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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY MARTIN CORDEN FOR JUDICIAL REVIEW

WEATHERUP J

The application

[1] At HMP Magilligan all prisoners returning from temporary release undergo searches and other security procedures that include passing a drugs dog. Drugs dogs identify contact with drugs by means of scent, and when the prisoner passes the drugs dog a positive indication takes the form of the dog sitting beside the prisoner. The prison authorities have experienced problems with prisoners returning to the prison from periods of temporary release who attempt to bring drugs into the prison by swallowing them in containers or wrappings or secreting them within a body cavity.

[2] This is an application for judicial review of a decision of a Governor at HMP Magilligan to remove the applicant from association under Rule 32 of the Prison and Young Offenders Centre Rules (NI) 1995 after the drugs dog had given a positive indication upon the applicant's return from temporary release on 15 April 2002. Upon a search of the applicant no drugs were found and he was removed from association to detect and retrieve any drugs swallowed or secreted.

[3] The applicant accepts that on his return to the prison the drugs dog gave a positive indication. The applicant denies any use of drugs or the carrying of drugs and states his opposition to drugs, which he states would be common knowledge within the prison. He offered to undergo a blood or urine test but that was refused, although the following day he did undergo a urine test. He questions the reliability of the drugs dog.

The use of the passive drugs dogs

[4] Governor Eagleson states it to be the experience of the Northern Ireland Prison Service that a positive indication, given by what he describes as passive drugs dogs, is a reliable indicator that a prisoner has been in recent contact with illicit drugs. He states that where a drugs dog gives a positive indication, and the follow up search is unsuccessful in locating drugs, the likelihood that the prisoner is engaged in the smuggling of drugs into the prison is substantial. Governor Eagleson decided that in order to maintain good order and discipline within the prison it was necessary to restrict the applicant's association for a period of up to 48 hours in order to detect and/or retrieve any drugs he may have swallowed or secreted about his person. He went to the applicant's cell block and explained to him that he was to have his association restricted for a period of up to 48 hours under Rule 32 and that the reasons were to detect and or retrieve any illicit drugs he may have within his system for the purpose of smuggling drugs into the prison. The applicant was served with a document with the title "Rule 32 – Restriction of Association" and the stated reason for being placed on Rule 32 was that "You provoked a positive response from a trained passive drugs dog."

[5] Governor Eagleson accepts that the applicant had not been required to undergo a conventional drugs test, but such a test was not considered to be of assistance as the concern was not that the applicant was a personal user of drugs but that he had swallowed or secreted drugs. During the period of removal from association the applicant was kept in a dry cell without toilet facilities. If and when the applicant wanted to go to the toilet or to wash, the applicant was taken from the cell to a toilet/ablutions area where he was discreetly monitored in a way that enabled the detection and retrieval of any illicit drugs that emerged from his system. The applicant was returned to normal association on 17 April 2002. No drugs were detected or retrieved during his period of restricted association. Governor Eagleson states that the absence of detection or retrieval of drugs during restricted association did not mean that the drugs dog's positive indication necessarily was incorrect.

[6] The applicant asserts that an alternative response by the prison authorities would have been to allow the applicant to continue association with other prisoners, at least for periods during the day, under the observation of prison officers, so that he would not have been able to put any drugs into circulation in the prison whilst under the observation of prison officers. Governor Eagleson does not accept that alternative as he states that the observation of prison officers in relation to prisoners who are mixing together is always imperfect and the opportunity to pass secreted drugs from one person to another would be provided by such association.

[7] The exchange of affidavits between the applicant and the respondent then turned to the reliability of the drugs dog test. Further details of that exchange will be considered below.

The Prison and Young Offenders Rules (NI) 1995

[8] Rule 32 provides -

> "(1) Where it is necessary for the maintenance of good order or discipline, or in his own interests that the association permitted to a prisoner should be restricted, either generally or for particular purposes, the governor may arrange for the restriction of his association.
>
> (2) A prisoner's association under this Rule may not be restricted under this Rule for a period of more than 48 hours without the agreement of a member of the Board of Visitors or of the Secretary of State."

[9] The application of Rule 32 is limited to cases where it is "necessary" so it must be judged an essential step in order to achieve the specified purpose. The specified purpose is the maintenance of good order or discipline so it is a step undertaken in the interests of control and not as a punishment. In the alternative it may be for the specified purpose of the prisoners own interests but that is not the present case. The prisoner may be restricted generally or for particular purposes and in the present case the respondent relies on the particular purpose of detecting or retrieving drugs. The governor has to make the initial judgment in relation to invoking Rule 32. The Rule is invoked on the basis of necessity and is a measure of last resort.

The applicant's grounds

[10] The applicant's grounds for judicial review can be grouped together as follows -

(1) Article 6
The decision was in breach of the applicant's right to a fair trail in contravention of Article 6 of the European Convention in that he was given no opportunity put his case or challenge the case against him and in fact whilst the applicant offered to undergo a drugs test to prove his innocence this was refused to him,

(2) Relevant considerations
The governor fettered his discretion by removing the applicant from association based solely on the indication given by the

drugs dog and not taking any other factors into account such as the applicant's good record or his views on drugs,

The governor failed to consider the applicant's excellent prison record and that it was known within the prison that he was not involved in the taking or carrying of drugs and was in fact opposed to drugs,

The governor did not consider that the applicant underwent a urine drug test on 16 April 2002 and that this result was negative,

(3) Excessive measures
The governor acted disproportionately in refusing the applicant all association as it would have been possible to protect against any perceived risk to prison discipline or good order without depriving the applicant completely of association,

(4) Reliability of the drugs dog
The governor acted unreasonably in relying solely on an unreliable and unproven testing method,

The governor wrongly considered the result of an unreliable and unproven testing method,

The governor wrongly considered the drugs dog test was reliable,

(5) Article 8
The decision was in breach of the applicant's Article 8 rights in that he was prevented from establishing and developing relationships with other human beings.

Article 6.

[11] The applicant's first ground relies on Article 6, which provides that -

> "(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

[12] The applicant contends that the decision to remove him from association arose from the determination of "a criminal charge" against him or alternatively the determination of "civil rights".

[13] First of all it is necessary to consider "criminal charge". It is necessary to establish the basis on which the applicant was subjected to a restriction of association. I accept the evidence of Governor Eagleson that the decision on restriction of association was made under Rule 32 for the maintenance of good order and discipline in order to detect and or retrieve any drugs the applicant may have swallowed or secreted about his person. The applicant was not placed on Rule 32 as a form of punishment. Accordingly, I am satisfied that the Governor entertained reasonable suspicion and applied Rule 32 as an aspect of investigation and in an attempt to prevent drugs going into circulation in the prison. Had drugs been recovered it is assumed that there would have been disciplinary charges against the applicant but at the stage when Rule 32 was applied there was no "charge" against the applicant.

[14] Had the reasonable suspicion which grounded the decision to apply Rule 32 amounted to a "charge", and I have found that it did not, it remains necessary to determine whether it amounted to a "criminal charge" to which Article 6 applied, or whether it remained a disciplinary charge to which Article 6 rights would not apply. In *Ezeh and Connors v United Kingdom* (Grand Chamber 9 October 2003) the Grand Chamber found that the prison adjudication resulting in the award of additional days in custody amounted to the determination of a criminal charge for the purposes of Article 6. The applicants had been charged with threats to kill and assault respectively and on adjudication had been awarded additional days in custody and further there had been imposed cellular confinement, exclusion from associated work and forfeiture of privileges.

[15] In determining whether the charges should be considered "criminal" for the purposes of Article 6 regard was had to the three criteria adopted in *Engel v Netherlands* [1976] 1 EHRR 647 as applied in the prison context in *Campbell and Fell v United Kingdom* [1984] 7 EHRR 441 –

> *(1)* whether the provisions defining the offence charged belonged in domestic law, to criminal law or disciplinary law or both – this is no more than a starting point,
> *(2)* the nature of the offence – a factor of greater import,
> *(3)* the degree of severity of the penalty – there belongs to the "criminal" sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental.

The second and third criteria are alternatives and not necessarily cumulative but that does not exclude a cumulative approach where the separate analysis of each criteria does not make it possible to reach a clear conclusion as to the existence of a "criminal charge" (paragraph 86).

[16] In *Ezeh and Connors* the ECtHR noted that the parties did not suggest that the penalties other than additional days were of relevance as regards the applicability of Article 6. If the decision to remove the applicant from association for the detection and retrieval of drugs amounted to a "charge", and I have found that it did not, I am satisfied that it is not a criminal matter in domestic law; it remains a matter undertaken for the detection and removal of drugs rather than an offence of possession; the degree and severity of the penalty did not involve loss of liberty but loss arising from restriction of association. Applying the three Engels criteria referred to above I am satisfied that the decision to remove the applicant from association did not constitute a "criminal charge" for the purposes of Article 6.

[17] In addition it is necessary to consider whether the decision involved the determination of a "civil right" for the purposes of Article 6. The first "right" that the applicant contends is involved is that he should not be considered guilty of the offence of importing drugs into the prison. I have examined above the actual basis on which the applicant was removed from association and found that it was not on the basis that he was guilty of the offence of importing drugs. The action was taken on the basis of reasonable suspicion and for the purposes of investigation and as a precautionary measure to prevent drugs circulating in the prison in the interests of good order and discipline. I do not accept that the right claimed was in issue.

[18] In the alternative the applicant contends that the "right" in issue was the right to association, being the right to maintain relationships with other prisoners as an aspect of the right to private life under Article 8 and the right to liberty within the confines of the prison. In *McFeely v United Kingdom* [1981] 3 EHRR 161 the European Commission on Human Rights considered removal from association as an aspect of the right to private life under Article 8 of the Convention and stated –

> "The concept of private life under the Convention comprises to a certain degree the right to establish and develop relationships with other human beings especially in the emotional field of the development of one's own personality. The Commission considers that this element in the concept of privacy extends to the sphere of imprisonment and that their removal from association thus constitutes an interference with their right to privacy in this respect". (Paragraph 82).

In the event the ECommHR found that any interference was justified under Article 8(2) of the Convention.

[19] As to whether the engagement of Article 8 involved the application of Article 6, the ECommHR concluded –

> "The Commission observes that the awards of punishments against the applicants were occasioned by the abovementioned offences against prison discipline and made after disciplinary adjudications against the applicant. These proceedings accordingly did not involve the determination of `civil rights' as that concept is understood in Article 6." (Paragraph 103)

[20] The applicant contends that the finding in *McFeely*, that the engagement of Article 8 did not thereby engage Article 6 protections in the determination of the Article 8 rights, has been overtaken by more recent authority. In effect the applicant contends that the scope of "civil rights" for the purposes of Article 6 has been altered by the decision of the House of Lords in *Re: S and Re: W (Children – Care Plan)* [2002] 2 All ER 192. Lord Nicholls stated –

> "[71] Although a right guaranteed by art 8 is not *in itself* a civil right within the meaning of art 6(1), the [Human Rights Act 1998] has now transformed the position in this country. By virtue of the 1998 Act art 8 rights are now part of the civil rights of parents and children for the purposes of art 6(1). This is because now under s 6 of the 1998 Act it is unlawful for a public authority to act inconsistently with art 8.
>
> "[72] I have already noted that, apart from the difficulty concerning young children, the court remedies provided by ss 7 and 8 should ordinarily provide effective relief for an infringement of art 8 rights. I need therefore say nothing further on this aspect of the application of art 6(1). I can confine my attention to the application of art 6(1) to *other* civil rights and obligations of parents and children."

[21] There has been much discussion of the scope of "civil rights and obligations" for the purposes of Article 6. The issue was considered by the House of Lords in *Runa Begum v Tower Hamlets* LBC [2003] 1All ER 731. As stated by Lord Hoffman, it would appear that the concept of civil rights was originally intended to mean those rights and obligations which, in continental European systems of law, were adjudicated upon by the civil courts. These were, essentially, rights and obligations in private law. The term was not

intended to cover administrative decisions which were conventionally subject to review (if at all) by administrative courts (paragraph 28). However, "the Strasburg Court has extended Article 6 to cover a wide range of administrative decision making on the ground that the decision determines or decisively affects rights or obligations in private law." (paragraph 30).

[22] As to the boundary between those administrative decisions to which Article 6 applies and to those which Article 6 does not apply Lord Bingham stated in *Runa Begum* that –

> "It is not entirely easy, in a case such as the present, to apply clear rules as derived from the Strasburg case law since, in a way that any common lawyer would recognise and respect, the case law has developed and evolved as new cases have fallen for decision, testing the bounds set by those already decided." (Paragraph 5).

[23] There are certain areas of activity that are not within the reach of Article 6. In *Maaouia v France* [2001] 33 EHRR 42 the proceedings for the rescission of an Exclusion Order on an immigrant did not concern the determination of a "civil right" for the purposes of Article 6(1). Nor did the engagement of other Convention rights render Article 6 applicable (paragraph 38). *Yazar and Ors v Turkey* [2003] 36 EHRR 6 concerned the dissolution of a political party, which was held to be a violation of Article 11 of the Convention, but Article 6 did not apply. The ECtHR held that a dispute as to the right to pursue political activities as a political party was a right of a political nature not within Article 6. Similarly in *Ferrazzini v Italy* [2002] 34 EHRR 45 in a complaint about the time taken to resolve a tax dispute the ECtHR held that the pecuniary interests involved did not involve civil rights and Article 6 did not apply.

[24] The case by case approach is illustrated in *Runa Begum* where the House of Lords discussed the development of Article 6 rights in relation to social security schemes and welfare schemes. In discussing *Feldburgge v Netherlands* and *Deumelend v Germany* [1986] 8EHRR 448 which concerned sickness allowance and industrial injury benefits Lord Millet stated that -

> "The Strasburg Court held that the dispute in each case had features of a public law character – the character of the legislation, the compulsory nature of the insurance and the assumption by the state of responsibility for social protection; but these were outweighed by features of a private law nature - the personal and economic nature of the right asserted, the close connection with the contract of

> employment, and the affinities with insurance under the ordinary law. The right asserted was therefore a "civil right" under Article 6(1). The decision in each case was strongly dependent on the contributory nature of the scheme and the analogy with private insurance". (Paragraph 89).

[25] The position in relation to social security schemes and welfare schemes was further extended in *Silesi v Italy* [1998] 26 EHRR 187 which concerned non-contributory disability allowances and the critical feature which brought it within Article 6(1) was that the claimant, "suffered interference with her means of subsistence was claiming an individual, economic right flowing from specific rules laid down in a statue giving effect to the constitution".

[26] The right to accommodation claimed in *Runa Begum* would have involved a further extension of the scope of Article 6 in the area of social security schemes and welfare schemes as it concerned the provision of benefits in kind. The members of the House of Lords assumed, but refrained from deciding whether such rights should be classified as "civil rights" for the purposes of Article 6. The House of Lords did not approach the application of Article 6 by reference to the engagement of other Convention rights. Had the scope of Article 6 been subject to revision in the manner advocated by the applicant in reliance on *Re S and Re W* the House of Lords in *Runa Begum* might have been expected to refer to that development.

[27] The scope of Article 6 has developed on an incremental basis. *Re S and Re W* does not establish that every engagement of Article 8 necessarily involves a "civil right" for the purposes of Article 6. It remains the position that Article 6 extends to administrative decision making that "determines or decisively affects rights or obligations in private law." It is a question of fact and degree as to whether the dominant features of the dispute are of a private law nature.

[28] In the area of decision making by prison authorities *McFeely v United Kingdom* has established that removal from association for disciplinary reasons does not involve civil rights for the purposes of Article 6. Decisions as to the security classification of prisoners do not concern civil rights for the purposes of Article 6. In *Brady v United Kingdom* [1979] 3EHRR 297 such decisions were regarded as matters of "administrative classification". Decisions as to the status of prisoners under the present regime of enhanced or standard or basis status are also matters of administrative classification and not civil rights for the purposes of Article 6. *Winchester's Application* [2002] NIQB 65. *McKinley's Application* [2003] NIQB 20. Loss of privileges awarded in prison adjudications do not involve civil rights for the purposes of Article 6. *Graham's Application* [2004] NIQB 24. The applicant's removal

from association in the interests of good order and discipline did not involve a "civil right" for the purposes of Article 6.

[29] The applicant further contends that the removal from association amounted to loss of liberty within the prison and that loss of liberty is a civil right for the purposes of Article 6. Reliance is placed on *Aerts v Belgium* [1998] EHRR where the applicant had been detained as a person of unsound mind. The Government submitted that such detention did not concern a civil right for the purposes of Article 6 but the ECtHR held that the right to liberty was at stake and that involved a civil right. In the domestic setting *R (on the application of Justin West) v The Parole Board* [2002] EWCA Civ 1641 concerned a parole board decision whether to recommend release on licence of determinate sentence prisoners recalled to prison upon the revocation of their licences. The Court of Appeal considered whether that was the determination of a "criminal charge" within the meaning of Article 6 and found that there was not. Hale LJ expressed regret that the matter was not also being considered under the civil limb of Article 6, as the common law always regarded the right to freedom from physical coercion, with which imprisonment was a serious interference, as the most important of civil rights.

[30] I do not accept the applicant's reliance on the loss of liberty. In the present case the applicant's detention is not in issue and the transfer of the applicant from association within the prison does not involve the deprivation of liberty. The right to liberty is not at stake.

[31] For the reasons set out above the decision in issue did not involve a criminal charge or a civil right and Article 6 is not applicable. Had Article 6 been applicable I am satisfied that the availability of Judicial Review of the Governor's decision would have been sufficient to comply with the requirements of Article 6 for an independent and impartial hearing. The Court of Appeal discussed this issue in *Re Brown's Application* [2003] NIJB168 at paragraphs [14] to [16] and on the approach outlined by Carswell LCJ the present type of case is in the class where Judicial Review satisfies the requirements of Article 6.

[32] In any event the standards of procedural fairness apply for the benefit of the applicant and in general that includes a right to know and the right to respond to the reasons for removal from association. The position was set out by Carswell LCJ in the Court of Appeal in *Conlon's Application* [2002] NIJB 35.

> "We are in general agreement with the proposition that a prisoner should where feasible be informed of the reasons for his removal from association, but we do not consider that a hard and fast rule should be laid down, for the circumstances may be infinitely variable. We would accept that the conclusion reached by Tudor Evans

J in *Williams v Home Office* can no longer be sustained. It does not follow that because a prisoner does not have to be guilty of an offence before he is removed from association, he has no right to be heard. The trend of recent decisions in this area of the law has been to increase the instances in which reasons have to be furnished and an opportunity given to make representations.

The generalised requirements of fairness articulated by Lord Mustill in *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 at 560 will, however, apply to a decision to remove him. It is important to bear in mind the essentially flexible nature of the principles set out in that case. A decision to remove a prisoner from association may have to be taken and put into effect quickly. It may not be appropriate to enter into a debate about the matter before removing him. In some cases it may not be possible to disclose to the prisoner the information upon which the decision is based, in which event any uninformed representations which he may make may be of little value. For these reasons we would not go so far as to say, as the judge did, that a prisoner must always be informed of the reasons for his removal from association at the earliest opportunity. We would not go further than to propound a general rule that the governor should at an early stage, but not necessarily before the removal of a prisoner from association, give him where possible and where necessary sufficient reasons for taking that course and afford him the opportunity to make representations about its justification. Whether this will apply on the extension of a period of removal will depend on the circumstances, and comprehensive rules cannot be laid down. Nor do we think that there should be any hard and fast requirement about the form in which the reasons are given to the prisoner. As the judge observed, the important thing is that he is given sufficient information to permit him to understand why he was removed from association and why the visitors accept that his removal should continue. Whether this can be given satisfactorily by oral explanation or whether some documentary material is required depends on the facts of the case, although it seems likely that in most cases the gist of the prison authorities' reasons for wishing to continue the removal can be given in interview."

[33] In the present case the applicant was informed of the reason for his removal from association namely for the purposes of detection and retrieval of suspected drugs and he had the opportunity to make representations in respect of that decision. Accordingly the applicant's right to know and to respond in the interests of procedural fairness were satisfied in the circumstances of the present case.

[34] Further the applicant relies on his offer to undergo a drugs test to prove his innocence and the refusal of the opportunity to undergo a drugs test. I accept the respondent's contention that the offer to undergo a drugs test was not relevant to the decision to remove him from association. The applicant was not suspected of using drugs but of being or having been in possession or contact with drugs. A negative drugs test would not have advanced the real issue.

Relevant considerations.

[35] The applicant's second ground of challenge concern certain matters that it is alleged the Governor did not take into account in making the decision to remove the applicant from association. In reply the Governor states that in making the decision to apply Rule 32 he considered all the circumstances of the applicant's case. However he states that in the face of a positive indication by a drugs dog in respect of a particular prisoner it is the duty of the Prison Service to adopt necessary measures to prevent drugs entering the prison and/or retrieving them in the interests of good order and discipline in the prison. I conclude that the Governor was aware of the matters relied on by the applicant, namely his good record and opposition to drugs, but they carried no weight in the light of the positive indication by the drugs dog. That is a legitimate approach if the Governor was entitled to rely on the positive indication from the drugs dog and that reliability is a separate ground of challenge considered below. Further the applicant complains that the Governor did not take into account the negative result in the urine drug test completed by the applicant the following day. Again this is a factor that does not address the real issue of suspicion of the applicant's contact with or possession of drugs.

Excessive measures.

[36] The applicant's third ground of challenge contends that the removal from association was a disproportionate response. The proposed less intrusive measures would have involved the applicant being admitted to the general prison population and monitored. I accept the respondent's contention that this would have been an inadequate response to achieve the object of detecting and retrieving any drugs that prisoners might attempt to smuggle into the prison.

Reliability of the drugs dog.

[37] The applicant's fourth ground of challenge concerned the reliability of the drugs dog test. On behalf of the applicant James Campbell, a Forensic Scientist with experience of drugs, drugs testing and issues relating to contamination and transference of drugs and other substances from one source to another, expressed the opinion that a drugs dog could be capable of detecting drugs secreted in a body cavity, depending on the type of wrapping or concealment of the drugs and the care with which the package would have been cleaned beforehand. However, where such a package was swallowed it was his opinion that it was unlikely that it would be detected by a drugs dog. Mr Campbell reported that it was possible to have contamination by cannabis vapours from one person sitting next to another and that it may not be necessary for there to be physical contact. Further it was stated to be possible for the drugs dog to detect other kinds of contamination depending on the severity of the contamination. As to alternative means of investigation Mr Campbell was of the opinion that the swallowed package was likely to be detected on x-ray and the secreted package could possibly be detected on x-ray, but a more suitable method of detection would be medical inspection using suitable searching techniques and instruments.

[38] Governor Alcock, the Prison Service Drugs Advisor, describes the passive drugs dogs as having been trained by an English constabulary at a training centre of the English Prison Service and more recently by the Northern Ireland Prison Service. The training for each dog comprises an initial course of 6 weeks to secure a license to operate as a passive drugs dog in a prison; continuous daily training on each working day prior to deployment by testing the dogs reliability to detect drugs. Only after successfully passing the daily test is the passive drugs dog deployed operationally. A full days training each week involved a series of tests of the dog's positive indications. Twice a year each drugs dog received a period of 5 full days training. Figures were produced for the months of January to May 2003 indicating the number of daily tests undertaken by drugs dogs, which range from 28 to 50, and all were recorded as successful so there were no false positives in respect of the daily validation tests during that period.

[39] The once weekly full days training includes a test where a dog has positively indicated on person A, and drugs are removed from person A and out of sight of the dog placed on person B. Persons A and B then pass by the dog. On all such occasions the dogs correctly positively indicated on Person B and on no occasion did the dogs incorrectly indicate person A.

[40] In April 2002 one dog was stood down due to false indications. In October one dog was stood down due to inability to indicate. In April 2003 one dog failed initial training.

[41] Governor Alcock states that the ability to detect secreted or swallowed drugs resulted from drug traces being left on the person concerned. Where such traces are left the passive drugs dog will have the capacity to detect them and give a positive indication. If there were no such traces then a positive indication for secreted drugs would depend on the location of the wrapping and the measures taken to disguise any emissions. In the absence of such traces it was considered unlikely that swallowed drugs would be capable of giving a positive indication.

[42] As to alternative measures Governor Alcock states that drug lab or drug wipe products testing had proved unreliable; the use of salvia tests were still being assessed; the use of x-rays or the administration of voluntary laxatives or similar procedures were considered inadvisable in the absence of close medical supervision and in any event inappropriate in a prison environment. Mr Campbell maintained the view that there are reliable screening products available.

[43] I accept the respondent's contention that the drugs dogs have proved reliable and are themselves subject to constant monitoring of their reliability and it has not been established that there are suitable alternatives to the present regime.

Article 8.

[44] The applicant's fifth ground of challenge concerns the applicant's right to respect for private life under Article 8. The removal from association interferes with the applicant's relationships with others. In *McFeely v United Kingdom* [1980] 3 EHRR 161 at paragraph 82 the European Commission on Human Rights found that removal from association constituted an interference with a prisoner's right to privacy "to establish and to develop relationships with other human beings, especially the emotional feel of the development of one's own personality." Such interference is prescribed by law and in furtherance of the legitimate aim of preventing disorder or crime. The interference must be necessary in that it fulfils a pressing social need and employs means that are proportionate. The applicant contends that the proper balance of public and private interests has not been achieved in the present case. Taking account of the limited scale of the interference and the proper limits that exist on intervention with prisoners suspected of contact with drugs and the reliability of the drugs dogs in generating reasonable suspicion of contact with drugs and the unsuitability of the applicant's proposed alternative of monitoring the prisoner in full association and the absence at present of a suitable alternative in the campaign against drugs and the seriousness of the problem presented by drugs in the prison system, I am satisfied that the measures adopted by the respondent represent a proportionate response to the legitimate aim. Any interference is justified under Article 8.2 of the Convention.

[45] I have not been satisfied on any of the applicant's grounds for Judicial Review. The application is dismissed.