

Neutral Citation No: [2021] NIFam 2	Ref: KEE11378
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	ICOS No: 11/103100/08
	Delivered: 12/01/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

IN THE MATTER OF ORLA AND MARTIN No. 4

The Applicant Father appeared as a Litigant in Person
The Respondent Mother appeared as a Litigant in Person
Ms Smyth QC with Ms O'Flaherty represented the children instructed by
Official Solicitor

KEEGAN J

The names of the parties in this case have been anonymised in order to protect the interests of the children to whom the case relates. Nothing must be published or reported which directly or indirectly leads to the identity of the children or their families being revealed. The names I have given the children are not their real names.

Introduction

[1] I gave a substantive judgment in this case on 16 November 2020 which is reported at [2020] NIFam 24. Subsequent to that decision I invited the parties to address me on any issues in relation to the making of a 179(14) restriction on future applications. I have received some representations in relation to this. In broad terms the mother of the children supports such a restriction on future applications. The father of the children has offered no substantive objection in relation to the issue. The Official Solicitor in a paper has set out the law in her paper and helpfully pointed to the factors which would allow the making of an order.

[2] If I first turn to the law in this area it is contained in Article 179(14) of the Children (Northern Ireland) Order 1995 and provides as follows:

“(14) On disposing of any application for an order under this Order, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Order of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.”

[3] Consequently, an order of this nature does not prevent applications, it simply means that applications are subject to a leave requirement. It is right to say that these applications are generally utilised in cases of repeat and unreasonable applications. However, as the Official Solicitor states:

“In cases where the welfare of the child requires that a court can impose the restrictions for other reasons. Article 179(14) is not in breach of the European Convention for the Protection of Human Rights as it does not deny access to the court, only access to an immediate inter partes hearing.”

[4] In other words, a judge who in family cases is usually a judge familiar with the case, decides whether the case requires a hearing. The main decision in this area which I highlighted to the parties in my judgment is a case of *Re P (Section 91(14) Guidelines: Residence and Religious Heritage)* [1999] 2 FLR 573. I also referred the parties to a case in which I made in Article 179(14) order on appeal - *KT v ST* [2017] NIFam 7.

[5] The case of *Re P* has resulted in what are called the *Re P* Guidelines which have been applied in this jurisdiction in cases such as *In Re L & Anor, Re Children (Northern Ireland) Order 1995* [2004] NI Fam 7 which summarised the law as follows:

- “(1) Section 91(14) the equivalent English provision should be read in conjunction with Section 11 which makes the welfare of the child the paramount consideration.
- (2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.
- (3) An important consideration is that to impose a restriction is a statutory intrusion to the right of a party to bring proceedings before the court and to be heard in matters affecting his or her child.

- (4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- (5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable application.
- (6) In suitable circumstances (and on clear evidence) a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- (7) In cases under para 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction the child or primary carers will be subject to unacceptable strain.
- (8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
- (9) A restriction may be imposed with or without limitation of time.
- (10) The degree of restrictions should be proportionate to the harm it is intended to avoid. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.
- (11) It would be undesirable in other than the most exceptional cases to make the order *ex parte*."

[6] In this case, as I have said in my substantive judgment, proceedings have been ongoing for 9 years. One child will turn 18 next year and the other child is also

a teenager. Mr Justice O'Hara dealt with this case substantially and made final orders on 10 January 2020. The matter returned fairly soon thereafter on 19 April 2020 and both parties then issued applications which I heard. As I explained in my judgment it is not the purpose of the Family Court to re-litigate matters that have already been properly decided upon. That would neither be proportionate, a good use of the court's time or in keeping with the welfare of children. The court in this case was clear at the outset that it would only consider matters that required attention and not re-open matters unless there was some good reason to do so. The court was also very cognisant of the ages of these children and the comprehensive orders made by O'Hara J. To be fair to him, I think that the father recognises all of this.

[7] It will be apparent from my judgment that I did not substantially change the orders made by O'Hara J. However, given the doubt raised about information sharing I considered that the Official Solicitor should tell the children that there is no evidence that their father is a paedophile to complete the case. All of the other applications were effectively dismissed.

[8] It is in this context that I consider the 179(14) application. Having done so, I do consider that there is merit in the making of an order because this case seems to result in continuous litigation over the same issues which have been before the court for some time. There is absolutely no reason why any future application should be made in relation to the eldest child Orla, a point properly conceded by the father given her age. Therefore, there is no prejudice in making an order in relation to Orla that no future applications of any nature in relation to contact or specific issues should be made without the leave of the court for a period of 6 months. That takes Orla into her majority and thereafter the Children (Northern Ireland) Order 1995 does not apply.

[9] The position in relation to Martin is somewhat different given that there are ongoing issues raised about him which are concerning and he was the child who had more contact with his father. However, I will make an Article 179(14) Order for the same period to allow matters to settle. I have considered a longer period but given that the Official Solicitor is going to share information with Martin, I think it better to leave it for the 6 month period during which that can be done.

[10] The submissions made by the father to me after the hearing focussed on another matter namely paragraph [25] of my judgment in which I said I proceeded accepting the submission made by the mother that she never said that he is a paedophile. For the avoidance of doubt I can clarify that paragraph [25] refers to the mother's submission before me and it should be read in that way. While the mother did not say that she had called the father a paedophile she repeated that she had been told the computer material was of paedophilic nature. In his submissions, the father has highlighted representations made both by the mother and lawyers over many years on this issue before other courts. The mother invites me to obtain transcripts of past hearings before O'Hara J and go over this again. I am not

attracted to either submission. Suffice to state as follows: It was found that there is no evidence from any source that the father is a paedophile. Clearly the father did not accept the allegation in any way and clearly the mother raised it in some way. I am not going to re-open matters from as far back as 2011 about how this all came about given the nature of my decision. This issue was clearly raised directly, indirectly or by inference. It is not necessary, proportionate or in keeping with the welfare principle to deal with this any further.

Conclusion

[11] I want the children to have proper information about their father. I am also ever hopeful that the children as they grow up might reach their own conclusions about their parents and establish relationships accordingly.

[12] I am very grateful to the Official Solicitor for assisting in this case. As I have previously said the Official Solicitor should decide when to speak to the children about the paedophile allegation. However, it should happen soon. This is an important conversation because the children should be told that there is no evidence whatsoever that their father is a paedophile. Wherever they have got this idea from, if they knew about it at all, it is wrong. I am confident that the Official Solicitor will deal with this professionally and obviously she will have to share the outcome with the two parents.

[13] I will make the Article 179(14) restriction for 6 months from today. I reiterate my direction to the Official Solicitor in relation to information sharing.