

Judicial Communications Office

4 May 2011

JUDGE QUASHES DECISION TO TRANSFER 17 YEAR OLD TO SECURE HOSPITAL IN ENGLAND

Summary of Judgment

Mr Justice Treacy, sitting in the High Court, quashed an order made by the Department of Health, Social Service and Public Safety authorising the removal of a 17 year old young person to a hospital in England under the Mental Health Act 1983 (“the 1983 Act”).

The youth, named in court as JR 49, has been detained in Beechcroft Child and Adolescent Mental Health Unit in Belfast since 12 October 2010. Beechcroft is the only Tier 4 mental health unit in Northern Ireland. It is not, however, a secure or forensic unit. There are no secure or forensic hospitals for adolescents in Northern Ireland.

Dr Frances Doherty, a psychiatrist employed by the Belfast Trust, told the court that JR49 had spent most of his time in the intensive care unit of Beechcroft. She formed the view that he poses a high risk of harm to himself and others and that the services being provided at Beechcroft were not sufficiently specialised to meet his needs. Dr Doherty wrote to Dr Monks, Consultant Forensic Psychiatrist at St Andrew’s Healthcare in Northampton, seeking his opinion on the suitability of JR49 for the secure adolescent unit at St Andrews. She felt JR49 required medium to long-term care and treatment in a secure setting.

Dr Monks provided Dr Doherty with a report informed by detailed factual and clinical enquiry including interviews with JR49’s mother. He referred to JR49’s mother’s concerns about his transfer to England and in particular that there would be a substantial disruption of his contact with his family. Dr Monks said that if a plan to transfer JR49 to an English secure unit was being formulated, the responsible mental health team in Beechcroft would need to be satisfied that the advantages outweigh the disadvantages and that it had been clearly demonstrated that all options to meet the needs of the young person in Beechcroft had been exhausted.

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The Court was told that JR49 and his mother had clearly stated that they do not want the transfer to take place. JR49's mother was specifically concerned that the family will no longer be able to visit him on a daily basis. She also said that her son finds it hard to adjust to new situations and people and there will be no-one and nothing familiar to him at St Andrews. She felt this could have an adverse effect on his behaviour and mental state. She also stated that jurisdiction for his detention would transfer to the system in England and Wales and if the treatment at St Andrews did not improve his condition, and no facilities exist for treating him in NI, it may not be possible for him to be transferred back to NI.

The Department concluded that a transfer for specialist treatment to an age appropriate psychiatric unit in England was the correct recommendation to make in this case. The Court heard that the Department's psychiatric medical officer reached his decision without having sight of the report from Dr Monks or obtaining the views of JR49 or his mother about the transfer. Counsel on behalf of JR49 argued that the Department failed to consider all relevant documents in reaching its decision. It was also claimed that failure to seek additional information from JR49 or his mother, where it was clear that objections existed, amounted to unfairness and the Department's decision amounted to little more than a "rubber stamp". The Department submitted that it had exceeded the requirements imposed by the 1983 Act which permitted decisions to be made in the "interests" of a patient by a third party (in this case the Department).

Mr Justice Treacy said the case raised several issues of concern to the Court. The first related to the interpretation of 1983 Act which states that the responsible authority may authorise the transfer of a patient to England if "it appears" to the responsible authority that such a transfer "is in the interest of the patient". At times during the hearing the Department (which is the responsible authority in this case) suggested that the term "interests" of the patient meant something different to and rather less than the term "best interests". Mr Justice Treacy said that the meaning of the phrase must be determined in the context in which it appears and in this case it was the responsibility of the Department to identify the option which serves the patient's interests by providing the best outcome possible for the patient because he is not capable of making the selection on his own behalf.

The second matter which caused concern to the Court was the interpretation of the word "appears" in the 1983 Act. The Department asserted that this statutory provision only required it to conduct an "empirical audit" of the evidence it had available in order to decide what "appears" to be in the patient's interests. Mr Justice Treacy said the word must again be interpreted in its context in the statutory provision:

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“It is quite clear to me that “appears” does **not** mean some kind of superficial visual weighing up of whatever paperwork is sent to the department in support of a proposal to transfer a patient. It requires a much more rigorous and inquisitorial exercise to take place. As we know a decision to transfer a patient to England against his family’s wishes and his own ascertainable wishes is a very grave decision indeed which demands the best informed and most anxious scrutiny. It certainly requires more than an “empirical audit” of the paperwork *presented* to the responsible authority.”

The third concern was the paperwork itself. Mr Justice Treacy said it was a matter of huge concern that Dr Monks’ report was not included in the paperwork forwarded by the Trust to the Department. The template document that was forwarded was “both inaccurate and misleading”. It stated that JR49 was “ambivalent” about the proposed transfer to England and did not set out the basis for his mother’s objections or any other relevant information.

Mr Justice Treacy said that the fact that Dr Monks’ report was not made available to the Department and that the Department did not request it before making a decision was troubling. He commented that the current mechanisms in place for proposed transfers do not necessitate the transmission of all relevant evidence to the responsible authority and the responsible authority does not have its own mechanism for reviewing and evaluating the quality of the evidence supplied to it by Trusts:

“These are serious flaws in the present system for proposed transfers of detained patients to England and I suggest that they be investigated and corrected at the earliest opportunity. It is axiomatic that a decision founded on incomplete or on partial evidence is likely to be a defective decision which is open to challenge by concerned families. It is in everyone’s interests that all sensible systemic provisions should be in place to minimise the needs for these types of challenges with all their associated emotional and financial costs.”

Mr Justice Treacy found that the Department failed to consider the objections to transfer and the possible significant disadvantages of transfer. He concluded that the Department did not take into account all relevant

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considerations before reaching its decision authorising the removal of JR49 to a hospital in England and quashed the decision.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Courts and Tribunals Service website (www.courtsni.gov.uk).

ENDS

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