

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

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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**John Smith (pseudonyms) (Application for bail)**

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**Anonymity and restriction on publication**

[1] The applicant's names have been anonymised by the use of pseudonyms.

[2] Nothing should be published which would identify the child or any member of the child's extended family.

**Introduction**

[3] John Smith, the applicant, applies for bail.

[4] The application raises some short practical points in relation to the interaction between bail applications and family law. In particular it emphasises the need to obtain information from Social Services in advance of a bail application to ensure that the interests of children are properly taken into account.

[5] There is a positive obligation to assist the court in its obligation to protect children. Accordingly professionals, who make applications for bail on behalf of their clients, should as part of the process of obtaining instructions from their clients, enquire as to whether any child could be affected by the grant or refusal of bail. They should also enquire as to whether a child who could be affected by the grant or refusal of bail is known to Social Services. If a child is known to Social Services then arrangements should be made by those applying for bail for the child's social worker to be in court on the hearing of the application or for a report to be available to the court from the child's social worker or given the timescales involved in a bail application, at the very least for the child's social worker's contact details to be available so that information can be obtained during the hearing of the application.

## **Background to child protection, the threshold for state interference and the impact of further offences on children**

[6] The general background to child protection issues is provided by the European Convention on Human Rights and by the Children (Northern Ireland) Order 1995.

[7] Article 8 of the Convention and the jurisprudence of the European Court of Human Rights requires that there be a “pressing social need” before there is state intervention in family life and that the intervention be proportionate to that need. This is reflected in domestic law by the requirement that before a court can intervene in family life by considering what would be best for a child, it has to be satisfied as to the “threshold conditions” contained in Article 50 of the Children (Northern Ireland) Order 1995. The threshold conditions require the court to be satisfied as to two matters. The first is that the child is suffering, or is likely to suffer, *significant* harm. The second is that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given, if the order were not made, such care not being what it would be reasonable to expect a parent to give to the child or the child’s being beyond parental control. In short unless the *statutory threshold conditions* have been established a court cannot intervene by making a final order. The statutory threshold conditions can only be established if there is or is likely to be *significant* harm to the child. The effect is that a parent or parents may cause harm to their children but not *significant* harm.

[8] Bail courts should not be used as an unwitting instrument to facilitate significant harm to children. For instance, if a full care order has been made then there has been a finding by a family court that a child has or is likely to suffer significant harm. In those circumstances a bail court should know about the care plan for the child so that it supports rather than undermines that plan.

[9] When considering the risk of future offences being committed by an applicant for bail a court not only considers the degree of the risk of future offences being committed by the applicant, but also the potential consequences if the risk materialises. In cases of domestic violence the risk of further offences is ordinarily the risk of further physical assaults on the applicant’s partner. However the applicant’s partner is not the only victim of such physical assaults, so also can be children even though they themselves are not physically assaulted. Incidents of physical assaults and verbal abuse directed towards the applicant’s partner can cause serious long term emotional damage to a child. Even if the assaults are not witnessed by a child the physical and mental degradation and humiliation of a child’s primary carer can seriously damage the care being afforded to that child and thereby indirectly cause serious harm to the child. Any consideration of the risk of future offending should take into account the potential consequence not only

for the applicant's partner but also the potential consequences both direct and indirect for the applicant's child if that risk materialises.

**Examples of the way in which the interests of children can impact on the grant or refusal of bail or on the conditions to be applied if bail is granted**

[10] The examples are

(a) *Bail address.* A proposed bail address could be unsuitable if children reside at or are present at that address. If a child at that address is known to social services then as a general proposition it is unlikely that the address will be a suitable bail address. Generally considerable efforts will have been made by social workers, other professionals and the family courts in maintaining the child's placement at that address. The potential fragility of such placements should be recognised as should the potential life long consequences for the child if there is a breakdown of the placement. There is an obvious need for careful enquiry if a bail address is being proposed at which a child is known to social services. There will be a wealth of information available from social services as to matters such as the ability of the child's carers to protect the child from physical and emotional harm by others and as to whether the child's carers have drug, alcohol or mental health issues that could be exacerbated by an applicant for bail residing at that address. That information from social services must be available to the bail court. The impact of children on the suitability of bail addresses is not just confined to children known to social services. There is a need for careful enquiry in relation to all children regardless as to whether they are known to social services and as to the potential consequences for children.

(b) *Contact arrangements.* In cases of alleged domestic violence upon granting bail a condition is almost invariably imposed that the applicant must not contact either directly or indirectly the partner whom it is alleged that he (or on occasions she) has assaulted. In imposing such a condition consideration should be given to a qualification to allow for the continuation of the current arrangements for contact between the applicant and his or her children. If the current contact arrangements are no longer appropriate then alternative arrangements should be considered for instance should the contact be supervised or unsupervised, should it take place at a contact centre, at the bail address of the applicant or at the home of a member of the extended family or should it be indirect by appropriate letters and cards to be sent to the resident parent. If contact should

take place at an address different from the present address then is that address a suitable environment for a child given his or her age and understanding. What should be the handover arrangements for the child given the risk of friction at handover? Is there a need to identify and then arrange for a dispassionate or trusted member of the extended family to facilitate transport from the resident to the non resident parent? Regard should be had as to whether there have been contact orders made in the family courts. In particular if there has been protracted litigation in the family courts then the case may involve implacable hostility between parents with there being a difficult history of establishing and then maintaining contact between a child and his or her non resident parent. Those existing contact arrangements can be fragile. In order for a bail court to act in a way which does not unnecessarily frustrate the family proceedings it has to be given full and accurate information as to what has occurred in the family courts. This in turn requires detailed instructions to be taken by those professionals who are instructed on behalf of those applying for bail.

(c) *Family proceedings, either current or concluded.* The applicant for bail may be a child or young person in relation to whom there have been or there are ongoing public law proceedings under the Children (Northern Ireland) Order 1995. If there are ongoing public law proceedings then there will be a wealth of information readily available in those public law proceedings to assist in a bail decision. If the public law proceedings have concluded by, for instance, the making of a care order then there will be regular Looked After Children reviews and ongoing active involvement by social services in the life of the child or young person. Again there will be a wealth of information. The social worker with responsibility should be able to assist the court in relation to the bail application and the bail court should be able to ensure that proper information is given to the social worker to inform further Looked After Children reviews. Alternatively the applicant for bail may not be a child or young person but the grant or refusal of bail may impact on a child or young person in relation to whom there has been a private law dispute between his parents or in relation to whom there has been or there are ongoing public law proceedings. In any of these cases those instructed on behalf of applicants should obtain as much information as possible about those proceedings and should inform the judge hearing the bail application as to the stage of the family proceedings and as to the identity of the judge who dealt with those proceedings or before whom they

are listed. This provides information to the bail judge and also facilitates consideration as to whether to require that the family law case is immediately brought back to the attention of the family judge so that further consideration can be given to the family law issues in light of the allegations being made in the bail court.

(d) *The need to identify cases in which social services should be involved.* The obligation to enquire about and to obtain instructions in relation to the impact of bail on children is not confined to those instructed on behalf of applicants but includes those who appear on behalf of the prosecution. A bail court should be informed by both those who appear on behalf of the applicant and those who appear on behalf of the prosecution as to the potential impact that granting or refusing bail will have on children. In that way the court can make an informed bail decision. However the obligation on those who appear for the prosecution is more extensive. Their obligation is to give consideration as to whether the facts reveal a reason why social services should be notified. The question as to whether social services should be notified does not depend on whether bail is or is not granted. This should be seen as a continuation of the arrangements in place so that when police officers become aware of situations that raise child protection issues social services are notified regardless as to whether those situations give rise to a criminal investigation or criminal proceedings. The most readily recognisable situations are suspected physical violence to children or neglect of children. That obligation to notify social services is a continuing obligation and those instructed on behalf of the prosecution in bail applications should be alive to all situations in which social services should be notified regardless as to the outcome of the bail application. But one example of such a situation would be a bail application by an individual accused of drug dealing if for instance there is a risk that the applicant's children might ingest drugs or be subject to neglect whilst their carer is under the influence of drugs. Another example is that a drug user or an abuser of alcohol can create a significant risk of irrational violence to a young child or in the case of older children who seek to protect the real risk of physical conflict.

### **The facts in relation to the bail application**

[11] The applicant and his partner do not live in the same house. They have a four year old daughter who resides with her mother. The relationship between the applicant and his partner is complicated by the fact that the

applicant, although he does not presently live with his partner, is her landlord.

[12] The relationship between the applicant and his partner is alleged to have been marked by violence and aggression. Prior to the alleged incident the subject of these charges there had been four previous alleged incidents of domestic violence reported to the police by the applicant's partner over a period of approximately four years. In one of the previous incidents it was alleged that the applicant used a bottle to strike his partner in the face though that complaint by his partner was withdrawn. There has been no history of alleged violence by the applicant towards his four year old child.

[13] The applicant faces a range of charges arising out of an incident which is alleged to have occurred in April 2011 at the home of the applicant's partner which is also the home of their four year old daughter.

[14] The prosecution allege that in April 2011 the applicant had consumed a considerable quantity of alcohol and one ounce of cocaine. That thereafter at his partner's home he became violent, abusive and aggressive. That he assaulted his partner slitting her thumb with a kitchen knife. The police were called and they attempted to enter the house. It is alleged that the applicant responded by climbing onto a roof where he attempted to remove roof tiles in order to them throw at the police. It is alleged that he threw a glass bottle at police officers, that he dropped his trousers exposing himself to amongst others a female police officer and that he then attempted to escape by running along the top of a wall to an adjoining property. The prosecution state that in the process of doing this he assaulted one of the police officers, dislocating her shoulder and that he also assaulted another police officer.

### **Sequence in relation to the progress of the bail application**

[15] The matter first came before me on 15 April 2011. The prosecution opposed the grant of bail on the basis of a risk of future offending, that is future physical assaults on the applicant's partner and the risk of interference with a witness that is interference with the applicant's partner. In support of the risk of future offending the prosecution relied on the facts surrounding the charges, the four previous allegations of domestic violence involving the applicant's partner and the drug and alcohol abuse by the applicant. The prosecution also referred to the applicant's criminal record whilst acknowledging that it was limited and did not establish a history of violent offences. The prosecution also adverted to the potential consequences if the risk of future offences materialised in that there are grounds for suspecting that on a previous occasion the applicant had struck his partner in the face with a bottle and that on this occasion there is a prima facie case that the applicant had used a knife to wound his partner and had inflicted a dislocated shoulder upon a police officer.

[16] In response on behalf of the applicant whereas some of the events which gave rise to the charges were acknowledged and therefore some of the risks were acknowledged it was suggested that they could be met by the imposition of suitable bail conditions in a situation where the proposed bail address was with the applicant's parents some miles away from the applicant's partner and his child's address. The applicant's parents were held out as being responsible members of the community who had insight into the problems that were presented by their son and who would respond appropriately to any breach of bail conditions. It was recounted that the applicant's father ran his own small business. That there would be a job available for the applicant and that the applicant would take up that employment. It was also submitted that conditions could be imposed preventing the applicant from direct or indirect contact with his partner and from entering the area in which she and her child resided.

[17] When the matter came before me on 15 April 2011 counsel on behalf of the applicant was unaware that the applicant's child was known to Social Services. It was only on enquiry that I was able to determine that Social Services were involved. There was no social worker in court; there was no report available from any social worker. The involvement of Social Services should have been volunteered to the court and in addition arrangements should have been made for the social worker concerned to be in court or to provide a report to the court or at the very least to provide contact details so that a telephone call could be made to the relevant social worker if any point arose during the course of the bail application. On 15 April 2011 I did not have any input from social services and was unable to be independently informed as to the potential consequences for the child if I granted bail subject to conditions.

[18] On 15 April 2011 the applicant's father, the child's paternal grandfather, was present in court and was concerned as to both his son and his grandchild. It was apparent that he wished to adjourn the bail application so that information could be obtained from social services. Social services have means of obtaining considerable information by for instance criminal record checks, interviews and unannounced visits. It could be anticipated that information from social services would assist in my assessment not only of the applicant, the applicant's partner but also of the paternal grandfather. The assessment of the paternal grandfather being of particular importance, given that it was suggested that he would be able to perform a supportive and protective role, if I granted bail. I adjourned the bail application in order to obtain information from social services.

[19] On the adjourned hearing on 21 April 2011 both of the applicant's parents were in court and the applicant's father gave evidence. I formed a favourable impression of him as a sensible and hard working individual. He

stated that he was willing to perform both a supportive and a protective role. In relation to protection he stated that he would have no hesitation in reporting to the police any breaches of bail conditions and that he had the opportunity to monitor the applicant's compliance as the applicant would reside in his house and be in his company during working hours. There was no suggestion by the prosecution that there was any reason not to believe the applicant's father. For instance there was no suggestion by the prosecution that the applicant's father had a criminal record or that there was any question as to either the supportive or protective roles that he stated that he was willing to perform in relation to the applicant.

[20] On the adjourned hearing a written report was made available to me from the social worker involved with this family. He stated that there was support available to the child from both the maternal and paternal grandparents. The report from the social worker was independent information which did not raise any serious adverse consequences for the child if I granted bail subject to conditions. The report from the social worker also supported the favourable impression that I had formed of the paternal grandfather and provided evidence of the supports available from paternal and maternal grandparents. There was no suggestion from the prosecution or from social services that either the maternal or paternal grandparents had any criminal record or that there was any reason to doubt the supportive and protective roles that they were prepared to undertake. The social worker stated that there was a need to restrict contact between the applicant and his daughter to supervised direct contact. He also stated that the applicant should address his drug and alcohol issues. The social worker's task is to warn of dangers rather than to be involved in the question as to whether or not to grant bail. The report did not raise any further dangers but rather confirmed the supports that were available in the community for the applicant, the injured party and the applicant's child.

## **Conclusion**

[21] This is a difficult and borderline bail application involving weighing the risk of further offences against the supports and protective factors available in the community with particular emphasis on the assessment of the proffered role of the applicant's father. Informed by the report from social services which supports my assessment of the applicant's father and given the other supports available to the applicant from his parents and to the applicant's partner and child from both sets of grandparents and social services, I consider that the risks present in the case to the applicant's partner and to the applicant's child can be met by the imposition of stringent bail conditions. I come to that conclusion in the context that there will be ongoing supervision of the applicant's compliance with those conditions by the police and by the applicant's father. If the applicant is in breach of his bail conditions then he can be arrested by the police. I also make it clear that bail can be, and

the applicant should anticipate that it will be, revoked if he does not comply with any of the bail conditions. The grant of bail should also be seen in the context that I will review the decision to grant bail which review will be informed by whether the applicant complies with the bail conditions which I impose. I grant bail in the applicant's own bail of £900 and one surety by his father of £900 and on the following conditions.

- (a) A residence condition requiring the applicant to reside at his parent's address and at no other address.
- (b) A curfew at that address between the hours of 8 p.m. and 7 a.m. and that he should present himself at the door during those hours if requested to do so by the police.
- (c) The applicant should be subject to electronic tagging.
- (d) There should be no contact direct or indirect with the applicant's partner.
- (e) There should be no contact direct or indirect with the applicant's child unless supervised by Social Services or a person authorised in writing by Social Services.
- (f) The applicant is not to be in an area delineated on a map which is in the vicinity of his partner's house for any reason whatsoever. A copy of the map is to be made available to the applicant prior to his release.
- (g) The applicant is not to consume alcohol and is not to be on licensed premises. He is to submit himself to a breath test if requested to do so by the police.
- (h) The applicant is not to consume non-prescription drugs and he is to submit himself to testing for drugs if requested to do so by the police.
- (i) The applicant is to contact his general practitioner within one week of his release from custody and follow his general practitioner's instructions in relation to treatment for his alcohol and drug abuse.
- (j) The applicant is to immediately take up employment with his father, to follow his father's instructions in relation to that employment and to present himself at the door of his place of employment if requested to do so by the police.

The prosecution did not seek and I therefore did not impose any requirement to report to a police station.

#### **Review on 4 July 2011**

[22] I reviewed the applicant's compliance with his bail conditions on 4 July 2011. Again the applicant's father attended at court accompanying the applicant for the purposes of the review.

[23] On behalf of the applicant I was provided with a letter from his general practitioner dated 5 July 2011 stating that the applicant had attended

"today at the Health Centre. He was looking very well, having been attending the local Gymnasium regularly (x3/week) eating better. He states he has stopped all alcohol and drugs and says he is happy to have any necessary blood or urine tests to prove so. He also has decided to quit smoking and received medication today to help."

The General Practitioner supported the applicant's willingness to change.

[24] The applicant also provided a letter dated 30 June 2011 from the Drug Arrest Referral Team of a local Health and Social Care Trust. That letter confirmed that the applicant had been attending weekly appointments for several months now and that the author of the letter felt that the applicant had responded well to therapy. That the applicant had maintained abstinence throughout and that he continues to make positive changes in his life.

[25] The attending police officer at the review was of the view that the stringent conditions that I had imposed were sufficient to meet the risks that the applicant presented in the context of the police supervision of those conditions, the applicant's abstinence from alcohol, the support of his family and in particular his father. I raised the question as to whether to impose a reporting requirement but this was not thought to be necessary.

[26] The applicant's father again gave evidence and I was confirmed in the positive impression that I had formed.

[27] On review I confirmed my decision to grant the applicant bail.

**Bail variation**

[28] A bail variation application was lodged on 8 July 2011 to vary the hours of the curfew to enable the applicant to work at night in his father's business. There was no police objection to that variation which I granted.

**Further direction**

[29] I direct that a copy of this decision is sent by the prosecution to social services.