THE HIGH COURT

SPECIAL CARE

[2024] IEHC 614

RECORD NO. 2024 293 MCA

IN THE MATTER OF:

D, A CHILD

BETWEEN:

THE CHILD AND FAMILY AGENCY

APPLICANT

-AND-

DA

FIRST NAMED RESPONDENT

-AND-

DB

SECOND NAMED RESPONDENT

-AND-

DC

THIRD NAMED RESPONDENT

AND

RECORD NO. 2024 273 MCA

IN THE MATTER OF:

E, A CHILD

BETWEEN:

THE CHILD AND FAMILY AGENCY

APPLICANT

-AND-

EA

RESPONDENT

AND

RECORD NO. 2024 208 MCA

IN THE MATTER OF:

F, A CHILD

BETWEEN:

THE CHILD AND FAMILY AGENCY

APPLICANT

-AND-

FA

RESPONDENT

AND

RECORD NO. 2024 214 MCA

IN THE MATTER OF:

G, A CHILD

BETWEEN:

THE CHILD AND FAMILY AGENCY

APPLICANT

-AND-

GA

RESPONDENT

AND

RECORD NO. 2024 294 MCA

IN THE MATTER OF:

H, A CHILD

BETWEEN:

THE CHILD AND FAMILY AGENCY

APPLICANT

JUDGMENT of Mr. Justice Jordan delivered on the 16th day of October 2024.

1. The Court is obliged by statute to review the situation of children in special care under s.23(I) of Child Care Act 1991, as amended which provides:-

> *"(1) The High Court shall carry out a review referred to in subsection (4) in each 4 week period for which a special care order has effect and the High Court shall, when making the special care order, or extending it pursuant to an application under section 23J, specify the date or dates for such review."*

2. Section 23I (4) sets out what shall be considered by the Court when it is carrying out a review as follows ;

> *"(4) The High Court shall, when carrying out a review under this section, consider whether the child continues to require special care to adequately address his or her behaviour, the risk of harm to his or her life, health, safety, development or welfare posed by that behaviour and his or her care requirements and shall have regard to an assessment made in accordance with section 23ND(4)."*

3. While the section provides for mandatory reviews the Court can, and routinely does, review the situation of children in care more frequently than once in every four-week period. This hearing is reviewing the situation of the above five children in respect of whom special care orders were granted by this Court on the application of the Child and Family Agency. For some months now there has been a significant difficulty in the special care list in circumstances

where the Court has made special care orders in respect of children, on the application of the Child and Family Agency, but effect has not been given to many of these orders. The situation is such that there is now a section in the special care list entitled "No Beds Cases". In addition, the Child and Family Agency now routinely conducts prioritisation meetings at which it is decided to whom a bed available or becoming available in a special care unit will be allocated – i.e. which of the children in respect of whom a special care order has been granted but who has not been admitted to a special care unit will be admitted, upon a bed becoming available.

4. The situation in respect of the "No Beds Cases" is somewhat fluid. In several of these cases children are without a bed for a significant period of time, relatively speaking, in terms of the length of the special care order. Special care orders are for a maximum three-month duration with a possibility of two extensions, up to three months each, giving a maximum duration of a special care order of nine months. After that nine-month period a fresh special care order can be applied for in respect of the child if considered necessary.

5. In situations where the Child and Family Agency has not given effect to a special care order it has applied to the Court, on a number of occasions, for a fresh special care order on the expiration of the first three month period - because the child in question is not in a special care unit so the question of extending their stay in a unit does not arise.

6. The situation is fluid because some of the children eventually get beds but if they do their position in the "No Beds Cases" list is now routinely taken up by another child in respect of whom a special care order is made but which is not given effect.

7. For a considerable period of time there has existed a significant difficulty in providing beds in special care units to children because the three special care units in the State are not functioning at full capacity. This issue has been articulated over a number of years in the special care list – and the situation has deteriorated with time. The issue has also been articulated in various judicial review proceedings in the High Court, at appeal hearings in the Court of Appeal

and at appeal hearings in the Supreme Court. The cause of the problem has been identified by the Child and Family Agency as a difficulty in having sufficient staff in the special care units to allow all of the beds in the special care units to be made available for use.

8. Over the course of the last year or so various parties concerned about the welfare of individual children in respect of whom special care orders existed but were not being given effect by the Child and Family Agency have sought to agitate the issue on behalf of the children in the hope of forcing compliance with the special care order in question. There have been plenary proceedings seeking a declaration that the Child and Family Agency is in contempt of Court and motions for attachment and committal against the Child and Family Agency by reason of the failure to give effect to the special care orders. The plenary proceedings which were taken in one case failed in this Court by reason of procedural defence and that decision is currently under appeal. Motions for attachment and committal in two other cases did not proceed in circumstances where the two children in question did get beds in special care units before the motions were heard.

9. It became apparent to the Court that those interested in the welfare of the children in respect of whom special care orders existed but were not being given effect were entitled to know precisely why that was/is so. Furthermore, the Court is entitled to know precisely what the position is. In the context of periodic reviews concerning children the subject of special care orders, it considered it necessary to hear evidence as to the actual cause of the problem – or more particularly;

(a) Why is it that special care orders granted by this Court on the application of the Child and Family Agency are not being given effect by the Child and Family Agency?

(b) If the cause or causes of the problem is identified, then what efforts are being made to solve the problem –

- How is it to be resolved.
- Can it be resolved.
- If not, how is it that it could not be resolved.

10. The Court thus conducted a focused review in respect of five of the children where orders were current but no beds provided i.e. the orders were not being given effect.

11. This crisis in the special care system has understandably caused extraordinary distress and anxiety to the parents, guardians and others interested in the welfare of the children in question. Even more worrying is the fact that the children in question are effectively at large and not detained in a special care unit in accordance with the Court order granted on the application of the Child and Family Agency and in circumstances where their life, health, safety, development and welfare is at significant risk.

12. The review or reviews conducted by the Court at the hearing on Thursday 27th June, 2024, Friday 28th June, 2024 and Wednesday 17th July, 2024 involved the participation and cooperation of ; -

- Representatives of the various children,
- The Child and Family Agency,
- The Department of Children, Equality and Disability, Integration and Youth,
- The Department of Public Expenditure, National Development Plan Delivery and Reform (the latter two Departments represented by their secretary generals).

13. It is useful to provide a brief synopsis of the situation of the five children as of the hearing dates so as to provide context ; -

D.

14. D is 15 years old. D has a diagnosis of ADHD. During the course of special care order applications, D has been described as being a vulnerable child, who is easily led and impulsive.

15. D first came into the care of the Child and Family Agency by way of a voluntary care agreement in 2021, due to D's parent's inability to cope with and care for D. D was placed in special care from December 2021 to September 2022. After D's first placement, D entered a single occupancy unit. Within a period of 4 weeks, D started to abscond initially into the local area and then into the city centre. There D engaged with homeless adults under addiction, was sleeping in tents, and engaging in drug use. D was placed in special care for a second period from December 2022 until September 2023.

16. Whilst in care, D has been absconding, having been found in multiple different counties across the country. D has a history of cannabis use and has also been involved in drug dealing. D engages in property damage in the form of playing with lighters and causing damage to soft furnishings in D's care centre. There are also fears that D is at risk of sexual exploitation. D has attacked staff on numerous occasions, in some cases leading to the requirement of medical attention. D's physical health is also of concern, staff noting that D is losing weight and has an unstable sleeping schedule. D has received some phone calls which have created concern that D is being groomed into criminal activity, D has expressed that D has a number of drug debts and cannot be seen in town as D could be shot.

17. In terms of more recent orders, a special care order was made in respect of D in December 2023. A fresh order was made in March 2024. A further special care order was made in June 2024. D has since been provided with a bed in special care, as of July 2024.

E.

18. E is 16 years old. E has a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and Autism Spectrum Disorder (ASD). E has also been diagnosed with a developmental disorder and an intellectual disability.

19. E has lived with a relative for most of E's life due to E's mother's drug use. E's father is deceased. Between July and September 2022, E left E's relative's care due to E's behaviour becoming unmanageable. E went to live with E's mother but came into care under Section 12 of the Child Care Act 1991 due to concerns that E's mother was using drugs in E's presence. During E's time at home, E was exposed to drug dealing and allegedly personally used drugs. E was also exposed to E's mother engaging in intercourse with men for financial gain. From 2022 to 2023, E was in 6 difference placements, all of which broke down. E moved to a special emergency arrangement in October 2023. E has a history of criminal activity, including stealing bikes, shoplifting alcohol and being arrested numerous times. E is also suspected to be involved in organised crime. E has received cautions from a Juvenile Liaison Officer as a result of E's criminal activity, and that Officer is also completing a report for further incidences of theft, assault on care staff, criminal damage, possession of weapons and possession of other people's bank cards and car keys, and an attempt at setting fire to pallets in a public place. E is exposed to violence stemming from E's peer group, E has been seriously assaulted twice, where E was left with serious injuries. E is often missing in care, sometimes for multiple nights at a time. The Agency has also expressed concerns that E is at risk of sexual exploitation.

20. The first special care order was made in December 2023. A second special care order was made in respect of E in March 2024. A third special care order was made in June 2024. A fourth special care order was made in September, 2024 and E was eventually admitted to a special care unit in September 2024.

F.

21. F was 17 at the time of the hearing but is now 18. F has a diagnosis of ADHD, Developmental Motor Coordination Disorder, a severe language disorder and a borderline intellectual disability. F is also suspected to have been exposed to maternal alcohol abuse whilst in utero. F first came to the attention of the Child and Family Agency in 2009, due to concerns surrounding F's mother's substance use.

22. F first entered into care in 2011, where F was placed with a relative until F's return to F's mother's care in 2012. F was returned to a relative's care in 2014. F remained in relative care until 2021, when F's relative ended the placement due to struggling to cope and care for F. F was placed in a residential unit in June 2023. F went missing in March 2024, and remained missing for a period of 4.5 weeks.

23. F has engaged in various forms of risk-taking behaviour. This includes being missing in care on multiple occasions, criminal activity, alcohol and drug misuse, threats of violence and aggression towards staff, and engaging in unprotected intercourse with another minor. F has started fires at F's unit and also hidden a knife on site. In April 2023, F was involved in a road traffic incident involving a stolen vehicle, following which F was hospitalised with a suspected spinal injury.

24. The first special care order made in respect of F was in February 2024. F was not placed in special care, and a fresh order was made in May 2024. At the date of the "No Beds Cases" hearing, 17th of July 2024, F had yet to be placed in a special care unit. A third special care order was made in August 2024, to last until F turned 18 years old.

G.

25. G was 17 years of age at the time of hearing and is now 18. G suffers from a stress related condition. G also is reported to have significant difficulties with motor skills and a borderline intellectual disability.

26. G and G's family have been known to the Social Work Department since 2011. Concerns surround G's behaviour and the impact of such on G's family. In 2020, referrals were made regarding concerns about G's mother's use of drugs, cocaine. G was placed with emergency foster carers in 2020, then moved to a number of short-term carers before a long-term residential placement was secured in August 2020. In early 2021, G's mother refused to re-sign the voluntary care agreement and G returned home where G remained until April 2021. G was reported to be physically and verbally abusive towards other family members. G was then placed in short term residential unit, and subsequently moved to another unit in June 2021. This placement broke down due to G's behaviour and G was moved to another residential unit. In November 2021, G returned home, during which time G threatened a family friend with a knife.

27. There were also incidences which G's mother reported including G stealing two thousand euros worth of cocaine, and the use of weapons such as an axe and a hammer, resulting in G's mother suffering injury to her knuckles. G moved to a special emergency arrangement in July 2022 and a further one thereafter. This was due to G's mother calling the Gardaí and refusing to allow G to stay in the home. G was placed in a Residential Unit in November 2022. G has said G planned to move home at 18.

28. G has been involved in multiple incidences of risk-taking behaviour. G has been involved in drug dealing, gang and gun violence and drug use. In May 2024, G fell off of a motorbike while under the influence. G has had more than 25 missing in care episodes since January 2024. Regarding criminal offences, G has had 14 youth referrals. G has had numerous

charges before the Courts, mostly driving related offences including ramming into a Garda car and endangerment. G has been involved with the probation services since early 2024.

29. The first special care order in G's case was made in May 2024.

H.

30. H is 16 years old. H's background includes concerns in relation to H's mother's alcohol abuse and lack of stable accommodation. H first came to the attention of the Social Work Department in 2010, aged three years, due to concerns that H's mother was a victim of domestic violence. H has previously reported sexual abuse by a relative when living with H's grandparents. H's father does not have any contact with the Social Work Department and is homeless and an active drug user. H is considered a risk to H. H has a diagnosis of ADHD.

31. H has had 16 placements since H's time in care first commenced. H's longest placement with H's grandparents ended in January 2023. H had a short emergency placement with general foster carers and then was moved to a relative placement. This placement ended and H was placed in a long-term residential placement in September 2023. This placement was a positive one, where H engaged in activities such as going to the gym and cooking. H has expressed that this placement is the first place H has lived in where H felt safe.

32. H's risk-taking behaviour had escalated on almost a weekly basis whilst in H's residential placement. This behaviour includes drug use, drug dealing, and absconding. H spent a large amount of time with H's mother, who is homeless and actively drug using. There is also a report of H being subjected to an alleged sexual assault in 2024.

33. The first special care order was made in respect of H in June 2024.

34. It is readily apparent that each of the five children require special care – or did when the orders were made and current.

35. The Chief Executive Officer of the Child and Family Agency, Ms. Kate Duggan, gave evidence at the hearing. She has held that position on an interim basis since January 2023 and has a permanent position since September 2023. Before then she was the Deputy Chief Executive Officer.

36. There are three special care units in the State – Crannóg Nua, Ballydowd and Coovagh House. Full capacity across the three locations is 26 and at present 15 beds are occupied. The primary reason for the underoccupancy is a staffing issue. Recruitment and retention of staff is a problem. Staff are leaving faster than they are being replaced. From the beginning of 2021 until April of 2024 168 social care staff were hired and 174 left the service in the same period. 37 of those transferred to another post within the Child and Family Agency. Up to the 27th of June, 2024 there were 14 starters in social care and 13 leavers - from the beginning of the year. The staff complement required is 72 in Ballydowd, 96 in Crannóg Nua and 32 in Coovagh House. The staff complement, if fully staffed, is 200 across the units.

37. There can be no doubt but that the high turnover of staff is indicative of the challenging work in special care units. Furthermore, violence, harassment and aggression are a significant problem for staff working in special care units and there is a high level of absenteeism as a result with some staff off work significant periods of time because of assaults. In 2023 the concerns in two of the special care units were such that the Child and Family Agency had to apply to HIQA for changes to allow it to employ security personnel as a security measure for staff - in circumstances where the Child and Family Agency was conscious of its obligations under the health and safety legislation. It is also the position that the Child and Family Agency must maintain a specific staffing ratio in each of the special care units to satisfy HIQA requirements.

38. Another cause of the problem is an ongoing lack of appropriate alternative placements across the continuum of need. Other specific placements providing therapeutic care for children

are not always available and this puts additional pressure on the special care units. If suitable alternative placements were available they might cater for some of the children in respect of whom applications for special care orders are made thus obviating the need for those children to have a bed in a special care unit. While this is identified as a contributory cause for the problem the Court does consider it a secondary issue. It should be possible for the special care units to function at full capacity. They are not functioning at full capacity and this has been the position for too long.

39. Ms. Duggan also mentioned in the context of the placement issue the pressure on the special care units by reason of suitable step down placements not being available. Detention in a special care unit pursuant to a special care order is underpinned by a therapeutic rationale. It is intended that special care be used for that purpose and that special care be used for a short-term therapeutic intervention where a child can be supported to return to a residential placement, a foster care placement or an aftercare placement. Ms. Duggan pointed out that for many children and young people, because of the difficulties that they present with and the significance of the needs they have, that when they go into special care there are many who make progress while they are in the unit, but in terms of their ongoing needs, particularly, she said, for those older young people who perhaps did not get the services they needed in the past, it becomes very difficult for them to cope and live in a mainstream residential setting. Ms. Duggan made the point that the Child and Family Agency do not have access to specialist mental health or disability services and that they must try and work in collaboration with colleagues in the Health Service Executive (HSE) in terms of identifying placements for such children and young people.

40. The point here is that there are many children and young people detained in special care units who are there because there is no safe or suitable step-down placement where they can

transition to. As pointed out in the course of the hearing this reduces the throughput of children receiving help in the special care units and this is yet another aspect of the problem.

41. Again, it is no doubt correct that there are some children detained in special care units who could and would transition out if a suitable step-down placement was available. The lack of adequate suitable step down placements is a significant problem in the special care list and a significant concern insofar as children in special care are concerned – not least because there is a point at which children will start to regress if detained in special care units – almost always against their will – when they have done well as a result of therapeutic intervention and when they have done all of what is asked of them but cannot transition due to an inability on the part of the Child and Family Agency to find a suitable home for them outside a special care unit.

42. Again, while the lack of step-down places is a significant issue it is somewhat secondary to the core problem. The special care units ought to be able to function at full capacity and they do not.

43. It is clear from the evidence that the Child and Family Agency has been proactive in trying to make employment in special care units more attractive and in trying to recruit additional staff. It is clear that;-

(a) Significant steps have been taken in relation to training and support with a view to ameliorating issues surrounding violence, harassment and aggression in special care units.

(b) There is a rolling recruitment campaign seeking to get additional staff.

(c) There are processes for voluntary redeployment of existing staff to special care units.

(d) There is now a graduate campaign.

(e) An executive search or recruitment company has been engaged by the Child and Family Agency with a view to identifying and recruiting additional staff.

(f) Significantly, the pool of acceptable qualifications for employment at special care units was expanded with the agreement of the unions in 2020.

44. Twenty-two different individual measures are identified in the report of the second witness from the Child and Family Agency – Mr. William O'Rourke.

45. Notwithstanding the various initiatives, it is clear from the number of staff leaving the special care units that the retention of staff is a huge problem.

46. Mr. William O'Rourke, who is the National Service Director for children's residential services with the Child and Family Agency, gave evidence on the 28th of June, 2024. He had prepared a comprehensive report for the Court.

47. Before being appointed National Service Director, Mr. O'Rourke was the director of special care for Coovagh House Special Care Unit and Ballydowd Special Care Unit since 2018.

48. Mr. O'Rourke gave detailed evidence in relation to steps and initiatives taken by the Child and Family Agency to improve working conditions for staff in special care units. It is not necessary to dwell on these because it is evident that the Child and Family Agency has been proactive in this regard and it has endeavoured to make working conditions more attractive for staff in special care units – and safer. Unfortunately, it has not been possible to obtain sanction for an increase in the special care allowance and which the Child and Family Agency considers to be a core issue in terms of the recruitment and retention of staff for special care units.

49. Mr. O'Rourke gave detailed evidence in relation to "Sligo Rate" which is *"aligned to the Oberstown grade."* Two long term staff working for the Child and Family Agency and on the "Sligo Rate" have remained within the service and are red circled into their positions at that rate because, in 2014, when the social care worker grade came in, this was applied across the agency for all new recruits into the service and, effectively, the "Sligo rate" was no longer available to the Child and Family Agency in terms of recruiting staff. The two staff on the

"Sligo rate" who remained within the service enjoy a salary which is approximately €14,500 more than the top of the social care worker grade scale. It is a much longer incremental credit – there are 25 points on the scale before one reaches the top of the "Sligo rate" – whereas the social care workers have a six-point scale. The two staff on the "Sligo rate" have achieved the top of the scale because they have been in their employment for more than 25 years.

50. Expanding on the problem caused by the lack of suitable step-down placements, Mr. O'Rourke made the point that the number of years ago the Child and Family Agency would have had 28 young people coming into the service (presumably per annum) whereas last year (2023) only 15 people came through the service.

51. In this regard, Mr. O'Rourke stated:

> *"I think one of the big challenges for me coming into the role is that I can't magic up staff. It's not something I can do very rapidly. But what I can do is make sure that we have very clear focus on moving the young people on when they are ready to move on from special care, and I suppose that really is going to be my focus over the next while, so that we can admit young people, but also that young people aren't being detained for longer than necessary."*

52. Dealing with exit interviews, Mr. O'Rourke stated:

> *"... We had, as was reported to the court yesterday, 16 exit interviews conducted with our staff, which identified a number of issues of concern for staff leaving. That included I suppose, the challenging nature of the employment, the violence and harassment and aggression, some issues in relation to access to information within the services, some challenges in relation to communication from management as well, and I suppose, they are all issues that we have addressed internally.*

But in terms of other issues I suppose we would have, as you know, in terms of speaking with our staff, discussing (with) agencies who are recruiting our staff, the issue of pay does come up on a regular basis in terms of the people feeling that they are not paid enough for what they do and people feeling that there are jobs that are, I suppose, may be viewed as less challenging in the community than special care."

53. Mr. O'Rourke, in answer to a question from the Court, agreed that if social care workers were paid more, then more of them would be attracted to work in special care units. He said that this is why they had asked for an increase in the special care allowance over the years as they considered that it might attract staff to the services and help to retain staff. He pointed out that the Child and Family Agency had done what they could in that regard and had provided a number of business cases. He said that there was nothing within the Agency's current power that allowed them to increase the wages of their staff.

54. In answer to a question from senior counsel acting on behalf of the mother of D, Mr. O'Rourke stated that the Child and Family Agency was acutely aware that they were not able to fulfil their statutory duties at this time and he said that the Department (Department of Children) was absolutely aware of that.

55. Mr. O'Rourke was also asked about his report – and the last sentence in particular;-

"This is an ongoing and systemic problem which is not confined to a simple question of financial resources that is within the remit of a single agency to address, but rather relates to the need for additional resources, policy and legislative changes, creative thinking and an interagency and whole of government approach."

56. He was asked to focus on the "interagency and whole of government approach" and he was asked what is it that the Child and Family Agency needed from other agencies and whole of government.

57. Mr. O'Rourke replied that the challenges we face within special care or within the Child and Family Agency are in relation to young people who are subject to exploitation and that to protect these young people they have to be detained. He made the point that one needed to look at the greater State response to what is happening to perpetrators, what is happening to the exploitation of these children – whether it be sexual abuse or whether it be engaging them in criminal matters. He said that this is part of the "ask" that they would have as an agency – that they would have a systemic approach to that within the State in terms of addressing some of those concerns. He made the point that mental health issues are also extremely concerning in terms of having the right services available to the young people while they are in special care. He made the point that tragically last year, one of the young people who left special care unfortunately died due to what he felt was not sufficient resources being available to her. And there were also significant issues in relation to young people who have learning disabilities – on the autistic spectrum, with autistic spectrum disorders - and the Agency did not have the right resources available to these young people in terms of step down placements. Any of the services being developed currently within the Child and Family Agency are mainstream services that do not necessarily have the supports that are needed to be able to care for such young people in the community – and the Agency cannot to that on their own. They need the support of the other agencies to be able to do that. This is what he was referring to in that section of the conclusion of his report.

58. There is substance and merit in what Mr. O'Rourke says about the need for additional resources, policy and legislative changes, creative thinking and an interagency and whole of government approach. However, these valid points are digressing from the issue at hand. The

legislation that requires the provision of special care is in existence from many years. The special care regime is well established. The full capacity of the special care units should be available for use. The failure to have special care units operating at full capacity has created a situation where High Court orders are not being complied with. That is an unacceptable situation which should not be allowed to continue.

59. At the time of the review hearing E and D had been waiting the longest for a bed in special care. Both had orders made in December of 2023 and both were at the time of the hearing over six months without a bed in special care notwithstanding special care orders being granted by the Court on the application of the Child and Family Agency. Mr. O'Rourke was questioned about the Boys Town model of care. In it you have a continuum of care from special care to step downs, therapeutic step down to families – and you can go down the system if you do well with special care, or go up the system quickly if you do badly.

60. Again, there is substance and merit in considering alternative models of care which might alleviate or remove some of the existing difficulties in the existing special care regime. However, these are essentially matters for the executive and the legislative branches of government. The Court is here concerned with the existing legislation and the special care regime which is established pursuant to statute. The Court is concerned to ensure that the special care orders made in accordance with the legislation are effective immediately and not treated as they are currently in respect of these five cases under review.

61. It is manifestly obvious that there exists, and has for some time existed, a need to make employment in special care units more attractive for staff. The Child and Family Agency is and has for some time been aware of this. It has for some time sought sanction for an increase in the special care allowance that is paid to staff working in special care units. This allowance has been in existence for many years. It was reduced in 2010 as part of the public pay reductions - then to €2,195. As of the 1st of June 2024 – with pay restorations – the allowance

is €2,622. It will rise in 2026 to €2,783 once the full FEMPI restoration kicks in. In order to get an increase in the special care allowance the Child and Family Agency need the support of the Department of Children, Equality, Disability, Integration and Youth and any increase must be sanctioned by the Department of Public Expenditure, National Development Plan Delivery and Reform.

62. In 2019 a business plan seeking an increase of the allowance to €5,000 was prepared and submitted to the Department of Children by the Child and Family Agency. With the support of the Department of Children the business plan was presented to DPER who rejected it.

63. The Child and Family Agency prepared another business plan in 2020 which they submitted to the Department of Children – again seeking an increase in the allowance to €5,000. The Department of Children did not pass this business plan on to DPER as it felt there was no point in doing so given the recent rejection of the 2019 business plan.

64. In 2023 the Child and Family Agency prepared another business plan seeking an increase of the allowance to €10,000. This was presented by the Department of Children to DPER and the requested increase in the allowance was again rejected by it.

65. While various reasons for rejecting an increase in the allowance as requested by the Child and Family Agency have been proffered by DPER the Court is satisfied on the evidence that the main reason for rejecting the increase in the allowance is a fear of a contagion effect across public pay. It is the position that the Child and Family Agency has a budget in excess of one billion euro per annum. That said, it is also the position that it employs 5,276 staff and that there has been a 50% increase in referrals to the Child and Family Agency since 2014.

66. In the course of the hearing there was reference to a small number of written exit interviews prepared with the co-operation of staff leaving employment in special care units. In

terms of the reasons for leaving the small number of written exit interviews referenced the reasons for leaving – according to Ms. Duggan – as:-

> *"It was certainly around the complexity of need of the young people, particularly in relation to suicidal ideation, mental health, and staff perhaps feeling they didn't – you know, we operate a social care model with social care staff, and they didn't feel that they had, maybe, the adequate skills to respond to that. It was around the levels of violence, harassment and aggression. And then there were, you know, other issues that we could resolve very quickly around access to, you know, kind of food being provided for staff at the weekends and kind of access to training and development, things that we have been able to solve on the basis of those exit interviews, and they happen right across the Agency now."*

67. It is the position that only a few of the exit interviews referenced pay as an issue. However, the evidence in relation to discussions with staff leaving over recent years – and who did not complete written exit interviews – is that they did in discussions reference pay as an issue. Furthermore, the Court is quite satisfied that professional social care staff completing written exit interviews would have a reluctance to articulate the issue of pay as a reason for leaving. After all, these social care staff are invariably and inevitably acutely aware of the sad and frequently critical predicament of the children whom they have been looking after in the special care unit. It is no doubt extremely difficult for a such a staff member to articulate acceptable reasons for moving on – and in the knowledge that obtaining staff is very difficult. Mentioning pay in that situation is, the Court is satisfied, something that such professionals would be slow to do as doing so could easily be perceived as grubby, unprofessional and inconsiderate. It is noteworthy that many staff who did not conduct written interviews did, according to the evidence, articulate pay as an issue.

68. As touched upon above, the evidence also established that there are two staff working in special care units who are on significantly higher pay, for historic reasons – those on the "Sligo Rate".

69. Mr. McCarthy gave evidence on 17 July 2024. He is the Secretary General for the Department of Children, Equality, Disability, Integration and Youth since January of 2022. He gave evidence concerning the statutory framework that governs the relationship between the Department and the Child and Family Agency. His evidence was that overall policy responsibility, and legislative responsibility in respect of this area is the responsibility of the Minister and the Department operating on behalf of the Minister. The Department has overall responsibility in terms of setting the policy and legislative framework within which the Agency operates and for ensuring that resources are allocated to it in support of those functions – and in overseeing the Agency within the terms of the statutory arrangements that are set out in the Child and Family Agency Act 2013.

70. Mr. McCarthy confirmed that the approval of the Minister and the consent of the Minister for Public Expenditure and Reform is required in respect of pay and conditions. Where, as is the position in relation to the request for the increased special care allowance, a case has been made outside of public sector pay agreements for a particular revision of terms and conditions this is made by way of application to the Minister. The Minister must approve and agree to the increase and then seek the consent and agreement of the Minister for Public Expenditure and Reform in respect of any change. The first business case preparation involved engagement between the Agency and the Department. The work began between the Child and Family Agency in early 2018 and it was submitted by the Department, which supported it, to the Department of Public Expenditure and Reform around June of 2019. On 17 June 2019 the business case was refused by the Department of Public Expenditure and Reform. Essentially, three reasons for refusal were given; -

(a) Firstly, the proposal was contrary to the Public Service Pay Policy and therefore could not be sanctioned.

(b) Secondly, the measure was cost increasing and therefore precluded under the terms of the Public Sector Stability Agreement 2018 to 2020.

(c) Thirdly, granting an increase would have an impact across the special care sector and would likely create a precedent for further claims in this and other sectors – this is what is referred to subsequently as the "contagion issue".

71. Following the refusal the Agency prepared a second proposal which it submitted to the Department in March 2020. On foot of receiving this second business case the Department suggested to the Agency that they should establish an internal group or working group to look at the wider issues relating to special care. The judgment of the Department at that point was that the previous business case had been rejected so recently that the second business case was unlikely to succeed, and some consideration of wider issues that were relevant was required. The position therefore is that the second business case which apparently again sought an increase of the special care allowance to €5,000 was not submitted to the Department of Public Expenditure and Reform because the Department of Children considered there was no point in light of the earlier refusal without further work being done.

72. In 2023 the third business case was formulated and submitted to the Department of Children. It forwarded this to the Department of Public Expenditure and Reform on 27 October 2023.

73. In the course of his evidence Mr. McCarthy did appear to push back against the notion that pay – and an increase of pay – was critical in terms of recruitment and retention of staff in special care units. When it was put to him that the standout issue in terms of what needed to be addressed was the increase in the special care allowance as requested by the Agency, Mr. McCarthy stated ; -

"I suppose what I have heard is that retention is certainly an issue. Recruitment is an issue, but retention is the bigger issue in terms of the efficient rates of staff for the service. And, indeed, absenteeism is an issue. I don't think it's as simple as an increase in an allowance will address the retention issue. I think what we have heard is that there are multiple factors at play, and certainly the evidence, such as it is from the exit interviews for example, I think pay was cited in four of the sixteen cases, to my knowledge, as being a primary factor. It's certainly a factor. It's not the sole factor. I don't know if it's even the most important factor, to be quite honest, from what I hear, from the evidence that I hear in respect of the working conditions that people are operating in, this is a very challenging environment in which to operate. And certainly listening to Mr O'Rourke's evidence where a number of special care staff are leaving for what would be deemed to be easier employment, on perhaps less money, given that there wouldn't be an allowance associated with the roles that they are going into, it would suggest to me that the simple fact of increasing the allowance won't necessarily impact on the decision of people to stay or to go.

But I don't know, I simply don't have the evidence to say what would influence an individual's choice in those matters. What I can say is, we have been persuaded by the case made by Tusla that it may help to contribute to the retention, to the decision of some people to stay longer in the service than they otherwise would, and it is therefore worth pursuing. But I wouldn't want the court to believe that increasing the allowance is simply going to solve the problem here or make the challenges involved here go away, because it is one of a myriad of factors."

74. Insofar as this view is concerned, this Court does not agree with the thrust of the argument. This Court is entirely satisfied that pay – and an increase in pay – is a critical issue

in terms of recruitment and retention of staff. It is certainly true that improving working conditions – aside from pay – is also important and will no doubt assist in terms of the recruitment and retention of staff. After all, employees are concerned with "pay and conditions". It is however the position that working in special care units is, by its very nature, challenging and demanding for employees on a daily basis. Children in special care units present with many challenges. That is why they are detained in special care units. That is something that cannot really be changed in terms of the working conditions - although resourcing and training should help to improve the working environment. Ultimately however, the pay must be sufficient to make coping with the challenges of the work worthwhile for employees. Put simply, the pay for the work must be sufficiently attractive to recruit and retain sufficient staff. The evidence is to the effect that it is not so at present.

75. The third business case sought an increase in the special care allowance to €10,000 – to be paid on an incremental basis.

76. The response from the Department of Public Expenditure and Reform on 27 November 2023 raised several queries in relation to the Department of Children's analysis and/or views of the Tusla business case. DPER indicated that in order for them to be able to examine the business case they needed the Department's considered view of the proposal, and in particular how it fits within the wider context of services for children, which also come within the Department of Children's remit (e.g. how it could impact on Oberstown).

77. There followed correspondence and interaction between both departments. It is clear from the email correspondence that the Department of Children was supporting the business case and acknowledging the seriousness of the issues arising – the impact of the undercapacity and the poor outcomes for the children affected. The point was made by the Department of Children to DPER that:

"Tusla have flagged to the Department that the current crisis in special care capacity has the potential to lead to a fatal outcome for a child who cannot access special care."

78. While a letter of 17 April 2024 from DPER to the Department indicates a refusal of the sanction sought for a number of reasons (which can perhaps be summarised as - possible or likely costs to the exchequer reasons) Mr. McCarthy said that the actual position was that the third business case had not been accepted by DPER *at this point in time*. He said that both ministers were in communication given the urgency and the critical nature of the challenges involved and the potential of this (increasing the special care allowance) to be a part of the range of solutions. He said that while the correspondence of 17 April of 2024 clearly communicates that DPER had not accepted the case made at that point in time *the case remains under active discussion.* When asked if no pathway or no resolution had been identified yet then what was the end point of the process – how long would it go on for? - Mr McCarthy replied that he could not speak to how quickly it could be done but that his understanding was that "it's a point that we can get to within a matter of weeks rather than months."

79. Referring to a letter from his Minister dated 01 May 2024 Mr McCarthy acknowledged that it reiterated his view that the allowance required to be addressed. Mr McCarthy accepted that it was an important part of assisting the Agency in resolving the ongoing crisis in special care.

80. When asked if he was satisfied that the Agency was taking the steps necessary to remedy the problems Mr McCarthy replied ; -

"I am satisfied that Tusla is taking all available steps and is exploring all available avenues open to it to address the challenges involved here, and I think Mr O'Rourke's evidence to the court, and the range of issues and initiatives that are being taken, is evidence to that. We have also established with Tusla a special care planning group, which is looking at various aspects of this, including recruitment and retention. There

is an external review group looking at the future model of special care to try to get behind some of the issues which have been, you know, seemingly perennial at this point, in a sense that they have been going on for decades rather than years .. .. . and obviously there is a piece around interagency support for the children who are in special care, or at risk of special care, which is part of that as well. So if you align that with the various internal initiatives that Tusla is taking, I am absolutely satisfied that no stone is being left unturned in terms of seeking to address the range of very complex and connected issues involved here ..... I mean that's why it worries me that the issue would be boiled down to the simple one of an allowance, and it's not to dismiss the value of an allowance in terms of individual decisions that might be taken to stay or not stay, I think all of the evidence to me points to the fact that there is a complicated range of issues involved here."

81. Unfortunately, the view thus expressed by Mr. McCarthy illustrates a malaise which lies at the heart of the current crisis in special care. There is no doubt that initiatives being taken by the Agency in relation to improvement of working conditions are important – but that does not detract from the importance of pay. The view that an increase in pay alone will not solve the situation has a superficial attraction in terms of an argument. However, in the context of the existing crisis, the apparent failure to acknowledge the reality that without improvement in pay all of the other initiatives are probably futile is extraordinary. There is no doubt that both departments are concerned to protect public funds and anxious to avoid any contagion effect in terms of pay. This is understandable. However, it is clear from the evidence that pay and conditions in special care need to be improved in order to recruit and retain sufficient numbers of staff to operate the three special care units in the State at full capacity. Sufficiently attractive salaries are required and this inevitably involves an increase in the current salaries – which it is proposed to achieve by an increase in the special care allowance. Undoubtedly, improved

working conditions will also assist in recruiting and retaining staff – but there is a limit to what can be achieved in that regard in the sense that the work is by its very nature challenging and that is a constant when working in Special Care Units.

82. Mr. McCarthy was questioned about the childcare legislation. It was pointed out to him that the Child Care Act was passed in 1991. There was an amending act in 2011 which was commenced on New Year's Eve in 2017. He was asked about the Supreme Court view that this could be regarded as an implicit promise by the Executive, the Government, that the requisite funding would be made available and the operational burden presented by the new legislation wasn't considered to be too onerous. Mr. McCarthy was asked did he think it fair to describe the Act as an implicit promise that the funding would be made available to run special care and that the burdens of running special care weren't too onerous. To this question he replied; -

> *"Absolutely. I mean government, in agreeing the legislation and approving the legislation - the Oireachtas in voting on the legislation - there is a commitment – there is a collective statement of commitment implicit in that. Absolutely."*

83. Mr. McCarthy was then asked did he think that that promise had been kept to the six, seven, eight children who are now without special care beds. To this he replied; -

> *"Clearly those children have been failed in the current circumstances, nobody questions that, and we are all extremely exercised by that fact."*

84. He was asked again had the promise been kept. To this he replied; -

> *"All I can say is that the obligations provided for under the legislation in respect of those children have not been met to date."*

85. He said that "promise being broken" is not the language that he would choose to use. He said that government has set out a set of legal obligations which at this point in time are not being fulfilled. He said that one could choose to apply whatever language one wished to that situation.

86. Touched upon in the course of the evidence was the pressure and false economy of so many closed beds in special care – and the cost to the exchequer of the alternatives being provided by the private sector, some in an unregulated manner.

87. Insofar as these points are concerned, this Court has no doubt concerning the substance to the assertion of the false economy involved – not least because of the increased cost to the exchequer in terms of alternative private sector care and litigation costs which is self-evident – but also because that is but one aspect of the false economy. Many children in need of special care are not receiving it and are without the interventions which might - and frequently do - assist such children in stabilising and availing of worthwhile opportunities in life. These neglected children - who do not receive the special care which probably would help them – are at a disadvantage on coming of age. The failure to stabilize and equip such children for life as adults – and to do what can and should be done for them as troubled children – can only have broader adverse societal impact.

88. Mr. McCarthy was referred to the fact that in 2018 a High Court Judge had issued a written judgment referring to the staffing crisis in special care and pointing out that it needed immediate resolution at that point in time. Mr. McCarthy acknowledged that he has been aware of the pressures on special care and was asked how seriously he took the ongoing breach of High Court orders. In response he said that any breach of statutory obligations was taken very seriously by the Department, as one would expect. He went on to say that the fact that the Department was engaged so intensively with the agency around the challenges that they were facing was really brought into focus by their inability to meet the requirement of care orders.

89. Mr. McCarthy was pressed about the fact that the routine breaches of High Court orders involving a number of children had gone on for months and he was asked how serious the Department had taken the Supreme Court judgment in *M McD (A Child)* [2024] IESC 6 –

which referred to the whole legal system being based on the rule of law and compliance with Court orders.

90. In response Mr. McCarthy said that the Agency had operational responsibility for the cases. He said that he would have a serious concern if he felt that the Agency were neglecting their responsibilities in any shape or form. He said that we know that the Agency is working night and day to try to advance solutions for all of the cases – and to advance solutions in respect of the wider issues involved here – and the Department had been engaged continuously with the Agency in respect of the issues involved and in being able to support them in doing that. He said that the Department did absolutely take the matter seriously and that it was a huge priority for him and a huge priority for the Minister and for the Department. He said that he thought that the evidence in terms of the engagement around the issues involved, the broader issues, reflects the fact that they had taken the matter extremely seriously. Notwithstanding these assertions it was put to Mr. McCarthy that both the departments had failed abysmally to address the issue with the urgency required. In response Mr. McCarthy rejected this charge that the matter was not being taken seriously or that there was a failure to recognise the urgency or the critical nature of the situation. He said that he thought that all of the evidence points to the opposite in fact.

91. Unfortunately, the Court cannot agree with the view expressed above by Mr. McCarthy. This problem has existed for years and was flagged in a written judgment in 2018 by Reynolds J. Not alone does the problem continue to exist but the situation has deteriorated. The plain fact of the matter is that the issue has not been addressed with the degree of urgency required. It has not been given the priority it deserves.

92. Later in his evidence, Mr. McCarthy acknowledged that the ongoing discussions between the departments which were taking place were of little immediate benefit to the children the subject of the review. He said that:-

"[I] absolutely understand that for the children here, the children involved in the five cases, the fact of discussions happening in government buildings or in government offices, doesn't impact on their immediate situation. I absolutely accept that. And that's why we are all exercised by this."

93. Towards the end of his evidence Mr. McCarthy referred to the fact that the evidence the Department had from the Child and Family Agency was that they saw the increased allowance as being amongst the most important issues – one of the primary issues he thought was some of the language that was used - and he said that he would accept the view of the agency on that. He again made the point that from what he saw there were other factors which he felt were probably more significant – and the working environment he felt was probably the single most significant issue in terms of the decision of people to stay.

94. Again, insofar as his latter view is concerned, the point remains that the special care regime is what it is and is unlikely to change. The difficulties working in special care will remain - as will the need for it. In these circumstances, it is important to look at improvement in pay - and improvement in conditions in so far as that can be achieved. The Court is entirely satisfied that pay is front and centre in terms of the improvement of conditions of employment for those working in special care units.

95. Indeed, it is impossible not to conclude on the evidence that the increase in the special care allowance is essential in terms of improving the "pay and conditions" of those who work in the special care units. It is true that we do not know that it will resolve the problem that exists but it does seem on the evidence which the Court has heard and from its knowledge of the special care system (Crannóg Nua, Ballydowd and Coovagh House) that it is essential . We will not know the actual effect of an increase if it happens until after it happens.

96. Mr. McCarthy was followed in evidence on 17 July 2024 by Mr Maloney. Mr Maloney is the Secretary General for the Department of Public Expenditure, national development plan

delivery and reform since January of 2021 on an acting basis – and on a permanent basis since August of 2021.

97. Mr Maloney confirmed in his evidence that the budget of the Child and Family Agency had increased from €609m in 2014 to €1.011bn in 2024. He explained that his responsibilities insofar as the current cases are concerned were largely in relation to pay issues. His witness statement deals with the management of the Public Service pay bill which has increased significantly in recent years. The pay bill is a function of the numbers and pay rates associated with different grades, groups and categories within the Public Service – and the management of Public Sector pay is rooted in the tradition of collective bargaining and the system of collective agreements. In this context he was asked what happened when an agency such as the Child and Family Agency requested sanction to make an additional payment such as [an increase in] the special care allowance.

98. In response Mr. Maloney said that it can depend all the time on the Public Sector agreements that are in place. Public Sector pay policy operates within agreed collective pay agreements. He said that reference had been made to the 2019 business case. He pointed out that it was conducted against a Public Service Agreement that did not allow any cost increase in claims. The current business case is set against the more recent pay agreements – more particularly the most recent Public Service Agreement which has a sectoral bargaining – or a local bargaining provision in it.

99. Mr. Maloney was asked about the decision of his Department conveyed by letter dated 17 April 2024 which did not approve of the third business case. He said that the business case was being looked at from the point of view of whether the issue was pay or were there other issues, and the conclusion that was come to by his Department, it would be very clear, was that the key issue here was not pay, that the key issue was other places (*placements*), including stepdown places (*placements*). He explained that the analysis of the Department was that pay

was not the issue and, therefore, the letter was crafted in such a way as to point to the resources that were available, the ability to increase the allowance under the existing pay agreement, and the potential, if Tusla prioritised pay as an issue, the potential to deal with that issue under the local bargaining clause of the new agreement. When it was pointed out to him that the decision on the application conveyed in the letter of 17 April 2024 did not state anywhere that pay was not an issue Mr. Maloney said that the letter was in response to a business case in support of a pay issue and he thought "*that any official reading the letter would understand that the business case had not persuaded".*

100. Mr. Maloney later said that; -

> *"So the issue that my department has been faced with is the pay issue. It certainly is not the answer to the crisis in special care, because the answer to the crisis in special care is, to our view, around safety in the workplace and to appropriate onward placement".*

101. Notwithstanding the evidence thus far of Mr. Maloney, it was clear to the Court that the primary concern of his Department was being asked to approve a pay increase which might have unwanted ramifications for pay in the Public Sector. On the evidence, it appeared to the court that the Department quickly made the decision not to sanction the increase in the allowance – and then began to work backwards from there to find reasons for not sanctioning the increase.

102. It is telling that Mr. Maloney referred in evidence to the lack of stepdown placements as an issue but later acknowledged that the issue of stepdown beds or placements did not inform the letter of 17 April 2024. This issue of stepdown placements was something that came to his knowledge by reason of the evidence given by Mr O'Rourke to the court. In this regard, Mr. Maloney was relying on the evidence of Mr. O'Rourke to the effect that a greater number of

children were able to take advantage when stepdown placements were available – so that even with the same number of beds a greater number of children could be accommodated.

103. Suffice it to say that Mr. Maloney's evidence on this issue illustrates his Department, without any clear knowledge or understanding of the special care system, looking for explanations or justifications for not sanctioning an increase in the special care allowance. DPER appears to have failed to give appropriate weight to the views and submissions of those expert in the area – the Agency and the Department of Children.

104. That the problem is long-standing is apparent from the Judgment of Reynolds J. already referred to. In the judgment in *The Child and Family Agency v T.N.* [2018] IEHC 651 in November 2018, Reynolds J. stated:-

> *"6. Currently there are up to fourteen mixed gender places available in Special Care, for children aged between 11 to 17 years, in four separate Special Care units. One of these units, providing up to two placements, is due to close at the end of the year.*
>
> *7. What is alarming to this Court is that almost twelve months ago, a brand new specially adapted facility with placements for up to twelve children was opened by the Minister and to date it has operated at less than 50% capacity. At best, five of the twelve placements are being utilised.*
>
> *8. At a time when there is an ever increasing and unprecedented demand for placements in Special Care, it appears incomprehensible why this facility is not operating at full capacity.*
>
> *9. However, having heard evidence from the Child and Family Agency on this issue, it is readily apparent that the difficulty is in relation to the recruitment of appropriately qualified staff given the constraints on its financial resources."*

105. Notwithstanding the passage of time since that judgment the situation has now deteriorated to crisis point with regrettably no resolution in sight. The Agency is now very well funded but is constrained in terms of improving the pay conditions for staff in Special Care.

106. In the course of her evidence Ms. Duggan stated that:-

"…strategically, the Minister and the Department expect that we'd fulfil our statutory obligations as an agency, which we are unable to do at the moment…"

107. In the course of his judgment in *M McD (A Child)* [2024] IESC 6 Hogan J. stated:-

"As the CFA confirmed in the hearing before Heslin J. the CFA has the requisite financial resources and the secure units available: the problem pertains rather to the acute difficulties it has experienced in the retention and placement of staff at present rates of pay."

108. The Court does acknowledge that DPER takes a difference view in relation to the cause of the problem. DPER, through its Secretary General, stood firmly to the Department narrative in the course of the hearing that pay was not the issue. This Court differs from the view expressed by DPER in this regard. It is true that pay is not the only issue. However, the court is satisfied that a core issue is pay - while other conditions of employment are also important in terms of recruiting and retaining staff in special care units.

109. Somewhat lost in all of the talk concerning recruitment and retention of staff is what is undoubtedly the harrowing daily experience of staff endeavouring to care for and support children and young people who are frequently broken, traumatised, hopeless, actively suicidal and frequently bereft for all of their young lives of the parenting, love, nurturing and support that most children have and take for granted. It does not require any imagination or speculation to understand the demands on social workers who are professional and conscientious and working in that environment. It is no mystery why there is a difficulty recruiting and retaining staff for such work in circumstances where they can find much easier and rewarding work

outside of that environment at very similar rates of pay. In fact, the evidence is that many social care staff have left to work as social care workers in other areas – for lesser salaries (in circumstances where they will not have the special care allowance).

110. The Court has considered the written submissions of the Agency. The Court does not propose to make any directions against the Agency as a result of the hearing - nor will it trespass beyond its remit and into the statutory functions of the Agency. The focus of the reviews and hearing is as already set out.

111. The Court notes the written submissions of the Guardian *ad Litem* for F dated 24 September, 2024. The Court is satisfied as to its jurisdiction in so far as the reviews carried out and the hearing is concerned. It is however important to emphasize that the objective of the Court in hearing the evidence proffered was to have clearly articulated the reasons offered for the existing problems which has resulted in the special care orders not being given effect in respect of these children. The Court does not consider it appropriate to stray beyond the focus of the reviews – not least because it made it clear from the outset what that focus would be. The Court is not prepared to explore the "outer reaches" of its jurisdiction. Rather it considers it necessary to spell out clearly what the evidence establishes.

112. The Court has also given consideration to the written submissions of EA– Grandmother of E. Again, the focus of the reviews and hearing was made clear at the outset and the Court is confining itself to establishing the factual situation and making necessary observations in that regard. Having regard to the focus of the reviews and hearing the Court is not going further by granting directions arising out of it – even if the Court did feel that directions against the Agency might be beneficial as a result of the hearing – and it does not.

113. The Court has also considered the oral submissions and positions as set out by the representatives of the other parties.

114. The evidence clearly proves, as a matter of probability, that a significant improvement in pay and working conditions for staff in special care units is required in order to address the crisis which now exists. While pay is not the only issue the Court is satisfied that it is a core issue. Improvement in other working conditions – though desirable and necessary – will not be sufficient to address the existing problems if the issue of improved pay is not dealt with as a matter of urgency.

115. The evidence also shows that the Special Care List will likely be dealing with the existing problems when carrying out reviews and indeed when granting some special care orders for as long as the three special care units are operating under capacity.

116. This situation is entirely a matter for the Child and Family Agency and the respective Departments. Articulating what the problem is ought not to be a concern of this Court – much less what the resolution of the problem may be. Yet, the Court must articulate what the evidence establishes in circumstances where this Court is now looking at several Court orders which are not being complied with because of the crisis in the special care regime. The Court is satisfied that the problem is not without a solution.

117. It is clear to the Court on the evidence that the Child and Family Agency and the two Departments, working together, can solve the problem if willing to do so. It should not be necessary to add that they ought to find and implement the solution as a matter of great urgency. The necessary action ought to have been taken long before now.