Neutral Citation No: [2018] NIQB 32	*Ref:* **McCL10632**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: ex tempore, 12/04/18*

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 JR80
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

SECRETARY OF STATE FOR NORTHERN IRELAND

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McCLOSKEY J

[1] At the outset I rule that the Applicant has established sufficient grounds to warrant the protection of anonymity. Thus there must be no publication of his identity or of anything which could lead to him being identified.

[2] The evidence clearly establishes the Applicant's entitlement (standing) to bring these proceedings.

[3] The Applicant avers that in his childhood he was subjected to sexual, physical and psychological abuse at a named institution. In his affidavit he discloses details relating to his family and life circumstances. It is unnecessary to reproduce any of this. He further avers that he did not participate in the Northern Ireland Historical Institutional Abuse Enquiry ("HIA").

[4] The proposed Respondents are the Secretary of State for Northern Ireland (the "Secretary of State") and the Executive Office (the "EO"). The latter is the entity which, in the absence of a functioning devolved Executive in Northern Ireland, substitutes in some ways for the Office of the First Minister and Deputy First Minister.

[5] The nub of this application for leave to apply for judicial review is evident from the primary remedies pursued:

> "An order of mandamus directing the Secretary of State for Northern Ireland to take the steps necessary

> to establish a redress mechanism for survivors of historical institutional abuse…
>
> An order of mandamus compelling the Secretary of State to propose an early date for the poll for the election of the next Assembly ….
>
> An order of mandamus directing the Executive Office to take the steps necessary to establish a redress scheme."

The other forms of pleaded relief are declaratory in nature.

[6] At this juncture brief mention of the HIA report is appropriate. The report was the culmination of an independent inquiry into physical, emotional and sexual childhood abuse and childhood neglect occurring in residential institutions in Northern Ireland between 1922 and 1995. It was published in January 2017. It was addressed to the Northern Ireland Executive, which had established the inquiry. It contains a series of recommendations on the subject of redress. One such recommendation is that there should be financial redress to victims in accordance with a specified scheme to be established by the Executive. The report proposed minimum and maximum payments of £7,500 and £100,000 respectively. These would be paid in the form of non-taxable lump sums following the processing of claims by the "HIA Redress Board". The report urged that this recommendation, and others, be speedily implemented. It exhorted that the first payments be made before the end of 2017.

[7] The Applicant asserts that he would qualify for compensation in accordance with the terms of the HIA report's recommendations. None of the recommendations of the HIA report has been activated.

[8] Leanly summarised, the thrust of the Applicant's case is that the Secretary of State and/or the EO are both legally empowered and legally obliged to take either or both of the steps identified in the mandatory orders claimed. This is what I extrapolate from the somewhat diffuse pleaded grounds of challenge, duly condensed and illuminated in counsels' written and oral submissions.

[9] The Applicant's challenge raises issues of construction of the Northern Ireland Act 1998, in particular sections 23 and 63. It further ventilates questions of constitutional law, including the availability of prerogative powers in a context where the Northern Ireland Executive is suspended and the implementation of the HIA recommendations entails action belonging to the realm of a devolved (or, more technically, transferred) matter.

[10] The following are the main components of the stance which has been adopted on behalf of the Secretary of State in pre-proceedings correspondence:

(a) Implementation of the Report's recommendations is likely to require legislation.

(b) It will also require "important policy choices and the allocation of public funds".

(c) "… when announcing the Terms of Reference the First Minister and Deputy First Minister made clear that the policy decisions on implementation would be made by the Executive Committee, which is not currently in place."

(d) The Head of the Civil Service has explained to victims that –

> "In the absence of Northern Ireland Ministers and an Executive Committee, the Executive Office was making preparations to enable the full implementation of the HIA Report recommendations as quickly as possible, in the event that this model for redress was agreed by a future Executive Committee."

Finally, it is stated:

> "Even if it was possible to devise some alternative scheme of redress, without legislation, the Executive Office does not consider that it would be appropriate for officials to do so in the absence of an Executive Committee."

All of this was both refined and amplified in the submissions of Mr McGleenan QC (with Mr McLaughlin, of counsel) on behalf of the Secretary of State.

[11] The position of the EO, in a sentence, is that the HIA report and recommendations are directed exclusively to the Executive and the EO has no legal power or duty to activate same. It is also represented on behalf of the EO that work on what are considered to be the administrative arrangements and draft legislation necessary to implement the HIA redress recommendations has been initiated and is continuing, in a context wherein it is suggested that the requisite legislation could be made in either Westminster or Northern Ireland.

[12] I am satisfied from all of the available evidence and the arguments formulated that none of the conventional bars to the grant of leave to apply for judicial review – in particular lack of standing, unjustifiable delay or significant lack of candour – arises. As the recent decision in Re Hughes Application [2018]

NIQB 30 demonstrates some of the issues raised by this challenge are both novel and complex. It is at least arguable that no answer to them is to be found in either the statutory language or any precedent decision binding on this court. In passing, the constitutional role of the High Court in a state system based on the separation of the distinct and differing portfolios and powers of the Executive, the legislature and the Courts is unmistakable.

[13] The indefinite moratorium afflicting the Executive and legislature of Northern Ireland featuring in the present case arises in other judicial review cases. One of the consequences of this moratorium is that members of the Northern Ireland population are driven to seek redress from the High Court in an attempt to address aspects of the void brought about by the absence of a Government and legislature. This, as in the large cohort of "legacy" cases, in effect involves the High Court adjudicating in disputes in cases which would not otherwise arise and entails a significant diversion of judicial and administrative resources. While this does not involve Judges encroaching upon the impermissible territory of political and legislative decision making, it skews the constitutional arrangements whereby this country is governed. While the spotlight on the implementation of the HIA redress proposals should be firmly on the Northern Ireland Executive and Assembly it is, rather, on the courts.

[14] On the grounds and for the reasons elaborated I conclude that the applicable threshold, namely arguability, is overcome. The Applicant is granted leave to apply for judicial review in accordance with the terms of this judgment.

Order and Timetable

[15] Leave to apply for judicial review is granted accordingly. The substantive hearing will be conducted not later than September 2018. The parties' representatives will submit a draft case management order to the Court accordingly, by close of business on 16 April 2018.