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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

JR 20's (Firearms Certificate) Application [2010] NIQB 11

AN APPLICATION FOR JUDICIAL REVIEW BY

JR 20 (FIREARMS CERTIFICATE)

WEATHERUP J

[1] This is an application for Judicial Review of decisions of the Secretary of State dated 27 June 2008 to refuse the applicant's appeals against the revocation of a firearms certificate and the refusal to renew a firearms certificate. Mr Hutton appeared for the applicant and Mr Maguire QC appeared for the respondent.

The Background

[2] For some years the applicant has held a firearms certificate for a personal protection weapon and a further firearms certificate which permitted him to transport firearms. In recent years the applicant has received repeated warnings from the police that they had received information that the applicant was under threat from paramilitaries.

[3] In 2004 police carried out raids on premises owned by the applicant. Police recovered drugs and arrests were made. The applicant was not arrested.

[4] The applicant received a letter from police indicating that they were minded to revoke the firearms certificate that permitted him to transport firearms and a further letter indicating that the police were minded to refuse renewal of the firearms certificate for the personal protection weapon. The reason for the proposed decisions was stated to be the belief that the applicant

had associated with a proscribed organisation and was involved in criminal activity. The applicant was invited to make any comments or representations. The applicant requested further particulars of the alleged associations with the proscribed organisation and of the criminal activity.

[5] By letter dated 2 March 2005 the police informed the applicant that they were not at liberty to divulge the specific proscribed organisation or provide copies of security reports, although it was stated that the alleged association was recent. The alleged criminal activity was stated to relate to the recovery of the drugs at the applicant's premises. The applicant was served with notice of refusal to grant a new firearms certificate and notice of revocation of a firearms certificate.

[6] On 11 March 2005 the applicant appealed to the Secretary of State. The applicant requested the Secretary of State to consider representations from third parties on behalf of the applicant. Further, the applicant objected to being connected to the drugs found at his premises, in respect of which he had not been arrested or charged. On a bail application in respect of an arrested person the investigating police officer had stated that the applicant was not present when the drugs were seized and had co-operated with police. At a later bail application on behalf of another accused, prosecuting Counsel stated that the police were satisfied that the applicant was not involved.

[7] On 15 June 2006 the Secretary of State rejected the applicant's appeals. By that stage a number of police warnings had been issued to the applicant and were taken into account. No particulars had been given to the applicant in relation to the allegations of association with a proscribed paramilitary group. The police had formed the view that on the balance of probabilities the applicant was aware of the drugs activity at his premises. The third parties had made their representations on behalf of the applicant.

[8] The applicant sought leave to apply for Judicial Review of the Secretary of State's decisions of 15 June 2006. The Secretary of State agreed to reconsider the applicant's appeals. This was based on the Secretary of State not being fully informed about a police warning of 8 December 2005 concerning a threat to the applicant. Further to reconsideration of the appeals the Secretary of State, on 22 November 2006, rejected the applicant's appeals. In connection with the police warning to the applicant of 8 December 2005 it was stated that this referred to another person. There was said to be a police practice of notifying all concerned about a threat when there was the possibility of confusion about the identify of the person threatened, a practice which on that occasion had not been applied because no notice had been given to the other person.

[9] The applicant amended his Judicial Review application to challenge the Secretary of State's decisions of 22 November 2006. On 26 April 2007 the

Secretary of State undertook a further reconsideration of the applicant's appeals on the basis of an agreement that the applicant would withdraw the application for Judicial Review.

[10] The applicant made further representations to the Secretary of State. Additional police warnings were issued to the applicant. The Secretary of State forwarded a letter indicating that he was minded to refuse the applicant's appeals and invited the applicant's comments. Further correspondence ensued about the issues that had arisen. By letter dated 27 June 2008 the Secretary of State rejected the applicant's appeals. The decisions of 27 June 2008 are the subject of the present application for Judicial Review.

[11] The reasons for the rejection of the appeals on 27 June 2008 were that the applicant was not a fit and proper person to be entrusted with a firearm and did not have a good reason to have a personal protection weapon. The threat warnings to the applicant had been assessed and the police and the Security Service considered the applicant to face a 'moderate' threat, that is, that an attack was possible but not likely. It was stated that a personal protection weapon would only be warranted if the risk to the applicant was real and immediate. It was noted that there may have been some confusion over the police warning of 8 December 2005.

The Grounds for Judicial Review

[12] The applicant's grounds for Judicial Review are that the decisions of the Secretary of State of 27 June 2008 -

(a) were unreasonable and irrational insofar as it was determined that the applicant's life was not at real and immediate risk.

(b) represented a violation of the applicant's right to life under Article 2 of the European Convention on Human Rights.

(c) were unfair, insofar as it was determined that the applicant was not a fit person to hold a firearms certificate, in that the decision-maker withheld substantial information and material from the applicant, failed to give full and proper reasons for his conclusions in a way that failed to indicate what matters he took into account in the applicant's favour and failed to indicate how he judged the question of unfitness in the light of the matter said to stand in the applicant's favour in the question of unfitness.

(d) were unreasonable and irrational in that the Secretary of State in determining the question of fitness failed to apply a proper method to the question of determining unfitness, failed to come to any factual

conclusions on those matters said to stand in the applicant's favour on the question of fitness, failed to judge the question of fitness in the light of those factors that stood in the applicant's favour, failed to afford the decision the necessary extra scrutiny required of a decision involving Article 2.

(e) were unreasonable and unfair in that, in a case where the majority of material adverse to the applicant was not revealed to him, the Secretary of State failed to critically analysis the case made against the applicant by police in a way that failed to provide relevant anxious scrutiny.

The assessment in relation to the Applicant

[13] Inspector Mark Brown of the Criminal Legislation and Procedure Branch of the PSNI has responsibility for the review of certain policy and procedure, including the 'Threats to Life' policy. Information received by police which suggests a threat to the life of an individual will be subject to assessment to determine whether a police message (Form PM1) should be issued to the person concerned. Further an assessment is made as to whether there is a threat to the life of the individual and if so whether it is a real and immediate threat. If the information received by police is anonymous the police will frequently warn the individual concerned by means of a PM1. The issuing of a PM1 in such circumstances does not mean that the threat giving rise to it is real and immediate or objectively verified by police. It does mean that the threat is being treated as real and immediate because the police do not have any information to the contrary. Inspector Brown states that the issuing of a PM1 is not necessarily a reliable indication of a genuine threat to an individual.

[14] Officer A is a Detective Chief Inspector in the Crime Operations Department of the PSNI responsible for the collection, retention and processing of intelligence information. On an appeal to the Secretary of State in relation to a firearms certificate the relevant intelligence information is provided to the Northern Ireland Office Firearms and Explosive Branch. Disclosure to the person concerned will be limited by the requirement to protect sources of police intelligence, protect the methodology and systems used in respect of police intelligence and safeguard the flow of the information of an intelligence character to the police. In some cases the intelligence information may be so sensitive that the Minister is advised to request a briefing from police in respect of the relevant intelligence information. Officer A attended a security briefing with the Minister on 16 June 2008 to update him on the intelligence held by police relating to the applicant.

[15] Officer A stated that the PM1s issued to the applicant between 2003 and 2007 were based on anonymised or otherwise uncorroborated information received by police. Intelligence assessments were carried out on each occasion and there was nothing within the information held by police to corroborate the threats made or any information which would have led the police to believe that the threat would be likely to be carried out or was imminent.

[16] Security Service Witness A had responsibility for threat assessments on behalf of the Security Service in relation to the threat from Irish related terrorism. The police had responsibility for the assessment of other threats. It is stated that a threat assessment is not the same as a risk assessment. In assessing the risk to an individual of being attacked it is necessary to have regard to their personal circumstances and their vulnerability to attack in addition to the assessment of the threat. The Security Service conducts threat assessments but it does not conduct risk assessments as it will not possess the necessary information to consider vulnerability in any depth. The Security Service carried out a threat assessment in relation to the applicant on 5 June 2008. The threat assessment level was 'moderate', that is, an attack was possible but not likely. Security Service Witness A stated that generally the Security Service requires intelligence beyond the fact of a PM1 or a complaint by an individual indicating a specific threat to an individual in order to take them to a level of threat above moderate. The Security Service attended the meeting with the Secretary of State on 16 June 2008.

[17] Eric Kingsmill is an official in the Firearms and Explosives Branch of the Northern Ireland Office involved in the applicant's appeal to the Secretary of State. Further to the applicant's appeal Mr Kingsmill requested from police an updated assessment in relation to the applicant and of the applicant's criminal activity in relation to the drugs raid at his premises. By reply dated 1 June 2007 the police provided an up-to-date intelligence assessment, although a detailed account was to be provided by oral briefing of the Secretary of State rather than by correspondence. The police assessment in relation to the drugs raid at the applicant's premises indicated that the applicant would in all probability have been aware of the criminal activity taking place at his premises.

[18] A further PM1 was issued to the applicant on 22 August 2007 and Mr Kingsmill requested an updated threat assessment. By a Submission to the Secretary of State dated 21 November 2007 Mr Kingsmill recommended a police briefing in relation to the PM1 notices, clarification in relation to the warning of 8 December 2005, an assessment of the risk from a named individual and discussions with police on the representations made by the third parties on behalf of the applicant.

[19] On 3 January 2008 Mr Kingsmill advised the applicant that the Secretary of State was minded to reject the applicant's appeal and invited representations, which were received on 7 February 2008. Mr Kingsmill made a further Submission on 13 May 2008 in response to the applicant's representations and this led to a meeting on 5 June 2008 which included police and Security Service representatives. Mr Kingsmill prepared a further Submission on 13 June 2008 and on 16 June 2008 the Secretary of State was briefed by police and the Security Service and decided to reject the applicant's appeals. The letter of 27 June 2008 conveyed those decisions to the applicant.

Real and Immediate Risk

[20] The applicant contends that it was unreasonable and irrational for the Secretary of State to determine that the applicant's life was not at real and immediate risk. Article 2 of the European Convention on Human Rights provides for the protection of the right to life. The substantive obligation arising under Article 2 contains a negative aspect whereby the State must refrain from the unlawful taking of life and also contains a positive aspect in that the State must take appropriate steps to safeguard the lives of those for whom it is responsible. This positive obligation arises where the authorities know or ought to have known of the existence of "a real and immediate risk" to the life of the individual concerned (Osman v United Kingdom (1998) 29 EHRR 245 at paragraph 116). Thus the positive obligation arises only where the risk is "real and immediate" and a real risk is one that is objectively verified and an immediate risk is one that is present and continuing. "It is in my opinion clear that the criterion is and should be one that is not readily satisfied; in other words, the threshold is high" per Lord Carswell in Re Officer L (2007) 1 WLR 2135 at paragraph 20.

[21] The Secretary of State's decision letter of 27 June 2008 states the view of the police and the Security Service to be that the applicant faced a moderate threat, that is, an attack was possible but not likely. The Security Service assessed the threat from Irish related terrorism as moderate, namely an attack was possible but not likely. Security Service Witness A noted the distinction between a threat assessment and risk assessment, with the latter taking account not only of the assessment of the threat but of the personal circumstances of the individual and their vulnerability to attack. On the other hand the police conducted an 'intelligence assessment', which included an assessment of the threat. The police assessment took account of the potential reality of the threat and considered the threat in context, which included the volume of threats, the nature of the area in which the individual lived and the lifestyle of the individual concerned. This approach has the character of a risk assessment as referred to by Security Service Witness A as it involves not only an assessment of the threat but also of the personal circumstances of the individual and their vulnerability to attack.

[22] It is apparent that the police and the Security Service did not consider the applicant to be at real and immediate risk to life. With the benefit of security briefings from the police and the Security Service the Secretary of State shared that view. The Court has not seen the intelligence information that was included in the briefing of the Secretary of State before he reached the conclusion that there was no real and immediate risk to life. However there is nothing to suggest that the Secretary of State was mistaken in any respect or was not fully informed or was not entitled to reach the conclusion that was reached. It cannot be said that the PM1s issued to the applicant were in themselves sufficient to establish that the applicant was at real and immediate risk to life. It has not been established that it was unreasonable or irrational of the Secretary of State to reach the conclusion that there was no real and immediate risk to life. The available evidence does not establish that there was a real and immediate risk to the life of the applicant.

[23] In any event none of this avails the applicant. In the event of the existence of a real and immediate risk to life the obligation on the State is to take measures within the scope of its powers which judged reasonably might be expected to avoid the risk. Measures other than the issue of a personal protection weapon were not raised for consideration in these proceedings. It does not follow that the crossing of the risk threshold requires that the applicant should be issued with a personal protection weapon if he was otherwise not a fit and proper person. Of course if a person considered unfit to hold a firearms certificate were at real and immediate risk to life the State must take reasonable measures to protect that person, as with any other person at such risk. The nature of the appropriate measures to be taken is a different issue.

A Fit Person to be Entrusted with a Firearm

[24] The regulation of firearms is provided by the Firearms (Northern Ireland) Order 2004. Article 5 deals with the grant of a firearms certificate by the Chief Constable, Article 9 with the revocation of a certificate by the Chief Constable and Article 74 with appeals to the Secretary of State.

> 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.

9 (1) The Chief Constable shall revoke a firearm certificate if he is satisfied that the holder cannot be permitted to have in his possession or to purchase or acquire any firearm or ammunition to which the certificate relates without danger to public safety or to the peace.

(2) The Chief Constable may revoke a firearm certificate if he has reason to believe that the holder-

(a) is not a fit person to be entrusted with a firearm; or

(b) does not have a good reason for having in his possession, or for purchasing or acquiring, any firearm or 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 Secretary of State if it is a decision to which this Article applies.

(2) On an appeal under this Article the Secretary of State may make such order as he thinks fit having regard to the circumstances.

(3) This Article applies to the following decisions of the Chief Constable under this Order-

(a) a refusal to grant or vary any certificate;

(b) a revocation of a certificate.

[25] The applicant was judged not to be a fit person to hold a firearms certificate. The reasons for that conclusion were said to be related to his associations with a proscribed organisation and involvement in crime, by in effect turning a blind eye to the drugs offences committed at his premises. Association with a paramilitary group is an ample basis for being judged unfit to be entrusted with a firearm. Ignoring drugs offences on one's premises is an ample basis for being judged unfit to be entrusted with a firearm.

[26] The applicant contends that the Secretary of State adopted an improper method of determining the fitness of the applicant by failing to evaluate the factors in favour of the applicant. It is apparent that these matters were brought to the attention of the Secretary of State by the applicant and by the third parties who briefed officials on behalf of the applicant. Even if full credit were to be given for those matters, if it were the case, as the Secretary of State was satisfied it was, that the applicant was

associating with paramilitaries and that he had ignored the drugs offences committed on his premises, it is apparent that the Secretary of State would have been entitled to conclude, as he did, that the applicant was unfit to hold a firearms certificate.

[27] Thus the issue develops into a consideration of the manner in which the intelligence information was dealt with and whether the respondent was entitled to reach the conclusions that were reached in relation to the applicant's connection with paramilitaries and the drugs find.

Disclosure of information to the applicant.

[28] The applicant complains about the failure to disclose the information in relation to his associations with paramilitaries. It is a general principle of procedural fairness that a party has the right to know and to respond to an adverse case. The approach was stated by Lord Mustell in Doody v Secretary of State for the Home Department (1994) 1 AC 531 at 560:

> "5. Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification or both.
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> 6. Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

[29] The general requirement that there be sufficient disclosure to enable a party to make meaningful representations may be limited where there is a greater interest that warrants the protection of the relevant information. This may occur where the information concerned is based on intelligence obtained by the police or security services, as the disclosure of the information may compromise sources or methods of operation. There then has to be a balancing of interests between the private interest in disclosure and the public interest in maintaining the intelligence system. That balance may be more favourable to the private interest, for example, where the context involves the individual being subject to criminal charges and may be more favourable to the public interest, for example, when the context involves the individual claiming the benefit of a public authority licensing system. Thus the balance of private and public interests has favoured the public interest and has

resulted in a more limited right to know and to respond to an adverse case in those circumstances where reliance is placed on intelligence information in applications or appeals concerning the refusal or revocation of firearms certificates.

[30] This issue arose in Donnelly and Donnelly's Applications [2007] NIQB 34 where Gillen J dismissed a challenge by the applicants to the refusal of a firearms certificate. At paragraph [16] it was stated:

> "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.
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> 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."

[31] 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.

Anxious scrutiny

[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 –

> "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.

[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.

[35] The applicant further contends that there was a need for additional safeguards to be introduced to attain procedural fairness. Counsel noted the prospect of Special Advocates being used in circumstances where no statutory scheme for the use of Special Advocates had been implemented, as is the position in the present case. However the role of the Court is to determine whether the procedures actually applied were sufficient to achieve procedural fairness, rather then to devise preferred procedures. I am satisfied that in all the circumstances the substantive and procedural requirements of Judicial Review did not require the disclosure of any further information to the applicant and that scrutiny of the information by the Secretary of State was capable of being sufficient and that in all the circumstances the Secretary of State subjected the information to sufficient scrutiny before reaching his conclusion.

[36] In addition the applicant contends that the Secretary of State failed to undertake critical analysis of the police objections to the applicant. In the first place the applicant refers to the absence of critical analysis of the police view of the applicant's knowledge of drug dealing on the premises. I am satisfied that the police conclusion was one that the police officers involved with the drugs find were entitled to make and that the Secretary of State was entitled to accept. Further the applicant refers to the absence of critical analysis in relation to the information supplied to the Secretary of State about the PM1s. It is apparent that at an early stage the Secretary of State was misinformed in relation to the warning of 8 December 2005. The Secretary of State was entitled to accept the explanation offered. It is apparent that information about the warning of 8 December 2005 was before the Secretary of State when he made his decisions. Repeated security assessments were provided to the Secretary of State in relation to the applicant. By the date of the decisions on 28 June 2008 the Secretary of State was aware of the up to date information concerning the applicant. None of this establishes uncritical acceptance by the Secretary of State of police assertions about the applicant. On the contrary, the Secretary of State's repeated briefing from officials and verbal briefings from the police and the Security Service indicate ongoing assessment and scrutiny rather than bare acceptance of information supplied.

The reasons for the decisions

[37] The applicant complains that it was unfair and unreasonable that no proper reasons were offered for the decisions. The applicant was given a gist of the first reason concerning the proscribed organisation. He was not given further information about that ground and for the reasons set out above I am satisfied that he was not entitled to further information in the circumstances.

The second reason concerned the police view that the applicant probably knew about the drugs offences at his premises. That was a conclusion that the police were entitled to reach, even though there were no criminal proceedings against the applicant. It is a judgment that the applicant does not accept but one of which he was made aware. Nor was the applicant given the reasoning for the decisions but he is not entitled to a statement of the process of reasoning.

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