

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 10/2/2012

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

JR 66's Application [2012] NIQB 5

IN THE MATTER OF AN APPLICATION BY JR66  
(child in need accommodation duty)  
FOR JUDICIAL REVIEW

TREACY J

**Introduction**

[1] The applicant, JR 66, was born on 5 September 1994, and is now aged 17 years. He was assessed by the Respondent Trust's Gateway Team, having initially presented himself to the Simon Community in Coleraine on 18 March 2011 as homeless. This assessment resulted in the completion of a UNOCINI assessment on 11 April 2011 when the Northern Health and Social Care Trust did not conclude that the applicant was a child in need entitled to accommodation under Article 21 of the Children (NI) Order 1995 ("the 1995 Order").

**The Law**

[2] Article 21 of the 1995 Order states:

**Provision of accommodation for children: general**

**21. – (1) Every authority shall provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of –**

(a)there being no person who has parental responsibility for him;

(b)his being lost or having been abandoned; or

(c)the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Where an authority provides accommodation under paragraph (1) for a child who is ordinarily resident in the area of another authority, that other authority may take over the provision of accommodation for the child within –

(a)three months of being notified in writing that the child is being provided with accommodation; or

(b)such other longer period as may be prescribed.

(3) Every authority shall provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.

(4) An authority may provide accommodation for any child within the authority's area (even though a person who has parental responsibility for him is able to provide him with accommodation) if the authority considers that to do so would safeguard or promote the child's welfare.

(5) An authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any home provided under Part VII which takes children who have reached the age of 16 if the authority considers that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this Article, an authority shall, so far as is reasonably

practicable and consistent with the child's welfare—

(a)ascertain the child's wishes regarding the provision of accommodation; and

(b)give due consideration (having regard to his age and understanding) to such wishes of the child as the authority has been able to ascertain.

[3] Article 34A of the 1995 Order states:

**“Preparation for ceasing to be looked after**

**34A.—(1) Where a child is being looked after by an authority, the authority shall advise, assist and befriend him with a view to promoting his welfare when the authority has ceased to look after him.**

**(2) Where a child who is being looked after by an authority is an eligible child, the authority shall have the following additional duties in relation to him.**

**(3) In paragraph (2) “eligible child” means, subject to paragraph (4), a child who—**

**(a)is aged 16 or 17; and**

**(b)has been looked after by an authority for a prescribed period, or periods amounting in all to a prescribed period, which began after he reached a prescribed age and ended after he reached the age of 16.**

**(4) The Department may prescribe—**

**(a)additional categories of eligible children; and**

**(b)categories of children who are not to be eligible children despite falling within paragraph (3).**

**(5) For each eligible child, the authority shall carry out an assessment of his needs with a view to**

determining what advice, assistance and support it would be appropriate for the authority to provide him under this Order –

(a) while it is still looking after him; and

(b) after it ceases to look after him, and shall then prepare a pathway plan for him.

(6) The authority shall keep the pathway plan under regular review.

(7) Any such review may be carried out at the same time as a review of the child's case carried out by virtue of Article 45.

(8) The Department may by regulations make provision as to assessments for the purposes of paragraph (5).

(9) The regulations may in particular make provision about –

(a) who is to be consulted in relation to an assessment;

(b) the way in which an assessment is to be carried out, by whom and when;

(c) the recording of the results of an assessment;

(d) the considerations to which the authority is to have regard in carrying out an assessment.

(10) The authority shall arrange for each eligible child whom it is looking after to have a personal adviser."

[4] The law in regard to the implementation of the duty contained in Article 21 is clear, following the House of Lords' decision in *R (G) v LB of Southwark* [2009] UKHL 26; [2009] 1 WLR 1299; [2009] PTSR 1080; [2009] 3 All ER 189. The approach when assessing whether a child is an 'Article 21-entitled' child is succinctly encapsulated by a sequential list of questions contained at para 28 of Lady Hale's speech in that case, an approach more recently summarized by the

English High Court in *R (AH) v Cornwall County Council* [2010] EWHC 3192 (Admin) in the following way:

- "1. Is the applicant a child?**
- 2. Is the applicant a child in need?**
- 3. Is he within the Local Authority's area?**
- 4. Does he appear to the Local Authority to require accommodation?**
- 5. Is that need the result of:**
  - (a) There being no person who has parental responsibility for him**
  - (b) His being lost or having been abandoned; or**
  - (c) the person who has been caring for him being prevented from providing him with suitable accommodation or care?**
- 6. What are the child's wishes and feeling regarding the provision of accommodation for him?**
- 7. What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings?"**

[5] The notion that a person who has parental responsibility is 'prevented' from caring for a child is to be given a broad brush approach (see *R (AH) v Cornwall CC* para14). Further, the House of Lords in *R(G) v LB of Southwark* accepted that:

**"It is not disputed that this covers a child who has been excluded from home even though this is the deliberate decision of the parent." (para28)**

## Conclusion

[6] The Trust now accepts that, at all material times since his presentation to the Trust's Gateway team on 21 March 2011, the applicant was an 'Article 21-entitled' child and that he became an 'eligible child' 13 weeks from that date.

[7] The Respondent Trust, therefore, consents to a declaration in the following terms:

**"A declaration that the Northern Health and Social Care Trust made an error in failing to classify the Applicant as a 'child in need' to whom a duty of accommodation under Article 21, Children (NI) Order 1995 was owed and that at all times since 21 March 2011 the applicant has been a 'child in need' who was owed a duty of accommodation by the Northern Health and Social Care Trust under Article 21, Children (NI) Order 1995 and has since become an 'eligible' child within the meaning of Article 34A, Children (NI) Order 1995."**

## Postscript

[8] Following views expressed by the Court that the Children's Law Centre and the Respondent Trust should seek to engage with one another constructively to review the existing "Regional Good Practice Guidance on meeting the accommodation and support needs of 16-21 year olds", the Respondent Trust raised this matter on 17 January 2012 at the Regional Homelessness Group, which is co-chaired by the Director of the HSCB and the Director of the NIHE and the Regional Homelessness Group has agreed to consider the contents of any submissions or proposals made by the Children's Law Centre about the existing "Regional Good Practice Guidance on meeting the accommodation and support needs of 16-21 year olds".