

<b>Neutral Citation No:</b> [2023] NIKB 36	<i>Ref:</i> FOW12118
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<i>ICOS:</i> 23/26088/01
	<i>Delivered:</i> 25/03/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION  
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY SAMUEL MANNING  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF:

THE DECISION BY PRISON SERVICE OF NORTHERN IRELAND TO REFUSE  
TO ALLOW THE APPLICANT COMPASSIONATE TEMPORARY RELEASE

**FOWLER J**

[1] The applicant in this case is Samuel Manning, a sentenced prisoner at HMP Magilligan. On 13 December 2022 he was sentenced to a determinate custodial sentence of one year six months (nine months custody to be followed by nine months supervised licence). This related to an offence of possessing Criminal Property. He has an estimated release date of 9 September 2023. His aunt has passed away and her funeral service is on Monday 27 March 2023 at 3:30pm at St Peter's Cathedral.

[2] The applicant has sought compassionate temporary release ("CTR") under the scheme operated by the Northern Ireland Prison Service ("the Prison Service") by way of an application dated 22 March 2023. This was refused on 24 March and leave to apply for judicial review of that decision was heard on Saturday 25 March.

[3] Mr Sean Devine appeared on behalf of the applicant and Mr Summers on behalf of the Northern Ireland Prison Service.

[4] On 21 June 2018 police searched the applicant's home and recovered 18,936.60 (GBP), 14,156.64 (Euro) and 168 (USD). Forensic examination of his bank account revealed unaccounted for cash deposits of 61,020 (GBP). During the material period of the deposits the applicant was unemployed and claiming benefits. He had a lifestyle well above his income. During interview he declined to answer any questions. He was indicted on a charge of Possessing Criminal Property and pleaded guilty.

[5] The applicant is 35 year old married man who told probation that prior to his arrest and imprisonment he resided with his wife and daughter in a property owned by his wife. He stated that he was also registered with the Northern Ireland Housing executive and hoped to secure a property of his own as a sole tenant due to a current paramilitary death threat issued against him. When interviewed by probation he identified no childhood issues and described a secure and stable home life with his parents and siblings. He has 10 previous convictions between 2005 and 2020, including six motoring related offences and three for drugs offences (including one for possession with intent to supply).

[6] He presently has court bail on pending offences of conspiracy to supply a class A drug, possession of a class C drug, GBH with intent and possession of an offensive weapon in a public place.

[7] The Prison Service has a discretionary power to grant compassionate temporary release under rule 27 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995. There is a clear distinction between the Prison Service decision making role and the court's limited supervisory role. There is no merits-based appeal or review against the Prison Service's decision to refuse CTR. It is for the applicant to establish a legal basis upon which the court may impugn the decision of the Prison Service.

[8] In the present application there is no dispute that the applicant's Article 8 rights are engaged, and I am satisfied that a refusal to permit CTR to attend his aunt's funeral constitutes an interference with the applicant's right to respect for private and family life. However, this right is a qualified right and as such any interference has to be:

- (a) in accordance with law,
- (b) to pursue a legitimate aim, and
- (c) necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime.

[9] The question of what is necessary in a democratic society requires a consideration as to whether the decision is proportionate and strikes a fair balance between the competing interests at play. In the present case it is agreed that the interference is in accordance with law and is in pursuit of a legitimate aim. The focus in this case is directed at proportionality. This requires an assessment of the balancing exercise the Prison Service has carried out, paying particular attention to the relevant weight attached to the competing interests and considerations. This is not simply a consideration of whether the decision is unreasonable in the Wednesbury sense. What is required is a more intense standard of review, a review greater even than the 'heightened scrutiny' test. Accordingly, I must examine the

merits of this case individually and in context, having due regard to the margin of appreciation to be afforded to the prison service in reaching its conclusion.

[10] In its decision letter of 24 March the Prison Service acknowledged that a refusal to permit the applicant's attendance at his aunt's funeral service would constitute a significant interference with his Article 8 rights.

[11] However, when it comes to the issue of proportionality, there are a number of competing interests and considerations. First, the risk of absconding. It is suggested by the Prison Service that there is a heightened risk of absconding because he still has five months of the nine-month custodial element of his sentence to serve. His estimated date of release is not until 9 September 2023. He has further charges pending which have to be determined and he has yet to be tested by any form of unaccompanied release. He is a category B prisoner and still on basis regime. Concerning absconding, the applicant is just shy of being halfway through what is a relatively short custodial element of his sentence. He was on bail pending sentence and honoured his bail surrendering to imprisonment. He is likely to be considered for unaccompanied release in the relative near future. There is no history of breach of bail or other court orders on his part. Failure to return to custody and/or re-offend would adversely impact the length of his ultimate sentence. His home and family are within this jurisdiction. I regard the risk of absconding as low.

[12] The second consideration, that of risk of reoffending and non-compliance with release conditions, is primarily related to his history of substance misuse, drug related offending and unadjudicated failed drug tests in prison on 15 February and 7 March 2023. These issues are to be considered against a backdrop of an ACE score of 36, indicative of a high likelihood of re-offending in relation to drugs. As indicated earlier, the applicant is 35 years and a relatively limited criminal record. Six road traffic offences and three drug related offences. The pending prosecutions await trial, and the applicant has been granted bail in respect of this matter. In coming to a decision on CTR the Governor took into account the pre-sentence report and concluded the applicant was a high risk of re-offending and a high risk of taking substances on release and bringing substances back to the prison. The applicant has indicated that he will submit to any required drug testing and/or required isolation on his return to ensure he had not taken substances or brought them into prison. Mr Summers expressed concerns that this would be difficult to enforce.

[13] A third consideration is the verified current death threats from paramilitaries against the applicant (six in total over a considerable number of years). There have been no attempts on his life at any time while he has been living in the community under these threats.

[14] The respondent had considered the issue of the applicant being escorted by prison staff to the funeral service. However, having examined this, a PSNI area check has indicated a severe threat to staff by paramilitaries, if they were to attend

this location. Accordingly, the Article 2 rights of prison staff prevents the applicant being escorted during CTR. In addressing this issue, the applicant had indicated that it would be his intention only to seek CTR to attend the funeral service and not the subsequent cremation. That to alleviate the concerns of the applicant absconding or re-offending by taking or obtaining drugs, the applicant's solicitor, Mr Ruaidhri Currie, an officer of the court, has indicated in an affidavit that he will collect/return the applicant from and to prison. He will escort, supervise and be in the applicant's presence at all times during any period of release. Mr Summer's on behalf of the Prison Service expressed some concerns that a solicitor is not trained or equipped to escort a prisoner in such circumstances as to ensure the applicant does not abscond or offend. That Mr Currie may not be able to provide the necessary protection or reduction in risk necessary in this situation.

[15] It is of significance that in *Re McGlinchey's Application* [2013] NIQB 5 Stephens J observed at para [28] that:

"One of the considerations in play when one is considering the proportionality of the interference with the applicant's Article 8 rights is the nature and effectiveness of any conditions that could be imposed on the applicant if granted temporary release. The case made on behalf of the applicant is that the proposed respondent failed to take into account appropriate conditions that could have been imposed that would protect the public interest and/or failed to give appropriate weight to those conditions when arriving at a proportionate decision."

[16] Paying due regard to that observation in the present case, I am of the view the respondent has failed to give any or sufficient weight to the conditions around CTR which have been proposed by the applicant's representatives as favourable considerations for CTR. The decision letter and determination was devoid of any points considered on the positive side of the notional balance sheet of factors to be considered. The suite of conditions proposed by the applicant's lawyers include a truncated period of release (only for the church service), constant supervision by a solicitor and officer of the court Mr Currie. These limit the opportunities which could be afforded to the applicant to engage in any re-offending or non-compliance on the basis of transportation directly from prison to the church service and back again. I also find that there has not been any or insufficient weight paid to searching, isolation and testing of the applicant on his return to prison to avoid drugs being concealed by him.

[17] As a result there has been a failure to give sufficient weight to those conditions, balanced against the significant interference with the applicant's Article 8 rights. I determine that the decision to refuse CTR constitutes a disproportionate

interference with the Article 8 rights enjoyed by the applicant for the reasons set out above.

[18] Accordingly, the court orders:

1. That leave to apply for judicial review is granted.
2. That the decision refusing the applicant compassionate temporary release be quashed.
3. That the respondent to make provision for the applicant to be released on the morning of Monday 27 March 2023 at 12:30pm, returning to HMP Magilligan at 6:00pm with the condition that the applicant is to remain in the company of Mr Ruaidhri Currie at all times. Mr Currie and the applicant to travel along and not to deviate from a route set out on a map to be provided to the respondent and PSNI by 5pm today.

[19] If there are any difficulties with the final arrangements or the conditions which are imposed the parties are at liberty to refer any such matter back to the court.

[20] I order that the respondent pay the applicant's costs of the application to be agreed or taxed in default of agreement.