Neutral Citation No: [2017] NIQB 101 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **McC10453** ***Delivered:*** **11/10/2017**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

IN THE MATTER OF CLIVE FULLERTON FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

DISCOVERY RULING [Ex tempore]

_____

McCLOSKEY J

[1] The applicant has been granted leave to apply for judicial review. The decision under challenge is a decision made on behalf of the respondent, the Police Service of Northern Ireland, to close the Custody Suite at Bangor Police Station. The closure occurred on 5 December 2016, post-dating the grant of leave by five days. With one minor area of disagreement between the parties, it is uncontentious that leave to apply for judicial review has been granted on two grounds. The first is illegality based on an admitted failure to consult in advance of making the impugned decision, based in turn on the applicant's assertion of a legitimate expectation that there would be consultation with the applicant, with the Ards and North Down Solicitors' Association and (this I understand to be the contentious element) the Law Society or other firms of solicitors potentially affected by the impugned decision.

[2] A further limb of this ground is couched in the terms of an unlawful failure to consult with "the people of Ards and North Down who are likely to be affected by the decision and other organisations operating in that district with a particular interest in the custody suite".

[3] Those are the various components of the first permitted ground of challenge. The second permitted ground of challenge asserts a breach of the respondent's duty under Section 75 of the Northern Ireland Act 1998.

[4] The applicants have brought a discovery application. This is not based upon or related to the second of the permitted grounds of challenge. Rather as formulated in writing and presented in argument it relates exclusively to the first ground of challenge. Ultimately, three classes of documents are pursued by this application. These are set forth in the schedule to the Discovery Summons. They are the following:

(a) PSNI statistical information on the processing times of detainees at the custody suites at Musgrave Street Police Station and Bangor Police Station including the time taken to see the Force Medical Officer, to be interviewed and to be disposed of.

(b) All information regarding the move of response units from Bangor Police Station to Ards Police Station in 2015, including any feasibility studies received or obtained by the Police Service in respect of either station prior to or subsequent to the decision to move the response officers.

(c) All information held by the Police Service regarding proposals to close, sell, develop or otherwise dispose of the Bangor Police Station site.

[4] I pause at this moment to recall the substantive relief that is sought by the applicant. It is, very sensibly, acknowledged by Mr Lavery QC that, at this remove, the applicant's pursuit of an Order of Prohibition and an Order of Mandamus is simply not viable, the only remaining relief of substance which might in principle be granted by the court in the event of the applicant's challenge succeeding being an Order of Certiorari quashing the impugned decision or a declaration that it was unlawful on some ground which would have to be specified in light of the judgment of the court. I shall proceed on the basis that either of those forms of remedy could provide the applicants with a practical and effective species of relief since either, if granted, would generate a public law duty on the part of the respondent to reconsider the impugned decision carefully and conscientiously. And I add parenthetically if the basis of either form of relief was an unlawful failure to consult with an identified person or persons or agencies then in principle that failure would have to be rectified in the context of a fresh decision making process by the respondent.

[5] I consider that the resolution of this application for discovery of documents turns on the fundamental question is whether there is an identifiable nexus between the two grounds of challenge which are proceeding. Mr Lavery acknowledges, correctly, that the test to be applied is whether discovery should be ordered in certain terms on the ground that it is necessary for the disposal of the proceedings. In exchanges with the bench it has been acknowledged that the applicants are relying strongly on the concept of context. Elaborating, that means the full context in which the impugned decision was made. My attention has been drawn to, and I take account of, certain aspects of the evidential matrix, in particular the distinctions, if any, between the practice of Northern Ireland and other parts of the United

Kingdom and the distinction between the closure of an entire police station on the one hand and its custody suite on the other. I also take cognisance of Mr Coll QC's uncontested submission, which is confirmed by the terms of the applicant's pleaded challenge, that there is no suggestion in this challenge of closure of Bangor Police Station by stealth. What is clear is that the services offered by the police station are on the wane and have evidently continued to diminish progressively during the past year.

[6] With that preface I return to the question of nexus. My conclusion on this is clear. I cannot identify a sufficient nexus between the permitted grounds of challenge and the documents which are pursued by this application for discovery. In my judgement, there is a clear mismatch, or disconnect, between the two. The documents sought by the applicants are remote from the heart of their challenge. They simply do not belong to the framework of this litigation, as shaped and delimited by the permitted grounds of challenge. It follows from that assessment that the test namely whether discovery is necessary for the disposal of the proceedings is not satisfied.

[7] Accordingly, I dismiss the discovery application and I reserve the costs.

[8] I make the following further directions:

(i) The applicant's further affidavit will be served and filed by 27 November 2017.

(ii) The applicant will simultaneously file an amended Order 53 Statement and an amended Notice of Motion. The amendment that is required is the formulation of the legal basis upon which the applicant contends that the respondent was under a duty to consult with the applicants or any of the other persons or agencies who are identified in the applicants' challenge. That will have to be specified with absolute precision and particulars.

(iii) Bundles, skeleton arguments et alia as per Practice Direction. I do not make any special directions in that regard.

(iv) The target hearing period is January 2018. To that end the parties' representatives will liaise with the Judicial Review Office and each other with a view to confirming a concrete hearing date within the next 7 days.

(v) Costs reserved.

(vi) Liberty to apply.