

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY OC (A MINOR)
FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY A HEALTH AND
SOCIAL CARE TRUST

AND IN THE MATTER OF AN APPLICATION BY LH (A MINOR)
FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY A HEALTH AND
SOCIAL CARE TRUST

KEEGAN J

This case is anonymised by agreement of all parties as it involves issues relating to children. Nothing should be published which would identify the children or their families.

[1] These applications for judicial review were heard together as they raise similar issues. Both cases relate to the duties owing by the respective Health and Social Care Trust ("the Trusts") to provide accommodation to children when either looked after or children in need. The questions arising for determination include consideration of the extent of the duty, the timeframe within which it must be discharged, and how it must be fulfilled with particular emphasis on the issue of the suitability of accommodation that is provided by the Trusts.

[2] Mr White BL appeared on behalf of the applicant OC. Mr Mullan BL appeared on behalf of the applicant LH. Mr Magee BL appeared on behalf of both respondent Trusts. After the grant of leave I asked various interested bodies if they wished to intervene. I am very grateful for the detailed responses of the Northern Ireland Commissioner for Children and Young People ("NICCY") who was

represented in these proceedings by Ms McCrory BL. I also received a comprehensive submission from the Northern Ireland Children's Law Centre ("CLC") comprised in an affidavit from Ms Paddy Kelly and associated documentation. I received a letter from the Northern Ireland Human Rights Commission expressing an interest in the case. The Police Service of Northern Ireland ("PSNI") also filed a written argument and Mr Henry BL appeared on its behalf. I wish to commend all of the parties for their attention to detail and elucidation of the very important issues in this case which relate to young people who cross over between the care and juvenile justice systems.

[3] I granted leave in both cases largely on wider policy grounds given that accommodation was found and bail was ultimately granted in both cases. However, I was concerned about the type of accommodation suggested during the course of hearings namely bed and breakfast/hotel accommodation. This hearing therefore focussed on this issue. Mr Mullan also applied for specific declaratory relief in LH's case.

Background

[4] The background facts in each case are comprehensively recited in the affidavits. I will not repeat them at length as they inevitably make difficult reading. Both of these applicants have had difficult histories. OC is now 18 years of age having achieved that milestone in December 2017. He has had a very difficult history characterised by instability at home and drug use. He became a looked after child in July 2017 when his father was imprisoned. Thereafter he experienced the care of social services. The relevant Trust attempted to accommodate OC in various bed and breakfast and hotel accommodation over a period without success. An application was made for secure accommodation on 11 August 2017 and refused. OC was then remanded in custody on 25 August 2017 for offences of disorderly behaviour, drug possession and theft.

[5] At that stage OC was remanded into juvenile justice until the police and social services could agree a suitable address. The remand was maintained until 1 September 2017 whenever OC was again placed in hotel accommodation. The placement was short-lived and OC returned to juvenile justice. The evidence of the Trust is set out in an affidavit with attached reports which refer to the very many attempts to accommodate OC in various types of accommodation. In particular there is a document entitled "accommodation OC was placed in since July 2017 to 13 December 2017" and that sets out a range of placements namely hotels, bed and breakfasts and supported placements that were tried, all without success. The report also points out that the Trust is now working in partnership with the Northern Ireland Housing Executive in relation to accommodation options given that OC is 18.

[6] Counsel did not demur from the fact that OC is a troubled young man, with a serious drug issue, and that he really is unmanageable. Throughout the reports received in this hearing references are made to him having drug paraphernalia in

various accommodations, wrecking accommodation and being seen on CCTV stealing from other members of the public whilst in hotel accommodation.

[7] LH is now 17 years of age and she has experienced a history in care since she was aged 3 and made the subject of a care order having moved to Northern Ireland. She experienced abuse as a child. As an adolescent she exhibited alcohol and drug misuse. It is clear from the papers and the replying affidavit filed by the respondent Trust that foster care was tried, residential care was tried, and secure accommodation was tried. The case of LH came to the attention of juvenile justice due to assaults on staff in secure accommodation and alleged arson. It is clear that from May 2015 there was an escalation in this young woman's behaviour. She was remanded in custody on 19 September 2017 having been previously released from the juvenile justice system on 15 September 2017. She had approximately 10 days whenever bail could not be effected as a suitable bail address could not be found. On 29 September 2017 bail was granted in the High Court on the basis that LH would live with her boyfriend's mother. Since then the placement option has changed somewhat in that LH now lives successfully between bed and breakfast accommodation and her sister.

[8] The preceding paragraphs present but a brief snapshot of the histories of both of the juveniles at issue in this case. Their lives have been shaped by instability and addiction issues. The facts of these cases are extreme. A related theme throughout the papers is the difficulties which the Health Trusts have had in terms of management of both of these young people and in providing accommodation for them which does not break down. Against this background the applications for judicial review were brought enjoining the court to look at issues of the suitability of accommodation for juveniles placed in such a situation. In that regard the case has a broader focus than that associated with the particular factual circumstances of the two applicants.

Legal Context

[9] The duty to provide accommodation to children is well trammelled ground and is found in two separate provisions of the Children (Northern Ireland) Order 1995 ("the 1995 Order"). Firstly there is a duty to provide accommodation to a "looked after child". This duty is set out in Article 27(1)(a) of the 1995 Order and arises when a looked after child is in the care of the authority. A looked after child is a child who is either –

- (i) In the care of a Health and Social Care Trust by virtue of a care order; or
- (ii) A child who is provided with accommodation by the authority for a continuous period of more than 24 hours.

[10] There is also a duty to provide accommodation to a "child in need" as defined by Article 17 of the 1995 Order. This duty arises in circumstances specified in

Article 21 of the 1995 Order when certain conditions are met. These conditions are that the child must appear to the authority to require accommodation, and this requirement must be due to one of three factors –

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or having been abandoned; or
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

[11] The Article 21 duty to children of this category has been set out by Baroness Hale in *R(G) v LB of Southwark* [2009] UKHL 26 applying the seven step test which is repeated in our jurisprudence and in the regional good practice guidance. The questions are as follows:

1. Is the applicant a child?
2. Is the applicant a child in need?
3. Is he within the local authority's area?
4. Does he appear to the local authority to require accommodation?
5. Is that need the result of –
 - (a) there being no person who has parental responsibility for him;
 - (b) his being lost or having been abandoned; or
 - (c) the person who has been caring for him being prevented from providing him with suitable accommodation or care?
6. What are the child's wishes and feelings regarding the provision of accommodation for him?
7. What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings?

[12] In this case it was accepted that the duty to accommodate was an absolute duty. This flows from a number of decisions namely *R(N) v Gateshead NBC* [2006] EWCA Civ 221 applied by the House of Lords in *R(G) v LB of Southwark* [2009] UKHL 26 in the context of an entitlement to accommodation. In this jurisdiction the principles have been repeated in the case of *JR66's Application* [2012] NIQB 5 and *MP's (A Minor) Application* [2014] NIQB 52.

[13] The next question is how the duty should be performed. This involves consideration of what discretion is afforded to the relevant Trust in finding accommodation. On this issue there was consensus among counsel that a Health Trust in the position of the respondents in these cases should be allowed a reasonable time to comply with the absolute duty. In *JR47's Application [2013] NIQB 7*, in the context of the provision of accommodation to vulnerable adults in the fulfilment of duties to them under the Health and Personal Social Services (Northern Ireland) Order 1972, this was described by McCloskey J as a duty which is,

“...imposed on the relevant authority to provide the assessed benefit within a reasonable time. It is trite to add that the measurement of this period will inevitably vary, tailored to its particular context.”

[14] In *R (N) v Gateshead* at paragraph 20 Dyson LJ also stated as follows:

“Thus where it appears to the local authority that there is a child in need, for example, as the result of there being no person who has parental responsibility, the local authority has an absolute obligation to provide some accommodation for that child. Section 20 says nothing about the type of accommodation that must be provided; that is left to the discretion of the local authority.”

[15] In LH's case an argument was made that the Trust had not acted in a timely manner as she experienced a 10 day period in custody prior to the provision of accommodation which it was argued was unreasonable in the circumstances. Her case was also distinctive in that the original address provided by the Trust was an address which was not acceptable to the police. This was due to the fact that LH was subject to a Child Exploitation Assessment. In the OC case I determined the time issue at the leave hearing as I considered that the 6 day period during which the Trust struggled to find a placement for OC was within a reasonable timeframe, particularly given the fact that OC had a particularly difficult history.

[16] In terms of suitability, the main argument in the case was whether or not there should be an absolute prohibition on the use of bed and breakfast accommodation/hotel in these cases. To that end both applicants drew on the *dicta* of Baroness Hale in *R (N) v Hammersmith & Fulham LBC [2008] UKHL 14*. This was a case involving consideration of the Housing Acts and the Children Act in relation to the suitability of bed and breakfast accommodation for children in need. The ultimate outcome was that the Children Act provisions took precedence over homeless legislation and as such local authorities could not abdicate responsibilities to housing providers. Reliance was placed upon Paragraph 27 of this judgment which reads as follows:

“The 2006 Code spells out some points in more detail. It emphasises that 16 and 17 year olds who are homeless

and estranged from their family will be particularly vulnerable and in need of support (para 12.12); that housing solutions are likely to be unsuccessful if the necessary support is not provided, so close liaison with social services and other support agencies will be essential (para 12.13) and that bed and breakfast accommodation is unlikely to be suitable for 16 and 17 year olds who are in need of support (para 12.14). This case is good illustration of the wisdom of this guidance. One of the reasons that N was evicted from the hostel for 16 and 17 year olds in October 2005 was her failure to co-operate with her support worker.”

[17] The code to which Baroness Hale was referring was the Homelessness Code of Guidance for Local Authorities 2006 issued under the Housing Act 1986. That statutory guidance issued in England in the aftermath of the *Southwark* case. It provides that bed and breakfast accommodation is not considered suitable for 16 and 17 year olds even on an emergency accommodation basis. Mr White also referred to statutory guidance in Wales which states that bed and breakfast accommodation for 16 and 17 year olds is not normally considered to be a suitable option, subject to the provisions of the Homelessness (Suitability of Accommodation) (Wales) Order 2006. Further reliance was placed on the *dicta* of Baroness Hale in the *Hammersmith & Fulham* case contained in paragraph 4 as follows;

“This case is about the respective responsibilities of local authority children’s and housing services towards children aged 16 and 17 who are unable to live with their families. In the end, it comes down to a short point of construction: what is meant by a child who is looked after by a local authority is defined in Section 22(1) of the Children Act 1989 but the clear intention of the legislation is that these children need more than a roof over their heads and that local children’s services authorities cannot avoid their responsibilities towards this challenging age group by passing them over to the local housing authorities.”

[18] Mr White also very helpfully pointed out that children law in England and Wales in relation to sufficiency of accommodation is different in that there was a statutory amendment to the Children Act made and an insertion at Section 22(g) by virtue of Section 9 of the Children and Young Persons Act 2008 in force since 1 April 2011. He pointed out that this provides that a local authority has a duty to provide sufficient accommodation for looked after children. It requires the local authority to take steps to secure that, as far as reasonably practicable, it is able to provide the accommodation for *inter alia* looked after children. This is referred to as

the sufficiency duty and it has this statutory imprimatur. Mr White accepted that the sufficiency duty does not apply in Northern Ireland but an analogy was drawn with England and Wales.

[19] These cases establish important points of principle about the duties of public authorities towards homeless teenagers. It is clear that the responsibility lies with children's services rather than housing providers for 16 and 17 year olds. It is in that context that the prohibition on bed and breakfast is raised. In my view emphasis is placed on the unsuitability of unsupported accommodation of vulnerable children. It is distinct from accommodation provided by children services which must also be accompanied by a package of supports and services.

[20] This case also raises the issue of the interaction with bail hearings. As Mr Magee pointed out in his written argument there is a nexus between the provision of bail to a young person and the duty to accommodate. This has already been discussed in *MP's (A minor) Application* and *CM's (A minor) Application*. The relevant international instruments have been set out in those judgments namely:-

- Article 5 of the European Convention on Human Rights ("the ECHR") - the right to liberty and security.
- Article 37 of the United Nations Convention on the Rights of the Child ("the UNCRC") - Detention of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time".
- Rule 13 of the Beijing Rules - "Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care placement within a family or in the educational setting at home".
- Rule 17 of the Havana Rules - "Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures."

[21] In his argument Mr Henry explained the considerations that are applied after a juvenile is charged in a police station namely the Police and Criminal Evidence (Northern Ireland) Order 1998 ("PACE"). He referred to Article 39 of PACE which states that custody staff are advised to take account of the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child when interpreting the legislation. He also referred to Article 12 of the Criminal Justice (Children) (Northern Ireland) Order 1998 which contains a presumption of bail in the case of juveniles as follows:

"12(1) Where a court remands or commits for trial a child charged with an offence, it shall release him on bail unless -

- (a) the court considers that to protect the public it is necessary to remand him in custody
 - (b) paragraph 2 or 3 applies
- (2) This paragraph applies where the offence charged-
- (a) is a violent or sexual offence; or
 - (b) is one where in the case of an adult similarly charged he would be liable on conviction on indictment to imprisonment for 14 years or more."

[22] During the hearing the relevant policy context was also opened by Mr Magee. He stated that this was contained within regional policy and procedures entitled "The Regional Good Practice Guidance on Meeting the Accommodation and Support Needs of 16-21 Year Olds (the Guidance)".

[23] Mr Magee examined the guidance in some detail in his submissions. He explained that this was devised by the Health and Social Care Trusts and the Northern Ireland Housing Executive with the aim of detailing how the Trusts and the NIHE would work together in a coordinated way to ensure that vulnerable young people aged 16-21 received a joined-up service and that their housing support needs were adequately assessed and responded to appropriately. Mr Magee referred to the fact that the guidance was originally issued in 2009 but revised following the House of Lords decision in *Southwark* as applied by *JR66*. In that case Treacy J highlighted the intention of the parties to review the existing guidance with input from the Children's Law Centre and that outcome was achieved and the revised version published in December 2014. In his written argument at paragraph 34 Mr Magee makes reference to the fact that:

"The guidance has as its primary aim the delineation of the respective responsibilities of the NIHE and the Trust when working with young people in the provision of housing and support to them. The guidance sets out categories of young people most directly relevant in these applications and considers at Appendix 2 exit pathways for young people aged 16/17 in Woodlands Juvenile Justice Centre who are at risk of/face homelessness on discharge."

[24] The submissions of all of the parties referred to the fact that a bed and breakfast/ hotel placement is an unregulated placement, that is a placement which is

not (i) a registered children's home (ii) an approved foster home (this includes approved kinship, foster care homes) or (iii) placement at home with parents. The written argument of the Trusts also points to the fact that notice must be served on the Health and Social Care Board in accordance with the notification of the placement of any 16 or 17 year old young person in an unregulated placement. The evidence filed by both Trusts states that it would only be in rare and emergency circumstances that such unregulated accommodation as a bed and breakfast would be used.

[25] After the hearing of the case I received further documentation which I allowed all parties to comment on. This included a checklist for usage of bed and breakfast or hotels for young persons aged 16-17. The respondents explain in the supplementary submissions that these documents were received following the oral hearing on 27 February and are relevant to the issues arising in these applications. The checklist provided by the Health and Social Care Board in particular states as follows:-

- (i) At page 3 of the correspondence (this was a letter sent by the service manager dated February 2018) on page 1 of the checklist - use of B&B or hotel, for 16-17 year olds should only be used as a last resort and for the shortest possible time.
- (ii) Page 1 of the checklist - such arrangements are reported by Trusts to arise primarily where no alternative suitable placement is available and/or where all other suitable options have been exhausted.
- (iii) Page 1 of the checklist - that the young person is provided with a high level of support, the landlord is assured of Trust input and that immediate efforts are directed towards identifying and securing a more suitable arrangement.

[26] In the supplementary submissions filed by the respondents specific reference is made to the fact that the respondent Trusts acknowledge:

- (a) Accommodation in a bed and breakfast or a hotel is the least appropriate arrangement for a young person.
- (b) Accommodating a young person in a bed and breakfast is better managed when a small number of providers are used and strong working and supportive relationships are built up.
- (c) Decisions to accommodate a young person in this type of accommodation are made at senior level and notification provided to the Health and Social Care Board by the relevant head of service.

I was also provided with some forms entitled "Notification of the Placement of any 16 or 17 year old person in an unregulated placement."

[27] In the submissions filed by NICCY the point is made that this case raises questions of public importance and highlights the need for judicial guidance with regard to the appropriate interpretation of Articles 21 and 27 of the Children Order in compliance with international obligations and in particular the issue of sufficiency and suitability of accommodation. The Commissioner rightly refers to the particular imperative contained in the United Nations Convention on the Rights of the Child Article 37(b) which states:-

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

[28] At paragraph 22 of these impressive submissions the following is articulated by the Commissioner:-

“The Commissioner notes with concern that there appears to be a disproportionately high representation of children on remand also being children in care. The proportion of young people involved with custodial services in Northern Ireland that were looked after increased to 39% in 2016/17 from 29% in 2015/16 (Youth Justice Agency Annual Workload Statistics 2016/2017).”

[29] The Commissioner confirms that following judgment in the matter of *MP NICCY* engaged with five local Health and Social Care Trust and the Health and Social Care Board who have provided assurances regarding the future provision of bail addresses. Reference is made to the fact that this resulted in roundtable discussions following which a number of actions were agreed as follows:-

“The HSCB will give the issues raised in the above judicial review and by NICCY at the meeting a particular focus. The Children Services Improvement Board will have a discussion regarding the sharing of this judgment and the outworkings and changes to practice to ensure that the learning is disseminated across all Health and Social Care Trusts and to relevant staff - the HSCB will look at relevant statistics to identify whether a relevant trend exists regarding the placement of children and young people in the Juvenile Justice Centre - HSCB to look at what progress has been made in the joint work

with the Department of Justice - HSCB undertook to update NICCY in respect of the development of work in this area.”

[30] In her informative affidavit Ms Paddy Kelly, Director of the Children’s Law Centre, also refers to the international obligations and the work of the CLC in dealing with this issue. She states that following the judgments in both the *Hammersmith* and *Southwark* cases the law in relation to the duties owed to homeless 16 and 17 year olds was clarified. However, Ms Kelly states that these duties and the subsequent guidance which was produced to assist decision-makers was not being correctly followed in the majority of cases in Northern Ireland and this resulted in the Children’s Law Centre bringing an application in *JR66’s* case in 2011. She notes that *JR66’s* application did not change the law but she points out that it clarified the existing law and resulted in the regional good practice guidance which has been referred to.

[31] The CLC affidavit also states that it has worked with a number of homeless young people who have been accommodated in bed and breakfast type accommodation and hotel accommodation. Ms Kelly states that these have proved to be completely unsuitable and have failed in every respect to meet the needs and rights of the child. She asserts that the use of such accommodation in CLC’s submission falls far short of the duty imposed on the Health and Social Care Trust by Article 21 of the Children (Northern Ireland) Order. The point is made that such accommodation is unregulated and is not subject to inspection in the same manner as children’s homes and supported accommodation. Further, it is stated that bed and breakfast type accommodation often results in young people being accommodated with adults who have not been subject to any checks including under Access NI. Ms Kelly explains that many of the homeless young people CLC have worked with have additional needs, such as mental health needs or drug use, which cannot be adequately met by placing them in bed and breakfast accommodation. She also states that “many young people whom CLC work with require support which goes beyond mere accommodation.”

[32] The complexity of the needs of homeless young people was recognised by the Northern Ireland Assembly Research and Information Service in its briefing paper ‘What Do We Know About Homelessness in Northern Ireland? An Overview of Some of the Evidence Base, 16th June 2016’. Ms Kelly draws on this report, particularly from page 9, which specifically recognises the complexity of the needs of young people and the need to meet their long-term needs. Ms Kelly then refers to a number of studies and reports in England and Wales which examined the use of bed and breakfast accommodation for homeless 16 and 17 year olds and which echo the sentiment that these were unsuitable for the accommodation of such juveniles. Finally, Ms Kelly states at paragraph 16 that much of the work of CLC in this area has been around the incorrect classification of homeless young people as children in need under Article 18 of the Children (Northern Ireland) Order 1995 rather than as a children in need requiring accommodation under Article 21 of the Children

(Northern Ireland) Order 1995. She states that if a young person is wrongly classified as Article 18 rather than Article 21 he or she does not acquire looked after status. She concludes as follows:

“Courts through a series judgments, including but not limited to those cited throughout this affidavit, have made it clear that Health and Social Care Trusts cannot bypass long-term duties owed to homeless 16 and 17 year olds under the leaving and aftercare system by calling accommodation which should be provided under Article 21 as Article 18 accommodation which prevents the child becoming a looked after child. The needs of the homeless young people that CLC has worked with are so diverse that these young people require more than mere accommodation; they require ongoing supports for their mental health, to access education and to acquire life skills. Moving into adulthood they require the support of the full leaving and aftercare regime to ensure successful outcomes.”

[33] Mr Magee also extracted some statistics from the evidence which he compared with the statistics available for England and Wales. He contended that in England and Wales the usage of bed and breakfast accommodation was higher. He utilised the Western Trust’s statistics to highlight that the provision from May 2017 to January 2018 was five usages of bed and breakfast out of a groupage of 81 which is 6%.

Discussion

[34] Article 21 of the Children Order has been the subject of considerable jurisprudence but this case brings into focus the fact that there remain issues in its application. This case has highlighted some matters of substance and procedure which I wish to address. The backdrop to this is the Trust’s recognition of their duties to these children and their absolute duty pursuant to Article 21. This concession made at the outset has been very useful and has avoided the arguments which have occupied many of the cases in this sphere and which were initially part of the relief claimed.

[35] The real issue in this case is much narrower and is whether the court should declare that there should be an absolute prohibition on the use of hotel/bed and breakfast accommodation by social services in cases such as these. This is a different question from that at issue in the *Southwark* case or the *Hammersmith & Fulham* case. In those cases there were issues about the nature of the duty, and whether accommodation should be provided by care or housing authorities. There was a concern that bed and breakfast/hotel accommodation provided by housing

authorities left vulnerable 16 and 17 year olds unsupported in the community. There was also an overarching concern in relation to an abdication of responsibility by local authorities.

[36] This case involves the interplay between the care system and juvenile justice. In terms of criminal justice it is important to state the cardinal principles that juvenile defendants are entitled to the presumption of innocence and that there is a presumption of bail and that a loss of liberty engages Article 5. The Trusts' knowledge of such juveniles may differ depending on the circumstances of each case. But in any event the duty upon the Trusts is to provide accommodation.

[37] I bear in mind that the court is exercising a supervisory function and that a margin of discretion is allowed to the decision maker. In cases such as these the decision maker has knowledge and expertise of child protection matters and that should be afforded considerable respect. I recognise the vulnerabilities of the young people involved and their need for support. However, I also recognise the challenges faced by Trusts in many cases of this nature when they are dealing with juveniles who display very troubled and difficult behaviours. For instance, it is hard to criticise placements which refuse to take juveniles back when they have assaulted staff, damaged property, or otherwise behaved in an unruly manner often fuelled by drug and alcohol abuse. So, there has to be a measure of discretion given to a Trust in finding accommodation. The duty cannot exist in a vacuum as it has a correlation to the characteristics of the juvenile involved. The legislation does not define what type of accommodation must be provided, however I accept that consideration should be given to suitability. An assessment of what is suitable will depend on the particular circumstances of a case and in this sphere the issues raised are many and various.

[38] Mr White put forward an impressive argument in support of an absolute prohibition on bed and breakfast accommodation using OC's case by way of example. I have considerable sympathy with this case, particularly as OC's case highlights the dangers in using this type of accommodation where there are serious inherent problems such as drug addiction. The accommodation cannot simply be used to provide a roof over the head of a problematic young person.

[39] However, each case is different and the reality of the situation was borne out as the arguments developed in that it became clear that an absolute prohibition on the use of hotel/bed and breakfast accommodation was problematic. In particular, whilst Mr White urged this course on behalf of OC, Mr Mullan did not on behalf of LH. This was because an absolute prohibition on bed and breakfast accommodation would invalidate LH's current placement and result in an impediment to her bail. This situation illustrates the difficulty in imposing an absolute ban given the infinite variety of circumstances which may arise. In saying this I stress my reservations about the use of this accommodation and I reiterate the fact that the accommodation at issue is not a substitute for proper supported accommodation. However, the Trust case is that it may be a stopgap until that becomes available, it should be used in a

very small category of cases and it must be supported. This type of accommodation should only be contemplated in the case of older children as the policy provides for. These are children who are often exiting the care system when independent accommodation is a next step. The provision of accommodation is also important to assist juveniles to achieve bail as these cases illustrate. Finally, it is important to reiterate the fact that juvenile detention should not be used as an alternative placement.

[40] I am reassured that these principles find expression in the evidence filed by the respondent Trusts and in the policy documents I have been referred to. There is recognition that such accommodation is not ideal and must only be used in exceptional circumstances after assessment in an individual case and pending a move to more appropriate accommodation. It is also designed to be a short term solution. I consider that all of this is within the margin of discretion exercised by the public authority and this is not something I am prepared to interfere with. I take cognisance of the codes from other jurisdictions and the materials presented on the issue, however I also bear in mind the fact there is a difference between homeless accommodation provided by housing services and accommodation provided by children's services which must be accompanied by support and services.

[41] I accept the evidence filed by the respondent Trust and contained within the affidavit of Peter Quinn, service manager, of 22 January 2018. He refers in detail to the attempts to find accommodation for OC. He also refers to OC's aggression towards staff in previous placements and the risks posed to other residents. At paragraph 22 he summarises the position as follows:

"The use of hotel and B & B accommodation for OC has only ever been intended as an emergency or short term measure while all efforts were being made to identify more appropriate and hopefully longer term accommodation for him. This has always been the aim of the Trust. The risks, however, presented by OC and his behaviour have significantly limited the options available for him."

At paragraph 24 he states:

"It is never the Trusts aim to place a young person such as OC in hotel or B & B type accommodation. This is an extremely rare occurrence and records available show that only 5 people have been accommodated for periods in this type of accommodation since May 2017."

At paragraph 30 he concludes by stating that:

“This is only used in exceptional circumstances and for as short a period as possible. In all cases there will be a framework of support around that placement and young person to ensure that their assessed needs are met. At the same time the Trust continues to make all necessary efforts to obtain a more stable and long term placement for the young person and works actively to ensure this is achieved as swiftly as possible.”

[42] In LH’s case I have also considered the evidence of the Trust contained within the affidavit of Ciara Quinn, principal social worker, of 8 November 2017. This affidavit also sets out the extensive attempts made to find accommodation for LH. It sets out LH’s history of violence and aggression towards staff in previous placements and the fact that foster care or residential accommodation was not suitable. The affidavit then states that bed and breakfast accommodation was considered as the only option in that context. At paragraph 36 Ms Quinn states;

“While accepting that the provision of B&B accommodation is far from ideal for a young person like LH, it was the Trust’s assessment that with an appropriate package of support for LH in the community, the accommodation proposed could meet her needs in the short term.”

A comprehensive package of support is also set out in the affidavit at paragraph 36 from i to xv.

[43] There does not appear to me to have been any other option in these cases save those options restricting liberty. In both cases the young people involved could well have had their liberty restricted by way of secure accommodation or remand in juvenile justice. However, efforts were made to find accommodation for them to facilitate bail. The outcomes were different in each case. It is in that context that the actions of the respective Trusts must be assessed. This is not a case about abdication of responsibility.

[44] There is an undercurrent in this case that perhaps there is a lack of resourcing for suitable placements. I was struck by the force of Mr White’s arguments in relation to the sufficiency duty which was imported into the Children Act. This is undoubtedly a matter worthy of debate in Northern Ireland when the availability of services and accommodation for children is under the spotlight. I do not have full evidence on this issue. However, it is possible that these cases are also symptomatic of a wider problem. If so, the issue should be taken up with the relevant authorities. A situation should not be allowed to develop in Northern Ireland where temporary accommodation becomes a substitute for properly supported placements.

[45] I am also concerned that the out workings of the policy only became clear in the supplementary submissions and it was not fully explained in the affidavits or the hearing. It seems to me that NICCY is correct in saying that there may not be a full appreciation of the policy and the fact that bed and breakfast accommodation must only be used *in extremis*, must be notified to the health board, must be for the shortest period and must be supported. I consider that there is an issue as to the accessibility of the existing guidance. In this case there was uncertainty as to where the policy was found and how it operated in practice, in particular that it should only be utilised *in extremis* and properly notified. At the very least the Trusts must make sure that practitioners on the ground know what the policy is, where it is found, and how it must be operated. In my view a codified document would also be of assistance.

[46] In LH's case there was also an application for specific declaratory relief contained within an Amended Statement Order 53. Mr Mullan argued that the initial choice of placement resulted in a breach of duty given that it was clearly unsuitable. I have considered this argument. The affidavit of Ms Quinn refers to the police objection to the identified bail address and explains that this position was accepted within 3 days. It then refers to the attempts after that to secure accommodation. I accept that evidence and as such I do not consider that the Trust has offended the duty to act within a reasonable timeframe. I agree that the situation as regards the first identified bed and breakfast placement was unfortunate, however, I have not detected any bad faith and the position was remedied. In these circumstances I am not persuaded to make the specific declarations set out in the Amended Order 53 Statement.

[47] Having considered all of the evidence, I am of the view the Trust actions were reasonable and that the duty to LH has not been breached. This is a case where there was effective liaison with police to ensure a safe placement for LH. I commend that approach as information sharing is critical in this type of case. In my view it would be a good idea for the Trusts to engage with police in creating a generic list of suitable temporary accommodation to ensure that no issues arise in future and so that that accommodation is provided as swiftly as possible. I was informed that the police have a checklist in relation to juvenile bail hearings. The relevant Trusts also have a checklist dealing with the provision of accommodation. I encourage a multidisciplinary discussion to make sure there is a consistency of approach. I also note that since bail was perfected, LH has been relatively stable and now lives between bed and breakfast and her sister with supports. I am encouraged that her current arrangements seem to work well.

[48] In relation to bail hearings I offer some further comments as follows:

- (i) When there is an issue with a child in need, a looked after child or a child subject to a care order, social services should directly input into the bail hearing. I have to say that in my experience this has become an ingrained

practice which is to be welcomed in that social services regularly attend at court and often give very valuable evidence about placement issues.

- (ii) A reviewing mechanism is available to the bail court which may be particularly important where short term accommodation is provided.
- (iii) In my view consideration should be given to having “one-stop” for these types of cases where possible. This chimes with the sentiments expressed by Gillen LJ in the Civil and Family Justice Review. If there is a judicial review it should be heard alongside the bail case. It may also be possible to combine a related family case.

Conclusion

[49] Accordingly, I decline to declare an absolute prohibition on hotel/bed and breakfast accommodation in cases of this nature. That is on the basis that the current policy places clear restrictions upon its use. However, I stress that the use of this type of accommodation should be rare, restricted and heavily monitored. I also decline to grant any specific declaratory relief. This judgment speaks for itself in relation to the issues in each case.

[50] Notwithstanding my overall conclusion, there are a number of lessons to be learnt from this case in terms of when bed and breakfast/hotel accommodation may be utilised. This will depend on the characteristics of the juvenile involved and each case must be rigorously assessed by Trusts going forward. This case has also served a very useful purpose in highlighting the fact that the policy should be recirculated. I also distil the following headline points from this case:

- The Trust duty under Article 21 is absolute.
- Accommodation must be provided within a reasonable time.
- That will depend on the facts of each case but there is an obvious urgency when a juvenile’s liberty is at issue.
- The accommodation should be suitable.
- What is suitable will depend on the facts of each case.
- Bed and breakfast /hotel accommodation must only be used in exceptional circumstances, for the shortest possible period and accompanied by supports and services.
- There must be notification to the health board in accordance with the policy.

- Social services will be expected to vouch all attempts to find suitable accommodation to a court and to set out the exact nature of temporary accommodation with an emphasis on supports and services.

[51] Finally, I record my thanks to all of the interested organisations who have presented arguments in this case. I am struck by their commitment to improving practice in this area for the benefit of the juveniles involved.