Judicial Communications Office

11 October 2022

COURT DISMISSES APPEAL IN RELATION TO MUCKAMORE ABBEY INQUIRY

Summary of Judgment

On 15 September 2022, Mr Justice Colton ("the judge") dismissed an application for judicial review of two decisions of the Minister of Health ("the Minister") refusing to suspend the Muckamore Abbey Hospital Inquiry ("the Inquiry")[1] until the criminal proceedings against the applicant (now referred to as "the appellant"), a former staff member of Muckamore Abbey Hospital, have concluded[2]. The Court of Appeal[3] today dismissed an appeal against that decision.

This appeal was confined to the judge's conclusions on the interpretation of section 13 of the Inquiries Act 2005 ("the 2005 Act"). It was contended that whilst the Minister has a discretion to suspend the Inquiry "he applied the concept of necessity to the entirety of his discretion under section 13 … and he failed to appreciate that the concept of necessity applies only to fixing the duration of any period of suspension." The judge agreed with the interpretation argued on behalf of the Minister saying that any suspension imposed by the Minister must be necessary before it may be imposed. The judge concluded that the Minister had applied the correct test in exercising his discretion and deciding not to suspend the Inquiry. The judge considered the matter in the alternative but concluded he was still not persuaded that he should interfere with the Minister's decision give the very broad discretion open to him.

Grounds of Appeal

The following grounds of appeal were raised:

- The judge erred in concluding that the Minister applied section 13(1) of the 2005 Act correctly;
- The judge erred in holding that "any suspension [under section 13(1) of the 2005 Act] must be necessary before it may be imposed";
- The judge erred in failing to hold that the concept of assessed necessity applied only to the duration of any period of suspension; and
- The judge erred on the alternative that his view of the construction of section 13(1) of the 2005 Act was incorrect in his assessment of discretion.

The decision-making process

The court referred to a submission to the Minister in January 2020 outlining the potential options available to him around establishing a public inquiry in parallel with criminal proceedings. A further submission in September 2020 led to consultation with the PPS and PSNI and informed the consideration of the risks by the Minister. The court said there was no criticism of the decision-

[1] The public inquiry was established under the Inquiries Act 2005.
[2] Link to summary of Mr Justice Colton's decision.
[3] The panel was Keegan LCJ, Treacy LJ and Horner LJ. Keegan LCJ delivered the judgment of the court.

making process which prefaced the impugned decisions nor of the process undertaken by the Minister when considering the suspension request raised by the appellant. The decision under challenge was contained in paragraph 9 of the advice given to the Minister which the appellant said "infected the decision-making process" as the Minister was constrained in exercising his discretion to decide whether to suspend the Inquiry or not. Paragraph 9 stated:

> "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."

Consideration

Section 13(1) of the 2005 provides that the Minister may suspend an inquiry 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 panel) arising out of any of those matters.

The court reiterated that it was not concerned with the decision to proceed with an inquiry in the midst of criminal proceedings, but the question was 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 …"

The appellant's case was that the Minister has a broader discretion than that set out in the ministerial advice in paragraph 9 noted above. The question was whether this accurately reflected the statutory test. The court, firstly, turned to consider what the statute means. It said 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." Then the Minister has to evaluate that for himself taking into account all relevant factors in a given case whether a suspension is necessary. The court said this assessment is 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 court commented that if the Minister is minded to suspend an inquiry under the terms of section 13, he must consider what period is necessary to allow for either the completion of investigation of 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. 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. "

The court found that on the appellant's approach, section 13(1) would 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). It commented that those conditions would only be tied to the necessary period of time of any suspension. The court did not think that construction can be correct. Additionally, it was 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. The court found the argument unconvincing and said 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 in this case provide substantial reasons for his conclusion related to the mitigations put in place at the inquiry."

The court further determined that it could not 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. It said that decisions to suspend an inquiry are contextually different from decisions to bring an inquiry to an end:

> "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."

The court did not favour the appellant's analysis that the Minister has some broader undefined discretion which he has failed to consider. It said this is against the plain and ordinary meaning of the statute and that the argument was out of kilter with the specific context of this case.

Finally, the court observed that the power under section 13 may be exercised "at any time" by notice. It said there is an obvious and delicate equilibrium to a public inquiry progressing whilst criminal charges are progressed and that this is something that must be managed by the Inquiry Chair and reviewed on an ongoing basis.

Conclusion

The appeal was dismissed.

NOTES TO EDITORS

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1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

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