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2015/108163

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY JKL (A MINOR)
TO APPLY FOR JUDICIAL REVIEW**

and

IN THE MATTER OF A DECISION OF THE DEPARTMENT OF JUSTICE

COLTON J

Introduction

[1] The applicant in this case is a 15 year old child who suffers from Asperger's Syndrome. On 26 October 2015 he was arrested and interviewed by the PSNI as a suspect in an alleged cyber-crime involving the "hacking" of customer details retained by "Talk Talk". He has been released on police bail.

[2] I am obliged to counsel for the parties in this case, Mr Ronan Lavery QC and Mr Sean Mullan for the applicant and Mr Aidan Sands BL for the respondent for their excellent written and oral submissions. I am also grateful for the written submissions prepared by Ms Karen Quinlivan QC on behalf of "Just for Kids Law" who were permitted to intervene by way of written submissions. The court was greatly assisted by those written submissions.

[3] The hacking of Talk Talk attracted huge media interest. The applicant's subsequent arrest and interview also attracted similar media coverage. In 2015 several national media outlets published both online and in print details about the story which variously named the applicant and the town in which he lived, and published details about his social interest in online pursuits. A photograph of the

applicant was also published (although part of his face was blacked out) several times.

[4] The material has also found its way onto various websites.

[5] As a result of these publications the applicant issued civil proceedings against Telegraph Media Group Ltd, Associated Newspapers Ltd, News Group Newspapers Ltd and Google Inc and Twitter International Company. On 30 October 2015 the first three of the defendants in these proceedings, on a without prejudice basis, removed the material complained of and provided undertakings to the plaintiff and the High Court. On the same date the applicant obtained injunctions against Google (Google Inc) and Twitter (Twitter International Company).

[6] At the time this application was heard these civil proceedings were ongoing and had not been resolved.

[7] The applicant's case in the civil proceedings is that the publications about which he complained constituted an abuse of private information and a breach of his Article 8 rights under the ECHR.

[8] In terms of this application he complains that the Department of Justice has failed to take adequate steps to protect his rights as a child who has been publicly identified in the manner described.

The Order 53 Statement and Relief Sought

[9] In this application the applicant seeks the following relief:

> *"(a) An order of mandamus requiring the Department of Justice to immediately enact legislation to provide for reporting restrictions in pre-charge situations.*
>
> *(b) A declaration that the decision of the Department of Justice to implement legislation under Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 covering reporting restrictions post charge and at court but not for minors who are pre-charge is contrary to common law rules of fairness.*
>
> *(c) A declaration that the said failure to enact legislation in pre-charge situations is irrational and unlawful.*
>
> *(d) A declaration that the Department of Justice has acted contrary to Article 8 of the European Convention on Human Rights and contrary to Section 6 of the Human Rights Act (1998) by failing to implement legislation*

governing reporting restrictions for minors in pre-charge situations.

(e) *A declaration that the failure of the Department of Justice to enact Section 44 of the Youth Justice and Criminal Evidence Act 1999 is unlawful.*

(f) *An order of mandamus compelling the Department of Justice to immediately enact Section 44 of the Youth Justice and Criminal Evidence Act 1999.*

…

(h) *Such further or other relief as the honourable court may deem appropriate.*

(i) *All necessary and consequential directions."*

[10] As will be seen the focus of the application against the respondent is its failure to enact legislation to provide for reporting restrictions in relation to children who have been arrested but not charged with any criminal offence, what the applicant refers to as "pre-charge situations". In particular, this position is in contrast with the restrictions in relation to children who are actually charged with offences. Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides statutory protection of a child's identity by way of reporting restrictions in the following provisions:

> *"(1) Where a child is concerned in any criminal proceedings (other than proceedings to which paragraph (2) applies) the court may direct that—*
>
> (a) *no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and*
>
> (b) *no picture shall be published as being or including a picture of the child,*
>
> *except in so far (if at all) as may be permitted by the direction of the court.*
>
> *(2) Where a child is concerned in any proceedings in a youth court or on appeal from a youth court (including proceedings by way of case stated)—*

> *(a) no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and*
>
> *(b) no picture shall be published as being or including a picture of any child so concerned,*
>
> *except where the court or the (Department of Justice), if satisfied that it is in the interests of justice to do so, makes an order dispensing with these prohibitions to such extent as may be specified in the order.*
>
> *(3) If a court is satisfied that it is in the public interest to do so, it may, in relation to a child who has been found guilty of an offence, make an order dispensing with the prohibitions in paragraph (2) to such extent as may be specified in the order…"*

[11] The applicant says in effect that there is a lacuna in the legislation in that it fails to provide similar protection to those who are arrested but not charged with a criminal offence to those who are actually charged with an offence. It is argued that this lacuna is irrational and unlawful. Further, it is argued that the respondent has failed to comply with its positive obligations in respect of the applicant under Article 8 of the European Convention on Human Rights and therefore is in breach of Section 6 of the Human Rights Act 1998.

[12] It is clear that this is a matter which has been considered by Parliament. Thus, Section 44 of the Youth and Criminal Evidence Act 1999 contains pre-charge reporting restriction provisions prohibiting the disclosure of material which "is likely to lead members of the public to identify" a person who is the subject of criminal investigation. This provision has not been commenced.

[13] The matter was considered at the Committee stage in Parliament on 29 June 1999. The Minister of State for Home Affairs explained to the Committee that the government had taken part in discussions with the broadcast and print media and it was decided that the media's own regulatory arrangements could be strengthened in order to protect vulnerable children and that the aims of the reporting restriction provisions could be achieved by other means. It was also stated that the case for implementation would be kept under review but that the provisions would not be implemented without further debate in both houses.

[14] In 2004 the Home Office took a decision not to commence Section 44 of the 1999 Act. At that stage the Press Complaints Commission gave a commitment that it would strengthen the media's own regulatory requirements. At the same time the Home Secretary gave an assurance that the youth reporting restrictions would not be implemented, unless press coverage gave rise to concern. Any minors who were the

subject of alleged breaches of privacy would still have a right of access to the civil courts.

[15] This issue was the subject matter of debates before the House of Lords Committee on 23 July 2014 and on the floor of the Upper House on 22 October 2014. On both occasions the government maintained its view that the aims of Section 44 could best be achieved through other non-legislative means and that the relatively new regime of independent press self-regulations should first be tested.

[16] The matter has never been debated by both houses and Section 44 remains un-commenced.

[17] Police and justice was devolved to the Northern Ireland Department of Justice (the respondent) in April 2010. With that devolution the power to commence Section 44 was devolved to the Northern Ireland Assembly by virtue of Schedule 14, paragraph 43 of the Northern Ireland Act 1998 (Devolution of Policing and Justice functions) Order 2010.

[18] It appears from the affidavit filed on behalf of the respondent in this matter that no active consideration has been given by the respondent to either commencing Section 44 of the 1999 Act or passing new legislation on the same subject.

[19] From this outline it can be seen that there is therefore statutory protection for children who have been charged in relation to a criminal offence but none in relation to those who have been arrested but not charged in respect of an offence.

The Respondent's obligation in respect of children

[20] When considering this matter it is legitimate to consider the international legal framework. Article 4 of the UN Convention on the Rights of the Child provides that State parties must recognise:

> *"The right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which re-enforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society".*

[21] Article 3(1) of the UN Convention on the Rights of the Child provides:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

[22] Article 40 of the Convention expressly requires that the state shall *"in particular"* ensure that the child has *"his or her privacy fully respected at <u>all</u> stages of the proceedings"* (emphasis added).

[23] The substance and meaning of this entitlement is elaborated by the Committee on the Rights of the Child in general comment No:10: Children's Rights in Juvenile Justice which states:

> *"64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of CRC. 'All stages of the proceedings' includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions."*

[24] The protection of the juvenile's right to privacy finds further expression in the Beijing Rules which provide at Rule 8:

> *"8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.*
>
> *8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published."*

[25] The commentary to Rule 8 provides as follows:

> *"Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental*

effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle."

[26] There is therefore ample support in international law for the requirements to protect individuals such as the applicant and a well-founded basis for the requirement of such protection. In interpreting rights guaranteed by the European Convention the court is entitled and should take these into account in the interpretation and application of those rights in our national law.

[27] Article 8 of the Convention provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and 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, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Section 6(3) of the Human Rights Act provides:

"(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

…

(6) "An act" includes a failure to act but does not include a failure to –

(a) introduce in, or lay before, Parliament a proposal for legislation; or

(b) make any primary legislation or remedial order."

The extent of positive Article 8 duties

[28] In this case it is not alleged that the respondent itself has actively breached the applicant's rights under Article 8. That case is made against the various media outlets to which I have referred. Rather the case made by the applicant is that the positive duties imposed on the state by Article 8 of the Convention give rise to a specific obligation on the respondent to act. In particular the application focuses on a failure to enact legislation and a particular failure to implement Section 44 of the Youth Justice and Criminal Evidence Act 1999. In relation to this specific argument it seems to me this is unsustainable. Section 6 of the Human Rights Act 1998 makes it plain that a human rights challenge may not be brought on the grounds of a failure to legislate. The act expressly preserves Parliamentary sovereignty in this regard. I accept that the relevant legislation, being an act of the Northern Ireland Assembly, would not be primary legislation but it seems to me that this does not affect the principle. In these circumstances it seems clear to me that the court cannot be compelled to require the respondent to enact legislation and that therefore the relief sought in paragraphs (a), (b), (c), (d), (e) and (f) should be refused.

[29] It is also clear that the court could not make any order requiring the Northern Ireland Assembly to legislate under any common law provision.

[30] However, the matter does not end there. The applicant with the support of the intervening party in this matter says that the applicant is entitled to declaratory relief by reason of the respondent's failure to put in place any effective means to secure the protection of the applicant's Article 8(3) rights.

[31] Whilst this may have required a further amendment to the Notice of Motion both parties made full submissions on the matter and I have decided to deal with it in this judgment.

[32] What then is the extent of any positive Article 8 duties on the respondent? Clearly the wording of Article 8 itself imposes no express obligation on Member States to take any positive action. The object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities. It is essentially a negative undertaking. Mr Lavery refers me to the decision in *X and Y v Netherlands* [1995] 8 EHRR 235 in which the court decided that it was a positive obligation upon the state under Article 8 to protect a vulnerable young person by remedying a lacuna in the criminal law. In that case Y who was mentally handicapped, was raped. The prosecution decided not to press charges. Y had no legal capacity to appeal this decision. The court found that positive obligations could arise under Article 8 which required the state to implement certain measures even in the context of the relations of individuals between themselves. The local legislation was therefore deemed deficient as it had failed to provide adequate protection.

[33] Mr Sands points out that the circumstances of the *X and Y* case are radically different from the present one and not a particularly helpful comparator. In any event it is contended that the state has adopted sufficient measures to give effect to

any Convention rights that exist in this case. In the context of this dispute it is contended that the state is obliged to set a balance between the Article 8 rights of a person in the applicant's position and the freedom of the press under Article 10 of the Convention. In setting that balance the Executive has decided that legislation is not necessary at this time. It will be seen from the history set out earlier that the UK Parliament made a conscious decision not to implement statutory protection. It is not the case however as is contended in the applicant's submissions that there is no remedy for breaches of privacy for the misuse of private information in the circumstances faced by the applicant. In this jurisdiction, as in England and Wales, the protection of the privacy rights of minors who are arrested, but not charged, remains a matter governed by the civil law and by the IPSO Code of Practice. In relation to the former the applicant has exercised his civil rights both in the form of obtaining an injunction and maintaining an action for damages.

[34] The respondent also points to the press self-regulation regime known as IPSO (the Independent Press Standards Organisation). This regime applies in Northern Ireland as well as in England and Wales.

[35] IPSO is charged with enforcing the editor's Code of Practice. In the course of the hearing I was referred to a number of paragraphs of the Code which are clearly relevant.

[36] Paragraph 2 of the Code of Practice states:

> *"(i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
>
> *(ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
>
> *(iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy."*

[37] Paragraphs 6 and 7 of the Code relate to protection for children but would not cover the circumstances of this case. Significantly paragraph 9 deals with reporting of crime and states:

> *"(i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.*
>
> *(ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of,*

> *crime. This should not restrict the right to report legal proceedings."*

[38] It will be noted that any reference to children is confined to those who are witnesses or victims of crime and not those suspected of or charged with crime.

[39] Finally, in the section which defines "The Public Interest" the Code says at paragraph 5

> *"An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16."*

[40] IPSO has a detailed process for hearing complaints by a Complaints Committee about breaches of the Editor's Code of Practice together with 24 hour emergency support if a member of the public feels that a publisher intends to publish information that may breach the Editor's Code. Rulings on complaints are published on the IPSO website.

[41] The respondent contends that this non-legislative approach namely the press regulation together with the right of access to the court provides sufficient safeguards to protect the anonymity of minors who are the subject of criminal investigations.

[42] Mr Lavery responds that these measures are not effective. He points out that even though the applicant has invoked civil proceedings to a large extent the damage has been caused. The applicant has been publicly identified. He asserts that his identity is still readily accessible on the internet. He points out that this has been extremely distressing for the applicant and indeed he was compelled to move home in the aftermath of the publications about which he complains. He says that self-regulation is insufficient protection for children. I have been provided with extremely helpful affidavits from Just for Kids Law which is an independent non-governmental charity established in 2006 and from the Standing Committee for Youth Justice which is a non-governmental charity which has worked alongside Just for Kids Law outlining the actions they have taken in relation to this specific issue.

[43] The SCYJ has been working on the issue of pre-charge anonymity since 2014 when it published a report on the identification of children in the justice system under the heading "What's in a name? The identification of children in trouble with the law". This looked at a wide range of policy issues around identifying children in trouble and included a number of policy recommendations, including "banning the identification of children being investigated for a crime and where court proceedings have not yet commenced". They have been involved in the lobbying of Parliament and also have engaged with the new press regulator on a range of issues including pre-charge anonymity. In particular they requested that the Code should be amended to include the following sub-section:

"Children under criminal investigation should not be identified unless it is for the purpose of solving crime."

[44] The Committee has also lobbied media organisations including the Guardian newspaper, the BBC and the Telegraph about their approach towards anonymity for children in trouble with the law.

[45] The government's position remains that "due to the significant changes to independent press self-regulation recently introduced it did not believe that it was the right time to consider implementing the pre-charge reporting restrictions provided by Section 44 of the Youth Justice and Criminal Evidence Act 1999". The government continues to support the new system of independent press regulation as it develops and establishes itself – as per a written response from the Minister for Justice, Andrew Selous, on 22 June 2015. This was reiterated in response to a parliamentary question in December 2015 when Baroness Neville-Rolfe answered for the government stating:

"The government is committed to a strong, independent and effective self-regulatory system for the press that commands the confidence of both the public and the industry. Following the Leveson Inquiry, and with cross-party agreement, government has now delivered the framework for a new system of independent press self-regulation; the Royal Charter has been sealed and the press recognition panel has been appointed, opening for business in September of this year. We must now give this new approach time to become established."

[46] In the course of its representations the Standing Committee has identified three cases where children have been directly identified pre-charge. These were the child accused of the murder of a school teacher, Ann Maguire, the stabbing of the teacher in Bradford, and the fatal stabbing in a school in Aberdeen. Reference has also been made to the applicant where the Committee observe that he "had so much information published about him that he could easily have been identified by jigsaw identification". This is described as a deeply concerning trend.

[47] In terms of the media response this is perhaps best set out in a letter from the managing editor on behalf of the Guardian newspaper dated 15 December 2015 which states:

"On the whole my view is that unless there are exceptional circumstances, a child should not be named by us pre-charge without senior editorial approval. I will be making this clear internally and as and when we update our internal Editorial Code this will be reflected."

Significantly, the letter does state:

> *"As you know there is no specific statutory legal impediment to naming children (of which I mean those aged 17 and under) who are suspected of criminal activities before charge, either in Scotland or England and Wales. However, I accept that this is not the end of the story or the answer to the issue as I have indicated."*

[48] Mr Lavery describes this as a troubling response from a responsible newspaper. It clearly demonstrates the thinking of the press in the absence of what they perceive as a statutory legal impediment. In short he says that only such a requirement will achieve the objective of protecting someone such as the applicant.

[49] In terms of the situation in this jurisdiction the respondent avers that in the six years since the devolution of policing and justice the issue of enacting legislation to restrict reporting on minors at the pre-charge stage has never been raised with the DOJ by any NGOs, children's charities, politicians or individuals. The applicant's case is the first occasion that the matter has been brought to the department's attention. Mr Sands refers me to the very detailed report from the Children's Law Centre and Save the Children in June 2015. Whilst raising many issues concerning the protection of children from negative media representation the report does not expressly raise the issue of pre-charge publicity. It does however ask that NIA and Executive should "ensure that all relevant international standards are integrated into youth justice legislation, policy and practice, implementing commitments made under the Hillsborough Agreement".

[50] It is submitted on behalf of the respondent that the absence of any such representations indicates that there is no great public concern about this matter. Nonetheless, it is indicated on behalf of the respondent that:

> *"Since devolution, it has been the policy of the DOJ not to simply mirror the legislative approach taken in England and Wales but instead to ensure that legislation in this jurisdiction is subject to full public consultation and debate in the Assembly. If it was considered that there was a need to legislate in order to restrict reporting on minors at the pre-charge stage, then the preferred approach of DOJ would be to consult with key stakeholders and the Justice Committee, before considering whether to commence Section 44 of the 1999 Act, particularly as it is cognisant of the concerns previously expressed about the potential unintended effects of the 1999 Act, to ensure that the provisions were fit for purpose and are subject to Assembly scrutiny."*

[51] In terms of the overall effectiveness of existing protections Mr Sands makes a number of supplementary points. Firstly, he points out that it has not been established as a matter of fact or law that the applicant's Article 8 rights have been

breached by media outlets. Secondly, he points out that even if legislation had been in force there was no guarantee that material would not have been published. He points out that the applicant was not identified in any way in any of the local newspapers.

[52] When considering the matter the court is mindful of the wide margin of appreciation that is afforded to states in adopting any measures to give effect to Convention rights. This doctrine is applied at its widest when considering the positive obligations imposed. Mr Sands refers me to the decision in *Mosley v UK* [2011] 53 EHRR 30. The plaintiff contended that the UK had violated its positive Article 8 obligations by failing to impose a legal duty on the News of the World to notify him in advance of its intended publication of highly personal images so as to allow him the opportunity to seek an interim injunction. He argued that it was for the state to balance the Article 8 and Article 10 rights not the newspapers. The ECHR emphasised:

> *"The importance of a prudent approach to the State's positive obligations to protect private life in general and of the need to recognise the diversity of possible methods to secure its respect."*

[53] It set out four relevant factors for determining the breadth of the margin. Firstly, the margin of appreciation is a wide one and "the state authorities are, in principle, in a better position than the international judge to give an opinion on how best to secure the right to respect for private life within a domestic legal order".

[54] Secondly, the nature of the activities involved affects the scope of the margin.

[55] Thirdly, "the existence of absence of a consensus across the member states of the Council of Europe, either as to the relative importance of the interests at stake or as to the best means of protecting it, is also relevant to the extent of the margin of appreciation; where no consensus exists the margin of appreciation afforded to states is generally a wide one".

[56] Fourthly, where competing Article 8 and Article 10 rights are involved, "regard must be had to the fair balance that has to be struck between the competing rights and interests arising under Article 8 and Article 10".

[57] The court took account of the system of press regulation that existed in the UK and the available civil legal remedies and considered that:

> *"Such awards can reasonably be expected to have a salutary effect on journalistic practices."*

[58] In applying the four stage test set out above, the court noted that there was a consensus in member states against pre-notification. Having regard to the wide

margin of appreciation and the limited scope for interference on Article 10 it found no violation of Article 8 by the UK. It is clear from this decision that the European Court has given considerable latitude to member states in implementing the positive Article 8 duties and considers that the state authorities are in a better position to judge how the balance should be set in a domestic context. In the context of this case the Executive has decided that legislation is not necessary at this time. The respondent points to the well-established tort of misuse of private information which provides an effective remedy for invasions of privacy and strikes the appropriate balance between the competing Article 8 and Article 10 rights. Further protection is provided by the IPSO Code of Practice to which I have referred.

[59] In terms of the Article 8 rights of children in the context of criminal activity the case of JR38's Application [2015] UKSC 42 is relevant. In that case by a majority the court found that published images of a child apparently involved in criminal activity during a riot did not violate his Article 8 rights and that Article 8 was not engaged. The minority found that Article 8 was engaged but that the interference was justified. Thus, in that case the mere fact that the subject of the photograph was a minor suspected of involvement in criminal activity was clearly not considered sufficient to justify the imposition of a blanket ban on reporting, nor did the Supreme Court consider that the Beijing Rules required it. Had Section 44 of the 1999 Act been in force, it would have been unlawful for the police to publish the photographs of JR38.

[60] In terms of the applicant's argument that I should grant declaratory relief in this case I can only do so if I find that the respondent has acted unlawfully.

[61] Having considered the matter I have come to the conclusion that there is no basis for so finding. As I have already made clear the respondent cannot be compelled to legislate on this matter. Given the wide margin of appreciation available to the state there is no basis for a finding that the measures in place amount to a breach of any positive obligation imposed under Article 8 or in domestic law.

[62] A good case can be made for reform in this area either by way of legislation short of Section 44 or by way of further amendment to the Editor's Code of Practice supervised and enforced by IPSO. This matter has now come to the attention of the respondent and it remains to be seen whether or not the applicant's case signifies a trend.

[63] This application has raised important public issues and it is hoped that this matter will be kept under review by the respondent.

[64] However, for the reasons set out I do not consider that the applicant is entitled to judicial review and the application is dismissed.