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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JR79 FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS TAKEN BY A SCHOOL AND A HEALTH AND SOCIAL CARE TRUST

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KEEGAN J

Introduction

This judgment is anonymised given that it relates to a child. Nothing should be published which could result in the identification of the applicant or his family.

[1] This is an application for judicial review dated 1 September 2015. It is brought by a minor acting via a next friend and it relates to the supervision of the minor following allegations of sexual abuse made against him.

[2] Ms Quinlivan QC appeared with Mr McGowan BL for the applicant. Mr McQuitty appeared for the school. Ms Martina Connolly BL appeared for the Health and Social Care Trust ("the Trust"). I am grateful to all parties for their oral and written submissions.

[3] This case began as a challenge against the relevant school only. However during the currency of proceedings the Trust was joined as a respondent. The application for leave was granted on 26 April 2016 after a three day contested hearing before Maguire J. The challenge in its initial form was wide reaching however leave was specifically confined to three grounds as follows in relation to the Trust:

> "(i) Whether the Trust has breached its obligations to the applicant under Article 8 of the Convention in connection with the arrangements put in place for the applicant's supervision. In particular the court grants

leave on the issue of whether the arrangements made were in accordance with law and/or were disproportionate.

(ii) Secondly the court grants leave in respect of the issue of whether the Trust has breached any duty owed to the applicant under section 12 of the Safeguarding Board Act (Northern Ireland) 2011 or under Article 18 of the Children (Northern Ireland) Order 1995.

(iii) Thirdly the court grants leave on the issue of whether the Trust abdicated any of its responsibilities to the NSPCC in the context of the assessment of risk which the applicant represented: in particular, by neglecting or failing to superintend the work of the NSPCC to ensure that it was carried out in a reasonable manner and within a reasonable timeframe. "

In relation to the school leave was granted on the following grounds:

"(i) The issue of whether the school abdicated its responsibilities in respect of the applicant to the Trust and acted upon the Trust's dictation in respect of these.

(ii) The court considers it arguable that the school breached its obligations to the applicant under Article 8 of the Convention by placing the applicant under a regime of supervision which was not in accordance with law or which was disproportionate.

(iii) The court will grant leave on the issue of whether the school breached Articles 17 or 18 of the Education and Libraries Order 2003."

[4] On 19 May 2016 interim relief was granted as follows:

(i) By way of interim relief the first named proposed respondent shall:

(a) Immediately cease any supervision of the applicant (apart from any minimal supervision required because he is a child in need

within the meaning of Article 17 of the Children (Northern Ireland) Order 1995).

(b) Allow the applicant access to the school and its facilities as all other pupils do. This order shall apply pending final determination of this application for judicial review or further order of the court.

(ii) The second named proposed respondent shall write to the applicant's solicitor within seven days indicating that they have no intention of taking step which the interim relief would be designed to inhibit and include provisions that if at any stage there should be any significant prospect of the Trust altering their position that they are to put the applicant's solicitor on notice of at least seven days.

[5] It is important to note that the minor is no longer at the school in question and the interim relief was designed to assist the minor to undertake GCSE examination in the summer of 2016. The applicant is now at a college. However he does remain subject to social services supervision and control but happily there are no particular issues raised in relation to his current circumstances.

[6] I heard the case over a number of days in November and December 2017. At the hearing of final submissions in December Ms Connolly properly informed the Court of a revised position on behalf of the Trust. This was that the Trust accepted that the risk assessment currently in place should be quashed by reason of passage of time and that it would be reconsidered by an independent third party. Ms Connolly stated that relief was conceded on that basis. I allowed the applicant some time to consider this development and by correspondence his solicitor confirmed that he is willing to undertake the new assessment subject to having an input regarding the identity of the assessor. This development is welcome and had it been offered at an earlier stage there may well have been an argument that the case could end there. However, as I heard the case in full I will deal with the other matters raised as follows.

Background

[7] The factual history is long and complicated and so I will refer to it in summary form. The applicant has had a difficult history along with his siblings and social services have been involved at different interludes in his family life. The applicant's father was accused at various points in the history of sexual abuse of the children and domestic violence. The applicant's mother struggled to offer good enough parenting to her children but ultimately, with assistance from social services, she managed to maintain the family unit.

[8] The children were registered on the Child Protection Register on 31 January 2005 under the categories of sexual abuse, physical neglect and potential emotional abuse. There was a further registration from 29 October 2012 to 14 December 2012 and then the current issues led to registration on 13 May 2014 under the category of suspected sexual abuse.

[9] The current issues arise because on 29 April 2014 a neighbour made an allegation that the minor applicant had inappropriate sexual relations with a dog. He was at this stage living at home with his siblings and his mother. The next day, his younger brother disclosed to his mother that he had been sexually abused by the applicant. An Achieving Best Evidence ("ABE") interview was conducted with the young child who was aged 11 at the time but this was not productive because the child was too distraught to discuss the matter in detail. These allegations caused a difficulty within the family home, in particular for the mother who was shocked by what she heard. As a result the applicant was removed from the family home and he was placed in foster care for one week. Social Services initiated a joint protocol investigation with police. There was no other statutory intervention although care orders were subsequently made in 2016 by consent as the carer wished to have the Trust involved, particularly to manage contact between the children and their father.

[10] Consideration was given to removing the applicant permanently into care, but the Trust was satisfied that the mother would undertake a full supervisory role at home and so she was considered to be a protective parent. The applicant was returned to home within one week on 12 May 2014. Initially the applicant was removed from school but he returned on 9 May 2014 on the basis of a plan of supervision at school in addition to the supervision at home.

[11] On 13 May 2014 the applicant and his siblings were placed on the Child Protection Register at the Child Protection Case Conference on grounds of suspected sexual abuse with the Trust requirement that the applicant be supervised at all times. After this the police investigated the two allegations that had been made against the applicant, one involving the dog and one involving abuse of his brother. A decision was taken not to prosecute in either case. This was not the end of the matter as from October 2014 a risk assessment process began with the input of professional services provided by the National Society for the Protection of Cruelty to Children ("NSPCC"). The professionals utilised a recognised tool, the assessment model "AIM 2". The NSPCC meetings began on 20 October 2014. There was a significant intervening event in January 2015 in that the applicant's mother was diagnosed with cancer and she sadly died on 10 March 2015. As a result of this upheaval some of the NSPCC sessions were postponed. Following the death of his mother the applicant and his siblings also moved placement to live with their aunt.

[12] During the assessment process, the plan of supervision continued. However as time progressed, some issues were raised about the supervision and these culminated in a reference in the June 2015 LAC to the applicant feeling that "life was

not worth living". At this stage the family and the solicitor expressed a reluctance to continue with the NSPCC sessions given the apparent effect upon the applicant.

[13] The current proceedings came about following correspondence of 14 April 2015 from the applicant's solicitor challenging the supervision requirements imposed on the applicant. After that the NSPCC sessions continued and further correspondence was sent in relation to the supervision. In particular on 29 June 2015 a pre-action protocol letter was sent to the school challenging the supervision requirements. A response was received on 3 July 2015 to the pre-action protocol letter from the school to the applicant's solicitor. There were further issues with the supervision raised at Trust meetings but the NSPCC assessment continued. The final session was 21 December 2015.

[14] On 20 January 2016 the NSPCC AIM2 initial assessment report was filed and this concluded that the applicant had medium strengths and concerns and recommended medium supervision and a 30 week treatment programme. In January or February 2016 on foot of this report the Trust produced a plan entitled "social services proposed plan for continued supervision of the applicant." This plan stated that "the Trust believe that it is appropriate the applicant receives continued supervision around potential vulnerable others until such times as he is able to address his harmful sexual behaviours and the thoughts that led to these." A professionals meeting took place involving representatives of the school and the conclusion was that whilst supervision could justifiably be increased on the basis of the AIM assessment, it should remain the same. The supervision therefore continued up to the applicant taking his exams when interim relief was granted which reduced the supervision requirement and the applicant then left the school in the summer of 2016.

[15] The applicant is a child who has learning difficulties. He had a statement of special education needs whilst at the school in question. He is described as immature and this is apparent from various descriptions of his hobbies and interests. I note that the applicant was also referred to Child and Adolescent Mental Health Services ("CAMHS") at the time of the allegations due to suicidal thoughts. The intervention was brief as it appears that he was assessed and discharged.

The nature of the challenge

[16] The final amended Order 53 statement is dated 8 December 2017. During the closing submissions in this case I allowed a further amendment by Ms Quinlivan to include a ground that the risk assessment was based on material mistake of fact. This was the first time that this had been specifically mentioned and so I adjourned the proceedings to allow the respondent Trust to file a further affidavit given the allegations made. The final articulation of the Order 53 statement therefore sought the following relief against the school:

(a) An order of certiorari quashing the decision of the school to require full supervision of the applicant during school hours from 1 May 2014 pursuant to the request and recommendation of the Trust.

(b) An order of mandamus requiring the school to stop any supervision of the applicant apart from any supervision required because he is a child in need within the meaning of Article 17 of the Children (Northern Ireland) Order 1995.

(c) Declarations that the school's decision to put in place and maintain full supervision of the applicant was unlawful and/or procedurally unfair and violated the applicant's rights under Article 8 of the European Convention and under the UNCRC and the UNCRPD and interim relief requiring the school to immediately suspend any supervision of the applicant apart from any supervision required because he is a child in need pending a full hearing of the matter.

(d) Damages for negligence and breach of privacy and breach of statutory duty and breach of the applicant's rights under the European Convention and order for costs.

[17] Against the relevant Health Trust the following relief was sought:

(a) An order of certiorari quashing the decision of the Trust that the applicant posed a risk to pupils and required supervision at a school from September 2014.

(b) An order of certiorari quashing the decision of the Trust of January or February 2016 to approve and accept the risk assessment of the NSPCC of 20 January 2016. Declarations that:

(i) The Trust unlawfully delegated the responsibility to assess the risk posed by the applicant and to review that assessment to the NSPCC and in doing so unlawfully fettered their discretion.

(ii) The Trust decision to treat the applicant as posing a high risk of harm to others since May 2014 in the absence of on-going risk assessments and reviews was unlawful, procedurally unfair and in breach of the applicant's rights under Article 8 of the Convention and under the UNCRC and the UNCRPD.

(iii) The decision to require the applicant to continue with the AIM2 assessment process after March 2015 was unlawful, procedurally unfair and in breach of his rights under Article 8 of the Convention and under the UNCRC and UNCRPD and a

breach of the Trust's statutory duty under section 12 of the Safeguarding Board Act (Northern Ireland) 2011.

(iv) The Trust has unlawfully failed to make provision for the applicant as a child in need under Article 17 and 18 of the Children (Northern Ireland) Order 1995.

(d) An order of mandamus compelling the Trust to take steps to properly assess, plan and provide for the applicant's needs as a child in need under Article 17 of the Children (Northern Ireland) Order 1995.

(g) Damages for negligence, breach of privacy and breach of statutory duty and breach of the applicant's rights under the European Convention.

(h) An order for costs.

[18] Five main points were made in support of the case against the school. Firstly it was argued that the school had unlawfully delegated the exercise of its statutory duty. Secondly, that the decision to require full supervision of the applicant for more than a three month period was in breach of Article 8 of the Convention. Thirdly, that the decision was not in accordance with the law namely Articles 17 and 18 of the Education and Libraries (Northern Ireland) Order 2003. Fourthly, that the decision failed to treat the best interests of the child as a primary consideration contrary to Article 3 of the UN Convention on the Rights of the Child. Fifthly, that the decision was neither proportionate nor necessary in a democratic society.

[19] The relief against the Trust was sought on the following grounds. Firstly, that the decision to treat the applicant as posing a high risk of harm to others at home and at school was in breach of Article 8 of the Convention. Secondly, that the decision to approve of and require the applicant to continue engaging that the AIM assessment breached Article 8 of the Convention. Thirdly, it was argued that the Trust acted unlawfully and in contravention of the applicant's best interests. Fourthly, the case was made that the Trust delegated to the NSPCC inappropriately. Fifthly, that the Trust breached its obligations in providing for a disproportionate level of supervision. Sixthly that the Trust breached a duty under section 12 of the Safeguarding Board Act (Northern Ireland) 2011 and under Article 18 of the Children (Northern Ireland) Order 1995. Finally, that the Trust abdicated its responsibilities to the NSPCC in terms of the risk assessment and failed to superintend the conduct of the AIM2 assessment and failed to ensure that it was conducted in accordance with the guidance and proceeded on a proper factual basis and did not proceed on the basis of material errors of fact.

[20] The evidence in this case was contained in substantial affidavit evidence filed by the applicant's next friend. An affidavit was also filed by the applicant himself. I

have considered all of these affidavits in addition to the affidavits of the applicant's solicitors. The respondent's evidence was comprised in affidavits firstly on behalf of the school from the school Principal and the designated teacher. I have also considered the affidavits filed on behalf of the relevant Trust by the social workers involved with this case and also in particular the affidavits of the NSPCC professional who undertook the risk assessment.

[21] During the course of the case I considered a large volume of papers including discovery provided by the relevant Trust of child protection case conference reports, LAC reviews and other discoverable material in relation to decision-making. I was provided with the entire body of records of the NSPCC which I considered. In the context of these proceedings the applicant also obtained expert evidence from a consultant psychologist Dr Murray who filed two reports and I have considered these as well.

The arguments

[22] Ms Quinlivan on behalf of the applicant made comprehensive written and oral submissions which I have considered in detail but which I simply summarise as follows:

(i) The Trust abdicated responsibility to the NSPCC to conduct and review risk on an on-going basis and failed to supervise it in a timely and proper manner. Ms Quinlivan argued that the consequence of this was disproportionate supervision by the Trust and the school over an extended and unjustified period in breach of Article 8.

(ii) Ms Quinlivan made the point that the flawed risk assessment remains on the record of this minor and that this is a significant matter. She argued that the assessment should be quashed and reconsidered

(iii) Ms Quinlivan frankly and properly accepted that she was not asking the court to adjudicate on factual disputes, but rather she said that the court could look at contemporaneous documents and draw reasonable inferences as to the child's apprehension at the relevant time.

(iv) Ms Quinlivan contended that the school had failed to independently assess risk. It was accepted that the school was entitled to take advice from social services but it was argued that the school should have formed its own view in relation to this child, particularly when the child began raising issues from March 2015.

(v) Ms Quinlivan argued that the Trust had not provided any meaningful supervision of the NSPCC and as a result the supervision was disproportionate. She argued that Article 8 was clearly engaged and

drew on the provisions of Article 8 supplemented by the UN Convention on the Rights of the Child, Articles 3 and 12. Ms Quinlivan referred to various documents whereby the child had explained himself that this supervision was presenting a "living hell". Ms Quinlivan also relied on the reports of Dr Murray which opined that school supervision should have been lessened. Ms Quinlivan also made some submissions about the strength of the allegations themselves.

(vi) Ms Quinlivan referred to the fact that the NSPCC report took a very long period of time and she also referred in detail to the scoring undertaken by the NSPCC professional which she said was flawed in certain respects. Ms Quinlivan in her closing submissions said that this amounted to a material error of fact.

[23] The focus of Ms Connolly's submissions on behalf of the Trust was as follows:

(i) She made the case that a high level of distress on behalf of the child with the arrangements was not apparent from the Trust documentation and that there was clearly a factual dispute upon this. In relation to the AIM2 assessment Ms Connolly said that the Trust was entitled to have a matter referred to a professional agency but they did not divest themselves of responsibility due to on-going reviews and such like.

(ii) Ms Connolly relied on the fact that there was supervision at home, in the community and in the school. She referred to what she described as a commonality of supervision. Ms Connolly also highlighted examples where a light touch to supervision was applied such as a disco and a residential weekend.

(iii) Ms Connolly frankly accepted that the risk assessment had taken too long and in hindsight something probably should have been done about that. However she did refer to the fact that there was a particular context in this case as the child's mother had died and the placement had changed. Ms Connolly accepted that the delay in having report led to a knock on delay in the provision of therapy.

(iv) Ms Connolly also referred to a factual dispute in that the NSPCC worker thought that there was a rapport with this child and that is in direct conflict to the evidence given by the applicant and his family. She said that in reality there were regimes in place at home, in the community and school and that no substantial hurt or harm or upset was caused by them. Ms Connolly enjoined the court to stand back and look at the whole process in this case and as such she argued that there should be no finding against the Trust in relation to abdication of

responsibility or coercion in doing work. She contended that the NSPCC work was undertaken with good intentions and that the family wanted to engage in this work. She stated that there was no breach of Article 8 in this case. Ms Connolly accepted that due to the passage of time the assessment needed to be updated and that this was now offered by the Trust.

[24] Mr McQuitty on behalf of the school made the following submissions:

(i) He accepted that the school had its own obligations under the Education Order which involves looking at the welfare of all pupils and also protecting any pupils from abuse. He pointed to the fact that this type of case involved a multi-agency approach and the legislative drive was towards co-operation, the aim being to safeguard children.

(ii) Mr McQuitty stressed that the school did not have an investigative obligation. He said that the court should take into account the reality of the situation as that when the Trust gives advice it is unusual and could be potentially actionable if the school did not follow it.

(iii) Mr McQuitty crisply pointed out that the applicant now accepts the point made by the school as follows:

- There are factual disputes regarding impact.

- The school is entitled to take advice by the Trust.

- That there were very good relations between the applicant and the teaching staff.

- The school were trying to do their best.

(iv) In addition Mr McQuitty contended that the school did respond to issues when raised and the school also in terms of looking at the mechanics or practicalities of the regime did look at how this could be managed on a day to day basis. As such the submission of the school was that the actions of the school were not disproportionate, that the school was entitled to take the course that it did. Mr McQuitty did accept that the school had not perhaps formally reviewed the supervision requirements once litigation commenced, but that there had been informal reviews of this young person's situation on an on-going basis taking into account what was happening on the ground.

(v) In relation to Article 8 Mr McQuitty could accept that Article 8 was engaged but he indicated that if there had been an interference it was

of a low level given the ambiguity in evidence. In any proportionality analysis this was not the gravest breach. It was relatively modest interference which would be easier to justify given the particular obligation to protect other pupils and indeed the applicant in this type of scenario.

Consideration

[25] I make a number of preliminary observations. Firstly, the case involves an extremely sensitive subject matter. Secondly, it is very apparent that there are numerous factual disputes between the parties. Thirdly, the events at issue are now of some vintage. Fourthly, given the serious nature of the allegations, issues of protection arise for both the applicant and the wider public.

[26] I am exercising a supervisory function in this case. This is not a court of merit equipped to deal with factual disputes. In this case there was some attempt to have the court adjudicate on the actual allegations. However that is not an exercise that is appropriate in a judicial review. A determination of that nature in criminal or family proceedings would only take place after evidence is tested, witnesses are examined and cross-examined and expert evidence is scrutinised. The allegations are there and for the purpose of this judicial review hearing they stand as the underlying basis of the decision-making.

[27] There are obvious ripple effects when something of this nature arises. Statutory agencies such as police and social services inevitably become involved. Investigative work is undertaken and this can often take some time. Alongside that, there are immediate steps that need to be taken. One of the most significant actions is the formulation of a child protection plan. The ingredients of this will depend on the facts of each case however it is important to recognise that children are often removed from home and the school environment in these circumstances.

[28] Risk assessment is not straightforward in a case where there is no conviction and indeed where there is no acknowledgement of what happened. Various assessment tools are used in cases such as this to try and assess risk. The purpose of this is two-fold as it is both protective and curative in nature. Firstly, it is to protect others, but secondly and of no less importance the aim is to protect the person against whom allegations have been made and to assist him or her going forward in life.

[29] An important characteristic of this case is the fact that this child was only temporarily removed from home because his mother was seen to be a protective carer. Also, the school in this case wanted to have the child back. These were extremely positive developments for the child himself. But the corollary of that is that some supervision would have to take place both at home in the community and the school. The other distinguishing factor is that the applicant's mother died in

March 2015 and he also had to undergo a change of placement. I do not underestimate these factors in the context of this type of case. I also bear in mind that this child has a learning difficulty. He is described as immature for his age and also he was subject to a statement of special educational needs requiring one to one assistance, including a classroom assistant. So the child himself has a level of need which is particular to his own situation. Within that factual matrix a case is made in judicial review against two public bodies, firstly, the school and secondly the Trust.

[30] In reality this case comes down to a discrete point which is in relation to the proportionality of the level of supervision. Ms Quinlivan accepts a high level of supervision up to October 2014, but she says that after that there should have been relaxation. I have to decide whether the Trust and school regime was unlawful in that regard.

Conclusion regarding the Health Trust

[31] I note that the Trust was not the original focus of this challenge. The pre-action protocol letter against the Trust is dated September 2015 which is a considerable time after the impugned events arose. However, there was no substantial argument made that the case should be dismissed on grounds of delay and the grounds upon which leave were granted were directed against the Trust actions. I now turn to that case.

[32] Firstly, I see no merit at all in the argument that there has been a breach of statutory duty to provide for a child in need. It was clearly appropriate that the Trust would provide assistance to this child to aid him in his sexual development and to make sure that no further allegations were made against him. The Trust also assisted the family and ensured that the applicant and his siblings were not removed into care in what was a very delicate situation. It is also uncontroversial that the Trust needed to assess risk in this case. Until the outcome of any assessment the risk was unquantified and in my view the decision makers are entitled to exercise a measure of judgment in this regard and to adopt a precautionary approach.

[33] I consider that it was reasonable for the Trust to seek assistance from an expert agency such as the NSPCC. I note the well-meaning approach by the NSPCC worker and it is encouraging to see the effort he invested in the case. It is also inevitable that exploration of sexual matters would cause distress to the applicant. However that type of intervention was necessary. The effects were likely compounded by the applicant's learning disability. I do not accept the argument that the assessment work was coercive or a breach of the applicant's rights however I do appreciate that it was uncomfortable. I note Dr Murray's criticisms of the process however I can form no concluded view on the substance of the two competing reports without hearing evidence. In other words I am prepared to accept Dr Murray's criticisms about procedure and particularly delay however it is

impossible to make any assessment of the merits of each expert report. I am also not undertaking a risk assessment myself.

[34] However, I do have a concern about the oversight of the assessment process. In my view a Trust does not relinquish statutory responsibility on the basis that a professional agency is undertaking assessment work. If this case had been before a court the process would be subject to scrutiny, particularly in relation to timeframe. The timeframe in this case has not been impressive. I take into account the fact that there are particular variables namely the death of the child's mother and a change of placement and it seems to me that these factors explain the situation to an extent. However I remain of the view that more structure should have been applied to this assessment. I cannot help but think that better management and communication might have obviated many of the difficulties in this case and maintained confidence in the process. It would certainly have allowed for a better understanding by the applicant and his family of what was happening. AIM stands for "assessment, intervene and move on." It is clear to me that the assessment needs to inform the intervention and in this case there was mixing of the two strands which elongated the process. The Trust properly concedes that the timeframe was too long. The risk assessment model allows for initial intervention which should be over weeks not months prior to therapy. I consider that the Trust failed to properly superintend this process with the result that it was not conducted in a timely fashion. I will consider the effects of this in the following paragraphs.

[35] I now turn to the argument about material errors of fact in the report. I have reflected upon this issue and I have considered the helpful oral and written submissions of Ms Quinlivan and the third NSPCC affidavit in this regard. On the face of it some mistakes may have been made and the assessor frankly acknowledges this in his affidavit. However, it is important to note that an assessment of this kind involves a professional judgment on the part of an assessor. I accept the averment on affidavit that even with a recalibration of scoring the assessment of risk would remain at medium. As such I consider that any mistakes are not of such materiality to undermine the report entirely. In any event, this report is now overtaken by virtue of the fact that a new assessment is being conducted by agreement and so the applicant has obtained the relief sought by these proceedings.

[36] There was broad acceptance that Article 8 is engaged. In assessing the merits of that case, I take into account the jurisprudence raised by Ms Quinlivan particularly *R (Agualar Quila) v SSHD (Aire Centre Intervening)* [2012] 1 AC 621. I have conducted my own objective analysis of this issue. This is obviously rooted in the particular facts of this case. I ask myself whether the measure's objective is sufficiently important to justify the limitation of a right or interest. I ask myself whether the measure is rationally connected to the objective. I must consider whether a less intrusive measure could have been used and whether, with regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. I also take

into account the best interests of the child as stated in *ZH (Tanzania)* [2011] 2 AC 166. This seems to be a case where the views of this particular child have been amply canvassed, listened to and adapted to, particularly by the school and the NSPCC worker.

[37] Article 8 is a qualified right. In my view the intervention was necessary and lawful in the context of protection of both the applicant and other children. The core question is whether the supervision was proportionate in the circumstances of this case. The fact of the matter is that the care plan was for supervision at home, in the community and at school. That was clearly justified on the basis of the particular allegations in this case. The supervision was applied flexibly and with a lightness of touch. The question is whether there should have been a cut-off point. I cannot accept the pure argument that the plan could have changed after a period of time when no risk assessment report was available. The risk assessment was delayed and that is regrettable but it ultimately resulted in an assessment of medium risk and a recommendation for therapeutic intervention.

[38] I must then consider the effects on the applicant of the process adopted in this case. There is some evidence about the effects upon the applicant however this is not altogether clear or unambiguous. It follows as a matter of course that there is going to be a level of discomfort and upset about supervision in this type of case. That goes with the territory but it does not automatically follow that a breach of Article 8 is established given the legitimate aim of child protection. I bear in mind the point made by Ms Connolly that there was a need for supervision not only at school but at home and in the community. Reliance is placed by the applicant upon the evidence of the next friend which records difficulties raised by her from March 15 culminating in the record of the June 15 LAC Review wherein it was reported that the applicant found life not worth living. However this record is not specifically about school and at that time the applicant's mother had recently died and he had changed placement. In addition some reference was made to comments made by the applicant himself. However, there is also evidence filed by the respondents that the applicant had a good relationship with school teachers and the NSPCC worker. I am left in a position where there is conflicting evidence about this issue. I stress again that this court is not conducting a merits based exercise. There was a period from March 2015 when there was reference to some particular distress during the assessment process. However, properly analysed, this may have been related to the social factors I have mentioned and also the impact of intensive work undertaken by the NSPCC. I cannot equate distress to the ongoing supervision alone. In any event I consider that any interference with the applicant's rights can be justified given the legitimate aim of child protection.

[39] On an overall view, I cannot conclude that the supervision was disproportionate. In my view a fair balance was struck in the highly specific factual circumstances of this case. Hence the Article 8 ground does not succeed.

[40] I have also considered the argument based upon the decision of *S and Marper* [2008] ECHR 1581. I bear in mind the importance of records for any young person. However in this case I commend the Trust for making a concession that in fact a new risk assessment will take place and that there will be no record of this particular exercise on the applicant's file. As such I cannot see that any case is made out on this front.

[41] There was no specific argument advanced in relation to a breach of statutory duty in this case but in any event as I have said I cannot see that the Trust has breached its obligation towards a child in need.

Conclusion regarding the school

[42] I begin my acknowledging that the circumstances of this case presented a challenge for the school. The school took advice as it did not profess to be expert in relation to child protection. The school also completed a risk assessment at the outset which was appropriate and in accordance with their statutory duties. This is the assessment dated 9 May 2014. A further assessment was made when the applicant began to attend college in September 2014.

[43] It is clear from the evidence that the school maintained a keen interest in this child by attending his LAC reviews and such like. I also note that the applicant enjoyed a good relationship with the teachers and the school reports I have seen are very positive. I accept the evidence filed by the school that it did not appear to them that there were particular complaints about the level of supervision. It is important to note that no specific issues were brought to the attention of the school by the applicant or his carers that were not dealt with. I accept that there was not a formal review process in place however I am satisfied that the case was reviewed informally and on an ongoing basis.

[44] The school has duties not just to the child but to other pupils and I can see no breach of the statutory obligations undertaken by the school. It seems to me that the school has acted lawfully and taken into account the advice of the social services. The school has also been flexible in terms of the arrangements, illustrated for example by the residential weekend that was facilitated.

[45] There was no specific argument about what the substantive breach of statutory duty of the school was. This part of the claim is without merit in my view. As regards the Article 8 claim, I will not repeat the principles I have applied which are set out above where I deal with the case against the Trust. The same applies to the school and I find no breach.

[46] The pre-action correspondence was directed to the school in April 2015 and a pre-action protocol letter is dated 29 June 2015. The school checked the position with the Trust at that stage and attached a letter of 1 July 2015 which clarified matters and

reiterated that supervision should remain in place. The school sent a substantive response of 3 July 2015 and further correspondence of 28 August 2015 suggesting that informal discussions would assist. I cannot fault this chain of correspondence.

Overall Conclusion

[47] The particular subject matter of this case has been overtaken and is academic in the sense that the child has moved from the school. In any event I do not consider that any case has been established against the school in this judicial review.

[48] As against the Trust, leave was granted on a number of specific grounds which I have set out at 3 (i) (ii) and (iii) of paragraph [3] herein. To that I allowed a further ground to be advanced during the hearing. I consider that a case has been made out by the applicant on the procedural ground comprised within 3 (iii). In my view the Trust failed to adequately superintend the process and ensure that the risk assessment was conducted in a timely manner. I consider that there is purpose in granting declaratory relief given that this issue will likely arise in other cases. I will make a declaration to that effect.

[49] The risk assessment will also be quashed and a fresh risk assessment will be undertaken.

[50] Accordingly the application for judicial review is granted against the second named respondent. I will hear the parties as to costs.