Neutral Citation No: [2025] NIKB 48	*Ref:*	**McLA12815**
	ICOS No:	**25/50595/01**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**27/06/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JR187 (2)
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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Mr Aiken KC with Ms Mulholland (instructed by Peter Bowles Solicitors) for the Applicant
Mr Henry KC with Mr Corkey (instructed by Business Service Organisation) for the Respondent

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McLAUGHLIN J

Introduction

[1] This is an application for leave to apply for judicial review and interim relief in judicial review proceedings which has been case managed under an expedited timetable and led to an inter partes hearing on Wednesday 25 June 2025.

[2] The applicant was represented by Mr Aiken KC and Ms Mulholland BL, instructed by Peter Bowles & Co. The proposed respondent was represented by Mr Henry KC and Mr Corkey BL.

[3] At the outset I wish to place on record my thanks to both parties and their representatives for the very considerable efforts which have been made to ensure that this application was prepared for hearing within the short timeframe set by the court. I have been greatly assisted by the materials presented by both sides and by the high-quality legal submissions presented both orally and in writing.

Background

[4] The applicant is J and is currently 27 years old. The proposed respondent is the South Eastern Health and Social Care Trust ("the Trust"). J suffers from a range

of physical and mental disabilities and does not have mental capacity. He is, therefore, a patient for the purposes of these proceedings, which are brought in his name by his father and next friend. J suffers from a severe learning disability, has autistic spectrum disorder and requires a high level of support and mechanical restraint to manage self-injurious behaviour. He also suffers from digestive problems, overheating, dry skin and folliculitis, which can trigger his self-injurious behaviour. J is a very much loved and cherished member of his family, including his parents and his sister. It is overwhelmingly clear from all of the evidence which is available to me that the family are utterly devoted to J and that all of the actions which they have taken both in bringing proceedings and in their interactions with the Trust and its staff are motivated by their strong desire to advance their own views about J's best interests and how they might be achieved.

[5] J's disabilities are such that the family is not able to meet J's physical, medical and care needs within their own home. Prior to 30 December 2024, J resided in a Trust residential care facility known as River House, at 114 Milltown Road, Belfast. For reasons which are not relevant to the present application, River House became unsuitable for J's needs and the Trust sought an alternative placement elsewhere. This process was protracted. The Trust proposed a move to J's current placement in Struell Lodge, 2 Ardglass Road, Downpatrick. J's parents did not agree with the Trust's proposal which resulted in the Trust bringing an application under the inherent jurisdiction of the High Court, seeking approval to move J, together with associated relief relating to the use of necessary restraint measures. The application was contested and ultimately resulted in an order of Quinlivan J dated 4 December 2024, by which she determined that the move to Struell Lodge was in J's best interests and made a Declaration to that effect. The Order also endorsed the Trust's Transition Plan and gave the parties liberty to apply.

[6] The result was that J moved to Struell House on 30 December 2024 and has resided there continuously since that time. It is a Trust owned and operated residential facility, which provides a home for a total of six residents all of whom have complex medical and social care needs. J has the benefit of a Care Plan in which the Trust set out J's care needs and the provision which it considered to be appropriate for meeting those needs. For present purposes, two aspects of the Care Plan are relevant:

(i) While in Struell Lodge, J requires four dedicated members of staff 24 hours a day to meet his needs.

(ii) J's Care Plan expressly recognises that family time and family visits are an important part of his life in Struell Lodge. I was referred to two particular entries, which I was informed were representative of this recognition:

> "J's family are very involved in his care and see him regularly both in his home Struell Lodge, the family home and also on outings within the community…"
>
> "**What is important to me**: My parents and sister …and having the opportunity to spend time with them."

[7] Struell Lodge also has a Service User Residential Guide, which formed part of the evidence in the declaratory proceedings. It contained a policy statement in relation to family contact for residents. It states in relevant part:

> "**Individuals contact with family, friends and the local community**
>
> Individuals are encouraged, with the support from staff, to maintain, as far as possible, their existing links with family, friends and the local community. Individuals can have visitors at any reasonable time and if there are restrictions, these are made known and explained to all concerned. When agreed by each individual, or through a best interest's decision, their family and friends have the opportunity to be involved in the resident's daily life."

[8] This policy appears to have been understood by the Family to mean that they would have access to Struell Lodge to visit J throughout the day or without significant restrictions. Within a short period of time following J's move the Trust informed the family that visits should take place within prescribed hours. While the family appear to have resolved to work within these restrictions, they have been a matter of contention since that time. The family also has other concerns about various aspects of J's care within Struell Lodge, which it is not necessary either to enumerate or resolve as part of these applications. They include issues such as staffing levels and the compatibility of J's needs with the other residents of Struell Lodge. The family's concerns culminated in an application made pursuant to the Liberty to Apply clause of the Order of 4 December seeking several forms of relief, including an order that his residence in Struell Lodge is not in his best interest ("the Liberty to Apply application"). In effect, the family seek to revoke the Declaration made on 4 December 2024 authorising J's move. In addition, the family also seeks further relief in the declaratory proceedings which is relevant for present purposes, namely (summarising):

(i) an Order that the "Open Visiting Policy" at Struell Lodge be reinstated forthwith in respect of [J]; and

(ii) an Order prohibiting the [Trust] from unreasonably restricting family access to [J].

[9] A review hearing of the declaratory proceedings took place before me on 28 May 2025. I raised with the parties whether the inherent jurisdiction of the court in relation to a patient's affairs was sufficiently broad to include the type of relief sought by the family regulating access to a Trust residential care facility. I invited the parties to consider whether a challenge to a restriction on visitation rights more appropriately fell within the court's supervisory jurisdiction over a Trust's management of its care facilities, rather than its inherent jurisdiction over a patient. I expressed the view that a hearing of the declaratory application may transpire to be a wasted exercise if some or all of the relief sought in the declaratory application was defeated on jurisdictional grounds. The parties agreed to reflect on the issue and a further review hearing was scheduled for 6 June 2025. However, consideration of the jurisdictional issue was somewhat superseded by events.

[10] At the time of the review hearing on 28 May 2025, further restrictions on visits by the family had also been imposed by the Trust as a result of two police investigations into issues which had been reported to the police relating to conduct by the family. These investigations caused understandable concern for the family and were the subject of various exchanges of correspondence between the family solicitor; the Trust and its advisors; and the police. At that time, the family appeared to be in the dark about the scope and target of the investigations. One of them has since transpired to relate to suspected injuries which J sustained during a home visit as a result of his fingernails being trimmed by J's mother. That investigation has since been closed by police without J's mother even being interviewed. Limited information is available about the other investigation, but it appears to relate to an allegation about the conduct of one or more members of the family towards another resident of Struell Lodge. For present purposes, the relevance of these investigations is that around the time of the review hearings on 28 May 2025 and 6 June 2025, additional restrictions were in place on visits by the family to Struell Lodge, the reasons for which were unclear, and which had been causing concern and distress.

The impugned decision

[11] On the evening of 5 June 2025, the Trust's solicitor sent a letter to the family solicitor informing it that a decision had been taken by the Trust not to facilitate any family visits for a period of four weeks, to be reviewed at the end of that period. The letter sets out the decision now under challenge and also the reasons for the restriction.

[12] In summary, it stated:

(i) The Trust would not facilitate any family visits for a period of four weeks (ie until 3 July).

(ii) The position would be reviewed after four weeks.

(iii) In four weeks, the Trust would "aim to restart community visits" and would "attempt to progress toward visits in the family home."

[13] The letter also outlined the Trust's reasons for its decision. In summary, the letter stated that the behaviour of Mr & Mrs S toward the Trust staff, in particular the staff within Struell Lodge, was unacceptable. In order to deliver the care which J requires (ie four dedicated members of staff on a 24/7 basis), it was necessary for the Trust to have access to very large number of staff who are trained in and familiar with J's specific needs. Since J's move to Struell Lodge, a total of six members of staff had resigned, citing their treatment by J's family as a reason for resigning. Four additional members of staff had requested either a demotion or had declined to take up/continue promotional opportunities which would have required them to undertake positions of responsibility for communicating with the family while on shift. In addition, two trade unions had contacted the Trust on behalf of their members working in Struell Lodge to express their grave concern about working conditions, in particular, working with the family. An MLA had also met with Trust officials at the request of the family members of other residents to express the concerns of those families about the environment within Struell Lodge and the impact which the interactions between the family and Trust staff was having upon their own family members. All of the staff members within Struell Lodge had expressed their enjoyment from working with J and their desire to continue to provide care to him. Their concerns related solely to the behaviour of Mr & Mrs S and their treatment by them. In short, the letter identifies the adverse effects of the behaviour of the Mr & Mrs S upon staff, the potential for more staff to leave and the resulting difficulties which this would place upon the Trust's ability to deliver care to J, in accordance with his needs and its statutory responsibilities. It identifies the need to "stabilise the Trust team" as the principal reason for the decision and contains the following summary description of the Trust's concern:

> "…J's family are repeatedly confrontational and unreasonably so. The family are rude and nasty to staff, raise their voices on occasion, are threatening (such as threatening to report individuals to their professional regulators), intimidating and make unreasonable demands for information. They deliberately try to make staff caring for J uncomfortable."

[14] The decision letter also contains a recognition by the Trust of the importance to J of the contact which he has with his family and that such contact is in his best interest but states it "has to be balanced against the need to have staff to provide the care he requires." The letter records that the Trust has attempted to meet with the family and discuss concerns about the effects of their behaviour. While some meetings may have taken place, unfortunately, meetings did not proceed in the recent past as the family would only attend if the meetings were audio recorded, and

their solicitor was permitted to attend. These conditions were not acceptable to the Trust.

[15] The applicant now challenges the decision of 5 June 2025, together with the earlier and ongoing restrictions on visiting hours which had been in place since January 2025. The current proceedings are therefore interlinked with the declaratory proceedings insofar as the applicant seeks to ensure that the court will have supervisory jurisdiction over the visitation restrictions (both the original restrictions and the more recent four-week restriction) through these proceedings, if it is not available through the declaratory proceedings. In light of the short initial duration of the impugned decision, the application for interim relief will, in effect, be dispositive of the challenge insofar as it relates to the four-week period.

Evidence of the parties

[16] At the review hearing of 13 June 2025, I made clear that the court did not expect that any evidence filed at this stage of the proceedings must contain all evidence that the Trust or the family might wish to rely upon at a full hearing in due course of either the judicial review or declaratory proceedings. I recognised that the practicalities of doing so in a case of this nature and evidential complexity was challenging and that it may also be potentially unfair to expect parties to meet such a requirement within such a short period of time, particularly since the declaratory proceedings would not be heard this term. However, I did wish to afford both sides an opportunity to provide the court with sufficient evidence to be able to deal with the interim relief application.

Evidence on behalf of Trust

[17] In response to the application for Interim Relief the Trust filed an affidavit from Rachel Gibbs, Director of Mental Health, Learning Disability, Psychological Therapy and Healthcare in the Prison Service for the Trust. The affidavit is extremely extensive. It is not possible to summarise it in full. For present purposes, three key issues are addressed:

(i) Evidence of the type of conduct on the part of Mr & Mrs S about which the Trust complained.

(ii) Evidence from Staff members and Representatives.

(iii) Proposals for future.

[18] I summarise these areas of the evidence in turn.

(i) Conduct and communications by the family

[19] The evidence of inappropriate behaviour by the family largely took the form of almost 200 pages of emails sent by the family to the Trust during the period since J's move to Struell House. I was informed that this was a representative sample only and not the totality of the email communications. This evidence was augmented by narrative descriptions of some of the behaviours which were witnessed and experienced by staff in their engagement with Mr & Mrs S.

[20] I was invited to read the emails for myself. I have considered as many of them as time allowed, but not all of them. It made for grim and dizzying reading. The emails span the entire period of J's time in Struell Lodge. They appear to have been sent at all hours of day and night. Most if not all emails are directed to more than one individual. The range of recipients appears to include staff at multiple levels, up to and including several emails which were copied to Assembly officials and even the Private Office of the Minister for Health. The family solicitor appears to have been copied in to almost every email, if not all. The content of the emails is extremely varied but includes detailed and specific complaints about almost every aspect of the care delivered to J on an almost daily basis; complaints about J's presentation and condition; events within Struell House; requests for changes to, refinement of and clarifications about almost every aspect of his daily routine; allegations of departures from J's Care Plan; perceived inconsistencies in the communications from different members of staff and allegations of abuse of J by staff. The list goes on. The content of the emails are impossible to summarise fully but it is also unnecessary to do so for the purpose of this application.

[21] Ms Gibbs also states that these communications are difficult for staff to cope with, while balancing other duties and the needs of other service users. The nature, tone, content and volume of the communications from the family have been such that Ms Gibbs describes it as providing a "constant undercurrent of threat", notwithstanding that not every interaction is unpleasant. It has resulted in defensive actions by staff insofar as they were afraid to do anything which might upset or annoy the parents and thus become a target.

[22] In the course of submissions, it was emphasised to me on behalf of the Trust that it was the cumulative effect of the communications and behaviour of the family which staff found to be overwhelming, even if each individual email, complaint or interaction might be regarded as tolerable or justifiable, when viewed in isolation.

(ii) Evidence from staff and representatives

[23] The Trust conducted exit interviews with all members of staff who had decided to resign or who had declined to take up/continue with promotion opportunities which would require them to work in a position involving interactions with the family. The position of each member of staff differed and the reasons for

their departure often included other personal reasons. However, all members of staff expressly cited their negative experiences with the family as at least a factor, even if not the primary reason for their decision. More than one staff member cited the adverse effects of their experiences with the family upon their mental health, physical health and work-related stresses. The staff in question were all experienced and some had worked with the Trust for many years and wished to continue to do so, albeit not in this role.

[24] In total, I considered the record of the exit interviews of ten different members of staff. In addition, I was referred to an email dated 17 June 2025 sent by one former senior manager with detailed knowledge and experience of the Family and who ultimately decided in January to take early retirement. The relevant parts of the email merit repetition in full, as they convey in the starkest terms the emotional impact which prolonged exposure to the family's conduct had upon an otherwise experienced, resilient and highly valued member of senior Trust staff:

> "…I have worked within the Statutory Disability field for 36 years and 21 of these have been within SET with different levels of Management responsibility.
>
> I have been involved with J and his family for the past 10 years, throughout his years in River House and most recently with his transition to Struell Lodge.
>
> Throughout this time there have been increasingly difficult relations with J's parents but none so difficult as during his transition to Struell Lodge and beyond to present day.
>
> As Assistant Director I understand and expect challenge and difficult interactions with people if they are not happy with the service we provide and alongside this I expect and seek assurances from staff that they are providing the best service possible. I have therefore been to the forefront of many challenging and difficult engagements with Mr and Mrs S, not least in an attempt to protect staff who are subjected to negative and threatening communication on a regular basis from this family. In this context I met with the Family on 31.12.25 alongside Struell Manager. J had just moved into Struell and Mr and Mrs S were extremely unhappy.
>
> The meeting was extremely challenging and ended with Mr S verbally threatening myself and the Manager in a manner I found intimidating. Such was the cumulative

> impact of this and the previous ten years of engagement that I decided to retire from my post and informed my Director of this decision shortly after on 14 Jan 25.
>
> This decision was reinforced for me when I was diagnosed with a stress related physical condition for which I am receiving ongoing treatment.
>
> While I am of retirement age this decision will not impact me financially unlike other colleagues who have sought to leave posts within Struell Lodge, however I am conscious that my decision places my colleagues in a difficult position as the recruitment pool is currently challenging, particularly within Learning Disability services.
>
> I have received nothing but support from my Trust colleagues but my decision to leave at this time is directly related to my ongoing ability to physically, professionally and emotionally withstand the cumulative impact of the attritional, unrelenting and negative engagement from the - Family…"

[25] As I have set out above, the evidence at this stage of the proceedings is not complete and does not include a response by Mr S. I am, therefore, unable to reach any conclusions at this time about what may or may not have occurred during the meeting of 31 December 2024 between the Assistant Director of the Facility and Mr S. However, I am able to say that if the description of the Assistant Director of the Facility is true and if she was threatened and intimidated by Mr S to the extent that she felt she could no longer continue in her post, it would be wholly unacceptable and reprehensible conduct, which simply could not be justified.

[26] Ms Gibbs also sets out in full the communications from Trade Union representatives of two different unions (NIPSA and UNISON) with members in Struell Lodge. The communications expressed grave concerns about the welfare of staff as a result of their exposure to the family and formally requested the Trust to make changes and to protect staff. The letter from NIPSA holds out the prospect of a "domino effect" of staff departing or taking sick leave in the absence of positive change. One of the communications contains the following comment which reflects the concerns expressed by both unions:

> "…[Staff] have experienced personal threats, threats of losing their NISCC registration, false allegations, abuse (verbal/psychological/emotional) defamation of character, being videoed within the workplace against their consent. Some have had to be walked to their car by

> another member of staff due to the family standing at their car, waiting for them to leave the workplace, within the last number of months…"

[27] I am not in a position to make a finding of fact on the alleged intimidation and/or harassment of staff by the family when staff are leaving the workplace. Suffice to say that, if true, whether intended to cause fear or not, it would be wholly unacceptable, unjustified and of the utmost gravity.

[28] In an email from UNISON sent after the impugned decision, the union expressed that its members were fully supportive of the action the Trust and management had taken but were concerned about a future return to the previous status quo.

[29] The affidavit also describes the approach to the Trust by Colin McGrath MLA on behalf of the family members of other residents who sought reassurance that staff departures and morale would not affect their loved ones.

[30] Overall, Ms Gibbs stated that the behaviour of the family is in stark contrast to that of the relatives of other residents of Struell Lodge and that the situation was "unique in the collective experience of the Trust Management Team." She describes the situation as "dire" and states that staff morale was at an all-time low. She feared that more staff may leave which could put J's placement in jeopardy if there was not sufficient staff to deliver the care which he requires and may impact upon other residents. Her affidavit contains the following summary of the factors which influenced the decision:

> "…The factor causing the difficulty was the conduct of [J's] parents. The Trust cannot cause a change in their behaviour. It can try to work with them and try to persuade them to work with us on more civil terms, as we have been doing before his move to Struell and since he moved into Struell, but we cannot force them to. However, if the stark choice is losing more staff or limiting contact, then the most appropriate option was to limit contact. There were competing considerations, and I have to attempt to strike the correct balance between them…This is not the first time this has happened. Staff were also lost in his previous placement as a result of the parents' conduct. The feedback I was getting from Struell was that the staff needed a break from J's parents. To keep the team in place for the benefit of all of the residents, I needed to give them a break in the short term and bring about an adjustment which will arrive at arrangements which are viable in the longer term."

(iii) The trust's position on visitation

[31] Since J's time in River House and thereafter, there had been a problem with home visits, insofar as a risk assessment of the home had not been completed and staff remained outside the home for the duration of the visit. Completion of the risk assessment has been outstanding since that time. In the course of the hearing, I was informed that the assessment could be completed within a day and both parties agreed to identify a suitable date during the week commencing 30 June 2025 when this could be completed.

[32] At the review hearing on 13 June 2025, I was informed by the Trust that it had reviewed its position since the impugned decision of 5 June and that it had facilitated access to Struell Lodge for visits by J's sister during the normal permitted hours and that it had facilitated one community visit per week with Mr & Mrs S. The Trust also confirmed during the hearing on 25 June 2025 that this would remain the position, pending the commencement of an overall review of visitation after the initial four-week period. The Trust's current position on visitation and communication with the family was set out formally at Para 137 of the affidavit of Rachel Gibbs which was filed for the purposes of the leave and interim relief hearing. A summary of the content of that affidavit is summarised at [17] above and is addressed in more detail below.

[33] In summary, the Trust's current proposal is as follows:

(i) Continuation of one family community visit per week, with a view to this increasing.

(ii) Move to home visits in the S family home, following completion of the risk assessment.

(iii) Re-introduction of family visits to Struell Lodge by Mr & Mrs S once they have demonstrated that they are able to interact with Trust staff in a way that will not increase the risk of staff leaving.

(iv) Visitation by J's sister to Struell Lodge and/or her participation in community or home visits.

(v) Communication by the Trust by means of regular phone calls to provide an update on J's welfare and email communication to a dedicated email address.

Rejoinder evidence of Mr S

[34] In a rejoinder affidavit, Mr S expresses the response of his family to the Trust's evidence. Upon reading the evidence, he describes feeling upset, amazed

and in some instances very angry. He considered that the evidence revealed that the Trust's decision was based upon the needs/interests of the Trust, rather than the best interests of J and did not give sufficient consideration to the impact upon J of restricting visits from his family. He did not accept the Trust's reasoning that J's best interests required stabilising the team of staff who care for J in priority to his ability to see his family. He described this logic as "cruel in the extreme." J's sister does not appear to have taken up the offer of visiting J in Struell Lodge while the restriction upon her parents doing so remains in place.

[35] Mr S's rejoinder affidavit did contain some recognition of the force of the Trust evidence, namely that his own conduct and that of Mrs S may have had unintentional adverse effects upon staff. At para 7, he states:

> "…it is evident from reading the material exhibited to the affidavit of Ms Gibbs that we may have upset some staff at Struell Lodge. We are sorry if that is the case. We have no desire for any member of staff to be upset, to be stressed or to want to leave their jobs. No engagement we have had with any staff in Struell Lodge has been with that intention. It is deeply upsetting that we could be said to have caused any staff to feel that way. Our only interest is ensuring that J is cared for properly and safely."

[36] Mr S also felt that the Trust should not be solely responsible for determining whether or when visits to Struell Lodge by him and his wife could resume.

[37] In his affidavit and on his behalf in submissions before me, Mr S emphasised that a large measure of the family's concerns about J's welfare in Struell Lodge and their desire for information about the broader living environment stem from a very distressing incident on his first day following J's transfer. I understand that one of the other residents was able to appear naked in J's room and proceeded to masturbate in front of Mrs S, without being stopped by staff.

[38] At para 22 of their most recent affidavit, the family has made a counter-proposal for an interim position, pending final determination of the proceedings, involving an independent supervisor. It was contended that an independent supervisor would provide reassurance for staff, deterrence against any inappropriate behaviour and would be an independent witness in the event of dispute. I was invited to make an order in these terms by way of interim relief. The family proposal is for:

(i) One weekly two-hour community visit, with an independent supervisor present.

(ii) One weekly two-hour visit to Struell Lodge, with an independent supervisor present.

(iii) One weekly three-hour family home visit, with staff to remain outside.

(iv) Attendance at any of J's medical appointments.

(v) Additional hours of visitation during the week of J's birthday

The grounds of challenge

[39] There are three broad strands to the challenge. They apply to both the restrictions on family visiting hours within Struell Lodge which have been in place since January and the impugned decision of 5 June not to facilitate visits to Struell Lodge by Mr & Mrs S for four weeks and thereafter to review the position:

(i) Breach of Statutory Duty.

(ii) Breach of J's Article 8 ECHR right to respect for private and family life.

(iii) Irrationality.

[40] At this stage of the proceedings, it is not necessary for me to reach a final view about whether or not any of these grounds of challenge are made out, simply whether I should grant leave and, if so, whether to make any order for interim relief. The test for leave is well established in this jurisdiction, namely whether any of the grounds are arguable and enjoy a reasonable prospect of success.

[41] Three separate statutory duties were relied upon in support of the illegality challenge.

[42] First, reliance was placed upon section 2 of the Chronically Sick and Disabled Persons (NI) Act 1978. It was not disputed that J was a person whose disability was such that brought him within the scope of the duty upon the Department under section 1 of the 1978 Act to identify and make arrangements to promote his social welfare. However, the applicant was unable to identify any of the specific mechanisms enumerated in section 2 by which the duty could be fulfilled which could require the Trust to facilitate family visits where the disabled person was in the care of a Trust. It is clear from the express language of section 2 that the list of powers is exclusive in nature and not merely illustrative of the powers by which social welfare may be promoted. Accordingly, it is clear that no breach of section 2 could arise on the facts of this case, and I will refuse leave on this ground.

[43] Second, the applicant relied upon Article 15 Health and Social Services (NI) Order 1972, when read in combination with Article 5. These provisions have been

the subject of detailed consideration by this court in many decisions in this area. The leading authorities to which I was referred to were those of McCloskey J in *Re LW* [2010] NIQB 62 at [45], Colton J in *Re JR 127* [2021] NIQB 23 and Scoffield J in *JR138* [2022] NIQB 46 at [56]. In summary, these authorities have established that the duty of a Trust is: (i) to assess the social care needs of a patient; (ii) to determine the provision which is necessary to meet the need; and (iii) to make that provision. At the first and second stage, the Trust enjoys a large measure of discretion as to how need is assessed and what provision is required. However, once that assessment is made, a duty to make the provision crystalises. The standard of review where there has been any departure from the assessed provision is "substantial compliance" rather than absolute compliance. It is also open to the Trust to review its assessment of both need and provision where a review is justified by the circumstances.

[44] In this case, there was dispute as to whether the facilitation of visitation rights to a patient could properly amount to the provision of the type of social care facilities which fall within the scope of Article 15 of the 1972 Order. The applicant relied upon the fact that family visitation is expressly referred to in J's Care Plan, which it was argued represented the assessment of his needs and the necessary provision to meet those needs. It was also argued that it should be read in the context of the Trust's Service User Residential Guide, which provides for access at "any reasonable time." Furthermore, where restrictions are introduced, they are to be notified, and families are to "have opportunities to be involved in the resident's daily life." On the part of the Trust, it was contended that, even if this was correct, both the Care Plan and the User Guide were drafted in qualified terms and were silent as to time, duration, venue or form of family visits. Hence, it was argued that they could not impose a sufficiently well-defined duty of provision. It was also argued by the Trust that the recent restrictions on visitation did not amount to a total prohibition, but rather a temporary reduction in the face of changed circumstances, which amounted to a review and was justified on the facts.

[45] At this stage of the proceedings, it is not necessary for me to reach a definitive view about these competing legal arguments. While I have some reservations about the ultimate merits of the applicant's arguments on the scope and content of the statutory duties, I consider that they meet the relatively low threshold of arguability, and I am prepared to grant leave on this ground.

[46] Third, the applicant relied upon the statutory duty under Regulation 18 of the Residential Care Homes Regulations (NI) 2005. For similar reasons as are set out above, I consider that this ground is also sufficiently arguable. Regulation 18(2)(m) imposes a duty upon a residential care home provide to, inter alia, make arrangements to enable a resident to "visit or maintain contact or communicate with their families and friends." While the language of this provision casts the duty in broad terms, without defining any particular form or frequency of visits, it is arguable that restrictions cannot be either unjustified or excessive in scope, which is precisely the issue in dispute. I will, therefore, grant leave on this ground also.

[47] As regards the Article 8 ECHR challenge, the Trust made the pragmatic and realistic concession that, at least for the purposes of leave, the impugned decision has given rise to an interference with J's right to respect for private and family life. Article 8 is one of the qualified rights within the Convention. An interference with a Convention right will not therefore amount to a breach or be unlawful if it can be justified by the relevant public authority. The onus, therefore, shifts to the public authority (in this case the Trust) to justify the interference. The Trust must establish that the restrictions on visitation rights:

(i) Pursue a legitimate aim for one of the reasons identified in Article 8(2).

(ii) Is in accordance with law.

(iii) Is proportionate to the attainment of the aim.

[48] There was little dispute that the aims of the impugned decision were within the scope of Article 8(2), namely the protection of health and/or the protection of the rights or freedoms of others. The Trust's evidence makes clear that the measure was intended to promote the twin objectives of protecting the rights and freedoms of Trust staff by reducing exposure to what is viewed as the damaging behaviour of Mr & Mrs S and secondly, in doing so, attempting to reset or improve relations between them and the Trust, with a view to being able to stabilise the care team by retaining and recruiting sufficient levels of qualified staff to be able to deliver the necessary health care to J, in accordance with its statutory obligations.

[49] Similarly, there was little argument about whether or not the changes in visitation were in accordance with law. For the purposes of Article 8(2) the concept of "law" can extend beyond express statutory provision and can include common law and administrative provisions provided that they are sufficiently clear and publicly accessible. At this stage it would appear likely that the power to limit visitation within a Trust owned facility is inherent in a number of the Trust's powers. Clear candidates would include:

(i) the power to make "arrangements" for the purposes of delivering social care under Article 15 of the 1972 Order.

(ii) the power/duty to make arrangements for residents to visit or maintain contact with family and friends under Regulation 18 of the 2005 Regulations.

(iii) the Trust's own policy within the Service User's Guide to allow visitors at "reasonable times" and to provide "restrictions."

[50] I am conscious that this issue was not fully argued before me, and it may be that there are arguments one way or the other which could be made.

[51] The real focus of the argument was upon proportionality. It was urged upon me by the applicant that, even if the Trust's case on the legitimacy of its objectives was accepted, less intrusive measures would be open to it. The applicant pointed in particular to the possibility of introducing an independent supervisor for visits. This is a suggestion which was proposed after the Trust had filed its evidence and, for understandable reasons, was not therefore fully addressed in the Trust's evidence. In oral submissions, the Trust maintained that in an area such as this, it enjoyed a sufficiently wide margin of appreciation about how best to achieve its objectives and that the mere identification of an alternative suggestion - long after the concerns about behaviour had first emerged - did not render the measure disproportionate. Indeed, a striking feature of the Trust's submissions was that, until receipt of the most recent affidavit, nothing in the words or actions of the family had demonstrated any insight into or recognition of the effect of their conduct upon staff and its potential corrosive effect upon the ability of the Trust to deliver care to J. Ms Gibbs went so far as to say that the Trust had reached the point where it believed that the behaviour was deliberate with a view to "sabotaging" the placement and forcing a move elsewhere. While the Trust's evidence does not address the issue of a supervisor expressly, the clear tenor of the evidence is that it had absolutely no reason to believe that the family would voluntarily accept or co-operate with a supervisory measure of this nature.

[52] Even at this stage, it is abundantly clear to me that the Trust has established a very clear and at times compelling evidential foundation to explain the background to and reasons for the restrictions on visitation which it has imposed. However, reflecting on the evidence, I am of the view that it cannot be said at this stage that the issue is no longer arguable or that all issues have been exhausted. Key issues in my mind include the fact that the Trust has not yet had a full opportunity to respond to the late suggestion by the family for independent supervision of visits. Similarly, I consider that there remains some uncertainty about the success or otherwise of the Trust plans for re-commencement of visits and the timescale over which this may be achieved. The risk assessment to consider home visits has not been completed and the outcome is unknown. The initial period of four weeks restriction is not guaranteed to lead to a resumption of visits. Rather it will lead to a review, with further decisions to be taken and no doubt many more managerial decisions about whether, when or how the family may return to visit J in Struell Lodge. The cumulative effect of these uncertainties is that it is not possible at this stage for the court to form a definitive or final view about the intrusiveness of the restrictions which have been imposed and hence their proportionality. The picture remains a fluid one. Accordingly, and in light of the fact that the Trust bears an onus of justifying the full extent of any interference with J's Article 8 rights, I cannot, at this stage, find that the Article 8 claim is unarguable, and I will grant leave on that ground also.

[53] In reaching this conclusion, two further factors are important.

[54] First, it was urged upon me by the Trust that I should be mindful of allowing the proceedings to become a "roving judicial review" with continually shifting targets. I am deeply mindful of this prospect and will endeavor to keep future progress of the proceedings under careful review. More fundamentally, a changing evidential picture is not unknown to the courts. Fast moving judicial reviews with evolving facts are nothing new. Indeed, it is a rare judicial review in which nothing changes between the inception of the proceedings and the conclusion. In this case, such a prospect is also inherent in the impugned decision itself, since it is one in which the precise nature, intensity and duration of the Article 8 restriction is not yet known. By allowing leave, the court has no intention of "managing", let alone "micro-managing" the actions of the parties or the Trust. This is a matter for the parties. The role of the court will be to adjudicate upon the Trust's justification for the restriction once the facts and the extent of the interference are sufficiently clear to enable it to do so.

[55] Second, it is also important to bear in mind the connection between these proceedings and the declaratory proceedings which are ongoing and which will continue. While the overlap between the proceedings is not in itself a reason for the grant of leave, it is clear that much of the work which will be undertaken by the parties for those proceedings will be directly relevant to these proceedings. Indeed, I will hear the parties on the potential for the evidence in these proceedings to be admissible in the other and vice versa, in order to avoid unnecessary duplication of effort and in line with the overriding objective. It is also important to bear in mind that there is a potential for injustice and or the inception of yet more proceedings if leave is refused at this stage, but the issue of visitation restrictions is found to fall outside the inherent jurisdiction of the court in the declaratory proceedings.

Interim relief

[56] In light of my decision on leave, it is then necessary to determine the application for interim relief.

[57] At the outset it is important to be clear about the application which has been made. The applicant seeks a mandatory order, requiring the court to authorise access for Mr and Mrs S to visit J in Struell Lodge and also to determine the visitation rights which should apply for visits in the community and in the S family home. On any view, the request inevitably seeks to draw the court into not only managing, but actually prescribing, visitation conditions within a regulated healthcare facility, involving multiple staff and five other residents. The applicant also asks the court to do so on the basis of only the barest of evidence, no statutory management powers, no regulatory accountability, no institutional competence and no experience whatsoever of circumstances within Struell Lodge. It is not lost on the court that even the most seasoned and experienced of Trust managers have so far proved unable to manage successfully the relationship between staff and the family

on the ground. They describe the current situation as "unique" and "unprecedented." It has prompted them to initiate a restriction on visitation which has not occurred before in the collective experience of staff. The situation has even prompted one senior member of staff with thirty years' experience and ten years' experience working with the family to seek early retirement. Notwithstanding the formidable managerial challenges faced by the Trust to date, the family requests the court to find a solution and to do so within an expedited time frame. While the powers of the court to grant interim relief are extensive and flexible, they do not extend so far as to include either a crystal ball or a magic wand.

[58] The test for interim relief is well established in this jurisdiction. It is an adaptation of the familiar test established in the *American Cyanamide* case for the award of interlocutory injunctions in private law. In private law cases, the court will consider whether there is a triable issue, whether damages are an adequate remedy and where the balance of convenience lies between the competing interests. Where the practical effect of an interlocutory injunction is likely to be dispositive of the entire case, the court will also give closer consideration to the underlying merits of the dispute.

[59] In public law cases, the second stage of the test is somewhat different. Since damages are rarely an adequate remedy, the test will focus more closely upon the balance of convenience, for which the court must consider not only the interests of the parties, but also the public interests.

[60] I was also referred to the recent decision of the E&W Court of Appeal in *R(RRR) v British Standards Institution* [2024] EWCA Civ 530 which reviewed the authorities in this area. It emphasised that a court should be slow to make an order compelling any public authority whether and how to exercise its public law powers where it has chosen not to do so, in good faith. A review of the authorities in that case also suggests that the first stage of the test is also more demanding, insofar as an applicant should establish a "strong prima facie case", rather than simply a triable issue. In other words, apply a higher threshold on the merits than would otherwise apply in private law proceedings.

[61] For present purposes, I do not consider that it is necessary to resolve that issue or engage in a detailed analysis of whether the applicant's case amounts to a "strong" one or simply an "arguable" one. In my view, even if it could be classified as a "strong" one, I am entirely satisfied that the balance of convenience points firmly against the grant of interim relief in the form of a mandatory order.

[62] The overwhelming picture which emerges from the evidence is that relations between the Trust and the family are deeply frayed for multiple reasons and that there is a deep lack of mutual trust together with mutual suspicion about the motives and objectives of the other party. If this were a purely private dispute, the parties may be able to separate their interests and go their own way. However, there

are two vital aspects of this relationship which affect and sound directly upon the public interests.

[63] First, J is currently in the care of the Trust in circumstances where the Trust has ongoing and continuing statutory obligations to provide care to him. While he does not have capacity to conduct these proceedings, he is not a detained patient. He is not a child, and his parents therefore no longer have parental responsibility for him and could not exercise that authority to decide unilaterally to remove him from Trust care and return him home. The parents candidly recognise that they cannot provide care for him at home from their own resources. As the declaratory proceedings illustrate, the Trust can ultimately seek the inherent jurisdiction of the court to find mechanisms to deliver care to J, notwithstanding the objections of the family, up to and including seeking authorisation to move him to Struell Lodge for the purposes of care and to use authorised restraint, if required. The interests of the Trust and family cannot, therefore, be easily separated and this position will continue for the remainder of J's life. Throughout that time, the Trust will have statutory duties to deliver care to J. In order for the Trust to be able to fulfill those duties and in order for the best interests of J to be promoted, it is therefore essential that improved, and more effective methods of communication are developed. This goes to the heart of the public interest in the continued delivery of care to and the promotion of the best interests of a young man who is dependent on those around him, is vulnerable by reason of his disability but who has his whole life still ahead of him, irrespective of where he resides.

[64] Second, the ability of the Trust to continue to deliver care depends entirely upon the availability of staff. The overwhelming evidence before the court is that very large portions of the staff who are responsible for delivering care to J are deeply unhappy about their treatment at the hands of the family and are suffering ongoing adverse effects. It may be that the family has never intended to subject staff to distress or unhappiness in their workplace. Mr S has expressed surprise at this evidence. However, whatever the intentions of the family, the evidence shows that this is the clear effect which they have had on staff. Some experienced staff have left, and others no longer want to continue in Struell despite their dedication to J and to other residents and despite their desire to continue working in the care sector. The clear message from the trade unions is that the staff want a break from the family, and they want an opportunity to reset the relationship. The Trust has gone so far as to suggest that if visitation rights are resumed or imposed in the current climate, that staff may leave, that there could be a "domino effect" of departures or sickness and that J's placement could be in jeopardy and other residents of Struell may suffer adverse effects. I do not know whether this is correct. It may be that the Trust itself does not know whether this may happen or may happen to an extent that the delivery of care will be compromised. However, what is patently clear is that the court does not know. It does not have a crystal ball. What it does know is that the Trust is the body with statutory responsibility to deliver care to J and has managerial responsibility for its staff. It has the managerial experience to be able to make an

assessment of what is required on the ground to be able to ensure the continuity of care to both J and the other residents. It has taken an exceptionally difficult managerial decision in circumstances which it has described as unique. It is not a permanent measure, and it contains opportunities for the resumption of relationships, even if not a defined timescale. The court is simply not in a position to step into the shoes of the Trust and to take uninformed managerial decisions by imposing upon staff a visitation regime of its choosing. The ramifications of such a step by the court are simply unknown. Even if the risks of severe adverse effects upon the continuity of care are not as high as the Trust fears, if those risks were to materialise, the consequences for vulnerable citizens would be enormous which significant damage to the public interests and to the interests of other residents.

[65] It may well be that when the facts are clearer the Trust may not be in a position to justify fully all of the restrictive steps which it has taken. However, it may be in a position to do so and at this stage, I do not consider that the actions taken by the Trust are so obviously disproportionate as to require court intervention. I also consider that it would be entirely inappropriate for the court to step into the shoes of the Trust and effectively assume responsibility for complex and potentially far-reaching managerial decisions which could pose risks to the continuity of care. In my view all of these factors make clear that the balance of convenience falls decisively against the applicant at this time and accordingly, I refuse the application for interim relief.

[66] In doing so, it is important to emphasise that the court is not making any judgment on the ultimate merits of this dispute, nor is it eschewing responsibility to find a remedy for a potential breach of human rights. Nor does it mean that the Trust can take whatever steps it determines appropriate to facilitate visitation or to do so at a time of its choosing. Any continuing restriction on visitation over and above that which applies to other families, will be assessed in due course and will ultimately have to be justified. This decision is simply a reflection of the fact that, even leaving aside the court's institutional limitations, it cannot be said at this time that the decision of the Trust is so clearly disproportionate as to compel intervention. It may be that this position will change at some point in the future, depending on what steps are taken by the Trust and the timescale for delivering the plan for resumed visitation rights that has been outlined to the court. The court, therefore, encourages the Trust to proceed with diligence and good faith along the path it has set for itself. This case will remain under review by the court until final determination and the applicant has the right to make further applications for interim relief if he chooses to do so. That will be a matter for the applicant to decide, in conjunction with legal advisors.

[67] Finally, it is impossible to leave this case without expressing one final observation. Whatever the intentions of Mr and Mrs S and however well motivated they have been in pursuing what they consider to be the best interests of J, there is now a substantial body of evidence which makes clear that their conduct towards

staff in Struell Lodge and the Trust has had unwanted effects. The court welcomes the fact that this appears to have been recognised. However bad relations and communications between the family and the Trust currently are, there is now a real opportunity for both parties to use the pause in visitation to attempt to reset relationships and to begin to work towards both a resumption of visitation and also the establishment of effective and mutually respectful communications about J's welfare. He is dependent upon the adults in his life to look after his interests and it is the least that he deserves.

[68] The application for interim relief is, therefore, refused.