Neutral Citation No: [2026] NIKB 14 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* *ICOS No:* *Delivered:*	**McLA12995** **25/65967/01** **11/03/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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ALICIA GRANT (A PERSON UNDER A DISABILITY) ACTING BY HER MOTHER AND NEXT FRIEND CATHERINE FOX FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

IN THE MATTER OF DECISIONS BY THE BELFAST HEALTH AND SOCIAL CARE TRUST

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Fiona Doherty KC with Sinead Kyle (instructed by Phoenix Law Solicitors) for the Applicant
Philip Henry KC with Lisa Casey BL (instructed by Director of Legal Services) for the Respondent

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RULING ON COSTS

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McLAUGHLIN J

Background

[1] This is the ruling of the court on the issue of costs, following the consensual resolution of this application for judicial review by means of an order dated 30 January 2026.

[2] The applicant is a vulnerable adult accommodated by the Belfast Health and Social Care Trust ("the Trust") at a care facility called River House. In October 2021, the Trust initiated the necessary procedures to undertake a Serious Adverse Incident ("SAI") review into a series of safeguarding concerns relating to both the applicant and other residents of River House following allegations of inappropriate conduct by Trust staff. In the course of the SAI review, further safeguarding incidents were included within its remit.

[3] A SAI review is an internal Trust procedure for the investigation of serious issues of concern. The conduct of an SAI review and the relevant procedure are governed by Trust policy rather than by statute. The procedures include the appointment of a SAI review panel which carries out the review with the assistance, co-operation and support of the Trust, but independently of it, insofar as the panel are not subject to the direction of any Trust officials. The Trust is therefore ultimately responsible for the overall review process including the procedures adopted during the review, but it is carried out at arm's length from Trust officials. The Trust might be regarded as "sponsoring" the review process. The arm's length nature of the review process therefore assists to promote independence, public confidence and to ensure adequate expertise amongst the panel members.

[4] In this case, the conclusions of the SAI review panel were contained in a Root Cause Analysis ("RCA") report dated 11 April 2025. It appears that the RCA was not disclosed to the applicant's mother until 12 May 2025. The applicant's family was not content with the report and commenced these proceedings, seeking an order quashing the report. For present purposes, the challenge raised two broad issues, which were expressed through a serious of related grounds of challenge:

(a) It was alleged that the SAI review panel breached the legitimate expectations of the family and adopted an unfair procedure, insofar as it did not meet with or allow representations from the applicant's family either during the process or prior to presentation of the final report to the Trust.

(b) The SAI review process took an excessive period of time.

[5] On 31 July 2025, the applicant sent a pre-action letter in accordance with the Judicial Review Practice Direction, raising these concerns. Proceedings were commenced on 12 August 2025, prior to the Trust's pre-action response. The Trust replied on 20 August 2025. This was within the 21 day time period prescribed by the Practice Direction, but after commencement of proceedings. In its response, the Trust denied that there was any legal basis for the claim. The Trust contended that it did not have control over the duration of the review process and that it had communicated with the review panel on several occasions, encouraging it to meet with or otherwise engage with the applicant's family. It contended that the proceedings were also out of time and that the Trust's internal complaint process had not been exhausted.

[6] The proceedings were reviewed by the court on 23 September 2025. A date for a leave hearing was fixed for 5 December 2025. Shortly before the leave hearing, the parties requested the court to downgrade the hearing to a review only. On 5 December 2025, the court was informed that, following discussions between the parties, the Trust proposed to withdraw the report and to reconvene a new panel to carry out a fresh SAI review and report. The parties asked for further time to allow matters to be concluded. Proceedings were reviewed again on 3 January 2026. The court approved a draft order quashing the Trust report and reserving the issue of

costs for further argument. The order of 3 January 2026 includes the following recital:

> "The proposed respondent acknowledges that the first review took longer than was reasonable in the circumstances and that the panel did not engage adequately with the applicant in the course of that process."

[7] The result of all of the above is that, following concessions made by the Trust, the applicant has achieved the objective of the proceedings in full. The applicant also followed the pre-action protocol for judicial review proceedings, but due to the late service of the pre-action letter, proceedings were issued prior to the Trust response. The Trust initially denied responsibility but later changed its approach and the matter was resolved without the need for a leave hearing. It is therefore clear that the Trust's position evolved during the period between August 2025 and December 2025

Governing Legal Principles

[8] The principles governing the award of costs in judicial review applications have been considered on several occasions by the courts in Northern Ireland in recent years. Most of these costs disputes involved either concessions by the respondent (before or after leave) or practical solutions which avoided the need for full hearings. The key principles were explained in *Boxall v London Borough of Waltham Forest* [2000] All ER (D) 2445; (2001) 44 CCLR 258. Scott-Baker J set out the guiding principles where a case has been resolved or compromised at para [22] of his judgment in the following terms:

> "(i) The court has power to make a costs order when the substantive proceedings have been resolved without a trial but the parties have not agreed about costs.
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> (ii) It will ordinarily be irrelevant that the claimant is legally aided.
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> (iii) The overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional cost.
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> (iv) At each end of the spectrum there will be cases where it is obvious which side would have won had the substantive issues been fought to a conclusion. In between the position will, in differing degrees, be less clear. How far the court

> will be prepared to look into the previously unresolved substantive issues will depend upon the circumstances of the particular case, not least the amount of costs at stake and the conduct of the parties.
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> (v) In the absence of a good reason to make any other order, the fall back is to make no order as to costs.
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> (vi) The court should take care to ensure that it does not discourage parties from settling judicial review proceedings for example by a local authority making a concession at an early stage."

[9] The *Boxall* principles have been considered by the Court of Appeal in England & Wales on several subsequent occasions. In *R (Bahta) v Secretary of State for the Home Department* [2011] EWCA Civ 895, the court recognised that the *Boxall* decision preceded the introduction of the CPR and the pre-action protocol for judicial review proceedings. When applying the *Boxall* principle (vi), the court in *Bahta* considered that the starting point under the CPR was that a successful party who had complied with pre-action protocol obligations, should be entitled to their costs. If concessions by a respondent were appropriate, they should normally be made at the pre-action stage. Pill LJ stated:

> "[64] … It would be a distortion of the procedure for awarding costs if a defendant who has not complied with a Pre-Action Protocol can invoke *Boxall* principle (vi) in his favour when making a concession which should have been made at an earlier stage. If concessions are due, public authorities should not require the incentive contemplated by principle (vi) to make them.
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> [65] When relief is granted, the defendant bears the burden of justifying a departure from the general rule that the unsuccessful party will be ordered to pay the costs of the successful party and that the burden is likely to be a heavy one if the claimant has, and the defendant has not, complied with the Pre-Action Protocol. I regard that approach as consistent with the recommendation in paragraph 4.13 of the Jackson Report."

[10] In *M v Croydon London Borough Council* [2012] EWCA Civ 595, the Court of Appeal reviewed the relevant principles, following the decisions in *Boxall* and *Bahta*. Once again, the court emphasised the general position in England & Wales that judicial review litigation should not normally be viewed differently than other civil litigation governed by the CPR and by pre-action protocols. Namely, where a party

had been successful, they should generally be entitled to recover costs from the unsuccessful party. The court offered further guidance on the application of *Boxall* principle (vi) where there had been a settlement or a concession from the respondent. It considered that the focus of the court should be upon the extent to which the applicant was successful and the reasons for that outcome. It distinguished between three separate "settlement" scenarios, albeit emphasising that all decisions on costs would depend upon the specific facts (per Lord Neuberger MR, at [58]-[59]). A summary of the different types of settlement or resolution options is the following:

(i) Where the claimant had been wholly successful in achieving all of the relief sought and had complied with the pre-action protocol. In those circumstances, the court considered it was hard to see why an applicant should not recover all costs, unless there was some good reason to the contrary.

(ii) Where the applicant had partially succeeded, the court would determine the relative extent of success compared to the totality of the claims made together with the importance of the successful point and the extent to which it had generated most costs.

(iii) Where there had been some compromise by the respondent which afforded some measure of success to the applicant, but which did not actually reflect the claims made. In these cases, there may potentially be a more powerful argument for no order as to costs. However, the court may wish to look at the underlying claims and ask whether it could accurately predict which party was likely to have succeeded if the matter had not resolved.

[11] In the later case of *Emezie v Secretary of State for the Home Department* [2013] EWCA Civ 733, Sir Stanley Burton concluded that the *Boxall* test had effectively been superseded by *M v Croydon* and that the focus of the court when determining costs should commence with whether and to what extent the claimant had succeeded. However, in *R (TH) v East Sussex CC* [2013] EWCA Civ 1027, the Court of Appeal emphasised that the principles remained flexible and that the first principle identified by Lord Neuberger MR in *M v Croydon LBC* was not absolute where there was a good reason to the contrary. Even in cases of complete success, an applicant may not recover costs if there was good reason to the contrary: "*The important point to note is that this does not follow if there is a good reason to the contrary. All sorts of good reasons are possible in different cases…*" (at [18]). Jackson LJ also emphasised the importance of parties in public law litigation taking advantage of sensible opportunities for resolution:

> "[21] Litigation of the character that is now before the court is inherently expensive. Lawyers are instructed on both sides, both solicitors and counsel; independent experts are instructed; then instructions are drafted to the experts,

> and no doubt approved by the lawyers. There is a high duty on both parties to public law litigation to take advantage of any reasonable and sensible opportunity for settlement which presents itself."

[12] More recently, in *R(Tesfay) v Secretary of State for the Home Department* [2016] EWCA Civ 415, Lloyd Jones LJ again reviewed these principles and appears to have reemphasised that in the first category identified by Lord Neuberger in *M v Croydon LBC*, a claimant should normally recover their costs if they have been wholly successful and had fairly set out the issues in pre-action protocol correspondence.

[13] In Northern Ireland, all of these principles and decisions have been considered on several occasions in recent years by the High Court. While all of the courts considering these principles have taken the England and Wales decisions into account and have applied them to varying degrees to the facts of those cases, Northern Ireland decisions have probably demonstrated a greater degree of flexibility in approaching costs in cases within the *Boxall* principle (vi) and have tended to be less formulaic in measuring the extent of success by an applicant, particularly prior to the grant of leave.

[14] In *Re JR78* [2017] NIQB 93, in a challenge to a delay in making a prosecution decision and also to the decision not to prosecute, the matter resolved at the leave stage when a decision was taken by the PPS. The Divisional Court (Deeny LJ and Keegan J) awarded the applicant two-thirds of costs based upon the facts of that case. The court reviewed all of the relevant England & Wales authorities summarised above. The Applicant had complied with pre-action protocol requirements and obtained partial success, insofar as the PPS ultimately made a decision prior to leave, not to prosecute. The court made the following relevant observations:

> "[23] ... The approach in the Judicial Review Court in this jurisdiction, as we understand it, has been that costs are not normally awarded at the leave stage. That has a number of advantages. Amongst those it has an advantage for applicants who are not denied access to justice by being deterred from bringing a leave application, conscious that they may face a stiff bill in costs from a respondent if they fail to get leave. It is true to say that many applicants enjoy the benefit of Legal Aid and some have commercial interests behind them but some do not, and so it is a virtue of the present system that applicants who fail to get through the leave stage are not normally penalised on costs.
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> [24] It is virtuous for the respondents also. It means that public bodies have the incentive of saving costs and

> making sensible concessions at the leave stage or other early stage of proceedings. It also recognises the reality that these applications by definition are being brought against public bodies. Almost always therefore procedures will have to be adopted within those public bodies before a fresh decision can be taken. They will have to take advice internally and usually, at least often, externally from counsel or at least from solicitors as to the strength or weakness of their legal position. It is reasonable that they should have done so by the leave hearing, but it might be harsh on them on occasions to have expected to be done before that. A further advantage of continuing the present practice of not normally awarding costs at the leave hearing is that it avoids an already busy Judicial Review Court spending time on satellite issues of costs.
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> [25] On the other hand, it is right to say that an applicant who fails to act "promptly" in accordance with Order 53 runs the risk of being turned away by the court. It follows in fairness that a public authority should also act promptly in response to the pre-action protocol letter. If it fails to respond promptly it puts itself at the risk of paying costs ultimately.
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> [26] However, as we have indicated, we do not consider that this is the case in which to decide if that general and present practice in the general judicial review court should change. We exercise a discretion in this case in the way indicated against the exceptional factual matrix of very considerable delay and an absence of response to the letter against this being the leave stage and not a complete success on the part of the applicant."

[15] The relevant costs principles were also considered by McCloskey J in *Re YPK* [2018] NIQB 1, where he ultimately concluded:

> "[21] The extensive treatise … should not obscure two overarching principles which shine more brightly than any other. The first is that costs lie in the discretion of the court. The second is that the unsuccessful party should normally pay the costs of the successful party. This principle is stated in uncompromising terms in Order 62, Rule 3(2) of the Rules of the Court of Judicature."

The Rules of the Court of Judicature quoted by McCloskey J provide in relevant part as follows:

> "3(2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court."

[16] In *YPK*, the court was concerned with multiple immigration judicial reviews. The judge made no order as to costs in five cases and ordered the respondent to pay the applicant's costs in one case in which the legal issue in play had been determined against the respondent in separate litigation.

[17] The relevant costs principles were also applied in three separate first instance decisions in which the proceedings were ultimately rendered academic or resolved by reason of actions of a party other than the respondent. In each of those cases, the court made no order as to costs: (*Re JR115 and JR116* [2021] NIQB 105, per Morgan LCJ; *Re Coleman* [2022] NIQB 25, per Colton J; and *Re RG (A minor)* [2023] NIKB 48, per Scoffield J).

[18] Shortly after the decision of Scoffield J in *Re RG* [2023] NIKB 48, Colton J handed down his decision in *Re Stevenson* [2023] NIKB 80. The case concerned a challenge to the decision of a Board of Governors for closure of the preparatory department of a voluntary grammar school. The case resolved prior to leave following a full concession by the Board of Governors. Pre-action protocol requirements had been followed. Colton J made no order as to costs. He referred to the decision of the Divisional Court in *Re JR78* and commented:

> "[32] As a general rule the practice in this jurisdiction has been not to make any inter partes order in relation to costs at the leave stage. If leave to apply for judicial review is refused the almost invariable practice of this court in this jurisdiction is that an unsuccessful applicant for leave should not be required to bear the costs of the proposed respondent.
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> [33] In this case the matter has been resolved without the necessity of a leave hearing.
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> [34] In such circumstances, again the invariable practice of the court in this jurisdiction is not to make any inter partes order in relation to costs."

[19] In the *Stevenson* case, the parents had invited the Board of Governors to enter into a costs protection agreement in advance, whereby neither party would have a liability for the other's costs, irrespective of the outcome. The offer was refused by

the Board of Governors. The parents therefore argued that costs had been put in issue. Notwithstanding this position, Colton J made no order as to costs, applying the principles and practice set out above.

[20] It is apparent from the above authorities that the Northern Ireland courts have perhaps tended to apply the principles set out in the E&W authorities with a greater degree of flexibility, especially at the leave stage. The courts have repeatedly emphasised the importance of compliance with pre-action protocols and of considering the overall success of an applicant, together with the reasons for that success. However, when applying the *Boxall* principle (vi) to cases which resolve prior to leave, particular emphasis has been placed upon the twin public interests explained by Deeny LJ in *Re JR78* and by Colton J in *Re Stevenson*. In appropriate cases, those interests have been recognised as providing benefits to both applicants and respondents and an overall benefit in promoting access to the courts for public law litigation. To this extent, the courts in Northern Ireland have tended to apply a less formulaic approach to costs at the leave stage of judicial review proceedings than in other forms of civil litigation where the principle that costs normally follow the event will generally have greater weight (per Order 62, rule 3(3)).

Consideration

[21] In this case, there is no question that the applicant has followed the necessary pre-action protocol and has ultimately achieved the objectives of the litigation in full. Furthermore, the pre-action response of the Trust denied any responsibility, contended that the proceedings were out of time, relied upon an available complaints procedure and indicated that it would seek costs against the applicant.

[22] Notwithstanding the firm position which the Trust adopted in its pre-action response, it ultimately elected not to defend the judicial review and consented to an order quashing the report and to undertake a further SAI investigation. It did so before the leave application and reasonably promptly after a first case management review hearing in which both parties requested the opportunity for further consideration.

[23] Having considered all of the circumstances of the case, I am ultimately of the view that the appropriate order in this case is to make no order as to costs between the parties. I consider the following factors to be of particular importance.

[24] First, the pre-action correspondence was issued during the long vacation and also approximately two weeks prior to the three-month deadline for commencing proceedings. The period afforded to the Trust for preparing a pre-action response, was therefore shorter than normal. It is true that the applicant canvassed all issues fairly and fully in its correspondence. However, the issue raised by the applicant was an important one in which it was inevitable the Trust would require time for more detailed internal consideration. I do not consider the Trust can be criticised

unduly for responding in a more defensive manner than ultimately transpired to reflect its final position.

[25] Second, while there can be no dispute that the Trust is ultimately responsible for the SAI procedure and the report, an essential feature of the entire SAI process is that it is carried out at arm's length from the Trust and by persons who act independently of it. It is an intrinsic part of that process and of the maintenance of public confidence that a Trust will be expected to accept and respect the outcome, (even if it is uncomfortable for the Trust), unless there are very clear contrary circumstances. It would be antithetical to the entire SAI review process if a Trust departed from its findings or if it readily consented to an order quashing the report, without careful reflection and consideration. In my view, that is precisely what occurred in this case and there is nothing to suggest that the Trust's analysis of both the report and the challenge was carried out other than in good faith. I consider that there is a strong public interest in allowing the Trust sufficient time to undertake such a solemn process as a decision to depart from the independent findings of an SAI review report. It appears to be precisely the sort of process which Deeny LJ recognised in *Re JR78* as requiring internal reflection, consideration and multi-level internal approval. In this case, the result of the Trust's reconsideration has been a candid and early recognition of both the flaws in the process and also the consequences which should follow. I consider that this process is consistent with the promotion of a broader public interest.

[26] Third, relatedly, I consider that the Trust has acted in a sufficiently prompt, candid and considered matter when reflecting upon its position. While it might be criticised for adopting such a robust stance in its pre-action response, I consider that the Trust has ultimately acted responsibly and in the public interest by reviewing that initial stance and by reconsidering its litigation position. As a general principle, public authorities should not be discouraged from doing so by means of a costs penalty, where further reflection points toward the desirability of a concession.

[27] Fourth, ultimately the Trust's reconsideration of its position was carried out swiftly and in advance of the leave hearing. The applicant was alerted to the Trust's change of position in advance of the leave hearing and before the further expense and effort of preparing skeleton arguments was required. Some wasted effort must therefore have been avoided.

[28] For all of the above reasons, I consider that the appropriate order is that there should be no order as to costs between the parties. I make no criticism of the applicant for pursuing these proceedings and her conduct has been entirely vindicated by the ultimate outcome. I will order taxation of the applicant's costs as a legally assisted person.