

Neutral Citation No: [2024] NIKB 6

Ref: HUM12420

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 07/02/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY SAMUEL BRIDGE
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**Tim Jebb (instructed by Edwards & Co) for the Applicant
Aidan Sands (instructed by the Crown Solicitor's Office) for the Proposed Respondent**

HUMPHREYS J

Introduction

[1] The applicant is a serving police officer who seeks leave to apply for judicial review of a decision of the Chief Constable of the Police Service of Northern Ireland dated 12 June 2023 whereby he was refused a further period of paid dependants leave.

[2] In March 2023, a new baby was born to the applicant and his wife but soon thereafter the child was diagnosed with a serious and rare medical condition. This necessitated the applicant taking time off from his work duties and this was made up of a mixture of paternity leave, annual leave and dependants leave.

[3] On 12 June 2023 the applicant was informed that the maximum provision of paid dependants leave was 20 days in a 12 month period and that this had been used up. As a result, he was offered unpaid leave only.

[4] The case advanced by the applicant is that the limit imposed on the period of paid dependants leave is outwith the statutory scheme and represents an unlawful fetter on the Chief Constable's discretion. Furthermore, he challenges the determination that the periods of leave taken by him from 21 March to 7 April and 12 May to 18 July 2023 should be considered annual leave or sick leave rather than dependants leave.

The statutory scheme

[5] Regulation 32(10) of the Police Service of Northern Ireland Regulations 2005 states:

“A member shall, so far as the exigencies of duty permit, be entitled to be permitted to take a reasonable amount of time off during periods of duty in order to take such action, and for such purposes, in respect of a dependant of that member, and subject to such conditions, as shall be determined by the Secretary of State; and for this purpose the Secretary of State may determine the meaning of “dependant” in relation to members.”

[6] Annex S to the Regulations provides:

“A member is entitled to be permitted by the Chief Constable to take a reasonable amount of time off during his normal duty periods in order to take action which is necessary:

- (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted
- (b) to make arrangements for the provision of care for a dependant who is ill or injured”

[7] A “dependant” is defined as being a spouse, child, parent or person living in the same household.

[8] These provisions closely mirror the regime which applies in the case of an employer/employee relationship under Article 85A of the Employment Rights (Northern Ireland) Order 1996. A complaint in relation to the unreasonable refusal to grant time off under Article 85A can be made to the Industrial Tribunal, a remedy not available to police officers as a result of their particular status.

[9] Guidance has been given by the Employment Appeal Tribunal in England & Wales (EAT) as to proper import of the statutory scheme. In *Qua v John Ford Morrison Solicitors* [2003] IRLR 184 the tribunal stated:

“The right under s 57A(1)(a) is not intended to allow the employee to take time off to care for a sick child ; the right is to deal with an unexpected event, by making arrangements for continuing care if necessary...The EAT

endorsed the view expressed by Lord Sainsbury that leave ought not to be longer on any occasion than one or two days, and would usually be shorter.”

[10] Similarly, in *Cortest v O'Toole* [2008] All ER (D) 220, the EAT held that a month's absence would almost never be a reasonable period of time off to deal with childcare issues. The purpose of the leave was to provide an opportunity to make alternative arrangements, not to undertake the provision of care oneself over a lengthy period.

The applicant's leave

[11] On 24 March 2023 the applicant made an application for seven days' paid dependants leave on the dates 10-13 April and 17-19 April. This was duly approved.

[12] On 23 April 2023 the applicant requested and was granted a further ten days' paid dependants leave, from 20 April to 6 May 2023.

[13] On 17 May 2023 a further application was made on the applicant's behalf, but this was refused by Superintendent Moore on the following basis:

“HR have since confirmed that the maximum period of paid dependants leave to cover this very exceptional circumstance has been granted via myself i.e. the total of 20 days' paid leave in a rolling 12 month period, and that the next phase as part of the special leave policy would be the consideration for approval of up to 20 days unpaid leave”

[14] The applicant then took a period of annual leave from 6 to 28 May, and then went on sick leave with effect from 29 May until 18 July 2023. He then returned to work as, thankfully, the medical position in relation to his child had improved.

[15] The overall picture therefore was as follows:

14-20 March	Paternity leave
21 March – 7 April	Annual leave
10 April – 6 May	Dependants leave
12 -28 May	Annual leave
29 May – 19 July	Sick leave

The grounds for judicial review

[16] The applicant contends that the 20-day limit referred to in the response of 12 June 2023 from Supt Moore represents an unlawful fetter on the regulation 32 discretion to permit periods of paid dependants leave.

[17] Counsel for the proposed respondent states that the existing special leave policy is currently being revised and this will permit periods of paid dependants leave of over 20 days in exceptional circumstances. It is therefore now recognised that there is no bar to the applicant making any future application. In these circumstances, any application for judicial review of the existing policy is of no utility.

[18] The remaining issue between the parties is whether any other periods of time off ought to have been classified as dependants leave.

[19] The applicant's own evidence in relation to first period in question is that he did not apply for dependants leave until 24 March and when he did so, it was with effect from 10 April. Since no application for dependants leave was made for the period between 21 March and 7 April, there is no refusal decision which could be challenged by way of judicial review.

[20] The second period in issue, between 12 May and 18 July, is made up of a period of annual leave and a period of sick leave. In relation to the latter, the applicant says:

"All of the above placed an enormous amount of strain on me and caused me significant stress. I ended up taking sick leave myself on 29 May."

[21] By definition, the applicant could not have been entitled to dependants leave when he was unfit to work due to illness. Again, therefore, there is no relevant decision in relation to the period from 29 May to 18 July which could be challenged by way of judicial review proceedings.

[22] This leaves only the period from 12 to 28 May when the applicant took annual leave.

[23] The proposed respondent emphasises that such periods of leave ought properly be limited to the making of arrangements, rather than the provision of care, in line with the caselaw. Caring responsibilities ought to be managed through the use of flexible or part time working or other bespoke arrangements, and not by the use of lengthy periods of paid leave.

[24] The applicant in this case was afforded a period of 20 days' paid dependants leave which was more than sufficient to address the question of arrangements for childcare. The criterion attaching to the grant of such leave is necessity and the inescapable conclusion to draw from the evidence is that the applicant was granted a

reasonable period of time off to take action necessary to make arrangements for an ill dependant child.

[25] For these reasons, I have concluded that the applicant has not established an arguable case with reasonable prospects of success.

Conclusion

[26] The application for leave to apply for judicial review is dismissed. I make no order as to costs inter partes.