Neutral Citation No: [2017] NIQB 110 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **McC10476** **Delivered** ***ex tempore:*** **21/11/17**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY LAM FOR LEAVE TO APPLY FOR JUDICIAL REVIEW [No 2]

-v-

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

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McCloskey J

[1] As a preliminary matter I grant anonymity to the Applicant in order to protect the identity of her child, who is a minor and a vulnerable person. The anonymity order forbids the publication of the identity of either the Applicant or her child or anything which could result in their identification.

[2] Having considered the submissions, oral and written, of the parties' respective counsel I refuse leave to apply for judicial review on the grounds and for the reasons elaborated below.

[3] The child in question is aged 14 years and a member of the cohort of "looked after" children [the acronym is "LAC"]. She is the subject of a care order and, until 02 August 2017, was in secure accommodation. On that date she was transferred to residential accommodation. This occurred two days in advance of a LAC review. The notable dates, in brief compass, are the following:

(a) 15 May 2017: earlier LAC review.

(b) 01 June 2017: pre-action protocol letter.

(c) 08 June 2017: disclosure of the minutes and reports concerning the aforementioned LAC review.

(d) 11 July 2017: letter on behalf of the LAC Chair to the Applicant's solicitor explaining why he had not been admitted to the LAC review on 15 May 2017.

(e) 02 August 2017: the child was transferred to residential accommodation.

(f) 04 August 2017: further LAC review.

(g) 10 August 2017: initiation of judicial review proceedings.

(h) 08 November 2017: reply to Pre-action protocol letter.

[4] The proposed Respondent is the South Eastern Health and Social Care Trust (the "*Trust*"). The focus of the Applicant's challenge is the decision of the LAC Chair not to admit her solicitor to the LAC review held on 15 May 2017. In her affidavit the Applicant makes the case that by reason of her various afflictions – alcoholism, depression, anxiety and low IQ – she felt unable to attend the LAC review on 15 May 2017, motivated mainly by fear of having to confront her daughter who would be present. The solicitor concerned has been advising and representing the Applicant for some few years. This involved attending LAC meetings on certain occasions.

[5] On 24 March 2017 the Trust wrote to the solicitor advising him of a forthcoming LAC review meeting scheduled for 06 April 2017 and expressing the hope that he would be able to attend or, in default, would provide a "*written report*" in advance. The meeting was re-scheduled to 14 April 2017. The solicitor was not invited to attend. The next LAC review meeting was arranged for 15 May 2017. Once again the solicitor was not invited to attend. However, he in effect invited himself and attempted to notify the Trust of this a couple of days in advance. It is accepted that this attempted notification was ineffective. The Applicant had signalled her decision not to attend. The solicitor attended the premises in question on the scheduled date. There was a discussion between the solicitor and the Chair in advance of the meeting. The upshot was that the Chair declined to admit the solicitor to the meeting. This is the decision impugned in these proceedings.

[6] In a subsequent letter to the Chair the solicitor acknowledged that during the aforementioned discussion, the Chair "*…. made notes on the points I wish to have made …*", simultaneously protesting that the Applicant's views "*…. were effectively excluded from the decision making process*" and adding that he (the solicitor) had not been fully equipped with the available reports and the minutes of the previous LAC meeting. By the same letter the solicitor requested the provision of the reasons for the impugned decision.

[7] In response the following was stated on behalf of the Trust:

> "[The Applicant] …. *was invited to the LAC held on 15/05/17 but (that) you were not invited by the Trust ….*
>
> *It is up to the family to invite a friend or supporter or solicitor and not for the Trust to invite him/her to attend alongside the client.* [The Applicant] *did raise with the social worker her intention not to attend and that her solicitor would attend in her absence and was advised that this was not appropriate. There were no extenuating circumstances which would have prevented* [the Applicant] *from attending. The Chair met you …. and explained that she could not enable you to participate in the meeting without your client in attendance as she was not aware of any mitigating circumstances which would prevent her from attending.*"

The solicitor rejoined, setting out the case in favour of his attendance in elaborate terms. The solicitor, *inter alia*, attributes to the Chair the verbal statement, made during their discussion, that she was "*…. going to force the mother to engage*".

[7] It is common case that in consequence of the transfer of the child from secure accommodation to a residential placement with effect from 02 August 2017 these proceedings have been rendered academic. There is no explanation anywhere – in the grounding affidavits, the correspondence, the pleading or counsel's submissions – of why proceedings were initiated just over one week after this highly significant event. Nor is there any explanation of why the relief sought was an order quashing the exclusion decision of 15 May 2017, coupled with an order of mandamus obliging the Trust to reconvene the "*relevant LAC review and to permit the attendance and participation of the Applicant and* [the solicitor]". This is all the more remarkable when one takes into account that on **04 August 2017** a further LAC review, attended by the Applicant and her solicitor, had been conducted.

[8] Notwithstanding the vintage of these proceedings (they are almost four months old) no attempt has been made to reconfigure the Applicant's challenge via amendments of the Order 53 pleading. Nor was any advance intimation given to the court or the Trust of the submission by counsel for the Applicant that, at this remove, the sole reason for seeking to proceed is to pursue declaratory relief. This was based upon the contention that there is a "*wider public interest*" which will thus be served.

[9] The proceedings having been rendered academic, the principle expressed in R v Secretary of State for the Home Department, ex parte Salem [1998] 1 AC 450, (per Lord Slynn) is engaged. Stated succinctly, there must be some solid justification for the perpetuation of a challenge of this kind.

[10] I reject the submission that a "*wider public interest*" will be served for the following reasons. Fundamentally, I find it impossible to identify a wider public interest from any of the materials available: the Order 53 pleading, the grounding affidavits, the correspondence or counsel's submissions. The analysis that the events giving rise to this challenge occurred in an intensely fact sensitive context on a particular date at a particular place involving a conversation with two participants is, in my view, irresistible. No submission to the contrary was formulated. Furthermore, there is no evidence whatsoever of an arguably unlawful practice or policy being operated beyond the confines of the offending event and decision on 15 May 2017. This was unequivocally acknowledged by counsel.

[11] My second reason for refusing leave is that there is in my judgement no arguable case that the Chair failed to appreciate that there was a discretion to permit the solicitor to attend. The evidence, considered as a whole, points to the contrary. Thus there can be no arguable case that the impugned decision was in contravention of paragraph 3.2.7 of the Trust's "Practice Guidance (etc)" policy dated October 2014 wherein this discretion reposes.

[12] Furthermore, I have given particular consideration to the child concerned. It is clear that the refusal of leave to apply for judicial review will be in no way detrimental to the child's best interests, while the grant of leave would not further those interests in any identifiable or foreseeable way. Indeed there is no practical or effective relief to the benefit of either mother or child which the Court could grant.

[13] For the above reasons alone, the grant of leave to apply for judicial review is plainly inappropriate. This conclusion is reinforced by certain inter-related practical considerations: the need to reconfigure the Applicant's challenge via a substantially amended Order 53 pleading, the obvious requirement for further documentary and affidavit evidence and the real possibility that the court may find itself drawn into the territory of attempting to resolve disputed factual issues, such as what was or was not said during the crucial event , the sequence of words spoken and matters of interpretation, intonation and emphasis.

[14] Finally, in the absence of evidence to the contrary, the court inevitably entertains certain reservations about the ability of the Applicant to provide fully informed instructions to proceed at this remove for the sole purpose of securing abstract declaratory relief of the public interest variety which will be of no identifiable benefit to either mother or child.

[14] Accordingly, the order of the court is:

(a) Leave to apply for judicial review is refused.

(b) There shall be no order as to costs *inter-partes*.

(c) The Applicant's costs shall be taxed as an assisted person.