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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY PHILIP BLANEY FOR

JUDICIAL REVIEW

KERR J

[1] Article 3 of the Firearms (Northern Ireland) Order 1981 makes it an offence to possess, purchase or acquire a firearm or ammunition without holding a firearm certificate in force at the time. Article 22 (1) provides that a person who has been sentenced to preventive detention, or to either imprisonment or corrective training for a term of three years or more, shall not at any time purchase, acquire or have in his possession a firearm or ammunition.

[2] Applications for firearm certificates are to be made under article 27, and the Chief Constable may grant a firearm certificate subject to the terms set out in article 28. He is forbidden by article 28 (2) (i) to issue a firearm certificate to anyone prohibited by the Order from possessing a firearm. By article 28(10) a person aggrieved by the Chief Constable's refusal of a firearm certificate may appeal to the Secretary of State under article 55 which provides that on such an appeal –

> "the Secretary of State may make such order as he thinks fit having regard to the circumstances."

[3] The applicant is a thirty-two year old man who was convicted on 13 October 1989 of two offences of arson, making a petrol bomb, taking a motor vehicle without consent and attempted hijacking. He was sentenced to detention in a young offenders' centre for concurrent periods of three years, eighteen months, and twelve months. The applicant was almost eighteen years old when the offences were committed.

[4] On 2 February 2001 he applied to the Chief Constable for a firearm certificate. The Chief Constable was obliged by article 28 (2) (i) to refuse this application and duly did so on 28 August 2001. The applicant then applied under article 55 to the Secretary of State on 15 October 2001 for a removal of the prohibition. This was refused by Jane Kennedy, minister of state at the Northern Ireland Office, on 4 June 2002 and the applicant was informed by letter of 10 June 2002. By this application he challenges this refusal.

[5] Article 22 of the 1981 Order imposes a lifetime ban on the acquisition or possession of a firearm or ammunition on anyone who has been sentenced to a period of imprisonment of three years or more. It also prohibits a person who has been sentenced to borstal training, detention in a young offenders' centre, corrective training for less than three years or to imprisonment for a term of three months or more but less than three years, from purchasing, acquiring or possessing a firearm or ammunition for eight years.

[6] In dealing with applications under article 55 to remove the prohibition under article 22, the Secretary of State has devised a policy which is set out in a document entitled 'Notes for Guidance' which is supplied to all applicants and which was provided to the applicant in the present case. The manner in which the Secretary of State exercises his discretion is described in the document thus: -

> "1. In those cases where an applicant is subject to an 8-year prohibition, the Secretary of State will consider removing the ban only if he is satisfied that there are exceptional circumstances for doing so.
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> 2. In those cases where an applicant is subject to a life prohibition, the Secretary of State will not consider removal of the prohibition within 15 years of the applicant's release from prison, unless there are exceptional circumstances for doing so.
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> 3. When deciding whether there are exceptional circumstances for removing a statutory prohibition, the Secretary of State will consider all relevant factors including:
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> - The nature and seriousness of the original offence (for example did it entail violence or the threat of violence?);
> - The period of time since the applicant's release from prison or the end of a suspended sentence;

- The applicant's behaviour since release and his current personal circumstances (is there evidence of recidivism, a stable family background etc?);
- The reasons for the application (including the type of firearm sought and whether it is intended for employment and, if so, to what extent the applicant's livelihood (or that of his family) will be affected; and
- The Chief Constable's assessment of the implications (if any) for public safety and the peace, were the prohibition to be removed."

[7] In the course of considering the applicant's application for removal of the prohibition, the firearms and explosives branch of the police division of the Northern Ireland Office made a submission to the minister. In it the minister was informed that the applicant had referred in his application to the fact that he was seventeen years old when the offences that gave rise to the ban had been committed and that they had arisen out of public disorder when he was arrested with a large number of other young people. He had not been convicted of any similar offences since then and now had sole care of two young children since the death of their mother. He wished to have a firearm certificate for a 12 bore shotgun in order to take part in field sports and shoot in the Portaferry area with his father and brother. Local police had no adverse information about Mr Blaney since his release from custody.

[8] The submission to the minister concluded with the following recommendation: -

> "7. Due to the fact that Mr Blaney committed the offences when he was seventeen years old we considered whether the normal fifteen year prohibition period, which we expect people to complete, might be reduced. In consultation with the legal adviser … we concluded that in Mr Blaney's case reducing the period to fourteen years would be appropriate. He will not, however, complete fourteen years since his release until April 2005.
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> 8. Although Mr Blaney committed the offences thirteen years ago, was released from prison eleven years ago and has no subsequent convictions, the offences were very serious. Mr Blaney has not shown in his appeal that he has a

> strong reason for a firearm, and I recommend that his application should be refused on the grounds that there are no exceptional circumstances to merit the removal of his prohibition before the expiration of the fourteen year period described above."

[9] The minister sought advice on why, since there were no exceptional circumstances, she was being asked to reduce the prohibition period to fourteen years. The branch replied as follows: -

> "What we should have said was that there were no "other" exceptional circumstances. We considered that Mr Blaney's age at the time he committed the offences was a factor which might be recognised by reducing the normal period by a year but there was nothing else to suggest that he deserved to have the prohibition removed any sooner."

[10] The minister refused the application and wrote on the submission: -

> "I refuse the application but the 15 years must stand. I do not accept that his age at the time of committing such serious offences constitutes an exceptional circumstance."

[11] The origin of the fifteen-year rule was uncertain. Before the hearing of the judicial review application this was investigated by Eric Kingsmill, a civil servant in the firearms and explosives branch. He was unable to trace policy documents dealing with the issue but was able to confirm that this period was chosen in or about 1988-89 and was approved by the then minister of state in the Northern Ireland Office. From discussion with colleagues, Mr Kingsmill deduced that fifteen years had been chosen as the appropriate period because it clearly had to be more than eight years (since this was the period selected by Parliament to apply to cases where imprisonment of less than three years had been imposed); because it was necessary to ensure that the period was of sufficient length to reflect the need to protect the public; and because the prohibition under the legislation was for life.

[12] When the hearing of the judicial review was imminent, Mr Kingsmill made another submission to the minister inviting her to confirm the policy that hitherto existed. In the submission he said: -

> "3. The rationale for the 15-year period has been questioned by an applicant for judicial review of your recent decision not to remove his life

> prohibition. I have been unable to trace the original policy papers dealing with this issue but have been able to confirm, in discussions with colleagues, that the policy was adopted in 1988-89 and was approved by the then minister of state (John Cope). In the absence of policy papers it seems appropriate that ministers should consider whether or not the period of 15 years should remain the norm in lifetime prohibition cases.
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> 4. I believe that the 15-year period was viewed as appropriate in reflecting the intention of Parliament as expressed in the 1981 Order and in protecting the public on the one hand and the position of the applicant on the other. It would obviously have to be more than the 8 years which applied to those who had been given a sentence of less than 3 years. Periods of 10 or 12 ½ or 15 or 17 ½ are all possibilities and it is a matter of judgment as to what precise period ought to be chosen to reflect the factors referred to above. Having considered the issues it is my view that 15 years strikes a suitable balance between all the factors involved and the operation of the policy in life prohibition cases to date. The policy in respect of such cases has not created any significant difficulties and has been viewed as fair."

The minister accepted the recommendation and confirmed the policy both in respect of the eight-year period and the lifetime ban.

[13] For the applicant Mr Michael Lavery QC attacked the selection of fifteen years as being arbitrary and irrational. He suggested that this was far too crude a method of dealing with applications of this type and far too wide in its application. To require an applicant to demonstrate exceptional circumstances erected a "meaningless and unnecessary hurdle" that was almost impossible to surmount. The guiding principle should be whether the applicant for a removal of the ban presented a danger to the public. If he did not, there was no reason that he should be penalised by the imposition of a further penalty beyond that which had been imposed by the courts.

[14] For the respondent Mr Maguire submitted that the policy was perfectly rational. Parliament had decided that a lifetime ban should apply to all who were sentenced to terms of imprisonment of three years or more. It was unexceptional for the minister, in deciding whether to remove the prohibition, to devise a policy to help her approach the issue in a consistent and logical

way. There was nothing wrong in having a normative period of years before which (save in exceptional circumstances) would have to elapse before the removal of the prohibition would be considered. This promoted consistency and served as a guide to the public.

[15] Mr Maguire did not accept that the only issue that was at stake was whether the applicant represented a danger to the public. There were also, he said, socio-cultural issues at play. It was well within the range of reasonable responses to the problem presented by this type of case to say that an individual who had been convicted of serious offences, whatever the nature of these, should not be granted a firearm certificate unless he could demonstrate that he had a very good reason to have it and that there were exceptional circumstances that justified a departure from the position that Parliament had decreed should normally apply.

[16] It is clear that there is a general power to formulate a policy to guide the decision maker in his approach to a frequently encountered request to exercise a statutory power in a particular way. A public body endowed with a statutory discretion may legitimately adopt general rules to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary, capricious or unjust – *Halsbury's Laws of England Vol 1 (1) para 32.* But the decision maker must be prepared to consider the individual circumstances of each case and be prepared, if the circumstances demand it, to make an exception to the policy - *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610.

[17] In the present case I am satisfied that the rule that an application for the removal of a lifetime ban will not be entertained until the elapse of fifteen years, save in exceptional circumstances, promotes the policy of the legislation. In *Re Cummins* [2002] NIQB 33, I held that the philosophy of the legislation went beyond merely ensuring that those who were issued with a firearm certificate would suitable to have one. In relation to the argument that the minister's decision should be confined to that consideration, I said: -

> "… on the hearing of an application under Article 24 (6) of the Order, it appears to me that the Secretary of State is not obliged to remove the prohibition even if he concludes that the applicant is suitable to be entrusted with a firearm. Thus, for instance, it would be open to him to take into account the effect on the efficacy of the statutory scheme as a whole that the removal of the prohibition might have, or whether sufficient time had elapsed between the date of the conviction

> that gave rise to the prohibition and the application for its removal."

[18] Mr Lavery criticised this passage and suggested that it was not consistent with the approach of Brooke J in *Chief Constable of Essex v Cripps* (1993, unreported) where he said: -

> " … the test laid down by Parliament in s 30(1)(a) means what it says. It certainly cannot, quite simply, be restricted to a risk that the firearm would be used in a manner dangerous to the public. There may be all sorts of factual situations which lead the Chief Constable to be satisfied that the holder is unfit to be entrusted with a firearm, and Parliament did not seek to fetter his discretion by limiting the matters which he was to take into account in addition to those set out in s 30(2)."

This passage and a passage to like effect from the judgment of Stuart-Smith LJ in *Chief Constable of Essex v Germain* (1991) 156 JP 109 were approved by the Court of Appeal in *Re Tennyson's Application for Judicial Review* [2001] NIJB 353. Mr Lavery submitted that it was implicit in all these judgments that the proper approach was to ask whether the applicant was a suitable person to hold a firearm certificate.

[19] I do not accept these submissions. In each of the cases referred to a common issue was whether an individual who had been convicted of offences that had nothing to do with firearms could be said, on account only of the convictions, to be unsuited to hold a firearm certificate. Not surprisingly, the consistent approach of all three courts was to accept that convictions on other offences could well be relevant to the question of suitability of the individual concerned. None of the judgments suggests that the exercise of the minister or the Chief Constable's discretion should not be informed by considerations other than the suitability of the applicant. There must be very many people in our society who are suitable to hold a firearm certificate in the sense that they are sober responsible individuals. It does not follow that every person who is suited to hold a firearm should be granted a certificate.

[20] It should be remembered that article 28 (2) provides: -

> "… a firearm certificate shall not be granted unless the Chief Constable is satisfied that the applicant—
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> (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; and
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> (ii) has a good reason for purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made; and
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> (iii) can be permitted to have that firearm or ammunition in his possession without danger to the public safety or to the peace."

[21] Thus three conjunctive conditions must be satisfied. The applicant must not be unfitted to be entrusted with a firearm; he must not represent a danger to the public safety or to the peace; *and* he must have a good reason for purchasing, acquiring or having the firearm in his possession.

[22] In the present case it is clear that the minister considered the individual circumstances of the applicant carefully. She decided that those circumstances did not constitute exceptional reasons for departing from the general policy. That conclusion was comfortably within the range of reasonable responses to the application. I am satisfied that there was nothing arbitrary about the selection of the period of fifteen years as the period that would normally be required to pass before an application for the removal of the lifetime prohibition could hope to succeed. On the contrary, the considerations outlined in the affidavit of Mr Kingsmill set out in paragraph [12] above shows that a logical and reasoned analysis was brought to bear on the selection of this period. The application for judicial review must therefore be dismissed.