Neutral Citation Number: [2016] IEHC 335

THE HIGH COURT

[2014 No. 3909 P.]

IN THE MATTER OF Q., A MINOR

AND IN THE MATTER OF ARTICLE 40.3 AND ARTICLES 41, 42 AND 42A OF THE CONSTITUTION

AND IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964 (AS AMENDED)

AND IN THE MATTER OF THE CHILD CARE ACT 1991 (AS AMENDED)

AND IN THE INHERENT JURISDICTION OF THE HIGH COURT

BETWEEN

CHILD AND FAMILY AGENCY

PLAINTIFF

AND

Q., A MINOR REPRESENTED BY HER GUARDIAN *AD LITEM* GRÁINNE GRENNAN

AND A.B. (THE MOTHER) AND C.D. (THE FATHER)

DEFENDANTS

AND

HEALTH SERVICE EXECUTIVE

NOTICE PARTY

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 16th day of June, 2016

1. This judgment concerns a review of special care in the case of a minor. Q., the subject matter of these proceedings, is a fifteen year old girl, who has been in special care for most of the last two years since April, 2014. She has had no less than 23 residential care placements. There are only three special care units in this State and her stay in each of the three units has presented significant challenges to her carers and indeed to Q. herself who presents at this stage as a young person in deep distress although there has been some improvement.

2. This judgment proposes to address a number of issues, which arise by virtue of the evidence heard and submissions made, as follows:-

- The systemic issues around special care as highlighted by this case and this Court's response to these issues.
- The possibility of an agreed protocol between the Health Service Executive and the Child and Family Agency to alleviate the *lacunae* in care provision which arises through the historical development of the two parallel services.
- Such directions for the care of the minor during her remaining time in special care as estimated, according to the psychiatric evidence in March, 2016, as needing to be prolonged for a further six months, although by June, 2016 now seen as coming to an end because of her improved presentation.
- A plan for a step down placement for the minor from secure care to be developed in parallel with the educational and therapeutic interventions now available to her in special care.
- The law applicable to this case.

3. A special hearing was held on 2nd, 3rd and 8th February, 2016 and further evidence was heard on 18th March, 2016. This judgment is made on the basis of the evidence heard on those occasions, along with the various reports submitted to the Court when this case was before it for regular review and the legal submissions made by the parties, as well as a wide range of documentation from the Child and Family Agency on policy and procedure and a minimum of two thousand pages of notes taken during the minor's time in special care, recording her movements and the incidents and interventions.

Background to the Case

4. Q.'s father, who is the third named defendant, had sole custody of Q. from when she was approximately 10 months old. Q. and her father resided with his parents until Q. was two and a half years old when they moved to their own home. There has been no period of sustained engagement by her mother, the second named defendant. Q. has attempted to make contact with her mother on a number of occasions and although there has been some response it has not been sustained.

5. Q. came to the attention of the social work department in March, 2013, due to concerns relating to her "at risk" behaviour including incidents of self harm. Her father sought help from the State to manage her concerning behaviours. She was placed, with the consent of her father, in a number of out of hours foster placements in January and February 2014. It is a matter of fact that all of these placements broke down. She was then placed in a private residential unit with a high level of support and unfortunately she continued to place herself in extremely high risk situations. The level of concern for her became so serious that an application was made for an assessment for special care in March, 2014.

6. Q. was detained in Coovagh House Special Care Unit by continuous Orders of the High Court from 17th April, 2014 until 13th November, 2014. Her step down placement to a private residential unit broke down and, following a period of five nights in LeFroy House, Q. moved to a placement in Ashfield House. This placement broke down on 5th January, 2015. She was then placed in a short term emergency placement in Mullingar until another application was made for special care and the order was granted by the High Court. Q. was further detained in Coovagh House by continuous orders of the High Court from 23rd January, 2015 to 9th November, 2015.

7. On 9th November, 2015, by Order of the High Court, Q. was discharged from special care in Coovagh House and detained in Gleann Álainn Special Care Unit. The Child and Family Agency applied for this transfer on the basis of Q.'s best welfare interests and considering that there had been an escalation in her behaviours and she was being held on a "single separation" basis which could not continue for a prolonged period of time. Counsel for the Agency also noted at the time of the application that Q. was being negatively impacted upon by her peers in Coovagh House and that moving away from the Limerick area might assist her to make further disclosures about a significant incident which happened in August 2015. The merits of Gleann Álainn were set out to include the fact that it is a girls only unit and that it has a long track record of dealing with difficult cases. Both the guardian *ad litem* and the father consented to the transfer from Coovagh House to Gleann Álainn.

8. Q. was detained in Gleann Álainn by continuous Orders of the High Court until 29th January, 2016. On that date, she was moved by Order of the High Court to Ballydowd Special Care Unit. The Child and Family Agency applied for the transfer to Ballydowd on the basis of Q.'s best and immediate welfare interests. Counsel for the Agency emphasised that Ballydowd is the most advanced of the special care units in the State and that there is a specific psychiatric service attached to the Ballydowd Unit. Counsel for the guardian *ad litem* stated that they were consenting on the basis that they believed Q. was not safe in Gleann Álainn and that anywhere would be better than where she was. Counsel for the father stated to the Court that he was neither consenting nor objecting to the move as he was appalled at Q.'s treatment in Gleann Álainn but he was worried about what may occur in Ballydowd. Q. remains in detention in Ballydowd at this time.

Summary of the Expert Evidence on the Systemic Issue Concerning Psychiatric Services in Special Care

9. The issue of the provision of psychiatric treatment to minors in special care facilities was first highlighted because of an email regarding this case sent by Dr. Eamon Raji, Consultant Child and Adolescent Psychiatrist with the CAMHS (Child and Adolescent Mental Health Service) Inpatient Unit in Merlin Park, Galway on 15th October, 2015. In this email, Dr. Raji highlighted the difficulties he faced in providing consultative support to Coovagh House in Limerick. He stated that he believed that Coovagh House (referred to below as CH) residents required:-

> "1) A full multidisciplinary CAMHS service, like every other young person is entitled to. I fall short in this regard due to my role being consultative and the absence of CAMHS MDT back up. I personally find this dissatisfying in that the young people with the most complex difficulties receive less than treatment as standard.
>
> 2) A local CAMHS team, that would be more responsive to the young people's needs in CH. Due to my commitments and distances involved, I find a simple review of a young person may take an entire days work with the travel involved.
>
> 3) A clear and equitable referral pathway for young people in CH. As far as I am aware the only avenue to the local CAHMS for a one off review is through the A/E dept, I do not think that standard GP referrals are accepted."

This Court also heard evidence from Dr. Raji on 10th December, 2015. He told the Court that it would be vastly preferable if he or another suitably qualified consultant psychiatrist were based in Limerick in order to better attend at Coovagh House, especially to oversee the administration of medication. He did, however, tell the Court that some workable solutions have been proposed for the time being including that Dr. Raji would be made aware of new arrivals in Coovagh House and be able to review their files in advance of any emergency occurring.

10. Ms. Laura Tynon, Acting Manager of Coovagh House Special Care Unit, gave evidence on 12th November, 2015 on the issue of the provision of psychiatric services to minors in special care in Coovagh House. She indicated that there was a current vacancy for a consultant child and adolescent psychiatrist in the Limerick area which has caused the arrangement by which Dr. Raji travels from Galway to Coovagh House once a month. Ms. Tynon stated that she was satisfied with the adequacy of the psychiatric services that were being provided by the HSE to Coovagh House residents. This Court does not accept her evidence in this regard. Ms. Tynon explained that when Dr. Raji was unavailable and psychiatric support is required, Coovagh House can telephone the local on call GP service and then go to the A & E Department to access a psychiatric nurse who can refer the young person to the local CAMHS team a day or so later. Ms. Tynon emphasised that none of the minors in special care have a mental illness as defined in the Mental Health Act 2001. In terms of a psychiatric assessment, Ms. Tynon identified that the GP does an assessment of the young person within 24 hours of their arrival in Coovagh House and also that the young person's file would be sent to Dr. Raji for review.

11. Ms. Tynon accepted that young people should not be in Coovagh House unless there is a therapeutic benefit to them. She identified the benefits of being in Coovagh House as providing a safe space for young people in order to care for, support and listen to them so that staff can help them to identify safer choices going forward. Ms. Tynon accepted that psychiatry is part of the therapeutic benefits that must be offered to young people in special care although she asserted that there are a number of other therapies available to them.

12. Ms. Tynon was asked in theoretical terms about the facilities that were available to a young person in Coovagh House who may have been the subject of sexual assaults. In response, Ms. Tynon detailed that there was GP provision, access to the local sexual assault clinic, access to the local gardaí, and ACTS (Assessment, Consultation and Therapy Service) provision of therapeutic engagement. Ms. Tynon gave evidence to the Court that these young people are not always able to engage in therapy around these traumatic events immediately but that as the young person indicates an ability to engage the suitable therapy will be provided.

13. Dr. Brendan Doody is the Clinical Director of the Linn Dara South West Dublin Community Child and Adolescent Mental Health Service which provides consultancy assistance to Ballydowd Special Care Unit and he gave extensive evidence to this Court on 2nd February, 2016. Dr. Doody explained that a consultant from the Linn Dara Service dedicates one day a week to the assessment and sometimes treatment of children in the Ballydowd Special Care Unit. He stated that the doctor who previously fulfilled that role had resigned in December, 2015 and that Dr. Ekata Uduehi had taken up this position since then.

14. Dr. Doody told the Court that there were national plans for the development of adolescent psychiatry with an intention to recruit a team within 2016 which would have a national consultation role. He also gave evidence that there was a plan to create a new ten bed facility to provide adolescent secure in-patient services in Ireland. This Court notes this evidence and deems such a unit to be

extremely urgent at this stage.

15. Dr. Doody affirmed his belief in the importance of seeing the young person in order to form a judgment in relation to the minor's mental health needs. He stated that files would also be assessed but that it should be remembered that each individual case is unique. He noted that the psychiatrist can have an input in informing the wider care plan for the young person. He further stated that even if the young person does not have a mental illness within the definition of the Mental Health Act 2001, that the psychiatrist can provide assistance to the care team by giving suggestions and methodologies for coping with the young person's issues. Dr. Doody felt that it was important for the psychiatrist to adapt to the needs of the young person. He opined that in an emergency the psychiatrist could and should be contacted. He was of the view that that may involve a phone call in order for the psychiatrist to advise the social care workers in the unit or the psychiatrist may indeed be required to go to the unit.

16. Mr. Éanna O'Brien, Director of Children's Residential Services for the Child and Family Agency, gave evidence to this Court on 2nd February, 2016. He identified the theory of special care as being the very extreme and short term end of the range of residential care facilities that are available in the State. The stated policy is to use special care as a short term, stabilising, and secure placement. Mr. O'Brien was involved, at the point when he was giving evidence, in attempting to bring to the Court what both agencies hope will be an agreed protocol between the HSE and the Child and Family Agency covering the provision of psychiatric services to special care facilities. Mr. O'Brien envisages the potential role of a consultant psychiatrist for children in special care in one of three possible ways;

> (a) the psychiatrist would meet the young person, read the file and then decide that there is no role for psychiatry in their ongoing care plan, or
>
> (b) the psychiatrist would, after meeting the young person and reading their file, decide that it is appropriate for a psychiatrist to have an advisory and supportive role for the staff in direct contact with the young person, or
>
> (c) the psychiatrist may decide that there is a discreet role for a psychiatrist in the care of the young person.

This Court, on the evidence of Mr. Éanna O'Brien, notes that there is acceptance by the Child and Family Agency that there is a role for psychiatric involvement at one or other of the three levels as set out above for each young person who is admitted to a special care unit and the Court shall refer to the above principles as the "O'Brien Principles".

17. The Court accepts Mr. O'Brien's evidence that the general aim is to keep a young person in special care for three months with a Child in Care Review at least once a month. Mr. O'Brien was hopeful of a situation arising where, in advance of an application for a special care order, a placement plan would be prepared and it would be made clear in that plan which person would be in charge of each element of the young person's care.

18. Mr. O'Brien envisaged that a consultant psychiatrist would have to provide a written reasoned decision as to whether or not he or she believed that psychiatric care was necessary in each particular case. He pointed out that the HSE govern the provision of psychiatric healthcare resources and that this is the reason for the necessity to produce an agreed protocol going forward. He believed that the accident and emergency departments of hospitals should not be used as a substitute psychiatric service for these children. Mr. O'Brien noted that not all children in special care require psychiatric treatment directly but that a decision should be made efficiently and in a reasoned manner by a psychiatrist. Mr. O'Brien accepted that psychiatric services need to be improved and standardised so that both the young person and indeed the Court know what to expect.

19. This Court accepts on the evidence of Mr. O'Brien representing the Child and Family Agency and Dr. Doody, where both are in agreement, that a psychiatrist should actually meet the young person as well as having access to their files.

20. Mr. O'Brien explained to the Court that special care units have evolved over time without formal legislative review. He accepted under cross examination that although the Childcare (Special Care) Regulations 2004 apply only to certified units and none of the units have been certified to date, that the regulations are applied in practice. Mr. O'Brien also pointed out that there is a plan for a set of binding departmental guidelines in relation to the use of "single separation" in special care and detention units. Mr. O'Brien, on behalf of the Child and Family Agency, accepted that the Court can only detain children if there is an identifiable therapeutic benefit and that this is not just desirable but required by law.

21. Dr. Toby Haslam Hopwood is a clinical psychologist working with ACTS (Assessment Consultation Therapy Services) and he is linked with Coovagh House Special Care Unit. His evidence was to the effect that any young person in special care deserves to have a comprehensive view taken as to their therapy including psychiatry and an assessment as to whether pharmacological assistance is needed. He felt that the social workers within the special care unit do the most important work with the young person and they should be supported with the assistance of expert advice.

22. Significantly, Dr. Haslam Hopwood felt that it was important to note that there would be a benefit in having psychiatric support embedded in the special care unit. He noted that a consultancy type situation can often do more damage than good and that what was needed was the embedded clinician who would be able to provide support to the social care workers in the unit as intensive therapeutic work is required.

23. Mr. Lorcan O'Neill, Manager of Gleann Álainn Special Care Unit, gave evidence on the issue of psychiatric care on 2nd February, 2016. At that point in the hearing of this case it was stated by Mr. O'Neill that the consultant assigned to Gleann Álainn and had decided to stop attending at the secure unit. However, subsequently, Mr. O'Neill indicated that that doctor appeared to have changed his mind and was now willing to attend. In relation to Mr. O'Neill's evidence, it appears that personnel in the unit use their own discretion as to what they thought might be relevant to the psychiatrist. He gave evidence that they would send email synopses of events to the psychiatrist if they believed it to be psychiatrically relevant. It seems to the Court that it should be the judgment call of the psychiatrist concerned to decide whether material is relevant or not and not the role of the care worker or other personnel to so decide. It is the view of the Court that Mr. O'Brien's proposed model for psychiatric involvement as set out in paragraph 16 of this judgment would overcome some of the obstacles which pertain at present.

24. The evidence of the manager of Gleann Álainn was to the effect that since January, 2016, the Consultant Child and Adolescent Psychiatrist with CAMHS assigned to Gleann Álainn Dr. Finbarr O'Leary ceased to provide consultancy services to Gleann Álainn and that, according to his evidence, they now have no psychiatric input whatsoever. Q. for example, was never seen by the psychiatrist assigned when she was in Gleann Álainn although her file was apparently reviewed by him and although the psychiatrist is described by Mr. Lorcan O'Neill as having contributed to a number of clinical team meetings about Q.'s care. It was also noted that Q. did meet the Child Psychiatry Registrar who is a member of the CAMHS team working under that consultant while in hospital after a self harm episode in January 2016. There was no follow up to this as it was confirmed by letter at that time that Q. was not suffering from a

major psychiatric disorder.

25. Dr. Finbarr O'Leary did not give evidence to this Court. He provided a short letter to the Court, dated 21st January, 2016, which indicated that he has assessed Q.'s file and attended the weekly Multi Professional Meeting in Gleann Álainn. He noted concerns about the "quality of evidence being presented to the High Court with its apparent emphasis on the need for [Q.] 'to be seen'" by him.

26. Evidence was heard on 3rd February, 2016 from Ms. Freda McKittrick who is the manager of the guardian *ad litem* service provided by Barnardos and who has extensive experience regarding special care. Her view was that the provision of psychiatric treatment to children in special care has been an issue for the High Court for the past 15 years. She reiterated what Dr. Haslam Hopwood had indicated that there needs to be an embedded therapeutic service which works in the daily life of a young person. Ms. McKittrick also emphasised that the necessity to make step down provisions is central to the whole process of special care and that Q.'s case highlights the difficulties in the system. She stated that a starting point upon an application for special care could be a thorough multi-disciplinary assessment of the young person by a team who know each other and who regularly work together. Ms. McKittrick believes that special care needs a full root and branch reform. She further noted the problems which can and have occurred in getting CAMHS (Child and Adolescent Mental Health Service) to intervene in a meaningful way when a child does not have a defined mental illness but continues to have medical health difficulties.

27. Ballydowd Special Care Unit currently has the consultant services of Dr. Ekata Uduehi, Consultant Child and Adolescent Psychiatrist from the Linn Dara CAHMS. She can provide assessment and treatment of young people in Ballydowd once a week. Dr. Ekata Uduehi gave evidence to this Court on 18th March, 2016 in which she noted that an embedded psychiatric service in the special care units is preferable.

28. Dr. Doody gave further evidence on 18th March, 2016 where he stated that he was in agreement with Dr. Uduehi. He identified that the main role for the child and adolescent psychiatrist in the special care setting, after an assessment is completed, is one of support for the staff working directly with the young person. The psychiatrist can assist in formulating plans and identifying what can be done for the young person in order to meet their needs. He noted a problem which came up in Q.'s case, but is not specific to it, that there was no individual who had continuous clinical responsibility for Q. and that she had seen a number of psychiatrists on a "once off" basis.

29. Dr. Keith Holmes, Consultant Child and Adolescent Psychiatrist, and Lead Clinician at the Lucena Clinic provided an independent report which he adopted as part of his evidence when he gave oral evidence to this Court on 18th March, 2016. In his report, Dr. Holmes stated in reference to the work of a psychiatrist in special care:-

> "Essentially, the task of Psychiatry, in trying to find a clear condition to target, in the midst of so much trauma and disruption, can sometimes be akin to searching for a needle in a haystack, whereas, in the normal course of events it can be more like identifying the cloud in a blue sky."

30. Dr. Holmes further identified the difficulties in relation to the CAMHS team working with children in special care and even more so when they move on to their onward placements which can be summarised as follows:-

> "1) The child has to liaise with the local CAMHS consultant wherever they move to so there is continuous psychiatric input.
>
> 2) The young people in special care with huge behavioural difficulties but without a major mental illness are not, technically speaking, part of the remit for CAMHS and are "at risk of falling between stools."

It is the view of Dr. Holmes that until such time as the ACTS team have access to a consultant child and adolescent psychiatrist on a more fixed basis, there will continue to be frustration because of the mismatch between the ACTS remit and the CAMHS remit. The Court notes the complication in that ACTS is provided by the Child and Family Agency while CAMHS is provided by the HSE.

31. Many of the experts stressed that there is a national shortage of child and adolescent psychiatrists. The Health Service Executive also stressed to the Court that they are currently attempting to hire child and adolescent psychiatrists across the country and that they are having difficulties with same.

Summary of Evidence Regarding the Welfare of Q.

32. Dr. Brendan Doody gave evidence on 2nd February, 2016 that he had met with Q. on 1st of February, 2016 and he also met the unit manager of Ballydowd Special Care Unit where Q. had been moved on 29th of January, 2016. At the time of her interview with Dr. Doody, Q. was expressing the desire to return to her family. However, since that interview her wishes, as clearly stated by her to social services and her guardian *ad litem*, have changed and she no longer wishes to return to live with her father in the family home.

33. Q. told Dr. Doody that she felt that therapeutic interventions had not been successful. However, she spoke to him positively about the ACTS team. Dr. Doody found that Q. has a high level of impulsivity and has difficulty in managing emotions.

34. Dr. Toby Haslam Hopwood gave extensive evidence on 2nd February, 2016 as to Q.'s welfare. He told the Court that he has been working with Q. since approximately April, 2014 upon her first admission to Coovagh House Special Care Unit. He felt that it would be wrong to say that Q. has not had any benefit from special care. However, he did note that a previous attempt to step her down with Compass did not work out and he felt that had undone a lot of the previous progress made.

35. Dr. Haslam Hopwood gave his view that Q. had a combination of ambivalent and avoidant attachment disorder. He explained that attachment is the relationship between child and primary care giver and that it helps the child to build up a secure sense of self and when that relationship is not good it affects the future relationships of the young person. He stated further that a consistent therapeutic team needs a number of years to work towards solving these difficulties. He felt the recurring serious incidents involving Q. are attributable to a dysfunctional attachment. A number of serious traumas in Q.'s life have also had an effect and she also has had difficulties with her sense of rejection from her mother. He stated both in evidence and in his report that staff have focused too much on Q.'s behaviour and have neglected to address the distress she is trying to communicate through that behaviour.

36. Dr. Haslam Hopwood's view was that Q. needs a consistent therapeutic team but that she does not necessarily have to be in special care. He felt that Q.'s behaviour is a cry for help and that she will continue to act like this until she feels safe. He felt that the plan has always been to have her in special care for a short time but that there are insufficient onward step down placements. He also stated that he believed that she is experiencing special care as a punishment.

37. Dr. Haslam Hopwood stated his belief that there is no therapeutic benefit in the future detention of Q. He noted that when her previous step down placement with Compass broke down she saw this as another form of rejection. The placement broke down as a result of a direct test by her of whether they would be able to handle her in that residential care unit. When asked by the Court about the issue of Q. not appearing to get much direct psychological support in response to a trauma suffered by her in August 2015 as a result of serious alleged sexual assaults upon her while she absconded on a mobility from Coovagh House, Dr. Haslam Hopwood stated that adults have let these children down again and again.

38. Dr. Haslam Hopwood outlined, in his report, Q.'s needs for her ongoing placement. He identified that any placement must expect and be supported to tolerate a high degree of disruptive behaviour and remain engaged with her, giving her the clear message that the adults can and will take care of her. Given that Q. has ongoing difficulties with peer groups, Dr. Haslam Hopwood recommends that Q. be placed, at least initially, in an individual occupancy residential placement. He further emphasised that it was important that her father be included in her onward placement as much as is feasibly possible.

39. Ms. Gráinne Grennan has been Q.'s guardian *ad litem* since May, 2014 and gave evidence on 3rd February, 2016 to this Court. Ms. Grennan gave evidence that when she met Q. she found her to be a shy young girl although she had already left a trail of destruction in her wake at that point. Ms. Grennan gave evidence that Q. is a typical teen who loves fashion and beauty and takes pride in her appearance. Ms. Grennan noted the struggle that has been and continues to be her relationship with her mother and that the rejection by her mother overwhelms Q. She also noted the horrendous distress and trauma that Q. has experienced in relation to the multiple and serious sexual assault allegations that the young person made in relation to an incident which occurred in August 2015.

40. Ms. Grennan pointed out that Q. has had no less than 23 placements of various types since 2014. She gave evidence that she believes there has been too much of a focus on Q.'s behaviour, as terrible as it has been. She identified that the young person escalates her behaviour to match her emotions and that the behaviour is a clear call for help. Ms. Grennan agrees with the assessment of Dr. Haslam Hopwood that Q. has an attachment disorder. She describes her as defensive and that she attempts to distract and disconnect. Ms. Grennan noted that the young person needs stability, security, acceptance and affection. She also pointed out that Q. is very easily influenced by her peers.

41. When Ms. Grennan visited Q. in Ballydowd on 1st February, 2016, where she had been moved by the Court, she noticed that Q. had gone from one extreme to the other. Q. had been deeply distressed in Gleann Álainn when Ms. Grennan had previously seen her and did not appear to be looking after herself but she was now extremely heightened and wearing a lot of make up. Ms. Grennan gave evidence that Q. was distracted by one of her male peers and would not engage with her at all. When Ms. Grennan left that night Q. caused further "mayhem".

42. Ms. Grennan pointed out that Q. does not want a "replacement family" or to be put with professionally trained foster carers. However, Ms. Grennan described her own involvement with another case where the young person lived with their mother, care staff lived next door and came into the house at key points in the day and were available at all times to help and that had worked well in that case. Since Ms. Grennan gave this evidence, Q. has indicated a desire not to return to live with her father although Q. has been known to change her opinion about such things. In her evidence, Ms. Grennan emphasised that Q. needs a tailor made package and that she is not happy for Q. to remain in secure care for a much longer period of time. Ms. Grennan noted that she is pessimistic about any attempt to set Q. up in a further residential care unit and that the young person needs a level of normalisation in her life and a mother figure. A 24 hour supervised unit near to her family is what Ms. Grennan felt was necessary along with one-to-one teaching given that Q. is bright although she has these difficulties.

43. Q.'s grandmother gave evidence of her continuous contact with the young person and that this young person is usually on her best behaviour with the family but that they recognise they cannot keep her safe without support. Essentially, her grandmother wants the special care order to be lifted. Along with her son, Q.'s father, she was prepared to take the risks associated with that so long as there is a plan and structure in place and Q. must have bought into the plan. Q.'s father also gave brief evidence on 3rd February, 2016, to the same effect that he did not wish for Q. to continue to be detained in special care but that significant supports were required for her to live anywhere else.

44. Dr. Ekata Uduehi, Consultant Child and Adolescent Psychiatrist gave evidence on 18th March, 2016 and also provided a report on Q. to the Court. She was of the opinion that Q. reaches the diagnostic criteria for a reactive attachment disorder along with a conduct disorder which can be understood in the context of her fraught and fractured childhood. Dr. Uduehi identified that while Q. does not have a psychotic illness she does have psychological problems including an inability to regulate her emotions. Dr. Uduehi stated that long term psychotherapy would be beneficial to Q. She also identified that CAMHS should follow up with Q. in the future as she is at an increased risk of developing a major mental disorder and that psychotherapy will have to continue into the future outside special care.

45. Dr. Uduehi recommended a further period in secure care for Q. of at least six months. It is her clinical opinion that releasing Q. from secure care at this stage may put her at serious risk to herself which may result in dire consequences. Although Dr. Uduehi admitted that there was a risk to Q. of institutionalisation she indicated that the risk had to be weighed against the more extreme risk of death associated with Q. leaving special care with her current lack of concern for her own safety and risk taking behaviours.

46. Dr. Uduehi noted that the other benefit for Q. in remaining in special care is to allow for the development of stable therapeutic relationships with the ACTS team. Q. needs to be equipped with basic skills to manage her emotional and behavioural difficulties. Any possibility of moving on from special care would require significant engagement from Q., in Dr. Uduehi's opinion.

47. Dr. Doody gave further evidence on 18th March, 2016 where he stated that he was in agreement with Dr. Uduehi's assessment of Q. and agreed that she should remain in special care for at least a number of months. He further agreed with Dr. Uduehi that Q. was at an increased risk of developing a major mental disorder. He noted that Q. had been put at a disadvantage by the early experience of rejection by her mother and that she finds it very difficult to sooth herself.

48. Dr. Doody further noted the importance of building trusting therapeutic relationships with Q. especially when moving towards transitioning her out of special care as she finds uncertainty stressful and may attempt to sabotage herself. It is essential according to Dr. Doody that there is no break in supports for Q. and that the same services and staff need to continue to be available for her in her onward placement. Dr. Doody identified that Ms. Siobhán Anglim could continue to conduct the psychotherapy sessions that are required by Q. He accepted that there will have to be a handover to the CAMHS team in the community wherever Q.'s onward placement is and that this handover will have to be handled very carefully.

49. Dr. Keith Holmes gave evidence on 18th March, 2016. He identified in his report on Q. that there is no lack of psychiatric opinions stating that Q. does not have a major psychiatric illness. Although he agreed with this, he stated that she does have enormous

psychological difficulties and huge behavioural problems and she puts herself at enormous risk in almost every manner possible. The doctor stated that Q. has shown that she can paralyse the system with her challenging behaviour. He stated in his report that Q.'s difficulties are a function of her personality. Dr. Holmes stated that such personality difficulties are far more complicated to treat and need a high level of cooperation from Q., a level of cooperation which has thus far not been forthcoming. He agreed with the assessment of Dr. Uduehi that Q. has a reactive attachment disorder. Where he differs slightly from Dr. Uduehi is that he has also stated that she may have an emerging personality disorder which would not be diagnosed until she reaches her majority.

50. Dr. Holmes noted that continuing psychiatric assessment may be helpful and on the basis of this there may or may not be a role for medication. Dr. Holmes noted that the involvement of the ACTS team is of particular benefit to Q. as they remain committed to Q. and will be able to follow her through different placements. This will assist Q. to form trusting therapeutic relationships. Dr. Holmes stated that, ideally, there would be some joint working between ACTS and the local CAMHS team wherever Q. will reside, although this cannot be taken for granted. Dr. Holmes noted, in evidence, that the priority in special care is to give Q. a secure place and that treatment is seen as somewhat of a luxury above that.

51. In terms of the onward placement for Q., Dr. Holmes advised the Court to be cautious about any option which involves releasing Q. from secure care into a setting which is not absolutely bespoke for her, both in terms of structure and experienced staffing. He noted that Q. has shown herself very capable of bringing a placement to its knees very quickly. Dr. Holmes agreed that Q. is at huge risk and could end up dead. He stated in evidence that she is as close as a ten out of ten in terms of risk as he has seen. He agreed with Dr. Uduehi and Dr. Doody that Q. should remain in special care for a period of approximately at least six months from March 2016 going forward.

August 2015: Significant Event and the response by the professionals involved

52. On 6th August, 2015, Q. absconded while on a mobility from Coovagh House. When she returned she made disclosures about multiple alleged sexual assaults. The following is the accepted description of events from the various reports provided to the Court although it should be noted that not all of the following was subject to evidential scrutiny before the Court.

53. The Significant Event Forms which are dated from 7th August 2015 are of assistance to the Court in understanding the details of what may have happened. Q. went missing from care from 21.15 on the evening of 6th August, 2015 to 12.15 the following day. There is an indication that the fact that Q.'s mother was scheduled to meet with Q. but did not do so and could not be contacted. This had an adverse impact on Q. When Q. returned to the unit she stated that she had been drinking alcohol and had had unprotected sexual intercourse with multiple males. The general practitioner in Coovagh House gave Q. a medical check up and recommended that an appointment be followed up with CAMHS in relation to her mental health.

54. The information put forward by Q. led to two gardaí meeting with Q. in Coovagh House. The Gardaí reportedly informed Q. that, as she is a minor she could not consent to sexual intercourse. According to the minutes of clinical meetings in Coovagh House, Q. refused to give a formal statement and this meant that the investigation was put on hold until such occasion that Q. discloses more information to the authorities.

55. Q. was brought to Limerick Regional Hospital on 8th August, 2015, where she underwent a full forensic medical examination. She was presented with information booklets by Ms. Deirdre Curtin, a counsellor from the Rape Crisis Centre. The psychiatric nurse, Terry Ryan also interviewed Q. and advised that an appointment with CAMHS Limerick would be organised. Upon her return that evening there was a significant incident involving the other young people in Coovagh House where they engaged in serious property damage and threatened staff. She was then placed on "structured time away" for a period of several hours.

56. Dr. Raji, Consultant Psychiatrist attended at Coovagh House to meet with Q. on 11th August, 2015. She refused to meet with him as she stated that she had a preference for a meeting with a female psychiatrist. This is consistent with Q.'s general preference for working with female staff as noted in the Individual Work Reports and Clinical Meeting Minutes. No meeting with a female psychiatrist took place. In the minutes from the clinical meeting in Coovagh House in relation to Q. on 13th August, 2015, it was noted that Q. needed support or an appointment from CAMHS at that time.

57. The minutes from the professionals meeting on 11th August, 2015, indicated that there was a concern about potential PTSD (Post Traumatic Stress Disorder) and that Q. required psychological support at that point. It appears from the clinical meeting minutes on 20th August, 2015 and from the professionals meeting minutes on 24th August, 2015 that support was given by St. Louise's Statutory Child Sexual Abuse Assessment Unit but this was limited to devising a new care approach for Q. It was also recommended that Siobhán Anglim of ACTS, formerly working in St. Louise's Statutory Child Sexual Abuse Unit, review Q.'s file.

58. A concerning relationship appeared to develop between Q. and a male peer in Coovagh House. Over the following months Q. continued to engage in regular incidents of self harm, property damage and threatening behaviour towards staff members. This escalated to the point that Q. agreed to engage with CAMHS Naas regarding her suicidal ideation on 21st September, 2015, but this meeting does not appear to have taken place. On 29th September, 2015, while in "structured time away", Q. identified that the sexual assault remained something which she was struggling with. No reaction of the staff to this was recorded in the incident reports.

59. Q. absconded from care on 3rd October, 2015. She told the care staff upon her return that she had gone to the same location where she had been sexually assaulted in August, 2015.

60. The following day, Q. was brought to the Accident and Emergency Department at Limerick Regional Hospital due to Q. self harming. Q. was met by the psychiatric nurse, Terry Ryan. Q. sought medication and the psychiatric nurse arranged a meeting with CAMHS the following day. Q. had an appointment with Senior Psychologist Siobhán Carrick in CAMHS though the sexual assaults did not appear to be addressed by this meeting.

61. Following an incident involving extensive self harm on 7th October, 2015, Q. was brought to Limerick Regional Hospital where she was assessed by Psychiatrist Dr. Vishnu who concluded that he did not feel that Q. required psychiatric treatment.

62. Following a further incident of self harm on 13th October, 2015, when on an overnight stay in her then onward placement, Compass, Q. was brought to Limerick Regional Hospital where she was assessed by crisis nurse Áine Donnellan. She referred Q. to CAMHS however she stated to staff at the time that she was aware Q. had previously attended appointments and it was deemed that Q.'s actions were "behavioural". Ms. Donnellan indicated her view that admitting Q. to CAMHS again wouldn't be beneficial but that she was following protocol.

63. Q. attended a CAMHS appointment on 13th October, 2015, with Dr. Eithne Foley who stated that her recommendation was that

Q. did not appear to have any mental health problems and it was not necessary for Q. to attend any more appointments in their office. Q. is recorded as stating that she was only engaging in self harm so that she could be brought to A & E in order to get a cigarette from a member of the public.

64. The Compass staff informed Q. on 15th October, 2015 that they could no longer provide her with an onward placement as they could not provide an environment safe enough to meet her needs. After this placement breaking down Q. continued to display negative behaviour including self harm, property damage and aggression towards staff members until the point where this Court ultimately ordered for Q. to be moved from Coovagh House to Gleann Álainn on 9th November, 2015. This Court became particularly concerned at that point at the lack of therapeutic input after the alleged sexual assaults and the complete absence of any sense of urgency regarding same.

65. Mr. Andrew Craven, Acting Deputy Manager of Coovagh House, gave evidence on 2nd February, 2016 that he was on leave during August, 2015 when the incidents allegedly occurred. He did confirm that Q. refused to see Dr. Raji as she wished to see a female psychiatrist. Mr. Craven gave evidence that the process was to bring her to the accident and emergency department. He gave evidence that Q. was brought to hospital where she was seen by gardaí, a rape crisis centre counsellor and a psychiatric nurse. She was never seen by CAMHS directly in relation to the alleged incident in August, 2015 although she did have a meeting with CAMHS in October, 2015 relating to other issues including her ongoing self harm.

66. Ms. Grennan, guardian *ad litem*, pointed out in her evidence on 3rd February, 2016 that she had raised the possibility of Q. being referred to St. Louise's clinic before the August trauma. She emphasised that the incident in August should not be looked at in isolation as Q. has continuously engaged in at risk sexual behaviours.

67. Ms. Siobhán Anglim, Principal Social Worker with ACTS (Assessment Consultation and Therapy Services) was engaged around October, 2015 in order to do work with Q. in relation to sexual trauma as this is Ms. Anglim's area of expertise. Ms. Anglim's first session with Q. in relation to sexual trauma occurred on 12th November, 2015, as was noted in the professional's meeting minutes of 19th November, 2015. It was recognised at the Child in Care review on 17th December, 2015, that Ms. Anglim's work needed to be a priority and Q. needed the sexual assault work to be done for when she leaves special care in order for Q. to be able to keep herself safe. However, this work did not happen on a regular basis because of what was described as the competing demands on Q.'s time. Ms. Anglim gave an example of this that arrangements were made for J to go shopping for Christmas and this clashed with a session arranged by Ms. Anglim for psychotherapy with Q.

68. Ms. Anglim gave evidence to this Court on 21st January, 2016. She identified that, because of the ACTS team's knowledge of Q. they gave a presentation to the staff at Gleann Álainn about Q. and the welfare approach for her. She stated that ACTS is unique because of the fact that the team follow the young person wherever they may be moved and can build trusting therapeutic relationships. She confirmed that ACTS can continue engagement with the young person beyond special care. Ms. Anglim gave evidence that Q. should remain in special care in the short term in order to keep her safe but that a plan should be made towards transitioning her out of special care. She further noted that there will always be a degree of risk in Q.'s case.

69. Further to this evidence, Ms. Anglim provided the Court with a report dated 4th May, 2016, upon the request of the Court, detailing the therapeutic services that have been provided to Q. in relation to the sexual assaults. Since Q. moved to Ballydowd she has been able to avail of weekly psychotherapy appointments with Ms. Anglim. In the report, Ms. Anglim indentified that Q.'s engagement in therapeutic work is tentative but that she continues to be offered a safe therapeutic relationship to explore all of her adverse life experiences including her experiences of sexual assault.

Issues Surrounding Q.'s Stay in Gleann Álainn Special Care Unit

70. What occurred in relation to Q.'s care in Gleann Álainn in the month of January 2016 is recorded in the various booklets of reports provided to the Court and was confirmed in evidence by Mr. Lorcan O'Neill, Manager of Gleann Álainn Special Care Unit. The situation escalated for Q. upon her return from family access on 9th January 2016 when she refused to hand up a lighter and became threatening toward staff and was placed on "structured time away". When it became clear that she had a razor blade her status was switched to "single separation". She continued to be observed by staff although it was not safe for them to enter the A Section that she was in. The gardaí were called and assisted staff in moving Q. from the A Section to the B Section on 11th January, 2016. She remained in the B Section on a combination of "structured time away" and "single separation" depending on her behaviour.

71. On 12th January, 2016, there was an initial plan to reintegrate Q. back onto the main floor, however she assaulted a staff member and it was decided that she needed further "structured time away". However, her status was later changed to "single occupancy" in consultation with the ACTS clinician, care staff and management at Gleann Álainn based upon a risk assessment.

72. The various terms are set out in the Child and Family Agency Policies and Procedure for Special Care Services Booklet, last updated on 11th November, 2014. "Structured time away" is defined as time away from peers with intense staff intervention based on an individualised programme. It can only be done if it is in the best interests of the young person and if no less intrusive measure can be used. "Single separation" is described as the last resort option where the young person is separated from peers and staff members for their safety. It must be reviewed every 30 minutes. "Single occupancy" refers to a situation where a young person is placed living on their own with no other young people for a specified period of time and staff work alongside them. This should be done by agreement of the care team, the clinical team and the guardian *ad litem*.

73. Mr. Lorcan O'Neill, Manager of Gleann Álainn Special Care Unit, gave evidence in relation to what happened to Q. during her time in Gleann Álainn. Mr. O'Neill assisted the Court by describing some of the terminology. He explained that "structured time away" is when the behaviour of a young person is deemed to be somewhat risky to themselves and others and the young person is therefore locked away and separated from the peer group with a single staff member. "Single separation" is described as when the risk is too high and the young person is locked up without a staff member. "Single occupancy" is when the young person is living on their own in a locked section of the unit with staff interaction.

74. Mr. O'Neill gave evidence that Q., on 13th January, 2016, was placed on the A Unit on "single occupancy". He stated that she was then moved to the B Unit which was described as the safest area of the care home on "structured time away" on 19th January 2016, from 8.50pm to 11.50pm. B Unit was described as a corridor with two rooms and a bathroom with no furniture. He explained the guidelines concerning "structured time away" as requiring review every half hour.

75. On 20th January, 2016, Q. was brought to the accident and emergency department upon her return to Gleann Álainn there was an incident and she was put on "single separation" in the B Unit. Mr. O'Neill explained that from 21st January, 2016, Q. was put on "single occupancy". She was risk assessed as to what could be left in the room and it was left with almost nothing in it. Up until 26th of January, 2016, Q. remained in the B Unit with little or no furniture and little or no stimulation and he indicated that her situation was

reviewed every three days. Mr. O'Neill contended that the B Unit was the only place where Q. could be kept safe and that staff were available to her at all times. He explained to the Court that Q. has a negative impact on peers and appears to have decided to destroy all placements.

76. Significantly, under cross examination, Mr. O'Neill admitted that the guardian *ad litem* should have been consulted. He also accepted that it would have been a good idea to make the High Court aware of the situation as this was a level of deprivation of liberty not contemplated by the order of this Court. Mr. O'Neill admitted that it was very unusual to leave a young person in such a situation and that it should have been brought to the attention of the High Court.

77. Q. was interviewed and cautioned by the gardaí on 15th January, 2016 and signed a statement admitting an incident which neither her father nor the guardian ad litem were made aware of. In that regard, Mr. O'Neill admitted that her father should have been made aware and accepted that although she had care staff with her, she had no legal representative. Mr. O'Neill admitted that the staff member involved was unaware that notice should have been given to the father and to the guardian ad litem and that she should have had legal advice.

78. Under cross examination, Mr. O'Neill accepted that the correct procedure was for a young person on "single occupancy" is to note it as a significant event such that the Child and Family Agency is informed and that the guardian *ad litem* should also be informed. His explanation was that it was an oversight that the guardian *ad litem* was not included in that notification. Mr. O'Neill explained that the plan upon Q.'s return from hospital was that she would return to the A Unit but that further trouble had occurred and that the staff were left with no choice but to place her in the B Unit. Mr. O'Neill gave further evidence that, on 21st January, 2016 a further attempt was made to bring her to the A Unit but again Q. started dismantling the fabric of the building and was returned to the B Unit.

79. Mr. O'Neill noted that an informal meeting occurred on 22nd January, 2016 and that a decision was made based on a risk assessment that Q. had to remain on "single occupancy" in the B Unit and he admitted that the guardian *ad litem* was not informed of this decision. Mr. O'Neill agreed that she should have been so informed and that in their own guidelines a person outside the clinical team, which in this case was the guardian *ad litem*, should be part of the consultation process in deciding whether a young person should remain on "single occupancy". Of great concern to this Court is the further admission by Mr. O'Neill that Q.'s case was before this Court on multiple occasions during that week when she was on "single occupancy" and that the High Court was not informed of the "single occupancy" status and the restrictive detention involved on the B Unit. He described this as an oversight on the part of Gleann Álainn staff.

80. Mr. O'Neill accepted that Ms. McKittrick from Barnardos, who at one point filled in as guardian *ad litem* when Ms. Grennan was ill, was not informed as to the "single occupancy" either. He explained this by saying that Gleann Álainn was unaware that she had taken on this role. His evidence was that he tried to call the guardian *ad litem* several times to tell her about the "single occupancy" situation.

81. His evidence was that he felt that Q. seems to have lost all hope, that she feels the system has failed her and that she works herself up and then cannot seem to deescalate her behaviour. He felt that they had no option but to maintain her in the B Unit where she could be kept safe. Mr O'Neill further stated that there was never any intention on behalf of the Gleann Álainn staff or management to mislead anybody.

82. It was put it to Mr. O'Neill that had Q. been on "single separation" or "structured time away" she would have had her position reviewed very frequently every half hour in fact. Mr. O'Neill said that a major difference was that she would not have been allowed out on access had she been on either "single separation" or "structured time away".

83. When the matter was reviewed, Q. was again to remain on single occupancy in the B unit on Monday, 25th January, 2016. It was admitted by Mr. O'Neill that the guardian *ad litem* was not involved in this decision and that she should have been informed in advance. The guardian *ad litem* is appointed to represent the voice of the young person and to protect their best interests, this role is undermined if the guardian is excluded from decisions around the young person's care.

84. It is clear to this Court based on the above clear admissions that the appropriate standards were not reached and that there was a lack of transparency given that Mr. O'Neill had a duty to fully appraise the guardian and to make sure that the High Court was informed of the situation during this period of time in particular.

85. Mr. O'Neill accepted that there were things to be learned from these events and that procedures have to be adopted and the correct people should be contacted and informed. He further accepted that there were failings in that the High Court should have been made aware of these events. The Court needs to have a clear understanding of what is happening on foot of orders made by the High Court.

86. Mr. O'Neill gave evidence that Q. exposed the faults in the physical building in Gleann Álainn which is not purpose built and that he was now trying to see if he could improve the physical fabric of the building. Problems include ceilings which are too low, the absence of a gym and the necessity to have plated wall sockets. His evidence was that Q. was in a vicious cycle and that she thought she was being treated appallingly and therefore escalated her behaviour but that the more that she escalated her behaviour the more risk she posed and the more she had to remain on "single occupancy". Mr. O'Neill accepted that there was no ongoing professional developmental work done with staff or any form of training to help them deal better with such situations.

87. Mr. O'Neill also felt that many children in special care feel let down when they reach a certain stage because there is such a lack of onward placements. Mr. O'Neill felt that the major problem for Q. was that there is no onward placement for her and yet that it may be detrimental to keep her in special care at this point.

88. Mr O'Neill described Q. as seeking to be accepted and missing a relationship with her mother. He indicated that she is very good at school when she puts her mind to it and also good at baking and art. The Court noted that the description of the young person at this point in the evidence is really the first glimpse of any attributes in her personality to emerge. The Court further noted that there was only one reference in over two thousand pages of notes covering reports of her time in care refers similarly to her interest in baking, her ability in school and the fact that she likes running but otherwise the notes are fairly devoid of any personal attributes being highlighted. Mr. O'Neill then confirmed that special care should be short term and a period of stabilisation with an aim of giving a suite of therapeutic interventions and the staff were to reintegrate the young person into an onward residential placement. He stated that long stays in special care do not work and that child and adolescent psychiatry and clinical psychology are the two main pieces that you need and will help determine what else is needed and that the staff in special care units need that assistance to do the work they do. Mr O'Neill accepted that the social work reports contain all of the negatives in relation to the young person's behaviour

and that this could be looked at and changed.

89. Ms. Grennan gave evidence that she discovered on 26th January, 2016, that the young person had been locked up for a prolonged period of time, that the gardaí had interviewed and cautioned the young person, that the young person did not have sufficient toilet paper, nor did she have furniture or stimulation where she was living. Ms. Grennan described Q. as being dishevelled, pale, withdrawn and bored. Ms. Grennan said that she telephoned the national director for secure care on 26th January, 2016, and he assured her that the situation was under review. She checked the logs and records of the previous week and she also asked to see the B Unit. She described the B Unit as a bare corridor, room and bathroom and a mattress was brought in at night for Q. to sleep on. Ms. Grennan accepted in evidence that special care staff have a very difficult job and while she is acutely aware that Q. can find anything to harm herself. However, she believes something went very wrong in Gleann Álainn. This Court accepts her evidence in full in this regard.

Summary of Legal Submissions on behalf of the Guardian *ad litem*

90. Written legal submissions were filed on behalf of the guardian *ad litem* on 22nd February, 2016. These submissions set out the legal basis for the lawful detention of a minor under the inherent jurisdiction of the High Court on the basis that such a course is lawful if the action is necessary to protect his or her life or welfare. Reference was made to the decision of Geoghegan J. in the case of *D.T. (a minor suing by her mother and next friend N.T.) v. Eastern Health Board & others* (Unreported, High Court, 24th March, 1995). In that judgment, Geoghegan J. was satisfied, having regard to the principles enunciated in O'Flaherty J.'s judgment in the Supreme Court in *M.F. v Superintendent Ballymun Garda Station* [1991] 1 I.R. 189 at 205, that since such an order was necessary to vindicate the constitutional rights of the young person the Constitution empowered the court to make detention orders. The High Court was found to owe a constitutional duty to D.T. and to cater for her needs. Even though there was no express statutory power enabling Geoghegan J. to make an interim order for the detention of D.T., he was satisfied to vindicate the constitutional rights of the minor through the inherent jurisdiction of the court.

91. The Supreme Court in *D.G. v. Eastern Health Board* [1997] 3 I.R. 511 was cited as a further authority for the power to make such a detention order. It was confirmed by the Supreme Court that there is a conflict of the constitutional rights of the applicant as set out in Article 40 of the Constitution that no person shall be deprived of his liberty save in accordance with law and the unenumerated personal rights as set forth by O'Higgins, C.J. in his judgment in *G. v. An Bord Uchtála* [1980] I.R. 32 at 56:-

> "Having been born, the child has the right to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her full personality and dignity as a human being. These rights of the child (and others which I have not enumerated) must equally be protected and vindicated by the State."

92. The legal parameters of the power to detain were considered by MacMenamin J. in *Health Service Executive v. S.S.* [2008] 1 I.R. 594 at 612:-

> "…on the basis that the right to life and welfare of a minor is to be placed temporarily, and only so long as proportionate and justifiable, in a superior position in the constitutional hierarchy to other fundamental values such as liberty, equality, or bodily integrity… such an approach may never justify the abrogation or negation of fundamental constitutional rights."

93. It was emphasised that secure care orders are exceptional orders which ought to only be made when the life or welfare of a minor is at risk and when there is no less extreme means by which to protect the young person's life or welfare. The detention must, according to MacMenamin J. in *S.S. (a minor) v. Health Service Executive* [2008] 1 I.R. 594 at 602:-

> "have a rationale; [t]he purpose and objective of such detention must be educational, therapeutic and for the purpose and objective of protecting the life and welfare of such young person. The means adopted must be proportionate to the ends sought to be achieved, both as to duration, education and therapeutic care".

94. It was submitted on behalf of the guardian *ad litem* that, in order to ensure conformity with the requirements of the European Convention on Human Rights, it is clear that the rationale or justification for an order for detention of a minor in such circumstances must be clearly identified, and must have a therapeutic or welfare purpose, and be exercised only in circumstances where it is for the minimum duration, as per *D.G. v Ireland* [2002] 35 EHRR 1153 and *Boumar v Belgium* (Case No. 9106/80 (1987) 11 EHRR 1. It was further submitted on behalf of the guardian *ad litem* that the Court must be satisfied that the young person's position is sufficiently serious that he or she requires secure care. Evidence must also be put before the Court as to how, and over what period, therapeutic intervention is to take place to ameliorate that situation. It was accepted that there may be cases of such extreme urgency that there would not be an opportunity to provide such information to the court upon the special care order application. However, such information must be put before the court at the earliest opportunity. Counsel for the guardian *ad litem* referred to the Child and Family Agency's own admission criteria in regard to secure care as according to the Tusla, Child and Family Agency, *Special Care Services Information Booklet 1*, Revised 4th Edition, July 2014.

95. It was submitted on behalf of the guardian *ad litem* that if an order for secure care is made by the Court the operation of the order should be subject to regular review by the High Court. At such reviews, the court should be provided with further evidence in order to satisfy the court that the special care order continues to be necessary and appropriate. Counsel for the guardian emphasised that the young person must, in reality, be obtaining the necessary therapy or therapies to address his or her needs.

96. Counsel for the guardian *ad litem* submitted that while initially Q.'s detention may have had some beneficial therapeutic effects, over time such beneficial effects diminished and Q. began to regress. He particularly cited a note from a Staff Meeting which took place in Coovagh House on 17th September, 2015:-

> "There are no other suitable placements available for [Q.] at the present, there is risk no matter where [Q.] goes and there is no benefit to [Q.] remaining in Special Care. Social Work plus ACTS are in agreement. No therapeutic rationale to keep [Q.] detained in Special Care."

Her situation continued to deteriorate when an identified onward placement broke down. Her behaviour became more difficult with an increasing number of incidents of self harm. It was submitted that, rather than being to her benefit, her stay in secure care became deleterious to her welfare.

97. Counsel for the guardian identified that the deterioration in her situation culminated in her transfer to Gleann Álainn. Her increasingly destructive cycle of behaviour resulted in ever increasing deprivations of liberty in that she spent almost the entirety of the period from 9th January until 26th January, 2016 on "single occupancy". Counsel for the guardian *ad litem* accepted that it would

be a mistake to underestimate the difficulty of attempting to adequately protect and care for Q. in a unit which was not purpose built. However, it was submitted that her stay in Gleann Álainn, particularly in the B Unit, was of a different order to the deprivation of liberty which would apply on a normal regime in a special care unit.

98. The use of the "single occupancy" regime while Q. was in the B Unit was particularly raised by counsel for the guardian *ad litem*. It was explained in submissions that "structured time away" and "single separation" are subject to review every half hour in order to authorise their continuation. No such regular review is required in regard to "single occupancy". Counsel for the guardian *ad litem* set out the relevant procedures applicable to "single occupancy" in submissions as found in the "Policies and Procedures for Special Care" document written by Anne Wall, National Manager for Special Care and Gordon Jeyes, CEO of Tusla, last updated 11th November, 2014 which was provided to the Court. Under the heading "Procedure" it is required as follows:-

> "When having to consider Single Occupancy for a young person, this centre will
>
> 1) Meet and/or consult with all people who have a *bona fide* interest in the case before a decision is reached. This will include the young person, social care staff, management, clinical professionals, social work team, parents/guardians, Guardian *ad Litems* and the national manager for special care services (…)
>
> 2) Notify the intervention as a significant event in line with the Centre's policies and procedures and continue to notify when reviewed, indicating a rationale to continue or stop."

99. The guardian *ad litem* noted in evidence that she was not involved in the decision making process in relation to "single occupancy" nor was she involved in the review process which decided to continue Q.'s "single occupancy" arrangement. It was submitted on behalf of the guardian *ad litem* that it would be desirable that the greater the level of deprivation of constitutional rights, the more assiduous and rigorous must be the application of the relevant procedures which have already been put in place. This Court fully accepts the evidence of the guardian *ad litem* in this regard and the legal submissions made on her behalf.

100. It was further submitted that Q.'s history in special care highlights the need for early identification of the necessary therapeutic interventions and provision of same. It also highlights the need for suitable step down placements as without them being available when the young person is ready to step down the young person may become frustrated and any improvements that have been made may be undermined.

101. The issue of the provision of psychiatric services was also raised in the submissions on behalf of the guardian *ad litem*. A comprehensive assessment by a psychiatrist who had met with Q. did not take place up until the order of this Court was made in the context of the present review. It was indicated that the guardian *ad litem* had persistently sought that appropriate psychiatric services be made available to Q. It was submitted that arrangements need to be put in place which ensure that adequate and appropriate therapeutic services are available to minors in special care so that they can receive effective treatment in a timely manner. If such arrangements are not in place then this undermines the legal justification for the detention by the High Court of that minor in special care.

102. It was noted by counsel for the guardian *ad litem* that the exceptional level of depth of review undertaken in this particular case has revealed a wealth of documentation in relation to Q.'s stay in the various special care units. It was submitted that reports from someone in the unit may be of assistance to the Court in the future in this case and others in order for the Court to have access to a higher degree of knowledge of what is occurring with the young person on a day to day basis. This would provide a more direct means of communication between the Court and the unit which would be beneficial as it is the staff in the units that have the responsibility of giving effect to the provisions of the High Court order.

Summary of Legal Submissions on behalf of Q.'s Father, the Third Named Respondent

103. Counsel for the father, the third named respondent, filed written legal submissions on his behalf on 22nd February, 2016. It was submitted that the provision of services to minors in special care, and particularly to Q., have been deficient.

104. Particular reference was made to the provision of psychiatric services. It was acknowledged that CAMHS deals with and treats minors who suffer from mental illness coming within the definition of the Mental Health Act 2001. However, the effect of this is that a cohort of young people, such as Q., does not receive psychiatric intervention and treatment in any consistent manner. Q. was seen on an intermittent basis by CAMHS team members via A & E in the local hospital when she attended there as a result of incidents of self harm. Counsel for the father summarised the evidence of the experts as requiring that upon admission to special care, each young person must have the benefit of a multi disciplinary team, including a psychiatrist and a psychologist, who will carry out an immediate assessment of the young person's therapeutic needs with a view to implementing same as soon as possible after admission into special care. It was submitted that, if the minors are to obtain optimum benefit from secure care, therapeutic intervention must be swift and effective.

105. It was submitted that the evidence shows that Q. spent a considerable period of time during January 2016 on "single separation", "structured time away" and "single occupancy" in the B Unit of Gleann Álainn. Counsel for the father submitted that the conditions in which Q. was being held were akin to punitive measures rather than therapeutic care. It was further submitted that "single occupancy" appears to be almost exactly the same as "structured time away" in its nature and effects. In both situations, the young person concerned is confined to and locked into a particular area and is accompanied by staff members. The main difference between "single occupancy" and "structured time away" is the regularity of review and while on "single occupancy" Q.'s situation was reviewed every few days. It was submitted that the punitive nature of the measures taken in respect of Q. during January 2016, the lengthy periods between reviews of her situation and the absence of consultation with the guardian *ad litem* or Q.'s father are highly concerning. It was further noted that there had been no application to the Court nor was the Court informed as to the situation at the time.

106. An analysis of the law relating to special care was undertaken by counsel for the father. It was submitted that, because of the lack of provision in relation to special care in the Child Care Act 1991, the High Court has developed an inherent jurisdiction to protect and vindicate the rights of children. Reference was made to the fact that the Supreme Court upheld this in the case of *D.G. v. Eastern Health Board and Others* [1997] 3 I.R. 511 and it was stated by Hamilton C.J. at 522 that the court is "under an obligation to defend and vindicate the personal rights of the citizen" and therefore, the court has "the jurisdiction to do all things necessary to vindicate such rights". The issue of competing rights was central to this case as with the other special care cases and the Supreme Court held that the welfare of the child overrode his right to liberty.

107. D.G. appealed this decision to the European Court of Human Rights and was successful in the case of *D.G. v. Ireland* (2002) 35 E.H.R.R. 33. Article 5(1)(d) of the European Convention on Human Rights permits the detention of a minor as follows:-

> "(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority"

Counsel for the father submitted therefore that, in the context of special care, the detention of a minor will only be Convention compliant if it is for the purposes of educational supervision as provided for in Article 5.

108. It was submitted on behalf of the father that the European Court of Human Rights found in *Bouamar v. Belgium* (Case 9106/80) (1987) 11 EHRR 1 that, in principle, a minor could be detained in a manner which was not readily identifiable with educational supervision so long as any such detention was speedily followed by the implementation of a regime of supervised education. Educational supervision was given a broad definition by the ECtHR at para. 80:-

> "In the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise by the local authority, of parental rights for the benefit and protection of the person concerned."

The case of *Koniarska v. UK* (Case 33670/96) (Unreported, 10th October, 2000), was also cited by counsel for the father. In that case, the ECHR noted that the applicant had been placed in a specialised residential facility for seriously disturbed children where she attended classes and took part in life and social skills programmes and, therefore, concluded that her detention was for the purposes of educational supervision and was compatible with Article 5.

109. It was submitted on behalf of the father that a question has arisen in this case as to whether the court has jurisdiction to direct the HSE, if necessary, to provide psychiatric services to children in special care. The case of *T.D. v Minister of Education* [2001] 4 I.R. 259 was cited. In that case, the Supreme Court held that orders made in the High Court purporting to force the executive branch of government to implement a particular policy breached the separation of powers. It was submitted by counsel for the father that the *T.D.* case should be interpreted as stating that the doctrine of the separation of powers prohibits the Court from making mandatory orders against the executive in relation to the distribution of public resources save in exceptional circumstances where the executive has disregarded its constitutional duties. It was submitted that it is arguable in the instant case that any order made against the HSE regarding the provision of psychiatric services could breach the principle of the separation of powers.

110. Counsel for the father further identified the case of *S.S. (a minor) v. Health Service Executive* [2008] 1 I.R. 594 where MacMenamin J. considered the nature and extent of the High Court's role in special care cases as a case that bears many similarities to the facts of the present case. Of particular note is the observation by MacMenamin J. at para 61 of his judgment that "the rationale of any detention order must be educational or therapeutic rather than punitive in order to vindicate the constitutional rights of the minor". According to MacMenamin J. at para. 91 the detention must also be "subject to appropriate safeguards of fair procedures and regular review to vindicate such rights".

111. It was submitted on behalf of the father that if the Court were to direct the HSE and/or the Child and Family Agency to put in place a system of psychiatric care for children in special care, it may be exceeding the boundaries of it's jurisdiction and be in breach of the doctrine of the separation of powers. However, it was also submitted that the Court can request particulars which must be furnished on an application under the inherent jurisdiction for a detention order before granting such an order.

112. It was submitted by counsel for the father that the Court must be satisfied of the following before an order for special care can be granted:-

> 1) That the minor the subject of the application is experiencing or is imminently likely to experience a crisis in their welfare so that a detention order is necessary to safeguard life, prevent a serious risk to life, or other serious threat to the care, protection and welfare of the minor.
>
> 2) That the objective of the detention is educational and therapeutic and not punitive, to protect the life and welfare of the child concerned.
>
> 3) Detention for protective purposes alone is not permitted, there must be an educational and therapeutic purpose for the detention, which educational and therapeutic purpose must be speedily implemented once the detention order is made.
>
> 4) Once the Court is satisfied that the first condition is met in an individual case, it is submitted that the Child and Family Agency must satisfy the Court that therapeutic and educational interventions to meet the welfare needs of the particular minor are in place, or will be shortly be put in place, once the detention order is made.

It was submitted that the Court can require a therapeutic and educational plan for each child to be available to the Court on the application for a detention order, or in cases of emergency, very shortly thereafter. It was further submitted that the Court must be satisfied that educational and therapeutic services such as those of psychiatry, psychology and education will be provided to the minor unless there is a reason given as to why such intervention is not required in the particular circumstances. In this way the Court can be satisfied that the conditions required to justify a detention order are met in each individual case and the constitutional rights of the minor are vindicated.

113. It was submitted on behalf of the father that there was an unacceptably long time lag in identifying the therapeutic needs of Q., and once identified that there was an unacceptable time lag in implementing same. Counsel for the father emphasised that an onward step down placement should be established as efficiently as possible. These submissions were made prior to the evidence of the psychiatric experts who stated clearly that Q. should remain in special care for at least six months from 18th March, 2016 as she was at such a considerable level of risk to herself. The Court notes, as of June, 2016, that Q. is now deemed ready to step down from special care.

Conclusions

The law as it stands

114. This Court appreciates the legal submissions made and adopts the detailed analysis of the law in relation to the inherent jurisdiction contained therein. It is worth reiterating the fundamental position of the law as it stands. The inherent jurisdiction to detain minors was developed in response to the lack of provision in the Child Care Act 1991 for any special care detention arrangement and in order to protect and vindicate the constitutional rights of such minors.

115. Special care orders are exceptional orders which ought to only be made when the life or welfare of a minor is at risk. The detention of the minor must have a therapeutic rationale as set out by *MacMenamin J. in S.S. (a minor) v. Health Service Executive* [2008] 1 I.R. 594 at 602 as follows:-

> "The purpose and objective of such detention must be educational, therapeutic and for the purpose and objective of protecting the life and welfare of such young person. The means adopted must be proportionate to the ends sought to be achieved, both as to duration, education and therapeutic care".

The detention must also be subject to the safeguards of fair procedures and regular intensive welfare review in order to ensure that the minor's constitutional rights are in fact vindicated. This is also in conformity with the requirements of Article 5(1)(d) of the European Convention on Human Rights.

The systemic issues around special care as highlighted by this case and this Court's response to these issues

116. This Court believes that the lack of an integrated approach between the various care givers led to a situation where the minor, Q., ended up remaining in special care for far too long a period of time. This is believed to have contributed to the deterioration in her behaviour and resulted in the minor Q. experiencing special care as a punishment for a period of time, particularly in January 2016.

117. Various stakeholders in this case operated almost in a "virtual reality" with a failure to apply an integrated approach to this young person's problems. It is the strong view of this Court that in order to help a young person in special care, such as the minor Q., there ought to have been a speedy identification of her problems as a first step to assisting in her stabilisation and recovery. In this case, there was, for a considerable period of time during which this case came before the High Court for intensive welfare review, an inability on the part of some of the stakeholders to grasp that this young person could only be detained under the inherent jurisdiction of the High Court in order to protect the constitutional rights of the minor concerned. This means that the Court must be satisfied that the minor's welfare needs are such that they outweigh the minor's entitlement to liberty, and that the curtailment of the minor's right to liberty will only pertain for so long as those welfare needs absolutely require such measures.

118. This Court accepts in the case of the minor Q. that she was experiencing or was imminently likely to experience a crisis in her welfare so that a detention order was necessary initially to safeguard life, prevent a serious risk to life or other serious threat to the care, protection and welfare of this minor. This is the basis upon which this Court made orders detaining Q. in the various special care units. However, those dealing with the day to day care of the minor within the special care units failed to grasp the objective of the detention as set out above.

119. It is clear from all of the evidence heard that the level of the deprivation of liberty experienced by Q. when she was in Gleann Álainn Special Care Unit in January 2016 went beyond what was contemplated within the orders granted by this Court. The care staff in Gleann Álainn took steps in relation to the manner of her detention without reference to the guardian *ad litem* and indeed without reference to the High Court. The proper safeguards and procedures must be adhered to at all times, particularly in extremely difficult cases such as this one. The care staff failed to understand appropriately that detention for protective purposes alone is not permitted and that there must be an educational and therapeutic rationale for the detention. This educational and therapeutic rationale must be speedily implemented once the detention order is made and there is a continuous obligation throughout the detention of the young person in special care.

120. The great fault in the system which occurred in this case was that it was well recognised, when the minor Q. was in Coovagh House Special Care Unit, that she was ready to be stepped down to an onward placement, however, the residential care unit that had initially agreed to provide a placement for her then resiled from that agreement. This led to the young person then being detained in special care when she really was ready and ought to have been properly stepped down to a unit which is tailor made for her needs. This led to frustration on the part of the minor Q. and to a clear deterioration in her behaviour.

121. The second issue which this Court believes must be addressed is the failure of those involved with her care to listen to the guardian *ad litem*, Ms. Grennan, who advised before the incident in August, 2015 of the necessity of work being undertaken with the minor Q. to help this minor keep herself safe sexually. The appropriate supports were not put in place in accordance with the strong advices given by the guardian *ad litem* as set out in this judgment and a very serious incident occurred in August, 2015. This Court became exceptionally alarmed when it realised that little or no specific action had been taken between this incident in August, 2015 and the young person commencing psychotherapy with Ms. Anglim, the member of the ACTS team with expertise in sexual assault, in November, 2015. The Court had been told that matters were in hand but this subsequently emerged not to be the case, at least to the extent to which one would reasonably expect after such a serious event given the young age of this minor and the serious nature of the particular incident. Despite the delay in the provision of suitable therapeutic services to Q., she now appears to be forming a positive therapeutic relationship with Ms. Anglim and it is hoped that she will continue to be provided with same after she transitions out of special care to her onward placement.

122. This case further highlights the essential role of the guardian *ad litem* in special care cases, not just in the litigation process but as a more general check and balance on the whole set of circumstances in which the young person is in. It is the view of the Court that the guardian *ad litem* came up against barriers at many points in this case as she continued to fight for the best interests of the minor Q.

123. The evidence of the three psychiatrists, Dr. Holmes, Dr. Doody and Dr. Uduehi, given on 18th March, 2016 gave clear guidance to the Court as to the nature of Q.'s many problems but it also gave great guidance to those concerned with her care as to how she might be helped going forward. It is the strong view of this Court that the problems of this young person, while not neatly fitting into the category of a detainable illness under the Mental Health Act 2001, was clearly one where psychiatric intervention, assistance and assessment were of vital importance. It is of concern that this Court had to make several orders before any proper psychiatric assessment occurred. The assistance of the child and adolescent psychiatrists would have greatly benefited this young person at an earlier stage and would have better informed those providing her with services and making decisions about her care.

124. Another example of the clear disconnect between those caring for the minor Q. on the ground and the psychiatrists involved in this case, was the fact that even thought the psychiatrists were in agreement that as of the 18th March, 2016 that this young person was deemed by them to need a further six months from that date to stabilise her in special care otherwise her life could be in danger, shortly after that, the view of social workers was that she should be stepped down at that point, i.e. shortly after Easter, 2016. Thankfully, the minor Q. has settled sufficiently to be deemed by her treating psychiatrist, Dr. Uduehi, to be capable of stepping down at the end of her Junior Certificate examinations in June, 2016. The care givers and professional staff must realise that the High Court cannot continue the detention of the minor Q. save for educational and therapeutic services including, if necessary, psychiatric services. It took considerable effort on the part of the Court to bring about a situation where care staff, social workers and others accepted the value of psychiatric input in this case.

125. In order to resolve the systemic issues around special care as highlighted by this case, this Court both welcomes and accepts the efforts made by Mr. O'Brien which have resulted in the Department of Children and Youth Affairs having communicated as recently as the 9th June, 2016 that they are willing to recruit and put in place 0.6 of a consultant child and adolescent psychiatrist. This would be the equivalent of three days a week in terms of a working consultant psychiatrist, who will be recruited to attend each of the three special care units in this country once a week in order to alleviate one major systemic difficulty. That difficulty was that the CAMHS (Child and Adolescent Mental Health Service) was limited to children with a mental health disorder as defined by the mental health legislation and CAMHS is a service run by the Health Service Executive. ACTS (Assessment, Consultation and Therapy Service), on the other hand, is a service run by the Child and Family Agency and, to date, ACTS has not had the assistance of a child and adolescent psychiatrist within its remit. This left a risk that there would be a *lacuna* in terms of the provision of psychiatric services as identified by Dr. Keith Holmes.

126. This Court adopts and intends implementing best practice standard as expressed by Dr. Doody and as outlined in what is referred to as the "O'Brien Principles". This is based on the evidence of Mr. Éanna O'Brien, Director of Children's Residential Services for the Child and Family Agency who gave evidence on the 2nd February, 2016 showing the potential role of a consultant psychiatrist in the special care area in one of three possible ways;

> 1) the psychiatrist would meet the young person, read the file and then decide that there is no role for psychiatry in their ongoing care plan, or
>
> 2) the psychiatrist would after meeting the young person and reading their file, decide that it is appropriate for a psychiatrist to have an advisory and supportive role for the staff in direct contact with the young person, or
>
> 3) the psychiatrist may decide that there is a discreet role for the psychiatrist in the care of the young person.

It is now an accepted fact by the Child and Family Agency that there is a role for psychiatric involvement at one or other of the three levels (a), (b) or (c) above, for each young person who is admitted to a special care unit. As noted above, they have secured permission to recruit 0.6 of a consultant psychiatrist in order to fulfil this role.

127. At appendix one hereto, there is an interim protocol as agreed between the Health Service Executive and the Child and Family Agency to alleviate the *lacunae* in psychiatric care provision which arose through the historical development of two parallel services. This protocol is of its nature interim because of the awaited recruitment by the Child and Family Agency of their own 0.6 of a consultant psychiatrist and the document is received as such by this Court. This Court accepts this proposal from the Health Service Executive and Child and Family Agency jointly as an interim measure to be reviewed when the Child and Family Agency's proposal to appoint 0.6 of a working consultant psychiatrist is in place. This Court notes with approval that much of what was discussed and proposed by this Court and the various parties throughout this hearing has clearly been taken into account in the drafting of this protocol document.

128. The current situation is that if a young person is admitted to secure care and has attended at a local CAMHS facility that CAMHS team will continue to have clinical responsibility for the young person. However, in reality the young person will be assessed, and if necessary, treated by one of the CAMHS psychiatrists that are currently providing services to the special care units. The Court understands that Dr. Ekata Uduehi is the designated child and adolescent psychiatrist for the time being with Ballydowd Special Care Unit, and that Dr. Finbarr O'Leary has now agreed to continue his role in respect of Gleann Álainn Special Care Unit. It was not confirmed to the Court but it is hoped that Dr. Eamon Raji will continue to be the designated person for the time being for Coovagh House Special Care Unit.

129. This Court notes from the protocol document that the High Court is entitled to seek a report from a psychiatrist and a second opinion if necessary. The Court may require assessments from the psychiatrist that is at present attached to each of the three units in question and that individual would be obliged to produce an assessment. It is the understanding of the Court that once the Child and Family Agency have recruited this proposed child and adolescent psychiatrist then that will be the person who has clinical responsibility for the minors in special care and they will be carrying out all of the assessments and any treatment that may be required. This Court understands that the interim protocol agreed between the HSE and the Child and Family Agency will be further refined and will be viewed again when the child and adolescent psychiatrist as now proposed by the Child and Family Agency is in place.

130. This Court recognises that the public authorities must exercise their statutory authority. The inherent jurisdiction of the High Court supplements a gap in the law where same arises although the Court cannot direct the use of public resources in any particular way. However, this Court is also extremely mindful that detention of a minor in a secure unit is a very significant step and that for the inherent jurisdiction to be exercised in this way it must be understood that there is the necessary substratum of resources in place to ensure the vindication of the constitutional rights of the minor involved. In other words, the Court cannot detain a minor under the inherent jurisdiction if the therapeutic rationale is undermined by a lack of resources.

131. This Court now expects that on the first *ex parte* application to place a young person in special care under the inherent jurisdiction of the High Court certain basic documents shall be provided to the Court. These documents together will be known as the "Programme of Special Care" and this is set out within the protocol document at appendix I. It is accepted by the Child and Family Agency and the Health Service Executive that these basic documents will be shared, as appropriate, with the young person, their parents, their guardian *ad litem*, the Child and Family Agency special care court liaison officer, the Court and others with the permission of the young person's allocated social worker. The following are the six documents which will be compiled and provided:

> 1) The first document shall be a care plan provided by a nominated social.
>
> 2) The second document shall be a placement plan provided by a named person within the special care unit.
>
> 3) The third document shall be a placement support plan also provided by a named person within the special care unit.
>
> 4) An individual education plan shall be produced and shall be signed off by a designated person from the special care school concerned.
>
> 5) The fifth document will be an individual therapeutic plan and shall be provided by a named person from the ACTS team.

6) The sixth document will be a psychiatric treatment / intervention plan and, under the interim protocol, be provided by the relevant HSE consultant psychiatrist. This element of the Programme of Special Care will only be provided where treatment and intervention are deemed necessary as per the third strand of the "O'Brien Principles".

The ACTS person named shall be the clinical psychologist who will have responsibility for carrying out an assessment of the young person in accordance with these processes and for taking a lead role in the delivery of ACTS services for the duration of the placement. This model then shall continue to evolve through the placement and will specify when each agreed action is to be carried out and by whom. This Court recommends the adoption of this as the model for any and all future applications for special care orders that may come before the High Court. It is noted that p. 4 of the interim protocol document entitled "Programme of Special Care" sets this out in greater detail.

132. As a matter of efficient case management it seems to this Court that the monthly intensive welfare reviews will receive each month, or more frequently as required depending on the particular case, updates of each of the six plans referred to above. It is apparent that the adoption of this protocol will involve an increase in paperwork, however, it is hoped that the extensive documentation will provide clarity and reduce the time spent in court. This system will be developed so that there can be electronic transmission of documents and the updated plans need not repeat the history to date of what has occurred but deal with what has happened since the last occasion in court and identify the issues, the responses to said issues and the proposals for the appropriate interventions. It is clearly understood from the protocol document that the young person, their parents and the guardian *ad litem* will be given an opportunity to consider and contribute (if appropriate) to all aspects of the Programme for Special Care in each Child in Care Review and as required in the intervening period.

133. In an emergency situation, when documents (1) to (6) are not available at the original *ex parte* stage, it is expected that they shall be available to the Court within ten working days of a placement in special care. These documents shall accompany the social work court report at each interim stage thereafter in terms of updating documents.

134. This Court notes the inclusion at p.7 of the protocol of the Assessment, Consultation and Therapy Service (ACTS) and the detail of their role in relation to children in special care. This Court also notes that the role of the consultant psychiatrist from the HSE and their responsibilities are clearly outlined from p. 8 of the interim protocol document. Given that all concerned now accept that any minor subject to a special care detention order will have the above facility, it then appears to be the case and this Court accepts that any young person subject to a special care detention order will have a legitimate expectation that this model will be the accepted model of best practice in this area. The interim protocol document is appended to this judgement.

Directions for the care of the minor during her remaining time in special care

135. This issue in itself shows the fluidity of the situation concerning any young person in special care. The minor Q. is no exception. Although in March, 2016 the evidence was that it would take until September, 2016 to stabilise her, now as of today's date, her period of time in special care is seen by all concerned as coming to an end because of her improved presentation.

136. An issue has arisen as highlighted by her father and her grandmother who handed in a document and gave evidence to the Court on 9th June, 2016 in relation to their concerns regarding access. The document is dated 1st June, 2016 and has been carefully considered by this Court. Their evidence has been heard. It is clear that there is a serious disagreement between the care workers on the ground and both the father and grandmother of the minor Q. This Court is deeply concerned at such a dispute at this point and has advised mediation although it cannot order same to see can the impasse be overcome as between the two groups. This Court did not suspend access by Q. to her father at any stage. The manager of the special care unit involved is responsible for the day to day management and running of same and this Court notes that for a minimum of a nine day period, Q. did not wish to have contact with her father. In the background is a report from social services saying that the father is not an appropriate person to resume a parental role at the moment. This Court does acknowledge that both father and grandmother dearly love the minor Q.

137. The Court asked the father to stand back on the issue of access during the period of time when Q. did not wish to see him. It seems to this Court without going into the detail of the dispute which should be resolved at mediation and not in court, that if Q. the minor is to step down successfully, nothing should happen which would destabilise her at this point. Access has to be, in the view of this Court, organised in her best interests and at the moment while she is having some access visits same is closely monitored by social workers and care workers. This Court does not intend to in any way impede a successful step down by this young person and stresses that however difficult it is for both her loving father and loving grandmother, really they should take guidance from the professionals concerned and abide by such directions as are given concerning access to facilitate the continuing stability of this fragile minor. The Child and Family Agency are willing to engage in mediation to assist in this regard and an independent mediator can be appointed to facilitate a resolution of this issue.

138. The focus of this judgment and this review is really of the minor in special care and how she was handled by the professionals and care workers concerned. It is now clear that a step down placement must be developed that is specifically tailored to the needs of this minor. This Court intends to further review such preparations.

139. In terms of an educational assessment of Q. ACTS had agreed to undertake this work and that if they were not in a position to do this they would source it privately and they have advised now that they don't have actually an educational psychologist on their team. This Court is very appreciative of the work done by Ballydowd School because the minor Q. has been able to sit her junior certificate, effectively against all the odds and the short assessment carried out by this school is of assistance to the Court. This Court fully expects that by September, 2016 when the minor Q. has had a suitable break and has her Junior Certificate results that a private educational assessment can be completed as already ordered by this Court. The reason for this is that the Court has to fulfil its role in ensuring that an enlightened approach is taken to her future education. It is noted that this minor is considered to be bright although naturally she has had an interrupted schooling by virtue of her extreme behavioural difficulties over the last period of time but has now stabilised and therefore the Court must ensure that an informed view as to her future educational needs is taken.

140. This Court notes that referrals have been made to the local CAMHS teams in the areas where Q. is intended to be placed in the future so that there will be a continuous assessment and support of the minor Q. when she commences her transition plan. This Court expects fully therefore also that the need for continuous psychotherapy for the minor Q. as recommended by Dr. Uduehi will be taken on board and will be made available as this is essential to maintaining her stability. This Court intends to continue to monitor the stepping down of the minor to a tailor made unit specifically adapted for her needs.

141. Finally, this Court is very grateful for the input and assistance of the professionals involved and for the hard work done by the legal teams involved in order to secure a good resolution in this case given the serious deprivation of her liberty and abrogation of her constitutional rights which occurred during the month of January, 2016, in particular. A balancing exercise always has to be undertaken by the Court in exercising the inherent jurisdiction in a case such as this. It is simply unacceptable that the methods

employed by Gleann Álainn Special Care Unit in relation to the detention of this young person in January, 2016 were not carried out in accordance with the rules and procedures in the appropriate manner. Mr. O'Neill, Manager of Gleann Álainn, accepted in evidence that the guardian *ad litem* and the Court should have been informed of the level of deprivation that occurred in January, 2016. These safeguards must not be abandoned, especially in such a difficult case. However, it has to be acknowledged by this Court that those taking care of the minor Q. have, throughout a long period of extreme difficulty, managed to keep her safe and that in itself is a vindication of her constitutional right to life. This Court notes with approval that there is desire to learn by those involved and this is clear from the minutes of the Significant Event Review Group meeting dated 12th May, 2016 that occurred in Gleann Álainn. This is not a legal document as such but it does show good faith to the Court by those involved in these secure care units of an attempt to remedy something which should never have occurred in the manner in which it did occur. The welfare and the life of this minor would have been better cared for had the normal procedures and rules been followed in her best interests. Her guardian *ad litem* and the High Court should have been consulted of the proposed course of action in January 2016 in accordance with proper procedures.

For the Child and Family Agency

Felix McEnroy SC

Lana Fitzsimons BL

Instructed by James Bardon, Solicitor (Mason, Hayes & Curran)

For the Guardian ad litem

Gerry Durcan SC

Nuala Egan BL

Instructed by Geraldine Keehan, Solicitor (Augustus Cullen Law)

For the Health Service Executive

Peter Finlay SC

Sarah McKechnie BL

Instructed by Katherine Kelleher, Solicitor (Comyn, Kelleher, Tobin)

For the Father

Originally: Mary O'Toole SC

Diane Duggan BL

Instructed by James McMahon, Solicitor (St John Solicitors)

Currently: Mona O'Leary, Solicitor (O'Leary Maher Solicitors)

Appendix I
Special Care Processes (Referred to as the Protocol Document)

Compiled by the Child and Family Agency and the Health Service Executive

Consolidated Draft Dated 4th May 2016