

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

RAYMOND BROWNLEE

**TREACY J**

**Application**

[1] The applicant in this case is Raymond Brownlee, a convicted prisoner, presently of Her Majesty's Prison, Maghaberry. In its earlier judgment, [2013] NIQB 36, the court held that the relevant Legal Aid Rules are defeating the applicant's right to practical and effective access to the legal assistance which, in the interest of justice, the presiding judge at his criminal trial has indicated is necessary. The problem has arisen because the applicant has not been able to obtain any counsel to represent him. This is because the 2011 Amendment Rules make no provision for exceptional or unusual circumstances.

[2] Article 6(3) of the European Convention on Human Rights sets out a number of minimum rights to which everyone charged with a criminal offence is entitled. This specifically includes the right at Article 6(3)(c), subject to means, to free legal assistance when the interests of justice so require. The trial judge has determined that the interests of justice require the level of assistance that he has determined in the legal aid certificate namely, Senior Counsel, Junior Counsel and solicitor.

[3] Through no fault of the applicant he has not been able to make his right to legal aid effective in breach of the entitlement identified in for example the recent judgment of the Court of Appeal in *Re John Finucane* [2012] NICA 12. The right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial. The trial includes the sentencing process. In the present case, as the earlier judgment noted, the applicant's solicitor has tried to engage senior and junior counsel to no avail. She has contacted the Bar Council who has confirmed that no counsel would act in the circumstances and the Pro Bono Unit has stated that it would not be able to assist the applicant as the Unit

does not act in criminal cases and that it could never contemplate any responsibility in the conduct of criminal trials.

[4] The person entitled to legal aid must be able to make his right to legal aid effective as the Court of Appeal recognised in the Finucane case. The nature of the preparatory work involved in this case for the deferred sentencing hearing in the circumstances which have arisen is likely to be substantial. As the court noted in its earlier judgment it is not in the public interest that the legal aid scheme as presently formulated or operated should lead to the rejection of instruction in this case by competent and experienced counsel supported by the Bar Council itself. Part of the reason for this rejection appears to be because the rules do not allow payment for preparatory work and because, relatedly, the Scheme has no exceptionality provision. It is clear, as the court recorded earlier, that the inflexibility of the impugned Scheme is preventing the applicant from being able to make his right to legal aid effective.

[5] The earlier judgment of the court is being appealed and the respondent has not taken any steps, and does not intend to take steps, to make the applicant's right to legal aid effective. The applicant's much delayed plea and sentence is scheduled for the 17<sup>th</sup> of May and in a letter from the Northern Ireland Courts and Tribunals Service dated the 9<sup>th</sup> of April 2013 a tight timetable was laid down by the trial judge. That letter states as follows:

"I refer to the above matter which has been listed for plea and sentence on Friday the 17<sup>th</sup> of May 2013....

Given that a year has almost elapsed since the last risk management hearing took place, the judge has directed that the Probation Services be informed that a new hearing should be arranged and an updated PSR made available to the court. Below is a timetable that must be adhered to given the protracted history of this case:

10 May 2013 - defence to serve on PBNI, PPS and Court any reports relevant to the issue of the defendant's dangerousness as they intend to rely upon.

13 May 2013 - risk management hearing to review the issue of the defendant's dangerousness.

16 May 2013 - PBNI to lodge addendum PSR to include conclusions of risk management hearing.

17 May 2013 - Plea and sentence hearing at 2 pm at Laganside Courthouse."

[6] The result of the impugned scheme is that no lawyer is available for the accused at the forthcoming hearing or in respect of the various other steps which are referred to. So as I say the basic position is that as a result of the present legal aid scheme the defendant at the forthcoming hearing will not have the benefit of counsel to represent him and this is despite the fact that this is a case where the convention and domestic law require that the applicant should be represented. By virtue of Section 6 of the Human Rights Act it is unlawful for a public authority such as the respondent to act in a way which is incompatible with a convention right. Section 8(1) of the same Act provides that:

“In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such Order, within its powers as it considers just and appropriate.”

[7] In this connection the court was also referred by Mr Lavery QC on behalf of the applicant to paragraph 8.42 of *Judicial Review in Northern Ireland* by Gordon Anthony.

[8] I am persuaded that in this case it is just and appropriate to grant an Order of Mandamus compelling the respondent to take all necessary steps to make the applicant's right to legal aid effective and I so Order.