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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 KIERAN ALLSOPP FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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Sean Mullan (instructed by Brentnall Legal Limited) for the Applicant
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HUMPHREYS J

Introduction

[1] This is an application for leave to apply for judicial review of a decision of the Local Area Public Protection Panel ('LAPPP') dated 7 August 2020 whereby the applicant was classified as a Category 2 violent offender within the Public Protection Arrangements for Northern Ireland ('PPANI').

[2] During the course of 2019, the applicant was convicted of a number of offences involving common assault and threats to kill against a former partner. This led to a Probation Officer making a referral to the LAPPP under the PPANI. A meeting took place on 7 May 2020 at which all the agencies which were represented agreed that the applicant should be classified as a Category 2 violent offender.

[3] The applicant now seeks to impugn this decision on the grounds that it was unlawful, it breached his ECHR rights and was infected by procedural unfairness. The court is grateful to counsel and solicitors for their written and oral submissions.

The Statutory Framework

[4] Part 3 of the Criminal Justice (Northern Ireland) Order 2008 ('the 2008 Order') is entitled "Risk Assessment and Management" and Article 50, as amended, states:

> *"(1) The Secretary of State may issue guidance to agencies on the discharge of any of their functions which contribute to the more effective assessment and management of the risks posed by persons of a specified description.*
>
> *(2) Guidance under this Article may contain provisions for the purpose of facilitating co-operation between agencies, including –*
>
> *(a) provisions requiring agencies to maintain arrangements for that purpose and to draw up a memorandum of co-operation; and*
>
> *(b) provisions regarding the exchange of information among them.*
>
> *(2A) Guidance under this Article must contain provisions about arrangements for considering the disclosure, to any particular member of the public, of information concerning any relevant previous convictions of a person where it is necessary to protect a particular child or particular children from serious harm caused by that person; and the guidance may, in particular, contain provisions for the purpose of preventing a member of the public from disclosing that information to any other person.*
>
> *(3) Paragraphs (2) and (2A) do not affect the generality of paragraph (1).*
>
> *(4) Agencies shall give effect to guidance under this Article.*
>
> *(5) The Secretary of State shall consult the agencies before issuing guidance under this Article.*
>
> *(6) The Secretary of State shall not specify a description of persons in guidance under this Article unless, whether by reason of offences committed by them (in Northern Ireland or elsewhere) or otherwise, the Secretary of State has reason to believe that persons of that description may cause serious harm to the public."*

[5] Following the devolution of justice, the relevant guidance was published by the Department of Justice. This guidance is directed to a number of agencies, listed in Article 49 of the 2008 Order, including the PSNI, the Probation Board for Northern Ireland ('PBNI') and the health trusts. The stated objective of the guidance is to achieve maximum effectiveness in the management of risk to the community posed by sexual and violent offenders by adopting a multi-agency approach.

[6] By virtue of Article 50(4) of the 2008 Order each of these agencies was obliged to give effect to the guidance in exercising their functions.

[7] The Article 50(6) requirement to specify a description of persons which the Department has reason to believe may cause serious harm to the public finds voice in paragraph 3.6 of the guidance. This sets out the criteria for initial assessment to determine if management through the PPANI is required. Insofar as is relevant to this application, a 'Relevant Violent Offender' is one who:

> *"Has been convicted, on or after 1 April 2010, of a violent offence in domestic or family circumstances, or who has a previous conviction for a violent offence in domestic or family circumstances and about whom an agency has current significant concerns."*

[8] The Guidance goes on to state:

> *"A conviction for a violent offence involving an assault in domestic or family circumstances excludes an offence under section 42 of the Offences Against the Person Act 1861, other than in exceptional circumstances where it is determined that an assessment of risk is necessary."*

[9] At paragraph 3.12, the Guidance refers to the definition of 'serious harm' in Article 49 of the 2008 Order as being:

> *"Harm (physical or psychological) which is life threatening and/or traumatic and from which recovery is usually difficult or incomplete."*

[10] The relevant agencies have also published a Manual of Practice which is intended, inter alia, to provide operational guidance that reflects best practice to LAPPP's. It defines a 'Category 2' violent offender as:

> *"Someone whose previous offending and/or current behaviour and/or current circumstances present clear and identifiable evidence that they could cause serious harm through carrying out a contact sexual or violent offence."*

In relation to the identification of relevant offenders, it states at paragraph 3.1:

> *"From 1 July 2013 new referrals into PPANI for violence in a domestic or family circumstance must have a minimum conviction of Assault Occasioning Actual Bodily Harm (AOABH)."*

[11] The Manual then addresses the question of 'Exceptional Circumstances':

> *"In exceptional circumstances a referral into PPANI may be appropriate in respect of cases where the conviction for violence in domestic or family circumstances is below the AOABH threshold.*
>
> *It is not possible to be prescriptive in relation to what constitutes exceptional circumstances. However exceptions could include a verifiable pattern of on-going domestic violence, the nature of the domestic violence conviction, multiple victims, or a new charge for a serious assault in family or domestic circumstances. It is important to note that the exceptional circumstances must also evidence the current significant concerns criteria.*
>
> *When invoking the exceptional circumstances option the referring agency should also make clear on the PPANI 1 referral form why a LAPPP is necessary as opposed to using one of the other available fora."*

[12] The *'other available fora'* referred to include Multi Agency Risk Assessment Conferences (MARAC), Child Protection Case Conferences, Vulnerable Adult Conferences, Risk Management Meetings and NIPS Licensing Panels. It is stressed that these options should be considered or utilised prior to any referral to PPANI.

The Referral of the Applicant

[13] The applicant was referred to PPANI by the PBNI on 20 January 2020. Details of the various offences in 2019 are set out in the Referral Form and it is stated that these demonstrate a regular pattern of domestic violence. There is no mention in the original referral of 'exceptional circumstances', nor does the referring agency state what consideration had been given to the alternative fora set out in the Manual.

[14] The PPANI Links Team accepted the referral on 19 February 2020. In doing so, it found:

> *"Whilst offences are below the AOABH threshold the exceptional circumstances criteria has been met i.e. pattern of common assaults and partner's pregnancy."*

[15] A LAPPP meeting was convened on 7 May 2020. It was proposed to the meeting that the applicant be classified as a Category 2 violent offender on the basis of the history of domestic violence, some of which had been perpetrated on his former partner whilst she was pregnant. It was noted that the applicant had sought to minimise his offending behaviour and had been assessed as presenting a high risk of reoffending. Following a discussion between the agencies represented at the meeting, Category 2 was agreed by the LAPPP. The issue of the risk of serious harm was considered and the Panel concluded:

> *"That Mr Allsopp could commit a significant act of violence upon a female in a relationship with him (specifically stamping and choking – both of which have potential to cause serious harm)."*

The Grounds for Judicial Review

[16] In his Order 53 statement, the applicant claims that the classification of him as a Category 2 violent offender was unlawful as being contrary to the published guidance. It is contended that he does not fall within the definition of 'Relevant Violent Offender' nor does he fall within the definition of posing a risk of serious harm. It is also claimed that the LAPPP failed to adhere the Manual of Practice in that the exceptional circumstances test was not correctly applied.

[17] The applicant also asserts that his rights pursuant to Articles 6 & 8 ECHR have been breached by the decision under challenge and that the lack of any representation and/or appeal rights were procedurally unfair.

[18] Discretely, the applicant claims that the decision maker was labouring under a misapprehension of fact, namely that the applicant had been involved in an incident of stamping on his ex-partner's head.

[19] The court is conscious of the fact that at the leave stage the applicant need only establish an arguable case – i.e. one with a realistic prospect of success.

The Identity of the Respondent

[20] At the outset, counsel for the PBNI and the DOJ sought to argue that the LAPPP was not the correct proposed respondent. It is claimed that the LAPPP is merely a group of representatives from various agencies and not a legal entity which would be amenable to judicial review.

[21] The court accepts that the LAPPP is not a body corporate but this is not itself determinative of the question of amenability to judicial review. The LAPPP is clearly exercising powers which derive from statute and have substantial public impact. In *R v Panel on Takeovers and Mergers ex parte Datafin* [1987] QB 815, judicial

review proceedings were launched against the Panel which oversaw the regulation of certain activities in the City of London. The Panel in that case was a self-regulatory body, of no statutory authority, and, in the words of Sir John Donaldson MR it operated *"without visible means of legal support."* He explained:

> *"The panel is an unincorporated association without legal personality and, so far as can be seen, has only about twelve members…It has no statutory, prerogative or common law powers and it is not in a contractual relationship with the financial market or with those who deal in that market."*

[22] Nonetheless, the Court of Appeal in England & Wales held that the decisions of the Panel were susceptible to judicial review. *De facto*, it exercised powers of a public law nature which had important consequences both for businesses and the rights of citizens. It was not therefore the source of power but its nature which was the determinative issue.

[23] The contention that the PBNI is the correct proposed respondent cannot be correct. It made a referral to PPANI but did not, of itself, make the decision to categorise the applicant. Conceivably, all the agencies which were involved in the decision could be respondents but the court is concerned that such a multi-party approach may be unwieldy and contrary to the overriding objective. This is an issue to which I will return later in this judgment.

[24] It is noteworthy that in *Re NJ's Application* [2011] NIJB 122 the applicant sought judicial review both of the issued guidance and also of the categorisation decision of a LAPPP. It was not argued before the Divisional Court that the LAPPP was not a correct respondent or that it was not a public body susceptible to judicial review.

[25] For the purposes of this leave application, I find that there is an arguable case that the LAPPP is the correct respondent and its decision to categorise the applicant is amenable to judicial review.

Is the challenge academic?

[26] In September 2020, after the application for judicial review was commenced, the applicant's status was downgraded to that of a Category 1 offender. It was contended therefore that this challenge was now academic and should not be entertained by the court in light of the principles set out in *R v Secretary of State for the Home Department ex parte Salem* [1991] AC 450. In terms, the courts will decline to hear disputes which have become academic unless there is a good reason in the public interest for doing so. The examples given in *Salem* include a discrete point of statutory construction or the existence of a large number of cases awaiting the outcome of the dispute in hand.

[27] However, before the public interest exceptions are considered, one must determine if the dispute between the parties has actually become academic. In his affidavit, the applicant states:

> *"The categorisation is very serious and clearly carries a significant label and stigma. This label or tag would be recorded against me on police and probation computers. I do not know what else it would be used for, for example, would it affect my ability to travel to other countries such as the USA, etc. The consequences have never been explained to me and are unknown."*

[28] In submissions, counsel for the applicant stressed that the status as a former Category 2 violent offender could still have consequences for the applicant in terms of bail applications, sentencing for any future offences, etc.

[29] In light of the evidence and the uncertainty surrounding the impact of the applicant's former categorisation, I am not persuaded at this stage that the point in issue has become academic. I do not therefore need to consider whether there is some wider public interest in the determination of the dispute.

Illegality

[30] It is common case that the applicant did not meet the definition of 'Relevant Violent Offender' in the guidance unless the exceptional circumstances criterion is met. By virtue of Article 50(4) of the 2008 Order, the agencies concerned were obliged to give effect to the guidance issued.

[31] The Referral Form sent by PBNI does not particularise what are said to be the exceptional circumstances in the instant case. The LAPPP decision document is similarly silent in that there is no analysis carried out of how the exceptional circumstances are said to arise in the applicant's case. Further, there is no reference in the Referral Form to any consideration of why a LAPPP is necessary rather than one of the other available fora, in breach of the express requirement imposed by the Manual.

[32] The Panel's conclusion in relation to the 'serious harm' requirement was founded on the specific risk caused by stamping and choking. In the sentencing context, the Court of Appeal in England & Wales in *R v Lang* [2005] EWCA Civ 2864, cautioned that repetitive violent offending at a relatively low level without serious harm does not of itself give rise to a risk of significant harm in the future.

[33] In the LAPPP minutes, specific reference is made by the PBNI representative to *"stamping on her head"*. There is no evidence anywhere in the papers either of the applicant having been convicted of an assault involving stamping on the victim's head or of such an allegation having been made. There are two references to

stamping – one on 21 July 2019 where there is an allegation of stamping on her stomach and another on 1 November 2019 where it is claimed he *"stamped on her"*.

[34] For these reasons, I have concluded that the threshold for leave has been met in relation to the applicant's claims that the decision under challenge was unlawful in that the decision maker failed to properly apply the statutory guidance on the issues of exceptional circumstances and serious harm.

Breach of Convention Rights

[35] The applicant argued that the determination of the categorisation process without being afforded an opportunity to make representations constituted a violation of his Article 6 rights. In *Re NJ's Application* (supra) the Divisional Court held that a decision by an LAPPP was a preventative and protective decision which was not decisive of any civil right of the applicant and therefore Article 6 did not apply to such a decision. As such, the applicant's case in this regard is unarguable and leave on this ground is refused.

[36] The applicant's right to privacy and family life is clearly engaged by his classification as a Category 2 violent offender and the consequences which flow from that. In light of my consideration of the illegality arguments, I consider that there is an arguable case that the interference with the applicant's Article 8 rights was not proportionate or necessary. I grant leave on this ground.

Procedural Unfairness

[37] In *Re NJ's Application* (supra) the Divisional Court considered that the requirements of procedural fairness in the context of LAPPP hearings did not impose an obligation on the Panel to hear from the applicant prior to making a determination. The statutory guidance does not import any right to heard in a LAPPP meeting but rather anticipates that the participation of the person concerned takes place at the risk management stage.

[38] In the event, in this case, the applicant was successful in having his status downgraded to Category 1 by reason of his behaviour and co-operation with the relevant agencies. In these circumstances, and in light of the decision in *NJ*, there is no arguable case of procedural unfairness and I refuse leave on this ground.

Conclusion

[39] Accordingly, I grant leave in respect of the grounds set out at paragraph 5.1 (i), (ii) (b) and (iii) of the Order 53 statement.

[40] As will be evident, I have determined that there is an arguable case that the LAPPP is the correct respondent to the application for judicial review but the parties are at liberty to file evidence and make further submissions on this issue.

[41] I formally join the Department of Justice as a notice party to the application. I reserve the costs of the leave application and will hear the parties as to further directions.