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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**03/03/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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QR

Appellant

-v-

OFFICIAL SOLICITOR FOR NORTHERN IRELAND

Respondent

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The appellant appeared as a litigant in person
Ms L Murphy BL (instructed by the Official Solicitor) appeared for the Respondent
Mr A Montgomery BL (instructed by the Directorate of Legal Services) appeared for the Western Health and Social Care Trust

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McFARLAND J

Introduction

[1] This is an appeal by the appellant against an order of Master Wells of 16 October 2019 whereby she ordered that the appellant's appointment as an authorised person under a short procedure order dated 27 January 2014 be terminated with immediate effect, that the appellant pay the sum of £26,700 into court for the benefit of her brother ("the patient"), and that the appellant should pay the costs of the respondent and the Western Health and Social Care Trust ("the Trust"). The Trust was not a party to the application before the Master or this appeal, but had sufficient interest in the proceedings to require representation, given the allegations being made against the Trust and its employees in relation to the care of the patient and the management of his affairs. I have anonymised this judgment to protect the identity of the patient, and for no other reason, and nothing can be

published, without the permission of the court, that will identify the patient. The appellant is a practising solicitor.

Background

[2] The background to the case is that the appellant is the sister of the patient. On 27 January 2014 she was appointed by the court as an authorised person. The terms of the order included the following –

> *"2. The authorised person is authorised to:-*
>
> *(a) open a current account in the sole name of the patient in Bank of Ireland and operate said account as trustee for the benefit of the patient;*
>
> *(b) close account numbered *****293 held in the name of the patient in the Post Office and lodge the closing balance plus any accrued interest to account referred to in paragraph 2(a) of this order;*
>
> *(c) operate Bank of Ireland account numbered *****198 held in the name of the patient as trustee for the benefit of the patient;*
>
> *(d) uplift all funds in excess of £500 in Bank of Ireland account numbered *****198 and lodge to account referred to in paragraph 2(a) of this order;*
>
> *(e) on completion of the direction referred to in paragraph 2(d) of this order the proper officer of the Bank of Ireland is authorised to permit the patient to operate account numbered *****198. No credit facilities to be attached to said account;*
>
> *(f) arrange payment of the benefits to which the patient is entitled payable by the Social Security Agency… directly to account referred to in paragraph 2(a) of this order to be used for the benefit of the patient;*
>
> *…*
>
> *3. The authorised person shall account to the Master for all sums received or paid for and on behalf of the patient as and when directed."*

[3] The Master was exercising the jurisdiction of the High Court in relation to the property and affairs of patients contained in Part VIII of the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"). The relevant articles in the 1986 Order are as follows:

"Article 98 (1) the court may with respect to the property and affairs of a patient do or secure doing of all such things as appear necessary or expedient-

(a) for the maintenance or other benefit of the patient;

(b) for the maintenance or other benefit of members of the patient's family;

(c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or

(d) otherwise for administering the patient's affairs.

Article 99 (1) Without prejudice to the generality of Article 98 the court shall have power to make such orders and give such directions and authorities as it thinks fit for the purposes of that Article and in particular may for those purposes make orders or give directions for-

(a) the control (with or without the transfer or vesting of property or the payment into our lodgement in the Court of Judicature of money or securities) and management of any property of the patient; …

(d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in subparagraphs (b) and (c) of Article 98 (1)"

[4] Order 109 Rule 5 of the Rules of the Court of Judicature provides for a short procedure -

"1. … [I]f it appears to the court that-

(a) the property of the patient does not exceed £5000 in value; or

(b) it is otherwise appropriate to proceed under this rule

and that it is not necessary to appoint a controller for the patient the court may make an order under this rule…

2. An order under this rule is an order directing an officer of the court or some other suitable person named in the order to

> *deal with the patient's property, or any part thereof, or with his affairs, in any manner authorised by the order and specified in the order."*

[5] The appellant complied with the terms of the short procedure order of 27 January 2014, opened the new bank account and dealt with the other bank accounts. In the course of her operation of the new bank account she made transfers from that account into the bank accounts of her mother and father. The amounts transferred totalled £26,700. When the Master became aware of these transfers, by order dated 24 March 2019, the Master suspended the appointment of the appellant. The Official Solicitor, at the direction of the court, carried out an investigation and taking into account the results of that investigation and other information made available by the Trust, the Master made the order of 16 October 2019.

[6] The appellant appeals the order primarily on the ground that the gifts to her parents were permissible and that she has acting honestly and reasonably in the circumstances. She said she transferred the money as the making of gifts to his parents was something the patient had done in the past arising out of his familial ties, and the payments were therefore, in a general sense, for the benefit of the patient. They were transfers, she submitted, that he would have made had he been capable of managing his affairs.

Duties of the appellant as an authorised person

[7] The first issue for the court to determine is whether the appellant was acting as a trustee. The appellant's role as described in the order of the court of 27 January 2014 was that she was to operate the bank accounts "as trustee for the benefit of the patient". This phraseology creates difficulties because the bank accounts at all times were to be in the sole name of the patient and not in the name of the appellant.

[8] Lord Diplock in *Ayerst v C & K (Construction) Ltd* [1976] AC 167 at 177GH stated:

> *"The concept of legal ownership of property which did not carry with it the right of the owner to enjoy the fruits of it or dispose of it for his own benefit, owed its origin to the Court of Chancery. The archetype is the trust. The legal ownership of the trust property is in the trustee, but he holds it not for his own benefit but for the benefit of the cestui que trust or beneficiaries. Upon the creation of a trust in the strict sense as it was developed by equity the full ownership in the trust property was split into two constituent elements which became vested in different persons: the legal ownership in the trustee, what came to be called the beneficial ownership in the cestui que trust."*

(The reference to *cestui que trust* is an expression derived from medieval Law French. A more modern term, 'beneficiary of a trust', is now commonly used.)

[9] A description of a trustee has been provided by James LJ in *Smith v Anderson* (1880) 15 Ch 247 at 275 in the following terms:

> *"A trustee is a man who is the owner of the property and deals with it as principal, as owner, and as master, subject only to an equitable obligation to account to some persons to whom he stands in relation of trustee, and who are his cestui que trust."*

[10] The appellant clearly had obligations in relation to her appointment as an authorised person, however the property of the patient (*i.e.* the money in the bank accounts) was never vested in her as legal owner. The order was specific that the bank accounts remained in the name of the patient, and therefore in his legal ownership. The legal and equitable estates in the bank accounts were, and always were, merged. The bank accounts were not in her name and she had no authority to open bank accounts in her name for his benefit. She did have effective control of the accounts, but that is different from trusteeship. This point is clearly set out in the 19th edition of Underhill and Hayton - *Law of Trusts and Trustees* at 1.2 and 1.3. The learned authors specifically referred to earlier editions (up to the 16th edition) were the text referred to trust property as being property over which the trustee had control. At 1.2 the learned authors, recognising the difficulties created by this definition, stated *"however a person has control over property where he has mere custody of property left to his management by the owner or has a power of attorney over property."* A correct statement of the law is then provided at 1.3 of the 19th edition:

> *"a person who deals with property owned by another but over which he has control as agent or as bailee or as attorney under a power of attorney for the benefit of another person, is not a trustee of property, although in relation to particular property he may in certain circumstances… be under fiduciary duties similar to those of a trustee."*

The position of the appellant as an authorised person under the court order falls into a similar category as an agent, bailee or attorney.

[11] It was therefore an unfortunate use of language that the order contained the words "as trustee for the benefit of the patient". These words alone cannot create a trust, because no trust assets were vested in the appellant as a trustee, and the clear language of the order was that no assets were ever to be vested in the appellant. The wording of the order, if it adds anything, merely confirms that the duties of the appellant, as an authorised person, are fiduciary duties which are similar to, if not identical, to those of a trustee. The wording would also make provision for circumstances which could arise when the appellant, on withdrawing money from the patient's bank account, transferred it into an account in her own name, or

otherwise came into legal ownership of the money. At that point the appellant would assume the role of trustee in respect of the money which she would then hold on a bare trust on behalf of the patient.

[12] The appellant had asked the court to make a declaration in respect of the money in the bank account to the effect that it was held under a discretionary trust. I decline to make such a ruling as the relationship between her and the patient is not one of trustee-beneficiary and therefore the money is not held in trust. In any event I do not consider the obligations to be similar to, or identical to, a discretionary or protective trust. This case can be clearly distinguished from the decision of Commissioner McNally in *C2/93(IS)*. In that case, which related to whether funds held under a formal Controllership order by the Office of Care and Protection were to be disregarded in the calculation of the assets of a claimant for a means tested benefit, it was held that the funds were held in a trust. That ruling took into account the fact that the funds were vested in the legal ownership of the Controller and not merely under his control. The relevant regulations in any event precluded the calculation of funds held in a trust which had been derived from a payment for personal injuries, which they had in that case. *C2/93(IS)* is of no relevance to this case.

[13] However, I do not consider that the exact legal status of the appellant in relation to the money in the bank accounts has a significant practical implication. The duties of the appellant as authorised person were fiduciary duties similar to, if not identical to, those of a trustee. As she is not a trustee she is not afforded the specific protection of section 61 of the Trustee Act (Northern Ireland) 1958 which states:

> *"if it appears to the court that a trustee… is or may be personally liable for any breach of trust,… but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."*

[14] In my opinion, there is sufficient discretion vested in the Master, and a judge on appeal, to take a similar approach if the appellant, as an authorised person, in her dealings with the patient's bank accounts, has acted honestly and reasonably and by the court applying the principles of fairness.

The legal test

[15] The correct approach to the issues before the court is first to consider whether retrospective approval for the gifts should be granted. If it should, then that is the end of the matter. Should it not, then the court has an overall discretion when

considering whether or not to relieve the appellant from personal liability or to order the appellant to repay the money removed from the bank account.

[16] Article 98(1)(c) of the 1986 Order grants a power to the court to make provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered. This will include consideration of the making by the patient of both *inter vivos* gifts and testamentary dispositions. Ideally the power should be considered in advance of the gifts or will. But the same test applies when considered retrospectively. The English Court of Appeal reaffirmed the correct test in *G v Official Solicitor* [2006] WTLR 1201, and in the circumstances of this case the question to be asked is - Would the patient have made the gifts of cash set out in [26] (below) to his parents, if he had been capable of making the gifts and had the benefit of advice from a competent solicitor?

[17] When considering potential recovery from the appellant, this will involve the court exercising a discretionary power. The primary purpose is to protect the assets of the patient. If those assets have been diminished as a result of the conduct of the appellant, then there will be a strong interest in seeking to recover the amount removed without the court's permission. The court should also take into account all the relevant circumstances involving the conduct of the appellant, the overall circumstances of the wider family, and the ability of others to repay the money that was taken. Concepts of reasonableness and fairness will be factors the court can take into account when exercising its discretion, but reasonableness and fairness apply to both the appellant's position, and the position of the patient.

Would the patient, if competent, have made the gifts?

[18] The starting point has to be the position of the patient. The short procedure order was made because of the relatively modest capital and income. In October 2019 (after the transfers to the parents had been made) the estimated capital of the patient was £13,000; his income (largely derived from social security benefits) was £14,300 *per annum*, and his expenditure was £11,000 *per annum* (all figures approximate).

[19] The appellant asserted that the patient had a history of making regular gifts to his parents. Affidavits were filed by both parents. They refer to visiting him from time to time and either noticing or being referred by him to large sums of cash in the possession of the patient. They assumed the money had accumulated and represented money received and not expended by the patient. Their evidence was that the patient gave them these sums of money, which they spent.

[20] No specific dates were provided outside a general period of between 2001 and 2009, and no other corroborative evidence was provided. The gifts were said to be in cash and were spent as cash. The exact amounts given and the date of the gifts has not been provided. The patient's father referred to a figure of £2000 given to his wife "two or three" times a year. She said the gifts were for "Mum and Dad." No money

appears to have been given directly to the father. The patient's mother confirms this in her affidavit. The mother also confirmed that the gifts stopped for "a while." No specific medical evidence concerning the patient's medical condition during the 2000s was presented to the court but he was living in a domiciliary care supported environment having been discharged to the facility from hospital in 2001. No assessment can be made as to his capacity to make *inter vivos* gifts on any of these occasions. A report from 2012 from a psychiatrist is available and that report gives a guarded opinion that he was capable to manage his affairs in 2012, although no gifts were made to his parents at that time. Both parents, by inference, have indicated that the patient was functioning with a degree of normality at the time, and these were gifts voluntarily made by him with a basic understanding of the implications.

[21] There is no evidence that any gifts were made at any time after 2009. A calculation has been prepared by the appellant in an attempt to provide the court with a picture of potential cash which may have accumulated during this period and between 2007 and 2014 and which could not be accounted for. In other words, taking into account income and expenditure a surplus should have been present in his bank accounts but was not. These figures are:

Year	Unaccounted for difference in £
2007	4700
2008	6600
2009	6200
2010	7200
2011	7800
2012	6400
2013	5100
2014 (3 months)	1800

[22] No explanation has been provided concerning these differences, save that it may reflect the amount of money gifted by the patient to both his parents in the manner both have described. This would only have covered the period up to 2009. Thereafter there is nothing, with no suggestion or suspicion falling on other members of the family, medical or care staff or others taking it, or being the beneficiaries of his gifts.

[23] After considering all the evidence placed before the court, I consider that the appellant has not been able to establish that there was a regular pattern of gifts from the patient to his parents. Even relying on the evidence provided by her parents, it only accounts for some gifts, of an unknown amount and unknown regularity, in the 2000s, and not between 2010 and 2014. Any pattern of regular giving had stopped for a period of four years by 2014.

[24] The appellant is a practising solicitor. She owes no extra duty to the court or to the patient in her capacity as an authorised person, but she would have been

aware of the basic principles relating to the making of *inter vivos* gifts on behalf of the patient, a person, by definition, unable to manage his affairs. Gifts are permitted, but require the court's approval. If such a pattern of gifts had existed at the time of her appointment, and it was her intention to continue those payments, it would have been a simple matter to bring this to the attention of the Master to ensure that the pattern could be continued with approval.

[25] The appellant has relied on a telephone conversation she says she believes she had with an official from the Office of Care and Protection. There is no record provided of the call. The appellant states that she was told that if the gifts were reasonable and provided the gifts did not "impact on [the patient's] standard of living" she could make them, and that she should keep adequate records. I do not consider that this is sufficient justification for the appellant to rely upon as permission from the Office of Care and Protection to commence a process of removing cash, at the level and regularity that she did, from the patient's bank account and transferring it to her parents. The advice, insofar as it was proffered in the form suggested by the appellant, was in the most general of terms and it could never have been regarded as some form of *carte blanche* permission to transfer a significant portion of the patient's assets.

[26] The payments to the parents were made by direct electronic transfer from the patient's bank account. They commenced in January 2015 and continued thereafter on a routine, if not on a regular, basis. All payments are documented leaving the patient's bank account and then being credited to the separate bank accounts of each parent. The payments are as follows:

Month	Mother's Account in £	Father's Account in £
Jan 2015	500	500
Apr 2015	500	500
July 2015	500	500
Aug 2015	500	500
Dec 2015	1000	500
Jan 2016	1000	500
Mar 2016	500	500
Apr 2016 (2 dates)	1000	0
Aug 2016	0	500
Sept 2016 (2 dates)	500	500
Oct 2016	200	300
Nov 2016 (2 dates)	700	0
Feb 2017	0	500
Apr 2017 (2	0	1000

dates		
July 2017	500	500
Sept 2017 (2 dates)	0	1000
Oct 2017	0	500
Nov 2017	500	0
Jan 2018	0	500
Feb 2018	0	500
Mar 2018	0	500
April 2018	0	500
May 2018	0	500
June 2018	0	500
Jul 2018	0	500
Aug 2018	0	1000
Sept 2018	0	500
Oct 2018	0	1000
Nov 2018	500	500
Dec 2018	0	1000
Jan 2019	0	500
Total	8900	17800

[27] Some attempts had been made to set out how the money was spent by the parents, with reference to cash withdrawals for general living expenses, home improvements to the family home and money spent by the father in relation to another brother. The explanations are not vouched in any way although some photographs have been provided to show home improvements at their home. The patient's mother indicates £6500 was paid for home improvements between 2015 and 2017, including a £5000 kitchen installed in 2017. That may explain the amount of the transfers during that year. No explanation has been offered for the growth in intensity of the transfers in late 2017 and into 2018, and why they are directed almost exclusively towards the father.

[28] No evidence has been given concerning the patient's knowledge of, and attitude to, the gifts at the time they were made. In her affidavit the appellant refers to her belief that the patient would have made these payments himself, if capable. She avers to her responsibility to consult with the patient and to "inform him generally about the actions I take on his behalf which are in his best interests." She does, however, offer no evidence of any aspect of this consultation process, and in particular what she told him and what the patient said about the proposed gifts. The Trust were able to obtain evidence through medical and other professionals who had cause to speak to the patient during 2019:

a) An advocacy manager's report of 8 July 2019 states "I asked [the patient] whether he had ever gifted money to his parents, or asked his sister to do so.

He said that when he was 28 he might have agreed to give them £100 but that was just one payment." He is later reported to have said that he wished the money given to his parents to be returned, and that he did not wish future payments to be made to his parents. (The patient would have been 28 sometime in or around 2000.)

b) A psychiatric report of 7 August 2019 indicates that the patient could remember giving about £100 to his mother at Christmas some years ago. He said that he would be "okay" with £500 being gifted, but said, when asked about thousands, he would not have agreed to that. The patient was unaware that his father had been receiving gifts at all. The psychiatrist was of the opinion that the patient had the capacity to understand the giving of individual gifts of hundreds pounds but did not have the capacity to understand the implications of giving larger gifts over a prolonged period.

c) A social work report of 2 September 2019 states:

> "During discussions with [the patient] in relation to his money having been gifted to his parents, [the patient] stated that he was not previously aware that this had been happening. He further stated that he did not want any further gifts being made and that if it was possible he wished to have this money returned either in full or in part at least."

[29] The appellant submitted that the patient was going through, what she described as a particularly bad time during 2019, and anything that he did say could not be relied upon as being accurate. She offers no specific medical evidence to support that assertion, and there is no specific mention of this in any of the reports. The psychiatric report of August 2019 summarises the patient's condition as follows:

> *"[The patient] has a long history of paranoid schizophrenia which manifests as both positive and negative symptoms and some cognitive dysfunction. He had been deemed incapable of managing his financial affairs in 2013. He is able to understand some financial concepts if they are simple but his thought disorder and inattention means he has a poor concept of higher numbers and long-term planning."*

The report concludes with the following:

> *"It is also clear that [the patient] is quite vulnerable to undue influence by others. He finds it distressing to talk about financial matters preferring to leave these in the hands of others so he doesn't have to worry about them. This tendency could be*

used by others to make decisions which may not necessarily be in his best interest and makes him vulnerable."

[30] The court recognises that the patient is a man with restricted mental functioning. He could be capable of lucid intervals, but this evidence from the various reports in 2019 must be treated carefully. It does indicate a theme that the patient knew that he had from time to time made gifts to his mother (with no mention of his father), but he considered the gift or gifts to be in low hundreds of pounds. He was content with those gifts, although he expressed a view that he was expecting some repayment in the future.

[31] The probative value of what the patient is recorded to have said in 2019 is modest. Its real significance, however, is that it provides no support for the evidence from his parents and the evidence and submissions from the appellant, that the patient regularly gave money to his parents, he knew the quantities of those gifts, and he was content that his sister giving significant amounts of his money to his parents on a regular basis.

[32] A further issue to be considered is the scale of the gifts. As referred to in [18] above, the patient had modest assets, with modest income and expenditure. His current assets come to £13,000. When this is aggregated to the total transfers to the parents the total estate comes to about £40,000. It is very hard to come to any conclusion that the level of gifts to his parents representing 67% (two-thirds), or thereabouts, of his total assets could be regarded as reasonable, as is asserted by the appellant, or at a level that the patient, had he been capable, would have made after receiving advice from a competent solicitor.

[33] The patient is aged 47. The saving of any surplus of income over expenditure would be a prudent exercise to build up a reserve to meet possible future expenditure which may be necessary for his care and general needs. The appellant made no attempt to do this, and in fact appeared to have taken steps to reduce his assets, and for no stated reason.

[34] The appellant sought to rely on some English authorities, but they are of little value to this court for two reasons. First, each case is very much fact specific particularly as the court is considering what actions the patient would have taken had he been capable, and received competent legal advice. Secondly, some of the authorities relate to the application of the English Mental Capacity Act 2005. The Mental Capacity Act (Northern Ireland) 2016 will in due course bring in similar provisions as the 2005 Act, but the relevant provisions have not yet been commenced. This legislation refers to a "best interests" test and follows a distinct judicial structured decision making process. It is different from the test derived from the current 1986 Order (see Lewison J in *In the matter of P* [2009] EWHC 163 Ch at [21]). Many of the features of the "best interests" test could apply when considering what a capable person, properly advised, would do with their money.

Most people, after all, do act in their own best interests. However, the tests are different, and this court must follow the approach set out in *G*.

[35] I therefore consider that these are transfers that the patient would not have made had he been capable of managing his own affairs and had received the advice of a competent solicitor.

Should the court order recovery from the appellant?

[36] The appellant has referred to an Australian case, and I would echo the observations of Olssen J in *Maelor-Jones v Heywood-Smith* [1989] 54 SASR 285 that the court should have regard to whether the person (in the context of the case before me – the appellant) has acted *"honourably, fairly, in good faith and in a common sense manner, as judged by the standards of others of a similar … background."*

[37] That, of course, is only one of the factors to be taken into account. The other significant factors are that the patient has lost £26,700 of his money, representing two thirds of his total assets. Recovery from the recipients of these tainted gifts is unlikely. They are not in a position to repay the amounts. The loss has arisen due to positive acts taken by the appellant and did not arise due in inadvertence or mistake. There is absolutely no evidence that the appellant acted dishonestly in her dealings with the patient's money. It is, however, difficult to discern an abundance of any of the other three attributes set out by Olssen J in *Maelor-Jones*. It is regrettable that the appellant did not seek the advice of more experienced professional colleagues, both in the context of her dealings as authorised person and in relation to these proceedings. Had she done so, she could well have avoided the problems which have arisen in this case. It is sometimes very difficult to unravel personal and emotional issues arising from familial ties from a fiduciary duty that is owed.

[38] The appellant by her conduct removed £26,700 from the bank account of the patient. Fairness demands that that money be returned, and it is entirely appropriate that the appellant should repay it. She was in breach of her duty to the patient and to the court, she did not act reasonably, and her attempts to deny, and avoid the consequences, only compound the matter.

[39] These gifts could not be regarded as being in furtherance of the patient's interests. They could not be regarded as either reasonable or excusable by any standard of fairness. The order of the Master was entirely correct. The appellant's appeal will be dismissed. I understand that she has already repaid the money, so no further order is required save for the question of costs.

Costs

[40] The appeal has been dismissed and the costs will follow the event. It would not be appropriate that the respondent's costs be either borne out of the patient's assets or out of the public purse. The Trust became involved in this case as a result

of allegations made by the appellant concerning the conduct of Trust staff. Those allegations are unfounded. The appellant persisted in continuing with them before the Master and there was a costs order below. She continued to refer to them in position papers before this court, but wisely did not refer to them at the hearing of this appeal. However, by persisting with the allegations, this required the involvement of solicitors and counsel to protect the interests of the Trust, and its employees, and again it would not be appropriate that the patient or the public purse should bear the costs associated with their appearance.

[41] The appellant shall pay the reasonable costs of the respondent and the Trust, to be taxed in default of agreement.

The affairs of the appellant's father

[42] The appellant has asked me to consider referring the conduct of the Master to the Attorney General. The allegations she makes against the Master are disjointed and lack clarity, but, in any event, appear to relate to the affairs of her father, and the interconnection between the courts of the Republic of Ireland and Northern Ireland. Should the appellant's father have any complaints concerning his affairs in either jurisdiction then he should take the necessary steps to protect and enforce any property rights in either or both jurisdictions. From the limited information placed before this court, it has nothing to do with the affairs of the patient, which are the subject of this appeal. In addition, there is no evidence of any wrongdoing on the part of the Master, and I decline to take the steps suggested by the appellant.

Conclusion

[43] The appeal is dismissed with the reasonable costs of the respondent and the Trust to be paid by the appellant, and to be taxed in default of agreement.