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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL BY WAY OF CASE STATED PURSUANT TO ARTICLE 146 OF THE MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

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Between:

BT

Appellant

and

WESTERN HEALTH AND SOCIAL CARE TRUST

Respondent

_____

Ms Rice KC with Ms Wilson (instructed by Nicholas Quinn Solicitors) for the Appellant
Mr Magee KC with Mr Cleland (instructed by the Directorate of Legal Services) for the Respondent

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Before: Keegan LCJ, Colton LJ and McLaughlin J

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KEEGAN LCJ (*delivering the judgment of the court*)

As this case concerns a child, we have anonymised the appellant by application of a cypher. Nothing must be published which would identify the family or the child.

Introduction

[1] This is an appeal by way of case stated from a decision of District Judge (Magistrates' Court) McSorley ("the judge") in family proceedings at Dungannon Magistrates Court. The underlying proceedings were brought by the Western Health and Social Care Trust ("the Trust") on 2 February 2026 for an emergency protection order ("EPO") pursuant to Article 60 of the Children (Northern Ireland) Order 1995 ("the 1995 Order") in relation to a child, who we shall call D who is now 13 years of age. The appellant is D's mother; his father is deceased.

[2] The proceedings were brought out of hours. The hearing was conducted remotely. A senior social worker and the appellant were in attendance online. The appellant was also accompanied by her other son. There were no solicitors present for either party. The judge heard the application and made an EPO removing D into care from hospital where he had been voluntarily admitted. A return date to the Family Proceedings Court ("FPC") was on 5 February 2026 three days later. On that date the FPC made an interim care order which has been renewed since before Omagh Family Proceedings Court. The judge made an interim contact order regulating arrangements for contact between the child and his mother.

[3] It is within the above context that the case stated was settled and the judge asked the court to determine the following four questions:

(i) Was the court correct as a matter of law in convening remotely and out-of-hours to hear the Trust's application for an EPO in circumstances where the appellant was housebound due to physical disabilities?

(ii) Was the court lawfully convened as per Article 3(1)k of the Children (Allocation of Proceedings) Order (Northern Ireland) 1996 and para 4 of Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968?

(iii) Was the court correct as a matter of law to record the matter as having been heard *inter partes* in circumstances where legal representatives did not attend?

(iv) Was the court correct as a matter of law to accede to the application for an EPO under Article 63 of the Children (Northern Ireland) Order 1995, in circumstances where the child was ready for discharge from the hospital and the appellant was housebound?

Relevant law

[4] Article 63 of the 1995 Order provides for orders for the emergency protection of children. Under Article 63(1) such an order can only be made where:

> "(a) there is reasonable cause to believe that the child is likely to suffer significant harm if -
>
> (i) he is not removed to accommodation provided by or on behalf of the applicant; or
>
> (ii) he does not remain in the place in which he is then being accommodated; …"

[5] Although no appeal is permissible against the making of an EPO, the child's parents among others may apply for an EPO to be discharged under Article

64(7)-(10) of the 1995 Order, save in the circumstances provided for in Article 64(10) which is material to this case and which reads as follows:

> "(a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged—
>
> (i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and
>
> (ii) was present at that hearing."

[6] The Children (Allocation of Proceedings) Order (Northern Ireland) 1996 provides at article 3(1)(k) that proceedings under Article 63 of the 1995 Order shall be commenced in an FPC. Furthermore, Article 165(2)(i) of the 1995 Order provides that:

> "(2) The rules may, in particular, make provision—
>
> (i) authorising a resident magistrate or a member of a juvenile court panel to discharge the functions of a court of summary jurisdiction with respect to such relevant proceedings as may be prescribed."

[7] Rule 2(5) of the Magistrates' Court (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 ("the 1996 Rules") states:

> "(5) Where, in accordance with the Allocation Order an application is required to be commenced in a family proceedings court the following proceedings are prescribed for the purposes of Article 165(2)(i)—
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> (a) proceedings on an ex parte application under Article 63; 67 and 69; and under rule 5 are proceedings with respect to which a resident magistrate or member of a juvenile court panel may discharge the functions of a court of summary jurisdiction."

[8] Rule 5(1) of the 1996 Rules states that any application for an EPO may be made on an *ex parte* basis with the leave of the court. Rule 5(2) provides that service of the relevant documents and applications after the *ex parte* hearing has occurred must be within 48 hours.

[9] In terms of the constitution of the court, Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968 ("the 1968 Act") contains the relevant provisions which are:

> "3(1) Subject to the provisions of paragraph 4, a juvenile court shall be constituted of a resident magistrate, who shall be chairman, and two lay magistrates, of whom one at least shall be a woman.
>
> (4) A juvenile court at which the chairman is present shall have power to act notwithstanding that any other member fails to attend and remain present during the sitting of the court and all acts done by the court shall notwithstanding any such failure be as valid as if that member had so attended and remained.
>
> 5(1) The decision of a juvenile court upon any matter before it shall be by a majority of the members and shall be pronounced by the chairman, or other member at the request of the chairman, and no other member of the court shall make any separate pronouncement thereon; but where the chairman and one other member only attend and remain present during the sitting of the court the decision of the court shall in the event of disagreement between the chairman and that other member be the decision of the chairman and shall be pronounced by the chairman."

[10] By virtue of para 3 of Schedule 2 to the 1968 Act, a FPC shall be constituted of the District Judge (Magistrates' Court) who shall be chairman and two lay magistrates of whom one at least shall be a woman

[11] The service provisions which govern family proceedings are found in rule 9 of the 1996 Rules. It requires service in person or by first class post (rule 9(2)(a)) or upon the person's solicitor (rule 9(2)(b)). Rule 9(8) of 1996 Rules states:

> "(8) In any relevant proceedings, where these rules require a document to be served, the court may, without prejudice to any power under rule 15, direct that—
>
> (a) the requirement shall not apply.
>
> …
>
> (c) Service shall be effected in such manner as may be specified in the direction…"

[12] The law in relation to EPO's is set out in *X Council v B (Emergency Protection Orders)* [2004] EWHC 2015 Fam, in which Munby J provided a list of important principles which apply drawn from European and domestic case law. His list was adopted by McFarlane J in the case of *Re X (Emergency Protection Orders)* [2006] EWHC 510 and are the principles which, in fact, the Trust set out in its C8 form. Without reciting every one of the 14 points, which are well-known to family practitioners, we draw out the following:

> "(vii) Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority for an EPO. They must also be given proper notice of the evidence the local authority is relying upon.
>
> (viii) Where the application for an EPO is made ex parte the local authority must make out a compelling case for applying without first giving the parents notice. An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency – and even then, it should normally be possible to give some kind of albeit informal notice to the parents – or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.
>
> (ix) The evidential burden on the local authority is even heavier if the application is made ex parte. Those who seek relief ex parte are under a duty to make the fullest and most candid and frank disclosure of all the relevant circumstances known to them. This duty is not confined to the material facts: it extends to all relevant matters, whether of fact or of law.
>
> (x) Section 45(7)(b) of the Children Act 1989 permits the FPC to hear oral evidence. But it is important that those who are not present should nonetheless be able to know what oral evidence and other materials have been put before the FPC. It is, therefore, particularly important that the FPC complies meticulously with the mandatory requirements of rr 20, 21(5) and 21(6) of the Family Proceedings Courts (Children Act 1989) Rules 1991. The FPC must 'keep a note of the substance of the oral evidence' and must also record in writing not merely its reasons but also any findings of fact."

[13] Given the draconian nature of these proceedings, applications should be heard in person where possible. However, remote attendance may be allowed in certain circumstances. Whether that happens is a matter of judicial discretion. The latest guidance from the Office of the Lady Chief Justice dated 20 October 2025 on physical, in-person and remote attendance makes this clear in the following terms:

> "Most substantive family hearings will require in person attendance of counsel and solicitors. Reviews and directions hearings may be held remotely at the direction of the judge and "whilst some remote evidence may be given by professionals such as health professionals, emergency medical staff, social workers, psychiatrists, psychologists, forensic scientists, police call centre staff etc that will be a matter for the judge in each case and will depend on the nature, complexity and significance of the witness's evidence."

[14] Finally, we refer to the judicial direction dated 4 January 2023 which provides the Official Solicitor ("OS") with powers to act on behalf of persons who may lack capacity in proceedings concerning EPO applications under section 75(2)(b) of the Judicature (Northern Ireland) Act 1978 with the agreement of the Lady Chief Justice.

Consideration

[15] This case is fact sensitive. Therefore, we begin our consideration by highlighting the relevant facts which frame the case stated as follows.

[16] First, this application for an EPO came about following a history of social service involvement with this family. The application for an EPO was framed by that history in that the Trust had been involved with the family for several years even prior to D's birth and in relation to both him and his brother. In very broad terms, the Trust intervention centred around the appellant's complex physical health profile in that she has ME and fibromyalgia and the impact of that on her ability to meet the basic care needs of her children.

[17] An application for a care order was commenced on 9 December 2025 because in the month prior, D had taken medication in an attempt to end his life, expressed thoughts of his life not worth living and being admitted to hospital on 14 November 2025 and assessed by Child and Adolescent Mental Health Services ("CAMHS") which deemed that it would not be safe for him to return home due to inadequate supervision.

[18] It is notable that D was placed in foster care on a voluntary basis from 17 November 2025 until 25 November 2025 when the appellant revoked her consent. At that stage D returned home with a safety plan in place. Part of this safety plan was to keep D away from medication. However, on 8 January 2026, D was

dysregulated in school and expressed thoughts of life not being worth living. CAMHS and GP appointments were offered, but again, the appellant would not consent to these interventions.

[19] Matters took a turn for the worse when on 15 January 2026, D presented as extremely distressed at school and was worried about his mother's mental health. She refused to consent to treatment. On 30 January 2026, D took an overdose of antihistamine medication which he found at home. He was taken to hospital by his maternal grandmother. This was in breach of the safety plan that required all medication to be securely stored and out of reach.

[20] As a result of what transpired D was placed in hospital under 24-hour supervision. During the weekend prior to the EPO, he is reported to have been speaking about difficult circumstances at home and had suicidal ideation. On 2 February 2026, D was assessed by CAMHS who believed he could not safely be returned home. This was also the view of social services. However, he was medically fit for discharge as there was no further medical reason for his continued stay in hospital. This led to the social work intervention with which we are concerned.

[21] At this point in the chronology, the focus shifts to how the social services engaged with the appellant and her solicitor (who was on record for her) Mr Nicholas Quinn, prior to the EPO. In this regard the social worker initially contacted the appellant by email at 2:29pm. This message indicated that the Trust plan with the support of CAMHS was that D could not safely be discharged home and asked for consent to voluntary accommodation under Article 21 of the 1995 Order. The appellant responded by email, which we have seen, at 3:48pm asking a list of questions.

[22] By further email of 4:29pm, the social worker advised the appellant that she was working on a response to the queries. However, the urgent priority was to obtain a placement for D. Therefore, the appellant was asked to suggest a kinship option. At 5:42pm, the appellant responded to say that she took issue with some of the points being raised in terms of what D wanted and that she did not consent to voluntary care. At 5:58pm, the appellant was advised that if she was unable to identify a kinship placement and agree to voluntary care then there was no other option but to bring the matter before a judge that evening. She was asked to inform her solicitor. At 6:07pm, the appellant responded and confirmed that she was notifying her solicitor and that she did not consent to voluntary care.

[23] In addition, the Trust solicitor contacted the appellant's solicitor at 4:45pm on 2 February 2026, to confirm if he would accept service of the application for an EPO on behalf of his client. Mr Quinn indicated that he would, however, this did not come to pass. Rather, an EPO application was lodged by the Directorate of Legal Services ("DLS") (acting for the Trust) by email at 4:55pm.

[24] Thereafter, the social worker liaised with the court. She spoke directly to the judge and had the matter listed for hearing. The appellant was notified by email at 6:33pm that the application was proceeding and that the hearing was scheduled to start at 6:45pm.

[25] In the event, the appellant attended remotely as did the social worker. We have seen the transcript of what transpired. This was a substantial hearing in that the judge received evidence on the history of the case from the social worker. The judge also heard submissions from the appellant and her son in relation to potential kinship options. The judge was told by the appellant about a breakdown of relationships with social services and that there could be safety planning at home.

[26] The judge made an EPO at 8:20pm. It was the following day that the appellant's solicitor was informed that the EPO had been granted and served with the proceedings.

[27] The import of the above is that the appellant was aware of the substance of the application for an EPO and was able to participate in the hearing and the judge considered her views. However, she was not served with the application in accordance with the requirements of the 1996 Rules and no direction was made by the District Judge either for dispensation from the requirement for service or that service should be achieved in some other manner.

Conclusions

[28] It is with the above factual matrix in mind that we answer the four questions in the case stated as follows:

(i) Question 1 which relates to remote attendance is not a matter of law. The District Judge had a judgment to make as to whether remote attendance was appropriate in this case. The guidance on remote attendance means that cases such as this should ordinarily be in person. However, that is not a rule of law. Judges retain a discretion in appropriate circumstances to allow for a remote hearing. Given the combination of factors in this case, namely that it had to be heard out-of-hours given the risks to D if he was not suitably placed and that the appellant was housebound due to her physical disabilities, there can be no question mark over how the judge exercised her discretion in directing a remote hearing. The answer to question 1 is yes, in that there is nothing unlawful about the judge convening a remote hearing in these circumstances.

(ii) Question 2 concerns the provisions of the 1968 Act and relates to the composition of the court. The relevant provisions permit a District Judge to sit alone in certain circumstances. In this case attempts were made to find lay magistrates to sit with the judge, as that is obviously preferrable. However, these attempts were unsuccessful. In those circumstances that the judge was

entitled to convene as she did without lay magistrates under the statutory provisions. The answer to question 2 is yes, as no unlawfulness arises.

(iii) Question 3 poses the question - Was the court correct, as a matter of law, to record the matter as *inter partes*/that the case did not proceed on an *ex parte* basis? It is debateable whether this is a matter of law because this question resolves into a challenge to how the judge described the case which she conducted. We cannot readily see that this is a matter for an appellate court. In any event, it is not necessary for legal representatives to be present to make a matter *inter partes*. Applying common sense, it is readily apparent that this case did have the features of an *inter partes* hearing by virtue of the submissions made by the appellant. Therefore, we see no error of law in relation to the descriptor applied to proceedings and we answer question 3 in the affirmative. In addition, we do not accept the appellant's submissions raised as part of this ground that proceeding on an *inter partes* basis, gave rise to a procedural disadvantage to the appellant in relation to her standing to apply to discharge the EPO. While we acknowledge that the court order records that "*This Order has not been made ex parte*", the question of whether the proceedings are classed as *ex parte* or *inter partes* is not the relevant question for the purposes of an application to set aside the EPO. Article 64(7) confers standing upon a parent to set aside an EPO save in the circumstances set out in Article 64(10). It applies where the person was provided notice of the hearing "in accordance with rules of court" and was present at the hearing. It is common case that the appellant was made aware of the fact of the application and participated in it, but she was never given notice "*in accordance with the rules of court*." Accordingly, the appellant at all times retained standing to apply to set aside the EPO and in fact nothing done by the District Judge impaired her statutory right.

(iv) Question 4 asks the question – was the judge right to accede to an EPO on the facts? The judge was versed on the correct legal test for an EPO. She considered all relevant factors. She had to reach a conclusion which was in the best interests of the child. There is no basis upon which we would interfere with a factual finding such as this. The answer to this question is yes, as no unlawfulness arises.

[29] Hence, the four questions in the case stated are answered in the affirmative. In any event, on an overall view, we find that the hearing was conducted fairly and that the outcome was inevitable. In reality, this appeal was always bound to fail.

[30] Finally, we make some final comment on procedural issues to reiterate good practice in EPO applications as follows.

(i) The 1996 Rules require that the parties to these types of proceedings must be served or the judge can dispense with service. As we see it the problem likely arose in this case because there were no legal representatives in court. No one

seems to have properly addressed their mind to this issue. It is regrettable that neither the appellant nor her instructing solicitor were properly served. We make some allowance for the fact that this was an emergency. However, the matter should have been raised with the judge by social services, and the judge should have formally made an order dispensing with service under the Rules to reflect what happened. In the event, no injustice has occurred by virtue of this procedural oversight given that the appellant was made aware of the application and fully participated in proceedings.

(ii) There is provision for the OS to become involved in the FPC in tightly controlled circumstances. The argument that the judge has made a mistake in failing to direct that the OS become involved in this EPO application is a weak one. True it is, that District Judge (Magistrates' Court) Heaney in the Family Proceedings Court, when previously dealing with this case, made an order on 22 January 2026 for a capacity assessment and the appointment of a Guardian ad Litem. However, that assessment does not automatically read across into the need for the OS to be appointed in these EPO proceedings which were an emergency and which the judge had to assess for herself. Also, as it transpired there is no issue with appellant's capacity to conduct proceedings.

(iii) Finally, we understand that in out-of-hours applications the Directorate of Legal Services ("DLS") Code of Practice does not provide for solicitors to attend out of hours EPO hearings. It would be preferable if lawyers were present as that would likely avoid some of the practice issues which have arisen in this case. If lawyers are not present social services need to be aware of the legal requirements for an EPO including service provisions and be able to address the judge on them. We suggest that the creation of a checklist by DLS for all social workers to have as a resource in these cases if not already in existence would be the best way to achieve this aim.

[31] Accordingly, we dismiss this appeal.