

THE HIGH COURT

[2022] IEHC 21

High Court Ref. WOC10468

WARDS OF COURT

IN THE MATTER OF MR. M, A WARD OF COURT

JUDGMENT OF Ms. Justice Niamh Hyland delivered on 17 January 2022

Introduction

1. This is a review of the detention of Mr. M in the Central Mental Hospital ("CMH"). The most recent order made detaining him is that of Heslin J. of 23 March 2021. Because Mr. M is the subject of involuntary detention orders, that detention must be reviewed every 6 months in order to ensure that it is compliant with the requirements of the European Convention on Human Rights.
2. At the six-monthly review hearing of 17 November 2021, the sister and aunt of Mr. M (hereafter referred to as Ms. M and Ms. K respectively), representing the views of the family, expressed their dissatisfaction with various aspects of Mr. M's detention. An application was made that Ms. K would be appointed as the Committee of the person and of the estate. The present Committee of the person and of the estate is the General Solicitor. In fact, the family were happy that Ms. K be appointed in addition to the General Solicitor, but the position of the General Solicitor is that, for reasons identified below, she does not believe it would be appropriate to share the duties of the Committee with Mr. M's family members.
3. Therefore, I must determine whether the General Solicitor should be replaced as Committee with Ms. K.
4. Other issues in relation to the conditions under which Mr. M is detained were also raised by his family, namely the identity of his doctor, his medication regime, his placement in the CMH and his application for leave from the CMH. I deal with each of those in turn below.

Background

5. Mr. M was born in 1985. Sadly, he has had a long and troubled history of psychotic illness and recidivist type criminal offending which is also associated with polysubstance abuse and homelessness since his early teens. He suffers from schizophrenia and has a significant learning difficulty.
6. The background to his admission to wardship is set out in considerable detail, in an *ex tempore* ruling of Coffey J. delivered on 23 April 2020 and an *ex tempore* ruling of Heslin J. of 23 March 2021. In both those decisions, Mr. M's psychiatric history and his various periods of detention, including those in the CMH, have been set out in considerable detail. I do not propose repeating them.
7. However, in substance, the position is that the first of his admissions to the CMH was in 2004 and the most recent was on 25 January 2017 when he was transferred from Portlaoise prison while serving a lengthy prison sentence. The transfer from prison to the CMH was made pursuant to s.15(2) of the Criminal Law (Insanity) Act 2006 on foot of

certificates from two medical practitioners that Mr. M was suffering from a mental disorder for which he could not be afforded proper care and treatment within the prison. That sentence (with remission) expired on 28 April 2020.

8. Prior to expiry, on 23 April 2020, the wardship jurisdiction of the High Court was invoked by the CMH seeking interim protective orders for the involuntary detention of Mr. M in the CMH. Following a contested hearing, Coffey J. concluded that Mr. M was a person of unsound mind, that his current therapeutic needs and best interests required that he be detained in the CMH and that the making of the interim protective orders was necessary and appropriate to vindicate Mr. M's rights and to protect the rights of the public.
9. Largely because of the Covid-19 situation and the very strong desire of Mr. M to defer an inquiry until it could take place in person, the inquiry hearing did not occur until 23 March 2021. In the interim, Mr. M remained in the CMH pursuant to the interim wardship jurisdiction of the High Court.
10. A contested hearing took place on 23 March 2021 at which Mr. M was represented by solicitor and senior counsel. The Court heard oral medical evidence by Dr. Y, consultant psychiatrist at the CMH and by Dr. M, consultant psychiatrist at the CMH, as well as reviewing affidavit evidence from Prof. Harry Kennedy, executive clinical director, National Forensic Mental Health Service at the CMH, from Prof. Patricia Casey, consultant psychiatrist and from Dr. Stephanie Burke, consultant psychiatrist and the court medical visitor. The Court reviewed psychology reports of Dr. O'Donnell and Dr. Ryan. The Court also heard the oral evidence of Mr. M himself and Ms. K, his aunt, who has herself worked in homeless services and mental health and in recovery for 14 years.
11. Following this hearing, Heslin J. concluded that Mr. M lacked capacity and was a person of unsound mind and incapable of managing his person within the meaning of the Lunacy Regulation (Ireland) Act 1871 ("the 1871 Act"). He went on to say that he considered it appropriate to exercise his discretion in favour of admitting Mr. M into wardship. In relation to the appointment of the Committee, there appears to have been no application by any member of Mr. M's family at that point to be appointed as the Committee. Heslin J. dealt with the matter as follows;

"I also take the view that it can only be in the respondent's best interests for the General Solicitor for Minors and Wards of Court, to be appointed as committee. And I take that view because it will lay at the disposal of the respondent the vast experience and expertise of the General Solicitor, who is also an independent party and an independent professional and indeed, an officer of the court. So I believe it's appropriate and I'm going to so direct that the General Solicitor be appointed as Committee".

Review of 17 November 2021

12. Prior to the hearing I received an email identifying that it was Dr. Y's view that Mr. M should be excluded from the hearing while she was giving evidence as it would be upsetting to Mr. M and his family to hear some of the opinions expressed by her about his

clinical presentation, risk of violence and prognosis. Dr. Y is Mr. M's treating psychiatrist in the CMH. She also indicated hearing such evidence would negatively impact on the therapeutic relationship he has with staff, and that the CMH have observed a pattern of behaviour occurring in the period before and after hearings where Mr. M's mental state destabilises and that there is an increased strain on the therapeutic rapport with staff.

13. On the other hand, submissions were made by Mr. M's family that Dr. Y's evidence should be given in the presence of Mr. M, as to do otherwise would undermine his relationship of trust and fuel his paranoia in relation to what was being discussed in his absence.
14. I directed that a hybrid approach be adopted whereby Dr. Y could identify particular evidence that she wished to be given in the absence of Mr. M but that the remainder of her evidence should be taken in his presence. That was the approach adopted at the hearing.

Suitability of Mr. M's Treating Consultant

15. The first issue raised was the suitability of Dr. Y as Mr. M's consultant psychiatrist. Submissions from the family were made by letter provided prior to the hearing on 17 November 2021 that Mr. M's medical team, in particular Dr. Y, were unwilling to look at their methods of treatment of Mr. M in a reflective manner. It was identified that Mr. M does not get on with Dr. Y and that his previous consultant Dr. M had a better relationship with him.
16. Specific concerns were raised about medication which I deal with below and also with Dr. Y's alleged unwillingness to be more flexible and open-minded in relation to Mr. M's care. It was argued that in relation to the 37 incidents of violence in the past year that had been identified by Dr. Y, there was a failure to consider the fact that some of these were a response to the frustration Mr. M is experiencing due to the environment in which he is being detained.
17. I heard extensive evidence from Dr. Y on the presentation and treatment of Mr. M. His care was transferred to her from Dr. M on 7 October 2020. She was previously his treating consultant while he was a patient on Unit 5 until his transfer to Unit B in June 2020. Unit B is the acute admission ward, on which there is a high staff to patient ratio. That transfer was due to him striking a nurse on the side of the head without apparent provocation or warning.
18. Dr. Y identified the severity of his condition, whereby he continues to display ongoing psychotic symptoms, significant violence, behaviours that are driven by paranoia and the cognitive decline that comes with his schizophrenia, as well as his learning disability. She noted that he is now on the waiting list for Unit 5 which is a medium secure unit but that he currently remains in Unit B. She highlighted his assault on a staff member. In relation to his lack of access to the garden (an issue raised by his family), she noted that Unit B patients are not permitted to visit the garden but that he did have access to the ball alley, being a large grassed area, with football, badminton and walking laps, which permitted a view of the mountains. She noted that his neurocognitive impairments can cause violence

and that he is receiving treatment for persons with neurological impairment. She noted that where he has been put in seclusion due to his behaviour it has been in accordance with the Mental Health Commission guidelines and it is used as a last resort to manage and prevent violence. She observed that his family do not understand how unwell he is and the level of risk that he presents.

19. I have also considered the very extensive medical evidence that was put before Heslin J. in relation to Mr. M's treatment, including the care provided by Dr. Y.
20. In the context of the application to change the Committee, the General Solicitor has indicated that she is satisfied with the care and treatment being received by Mr. M while he is under the care of Dr. Y. She also indicated that she has full confidence in Dr. Y and was impressed by the evidence which she has given in these proceedings.
21. Insofar as Mr. M's relationship with Dr. Y is concerned, I note that the evidence is inconsistent. It is true that at times he is highly critical of her but that at other times he appears to accept that she is providing him good care.
22. Mr. M has been visited on two occasions by the court appointed medical visitor, Dr. Burke who is independent of the CMH. On neither occasion did she express any concerns in relation to Mr. M's treatment or medication. She considers he is receiving appropriate treatment for his condition. No independent medical evidence was put forward by Mr. M's family to suggest that the medical approach or treatment was not in his best interests.
23. I acknowledge that the family may consider Dr. Y's approach to Mr. M fails to recognise the frustration he is experiencing due to the restrictive conditions of his detention, and the impact of those conditions on his behaviour, and to factor that into his treatment. Equally, Dr. Y's may consider that the family may not fully appreciate the extent and severity of Mr. M's condition and the risk of sudden and unprovoked violent behaviour by him due to that condition. I think it is important that both sides carefully consider the views of the other on these points.
24. However, having considered carefully the reports of Dr. Y and listened to her oral evidence on 17 November, as well as considering the objections of the family, I do not consider there is any basis for a conclusion that Mr. M's best interests are not served by Dr. Y continuing as his treating consultant.
25. Mr. M's family also expressed their concern about his placement on Unit B and asked that he be transferred to a different unit. At the time of the hearing Mr. M had been placed on the waiting list for Unit 5. This means that when a bed becomes available, he will be moved depending on the priority of allocation. This decision is made by a MDT team on a weekly basis depending on the existing needs of patients. In the circumstances, it does not seem to me that there is any basis to interfere with his existing placement.

Nature of Medication

26. At the hearing, Mr. M's family asserted that the current anti-psychotic medication that he is being prescribed i.e. clozapine and clopixol, are not suitable for Mr. M as they are

making him very sedated and at times, when visits take place, it is impossible to communicate properly with him due to his sedation and lethargy. Dr. Y has given detailed evidence as to his medication. On 8 April 2021 he commenced on clozapine with a gradual reduction and subsequent discontinuance of olanzapine in September 2021. Further small incremental reductions of clopixon are planned but that will depend on evidence of sustained mental stability and that it may not be possible to discontinue this medication and treat Mr. M on clozapine alone. She notes that sedation and hyper- salivation are common side effects of clozapine and are being carefully monitored and actively managed. She also gave evidence of the fact that the effects of clozapine may take between one year and 18 months to be seen and that she is hoping for a further response to this drug.

27. No independent medical evidence was called by Mr. M's family in this regard.
28. I am quite satisfied by the evidence given by Dr. Y in this respect. There is clearly active consideration being given to his medication, evidenced by the discontinuance of the olanzapine, the commencement of clozapine and the attempts to reduce clopixon. I am conscious that the full beneficial effects of clozapine may not yet have been seen given that Mr. M has only been on this drug for just over 9 months. Undoubtedly there are unfortunate side-effects, which I know from the evidence of Mr. M are a real cause of concern to him. However, it is to be hoped that the potential benefits of this medication will significantly outweigh the unpleasant side effects.
29. In those circumstances it does not appear to me that there is any basis for concluding that Mr. M's medication regime is not in his best interests.

Application for Mr. M to visit the grave of his deceased relatives

30. This is a very difficult issue. Three of Mr. M's relatives have died in recent years. Mr. M is very anxious to be released into the care of his family so that he can visit the graves and has given oral evidence of his strong desire in this respect. His family feel very strongly that he should be permitted to visit the graves. The CMH say it will be difficult to safely manage such a visit, given that there are not always clear triggers or warning signs prior to explosive behaviour and this would be an emotional visit for him. They conclude such a visit is therefore not safe at present.
31. It seems to me that it would be in Mr. M's best interests to visit the graves if it can be done in a safe way. I think it would be inappropriate for me to direct the CMH to organise a visit. However, I would like the CMH to put forward proposals as to how they think such a visit might be facilitated over the coming months in a safe way and for the matter to be further considered on the next review date. It may well be that the dividends from permitting such a visit will far outweigh the undoubted difficulties that will arise in planning the visit.

Application to Appoint a Family Member as the Committee

32. Because of the paucity of recent case law on the appointment of a Committee where such an appointment is contested, as in the instant case, I requested that the parties provide written submissions on the issue. I wish to thank the lawyers for the CMH and the

General Solicitor for the in-depth and considered written legal submissions provided to me in advance of the hearing. They provided a most helpful review of the law in this area. Following receipt of the submissions, a separate hearing took place on the legal issues arising in relation to the appointment of a Committee on 1 December 2021.

Role of a Committee of a Ward

33. Before considering the role of a Committee, I should note here that the functions of a Committee are divided into those relating to the estate of the ward i.e. their financial and associated affairs, and those relating to the person, i.e. matters dealing with aspects of their life such as place of residence, care, treatment, relationships and associated matters. Different people can be appointed as Committee to manage the estate and the personal functions. In this case, the General Solicitor was appointed as Committee of the person and the estate. Equally, Ms. K's application is she would be appointed in both roles.
34. There is reference to the appointment and functions of a Committee of the ward both in the 1871 Act and in Order 67 of the Rules of the Superior Courts. However, neither the Act nor the RSC set out the criteria that a court should consider when deciding who to appoint as the Committee. To understand the correct approach, it is necessary to consider the role and functions of a Committee. Certain core principles have been identified in case law. First, as identified in the case of *Re a Ward of Court (withholding medical treatment) (No. 2)* [1996] 2 IR 79, when a person is made a ward of court the Court is vested with jurisdiction over all matters relating to the person and estate of the ward.
35. In *Re JJ* [2021] IESC 1, Baker J. describes the role of the Committee of the person and or estate as follows;

"The role of a Committee appointed by the President of the High Court is well understood in the authorities and derives from the power under ss. 12 and 15 of the Lunacy Regulation (Ireland) Act 1871...What is evident is that the Committee of the ward, while he or she has day-to-day duties and powers in relation to the ward, acts at all times under the supervision of the High Court through the Registrar of Wards of Court, and for example, a change of residence could not be arranged without leave of the Registrar. The Committee does not have an inherent or independent power."
36. *Theobald*, in *The Law Relating to Lunacy (London, 1924)*, observes it is for the President of the High Court to exercise his jurisdiction to determine what is best for the ward. He further states at page 43 that *"The Judge has the widest discretion in the selection of the committees of the estate and person, and that discretion is not to be hampered by any rules"*.
37. The position was pithily - and accurately - expressed by counsel for the present Committee to the effect that Committees in Ireland are kept on a very short leash but that a Committee is the eyes and ears of the Court.

Duties of the Committee

38. Abraham, in *"The Law and Practice of Lunacy in Ireland"* (Dublin 1886) identifies the duties of the Committee of the person as follows:

"20. The committee of the person, in the words of Abraham "has immediate charge of everything that concerns the government of the lunatic's person -- his care, treatment, and well-being." Among the committee's specific duties are the following:

"...he is bound to look to the application of the money, to visit the lunatic from time to time, to take care that he has every suitable comfort within his means, and to report to the Lord Chancellor any shortcomings that may be noticeable under the several heads of food, clothing, personal cleanliness, exercise, amusement, medical attendance, and domestic service."

39. O'Neill in *Wards of Court in Ireland* (First Law, 2004), describes the duties of the Committee of the person as follows:

"It is the duty of the Committee of the Person to see to the ward's care, treatment and wellbeing. To this end, s/he must visit the ward from time to time and report on his/her needs... When required to do so by the Registrar of the Wards of Court, the Committee of the person is obliged to make returns in duplicate periodically or otherwise giving particulars of the ward's residence, physical and mental condition, maintenance, comfort and any other matters which the registrar may wish to be informed of."

Family Members as Committee

40. In a response to a parliamentary question in the Dáil in 2018, the then Minister for Justice confirmed, having regard to information disclosed to him by the Courts Service, that in 75% of cases the ward's Committee is a family member, or trusted friend where there is no suitable relative who is prepared to act, where there is disagreement among the relatives which cannot be resolved or where a conflict of interest arises.

41. In *Leslie Gerald Eyre Harris, "A Treatise on the Law and Practice in Lunacy in Ireland"* (Dublin, 1930), it is noted that *"as regards the person to be appointed committee of the person, the next of kin are preferred to strangers and take rank among themselves according to their closeness in blood to the patient"*.

42. In the case of *In Re Davy* [1892] 3 CH 38, the English Court of Appeal upheld the decision of the Master in refusing to appoint a husband as Committee of the person and the estate of his wife. Lindley L.J. declared that the Court has full jurisdiction to exercise its discretion to do what is most for the benefit of the lunatic. Lopes L.J. in his concurring judgment, identified that a husband has no indefeasible right to be appointed Committee and that the paramount object for the Court to consider in appointing a Committee is the comfort and benefit of the lunatic.

43. In *Re a Ward of Court (withholding medical treatment) (No. 2)*, Denham J. listed 14 matters which ought to be taken into consideration looking at the totality of a ward's situation in exercising the best interest principle, and one of these was the family view.
44. In *Re a Ward of Court (withholding medical treatment) (No. 2)*, it was made clear by Hamilton C.J. that:

"The views of the family and committee of the ward, although they should be heeded and careful consideration given thereto, cannot and should not prevail over the court's view of the ward's best interest".

Views of the Intended Ward

45. *Theobald* emphasised that the wishes of the ward should be taken into account:

"In the appointment of committees, and especially of committees of the person, the wishes of the lunatic should be considered if he is capable of expressing a wish, and this is so even though his wishes may be unreasonable. For instance, if he has delusions in regard to some particular person who would otherwise be an excellent committee, the appointment of such a person may have serious consequences to the lunatic's mental and bodily health" (p.42)

46. *O'Neill* adopts a similar approach noting that, where the ward is capable of understanding the nature of the legal relationship, the ward's preferences will be taken into account (page 10).
47. This accords with recent case law from the European Court of Human Rights in relation to the importance of hearing the voice of the ward in relation to the identity of the Committee. In the case of *Stanev v Bulgaria* App. No. 36760/06 (ECHR, 17 January 2012) the Court noted that;

"any protective measure should reflect as far as possible the wishes of persons capable of expressing their will. Failure to seek their opinion could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons."

Therefore, any measure taken without prior consultation of the interested person will as a rule require careful scrutiny.

Factors Precluding a Person from Acting as a Committee

48. Order 67, rule 58, mirroring the 1871 Act, specifically precludes the proprietor, the keeper or the medical superintendent of the hospital or institution in which the ward resides or any person living with or employed by any such proprietor, keeper or medical superintendent from being appointed Committee of the ward's person or estate either solely or jointly with any other person.

Assisted Decision-Making (Capacity) Act 2015

Although the 2015 Act has not yet come into operation, nonetheless the factors considered relevant by the legislature in relation to the suitability of a decision-making representative are of interest. The express reference to the desirability of preserving existing family

relationships mirrors the emphasis I place on that approach where possible, as discussed below.

49. Section 38(5) identifies the factors as follows:

"(a) the known will and preferences of the relevant person;

(b) the desirability of preserving existing relationships within the family of the relevant person;

(c) the relationship (if any) between the relevant person and the proposed representative;

(d) the compatibility of the proposed representative and the relevant person;

(e) whether the proposed representative will be able to perform the functions to be vested in him or her;

(f) any conflict of interest."

Summary of Principles

50. In summary, the following principles may be gleaned from the above review of relevant case law and academic writing on the appointment of a Committee:

- The High Court is vested with jurisdiction over all matters relating to the person and the estate of the ward;
- The Committee acts under the supervision of the High Court. It has no independent or inherent power;
- The voice of the ward should be heard in relation to decisions being taken about him or her, whether through the Committee or in some other way.
- The wishes of the ward as to the composition of his or her Committee must be considered to the extent possible.
- When considering the best interests of the ward, one of the many factors the Court should consider is the view of the family;
- In principle, the appointment of a family member is preferable unless there is some reason not to make such an appointment;
- Where a person is detained, the detainer or persons employed by the detainer cannot be the Committee;
- The Committee has both reporting functions and decision-making functions (the latter subject to the supervision of the Court).

Objection to the Appointment of a Family Member as Committee

51. The position of the current Committee in relation to the appointment of a family member is somewhat nuanced. The General Solicitor is not objecting to the appointment of a family member. She indicates she is willing to continue to act on the sole basis as the Committee and that she can continue to fulfil this role effectively by continuing to engage Hilda Clare O'Shea, an independent solicitor specialising in this area of the law. She refers to the good relationship that Ms. O'Shea has with Mr. M. However, she indicates that she would not be prepared to serve as a joint Committee with Mr. M's family and explains the reasons in her written submissions as follows:

"The General Solicitor would not be prepared to serve as a joint Committee with [Mr. M]'s family. This is motivated not only by her difficult experiences with joint Committees in the past, but also by the fact that, unlike [Mr. M]'s family, the General Solicitor has full confidence in [Dr. Y], and was impressed by the evidence which she has given these proceedings. The General Solicitor does not believe that there is any way that [Mr. M]'s committee could function circumstances where two parts of the joint committee held such divergent views."

52. The position of the CMH is clear cut. It is objecting to the replacement of the General Solicitor as Committee with a family member, arguing that Mr. M's best interests are served by the General Solicitor remaining as the Committee and pointing out that decisions made by the Court are informed by what the Committee thinks are in the best interests of the ward.
53. It argues that in this case, his family are not suitable to be appointed as the Committee, noting that a key therapeutic goal for Mr. M is that he would obtain insight into his illness and that any matter likely to impede progress in this respect is unwelcome. His family lack insight in that they have an unrealistic expectation that he could be managed in the community, despite a lack of medical evidence for same.
54. Similarly, the CMH note that it is hoped that gaining insight into his illness will lead Mr. M to accept that he will have a life-long need for anti-psychotic medication. However, his family's view is that he is overly medicated and overly sedated. On the CMH's case, this reluctance on the part of his family can only detract from Mr. M's recovery.
55. In relation to the advocacy on the part of his family for the provision of a person based, holistic approach, this largely disregards the approach of the treating team which has explained the seven pillars of care underlying his treatment plan.
56. The CMH identifies the lengths it has gone to involve the family including periodic meetings, invitations to the hospital carers group and telephone calls. An offer has been made for the family to engage with the nursing staff so that the staff can explain to them the treating approach that has been declined. (The family have indicated they would go to the meeting if they can bring an advocate with them who can consider the compatibility of the treatment approach with Mr. M.'s human rights).

57. Equally, the CMH argued that the suggestion that his family would be in a position to care for him if he were permitted to visit the family graves was entirely unrealistic and fails to consider the protection of the public or take into account his forensic history.
58. In summary, the CMH consider there is a chasm between his family and the treating team as to the correct approach to Mr. M and that his family has not demonstrated the level of insight necessary for the Committee to engage with the treating team. It wishes to ensure that the expression of the family's views does not have a destabilising effect on the ward.
59. In contrast, the CMH notes that Ms. O'Shea, the independent solicitor appointed by the current Committee, understands the process of detention and wardship and can advocate on matters that concern Mr. M and the family. Any family concerns can be provided to the Committee who may relay them on to the Court.
60. It is further noted that the family are not disenfranchised as they can always come before the Court – as they have done in this instance - without being the serving Committee.
61. The family of Mr. M consider that a more empathetic person-centred approach is required. They believe that in time he should live in supported accommodation outside the CMH and that he should have the chance to be in the community. They note that no movement has been made and that he remains in Unit B. Ms. K stresses that the family want to work with the CMH, and that there should be a middle ground between the clinical approach and the family approach. She argues that the clinical approach has failed to take into account the family viewpoint and that there has been two years of frustration where the family has not been heard. She stresses that his whole family want what is best for him.
62. In relation to the views of the ward, it was submitted on behalf of the Committee that he was visited by Ms. O'Shea to discuss the issue of the identity of the Committee but that he was not able to engage on this issue. It was observed that Mr. M does want his family to participate in his wardship but it was not possible to explain to him the role of the Committee.

Appropriate Committee

63. It is clear from the foregoing analysis of the law that the views of the Committee are very important to a court exercising its wardship jurisdiction, both generally and where, as in this case, orders are made detaining a ward.
64. First, the Committee provides information on all matters relevant to the ward's best interests. The detainer – in this case the CMH – of course also provides a very considerable amount of information on the ward at each review date. It is invaluable that the Court has these two sources of information. Second, and quite separately, the Committee provides their views on what is in the best interest of the ward, even if that differs from the views of the ward. Third, the Committee usually relays the views of the ward, although sometimes wards will communicate directly with the Court, whether through email or by giving evidence.

65. Sometimes the Committee will make decisions about various aspects of the ward's life, subject to the supervision of the Court. However, in this case, because the care provided by the CMH addresses every single facet of Mr. M's life, there are effectively no decisions in relation to Mr. M's life that are made by the Committee. Therefore, the Committee's core function in this case is to provide information, to convey to the Court its views on the care and welfare of Mr. M and to report Mr. M's views, which may or may not coincide with the views of the Committee.
66. In this case, the core objection by the CMH to the appointment of a family member is that their views on Mr. M's detention do not coincide with those of the treating teams at the CMH, and that the expression of those views in the context of a family member being appointed are likely to destabilise the ward.
67. The importance of Mr. M's family in his life must be emphasised. At present, all persons involved in Mr. M's care and welfare are professionals paid for their work. This is not to devalue their work or to in any way undermine their commitment to Mr. M: it simply is the reality of the situation. If their employment comes to an end, so too does their involvement in Mr. M's life. As one would expect, Mr. M has had a vast number of professionals involved in his care over the many years he has been in residential care or in prison. Those people come and go, depending on the institution he is in and depending on the pathway of the workers.
68. On the other hand, Mr. M's family have been constantly supportive throughout his long and difficult journey through various services and remain committed to him and keen to support him. Many wards of court are not in that position. Indeed, often the General Solicitor is appointed as Committee because the intended ward has either no family member at all or has no suitable family member. Mr. M has many disadvantages; but he has the very great advantage of a supportive and committed family. The significance of that in his life cannot be over-estimated. In short, it is undoubtedly in his best interests that his family remain as involved as possible in his life.
69. Thus, I start with a strong presumption that where a family member wishes to be appointed as Mr. M's Committee, and to take on the responsibilities of same, that appointment should be made unless there are compelling reasons not to do so.
70. The alleged unsuitability of Mr. M's family stems from their views on his care and not from any other factor. Part of the evidence presented to me was a schedule of family visits from 2020 and 2021 when of course Covid-19 was still an issue, although there had been a relaxation of some restrictions. That schedule demonstrates that there have been weekly visits and calls from his father, his mother, his sister and her partner in Canada, and his aunt in Mexico. Mr. M's mother and sister have attended carers' meetings and multi-disciplinary team meetings. They are in regular contact with the nurses and social workers. His sister and aunt expressed their concerns to the Court at the two hearings in an informed, rational and measured fashion. Were it not for their disagreement with the CMH as to the appropriate approach to Mr. M's care, it is hard to see that there could be any objection to their involvement as Committee.

71. Turning to the existence of disagreement, Mr. M's family members are not obliged to take the same view as the CMH. The fact that the detainer is not permitted to be the Committee of a ward under the Rules of the Superior Courts demonstrates that the interests of the ward are not considered to be coterminous with those of the body detaining him or her. Similarly, there is no reason that the family of a ward should share the views of the detainer as to the care of the ward. Indeed, it may be very useful for the Court to have different perspectives on the care of a ward.
72. As identified above, the Committee is not the person who makes substantive decisions about the life of the ward, particularly in the circumstances of this case. Rather that responsibility rests with the Court, to be exercised having regard to the information received and applying the best interests test. The Court has no obligation to accede to the views of the Committee. Therefore, the fact that the proposed Committee has different views to that of the CMH in this case does not appear to be a basis for treating them as unsuitable to be the Committee.
73. A different concern has been identified, i.e. that their appointment as Committee and the expression of their views will undermine Mr. M's views of his treatment and thus impede his recovery. In fact, whether they are appointed Committee or not, Mr. M's family are entitled to express their views to the Court and make Mr. M aware of same, as they have done to date. Therefore, I do not think their appointment as Committee will increase this risk, if indeed such a risk exists.
74. Of course, the way they express that difference of views with the CMH as to Mr. M's treatment is important, given that Mr. M is in the care of the CMH and will undoubtedly remain there for a very significant period of time. I note the evidence of Dr. Y that Mr. M demonstrates greater levels of agitation before and after court hearings. This may of course be due to a variety of factors, but this is something that his family ought to give considerable weight to when expressing their views. In fairness to Ms. K, when giving evidence she demonstrated an awareness of the importance of maintaining the therapeutic relationship between Mr. M and his treating team.
75. Turning to the various roles that a Committee must discharge, it seems to me that there is no reason Ms. K cannot discharge those roles in this case.
76. In relation to the requirement that the Committee convey to the Court the views of the ward, I am satisfied Ms. K can put across Mr. M's views. I should add that Mr. M usually gives evidence and actively participates in hearings and therefore can directly give his own views as well, although there is no doubt that it is helpful to the Court to have the assistance of the Committee on this point.
77. In relation to the requirement that the Committee convey their own views on the welfare of the ward, I am quite satisfied having heard evidence from Ms. K on two occasions and having received two written submissions from her on behalf of the family, that she is well equipped to do so. She has worked with homeless persons, persons with mental health

issues and those in recovery and she understands the very significant challenges that Mr. M faces.

78. In relation to the provision of information on the care and welfare of the ward, the Court of course receives a very significant amount of information from the CMH at every review and can always request oral evidence to be provided from identified persons if required. The Court has at its disposal a medical visitor if it wishes to obtain independent medical evidence. Moreover, up until now, the General Solicitor has retained Ms. O'Shea as independent solicitor, who has visited Mr. M and given updates to the Court. I propose to retain Ms. O'Shea as independent solicitor given the ongoing relationship she has formed with Mr. M subject to any views the parties may wish to express following receipt of this judgment. If she is retained, she can continue visiting Mr. M and providing reports to the Court in the same way as she has previously done.
79. Having regard to the above, I am satisfied that Ms. K is a suitable person to be appointed. At present she is living in Mexico and will return at the end of March 2022. Her appointment will only take place when she returns to live in Ireland, as I consider it would be unsatisfactory to have a Committee who is permanently living abroad. This view is shared by legal writers on the topic. Theobald observes that as a matter of principle as well as of convenience the Committee of the person should be resident within the jurisdiction (page 44 – 45). This does not of course mean that Ms. K is not entitled to travel but rather that if she proposes to live abroad again, then a different Committee will have to be appointed.

Form of Order

80. I would ask the parties to liaise with each other in relation to the precise form of order to be made as to when Ms. K will take up her appointment and to provide a draft of same to the registrar for consideration when agreed.
81. In respect of costs, an order was made providing for the costs of the General Solicitor on 1 December 2021 and therefore I make no order for costs.
82. The parties have liberty to apply.