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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY MICHAEL LARKIN
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
AND IN THE MATTER OF DECISIONS OF THE DEPARTMENT OF JUSTICE
AND THE NORTHERN IRELAND PRISON SERVICE

AND DECISIONS OF THE SOUTHERN HEALTH AND SOCIAL CARE TRUST

Ms Fiona Doherty QC with Mr Malachy McGowan (instructed by Phoenix Law)
for the Applicant
Dr Tony McGleenan QC with Mr Terence McCleave (instructed by the Departmental Solicitor's Office) on behalf of the Department of Justice
Mr Philip Henry (instructed by the Directorate of Legal Services)
for the Southern Health and Social Care Trust

COLTON J

Background to the proceedings

[1] The applicant is a prisoner serving a prison sentence at Maghaberry Prison. On 8 November 2019 he made an application to the court seeking leave to challenge a decision dated 7 November 2019 to refuse him a period of compassionate temporary release ("CTR") to attend his mother's funeral ("the funeral decision"). The funeral was taking place on 9 November 2019. The matter was heard on an urgent basis by Keegan J. She refused to grant the relief sought by the applicant, namely an order quashing the Northern Ireland Prison Service's ("NIPS") decision or alternatively an order requiring NIPS to release the applicant/to reconsider its refusal.

[2] The matter was adjourned to 11 November 2019 for a review in order to permit the parties in the meantime to enter into discussions as to whether some form of virtual attendance or other arrangements could be made for the applicant to

participate in the funeral ceremony. Unfortunately, no suitable arrangements could be agreed.

[3] The matter was back before Keegan J on 11 November 2019. Having been advised of what had occurred during the course of the preceding weekend, she acknowledged that there may well be issues in respect of a prior decision by the NIPS to refuse the applicant a period of CTR to visit his mother in hospital ("the hospital decision"). That decision was made on 4 November 2019. She permitted the parties to engage in correspondence in respect of that issue. However, she further confirmed in response to a query raised by counsel appearing on behalf of the NIPS, that for the avoidance of doubt leave had been refused in respect of any discrimination point raised in the context of the funeral decision.

[4] Subsequently further pre-action correspondence was issued by the applicant on 14 November 2019. That correspondence focused on the issue of the refusal to release the applicant to attend the hospital but sought information in relation to security assessments for prisoners seeking CTR with a focus on potential discriminatory effects as between prisoners from a Catholic/nationalist background and prisoners from a Protestant/unionist background.

[5] A pre-action protocol letter was issued to the Southern Health and Social Care Trust ("the Trust") on 20 December 2019. In that correspondence the applicant indicated that he sought to challenge the hospital decision on the basis of a failure to implement a system to ensure that such decisions were taken in a manner compatible with the requirements of rationality and article 8 of the European Convention on Human Rights ("ECHR"). The correspondence asked the Trust to indicate whether it accepted the obligation falls on a relevant Trust to ensure that a system is established and operates in practice. It was asked to confirm that the failure to establish such a system, or to operate it effectively, in the applicant's case, was incompatible with his rights pursuant to article 8 ECHR and was inherently unreasonable.

[6] A response was sent by the Trust on 29 January 2020 in which it asserted that it did not accept any obligation to establish a system to ensure NIPS have up-to-date information for the purposes of their CTR applications.

[7] There are two decisions being challenged in these proceedings - "the funeral decision" and "the hospital decision."

The funeral decision

[8] The first issue to be considered in relation to the funeral decision is the fact that the application to challenge this decision was dismissed by Keegan J. She made clear when the matter was back before her on 11 November 2019 that that dismissal included any argument based on purported discrimination between prisoners from a Catholic/nationalist background and to prisoners from a Protestant/unionist

background. In short, the court has determined the application. Should the applicant now be permitted to attempt to re-open the matter in proceedings amended some six months after the determination?

[9] By way of further background it should be understood that in making the funeral decision the NIPS took into account, amongst other matters, a security assessment provided by the PSNI. In the decision letter the following appears:

> "Providing a staff escort to this type of event is not precluded but must be looked at in each case given the individual set of circumstances and in the wider context of the nature of the event and appropriateness of prison staff escort to same, as well as other factors such as staff safety (location/time/unknown attendees), which are all weighed up in the balance. NIPS have sought up-to-date advice regarding the current security of NIPS staff in that area where your mother's funeral is to take place. PSNI have advised NIPS that at present there is a heightened level of threat to prison staff in the area where the funeral mass and burial are to take place. NIPS must also consider the Article 2 rights of staff and the process of decision making in respect of your application."

[10] The applicant seeks to "renew" his application for leave to challenge the lawfulness of the funeral decision on grounds of discrimination, including article 14 ECHR and section 75 of Northern Ireland Act 1998.

[11] It is argued that he is entitled to do so in light of subsequent correspondence. The new material which was provided to Keegan J at the previous hearing but not to the applicant's solicitor contains the following:

> "Whilst the generic threat to prison officers, police and military colleagues remains at severe, there is no specific intelligence relating to the Newry town at this time. The area is policed as normally as possible within Northern Ireland terms. Police officers routinely travel in both armoured and soft skin vehicles and patrols routinely carry long barrelled weapons. It may be worth informing the PSNI South (CTC) – Co-ordinating Tasking Centre … where they can consider passing attention if the visit is to be escorted."

[12] In addition to this the applicant also points to figures provided by the NIPS from a Freedom of Information request made in 2015. These figures point to a disparity between the numbers of prisoners from a Catholic/nationalist background being released on CTR and those from a Protestant/unionist background.

[13] It is contended that reliance on security risks to officers of the NIPS acts to the detriment of prisoners from a Catholic/nationalist background. Reliance on this factor amounts to either direct or indirect discrimination which cannot be justified as lawful in these circumstances, relying on article 8 and article 14 of ECHR and also section 75 of the Northern Ireland Act 1998.

[14] The applicant contends that notwithstanding the fact that leave has been refused on this issue the court should now grant leave to argue this point. Should the issue arise again in legal proceedings it is likely that it will arise in the context of an urgent application, as was the situation here, and the court will not have either the necessary information or time to deal with the matter. It is therefore argued that it is preferable for the administration of justice if this issue could be dealt with in a hearing listed in advance, with evidence and skeleton arguments timetabled appropriately, rather than in a series of urgent judicial reviews. I should point out that as far as the court is aware this argument has not been raised in a judicial review subsequent to the decision made in 2019 challenged in these proceedings.

[15] In resolving this issue the court cannot ignore the fact that leave has been refused on the very point the applicant now seeks to raise.

[16] It should also be noted that in the context of the funeral decision a security assessment was only one factor taken into account. Thus, in the original Order 53 challenge the applicant raised issues about the NIPS's failure to have regard to the applicant's good behaviour, an alleged misdirection concerning the applicant's release date, the ability of the applicant's father to act as a chaperone, the lack of any factor identified to displace the overwhelming importance of attendance to the applicant and also a critique of the reasons provided.

[17] Each of these issues was expressly addressed by the court and rejected as a ground of challenge. A key consideration by both the NIPS and Keegan J related to the risk posed by the applicant having regard to the serious nature of the offences for which he had been convicted and the fact that he had been deemed a risk of serious harm under the Criminal Justice (Northern Ireland) Order 2008.

[18] Leave was not granted in respect of any of the issues raised by the applicant, including the discrimination point now contended for.

[19] Procedurally, the refusal of leave can only be revisited by the Court of Appeal under Order 53 rule 10 (the time limit for which is 21 days) or under Order 59 rule 14(3) (the time limit for which is 7 days). No such application has been made and, in any event, would now be wholly out of time.

[20] In support of her submission that the court could re-open the refusal of leave Ms Doherty drew the court's attention to the decision of the Supreme Court in *Virgin Atlantic Airways Limited v Zodiac Seats UK Ltd* [2013] UKSC 46. In that case the

Supreme Court confirmed that cause of action estoppel was absolute only in relation to points actually decided on the earlier occasion and was sufficiently flexible not to preclude the raising of essential points which had not been decided in the earlier proceedings. The issue before that court was the validity of a European patent in relation to a seating system used in long haul aircraft. At first instance the judge held that there had not been an infringement of the patent. The Court of Appeal reversed the judge's decision and held that the patent was valid and infringed by the defendants. The defendants applied for a stay pending their application for permission to appeal to the Supreme Court. The Court of Appeal, applying previous authority, refused the application on the ground that, having made a final determination in the claimant's favour, their decision was res judicata irrespective of whether the Patent Board subsequently amended the patent. Subsequently, in September 2010 the Patent Board amended the patent with the consequence that the patent was to be treated as limited accordingly with retrospective effect from the date of grant.

[21] In those circumstances, the effect of the later amendment of the patent which applied retrospectively was sufficient to persuade the court that it should not preclude the raising of essential points which had not been decided in the earlier proceedings.

[22] In those circumstances the court was prepared to permit an appeal. On the facts of that case this is understandable. The court determined it would be positively unjust, for the claimants to recover damages for an infringement of a patent after it has been irrevocably and retrospectively revoked or amended. That is not the situation here. The facts of the matter are that leave has been expressly refused on the very issue the applicant seeks to litigate now.

[23] The court takes the view that this matter is res judicata between the parties.

[24] However it should be noted that it remains open to the applicant to avail of the provisions of sections 75 and 76 of, and Schedule 9 to, the Northern Ireland Act 1998 should he wish to pursue the question of discrimination contrary to section 75.

[25] Leave to apply for judicial review in respect of the funeral decision is refused.

The hospital decision

[26] On 2 November 2019 the applicant's solicitor made a written request to NIPS on behalf of the applicant seeking a period of CTR to visit his mother who was ill in hospital. The application was refused by the NIPS in a written decision provided to the applicant (but not to his sister) on 4 November 2019. The relevant passages for the purposes of this application are as follows:

> "We contacted Daisy Hill Hospital, Newry who advised your mother is ill. They further advised her condition is

> not classified as being critically ill at this time. She was admitted to hospital on 31 October 2019.
>
> Therefore, all relevant information in your application together with relevant factors considered by NIPS, have been taken into consideration and have been weighed in the balance in the decision making process.
>
> Having completed this process, NIPS are not persuaded to exercise our discretion to grant temporary release on this occasion. …"

[27] The original Order 53 statement did not deal with the refusal to permit the hospital visit but it was indicated to the court on 11 November 2019 that the applicant intended to raise this issue in correspondence.

[28] Accordingly pre-action correspondence was issued by the applicant on 14 November 2019. That correspondence challenged the decision to refuse the applicant permission to visit his mother when she was ill in hospital. The correspondence sought details of the communication between the NIPS and the Daisy Hill Hospital where the applicant's mother was a patient. The correspondence asserts:

> "For the avoidance of doubt, we confirm that the applicant's father has spoken to staff at Daisy Hill Hospital who deny they informed the NIPS that the applicant's mother was not classed as being critically ill. In any event, there was no reasonable basis for concluding that the applicant's mother was anything but critically ill from her hospital admission until she passed away on 6 November 2019. We further confirm we will write to Daisy Hill Hospital, Newry seeking the same information. We intend to exhibit both your response and their response in these proceedings."

[29] The correspondence goes on to raise a further issue namely the NIPS's alleged failure to establish a system to allow for the exchange of medical information in circumstances where CTR is sought and where such medical information is necessary to determine that application.

[30] The NIPS responded on 5 December 2019. In that response the NIPS did not accept that there was any discrepancy between the information provided in relation to contact between the relevant NIPS Governor and Daisy Hill Hospital in the period between 2 and 4 November 2019. Insofar as it was suggested that this arose because the NIPS required the provision of third party medical details which raised data

protection issues it was pointed out that the NIPS simply sought to verify information which had been provided by the applicant. The letter suggested that:

> "In terms of the applicant's query concerning the establishment of any system concerning medical staff and data protection, this is a matter for the relevant Health and Social Care Trust."

The NIPS pointed out that if there was any issue in relation to data protection issues there was an effective alternative remedy available in the form of a complaint to the Information Commissioner with accompanying onward appeal rights to the Information Appeals Tribunal.

[31] Pre-action protocol correspondence was then sent to the Trust on 20 December 2019. The correspondence said that in light of the NIPS response of 5 December 2019:

> "… We will need to amend those proceedings to include a challenge to the decision of the Trust:
>
> 1. To fail to establish a system for quickly communicating accurate information about a patient to the NIPS for the purposes of informing their decisions and applications for compassionate temporary release submitted by that patient's friend or relative who is seeking the hospital visit;
>
> 2. The failure to inform the NIPS that the applicant's mother was critically ill in the present case, or to provide updated information to the effect that her condition had deteriorated. This resulted in the applicant being refused the bedside visit he sought before she passed away."

[32] A response was received from the Trust on 29 January 2020.

[33] The response set out the history of the applicant's mother's attendance in the hospital. It points out that a son and daughter were identified as next of kin of the applicant's mother (neither of which were Mr Larkin). Records indicate numerous references to Mrs McCartney's children being in attendance for 24 hour periods prior to her passing. There is no record of Mrs McCartney asking for nursing or medical staff to make contact with her son Michael Larkin at any time.

[34] The letter points out that:

> "In the event that the patient or patient's family request nursing or medical staff to contact the Northern Ireland

> Prison Service (NIPS), the Southern Health and Social Care Trust are more than willing to liaise with an NIPS representative or any other family member, on behalf of the patient. This process is already in place."

The letter further points out:

> "Had Mrs McCartney and her family advised any of the nursing or medical staff to contact Mr Larkin, the Southern Trust would have facilitated this upon confirmation of consent and the identity of the nominated NIPS representative. In the past there have been occasions where Southern Health and Social Care Trust staff have facilitated patients speaking to relatives who are not able to visit regardless of the reason."

Finally the Trust point out that:

> "Nursing admission documentation does not screen patients to establish if they have any family members in prison."

[35] Legal aid was granted to the applicant on 2 April 2020 to pursue a challenge concerning "hospital visits and the sharing of information regarding the medical condition of a patient."

[36] An amended Order 53 statement was issued on 1 May 2020. Copies of the amended pleadings were thereafter served on NIPS on 2 June 2020.

The case against the Trust

[37] In considering the case against the Trust it is important to set out the factual context. This is best encapsulated in the letter sent on behalf of the Trust on 13 December 2019 in response to the applicant's solicitor's letter of 15 November 2019 in which it sought to *"obtain your version of events."* The response reviews the medical records in relation to the applicant's attendance at the hospital and sets out the timeline of events as follows:

> "31.10.19 – Mrs McCartney presented at DHH ED with a history of cough for 3 weeks and falls in the previous 2 days. A CT was carried out which showed a new finding in both lung and liver metastatic disease. Mrs McCartney was admitted to the ward at 17.45. Mrs McCartney's daughters were present throughout.

> 1.11.19 – Mrs McCartney and family informed of CT findings. Clinically stable. Family present throughout.
>
> 3.11.19 – Mrs McCartney had increased shortness of breath from 16.50, portable chest – x-ray revealed fluid surrounding the lung. Ill but stable. Family present throughout.
>
> 4.11.19 – Seen by Palliative Care Team – medication given to relieve breathing symptoms with good effect. Family present. Overnight pain increase, pain relief provided.
>
> 5.11.19 – Seen by Palliative Care Team - `rapid deterioration' noted. Family present.
>
> 6.11.19 – Mrs McCartney passed away peacefully at 1.00am. Daughters present.
>
> Following a detailed examination of all nursing and medical documentation during Mrs McCartney's admission there is no record of any phone contact relating to your client.
>
> As there appears to have been a rapid deterioration of Mrs McCartney's condition it is possible that depending on when the inquiry was made a NIPS staff member could have been advised that she was `not critically ill', however there is no record of any contact in the medical notes. It is clear from the notes however, that family members were present throughout and were updated regularly by DHH staff."

[38] This factual context can be supplemented by the contemporaneous handwritten notes provided by the NIPS in relation to their contact with the hospital.

[39] The notes record three separate calls to the hospital. These were at 10.35am, 10.45am, and 12.04 on 4 November 2019.

[40] The important note is that of 12.04 which records:

> "Rang hospital and got through to the ward. The staff nurse advised she had spoken with the doctor regarding Theresa McCartney's condition and the doctor has advised she is ill. I asked if condition would be critical and the nurse advised again ill. Mrs McCartney was

> admitted to hospital on 30/31 October and no immediate discharge is likely."

[41] The Order 53 statement describes the impugned decision/omission in respect of the Trust as follows:

> "… The ongoing failure of either or both of the proposed respondents to establish a system to ensure that decisions of compassionate temporary release for prisoners to visit gravely ill relatives in hospital are taken rationally and on the basis of timely and accurate information."

[42] In terms of relief sought against the Trust the applicant seeks:

> "A declaration that the failure to establish a system which ensures that decisions on applications by prisoners for compassionate temporary release to visit ill relatives in hospital will be based on accurate information is unlawful and in breach of Article 8 ECHR."

[43] In this regard the applicant argues that there is an onus on the Trust to establish such a system.

[44] It is right to say that as the correspondence and proceedings developed the focus of the applicant's claim against the Trust has changed somewhat.

[45] In initial correspondence the focus related to matters of data protection, confidentiality and medical staff training.

[46] The factual criticism of the Trust appears to be that it failed to ensure that the information provided to the NIPS was accurate, comprehensive and timely. It is further suggested that what occurred in this case demonstrates a systemic flaw in the CTR scheme which should ensure that any system is adequate to inform decisions on CTR. Furthermore, it is argued that the failure to implement such a system fails to account for an individual's condition deteriorating suddenly, as occurred in the case of Mrs McCartney. It is suggested therefore that the failure to establish a coherent and effective system to inform decisions on a CTR, including to ensure that the NIPS was alerted in a timely manner about any deterioration in an individual's condition was unlawful.

[47] At the outset the court considers that there is no basis in fact for any assertion that the information passed by the Trust to the NIPS was in any way inaccurate. As the notes indicate the applicant's mother was clearly ill but was recorded as "stable" for the first number of days. The notes record "a rapid deterioration" on 5 November 2019, which was the day after the NIPS called the Trust inquiring about her condition.

[48] The applicant raises issues about what is meant by being critically ill. Whilst the content of the CTR policy is clearly outwith its control and remit, the Trust, in the court's view properly submit that the term "critically ill" is frequently used, intelligible and a readily understood term. It is frequently used by healthcare professionals to explain an individual's condition in lay terms. A terminal illness diagnosis is not the same as being critically ill. A person can receive a terminal diagnosis and remain in a non-critical condition for many days, weeks and months, perhaps even years.

[49] The court concludes that there is no basis for any assertion that there was any inaccuracy in the information provided by the hospital staff to the prison staff.

[50] In so far as it is suggested that there was an obligation on the Trust in these circumstances to alert the NIPS about any deterioration in an individual's condition the court rejects such a submission as being unarguable. Firstly on a factual basis it is clear that the hospital kept the applicant's relatives updated in relation to his mother's condition and they were present throughout her time in hospital. There is no difficulty on a factual basis about ongoing medical information being provided to the applicant's family or to the applicant should he be designated as next of kin/point of contact.

[51] As set out by McCloskey J in the case of *McKee v Northern Ireland Prison Service* [2018] NIQB 60 the onus on a person seeking CTR is to provide the relevant material to the NIPS. That information frequently includes medical notes, records, reports or information from medical practitioners and hospitals. The court frequently sees such material in dealing with CTR challenges decisions which are a steady diet of the judicial review court. Current practices ensure that such information is readily available to applicants and to the court. There is no suggestion that Trusts refuse or fail to provide such information on request. At a very basic level the court takes the view that a new system is not required when the desired result can be and is obtained through current practices.

[52] Furthermore, the court considers that there is no public law basis for a suggestion that there is an obligation on the Trust to form an "inter-agency" process with the NIPS or that there is some obligation to provide updates in the event that there is a deterioration in a patient's health.

[53] The provision of medical information is regulated by the Data Protection Act 2018. There is no legal basis to provide an inter-agency system which would override the effect of this detailed primary legislation. The applicant does not have an entitlement to the provision of such information as a matter of right.

[54] However, it is clear that within the existing legislation and in accordance with practice such information is provided to next of kin/points of contact or on request.

[55] Notwithstanding multiple judicial reviews dealing with refusals to grant CTR applications the court is not aware of, nor could the applicant identify, a case in which similar problems arose that are alleged in this case.

[56] Therefore, leaving aside arguments submitted by the proposed respondent in respect of this application being out of time and academic in respect of the Trust the court takes the view that there is no factual or legal basis which is arguable in support of the applicant's challenge against the Trust in respect of the hospital decision.

[57] Leave for judicial review is therefore refused against the proposed second respondent, the Southern Health and Social Care Trust.

The case against NIPS

[58] The first proposed respondent resists the granting of leave on numerous grounds.

[59] As a preliminary point it is argued that the challenge is outside the three month time limit for judicial review under Order 53 and should be dismissed on that ground alone. The hospital decision was issued on 4 November 2019. No proceedings were issued in respect of that decision until an amended Order 53 statement of 1 May 2020 (which the proposed first respondent says was not served until 2 June 2020).

[60] Turning to the substance of the case against NIPS in respect of the hospital decision the applicant makes two criticisms. Firstly, he complains about the use of an arbitrary standard namely "critical illness" by NIPS in assessing CTR applications. Secondly, he complains about an alleged failure by NIPS/SHSCT to implement a system for the sharing of information about an individual's medical condition.

[61] The court has considered both of these arguments in the context of the obligations of the Trust above. Turning to the obligations of NIPS, it is clear that an application by a sentenced prisoner to visit a dying relative, such as his mother engages his article 8 rights. Thus, the applicant frames both of his challenges in an article 8 context.

[62] The principles applicable to challenges to CTR releases are well-established and have been considered in numerous cases in this jurisdiction including *McGlinchey* [2013] NIQB 5; *Smith* [2014] NIQB 50; *McManus* [2014] NIQB 105; *Kane* [2014] NIQB 118; *McAree* [2015] NIQB 5; and *McKee [2018]* NIQB 60.

[63] The right to CTR protected by article 8 is a conditional right. The court's role is a supervisory one. It is not the decision-maker. In exercising its supervisory role

the court must give due deference to the decision-maker and should only interfere if the applicant can establish a legal basis for so doing.

[64] Turning to the criteria or policy governing the exercise of such a discretionary power, this is primarily a matter for the decision-maker. The court does not consider that the use of the term "critical illness" in the CTR provides such a legal basis. As set out above in paragraph [46] the Trust, the sole body in these proceedings with medical expertise, submit that the term "critically ill" is frequently used, intelligible and a readily understood term. It is frequently used by healthcare professionals to explain an individual's condition in lay terms. In the court's view such a criterion is readily understandable and allows all those involved in CTR applications including prisoners, family members, legal representatives and prison governors to understand the circumstances in which the CTR scheme applies. I agree with the proposed respondent's submission that rather than being an arbitrary standard, the criterion is reasonable, logical and rational.

[65] I conclude that the use of the criterion "critically ill" in the CTR policy discloses no illegality and that there is no arguable basis for judicial review on this point.

[66] In relation to the argument that there is an unlawful failure on behalf of the NIPS to establish a system which ensures that decisions on applications by prisoners for CTR to visit ill relatives in hospital will be based on accurate information, this too has been considered in the context of the case against the Trust.

[67] As the case has developed the focus of the applicant's argument now appears to suggest that in order to satisfy article 8, NIPS is required to establish an ongoing system that would alert them to "any deterioration in an individual's condition".

[68] In my view these arguments are misconceived. I refer again to the comments of McCloskey J in the *McKee* case. The onus on a prisoner seeking CTR is to provide the relevant material to the NIPS. It is clear that there already is in place a process whereby the NIPS has access to relevant medical evidence when considering requests to visit critically ill relatives. Such information is routinely provided by applicants and as this case demonstrates the NIPS can verify information by contacting the relevant trust. Alternatively family members can also provide relevant information to support such applications.

[69] The court takes comfort from the fact that despite many applications of a similar nature no similar issue has arisen for consideration by the court previously.

[70] The idea that any obligation on the NIPS could be expanded to establish a system that would alert them to any deterioration in an individual's condition finds no expression in any public law or Convention based authority.

[71] The current scheme developed by NIPS allows CTR applications to be advanced, to be considered on their individual merits and for verification of any information provided to take place.

[72] The applicant's reliance on the case of *Re Sterrett's Application* [2020] NIQB 58 provides no assistance to the applicant. In that case the application concerned circumstances in which a CTR application had been made but had not been processed by NIPS, which is an entirely different factual context than the one in this case.

[73] There can be no doubt as I have already observed that the facility to visit a dying mother engages strong article 8 rights. In response to those rights the NIPS has developed a CTR scheme which in the court's view is Convention compliant and provides for decisions to be taken on a lawful and proportionate basis.

[74] I have no doubt that the rapid deterioration in his mother's health and her passing came as a grievous blow to the applicant. His inability to visit her in hospital and attend her funeral have caused him an understandable sense of grievance. The court has carefully considered the issues raised in this case in that context.

[75] In the particular circumstances of this case the difficulty that arose in the relation to the "hospital decision" was the unexpected rapid deterioration of the applicant's mother after the NIPS had contacted the Trust on 4 November 2019. On a factual basis it seems to me that reasonable inquiries were undertaken by NIPS at the relevant time.

[76] Finally, it should be pointed out that had the NIPS been informed that the applicant's mother was in fact in a critical condition, whilst plainly of huge significance, this may not necessarily have resulted in a visit being granted having regard to the issue of risk which was an important factor in the context of the funeral decision.

[77] For all these reasons leave to apply for judicial review is refused.