

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**  
**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

---

**Stokes Application (Leave stage) [2009] NIQB 102**

**AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY**  
**BRIDGET STOKES**

---

**WEATHERUP J**

[1] This is an application for leave to apply for Judicial Review of a decision of the Legal Services Commission dated 14 October 2009 refusing free legal aid to the applicant for the purposes of an interview by Social Security officers in relation to suspected benefit fraud on 11 November 2006. Mr McCann appeared for the applicant, Mr Scofield for the proposed respondent, the Legal Services Commission, and Mr McGleenan for the Northern Ireland Court Service, as responsible for the relevant Regulations.

[2] The relevant statutory provisions are the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and the Legal Advice and Assistance Regulations (NI) 1981 which allow for the means testing of applicants for legal aid. When the Police and Criminal Evidence (NI) Order 1989 provided for the right of an arrested person to consult with a solicitor the legal aid Regulations were amended. The relevant Regulation for present purposes is Regulation 7A which provides for circumstances in which advice and assistance from a solicitor may be given without the payment of a contribution. This arises in three circumstances –

- (a) the person is arrested and held in custody at a police station or other premises;
- (b) the person is being interviewed in connection with a serious service offence;

(c) the person is a volunteer.

[3] A “volunteer” is defined as a person who, for the purpose of assisting with an investigation, attends voluntarily at a police station or any other place where a constable is present or accompanies a constable to a police station or any other place without having been arrested. The applicant claims to have been a volunteer.

[4] A “constable” is defined in the Interpretation Act (Northern Ireland) 1954 as a police officer, the harbour or airport police, the military police or any other person having for the time being the powers of a constable. It will be noted that this particular enquiry did not involve any police officer but involved social security officers. There is an issue as to whether the social security officers qualify as constables for present purposes.

[5] The proposed respondent’s approach is that the applicant does not qualify for non means tested legal aid under Regulation 7A because she was not interviewed by police but by the social security officers, who did not have the powers of a constable. The applicant’s approach is that the social security officers had the powers of a constable other than a constable’s power of arrest and the power to charge and that a purposive approach to legal aid provision would treat all benefit fraud interviews in the same manner, whether conducted by police or social security officers.

[6] The applicant relies on four grounds for Judicial Review –

(a) The decision infringes procedural protection for criminal proceedings under Article 6(3) of the European Convention, including the right to free legal assistance.

(b) The decision is unlawful under section 6 of the Human Rights Act.

(c) The decision is unlawful in that the Commission failed to read the Regulations in a manner that rendered them compatible with the Convention.

(d) The Commission’s policy not to grant non means tested legal aid to persons interviewed by social security officers is discriminatory, contrary to Article 14 of the Convention.

[7] Article 6 of the European Convention provides for fair trial rights and Article 6(3) provides certain minimum rights to everyone charged with a criminal offence. The rights apply from the commencement of an investigation

that might lead to a criminal conviction. I proceed on the basis that Article 6 rights apply in this case.

[8] Article 6(3)(c) provides that where a charged person has not sufficient means to pay for legal assistance that person has the right to free legal representation where the interests of justice so require. Thus in relation to the fair trial rights under Article 6 there is no right to free legal aid and the applicant accepts that that is the position. Thus there is no arguable basis for a breach of Article 6 in the provision of means tested legal aid.

[9] The only issue in effect is in relation to Article 14 – the non discrimination provision. Article 14 is a parasite provision that relies on another Convention right. The relevant Convention rights for present purposes are the Article 6 fair trial rights. If Article 6 is engaged then Article 14 may rely on discrimination in the exercise of the right to a fair trial. I am prepared to assume for present purposes that Article 6 is engaged in this case.

[10] The applicant's Article 14 argument proceeds on the basis that the applicant is subject to differential treatment. Being interviewed by social security officers does not entitle the applicant to non means tested legal aid whereas had the interview been conducted by police officers there would have been free legal aid. The applicant therefore contends that the restrictions in Regulations 7A should be read in such a way as to extend to social security interviews or alternatively that the Regulation should be struck down.

[11] The proposed respondent accepts that the applicant is the subject of different treatment but refers to the different circumstances of the applicant, namely being interviewed by social security officers rather than police officers. The proposed respondent refers to the powers of police constables to arrest and charge suspected persons as being the setting in which the Regulation operates. Accordingly the Regulation provides for non means tested legal aid in the context of police powers that do not apply in relation to enquiries undertaken by social security officers. This, the proposed respondent says, is a legislative choice, a social policy decision as to whether or not free legal aid should be accorded to people in such a situation.

[12] Discrimination may be on a variety of stated grounds such as sex, race or religion and there is a sweep up provision for "other status". The applicant claims discrimination based on "other status". In Carson and Reynolds v. Secretary of State [2005] 4 All ER 545 the House of Lords considered the concept of "other status". Carson was a UK pensioner who lived in South Africa and the pension scheme operated in a different way for those who lived within and without the UK. Those who lived outside and were resident in South Africa did not benefit from increases which were paid to those who lived within the UK. Reynolds received job seekers allowance and was paid less because he was under 25. Lord Walker at page 564 referred to the

interpretation of “status” as involving a personal characteristic by which persons or groups of persons are distinguishable from each other. The proposed respondent says that the present case is not concerned with status but that the applicant finds herself treated differently because of her circumstances.

[13] The House of Lords in Carson and Reynolds referred to Beale v. United Kingdom [12/10/2004, unreported] which concerned different procedures adopted by the police on the one hand and trading standards officers on the other hand in relation to the investigation of relevant offences. It was found that there was no basis for discrimination in that the different treatment arose not in relation to a personal characteristic but the circumstances.

[14] The proposed respondent refers to the applicant’s personal circumstances as the basis on which she received different treatment. She did not receive the treatment as an individual or as a class of person but rather because she found herself being investigated by social security officers. In those circumstances the Regulation provides that she was not entitled to free legal aid. The reasons for the distinction between social security interviews and police interviews are said to include the absence of powers of arrest and of charging by social security officers.

[15] That there is differential treatment is clear but that is not the result of a choice made by the Legal Services Commission. The different treatment accorded to the applicant as opposed to those interviewed by the police is based on the operation of Regulation 7A, which led to the intervention of the Northern Ireland Court Service. The differential treatment is based on the applicant’s circumstances. The social security interview was of a different character to a police interview and in those circumstances the applicant is not comparing like with like. I do not accept that the treatment of the applicant was based on her “status” for the purposes of Article 14. Thus there is no arguable basis for discrimination contrary to Article 14. As stated above there is no arguable case in respect of a breach of Article 6 fair trial rights. Accordingly I refuse leave to apply for Judicial Review.