

**THE HIGH COURT
WARDS OF COURT**

[2021]IEHC 465
[WOC 10593]

IN THE MATTER OF CL

RESPONDENT / A WARD OF COURT

JUDGMENT of Ms. Justice Niamh Hyland delivered on 2 July 2021

Introduction

1. This is an application brought by the HSE for an Order approving the proposed change of residence for CL, ward of court, from his current place of residence in Teach Mhuire, Newmarket, Co Cork to Iron Hills, Tullaroan, Co. Kilkenny. The hearing took place over two days on 21 April 2021 and 23 April 2021.
2. The inquiry as to wardship took place on 21 April 2021 and CL was admitted into wardship on 23 April 2021. The General Solicitor was appointed as the committee of the person and of the estate.
3. The application is opposed by the parents of CL, TL and DL. Reservations have been expressed about it by CL's former guardian-ad-litem ("GAL"), Sarah Duggan, largely on the basis that it is a considerable distance from CL's parents. The committee has remained neutral in relation to the placement due to its very recent appointment.

Procedure adopted in respect of this application

4. The application by the HSE to have CL first taken into wardship was made on 29 July 2020. An order was made on 20 August 2020 by Irvine P. directing that an inquiry be held into the soundness of the mind of CL in accordance with the 12th section of the Lunacy Regulation (Ireland) 1871. A GAL, Sarah Duggan, independent social worker, was appointed on 29 July 2020. CL was detained in St. Joseph's Foundation, Baker's Road, Charleville, Co. Cork under the protective wardship jurisdiction pending the holding of an inquiry. CL was served with the Notice of Motion (dated 7 September 2020) on 7 September 2020 at St. Joseph's.
5. Both parties proposed that the holding of an inquiry be postponed until after this application be determined in relation to his placement, since they wished Ms. Duggan to be involved in the hearing. I thought it important that Ms. Duggan provide evidence given that she has known CL since July 2020, having visited him on three separate occasions. However, I equally took the view that where very significant decisions are being made about a person, it is far preferable that these be made when the person is actually a ward of court than when they are under the protective jurisdiction of the court awaiting an inquiry, if at all possible. Therefore, the inquiry took place at the same time as the placement application.
6. I was in a position to give a decision straight away on the former application as the medical evidence was unfortunately, overwhelming, that CL was of unsound mind and unable to manage his affairs within the meaning of the relevant statute, being the Lunacy Regulation (Ireland) Act, 1871. I therefore took him into wardship on 23 April 2021 as identified above.

7. During the hearing on the proposed placement, evidence was given by Mr. Michael Hegarty (Disability Manager for the Cork North area, HSE), Mr Bryan Gallagher (Manager of Client Services for the Cork North area, HSE) on behalf of the HSE. On behalf of CL's parents, evidence was given by Mr Michael de Villiers (a registered chartered educational psychologist specialising in children and adolescents and educational psychology), Mr Alan Tennyson (behaviour specialist) and TL. Ms Sarah Duggan gave evidence as CL's GAL.
8. On 29 April 2021 I gave an *ex tempore* judgment, where I concluded that in the absence of a detailed assessment from Nua Healthcare, the proposed provider of residential services to CL as to the suitability of the proposed placement, Iron Hills for CL, it was premature to make a decision on the application and I therefore adjourned the matter to allow information to be provided. I also requested information as to the possibility of CL communicating with his parents through online access as I considered this was relevant to the issues requiring to be decided. Accordingly, I ordered *inter alia* that Nua Healthcare undertake and complete a comprehensive needs assessment in respect of the Ward in relation to a potential placement in Iron Hills, such assessment to include but not be limited to;
 - (a) clinical needs assessment
 - (b) environmental needs assessment
 - (c) social needs assessment
 - (d) health needs assessment.
9. Further information was provided after the hearing as identified in detail below and given that information I am now in a position to make a decision on CL's placement.

CL

10. CL is an 18 year old boy, born on 1 September 2002, who suffers from the very distressing disorder known as Heller's syndrome. This is considered an extreme form of ASD. He also suffers from an associated moderate intellectual disability. CL did not show any signs of developmental delay until age 4. He then started to lose speech and language, movement and intellectual and social development. Heller's syndrome means that his condition is degenerative and that he is likely to regress as he goes through life. However, as one of the experts called on behalf of his parents, Mr. Tennyson (behaviour specialist) observed, what the regression means in terms of challenging behaviour is not clear. For example, a decline in cognitive functioning does not necessarily correlate with an increase in challenging behaviour.
11. CL's presentation and history are well known to all the parties so I do not propose to outline same in detail. In short, he has significant cognitive, emotional, psychological and social deficits. He can communicate and has some spoken language but does not generally communicate on a reciprocal basis. He is doubly incontinent. He is very physically mobile and needs to move a great deal. He has in the past exhibited challenging and explosive behaviours, where he can be a danger to himself and others. At

these times he engages in self injurious behaviours. These include chewing cables and smashing furniture and doors. He is extremely sensitive from a sensory point of view and in particular cannot tolerate certain types of noise. In the past, CL has been able to attend school. However, since April 2019 he has not attended school or a day care centre or any type of organised daily placement. He enjoys going for walks in the woods or on the beach. He has been able to go swimming although that has been stopped for the last 4 years and only recently resumed on one occasion. He likes contact with animals. He enjoys watching television. He likes painting. He has very strong links with his family, who are the only people in his life who are not professionals. I return to that below.

CL's current situation

12. CL is currently living and being cared for in Teach Mhuire, a house run by St. Joseph's Foundation in Newmarket. I am satisfied that CL's placement in St Joseph's cannot continue for the following reasons. First, St Joseph's have identified that they are cannot manage CL's behaviour. Second, there have been difficulties between CL's parents and St Joseph's and the staff. Third, St Joseph's is a children's service and CL is now over 18. Finally, St Joseph's are anxious to use the three bedroomed house that CL currently occupies as a respite place and believe it will be suitable for four children at a time if used for respite.
13. Evidence was given that the staff caring for CL are "burnt out" and that there is a possibility that the placement may break down on a sudden basis. Mr Hegarty, Disability manager for Cork North, HSE gave evidence that a crisis discharge from St Joseph's is a possibility and that if it took place, then the HSE would ask another agency to provide temporary accommodation for 28 days and that the agency that provide those types of short breaks is Nua Healthcare. He says alternatively that there could be a discharge to a safe place, being an A&E department where CL could be admitted as a social admission. It is not in dispute that either of those options would be very distressing and highly undesirable for CL and not in his best interests.
14. I do not need to decide the reasons why St Joseph's have decided that they need to terminate CL's placement, but I am satisfied that his placement there is no longer open to him, except on a short-term basis pending transfer to another placement. The HSE were notified by St Joseph's on 28 April 2020 that they could no longer keep CL. That is more than one year ago. I also note that the placement in Iron Hills is likely to be ready in July/August. Mr Hegarty of the HSE gave evidence that St. Joseph's will likely keep CL until then if they know as definitively as possible when the transfer is likely to take place.
15. For the purposes of this application, the relevance of this evidence is that the best interests of CL require a move, because without such a move it is possible there will be a crisis discharge which will clearly not be in his best interests. I must take that into account in any decision that I make in this respect. I am equally aware that it is unlikely that there will be a crisis discharge in the very short term, particularly if there is a concrete plan to move CL in the short term.

Objection of CL's parents to Iron Hills

16. CL's parents have three principal objections to the proposed placement. The first, and overwhelming one, is the distance of Iron Hills from their home and the difficulties that will cause them in visiting CL. They live in Cork and the journey between their home and St. Joseph's takes about 50 minutes one way. On the other hand, they estimate that the journey to Iron Hills will take about 2-2 ½ hours so a round trip will involve a journey of about 5 hours. Because of their work situation, they estimate they will only be able to visit him once a week if he is moved to Iron Hills. At present his mother visits him 3-4 times a week.
17. The second is that they consider the proposed space in Iron Hills too small, being circa 51 sq. metres. They contrast this with the space that is available in St. Joseph's where CL is alone in a three bedroom house. They note that CL will be sharing the space with the two staff members who are assigned to him on a 24-hour basis.
18. Finally, they object on the basis that the application is premature and cannot properly be assessed given that the floor plans for the new apartment, which is being converted from its present use as a garage, have not yet been provided.

Effort to obtain other placements

19. Mr Hegarty gave detailed evidence about efforts to obtain other placements for CL. The documentation in relation to same was provided in advance of the hearing to CL's parents. In my consideration of same, I note that this application is not one to review the manner that the HSE explored other placements for CL. However, the search for a suitable placement, and outcome of same, is relevant to this application as it must feed into any best interest assessment. In other words, if I am satisfied that there is no other reasonably available placement for CL and that the placement in St Joseph's cannot continue, then that is relevant to my consideration of the proposed placement.
20. In the circumstances, I have carefully considered the material both from Positive Futures and from Resilience, two other potential providers that were identified by CL's parents. However, it is clear from the correspondence that neither of them has a residential placement available for CL. The Resilience proposal is that they would work with St Joseph's who would continue to provide a residential placement to CL. That is not an option for the reasons I have identified above.
21. The Positive Futures plan suggest that they would be willing to engage in searching for a residential location, to seek HIQA registration for same, to put in place a team in respect of same and could offer some but not all of the services required by CL. They could not offer psychiatric services and therefore would not have a multidisciplinary team. Mr Hegarty has given evidence that all of this will take some considerable time and that therefore, given the concerns of St Joseph's to move CL on, this is not a viable proposition from that point of view also. There are also important cost considerations, with the latter proposal being €400,000 higher annually than the cost of the Nua placement.

22. For all these reasons, the HSE has concluded the proposed placement by Positive Futures is not a viable alternative.
23. I accept that conclusion in light of the reasons given by Mr Hegarty.

Evidence of Mr. Tennyson

24. Mr. Tennyson has worked with CL since 2014 in the context of behavioural support services provided to CL by *Trasna* training services, a service run by the Brothers of Charity. I found the evidence of Mr. Tennyson particularly important given his history of working with CL. CL was discharged twice from *Trasna* due to behaviours settling but both times was re-engaged. Reports from January 2014, July 2016, May 2019 and October 2020 were provided. It is very helpful to have access to reports generated outside the context of litigation going back such a long way. It is equally helpful to have the evidence from the author of those reports, Mr. Tennyson, who obviously has a deep familiarity with CL and his behavioural issues.
25. In those reports he identified, *inter alia*, that there should be no physical interventions in terms of behaviour and that a low arousal environment was critical. This is demonstrated on page 2 of his report dated 7 October 2020, where Mr Tennyson also recommends physical and outdoor activities. Mr Tennyson's report from 24 May 2019, where CL had been assessed from 26 March 2019-3 May 2019 outlined in particular procedures to co-operate with CL in respect of activities of daily living, including personal hygiene, and practical recommendations to maintain a low arousal environment. The report of 14 January 2014 recommended a reduction in visual and auditory noise in CL's environment and reducing the amount of people in this environment.
26. The core aspects of his oral evidence were as follows.
27. He noted that CL exhibits high activity behaviour and that this had been monitored. He observed that where you have a large 18 year old, it is vital to make sure you are not in his way or that you don't contain him too much. In relation to the size of Iron Hills, the proposed placement he thinks the impact of it being small is likely to mean an increase in challenging behaviour.
28. He also expressed concerns about the impact of a building with four residents and attendant staff 15 to 20 feet away, given the possible impact of noise from that building.
29. He said that he would be in a better position to comment upon whether it would be a low arousal environment when further information is obtained, in particular in respect of parking and layout of the building.
30. In relation to distance of the proposed placement from CL's parents, Mr Tennyson observed that it was "very very likely" to have a detrimental effect. He referred to a large body of evidence to demonstrate that placements away from a person's circle of support is associated with poor outcomes. He identified that for CL, by worse outcomes he meant more challenging behaviour and greater restrictions on his freedom to move. He did not see any reason why it should be different in this case.

31. In relation to a further move from Iron Hills in the short to medium term, he said it would likely to be detrimental. He agreed it would be better if the transfer was to be a long-term transfer at this point as it would avoid the stress of an additional move at a later point in time.
32. He observed that the profile of other residents might not affect CL, because CL has lived with other people successfully in the past in Buttevant. He identified the distance as being the principal issue given the disruption it would cause to the relationship in the family.
33. He was asked about other ways of communication with his family apart from physical presence and he observed that CL has a moderate intellectual disability and therefore such remote forms of access will be very challenging for him and will remove the human contact element that he currently has.

CL's behaviour

34. I was particularly struck by the fact that CL's behavioural issues are not unvarying. For example, Mr Tennyson gave evidence that after he arrived Buttevant and an initial settling down period, he was very settled for a considerable period after that. Similarly, after a very difficult period in St Joseph's in 2019 and 2020, from a behavioural point of view, he seems to have become well settled. The evidence of his mother is that he is only having a behavioural incident every six to eight weeks. However, that evidence was given before the very serious behavioural incident on 15 May 2021 described below. It is clear that CL's environment and the way in which he is managed is highly relevant to his behaviours.
35. I was also very struck by the fact that when his behaviour is challenging, because of his size and strength and the intensity of the outbursts, serious restrictions are required. Those were the subject of adverse commentary by HIQA in relation to some of his time in St Joseph's. At present the means of restraint appear to be that CL is contained in the house and that the staff leave the premises until he has worked out his frustrations. I also note the evidence that such episodes are very distressing for CL and the effects last for some considerable time afterwards.
36. It is therefore paramount in my view that the cycle of behaviour, that has in the past caused such difficulty for CL and for the people who work with him, as well as great distress to his parents, be avoided if at all possible. The evidence appears to be that when CL is in a low arousal environment and being cared for by staff who are suitably trained, it is possible for him to maintain long periods of stable behaviour which allow him to participate in activities. Such participation is closed to him when his behaviour becomes very challenging.

Iron Hills

37. Iron Hills is on the grounds of a residential property in Ballydowel Little, Tullaroan, Co. Kilkenny run by Nua Healthcare, that provides accommodation for four other people and is HIQA registered. It is proposed to convert a garage that is in the grounds of Iron Hills to provide a living space for CL. That will require separate HIQA registration.

38. An application for planning permission for change of use has been submitted. It is proposed that the apartment will be laid out on a customised basis for CL with the necessary safety features, optimal aspect onto the garden, 2m high fence to separate him from the other residents, toughened furniture and a separate kitchenette. Internal plans are not yet available. The apartment will be 51 m² when completed. Evidence was given by Ms. Duggan, who visited the property, that Iron Hills has a very nice garden which will be exclusively available to CL. Iron Hills is in a quiet rural setting. Ms Duggan identified positive aspects of the placement as well as negative ones. I attempt to summarise both positive and negative aspects of the placement from CL's point of view. The advantages are as follows:

- The apartment is separate from the main building;
- The apartment can be designed and customised specifically for CL's needs;
- There is a big garden exclusively for CL with a 2 metre wall;
- Access in and out of the apartment can be designed specifically for CL so that it avoids him being over stimulated by other service users;
- There is a 7 person van associated with the placement that CL can use without the presence of other residents; and
- CL will have the benefit of a full multidisciplinary team from Nua Healthcare.

39. The disadvantages are as follows:

- The distance from his family;
- The fact that this is not designed as a long-term placement, given the distance from his family and possibly given the fact that ultimately CL may need a wheelchair and a hoist and that this size of placement may be unable to facilitate that; and
- The small space of apartment, in a context where there two staff must be with CL at all times and where CL is likely to spend a considerable amount of time in his apartment given his present inability to attend a day service.

Family access

40. At present CL's family, in particular his mother, visits three to four times per week. Her evidence was that she tends to have relatively short visits because CL cannot tolerate long periods of proximity to a person and disengages. Her visits are normally 30 to 60 minutes. CL does not appear to go home on any occasions. I note that sometimes she will phone CL and he finds the sound of her voice helpful although he is not able to easily communicate with her on the phone. She has given evidence that due to the distance of Iron Hills, she and DL, her husband, will only be able to visit once a week as it is effectively a four and a half to five hour round trip.

41. It seems likely to me that if CL goes to Iron Hills the visits will still have to remain relatively short for the reasons that she has already given, although possibly it might be possible for his parents to accompany CL on a walk and in that way prolong the visit.
42. I am satisfied from the evidence that CL is likely to be able to contact his parents either by phone or by Skype but that is not of course the same as having physical access, particularly given CL's communication difficulties. However, I do not discount the possibility that CL may in time find that remote access with his parents is an important way of staying in contact.
43. Suggestions were made by Mr Hegarty that it might be possible for his parents to meet CL half way with the staff from Nua taking CL to a halfway point. However as became clear from my interaction with Ms Duggan when she was giving evidence, it is likely to be difficult to find a suitable place for that meeting to take place. Because of CL's sensory difficulties he must avoid busy or crowded places both indoors and outdoors. That might mean for example that he could only meet his parents in a park – weather permitting – if the park was quiet and there were no children or groups of people where noise could be an issue.
44. All things considered, it seems likely to me that CL's physical access to his parents will be very substantially reduced by this placement. This reduced access is particularly unfortunate given that CL is a young person aged 18 and, as pointed out by Mr Duggan, has nobody in his life that is not a professional apart from his family,

Further information provided after the hearing on 19 May

45. Following the hearing, I received a letter of 18 May 2021 to Mr Gallagher of the HSE from JJ Carey of Nua Healthcare, giving a very brief summary of CL's individual care programme.
46. On 27 May 2021 a comprehensive needs assessment in respect of CL done by Nua was sent by the solicitors for the HSE to me and to CL's parents, as well as correspondence from Nua of 26 May 2021.
47. A replying affidavit was sworn by TL, CL's mother on 10 June 2021 in which she maintained her objection to the placement.
48. A replying affidavit of Ms Kelleher was sworn on 18 June 2021, where she exhibited the Nua correspondence referred to above, as well as correspondence between herself and the solicitors for CL and recent reports from St. Joseph's on behavioural incidents with CL.
49. The comprehensive needs assessment ("CNA") is a 32 page document. It describes *inter alia* what CL likes and dislikes, how he copes with stress/emotional worries, and identifies a detailed list of actions/recommendations. Those include that CL requires a low stimulus environment, that he needs space to walk around himself, that there will be a full detailed handover required from St. Joseph's MDT to Nua Healthcare MDT prior to admission, that staff are to support CL's existing relationship with family members, that CL is to be assessed by psychiatry to determine needs, medication treatment plan and clinical needs,

that CL displays a high level of violence and aggression when escalated, that the current approach in St. Joseph's requires to be reviewed throughout his 12 week assessment, that a MAPA instructor should review the environment to determine training needs and/or further risk management measures required. There is a section dedicated to restrictive practices, which refers to physical restraints and environmental restrictions such as requirement for toughened furniture, table fixed to the floor, no access to kitchen facilities etc. It is identified that staff will always use the least restrictive procedure and this will be discussed regularly at handovers and team meetings. It is identified that the apartment will be tailored to suit CL's assessed needs.

50. In the affidavit of TL sworn 10 June 2021 she observed that the CNA was not in compliance with the order made on 19 May 2021, given that the document did not set out how it was proposed to achieve the goals contained therein, did not contain a plan or layout of how the garage was to be converted and did not deal with clinical, environmental, social needs or health needs. She opined that it was not possible for me to determine if the proposed placement was appropriate without such plans or layout.
51. It was further suggested that the physical restraints referred to in the document would cause CL to engage in challenging behaviours. A report from Mr Tennyson of 3 June 2021 was attached as an exhibit.
52. In relation to Iron Hills TL said that she had not been facilitated with a visit, and that the remote visits had been trialled but had been a total failure. She also asked that the former GAL, Ms Duggan, be engaged as an independent social worker to advise the court on the information provided by the HSE and whether the placement was appropriate. Finally, she suggested an alternative placement with a UK organisation called Praxis Care who are setting up a premises in Cork.
53. The report of Mr Tennyson is a 2 page letter where he notes that the CNA refers to the frequency of episodes of challenging behaviours being yet to be determined but that the current service provider should be able to provide information about the restraints used in the past year and details of same. He says that the CNA makes recommendations for "*highly restrictive and likely damaging interventions to be applied to a vulnerable young man without the empirical evidence that these interventions are necessary*". He observes that according to UK guidelines, the presence of restrictive social environments is associated with an increase in challenging behaviour, and that changes to the person's environment such as moving to a new care setting are similarly associated with increases in challenging behaviour.
54. In Ms Kelleher's affidavit of 18 June 2021, she exhibits *inter alia* a report from St. Joseph's in relation to a recent and very unfortunate incident on 15 May 2021. I will describe the incident in some detail given that it illustrates starkly the challenges in caring for CL and explains why options are so limited in respect of a suitable placement. It goes without saying that I am not in any sense attributing blame to CL for the sequence of events: he is clearly unable to control his actions at times, given his medical condition, and it should not be taken as reflective of CL's behaviour the majority of the time.

55. CL had been for a drive, and when they returned, CL refused to put items back in the boot of the car having been gently requested. CL went into the house and as the person in charge ("PIC") walked towards the kitchen, CL ran at her, chased her out of the sitting room, she alerted other staff, she ran down the hall out the back door and along the side of the house. CL followed her, lunged at her, and over the course of five minutes, bit her left hand and her right hand, breaking the skin, and holding the bite, pulled her hair using both his hands, and pulled her down towards him. Two other staff members arrived within a very short space of time and they tried to distract him and exit the garden where the incident was taking place. CL followed the staff, pushed the PIC up against the green fencing, bit into her hair, pulled some hair out with his teeth and attempted to bite her face. CL had a hold of the PIC for approximately 5 minutes.
56. Ms Kelleher also exhibited correspondence back to CL's solicitors where she indicated that in relation to the CNA, if the court approves the transfer, then a comprehensive transition plan would be drawn up and agreed. Under the Regulations adopted under the Health Act 2007, within 28 days of a person's arrival at a designated centre, a personal care plan must be developed for the resident and that this would provide further detail.
57. In further correspondence, she indicated that the external layout of the garage is available by looking at the planning file and the internal layout will be drawn up once the transitional planning commences if the court decides Iron Hills is the most appropriate option available for CL.
58. In relation to Mr Tennyson's report, Ms Kelleher in her letter of 15 June 2021 notes that there are already significant restrictive practices in place in CL's current placements and she attaches and exhibits various reports in that respect.
59. The behaviour support guidelines for CL of May 2021 from St Joseph's refer to CL's behaviours of concern, triggers and setting events for those behaviours, warning signs, environmental and proactive strategies, including a low arousal environment, an individualised residential service, restricted access to certain rooms including kitchen and laundry room, secured front gate locked side gate and restriction on windows in his house and restricting access to staff areas in his house. Reactive strategies are also identified including the necessity for staff to evacuate the house if CL's behaviour deteriorates and to maintain visual contact with him through the windows of the house. A report from speech and language therapy monitoring CL's progress in using remote forms of communication is provided, identifying short-term goals and progress in respect of same.
60. Finally, an email from Praxis of 13 May 2021 was provided, whereby Praxis indicate they are not in a position to offer a service as they are at capacity.

Findings

61. Bearing in mind that the deciding factor in any decisions I make concerning is CL's best interests, I have concluded that CL's interests are best served by ordering a move to Iron Hills.

62. In arriving at that decision, I have balanced the benefits and detriments of a placement in Iron Hills from CL's point of view. There are many advantages to the placement. First, as noted above, CL must move from his current placement with the risk of a crisis discharge within the next number of months if he does not. As the references to CL's behavioural incidents in this judgment make clear, CL has very complex needs and ensuring he is suitably placed poses very considerable challenges. Only a very small number of residential services will be in a position to take CL, particularly given that he cannot at present live in close proximity to any other residents and that his living space has to be customised for his particular needs. There are no other reasonably available placements for CL.
63. Moreover, Iron Hills has two very significant advantages. First, the environment will be custom designed for CL. It will be possible to devise a low arousal environment given the physical location of the apartment. Second, Nua Healthcare has a multi-disciplinary team who will work together to formulate a holistic approach to CL and to devise a plan that will minimise difficult behaviours and enhance his life as far as possible. It will mean all his services will be provided by one team who can interact with each other.

Impact of placement on family visits

64. I turn now to the objections raised by CL's parents. They have a deep and sustained objection to this placement on the ground that it is a very significant distance from their house and will make it much more difficult to visit CL. I understand their concerns in this respect. However, given that it is accepted that CL must move, it is necessary to find a suitable placement that will accept him. Approaches have been made to three providers who are geographically closer to his home – Positive Futures, Resilience and Praxis Care. None of them have a suitable placement. As noted above, CL has complex needs and his behaviour poses significant challenges for the persons caring for him. The doctrine of necessity is applicable here. It would of course be optimum to find a placement close to his family's house. Their company and presence is of huge importance in his life given that he has no other persons close to him that are not professionals.
65. However, no suggestion of a suitable placement in reasonably close proximity to his parents has been put forward by the HSE. This is not a situation where I am choosing between two options, one of which is significantly closer to his parents than the other.
66. In truth, what I am presented with is a choice between moving CL to Iron Hills which, in all other respects for the reasons I set out below, I consider to be a suitable placement for him, and leaving him in a place that is clearly not suitable for him and which he would have been moved from some considerable time ago had it been possible to find an appropriate placement for him. In the circumstances I consider that it is in his best interests to move to Iron Hills, even taking into account the additional difficulty that will impose upon his parents in visiting him and the very likely reduction of parental visits from his point of view.
67. I have asked the parties to consider how remote contact may be facilitated to supplement access, although this cannot of course replace physical access. The speech and language

team have been heavily involved in trialling this and some progress is apparent, although it has been uneven.

68. I direct that the current approach continues and that remote access to his parents be part of CL's transitional planning. I am optimistic that some element of virtual contact may be possible to achieve with time.
69. On the next review date, I expect the court to be updated as to whether it has been possible to facilitate visits between CL and his parents at some mid-way point, so as to avoid the necessity of them making the round trip of 4-5 hours every time they wish to see him.

Size of Iron Hills

70. The other significant objection to the move to Iron Hills is that the environment is unsuitable because it is significantly smaller than the house he currently lives, and because the plans are not yet available for the internal layout. I do not find the latter objection well-founded. The building is currently in use as a garage and permission has been sought to convert it to a residential apartment. The external drawings were part of the application. No internal drawings were submitted to the planning authority since I understand permission is not required in respect of the internal layout if permission is granted for the change of use from a garage to an apartment.
71. It has been explained internal plans will not be drawn up until it is decided whether CL is in fact going to Iron Hills. Because I am granting liberty to the HSE to transfer CL, I understand that internal plans will now be drawn up specific to his requirements. CL's committee can have an input into those plans and I direct that they should be provided to the committee as soon as they are finalised, and no works may commence for one week to allow input by the committee on the proposed layout. Any comments that CL's parents wish to make on the plans should be provided to the committee who can decide to what extent they should be relayed onto Nua.
72. In relation to the size of the building, it is true that it is small and this will undoubtedly pose challenges for CL and for the two staff members who must be with him at all times. However, it is also true that there is a large garden for CL's exclusive use that is attached to the building and that this is a stand-alone building with no other residents present. There is also a large wall around the garden which will contain CL. I conclude that these advantages are likely to outweigh the disadvantages of a relatively small space.

Use of restraints

73. Finally, the use of restraints on CL has been raised by TL and Mr. Tennyson. CL is of course already subject to significant restraints in his current placement. The CNA provided by Nua refers to the type of restraints to be used. There is a reference to "MAPA holds", both seated and standing with use of a safety pod. Environmental restrictions are also identified which includes locking away dangerous items, a table fixed to the floor, toughened furniture and an enclosed garden. At paragraph 2.9 on page 26 is stated that, given the health and safety risks associated with CL in his current living arrangements, the restrictions are required and will be reviewed on an ongoing basis. The aim is to

eliminate the restrictions for CL, however this must be done in a very safe and controlled manner with input from MDT and over time.

74. Mr Tennyson referred in his letter of 3 June to the CNA recommending mechanical restraints, being harness and seclusion including a safety pod. I could not find any reference to the CNA to the use of a harness (apart from in the car) or seclusion, but it may be that that is part of the use of a safety pod. In any case I will address the concerns of CL's parents in this respect by directing that the personal care plan identified for CL within 28 days of his move to Iron Hills specifically address the question of mechanical and other restraints, and that the matter comes back before the Court within a further 28 days of the personal care plan being produced so that the parties can make submissions (if necessary) on what is proposed by Nua in this respect.
75. In so far as Mr Tennyson criticises the use of locked internal and external doors, that type of restriction is used at present where CL resides and unfortunately appears to be necessary given the risks that CL poses on certain occasions to the staff working with him.

Other objections

76. Finally, in relation to other points raised by TL in her affidavit, it is certainly true that the move to Iron Hills will very likely trigger behaviour due to the significant change in environment and routine. However, that is not a reason for refusing to move CL since that will be the case irrespective of his placement.
77. In respect of the suggestion that Ms. Duggan should be appointed as his social worker to analyse the placement, I have already heard the views of Ms. Duggan on the proposed placement in the course of the hearing before me and I do not think it would add anything to seek her views again.
78. Finally, TL raised the issue of the necessity for nursing care for CL. The only recommendation in relation to nursing care was that CL have nursing care for a short time following medical issues he was experiencing at the relevant time. There is no ongoing requirement for CL to have constant nursing care and TL has not put before any up to date medical reports that identify the need for such care.

Additional information provided by Nua

79. I had directed that in carrying out its assessments and plans, Nua consider the terms of my *ex tempore* judgment and the evidence provided, including the evidence and reports of Mr Tennyson, and that Nua address those issues in the CNA. The CNA does identify in some detail CL's behaviour and the triggers for behavioural outbursts and it has likely been informed by the Tennyson reports, although there is no explicit reference to same.
80. I have identified how valuable I found those reports and I think it is important that the information they contain is utilised in any forward planning for CL. I therefore going to make an Order identifying that, prior to CL's transfer, as part of the transitional planning, Nua provide a document explicitly identifying how the behavioural regime they intend to put in place complies with the Tennyson recommendations. In relation to TL's criticisms of

the CNA, I find that it does contain clinical, social, environmental and health assessments. However, by definition, CL's personal care plan that must be provided within 28 days of his arrival at Iron Hills, will provide further information in this regard, as it will be informed by the transitional planning that will now commence and the handover from the team at St. Joseph's.

Conclusion

81. Having regard to the foregoing, and the reasons set out, I hereby grant liberty to the HSE to move CL to Iron Hills at a time to be arranged after the conclusion of the transition plan. The parties have liberty to apply.