

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION (JUDICIAL REVIEW)**

BETWEEN:

A and B

Applicants

and

ULSTER COMMUNITY AND HOSPITALS TRUST

Respondent

CAMPBELL LJ

Introduction

[1] This is an application by the parents of four minor children for judicial review of a decision by an Appeal Panel dismissing their appeal against the Respondent Trust's decision to place their minor children on the Child Protection Register. The application is brought with the leave of Kerr J. (as he then was) given on 4 December 2003 and later renewed by Girvan J.

The background facts

[2] The applicants A and B are the parents of six children all of whom live with them at home. Two of the children are over eighteen and the other four children were at the relevant time aged between twelve and seventeen.

[3] In November 2002 the Trust received a report from a school where one of the minor children is a pupil of an allegation made by the child to a classroom assistant of ill treatment by her father. On the following day a social worker interviewed the child at school and she elaborated on these allegations. The next day the Trust was informed by the school that the child

had discussed the family situation with a sibling and that the children did not want a social worker involved.

[4] The social worker approached the child's parents to discuss the report. Initially they were willing to meet with her but their attitude changed possibly because they believed that the complaint, which was described as being anonymous by the social worker to protect the child, had come from a neighbour with whom the parents had a long standing dispute.

[5] On 5 December 2002 the Trust applied for and was granted an Emergency Protection Order under article 63 of the Children Order (Northern Ireland) 1995. The social workers were concerned at the living conditions in the home and decided that the children needed to leave. They did so accompanied by their mother and accommodation was arranged for them in an assessment unit.

[6] Ards Family Proceedings Court made an interim supervision order under article 50 of the Children Order on 13 December 2002 and this order remained in force until 7 February 2003 when it was discharged.

[7] Prior to the order being discharged a case conference was convened by the Trust and held on 2 January 2003 with the parents present and accompanied by their solicitor. It was decided that the names of the minor children should be placed on the Child Protection Register under the categories of "Potential Emotional Abuse" and "Potential Physical Abuse".

[8] The parents indicated to the Board, through their solicitors, that they wished to appeal this initial decision and as a result the case conference was reconvened on 8 April 2003. The parents were notified about the new conference but declined to attend and they were provided with a copy of the minutes. As a result of the conference it was decided that the name of one of the children be removed from the register as she was now 17 years of age and that the names of the other three minor children should remain on it.

[9] The parents appealed against this decision and an appeal panel met on 8 July 2003 to consider their appeal. After a hearing and consideration of the file records the panel dismissed the appeal. It is this decision that the parents wish to have reviewed.

[10] Subsequently after another case conference was held on 9 October 2003 the name of each of the minor children was removed from the Child Protection Register.

The appeal procedure

[11] The Trust is one of four within the Eastern Health and Social Services Board area and its child protection policy and procedure is contained in a document entitled the Children Protection Policy and Procedures of the Eastern Health & Social Services Board. The process begins with an initial case conference when family members and professionals from the agencies concerned with child care and protection meet to assess the level of risk to the child and to decide whether or not to place the child's name on the Child Protection Register. A review case conference is called at least every six months to review the inter agency plan to protect the child from harm and to make sure that the child's needs are met.

[12] The chairperson has discretion to reconvene a case conference where parents or children wish to appeal. The grounds of appeal are limited to situations where the criteria for registration/de-registration have not been met; facts have become available that were not known at the time of the original registration and these facts invalidate the original decision to register; and information having a bearing on registration has proved subsequently to be inaccurate.

[13] If the original decision to register or de-register is confirmed at the reconvened case conference and the parents or the children continue to object they may notify the Trust that they wish to appeal.

[14] Three people who were not involved in the case conference hear the appeal. There is a description of those who may sit on the appeal in the Children Protection Policy and Procedures. In this document the appeal procedure is set out and it allows for the attendance of the parents and children in order to allow them to explain the reasons for lodging the appeal and an opportunity to make further representations. They are encouraged to bring a person to support them. At the appeal hearing they may be asked by the panel to clarify points and the panel may ask the case conference chair person to clarify points and may ask for case conference minutes to be provided. The role of the panel is to make recommendations and give an opinion to the multi-disciplinary panel. It does not have the power to de-register children.

The appeal hearing on 8 July 2003

[15] In advance of the hearing Mr Cecil Worthington who is the Director of Social Services with the Trust gave the solicitors acting for the parents the names of the witnesses who would be asked to attend. These included a number of social workers. The solicitors expressed concern that other social workers whom they named were not included in the list of those who would attend. Mr Worthington also said that the panel would have the case

conference reports and minutes of the 2 January 2003 and 8 April 2003 and that the chairman of the case conference would be asked to attend. Mr Worthington made it clear that the parents could submit evidence and call relevant witnesses.

[16] Mr Worthington chaired the appeal panel at the hearing and the other members were Mr Mayhew who is Community Care Manager and Ms Paul the Director of Community Hospitals and Primary Care Services. According to the minute of the hearing at the outset the chairman said that given the evidence was in documentary form it may not be necessary to call upon the social work staff involved in the case. It is recorded that he asked the parents and their solicitor if they were content for the chairman of the case conference to be present and they raised no objection to this. During the hearing the solicitor expressed concern that the child's headmaster and Norma Stewart were unable to be present as they were the individuals who recommended that the names of the children be placed on the register. The solicitors had been informed in advance that Norma Stewart would not be present as she would be on annual leave and the headmaster was not one of those named as having been asked to attend.

[17] Mr Worthington states in an affidavit that as the children were present at the appeal he was concerned to ensure that the hearing was as non contentious as possible consistent with the rights of the parents to have a full hearing. Therefore he suggested that as the Trust was relying on documentary evidence and the chairman of the case conferences would be available to answer questions it might not be necessary to have the social workers in attendance as well. He claims that he specifically asked the parents and their solicitor if this proposal was acceptable and they responded in the affirmative.

[18] The father of the children in his affidavit puts it rather differently. He says that at no stage was it indicated that the social workers would leave or that the chairman of the case conferences would answer questions rather than the social workers. He adds that it was only after evidence had been given about the proceedings in the family court that he was informed that the social workers had been called out. He goes on to say that he fully expected to be able to question the social workers if necessary.

Leave application under Order 53

[19] On the application for leave a number of grounds for challenge were advanced. The judge gave leave limited to three substantive areas of complaint. First that there was a failure to observe procedural propriety in that the headmaster of the school where the child made the complaint, her GP and education welfare office all of whom were at the initial conference in January 2003 were not present at the appeal hearing on 8 July. Secondly the social workers whose presence at the appeal had been requested in advance

by the solicitor acting for the parents were not present at the hearing though their reports were before the appeal panel. Thirdly that the Trust failed to constitute an independent appeal panel contrary to the rules of natural justice.

[20] On that application for leave the judge was referred to the judgment of Laws L.J. in *R. on the application of TLJH v London Borough of Harrow* [2001] EWCA CIV 87 where he said;

“Article 6 of the European Convention of Human Rights has no application in the circumstances of the present case. That I emphasise is not because the Human Rights Act 1998 has not yet come into force, it is because a Child Protection Conference is simply not a ‘tribunal’ within the meaning of and for the purpose s of Article 6 and because a Child Protection Conference is not concerned with the ‘determination of civil rights’ which alone brings into operation Article 6 of the Convention.”

The judge agreed that Article 6 has no application in this case and reliance on any breach if it was excluded.

The absence of the child’s Headmaster, GP and educational welfare officer from the appeal hearing.

[21] In the minute if the case conference held on 2 January 2003 the general practitioner is recorded as having said that the children had minimal contact with him and that this was a fair comment however contact had always been appropriate. He said that while there were no concerns from a medical point of view with regard to the specific issues of registration that pending further investigation and until matters have been resolved it was his opinion that the childrens’ names should be added to the register in the categories recommended by the social worker. The headmaster is noted as saying that until the allegation had been made he would not have had any concerns regarding the children. He did not feel qualified to make a decision and he expressed his bewilderment with regard to the retraction of the allegation made. He had spoken personally to the child about the matter and he would like this issue to be looked at further. He was unable to make a decision on registration.

[22] The general practitioner attended the reconvened hearing on 8 April 2003 and said that he had seen the child who had made the allegation since the last conference. It was suggested that she was becoming withdrawn and unable to sleep. The doctor said that he had spent about an hour with her though he did not see her on her own.

[23] Mr Ronan Lavery, who appeared for the parents on this application said that if the headmaster had been present at the appeal hearing his clients would have wished to ask him to elaborate on his 'bewilderment' at the retraction by the child of her allegation.

[24] There is no evidence that the parents or their solicitor requested that the general practitioner or the education officer be present at the appeal hearing. They were present when the headmaster and the general practitioner made their observations at the initial hearing and according to the chairman as confirmed by the minutes (though the parents do not agree) they had an opportunity to comment. The parents did not choose to attend the reconvened case conference but they were provided with a minute containing the remarks made by the general practitioner who was present. The headmaster was not present on this occasion.

[25] Natural justice does not require that there should be an appeal from any hearing but where there is an appeal then natural justice or fairness ought to be observed. What constitutes fair procedure depends upon the nature of the inquiry and the courts have frequently warned against applying concepts that are appropriate to litigation in the courts to other forms of inquiry. In so far as the views of the headmaster and the general practitioner at the case conference stages, as recorded in the minutes, may have influenced the decision of the appeal panel it appears clear that the parents had an opportunity to make representations to the panel about them. It has not been established as likely that any useful purpose would have been served in having them attend the hearing and allowing them to be cross-examined. Nor has it been shown how the attendance of the education welfare officer would have assisted. This ground must therefore fail.

The lack of opportunity to cross-examine the social workers

[26] There is a dispute as to the circumstances in which the social workers left the appeal hearing and this cannot be resolved in an application for judicial review. If, contrary to the evidence of Mr Worthington, the parents did not agree that they should be released there is no indication that the parents or their solicitor made any request to the Panel for them to be asked to return to be questioned. Mr Morrison who as assistant principal in the Family Child Care Programme was responsible for overseeing the work of the social workers was present and available to be questioned. The parents had an opportunity to know the views of the social workers and both the father and the solicitor took the opportunity to comment upon these views. I am not persuaded that in a hearing of this nature fairness required that the social workers should be present and be cross-examined at the appeal.

The independence of the appeal panel

[27] The three members of the appeal panel were employees of the Trust. Mr Worthington is Director of Social Services, Mr Mayhew is Community Care Manager and Ms Paul is Director of Community Hospitals and Primary Care Services. This forms the ground of challenge to the independence of the Panel advanced by Mr Lavery. The list in the Children Protection Policy and Procedures of those who may be approached to sit includes a police inspector from the CARE Unit and a NSPCC manager so membership of panels is not confined to those employed by the Trust.

[28] Mrs Loughran, who appeared for the Trust referred to the decision of the House of Lords in *Runa Begum v Tower Hamlets London Borough Council* [2003] 2AC430. In *Runa Begum* the applicants article 6 rights were engaged unlike the present case. Lord Millett at para 100:

“Where an administrative decision is determinative of the claimant’s civil rights, including his or her right to social security benefits or welfare assistance, the Strasbourg court has accepted that it may properly be made by a tribunal which is not itself possessed of the necessary independence, provided that measures to safeguard the impartiality of the tribunal and the fairness of its procedures are in place and its decisions are subject to ultimate judicial control with full jurisdiction.”

Lord Millett goes on to explain that full jurisdiction does not necessarily mean full jurisdiction on fact or law but “jurisdiction to deal with the case as the nature of the decision requires.” Mrs Loughran submitted that in the present case no more should be required in order to achieve fairness since Convention rights are not engaged.

[29] The applicants face a further difficulty. By letter dated 5 June 2003 the solicitor acting for them was told how the appeal panel would be composed. The three people named were each described as holding posts with the Trust. The names of the members of staff who would be present were also mentioned and the solicitor raised a possible objection to one of them being present. On 1 July a letter was sent to the solicitor with a revised list of names of the panel members. The title of the post held by each of them was provided. Once again there was no objection to the constitution of the panel. Normally objection should be taken as soon as the party who considers he is prejudiced is aware of the facts. As Lord Woolf MR, Lord Bingham LCJ and Scott V-C said in *Locabail (UK) Ltd v Bayfield Properties Limited* [2000] QB 452 at 490 a litigant cannot wait until how the case works out before pursuing a

claim of bias. If there was any risk of apparent bias the applicants had waived their right to object.

[30] Even if they had not done so was there any real danger, in terms of possibility rather than probability of bias on the part of the members of the panel? Two of the members came from totally different areas of the Trust's operations. As Director of Social Services Mr Worthington held the most senior post in this sphere and he was reviewing the decisions of those junior to him. I do not accept that a fair minded person knowing these facts would have considered that there was a real danger that a fair hearing of the appeal would not take place.

[31] For these reasons the parents' application for judicial review is dismissed.