

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Conway's Application [2011] NIQB 49

IN THE MATTER OF AN APPLICATION BY BRENDAN CONWAY FOR
JUDICIAL REVIEW

TREACY J

[1] In an earlier judgment, [2011] NIQB 40, I had previously ruled that routine full-body searching of prisoners on entering and leaving the prison is lawful and that the policy of forcible full body searching of non-compliant prisoners is also lawful. This conclusion was expressed subject to one caveat regarding full body searching of prisoners who are being discharged on acquittal or completion of their sentence. The respondent, with leave of the court, filed a further affidavit sworn on 26 May 2011 to address the issue of such searches upon acquittal or final discharge. The applicant had objected to the respondent lodging additional affidavit evidence but apart from maintaining their original submissions made no further substantive submissions nor sought to file any further evidence.

[2] In the light of the effectively unchallenged averments I have been satisfied by the respondent that there are compelling, convincing and subsisting security needs for such full-body searching even on final discharge and that it is lawful. The matter is dealt with in the most recent affidavit of Governor Craig where he has indicated that he had been commissioned by the then Director of Operations to conduct a review of full-body searching of prisoners in Northern Ireland. This was on foot of a recommendation made by the Prisoner Ombudsman in a report on an investigation into two representative complaints from prisoners in Roe House in Maghaberry. He records that Recommendation 10 of the Ombudsman's report was:

"I recommend that arrangements are put in place by the end of June 2010 for independent prison-wide review of the full body searching arrangements to examine each of the circumstances

in which full body searches are carried out including entry and exit to the SSU and to the video-link suite and to check that the method and frequency of searches is necessary, proportionate and individually risk assessed and where appropriate recommendations from the review should be implemented immediately.”

[3] Governor Craig led a review team which included representatives from the Scottish Prison Service and the National Offender Management Service for England and Wales. This review also involved consultations with colleagues in the Irish Prison Service and others. As part of the review, the context in which prisoners are fully body searched and the necessity for searches was addressed. During the course of that review they looked at what was referred to as a human rights analysis which was carried out by the Northern Ireland Prison Service in 2005. The current review, conducted by Governor Craig, held that the analysis which was contained in the 2005 review was still valid. He has also deposed at para 4 that the current practice in the Prison Service has again been reviewed during the course of the current proceedings, specifically in relation to the searching of all inmates on final discharge from prison. He then sets out in his affidavit the relevant portion of the 2005 analysis which was effectively adopted by him or by the review team in their more recent analyses (also set out at page 6 of the earlier ruling). I do not need to repeat it here.

[4] Therefore the issue of full body searching on discharge has been reconsidered on a number of occasions by the Prison Service and they have maintained that such a search is necessary. Governor Craig has indicated at para 5 of his affidavit that there are additional reasons for maintaining a full body search for all prisoners of those being finally discharged other than to ensure the removal of property which appears to have been the sole or principal reason which was advanced in the 2005 analysis to justify such searches on discharge. The Prison Service considers that the continued use of such searches on final discharge from prison is required for four reasons.

- To prevent the exportation of material likely to assist others in planning or in effecting an escape from lawful custody.
- To prevent the removal of property that has been unlawfully taken or extorted from other prisoners.
- To prevent the removal of information which could be of use to terrorists or members of organised criminal gangs. He points out that modern mobile telephones commonly have video and camera facilities and that prison authorities across the United Kingdom are concerned

that video images from inside prisons can be saved on SIM cards and taken out of the prisons for dissemination.

- Finally he says that an exception to the general rule that all prisoners are subject to a full body search would expose a weakness in the Prison Service's security procedures. Prisoners who are being released on final discharge are not simply released at the prison gate and, he continues:

"They exit the prison with a cohort of other prisoners. After prisoners have been subjected to a full body search they do not immediately exit the prison. Prisoners who are subject to final discharge are not segregated from prisoners who are going to court, to hospital on home leave or compassionate leave. If prisoners on final discharge were not subject to a full body search on exit then such prisoners could be prevailed upon to remove items from the prison for other prisoners. Such items could then be picked up once the full body searches had been conducted but before the prisoners exited the prison for court attendance or home leave or they could be retrieved on the outside. The cessation of full body searching for discharged prisoners would expose vulnerable prisoners to coercion to remove contraband, drugs or weapons for other prisoners and would be to create an unacceptable weakness in security procedures. The fact that all prisoners know that all prisoners are searched on discharge has a deterrent effect on those who might otherwise prevail upon vulnerable prisoners at the end of their sentences."

[4] He further avers that if full body searching on final discharge was to be discontinued then the Prison Service would have to introduce a system which involved segregating the prisoner for discharge from the other prisoners exiting the prison. However he avers such a system would still expose the discharge category of prisoners to the risk of being pressurised to remove materials outside the prison and he points out that the full body searching on final discharge from custody is applied throughout the United Kingdom and there was nothing unusual or unique about the practice in Northern Ireland. Whilst prisoners who are released from custody at court are not fully body searched before release, he points out that they will have been subjected to a search before exiting the prison.

[6] In the light of those rather more detailed averments in respect of full body searching on final discharge I have, as I have already indicated,

concluded that I am satisfied by the respondent that there are compelling, convincing and subsisting security needs which justify such full body searching even on final discharge. In those circumstances the combined effect of the previous judgment and this postscript is that the applicant's judicial review challenge to the policy of full body searching and forcible full body searching of non-compliant prisoners must be dismissed.