

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

JMcA's Application [2013] NIQB 77

IN THE MATTER OF AN APPLICATION BY JMcA FOR JUDICIAL REVIEW

and

IN THE MATTER OF RESTRICTIONS PLACED ON THE APPLICANT'S
LIBERTY AND AUTONOMY BY THE BELFAST HEALTH AND SOCIAL CARE
TRUST

TREACY J

Introduction

[1] The applicant JMcA has been subject to guardianship under the Mental Health (NI) Order 1986 ("the 1986 Order") since 2004.

[2] The applicant currently resides in supported accommodation in the north Down area with two other gentlemen. It is agreed by all parties that the applicant is content to live there, that he participates in the running of the household and that he has complete freedom of movement within the household. He also attends a works skills programme run by the 'Praxis' organisation from Mondays to Fridays at a local Day Centre and engages well in this programme.

[3] The applicant has a learning disability and a history of serious aggression. He has received treatment for an unadjudicated sexual offence against a child. The evidence indicates that he becomes anxious when he comes into unexpected contact with children.

[4] The applicant has a supervision and support plan which facilitates his independence by the following measures: it enables him to walk to the local shop from his home without any supervision twice per week, to go to the local shopping

centre for approximately half an hour without supervision once per week and to go to the shop from his day Centre unsupervised once a week if he needs to make a purchase. He has social and sporting interests and enjoys travelling. He has attended various sporting events in England, Scotland and the Republic of Ireland.

[5] The applicant challenges the above arrangements and, in particular asserts his right to leave his home address at any time of his choosing and unaccompanied. By this application he challenges the legal authority of the respondent to impose conditions on his right to leave his place of residence or day care centre, and in particular the condition that, with the above exceptions, he may not do so unless accompanied by a person approved by the Trust.

Grounds

[6] The grounds upon which judicial review is sought are stated to be as follows:

“3. In placing restrictions on the applicant’s liberty including his right to leave the specified place of residence at times of his choosing and right to leave unaccompanied, the proposed respondent has acted unlawfully as follows:

- (a) It has interfered with the applicant’s autonomy and liberty without lawful authority;
- (b) Ultra vires the powers conferred on a guardian pursuant to the Mental Health (Northern Ireland) Order 1986, and in particular Articles 22, 29, 131 and 132 thereof;
- (c) The guardianship powers prescribed by the Mental Health (Northern Ireland) Order 1986 have been misused for an improper purpose;
- (d) Wednesbury unreasonably, strictly interpreted and applied in accordance with ‘human rights’ scrutiny;
- (e) In breach of the Human Rights Act 1998 and in particular Article 5, the right to liberty;
- (f) In breach of the Human Rights Act 1998 and in particular Article 8, the right to a private life.”

Background

[7] The factual background to this case is set out in the affidavit of

Mildred Lorimer, a professional social worker employed by the Trust who has been the applicant's Team Leader since 2000. She leads a team that is tasked with managing the applicant's case in a multi-disciplinary manner, with the applicant being central to the entire process. In her affidavit she deposes as follows:

"2. I know the applicant well. The applicant has a learning disability, a long-standing history of serious physical aggression towards peers and family members and he has received treatment for unadjudicated sexual offences against a child. Dr Rebecca Jamison continues to work with the applicant in respect of sexual risk. The applicant becomes very anxious when he comes into unexpected contact with children and can react aggressively to minor provocation or perceived problems.

3. In August 2004, a sister of the applicant disclosed that the applicant had sexually abused her regularly from when she was thirteen years of age and the applicant was 24 years old. When the applicant was interviewed about his sister's disclosures in August 2004, he admitted to the abuse and it is documented that he talked to professionals in 2007 about having sexual feelings whilst looking at photographs of his sister's children. The applicant's sister has recently made a Statement of Complaint to the police about the alleged abuse and I believe that the applicant is waiting on a date to be interviewed by the police. I refer to a document entitled "End of ASOTP report (June 2006-October 2008) by Mr Garvin McKnight" marked "ML1" which, *inter alia*, sets out the view that the applicant "*presents a low risk of re-offending within the current situation of structure, support and supervision ... if his environment were to become less structured and supported then the risk is likely to increase to at least medium risk level*".

4. The applicant is the subject of a Guardianship Order and he lives in supported accommodation at ... Newtownards with two other gentlemen and he attends a work skills programme in [a] Day Centre five days a week, which is run by Praxis. The applicant continues to require a high level of practical and emotional support from professional staff. Staff at [*his home*] assist the applicant in administering his

medication. Without the support of staff, the applicant would lack the skills to manage his diabetic condition independently. Staff also assist the applicant with managing his financial affairs and staff are responsible for the implementation of the risk management plan.

5. The applicant is very settled and content living in [*his home*] where he assists in carrying out household chores. The applicant is also reported to play a valuable role in [*the day centre*] where he is keen to help staff and assist with the organisation of tasks. The applicant is a member of the garden centre group, the drama group and he attends a course at ... College. The applicant competes in pool competitions organised through the Work Skills unit ... The applicant is isolated from his family.

6. The Respondent Trust initiates periodic meetings such as Case Management Reviews, Risk Assessment reviews, Strategy meetings and Care Planning meetings to consider and respond flexibly to changes in the applicant's circumstances and to consider his views, plan for his independence and ensure that safe and protective arrangements are in place for his daily living. These meetings consider issues such as the applicant's health, opportunities for socialising, increasing the applicant's independence, his work placement ... and the applicant's wishes and feelings. The applicant has been assisted during this process by his own independent advocate, Ms Torrens, from Bryson House. I refer to a sample of records of such meetings from 2010 marked "ML2".

7. The review risk assessment framework that the Respondent Trust has in place for the applicant also considers and promotes so far as possible his social interests and independence skills. The aim of professionals working with the applicant is to enhance his independence so far as possible and the applicant has co-operated with the professionals working with him and has adhered to the arrangements in place for both his own safety and the safety of others. I refer to a sample of records of such meetings marked "ML3".

8. The records of the meetings reflect a flexible

approach with the supervision and support plan having been refined and changed over time depending on the applicant's circumstances. The applicant now walks to the local shop ... without any supervision twice per week, goes to the local shopping centre for in or around half an hour without supervision once per week and he is able to go to the shop from [*his day centre*] once a week if he needs to make a purchase. Recently the applicant's shopping trips to the local shopping centre were extended to three quarters of an hour but I have been informed by the workers that the applicant appeared to be anxious and in need of reassurance on his return.

9. On the social front, the applicant attends a Racquet Club at [*a*] Leisure Centre, which is an adult pan disability club run by a group of volunteers. Praxis staff accompany the applicant in a minibus and remain in the leisure centre at a distance from him when he plays. The applicant has recently said he would like to go to Bangor Leisure Centre and Praxis staff have agreed to accompany him. In addition, the applicant has been on various trips associated with his sporting interests including a badminton tournament in Stoke Mandeville, a pool competition in Bridlington and he played basketball in the Special Olympics Tournament in Limerick. The applicant has also enjoyed various trips to Dublin, Scotland and Enniskillen. The applicant now receives one to one support for community outings, sports trips and holidays, which is a reduction from the two to one staffing ratio that he initially required. At a Case Management Review on 26 June 2012 the applicant stated he was quite happy with where he was at present.

10. The Respondent Trust wishes to continue to work towards enhancing the applicant's independence and to continue to manage this through the regular review meetings in which the applicant is involved. Given the nature of the risks associated with the applicant the Respondent Trust envisages that there will continue to be a need for a level of support and supervision in the community in the future.

11. I refer to a copy of the Decision of the Mental Health Review Tribunal on 11 March 2011 marked "ML4". On 11 March 2011, in directing that the applicant should remain subject to Guardianship, the Mental Health Review Tribunal stated in a written decision, (referring to the applicant as 'the patient'):

"The purpose of the supervision is to enhance rather than to restrict the patient's liberty and security of person ... from oral and written evidence it is clear that supervision is in place to enable the patient to go out safely, rather than prevent him leaving or to detain him. The supervision enables him to engage in a wide variety of activities, including trips outside Northern Ireland. Supervision is sufficiently readily available to regularly facilitate a variety of outings. It protects the patient's person from risks that his behaviour creates. The nature degree and purpose of the supervision does not conflict with the finding that the Guardianship Order is necessary in the interests of the patient's welfare. The issue of the degree of supervision required to enable the patient to go out safely is kept under review and his views on the matter are given consideration. This process respects his rights under Article 5."

12. It is my view that the level of support offered to the applicant by the Trust over time has been responsive to his changing needs and the assessed risks associated with his behaviour and feelings. It is also my view that the level of support provided serves to optimise the applicant's integration into community life in a manner which is safe for him and others and allows him to engage in a range of hobbies, interests and life enhancing experiences. The applicant lives a full and active life, assisted by the support and supervision of the professionals working alongside him. Without the current level of support and supervision offered to the applicant, I am of the view that he would be unable to cope with daily living and is likely to come to harm if left unsupported in the community. Additionally, it has been assessed that the applicant's risk to others is likely to increase if his environment were to become less structured and supported."

Statutory Framework

[8] Art 4 of the Health and Personal Social Services (NI) Order 1972 (“the 1972 Order”) provides:

“It shall be the duty of the Ministry

(a) to provide or secure the provision of integrated health services in Northern Ireland designed to promote the physical and mental health of the people of Northern Ireland through the prevention, diagnosis and treatment of illness;

(b) to provide or secure the provision of personal social services in Northern Ireland designed to promote the social welfare of the people of Northern Ireland.”

and the Ministry shall so discharge its duty as to secure the effective co-ordination of health and personal social services.”

[9] Art 15(1) of the 1972 Order provides:

“In the exercise of its functions under 4(b), the Ministry shall make available advice, guidance and assistance, to such extent as it considers necessary, and for that purpose shall make such arrangements and provide or secure the provision of such facilities (including the provision or arranging for the provision of residential or other accommodation, home help and laundry facilities) as it considers suitable and adequate.”

[10] As the applicant is the subject of guardianship under Art22(1) of the 1986 Order the respondent has the power to:

(a) require the Applicant to reside at a place specified by the Trust.

(b) *require* the Applicant to attend at places and times so specified for the purpose of medical treatment, occupation, education or training

(c) *require* access to the Applicant to be given at any place where the patient is residing to any medical practitioner, approved social worker or other person so specified.” **[Emphasis added]**

[11] Art 29 of the 1986 Order is entitled “Return and readmission of patients absent without leave” and, in material part, provides:

“(2) Where a patient who is for the time being subject to guardianship under this Part *absents himself without the leave of his guardian* from the place at which he is required by the guardian to reside, he may, subject to paragraph (3), be taken into custody and returned to that place by any constable or approved social worker or by any person authorised in writing by the guardian or by the responsible authority.

(3) A patient shall not be taken into custody under this Article after the expiration of the period of 28 days beginning with the first day of his absence without leave; and a patient who has not returned or been taken into custody under this Article within that period shall cease to be liable to be detained or subject to guardianship, as the case may be, at the expiration of that period.

(4) A patient shall not be taken into custody under this Article if the period for which he is liable to be detained is that specified in Article 7(2) or (3)[F2, 7A(2)] or Article 9(4), (7) or (8) and that period has expired.

(5) In this Order “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this Article.”
[Emphasis added]

Guidance Documents

[12] In 1986 the DHSS issued a Guide to the 1986 Order para 73 of which provides:

“Powers of a Guardian

The intention is that the three new specific powers of a guardian (Art 22(1)) should restrict the liberty of the individual only so far as it is necessary to ensure that he receives the medical treatment, social support and training he needs. The first power is to require the patient to live at the place specified by the Board or person named as Guardian. This may be used to discourage the patient from sleeping rough or living

with people who may exploit or mistreat him or to ensure that he resides at a particular hostel or facility.

The second power enables the Guardian to require the patient to attend specified places at specified times for medical treatment, occupation, education or training. These might include a day centre, an adult training centre, a day hostel, a surgery or clinic.

The third power enable the Guardian to require access to the patient to be given at the place where the patient is living, to any doctor, approved social worker, or other person specified by the Guardian. This power could be used, for example, to ensure that the patient did not neglect himself.”

[13] In 1992 a Code of Practice under the 1986 Order was issued by the DHSS which at para3.21 *et seq* deals with the powers of the Guardian.

“3.21 Article 22 of the Order gives the guardian power-

‘to require the patient to reside at a place specified by the Board or person named as guardian’. The patient may be taken to the specified place in furtherance of this requirement if he willingly complies or offers no resistance. However, this power does not provide the legal authority to detain a patient physically in such a place, nor does it authorise the removal of a patient against his will. The patient is absent without leave from the specified place, he may be returned to it within 28 days by those authorised to do so under Article 29(2) and (3) of the Order;

‘to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training’. If a patient refuses to attend the guardian is not authorised to use force to secure such attendance, nor does the Order enable medical treatment to be administered in the absence of the patient’s consent;

‘to require access to the patient to be given at any place where the patient is residing to any medical practitioner, approved social worker or other person so specified’. A refusal without reasonable cause to

permit an authorised person to have access to the patient is an offence under Article 125 of the Order. Neither the guardian nor any authorised person can use force to secure entry’.

If the patient consistently resists the exercise of the guardian’s powers, it can be concluded that guardianship is not the most appropriate form of care for that person and guardianship should be discharged.....

3.24 Where an adult is assessed as requiring residential care but due to mental incapacity is unable to make a decision as to whether he wishes to be placed in residential care, those who are responsible for his care should consider the applicability and appropriateness of guardianship for providing a framework within which decisions about his current and future care can be planned. Guardianship does not, however, confer powers to compel the admission of an unwilling person into residential care.”
[Emphasis added]

Arguments

[14] The applicant submits that the issue at the heart of this case is whether the powers contained in the 1986 Order can be construed to give the guardian the power to prevent the patient leaving the residence without permission; and, retake him if he leaves without such permission (see para 9 of the applicant’s revised and updated skeleton argument). In particular, the applicant questions whether it can be validly argued that Art 22, in conjunction with 29(2) and Art 132 gives a guardian sufficient control over a patient to render the restrictions *in the present case* lawful.

[15] The applicant argues that he has been deprived of his liberty in breach of Art 5 ECHR and further, and in the alternative, that the restrictions he is subject to breached his rights under Art 8.

[16] The respondent, for its part, in a short skeleton argument points out that the Trust has never had to exercise the powers conferred upon it by Art 29(2) in relation to the applicant.

[17] Other than the express powers set out in the 1986 Order, the Trust “in the circumstances of this case, does not claim to have any powers, express or implied, over the applicant by virtue of him being subject to guardianship (see para 2.7 of respondent’s skeleton argument).

[18] It does however submit that it has a duty to promote the social welfare of the applicant by providing tailored advice, guidance and assistance to him commensurate with his needs. As such, it also says it has a duty of care towards the applicant.

Discussion

[19] Deprivation of liberty must be distinguished from appropriate supervision and in cases of adults of impaired mental ability the distinction between these two things may be harder than expected to pin down accurately.

[20] In this context the Court of Appeal's reasoning in Cheshire West and Chester Council v P (*by his litigation friend the Official Solicitor* [2011] EWCA Civ 1257 is helpful. Referring to cases in circumstances analogous to those that arise here said:

"102. At this point it may be helpful to draw some of the threads together. My purpose, I stress, is limited. It is merely to draw attention to some aspects of the jurisprudence which are likely to be of significance in the kind of cases that come before the Court of Protection.

i) The starting point is the "concrete situation", taking account of a whole range of criteria such as the "type, duration, effects and manner of implementation" of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, not nature or substance.

ii) Deprivation of liberty must be distinguished from restraint. Restraint by itself is not deprivation of liberty.

iii) Account must be taken of the individual's whole situation.

iv) The context is crucial.

v) Mere lack of capacity to consent to living arrangements cannot in itself create a deprivation of liberty.

vi) In determining whether or not there is a deprivation of liberty, it is legitimate to have regard

both to the objective "reason" why someone is placed and treated as they are and also to the objective "purpose" (or "aim") of the placement.

vii) Subjective motives or intentions, on the other hand, have only limited relevance. An improper motive or intention may have the effect that what would otherwise not be a deprivation of liberty is in fact, and for that very reason, a deprivation. But a good motive or intention cannot render innocuous what would otherwise be a deprivation of liberty. Good intentions are essentially neutral. At most they merely negate the existence of any improper purpose or of any malign, base or improper motive that might, if present, turn what would otherwise be innocuous into a deprivation of liberty. Thus the test is essentially an objective one.

viii) In determining whether or not there is a deprivation of liberty, it is always relevant to evaluate and assess the 'relative normality' (or otherwise) of the concrete situation.

ix) But the assessment must take account of the particular capabilities of the person concerned. What may be a deprivation of liberty for one person may not be for another.

x) In most contexts (as, for example, in the control order cases) the relevant comparator is the ordinary adult going about the kind of life which the able-bodied man or woman on the Clapham omnibus would normally expect to lead.

xi) But not in the kind of cases that come before the Family Division or the Court of Protection. A child is not an adult. Some adults are inherently restricted by their circumstances. The Court of Protection is dealing with adults with disabilities, often, as in the present case, adults with significant physical and learning disabilities, whose lives are dictated by their own cognitive and other limitations."

xii) In such cases the contrast is not with the previous life led by X (nor with some future life that X might lead), nor with the life of the able-bodied man

or woman on the Clapham omnibus. The contrast is with the kind of lives that people like X would normally expect to lead. The comparator is an adult of similar age with the same capabilities as X, affected by the same condition or suffering the same inherent mental and physical disabilities and limitations as X. Likewise, in the case of a child the comparator is a child of the same age and development as X.

103. There is one further point I should like to emphasise. The fact that a domestic setting can involve a deprivation of liberty does not mean that it very often will. Indeed, typically it will not. In the kind of context with which we are here concerned – the care of children or vulnerable adults – there will normally be no deprivation of liberty if someone is being cared for by their parents, friends or relatives in a family home. Nor, I should add, will there normally be any deprivation of liberty if they are in a foster placement or its adult equivalent or in the kind of small specialist sheltered accommodation of the type occupied by MEG.”

[23] Clearly the question of the legal capacity of this applicant is of central relevance to the evaluation which must take place in this case and cases of this kind. At an earlier stage of these proceedings, on the basis of the evidence supplied and, in particular, of a report supplied by the Official Solicitor, I decided that this applicant does have the legal capacity required to participate in the present proceedings. I am also satisfied he has the legal capacity to participate in the less demanding/more familiar intellectual environment of case reviews and other internal mechanisms relating to the pragmatic operation of the legal guardianship to which he is subject, particularly where, as in this case, he had the benefit of an independent advocate who facilitated his meaningful participation in these procedures as minutes attached to the respondent’s affidavit evidence confirmed.

[24] I am fortified in my view of the applicant’s legal capacity by the fact that he, with all the limitations to which he is subject, has found his way to the Law Centre which has formulated his instructions into arguments that the respondent’s purported legal basis for interfering with the applicant’s autonomy and liberty was legally suspect because:

(a) the founding power at article 22 is a power to require residency and this falls far short of a right or power to remove a person’s liberty;

(b) the legislators do not appear to have intended the guardianship power to constitute or amount to a power of detainment - the guardianship structure appears premised more on voluntariness than requirement;

(c) that to interpret the legislation as containing a requirement that permission or leave is required before a patient can leave the place of residence would mutate guardianship into a power to detain and that such an interpretation would be legally unsustainable because, e.g. it offends the presumption of liberty;

(d) there is no legislative framework for leave of absence from guardianship which incorporates adequate safeguards for the rights of vulnerable adults. Informal frameworks are vulnerable to a negative finding such as occurred in the case of HL v U.K. (2005) 40 EHRR 32. Consequently even if a court implied a permission power into Article 22(1)(a), it is submitted that any *ad hoc* permission or leave arrangements would fall foul of the HL reasoning."

[25] All the above arguments must be considered in relation to the purpose and limitations of the power of guardianship. In the present case they must also be considered in the context of an applicant who has sufficient legal capacity to engage in the present proceedings and, a fortiori, has capacity to engage meaningfully in the internal mechanisms and safeguards designed to ensure that his views are taken into account in the design of his support arrangements. To this extent the present case differs from the position in the HL case which therefore has no direct bearing on this case.

[26] In terms of the purpose and limitations of the power of guardianship, the main relevant aspect of this power is reflected in Art 22(1) which authorises the Trust, via guardianship, to require the applicant to reside at a place specified by the Trust. Under Art 29(2) where a patient absents himself without leave of the guardian from the place at which he is required by the guardian to reside he may be taken into custody and returned to that place. The question arises as the scope and limit of this power.

[27] It is clear that there is no authority under guardianship for the patient to be detained or deprived of his liberty. Moreover, Parliament is presumed not to enact legislation which interferes with the liberty of the subject without making it clear that this was its intention. The intention of Parliament in particularising the powers of guardians was not to restrict the liberty of persons of vulnerable persons with

impaired intellectual abilities, but rather to create a flexible vehicle which could be applied appropriately to maximize the freedoms of such individuals.

[28] Art 22 confers a specific power on the Guardian to require a person subject to guardianship to reside in a specified place. Absenting himself without leave from that place can trigger the coercive Art 29(2) power for the person to be retaken and returned to the place of residence. It seems to me to be implicit in this arrangement that the guardian can impose a reasonable and lawful condition on the grant of leave of absence, including a condition that leave, express or implied, must be obtained in advance of the person absenting himself from the place at which he is required to reside. If it were otherwise how would the guardian ever know which of the persons within his/her care were still 'residing' but were temporarily and lawfully out of their home, and which were 'absent without leave' and so subject to the coercive power available under Art 29(2)? The failure to have the requisite leave gives rise to the discretionary power to retake and return under Art 29(2). That being so, it seems to me, that here is no reason why a condition cannot be imposed requiring a person to seek leave of absence before he/she departs the place of residence. Indeed, it seems to me that the existence of such a condition is a de facto necessity if Art 29(2) is to have any meaning in practice. So, a power to retake a person who is 'absent without leave,' pre-supposes that most people who absent themselves will have obtained that leave in advance, so ensuring that the potential applicability of Art 29(2) does not arise in the majority of occasions when persons subject to guardianship are out of their homes. If leave, express or implied, were NOT routinely granted in such residences they would be in a constant state of high alert and constantly in search of 'missing' residents. It is because most residents who are absent are absent with the knowledge and agreement of their guardians that this is not the case in practice.

[29] It seems to me that a Guardianship system which envisages use of coercive powers in relation to residents who are 'absent without leave' presupposes knowledge of /control by the Guardian of when leave is given and when it is not: i.e. the Guardian must make this decision in relation to the movements of every resident within his/her Guardianship. In exercising this discretion the Guardian should take account of the purposes of Guardianship which include supervision of the person subject to Guardianship in a manner which maximizes his/her freedoms whilst also protecting him/her from harm and protecting the interests of the wider community. Given this entire context it seems to me to be quite appropriate for the Guardian to impose such conditions on the grant of leave as are necessary to achieve all the purposes of the Guardianship arrangement. Such conditions may well include the imposition of a requirement that the person be supervised by a person appointed by the Guardian during periods of agreed absence. Of course all such conditions must be required by the individual circumstances of each case and must be proportionate and reasonable in light of those prevailing circumstances.

[30] Where a person subject to Guardianship feels that a condition or restriction is not warranted in his/her case he/she should have the opportunity to raise these

concerns in an effective way and should be facilitated to explain why they say the disputed conditions/limitations are inappropriate. In the present case I am satisfied that the applicant did have such opportunities and they were rendered effective especially by the provision of an independent advocate to support the applicant at planning/review meetings.

[31] If a person subject to Guardianship flouted reasonable, proportionate and lawful conditions proposed by a Guardian then the Guardianship arrangement may cease to be appropriate since it is based upon consensus and co-operation. In such circumstances the guardian must take whatever steps are necessary to ensure that the person receives appropriate supervision and support via some other legal channel.

[32] Parents or those in loco-parentis will frequently impose restrictions on, for example, children who want to stay out later than is appropriate for them, or to associate with persons who their parents consider it would be better for them to avoid. Restrictions on time out and/or rights to associate with others do not result in a deprivation of liberty for these children: on the contrary, they are often the means whereby they are facilitated to enjoy their freedom to the fullest extent possible given the age, life experience and understanding of the children in question. Similarly, in the case of vulnerable adults the impositions of restrictions designed to protect them and those around them, are rarely likely to amount to 'deprivations of liberty'.

[33] Guardians who impose restrictions/supervision to protect those whom they are guarding are discharging their functions appropriately and are maximizing rather than limiting the freedoms of those subject to their care. It appears to me on the evidence that this is what happened in the present case and that, despite some complaints by the applicant about the level of restriction to which he was subject, the reality was that he generally accepted the conditions judged necessary by his support team and used the space within them to live as full and varied a life as would be available to most individuals with cognitive and other limitations comparable to his own. It appears to me on the evidence that this applicant is comparable to an older teenager who, whilst he may complain about some restrictions imposed by his parents, nevertheless generally complies and does not find the limitations sufficiently burdensome to wish to change his living arrangements entirely. Far from that being this case the applicant, who as we have seen, has a learning disability and a history of serious aggression, is a capable person co-operating with the day to day working of his care plan and he has never departed from the supervision in place. The fact that he may wish that some of the restriction on his freedom could be removed does not convert his position from one of compliance into one where he suffers deprivation of liberty.

[34] Plainly, the more onerous the conditions the more difficult they may be to justify if challenged. But the power to supervise and impose restrictions is, as it seems to me, implicit (at least) in the statutory scheme under the 1986 Order. It may

be that in some cases where the reasonableness, proportionality or lawfulness of the restrictions or the proposed restrictions is an issue then the Trust as a matter of good practice should seek authority from the Court to impose/maintain those conditions. Indeed, the Trust fallback position in the present case was that in the event the Court held against it, then similar restrictions on the applicant's movements should be imposed by order of the Court. However, this will not be necessary in the present case as I consider that this Trust has acted within the powers available to it under the relevant legislation.

[35] Accordingly, the Court holds that the supervision of this applicant was with legal authority and lawful and that the 1986 Order did authorise the guardian to take the impugned measures in the circumstances this case.