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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY TP A MINOR BY HIS FATHER AND NEXT FRIEND

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WEATHERUP J

Rathgael Juvenile Justice Centre.

[1] This is an application for judicial review of decisions of the Youth Justice Agency that the applicant, while on remand at the Juvenile Justice Centre for Northern Ireland at Rathgael, be detained in an area of the Centre known as the Intensive Support Unit (ISU) from 13 January 2004 to 4 June 2004. Ms MM Higgins BL appeared for the applicant and Mr D Scoffield BL appeared for the respondent. The Northern Ireland Human Rights Commission intervened by written submission.

[2] The applicant was admitted to Lisnevin Juvenile Justice Centre on 12 September 2002 having been remanded on a charge of murder. On 7 October 2003 the applicant transferred to the new Juvenile Justice Centre at Rathgael where he was placed in House 6. On the evening of 12 January 2003 an incident occurred in House 6 involving the applicant and two other young persons detained at the Centre. The following day the applicant was placed in the ISU where he remained until 4 June 2004 when, upon his conviction, he was transferred out of the Centre to Hydebank Wood.

[3] The development of the Centre is described in the affidavit by Philip Tooze the Director of the Centre since October 2003. Further to a review in 2000 of the Juvenile Justice estate in Northern Ireland the existing Juvenile Justice Centres were considered unsuitable and the establishment of a single new Centre was approved and is due for completion at Rathgael in the

middle of 2006. In the meantime young persons are detained at the existing facility at Rathgael which currently functions as the single Justice Juvenile Centre for Northern Ireland. Rathgael was refurbished and became operational as the single Juvenile Justice Centre in October 2003. The Centre comprises three house units each holding eight young people together with an Intensive Support Unit and an Assessment Unit each holding five young people. The three house units are not secure by design but the ISU/Assessment building has a greater degree of building security and is used to accommodate young people who, based on a risk assessment, cannot be safely accommodated within the three house units.

[4] Young people in the ISU are offered the same range of facilities and activities as those in the house units, although they do not apply in an identical manner in the ISU. A progressive regime of privileges applies in the ISU as well as the house units. However there is enhanced supervision in the ISU with a one to one staff ratio compared to a two to one ratio in the house units. While the respondent describes the ISU as broadly similar to the house units the applicant considers the ISU to represent a much more restrictive regime.

[5] On admission to the Centre the applicant was placed in House 6 where Mark Beattie was the Unit Manager. Procedure No JJC13 "Progressive Regime" provides for "privileges and incentives that are earned by co-operation and good behaviour and removed if acceptable behaviour is not maintained." There are four levels in the progressive regime, namely bronze, silver, gold and platinum. The platinum level is reserved for those children whose behaviour is of a very high standard, who have fully co-operated with staff, who have worked to their training plan and achieved change and who require little or no supervision by staff. Paragraph 5.6 provides that a child may be "instantly demoted for committing a serious offence within the Centre and very serious offences can mean reduction to bronze level." The applicant acquired the platinum status. One of the privileges granted to young people on platinum status was a later bedtime of 11.00 pm rather than 10.00pm. This involved the young person remaining downstairs in the house unit, and unsupervised from 10.15 pm when the day staff went home, and then going upstairs for an 11.00 pm bedtime when the young person would be supervised during the night by the night staff.

[6] On 24 December 2003 a young person escaped from House 6. As a result Mr Tooze made changes for security reasons with the result that those who remained downstairs from 10.15 pm to 11.00 pm would be supervised during that period. This arrangement required daytime staff to remain in the house unit on a voluntary basis after their shift ended at 10.15 pm on those occasions that a young person on platinum status requested an 11.00 pm bedtime. However staff might not always have been available to facilitate the

young persons remaining downstairs during this period but if that occurred they would go upstairs and still have lights out at the later bedtime.

Transfer to the ISU.

[7] On the respondent's version of events on the evening of 12 January 2004 the applicant and two other young persons in House 6 requested an 11.00 pm bedtime. Bob Hedley was the staff member who volunteered to remain in the house unit after the end of his shift at 10.15 pm. Emma Harvey was the team leader in House 6 and Gareth Taggart was the staff member in House 6 that evening. They spoke to the three young persons when they were downstairs in House 6 and the young persons made complaints about issues within the Centre. Emma Harvey describes the applicant as being angry and that he made threats against Mark Beattie the house manager and against property in the house. Gareth Taggart also describes the applicant's threats against the house manager and property in the house. The three young persons were told not to make threats but to make complaints. As a result of these exchanges Emma Harvey and Gareth Taggart remained with Bob Hedley downstairs in House 6 until the three young persons went upstairs for the 11.00 pm bedtime.

[8] The following morning Mark Beattie the house manager was informed of the events involving the applicant and the two others the previous evening. Mr Beattie spoke to the three young people and stated that the threats placed staff and property at risk and informed them of his decision to withdraw the privilege of the 11.00 pm bedtime for the night of 13 January. The applicant refused to accept a 10.00 pm bedtime. Mr Beattie was concerned about how staff in the Centre would handle the applicant if he refused a 10.00 pm bedtime and he consulted Mr Tooze the Centre Director. Mr Tooze considered that if the applicant refused a 10.00 pm bedtime there was a risk that he would present a danger to staff and cause serious damage. Mr Beattie was detailed to speak again to the applicant to establish if he would abide by the 10.00 pm bedtime and if he refused to do so Mr Beattie was to inform him that he would be transferred to the ISU. Mr Beattie spoke to the applicant in his office and explained the reason for the decision to apply the 10pm bedtime, and the potential risks at 10.00 pm if the applicant did not comply, but the applicant was adamant that he would not change his mind and Mr Beattie informed him that he would be transferred to the ISU. The applicant walked voluntary to the ISU. The following morning Mr Beattie again spoke to the applicant with Paul Fullen the ISU Manager. The applicant was asked to return to House 6 but he refused and is quoted as stating that if he had not been moved from House 6 staff would have been hurt. The applicant's status was reduced to bronze and later was raised to gold.

[9] On the applicant's version of events the applicant's father states that the applicant denies making the threats attributed to him by the staff on the evening of 12 January. Further it is stated that the applicant was unaware that the transfer to the ISU was made because of any threat implicit in the refusal to accept the earlier bedtime but rather that the transfer was imposed as a punishment for refusing to accept the earlier bedtime. The applicant's father states that when the applicant was offered a return to House 6 on the day after his removal to the ISU he had lost respect and trust for certain members of staff in House 6 and he was angry at the way he had been treated and conceded that had the applicant returned to House 6 he could not be confident that he could control his anger. Further the applicant's father's affidavit accepts that the applicant did make a passing comment about some staff from House 6 which could have been construed as a threat but the applicant was very angry at his treatment at the time. In a second affidavit the applicant's father states that the applicant has no memory of making threats against members of staff before he was moved to the ISU, although he does accept that he made remarks which could be seen as threats when he was in the ISU.

[10] A written record of events of January 2004, as recorded by staff, has been exhibited. The first entry, which is not dated or timed, records the applicant's threats to property and staff during the evening and on the following morning. The next entry is dated 13 January 2004 and timed at 12 noon and records the withdrawal of the platinum bedtime privilege and notes the need for extra vigilance that evening. The next entry is dated the same day and timed at 6.00 pm and records the applicant being transferred to the ISU "for total refusal to comply with manager's request to go to bed at 10.00 pm". I am satisfied that the first entry that is not dated or timed was made on the morning of 13 January 2004.

[11] The applicant contends that he was unaware at the time that the reason for the transfer concerned alleged threats to staff and property. The contemporaneous records refer to the threats to staff and property and are supported by Ms Harvey and Mr Taggart who were present on the evening of 12 January 2004. Mr Beattie discussed the potential risks that might arise at 10.00 pm when he informed the applicant of the transfer to the ISU and he refers to having discussed the threats with the applicant the following morning. The applicant is reported as having confirmed the risk to staff if attempts had been made to move the applicant at 10.00 pm. The applicant through his father has stated that he has no recollection of making threats while in House 6 although it does appear to be accepted that threats were made because it is stated that the applicant refused to say who had made the threat against Mr Beattie. Further it is accepted on behalf of the applicant that while in the ISU remarks were made which could be seen as threats.

[12] In proceedings for Judicial Review the burden of proof is on the applicant. Where there is a conflict of evidence in proceedings for Judicial Review, and it is not an exceptional case involving cross examination of witnesses, and that conflict of evidence cannot be resolved on the papers, it follows that the applicant's version of events has not been established. In those circumstances the Court proceeds, in respect of disputed matters incapable of resolution on the papers, on the basis of the version of events advanced by the respondent's witnesses. In the present case there are conflicts of evidence between the applicant and the staff that cannot be resolved on the papers. A bare contradiction by the applicant is no basis for rejecting the version of events given by staff. I am satisfied that the applicant made threats to staff while in the house and that his refusal to accept the early bedtime implied a threat and that he made threats to staff while in the ISU in relation to the prospect of a return to the house. Accordingly the staff at the Centre had good grounds for concluding that threats had been made by the applicant while he was in House 6 and while he was in the ISU and that there were good grounds for concluding that the applicant's non cooperation with the proposed 10pm bedtime represented a threat.

Grounds for Judicial Review.

[13] The applicant's grounds for judicial review are as follows:-

(1) The decisions of the Agency to detain the applicant in the ISU from 13 January 2004 until 4 June 2004 were unlawful for the following reasons –

(a) They exceeded the powers conferred by Rule 26 of the Juvenile Justice Centre Rules (Northern Ireland) 1999.

(b) The said powers were exercised for a purpose collateral to Rule 26 namely to punish the applicant or to ensure that the applicant did not again challenge the authority of the manager of House 6 as evidenced by -

(i) The wording of Rule 26 which is limited to supervision which could have been carried out in House 6;

(ii) The letter from Mr Tooze to the applicant's solicitors dated 7 May 2004; and

(iii) The purpose for which young persons are detained in the ISU as set out in the Juvenile Justice Centre for Northern Ireland Policy and Procedures

Intensive Support Unit JJC16 paragraph 1 and which did not apply in the circumstances of this case.

(c) They were in breach of Section 6 of the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights in that they disproportionately infringed the applicant's Article 8 rights –

(i) In intruding unduly on his privacy by reason of the constant supervision of his movement and activities; and

(ii) Interfering with his right to pursue the development and fulfilment of his personality and specifically the right to establish and develop relationships with human beings;

(iii) On the ground that such interference was not "in accordance with the law" in that in breach of Rule 44(2) of the 1999 Rules the Agency failed to advise the applicant or his father about the Centre's complaints procedure.

(d) The respondent was in breach of Section 6 of the Human Rights Act 1998 and Article 5 of the European Convention on Human Rights in that it disproportionately infringed the applicant's Article 5 rights as follows –

(i) His detention in the ISU was arbitrary and not in accordance in the procedure prescribed by law, particularly in view of the lack of clarity of Rule 26 regarding the purpose of any detention thereunder and the lack of procedural safeguards or time limits to prevent its arbitrary application;

(ii) Further and in the alternative if his detention in the ISU was in accordance with a procedure prescribed by law it was in breach of Article 5 because –

(A) It was not necessary and did not serve any legitimate purpose; less severe measures were available to deal with the situation which were not considered or applied.

(B) It was disproportionate to its aim, as evidenced by the offer to return the applicant to

House 6 and the prolonged detention which resulted from his refusal to consent to this.

(C) If the applicant posed a risk to others or to the order of the Centre, it was unlawful by reason of the failure to regularly evaluate the risk posed by the applicant.

(iii) In failing to implement and properly advise the applicant of an adequate complaints procedure, and in failing to institute the existing complaints procedure in response to the complaints made by him and by his father, the respondent denied the applicant the opportunity to challenge the legality of his detention contrary to Article 5(4).

(2) The Agency acted unlawfully or unfairly in failing to safeguard and promote the applicant's welfare and to ensure that his best interests were the primary consideration.

(3) The applicant was treated unfairly and denied his legitimate expectation that he would be "treated with fairness, justice and respect" in being detained for this period in the ISU and in not explaining the reason for his detention there to him and in being denied the opportunity to complain about his treatment and make representations through the complaints procedure.

(4) The Agency acted unreasonably in detaining the applicant in the ISU between January and June 2004.

The Juvenile Justice Centre Rules.

[14] The Criminal Justice (Children) (Northern Ireland) Order 1998 Article 51 provides for the establishment of Juvenile Justice Centres by the Secretary of State. Article 52(1) of the 1998 Order provides that the Secretary of State may make rules for the management and discipline of Juvenile Justice Centres. Under Article 52(1) the Secretary of State has made the Juvenile Justice Centre Rules (Northern Ireland) 1999 which came into operation on 31 January 1999. Part V of the Rules deals with "Discipline and Control" and Rules 26-30 deal with supervision, restriction of association, prohibited articles, control and temporary confinement as follows –

Supervision
26. A child may be supervised by members of staff of either gender except that in circumstances where privacy would be expected supervision shall be by a member of staff of the appropriate gender.

Restriction of association
27.- (1) Where it is necessary in the interests of a child or to maintain the good order of the centre that the association permitted to a child should be restricted, the manager may arrange for the restriction of his association in accordance with limits and guidelines approved by the Secretary of State.
(2) Nothing in this rule shall restrict a child's right to receive visits or make a complaint or consult his legal adviser, chaplain or the medical officer.

Prohibited articles
28.- (1) The manager shall display prominently a list of prohibited articles and substances.
(2) Except as provide by these rules or the manager no person may:-
(a) bring, send, throw or cause to be taken into or out of a centre by post or otherwise, or
(b) deposit in any place with intent that it should come into a child's possession any prohibited substance or article.
(3) Any item contrary to paragraph (1) may be confiscated by the manager and shall be dealt with as he thinks fit.
(4) A person found to be acting contrary to the provisions of paragraph (2) may be removed from the centre and the manager may direct, subject to the approval of the Board, that admission be denied on future occasions.

Control
29.- (1) Only forms of control approved by the Secretary of State may be used in dealing with an unruly child.
(2) Measures in paragraph (1) may be used only as a last resort and when all other reasonable efforts have been tried and failed or where there is a danger to the child or others or a risk of serious damage to property or if necessary to prevent injury.
(3) A member of staff responsible for the supervision of a child shall be trained in the forms of control referred to in paragraph (1) and where their use is necessary a report of the circumstances shall be made to the manager without delay and confirmed in writing.

Temporary confinement
30.- (1) For the purpose of preventing disturbance, damage or injury, a child may be confined temporarily but only on the express authority of the manager.

(2) A child so confined shall be observed at least once every 15 minutes by a member of staff and a record shall be kept of such observations.
(3) The manager shall visit a child who is confined within one hour of his confinement, and at regular intervals thereafter, to assess his behaviour and consider his release from confinement.
(4) The manager shall inform the medical officer of the intended removal of any child to confinement, but where this is not possible the medical officer shall be informed as soon as is possible thereafter.
(5) Notwithstanding the provisions of paragraphs (1), the medical officer may, for the purposes of preventing a child from causing injury to himself or others, order that he may be removed and confined for the minimum period considered necessary and in any case no longer than twenty-four hours.

Supervision under Rule 26.

[15] Under ground 1 (a) the applicant contends that the respondent exceeded the powers under Rule 26. The respondent relies on Rule 26 to provide for the enhanced supervision which was applied to the applicant in the ISU. The respondent contends that the applicant was not subject to temporary confinement under Rule 30. Rule 30 is otherwise described by the respondent as "single separation" and arises under the authority of the manager (to prevent disturbance, damage or injury) or the medical officer (to prevent a child injuring himself or others) subject to the stated safeguards. The respondent applies "single separation" under Rule 30 by requiring a young person to be temporarily locked in his room, whether in the house units or the ISU.

{16] It is implicit in detention in a Juvenile Justice Centre that those detained will be subject to supervision and control. The Rules do not specify the degree of supervision and control and this would be a management issue. Were Rule 26 not included in Part V of the Rules dealing with discipline and control the wording might be interpreted as addressing only the gender issue. However a rule in Part V dealing with discipline and control provides a context that implies a degree of supervision over and above the standard generally applied in the Centre. Even without an express rule it would be implicit that detention in the Centre may involve increased supervision at certain times or in certain places or for certain young persons depending upon the needs and risks that arise. One means by which the Centre has addressed the need for enhanced supervision is to operate the ISU. Accordingly I proceed on the basis that the need for enhanced supervision may be authorised under Rule 26, as the respondent contends, but in any event would consider that the need for enhanced supervision would be impliedly authorised under the legislation.

[17] Procedure No. JJC 16 "Intensive Support Unit" explains the ISU policy as being to "provide a safe, secure environment for those children who by their behaviour have demonstrated a risk of serious self-harm, violence to staff and/or other children or whose offences are such that their escape would place the public or the police at risk." The regime in the ISU is described as being as far as possible "broadly similar" to the open houses in the Centre. There is enhanced supervision, searching and security in the Centre. There is constant supervision outside the bedrooms, at least 15 minute observations at night, a cutlery count before leaving the dining room, rub down searches and metal detector scanning of those returning to the ISU, daily room checks, weekly room searches and checks of other areas after use. The applicant refers to the ISU being a different regime involving increased supervision and loss of privileges and freedom of movement. The increased supervision is clear. Loss of privileges does not arise by reason of being in the ISU where the progressive regime continues to apply. Additional loss of freedom of movement is limited to the extent of the enhanced supervision, searching and security. While there are necessary differences arising from the nature of the ISU I am satisfied that the regime in the ISU is broadly similar to that offered in the open houses.

[18] Rule 26 does not specify any safeguards for enhanced supervision. Under Rule 27 restriction of association must be in accordance with limits and guidelines approved by the Secretary of State and must not restrict a child's right to receive visits, make complaints or consult a legal advisor, Chaplin or medical officer. I interpret Rules 27(2) as declaring, for the avoidance of doubt, that restriction of association does not result in any of the restrictions to which reference is made. It is apparent that the application of enhanced supervision under Rule 26 would not entitle the respondent to restrict visits or the making of complaints or consultation with legal advisers, the Chaplain or the medical officer, save perhaps where that restriction was necessary in emergency circumstances. Rule 29 provides for control of unruly children in a form approved by the Secretary of State as a measure of last resort. Rule 30 provides for temporary confinement subject to the express safeguards of 15 minute recorded observations, regular visits by the manager, notice to the medical officer and a 24 hour limit for medical confinement. I do not interpret any of the express restrictions in Rules 27, 29 or 30 as preventing enhanced supervision in the ISU under Rule 26.

[19] The Centre has authority to apply supervision commensurate with the risk and that may involve enhanced supervision in response to an increased risk, whether under Rule 26 or by necessary implication. Accordingly I am satisfied that the Centre had authority to detain the applicant in the ISU in accordance with the policy stated in Procedure No. JJC 16 namely, a risk of serious self-harm, violence to staff and/or other children or where offences are such that escape would place the public or the police at risk.

Collateral purpose for transfer to the ISU.

[20] Under ground 1 (b) the applicant contends that the power to transfer to the ISU was exercised for the collateral purpose of punishing the applicant for challenging the authority of the house manager. On the other hand the respondent states that the relevant risk under the ISU policy document was that of violence to staff. The applicant and the two other young persons were dissatisfied with decisions of the house manager. There are procedures for making complaints and the applicant was aware of those procedures and had previously availed of those procedures and was reminded of them by the staff present on the evening of 12 January 2004. I am satisfied that the applicant issued threats against staff and that his proposed non cooperation with the amended bedtime implied a threat to staff.

[21] The applicant contends that the collateral purpose is evidenced by the wording of Rule 26 which is said to be limited to enhanced supervision in the house units. There is no basis for the contention that Rule 26 is limited to supervision which could have been carried out in House 6. While the applicant objects to the level of enhanced supervision the respondent contends that the new Rathgael Centre to be completed in 2006 will comprise houses, all of which will have the degree of security presently applied in the ISU and which may be relaxed or increased as circumstances demand. The level of supervision throughout the Centre must be such as addresses the needs and risks arising in the circumstances and is otherwise in compliance with the Rules.

[22] Further the applicant contends that the collateral purpose is evidenced by Mr Tooze's letter of 7 May 2004. The letter stated that the applicant's refusal of a 10.00 pm bedtime and clear challenge to the discipline of the Centre was treated as a threat. The entry in the record at 6.00 pm on 13 January 2004 does state the refusal of the 10.00pm bedtime as the reason for the transfer. Mr Tooze states that the reason for the transfer was not simply because he refused to go to bed but that his behaviour was a threat to the good order of the Centre as it presented an unacceptable risk towards staff. I have accepted that the applicant issued threats to staff and property on the evening of 12 January 2004. Further I have accepted that his refusal to accept a 10.00 pm bedtime also represented a threat and was properly treated as a threat. The applicant accepted the following morning that he represented a threat had staff attempted to enforce a 10.00 pm bedtime in House 6. I accept that it was not the refusal as such that prompted the transfer but the threats that had been expressed and the further threat that was implicit in the refusal to accept the 10pm bedtime which rendered the applicant a risk to staff and property in the Centre.

[23] Finally the applicant contends that the collateral purpose is evidenced by the purposes set out in paragraph 1 of Procedures No. JJC 16 not applying in the circumstances of the case. I am satisfied that the circumstances did apply as the applicant by his behaviour had demonstrated a risk of violence to staff. Accordingly I am satisfied that the transfer to the ISU was in accordance with the specified reasons set out in the policy.

[24] The applicant continued to be detained in the ISU from 13 January 2004 to 4 June 2004. From the day after his first detention in the ISU he was offered a transfer back to House 6 and refused. The applicant's father accepts that the applicant was not going to go back to House 6 and that he wanted to be transferred to another house. He further accepts that while in the ISU the applicant made remarks that could be seen as threats and these involved the prospect of violence against staff. The applicant objects that there was no necessity to retain him in the ISU as demonstrated by the offer to return the applicant to House 6. However it was obviously an aspect of the return to House 6 that the applicant would not use or threaten violence against staff and this was an aspect that the applicant was found to be unable to satisfy. While that risk was judged to remain the applicant remained in the ISU. Mr Tooze refers to ongoing reviews of the applicant's placement to determine if there was any change of circumstances and a multidisciplinary meeting with the applicant and his father occurred on 10 March 2004 but no change of circumstances was found to have arisen.

[25] Accordingly I am satisfied that the staff at the Centre judged that the conditions for removal of the applicant to the ISU continued throughout his placement there. The respondent would not move the applicant to another house while he threatened violence against the staff. It was reasonable that a young person should not dictate the terms of his management in the Centre by the threat of violence against staff. In any event the staff in the houses were not fixed and had the applicant been placed in another house he may still have encountered the staff to whom he objected. The applicant was not retained in the ISU to 4 June 2004 for a collateral purpose. A different issue arises as to whether additional steps ought to have been taken in relation to the applicants continuing placement in the ISU and that issue will be considered below.

Article 8 of the European Convention.

[26] Under ground 1(c) the applicant claims a breach of Article 8 of the European Convention on Human Rights which protects the right to respect for private and family life. Related to the approach to Article 8 is the applicant's separate complaint, under ground 2, that the respondent failed to safeguard and promote the applicant's welfare.

[27] Article 8 provides that –

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[28] The concept of private life covers the physical and psychological integrity of a person, a right to personal development and to establish and develop relationships with others and includes the preservation of mental stability, see Pretty v United Kingdom (2002) 35 EHRR 1 and Benzaid v United Kingdom (2001) 33 EHRR 205. Restrictions on private and family life are necessary incidents of lawful custody, however any restrictions do not remove such right to respect for family and private life as may be compatible with the lawful deprivation of liberty, see Daly v Home Secretary [2001] 2 WLR 1622. When assessing the obligations imposed by the article "regard must be had to the ordinary and reasonable requirements of imprisonment and to the resultant degree of discretion which the national authorities must be allowed in regulating a prisoner……" per Kerr LCJ in Re Griffin's Application [2005] NICA 15 at paragraph 25.

[29] In interpreting Article 8 rights the Court will take into account relevant international obligations. R (on the application of P and Q) v Secretary of State for the Home Department (2001) EWHC Admin 357 was a decision of a Divisional Court and concerned a judicial review of a Prison Service Order only to allow babies to remain with their mothers who are in prison until they reach the age of 18 months. At paragraph 33 Lord Woolf CJ accepted that while the United Nations Convention on the Rights of the Child (UNCRC) was not part of domestic law, the obligations under the UNCRC were relevant because (a) they could inform the Court's decision, and (b) they are taken into account by the European Court of Human Rights when applying Article 8 and therefore in accordance with Section 2(1) of the Human Rights Act 1998 have a place in the interpretation of Convention rights. S R v Nottingham Magistrates' Court (2001) EWHC Admin 802 was a further decision of a Divisional Court and concerned a judicial review of a decision of a District Judge in Nottingham Youth Court to remand the applicant in custody pending sentence in a young offenders institution. Brooke LJ accepted at paragraph 65-67 that where children in custody are concerned the

provisions of UNCRC are available to inform the content of Article 8 of the European Convention.

[30] The applicant referred to various international standards as influencing the approach to Article 8. The United Nations Convention on the Rights of the Child came into force on 2 September 1990.

Article 3.1 provides that in all actions concerning children the best interests of the child shall be a primary consideration.

Article 16 provides that no child shall be subjected to arbitrary or unlawful interference with his or her privacy and that the child has the protection of the law against such interference.

Article 37 (c) provides that every child deprived of liberty shall be treated with dignity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of that age.

Article 40 provides that States recognise the right of every child accused of having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

[31] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") were adopted by the General Assembly on 29 November 1985.

Rule 1 sets certain fundamental perspectives which require Member States to further the well being of the juvenile and his family and foster a process of personal development.

Rule 8 provides that the right to privacy shall be respected.

[32] The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) were adopted by the General Assembly on 14 December 1990.

Article 3 provides for a child centre orientation in the interpretation of the Guidelines.

Article 5 emphasises the need for an importance of progressive delinquency prevention policies and the recognition of the systematic study and elaboration of measures.

[33] The Charter of Fundamental Rights of the European Union, proclaimed at Nice in December 2000, provides at Article 24 that children shall have the right to such protection and care as is necessary for their well being, and in all actions relating to children the child's best interests must be a primary consideration.

[34] In R (The Howard League for Penal Reform) v The Secretary of State for the Home Department of Health (2002) EWHC Admin 2497 concerned children detained within the criminal justice system in Young Offender Institutions run by the Prison Service. Having reviewed the English equivalent of the Childrens Order and the Prison Act and the international Conventions Mumby J stated:

> "65. In the first place Articles 3 and 8 of the European Convention protect children in YOIs from those actions by members of the Prison Service which constitute inhuman or degrading treatment or punishment or which impact adversely and disproportionately on the child's physical or psychological integrity.
>
> 66. Secondly, however, Articles 3 and 8 of the European Convention, read in the light of Articles 3 and 37 of the UN Convention and Article 24 of the European Charter, impose on the Prison Service *positive* obligations to take reasonable and appropriate measures designed to ensure that –
>
> (i) Children in YOIs are treated, both by members of the Prison Service and by fellow inmates with humanity, with respect for their inherent dignity and personal integrity as human beings and not in such a way as to humiliate or debase them.
>
> (ii) Children in YOIs are not subject to torture or to inhuman or degrading treatment or punishment by fellow inmates or to other behaviour by fellow inmates which impacts adversely and disproportionately on their physical or psychological integrity.
>
> 67. Such measures must strike a fair balance between the competing interests of the particular child and the general interests of the community as a whole (including the other inmates of the YOI) but always having regard –
>
> (i) first to the principle that the best interests of the child are at all times a primary consideration,

(ii) secondly to the inherent vulnerability of children in a YOI and

(iii) thirdly to the need of the State – the Prison Service - to take effective deterrent steps to prevent, and to provide children in YOIs with effective protection from ill-treatment (whether at the hands of Prison Service staff or of other inmates) of which the Prison Service has or ought to have knowledge.

68. In short human rights law imposes on the Prison Service enforceable obligations, that is, obligations enforceable by or on behalf of children in YOIs –

(i) to have regard to the welfare principle encapsulated in the UN Convention and the European Charter; and

(ii) to take effective steps to protect children in YOIs from any ill-treatment, whether at the hands of Prison Service staff *or of other inmates* of the type which engages either Article 3 or Article 8 of the European Convention."

[35] On the domestic front the Criminal Justice (Children) (Northern Ireland) Order 1998 Article 53(a) provides that while a person detained by the manager of a Juvenile Justice Centre is under the age of 18 they shall have parental responsibility for him. "Parental Responsibility" has the meaning assigned by Article 6 of the Children (Northern Ireland) Order 1995 namely all the rights, duties, powers, responsibilities and authority which by law a parent of the child has in relation to the child and his property.

[36] Further the applicant relies on Article 3 of the 1995 Order which provides that where a Court determines any question with respect to the "upbringing" of a child, the child's welfare shall be the Court's paramount consideration. However Article 3 did not apply to the decision of the Centre that is now under review as it was not made in respect of the "upbringing" of the applicant nor was it made by the Court. Nor does Article 3 apply to this decision of this Court as it is not made in respect of the "upbringing " of the applicant. Nevertheless the Centre and the Court should in any event address the applicant's Convention rights in the light of the international obligations that include the best interests of the applicant as being a primary consideration. All of the aspects of the international obligations may be described for shorthand purposes as the welfare principle.

[37] Accordingly all of the above matters inform the approach to Article 8, and that includes what has been labelled as the welfare principle arising from the international obligations. In addition, in Northern Ireland, unlike England, the Juvenile Justice Centre, by the operation of the Criminal Justice (Children) (NI) Order 1998, has parental responsibility for young persons detained and that represents a separate domestic obligation.

[38] Returning then to the content of Article 8 the applicant relies on three alleged infringements namely unduly intruding on the applicant's privacy, interfering with the development and fulfilment of his personality and the establishment and development of relationships and finally, breach of Rule 44 (2) in failing to give notice of the complaints procedure.

[39] Recent decisions of the Court of Appeal have emphasised the requirement for public authorities to make an assessment of the impact of convention rights on particular decisions. In Re Connor's Application [2004] NICA 45, a health and social services trust had refused to permit the appellant, a person subject to a guardianship order, to live permanently with her husband. It was established that this decision interfered with the appellant's rights under article 8 and that the trust had not recognised, much less addressed, the interference with those rights. The Court of Appeal concluded that the evaluation of Article 8 interests was primarily one for the public authority, subject always to the Court's superintendence where a challenge to its assessment of those interests had been made. Where no appraisal of the interests had been made by the public authority, the Court could only conclude that the interference was justified if, on analysis, it determined that it was inevitable that the decision-maker would have decided that the Article 8 rights of the individual would have to yield to protect the wider interests outlined in article 8 (2). Similarly in AB v Homefirst Community Trust [2005] NICA 8 a mother, whose child had been taken into care appealed against the making of a care order, the refusal of a residential assessment and arrangements for contact. Article 8 was engaged but was not considered by the Trust. The Court of Appeal repeated the approach taken in Re Connor's Application in allowing the mother's appeal. Finally, in Re Misbehavin's Application [2005] NICA the Court of Appeal considered a local authority decision to refuse a sex establishment licence and it was established that the right to property under Article 1 of the First Protocol was engaged. It was held that the interference with the appellant's rights could only be justified if either the public authority has decided that the general interest demands such interference or it was inevitable that it would have so decided had it been conscious of the interference with the appellant's rights that refusal of the application entailed.

[40] Considering Article 8 in relation to the supervision and control of those detained in the Juvenile Justice Centre it is apparent that there will be a

degree of supervision that is an ordinary and reasonable requirement of their lawful detention, and that degree of supervision may vary in relation to different detainees depending on the risks involved. There may also be variations in the degree of supervision and control required for any individual, or for groups or for all the detainees in the day to day management of the Centre, involving reduced or enhanced supervision. Enhanced supervision has the potential to constitute the infringements complained of by the applicant, namely undue intrusion on privacy and the development and fulfilment of personality and the establishment and development of relationships. Article 8 will be engaged when there is enhanced supervision of such a degree or for such duration that it represents a significant increase in the restrictions imposed beyond the ordinary and reasonable requirements for supervision in the Centre. The impact of those increased restrictions must be assessed by the Centre under Article 8, and if they fail to make such an assessment the Court that is called upon to review the decision of the Centre will find the increased restrictions to be unjustified, unless the Court concludes that the Centre would inevitably have concluded that the action was justified. The approach to Article 8 will be informed by the international obligations referred to above that include the best interests of the child being a primary consideration, absence of arbitrary or unlawful interference with privacy and promotion of the child's dignity and worth. The impact of Article 8 will also be assessed on the basis that the Centre has parental responsibility for the child.

[41] It is proposed to consider first the initial transfer to the ISU and secondly the continuing detention in the ISU. The initial transfer to the ISU did involve enhanced supervision but as found above involved a broadly similar regime to that applied in the houses. I do not accept that the increased restrictions resulting from the transfer to the ISU were of such a degree as interfered with the right to respect for private life.

[42] However I will assume for present purposes that by transferring the applicant to the ISU there has been interference with the right to respect for his private life. Such interference must therefore be justified under Article 8(2) of the Convention as being in accordance with the law and necessary in a democratic society for the prevention of disorder or crime or for the protection of the rights and freedoms of others. First the interference must be in accordance with the law and to the extent that the applicant is detained in the Centre on foot of an Order of the Court his detention in the Centre was in accordance with law. However the applicant's complaint relates to his detention in the ISU, which I am satisfied, as set out above, was in accordance with Rule 26 and Procedure No. JJC 16, and in accordance with law. The applicant further complains about non-compliance with Rule 44(2) in relation to the complaints procedures and that issue will be dealt with below.

[43] Next the interference must be for a legitimate aim, the means rationally connected to that aim and proportionate. I have held that the transfer was made and continued by reason of the applicant's threat to staff and accordingly was for the permitted purposes of preventing disorder or crime and protecting the rights and freedoms of others. The transfer to the ISU with enhanced supervision to meet enhanced risks was rationally connected to the legitimate aim. It does not appear that the Centre carried out any assessment of the Article 8 issues in making the decision to transfer and accordingly the decision can not be justified unless the Court finds that the Centre would inevitably and justifiably have made the initial decision to impose enhanced supervision by transferring the applicant to the ISU. The applicant contends that the transfer to the ISU was not necessary. Reliance was placed on his previous good record and that alternative measures could have been adopted whether by the use of the progressive regime, by restriction of association, by control or by temporary confinement. I am not satisfied that any of the proposed alternatives would have been sufficient to address the nature of the immediate risk offered by the applicant, namely the threat of violence to staff while he was subject to the proposed bedtime regime in House 6. In any event an examination of justification for interference under Article 8 is a balancing exercise between the character of the interference with the person concerned and the permitted purpose being pursued in the wider public interest, and is not merely an exercise in identifying a possible alternative of a less intrusive character, see Re Murdoch's Application [2003] NIJB 214 at paragraph 18. In all the circum stances I am satisfied that had the transfer to the ISU represented an interference with the applicant's Article 8 rights, and had the Centre carried out an Article 8 assessment to determine whether to proceed with a transfer, the Centre would inevitably have reached the same decision. The transfer to enhanced supervision in the ISU was essential to meet the enhanced risk presented by the applicant.

[44] It is then necessary to consider the continuing detention of the applicant in the ISU to June 2004. The impact of the restrictions involved in the transfer to the ISU continued for several months and while the initial transfer was not of such significance that it engaged Article 8 I am satisfied that the duration of the enhanced supervision was of such an extent as engaged Article 8.

[45] The continuing restrictions must be for a legitimate aim, with the means rationally connected to that aim and proportionate. I have held that the transfer was made and continued by reason of the applicant's threat to staff and accordingly was for the permitted purposes of preventing disorder or crime and protecting the rights and freedoms of others. The transfer to the ISU with enhanced supervision to meet enhanced risks was rationally connected to the legitimate aim. Again it does not appear that the Centre carried out any assessment of the Article 8 issues in continuing the detention in the ISU and accordingly the continuing detention can not be justified

unless the Court finds that the Centre would inevitably and justifiably have made the decision to continue the detention. Again the applicant contends that the continuing transfer to the ISU was not necessary and that alternative measures could have been adopted, whether by the use of the progressive regime, by restriction of association, by control or by temporary confinement or by transfer to another house.

[46] The Centre kept the continuing transfer under review. The threat from the applicant was judged to be continuing. The Centre convened a multidisciplinary meeting on 10 March 2004 attended by the applicant, his father and his step mother. Various matters were discussed including education and medical issues, The keyworker present at the meeting, Ms Carvill, asked the applicant if he would engage in "conflict resolution" with staff and the minute of the meeting records the response as "T-------- replied that this is not an option to sit down and discuss problems." The minute of the meeting concludes by stating that senior management would be informed of the discussions. A stalemate had developed in relation to the breakdown between the applicant and the staff at the house and the threat of violence posed by the applicant. The applicant was to remain in enhanced supervision for a further three months. In assessing the proportionality of the continuing restrictions for the purposes of Article 8 and balancing the private interests against the public interests, regard should be had to the international obligations summarised as the welfare principle and the domestic obligation of parental responsibility. Those obligations involve not only a continuing risk assessment but must place on the Centre the requirement to address the stalemate that had arisen. It does not appear that ongoing reviews went beyond remaining satisfied that the conditions continued to prevail that had led to the initial transfer of the applicant. Even the intransigent requires a rigorous assessment when there is an extended period of interference beyond the standard regime. I am not satisfied that had a balancing exercise been carried out it would inevitably have resulted in continuing enhanced supervision.

Article 5 of the European Convention.

[47] Under ground 1 (d) the Applicant contends that there has been a breach of Article 5 of the European Convention. Article 5 provides:-

> "(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of

> bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent him committing an offence or fleeing after having done so ;
>
> (4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

[48] Reliance is placed on the argument advanced in the written submissions by the Northern Ireland Human Rights Commission as intervener. It is accepted that the original detention of the applicant by order of the Court satisfied the permitted grounds for deprivation of liberty under Article 5(1)(c). However it is argued that the applicant's transfer to the ISU involved a fundamental and arbitrary change in the circumstances of his detention which by virtue of its type, duration, effects and manner of implementation undermined the legality of the original Court order and raised a serious issue of compatibility with Article 5(1) of the Convention.

[49] Detention must be "in accordance with a procedure prescribed by law." The applicant's detention in the ISU is said to be arbitrary because, in contrast to Rules 27 and 30, Rule 26 does not specify the purpose of enhanced supervision nor place a time limit on its operation nor attach safeguards to its implementation. For the reasons appearing above in the discussion of supervision under Rule 26, the Centre has authority to apply supervision commensurate with the risk and that may involve enhanced supervision in response to an increased risk, whether under Rule 26 or by necessary implication. The purpose of enhanced supervision is specified in Procedure No. JJC 16 and the facilities available in the Centre continue to be provided and the Rules and all other legal requirements continue to apply.

[50] Further it is argued that the transfer to the ISU does not satisfy the requirements of what is described as "Convention lawfulness." It is said that the detention was arbitrary in relation to motivation and effect, proportionality, absence of regular evaluation of continuing risk, necessity and purpose. In addition the applicant relies on the requirement of Article 5(4) that everyone who is detained shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his released ordered if his detention is not lawful. It is contended on behalf of the applicant that where the legal basis for detention has changed or a new

element of arbitrariness has been introduced into the detention access to a procedure compliant with Article 5(4) is necessary. I do not accept that in transferring the applicant to the ISU the legal basis of his detention changed. He remained in detention on foot of the order of the Court. Nor do I accept that a new element of arbitrariness was introduced into the detention. While I have been satisfied that some of the matters relied on by the applicant in relation to arbitrariness have affected the appraisal of Article 8 I do not accept that they invalidate the detention of the applicant. At any time the applicant had the right to apply to the Court to have the lawfulness of his detention determined. If the applicant is correct that his placement in the ISU constituted unlawful detention then an application for habeas corpus would have secured his release. The applicant did not make such an application. The Juvenile Justice Centre Rules cannot prevent such an application being made.

[51] Article 5(4) would not have been a basis on which the applicant could succeed in any application to the Court because the applicant's right to liberty would not be at stake. The applicant had been lawfully detained on foot of the Order of the Court and the custodial placement based on security status does not engage the right to liberty, see Re Corden's Application (2004) NIQB 44. The applicant based his approach on a claim to "residual liberty". A prisoner does not have the residual liberty relied on by the applicant, see R (Hague) v The Deputy Governor of Parkhurst Prison (1991) 3 All ER 733. The applicant refers to R (Smith and West) v Parole Board (2005) 1 All ER 755. The House of Lords was concerned with the judicial review of decisions of the Parole Board not to direct the release of prisoners who had been recalled to prison upon revocation of their licences. The applicant refers to Lord Slynn at paragraph 55 who was in the minority in finding that a prisoner who had a conditional right to freedom under licence was subject to "a new deprivation of liberty by detention" when he was recalled to prison after revocation of his licence. This finding does not support the applicant's contention that a change of the circumstances of detention can amount to a new deprivation of liberty. The applicants in Smith and West had been released from detention and then recalled to detention thereby leading to Lord Slynn's finding of a new deprivation of liberty.

[52] The rejection of residual liberty does not lead to the absence of any legal remedy relating to the conditions of detention of a prisoner. There are remedies available in public law actions and private law actions to secure orders concerning the conditions of detention and the treatment of the detained.

Rule 44 and the complaints procedure

[53] Rule 44 deals with complaints procedures and provides:

> "(1) A centre shall operate procedures for complaints and child protection which have been approved by the Secretary of State.
>
> (2) A child and his parent shall be advised about the procedures in paragraph (1) and shall be given access to written copies of these procedures."

[54] The applicant relies on the Rule in three respects. First of all the applicant contends that there has been a breach of Rule 44(2). Secondly, that the breach of Rule 44(2) meant that detention in the ISU was an interference with the Article 8 right to respect for private life that could not be justified as it was not "prescribed by law." Thirdly, the breach of Rule 44(2) and the failure to respond to complaints prevented the applicant challenging his detention under Article 5(4).

[55] Procedure No. JJC 9 "Complaints and Representation" is dated 2 October 2003 and would appear to have been introduced when the new Rathgael Centre opened. Paragraph 3.2 provides that information about the complaints procedure will be available to children, parents and professionals in the pamphlets which are given out to them and paragraph 3.3 provides the children who complain will receive whatever help and guidance they require to make a complaint or understand the procedure and the Independent Person may provide that assistance. The process is stated to involve three main stages namely the informal stage, the formal investigation stage and the final investigation stage. Paragraph 5 deals with stage 1, the informal stage, and provides that if a child or parent complains orally, dependent upon the nature of the complaint, the Day Manager will respond verbally followed by a letter within 24 hours and will ensure that the complainant has details of the complaints process. The Operations Manager will maintain a record and undertake an assessment and the outcome must be conveyed to the complainant within seven days. Stage 2 involves the formal investigation stage and a right to appeal to the Director from the response of the Operations Manager. The Director will maintain a record and carry out an investigation and inform the complainant of the outcome within 21 days. Stage 3, the final investigation stage, involves an appeal to the Chief Executive, who will undertake a review and further investigation and issue a decision in writing within two weeks.

[56] In the event the applicant and the applicant's father complained about the applicant's transfer to the ISU but the above provisions of the complainants procedure were not applied. The respondent's Counsel described the complaints procedure as being inapt in relation to a decision of the Centre Director as he is stated to be involved in stage 2 of the investigation process. The complaints procedure does involve appeals to the

Chief Executive from complaints decisions by the Director and this complaint by the applicant and the applicant's father could have been referred to the Chief Executive. Either there was non-compliance with the procedures for complaints established under Rule 44(1) or the Centre does not operate procedures for complaints against the Centre Director.

[57] Further Rule 44(2) imposes a dual obligation first to advise the child and his parent about the complaints procedures and secondly to give to the child and his parents access to written copies of the complaints procedures. When the applicant was admitted to Lisnevin the policy and procedure for dealing with complaints was contained in a policy statement issued by the Director in October 1999. On admission to Lisnevin the applicant would have received an outline of the complaint procedure as appears from the reception checklist and the procedure for admission in the Staff Procedural Manual. In addition the applicant would have received an information pack which included reference to the complaints procedure. This referred to a complaint being made to the key worker or a member of staff, which complaint would be dealt with within six days. It is provided that the Centre Manager or Deputy would discuss the complaint in an attempt to resolve the problem and if the complainant remained unhappy he could speak to the Director or a member of the Board. Reference was also made to complaints to an Independent Representative and a section of the information pack dealt with "The Independent Representation Project" and included a complaints form. Also forwarded to the applicant's father at the time of his admission to Lisnevin was an information book for friends and family which set out similar information to that provided to the applicant and referred to the complaints procedure and the Independent Representation Project.

[58] On transfer to Rathgael on 7 October 2003 the applicant was given an information sheet for staff and young people, which included reference to the right to complain at any time and to the Independent Representative Project. The Operations Manager at the Centre avers that Procedure No. JJC 9 on complaints and representation and Procedure No. JJC 10 on independent persons were available to parents and young persons on request. After his transfer to Rathgael the applicant availed of the Independent Representative procedure on four occasions. The applicant made a written complaint on 1 March 2004 relating to haircuts.

[59] The applicant and the applicant's father were informed that complaints might be made and they did make complaints. However they were not informed of the complaints and representation Procedure No. JJC 9 which sets out the details of the three stage process. In his affidavit the applicant's father states that the applicant complained to the ISU manager but he did not know of the complaints procedure and that he had a right to refer to the Operations Manager or the Centre Director or indeed the Chief Executive. Further the applicant's father states in his final affidavit that he

did not understand there was a specific complaints procedure and that the information booklet did not make clear that there was a separate complaints procedure booklet.

[60] The respondent relies on Complaints and Representation Procedure No. JJC 9 as complying with Rule 44 (1). JJC 9 does not make clear the nature of the complaints procedure in relation to decisions of the Centre Director. It has not been established that the Centre operates procedures for complaints in relation to decisions of the Centre Director which have been approved by the Secretary of State. Even if Procedure No. JJC 9 were to be treated as the approved complaints procedure for decisions of the Centre Director to the extent that it might be adapted accordingly, it has not been established that there has been compliance with Rule 44(2) requiring that the applicant and the applicant's father be advised about the approved complaints procedure. Such advice as they have received in the information booklets merely advises them of the rights to complain without advising them about the approved complaints procedures. Nor has there been compliance with the requirement of Rule 44(2) that the applicant and the applicant's father be given access to written copies of the approved complaints procedures. It is stated that copies of those procedures are available on request but neither the applicant nor the applicant's father was informed of the existence of the approved complaints procedures.

[61] There was a breach of Rule 44(2) in that the applicant and his father were not advised of the formal complaints procedure approved by the Secretary of State, namely Procedure No JJC 9 "Complaints and Representation" and further were not given copies of the procedure. However that breach of the Prison Rules does not render unlawful the decisions to transfer to and continue the detention of the applicant in the ISU. A breach of Rule 44(2) does not render the transfer to and continuing detention in the ISU unjustified for the purposes of the right to respect for private life under Article 8 as not being "in accordance with the law." The operation of the arrangements for transfer to the ISU have a basis in domestic law and involve a scheme of legal protection which are adequately accessible and sufficiently certain, in that it is reasonably foreseeable that certain actions will have certain consequences. Notice of the right to complain, without disclosure of the formal procedures, does not render the scheme contrary to law. Nor does the absence of notice of the formal procedures affect the right of the applicant to make an application for the purposes of Article 5(4).

Reasons for transfer to the ISU.

[62] Under ground 3 the applicant complains of unfairness in that the reasons for his transfer to the ISU were not given to the applicant and that

any representations he might have made were not taken into account. I am satisfied that the reason for the transfer of the applicant to the ISU based on the risk to staff was made known to the applicant by Mr Beattie on 13 January during their discussion, at which time the applicant put forward his position. Further the issue of threats was discussed by Mr Beattie and the applicant the following morning.

[63] Rule 3(1) provides that the rules are made having regard to various general principles which include at (f) the principle that children in custody be "treated with fairness, dignity and respect at all times and in a manner which takes account of personal circumstances and they shall be entitled to contribute when decisions that affect them are made." The applicant was involved in the decision-making when he was interviewed by the house manager before the move to the ISU and interviewed by the house manager and the ISU manager after transfer to the ISU. At a case review meeting attended by the applicant and his father on 10 March 2004 a key worker asked the applicant to participate in "conflict resolution" with staff from House 6, but the applicant refused. The applicant had the opportunity to contribute when decisions affecting him were made.

Rationality.

[64] The applicant contends that the decision to detain the applicant in the ISU from January to June was irrational. This is a high threshold to establish. While I have been satisfied that the continued detention of the applicant in the ISU was not proportionate for the purposes of Article 8 for the reasons set out above, I am not satisfied that the decision to continue the detention was irrational, based as it was on a reasonable judgment that the applicant represented a continuing threat in the circumstances.

Conclusion.

[65] The applicant has moved from the Centre and is no longer affected by the decisions made. To that extent this application may be considered academic. However there is a public interest in the treatment of those in the Centre, as evidenced by the involvement of the Northern Ireland Human Rights Commission. I propose to order two declarations.

1. The failures to advise the applicant and his parent about Procedure No JJC 9 "Complaints and Representation" and also to give them access to written copies of the same, represented breaches of Rule 44(2) of the Juvenile Justice Centre Rules (Northern Ireland) 1999.

2. The actions of the Juvenile Justice Centre in relation to the ongoing threat from the applicant were not demonstrated to be such as to render the continued detention of the applicant in the Intensive Support Unit a proportionate response for the purposes of the applicant's right to respect for private life under Article 8 of the European Convention on Human Rights.