Neutral Citation No: [2017] NIQB 125 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* McC 10521 *Delivered:* 1/12/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY IAN QUINN FOR JUDICIAL REVIEW

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MCCLOSKEY J

[01 December 2017]

[1] By this judicial review application, which was initiated as an urgent matter during the summer 2017 vacation and has not yet advanced beyond the leave stage, the Applicant, a sentenced prisoner, seeks relief arising out of a state of affairs which the Court finds more than a little disturbing.

[2] In brief compass, in March 2017 a panel of the Parole Commissioners directed the proposed Respondents (NIPS/SOSNI) to provide a psychiatric report by a prescribed date in April 2017. The purpose of the report was to inform the panel's deliberations in the Applicant's case with a view to an adjourned oral hearing scheduled for May 2017. This was no casual or informal request. Rather, it was a formal statutory direction. There has been much water under the bridge during the period of nine months which has elapsed subsequently. This has been punctuated by, in particular, a series of indulgent extensions of time peppered with assurances which have not been honoured. The solemn advent of legal proceedings and judicial oversight made no difference. This cycle continued – and continues. The stand out fact, stark and disturbing, is that as of today (01 December 2017) the report directed by the Commissioners has not yet been provided. Indeed, it has not even been compiled.

[3] At the outset of today's hearing I expressed the provisional view that this was a highly unsatisfactory set of circumstances. I declined to venture further given that the factual matrix was manifestly incomplete. In addition, I invited the proposed Respondent's representatives to confer with their clients and obtain further instructions. Mr Corkey (of counsel), representing the proposed respondent (NIPS/SOSNI) has responded to the court's exhortation to provide a chronology

with impressive speed and ability. As a result, I am more informed having considered this excellent piece of work, prepared quick-fire, which is highly commendable.

[4] The Court's concerns with the NIPS failure to comply with the Commissioners' Direction are of the most profound nature. I accept that in the most recent phase there is some reasonable explanation and justification for the appalling delay. However, one of the striking features in the factual matrix is the gaping void when nothing of substance occurred between March and September of this year. The NIPS attitude to the Direction of the Commissioners – which equates to an order of a court - is illustrated in the text of the NIPS letter of 9 May to PCNI. This displays a disturbingly relaxed, casual and disinterested approach to the order, which was clearly treated as something unimportant, incorporating a merely aspirational, or indicative, deadline.

[5] NIPS has not so much as bothered to explain or apologise for its outright inertia during the first phase. Worse still, the next four months, which were punctuated by the initiation of these proceedings, were characterised by the same relaxed and indifferent inertia. The failures between March and September 2017 must be strongly deprecated. They were egregious in nature.

[6] Against this disturbing background, the Applicant was deprived of a hearing, vital in a decision as to his liberty, which ought to have taken place some seven months ago. If this were not bad enough, he was again deprived of two further rescheduled hearings which had to be aborted solely on account of the persisting NIPS default. Even worse, a fourth rescheduled parole hearing, programmed for mid-December, is now under threat. This is manifestly unacceptable.

[7] My assessment of the evidence is that in the most recent phase, dating from September 2017, there has been a failure by the independent consultant concerned to adhere to express and implied assurances regarding the provision of his report within specified time limits. Consultants of this kind are, as Weir LJ observed in R v D'arcy [2015] NICC 5 at [4], well rewarded for their services. The express and/or implied conditions of their engagement require, in every case, the provision of a report by a certain date. If they are unable to undertake that they will observe such requirement, they should refuse the offer of instructions. The documentary evidence before this court demonstrates with abundant clarity that there were no ambiguities about the time limit – by this stage a heavily and extensively extended one – in play.

[8] The upshot is that neither the Parole Commissioners nor the High Court have been treated with the elementary respect deserving of the judiciary in a constitutional arrangement which has as one of its cornerstones respect for the rule of law. Those guilty of the egregious failures and disrespect which have occurred in this case will doubtless wish to reflect on the propriety of proffering a swift and full apology to the Commissioners, this court and, most important, the Applicant.

[9] Having considered all the evidence and the submissions of both counsel, I have formed a clear view about the appropriate course. First, leave to apply for judicial review is granted. Second, I order mandamus requiring the provision of the report to the Parole Commissioners and the Applicant's solicitors by 4 pm on 4 December 2017. The case will be relisted before this court seven days hence. Costs are reserved and there will be liberty to apply.

[08 December 2017]

[10] Today's resumed hearing has two main features. First, there has been compliance with the court's order of mandamus, the long-delayed report being delivered just before the deadline specified in the order expired. Second, Ms Laverty on behalf of the Applicant draws attention to her client's claim for damages. She reminds the court that in a factual matrix of this genre there is high authority for the proposition that damages, measured in the modest amount of hundreds of pounds, are recoverable.

[11] In preference to devising a programme which would involve both parties in further cost incurring steps, at this stage I consider it preferable to impose a time limited stay to enable the parties' representatives to explore the possibility of consensual resolution on the issues of damages and costs, having pointed out earlier that in a case of this kind the spectre of costs on an indemnity basis could conceivably arise. See, inter alia, Awuah and Others v SSHD [2018] UKUT (IAC).

[12] There will, therefore, be a stay for a period of two weeks.

Addendum, 28 December 2017

The court having been informed that the Applicant's claim for damages has been settled on confidential terms, nothing other than a formal, final order is required.