

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

LP's Application [2014] NIQB 40

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

AND

IN THE MATTER OF A DECISION OF THE HISTORICAL INSTITUTION
ABUSE INQUIRY

TREACY J

Introduction

1. By this application the applicant challenges the refusal of the Historical Institutional Abuse Inquiry (the Inquiry) to provide her with a copy of her statement to the Acknowledgement Forum. However there is no statement as such and what the applicant in substance seeks is a copy of the evidence she gave to the Acknowledgement Forum. The central issue in this leave application is whether, as the applicant asserts, she has a *right* to a copy of the Inquiry record of what she said to the Acknowledgement Forum and whether the Inquiry is subject to the concomitant duty to provide her with a transcript thereof or a disc.

Background

2. The applicant avers that she was subjected to physical and psychological abuse in Nazareth House during her time in care there between 1971 -1976. She has commenced proceedings seeking damages in respect of this alleged abuse.

3. Over a number of months the applicant's solicitor engaged in correspondence with the Inquiry with a view to obtaining a copy of the "statement" she made to the Acknowledgement Forum when she attended on 7th November 2012 to give her account confidentially and in private. These requests have been refused. The rationale for the refusal was set out in a letter from the solicitor to the Inquiry dated 25th March 2013 and, following a renewed request from the applicant's solicitor,

reiterated in the Inquiry's letter of 20th June. The stated rationale was to preserve the confidentiality of the work being undertaken by the Acknowledgement Forum.

4. The applicant challenged this initially asserting that as a matter of "fundamental principle" her confidentiality is a matter for her and that by refusing a copy of her own "statement" the Inquiry is placing restrictions on her right to pursue litigation and thereby restricting her access to the courts. Recognising that such an argument was not sustainable Mr O'Donoghue QC at the hearing submitted that she had a right to a copy of the record of her evidence to the forum and that absent an express statutory provision preventing the Inquiry from providing a copy she had a legitimate expectation of its provision. The copy was not sought in connection with the Inquiry itself and there is no complaint that non provision to the applicant would adversely affect the fairness of the Inquiry itself.

Discussion

5. The applicant acknowledged that there was a "paucity" of authority to support this proposition submitting that this is because it is "self-evident". In fact there is *no* authority to support the proposition that the applicant had the asserted right with the concomitant obligation on the Inquiry to provide her or her solicitors with a copy of the record of her evidence whether by transcript or disc. The recording made by the Inquiry is the property of the Inquiry and the applicant is not entitled as a matter of legal right to require the Inquiry to provide a record of her evidence whether by provision of a transcript or disc. In R v HM Coroner ex parte Peach (Nos. 1 and 2) [1980] WLR 496 the Divisional Court in England addressed the ownership of statements, made to police but subsequently released to a coroner, on foot of a challenge to the coroners refusal to release the statements to a family member with a direct interest in the inquest proceedings. See also Re Mailey [1980] NI 102 and Re Devine & Breslins Application [1988] 14 NIJB 10. Although these authorities no longer represent the modern convention compliant law in relation to disclosure at inquests the broad underlying theme is still relevant. Those authorities support the Inquiry's position in the present case that the Inquiry's record of the evidence belongs to it not to the applicant.

6. The only means by which the applicant could establish an obligation on the Inquiry to furnish the record of the evidence before the Acknowledgement Forum to the applicant would be if she satisfied the court that in refusing to do so the Inquiry had breached some public law duty. In this respect the applicant asserted that in the absence of express statutory provision preventing disclosure by the Inquiry she had a legitimate expectation of being so provided. In my view the applicant could have had no legitimate expectation of being provided with the copy of the record of her evidence. Indeed such an expectation is confounded by the unchallenged averments of the solicitor to the Inquiry. He deposed that at the start of the meeting with the panel members of the Forum individuals are asked if they are prepared to allow the discussion to be recorded; the purpose of the recording is explained; it is also explained that a copy of the recording will *not* be provided to the individual; that it

is to assist the work of the Inquiry only and will not be made available beyond the Acknowledgement Forum unless the individual also wants to speak to the Statutory Inquiry, in which case it will also be made available to the Inquiry's legal team.

7. Nor was there any unfairness in the Inquiry chairman determining in the exercise of his discretion under Section 6 of the Inquiry into Historical Abuse Act (NI) 2013 ("the Act") and Rule 19(2) of the Rules, that such evidence to the AF is not to be released other than to the inquiry legal team, and only then in respect of those individuals who wish to engage with the Statutory Inquiry since it is clear from the governing legislation and the Terms of Reference that the AF process is designed to be confidential and that such confidentiality is an essential prerequisite for the AF to operate effectively.

8. Section 6(1) provides that subject to any provision of the Act or of rules made under section 21 that the procedure and conduct of the Inquiry are to be such as the chairperson may direct. Rule 19(1) provides that evidence given to the Acknowledgement Forum by any witness is to be treated as subject to an obligation of confidence owed separately by each member of the inquiry team to that witness. Rule 19(2) provides that evidence given to the Acknowledgement Forum must not be disclosed "(a) in the proceedings of any other part of the inquiry unless the chairperson so orders; or (b) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of convention rights (within the meaning of the Human Rights Act 1998)." Rule 19(3) provides that the restrictions in 19(2) shall not prevent "(a) the witness separately giving all or any part of that evidence to any other part of the inquiry; or (b) the disclosure in any criminal or civil proceedings in Northern Ireland of the evidence referred to in sub-paragraph(a)". The Inquiry's Terms of reference set out the remit of the Acknowledgement Forum:

"An Acknowledgement Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary the Forum will have the authority to hear accounts from individuals whose experiences fall outside the period 1922 - 1995. The Acknowledgement Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair."

9. The Chairman's duty to act with fairness in terms of the procedures adopted has to be considered in the light of the purpose of the Inquiry as set out in the Act, the Terms of Reference and subject to the rules of procedure. Subject of course to the

Act, Rules and the requirements of fair procedures and justice a wide margin of appreciation is to be afforded to the Inquiry in respect of the procedures they adopt influenced by factors such as speed, efficiency and costs. [See *Re Chief Constable Application [Stephen Walker]* [2008] NIQB 145 at para 10]. No arguable public law grounds have been established to impugn the decision of the chairman.

10. The present application is also out of time since it was not brought within 14 days after the date on which the applicant became aware of the decision as required by Section 19 (1) of the Act. I see no good reason why this time limit should be extended.

11. The Inquiry has received a number of requests from different solicitors seeking the record of the proceedings before the AF. It is important that I make clear that this confidential procedure is not intended as an evidence gathering forum for claimants and their lawyers who wish to pursue civil claims on their behalf.

Conclusion

12. Accordingly, for these reasons the judicial review is dismissed.