



Neutral Citation Number: [2025] EWCA Civ 1556

Case No: CA-2025-002399

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT (KINGS BENCH DIVISION)
THE HONOURABLE MRS JUSTICE EADY DBE
[2025] EWHC 2015 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1st December 2025

Before:

LORD JUSTICE LEWIS

Between:

THE KING
on the application of:
1) SUSAN EVANS
2) XX)

Appellants

- and -

(1) THE CARE QUALITY COMMISSION

(2) GENDER PLUS HEALTHCARE LIMITED

**(3) SECRETARY OF STATE FOR HEALTH AND
SOCIAL CARE**

**(4) NATIONAL HEALTH SERVICE
COMMISSIONING BOARD**

(5) YY

(6) ZZ

Respondents

Tom Cross KC (instructed by **Conrathe Gardner LLP**) for the **Appellants**
Jamie Burton KC (instructed by **Care Quality Commission Legal Services**) for the
Respondent

Peter Mant KC (instructed **Rook Irwin Sweeney** for the **Second Respondents**
The third, fourth, fifth and sixth respondents were not represented and did not appear.

Hearing date: 1st December 2025

Approved Judgment

LORD JUSTICE LEWIS:

1. This is an application for permission to appeal against a decision of Eady J (“the judge”) dismissing a claim for judicial review of two decisions of the first respondent, the Care Quality Commission (“the Commission”).
2. The first is the decision of 9 January 2024 to register the second respondent, Gender Plus Healthcare Limited (“GPH”), pursuant to section 12 of the Health and Social Care Act 2008 (“the 2008 Act”) as a person authorised to carry on a regulated activity, namely the treatment of disease, disorder or injury. In the present case, the activity in question is the provision to 16 and 17 year olds of what are referred to as cross-sex hormones.
3. The second decision was made by the Commission on 3 December 2024 when reviewing the carrying on of the regulated activities pursuant to section 46 of the 2008 Act. As an aspect of the claim, the appellants contend that the Commission failed to consider exercising a power to attach a condition prohibiting the provision of cross-sex hormones to those aged 16 or 17. Permission to bring a claim for judicial review in relation to the second decision and the other matters was granted by the judge at the hearing of the claim for judicial review.
4. As the judge said at paragraph 2 of her judgment:

“2. The hormone treatment in issue involves the prescription of masculinising or feminising hormones (oestrogen; testosterone), introducing irreversible changes to the patient's body. There are strongly held views about this treatment and an expert panel is due to report to the Secretary of State for Health and Social Care on its use for those under 18. At present, however, the treatment provided by [GPH] to 16 and 17 year olds is permitted by law, and the issue I am required to determine is not whether that is correct, but whether specific decisions made by the CQC are irrational and/or unlawful.”
5. There are three grounds of appeal which can be summarised as follows:
 - (1) the judge erred in finding that the views of Dr Kelly, the founder and the owner of GPH, on the provision of certain treatments related to gender issues was not a legally relevant consideration and, if the Commission were not aware of those views, it was required to make reasonable inquiries to ascertain them;
 - (2) the judge erred (a) in holding at paragraph 110 of her judgment that it was not necessary to resolve the dispute as whether the Commission had understood the update NHS approach when making its assessment decision and/or (b) should have found that the NHS approach had moved on from 21 March 2024 and the Commission had acted irrationally in not taking account of that or failing to make inquiries; and
 - (3) the judge erred by considering that the four differences identified between the GPH and the NHS processes were matters of form rather than substance.

6. I ordered that the application for permission be adjourned to an oral hearing. I say immediately that I refuse permission to appeal each of the three grounds. They do not have a realistic prospect of success and I do not consider that there are any other compelling reasons for allowing an appeal on these grounds to proceed. I can set out my reasons why these grounds have no realistic prospect of succeeding relatively shortly by reference, essentially, to the full, clear and comprehensive judgment of the judge below.

THE LEGISLATIVE FRAMEWORK

7. The legal framework is summarised at paragraphs 60 to 72 of the judgment below. In essence, the objective of the Commission is to protect and promote the health, safety and welfare of people who use health and social care services. It must have regard to the need to protect and promote the rights of such services users including, particularly, the rights of children.
8. Providers of regulated activities – which include the provision of cross-sex hormones – must be registered with the Commission. Section 20 of the 2008 Act required the Secretary of State to make regulations to ensure that the carrying on of regulated activities causes no avoidable harm to those provided with the service. In particular, regulation 12(1) of the relevant regulations provides that “Care and treatment must be provided in a safe way for service users”.
9. Section 12(2) provides that the Commission must grant an application for registration if it is satisfied that the requirements in the regulations made under section 20, and other statutory requirements, are and will continue to be complied with. There is provision for the Commission, at any time, to attach conditions or suspend a registration. Section 46 requires the carrying out of reviews and assessments of the provision of regulated activities. It provides, so far as material, that:

“(1) The Commission must, in respect of such regulated activities and such registered service providers as may be prescribed—”

(a) conduct reviews of the carrying on of the regulated activities by the service providers,

(b) assess the performance of the service providers following each such review, and

(c) publish a report of its assessment.”

THE FACTUAL BACKGROUND

10. The facts material to this application can be stated shortly and are taken from the judgment below.

GPH

11. GPH was incorporated in May 2023. Dr Aidan Kelly, a consultant clinical psychologist registered in the UK with the Health and Care Professions Council, is the founder and owner of the shares. It operates as a private provider of non-medical psychology,

assessment and mental health services. Following an assessment by another entity, Kelly Psychology, a patient aged 16 or over may be referred to GPH for the provision of cross-sex hormone treatment. It applied for registration to provide those services.

The Registration Process

12. The assessment of the application was undertaken by Amy Robson who is a registration inspector. Dr Robson has a PhD, and a qualification, and previous work experience, in health and social care management. The process by which the application was considered is described in the judgment as follows:

“37. In assessing [GPH], Amy Robson led a team that also comprised a regional medicines manager, a national professional adviser for primary medical services and integrated care who had oversight for on-line provision, and a senior specialist in mental health who had been involved in the inspection of Tavistock GIDS and had experience of mental health services. The assessment framework used identified five key questions relating to the provider and the services to be provided: are they safe; are they effective; are they caring; are they responsive to people's needs; are they well led? In completing the assessment, specific regard was had to a number of guidance documents, including the Cass Review interim report, relevant NHS guidance, and the inspection history of Tavistock GIDS. The paperwork obtained from [GPH] was fully assessed, and additional information and clarification obtained; the process included meetings with Dr Kelly and Mr Carruthers, and a separate fit person interview with Mr Carruthers. A (59-page) research and planning evidence record was produced, dated 11 December 2023, which included Amy Robson's analysis of evidence collected during the assessment and their recommendation to grant registration.”

38. In her evidence in these proceedings, Amy Robson has confirmed their awareness at the time of undertaking this assessment of the sensitivity around the hormone treatment, and that they had specifically considered the content of Cass Review interim report and the NHS position at that time. She has explained that the assessment team considered the evidence provided by [GPH] against the criteria for endocrine treatment in the NHS commissioning policy then in place, concluding that it was broadly aligned; specifically, the evidence demonstrated there would be: (a) assessment by a MDT over a period of time, which would include a medical practitioner with specialist expertise in gender incongruence in children and adolescents; (b) continued psychological support through engagement with the MDT; (c) no hormone treatment before age 16; (d) discussion about the impact on fertility; (e) parental involvement in decision-making; (f) robust processes for seeking consent; and (g) involvement of a consultant endocrinologist in the service provision.

39. A management review meeting was held on 14 December 2023 to consider the recommendation to grant registration, at which it was determined that a condition should be imposed that would prevent the provision of [treatment for a disorder, disease or injury] to those under 16. Further oversight was provided by the CQC's director of national operations, chief inspector of adult social care and integrated care, and the senior government engagement officer, before registration was confirmed on 9 January 2024."

13. The reference to the Cass Review interim report is to an independent review commissioned by NHS England to make recommendations on how to improve services for children and young people experiencing gender identification issues. It was chaired by Dr Hilary Cass. The reference to the inspection history of the Tavistock GIDS records is a reference to checks on whether those records contained any concerns in relation to Dr Kelly who had worked there.
14. GPH's application was granted and a certificate of registration issued on 9 January 2024.

Subsequent events

15. The following events occurred after registration. On 21 March 2024, NHS England published its clinical commissioning policy on prescribing what was described as gender affirming hormones, that is cross-sex hormones. The document included the following:

"Gender Affirming Hormones (masculinising or feminising hormones) (GAH) are available as a routine commissioning treatment option for young people with continuing gender incongruence/gender dysmorphia from around their 16th birthday subject to individuals meeting the eligibility and readiness criteria ...

but requiring that:

"Patients must meet ALL of the eligibility and readiness criteria listed ..."

which included the following:

"The individual has been assessed by the appropriate specialist multi-disciplinary team over a period of time* and fulfils the criteria for a diagnosis of Gender Incongruence ...*The duration of the assessment to be determined by the clinical team as relative to the needs of the individual."

"Reason for this criterion

To ensure that the individual is highly likely to be continue to identify in the experienced gender, meaning that GAH therapy is an appropriate treatment in the long term."

and

"The [Children and Young person] Gender Service National MDT, that includes clinicians not directly involved in the formulation of the individual's care plan, agrees on the suitability of the individual receiving GAH based on the consideration of these eligibility and readiness criteria."

"Reason for this criterion

To ensure that the individual understands that there is limited clinical evidence on the effects and harms of prescribing GAH treatment below their 16th birthday; and also that GAH treatment is a significant decision with long term indications."

further providing that:

"Patients meeting ANY of the below exclusion criteria are not eligible for treatment:

...If the individual is having a significant psychotic episode or has another significant mental health disorder that is not adequately controlled as this may reduce their ability to manage the emotional issues that may arise from the changes in hormone levels from the hormone treatments and may impact on their capacity to consent; ..."

16. On 10 April 2024, the final Cass report was published. Extracts are set out in the judgment. For present purposes it is sufficient to note recommendation 8 and 9 which were that:

"Recommendation 8

NHS England should review the policy on masculinising/feminising hormones. The option to provide masculinising/feminising hormones from age 16 is available, but the Review would recommend extreme caution. There should be a clear clinical rationale for providing hormones at this stage rather than waiting until an individual reaches 18.

Recommendation 9

Every case considered for medical treatment should be discussed at a national Multi Disciplinary Team (MDT) hosted by the National Provider Collaborative replacing the Multi Professional Review Group (MPRG)."

17. On 9 April, the day before the report was published (but with the report obviously having been considered) NHS England wrote to all adult gender dysphoria clinics, advising that:

"We will ...define the role of gender affirming hormones through the development of a new evidence based national clinical policy which will cover all people over the age of 18 ...details on the procedure to be followed in its development will follow."

but requesting, in the meantime:

"[given the Cass review's advice at recommendation 8 ("extreme caution"), that you should] defer offering first appointments to patients until their 18th birthday ...".

18. On 7 August 2024, NHS England published a consultation report on children and young people's gender services.

The review

19. A review of the regulated activity was carried out in later 2024. The lead assessor was Ms Huntley. The process is described in the judgment in the following terms:

44. Ms Huntley has explained that, in approaching this assessment, she made sure to read the Cass Review final report, and the most up-to-date NHS commissioning policies and service specifications, along with other guidance and information; she also read the information that CQC held about [GPH] at that time. In addition to following CQC's standard procedures (which included reviewing all IP1's policies and procedures), the assessment team also directly observed patient consultations, which enabled them to:

"...witness how consent was obtained in practice; including seeing and understanding how the risks (including known unknown risks) are explained to service users. It would also allow us to observe if fertility preservation was being discussed in a meaningful manner and allow us to see if the consultation was holistic and person-centred. Many of these were key elements that the Cass Report raised as important, as well as being areas of concern for people who have strong views about this service type." (Ms Huntley's witness statement at [15])

45. Ms Huntley's statement provides a full account of the investigation assessment and the inquiries undertaken. In summary, Ms Huntley (assisted by others in the assessment team) observed three patient consultations, attended a MDT meeting (which involved an independent child psychiatrist (Dr Adams) who attended when a [GPH] were discussed, and spoke with two patients and their families, as well as to Dr Kelly, Mr Carruthers, and to [GPH's] administrator. In addition, questionnaires were completed by three health professionals selected at random from Kelly Psychology, and by 15 patients

and their families, some of which were followed up with telephone calls to discuss the results (in fact the report records that the team spoke with 21 patients and their families). A random selection of individual patient records was reviewed by both Ms Huntley and the CQC's medicines manager, who also spoke to the independent pharmacist dispensing [GPH] prescriptions, and Ms Huntley spoke directly with a visiting mental health nurse who attended all initial face-to-face appointments to ensure patients had any mental health support they needed, and was able to satisfy herself that there was liaison with patients' GPs. A further interview with Dr Kelly and Mr Carruthers was separately conducted by Dr Tim Ballard, focusing on the clinical aspects of the service, during which the Cass Review's findings were discussed, and details provided of [GPH's] process of auditing patient outcomes and of sharing of information with GPs, with a view to entering shared care arrangements.

46. Given the focus on the role of IP1's MDT, and whether this could rationally be considered to be broadly aligned with the NHS national MDT, it is helpful to set out Ms Huntley's evidence on this point in more detail.

47. Ms Huntley has confirmed her familiarity with the 21 March 2024 policy, and the requirement that the suitability of the individual receiving the hormone treatment must be agreed by the national MDT. She has explained how she was able to satisfy herself as to the extensive process of psychological assessment that all patients have to undergo before being referred for consideration by [GPH], with no referral being made unless the individual has a confirmed diagnosis of gender dysphoria *and* the clinician considers this to be the best course of action. Aware that the [GPh] MDT was unlikely to be identical to the NHS MDT, Ms Huntley explains how she was assured by the [GPH's] requirement that there would then be a MDT for every patient referred (including those over 18), which would include [GPH's] nurse consultant, clinicians from Kelly Psychology, and an independent paediatric psychiatrist (for under 18s), and that all decisions must be reached by consensus. Given: the requirement for MDT agreement to the acceptance of any referral; the involvement (in the case of under 18s) of an independent psychiatrist, not concerned with the patient's care planning; and having regard to the open and detailed discussions she had herself witnessed at the MDT, Ms Huntley's judgement was that [GPH's] practice was sufficiently aligned with the NHS.

48. Ms Huntley also details how she (and the other members of the assessment team) satisfied themselves that all the other eligibility and readiness criteria in the 21 March 2024 policy were being properly considered, with [GPH's] operating

procedure expressly stating that the referral criteria would be in line with that policy.

49. After the assessment was complete, Ms Huntley collated the evidence, analysed it, and produced a draft assessment report which was then considered and approved by senior and other colleagues, and was reviewed by Ms Kirton de Ortega, as head of the CQC's Cass oversight group. The assessment report was published on 4 December 2024, rating [GPH] as "outstanding" overall, as it had achieved "outstanding" ratings for four of the key questions (well-led; responsive; effective; caring); for safe, the service was rated "good" (i.e. performing well and meeting expectations)."

20. The applicants draw attention to interviews given by Dr Kelly to a newspaper and a magazine on 10 and 11 April 2024 respectively, in an article published on 19 July 2024 criticising the government ban on the use of puberty blocking drugs for children, and a letter from Dr Kelly to a newspaper published on 12 April 2025.

THE APPLICATION FOR PERMISSION TO APPEAL

21. The grounds of appeal are directed toward the process by which (a) the registration decision of 9 January 2024 was made and (b) the assessment in December 2024 was carried out. That is confirmed in a note provided by the appellant dated 27 November 2025 and was confirmed again orally by Mr Cross KC, for the applicants, at the hearing. It is clear, on analysis, that the central question is whether or not certain matters, or considerations, were matters that the Commission had to take into account in reaching those decisions. Relevant, or related, to that question is whether the Commission in fact knew of those matters or, if not, there was a basis upon which it could be said that it should have known of those matters or was under a duty to carry out enquiries which would have revealed the existence of those matters. The question of whether a consideration is one that a decision-maker must take into account depends upon whether it is so obviously material to the decision that it would be irrational, in the public law sense, not to take it into account, although the weight, if any, to be given to that consideration is a matter for the decision-maker in the way explained by the Supreme Court in *R (Friends of the Earth Ltd.) v Secretary of State for the Home Department* [2020] UKSC 52; [2021] PTSR 190 at [116]-[121] and see the application of the test in this Court recently in *Keep Chiswell Green v Secretary of State for the Home Department* [2025] EWCA Civ 958 at [82].

Ground 1 of the Grounds of Appeal

22. The grounds allege that the judge erred in finding that what are described as the strong personal or ideological views of Dr Kelly was not a legally relevant factor. In fact, the question on analysis in this case is whether the views of Dr Kelly were a consideration which the Commission was obliged to take into account if its registration or assessment decisions were not to be unlawful. Further, the question may arise as to whether the Commission knew, or ought to have known, or have made inquiries about that matter. The matters which are said to evidence strong personal views supporting the provision of cross-sex hormone treatment to children and young persons, and which are critical of the Cass Review's findings and recommendations about such treatments, are the

newspaper interviews in April 2024 and the article in July 2024 (and possibly the letter to the newspaper in 2025).

23. Mr Cross referred to paragraphs in the Cass report and the decision of the High Court in *AB v CD* [2021] EWHC 741, particularly at paragraphs 123 to 124, which both highlighted the risk that strong personal views, and perhaps fixed positions, might affect the safety of clinical decision-making. In that context, he submitted that the Commission were legally obliged to take into account, and to inquire into, the views of Dr Kelly. He further submitted that the evidence of Ms Rawlings for the Commission had indicated that it did not consider that to be a relevant consideration.
24. First, in relation to the registration decision of 9 January 2024, the Commission did hold meetings with Dr Kelly and did consider whether the records they held indicated any concerns over the provision of treatment. The comments and statements relied upon as evidencing views on the part of Dr Kelly were made *after* that decision. It cannot be said that the Commission acted unlawfully because it did not take into account comments that had not been made at the time of the decision. Furthermore, it is not correct to read Ms Rawlings statement as indicating that the views of individuals could never be legally relevant. Rather she describes the role of the Commission, and how any concerns about individuals (who were not the subject of the application for registration), could impact on that registration (or later assessment). In all the circumstances, there was no flaw in the decision-making process in this regard and the Commission were not under an obligation to make further inquiries.
25. Secondly, in relation to the assessment decision, the Commission was reviewing the provision of the regulated activity. The process it carried out is described above at paragraph 20. It involved the observations of patient consultations, attending a multi-disciplinary team meeting, discussions with patients and families and others, and consideration of questionnaires completed by health professionals. Furthermore, an interview was conducted with Dr Kelly (and the registered manager) focussing on the clinical aspects of the service and during which the Cass Review's findings were discussed. There is no basis upon which it could be said that it would be irrational not to take into account the interviews with, and the article published in, newspapers in April and July 2024 as part of the assessment process. Further, those interviews were not drawn to the Commission's attention and there is no basis for saying that the inquiries made by the Commission were irrational in not seeking to obtain and consider copies of views that Dr Kelly was said to have expressed in the popular press. Dr Kelly was interviewed as part of the process and matters such as the Cass Review's findings were discussed with him. The article and letter written in 2025 came after the assessment in December 2024 and it cannot be said that the decision-making process resulting in the December 2024 assessment was flawed because it did not consider material coming into existence months later.
26. Permission on ground 1 is refused.

Ground 2

27. In the written and oral submissions for the applicants, the ground advanced concerns an issue that appears, at least in part, to have arisen from a letter written shortly before the hearing of the claim (see paragraph 26.3 of the judgment below). That letter said that there were three regional gender services in England that can make referrals to an

NHS national multi-disciplinary team and that those services were separate from the endocrinology services that would administer the treatment if the case was approved for treatment by the multi-disciplinary team. Mr Cross explained this matter further in oral submissions. He submitted that the Commission had not inquired into the up-to-date practice in the NHS where the chair of the multi-disciplinary team was not employed by a referring hospital and where the members of that team were drawn from different providers. It seems that Dr Kelly's view had been that endocrinologists at NHS Trusts that would provide cross-sex hormone treatment are members of the national multi-disciplinary team.

28. This matter does not affect the registration decision. That was taken before the changes in the NHS system. So far as the assessment review is concerned, the judge said that she did not have to resolve this dispute of fact. The central question for the Commission was whether GPH could demonstrate compliance with the requirements of the regulations made under section 20 of the 2008 Act. In that regard, the Commission had considered the process operated by GPH by reference to the NHS policy adopted on 21 March 2024. It had taken account of the risks that the NHS processes were said to safeguard against. In that context, the Commission were satisfied with the way that the regulated activity was being provided. I agree. There is no arguable basis for saying that it was irrational for the Commission in December 2024 not to carry out further investigations into the way in which NHS trusts and multi-disciplinary teams were being operated. There is no arguable basis for saying that the failure to do so led to the December 2024 assessment review being flawed. That is sufficient to justify refusing permission to appeal for that part of ground 2 (essentially paragraph 3 of the grounds of appeal).
29. At one stage, I was concerned that the advice given to adult gender dysphoria clinics on 9 April 2024 might have indicated that the NHS had paused the provision of cross-sex hormone treatment for 16 to 17 year olds. However, as was accepted by all parties, that is not the correct reading of the document. It is addressed to adult clinics who were, in some instances treating those aged 17. The advice was they should not treat such persons. Rather, they would be treated by the new service established for children and young persons. There was no NHS policy pausing the provision of cross-sex hormone treatment for 16 or 17 year olds. This does not provide any basis for questioning the process by which the Commission reached its decision.

Ground 3

30. Ground 3 concerns differences between the process in the NHS and the process undertaken by GPH. It is said that the judge erred in treating these as matters of form rather than substance and the Commission was "required to recognise and grapple" with the fact that the relevant NHS processes contained particular safeguards which were said not to be present in the GPH processes.
31. Mr Cross's underlying submission was that there were four matters which were mandatory relevant considerations. That is, he submitted that the four considerations were relevant to the safety risks that the Commission had to address. The Commission had to demonstrate by its reasoning that it had considered, and been satisfied, that the different structures used by GPH avoided the risks that the NHS structures had been devised to avoid.

32. The Commission were well aware of the four matters relied upon. They are the following. First, referrals to GPH are made by entities (Kelly Psychology) which were not regulated by the Commission whereas referrals made within the NHS would be made by entities which were regulated by the Commission. Secondly, patients can be referred by Kelly Psychology to GPH without those patients having been seen by a medical practitioner (that was a requirement that came into effect on 1 September 2024). Third, GPH was intertwined with Kelly Psychology in that both were founded and are operated by Dr Kelly. Fourthly, there were differences between the multi-disciplinary team operated by GPH and the multi-disciplinary teams in the new children's service launched by the NHS.
33. Dealing first with the registration decision of 9 January 2024, two of the matters relied upon arose after that date (those relating to patients being seen by medical practitioners and the arrangements for the multi-disciplinary team). The registration decision cannot be flawed because it did not take account of matters not then in existence. The other two matters, namely the way in which patients were referred to GPH and the links between the GPH and Kelly Psychology, were well-known by the Commission. There was no failure to have regard to these considerations. It is not arguable that the registration process was flawed in this regard.
34. So far as the assessment process is concerned, the judge made it clear that the Commission were well aware of all four matters when they carried out the assessment. The real issue for the Commission was whether it was satisfied that the regulated activity was being provided in an appropriate manner and, in particular, whether it was complying with the regulations made under section 20. It was satisfied of that. In reaching that conclusion it was fully aware of, and took into account, the differences between the way in which GPH and the NHS operated. As the judge made clear in paragraph 117 of her judgment, the Commission did carry out a "full and proper consideration" of all relevant matters i.e. the Commission did consider whether the matters gave rise to any safety concerns. That also appears from paragraph 133 of her judgment dealing with whether the decision itself was lawful. As the judge noted, in circumstances where GPH could not replicate precisely the NHS process, it did consider the objectives that the NHS process was seeking to achieve and used that as the relevant standard to assess the service provided by GPH.
35. Permission on ground 3 is refused.

CONCLUSION

36. Permission is refused as none of the grounds of appeal have a realistic prospect of succeeding and there is no other compelling reason for allowing an appeal to proceed.