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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **28/02/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY FRANCIS QUINN FOR JUDICIAL REVIEW

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HUMPHREYS J

[1] The applicant in this case is Francis Quinn, a sentenced prisoner at HMP Magilligan. On 11 June 2019 he was sentenced to a period of five years' imprisonment for attempted robbery. His mother Kathleen Quinn is terminally ill with lung cancer. She has weeks to live.

[2] The applicant has sought compassionate temporary release ("CTR") under the scheme operated by the Northern Ireland Prison Service ("the Prison Service") by way of an application dated 10 February 2020. This was refused on 13 February and since then the applicant's representatives have made further representations on his behalf but the position remains that his CTR application is refused. By agreement of the parties this application for judicial review relates to the various decisions which are to be considered globally.

[3] On 26 February I granted leave to the applicant to apply for judicial review on the basis that the failure to release him under the scheme was arguably a breach of his rights under Article 8 of the European Convention on Human Rights and that the decision was not proportionate in all the circumstances.

[4] I am conscious that the Judicial Review Court is exercising its supervisory jurisdiction. There is no merits based appeal or form of review against the Prison Service's decision to refuse CTR. There is no doubt that the refusal to permit CTR to visit his dying mother constitutes an interference with the applicant's Article 8 rights. However, Article 8 itself permits interference in pursuit of recognised interests including where it is *"necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime…"*. This requires consideration as to whether therefore the decision is proportionate and strikes a fair balance between these competing interests. In such a case the Judicial Review Court is not limited to a consideration of

whether the decision is unreasonable in the Wednesbury sense. Rather it requires an analysis of the relevant weight attributed to each of the competing interests.

[5] In the instant case I consider that being deprived of visiting one's dying mother for a final time is a substantial and significant interference with the applicant's right to and respect for his private and family life.

[6] The competing interests are firstly, the risk of absconding and secondly, the risk of re-offending or of non-compliance as it is described in the respondent's evidence. In relation to absconding the only evidence put forward by the respondent is that the applicant is in the early stages of his sentence. I do not know if there is any empirical evidence to justify the assertion that is being put forward that prisoners in the earlier stages of their sentence are in fact more likely to abscond, but certainly there is no such evidence before the court. There is no evidence that this particular individual has any propensity to abscond. I regard the risk of absconding in this case as being low and the decision-maker, I think it is fair to say, shared that view on the basis of the evidence of Ms Finlay the Governor in her affidavit.

[7] The second risk, that of re-offending and non-compliance, relates principally to the taking of illicit drugs. The applicant in this case is 48 years of age and has only two convictions. The first of these resulted in fines for possession of class B and class C drugs, the other is the offending for which he was imprisoned for a period of five years. In arriving at her decision on the CTR application, the Governor took into account the pre-sentence report wherein it is evident that the misuse of alcohol and drugs played a significant part in the applicant's offending. The further evidence of Ms Finlay is that she took into account all the matters in the risk assessment before her, including the history of two failed drugs tests whilst in prison. Particular concern was expressed relating to the applicant's vulnerability, his ability to deal with emotionally charged circumstances and his propensity to abuse illegal substances whilst in such situations.

[8] The respondent has determined in this case that the Article 2 rights of its staff preclude the applicant from being escorted by them during any CTR visit to his mother's home and there is no challenge in relation to that determination. In order to address this issue proposals have been made by the applicant's representatives in correspondence and through the provision of affidavit evidence in relation to escorting and supervising the applicant during any period of release. In terms three members of the applicant's family and his solicitor have each offered to escort him from a given police station to the family home and back again for what is proposed to be a total home visit of three hours. Given that the applicant is in prison in Magilligan it is anticipated that the total period of release would therefore be around six hours. It is not disputed that the three family members are all of good character and all have strong work records. The concern expressed by the Prison Service in relation to these proposed escorts is that they may not be able to provide the necessary protection or reduction in risk that is necessary in this situation.

[9] In *Re McGlinchey's Application* [2013] NIQB 5 Stephens J (as he then was) noted at paragraph [28] that the nature and effectiveness of any conditions that could be imposed on the applicant if granted temporary release is one of the considerations in play. He went on to say that the case made on behalf of the applicant in that situation was that the proposed respondent had failed to give appropriate weight to those proposed conditions when arriving at a proportionate decision.

[10] In my judgment in this case the respondent has failed to give sufficient weight to the conditions around compassionate temporary release which have been proposed by the applicant's advisors. In summary those conditions involve a short period of release, constant supervision by four individuals, and a limit to the opportunities which could be afforded to the applicant to engage in any re-offending or non-compliance on the basis of transportation directly from a police station to the family home and back again. I also find that the respondent has failed to give sufficient weight to the good character of the family members and the fact that one of the proposed escorts is Ms Baker, is an experienced solicitor and officer of this court. I also find that there has been insufficient weight paid to the unqualified and unambiguous assertions of each of those four individuals including in the affidavit evidence which was submitted today.

[11] As a result of that finding that there has been a failure to give sufficient weight to those conditions, balanced against the serious and significant interference with the applicant's Article 8 rights which I alluded to earlier, I find that the decision to refuse CTR constitutes a disproportionate interference with the Article 8 rights enjoyed by the applicant. As a result I propose to quash the decision to refuse CTR on that basis.

[12] Having engaged with counsel on the issue of appropriate relief I am going to make directions. The directions are that the applicant should be released on CTR on strict conditions as follows:

(i) The applicant will be transported to a nominated PSNI Station on the agreed date by the Prison Service;

(ii) The applicant will be collected from the nominated PSNI Station by Karen Baker (the applicant's solicitor), Liam Quinn (the applicant's father), Lisa Quinn (the applicant's sister) and Sean Mulholland (the applicant's sister's partner) and transported in the company all four persons directly to the family home (9 Kilmore Close, Belfast, BT13 27E);

(iii) The said visit to the family home is to last no longer than 3 hours and the applicant is to be returned directly to the nominated PSNI station at the end of that 3 hour period;

(iv) Whilst at the family home the applicant will remain under the constant supervision of Liam Quinn (the applicant's father), Lisa Quinn (the applicant's sister) and Sean Mulholland (the applicant's sister's partner);

(v) Immediately following the visit to the family home the applicant will be transported directly to the nominated PSNI Station by the Karen Baker (the applicant's solicitor), Liam Quinn (the applicant's father), Lisa Quinn (the applicant's sister) and Sean Mulholland (the applicant's sister's partner);

(vi) Prior to the applicant's visit to the family home, all prescription medication is to be removed. That all such medication has been removed is to be confirmed with Karen Baker (the applicant's solicitor);

[13] I will direct that the visit should take place as soon as practicable and I say to allow a measure of logistics and arrangements to be put in place. I give both parties liberty to apply. So if there are any difficulties with the final arrangements or indeed with the conditions which I have imposed the parties will be at liberty to come back to court. But I trust that a degree of co-operation and common sense will allow the visit to take place within the very near future.

[14] I think in the circumstances I would ask counsel to agree a draft order, simply because this goes beyond just the common form of quashing the decision. If counsel could rehearse those conditions into a draft order I will approve it.

[15] I order that the respondent pay the applicant's costs of the application to be agreed or taxed in default of agreement.