

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **21/9/10**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Quinn's (John) Application (Leave Stage) [2010] NIQB 100

**AN APPLICATION BY JOHN QUINN FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW**

TREACY J

Introduction

[1] The applicant is John Quinn, a resident of Magherafelt who seeks an order quashing the decision of the proposed respondent to close the Accident & Emergency Department of the Mid Ulster Hospital ("A&E").

Background to Closure

[2] The A&E Department ceased to operate on 24 May 2010. The applicant was aware from 12 May 2010 that the A&E Department was to close but did not meet with his solicitor until 25 May when he sought legal advice regarding a challenge to the closure.

[3] The substance of the applicant's challenge is that following assurances from the proposed respondent to the effect that the A&E Department would remain open until 2012 and that relocation would not occur until provision had been made at Antrim Area Hospital his legitimate expectation that this assurance would be honoured has been frustrated, without adequate consultation and before Antrim Area Hospital had sufficient capacity to deal with the increased attendances caused by the relocation.

[4] In this case the reason given for closure ahead of the expected time was patient safety linked, it would appear, to the non-availability of permanent staff at the Mid Ulster site.

[5] On 17 May 2010 in the Assembly the Minister said:

“...the trust has made me aware of pressing safety issues and difficulties in sustaining the current level of acute services, which have meant that immediate changes are required to the current A&E services on both sites and to inpatient medical services at Whiteabbey Hospital. The advice of senior clinicians is clear: this change is necessary within the time frame that the trust has set.”

[6] He also said:

“The senior accident and emergency consultant told me on 26 April that she could no longer sustain the service safely, following the departure of staff on 24 May, and I had no choice but to follow the guidance laid down by senior clinicians working in the trusts.”

[7] On 27 May, before the Assembly Health Committee, Mr Galloway from the Department of Health said:

“You will be aware from the Minister’s comments on the issue that he met with Colm Donaghy and Dr Dornan, the clinical director of unscheduled care in the Northern Trust, on 26 April 2010. At that meeting, the clear advice from the trust to the Minister was that, because of staff reductions at Whiteabbey, it could not guarantee that it could sustain the A&E services on either site. Two members of the medical team in the A&E department at Whiteabbey left in May 2010. The Mid-Ulster Hospital had locum doctors but no permanent staff in post, and the trust envisaged trying to sustain acute services at the Mid-Ulster Hospital, Antrim Area Hospital and Whiteabbey Hospital in that scenario. The trust’s clear advice to the Department was that it could not live with that situation because of the potential risks to patients.”

[8] The applicant was aware from 12 May 2010 of the imminence of the closure yet did not consult with a solicitor until after the closure. Indeed, the applicant, via his solicitor, did not correspond with the proposed respondent until letter dated 15 July 2010. A reply was received from the proposed respondent on 17 August which confirmed that patient safety was the reason for the urgent closure.

[9] I have not set out the detailed factual background relied upon by the applicant as demonstrating the representations upon which the stated legitimate expectation is said to be based. This has been very helpfully summarised in the applicant's skeleton argument. Even, however, if one assumes, for present purposes, that the applicant had the stated expectation based on earlier representations he could never, in my view, have legitimately expected the proposed respondent to maintain open an A&E Department in the teeth of the unequivocal advice received by the proposed respondent concerning the potential risks to patients.

[10] The Trust operating the A&E Department have a legal obligation to comply with the duty of care imposed by law and to provide a safe and effective service. It is clear from the evidence relied upon by the applicant that the point arrived in 2010 when the Trust believed that they could not satisfy their duty of care, for the reasons outlined, and consequently gave clear advice to the Department who, in the circumstances, had little if any choice but to comply with the advice given. The applicant cannot enjoy a legitimate expectation that a public authority provide services that don't comply with their duty of care nor can they be ordered by the Court to provide A&E services which are deemed unsafe.

[11] The claimed expectation, in the light of the material available to the Court, cannot be regarded as legitimate in the unqualified form in which it is asserted by the applicant. To put it another way, even if the legitimacy of the expectation was established, the Court considers that the overriding interest of patient safety extinguished it.

Delay

[12] At this stage the Court may refuse leave on the ground of delay unless it considers there is good reason for extending the period. Even if there is such good reason the Court may still refuse leave if the granting of the remedy sought would be likely to cause hardship or prejudice.

[13] RSC Order 53 Rule 4(1) requires that applications for leave are "made promptly and in any event within 3 months from the date when the grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made". The present application was neither made promptly nor within 3 months and I do not consider that any good reason exists for extending the period.

[14] The Courts have long emphasised the primacy of the promptness requirement which has added force when applications are made to challenge decisions which have already been taken, implemented and relied upon. The requirement to act promptly is particularly important in cases such as the present where the absence of a prompt challenge will almost certainly be

detrimental to good administration and may cause hardship or prejudice and affect the interests of third parties.

[15] Accordingly leave is refused.