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Case No: AC-2023-LON-000922
CO/806/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/11/2023

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

THE KING ON THE APPLICATION OF DANNY WALKER	**Claimant**
- and -	
SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Michael Bimmler (instructed by **Prisoners Advice Service**) for the **Claimant**
Claire Darwin KC (instructed by **GLD**) for the **Defendant**

Hearing date: 25 October 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 8 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is a renewed application for permission to seek judicial review following refusal on the papers by Lang J on 10 July 2023. I held an oral hearing on 25 October 2023. The Claimant was represented by Mr Bimmler and the Defendant by Ms Darwin KC. I reserved my decision.

2. The Claimant is a serving prisoner. He seeks to quash the Defendant's decision of 31 October 2022 to refuse him (and his partner) access to IVF fertility treatment, and further seeks a declaration that his rights under Article 8 of the European Convention of Human Rights (ECHR) have been violated.

3. The claim is brought on three grounds:

    a. Ground 1: irrationality in the Defendant's reasoning based on suitable alternatives to IVF; the Claimant's post-release accommodation; and potential future decisions by children's services.

    b. Ground 2: procedural unfairness, and breach of the Defendant's *Tameside* duty of reasonable enquiry (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014) with regards to the Defendant's conclusions on egg freezing as a suitable alternative; prospects of treatment success; and a child welfare assessment. As to the first limb it is said that the Defendant relied adversely on matters without giving the Claimant the opportunity to deal with them.

    c. Ground 3: breach of the Claimant's Article 8 rights: the decision was (conditional on Grounds 1 and 2 succeeding) not in accordance with law; and in any case constituted a disproportionate and unjustified interference with the Claimant's right to respect for his family life, as the decision was not a necessary and proportionate means of achieving a legitimate aim.

Factual background

4. The Claimant is 41 years old. He is currently serving an extended determinate sentence, imposed in 2021 for a serious offence of violence (wounding with intent to cause grievous bodily harm) and a firearms offence. He shot a woman in a nightclub in 2019. He has many other convictions, which I will come to. The Defendant's decision letter stated that the Claimant 'has a well-established pattern of offending behaviour linked to drug use/dealing and the possession of firearms/ammunition.'

5. The custodial term of the Claimant's sentence is 12 years, with an extension period of two years. The Claimant will first become eligible for parole on 23 August 2027 (the PED) and the custodial term of his sentence will expire on 23 August 2031 (the CRD), at which point he will be released. His sentence and licence will expire on 22 August 2033 (the SED). By the time of his release from prison he will be between 46 years old (if released at PED) and 50 years old (if released at CRD).

6. The Claimant is in a relationship with a 37-year-old woman, whom I will call M. She lives in the community. By the time the Claimant is released, M will be between 41 (if released at PED) and 45 years old (if released at CRD). Their relationship commenced in the summer of 2018, prior to the index offence.

7. The Claimant and his partner wish to have a child together. The Claimant has children from a previous relationship; they are now 19, 16 and three years old. He is in contact with them. There has been no involvement of social services in relation to these children. The Claimant's partner does not yet have any children of her own.

8. The Claimant's partner unfortunately suffers from fertility problems, which include a low number of eggs, polycystic ovaries and a blocked and leaking right fallopian tube.

9. She has been advised that the preferable course of treatment for her to conceive is IVF, and that this should start as soon as possible. There is an issue between the parties about whether egg freezing (which would, if successful, mean that her eggs would be available for IVF fertilisation upon the Claimant's release from prison, notwithstanding her age at that point) is a viable treatment option. Previous egg freezing was unsuccessful.

10. On 4 November 2021, the Prisoners' Advice Service submitted an application on behalf of the Claimant, for him to have access to fertility treatment while in prison. This application was made to the Interventional and Operational Services department of HM Prison and Probation Service (HMPPS). The Defendant has a policy for dealing with such requests, the Prisoner Access to Fertility Treatment Policy Statement (the Policy), which I will describe later.

11. The application emphasized: (a) the low likelihood of conception if the couple waited until the Claimant's time of release; (b) that there would be satisfactory arrangements for the care of the child once born, as the Claimant's partner is financially and emotionally able to look after the child with the support of her family. The application submitted that the couple had complied with the criteria in the Policy; (c) the costs would be borne out of the Claimant's partner's income and savings.

12. Included with the application was a letter dated 29 October 2021 from Dr Sapna Ahuja, Consultant Gynaecologist and Deputy Medical Director of the Assisted Reproduction and Gynaecology Centre (ARGC), a fertility clinic licenced by the Human Fertilisation and Embryology Authority, which set out the Claimant's partner's suitability for IVF treatment.

13. There were some delays in the Defendant's assessment of the application after it was made on 4 November 2021. On 12 July 2022, HMPPS wrote to the Prisoners' Advice Service seeking further information on the Claimant's relationship with his existing children, both presently and at the time of his release, and further information on any future relationship or arrangements with those existing children,

14. The Prisoners' Advice Service submitted further representations on 9 August 2022, noting that the Claimant's current children live with their mother and that, while he was in the community, he was a 'hands-on father' and participated in their home and school lives. Moreover, there had been no concerns by social services, police or other agencies about the children. It was further explained that on the Claimant's release,

his older two children would likely be living independent lives as adults, while his youngest child would be living with her mother (the Claimant's former partner), with the Claimant intending to maintain contact with them at his future home with his current partner.

15. With regards to any new child born as a result of IVF treatment, the intention would be for the child to live with the Claimant's partner initially, with the Claimant joining them upon release. There would also be involvement of the Claimant's mother with care for the child.

16. On 31 October 2022, HMPPS refused the application on behalf of the Defendant. The material parts of the decision letter were as follows:

> "As you may be aware, an inability to have children is a justifiable restriction of a prisoner's Article 8 Right in relation to family life. Prisoner applications to access fertility treatment are assessed against the criteria set out in the Prisoner Applications to Access Fertility Treatment Policy Statement (copy enclosed).
>
> In determining the application both [the Claimant] and [M]'s interests have been taken into account and it is noted that they both want to have a child together. It is further noted that [M] has stated she has the support of both families in raising a child whilst [M] is in prison. Consideration has also been given to [the Claimant's partner]'s substantial savings at the time of application and that she would meet any costs incurred by HM Prisons and Probation Service.
>
> The medical evidence submitted suggests that at the time of [the Claimant's] earliest release date, the couple are unlikely to conceive, either naturally or with the help of fertility treatment, because of [M's] age and her longstanding fertility issues. Equally, however, it is not known how successful fertility treatment is likely to be if access were to be granted. It is also not known if the actual treatment would go ahead as it is noted that the fertility clinic has yet to conduct a welfare assessment of any child that may be born as the result of treatment.
>
> It is further noted that [M] has indicated that her eggs could be frozen now. This would allow the couple to begin their IVF treatment after [the Claimant's] release. [M] has also indicated she is exploring the option of using sperm donation.
>
> In addition, regard must be given when assessing prisoner applications to access fertility treatment to the need to maintain public confidence in the justice system and it is noted that [the Claimant] is serving a significant sentence for serious crimes which include a firearm. [The Claimant] has a well-established pattern of offending behaviour linked to drug use/dealing and the possession of firearms/ammunition. Whilst [the Claimant]

> maintains that the index offence represents poor decision making and a lack of consequential thinking rather than a return to his past lifestyle, it is evident that he moves in a sub-culture whereby the possession of weapons is not necessarily unusual and that he is able to access and use an illegal firearm in public.
>
> It is noted that at the time of the index offence, [the Claimant] was living with his mother in order to distance himself from negative peers. It is understood that upon release from prison, [the Claimant] hopes to live with [M] and his youngest daughter however this will be subject to approval by Probation and it is likely because of his current risk level that he will be placed in Probation Approved Premises for a further period of risk assessment prior to consideration being given to independent living.
>
> [The Claimant] has been assessed as High risk to the public and Medium risk to children. Due to the fact that he presents a risk to children in the community, it is likely that prior to release [the Claimant] will be referred to Children's Services. The risk is due to the lifestyle [the Claimant] has previously lived, which involved the use of firearms. A referral would consider the possible risk to children as they could witness him committing a violent act, be caught in the crossfire if firearms are used, or be indoctrinated into a criminal lifestyle. There is also the potential of risk to a child's wellbeing and development as a result of [the Claimant's] behaviour.
>
> In applying the policy, it is concluded that on balance it is not appropriate to grant access to fertility treatment."

Submissions

17. On behalf of the Claimant, in relation to Ground 1, Mr Bimmler submitted that the Defendant's decision was irrational because the Defendant's finding that the freezing of the Claimant's partner's eggs (with a view to IVF treatment after the Claimant's release) was a viable alternative, and that the Claimant's application should therefore be refused, did not have an evidential basis, could not be read into the clinic's letter, and was thus irrational. Previous egg freezing had been unsuccessful. He also submitted that the Defendant's reliance on the likelihood of the Claimant being placed in Probation approved accommodation on release was irrational in two respects: (a) it amounted to an irrational premature judgment of the Claimant's risk level at the point of release; and (b) there was no rational basis for the finding that the child's welfare would be affected by the Claimant residing in approved accommodation. Thirdly, he submitted that in determining potential future risk to children, the Defendant had irrationally failed to record and give weight to, for example, the contemporaneous assessment of the Claimant's Prison Offender Manager that the Claimant posed 'between a low and a medium risk' to children.

18. In relation to Ground 2, Mr Bimmler submitted that the decision had rested in part on matters not within the Policy and so the Claimant had not addressed them in his representations; the Defendant had not raised them during the decision making process, eg, by way of seeking further information; and so the Defendant had not followed a fair procedure, fairness being a matter for this Court to determine. The three matters were: (a) the Defendant's finding that egg freezing would be an alternative option to IVF while the Claimant was in custody; (b) the Defendant's concern that the prospects of successful treatment were not known; and (c) the Defendant's concern that it was not known whether actual treatment would go ahead, as no welfare assessment of the future child had been conducted by the fertility clinic yet. He said the Claimant had been unfairly 'taken by surprise'. He also said that the Defendant had not complied with his *Tameside* duty of enquiry.

19. In relation to Ground 3, Mr Bimmler submitted that Article 8 was engaged; the Defendant's decision represented an interference with the Claimant's Article 8(1) rights, and that the burden was on the Defendant to justify the interference. He said that if either Grounds 1 or 2 succeeded, the interference with the Claimant's rights was not in accordance with law thus amounting to an unlawful violation of the Claimant's rights. However, even if Grounds 1 and 2 do not succeed, the Claimant has at least an arguable case that the interference with his right to respect for family life was unnecessary and disproportionate.

20. On behalf of the Defendant, Ms Darwin submitted in relation to Ground 1 that the Secretary of State's decision was not irrational. The Defendant correctly assessed the information available to him at the time and reached a rational conclusion. For example, to read the medical letter from the clinic as not excluding egg freezing as an option for M (albeit not the preferred option), as the Defendant did, was a rational reading of the letter.

21. In relation to Ground 2, the Defendant had had available to him all the information necessary to make an informed decision on the three issues relied on by the Claimant. He behaved fairly in the way in which he took these matters into account. The Claimant has not suggested that there is any further relevant information available relating to any of the three matters complained of.

22. In relation to Ground 3, Ms Darwin accepted that Article 8(1) of the ECHR is engaged. However, she said that any interference with the Claimant's Article 8(1) rights constituted by the Decision lay well within the Defendant's 'margin of appreciation'. The Defendant was not denying the Claimant the means of having a child; merely, he was denying the Claimant the method of doing so of his and his partner's choosing at a time of their choosing. It was an interference which was justified on the basis of the interests of the rights and freedoms of others (namely, the unborn child) and/or was in the interests of public safety and the need not to undermine public confidence in the criminal justice system. Granting the Claimant an unfettered right to IVF, notwithstanding his serious conviction and status as a serving prisoner, risked undermining that confidence.

Discussion

23. I have considered Mr Bimmler's careful written and oral submissions however, like Lang J, I am not persuaded that any of his three Grounds are arguable and accordingly I refuse permission.

Background

24. It is a requirement of the Human Fertilisation and Embryology Act 1990 (s 13) that a woman shall not be provided with fertility treatment by a clinic unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting), and of any other child who may be affected by the birth. Clinics providing fertility treatment have to be licenced under that Act, and thus the statutory framework requires the clinic to consider this welfare issue before providing treatment.

25. The HMPPS Policy to which I referred earlier provides:

> "Prisoners do not have a general right to access fertility treatment and fertility preservation facilities, but they are able to submit a request for HMPPS to facilitate access, via a central casework team.
>
> Each request is assessed on its individual merits according to the criteria set out below, taking into account all evidence provided by the applicant, the Prison Service and other appropriate authorities, and with due regard for the rights of all relevant parties. Any resulting treatment is a matter for the National Health Service or private health care providers engaged by the applicant.
>
> Applicants will need to submit evidence against criteria 1- 5, working with their healthcare provider and other relevant resources. The HM PPS central casework team will then consult with prison security colleagues, legal services and other appropriate authorities regarding the remaining criteria, before an assessment is made.
>
> The policy differentiates between fertility treatment (considered as treatment intended to bear a child) and fertility preservation (storing of eggs, sperm, embryos or reproductive tissue for use at a later date) where appropriate."

26. The Policy's nine criteria include the following:

> "(1) The prisoner (and/or their partner) is unlikely to be able to conceive at the time of release, either naturally or with the help of fertility treatment, taking into consideration factors such as age at time of release and pre-existing/ underlying medical conditions.
>
> (2) There is evidence that satisfactory arrangements are in place for the welfare and support of any child born as a result of fertility treatment and any other children of the family likely to be

> affected. This involves consideration of the prisoner's personal records for past or current circumstances that may lead to any child experiencing any
> harm or neglect e.g. the risk assessment provided by the prison, child protection measures, or violence or serious discord in family environment.
>
> …
>
> (4) The prisoner's GP is satisfied that the prisoner is medically fit to proceed with fertility treatment and a Human Fertilisation & Embryology Authority approved clinic has confirmed that they are suitable candidates for fertility treatment or fertility preservation. As in the criteria above, for fertility preservation treatments involving egg, sperm or reproductive tissue freezing, the prisoner will be the only relevant party.
>
> (6) There is due consideration of the prisoner's offending history and any other factors which suggest it would not be in the public interest to allow access to any form of fertility treatment, due to the risk of undermining public confidence in the Justice System.
>
> …
>
> (9) There is due consideration of the Article 8 and Article 12 rights of all relevant parties (nominally the prisoner and/or their partner), as set out in the European Convention on Human Rights and the Human Rights Act 1998. Article 8 provides for the right to respect for private and family life. Article 12 provides for the right to marry and found a family."

27. In this case the Secretary of State accepts (Summary Grounds of Defence (SGD, [10]) that the right of a couple to conceive a child and to make use of fertility treatment falls within Article 8(1) and that, accordingly, the Claimant's Article 8(1) rights are engaged by his request for access to fertility treatment. However, the right is not unrestricted, and an interference with the right may in principle be justified if: (a) the interference is prescribed by law; (b) it that it is done to secure a legitimate aim under Article 8(2) (eg, the protection of the rights and freedoms of others, or the interests of public safety); and (c) that it is necessary in a democratic society, that is, it fulfils a pressing social need and goes no further than is strictly necessary to secure that need. Restricting access to fertility treatment by prisoners may serve these legitimate purposes: see *Dickson v United Kingdom* (2008) 46 EHRR 41, [75]-[76].

28. In her written submissions Ms Darwin made reference to the UK's 'margin of appreciation'. The concept of a 'margin of appreciation arises because of the need for an *international* court, charged with the task of determining whether a *domestic* measure has infringed an individual's ECHR (defined at §2) rights in a particular case, to have appropriate respect for the choice which that democratic State has made with respect to the measure in question, having regard to its own national conditions, and which it, rather than the European Court of Human Rights, is best

placed to assess. Where the context is social or economic policy then States have a wide margin of appreciation: see eg, *Stec v United Kingdom* (2006) 43 EHRR 47, [52].

29. That said, at the national level, there is a broadly analogous principle that in some circumstances it is appropriate for the courts to recognise that there are areas of judgement within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the ECHR (defined at §2): *R v Director of Public Prosecutions ex parte Kebilene* [2000] 2 AC 326, 381. In the domestic context, the term 'margin of discretion' rather than 'margin of appreciation' should be used. In *In Re Medical Costs for Asbestos Diseases (Wales) Bill* [2015] AC 1016, [44], Lord Mance said the latter term does not apply at the national level. Lord Reed made a similar point in *R(SC) v Secretary of State for Work and Pensions* [2022] AC 223, [143]. Nevertheless, he went on to point out, as I have said, that domestic courts have generally endeavoured to apply an analogous approach to that of the European court.

30. It follows that I broadly accept that the Defendant had a broad margin of discretion in deciding whether to allow the Claimant's application for treatment under the Policy. Allied to that is the fact that the Policy does not prescribe a particular process by which a decision is to be taken pursuant to the Policy. The Defendant therefore also enjoyed a margin of discretion about what procedure to adopt (accepting, of course, that he had to act fairly and lawfully).

Grounds of challenge

31. In relation to Ground 1 (irrationality) when assessing the Claimant's request to access fertility treatment, the Defendant took into account his understanding that '[M] has indicated that her eggs could be frozen now'.

32. The SGD indicate that the Defendant understood this to be the position because of the clinic's letter submitted with the Claimant's application. This stated *inter alia* that:

> "[M] stated that she had undergone IVF treatment in the past with a previous partner. Eggs had also been frozen at the same time. They had subsequently been thawed around 5 years ago, but unfortunately none survived.
>
> …
>
> At the initial consultation, [M] talked through her treatment options including egg freezing.
>
> …
>
> Further discussions took place with [M] on 8th September 2021 through a virtual consultation with myself and the clinic manager [E]. Various options of treatment were discussed. [M] expressed her desire to have treatment with her partner Danny Walker, though she was considering other treatment options.

> The options of treatment discussed included egg freezing, treatment together with Mr Danny Walker (her partner), and treatment with donor sperm. The best option of treatment with her partner would be to proceed with IVF treatment."

33. I consider that it was rational to read this letter, as the Defendant did, as indicating that egg freezing remains a viable fertility treatment option for M. There was nothing in the Claimant's application to suggest that egg freezing was *not* viable. Further, the fact that M's eggs had not survived freezing on a previous occasion, does not mean that egg freezing is not a viable treatment for M at all. If egg freezing was not (or no longer) a viable option then I would have expected: (a) the clinic's letter to have said so clearly; and/or (b) the Claimant and M to have made this expressly clear to the Defendant in their representations and supporting material.

34. I also note that the post-decision letter dated 30 January 2023 from another clinic, the Zita West Clinic, does not say egg freezing is not viable; and also that in her statement of 8 March 2023, M referred to the freezing of embryos.

35. In short, the burden lay on the Claimant to show that he ought to be permitted to have IVF pursuant to the Policy. If egg freezing is not an option then it was incumbent on the Claimant to say so expressly. The Defendant's approach to this aspect of the case cannot be faulted.

36. In relation to the Claimant's accommodation on release, the Defendant's decision said that:

> "It is understood that upon release from prison, Mr Walker hopes to live with [M] and his youngest daughter however this will be subject to approval by Probation and it is likely because of his current risk level that he will be placed in Probation Approved Premises for a further period of risk assessment prior to consideration being given to independent living."

37. I do not consider that the Defendant's approach can be faulted. The Defendant was required to consider child welfare issues and accommodation is obviously an important aspect of that. He was required to make a prediction as best he could, based on current information, about what the situation would be regarding the Claimant's accommodation at the point of release some years hence. The Defendant was not wrong or irrational to conclude that the Claimant's accommodation arrangements on release would likely be subject to approval in one way or another. In making that prediction, he was entitled to take into account the Claimant's risk level as it is now.

38. The Defendant therefore was right to say in his SGD that the Claimant will not be free to decide his own living arrangements immediately upon his release and hence to recognise, at least implicitly, that there was a possibility that the Claimant would not be able to live with M and any child immediately upon his release as he wishes.

39. Turning more specifically to child welfare matters (including in relation to the unborn child), as I have said, this is specifically referred to in [2] of the Policy as a matter

which the Defendant takes into account. The decision letter noted that the Claimant has a long history of criminal behaviour. The SGD stated at [32]:

> "32. The Claimant first came into contact with the Criminal Justice System when he was 19 years old and first appeared at court when he was 21. Since then, he has committed 15 further offences, including assaulting a police officer, carrying a loaded shotgun in a public place, carrying a firearm and ammunition in a public place, possession of Class A (crack cocaine) with intent to supply and drunk driving. He is currently serving a sentence for grievous bodily harm and for the possession of a prohibited firearm. The victim of his latest offence, a woman he did not know who happened to be near him in the nightclub, has been left with life changing injuries."

40. As I set out earlier, in his decision letter the Defendant concluded that the Claimant presents a medium risk to children 'due to the lifestyle Mr Walker has previously lived, which involved the use of firearm' and went on to say that a referral to Children's Services would likely be made upon his release to consider, for example, the risk that a child would witness him committing a violent act.

41. I do not consider that the Defendant's approach can be faulted. Risk was obviously a matter which had to be considered as part of welfare. True it is that the Claimant has never been convicted of an directly against a child, but the Defendant was entitled to approach welfare and risk concerns on a broader basis. True it is that the Offender Manager referred to 'low to medium risk', but I do not think anything turns on the precise quantification of risk, given that both that person and the Defendant were concerned with predictions of the future risk which the Claimant posed and the OASys assessment referred to a medium risk to children (R10.3). The Offender Manager accepted that the Claimant poses a secondary risk to children. The Defendant was right to determine that in this case there would have to be referral to Children's Service for risks to be assessment as part of an overall welfare assessment (per [2] of the Policy). He himself was not required (and did not) list out all factors pointing both ways.

42. Overall, it was not irrational for the Defendant to take the view that there was a risk that any child born to the Claimant and M might witness him committing a violent act and/or be indoctrinated into a criminal lifestyle. The Claimant's lifestyle presents a risk, thereby requiring a suitable assessment.

43. Ground 1 is, accordingly, not arguable.

44. Turning to Ground 2, and dealing first with the Claimant's procedural fairness point, the three concerns identified in [39] of the SFG (and [16] of the Renewal Skeleton Argument) were issues that I consider obviously arose from a straightforward reading of the Policy, and the Claimant therefore had the opportunity to address them. Accordingly, it was not unfair for the Defendant to take these matters into account. There was no need to draw them specifically to the Claimant's attention for comment.

45. Thus, for example, the chances of treatment being successful is obviously something which needs to be taken into account by the Defendant; he is unlikely to sanction

treatment which is bound to fail, and nor would any reputable clinic (per [4] in the Policy) recommend someone as suitable for treatment if the chances of success were low or zero. If the Claimant thought his evidence on chances of success was sufficiently unclear then it was open to him to get further evidence on that issue, including a quantification of the chances of success (if that were possible).

46. As to the Claimant's *Tameside* complaint, the relevant principle is well-established and uncontroversial. Lord Diplock said at p1065 of that case:

> "[T]he question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

47. As the Court of Appeal recently said in *R (Friends of the Earth Limited) v Secretary of State for International Trade/UK Export Finance* [2023] EWCA Civ 14, [57], subject to an irrationality challenge, it is for the decision-maker, and not for the court, to decide upon the manner and intensity of the inquiry to be undertaken: *R (Khatun) v. Newham London Borough Council* [2005] QB 37, [35].

48. The Defendant did not in my view arguably act irrationally in not making enquiries which the Claimant says he should have done, but did not, in breach of his *Tameside* duty.

49. In relation to egg freezing, as I have said, this appears to be a viable option, and so enquiries by the Defendant would not have altered the Defendant's approach to this issue. As to the chances of treatment success, the Defendant was entitled to take the Claimant's evidence on its face, which was silent on that issue, and there is nothing to suggest if he had directly asked that question of the clinic, anything further would have been forthcoming that could have altered his decision. The Claimant has submitted post-decision evidence, but nothing which touches on this point. In relation to the child welfare assessment point, the Defendant was correct to note that it was not known if treatment would go ahead because no welfare assessment had been conducted by the clinic (which it was required to do by law to do: see above). I do not consider any further inquiries would have yielded anything useful which might have borne upon the Defendant's overall decision.

50. Ground 2 is therefore also not arguable.

51. In relation to Ground 3 and Article 8(1), in considering the proportionality of the interference with the Claimant's rights represented by the Defendant's decision, it is important to recognise that it does not absolutely prevent the Claimant (and M) from having fertility treatment. The option of egg freezing remains open to them, whilst it is not their preferred option or that of M's treating clinician. The decision is therefore only a limited interference with the Claimant's Article 8(1) rights.

52. The Policy required the Defendant to weigh the relevant competing individual and public interests and to assess the proportionality of the restriction. I do not consider that he did so in a way that is arguably open to challenge. A fair balance was struck. Even though the Claimant has not been convicted of any offences against children, he has a lengthy criminal and violent past and is currently in prison for shooting a

woman. Even though the Claimant has a healthy relationship with his three children, the Defendant was entitled to take into account the general risk he poses to children as a result of his lifestyle and the risk of him reoffending. The Claimant has been assessed as posing a medium risk to children in the community, and will need to be referred to Children's Services upon his release. There is also the very important point that the Claimant must be taken to have forfeited the absolute right to have a child with M at a time and by a method of his choosing. That is a necessary consequence of imprisonment, and the public would be rightly concerned if people such as the Claimant could too readily be allowed to enjoy the rights which law-abiding citizens enjoy.

53. These are strong factors. The Defendant was therefore entitled to conclude that his decision was a proportionate and limited restriction on the Claimant's Article 8(1) rights.

54. Ground 3 is not arguable.

Conclusion

55. For these reasons, this renewed application is dismissed.