

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Campbell's (Paul Martin) Application (Leave Stage) [2010] NIQB 9

AN APPLICATION FOR JUDICIAL REVIEW BY
PAUL MARTIN CAMPBELL

TREACY J

[1] The applicant is a pupil solicitor apprenticed to his master, Paul Fitzsimons, who is a senior partner in the practice of Fitzsimons Kinney Mallon (solicitors) who practice in Newry. By this application the applicant seeks leave to apply for judicial review of the decision by the police to exclude him in, the company of his master, from attending police interviews.

[2] By way of relief he seeks, inter alia, a declaration that the said decision was unreasonable or irrational and secondly that the refusal to admit him to interviews along with his master on the evening of 8 July 2009 was contrary to law on the basis that the applicant had a legal entitlement to accompany his master in the course of his training and in the discharge of the master's duties as a solicitor.

[3] From the affidavit evidence it is clear that there is no **policy** exclusion of pupils. Unsurprisingly the affidavit evidence reveals that pupil solicitors in this jurisdiction have been admitted to PACE interviews without difficulty over many years. Indeed in the present case the applicant was in fact admitted to the first *four* interviews only to be refused admission by a different custody sergeant. A decision which was promptly reversed by a Chief Superintendent following a complaint from the applicant's master.

[4] In his first affidavit at paragraph 5 Mr Fitzsimons, the master, avers as follows -

“Despite my representations and requests for the applicant to be admitted again the custody sergeant maintained that as the applicant was unqualified he was not **entitled** to be present under PACE regulations.”

[5] The Master then complained to Chief Superintendent Grimshaw. The custody record at page 16 records the complaint that was made and then has Chief Superintendent Grimshaw stating as follows -

“I informed the solicitor that I had been briefed by Sergeant McMahan and on the basis of the legislation and the code of practice I as Chief Superintendent Grimshaw was *satisfied with his judgment and decision*. However in light of the fact that Mr Campbell had been *present* at previous interviews, which I had not been briefed about, I was prepared to reverse the decision of the custody sergeant.”

[6] Paragraph 5 of Mr Fitzsimons’ affidavit then states (and he is referring to the conclusion of the complaint process that he had initiated whilst in Antrim custody suite) -

“At the end of this process Chief Superintendent Grimshaw told me that he would speak with custody sergeant McMahan and that he could see in the circumstances *no difficulty* with the pupil solicitor being admitted and that he would recommend that to the custody sergeant. I thanked him for his helpful consideration of the matter and was returned to an interview room. A short time later the custody sergeant reappeared and asked if we were now ready to go ahead with the interviews. This was now at approximately 11.15 pm. I said I was waiting for my pupil solicitor to be brought across from the police reception area in the outer building where he had now been waiting for over 3 hours. The custody sergeant told me that the pupil solicitor was **not** being admitted and that was his decision. I told the custody sergeant that was not what Chief Superintendent Grimshaw had related to me. The custody sergeant said, “he was in charge and that **no** such representation had been made to him by Chief Superintendent Grimshaw before he left the station”. As the pupil solicitor was continued to have been denied access I told the custody sergeant that I was no

longer prepared to engage with him and there would be no further interviews with my client now this evening given the lateness of the hour, the interviews having been delayed by 3 ½ hours at this stage.”

[7] I am satisfied that out of what has the hallmarks of an isolated dispute issues of some potential importance arise, in particular, the circumstances in which a pupil solicitor, having been duly admitted to PACE interviews with his master, can, if at all, be thereafter excluded in the absence of any unreasonable conduct (none being alleged) on the part of the pupil solicitor . The impugned exclusion decision of the custody sergeant was reached on the basis that the applicant was not a qualified solicitor and *therefore* was not entitled to be present *under PACE regulations*. Whether that was a sufficient or proper basis for exclusion especially since he had already been admitted will require close examination.

[8] The custody record reveals that whilst the Chief Superintendent reversed the impugned decision he was, on the basis of the legislation and the code of practice, purportedly satisfied with the actual judgment and decision of the custody sergeant (which he nevertheless reversed). The applicant has persuaded me that there are arguable grounds requiring leave to be granted. If and insofar as the applicant relies on Article 59 of PACE and the codes thereunder as a source of his alleged right to be present I consider this to be misconceived and leave is not granted to rely on that ground. Article 59 confers a right on a detained person to consult with his or her solicitor. That right vests in the detained person. In Coyle v. Reid [2000] NI 7 Carswell LCJ, held –

“We do not find it helpful to analyse the relationship between the police and a solicitor visiting a client detained in a police station in terms of the *solicitor's* rights. By the terms of PACE certain rights are conferred on a *person detained* in police custody but none are given specifically to the solicitor.”

[9] Nonetheless the circumstances in which a pupil solicitor, having already been admitted to PACE interviews (in accordance with well established custom and practice)can, in the absence of any reasonable complaint about his conduct, be excluded *now* needs to be addressed because of the difficulty that this case has graphically exposed. Subject to what I have just said about Article 59 leave is granted. It seems to me that the grounds in the Order 53 statement may require some revision in the light of what I have said about the basis on which leave has been granted.