THE COURT ORDERED that no one shall publish or reveal the name or address of JR222 or publish or reveal any information which would be likely to lead to the identification of JR222 or of any member of JR222's family in connection with these proceedings.

Michaelmas Term
[2024] UKSC 35
On appeal from: [2022] NICA 57

JUDGMENT

In the matter of an application by JR222 for Judicial Review (Appellant) (Northern Ireland)

Before

Lord Lloyd-Jones
Lord Burrows
Lord Stephens
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
30 October 2024

Heard on 20 March 2024

Appellant
John F Larkin KC
Natasha Fitzsimons
(Instructed by McCann & McCann (Belfast))

Respondent
Peter Coll KC
Philip McAteer
Leona Gillen
(Instructed by the Departmental Solicitor's Office (Belfast))

Notice Party
Sean Doran KC
Denise Kiley
(Instructed by Solicitor to the Muckamore Abbey Hospital Inquiry (Belfast))

First and Second Interveners
Monye Anyadike-Danes KC
Aidan McGowan
(Instructed by Phoenix Law (Belfast))

Third Intervener
Conor Maguire KC
Victoria Ross
(Instructed by O'Reilly Stewart (Belfast))

Appellant: JR222

Respondent: Minister of Health

Notice Party: Muckamore Abbey Hospital Inquiry

First Intervener (written submissions only): Aaron Brown (by his father and next friend Glynn Brown)

Second Intervener (written submissions only): Bryan McCarry (by his sister and next friend Brigene McNeilly)

Third Intervener (written submissions only): NP3

LORD STEPHENS (with whom Lord Lloyd-Jones, Lord Burrows, Lord Richards and Lady Simler agree):

1. Introduction

1. The issue on this appeal is, when all is said and done, a very short point as to the true interpretation of section 13(1) of the Inquiries Act 2005 ("the Act") which enables a public inquiry to be suspended. Section 13(1) provides that:

> "The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be *necessary* to allow for—
>
> (a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or
>
> (b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters." (Emphasis added).

The issue is:

> (i) whether, as the appellant contends, the word "necessary" only qualifies the period of suspension. On this interpretation the Minister should first decide whether to suspend an inquiry for one of the purposes set out in section 13(1)(a) or (b) and thereafter, if the Minister decides to suspend an inquiry, the Minister should then determine the period of time as appears to him to be *necessary* for the events in section 13(1)(a) or (b), as applicable, to occur; or
>
> (ii) whether, as the respondent contends, the word "necessary" also qualifies the decision of the Minister to suspend an inquiry. On this interpretation the Minister can only suspend an inquiry for one of the purposes in section 13(1)(a) or (b) if it appears to him that it is *necessary* to do so, and the suspension can only be for the period as appears to him to be *necessary* for the events in section 13(1)(a) or (b), as applicable, to occur.

2. The appellant, JR222, a former staff nurse at Muckamore Abbey Hospital ("the Hospital") brings these judicial review proceedings challenging two decisions of Robin Swann, the then Minister of Health ("the Minister") whereby he refused to suspend an

inquiry until the determination of criminal proceedings against her on the basis that it was not necessary to suspend the inquiry for that purpose. The decisions were communicated to JR222 in letters from the Minister dated 29 June 2022 and 3 August 2022. A ground of challenge to the decisions of the Minister (and the only remaining ground in this court) is that he incorrectly applied the concept of necessity to the entirety of his discretion under section 13(1) of the Act. This ground, along with several other grounds, were dismissed by Colton J in his judgment dated 15 September 2022 ([2022 NIKB 3]). JR222's appeal to the Court of Appeal was dismissed in a judgment delivered by Keegan LCJ dated 11 October 2022 with which Treacy and Horner LJJ agreed ([2022] NICA 57).

3. JR222 now appeals to this court. The Minister is the respondent to the appeal and the Inquiry is a notice party. This court has permitted the following persons to intervene in the appeal, namely: (a) Aaron Brown, a former patient at the Hospital, by his father and next friend, Glynn Brown; (b) Bryan McCarry, another former patient at the Hospital, by his sister and next friend, Brigene McNeilly; and (c) the mother of a former adult patient, now deceased, who spent time in the Hospital between 2016 and 2018. The mother is anonymised as NP3.

2. Factual background

4. In setting out the factual background I draw upon the very comprehensive and thorough judgments of the courts below.

(a) The Hospital, the patients at the Hospital and concerns as to their care

5. At all times relevant to these proceedings the Hospital provided inpatient assessment and treatment facilities for vulnerable people with severe learning disabilities, mental health needs, and challenging behaviour.

6. The medical circumstances of Aaron Brown, whose anonymity has been waived, illustrate the vulnerability and the needs of patients at the Hospital. Aaron was admitted to the Hospital in May 2017 when he was 21 years old and remained there until February 2020. Aaron's father, Glynn Brown, states that:

> "Aaron suffers from several significant difficulties. He has been diagnosed with autism, severe learning disability, ADHD, epilepsy, hypertrophic cardiomyopathy, and sensory issues. He is non-verbal and requires 24-hour care and assistance with feeding, toileting, medication, dressing, bathing, and all personal care. … Aaron is an exceptionally

> vulnerable individual who lacks capacity and [has] a similar level of functioning to a very young child."

Aaron's father describes how Aaron lived at home with his family but how, at about the age of 19, he began to develop significant aggressive behavioural traits. Matters came to a head when Aaron seriously injured his mother and as a result was admitted to the Hospital as a voluntary patient.

7. The medical circumstances of Bryan McCarry, whose anonymity has also been waived, further illustrates the vulnerability and the needs of patients at the Hospital. His sister, Brigene McNeilly, states:

> "My brother Bryan has been diagnosed with autism and bipolar disorder. He also has a severe learning disability and is essentially non-verbal, communicating with us mainly through gestures and expressions. He is an extremely vulnerable person. … Until he was 21 years, Bryan lived at home with our family. … However, his behaviour became more difficult to manage as he got older. Then in February 1988 there was an incident at home when Bryan unexpectedly attacked our mother. … On 22 February 1988, when Bryan was 21 years old, he was admitted to [the Hospital]. … Since Bryan's admission, a member of our family has been to visit him every day, except for the period when visits were stopped due to the Covid-19 pandemic. … [The visits involve] a 100-mile round trip [for me and other siblings] which we willingly make. He is our brother, and we love him."

8. In late August 2017 concerns began to emerge as to alleged inappropriate behaviour towards and the alleged abuse of patients by some staff in the Hospital. Several relations of patients, including Glynn Brown, formed a group known as "Action for Muckamore" to campaign to discover the truth about what had happened to family members in the Hospital.

(b) Two reports in response to concerns as to the care of patients at the Hospital

9. In response to these concerns the Belfast Health and Social Care Trust ("the Trust") commissioned an independent team, chaired by Dr Margaret Flynn, to undertake a Serious Adverse Incident review to examine safeguarding practices at the Hospital between 2012 and 2017. The independent team began their work in January 2018 and reported in November 2018 under the title "A Review of Safeguarding at Muckamore Abbey Hospital – A Way to Go". The report revealed systemic failures.

10. The Department of Health considered that that report had not sufficiently explored leadership and governance arrangements at the Hospital or at the Trust. Accordingly, a further independent review was commissioned to critically examine the effectiveness of the Trust's leadership, management and governance arrangements in relation to the Hospital for the five-year period preceding late August 2017 ("the Leadership and Governance Review"). The independent panel began their work in January 2020, and their report was completed in July 2020. The report highlighted that while the Trust had appropriate corporate governance and leadership arrangements in place, it failed to appropriately implement them at various levels within the organisation. The report concluded that this failure resulted in harm to patients.

11. As a result of above described events several members of staff at the Hospital have been suspended.

(c) The police investigation and the criminal proceedings

12. The concerns also led to an investigation by the Police Service of Northern Ireland ("the PSNI"). As a result of those investigations there have been eight arrests to date and in April 2021 the Public Prosecution Service for Northern Ireland ("the PPS") decided to charge JR222, along with seven other co-accused, with criminal offences in respect of alleged abuse committed in the course of their employment at the Hospital between April and June 2017.

13. JR222 and her seven co-accused have been committed for trial in the Crown Court and their trial is still pending.

14. The trial of JR222 and her seven co-accused is but one outworking of a large scale criminal investigation. There are said to be additional files under consideration by the PPS. It is also said that the investigation by the PSNI has not yet been completed. Accordingly, it may be that others will be prosecuted as a result of the ongoing police investigation and the ongoing consideration of files by the PPS.

(d) Consideration by the Minister to establishing an inquiry under the Act

15. In 2020 and prior to receiving the report into the Leadership and Governance Review, the Minister was considering whether to order an inquiry under the Act. In a briefing from officials dated 16 January 2020 two options were put to the Minister: do nothing or establish a public inquiry. In relation to the option of establishing a public inquiry the Minister was alerted to issues that might arise in respect of the parallel running of an inquiry and a criminal investigation and criminal proceedings. In his

response the Minister sought further advice from his officials which was provided in a briefing paper dated 28 January 2020. He was advised that:

> "3. There is some precedent for public inquiries proceeding in parallel with criminal investigations, most notably at present in the case of the Grenfell Tower Inquiry."

The advice went on to explain how the Grenfell Tower Inquiry was being dealt with by the chair with particular reference being made to a Memorandum of Understanding between the Grenfell Tower Inquiry and the Metropolitan Police Service who were undertaking criminal investigations into the fire, independently of the Inquiry. The Minister was further advised:

> "8. The [Memorandum of Understanding in the Grenfell Tower Inquiry] also states that the Chairman of the Inquiry will use all reasonable efforts, so far as consistent with his statutory duty under the Inquiries Act 2005, to conduct the Inquiry in a way which does not impede or compromise the [Metropolitan Police Service] investigation or its integrity.
>
> …
>
> 10. In summary, while there doesn't appear to be any legislative barrier to a public inquiry proceeding in parallel with ongoing criminal investigations and some precedent for this approach does exist, there is an obvious potential for a conflict of interest between the two processes. Witnesses called by a public inquiry may also be under investigation as part of the criminal investigation, and any evidence they might provide could potentially impact negatively on the criminal investigation. At the very least it would be important to have a clear delineation of the respective remits and roles of the parallel investigatory processes to avoid any potential prejudice to the outcome of the criminal investigation and cases against individuals."

16. On 11 March 2020 a submission was provided to the Minister recommending that he issue a letter to the then Chief Constable of the PSNI, Simon Byrne:

> "seeking his view on whether or not a public inquiry would interfere with ongoing investigation and potentially prejudice future prosecutions."

Such a letter was issued on 16 March 2020 and on 17 April 2020 the Chief Constable replied indicating that the PSNI:

> "will work with the Department of Health should [the Minister] make a decision to call a public or other inquiry but [the Chief Constable] would ask for due consideration in protecting the integrity of the criminal investigation."

17. Thereafter, the Minister awaited and considered the report from the Leadership and Governance Review concerning events at the Hospital.

18. After receipt of that report, the Minister received a further briefing from officials on 3 September 2020 which updated the Minister on the progress of the criminal investigation. The Minister was informed:

> "7. The police investigation into the abuse is ongoing and is likely to continue for some time (at least 2 - 4 years). To date, 7 individuals have been arrested and 63 members/former members of staff are on precautionary suspension (22 of these from January 2020 to date and 4 since the launch of the report of the Review of the Leadership and Governance Review). To date, the police have not advised the Department of any findings other than this is the largest adult safeguarding investigation ever conducted in the UK.
>
> 8. Families we have spoken to consider that the criminal justice process is likely to take care of those members of staff (front-line workers) who were involved in the actual abuse but they are concerned that senior members of staff, who, through ineffective management allowed the abuse to happen, will not be held to account.
>
> 9. It is also worth noting that as well as the ongoing police investigation there are likely to be professional misconduct hearings at some point; for instance, through the Nursing and Midwifery Council … and there may also be internal disciplinary proceedings. In addition, the Review PaneI has

> recommended that the [Trust] should consider immediate action to implement disciplinary action where appropriate on suspended staff."

19. In the briefing from officials dated 3 September 2020 the Minister was provided with five options for his consideration and was briefed on the risks and benefits of each option. I will set out the five options. Colton J in his judgment at paras 67-73 set out in detail the risks and benefits of several of those options but I will confine the risks and benefits to option 1 which is the option with which in the event the Minister agreed.

20. Option 1 was to commission an inquiry under the Act to run concurrently with the police investigation. The benefits of such an approach were described as including:

> (a) "This will satisfy the families and other interested parties who want answers about what happened at [the Hospital] and how it was allowed to happen sooner rather than later and don't think that the police investigation needs to conclude before a public inquiry starts.
>
> (b) There is no statutory barrier to a public inquiry operating in parallel with an ongoing police investigation, and there is some recent precedent for this approach in both the Grenfell and Leveson Inquiries."

21. Among the risks the following were identified:

> (a) "Running the two processes in parallel has the potential of interfering with the criminal investigation – we understand this has led to some difficulties in the Grenfell Inquiry.
>
> (b) Individuals have the right to refuse to give evidence to an Inquiry which may leave him or her open to prosecution (the right against self-incrimination).
>
> (c) Potentially witnesses may, in giving evidence, incriminate someone else leaving that person/persons open to potential future prosecution.
>
> (d) An undertaking that evidence presented by witnesses will not be used in a prosecution may have to be given (as was employed for example in the [Renewable Heat Incentive] Inquiry).

(e) Individuals could argue that the evidence heard at a Public Inquiry, the public reaction to this and the findings of an Inquiry may all make it difficult for them to obtain a fair criminal hearing."

22. Option 2 was to commission a non-statutory public inquiry. Option 3 was to commission an inquiry under the Act and then immediately suspend it to allow the police investigation to conclude. Option 4 was to wait for the criminal investigation to come to a conclusion and then establish an inquiry under the Act. Option 5 related to the establishment of an independent inquiry panel to examine wider issues than those which arose at the Hospital bringing a greater focus on accountability and the role of wider organisations pending conclusion of the police investigation.

23. By email dated 4 September 2020 the Minister responded to the 3 September 2020 briefing paper indicating his intention to "give further consideration of a Chair/Lead, but as previously highlighted with a Terms of Reference that doesn't affect the PSNI/PPS Service; that would give the Chair discretion to adopt Option 3." He meant by this that he preferred Option 1 but mistakenly believed that the chair of the inquiry could immediately suspend it. However, the chair does not have discretion to suspend an inquiry, this being a matter for the Minister to determine. The Minister was disabused of this misconception when the issue of suspension subsequently arose.

24. It is apparent that prior to deciding on whether to establish an inquiry under section 1 of the Act the Minister was fully sighted as to the potential implications of an inquiry overlapping with criminal investigations and proceedings.

(e) Establishment of the Inquiry

25. On 8 September 2020, the Minister exercising his power under section 1 of the Act ordered an inquiry ("the Inquiry") to examine, amongst other matters, the issue of abuse of patients at the Hospital. The Minister appointed Tom Kark KC as chair of the Inquiry and Professor Glynis Murphy and Dr Elaine Maxwell as panel members.

26. The terms of reference of the Inquiry require it to report and make findings on events that occurred between 2 December 1999 and 14 June 2021. The core objectives of the Inquiry in the terms of reference are to:

"(a) examine the issue of abuse of patients at [the Hospital];

(b) determine why the abuse happened and the range of circumstances that allowed it to happen;

> (c) ensure that such abuse does not occur again at [the Hospital] or any other institution providing similar services in Northern Ireland."

27. On 28 June 2022 the Inquiry commenced hearing evidence. It has continued and still continues with its work some two years later. Counsel, solicitor and administrative teams have been appointed for the duration of the Inquiry; core participants have been designated, documents have been obtained and over 100 witnesses identified; premises have been secured and technical staff employed. The Inquiry currently employs a full-time staff of approximately 20 personnel. The considerable investment in the Inquiry reflects its public importance.

(f) Overlap between the Inquiry and the criminal investigations and proceedings

28. The Inquiry is tasked with making findings on events that occurred at the Hospital between 2 December 1999 and 14 June 2021. The criminal prosecutions of JR222 and her seven co-accused relate to events which are alleged to have occurred at the Hospital between April and June 2017. Accordingly, the work of the Inquiry includes but also extends prior to and beyond the timeframe of the prosecutions. At para 106 of his judgment Colton J addressed the extent of the overlap between the work of the Inquiry and the criminal proceedings. He also identified that the work of the Inquiry extended significantly beyond just a consideration of the conduct of individuals. He stated:

> "[106] …. The period of time relating to the charges against [JR222] is therefore only a small part of the Inquiry's considerations. Further, the Inquiry is charged with the responsibility of examining a multiplicity of issues that extends significantly beyond the conduct of individuals, including: the role of staff at all levels and those responsible for management and oversight within the Trust and beyond; the processes for identifying and responding to concerns; recruitment, retention, training and support; the use of CCTV; the adequacy of policy and processes in place for discharge and resettlement of patients; the legal and regulatory framework. In addition, the Inquiry's work has an important forward looking aspect; it is expected to make recommendations on a wide range of matters with a view to ensuring that abuse does not recur at [the Hospital] or any other comparable institution within Northern Ireland. …."

(g) Measures taken by the Inquiry, the PSNI and the PPS to protect the integrity of the criminal investigations and proceedings

29. The Inquiry, the PSNI and the PPS have taken several detailed measures to protect the integrity of the parallel criminal investigation and proceedings.

(i) The Memorandum of Understanding

30. First, the Inquiry entered into a "Memorandum of Understanding" ("MOU") with the PSNI and the PPS. The objective of the MOU is to state the shared understanding of how the Inquiry, the PSNI and the PPS will discharge their respective statutory responsibilities as the Inquiry, the police investigation and the prosecutions proceed.

31. Para 4 of the MOU records that:

> "The PSNI is conducting an investigation in respect of alleged abuse at the [Hospital]. The investigation followed the seizure of CCTV footage relating to an approximate six month period commencing in April 2017. The investigation has resulted in arrests and in decisions being taken by PPS to prosecute individuals for offences alleged to have been committed at the [Hospital]."

Thus, the MOU specifically addresses the investigation which relates to the prosecution of JR222.

32. Para 6 of the MOU states:

> "The PPS and PSNI will provide the Inquiry with a narrative statement of the scope and progress of the investigation and prosecutions and will provide the Inquiry with monthly updates on those matters, with the objective of ensuring that the Inquiry is fully informed of relevant developments."

This dialogue enables the Inquiry to keep under constant review the question of the protective measures to preserve the integrity of the criminal investigation and proceedings. Based on further information provided by the PPS or the PSNI the Inquiry can consider exercising its powers under section 17 of the Act to give directions as to procedures and under section 19 of the Act to make restriction orders.

33. Para 10 of the MOU provides:

> "The three parties will engage in ongoing consultations to ensure that the arrangements set out in the MOU are working effectively. The three parties will also ensure that all persons involved in responsibilities that may fall within the ambit of the MOU are aware of its contents."

Accordingly, the MOU provides for ongoing co-operation between the three parties. The measures are not static. Rather, they are subject to revision and can be and have been adapted. For instance, there have been two further versions of the MOU. Version 2 was issued on 13 December 2022 and was amended on 5 October 2023. Version 3 was issued on 12 October 2023. The excerpts below are taken from the original version.

34. The basic principles set out in the MOU are also important. They provide as follows:

> "16. The Chair of the Inquiry acknowledges the need to make every effort to ensure that the work of the Inquiry does not impede, impact adversely on or jeopardise in any way the PSNI investigation into abuse at the [Hospital] and the prosecutions that result from that investigation.
>
> 17. The subject matter of the investigation and prosecutions is of direct interest to the Inquiry, but the Inquiry is not examining the response of the PSNI and the PPS that has followed from the seizure of the CCTV footage.
>
> 18. The Chair, in accordance with section 17(1) of the Act, shall make every effort to ensure that the procedure and conduct of the inquiry respects the integrity of the investigation and prosecutions while continuing to address its terms of reference.
>
> 19. In particular, the Inquiry will be conducted with due regard to the live nature of the investigation and any ongoing or prospective prosecutions … in accordance with the arrangements prescribed by this MOU.

20. The Chair shall where necessary adopt specific measures as the Inquiry proceeds to ensure protection of the integrity of the investigation and prosecutions.

21. The parties to the MOU take cognisance of the fact that public access to Inquiry proceedings and information is governed by section 18 of the Act. Restrictions on such access are governed by section 19 of the Act. Restrictions imposed by the Chair must be justified with reference to section 19(3) to (5).

22. The PSNI and PPS acknowledge that the work of the Inquiry extends beyond the subject matter and timeframe of the police investigation and that the Inquiry must proceed with reasonable expedition to conduct the work that is necessary to fulfil its terms of reference.

23. The PSNI and PPS also acknowledge that the subject matter of the investigation and prosecutions is within the Inquiry's terms of reference and is therefore required to be addressed by the Inquiry.

24. In discharging their respective responsibilities in accordance with this MOU, the Chair, the PSNI and the PPS will adopt such measures as are required to protect the Convention rights of persons affected."

35. Part C of the MOU outlines a process for applications to restrict disclosure of documents to core participants. The issue of the production of documents by the PSNI to the Inquiry and the subsequent disclosure of those documents by the Inquiry is addressed in paras 30 – 32 of the MOU. Those paragraphs provide:

"30. Documents relating to the investigation and prosecutions that are provided by PSNI in accordance with this part of the MOU will not be disclosed to Core Participants without reasonable notice being given to the PPS and the PSNI.

31. The PSNI and/or the PPS may request that specified documents should not be disclosed to Core Participants where there is a real risk of such disclosure impeding, impacting adversely on or jeopardising the criminal proceedings

> resulting from the investigation. Such a request will be made by way of an application under Rule 12 of the Rules, specifying the nature of the risk and the suggested justification for a restriction on disclosure being imposed in accordance with section 19.
>
> 32. In considering such an application, the Chair will have due regard to the live nature of the investigation and any ongoing or prospective prosecutions. The question of whether the real risk of disclosure impeding, impacting adversely on or jeopardising the criminal proceedings will be kept under review and any restriction on disclosure will remain in place only so long as is reasonably necessary."

36. The MOU also makes provision for viewing arrangements in relation to CCTV footage of events at the Hospital. It provides that viewing will be restricted to the Inquiry Panel, the solicitor to the Inquiry and senior and junior counsel to the Inquiry. It also provides that the question of wider viewing of the CCTV footage will be kept under review in consultation with the PSNI and the PPS. This is with the express purpose "to ensure that the integrity of the investigation and the prosecutions is protected.": para 42. Para 44 provides:

> "In considering any issue relating to the viewing of CCTV footage, the Chair will have particular regard to the live nature of the investigation and any ongoing or prospective prosecutions."

37. On the issue of oral evidence at the Inquiry the MOU provides, amongst other matters, as follows:

> "64. The Inquiry's legal team, when scheduling oral evidence, will seek to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions.
>
> 65. The Inquiry panel may defer issuing a request to a witness to give oral evidence under Rule 9 of the Rules, where it adopts the view that such deferral is necessary to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions. Where it appears to the panel to be necessary to call such a witness to give oral evidence, the Inquiry will notify the other parties to the MOU and will

> afford a reasonable opportunity for an application for a Restriction Order in appropriate terms to be made.
>
> 66. The Chair shall also take appropriate steps in the course of oral evidence to avoid the risk of impeding, impacting adversely on or jeopardising the investigation or prosecutions.
>
> 67. Where oral evidence is given to the Inquiry and the Chair forms the view that reporting or publication of that evidence may impede, impact adversely on or jeopardise the investigation or prosecutions, the Chair shall issue a Restriction Order in appropriate terms under section 19 of the Act to restrict reporting or publication of such evidence until the views of the parties to this MOU can be canvassed."

(ii) Undertaking by the Director of Public Prosecutions

38. Secondly, the Director of Public Prosecutions has given an undertaking, dated 6 June 2022, that no oral evidence or written statement drafted for the purpose of giving evidence to the Inquiry will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings. This undertaking does not apply to a prosecution in which a person is charged with having given false evidence in the course of the Inquiry or having conspired with or procured others to do so or for a prosecution with any offence under section 35 of the Act.

(iii) Restriction orders

39. Thirdly, to date the Inquiry has made some 90 restriction orders. Numerous detailed measures to protect the integrity of the criminal investigation and proceedings are contained in those orders. Restriction Order No 1 entitled "Redaction of Personal Details" makes provision for the redaction of, for instance, private addresses. Central to the allegations of abuse is the CCTV footage recording events at the Hospital. Restriction Order No 3 entitled "CCTV" restricts those who can view CCTV footage to the Inquiry panel, the solicitor to the Inquiry, senior and junior counsel to the Inquiry, and any officer of the PSNI tasked to assist with the playing of CCTV footage. Restriction Order No 4 entitled "Staff Identification" prohibits the identification of past and present staff members who are implicated in abuse of a patient in evidence received by the Inquiry. It also makes provision for their names to be redacted in statements and replaced with ciphers.

40. In a statement dated 20 June 2022 the chair explained the rationale behind the restriction order in relation to staff identification as follows:

> "10. I regard this measure as necessary in the interests of fairness and to achieve the Inquiry's objectives. It is particularly important to bear in mind that there is a live criminal investigation and prosecutions. As acknowledged in the MOU, there is a need to take steps where necessary to ensure that the Inquiry's work does not impede, impact adversely on or jeopardise the criminal proceedings.
>
> 11. Staff named in Inquiry statements may be facing charges or may face charges in the future. This Order means that they will not be publicly named in the evidence given to the Inquiry. The Inquiry also wants to hear from staff, including staff who are the subject of allegations. They will have an opportunity to comment on allegations made against them. The naming in evidence of staff against whom allegations are made would, in my view, discourage staff from co-operating with the Inquiry. The order will, I believe, both ensure fairness and facilitate engagement by staff with the Inquiry."

(iv) Undertakings by core participants

41. Fourthly, the Inquiry has required core participants, their relevant employees and their legal representatives to sign strict confidentiality undertakings in respect of all material received for Inquiry purposes.

(v) Attendance at the Inquiry of a legal representative of the PSNI

42. Fifthly, the PSNI have appointed senior counsel to engage with and attend the Inquiry.

43. All these measures which I have summarised were arrived at after much thought by the chair and were devised in consultation with all interested parties. They are also subject to review and adaptation by the chair as evidence is heard or as a result of developments in relation to the criminal investigations or proceedings.

(h) JR222's request to the Minister for the Inquiry to be suspended and his refusal to suspend it

44. On 16 June 2022, JR222's solicitors wrote to the Inquiry with a copy to the Minister requiring "the immediate suspension of the Inquiry" under section 13(1)(b) of the Act on the basis that the rights of JR222 and other defendants to a fair trial under article 6 of the European Convention on Human Rights ("the ECHR") "have been and continue to be infringed by this Inquiry commencing prior to the conclusion of the criminal prosecution" of them. The sole focus of the letter was on the fair trial rights of JR222 and the other defendants. Unsurprisingly, that was also the sole focus of the Minister's reply dated 29 June 2022. In the reply the Minister summarised the safeguards that were in place to protect the integrity of the criminal investigation and the criminal proceedings. Those safeguards included, for instance, the MOU with the PSNI and the PPS and the Restriction Orders which had been made by the chair. The Minister declined to suspend the Inquiry on the basis that it was not necessary to do so to allow for the determination of the criminal proceedings.

45. On 24 June 2022 the Inquiry replied to JR222's solicitor's letter dated 16 June 2022. Unsurprisingly, the sole focus of the reply was on the fair trial rights of JR222 and the other defendants. In the reply, the Inquiry summarised the safeguards that were in place to protect the integrity of the criminal investigation and the criminal proceedings.

46. By letter dated 7 July 2022, JR222's solicitors wrote to the Minister again inviting him to use his power under section 13(1)(b) of the Act to suspend the Inquiry pending the determination of the criminal proceedings against JR222. The Minister replied by letter dated 9 August 2022 stating that he remained "of the opinion that it is not appropriate to suspend the Inquiry at this point" and that he had "decided against invoking the power under section 13 of the Inquiries Act 2005."

47. In making both of those decisions the Minister accepted and applied advice from his officials contained in a note dated 27 June 2022. The advice was that:

> "The Minister has a discretionary power under section 13 of the 2005 Act to suspend an Inquiry, where it is '*necessary*' to allow for the completion of a criminal investigation or criminal proceedings arising out of matters to which the Inquiry relates." (Emphasis added).

Accordingly, the Minister applied the concept of necessity to the entirety of his discretion under section 13.

3. The procedural history

48. On 12 July 2022 JR222 sought leave to apply for judicial review of the Minister's decision to refuse to suspend the Inquiry.

49. By order dated 15 July 2022 the court granted leave to apply for judicial review and directed that the following parties should be notice parties to the application, namely: (a) the Inquiry; (b) the PPS; (c) the PSNI. The three interveners in this appeal and the Trust were also later joined as notice parties in the proceedings.

50. JR222's Order 53 statement dated 13 July 2022 set out wide-ranging grounds of challenge to the decision of the Minister. The grounds alleged that the Minister had taken into account immaterial considerations, failed to consider material considerations, acted irrationally, unlawfully fettered his discretion, unlawfully placed undue reliance on or deference to the views of the chair and acted in breach of statutory duty. The Order 53 statement was then amended on 15 August 2022 to include a challenge to the Minister's second decision on 9 August 2022, and a new ground of challenge, namely that the Minister's decisions were procedurally unfair and failed to give adequate reasons. However, at this stage, the focus of JR222's challenge was on the alleged breach of her right to a fair trial under article 6 of the ECHR. The core of JR222's case was that publicity from the Inquiry would prejudice her criminal trial. Therefore, she contended that the Minister, if faithful to his duty to act in a Convention compliant way, should suspend the Inquiry to protect JR222's fair trial rights.

51. JR222's pre-action correspondence and her Order 53 statement did not raise the issue as to the true interpretation of section 13(1) of the Act which is the sole issue on this appeal. It was not until 8 September 2022, the date of the hearing before Colton J, that this issue was first raised. On that date a further application was made to amend the Order 53 statement, which Colton J granted. The amendment added the following additional ground of challenge:

> "(vi) The minister has misdirected himself as to the nature of his discretion under Section 13 of the Inquiries Act 2005 in the following respects:
>
> (a) He applied the concept of necessity to the entirety of his discretion under section 13 of the Inquiries Act 2005;

> (b) He failed to appreciate that the concept of necessity applies only to fixing the duration of any period of suspension."

4. The relevant provisions of the Act

52. Section 1 of the Act is headed "Power to establish inquiry." The power to establish an inquiry is given to a Minister and the definition of a Minister includes the Minister of Health for Northern Ireland: section 1(2)(c). Section 1(1) provides that:

> "(1) A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that—
>
> (a) particular events have caused, or are capable of causing, public concern, or
>
> (b) there is public concern that particular events may have occurred."

The discretion to cause an inquiry to be held only arises where it appears to the Minister that "particular events have caused, or are capable of causing, public concern" or "there is public concern that particular events may have occurred." The statutory purpose of an inquiry, to address public concerns, is informed by those prerequisites. An inquiry achieves that statutory purpose by finding out what happened, and if appropriate by making recommendations. As a result of finding out what has happened and by making appropriate recommendations public confidence can potentially be restored in a service or organisation. An inquiry performs this purpose independently of government and ordinarily in relation to matters of high public importance. The significance of inquiries under the Act is reflected in the statutory obligations on the Minister to make statements to the relevant Parliament or Assembly and the obligation on the Minister to lay the inquiry's reports before the relevant Parliament or Assembly: see sections 6(1), 6(4), 14(4) and 26.

53. Section 2 of the Act under the heading of "No determination of liability" provides:

> "(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.

> (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes."

54. Section 3(1) of the Act makes provision for an inquiry "to be undertaken either (a) by a chairman alone, or (b) by a chairman with one or more other members." Section 3(2) provides that "References in this Act to an inquiry panel are to the chairman and any other member or members."

55. Section 4(1) of the Act makes provision for the appointment of the inquiry panel by the Minister by an instrument in writing and section 4(3) provides that "Before appointing a member to the inquiry panel (otherwise than as chairman) the Minister must consult the person he has appointed, or proposes to appoint, as chairman."

56. Section 5 of the Act makes provision, amongst other matters, for the Minister to set out the terms of reference of the inquiry: section 5(1)(b). Section 5(3) provides that "The Minister may at any time after setting out the terms of reference … amend them if he considers that the public interest so requires." However, "before setting out or amending the terms of reference the Minister must consult the person he proposes to appoint, or has appointed, as chairman": section 5(4). Where the terms of reference of an inquiry are amended, the Minister must, as soon as is reasonably practicable, make a statement to the relevant Parliament or Assembly setting out the amended terms of reference: section 6(3).

57. Section 5(6) of the Act defines what is meant in the Act by "terms of reference". It provides that:

> "In this Act 'terms of reference', in relation to an inquiry under this Act, means –
>
> (a) the matters to which the inquiry relates;
>
> (b) any particular matters as to which the inquiry panel is to determine the facts;
>
> (c) whether the inquiry panel is to make recommendations;

(d) any other matters relating to the scope of the inquiry that the Minister may specify."

58. Section 6(1) of the Act makes provision for the Minister to inform the relevant Parliament or Assembly by making a statement to the effect either that they propose to cause an inquiry to be held, or that they have already done so. Section 6(2) sets out the matters which must be stated, such as what are to be, or are, the inquiry's terms of reference.

59. As indicated at the start of this judgment, this appeal concerns the true interpretation of section 13(1) which is set out at para 1 above. However, for completeness it is appropriate to set out the whole of section 13. It provides:

"(1) The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for—

(a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or

(b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters.

(2) The power conferred by subsection (1) may be exercised whether or not the investigation or proceedings have begun.

(3) Before exercising that power the Minister must consult the chairman.

(4) A notice under subsection (1) may suspend the inquiry until a specified day, until the happening of a specified event or until the giving by the Minister of a further notice to the chairman.

(5) Where the Minister gives a notice under subsection (1) he must—

(a) set out in the notice his reasons for suspending the inquiry;

(b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly.

(6) A member of an inquiry panel may not exercise the powers conferred by this Act during any period of suspension; but the duties imposed on a member of an inquiry panel by section 9(3) and (4) continue during any such period.

(7) In this section 'period of suspension' means the period beginning with the receipt by the chairman of the notice under subsection (1) and ending with whichever of the following is applicable—

(a) the day referred to in subsection (4);

(b) the happening of the event referred to in that subsection;

(c) the receipt by the chairman of the further notice under that subsection."

60. In understanding section 13 more fully, I make several points.

61. First, the purposes of a suspension are limited to those in section 13(1)(a) or (b). The Court of Appeal considered that, on JR222's approach, section 13(1) would have to be read as giving the Minister "a power to suspend that is free standing and not limited to the grounds in [section] 13(1)(a) and (b)": see para 49 of the judgment of Keegan LCJ. JR222 asserts that the Court of Appeal misunderstood her contention. JR222 agrees that the power to suspend is limited to the purposes in section 13(1)(a) and (b) but submits that the Minister's evaluative assessment in relation to those purposes is free standing and not restrained by a test of necessity.

62. Secondly, the existence of discretion to suspend if, for instance, there are criminal proceedings, means that an inquiry can continue even if there are criminal proceedings. Accordingly, not only is there no prohibition in the Act on an inquiry

proceeding if there are criminal proceedings but the Act expressly envisages that in the exercise of discretion an inquiry can continue if there are such proceedings.

63. Thirdly, the power to suspend is vested in the Minister but before exercising the power the Minister must consult the chair. In this way the Minister, who is ordinarily detached from detailed day-to-day knowledge of the running of an inquiry, can form a view as to whether to suspend but with the benefit of information gathered as the result of consultation with the chair who will have such knowledge.

64. Fourthly, the period of suspension is until the day specified in the notice, or the happening of an event specified in the notice or the receipt by the chair of a further notice given by the Minister.

65. Fifthly, if the Minister suspends an inquiry, then he or she must not only set out in the notice their reasons but also must lay a copy of the notice before the relevant Parliament or Assembly. On behalf of JR222 it is submitted that, as in section 13(5) there is no mention of a requirement that the Minister sets out his or her reasons as to why it is *necessary* to suspend an inquiry, this aids an interpretation of section 13(1) that there is no test of necessity in relation to the Minister's evaluation of the purposes in section 13(1)(a) and (b).

66. Section 14(1)(a) of the Act provides for an inquiry to come to an end on the date, after the delivery of the report of the inquiry, on which the chair notifies the Minister that the inquiry has fulfilled its terms of reference: section 14(1)(a). However, section 14(1)(b) vests in the Minister the power to end an inquiry at any earlier date in a notice given to the chair by the Minister. Before exercising the power under section 14(1)(b) the Minister must consult the chair: section 14(3). Where the Minister gives a notice under section 14(1)(b) he or she must (a) set out in the notice the reasons for bringing the inquiry to an end; and (b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly. The power vested in the Minister to bring an inquiry to an end under section 14(1)(b) is not subject to any requirement of necessity. On behalf of JR222 it is submitted that it would be absurd for Parliament to have specified a test of necessity in relation to the evaluation of the purposes in section 13(1)(a) and (b) in order to suspend an inquiry without specifying a similar test in relation to bringing an inquiry to an end under section 14(1)(b). JR222's submission is that the test under section 13(1) should be seen in the context of section 14(1)(b). Seen in that context it is suggested that the true interpretation of section 13(1) is that there is no test of necessity in relation to evaluation of the purposes because there is no test of necessity in relation to a decision to bring an inquiry to an end.

67. Section 17(1) of the Act under the heading of "Evidence and procedure" provides:

> "Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct."

In circumstances where there are parallel investigations or proceedings, including parallel criminal investigations or criminal proceedings, the chair can give directions under section 17(1) to ensure that the procedure and conduct of an inquiry respects the integrity of the parallel investigations and proceedings while continuing to address the inquiry's terms of reference.

68. Section 19 of the Act under the heading "Restrictions on public access etc" provides:

> "(1) Restrictions may, in accordance with this section, be imposed on—
>
> (a) attendance at an inquiry, or at any particular part of an inquiry;
>
> (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
>
> (2) Restrictions may be imposed in either or both of the following ways—
>
> (a) by being specified in a notice (a 'restriction notice') given by the Minister to the chairman at any time before the end of the inquiry;
>
> (b) by being specified in an order (a 'restriction order') made by the chairman during the course of the inquiry."

The chair of an inquiry has power under section 19 to make restriction orders to protect the integrity of parallel criminal investigations and proceedings while continuing to address the inquiry's terms of reference.

5. A summary of the judgments of the High Court and the Court of Appeal

(a) Colton J

69. As I have indicated, in para 50 above, there were several wide-ranging grounds of challenge to the Minister's two decisions not to suspend the Inquiry, none of which were pursued in the Court of Appeal or on this appeal except for the ground relating to the interpretation of section 13(1) of the Act. For instance, no appeal is pursued in relation to Colton J's conclusion, at para 51 of his judgment, that "no breach of [JR222's] article 6 rights has been established." As this appeal is limited to the ground relating to the interpretation of section 13(1) strictly speaking it is only necessary to summarise Colton J's judgment in relation to that ground of appeal. However, I consider it appropriate to give a brief overview of Colton J's reasons for dismissing the other wide-ranging grounds of challenge. The reasoning of Colton J in relation to those grounds of challenge was that the Minister had decided to establish the Inquiry being fully sighted as to an overlap with the criminal investigations and proceedings. Thereafter, the Minister decided that it was not necessary to suspend the Inquiry to allow for the determination of the criminal proceedings. He arrived at that decision given, for instance, the precautions taken to protect the integrity of the criminal investigations and proceedings and given the important work with which the Inquiry was tasked, including ensuring that such abuse does not occur again at the Hospital or at any other institution providing similar services in Northern Ireland. There was nothing irrational or unlawful about that decision.

70. The only remaining ground of challenge before Colton J was that the Minister incorrectly applied necessity to the entirety of his discretion under section 13(1). In relation to that ground of challenge Colton J held, at para 144, that the text of section 13(1) should be read as a whole so that "any suspension imposed by the Minister must be necessary before it may be imposed." Colton J was satisfied that the Minister had applied the correct test.

(b) The Court of Appeal

71. Keegan LCJ, at para 47 of her judgment, held that section 13(1) of the Act "naturally reads as one question which must be answered." Accordingly, section 13(1) "must be considered as a whole and as requiring one, single coherent decision." On this basis necessity applied to both the purposes in section 13(1)(a) and (b) and to the period of suspension. Keegan LCJ rejected the submission on behalf of JR222 that section 13(1) contained two considerations rather than one with "some broader undefined discretion" applying to a consideration of the purposes in section 13(1)(a) and (b) and (at para 53) she considered that this submission was "against the plain and ordinary meaning of the statute, and the Explanatory Notes" to the Act. She also considered that

it was "contrary to" a passage at para 10.05 of *Beer on Public Inquiries* (2011) which she described as being "the authoritative text in this area." Accordingly, the Court of Appeal dismissed the appeal.

6. Statutory interpretation

72. The normal principles of statutory interpretation are engaged.

73. The courts in conducting statutory interpretation are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision.

74. In R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department [2022] UKSC 3, [2023] AC 255, Lord Hodge, with whom those in the majority agreed, stated, at para 29:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397: 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

75. In *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684, at para 28 Lord Nicholls of Birkenhead also set out the requirement to have regard to the purpose of a particular provision, so far as possible. He said:

> "… the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."

76. In addition, courts should seek to avoid an interpretation that produces an absurd result, since this is unlikely to have been intended by the legislature. In that respect absurdity is given a very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality: see *R v McCool* [2018] UKSC 23, [2018] NI 181, [2018] 1 WLR 2431, paras 23 and 24.

77. In R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department Lord Hodge also stated the following in relation to external aids to interpretation at para 30:

> "External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole."

78. In this appeal, the respondent relies on reports in Hansard as to the legislative debates during the passage of the Bill which led to the enactment of the Act as an external aid to interpretation. Under the rule in *Pepper v Hart* [1993] AC 593, the court may have regard to reports of the legislative debates on a Bill for the purpose of ascertaining the meaning of a provision of the resulting Act where three critical conditions are met. The three critical conditions are (i) that the legislative provision must be ambiguous, obscure or, on a conventional interpretation, lead to absurdity; (ii) that the material must consist of or include one or more statements by a minister or other promoter of the Bill; and (iii) the statement must be clear and unequivocal on the point of interpretation which the court is considering.

79. In this appeal the respondent also asks the court to consider a passage in *Beer on Public Inquiries* in construing section 13(1) of the Act. It is appropriate to do so as "[t]he writings of jurists and other learned commentators may be considered by the court in construing an enactment": see *Bennion, Bailey and Norbury on Statutory Interpretation,* 8th ed (2020) ("Bennion") at para 24.22. However, this statement in Bennion is followed by the comment that:

> "Views expressed in textbooks and other commentaries are often considered by the courts in construing legislation, although they are of no more than persuasive authority. As Lord Diplock said in *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 284:
>
> > 'It may be that greater reliance than is usual in the English courts is placed [upon] the writings of academic lawyers by courts of other European states where oral argument by counsel plays a relatively minor role in the decision-making process. The persuasive effect of learned commentaries, like the arguments of counsel in an English court, will depend [upon] the cogency of their reasoning. Those to which your Lordships have been referred contain perhaps rather more assertion than ratiocination ….'"

7. Hansard material

80. It is convenient at this stage to set out the passage in Hansard primarily relied on by the respondent as an external aid to the interpretation of section 13(1) of the Act. Clause 12(1) of the Inquiries Bill 2004 as introduced in the House of Lords on 25 November 2004 was expressed in the same terms as that which became section 13(1) of the Act. On 19 January 2005 Lord Evans of Temple Guiting, who was a government

whip and a promoter of the Bill, stated (at HL Deb 19 January 2005, vol 668, col GC259):

> "There is some concern about the possibility that the powers in Clause 12 to suspend an inquiry could be abused. As my noble friend has explained, Clause 12 allows a Minister to suspend an inquiry only *when it is necessary to allow for the completion of other related investigation or the determination of any civil or criminal proceedings*. The power is very limited and very important. It could not be used to suspend an inquiry because, for example, the Minister did not like what the inquiry was finding. We must remember that any improper or unreasonable decision to suspend an inquiry could be challenged in the courts through judicial review." (Emphasis added).

8. The true interpretation of section 13(1) of the Act

81. At the outset I recognise that there are two possible interpretations of section 13(1). As a matter of syntax, it is plausible that "for such period as appears to him to be necessary" qualifies "for such period" and not "may … suspend." However, an alternative interpretation is that "for such period" is a phrase within a sentence, so that reading the sentence as a whole, necessity applies to both the purposes in section 13(1)(a) and (b) and to the period of suspension.

82. In agreement with the courts below I consider that the true interpretation is that section 13(1) naturally reads as one question which must be considered and answered as a whole. On this basis necessity applies to both the purposes in section 13(1)(a) and (b) and to the period of suspension. I arrive at that interpretation ("the respondent's interpretation") for several reasons.

83. First, and in agreement with the lower courts, the meaning of the words used by Parliament is consistent with the respondent's interpretation.

84. Secondly, the interpretation is put beyond all doubt by reference to the external aid of the legislative debate. The three critical conditions set out by Lord Browne-Wilkinson in *Pepper v Hart* are met. First, section 13(1) is ambiguous. Second, the material is a statement by a promoter of the Bill. Third, the point of interpretation is whether the test of necessity applies to the purposes in section 13(1)(a) and (b). Lord Evans addressed that point. In doing so, he did not say that a Minister may suspend an inquiry when he considered it desirable or appropriate or prudent for the completion of other related investigations or the determination of any civil or criminal proceedings. If

he had then that would be consistent with the appellant's interpretation that the Minister's evaluative assessment in relation to the purposes in section 13(1)(a) and (b) are free standing and not restrained by a test of necessity. Rather, Lord Evans clearly and unequivocally stated that clause 12 (now section 13(1)) "allows a Minister to suspend an inquiry only when it is necessary to allow for the completion of other related investigation or the determination of any civil or criminal proceedings." Accordingly, the statement is clear and unequivocal on the point of interpretation which the court is considering and is a powerful and, in my view, a decisive aid to the respondent's interpretation of section 13(1) of the Act.

85. Thirdly, I consider that the respondent's interpretation is further supported by the statutory purpose of an inquiry which is to address public concerns. It would be contrary to that purpose if an inquiry were to be suspended unless it was necessary to do so for one of the stated purposes. JR222's interpretation would result in delay to the public interest being served by an inquiry in circumstances where it was not necessary for the delay to occur for one or other of the purposes set out in section 13(1)(a) or (b). So, for instance in this case the Minister decided that given all the precautions that had been and were being taken to protect the integrity of the criminal proceedings it was not necessary to suspend the inquiry to allow for the determination of those proceedings. Applying the test of necessity advances the statutory purpose of the Inquiry which includes allaying the high degree of public concern that the most vulnerable members of our society should not be abused in institutions in Northern Ireland which are there to protect and care for them. JR222's interpretation of section 13(1) would mean that the vital work of the Inquiry which includes protection of other extremely vulnerable individuals would be delayed even if it was not necessary for the delay to occur to allow for the determination of the criminal proceedings.

86. Fourthly, if, as JR222 submits, section 13(1) involves two separate stages with necessity only applying at the second stage, then this creates the illogical result that a stricter test applies at the less important secondary stage of the period of suspension rather than at the anterior and more important stage of forming an evaluation as to whether the inquiry should be suspended to allow for the determination of, for instance, criminal proceedings.

87. Fifthly, I consider that the respondent's interpretation is further supported by paragraph 26 of the Explanatory Notes to the Act, which are materially identical to the Explanatory Notes to the Bill. Paragraph 26 addresses section 13 and states:

> "In the event that new investigations or proceedings come to light or are commenced after the inquiry has started, it may be *necessary to halt* the inquiry temporarily. This section sets out the circumstances in which a Minister may, after consulting

> the chairman, suspend an inquiry to allow other proceedings to be completed." (Emphasis added).

The appellant's interpretation of section 13(1) is that necessity only qualifies the period of suspension. However, in the Explanatory Notes the word "necessary" qualifies the word "halt" so supports the respondent's interpretation that necessity applies to the Minister's evaluation of the purposes in section 13(1)(a) and (b).

88. Sixthly, if section 13(1) involves two separate stages as JR222 submits, then once a decision has been made to suspend because of, for instance, the existence of criminal proceedings, ordinarily the period of suspension would be dependent on the progress of those proceedings and outwith the control of the Minister. In such circumstances applying a test of necessity solely to the period of suspension would be illogical. Rather, a workable solution is that the period of suspension cannot be necessary unless it is also necessary to suspend an inquiry for one of the purposes in section 13(1)(a) and (b).

89. Seventhly, I reject the submission on behalf of JR222, set out at para 66 above, that the absence of any test of necessity in section 14(1)(b) in relation to a Ministerial decision to end an inquiry supports the appellant's interpretation of section 13(1). JR222 submits that it would be a "faintly absurd arrangement" for a Minister to end an inquiry without having to satisfy a test of necessity but that to suspend an inquiry it must appear to him or her to be necessary for the events in section 13(1)(a) or (b), as applicable, to occur. However, I consider that a decision to bring an inquiry to an end is not analogous to suspending an inquiry. A decision to end an inquiry is made in the context that there is no further need for the inquiry. A decision to suspend an inquiry is made in the context of a continuing public interest in the inquiry taking place. In view of the different contexts the existence of two different powers is not absurd. Rather, it is appropriate that the power to suspend requires a higher test than that for bringing an inquiry to an end.

90. Eighthly, I reject the submission on behalf of JR222, set out at para 65 above, that, as there is no mention in section 13(5) of a requirement for the Minister to set out his reasons as to why it is *necessary* to suspend an inquiry, this aids an interpretation of section 13(1) that there is no test of necessity in relation to the Minister's evaluation of the purposes in section 13(1)(a) and (b). The fact that this ancillary provision does not rehearse the language of necessity does not change the nature of the decision to be taken or the test to be applied under section 13(1). The reasons given under section 13(5) should include why the decision was taken to suspend by reference to the language of necessity. There was no need to spell this out in section 13(5).

91. I should say something about the passage from *Beer on Public Inquiries*. At paragraph 10.05 of *Beer on Public Inquiries* the authors refer to the conditions for exercise of the power of suspension in the following terms:

> "The power of suspension may only be exercised if one of two conditions is fulfilled, namely that *it appears to the minister to be necessary* to suspend the inquiry to allow for (a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or (b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary panel) arising out of any of those matters." (Emphasis added).

It is apparent that the respondent's interpretation appeared to the authors of this textbook to be correct. However, the persuasive effect of the views expressed in this textbook depends on the cogency of the author's reasoning and para 10.05 contains assertion without any ratiocination. I consider that this passage is of no assistance in determining the correct interpretation of section 13(1).

9. Conclusion

92. I would dismiss the appeal.