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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY DARRAGH McGRATH
FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF DECISIONS OF
THE WESTERN HEALTH AND SOCIAL CARE TRUST**

**Dessie Hutton KC and Stephen McNicholl (instructed by Hampson Harvey, Solicitors)
for the Applicant**
**Philip Henry KC and Tracy Overing (instructed by the BSO Directorate of Legal Services)
for the Respondent**

SCOFFIELD J

Introduction

[1] The applicant in this case was formerly a ‘looked after child’ under the care of the respondent, the Western Health and Social Care Trust (“the Trust”), until he attained the age of majority on 9 January 2024. The initial trigger for these proceedings was the applicant’s inability to perfect bail granted on 29 June 2024, since he did not have a bail address. The applicant argued that he was unable to perfect bail because of the respondent Trust’s continued failure or refusal to provide him with accommodation, both before and after he was detained. He argued that this was a breach of the Trust’s duties under the Children (Northern Ireland) Order 1995 (“the Children Order”).

[2] Very shortly after the case came on for hearing, the applicant was released on bail after the Trust managed to secure some accommodation for him. The urgency in the case therefore dissipated entirely. (The applicant had been seeking, inter alia, an order of mandamus to compel the Trust to urgently provide him with accommodation.) The respondent contended that the application was then completely academic and should be dismissed for that reason. The applicant argued

– and I accepted, for reasons set out further below – that the court should nonetheless address the issues raised in the case.

[3] The central issue to be addressed is the applicant’s claim that the respondent Trust breached its duty to provide him with accommodation in the period from 29 June 2024 to 12 September 2024.

[4] Mr Hutton KC appeared for the applicant with Mr McNicholl; and Mr Henry KC appeared for the respondent with Ms Overing. I am grateful to all counsel for their helpful written and oral submissions.

Factual background

[5] As noted above, the applicant was formerly a ‘looked after child’ under the care of the respondent Trust, until he turned eighteen years of age on 9 January 2024. He had numerous interactions with Social Services throughout his childhood and adolescence due to a variety of family issues. This led to the applicant being taken into care and placed in Woodlands Children’s Home in 2020 when he was around 13-14 years of age. Over the next few years, the applicant spent time between several children’s homes. At a later stage, the applicant was diagnosed with mal-adapted neural development, Autistic Spectrum Disorder (ASD), Attention Deficiency Hyperactivity Disorder (ADHD) and higher stress levels.

[6] When the applicant was approaching his 18th birthday, the 16+ Team within the Trust attempted to plan with him alternative possibilities for accommodation, such as living with his mother or father, or in (private) rented accommodation. The Trust attempted to persuade the applicant to take up accommodation which had structure and support for him, for instance in facilities which specialised in the provision of supported living for 18 to 21-year-olds (such as the Foyle Young Persons Project, Derry), discussed further below. The applicant was not prepared to do this and wanted to live entirely independently, either with a parent or in his own accommodation. Against this backdrop, the applicant was encouraged by the Trust to seek help from the Northern Ireland Housing Executive (NIHE) after turning 18 to secure social housing rather than becoming homeless. The Trust facilitated this and made the necessary arrangements for contact with the NIHE in the weeks before the applicant’s 18th birthday.

[7] The applicant says that, in the event, none of the accommodation options offered to him by the NIHE were suitable, either because they were too far away (in Belfast or Newtownards, since the applicant was adamant that he wanted to live in Derry) or they were not structurally suitable (that is, they were in hostel accommodation which he considered unsuitable because of his difficulties and conditions). The Trust’s evidence in relation to this paints a different picture. In any event, the applicant took up few (if any) of the options presented to him by the NIHE. He ended up in custody from 1 March 2024 in relation to charges of assault and burglary. The initial focus of his case in these proceedings is the period after his

release, on 7 June 2024, up to his further incarceration at the end of June 2024; and then over the summer period.

[8] Upon the applicant's release from prison on 7 June 2024, Catharine Madden, an officer from Housing Rights who has worked closely with Trust staff in relation to the applicant's accommodation issues, coordinated with the NIHE, driving the applicant from Hydebank Wood YOC to the NIHE office in Derry. He was offered temporary accommodation, which the applicant rejected, indicating he preferred to stay with his mother instead. Ms Madden had been liaising with the applicant's personal adviser (Mr Stephen McFadden) and the relevant social worker (Mr Dan McGill). Mr McGill, the Trust's deponent in these proceedings, is a social worker who oversees the 16+ Pathway Team within the Trust and who previously worked in a similar area in the Northern Trust. Mr McFadden also works part-time as a housing officer in a housing association in Derry City and has 20 years' experience working with those in care transitioning to public housing.

[9] On 9 June 2024 the Trust arranged accommodation for the applicant at the Drummond Hotel, as he had no place to stay that night. The following day he left in the morning. He made no effort to communicate with the NIHE temporary housing team and had not answered their calls, notwithstanding that they had repeatedly been trying to contact him over the weekend. He left the Foyle Haven (a facility that accommodates adults experiencing issues such as homelessness, addiction and poor mental health) that afternoon, missing an appointment to complete an out-of-hours referral for emergency housing. The applicant stated that he was going back to Belfast and taking a full bottle of vodka with him. There was then no contact with him throughout the evening. There was contact with him over the next few days when he arrived at one of the Trust's children's homes looking for his belongings such as his Xbox and TV. He refused to take Ms Madden's call in relation to his housing issues.

[10] The applicant then had a further spell in a Bed & Breakfast ("B&B"), Bridge B&B, around 13 June 2024. The applicant had sourced this through the NIHE. However, he was asked to leave this on 15 June after being arrested. The staff indicated that they could not tolerate his behaviour. Later enquiries confirmed this was because of his theft of alcohol from local shops and multiple incidents of his seeking to bring alcohol into the B&B, smoking in his room and setting off smoke alarms and exhibiting anti-social behaviour. He made contact with the Trust on 17 June and indicated that he had stayed in the hospital since. He was due to get in touch with the NIHE on 17 June but did not, despite Mr McGill having left him into town which would have facilitated this.

[11] On 18 June 2024, the applicant was offered a place in Belfast by the NIHE, which he rejected as he said they were not offering transportation. An NIHE housing officer indicated to the Trust that a B&B in Belfast had been offered, along with transportation, but the applicant had told the officer to, "Stick it up your hole", and had then hung up. He told Trust staff he had a safe place to stay on someone's sofa and, when encouraged to contact the NIHE further, said he "couldn't be bothered."

On 19 June the Trust officials were in constant contact with the applicant, checking his whereabouts since he had no place to stay, and the applicant's social worker and personal adviser arranged accommodation at Annie's B&B in Derry for an extended period of time.

[12] On the same day, 19 June 2024, the applicant's legal representatives sent a pre-action letter to the Trust, on an urgent basis, stating that the applicant was homeless and contending that the Trust had a duty to immediately provide him with accommodation by virtue of Article 34D of the Children Order. Although styled a pre-action protocol letter, this correspondence did not follow the required template set out in the High Court's Judicial Review Pre-Action Protocol. Nonetheless, the key points raised were that, since turning 18, the Trust had helped the applicant to source accommodation with the NIHE; the applicant had then been in custody for some time but had been released earlier that month; his attendance with the NIHE had been "to no avail, due to a combination of his application being processed in another office and the waiting list for places"; he wanted the Trust to provide him with accommodation; he had very limited support in terms of his family circle and his mother was "not in a position to provide him with somewhere to live"; and he was vulnerable and had resorted (at least on occasion) to sleeping on the streets. A same-day response was required.

[13] The respondent sent a holding response that day but issued a further response on 21 June 2024. It denied that the Trust had a duty to accommodate in the case and pointed out, *inter alia*, that the applicant was staying with his mother and was not therefore homeless. In material part, the response was as follows:

"I understand that [the applicant] has been offered accommodation on numerous occasions but he has refused this on the basis that the property is not in the Derry area.

The Trust does not have a duty to accommodate in this case. The NIHE may have a duty to accommodate, providing that the Applicant has not intentionally made himself homeless.

...It is our understanding that Mr McGrath is staying with his mother and therefore not homeless, eradicating the need for an urgent response."

[14] In fact, the applicant was not staying with his mother but at Annie's B&B. This had been organized by Ms Madden and the Trust for him on 19 June, with Mr McFadden meeting the applicant at the B&B that night. He was resident there until 28 June when he called Mr McGill complaining about being evicted from the B&B "for no apparent reason." The owner of the B&B explained that this was because the applicant had been involved in a confrontation with another resident two nights previously and had displayed threatening and confrontational behaviour. He was

given a second chance but had returned to the B&B “drunk and disorderly” and breaching the house rules in a further respect. When confronted by staff, he was disrespectful and defiant. He had also forcibly entered the building, had taken a set of staff keys, threatened staff and made remarks about burning down the building. This led B&B staff to contact the police. In a call from Mr McGill to the applicant that night, he indicated that he had a place to stay for the night and then hung up.

[15] On 4 July 2024, the Trust issued a further, more detailed response to the applicant’s solicitors’ correspondence of 19 June, in which it accepted that it had an ongoing duty to the applicant until he was 21 years of age under Article 34D but did not accept that such a duty extended to accommodating the applicant. It is that disagreement as to what Article 34D required in the circumstances which gave rise to the legal dispute which lies at the heart of these proceedings. In particular, the Trust said that the continuing duty “does not include providing accommodation post-18 unless needed to continue higher education.” The letter cited a range of occasions when, on the Trust’s case, the applicant had failed to engage with it, or with other agencies or organisations seeking to provide him with assistance. It also set out a chronology of the Trust’s ongoing efforts to engage and support the applicant from January 2024 to 3 July 2024 (which was later replicated in part and expanded upon in Mr McGill’s affidavit evidence). The applicant’s grounding affidavit does not take issue with this, accepting that he has acted inappropriately in the past.

[16] On 28 June 2024, the manager of Annie’s B&B contacted Mr McGill to inform him that the applicant had caused trouble at the premises, which later prompted his arrest. The applicant was remanded to Hydebank Wood YOC. Bail was granted at Dungannon Magistrate’s Court on 29 June 2024, with a condition that the applicant reside at an address approved by the police. Since the applicant did not have a bail address to offer at that time, bail was not perfected and the applicant therefore remained in custody, notwithstanding his having been granted bail in principle. It seems that some consideration was given to the applicant’s mother’s address being offered as a bail address but that she was not willing for this to be offered given that the applicant’s sister lived there and was pregnant at the time.

[17] The respondent’s evidence is that, whilst the applicant was in custody, Mr McGill and Mr McFadden were in constant contact with him, checking on his welfare and attempting to sort out his housing situation. It is a striking entry in the chronology that, in a conversation with the applicant on 3 July 2024, Mr McFadden is noted to have expressed to the applicant that, for the first time, he was relieved that he (the applicant) was in prison due to his concern for his alcohol use. The file note indicates that the applicant agreed with this, acknowledging that he expressed gratitude to the PSNI upon his arrest and recognised his need for a break from alcohol.

[18] The chronology further indicates that, in a call on 3 July 2024, the applicant said he believed he would be out of Hydebank Wood YOC in six weeks and would seek an address in Derry. In the course of these communications, the Trust staff say that applicant informed them that he had arranged his own accommodation, although that

later turned out to be unsuccessful. In one call on 5 July 2024, it is noted that the applicant said that he had a bail address in Strabane but that he was not sure if the police would approve the address. He then terminated the call.

[19] On 10 July 2024, Ms Madden contacted the applicant's social worker to say that she had visited the applicant, and he was seeking bail on 1 August 2024. Mr McFadden had been speaking to the applicant's mother, and she was looking at private rented accommodation for the applicant, with an intention that she would pay the first three months' rent. This was viewed as a positive development and a pre-bail meeting before 1 August 2024 was arranged. In a call with the applicant on 15 July 2024, the applicant said that if his mother did not get private rented accommodation sorted, he might be able to use his girlfriend's address. In a call the following week, on 22 July, the applicant told Mr McGill that he had secured a two-bed flat in Strabane, which he would be presenting to the court on 1 August for approval. This was a six-month tenancy from a private landlord, with his girlfriend acting as guarantor and paying two months' rent up-front. (On another occasion, he said his mother and aunt were going to pay the rent fees and deposit.)

[20] In a further discussion on 26 July 2024, the applicant said that his planned bail address in Strabane had fallen through but that he had been able to identify another one. He indicated he would not share any information with the Trust about this, in case it objected. In this call, the applicant complained that it was unfair that he did not receive supported housing and Mr McGill reminded him that of the difficulties with this (see paras [69]-[70] below). In a discussion with Ms Madden on 29 July, she indicated to Mr McGill that it was possible the applicant may be getting a tenancy in Strabane but that he may also use his mother's address for a bail address.

[21] In a further call with the applicant on 7 August 2024, the applicant told Mr McGill that he may be using his mother's address as a bail address and that she had indicated that she was prepared to engage with the necessary process. However, he also indicated that he had two other addresses (both in Derry) which could be offered to the court for approval.

[22] The applicant's evidence in these proceedings complains that he requires accommodation provided by the Trust which provides a sense of security, a structured environment, and the support of professionals. He says that, since turning 18, the Trust has been focused more on trying to obtain him accommodation through the NIHE and that NIHE accommodation is not suitable for him because of his needs (with mental health and addiction issues and a diagnosis of ASD). Since turning 18, he has, in his submission, "been by and large homeless... and has lived a shiftless disordered life involving periods of no fixed above, apparent sofa-surfing, temporary accommodation and periods in custody." In mid-June, when the pre-action correspondence referenced above was sent, he says that he was street homeless and desperate, so much so that he had also presented at a hospital.

[23] Part of the Trust's case is that the applicant only first suggested that he was interested in supported living accommodation in his evidence in these proceedings, having previously consistently refused to countenance this, and that this has come as a surprise to Trust staff given his previous attitude. It was surmised that this is simply because of the unavailability of other suitable bail addresses for the applicant.

[24] In the event, as noted above, the applicant was released on bail on Thursday 12 September 2024 as B&B accommodation had been located for him by the Trust at a B&B in Derry. It seems that he was released from Hydebank Wood YOC in the evening and did not arrive at his bail address until the early hours of Friday 13 September, due to his having to use public transport to travel to Derry. Due to his late arrival, the B&B would not accept him and notified the PSNI that he had breached the terms of his bail conditions. He was therefore subsequently arrested for breach of bail. However, he was then released by the PSNI as they became aware that the proceedings against the applicant were being withdrawn by the PPS on Monday 16 September. That occurred; and the applicant was therefore no longer subject to bail. At that point he continued to reside (at least for a time) at the B&B accommodation which the Trust had secured for him.

[25] A further affidavit from Mr McGill indicated that he was present at the hearing of this judicial review on 11 September 2024 and welcomed the submission on the part of the applicant that he was then willing to engage with the Trust to assist him in his search for a bail address, and then subsequently for longer term accommodation. Mr McGill made contact with him as soon as he could after the hearing. The Trust had contacted all supported living facilities in Derry in the week preceding the hearing, but they had either refused to provide accommodation for the applicant or said they did not have a bed or space available for him at that time. (The two facilities owned and operated by First Housing adamantly refused to accommodate him, for reasons set out below, and the remaining facility operated by Praxis did not then have a bed for someone over 18.) Furthermore, the NIHE advised the Trust that the applicant was barred indefinitely from all properties belonging to the two main landlords in Derry (one of which is the owner of Annie's B&B).

[26] Having obtained the applicant's consent after the hearing, Mr McGill approached the NIHE which agreed to fund temporary accommodation in Derry until such times that more stable accommodation could be found. After discussion with a relevant NIHE official, the result was that an available bed was found in a local B&B which the landlord agreed to allocate to the applicant. This would be available from the next evening (12 September). This was funded directly by the NIHE initially but, thereafter, by the applicant's housing benefits once he was released and re-established in the community. On the same date, these developments were shared by Mr McGill with the applicant's solicitors. They communicated the information to the PSNI which then liaised with Mr McGill, indicating that the proposed bail address at the B&B would likely be approved by the relevant officer (of the rank of Sergeant) the next day. It appears that this occurred since, the next evening, shortly before 7.00 pm, Mr McGill was informed by an officer at Hydebank Wood YOC that the applicant had perfected

his bail and was to be released shortly. Mr McGill presciently expressed concern that the applicant may not make it to Derry that night for 10.00 pm in compliance with the curfew which formed part of his bail conditions.

[27] Mr McGill then spoke with the applicant who was happy with the address and how things had developed. He was due to attend at the Trust's offices the following morning to start work on his recently determined Pathway Plan. Mr McGill avers that the applicant expressed enthusiasm to work with the Trust and gratitude for assisting him. Plans were put in place between Messrs McGill and McFadden to assist the applicant set up home over the coming days, including the provision of day-to-day necessities and the return of the applicant's belongings which remained within the Trust's possession. When the applicant was unable to reach the B&B by 10.00 pm (and was therefore unable to have his electronic tag fitted in compliance with the bail conditions) Mr McGill took various steps to seek to address the situation. From contact with the applicant's mother, however, it quickly became clear that he was (in her words) "back on the drink", despite it being a condition of bail that he was not to be under the influence of alcohol. On 13 September the applicant attended at the NIHE presenting as homeless, with a bag full of alcohol. He is alleged to have stolen alcohol from an off licence the following day. It seems that he did stay at the B&B from around 15-16 September and, as noted above, that he was released from his bail conditions when the charges against him were not proceeded with. Further contact with Mr McGill around that time, however, did not provide positive indications as to the applicant's behaviour or intentions. At the date of Mr McGill's second affidavit (20 September 2024) the applicant was not engaging at all with the Trust.

[28] A further update from the applicant's solicitors of 29 October 2024 (in the context of representations as to whether the application should be dismissed as academic), I was informed that the applicant had recently entered an alcohol treatment centre. He was at that stage facing three pending criminal cases.

Relevant statutory provisions

[29] The applicant's challenge revolves around Article 34D of the Children Order 1995, which was added by way of amendment to that Order by the Children (Leaving Care) Act (Northern Ireland) 2002 ("the 2002 Act"). Paragraph 7 of the Explanatory Notes to the 2002 Act explains the purpose of the additional enhanced duties as follows:

"The main purpose of the Act is to improve the life chances of young people who are looked after by HSS Trusts as they make the transition to independent living. To do this, it amends the Children Order to place new and enhanced duties on HSS Trusts to assess and meet the care and support needs of young people until they are at least 21 years old. Its main aims are: to ensure that young people should not leave care until they are ready to do so; to

improve the assessment, preparation and planning for leaving care; to provide better personal support for young people after leaving care; and to improve the financial arrangements for care leavers...”

[30] Article 34D is headed, ‘Continuing functions in respect of former relevant children.’ Article 34D(1) is in the following terms:

“(1) Each authority shall have the duties provided for in this Article towards –

- (a) a person who has been a relevant child for the purposes of Article 34B (and would be one if he were under 18), and in relation to whom that authority was the last responsible authority; and
- (b) a person who was being looked after by that authority when he attained the age of 18, and immediately before ceasing to be looked after was an eligible child,

and in this Article such person is referred to as a “former relevant child.””

[31] There is no dispute that the applicant falls within the scope of these provisions and is a “former relevant child” such that the Trust has continuing functions in respect of him. Two basic duties towards such an individual – of continuing contact and supervision – are set out in Article 34D(2) and (3), as follows:

“(2) The authority shall take reasonable steps –

- (a) to keep in touch with a former relevant child whether he is within the authority's area or not; and
- (b) if the authority loses touch with him, to re-establish contact.

(3) The authority shall –

- (a) continue the appointment of a personal advisor for a former relevant child; and
- (b) continue to keep his pathway plan under regular review.”

[32] Article 34D is the key provision for the purposes of this case. It provides as follows:

- “(4) The authority shall give a former relevant child –
- (a) assistance of the kind referred to in Article 35B(1), to the extent that his welfare requires it;
 - (b) assistance of the kind referred to in Article 35B(2), to the extent that his welfare and his educational or training needs require it;
 - (c) other assistance, to the extent that his welfare requires it.”

[33] The applicant argues that “other assistance” in Article 34D(4)(c) includes accommodation and that, accordingly, the Trust “shall” give him accommodation to the extent that his welfare requires it. On his case, his welfare obviously required the provision of accommodation to him at the relevant time. Article 34D(5) provides further detail about the nature of assistance which may be provided under Article 34D(4)(c):

“The assistance given under paragraph (4)(c) may be in kind or, in exceptional circumstances, in cash.”

[34] Since Article 34D(4), sub-paragraphs (a) and (b) refer to the assistance of the kind referred to in Article 35B(1) and (2) respectively, it is helpful to also set those out. Article 35B is headed, ‘Employment, education and training’ and Article 35B(1) and (2) are in the following terms:

- “(1) The relevant authority may give assistance to any person who qualifies for advice and assistance by virtue of Article 35(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.
- (2) The relevant authority may give assistance to a person to whom paragraph (3) applies by –
- (a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or

- (b) making a grant to enable him to meet expenses connected with his education or training.”

[35] Another provision which has featured in the argument in this case is section 23C(4) of the Children Act 1989 (“the 1989 Act”), which applies in England and Wales. This provision was inserted by Children (Leaving Care) Act 2000. It is in materially similar terms to Article 34D of the Children Order which applies in this jurisdiction. The courts in England and Wales have interpreted the reference to “other assistance” in section 23C(4)(c) of the 1989 Act with reference to section 17(6) that Act, which provides as follows:

“The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.”

[36] The inclusion of the reference to accommodation in this provision was effected by way of amendment through the Adoption and Children Act 2002. Section 17 of the 1989 Act is not directly engaged since the reference to “other assistance” in section 23C(4)(c) of that Act is not linked to section 17; and section 23C(5) is in materially similar terms to Article 34D(5) of the Children Order. The equivalent provision in the Children Order to section 17(6) of the 1989 Act is Article 18(6) which, under the general section heading ‘General duty of authority to provide personal social services for children in need, their families and others’, provides as follows:

“The services provided by an authority in the exercise of functions conferred on it by this Article may include giving assistance in kind or, in exceptional circumstances, in cash.”

[37] There is, therefore, no express reference to the (direct) provision of accommodation in the Northern Irish statutory scheme, as opposed to the English provisions. Whether, and the extent to which, this makes any difference is discussed below. The respondent’s position on Article 34D(4)(c) in its pre-action response of 4 July 2024 was somewhat equivocal, accepting that the reference to assistance “could cover accommodation” but that it was “impossible to say or imply more.” It maintained that there was no obligation to provide accommodation to a former relevant child simply because they required an address to perfect bail.

[38] Additionally, the applicant referred to Article 21(5) of the Children Order which, he contends, provides a discretionary power to provide accommodation for someone up to the age of 21 years of age in a children’s home. Article 21 deals specifically with the provision of accommodation to children. There is an obligation to provide accommodation for children in need in certain circumstances contained within Article 21(1):

“Every authority shall provide accommodation for any child in need within its area who appears to the authority to require accommodation as a 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 (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.”

[39] There is a more limited obligation to provide accommodation to children over 16 in certain circumstances, set out in Article 21(3):

“Every authority shall provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.”

[40] There is a further discretionary power to provide accommodation to children in Article 21(4):

“An authority may provide accommodation for any child within the authority’s area (even though a person who has parental responsibility for him is able to provide him with accommodation) if the authority considers that to do so would safeguard or promote the child's welfare.”

[41] Finally, there is the provision upon which the applicant also relies in Article 21(5), which extends to persons who are no longer children but who are under 21:

“An authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any home provided under Part VII which takes children who have reached the age of 16 if the authority considers that to do so would safeguard or promote his welfare.”

Summary of parties' positions

[42] The applicant contends that the respondent Trust, both before and after he was taken into detention, has continuously refused to provide him with accommodation in breach of its obligations under Article 34D(4)(c) of the Children Order or, in the

alternative, in an unlawful non-exercise of its discretionary power to provide accommodation under Article 21(5) of that Order. He contends that the phrase “other assistance” under the Article 34D(4)(c) is broad enough to encompass the provision of accommodation and that that is the correct interpretation (having regard to a variety of authorities and the equivalent provisions in England and Wales). He says that, in failing to provide him with accommodation (either before or after he was taken into custody) the respondent misunderstood its legal powers; failed to comply with a mandatory duty under Article 34D; and/or fettered its discretion by failing to consider the provision of accommodation under Article 21(5) of the Children Order. Furthermore, the applicant contends that his rights under article 8 ECHR have been violated by not providing him with accommodation.

[43] The respondent contends that it has at all relevant times attempted to assist the applicant to arrange accommodation, both before and after he turned 18. It relies upon the applicant’s own unwillingness to avail of accommodation options which he *now* says he seeks. The Trust accepts that a duty to provide accommodation may arise under Article 34D(4)(c) in some circumstances; but denies that any such duty crystallized towards the applicant in the factual matrix in this case. It contends that it has provided appropriate assistance and relies upon the fact that it is not the national housing provider (which is the NIHE). The Trust further contends that, given the applicant’s circumstances, it would not have been appropriate to place him in a children’s home in the exercise of its powers under Article 21(5) of the Children Order. Finally, it argues that since there was no breach of duty under the Children Order, there is no possible breach of any positive obligation under article 8 ECHR.

Whether the case should be dismissed as academic

[44] Given the factual developments set out at para [24] above, it appeared to the court that the matter which had featured most heavily at the hearing (the alleged duty on the Trust to find a bail address for the applicant) may have become academic. This was because the applicant had been released on bail when accommodation had been found for him by the Trust; and also because, subsequently, the applicant had been entirely released from the relevant bail conditions.

[45] The applicant urged the court to nonetheless proceed to determine the matter. It seems to me that the issue was then academic between the parties, this being an intensely practical question (see *Re Bryson’s Application* [2022] NICA 38, at para [14]). However, I was persuaded that the court should nonetheless proceed to give judgment in light of the applicant’s representations, particularly because there was an issue of statutory construction in relation to Article 34D(4)(c) of the Children Order which had been fully argued and which it would be helpful to resolve for the benefit of future cases. In addition, the applicant also sought damages for breach of article 8 ECHR in these proceedings. Although this could have been addressed in an action for damages, the issue had been addressed in the evidence already presented to the court and in the arguments. Moreover, it was possible that the issue of the provision of accommodation for the applicant may arise again in the period up until the

applicant attains the age of 21, particularly in the context of him facing further criminal charges which might see him remanded in custody again. For these reasons and having regard to the fact that considerable time and costs had already been expended in arguing the case, I concluded that there was a good reason in the public interest to conclude the case by giving judgment.

Statutory construction

[46] Certain aspects of this case have at their heart an exercise of statutory construction. Much guidance has been set out in authority in relation to the correct approach on the part of the courts when construing statutory provisions. For present purposes, I confine myself to reciting some observations of Lord Hodge, giving the majority judgment in a recent Supreme Court case (*R (O) v Secretary of State for the Home Department* [2022] 2 WLR 343), which were reiterated and endorsed by the Court of Appeal in this jurisdiction in *Minister and Department for Infrastructure v SEAT and Woods* [2022] NICA 61 (in the judgment of Keegan LCJ on behalf of the court, at para [35]):

“29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated:

‘Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.’

(*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397: “Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.

...

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered..."

[47] The key issue of construction in this case is the extent to which Article 34D requires, or may require, the provision of accommodation to a former relevant child. The resolution of this issue not only requires a focus on the words used by the Children Order in the relevant provision but also a careful consideration of the wider context of Article 34D and how it fits within the statutory scheme more generally.

The Article 21(5) argument

[48] The applicant's argument grounded on Article 21(5) of the Children Order can be dealt with in short order. The power to provide accommodation to a young person or young adult between 16 and 21 in a home provided under Part VII of the Children Order – that is, in a *children's home* (provided under Article 72 for the care and accommodation of children or for purposes connected with the welfare of children) – is discretionary. The respondent *may* house those who, like the applicant, are no longer children in any such home "if the authority considers that to do so would safeguard or promote his welfare." Even where that condition is met, the authority is not obliged to offer or provide accommodation in such a home. In determining whether or not to do so, a range of relevant factors may require to be taken into account.

[49] In the present case, the evidence suggests that the applicant is a repeat offender, with a variety of convictions, and also that he has issues related to alcohol. In his own affidavit evidence he has accepted that he was often in trouble with the police and that he often acted inappropriately and engaged in poor behaviour, both in the community and in children's homes in which he was living. He attributes this in large measure to his difficulties with alcohol and his mental health but averred that he knows that he "cannot blame everything" on these. With an element of both understatement and euphemism, he explains that he would get himself "into inappropriate situations and act unpleasantly", leading to him coming before the Youth Court on a regular basis. Indeed, the applicant had been in secure accommodation for much of his final year as a child. The Trust's evidence is also that it does not house adults and children together in its facilities as to do so would place it in breach of the relevant children's home's statement of purpose, which is an essential regulatory document issued by the Regulation and Quality Improvement Authority (RQIA) governing the conditions of providing accommodation in the facility.

[50] It was perfectly lawful in my judgment, and indeed understandable, for the Trust to conclude that it would not be appropriate for the applicant to be

accommodated in a children's home in these circumstances. It would not be particularly suitable for him but, perhaps more importantly, it would not be suitable for the children to whom the Trust had responsibilities who were accommodated in such homes and may have put them at a variety of risks. This issue was not seriously raised in advance of the proceedings and the suggestion that the Trust should have accommodated the applicant in a children's home, or should have given that option greater consideration, was in my view a distraction from the main issues.

What is required by Article 34D(4)(c)?

[51] The key issue in this case is what was required by Article 34D(4)(c) of the Children Order in the circumstances. I intend to address this issue in principle, considering the arguments made as to the correct meaning and interpretation of the provision, before turning separately to its application in this case.

[52] The respondent accepts that it owes certain duties to the applicant as a former relevant child under Article 34D until he reaches the age of 21. In particular, it accepts that it is obliged to take reasonable steps to keep in touch with him and to continue to give him advice, pursuant to Article 34D(2) and (3). The means by which the Trust has sought to discharge those duties are outlined in the affidavit of Mr McGill. After the applicant turned 18, the Trust has taken steps to keep in contact with him and assist him, including by liaising with other organisations which may support him and by checking up on him. For instance, the Trust helps the applicant in his communications with his family and liaising with the NIHE in order to assist him in securing accommodation. The applicant has also been provided with a personal adviser who has been helping him in finding accommodation and setting up future goals. His pathway is kept under regular review. The Trust's evidence indicates that there were pathway plans for the applicant dated 9 February 2024 and 20 August 2024, formulated after he had turned 18, in which the Trust recorded his progress and plans for the future.

[53] The main issue arises in relation to the interpretation of article 34D(4). Article 34D(4)(a) and (b) plainly need to be read in light of Article 35B(1) and (2), to which they refer. Reference to these provisions makes it clear that the "assistance" in those sub-paragraphs is related to employment, education and training purposes. Although the provision of such assistance is discretionary under Article 35B, there will be a duty to provide such assistance under Article 34D but only where (and to the extent) that this is *required* by the former relevant child's welfare and/or educational or training needs, as the case may be. That imports an element of judgement on the part of the Trust. The relevant assistance under Article 34D(4)(a) and (b) consists of contributing to expenses incurred by the former relevant child in living near the place where he is, or will be, employed, educated or trained (or making a grant to enable him to meet expenses connected with his education or training).

[54] The applicant argues that there is a duty under Article 34D(4)(c) to provide a former relevant child with accommodation, to the extent that his welfare requires it.

The respondent's case at hearing, in the oral submissions made by Mr Henry, accepted that, in some circumstances, there may be an obligation under this provision to provide accommodation to a former relevant child. This was a more nuanced position than had been adopted in pre-action correspondence, which suggested that – reading Article 34D(4)(c) in the context of other provisions of the Children Order – such a duty only arose by virtue of Article 34D(4)(a) or (b) when related to employment, education or training: see para [15] above. The focus of Mr Henry's submission was that, in the particular circumstances of this case, no such duty to provide accommodation to the applicant under Article 34D(4)(c) had crystallized, notwithstanding the possibility that this might occur in some rare cases.

[55] I consider the concession made by Mr Henry on behalf of the Trust – namely, that the “other assistance” referred to in Article 34D(4)(c) can, in some circumstances, encompass accommodation – to be properly made. Article 34D(5) does not shed a great deal of light on the issue; but it makes clear that the “assistance” given under Article 34D(4)(c) “may be in kind.” Looking at these provisions in isolation, there is no reason why assistance by way of the provision of accommodation should be excluded from the broad range of assistance which the Trust can be required to provide under Article 34D(4)(c). The provision of accommodation is something which an individual's welfare might well require. The question is whether, construing that provision against the broader context of other provisions in the Children Order, it becomes clear that the legislature intended to exclude assistance by way of the provision of accommodation from the assistance which may be required to be provided under Article 34D(4)(c). For the reasons explained further below, I do not find that to be so.

[56] The applicant relied upon the English case of *R (O) v Barking and Dagenham London Borough Council* [2011] 2 All ER 337, dealing with the analogous provision of section 23C(4)(c) of the 1989 Act. The issue in that case was whether the local authority concerned had a *power* under that provision to accommodate a former relevant child, rather than whether it had a duty to do so. However, those questions are plainly closely linked and the core issue – whether the phrase “other assistance” in the provision embraced the provision of accommodation – was before the court.

[57] The Court of Appeal in England and Wales analysed the history of the relevant legislation and paid particular attention to the express reference to accommodation in section 17(6) of the 1989 Act. Previous authority had indicated that the phrase “assistance in kind” in predecessor legislation encompassed the provision of accommodation or paying for accommodation (for instance, *AG (ex rel Tilley) v Wandsworth LBC* [1981] 1 All ER 1162 and *R v Tower Hamlets LBC, ex parte Monaf* (1988) 20 HLR 529). When this formulation was used in the originally enacted version of section 17(6), it would therefore have been understood to have included the provision of accommodation. However, that understanding was upset by the majority decision of the Court of Appeal in England in *A v Lambeth LBC* [2002] 1 FLR 353, which concluded that the reference to assistance in kind did *not* include the provision of accommodation. Laws LJ dissented on the point. This decision was described in

another Court of Appeal case shortly afterwards as having caused “a considerable stir” (see Brooke LJ in *R (W) v Lambeth LBC* [2002] 2 All ER 901, at para [17]). The Parliamentary response to the *A* case was the amendment of section 17(6), by means of the Adoption and Children Act 2002, to include specific reference to the power to provide accommodation. However, the Court of Appeal in the *W* case (*supra*) had in any event decided that the amendment was unnecessary; and that the decision of the other panel of the Court of Appeal in the *A* case had been *per incuriam*. Thus, the simple reference to the provision of “assistance in kind” was sufficient to permit the provision of accommodation; and the earlier understanding of the courts in that regard, prior to the *A* case, was restored.

[58] Drawing on this history, the English Court of Appeal in the *O* case held that section 23C(4)(c) of the 1989 Order, the analogue provision of that with which this case is concerned, *did* extend to the provision of accommodation; and that the express reference to “accommodation” in section 17(6) – which is of course absent from Article 18(6) of the Children Order – was simply intended to put its (original) meaning beyond doubt.

[59] The applicant therefore submits that this is an orthodox application of the ‘*Barras* principle’, namely the principle that where a statutory provision uses a word or phrase which had been the subject of previous judicial interpretation in the same or similar context, it may be inferred that the legislature (here, the Northern Ireland Assembly) intended the word or phrase to bear the same meaning as it had in that context (see, generally, *Bennion, Baily and Norbury on Statutory Interpretation* (8th edition, LexisNexis), at section 24.6). That is not an entirely straightforward submission since, at or around the time the Assembly was dealing with the Bill in 2002, there was an element of controversy over the meaning of the equivalent phrase in section 17(6) of the 1989 Act. Nonetheless, it is clear that the Assembly adopted a formulation which was used in the equivalent English legislation (section 23 of the 1989 Act) and, in my view, clearly intended that the provision made here should have a similar meaning and effect to the new English provisions dealing with former relevant children.

[60] The respondent drew the court’s attention to the fact that, in England and Wales, a local authority (ie local councils) would be responsible both for providing social services *and* social housing. That is different from the public sector structures in Northern Ireland, where we have an integrated health and social care system but a separate social housing provider. However, I do not consider that that fact is sufficient to alter the meaning of Article 34D(4)(c). It may be important as a matter of practicality when one considers what the provision requires in the circumstances of any particular case which arises in Northern Ireland. Similarly, the mere fact that more detailed provision is made elsewhere in the Children Order in relation to Trusts providing accommodation (usually to children) does not mean that the provision of “other assistance” cannot, in certain instances, extend to the provision of accommodation.

[61] I therefore consider that the legal position set out in the respondent's response to pre-action correspondence of 4 July 2024 – that the duty under Article 34D(4)(c) “does not include providing accommodation post-18 unless needed to continue higher education” – was in error of law (although it is also appropriate to recognise that the same correspondence also accepted that the provision was framed widely enough that it *could* cover the provision of accommodation). Perhaps the more important point is that, given that the Trust did itself directly arrange accommodation for the applicant on a number of occasions, both before and after his arrest in June 2024, it did not view itself as being precluded from providing such accommodation where it considered his welfare required it.

[62] For the reasons given above, I conclude that the provision of accommodation can come within the Article 34D(4)(c) duty. However, there are a number of important additional points to be made about this:

- (a) First, the respondent is correct to say that the primary duty is to provide “assistance.” That is the word used by the legislature when it could have imposed an express duty (limited to certain circumstances) to accommodate a former relevant child; or could have expressly referred to the provision of accommodation. The duty is therefore to be contrasted with, for instance, Article 21(1) of the Children Order (see para [38] above).
- (b) Second, therefore, any duty to provide accommodation under Article 34D(4)(c) is indirect. It arises only when required for the former relevant child's welfare. This involves an exercise of judgement on the part of the Trust concerned. The applicant accepts that the Trust must assess whether the provision of accommodation by it, rather than by NIHE, is required in the particular circumstances of the case. (Indeed, he complains that no such assessment was undertaken.) The Trust's expert judgement on this issue is obviously to be afforded a considerable degree of respect by the court.
- (c) Third, in exercising that judgement, the Trust is entitled to take into account the context that the individual is no longer a child. Albeit each case will turn on its own facts, generally speaking, as an adult, the former relevant child will have both more freedom and responsibility to make their own choices and promote their own welfare. This means the Trust cannot force the individual to live somewhere they do not wish to. But in addition, they have access to additional welfare benefits and provision which children do not. Most importantly in this context, they have access to the social housing provided by the NIHE which is the primary housing provider in Northern Ireland. The change in status to adulthood is reflected in the continuing support duties contained in Article 34D(2) and (3) – those of contact and advice – which are obviously much more ‘light touch’ than the obligations owed to looked after children.

- (d) Fourth, the condition for the duty becoming operative, namely that the former relevant child's welfare "requires" the provision of accommodation (or other relevant assistance), is an elevated one. The language used in Article 34D(4)(c) in this regard is to be contrasted, for instance, with that in Articles 21(4) and (5), where accommodation may be provided if the authority considers that to do so "would *safeguard or promote*" the welfare of the relevant child or young adult. A higher standard applies for the provision of assistance under Article 34D(4)(c).
- (e) Fifth, there must be some significance to the fact that Article 34D(4)(a) and (b) require assistance – which can include accommodation or payments towards accommodation – to be provided in more restricted circumstances, namely where this is directly related to the former relevant child's pursuit of employment, education or training. (The respondent suggested that this might well be because students in third level education are not entitled to assistance from the NIHE.) Although accommodation can be provided under Article 34D(4)(c) the statutory steer is that accommodation needs for former relevant children will usually be met where the individual requires to reside in a particular area for one of those limited purposes. The provision of accommodation otherwise under Article 34D is likely to be for exceptional or emergency reasons.
- (f) Sixth, the nature of the obligation described above is such that it is not for the former relevant child to dictate or demand precisely when they are accommodated or in exactly what accommodation. As Mr Henry submitted, "what is required is not determined by the applicant's subjective preferences and the parameters he wishes to impose."
- (g) Seventh, even where the Trust has determined that it will provide accommodation because, in the circumstances, the former relevant child's welfare requires it, this obligation can only sensibly be interpreted as an obligation to provide suitable accommodation and to do so within a reasonable period of time. In this regard, a parallel may be drawn with the case of *Re OC's and LH's Applications* [2018] NIQB 34, at paras [13]-[15] and the cases there cited, and at paras [37].

[63] Returning to the issue addressed at sub-paragraph (c) in the preceding paragraph, the position is not quite as simple as saying, in every case, that, as housing is available through the NIHE, it is not necessary for a Trust to provide it to a former relevant child. Nonetheless, that is an appropriate starting point. It may also be an adequate assessment in many cases. (In the *O* case, discussed above, it was held that the relevant authority could not take into account the possibility of the claimant being housed by the Secretary of State for the Home Department as an asylum seeker because the provision of accommodation by that means was a residual power which could not be exercised if the individual was entitled accommodation under similar provision: see para [40] of the decision of Tomlinson LJ. Accordingly, the local

authority's powers had to be addressed first. However, it seems clear from the Court of Appeal's ruling that, had that not been the case, it would have been entirely appropriate for the local authority to take into account, in determining whether it was under a duty to provide accommodation to a former relevant child, *other* means of accommodation available to him. That applies a fortiori where the other means of accommodation is through the presumptive social housing provider.) There may nonetheless be cases where the other options available are so unsuitable that the Trust should provide accommodation. Again, this will primarily be a question for the Trust in determining what the former relevant child's welfare requires.

Was there a breach of duty in this case?

[64] The applicant contends that it was irrational for the Trust not to have concluded that his welfare required the provision of accommodation to him (although he was not granted leave on this specific ground by Colton J). Alternatively, he contends that the respondent fettered its discretion, or adopted a rigid policy, of only providing accommodation to former relevant children where they were pursuing higher education. He submits that the welfare case for the provision of accommodation to him, particularly when he was in custody for want of an address, was clearly a strong one.

[65] The Trust's assistance in arranging, or seeking to arrange, accommodation for the applicant can be considered in three parts: first, attempts which were made before the applicant turned 18 to arrange accommodation for him after he turned 18; second, attempts which were made to arrange accommodation for the applicant after he had reached 18 and before he was arrested on 29 June 2024; and, third, attempts to arrange accommodation after the applicant was taken into custody but granted bail. All three scenarios have been addressed to some degree in the evidence in this case. The second and third are relevant to the applicant's claim of breach of duty (with Mr Hutton having focused his submissions on the third stage, when the applicant was unable to perfect bail). However, an understanding of the circumstances of the case also requires some consideration of the first stage.

[66] The Trust argues that the applicant appears (in the course of his evidence in these proceedings) to be seeking the provision of accommodation with structure and support whereas, before he turned 18, it had tried to persuade him to take up that kind of accommodation without success. The Trust made referrals to facilities which specialised in the provision of supported living for 18 to 21 year olds; but the applicant resisted this. The Trust therefore welcomed the change of approach on the part of the applicant which it detected in the course of these proceedings, assuming it to be genuine.

[67] So, before the applicant turned 18 a number of accommodation options were canvassed with him, including living with his mother, or father, in (private) rented accommodation. However, the Trust tried to persuade the applicant that it would be better to start off in a supported living facility, at least for a short period initially, to

prepare him for adulthood and independent living. The Trust made three referrals to such facilities in the Derry area (the applicant having expressed a strong preference to remain there). The NIHE would have funded this. However, the applicant made clear that did not wish to take up that kind of accommodation and that he wanted to live independently. The Trust's evidence is that, notwithstanding the applicant's ASD diagnosis, he is very independent and generally quite competent, able to communicate, and capable of undertaking basic tasks required for looking after himself; for instance, he is said to be a good cook, can do his own laundry and can engage directly with professionals. In light of his unwillingness to avail of supported living facilities, it fell to the Trust to work with the applicant to find accommodation through the NIHE.

[68] The Trust has access to a limited supply of accommodation in which to house adults with specifically assessed medical or social care needs. These are nursing homes and care homes. Generally, however, if an individual's needs are better met through providing support services in the community, that will be pursued. Obviously, neither a nursing or care home would be appropriate for the applicant. In extreme cases, the Trust will use hotel rooms and B&Bs to house individuals but only on a short-term and emergency basis when there is no other option. This option has been used on a number of occasions in the applicant's case; but it is clearly not an appropriate long-term option.

[69] Although the Trust assesses that the applicant is capable of living independently, its position has consistently been that it would be better for him if he resided in a supported living facility which specialises in care for young adults. There are three private sector providers who run such facilities in the Derry area: Jefferson Court (First Housing); Francis Street (First Housing); and Foyle Young Peoples' Project (Praxis). The Trust made referrals for the applicant to all three of these in November 2023, although he indicated he would only consider the latter two (without prejudice to his position that he wished to live independently rather than in any of these supported living facilities). The Trust felt that Francis Street was probably the best option but the manager there declined the referral due to an incident where the applicant had tried to headbutt him and had thrown a bottle in the facility. The manager of Jefferson Court also advised that he would not consider the applicant's application due to the attempted assault on his colleague.

[70] A place was available in the Praxis facility in February 2024 but the applicant was not interested in taking it up and another young person therefore availed of it. The evidence from the Trust is that the NIHE can pay for these places and, if accepted, a young person is normally offered a two-year tenancy. The support provided is tailored to the individual's needs, in conjunction with the Trust. The Trust has remained ready to offer and arrange supported accommodation such as that; but the applicant has remained unwilling to avail of it (until late in the day in the course of these proceedings).

[71] In view of the above, use of B&B accommodation on a short-term basis and working with the NIHE to secure medium to long-term housing were the only real options for the applicant. The NIHE is the national social housing provider, which provides accommodation to those who need it, either from its own stock or by funding accommodation provided by the private sector. The foundation of the Trust's case is that, in light of the choices made by the applicant, suitable accommodation could also be provided by the NIHE (or in the private rented sector, funded by the NIHE) and had in fact been offered to the applicant. However, through his own preferences and conduct, he had failed to take this up.

[72] More generally, the respondent's evidence set out in detail a range of steps taken by it to try to assist the applicant with a variety of issues, in addition to his accommodation, namely his alcohol and substance abuse, and to seek to improve his relationship with his mother. The Trust's evidence is that the applicant has consistently refused to engage with these efforts (other than permitting it to pay for his stay in a rehabilitation facility after he turned 18). Specific concrete examples are provided of the applicant failing to engage with a variety of therapeutic or supportive measures offered. It is unnecessary to set those out for present purposes.

[73] Turning back to the applicant's engagement with the NIHE since turning 18, the evidence also shows that this has been quite poor. Certain complications appear to have arisen because the applicant was initially registered with the NIHE office in Bangor (that being the appropriate office when he was released from the Juvenile Justice Centre in Bangor), which resulted in some initial allocations of properties to him in the County Down area, such as in Newtownards. However, it would have been possible to transfer his case to the Derry NIHE office (as eventually happened) if he availed of temporary accommodation offered to him by the Bangor office.

[74] The evidence is that the NIHE temporary accommodation team have often tried to make contact with the applicant on a daily basis to offer him temporary accommodation; but he has frequently refused to accept their calls or was rude and abrupt to them on the phone. The Trust's evidence is that "his overall general approach to the NIHE has been poor and unhelpful" and he has failed to engage in any meaningful way with the NIHE, approaching it on an occasional basis only in reaction to being homeless. More importantly, the applicant was only willing to consider accommodation within parameters set by him.

[75] In February 2024, the applicant was offered accommodation in Belfast by the NIHE, which he rejected. On 29 February 2024, he was assigned a place in the Simon Community, Derry by the NIHE, which the Trust suggests was a suitable tenancy where he would have a degree of support, supplemented by it. However, as a result of the applicant's own criminal conduct, he was unable to take up that offer. He was arrested on 1 March 2024 and was then in custody until 7 June 2024. The Trust considered that this accommodation would have been suitable for the applicant; but the manager of the facility withdrew the offer because he would then not be able to take it up for several weeks.

[76] After the applicant was released on 7 June 2024, Catharine Madden from Housing Rights, who was in contact with the Trust about the applicant's situation, facilitated the applicant's introduction with the NIHE Office in Derry. However, the personal adviser for the applicant was informed by Ms Madden that the applicant rejected the temporary accommodation provided to him by the NIHE at this point as well.

[77] The Trust relies in particular upon one occasion when it directly provided accommodation to the applicant, namely when on 9 June 2024 the Trust arranged accommodation for him in the Drummond Hotel, as he had nowhere else to stay. Mr Henry submitted that this demonstrated that the Trust had provided accommodation for the applicant under Article 34D (since, not being in a children's home, it could not have been an exercise of the Trust's power under Article 21(5)). Similarly, on 19 June 2024, when the applicant had again been offered accommodation in Belfast by the NIHE the day before, which he rejected, the Trust arranged accommodation for him at Annie's B&B for an extended period. This was at the time when the applicant's pre-action correspondence was sent. It is clear, therefore, that there were occasions, after the applicant had turned 18 and whilst he was at liberty in the community, that the Trust intervened because his circumstances were dire and no alternative living options were readily available. It did so in the interests of the applicant's welfare.

[78] The Trust's evidence is also that, due to his increasing notoriety in the Derry area, it has become increasingly difficult to obtain accommodation for the applicant. The place in Annie's B&B was obtained as a result of personal requests ("calling in favours") on the part of his social worker and personal adviser. He caused trouble at the property, was given a second chance, and then was expelled again after engaging in further disruptive behaviour. This resulted in his being arrested and remanded on bail, giving rise to the situation where he complains that he was unable to perfect bail for want of an address.

[79] In relation to the period throughout June 2024, before the applicant's arrest on 29 June, I have concluded that the Trust was not in breach of its duty under Article 34D(4)(c). Even assuming that the Trust was bound, at certain times, to conclude that the applicant's welfare required him to be provided with assistance by way of accommodation, I have not been persuaded on the evidence before me that it failed in that duty. The overarching position was that the Trust (in conjunction with the NIHE or directly with third party providers) arranged supported living options for the applicant which would have been suitable for him; but he rejected these. Having done so, it cannot complain that the Trust failed him. In particular, he could have availed of suitable, medium to long-term places made available for him at the Foyle Young People's Project or in the Simon Community facility from February 2024. Having rejected those, or having failed to take up the latter when he was arrested, the Trust was entitled to rely upon the NIHE to provide temporary accommodation for the applicant. The failure to avail of the options the NIHE offered, or to adequately liaise with them despite the Trust's assistance, lies at the applicant's feet, not those of the

Trust. When matters escalated considerably in mid-June 2024 and this was brought to the Trust's attention, it arranged accommodation for him at Annie's B&B, clearly demonstrating its ability and willingness to provide accommodation directly where, exceptionally, it concluded that the applicant's welfare did require this.

[80] The factual position once the applicant was in custody from 29 June 2024 is addressed in summary at paras [17]-[26] above. The applicant's case proceeds on the basis that, having been granted bail (subject to an address to be approved by police), his welfare obviously required his immediate release from custody and that the Trust could not lawfully take any view other than that. I reject that premise. As noted at para [17] above, both the applicant and his social worker recognized that the applicant's detention had a number of positive effects, in particular in providing him with a degree of structure, stability and safety, and depriving him of the opportunity to abuse alcohol. Put shortly, although the applicant was entitled to bail in principle, the Trust was not legally bound to conclude that his welfare required his release, or immediate release, from prison. There are circumstances where an individual's welfare may be promoted in the custodial setting. Moreover, although a former relevant child may prefer not to be on remand in prison, and release may *promote* their welfare, that is not to say that their welfare necessarily *requires* release. (In this regard, I also note that the statutory test in Article 34D(4)(c) of the Children Order is different from that in respect of children in need in Article 2(2) of that Order discussed by Treacy J in *Re MP (a Minor's) Application* [2014] NIQB 52, at paras [66]-[69].)

[81] However, the more important point in relation to this period is that I accept the respondent's submission that the applicant had actively withdrawn from the assistance which was being provided to him in prison by the Trust in order to seek accommodation for him and was not seeking assistance from it. In particular, he was telling Trust staff that he himself would arrange a suitable bail address, or had arranged such an address, and suggested a number of options, albeit he would not give the Trust a variety of details in respect of these. The Trust considered this may be in case the relevant staff involved objected to the suitability of these addresses for some reason. However, the applicant was *not* presenting as someone who required the Trust to organise accommodation for him, nor suggesting that his welfare required this. My assessment of the evidence in the round is that the applicant's attempts to organise accommodation himself were not because he had given up hope of the Trust providing him with accommodation but because he remained unwilling to live in accommodation such as the Trust would propose or could arrange.

[82] In addition, Mr McGill's evidence is that the applicant has on a number of occasions seemed excited about the prospect of taking the Trust to court in these proceedings because of the prospect of securing financial compensation; and has attempted to engage Trust staff in conversation about it several times, asking how much compensation he would be receiving as a result of these proceedings. Several other conversations suggest the applicant expects to receive compensation as a result of these proceedings. In my view, this undermines the applicant's credibility in

relation to the case he is making in these proceedings, namely that he was at all relevant times seeking accommodation from the Trust.

[83] A particularly significant feature is that, once the applicant actually made clear to the Trust that he needed their assistance with arranging a bail address and *was* willing to avail of the type of accommodation which the Trust could readily arrange for him (and considered best suited to his welfare needs), the Trust took swift and urgent action to try to arrange this (see paras [25]-[27] above). This is corroborative of the Trust case that, up to that point, they considered the applicant content to make his own arrangements.

[84] Taking all of these factors into account, I have not been persuaded on the balance of probabilities that the applicant has made out his case against the respondent of breach of the duty under Article 34D(4)(c) in this case, bearing in my view of the proper approach to that duty set out in paras [62]-[63] above.

Article 8 ECHR

[85] The applicant relies upon *R (Anufrijeva) v Southwark LBC* [2003] EWCA Civ 1406 in support of the submission that article 8 ECHR is capable of imposing a positive obligation on a public authority to provide welfare support or benefits, including (he submits) accommodation, if appropriate. He accepts that article 8 does not provide an absolute right to be provided with a home. However, he submits that authority has recognised that, in the case of certain vulnerable classes of individuals, a positive obligation can arise in that regard under article 8. He relies in particular upon the case of *R (Bernard) v Enfield LBC* [2002] EWHC 2282 Admin, where it was held that a failure to provide suitable accommodation to a disabled woman was a breach of duty under section 21 of the National Assistance Act 1948 and also a breach of article 8. At para [32], the court noted as follows:

“I accept the defendant’s submission that not every breach of duty under s.21 of the 1948 Act will result in a breach of Art.8. Respect for private and family life does not require the state to provide every one of its citizens with a house: see the decision of Jackson J. in *Morris v London Borough of Newham* [2002] EWHC Admin 1262, paras 59-62. However, those entitled to care under section 21 are a particularly vulnerable group. Positive measures have to be taken (by way of community care facilities) to enable them to enjoy, so far as possible, a normal private and family life ... Whether the breach of statutory duty has also resulted in an infringement of the claimants’ Art.8 rights will depend upon all the circumstances of the case. Just what was the effect of the breach in practical terms on the claimants’ family and private life?”

[86] The applicant accepts that the question of whether a failure to provide accommodation (or adequate accommodation) amounts to a breach of article 8 is highly fact specific and will depend on a variety of factors, including the vulnerability of the individual and the impact the failure had on them: see, for instance, Collin J in *R (Aweys and Others) v Birmingham City Council* [2007] EWHC 52, at para [34]. However, he contends that, as a formerly looked after child, having recently turned 18, with addiction and mental health issues, he was inherently vulnerable. Given that the Trust had ongoing contact with him, had notice of his difficulties, and had in fact been responsible for him throughout his teenage years, as well the fact that (he contends) the Trust's failure to provide him with accommodation led to periods of homelessness, the applicant asserts that his article 8 right to respect for his home and/or private life has been violated.

[87] I do not consider that the *Bernard* case materially assists the applicant. In that case the local authority, which was also the housing authority, was in breach of a specific statutory duty to provide residential accommodation to the claimant which she needed by reason of infirmity. The judge plainly considered the facts to represent a serious breach of this duty, leaving a severely disabled woman in accommodation which the defendant had assessed as being unsuitable for her for a period of some 20 months, which condemned her and her carer husband to living conditions which made it virtually impossible for them to have any meaningful private and family life. In those exceptional circumstances, he found that the breach of statutory duty also represented a breach of article 8 ECHR entitling the claimant to damages.

[88] The general position in Strasbourg jurisprudence is that article 8 does not confer a right to be provided with a home (see App No 27238/95, *Chapman v UK* (Grand Chamber), at para 99); nor a right to live in a particular location (see App No 43494/09, *Garib v Netherlands* (Grand Chamber), at para 141; and App No 30391/18, *Faulkner and McDonagh v Ireland*, at para 98); nor does it guarantee the right to have one's housing problems solved by the state authorities, as the scope of any positive obligation to house the homeless is limited (see App No 24816/14, *Hudorovič and Others v Slovenia*, at para 114). That said, an obligation to secure accommodation for vulnerable individuals may flow from article 8 in exceptional cases (see App No 25446/06, *Yordanova and Others v. Bulgaria*, at para 130). However, this is viewed as an obligation to secure *shelter*, not housing of any particular type.

[89] Bearing in mind these authorities, the guidance given by the English Court of Appeal in *Anufrijeva* (for instance, at para [43] of that judgment), and the similar assessment on the part of McCloskey J in paras [37]-[38] of his decision in *Re JR47's Application* [2013] NIQB 7, I do not consider that there is any breach of article 8 in these circumstances. Where there is a breach of an obligation in domestic law to provide accommodation, an article 8 breach may follow where the effect of such a breach is particularly severe. Where there is no breach of a domestic law obligation to provide accommodation, it is unlikely that article 8 will impose such an obligation, save in highly exceptional circumstances where the individual's predicament is sufficiently severe to engage article 3 ECHR or of that order. In this case, for the reasons addressed

in detail above, I do not consider that there was any breach of a statutory obligation to provide accommodation to the applicant. Nor, when he was detained in custody, was he in need of shelter. I therefore dismiss the applicant's article 8 claim.

Bail to an address "to be approved by police"

[90] The applicant strongly took issue with a suggestion made on a number of occasions in the respondent's evidence to the effect that he only complained about lack of provision of accommodation by the Trust for him under Article 34D when he was in need of a bail address. He notes (correctly) that the issue was raised on his behalf in correspondence in mid-June 2024 *before* he was arrested on 29 June; and at a time when he simply contended that he was homeless. Mr Henry accepted that the Trust case was in error insofar as this had been suggested. On the other hand, Mr Hutton accepted that the applicant's inability to perfect bail provided "further impetus" to his challenge. It was very much the focus of the case when the application was lodged on 29 July 2024 (a month after the applicant had been arrested) and at the hearing. It arose in acute fashion because the applicant had been granted bail in principle but subject to an address being found which was acceptable to the police.

[91] In High Court bail applications, it is now the practice to try to minimise, so far as possible, the grant of bail to an address to be subsequently identified and approved by the police. The 'Guidance on Bail Applications in the High Court' issued by the Lady Chief Justice's Office in May 2023 touches upon this issue at para 4:

"There is no statutory requirement that a person must have an address before they can be released on bail and therefore lack of an address is not a bar to a bail application being made. However, the courts prefer that addresses are provided and approved in advance to avoid a situation where bail cannot be effected. Where an address for bail is to be proposed to the court, prior to making the application the applicant's solicitor should check the suitability of the proposed address with the Police Service for Northern Ireland ('PSNI'). The proposed address, and where possible, PSNI's views on its suitability, should be stated in the grounds of the application."

[underlined emphasis added]

[92] The identification of an address in advance of the grant of bail, and its assessment by the court in the course of the bail application, is preferable to the grant of bail to an address to be approved for a number of reasons. First, the PSNI may be prepared to approve an address which the court would consider unsuitable. Second, in a circumstance which may arise more frequently, the PSNI may object to an address which the court would consider acceptable, perhaps with additional bail conditions. Third, and most importantly, the location and circumstances of where an applicant for bail may be residing, and with whom, are often integral to the court's overall

assessment of whether legitimate objections to the grant of bail can be obviated or adequately mitigated by way of conditions. In short, it is much better if the court is aware of the potential bail address (and the PSNI's view of the suitability of that address) and makes a fully informed bail decision on that basis. Where a bail address is not available therefore, it will often be appropriate to refuse the bail application (with the potential for a fresh application to be advanced when an address can be proffered and this represents a material change in circumstance) or to adjourn the application so that further enquiries about potentially available addresses can be made.

[93] There can be some cases where, exceptionally, it is appropriate to grant bail to an address to be approved but, in the High Court at least, this is generally viewed as being limited to circumstances where a bail order is required before a housing provider (such as an organisation like the Simon Community providing hostel accommodation) will only process an application for a bed once it is clear that bail has been secured. In those circumstances, it is best practice for this possibility to be explored in advance of the application so that bail with such a condition is granted in the expectation that a bed will then become available in a particular location.

[94] In the course of this case, some submissions and evidence were directed to the difficulty some applicants for bail experience in seeking to arrange accommodation through the NIHE whilst they are in custody. The evidence of a solicitor with significant criminal law experience within the firm representing the applicant was that, if a person is remanded in custody and is homeless, the NIHE will not provide accommodation to them whilst they are remanded. His understanding was that the NIHE would only provide accommodation if the person had been released from prison and presented as homeless at their local NIHE office to allow them to perfect bail. As a result of this, the applicant contended that he was unable to make any approach to the NIHE and provision of accommodation via the Trust was his only option. This suggestion was supported (in part) by a media article exhibited to an affidavit from the solicitor, from the [Armaghi](#) website, indicating that different district judges within different petty sessions districts had varying practices as to whether limited compassionate bail would be granted to permit an applicant for bail to attend at an NIHE office in order to register as homeless to obtain accommodation. This was partly influenced, it seems from the article, by conflicting views having been expressed by the NIHE itself as to whether the practice was acceptable to it.

[95] I do not consider this was a live issue in the present case, since there is no evidence that the applicant sought compassionate bail in order to attend with the NIHE. On the contrary, as outlined above, his focus was on making his own private arrangements to secure a bail address. Indeed, his grounding affidavit makes the case that "the accommodation from the Housing Executive is simply not suitable for me." Moreover, Mr Henry submitted that, in practice, there were other ways by which a detained person could liaise with the NIHE in order to seek to secure a bail address even if they were in custody. In this case, this could be effected through the Trust and/or Ms Madden of Housing Rights. More recently, the Lady Chief Justice's Office

has been informed by the Northern Ireland Prison Service (NIPS) that Custodial Housing Executive Advisors assist prisoners at risk of homelessness upon release and that an application for accommodation can be commenced 28 days before leaving prison, with a 'warm handover' being made on release to a local Housing Executive office. This is currently available at HMP Maghaberry but it is understood that there is a hope that it will be provided at other NIPS establishments in due course.

Conclusion

[96] For the detailed reasons given above, I have not found any of the grounds of judicial review pursued by the applicant to be made out. In my judgment:

- (a) The Trust acted reasonably in all of the circumstances of the case and was not in breach of its duty to provide "other assistance" to the applicant in the form of accommodation (having determined that his welfare required this) either in the period immediately preceding his arrest or during his incarceration, as I interpret that duty. In the former period, the Trust did in fact arrange accommodation for the applicant in circumstances where this was considered to be required. In the latter period, once it became clear that the applicant had exhausted the other options he was pursuing (to the exclusion of Trust assistance) and that he had ruled out NIHE-provided accommodation but was willing to be accommodated by arrangement with the Trust, the Trust took swift action to secure accommodation for him which resulted in his release. It did so within a reasonable time in all of the circumstances.
- (b) Any misstatement on behalf of the Trust as to what may fall within the concept of "other assistance" in Article 34D(4)(c) was not a *material* error of law because, both before and after the Trust's response to pre-action correspondence, it showed itself willing to arrange accommodation for the applicant, where required; nor, therefore, did this represent an unlawful fettering of discretion.
- (c) In the circumstances of the case, where the Trust was not in breach of any domestic law duty to provide accommodation, the applicant's claim under article 8 ECHR must also fail.

[97] The application for judicial review is accordingly dismissed.