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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

IN THE MATTER OF AN APPLICATION BY JR353
FOR JUDICIAL REVIEW

and

IN THE MATTER OF A DECISION OF THE HISTORICAL INSTITUTIONAL REDRESS BOARD

_____

Mr Bassett (instructed by KRW Law Solicitors) for the Applicant
Mr McAteer (instructed by Departmental Solicitor's Office) for the Respondent

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M SMYTH J

Introduction

[1] In this judicial review, the applicant is challenging a decision made by the Single Judicial Member ('SJM') of the Historical Institutional Redress Board ('Redress Board') on 8 August 2025 that her stay in Lissue Hospital is outside the remit of section 2 of the Historical Institutional Abuse (Northern Ireland) Act 2019 ('the 2019 Act').

[2] The applicant was represented by Mr Bassett and the respondent by Mr McAteer. I am grateful to both counsel for their helpful written and oral submissions.

Legislative framework

[3] Section 2 of the 2019 Act sets out the test which applicants must satisfy in order to be eligible to make a claim for compensation to the Redress Board.

[4] Section 2 provides:

> "**2. Entitlement to claim compensation**
>
> (1) An application for compensation under this Part may be made by or in respect of a person who suffered abuse while a child and while resident in an institution at some time between 1922 and 1995 (both inclusive); but this is subject to sections 3 and 4.
>
> (2) A reference to having suffered abuse is a reference to —
>
> (a) having suffered sexual, physical or emotional abuse or neglect or maltreatment;
>
> (b) having witnessed one or more other children suffer abuse of a kind referred to in paragraph (a);
>
> (c) having otherwise been exposed to a harsh environment; or
>
> (d) having been sent to Australia under the programme commonly known as the "Child Migrants Programme."
>
> (3) "Institution" means an institution in Northern Ireland in which a body, society or organisation with responsibility for the care, health and welfare of children provided residential accommodation for children, took decisions about them and made provision for their day-to-day care.
>
> (4) A reference to an institution does not include a reference to an institution at which education was provided, other than—
>
> (a) a school certified under the Children Act 1908;
>
> (b) a training school under the Children and Young Persons Act (Northern Ireland) 1950 or 1968;
>
> (c) a Borstal institution; or

(d) a young offenders centre under the Treatment of Offenders Act (Northern Ireland) 1968.

(5) A reference to being resident in an institution includes a reference to being absent from the institution while under the care of—

(a) the body, society or organisation which provided residential accommodation for the child in the institution; or

(b) a person authorised by that body, society or organisation.

(6) But subsection (5) does not apply to a case within subsection (2)(c); and subsection (2)(c) is accordingly to be read as referring only to a person who was exposed to a harsh environment while in the institution in question.

(7) The reference in subsection (1) to a person who suffered abuse while resident in an institution is, in a case within subsection (2)(d), to be read as a reference to a person who was resident in an institution immediately before being sent to Australia as mentioned in that provision."

[5] It is uncontroversial that the clear purpose of the legislation is to ensure that children who were abused whilst residents in an institution are compensated.

[6] The issue for determination in this case is whether the applicant was "resident in an institution" within the meaning of section 2 of the 2019 Act at the time she claims to have suffered abuse and whether she is thereby entitled to apply for compensation. The SJM determined that she was not resident in Lissue Hospital and she was, therefore, ineligible for compensation. This is the determination now challenged by the applicant.

[7] At the hearing, both parties agreed that there is an interconnectedness between the two elements of the section 2(1) test ie 'residency' and 'institution', reasoning that this is evident from the definition of 'institution' in section 2(3) which includes matters which are relevant to determining whether a person was 'resident' in an institution. I accept the parties' submissions in this regard and will revisit the issue of statutory interpretation later in this judgment.

Lissue Hospital, Lisburn

[8] Chapter 24, Module 13 of the Historical Institutional Abuse Inquiry Report, January 2017 (the 'Hart Report') provides useful information about the history and functioning of Lissue Hospital including the type of patients admitted there and the medical services provided to those who stayed as patients. The report records that between 1949 and 1971, Lissue Hospital provided paediatric services only. Thereafter, it provided both paediatric and psychiatric care as distinct units within the same hospital building.

[9] To set the scene more fully, the Hart report included the following references to Lissue:

> "1. Lissue Hospital was unique among the institutions considered by the Inquiry in that it was the only hospital to be investigated, and its functions therefore included medical and nursing care. It is not the Inquiry's role to evaluate the medical care provided, and if there remain medical issues which require investigation the task will need to be allocated to another inquiry to be undertaken by professionals with the appropriate qualifications and experience.
>
> 2. However, much of the work of Lissue concerned the residential care of children who were displaying behaviour or conduct disorders, and who might well have been cared for in other types of children's home or residential school if they had been available. Furthermore, most of the allegations made by witnesses were concerned with aspects of childcare, which is within our remit.
>
> …
>
> 5. In 1945, after the War, the hospital was closed, but the Lindsays then donated the house to the newly created Northern Ireland Hospitals Authority. After a period in which the buildings were modified it was reopened in 1949 as a paediatric hospital, addressing children's health problems current at that time, such as tuberculosis, lobar pneumonia, rheumatic fever and worm infestation. By 1959 Lissue was a busy branch of the Royal Belfast Hospital for Sick Children, treating surgical and medical patients and able to house up to seventy patients. It

fulfilled this role for just over two decades, and two of the witnesses were patients during this time.

6. With improvements in health care, there was less demand for these types of paediatric services. A report written, in 1982, noted that the illnesses and disorders prevalent in 1948 had almost entirely disappeared. There was, however, an increase in the number of children admitted with behavioural problems, and the mixture of presenting problems caused management difficulties, so that it was decided to separate the children requiring paediatric care from those with psychiatric needs.

…

23. For the purposes of this chapter, the history of Lissue Hospital can be considered in two periods of about two decades each:

(a) the first phase from its opening in 1948 to 1971 when the Hospital mainly provided paediatric convalescent care, and

(b) the second phase from 1971 to the Hospital's closure in 1989 when it was divided into two units, respectively providing paediatric and psychiatric care.

…

105. Throughout its existence, most of the children admitted to Lissue Hospital were referred through the Royal Belfast Hospital for Sick Children, though general practitioners at times referred children directly to Lissue. In the earlier years, grounds for admission included convalescence after operations or the relief of other hospitals when the number of children with tuberculosis peaked.

…

109. Of the thousands of children who were admitted to Lissue between its opening in 1949 and its closure in 1989, only ten have come forward as witnesses to the Inquiry…

111. Only two of the ten were at Lissue in the first nineteen years of the hospital's existence, and the other eight all attended the hospital's psychiatric unit during its last eighteen years. The bulk of this chapter therefore relates to life in the psychiatric unit.

…

194. The only witness to make allegations of abuse at Lissue during its early years was HIA 404. He was admitted when he was very young with a history of multiple illnesses and he came from a family where tuberculosis was rife; indeed, an aunt who cared for him died of it while he was in Lissue. HIA 404 himself was later found to have scarred lung tissue. His main complaint was that he was cold; the windows were open and it was "cold like a dungeon." Since one of the treatments for tuberculosis at that time was placing patients in the fresh air, this could account for his treatment.

195. He recalled a nurse who shook him and beat him and threw him down on his cot mattress until another nurse remonstrated and comforted him. HIA 404 was also hit with a dessert spoon by nurses who were trying to feed him, as he had difficulty eating. He also remembered a male nurse who exposed himself but did not recall any sexual contact. There is no reason to doubt HIA 404's account of his experiences but as he was so young it is not altogether clear that the incidents occurred in Lissue. When he eventually told his mother of the abuse she was astonished, as she had seen Lissue as a sanatorium in the countryside, providing the best possible care. As HIA 404 is the sole witness from that era we cannot conclude any finding of systemic abuse.

…

212. HIA 426 suffered from chronic bronchial asthma and he attended Lissue from 1968 to 1971, before the psychiatric unit was opened. His only allegation is that a male nurse, LS 9 regularly took him to a part of the hospital that was little used and masturbated him. He said that he was pinned against a wall in a corridor and abused, "not aggressively, but tenderly." HIA 426 was

discharged but re-admitted the following year, and the abuse recommenced.

213. HIA 294 was admitted to Lissue Hospital around 1969 for the treatment of an eating disorder and encopresis. He said that he was put on his stomach and could not see the faces of staff. "And there was someone down below and I don't know if I was or if I wasn't ... But I can remember the same thing happening to some other wee boy, the same cries." This made him feel "very dirty." It is our opinion that the incident was probably some form of treatment for HIA 294's encopresis, rather than sexual abuse, and it is understandable that, if HIA 294 did not understand what was happening, he found the incident sufficiently upsetting to be memorable.

…

220. Our conclusions are that HIA 426's account is persuasive but appears to relate to a single member of staff, while HIA 294 may well have mistaken medical treatment for possible abuse. In neither case could their experiences be termed systemic abuse.

…

298. For about forty years, from 1948 to 1989, Lissue Hospital was virtually the placement of last resort in Northern Ireland for children up to the age of thirteen, having to deal with a very wide variety of physical, medical, psychological and psychiatric problems, all on one site. With improvements in medical care, the nature of the problems changed considerably during those four decades, with a greater emphasis on paediatric care in the earlier decades and the creation of the psychiatric unit in 1971 to cope with the growing demand for help with psychiatric and behavioural problems.

299. Out of possibly 10,000 children who passed through Lissue Hospital only ten have come forward to the Inquiry to make allegations, eight of whom were patients in the psychiatric unit. Although by far the majority of the patients were in paediatric care, only two witnesses came forward who had been in this group. We conclude

> that the paediatric care at Lissue was not subject to systemic abuse."

The applicant

[10] The applicant's evidence (which was not disputed by the respondent) was that she was born in 1964 and, when she was a young child, she had serious respiratory health problems and was admitted to Lissue Hospital for respiratory care.

[11] The applicant claims that she remained in Lissue Hospital continuously during the period August 1968 to May 1969. The panel concluded, and the SJM accepted, that she was hospitalised in Lissue between October 1968 and May 1969 although reference is also made in the SJM determination of her having been in Lissue for a nine month period. For the purposes of this application, nothing turns on this discrepancy. The applicant was in Lissue Hospital for at least seven months at a time when it provided paediatric medical services only.

The applicant's application for redress

[12] The applicant applied to the Redress Board on 26 March 2025. The application included a statement of experience, a photograph of her with her parents outside Lissue and a letter dated 7 May 1969 to the applicant's parents from a teacher at Lissue Hospital's school.

[13] In the statement of experience, the applicant said:

> "As a child, I experienced severe asthma flareups that required frequent emergency hospitalisations. It was believed that farm allergens triggered these episodes, and my parents were faced with a heart rending decision: either place me in Lissue Hospital for respiratory care or consider selling the family farm. Ultimately, I spent approximately nine months at Lissue Hospital, 1968-1969."

[14] The applicant goes on, in the statement of experience, to recount her experiences in Lissue Hospital and the impact of this upon her. The applicant recalls the following:

(i) An overwhelming and distressing atmosphere with constant crying and shouting;

(ii) Numerous instances when she fell out of bed during the night which left her hurt and disoriented and each time she fell, staff would drag her off the floor, scolding her;

(iii) Being forced into a cot, despite her protests;

(iv) Witnessing a nurse viciously scrubbing a child's feet with a coarse brush and fearing she might be next;

(v) Staff repeatedly calling her by her second name, deliberately ignoring her tearful insistence that her name was JR353;

(vi) Being placed in a glass isolation unit without being told the reasons why;

(vii) Seeing a nurse passing the glass isolation unit daily putting her fingers in her ears, contorting her face and sticking out her tongue whilst staring at her;

(viii) By way of treatment, being roughly manipulated over a chair whilst a worker forcibly thumped her back, shouting demands to breathe, cough and spit up;

(ix) Parental visits being limited to Sundays only; and parental request for an aunt and uncle to visit the applicant in their stead being denied;

(x) Parental gifts being handed over to staff on arrival; the withholding of said gifts from the applicant; and a nurse sending her to bed without food as a punishment when she begged for said gifts;

(xi) On one occasion, when she opened the refrigerator for ice-cream, a worker violently dragging her away with her clothes, fingers digging into her and scolding her;

(xii) When her mother was reassured by staff that the applicant would receive her gifts, nothing changed;

(xiii) Differences in how children were treated in Lissue – some children were permitted parental attention and personal possessions whilst the applicant was denied them.

[15] Given the determination that the applicant's presence in Lissue Hospital was outside the scope of the 2019 Act, the panel made no determination about the nature of the abuse suffered. Similarly, the SJM deemed it unnecessary to consider the nature of the abuse suffered. This element of the SJM's decision-making is not under challenge in this judicial review.

[16] The sole focus of this judicial review is the SJM's determination that the applicant's case falls outside the ambit of the 2019 Act because she was not resident in Lissue Hospital within the meaning of the said Act.

The panel's determination

[17] Pursuant to section 8 of the 2019 Act, the panel considered the application, and the panel determination is dated 7 July 2025.

[18] The panel decided it had no jurisdiction to make an award of compensation. The gravamen of the panel decision is that whilst it would have been challenging for a child between the ages of three and four to face a long hospital stay, particularly where their parents lived a considerable distance away, the applicant's admission to Lissue was not an admission to residential care within the meaning of the Act and accordingly the panel had no jurisdiction to make an award of compensation. The core of the panel's reasoning was that:

- The admission to Lissue was for medical treatment and rehabilitation in respect of a physical condition;
- The length of stay is not determinative of residence; and
- The applicant's admission for medical treatment did not represent an admission into residential care.

The SJM's determination on appeal

[19] Pursuant to section 16 of the 2019 Act, the applicant exercised her statutory right of appeal against the panel's determination, and her appeal was determined by a SJM of the Redress Board on 8 August 2025. The SJM agreed with the panel and determined that the applicant's case does not fall within the ambit of the 2019 legislation.

[20] The SJM's determination sets out (summarising):

- the relevant statutory provision namely section 2 of the 2019 Act (para 5);
- the fact that the applicant was hospitalised in Lissue for respiratory care between October 1968 and May 1969 (paras 6 & 7);
- Key portions of the Historical Institutional Abuse Inquiry Report, January 2017 (para 9);
- A summary of the reasons why the panel refused the applicant compensation (para 10);

- The applicant's grounds of appeal (para 11); and

- A summary of the SJM's reasons for affirming the decision of the panel is found in paras 12-18.

[21] In paras 17 and 18, the SJM stated:

> "[17] I consider that this child's presence in Lissue Hospital is outside the remit of the 2019 legislation for the following reasons:
>
> - As the appellant herself has conceded, she was manifestly in this hospital for the purpose of treating a respiratory condition. A hospital giving treatment for medical and physical conditions is not an institution within the definition set out in the 2019 legislation.
>
> - Her parents maintained the essential decision making process and welfare for this child whilst she was in Lissue. Thus, her address would not be given as the hospital but rather still as her home, her parents could at any time insist on taking her out of the hospital, still would have controlled all aspects of her life such as her choice of clothing, hobbies, contact with friends, mode of schooling, what she was allowed to read or listen to, spiritual guidance etc. with the exception of her medical care if they had chosen to do so.
>
> - The fact that she was in the hospital for 9 months is not in any way determinative. Many children are in hospital sadly for such a lengthy or long period and to suggest that their care and welfare has been taken away from their parents would be risible. All decisions about their care and welfare would still be the responsibility of the parents save for the welcome corrective of their medical care.
>
> - Decisions such as limiting parental visits, selective agreement about food and toys given to the child, are all matters that could have fallen within medical care to ensure that her respiratory condition was not exposed to any outside germs, et cetera. The restrictions imposed during covid in hospitals were a

> classic case of where medical requirements were imposed, but that did not suggest for a moment that the patients, children or otherwise, were somehow compulsorily under the care or welfare of the hospital.
>
> [18] In short, I consider that this is a classic case of a child being in hospital where certain restrictions arise for medical reasons but that otherwise full care and welfare rests with her parents."

The applicant's case

[22] The applicant's case can be broken down into three points:

(i) Lissue Hospital was an institution within the meaning of the 2019 Act;

(ii) The SJM misconstrued the broad reach of section 2(1) and section 2(3); and

(iii) The SJM erred in his application of the requirement of a "resident in an institution" by determining this question by reference to matters not in the statutory text.

[23] The applicant's primary ground of challenge upon which leave had been granted was illegality. It was submitted that the central issue of whether the applicant was a "resident in an institution" involved a question of statutory interpretation which is a hard-edge question of law.

[24] In response to the respondent's submissions and during the hearing, the applicant sought leave to amend the Order 53 statement to include an irrationality ground. This application was made without objection from the respondent, and I granted leave for this additional ground which was pleaded in an amended Order 53 statement.

[25] At hearing, the applicant argued that:

- A child being resident in an *institution* is a condition precedent to eligibility in section 2(1);
- The definition of institution in section 2(3) of the 2019 Act focuses on practical matters concerning the care of the child, rather than the purpose of their presence or who holds legal parental rights and responsibility for the child;
- Section 2(3) assists with understanding what it means to be resident in an institution in section 2(1);

- Section 2(4) excludes schools from scope save those which fall into the categories specified in subsections (a) to (d) and this was important, as it was open to the legislature to exclude hospitals which it elected not to do.

[26] Overarchingly, the applicant submitted that the SJM's task was to apply section 2 of the 2019 Act without modifying or adding to it by introducing additional considerations. It was argued that an admission to 'residential care' was not required and that responsibility for the child's day-to-day welfare was sufficient, even if this fell short of having legal responsibility or legal authority to make decisions on behalf of the child.

[27] The applicant agreed that length of stay is not determinative of residence but submitted it is a relevant consideration for a child of 3-4 years of age, which was the applicant's age at the time. On the applicant's case, the 30-mile distance between Lissue Hospital and the applicant's parents' home is also a relevant consideration.

[28] Finally, the applicant relied on previous decisions of the SJM in which similar issues were considered, for the purposes of illustrating the proper scope of section 2 of the 2019 Act. In my view, this was an appropriate position for the applicant to adopt as proper decision-making by public authorities must be done on a case-by-case basis. I am satisfied that each of the SJM's determinations I was referred to were fact-sensitive judgments that were rightly informed by their own particular facts.

The respondent's case

[29] The respondent submitted that this case is not about statutory interpretation at all. Rather, it was submitted that the applicant is seeking to challenge the SJM's evaluation of the facts and the application of the law to those facts. The respondent contended that it was, in substance, a rationality challenge to factual findings.

[30] The respondent submitted that the key question under section 2(1) is whether the applicant suffered abuse while a child and while resident in an institution; this is a question of fact for the SJM to determine and is challengeable only on the basis of *Wednesbury* irrationality, which, it was contended, was not made out in this case.

[31] The respondent did not accept that this case falls within the rubric of illegality and contended that the language used in a written decision was not required to adhere slavishly to the language of the statute and that the refence to "admission to residential care" in the determination was not intended to signify a requirement that a child must be admitted into state care and that the use of language was reasonable given these words were used in the Hart report, the panel's decision and the applicant's notice of appeal.

[32] At hearing, the respondent argued that the basis for the applicant's appeal to the SJM being refused was that she was not resident in Lissue within the meaning of

section 2 of the 2019 Act. The respondent submitted there was an overlap between what may be relevant to determining residency and institution under section 2 of the 2019 Act as the statutory definition of 'institution' in section 2(3) includes matters which are equally relevant to determining whether a person was resident in an institution at a material time rather than simply staying in hospital. According to the respondent, the purpose of admission, length of admission and who retained decision making responsibility for the applicant throughout are all relevant considerations that the SJM was entitled to take into account.

Consideration

[33] At the outset, it is important to state that when reviewing the SJM's decision, the judicial review court is not acting as appellate body or conducting a merits-based review. As Hutton LCJ said in *Re Murphy's Application* [1991] 5 NIJB 59:

> "The governing principle can be stated in differing terms, but the essence of the principle is that the court does not sit as a Court of Appeal to substitute its opinion of what should be the proper decision for the opinion of the person or body entrusted by parliament with the making of the decision. The court exercises only a supervisory jurisdiction and not an appellate jurisdiction. This means, in a case such as the present one, the court will not intervene to set aside the decision unless (the onus of proof being on the applicant) the person making the decision has failed to consider matters which he was bound to consider or included in his consideration matters which were irrelevant or unless the court considers that the person making the decision has abused the exercise of the discretion given to him and has come to a decision to which no reasonable person could have come. There may be arguments of weight and substance on both sides of the matter, but it is not for the court to weigh up the arguments for and against the decision. The weighing of those arguments is a matter for the decision maker, not for the court."

[34] In this case, the applicant's challenge was grounded on illegality whereas the respondent argued her judicial review concerned the rationality of the SJM's decision. Fordham in 'Judicial Review Handbook' states at 45.4:

> "Like all judicial review principles, the species of public law error are flexible. Grounds for judicial review have blurred edges and overlap. They are open to development and repositioning on the legal map. Many

> public law errors are intersectional. Some can be seen either as nuanced manifestations of broader principles from which they originated, or as free standing principles. Frequently, the public law error which justifies the court's interference may be described in several different ways."

[35] I have found this to be a helpful text in analysing the arguments made by the parties in this case. Whilst the arguments advanced require the court to examine both the legality and rationality of the SJM's decision, I also consider that there is some overlap in the parties' respective positions.

Illegality

[36] There is no doubt that the SJM identified the correct legal test in section 2(1) of the 2019 Act.

[37] Having identified the correct test, the task of the SJM was to decide whether the applicant was resident in an institution under section 2 of the 2019 Act.

[38] The applicant argued that, applying the principles of statutory interpretation, the SJM misconstrued the meaning of section 2. This argument necessarily calls for interpretation of the statute.

[39] The applicable principles of statutory interpretation, which are well known and uncontroversial, were recently summarised by Lord Hodge, Lady Rose and Lady Simler in *For Women Scotland Limited v The Scottish Ministers* [2025] 2 WLR 879. In this judgment, the Supreme Court approved the basic approach set out by the House of Lords in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349 and the following exposition of the law by Lord Hodge DPSC, who gave the leading judgment in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255 (paras 29-31):

> "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 of Drem. 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] 2 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*, 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.'

30. External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. ...

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. ..."

[40] In the present case, the applicant and respondent both submitted that:

- Sections 2(1) and 2(3) of the 2019 Act should be read together; and

- The definition of institution in section 2(3) of the 2019 Act is relevant to the residency determination in section 2(1).

[41] I agree with the parties' submissions on this approach to the interpretation of the 2019 Act and consider that it is in keeping with the principles of statutory interpretation expounded in the authorities. It follows that I conclude that the statutory definition of 'institution' in section 2(3) the 2019 Act includes reference to matters which are also relevant to determining whether a person was resident in an institution at a material time under section 2(1) of the said Act.

[42] A simple reading of section 2(3) of the 2019 Act indicates, therefore, that relevant considerations for determining the residency element in section 2(1) of the 2019 Act are whether an institution had responsibility for the care, health and welfare of children, provided residential accommodation for children, took decisions about them and made provision for their day-to-day care. In my view, this is not an exhaustive list of factors for determining the residency requirement in section 2(1) of the 2019 Act. Rather, decision makers are required, on a case-by-case basis, to consider all the available evidence when determining whether the *residency* requirement in section 2(1) is met. In my view, the question of whether an applicant is *resident in an institution* involves a mixed issue of fact and law, which includes a factual determination about the circumstances of the child's placement. This requires the decision maker to make an evaluation of all the available evidence on a case-by-case basis.

[43] In para [16] of the determination, set out below, the SJM correctly articulated both the approach to take in interpreting the statute and the purpose of the 2019 Act:

> "I must seek to arrive at the best interpretation of the words in the statute in light of their context and the purpose of statutory provision. In this instance, the legislation has the purpose of ensuring that children who are abused in the institutions in question receive appropriate and adequate compensation within the terms of the 2019 act and the Rules. I must exercise this approach with measured clarity ensuring there is a shared thread in decisions made. To permit this legislation to extend a hospital and medical care would be to open the floodgates to an untold number of claims on the public purse.

[44] The applicant, however, submitted that the SJM erred in his approach to section 2 by saying he sought to ensure a shared thread in decisions and that to permit the 2019 Act to extend to hospital and medical care would be to open the

floodgates to an untold number of claims on the public purse. The applicant's argument is that SJM was adding further restrictions to the scope of the provision, through the guise of interpretation.

[45] I do not agree with the applicant on these points for the following reasons.

[46] First, the SJM has a duty to decide eligibility under the 2019 Act in a manner that is consistent with the purpose of the legislation, and the SJM correctly sets out the purpose of the 2019 Act in para [16] of the determination. In my view, the SJM's comments about consistency and opening the floodgates are not an indication that he was adding restrictions to the scope of section 2(1). Whilst there is no public law obligation to act consistently (as distinct from irrationality), it can be said that ensuring there is a shared thread in decisions is a valid goal for SJMs so long as each application for compensation is decided on case-by-case basis by reference to its own unique facts. It is elementary that proper decision-making by public authorities must be done on a case-by-case basis and there is no suggestion that this was not done in the applicant's case.

[47] Secondly, I consider the SJM's commentary about opening the floodgates if the legislation was to extend to hospital and medical care to be consistent with the content of the Hart report in which it was stated:

> "if there remain medical issues which require investigation the task will need to be allocated to another inquiry to be undertaken by professionals with the appropriate qualifications and experience" - Chapter 24, Module 13, para 1.

Complaints about medical care clearly fall outside the remit of the legislation. It is also clear that the content of the Hart report was an important part of the pre-legislative history of the 2019 Act. Where possible, the Act and decisions taken as part of the remedial scheme which it enacted, should be interpreted consistently with the conclusions of the report.

[48] The applicant also argued that in para [17] of the determination, the SJM failed to apply the appropriate test by focusing on the purpose of admission being medical care as opposed to the practical reality of the applicant's stay in Lissue Hospital. The applicant submitted that, as a matter of evidence, Lissue Hospital provided residential accommodation for the applicant, took decisions about her and made provision for her day-to-day care.

[49] The applicant also asserted that the SJM's finding that her parents maintained the essential decision-making process and welfare for her whilst she was in Lissue was not borne out by the evidence and, in identifying this as a reason for deciding she was not resident there, the SJM impermissibly strayed from the statutory test.

[50] During the hearing, Mr Basset, on behalf of the applicant, accepted that both the purpose of admission and who had parental responsibility for a child during a stay at an institution were relevant considerations for an SJM determining the residency requirement under section 2(1) of the 2019 Act. Mr Bassett maintained that these considerations were not determinative and the SJM misconstrued the statutory test by relying on them in his reasoning whenever the focus ought to have been on the practical reality during the applicant's time in Lissue Hospital.

[51] Given the need for the SJM to evaluate the evidence before deciding whether the applicant was resident in an institution, I do not consider that the SJM's reasoning about the purpose of the applicant's admission and the fact that her parents retained parental responsibility is indicative of him misconstruing the statutory test. Rather, I consider that the SJM's reasoning in this regard demonstrates that relevant considerations were taken into account in the determination.

[52] The applicant's argument, under the rubric of illegality, is that a proper reading of the statutory test required the SJM to focus on the practical reality of the applicant's situation at the time eg her treatment, socializing, bedtime, medical care, visits from others, sleeping arrangements and schooling. Recalling Fordham's observation that grounds for judicial review have blurred edges and overlap, it seems to me that the applicant's case, being a complaint about the SJM's focus when deciding eligibility under section 2(1) of the 2019 Act, can be viewed as a dispute about the amount of weight the SJM attached to various relevant considerations, which is something I shall consider below under the irrationality section of this judgment.

[53] In para [17] of the determination, the SJM, having outlined the medical purpose of the applicant's admission to Lissue, stated that "a hospital giving treatment for medical and physical conditions is not an institution within the definition set out in the 2019 legislation." The applicant argued that it is possible for a hospital to be an institution within the meaning given in section 2(3) of the 2019 Act. The respondent pointed out that the SJM did not make a finding that Lissue Hospital was not an institution, rather the determination was that the applicant was not resident there – residency was why the panel refused and the SJM agreed with the panel.

[54] I agree with the applicant that it is possible for a hospital to be an institution within the meaning given in section 2(3) of the 2019 Act. It is also clear from previous SJM decisions referred to during the hearing that this point is uncontroversial, as this SJM has previously found other applicants to be resident in Lissue Hospital, as an institution, under the 2019 Act and thereby eligible for compensation. Whether an applicant is resident in an institution under the 2019 Act requires a fact sensitive determination to be carried out on a case-by-case basis.

[55] On the facts of the applicant's case, I accept the key reason for the SJM deciding she was ineligible for compensation was that she was not resident in Lissue Hospital and, reading the decision as a whole, I do not consider the SJM's comments in this section of his determination demonstrate that he applied the wrong legal test.

[56] The applicant was also critical of the language used in para [10] of the SJM's determination, which references the panel decision that the applicant's admission for medical treatment did not represent an admission into 'residential care.' The applicant argued that this shows the SJM deviated too far from the statutory test, which does not require an admission to residential care. Decision makers are required to comply with the statute, however, I accept a point, made on behalf of the respondent, that decision makers are not required to always use precisely the same language of the statute in their reasoning. Moreover, in this portion of the determination, the SJM was merely summarising the decision of the panel.

[57] For all of these reasons, I do not accept that the decision of the SJM was the product of a misunderstanding or misapplication of the statutory test. Accordingly, the illegality ground of challenge must be dismissed.

Irrationality

[58] It was accepted by both parties that the reason or purpose for admission to an institution and who holds parental responsibility for a child present in an institution may be relevant considerations for SJMs when deciding whether applicants for compensation fall within the scope of the 2019 Act. In the applicant's case, it is my view that these were relevant considerations which the SJM was entitled to take into account.

[59] The applicant contends, however, that the SJM's focus was wrong as it was the practical reality of the applicant's situation during her time in Lissue Hospital that mattered and failure to have this as the focus vitiates the SJM's decision.

[60] In *Re Murphy's Application* [1991] 5 NIJB 59, Hutton LCJ stated:

> "The approach which should be adopted by a court in deciding whether a person had given proper consideration to the relevant factors in deciding whether to exercise a discretion given by Parliament was stated as follows by Lord Wilberforce in *Secretary of State for Education v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1048C:
>
> > 'I must now enquire what were the facts upon which the Secretary of State expressed himself as satisfied that the council were acting or

> proposing to act unreasonably. The Secretary of State did not give oral evidence in the courts, and the facts on which he acted must be taken from the department's letters at the relevant time - ie, on or about June 11 1976 - and from affidavits sworn by its officers. These documents are to be read fairly and in bonam partem. If reasons are given in general terms, the court should not exclude reasons which fairly fall within them: allowance must be fairly made for difficulties in expression. The Secretary of State must be given credit for having the background to this actual situation well in mind, and must be taken to be properly and professionally informed as to educational practises used in the area, and as to resources available to the local education authority. His opinion, based, as it must be, on that of a strong and expert department, is not to be lightly overridden.'"

[61] In the present case, I consider that the SJM must be given credit for having the background to the application for compensation well in mind. It is clear from a full reading of the determination that the SJM was aware of the background to the application. This is clear from para [10] of the determination which includes the following statement:

> "Whilst it would have been challenging for a child between the age of three and four to face a long hospital stay, particularly where their parents lived a considerable distance away, nonetheless the admission to Lissue was not an admission to residential care within the meaning of the Act."

[62] Further, I consider that the SJM must be taken to have been properly and professionally informed as to the needs of the applicant during her admission, including her developmental and medical needs. It follows that knowing the age of the applicant during her stay in Lissue Hospital, the SJM knew that she was dependent on adult carers to meet all her needs and that the geographical distance from her family presented a physical barrier to her parents providing her with practical daily care and that these tasks were met by staff working in Lissue Hospital. I am satisfied that these practical, common-sense points would not have been lost on the SJM and the extract from para [10] of the determination, quoted above, shows that the panel, with whom the SJM agreed, took into account the

evident challenges involved for the applicant who was a very young child at the relevant time.

[63] Turning now to the SJM's reasoning in para [17] of his determination that:

> "… decisions such as limiting parental visits, selective agreement about food and toys being given to the child, are all matters that could well have fallen within medical care to ensure that her respiratory condition was not exposed to any outside germs, et cetera."

[64] The applicant correctly points out there was no evidence before the SJM that decisions about parental visits, selective food and toys fell within the remit of the applicant's medical care. However, the SJM was clearly properly and professionally informed about such matters. There is no doubt that the SJM in question, Sir John Gillen, is an extremely experienced lawyer with very considerable professional and judicial experience of litigation involving the treatment and care of individuals, including children, across many spheres of law.

[65] In light of the applicant's point about there being lack of evidence to underpin the SJM's reasoning in this regard, I have considered the fact that a public body has a duty to carry out a sufficient inquiry prior to making its decision. This duty was articulated as follows by Lord Diplock in *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014 T 1065B:

> "The question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

[66] I have also considered the principles from the post-Tameside case law, as set out as follows in para [100] of the *Divisional Court in R (on the application of Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) which subsequently received the approval of the Court of Appeal:

> "(1) The obligation upon the decision-maker is only to take such steps to inform himself as are reasonable.
>
> (2) Subject to a *Wednesbury* challenge, it is for the public body, and not the court to decide upon the manner and intensity of inquiry to be undertaken (*R(Khatun) v Newham LBC* [2005] QB 37 at paragraph [35], per Laws LJ).
>
> (3) The court should not intervene merely because it considers that further inquiries would have been sensible

> or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision (per Neill LJ in *R (Bayani) v Kensington and Chelsea Royal LBC* (1990) 22 HLR 406).
>
> (4) The court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient (per Schiemann J in *R (Costello) v Nottingham City Council* (1989) 21 HLR 301; cited with approval by Laws LJ in (*R(Khatun) v Newham LBC* (supra) at paragraph [35]).
>
> (5) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant, but from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion (per Laws LJ in (*R (London Borough of Southwark) v Secretary of State for Education* (supra) at page 323D).
>
> (6) The wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise it *(R (Venables) v Secretary of State for the Home Department* [1998] AC 407 at 466G)."

[67] Applying those principles to the present case, it was legitimately open to the SJM to reach the conclusion which he did without seeking further information such as a medical opinion. It is ultimately the responsibility of an applicant for compensation to adduce sufficient supporting evidence upon which the decision maker can satisfy themselves that eligibility has been demonstrated. In assessing the materials adduced and when forming judgments about whether any further inquiries should be undertaken, the decision maker has a broad latitude, with which the court should not lightly interfere. In this case, I am satisfied that it was lawfully open to the SJM, to exercise his professional skill and judgment and to assess the information submitted by the applicant and to determine that he had sufficient information to make his decision for the reasons articulated in his determination.

[68] For the reasons set out above, I do not consider that the SJM failed to consider matters that he was bound to consider or included in his consideration matters

which were irrelevant or that the SJM has come to a decision to which no reasonable SJM could have come. The amount of weight which he gave to the different strands of evidence and the inferences which he drew from them, were entirely within the scope of his discretion and were not irrational. Accordingly, this ground of challenge must also be dismissed.

Conclusion

[69] The arguments in this judicial review were, at their core, about the correct focus of the test in section 2(1) of the 2019 Act. On my analysis, the arguments distil down to matters of weight and the evaluation of evidence. The weighing of those arguments is firmly a matter for the SJM, as decision maker.

[70] As Lord Bingham observed in *R (Corner House Research and another) v Director of the Serious Fraud Office* [2008] UKHL 60, para [41]:

> "The issue in these proceedings is not whether his decision was right or wrong, nor whether the Divisional Court or the House agrees with it, but whether it was a decision which the Director was lawfully entitled to make."

[71] Absent irrationality or illegality, it is not for me, as judicial review judge, to weigh up the arguments for and against the SJM's decision.

[72] Whilst I am sympathetic to the applicant, in my judgment, there are no public law grounds for the court to interfere with the SJM's decision and, therefore, the application for judicial review is dismissed.