Neutral Citation No: [2022] NICA 57 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **KEE11950** *ICOS No:* **22/058007/01** *Delivered:* **11/10/2022**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION

Between:

JR222

Appellant

and

MINISTER OF HEALTH

Respondent

John Larkin KC and Natasha Fitzsimons (instructed by McCann & McCann Solicitors) for the appellant
Peter Coll KC with Philip McAteer (instructed by The Departmental Solicitor's Office) for the respondent
Sean Doran KC with Denise Kiley (instructed by the Solicitor to the Muckamore Abbey Inquiry) for the Inquiry as a notice party

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Before: Keegan LCJ, Treacy LJ and Horner LJ

KEEGAN LCJ (delivering the judgment of the court)

Introduction

[1] We have heard this appeal on an expedited basis as it concerns a public inquiry known as The Muckamore Abbey Hospital Inquiry ("the Inquiry") which is ongoing. We have heard submissions from the appellant and respondent to the appeal and the inquiry representatives who are notice parties. We have also had the benefit of background papers from other interested parties who were on notice of proceedings including those affected by events who will give evidence to the Inquiry and the Police Service of Northern Ireland ("PSNI"). We are grateful to all counsel who appeared in this appeal and at the lower court for their helpful written submissions which we have considered.

[2] The background to the Inquiry is set out in the judgment of Colton J ("the judge") who heard the case at first instance and so we will not repeat it here. Suffice to say that on 8 September 2020 the Health Minister Robin Swann ("the Minister") announced this Inquiry into events at Muckamore Abbey Hospital which provided services to patients with severe learning difficulties and mental health needs. This followed allegations which arose in 2017 that members of staff had physically and mentally abused patients in their care. A police investigation ensued and is ongoing.

[3] In addition, an internal review by the relevant health trust entitled "A Review of Safeguarding at Muckamore Abbey - A Way to Go" reported in November 2018 and revealed systemic failures. A further review of leadership and governance at the hospital by an independent review panel also reported in November 2020 and highlighted "dysfunction" within the system. As a result of these reports a number of staff have been suspended.

[4] Since the police began its investigation there have been eight arrests. The appellant, along with other co-accused, faces criminal charges in respect of alleged abuse committed in the course of employment at Muckamore Abbey Hospital between April and June 2017 and has now been committed for trial.

[5] The Inquiry has begun and is in the first phase which involves hearing patient testimony. It is due to resume on 10 October 2022. It is chaired by Tom Kark KC ("the Inquiry Chair"). It is governed by the terms of the Inquiries Act 2005 ("the 2005 Act") and is one of 15 active inquiries under the Act, the only one current in Northern Ireland commissioned by the Northern Ireland Executive.

[6] The Inquiry will consider matters contained within the Terms of Reference including taking steps to:

> "(a) Examine the issue of abuse of patients at Muckamore Abbey Hospital;
>
> (b) Determine why the abuse happened and the range of circumstances that allowed it to happen;
>
> (c) Ensure that such abuse does not occur again at Muckamore Abbey Hospital or at any other institution providing similar services in Northern Ireland."

This appeal

[7] This appeal challenges the judgment and order of Colton J dismissing the appellant's application for judicial review of the respondent's decision not to suspend the Muckamore Abbey Hospital Inquiry. The challenge relates to the

decisions of the Minister not to exercise his power to suspend the Inquiry pursuant to section 13 of the 2005 Act as communicated in decision letters of 29 June 2022 and 9 August 2022.

[8] At first instance the focus of the appellant's challenge was on the alleged breach of rights under article 6 of the European Convention on Human Rights ("ECHR"), the right to a fair trial. The core of the appellant's case was that publicity from the Inquiry would prejudice the criminal case. Therefore, the appellant contended that the Minister, if faithful to his duty to act in a Convention compliant way, should suspend the Inquiry to protect the appellant's fair trial rights. That challenge was dismissed and is not pursued in this appeal.

[9] Neither are the other challenges that were pursued at first instance which were wide ranging alleging that the Minister had taken into account immaterial considerations, failed to consider material considerations, acted irrationally, acted in a procedurally unfair manner and acted in breach of statutory duty.

[10] To our mind it is essential not to lose sight of the dismissal of all of the aforementioned claims and the fact that no appeal is pursued in relation to them. We also pay cognisance to the judge's conclusion in relation to the appellant's article 6 rights. Having considered the domestic and European authorities he said this in dismissing this claim at para [46]:

> "In this application in order to establish a breach of article 6 the court is being asked to speculate about what reporting may be given in future and how it may impact on a trial in the future. Neither the Minister nor the court is in a position to make such an assessment. Importantly, the applicants' article 6 rights can and will be protected within the trial process."

[11] Hence, whilst this appeal is confined to the judge's conclusions on the interpretation of section 13(1) of the 2005 Act it is framed by the background and cannot be entirely segregated from it. This appeal must be viewed in the context of the case as a whole.

[12] Having made introductory remarks we turn to the genesis of the appeal point we are asked to consider. Of obvious note is that it came extremely late in the day, raised as it was by the appellant's counsel on the morning of the hearing in the court below. Opposing counsel was taken aback as this issue did not feature in the extensive pre-action correspondence. This must mean that the point was not obvious to the appellant's legal advisors and may only have crystallised after the respondent's affidavit.

[13] Notwithstanding this chronology leave was given to amend the claim and so the point now relied on was comprised in an amended Order 53 statement. It was

pleaded in the following terms under the auspices of an illegality challenge found at para 5(1)(vi) and(vii) of the Order 53 statement:

> "(vi) The minister has misdirected himself as to the nature of his discretion under section 13 of the Inquiries Act 2005 in the following respects:
>
> (a) he applied the concept of necessity to the entirety of his discretion under section 13 of the Inquiries Act 2005;
>
> (b) he failed to appreciate that the concept of necessity applies only to fixing the duration of any period of suspension."

[14] These new claims were addressed by the judge at paras [140]-[145] of his judgment. The outcome of that consideration was that the judge agreed with the interpretation argued for in relation to section 13 of the 2005 Act on behalf of the Minister. At para [144] of his judgment he concluded as follows:

> "In my view, a proper interpretation of the section is that any suspension imposed by the Minister must be necessary before it may be imposed. The question is whether it is necessary to suspend the Inquiry for the purposes set out in sub-paragraphs (a) and (b). It will be noted that under section 13(2) the power may be exercised whether or not the investigation or proceedings have begun. In the event that there is a suspension the Minister must set out in a Notice his reasons for suspending the Inquiry. Under sub-section (4) the Minister has the power to suspend an Inquiry "until the giving by the Minister of a further notice to the Chairman." Again, this supports the interpretation that the suspension itself must be necessary given the open-ended nature of the potential period of suspension open to the Minister. Clearly, the section provides the Minister with a discretion – he may suspend. It could not be suggested that there is a presumption for a suspension but rather the section points to both the suspension and the period for any such suspension to be 'necessary.'"

Therefore, the judge decided that the Minister had applied the correct test in exercising his discretion and deciding not to suspend the Inquiry.

[15] The judge went on to consider the matter in the alternative and at para [146] found as follows:

> "Even if I am wrong about this, I am not persuaded that I should interfere with the Minister's decision. ... If the test is not to be one of necessity, then it would be clear that the Minister enjoys a very broad discretion. In exercising that discretion, it seems to me that he will of necessity take into account the considerations that have been set out in this judgment. He would need to take into account fairness to the applicant, and the potential impediment to any criminal prosecution balanced against the public interest in the continuation of the Inquiry which covers matters over a 22-year period. As is evident from the Terms of Reference it will inquire into and make recommendations in relation to a wide range of issues which have been described in para [106] above. In light of the factors to which he refers in his decision, that is the safeguards put in place by the Inquiry to ensure fairness to the applicant in respect of the criminal proceedings, it seems to me that his decision would have lawfully been the same."

The grounds of appeal

[16] Four grounds of appeal are pursued by the appellant namely:

(i) The judge erred in concluding that the respondent applied section 13(1) of the Inquiries Act 2005 correctly;

(ii) The judge erred in holding that "any suspension [under section 13(1) of the Inquiries Act 2005 must be necessary before it may be imposed";

(iii) The judge erred in failing to hold that the concept of assessed necessity applied only to the duration of any period of suspension; and

(iv) The judge erred, on the alternative that his view of the construction of section 13(1) of the Inquiries Act 2005 was incorrect, in his assessment of discretion.

[17] Ground 4 above was also subject to correspondence between the appellant and the Inquiry as Interested/Notice Party. This culminated in a letter from the appellant's solicitors to the court dated 22 September 2022 in the following terms inter alia:

> "… the final ground of appeal does not complain of the Ministerial exercise of discretion. It, instead, complains that the learned Judge was wrong to place himself in the position of the Minister with respect to the decision under

section 13(1) of the Inquiries Act 2005 if, contrary to the Judge's finding, the Minister had misdirected himself as to the nature of that discretion."

The statutory provision at issue

[18] Section 13(1) of the 2005 Act reads as follows:

> "**13. Power to suspend inquiry**
>
> (1) The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for—
>
> (a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or
>
> (b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters.
>
> (2) The power conferred by subsection (1) may be exercised whether or not the investigation or proceedings have begun.
>
> (3) Before exercising that power, the Minister must consult the chairman.
>
> (4) A notice under subsection (1) may suspend the inquiry until a specified day, until the happening of a specified event or until the giving by the Minister of a further notice to the chairman.
>
> (5) Where the Minister gives a notice under subsection (1) he must—
>
> (a) set out in the notice his reasons for suspending the inquiry;
>
> (b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly.

(6) A member of an inquiry panel may not exercise the powers conferred by this Act during any period of suspension; but the duties imposed on a member of an inquiry panel by section 9(3) and (4) continue during any such period.

(7) In this section "period of suspension" means the period beginning with the receipt by the chairman of the notice under subsection (1) and ending with whichever of the following is applicable—

(a) the day referred to in subsection (4);

(b) the happening of the event referred to in that subsection;

(c) the receipt by the chairman of the further notice under that subsection.

The decision-making process

[19] Any discussion of the decision-making process must include the first stage when the Minister had to consider whether to order a public inquiry. This run-up period is comprehensively documented by the judge from paras [56]-[76] of his judgment. We will not repeat all of the history for the sake of economy. However, it is important to record that there were a number of reports available about failures at Muckamore Abbey Hospital referred to at para [3] herein and there was the likely prospect of criminal proceedings against some staff.

[20] We pay particular regard to the following. First and foremost, the Minister was aware of ongoing criminal investigations and the potential implications for the Inquiry of overlap with criminal proceedings. This is explained by the submissions made and process of decision making as follows.

[21] In January 2020, a submission went to the Minister from the Head of the Muckamore Abbey Review Team outlining the potential options available to him. At this stage two options were put to the Minister; do nothing or establish a public inquiry. The Minister was advised as to potential drawbacks if he went ahead with a public inquiry in the midst of criminal investigations and proceedings. Significantly, he consulted the Chief Constable of the PSNI and other interested parties about this. He was advised that a public inquiry could run in parallel with criminal proceedings and the mitigations that could be put in place, namely a memorandum of understanding between the chairman and parties.

[22] A further significant submission was made to the Minister in September 2020 at which stage various options were again put to the Minister and risks were

identified and assessed. Thereafter, there was more engagement and cognisant of the risks associated with parallel criminal proceedings a framework was constructed with input from the PPS/PSNI and interested parties and the Chair of the Inquiry. The Minister was also aware that the Inquiry could be suspended at any stage although he erroneously thought that would be at the instigation of the Chair rather than him.

[23] From this background we can see that there was informed consideration given to whether a public inquiry should proceed whilst criminal proceedings were ongoing, and the Minister was aware of the risks. On this informed basis the Minister decided to proceed and ordered the Inquiry. There is no criticism of this decision-making process which prefaced the impugned decisions.

[24] Neither is there any criticism of the process undertaken by the Minister when considering the suspension request raised by the appellant. We now turn to that decision which is under challenge. The Minister's consideration of the application made to him is comprehensively explained in the affidavit of Ms Laverne Montgomery sworn for these proceedings. The affidavit confirms that the Minister consulted with the Inquiry Chair as he is bound to do. He also provided reasons in two decision making letters which we will refer to below.

[25] At this juncture we note the point well made by Mr Doran that the appellant has not identified any public law principle which the appellant says is breached by the Minister's decision. In addition, there is no pursuit on appeal of complaints as to the reasons given for the decision in the Order 53 statement. Rather, the appellant's focus is on a paragraph in the official advice given to the Minister which in essence the appellant says infected the decision-making process as the Minister was constrained in exercising his discretion to decide whether to suspend the Inquiry or not.

[26] The official advice to the Minister is a comprehensive document of 27 June 2022 also authored by Ms Montgomery. This advice explains the history of the Inquiry and the measures taken by the Inquiry by way of safeguard of those affected by the criminal process. In broad terms these included a memorandum of understanding about how evidence would be taken and used, restriction orders in relation to public access to hearings and publication, restrictions on who could view the CCTV evidence and the involvement of Public Prosecution Service ("PPS") and PSNI during the Inquiry. None of the above is controversial which is unsurprising given that these measures were arrived at after much thought by the Inquiry Chair and then devised in consultation with all interested parties. They are also subject to review by the Inquiry Chair and adaptation as evidence is heard.

[27] The Ministerial advice directs the Minister to the fact that correspondence has been received on behalf of a number of those who are charged with criminal offences during the time period covered by the terms of reference of the Inquiry. The correspondence then refers to the Inquiry process and at para [6] sets out in some

detail the procedures that have been put in place by the Inquiry and PPS for the purpose of ensuring that there is no prejudice to the criminal process. The author sets out the detail of this as follows which we record:

> "(a) **20 June 2022 – Muckamore Abbey Hospital Inquiry (MAHI) update**
>
> (i) The first witnesses will be heard from during the last week of June and first week of July. This evidence will be focused on the patient experience. The patients and relatives' names will cyphered.
>
> (ii) The evidence of the patients and their relatives will not be live streamed outside of the hearing rooms except to core participants.
>
> (iii) Restriction Order No.4 (Staff Identification) has been made.
>
> (b) **Restriction Order No.4 (Staff Identification)**
>
> (i) This prohibits the identification of past and present staff members who are implicated in evidence received by the Inquiry. Their names will be redacted in statements and replaced by cyphers. This does not apply to non-ward based staff in management or governance roles, including members of the Trust Board.
>
> The 20 June update suggests that MAHI regard this measure as necessary:
>
> 'In the interests of fairness and to achieve the Inquiry's objectives. It is particularly important to bear in mind that there is a live criminal investigation and prosecutions. As acknowledged in the MOU, there is a need to take steps where necessary, to ensure that the Inquiry's work does not impede, impact adversely on or jeopardise the criminal proceedings.
>
> 11. Staff named in Inquiry statements may be facing charges or may face charges in the future, this order means that they will not be publicly named in the evidence given to the Inquiry. The Inquiry also wants to hear from staff, including

staff who are the subject of allegations. They will have an opportunity to comment on allegations made against them. The naming in evidence of staff against whom allegations are made would, in my view, discourage staff from co-operating with the Inquiry. The order will, I believe, both ensure fairness and facilitate engagement by staff with the Inquiry.'

(c) **Memorandum of Understanding (MOU) between MAHI, the PSNI and PPS**

(i) This sets out how the Chair would make every effort, in accordance with section 17(1) of the Act, to ensure that the procedure and conduct of the Inquiry respects the integrity of the investigation and prosecutions while continuing to address its TOR.

(ii) There are provisions in Part C of the MOU around a process for applications to restrict disclosure of documents to Core Participants (CPs).

(iii) At present the CCTV footage can only be viewed by the Inquiry Panel and its legal representatives.

(iv) Part F (paragraph 64) deals with oral evidence at the Inquiry and seeks to avoid the risk of 'impeding, impacting adversely on or jeopardising the investigation or prosecution.' This includes the deferring of oral evidence (paragraph 65).

(v) Sean Doran KC to the Inquiry reiterated the Inquiry's intention that every effort is made to ensure that the work of the Inquiry does not impede, impact adversely on or jeopardise the PSNI investigation or the prosecutions on 7 June.

(vi) PSNI Counsel Mr Robinson KC made similar observations on 8 June. It is of note that PSNI have senior counsel representation to amongst other things ensure this does not occur.

(d) **Confidentiality Undertakings**

(i) The Inquiry has required CPs, their relevant employees and their representations to personally sign undertakings in respect of confidentiality."

[28] Then at para 9 of the advice under the heading "Response to the Complainants' letters" the following statement as to the law is found:

> "The Minister has a discretionary power under section 13 of the 2005 Act to suspend an inquiry, where it is "necessary" to allow for the completion of a criminal investigation or criminal proceedings arising out of matters to which the inquiry relates. The Minister must consult with the Chairman of the Inquiry before the power is exercised."

There is then a discussion about publication of correspondence and a recommendation in relation to a response by the Minister.

[29] The Inquiry Chair also responded to correspondence from those who raised fair trial issues. His letter of 24 June 2022 acknowledges the correspondence and refers to the express concerns that clients' fair trial rights "have been and continue to be infringed by this Inquiry commencing prior to the conclusion of the criminal prosecution." The letter makes reference to media reporting of the Inquiry's opening sessions and the opinion that some reporting and commentary suggests that the Inquiry has reached a concluded view on some of the matters which it will be investigating.

[30] The Inquiry Chair also provided the following response:

> "The evidence in the Inquiry has not commenced. The Chair categorically rejects any suggestion that a concluded view has been reached on any matter that the Inquiry is investigating. Further, for the avoidance of doubt, it is not accepted that the commencement of the Inquiry has infringed any of your clients' Convention rights. In any event, the appropriate forum for the ventilation of any concerns that you may have in this regard is the court in which your clients are to be tried."

[31] The Inquiry Chair's correspondence also refers to the restriction orders made in relation to evidence being heard and refers to scheduling and procedure which is openly available for perusal on the Inquiry website.

[32] It follows from the above that the Minister's decision was clearly taken after consultation with the Inquiry Chair. There is no issue with that. The first decision making letter is dated 29 June 2022. This is a letter from the Minister of Health to the

appellant via their solicitor. Without reciting the entire letter, we summarise the relevant matters highlighted by the Minister as follows:

> "As can be identified from the key documents and hearing transcripts from the MAHI website, a number of steps have been taken with the intention of respecting the integrity of the prosecutorial process whilst the Inquiry process continues. These include:
>
> (a) A Memorandum of Understanding (MOU) with the PSNI and PPS. …
>
> (b) The 22 June 2022 MAHI update. ...
>
> (c) Restriction Order No.4 (Staff identification).
>
> (d) The Inquiry has required Core Participants, their relevant employees and their legal representatives to sign undertakings in respect of confidentiality.
>
> (e) PSNI have appointed a senior counsel to engage with and attend the Inquiry."

[33] By virtue of the above correspondence it is apparent that the Department was not aware of the identity of the appellant and was not aware as to whether the client had made a statement to the Inquiry or any application to the Inquiry in respect of any evidence which may be relevant to them. The Department also indicated that it did not accept that anything said in the opening statement by the Inquiry chair directly suggested that any identified individual was guilty of a criminal offence in respect of Muckamore Abbey Hospital. The Department said that it did not consider it necessary at this stage to publicise the correspondence. At the end of this letter reference is made to the fact that the Department had seen and noted the Chair of the Inquiry's response to the letter previously sent. The ultimate conclusion provided is as follows:

> "In light of the above safeguards that are in place with respect to this Inquiry and the Chair's response to this matter, who is best placed to advise on the Inquiry's conduct and proceedings, I am not minded to make a notice to suspend the Inquiry."

[34] After this first response by the Minister there was further correspondence from the appellant taking issue with it. That resulted in a final letter from the Minister which is under challenge in these proceedings dated 9 August 2022. This is a brief letter which acknowledges the correspondence and sets out the final position of the Minister in relation to the course suggested to him as follows:

> "I have considered the safeguards in place as outlined in my previous letter and the views of the Chair of the Inquiry. I remain of the opinion that it is not appropriate to suspend the Inquiry at this point and I have decided against invoking the power under section 13 of the Inquiries Act 2005.
>
> I am also aware of judicial review proceedings in relation to this point and wish to defer to those."

Consideration

[35] It is within the above context that we examine this appeal. We also do so mindful of the huge public interest in this inquiry and the interests of all of those affected by it.

[36] We begin with a brief comment on the statutory framework provided by the 2005 Act. Section 18 of the 2005 Act reinforces the public nature of any inquiry. Restrictions to evidence or the openness of proceedings can only be made by the Inquiry Chair in specified circumstances. The terms of section 2 of the 2005 Act define the role of a public inquiry which is not to apportion civil or criminal liability. However, matters heard at a public inquiry will often overlap with criminal or civil cases or investigations. We understand that in many cases an inquiry will await criminal proceedings or be paused.

[37] *Beer on Public Inquiries 2011* which is an authoritative text in this area comments on the sequencing of public inquiries with other proceedings at para 2.128. At para 2.146 the authors state that it is not uncommon for issues to arise as to whether a public inquiry should commence before or after other related proceedings. The discussion highlights that cases require particular attention in this area, however, as 2.157 states:

> "Notwithstanding the desirability of investigating and determining issues of criminal liability before the initiation of a public inquiry, it does not follow that the courts will always interfere to halt an Inquiry because of a concurrent police investigation."

[38] The fact that a public inquiry can proceed notwithstanding a criminal investigation or case is not contentious in this appeal. However, issues may arise not just at the initiation of an inquiry but during it given the interface between an inquiry of this nature and in this case criminal proceedings. These issues are for the independent Inquiry Chair to manage. In addition, section 13 exists to deal with issues that may arise in this context. This is a specific provision which invests a

Minister with power to suspend an inquiry to allow for completion of investigation or determination of a criminal or civil case.

[39] *Beer on Public Inquiries* at 10.02-10.10 discusses this power. At para 10.05 of the text the authors refer to the conditions for exercise of the power of suspension in the following terms:

> "The power of suspension may only be exercised if one of two conditions is fulfilled, namely that it appears to the minister to be necessary to suspend the inquiry to allow for (a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or (b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary panel) arising out of any of those matters."

[40] The above section of the text also alerts us to the fact that vesting in a minister a power to suspend an inquiry was the subject of criticism at the pre-legislative stage of the 2005 Act.

> "It was said that the existence of the power compromised the independence of the inquiry, that the power was incompatible with Article 2 and/or Article 3 of the ECHR and that instead the power ought to be vested in the chairman rather than the minister. In fact, in the limited circumstances in which the power of suspension might be exercised and in particular that the purpose would on the face be in order to safeguard the integrity of the inquiry's proceedings or other proceedings and the availability of judicial review of a decision to suspend an inquiry, render it exceedingly unlikely that any challenge to the existence of the power would succeed."

[41] We have also been referred to the Explanatory Notes 25 & 26 to the 2005 Act addressing section 13 which read as follows:

> "25. An inquiry may be one of a number of investigations into a particular matter. Often, the respective timing of these is very important; for example, to ensure that an inquiry does not prejudice a criminal prosecution. The results of other investigations may also inform the inquiry and help prevent duplication.
>
> 26. In the event that new investigations or proceedings come to light or are commenced after the inquiry has started, it may be necessary to halt the inquiry

> temporarily. This section sets out the circumstances in which a Minister may, after consulting the chairman, suspend an inquiry to allow other proceedings to be completed."

[42] We are not concerned with the decision to proceed with an inquiry in the midst of criminal proceedings. Rather, the inquiry having started, the question is whether it should now be suspended given ongoing criminal proceedings which affect the appellant and others. This is a challenging issue for any public inquiry given the twin aims to obtain best evidence and protect the rights of individuals charged. However, the independent Inquiry Chair is undoubtedly well placed to assess the issue on an ongoing basis. The Minister is at a remove and so whilst he has a power to suspend an inquiry it is on particular terms as we shall see.

[43] The validity of the Minister's decision is called into question by virtue of alleged misdirection. In essence the appellant's case is that the Minister has a broader discretion than that set out in the ministerial advice which we set out in para [28] herein. The question is whether this advice accurately reflects the statutory test.

[44] First we turn to what the statute means. In conducting this exercise, we are guided by the Supreme Court dicta in *R(Project for the Registration of Children as British citizens) v Secretary of State for the Home Department, R(O) v Secretary of State for the Home Department* [2022] UKSC 3 where at para 31 Lord Hodge states that:

> "Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered.

[45] Lord Nicholls, in *Spath Holme v Secretary of State for the Environment* [2001] 2 AC 349, 396 in an important passage stated:

> "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the intention of Parliament is an objective concept not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the Minister or other persons who promoted the legislation. Nor is the subjective intention of the draughtsman, or of individual members or even of a majority of individual members of either House … Thus, when courts say that such and such meaning could not be what Parliament intended, they are saying only that the words under

> consideration cannot reasonably be taken as used by Parliament with that meaning."

[46] We bear these statements of principle in mind and turn to the words at issue in the context in which they appear. The use of the word "may" in section 13(1) denotes a discretion on the part of the Minister. However, that discretion is clearly only exercisable if certain conditions are met. The circumstances set out in section 13(1)(a) and (b) provide the gateway conditions before suspension may be ordered. The assessment is clearly subjective by virtue of the statutory wording which refers to the Minister having to be satisfied that a suspension is necessary "if it appears" so to him. The word necessary is an adjective defined by the Oxford English Dictionary as required to be done, achieved or present; needed.

[47] Therefore, the Minister has to evaluate for himself whether a suspension is necessary taking into account all relevant factors in a given case. If the Minister is minded to suspend an inquiry, he must consider what period is necessary to allow for either the completion of an investigation or determination of a civil or criminal case. These are the elements of any decision that is made. In our view this is one consideration rather than two as suggested by the appellant. There is no reason why section 13(1) should be broken down into two parts. The sentence naturally reads as one question which must be answered. To our mind the relevant statutory provision must be considered as a whole and as requiring one, single coherent decision.

[48] The Minster has a power to suspend the Inquiry, but it is limited to a power to suspend for such time as appears to him to be necessary to allow for (in this case) the determination of criminal proceedings. If it does not appear to him to be necessary to allow for the determination of the criminal proceedings, then he has no power to suspend and the issue of time period does not arise.

[49] On the appellant's approach, section 13(1) would really have to be read as giving the Minister a power to suspend that is free standing and not limited to the grounds in 13(1)(a) and (b). Those conditions would only be tied to the necessary period of time of any suspension. We do not think the appellant's construction that necessary only attaches to the time period of any suspension can be correct.

[50] Additionally, we are not convinced by the appellant's reliance upon the requirement in section 13(5) that where a Minister gives notice of suspension under section 13(1) the notice must set out his reasons for so doing. We find the argument unconvincing that if the power to suspend is on the basis of being necessary there would be limited purpose in a statutory requirement to give reasons. Any decision that requires the Minister to suspend would in any event have to be explained as to how it related to section 13(1)(a) or (b). This view is borne out by the fact that the Minister did provide substantial reasons for his conclusion related to the mitigations put in place at the Inquiry.

[51] We cannot accept the appellant's reliance on the Minister's power to suspend an inquiry and the power to bring an inquiry to an end under section 14(1)(b) of the 2005 Act in support of the appeal point. That is because decisions to suspend an inquiry are contextually different from decisions to bring an inquiry to an end. The Explanatory Notes in relation to the application of section 14(1)(b) highlight the point by explaining the particular circumstances that may invoke the section 14(1)(b) power.

[52] Therefore, we do not consider that the Minister applied the wrong test. It is a serious step to take to suspend a public inquiry once started. The statutory test reflects this by requiring a Minister, detached from an independent inquiry, to consider the conditions in section 13(1)(a) and (b) and only suspend when he considers it necessary to do so. We see nothing of prejudice in a test such as this in the circumstances. Put simply, the Minister has a discretion which can only be exercised if the requirements which flow from section 13 are satisfied. He can also exercise this power "at any time" as circumstances dictate.

Conclusion

[53] The Minister answered the question he was required to by virtue of section 13(1). We do not favour the appellant's analysis that he has some broader undefined discretion which he has failed to consider. That is against the plain and ordinary meaning of the statute, and the Explanatory Notes. It is contrary to the authoritative text in this area. In addition, this argument is out of kilter with the specific context of this case. Therefore, the judge was correct in his primary conclusion as set out in para [144] of his judgment. This deals with the appeal.

[54] Finally, we observe that there is an obvious and delicate equilibrium to a public inquiry proceeding whilst criminal charges are also progressed. This is something that must be managed by the Inquiry Chair and reviewed on an ongoing basis.

[55] Accordingly, for the reasons we have given, the appeal is dismissed.