

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Callison's Application [2014] NIQB 92

IN THE MATTER OF AN APPLICATION BY IVIE CALLISON FOR JUDICIAL  
REVIEW

IN THE MATTER OF A DECISION BY THE DEPARTMENT OF JUSTICE  
COMMUNICATED TO THE APPLICANT ON 23<sup>rd</sup> JUNE 2014

IN THE MATTER OF ARTICLE 136 OF THE CRIMINAL JUSTICE AND PUBLIC  
ORDER ACT 1994

TREACY J

[1] Ronan Lavery QC and Michael Tierney BL appeared on behalf of the applicant and Tony McGleenan QC and Stephen McQuitty BL appeared on behalf of the respondent. Following helpful submissions the matter was listed on an urgent basis for a hearing on 10 July. I am indebted to all counsel for the speedy resolution of a matter which was not free from complexity. What follows reflects the document that was submitted by the parties. I am reproducing it in full with minor amendments and a reference to case law produced by Mr Lavery QC at the hearing which may have facilitated resolution.

The Agreed Facts

[2] This Application concerns the transfer of probationary supervision within the United Kingdom.

[3] The Applicant is a 61 year old man who has resided in Scotland for his entire life. There is no dispute between the parties that the Applicant's home and home life, including a job, are in Scotland.

[4] The Applicant was convicted of two counts of indecent assault on a male child, contrary to Section 62 of the Offences Against the Person Act 1861, by Antrim

Crown Court on 23 October 2013. On 14 January 2014 the learned Crown Court Judge sentenced the Applicant to a Custody Probation Order of 1 year imprisonment and 2 years' probationary supervision.

[5] The Crown Court had the benefit of a pre-sentence report prepared by the Scottish probation authorities. The intention of the sentencing Judge and of the parties before the Crown Court was that the Applicant would serve the custodial portion of his sentence in Northern Ireland and would return to Scotland to serve out his probation supervision.

[6] In or around April 2014 the Applicant met with a probation officer from the Probation Board for Northern Ireland who told the Applicant he would not be permitted to return home following his release from custody.

[7] The Applicant's solicitor corresponded with the Probation Board for Northern Ireland and the Respondent. The Respondent has accepted they hold responsibility for prisoner transfers within the United Kingdom and are the correct Respondent to these proceedings. The issue of concern to the Probation Board for Northern Ireland and the Respondent was that in their view a Custody Probation Order could not be enforced outside of Northern Ireland.

[8] The Applicant issued Judicial Review Proceedings on 26 June 2014.

### **Declaration**

[9] The court was referred to *McGrath v Chief Constable of the RUC* [2001] 2 AC 731 and in particular to para 21 *et seq* of the judgement of Lord Clyde. That judgement plainly informed the approach of the parties who upon consent successfully invited the court to make the following declaration:

"A declaration that Article 136 of the Criminal Justice and Public Order Act 1994 can be interpreted in such a way that a warrant issued in Northern Ireland in connection with the Applicant's probationary supervision can be validly executed in other jurisdictions within the United Kingdom including Scotland."