Neutral Citation No: [2023] NIKB 124	*Ref:* **KIN12232**
	ICOS No: **21/94153/01**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **29/06/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY KRISS STEWART FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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Sean Devine BL (instructed by John J McNally and Co Solicitors) for the Applicant
Tony McGleenan KC with Philip McAteer (instructed by Departmental Solicitors Office) for the Respondent

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KINNEY J

Introduction

[1] The applicant in this matter sought leave to challenge the coronavirus vaccination programme for children aged between 12 and 15. The applicant originally brought a broad-based application but by the time of the hearing an amended Order 53 statement was provided which clarified that the only ground being pursued was that the applicant challenged the manner in which the vaccination programme was introduced and/or implemented. The relief sought was a declaration that the vaccination policy was procedurally unlawful.

[2] The Joint Committee on Vaccination and Immunisation (JCVI) provided guidance to ministers in September 2021 on the subject of the universal vaccination of children aged between 12 and 15. JCVI reported to Ministers that in its opinion the benefits from vaccination for this cohort were marginally greater than the potential known harms. The government then consulted the four Chief Medical Officers of the various jurisdictions who in turn were informed by a wide range of expertise. They were also informed by data from the USA, Canada and Israel. Ultimately, a decision was made to approve a vaccination programme for children in this age bracket. It was not compulsory, and the consent of parents was sought before the vaccination of an individual child.

[3] The applicant's contention is that there was an absence of guidance regarding the vaccination programme and no sufficient architecture around what she described as a controversial measure. It was possible that a child would be given the vaccine without parental consent. The absence of clear guidance was unlawful.

[4] The applicant is a mother of a 13-year-old child who was potentially affected by the respondent's decision to introduce a programme of voluntary vaccination for 12 to 15-year-olds. The applicant's child did not receive the vaccine. There was no requirement to have the vaccine. It was optional.

[5] There was absolutely no evidence before the court that the applicant's child did not receive appropriate information, guidance and advice in relation to the potential to receive the vaccine. There was no evidence that anyone who had been given the vaccine in this programme was not properly informed before making the decision to receive the vaccine. There was no evidence that anyone who had received the vaccine had subsequently considered that they have not been properly informed.

[6] The Children's Law Centre as third party intervenor in these proceedings provided submissions. The submissions address the issue of Gillick competence. This well-known test provides that a child under 16 can consent to medical treatment if they fully understand the decision they are making. There is no blanket conclusion on competency. It is considered on a case by case basis. Any medical practitioner considering the provision of treatment to a child will give them relevant and appropriate information, both to inform the child and also to allow the practitioner to assess the competence of the child.

[7] The factual background to this matter is that in fact parental consent was sought in relation to this cohort. If there was no response to a request for parental consent, then the parent would be contacted. If a child indicated a desire to have the vaccine administered in the absence of parental consent, then a further attempt was made to contact the parent by a different medical practitioner. It was only after these efforts to engage with the parent had been exhausted that the medical practitioner would speak directly to the child concerned in order to form an assessment of Gillick competence.

[8] Mr Devine on behalf of the applicant in his submissions confirmed that there was no challenge to the issue of Gillick competence. He also confirmed that the applicant's case was not that the dispensation with parental consent was in itself wrong. He argued that if parental consent was dispensed with, then there must be an assurance that any decision made by the child is properly informed.

[9] The applicant argues that she has victim status and relies on the authority of *In the matter of an application by Curtis Tanner for Judicial Review* [2023] NIKB. That case concerned the monitoring of prisoners' phone calls by the Northern Ireland Prison Service. In that case the applicant had not yet had any calls monitored. The

court considered that the fact that the applicant remained detained in prison and had a continuing risk of having his calls monitored was sufficient to provide him with necessary status. That must be distinguished from the present case where there is no such ongoing risk.

[10] It is difficult to see how the applicant can show any sufficient interest in circumstances where she herself is not subject of the policy being challenged, there is no evidence that her child sought vaccination without parental consent and there is no evidence that there was a failure of any kind by the respondent in the provision of such a vaccine. Although there was no direct challenge to the merits of the policy of vaccination itself, these having been abandoned at an earlier stage, there is no doubt that the concerns about the appropriateness of vaccination for this particular cohort coloured much of the argument made by the applicant.

[11] The parties also addressed the issue of utility. Mr Devine argued that the utility of the challenge was in the prospect of a future pandemic where there may be the rollout of a similar policy of vaccination in the future. If this matter is not adjudicated now, then there is a risk that such a policy may be rolled out in the future without appropriate guidance. The difficulty with this argument of course is that it is anticipating something that has not happened and also assumes that if there is a further pandemic it will be on a very similar if not identical basis to the coronavirus pandemic. I am satisfied that the applicant's case lacks utility. I am satisfied that there is no ongoing risk, and this is not a matter of general public importance.

[12] I have dealt with the submissions made before me in brief because it is clear that there is absolutely no merit in the application made in this case. I am satisfied that the applicant does not have standing and that there is no utility in the proceedings. The hypothetical situation posed by the applicant regarding the controls and the guidance needed if there was some fresh outbreak of a viral based pandemic will not be determined by any remedy, declaratory or otherwise, involved in this case.

[13] There is absolutely no evidence before the court that the circumstances pleaded by the applicant ever existed. There is no evidence of a lack of guidance and there is no evidence of a lack of architecture around the vaccination programme. There is absolutely no evidence relating to the applicant's child and her experience, if any, of the vaccination programme. The programme has long since finished and I am satisfied that the challenge in this case is a generalised challenge set in abstract terms. There is no public interest engaged. I am satisfied there were significant safeguards within the vaccination programme, not least the individual decisions required to be made by medical practitioners if a child were to present for the vaccine in the absence of parental consent.

[14] I am satisfied that the applicant does not have an arguable case with a reasonable prospect of success, and I refuse leave.