Neutral Citation No: [2025] NIKB 59 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **McA12872** *ICOS No:* **25/45111/01** *Delivered:* **21/10/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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

AND IN THE MATTER OF A DECISION BY THE SECRETARY OF STATE FOR NORTHERN IRELAND RE THE GRANT OF A FIREARMS CERTIFICATE

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Ms Denise Kiley KC with Ms Lara Smyth (instructed by Phoenix Law Solicitors) for the Applicant
Aidan Sands KC with Mr Terence McCleave (instructed by the Crown Solicitor's Office) for the Secretary of State for Northern Ireland, the proposed Respondent

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Hearing date: 30 September 2025

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McALINDEN J

Introduction

[1] This is yet another application for leave to apply for judicial review by Mr Donnelly arising out of the refusal by the Secretary of State on 24 February 2025 to allow an appeal from the decision of the Chief Constable made on 14 February 2017 that the applicant was not a fit person to be entrusted with a firearm. The history of the applicant's attempts to obtain a firearms certificate are set out below.

[2] On 5 January 2006, the applicant's firearms certificate (which he had held for approximately 22 years) was revoked. The applicant was provided with brief reasons by the Chief Constable to the effect that the Chief Constable believed that he associated with a proscribed dissident republican organisation named the Continuity IRA ("CIRA"). The source of this information was not disclosed. The applicant subsequently appealed this decision to the Secretary of State. This appeal was unsuccessful, with the decision being issued on 4 July 2006. The applicant then

initiated judicial review proceedings in early October 2006 and leave was granted by Weatherup J. The matter came on for hearing before Gillen J as the then was, and he gave judgment on 27 April 2007, in which he dismissed the applicant's application for judicial review; the judgment citation being *Re Donnellys' Applications* [2007] NIQB 34.

[3] At para [20] of his judgment, Gillen J stated that:

> "I have come to the conclusion that it was appropriate in this case that no further information be disclosed to these applicants other than that which was given to them. Any further order of disclosure, particularly when it had been considered personally by the Secretary of State, would in my view serve to undermine the purpose of the legislation and perhaps seriously impede firearms control in Northern Ireland. In my view the public interest in this matter outweighs the private interest of having further information for this decision other than that which has already been tendered. The gist of the case was provided to the applicants in this instance albeit in diluted form. Whilst it may not have been sufficient to allow the applicants to descent into the particularity that they would have wished in order to answer specific allegations, they were afforded some protection by virtue of the fact that the Minister did have regard to the question of what disclosure was appropriate and did ask appropriate questions before reaching a balanced decision … I find no basis for compelling the PSNI to provide further information as to the basis of the allegation that Philip Donnelly associated with CIRA or that the decision to refuse such information was unlawful."

[4] In February 2016, the applicant applied for a new firearms certificate. The application was refused by the Chief Constable on 14 February 2017 on the basis that the Chief Constable was not satisfied that the applicant was a fit person to be entrusted with a firearm. No disclosure was made in advance of this decision, and no reasons were provided to explain the decision. The applicant was advised that no further information could be given because to do so would not be in the public interest. The applicant appealed to the Secretary of State for Northern Ireland on 14 March 2017 and was then informed that the Secretary of State had requested a report from the Chief Constable on the background to his decision. The applicant was subsequently informed on 16 September 2020 that the Chief Constable had provided the report sought and that this would now be considered by the Secretary of State in due course.

[5] On 20 May 2021, the applicant's solicitors were notified that the Secretary of State had considered the Chief Constable's report and was minded to refuse the applicant's appeal. The purpose of the letter was to afford the applicant the opportunity to comment in writing on "the concerns." On 25 May 2021, the applicant's solicitors wrote to the Secretary of State and asserted that the applicant could not fairly be expected to comment on information that he had not been provided with and that the applicant needed to know the issues raised against him and the reasons for the Secretary of State's decision. A complete copy of the Chief Constable's report was requested.

[6] On 14 June 2021, the applicant's solicitors were informed that it would not be in the public interest to disclose the Chief Constable's report. On 2 September 2022, the applicant's appeal against the decision of the Chief Constable was refused by the Secretary of State. Both the Secretary of State for Northern Ireland and the Chief Constable of the PSNI, refused to provide the report that had been prepared to inform the Secretary of State for Northern Ireland of the background to the Chief Constable's initial decision, or to provide any summary or gist of the information set out therein. The applicant was informed that the Secretary of State was unable to provide any further information as to do so would not be in the public interest.

[7] An application for leave to apply for judicial review of this decision was lodged on 1 December 2022 and on 7 March 2023, leave was granted to apply for judicial review of the Secretary of State's decision. On 28 February 2024, the proceedings concerning the 2022 refusal by the Secretary of State ultimately resolved by consent on the basis that the appeal decision was to be quashed, and the Secretary of State agreed to provide a gist of the reasons relied upon by him in making his initial decision. A fresh decision would then be made in light of any representations that the applicant wished to make. In accordance with the agreed resolution, correspondence dated 28 February 2024 was sent to the applicant by the Secretary of State which stated:

> "… in making his initial decision, the Secretary of State took into account information from 2016 that Philip Donnelly continued to be associated with a paramilitary organisation."

The formal order quashing the September 2022 decision was made on 21 May 2024.

[8] In the meanwhile, in April 2024, the applicant's solicitors wrote to the Secretary of State and set out a denial that the applicant was or ever had been associated with a paramilitary organisation. The correspondence asserted that the gist provided in late February 2024 was even more limited than the information provided in 2006, when the applicant had been advised that it was alleged that he associated with a named prescribed paramilitary organisation, namely, CIRA.

[9] On 8 January 2025, correspondence was directed by the Northern Ireland Office ("NIO") on behalf of the Secretary of State to the applicant which stated that the Secretary of State had now considered all the information available to him and was minded to refuse the applicant's appeal. The applicant was informed that the Secretary of State had received a briefing from:

> "Security partners. Whilst it would not be in the public interest to provide you with full details of the information provided, I can inform you that the Secretary of State took into account information from 2016 that Philip Donnelly continued to be associated with a paramilitary organisation.
>
> The Secretary of State was further provided with information regarding the judicial review you had sought of the 2006 decision to refuse a previous firearms appeal you had made, where the PSNI disclosed that they believed that you were associated with a prescribed dissident republican organisation, namely CIRA.
>
> The Secretary of State took into account your representations, and also discussed the lack of disclosure to you. In the interests of reasonableness and fairness he has considered whether any further information can be disclosed. The Secretary of State has decided that he is unable to provide any further information as to do so would not be in the public interest.
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> Before reaching a final decision the Secretary of State wishes to give you this opportunity to comment, in writing, on the concerns."

[10] On 20 January 2025, the applicant's solicitors' response highlighted the alleged unfairness of this process and the inability of the applicant to meaningfully engage with the allegation made against him. On 24 February 2025, the applicant was notified that the Parliamentary Under-Secretary of State acting on behalf of the Secretary of State, after careful consideration of the case, had refused the applicant's appeal on the grounds that she was not satisfied that the applicant was a fit person to whom firearms can safely be entrusted. In reaching her decision, the Parliamentary Under-Secretary of State had taken into account the applicant's representations and those representations made on the applicant's behalf. It was further stated that:

> "It has not been possible to provide any further information as to the reasons for the rejection of the appeal, as to do so would not be in the public interest."

[11] In the applicant's Order 53 statement dated 27 May 2025, the applicant seeks an order quashing the decision made on 24 February 2025, on the grounds of procedural unfairness and irrationality. The applicant seeks an order of mandamus requiring the Secretary of State to provide sufficient information about the basis of the finding that he was not satisfied that the applicant was a fit person to be entrusted with a firearm. It is alleged that the proposed respondent failed to provide the applicant with sufficient information to enable the applicant to make meaningful representations in support of his appeal and that the proposed respondent failed to provide adequate, proper and intelligible reasons for the decision to refuse the applicant's appeal. It is argued that the decision is irrational/*Wednesbury* unreasonable by reason of the proposed respondent's failure to give the applicant sufficient information to enable him to make meaningful representations in support of his appeal and/or by failing to provide adequate, proper or intelligible reasons to refuse the applicant's appeal, the proposed respondent had acted in a way that no reasonable decision maker properly directing itself in relation to its duties would have done so in the circumstances.

[12] In the applicant's skeleton argument, which was submitted on 15 September 2025, it is argued that the applicant's ability to challenge the impugned decision in these proceedings is inherently prejudiced by the continued absence of disclosure. To that end, the applicant's position is that in the circumstances of this case, fairness requires that the court should consider the underlying material in a closed hearing if required, and in this context, the court should permit the applicant's interests to be represented by a special advocate. It is stated that should the court grant leave to apply for judicial review, the applicant intends to make an application under section 6 of the Justice and Security Act 2016 and Order 126 rule 21 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("RCJ").

[13] The relevant statutory framework is contained in Articles 5 and 74 of the Firearms (Northern Ireland) Order 2004 which provide as follows:

> "5(1) If he is satisfied that the applicant can be permitted to have in his possession without danger to public safety or to the peace the firearm or ammunition in respect of which the application is made, the Chief Constable may grant a firearm certificate.
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> (2) The Chief Constable shall not grant a firearm certificate unless he is satisfied that the applicant—
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> (a) is a fit person to be entrusted with a firearm; and
>
> (b) has a good reason for having in his possession, or for purchasing or acquiring, each firearm and any ammunition to which the certificate relates.

…

74(1) A person aggrieved by a decision of the Chief Constable under this Order may appeal to the relevant authority if it is a decision to which this Article applies.

(2) On appeal under this Article the relevant authority may make such order as the relevant authority thinks fit having regard to the circumstances.

…

(5) In this Article "the relevant authority" means -

(a) the Secretary of State, in any case where the Chief Constable's decision was taken wholly or partly on the basis of information the disclosure of which may, in the view of the Secretary of State or the Chief Constable, be against the interests of national security;

(b) the Department of Justice, in any other case."

[14] In *GMJ's Application* [2014] NIQB 135, Horner J summarised the legal principles applicable to cases of this nature at para [22] of his judgment which I quote in full:

"(a) The 2004 Order is a scheme which embodies the public interest in the regulation of the possession and use of firearms in order to ensure public safety: see *In the Matter of an Application by Chalmers Brown for Judicial Review* (20 May 2002).

(b) No member of the public has a right to possession and use of a firearm, other than in accordance with the 2004 Order: see *Chalmers Brown* above.

(c) Where there is a conflict between:

(i) the aspiration of a member of the public to possess and use a firearm; and

(ii) the public interest in ensuring public safety, the public interest will invariably prevail over private aspiration: see *In the Matter of Applications by Donnelly and Donnelly for Judicial Review* [2007] NIQB 34 ("*Donnelly*").

(d) The policy behind the firearms' legislation is that the authorities must have full confidence in the holder of firearms certificates. The granting of firearm certificates is a function to be carried out with great care and circumspection having regard to the public danger if inappropriate persons have access to firearms: see *Donnelly* (see supra).

(e) The threshold of *Wednesbury* irrationality is high and in the context of the manifest public interest in play in firearms cases, the Minister necessarily enjoys considerable but not unfettered latitude in forming his judgment as to fitness or unfitness to hold a firearm: see in *Re DGD* [2011] NIQB 123.

(f) In a case concerning a firearms certificate, the Minister's decision is concerned with ensuring the important public interests that only fit persons are licensed to possess firearms. That is a judgment for the Minister to make on the basis of the material presented to him. It is not the function of the court to substitute its judgment as to whether an applicant is or is not a fit person. That would be constitutionally impermissible: see *Re DGD* (see supra).

(g) A member of the public affected by a decision in respect of his aspiration to possess and use a firearm is entitled to make representations to the decision maker: see *JR20's (Firearms Certificate Application)* [2010] NIQB 11.

(h) Very often the member of the public affected by the decision will be entitled to receive information about concerns which the decision maker has, for example, about his fitness to possess and use a firearm: see *JR20* (see supra).

(i) There are circumstances when the member of the public affected by the decision will not be entitled to receive such information: see *In the Matter of an Application for Judicial Review by Liam McDonnell* (28 September 2005).

(j) An instance in which a member of the public will not be entitled to receive such information is where to do so might harm the public interest, for example, frustrate the operation of the regulatory scheme, or impede the effectiveness of policing: see *Re Frazer's Application for Judicial Review* [2004] NIQB 68.

(k) In any event, to ensure overall procedural fairness, the decision maker must subject the information before him to close scrutiny: see *JR20* (see supra)."

[15] In *JR20's application [2010]* NIQB 11, Weatherup J at paras [32]-[34] of his judgment emphasised the continued importance of overall procedural fairness in this context:

> "[32] Limited disclosure of information to a party adversely affected by a decision does not diminish the requirement for overall procedural fairness in all the circumstances. In *Henry's Application* [2004] NIQB 11 information was withheld from a prisoner who was subject to extended removal from association. At paragraph [24] it was stated:
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> > 'In this context where it is judged that information cannot be disclosed to the prisoner I consider that fairness requires that extensions of restricted association include a system of anxious scrutiny of the information by those charged with making the decision to extend the restricted association. Those given in effect a supervisory role by the statutory regulations, namely the members of the Board of Visitors and the Secretary of State must have access to the information and be able to subject it to such scrutiny as they consider necessary.'
>
> [33] Thus, a decision maker must subject intelligence information to anxious scrutiny. As the reference to scrutiny being 'anxious' may not chime with public authority decision making I prefer to refer to close scrutiny. Those making the original decision on a matter and any further decision maker, whether by supervision or review or appeal (and whether the office holder specified in the legislation or an authorised official on their behalf) should have access to the intelligence

> information and those responsible for such information as the decision maker should consider necessary. That access should enable the decision maker to subject that information and those responsible for the information to such close scrutiny as they consider necessary to make the required decision, knowing that parliament has placed the decision in their hands and knowing that, as the person concerned will not have access to that information, the decision maker must also be mindful of the need to consider the interests of the applicant in such circumstances.
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> [34] What is important in the exercise described above is that those with responsibility for the intelligence information should be subject to examination by the designated decision maker in relation to the information so that the designated decision maker may be satisfied that the information may be acted upon. In the present case the Secretary of State had a number of meetings with those responsible for the intelligence information, including a meeting in the period immediately before the decisions were made, and the Secretary of State made the decisions in question in the light of the disclosures made. There is no reason to doubt that the purpose of the meetings with police security and the security services was to permit the Secretary of State to satisfy himself about the intelligence information and no reason to doubt that he did so. The repeated briefings and meetings held on the subject make evident the close regard that was had to the material."

[16] In *R v Chief Constable of Thames Valley, ex parte Cotton* [1990] IRLR 344, a decision of the Court of Appeal of England and Wales, Bingham LJ made the following observations at page 352:

> "while cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all the circumstances unfair, I would expect these cases to be of great rarity."

[17] In *De Smith's Principles of Judicial Review (2nd edition)* it is also noted at [7-055]:

> "if relevant evidential material is not disclosed at all to a party who is potentially prejudiced by this, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing."

[18] The applicant also seeks to rely on the seminal case of *R v Home Secretary ex parte Doody* [1994] 1 AC 531, in which the House of Lords considered whether life sentence prisoners were entitled to know the information the Secretary of State relied upon when making his decision as to the date upon which the sentence could be first reviewed. It concluded that such a right did exist, for this reason, per Lord Mustill at page 563 F to H:

> "Approaching the matter in this way, it must be asked whether the prisoner is entitled to be informed of that part of the material before the Home Secretary which consists of the judges' opinion and their reasons for it. It has frequently been stated that the right to make representations is of little value unless the maker has knowledge in advance of the considerations which, unless effectively challenged, will or may lead to an adverse decision. The opinion of the Privy Council in *Kanda v. Government of Malaya* [1962] A.C. 322, 337 is often quoted to this effect. This proposition of common sense will in many instances require an explicit disclosure of the substance of the matters on which the decision-maker intends to proceed. Whether such a duty exists, how far it goes and how it should be performed depend so entirely on the circumstances of the individual case that I prefer not to reason from any general proposition on the subject. Rather, I would simply ask whether a life prisoner whose future depends vitally on the decision of the Home Secretary as to the penal element and who has a right to make representations upon it should know what factors the Home Secretary will take into account. In my view he does possess this right, for without it there is a risk that some supposed fact which he could controvert, some opinion which he could challenge, some policy which he could argue against, might wrongly go unanswered."

[19] The applicant argues that he was not provided with adequate disclosure or reasons in respect of the decision and was thereby prevented from making any meaningful representations about the concerns that had been raised about his fitness to be entrusted with a firearm. It is submitted on behalf of the applicant that he has been provided with even less disclosure than he was in 2006 when the proscribed organisation that he was alleged to be associating with was at the very least, able to be identified. According to the applicant, as matters presently stand, the court has no sworn evidence outlining the steps taken by the decision-maker in respect of the appeal. Much less is there a detailed decision before the court which it can analyse. Instead, there are only opaque notification letters which are of virtually no assistance in the determination of these proceedings. It is argued that in such circumstances,

the court cannot possibly be satisfied that the necessary anxious scrutiny has been applied.

[20] The applicant highlights the fact following the service of his PAP letter on 2 May 2025, he received the proposed respondent's response dated 23 May 2025 in which it is stated that the Parliamentary Under Secretary "received a briefing from security partners on the applicant's case." It is argued that no information has been provided as to when that took place or what was discussed. It is argued that it is not clear whether the briefing related only to the information which was the subject of the gist disclosed to the applicant, or whether the Parliamentary Under Secretary received new or updated information at that briefing. If she did, that information, or a sufficient gist of it should also have been provided to the applicant to enable him to make further representations.

[21] The applicant accepts that the authorities recognise that there may be circumstances in which limited disclosure may be justified. However, it is argued that even where such a stance is justified, that does not extinguish the requirements of basic procedural fairness. In assessing what the requirements of procedural fairness called for in this case, it is argued that the court should look to the guidance provided by the House of Lords in *ex parte Doody*. It is argued that Lord Mustill considered the duty to disclose to exist because, without it, there was:

> "a risk that some supposed fact which he could controvert, some opinion which he could challenge, some policy which he could argue against, might wrongly go unanswered."

[22] It is argued that the dearth of information provided to the applicant in this case has resulted in that risk being realised. It is argued that the applicant simply did not have a proper opportunity to controvert, challenge or argue against the information, which was held against him, because he was not told enough about what it was.

[23] The applicant also makes reference to the recent Northern Ireland Court of Appeal decision in the case of *JR86* [2024] NICA 36 at para [42], where Treacy LJ made the following observations:

> "It follows that all of the jurisdictions in the British Isles, except Northern Ireland, have arguably enhanced procedural safeguards via statutory provisions establishing a court-based system for determining whether a person's firearms licence should be revoked or not. Standards which the appellant contends sit more comfortably with the Convention framework. In contrast, the system in Northern Ireland does not involve the courts in making such decisions. The power of revocation

> vests in the Chief Constable with a right of appeal to the Secretary of State. The only role for the court is by way of judicial review where the High Court exercises its supervisory jurisdiction to review the lawfulness of the impugned decision in accordance with established public law principles. The difference of approach between NI and all the other jurisdictions in the British Isles together with article 6 of the ECHR and article one the First Protocol (A1P1) have been a catalyst for the contention that the current statutory framework is incompatible with the ECHR and with the requirements of the common law. This latter contention has already been the subject of consideration at appellate level in the case of *Chalmers Brown* [2003] NICA 7 and in decisions of the High Court which have firmly rejected the contention. The appellant contends that the case of *Chalmers Brown* needs to be revisited in light of European jurisprudence which emerged after the Court of Appeal decision in *Chalmers Brown*. Although there has been at least one first instance decision in which the matter was considered in light of the European jurisprudence the fact remains that the matter has not been reconsidered at appellate level in light of the European jurisprudence. The respondent is therefore invited to indicate whether leave is still opposed on the additional grounds. We will also hear the parties as to remedy in respect of our substantive decision allowing the appeal.

[24] Finally, it is argued that the question of whether the procedure was fair should not be conflated with whether the ultimate decision made was correct. As observed by McCloskey J in *Re Toal's Application* [2017] NIQB 124 at para [47]:

> "… In the realm of procedural fairness, the vocabulary is that of possibility, to be contrasted with probability or certainty. This is the consistent thread of the leading authorities. It is expressed with particular clarity in *R v Chief Constable of Thames Valley Police, ex parte Cotton* [1990] WL 753309 and [1990] IRLR 344, at 352, per Bingham LJ:
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> > 'In considering whether the complainant's representations would have made any difference to the outcome, the court may unconsciously stray from its proper province of reviewing the propriety of the decision making

process into the forbidden territory of evaluating the substantial merits of a decision.'

[25] On behalf of the proposed respondent it is argued that the application cannot be distinguished from the decision of this court in *Donnellys' Applications* [2007] NIQB 34, a case brought by the applicant himself. It is argued that the decision of Gillen J creates an insurmountable barrier for the applicant and as a result leave should be refused. It is also argued by the proposed respondent that the application for leave is brought out of time.

[26] The proposed respondent reminds the court that this is the third judicial review brought by the applicant relating to his firearms certificate. The applicant had held a firearms licence for 22 years before it was revoked in 2005 on the ground that it was believed he was associated with CIRA which is a proscribed organisation. That application for judicial review was dismissed. Gillen J concluded that any further order of disclosure would undermine the purpose of the firearms legislation and the public interest in this matter outweighed the private interest in further disclosure.

[27] In February 2016 the applicant made a new application to the Chief Constable for a Firearm Certificate, which he said was for sporting purposes and for vermin control. His application was refused by the Chief Constable on 14 February 2017 on the statutory ground that he was not considered to be a fit person to hold a firearms certificate. The applicant appealed that decision to the Secretary of State. The appeal was refused by the Parliamentary Under-Secretary of State on 31 March 2022. The reasons given for the decision amounted to a recital of the statutory test. The applicant then brought his second application for judicial review based on inadequacy of reasons. Following on the grant of leave on 7 March 2023, the judicial review proceedings were resolved by consent. The Secretary of State agreed to quash his decision of 31 March 2022 and to provide a gist of the intelligence-based reasons relied on to allow the applicant to make further representations as he saw fit.

[28] On 28 February 2024 and again on 8 January 2025, the applicant was provided with a gist of the adverse information relied on. He was told that the decision was based, firstly, on the information provided to him in 2006 (ie that he had associated with the CIRA) and, secondly, that there was information from 2016 that he continued to be associated with a paramilitary organisation. Additional representations were then received from the applicant on 20 January 2025 in light of that gist.

[29] The Parliamentary Under-Secretary of State (not the decision maker in 2022) received a briefing from security partners on the applicant's case. She considered the relevance and reliability of the information before her and actively considered whether any additional information could safely be released to the applicant which would have allowed the applicant to make further meaningful representations. She concluded that no additional information could be released. In the response to the

applicant's pre-action protocol ("PAP") letter, the proposed respondent in correspondence dated 23 May 2025, stated that the Parliamentary Under-Secretary of State had also considered whether, even if additional information had been provided, the applicant would have been able to make any additional representations that would have allowed her to be satisfied that he was a fit person to hold a firearm. She concluded that he could not have done so. This statement does not appear in any earlier correspondence from the proposed respondent.

[30] The proposed respondent argues that the legislative scheme for the control of firearms in Northern Ireland as set out in the Firearms (Northern Ireland) Order 2004 strikes a balance between public safety and the reasonable expectations of legitimate shooting enthusiasts. The key test is set out in Article 5(2). The Chief Constable must be satisfied that an applicant is "a fit person to be entrusted with a firearm" and that he has "a good reason for having in his possession, or for purchasing or acquiring, each firearm and any ammunition to which the certificate relates."

[31] There is a right of appeal from the decision of the Chief Constable which is set out in Article 74. The appeal authority may make "such order as the relevant authority thinks fit having regard to the circumstances." The proposed respondent argues that Article 74(5)(a) recognises that the public interest in protecting certain forms of information forms an integral aspect of the statutory scheme. The proposed respondent asserts that it is now settled law that the statutory scheme complies with article 6 and article 1 protocol 1 of the Convention. This was established in the case of *Re Chalmers Brown* [2003] NIJB 168 where Carswell LCJ stated at para [13] that:

> "The prevention of the enjoyment of a sport or hobby is not the deprivation of a possession. In *RC v UK App No: 37664/97* the Commission held manifestly ill-founded applications by a number of applicants who had lost the right to pursue shooting as a leisure activity in consequence of legislation controlling the use of handguns, declaring that the right to pursue a hobby cannot be said to constitute a "possession" for the purposes of Article 1 of the First Protocol."

Carswell LCJ also went on to find that even if article 6 rights were engaged this was the type of case in which the requirements were met by a right of appeal by way of judicial review.

[32] Further, it is argued on behalf of the proposed respondent that the decision of Deeny LJ in the case of *EH v Minister for Justice* [2017] NIQB 107 is important in that it establishes that the earlier Court of Appeal decision in *Re Chalmers Brown* must be followed and that the issue of entitlement to be granted or retain a firearms certificate does not engage article 8 or article 1 of protocol 1 to the Convention. At

paras [56] and [57] of his judgment, Deeny LJ refers to passages in earlier judgments on this point:

> "[56] The respondent further relies on the decision of Girvan J in *Re Liam Shannon's Application* [2005] NIQB 5. This is of particular assistance to the court as it also involved a person who already had a certificate being subsequently deprived of it on the grounds of his lack of fitness. I refer in particular to the following passages from the judgment:
>
> > '[12] It is clear from *Re Chalmers Brown* that the right to hold a firearm certificate is not an incident of an applicant's private life protected by Article 8. Nor is the prevention of the engagement in a sport or hobby a deprivation of a possession the purposes of Article 1 Protocol 1(6) as I see it (see also *RC v UK Application No.37664 – 97)*. The applicant has failed to persuade me that there are any special or peculiar circumstances in the present case to suggest that either Article is permanently engaged. The revocation of the certificate does result in the firearm and ammunition being no longer capable of use by this applicant but he is not deprived of the asset of which he can dispose by way of sale.
> >
> > [13] Further, in *Re Chalmers Brown* the Court of Appeal upholding Kerr J (as he then was) held that Article 6 is not engaged in relation to decisions on the grant of firearm certificates. Even if Article 6 were engaged the court concluded that the right to judicial review is sufficient to satisfy the requirements of the Article.'
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> [57] Counsel for the respondent submitted that this decision had been approved on appeal to the Court of Appeal although no judgment has been located. But he refers to a further judgment of Girvan J in *Re Graeme Drummond's Application* [2006] NIQB 69, again a revocation case, leading to an application for reinstatement. I note that in paragraph [5] of that judgment Girvan J said the following:

> '[5] The firearm could be sold without loss of value and the applicant never had an unconditional right to a firearm certificate which is a conditional authorisation under pain of revocation requiring the holder to conform to the requirements of the Firearms Licensing Authorities.'

He went on:

> '[9] In *Chalmers Brown* the Court of Appeal held that article 6 was not engaged. It concluded that the decision in relating to the grant or revocation of firearm certificates does not fall within the definition of civil rights for the purposes of article 6. On the question of article 1 First Protocol applying the Court of Appeal applying the approach of the European Court of Human Rights in *RC v UK* concluded that the prevention of the enjoyment of a sport or hobby is not a deprivation of a possession. Mr Hutton contended that this part of the Court of Appeal's judgment failed to deal with the separate question whether the revocation of the licence had the effect of depriving the holder of the firearm of the right to enjoy the chattel and thus failed to address the first part of the rule in indent 1 of article 1 Protocol 1. In *Re Liam Shannon* I did deal with the argument, concluding that the revocation of the certificate did result in the gun being no longer capable of use by the applicant but the applicant was not deprived of the asset which he could dispose of by way of sale. The Court of Appeal in its judgment on that case stated that the applicant could not point to any flaw in my reasoning and it ruled that the applicant had failed to make out an arguable case for challenging the decision to revoke the firearm certificate and it dismissed the application for leave to apply for judicial review. Unless these decisions are in some way overruled by or no longer consistent with *Re Misbehavin* they establish clearly that the applicant could not reply on article 1 Protocol 1 or article 6. *Re Misbehavin* (which is on appeal to the House of Lords) was dealing

> with a very different situation and was not *in pari materia*. It did not discuss the rulings in *Re Chalmers Brown* or *Re Liam Shannon*. Sitting as a court of first instance I consider that I am bound by the approach adopted in *Re Chalmers Brown* and *Re Liam Shannon*.'"

[33] Deeny LJ at para [59] of his judgment referred to an earlier judgment of his in the following terms:

> "[59] The same applicant then came before me in *Graeme Drummond's Application* [2006] NIQB 81. I said the following, inter alia:
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> > '[5] The learned judge refused leave on the grounds that there was a breach of Article 1 of the First Protocol of the European Convention on Human Rights or a breach of Article 6(1) of the same. It will be noted that this possession of firearms is for recreational purposes by the applicant and not for his employment. I respectfully agree with the view of Girvan J in that regard. I consider that it would be inappropriate to apply the full protection of Article 6 in particular to a situation where a person is applying for a Firearms Certificate. There is no human right to possess a firearm. There is no right to damages for refusal of the same. No punishment is being inflicted upon the applicant although no doubt he is significantly put out by the revocation of the certificate. The important object with regard to firearms is to prevent them coming into the possession of persons who are for one reason or another unfit to possess them. See Article 28 of the Firearms (Northern Ireland) Order 1981.'"

[34] Finally, at para [71] of his judgment in *EH*, Deeny LJ stated that:

> "For my own part I conclude that requiring a citizen to hand in a firearm which he uses only for sporting purposes and which he is free then to sell to some other person with a firearm certificate, because the Chief Constable is not satisfied that he is a fit person to continue

> to have a firearm, is a *de minimis* interference with his property rights."

[35] The proposed respondent characterises the applicant's challenge as being based on the grounds of procedural fairness and natural justice. It is argued that the gravamen of the applicant's argument is that, notwithstanding the gist, the applicant was not provided with sufficient information, or any information to allow him to meaningfully respond to the Secretary of State's "minded to" letter.

[36] The proposed respondent argues that the circumstances in the present application for leave to apply for judicial review are now materially different to those which applied at the time of the applicant's previous application for judicial review in 2023. On that occasion no gist of the intelligence relied on had been provided, although the applicant was aware of the reasons why his firearms certificate and that of his son had been revoked in 2006.

[37] The proposed respondent argues that the applicant has now been provided with an intelligence gist. He is aware that the decision maker relied on the intelligence from 2006 (ie that he associated with the CIRA) and information from 2016 that he continued to be associated with a paramilitary organisation. It is argued that the Parliamentary Under-Secretary of State actively considered whether greater release of information could have been made that would have allowed the applicant to make further representations. It is submitted that she actively considered that even with additional information, she would not have been confident that he was a fit person to hold a firearm. These points may be contained in the response to the PAP correspondence but they definitely are not made out in the correspondence to the applicant dated 8 January 2025 or 24 February 2025.

[38] It is argued that the challenge which is now made is entirely the same as that which was before Gillen J in *Donnellys' Applications* [2007] NIQB 34. It is submitted that in light of that decision, the procedural fairness grounds relied on by the applicant are unarguable, as his present claim is indistinguishable from the earlier one in that regard.

[39] It is argued on behalf of the proposed respondent that the applicant fully understands that it is believed that he was associated with a proscribed dissident republican organisation in 2006 and that he continued to be associated with a paramilitary organisation in 2016, which were the reasons relied on in the refusal of his firearms application, and that no greater disclosure could be provided on security grounds. The proposed respondent relies upon the earlier judgment of Gillen J at para [16] where he made the following observations:

> "The context of this case is the firearms legislation. The purpose of that legislation is fundamental to any approach to the matter. The central aim of the legislation is clearly to ensure that only fit persons hold firearms and

> ammunition. The scheme envisages, in the last resort, the Secretary of State providing a decision-making process that must be set in the context of the purpose of the legislation. Necessarily the Secretary of State must rely on information from the police who will provide the information which will assist in informing the decision-making process. The policy behind the firearms legislation is that the authorities must have full confidence in the holder of firearms certificates. The granting of firearms licences is a function to be carried out with great care and circumspection having regard to the public danger if any inappropriate persons have access for firearms or associated with people who might know that that person has a firearm. The court is bound to recognise that there is no legal right to a firearm and the purpose for which it is sought may vary enormously. The protection of the public is a highly important factor and must assume a primary role in the granting or revocation of certificates. No unreasonable impediment must be created to a proper and informed consideration of the issues in such matters."

[40] The proposed respondent argues that Gillen J went on to accept that no further information should be disclosed to the applicants other than which was given to them as any further order of disclosure, when already considered by the Secretary of State, would undermine the purpose of the legislation and perhaps seriously impede firearms control. The proposed respondent argues that the limitations of the gist provided were specifically addressed by the court in that Gillen J stated at para [20]:

> "In my view the public interest in this matter outweighs the private interest of having further information for this decision other than that which has already been tendered. The gist of the case was provided to the applicants in this instance albeit in diluted form. Whilst it may not have been sufficient to allow the applicants to descend into the particularity that they would have wished in order to answer specific allegations, they were afforded some protection by virtue of the fact that the Minister did have regard to the question of what disclosure was appropriate and did ask appropriate questions before reaching a balanced decision."

[41] The proposed respondent also relies on the decision of Weatherup J in *JR 20's Application* [2010] NIQB 11. The proposed respondent argues that the judge in that case followed the same approach to the balancing of the applicant's individual rights

against the wider public interest. Dismissing the judicial review application, he said at para [30]:

> "So it was in the present case that the intelligence information available to the respondent in relation to the applicant's associations was considered to be such that, in the public interest, it could not be disclosed to the applicant. In the context of an application for a firearms certificate the applicant's private interest in the disclosure of that information must yield to the public interest in protecting the information."

[42] It is further argued on behalf of the proposed respondent that in *GMJ's Application* [2014] NIQB 135 Horner J at para [22](i) and (j) recognised that there will be circumstances in which a member of the public will not be entitled to receive information which is relied on. It is argued on behalf of the proposed respondent that this application can also be distinguished from the facts of *JR86's Application* [2024] NICA 36 in which the Secretary of State took into account unspecified further adverse information that was not the subject of a gist and in respect of which there were no national security grounds to justify its non-disclosure. It is argued with some force and merit that the particular issue in that appeal does not arise in the circumstances of this case.

[43] The proposed respondent places some reliance on the recent UK Supreme Court judgment in *U_3 v SOS for the Home Department* [2025] UKSC 19. In that case, which related to the assessment by the Secretary of State that the applicant posed a risk to national security, the court held that in proceedings before SIAC, per Lord Reed at paras [65]-[69]:

> "[65] One further factor is also important. In carrying out a review of a discretionary decision by the person entrusted by Parliament to take that decision, and in particular when assessing the reasonableness of a decision, a court or tribunal will always attach weight to the assessment made by the primary decision-maker. That is a matter of particular significance in the present context, for two reasons, which might be described as institutional and constitutional.
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> [66] Institutionally, the Secretary of State acts on the basis of expert advice, including advice from the Security Service. The assessment of intelligence depends on an expertise which serving intelligence officers possess, but judges do not: expertise, for example, in assessing the reliability of information received from covert sources, based on such matters as the past record of informants,

> their motivation and their current circumstances, or the likelihood that the breaking of codes or encryptions has been detected, or that the presence of listening devices has been suspected; and expertise in the interpretation of a mosaic of individual items of information. Even persons formerly involved in intelligence work, such as some of the members of SIAC, are unlikely to be as well placed to assess such information as serving officers, because they will have no close or current involvement with the sources of that information and the factors bearing on its reliability.
>
> [67] There are in addition constitutional reasons why public safety should be primarily the responsibility of a member of the government who is accountable to Parliament, and ultimately to the electorate, rather than the responsibility of the members of a judicial tribunal, however eminent and experienced they may be. As Lord Hoffmann said in *Rehman*, in a postscript to his speech written after the 9/11 attacks on the United States, "such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process." (para 62)
>
> [68] Accordingly, there are both institutional and constitutional reasons why, in carrying out its function of reviewing decisions taken on grounds of national security, SIAC should attach very considerable weight to the Secretary of State's evaluation."

[44] In summary, the proposed respondent argues that the procedure adopted in the present case was fair. The applicant was given the opportunity to make representations on all issues, including the circumstances of the revocation of his firearms certificate in the past in which it was stated that that he was believed to be associated with a dissident republican organisation, the CIRA, before any final decision was made by the Minister. It is argued that there is nothing to suggest that the applicant could offer any more information than that which he has already put before the decision maker and which would or could produce a more favourable outcome for him.

[45] In relation to the issue of limitation, the proposed respondent asserts that the Secretary of State's decision was issued on 24 February 2025. Notwithstanding this, judicial review proceedings were not issued until 27 May 2025. It is argued that any proposed judicial review proceedings are outwith the relevant time limit for judicial review provided for in Order 53 rule 4 RCJ. Order 53 rule 4 imposes an unusually

short limitation period in judicial review proceedings. The policy objective behind this is good public administration. The authorities are clear that each period of delay must be accounted for and explained in evidence. It is argued that no explanation has been provided in respect of the delay in question, and no basis therefore exists upon which the court could extend time.

[46] The test for granting leave to apply for judicial review in this jurisdiction is that set out in *Re Ni Chuinneagain's Application* [2022] NICA 56. The applicant must satisfy the court at this stage that there is an arguable case with a realistic prospect of success. In assessing the applicant's prospects of success in this challenge, it is important to stress that I feel bound to take into account only matters which appear in the two relevant pieces of correspondence emanating from the proposed respondent and to put out of my mind anything contained in the response to the PAP letter in this case, particularly any assertion as to what issues were or were not taken into account when the proposed respondent made the final decision in this instance.

[47] Further, it is important not to lose sight of the fact that this is an appeal from the decision of the Chief Constable taken on 14 February 2017 and the primary focus of this appeal is to determine whether the Secretary of State should reach a different conclusion from that reached by the Chief Constable eight years ago. The judicial review which was initiated on 1 December 2022 was focused on the decision of the Secretary of State dated 2 September 2022 which was an appeal from the Chief Constable's February 2017 decision. This is clear from the manner of disposal of the previous judicial review application. The order of the court dated 21 May 2024, refers to a decision of the Secretary of State made on 31 August 2022, whereas, in fact, the decision is dated 2 September 2022. But apart from that issue, the order made it clear that what had to happen was that:

> "The Secretary of State shall provide to the applicant within three weeks of the date hereof a gist of the reasons relied on in his decision of 31 August 2022" (2 September 2022) "that the applicant was not a fit person to hold a firearms certificate."

[48] The gist that was provided in advance of the making of the formal court Order was in the terms set out in para [7] above. In essence, in late February 2024, the Secretary of State revealed that: "… in making his initial decision, the Secretary of State took into account information from 2016 that Philip Donnelly continued to be associated with a paramilitary organisation." Therefore, it is clear that in this appeal from the Chief Constable's decision in 2017, the Secretary of State took into account that in 2016 the applicant continued to associate with a paramilitary organisation. It is quite clear that the Secretary of State was looking at the matter from the Chief Constable's perspective in 2017 and not from the perspective of 2024 and certainly not from today's perspective. It is also clear that there is a significant academic aspect to this appeal because what is really required now is an assessment

at this stage with the benefit of up-to-date information of the issue of whether the applicant is a fit person to whom firearms can be safely entrusted. Even if the court were minded to find that the appeal from the Chief Constable's 2017 decision should have been successful, that would not be the end of the matter by any means. By reason of the passage of such a lengthy period between 2017 and the present date, it would be necessary for a fresh application for a firearms certificate to be made and for that application to be considered in the light of all the relevant up-to-date material. If there was evidence that the applicant was associating or had been associating with a paramilitary organisation in the recent past then this information would clearly be relevant to any decision with regard to his fitness to presently hold a firearms certificate.

[49] There is absolutely nothing in the recent decision letters to indicate that up-to-date information was considered and if, contrary to that conclusion, up-to-date information was actually considered, then there is a clear breach of the requirement to indicate that up-to-date information was taken into account and, where possible, to provide a gist of the up-to-date information. As things presently stand and based on my understanding of what has transpired in this case, I do not believe that the gist that was provided in late February 2024 was inadequate in relation to the Chief Constable's decision in 2017 or the Permanent Under-Secretary of State's appeal from that earlier decision which was eventually promulgated in early 2025. However, as I have stated, due to the efflux of time, I have very considerable concerns about whether that decision and subsequent appeal process is anything other than academic.

[50] The pragmatic solution and just outcome to this application for leave for judicial review is that it should be stayed on the following terms:

(a) The applicant shall be at liberty to make a fresh application for a firearms certificate within six weeks of today's date.

(b) The Chief Constable shall give due, proper and timeous consideration to any such application, in accordance with the duties imposed upon him and the powers conferred on him under the 2004 Order.

(c) In advance of any final decision by the Chief Constable, the applicant shall be afforded an opportunity to make submissions in relation to any matter which the Chief Constable is minded to take into account in determining the application where, in the opinion of the Chief Constable, it is possible (bearing in mind the public interest and the interests of national security) to provide details of such matters to the applicant, whether by means of a gist or otherwise.

(d) If any such application for a firearms certificate is unsuccessful, the applicant shall be at liberty to exercise his right of appeal to the appropriate authority and, if the appropriate authority in this instance is the Secretary of State, then

the procedure to be adopted during the appeal process will, so far as is possible, mirror that set out in the preceding sub-paragraphs.

(e) This application for leave to apply for judicial review will stand stayed until either the outcome of the process or processes described herein or, in the absence of a fresh application within the time stipulated in sub-para (a), for a period of seven weeks, whichever is the sooner.

(f) Upon the expiry of the applicable time period set out in sub-para (e) above, the matter will be relisted for final disposal in respect of the substantive application and any outstanding issue in respect of costs.