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*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 24/11/06

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**IN THE MATTER OF AN APPLICATION BY GRAEME DRUMMOND
FOR JUDICIAL REVIEW**

DEENY J

[1] The applicant brings proceedings to challenge the lawfulness of a decision taken by the Secretary of State for Northern Ireland on 25 October 2004 to refuse his appeal from the revocation of his firearms licence by the Chief Constable of the Police Service of Northern Ireland.

[2] The applicant was born on 7 May 1973 and lives in County Antrim. Until the year 2000 he worked as a plumber who was cleared to engage in employment at security forces installations. From 1993 he was permitted to have a personal protection weapon because of this. He was also a member of the Royal Naval Reserve. His employment and this reserve service ceased after 2000, following a serious accident.

[3] Firearms remained a recreation of his. As at 17 June 2003 his authorised firearms included a number of sidearms. He wished to add a fourth pistol, of different calibre apparently, to his collection. This necessitated the police making checks before that variation of a certificate was permitted. This led to the local Special Branch suggesting he was not a fit person to legally possess a firearm. The subsequent facts have been very helpfully set out in a careful and detailed skeleton argument prepared for the hearing by the applicant's counsel Mr Barry Macdonald QC and Mr Desmond Hutton. I have also had the benefit of a cogent written and oral argument from Mr Paul Maguire QC for the Secretary of State. Suffice it to say that the reason for the Chief Constable's view, ultimately upheld by the Secretary of State, was that Mr Drummond associated with Loyalist paramilitaries.

[4] Mr Drummond feared that there was another explanation for the revocation of his Firearms Certificate. He was a member of the Ex-Services

Pistol and Rifle Club. He got into a dispute with the officers of that club and was planning to open another club. He thought that this may have been the reason for this unhelpful report upon him. However the Northern Ireland Office expressly enquired from the Headquarters of the Special Branch of the Police Service of Northern Ireland whether this was or could be the case and were assured that the adverse report upon him was unconnected with this dispute. The applicant applied for leave to bring judicial review proceedings. Leave was given by Mr Justice Girvan on 28 January 2005. However is leave to confined to grounds 3(a) and 3(b) in his Order 53 statement dated 24 January. These read:

"(a) The decision was unfair in that the Applicant was effectively prohibited from properly challenging any allegations made against him and challenging any adverse material considered in connection with the question of revocation of his Firearms Certificate and is unable to determine whether matters of substance raised by him in the context of the decision-making process were adequately and effectively investigated;

(b) The decision was taken in breach of the applicant's legitimate expectation, induced by the decision-maker, to the effect that the applicant would be afforded procedural protections in connection with the appeal i.e. that he would be given an opportunity to comment on the Chief Constable's background report, once that had been received by the decision-maker."

[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 Mr Justice Girvan 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.

[6] Once it is clear in ones own mind that that is the case it also seems clear that both the Chief Constable and the Secretary of State are perfectly entitled to conclude that association with Loyalist paramilitaries can, and if they so consider should, constitute a reason why the applicant was unfitted to be entrusted with a firearm. By Loyalist paramilitaries we mean in this jurisdiction persons connected with illegal organisations which are not only actively involved in gangsterism of one kind or another but who have not declared a "ceasefire" with regard to terrorist activities ie. they purport to abrogate to themselves a completely illegal privilege to attack their fellow citizens and damage property for what they conceive to be political ends. Association with such persons may expose the possessor of the firearm to pressure, as the Court of Appeal has pointed out. It may also mean that these paramilitaries know of the possession of the firearms and, if friendly enough with the possessor, the location and means of access to them.

[7] This is a decision that turns very much on the particular facts before the court, rather than a general attack upon these propositions. In those circumstances it is not necessary to refer at length to the Order or the authorities. As indicated above the Chief Constable shall not grant a Firearms Certificate under Article 28 of the 1981 Firearms Order unless he is satisfied that the applicant "(i) is not prohibited by this order from possessing a firearm, is not of intemperate habits or unsound mind and is not for any reason unfitted to be entrusted with a firearm." An appeal lies from his refusal or from his decision to revoke a Firearms Certificate, as here under Article 30. The terms of Article 30(1)(a) are the same as Article 28(2)(i). Under Article 30(2) a person aggrieved by the revocation of a Firearms Certificate on any of these grounds may appeal to the Secretary of State under Article 55. Under Article 55, on such an appeal the Secretary of State "may make such order as he thinks fit having regard to the circumstances". The Chief Constable therefore is entitled to and indeed to obliged to take into account the fitness of the applicant to be entrusted with firearms. The discretion of the Secretary of State is if anything wider ie. to make such order as he thinks fit. In An Application by Chalmers Brown for Judicial Review, 20 May 2002, Kerr J, as he then was, concluded as follows:

"The philosophy which underlies those provisions (by which I mean, Article 28, paragraph 1 and Article 55) is clear, and that is that Parliament in its anxiety to ensure that only those in whom full confidence can be reposed as to their suitability to hold a Firearms Certificate should be the beneficiaries of the grant of such a certificate."

I respectfully adopt that statement. It is clear from the Order and the authorities that the decision maker must be positively satisfied with the licence-holder's suitability.

[8] The initial chronology of this matter which I will summarise as concisely as possible is a somewhat surprising one. Although the applicant was unaware of it at the time, on 9 April 2003 intelligence information was apparently logged on the computer system of the Special Branch of the Police Service of Northern Ireland (now Crime Operations Department). This was the basis of the subsequent finding by the Chief Constable and the Secretary of State that he was unfit to hold a Firearms Licence ie. that that log reported his association with members of a proscribed Loyalist organisation. However on foot of an application of 1 May 2003 the applicant was authorised on 27 May to acquire 1,000 primers to enable him to manufacture his own bullets. Furthermore on 29 August 2003 his certificate was further varied despite this earlier report.

[9] On 1 October 2003 the applicant applied for a further variation of his Firearms Certificate, as I have mentioned, to permit him to acquire a fourth handgun. He was also in or about that time pursuing an application to set up a new gun club and discussed that with Sergeant S Murphy of the Police Service of Northern Ireland. On 5 December 2003 he was authorised to acquire 2,000 primers for the manufacture of his own bullets. It was only on 9 December 2003, although the applicant was unaware of this at the time, that a Constable Leech in completing the necessary forms for his variation of his Firearms Certificate recorded correctly that an enquiry from SB as he referred to it reported that this applicant was "not recommended" and therefore he did not recommend the variation. On 6 February 2004 the Chief Constable wrote to the applicant saying that he was not minded to approve his variation because he was "associated with a proscribed organisation".

[10] The applicant wrote on 12 February 2004 maintaining that he had been the victim of "skulduggery" in connection with the dispute he had got into with the officers of the Ex-Services Club. He believed those officers had close links with a senior officer in the Firearms and Explosives Branch of the PSNI and that they were making mischief against him. It is right to say that the applicant continued to believe this and so instructed his solicitors until very recently.

[11] His counsel submitted, in my view properly, that this was a perfectly natural and an understandable inference for the applicant to draw. He was unaware of the report of April 2003. He had successfully varied his Firearms Certificate three times since then including being given permission to manufacture his own ammunition. It seemed to him that this difficulty in early 2004 must be related to the dispute which he had got into, roughly contemporaneously, with the Ex-Services's Club.

[12] However, again unknown to the applicant, the Chief Constable very properly enquired, in the light of the applicant's letter of 12 February, from

"HQSB" which I was informed was the Headquarters of the Special Branch in his own service, whether the source of the adverse report on the applicant could be linked to this dispute. Thus Chief Inspector J O'Brien of the Firearms and Explosives Branch later wrote in a report for the Northern Ireland Office:

"HQSB were able to confirm that the intelligence held was not related and their previous report remained extant."

At paragraph 4 of that report he provided a Conclusion:

"In the light of the reports from HQSB the Chief Constable cannot be satisfied that Mr Drummond is a person fitted to possess a firearm and ammunition and therefore revocation is necessary and justified."

It seems to me that the Chief Constable was therefore relying on two reasons set out in these two reports from HQSB ie. that the applicant associated with Loyalist paramilitaries or a Loyalist proscribed organisation (I agree with Mr Maguire that the difference is not significant) and that his proffered explanation for this, the dispute with the gun club, was entirely misplaced.

[13] The applicant was apparently written to on 24 March 2004 with a decision to revoke his Firearms Certificates and refuse his application for variation. Somewhat oddly the applicant did not receive these letters until they were handed to him on 13 April 2004. The applicant was highly suspicious that he was the victim of some manipulation from the persons with whom he was in dispute, because on 31 March 2004 they had offered to reinstate him as a member but subject to a declaration from him that he had never been disqualified from holding a Firearms Certificate. Of course that was a declaration that he could no long complete. It is therefore understandable that when his solicitors wrote on his behalf on 22 April 2004 exercising his right of appeal to the Secretary of State that they should have concentrated on this dispute with the Ex-Services Club. Both the earlier letter and the solicitor's letter carry a general denial of association with Loyalist paramilitaries but otherwise deal entirely with the dispute which they thought had prompted this radical change of attitude on the part of the police towards this man possessing firearms.

[14] The Northern Ireland Office response to the letter was both prompt and active. Their Firearms and Explosive Branch, wrote to their identically named opposite number in PSNI asking for a report detailing the background to the Chief Constables decision and other relevant matters. Furthermore they also wrote to the applicant's then solicitors saying that they had asked the Chief Constable for a full report. The letter goes on:

"We will write to you again in due course, setting out the reasons for the Chief Constable's decision, and giving you and your client the opportunity to comment on them."

Mr Macdonald relies on this as a promise made by the respondent of a procedural nature giving rise to a legitimate expectation on the part of his client that he would be given the Chief Constable's reasons and that he would be allowed to comment on them. In the event he was not given those reasons until well into these judicial review proceedings. He was not given any opportunity to comment on them nor indeed to comment more generally before a decision was made by the Minister of State Mr Ian Pearson MP on behalf of the Secretary of State. (No issue arises with regard to that delegation of authority). Indeed Mr Macdonald relies on a further letter from Mr Pearson himself of 7 June 2004 to Mr Ian Paisley Jun. MLA, again saying that Mr Drummond would be given an opportunity to comment on the report of the Chief Constable when it was available. To complete this aspect of matters there was a third letter of 28 July 2004 from the Firearms and Explosives Branch of the NIO to Messrs Reid Black and Company, the applicant's then solicitors, saying that they had got a report from the Chief Constable explaining the background to his decision. "We are corresponding with the Chief Constable to clarify some of the information that he has given us. In his account of his dispute with the Ex-Service's Pistol and Rifle Club that accompanied his appeal Mr Drummond mentioned that the Ministry of Defence had cleared him. It would be helpful if he could confirm why he received that clearance? I will write to you again once this correspondence has been completed to give you the opportunity to comment on what the Chief Constable has told us."

In the event Mr Drummond was not written to when the correspondence was completed and was not given the opportunity to comment.

[15] On 28 July 2004 the Northern Ireland Office also wrote a confidential letter to Chief Inspector J O'Brien later exhibited to an affidavit in these proceedings. It seems to me both relevant and of assistance to the applicant. The author, inter alia, set out the following paragraph:

"We will have to be to tell the Secretary of State much more about Mr Drummond's alleged association with a proscribed organisation. Can you tell us:-

- The name of the terrorist organisation concerned,
- Where the association occurred,

- When did the association occurred (sic) and did it occur on more than one occasion,
- Did the association occur in public or in private,
- The date(s) the association occurred,
- Is there anything you can tell us that the applicant can deny. This gives the appellant the opportunity to refute the intelligence by saying that on the date in question he was out of the country,
- If you cannot disclose information to us, can you explain why not,
- When did the intelligence that HQSB rely come to light, and
- I would also appreciate a copy of the club secretary's letter that appears to have accompanied Mr Drummond's application for the .45 calibre pistol?"

It seemed therefore to the official in the Northern Ireland Office that a relevant matter would be whether the police could tell the Secretary of State something "that the applicant can deny". In the event the police did respond, principally by offering an oral briefing personally to the Minister about the matters which they were unwilling to disclose. This was further to a letter of theirs of 31 August. Apparently the letter did provide a number of the pieces of information which the NIO had sought in its letter of 28 July 2004 including the name of the proscribed organisation, but these details have not been disclosed either to the applicant or indeed to this court.

[16] Mr Eric Kingsmill of the NIO then prepared a submission for the Minister dated 23 September 2004 relating to this matter. In that he expressly mentions that "the intelligence about Mr Drummond did not relate to his dispute with his firearms club". The submission also drew attention to the applicant's background including the fact that he had been permitted to use Minister of Defence ranges and that he had letters in support from two MLAs. He concluded with the following Recommendation.

"12. Mr Drummond's fitness to have firearms hinges entirely on the police's information that he associates with Loyalist paramilitaries. However I recommend that you have further briefing before you come to a conclusion on that.

13. Should the briefing convince you that Mr Drummond is not a fit person, the question of whether any further information can be released to

(for instance the name of the prescribed (sic) organisation) should be addressed. If it can it would be appropriate to give him further opportunity to make representations, if possible, before you reach a final decision.

14. If you are content, your Private Secretary and I can arrange the police briefing."

[17] It can be seen that the official was commending to the Minister, Mr Pearson that Mr Drummond be given a further opportunity to make representations if more information could be released. This should be borne in mind in the light of Mr Macdonald's criticism that he did not inform the Minister of the three letters in which the applicant had in fact been promised an opportunity to comment further in the light of the report and/or reasons of the Chief Constable. It seems to me that it would have been appropriate that the Minister was informed that those assurances had been given. It is right to say that he had signed one of the letters but he might well not remember that in detail. The Minister subsequently did have an oral briefing from the police on 18 October 2004. It appears from the papers that he was alone for that briefing which obviously included highly confidential matters. That might possibly help to explain why the respondent then wrote on 25 October 2005 without providing any further opportunity to the applicant to comment. He refused the appeal:

"In reaching his decision the Secretary of State took into consideration confidential information held by the Chief Constable that Mr Drummond associates with a proscribed Loyalist organisation."

The Minister's decision is actually written on Mr Kingsmill's typed submission document, in manuscript and initialled with the date 18/10 ie that the Minister was satisfied having been briefed by the police that he should refuse the appeal and recorded his decision there and then without an opportunity to be reminded by officials that he and they had said that the applicant would be given a chance to comment on the Chief Constable's reasons. For whatever reason that is what transpired.

[18] Mr MacDonald in his submissions pointed out that the report from the Police Service had been subsequently disclosed and therefore there was no good reason not to disclose it at this time. He also queried why they had not been told the name of the organisation. I feel he was on more solid ground in his next two submissions ie. that the applicant was not told that the gun club dispute was irrelevant to this allegation against him nor that the date of the information logged adverse to him was from the Spring of 2003 and therefore pre-dated the dispute. He contends that was unfair. He relies on the dictum

of Lord Steyn in R v Home Secretary ex parte Amin (2003) UKHR 51 at paragraph 52 to contradict Mr Maguire's contention in his skeleton argument that it would have made no difference. As Lord Steyn has said "...it is vital that procedure and the merits should be kept strictly apart otherwise the merits may be judged unfairly." He quoted Megarry J to the effect that open and shut cases often prove to be nothing of the sort. "This observation is apposite to the assumption that, although there has not been an adequate inquiry, it may be refused because nothing useful is likely to turn up. That judgment cannot fairly be made until there has been an inquiry." I observe that I am not convinced that further inquiry would be futile here in any event. Mr MacDonald QC pointed out that the date of the report logged in the computer was a day before the conviction of the applicant for careless driving. Apparently when he was stopped for careless driving by a police officer there were passengers in his car. Mr MacDonald did not want to say too much but the applicant had belatedly conceived the possibility that this might be linked to the adverse report on him. It seems to be not inconceivable that if the Minister were to reconsider his decision now in the light of further comments from Mr Drummond, and bearing in mind his hitherto good character and security clearance, another decision might possibly be arrived at.

Of course that would be a matter for the decision maker and not for the court. Certainly Mr MacDonald's argument seems to me persuasive that it was unfair to a man who had been led by the very actions of the police themselves in 2003 to think that his problem was the dispute with the gun club not to be told that this was entirely irrelevant.

[19] Mr MacDonald further relied as his second ground upon the legitimate expectation of the applicant that he be given an opportunity to comment on the Chief Constable's reasons. He submitted on the authority of R v North and East Devon Health Authority ex parte Coughlan [2000] 3 All ER 850 that a promise of a procedural benefit such as this would be enforced by the court unless there was some overriding reason to defeat the expectation of the promisee. See also Re Neale's Application [2005] NIQB 33, at para.28.

[20] He further relied on the decision of Sir Robert Carswell LCJ as he then was in Re Hugh Jordan's Application for Judicial Review [2003] NICA 30 with regard to legal aid for Mr Jordan. There the Lord Chief Justice rejected the submission of counsel for the Legal Aid Committee that there was no point in granting legal aid because the application it was for was so unlikely to succeed. Lord Carswell held:

"In those circumstances they could not be sufficiently certain that the application for judicial review was bound to fail (as in the event it did not) and they were in my judgment in error in refusing legal aid."

Likewise here it does not seem to me that the Secretary of State could be so sufficiently certain that his decision would be unchanged by further submission from the applicant.

[21] Mr MacDonald also relied on a third ground of irrationality on the part of the Secretary of State. As will be apparent from my earlier remarks this does not seem to me an appropriate ground. What is at issue here is the procedural fairness adopted by those acting on behalf of the Secretary of State in this connection. The decision itself could not be described in my view as irrational in the narrower *Wednesbury* sense. That is a very different matter from the need for the Secretary of State to take into account relevant considerations which it might be said the further comments of Mr Drummond would have been.

[22] Mr Paul Maguire QC in his helpful submissions referred to the substantial affidavit from Chief Superintendent Margaret Hunter of the Crime Operations Department of the PSNI. I say immediately that her averments in particular at paragraph 8 of her affidavit are entirely convincing. The necessity for the police to protect sources, to protect the methodology with which they acquire information and to ensure that a flow of information continues will indeed justify information not being disclosed to persons who are applying for Firearms Certificates or the subject of revocation decisions. But it does not seem to me that that point is in dispute in this case. The two matters which were not disclosed to Mr Drummond before the decision of the Minister are now in the public domain ie the date of the adverse report against him and the fact it was unrelated to his dispute with his fellow club members.

[23] Mr Maguire contended that the Secretary of State was under no obligation to tell the applicant that the adverse report against him was unrelated to the dispute. He was under no legal duty to do so. The applicant had chosen to concentrate on that aspect of matters but that was his concern.

[24] However Mr Maguire accepts that the Secretary of State was under a duty to act fairly even though this was clearly the exercise of an administrative rather than judicial discretion by him. It seems to me that fairness did demand that the man be told of this given that the police themselves had given considerable credence to that theory by permitting three other variations of his Firearms Certificate in 2003 after the report to Special Branch but before the dispute with the club. The respondent's own affidavits admit that this was due to an oversight on the part of one or more officers therein. Where the applicant labours under a major misapprehension, which has been induced, to a significant degree by error (or deliberately) by servants or agents of the decision maker, fairness is likely to require that the

decision maker corrects the false impression given before making his decision. It does so here.

[25] Mr Maguire submitted that unfairness would be established if the person effected was not given enough detail to make an informed response. While I accept his further submission that that may often pose difficulties in this context it does seem to me here that the applicant was not given enough detail to make an informed response before the Minister made his decision.

[26] Mr Maguire referred the court to R v Gaming Board of Great Britain, ex parte Doody [1993] 3 All ER 92 at page 106 and to In Re Liam Shannon's Application [2005] NIQB 5. He relied on these as authority for the proposition that it was enough in this context for the applicant to be informed of the gist of the case against him in relation to the proposed revocation. I entirely accept that dictum of Lord Mustill in the first case as applied to this situation by Girvan J in the second case. I note the two definitions given in the New Shorter Oxford Dictionary. The first reads: "Law. The real ground or point of an action." "2. The substance essence or main part of a matter." It seems to me that in the context of this case merely to tell this man that he was believed to have associated with members of a proscribed Loyalist organisation, which he, pausibly in the circumstances, believed to be due to a personal vendetta against him by persons capable of inputting such an allegation on to the Special Branch computer, directly or indirectly, when that was not the case, was to fail to convey the gist of the matter to him. The gist of the matter was that that report had been made a year before and had nothing to do with this dispute. In saying that I am not desirous of adding to the burden on the Chief Constable here or on the Secretary of State on appeal in dealing with firearms applications and revocations. A single sentence may well be enough in the great majority of cases to discharge this duty. But if it is clear from the response of the individual that he is labouring under a significant misapprehension, which arises from the error of one or more police officers, it may be necessary to correct that error so that the individual does grasp the gist of the complaint against him.

[27] Counsel also relied on the decision of Kerr J, as he then was, in Re McCallion's and Others' Application for Judicial Review 2001 NI 401. He examined the different treatment accorded by the learned judge to the three applicant widows before him. Two widows succeeded because their attention had not been drawn to adverse evidence against their applications for the exercise of a discretion by the Secretary of State. Again it seems to me that this judgment is not in conflict with the applicant's case here. The information that he was seen associating with Loyalist paramilitaries a year before is and was clearly information adverse to him.

[28] Mr Maguire did not dispute Mr Macdonald's submissions as to the current law on legitimate expectation. But he did rely on R v Hull Prison

Board of Visitors ex parte St Germain [1979] 1 All ER 701 as authority for the proposition that the court would not interfere if an error was trivial and merely technical. It seems to me in this case that the promise to the applicant to allow him to comment once the Chief Constable's reasons had been ascertained was neither trivial nor merely technical. He relied on the dictum of Lord MacDermott in Regina (McPherson) v The Ministry of Education 1973 NI 115 at 121.

"Certiorari is a discretionary remedy and does not usually issue if it will beat the air and confer no benefit on the person seeking it."

I readily accept the value of that dictum but it does not seem to me applicable here. The Minister ought to hear from Mr Drummond what he says about the allegation that this association was on or before 10 April 2003 and not at some later stage as he had hitherto thought, before Weatherup J directed the respondent to furnish the date of the Special Branch report.

[29] I conclude therefore, for the reasons set out in this judgment, that procedural fairness and the doctrine of legitimate expectation both required the Secretary of State, or the Minister on his behalf, to write to the applicant before a decision was made. He should have been informed of the Chief Constable's reasons to the extent of being told not only that he was believed to have been associating with members of a proscribed Loyalist organisation but also, in the circumstances prevailing here, that that association pre-dated and was wholly unrelated to his recent dispute with the gun club. He should have been given an opportunity to comment on the parts of the report of the Chief Constable which could be safely disclosed in accordance with the written assurances that he would be able to do so. In the circumstances I therefore make an order of certiorari to quash the decision of 25 October 2004 refusing Mr Drummond's appeal from the Chief Constable's decision to revoke his Firearms Certificate. That decision can be retaken by a Minister following receipt of a written response from Mr Drummond, now that he knows the reasons for the Chief Constable's decision, and taking into account the applicant's response along with all other relevant considerations.