Neutral Citation No. [2014] NIQB 12 | *Ref:* **TRE9142**

Judgment: approved by the Court for handing down | *Delivered:* **24/01/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Creggan's (Austin) Application [2014] NIQB 12

AUSTIN CREGGAN FOR JUDICIAL REVIEW

TREACY J

Application

[1] The applicant in this case is Austin Creggan who is currently detained at HM Prison Maghaberry. As originally presented there are two aspects to this application for judicial review. One was a challenge to a number of adjudications premised apparently on the alleged failure to properly deal with the applicant's request for legal representation. This aspect has now been resolved on consent. The second aspect involved a challenge to the refusal to transfer the applicant to the separated landing for republican prisoners at Roe House. Although this challenge is mounted against both the Northern Ireland Prison Service ("NIPS") and the Secretary of State ("SoS") it seems clear that the impugned decision is that of the SoS. Thus, in a letter from the Minister of Justice it was expressly acknowledged that the issue of entry into separation is a matter for the SoS. Any response from the NIPS therefore on this issue was said to be on behalf of the SoS. The particularised grounds of this aspect of the remaining challenge are set out at para 3(b) of the Order 53 Statement.

[2] The first item of correspondence exhibited to the grounding affidavit was a solicitor's letter of 11 July 2012 complaining about the fact that their client's application to be transferred had been refused. The letter alleged that as a perceived member of CIRA his detention in Bann House, as opposed to the separated conditions in Roe House, exposed him to a risk of serious harm in breach of Art 2 of the European Convention. It was also alleged that the impugned decision was not compatible with the findings of the Steele Report. This letter emphasised that given that Art 2 was said to be engaged it was essential that the prison authorities act with promptness to ensure the required protection. Under cover of letter dated 16 July 2012 the letter of 12 July was forwarded to the Prison Ombudsman expressing the

view that the issues raised were "of extreme urgency" and making an official complaint about the decision not to transfer.

[3] On 20 July 2012 the Prison Ombudsman said that she was unable to investigate the complaint until the applicant had gone through the NIPS two stage internal complaints process. On 3 August 2012 the applicant's solicitor wrote to the Governor again complaining about the alleged breach of Art 2. The letter also referred adversely to visiting arrangements that had taken place on Sunday 29 July 2012 where it was alleged "a known loyalist was permitted to be seated close to the applicant" when the applicant was being visited by a family member. This was described as "an egregious breach of security that showed blatant disregard for the obligations under Article 2 and the Steele Report".

[4] In response to correspondence the Minister of Justice by letter dated 16 August stated as follows:

> "You have explained that your clients believe that a known loyalist was present while they were in the visiting hall. As integrated prisoners your clients will encounter other prisoners from different backgrounds. If NIPS receive substantive information that any other prisoner is a threat to any of your clients then measures will be taken to ensure that they will not meet or be housed together."

On 17 August the NIPS on behalf of the SoS stated:

> "The recommendations of the Steele Report were accepted by the government on 8 September 2003. The compact was then devised to give information for those wishing to apply to be held in separated conditions and it also listed the required criteria. The compact states that the decision on who can be admitted to separated conditions are made by the Secretary of State. On behalf of the Secretary of State officials in Prison Service Headquarters consider all applications on the basis of the criteria set out. None of your clients met all the criteria required for admittance to separated conditions."

[5] By letter dated 2 November 2012 the applicant's solicitor asserted that the applicant is convinced that no threat would exist if he was transferred. The letter asked the NIPS to confirm where the threat emanated and asking which landing within the separated wing the threat originated. By reply of 12 November 2012 the Prison Service said that they were aware of a threat to the applicant's safety from within the Republican separated unit but they were not prepared to identify the

source of the threat as requested. So far as this issue is concerned the matter, at least legally speaking, lay inexplicably dormant. On 30 July 2013 the applicant's solicitor wrote again requesting the applicant's transfer and threatening judicial review proceedings. Section 1(A) of the Prison Act 1953 as amended provides for the SoS to continue to exercise the functions relating to amongst other things, *inter alia,* accommodation of prisoners in separated conditions. The criteria for admission to the separated landings in Roe 3 and 4 are known to the applicant. They are reiterated in the proposed respondent's response to the pre-action letter dated 8 August 2013. The letter of 8 August stated the criteria for admission to the male separated landings in Roe 3 and 4, which included the following:

> "(e) Admitting him to separated conditions would not be likely to prejudice his safety."

In light of the threat to the applicant's safety, if he were admitted to separated conditions, it was held that he did not satisfy the criteria and therefore refused to transfer him. The letter goes on to say:

> "Your client is a sentenced prisoner committed to Maghaberry Prison on 21 January 2013 and sentenced to 6 years for the offences of robbery, carrying a firearm with intent to commit an indictable offence, possession of a prohibited weapon and discharge of electricity or noxious substance. Mr Creggan made his first application for transfer to the separated landings on 18 January 2012 and he has renewed his request on a number of occasions since. Mr Creggan and his co-accused were housed on the integrated landings on remand from 16 January 2012 until 23 October 2012 when he, his co-accused and two others were transferred to the CSU. The transfer to the CSU was the result of Mr Creggan and his colleagues maintaining a dirty protest on the integrated landings and the impact upon other prisoners housed in their vicinity. The transfer was not made for their own protection. There is no record of Mr Creggan being subjected to any form of sectarian harassment or of his life being in danger on the integrated landings thus requiring him to be removed to the CSU for his own safety.
>
> As your client is aware and he has been informed on a number of occasions he does not meet the eligibility criteria for transfer to the separated landings. In particular he does not meet criteria (e). In your correspondence you refer to the suggestion that there

> was a death threat against Mr Creggan from this wing. *There is information available to NIPS of a direct threat to Mr Creggan's life should he be transferred to the separated landings.* This is a threat the NIPS acting on behalf of the Secretary of State cannot ignore in view of the obligations to the prisoner under Article 2 of the European Convention aside from their general duty to ensure the safety of your client. The safety of your client cannot be guaranteed on the separated landings. Your client complained to the Prisoner Ombudsman about his inability to transfer to the landings. Following an examination of the information available to the Northern Ireland Prison Service and the Secretary of State the Ombudsman concluded that the correct decision had been made. The reason for the unfavourable outcome to the complaint was, I understand, explained to your client by the Prison Ombudsman." [emphasis added]

[6] In light of the information available of a direct threat to the applicant's life should he be transferred, this was, for the reasons stated in the response stated above, something which the proposed respondent could not lawfully ignore. The applicant's averred confidence that he is not at any risk if transferred to the separated landings does not of course absolve the primary decision maker of the duty to act on information of a direct threat.

[7] This applicant, who has not seen the information available to NIPS, questions the bona fides of the asserted risk. However, the Prison Ombudsman, to whom the complaint was made, examined the information that was available to the SoS. She concluded, following her independent scrutiny of the information available, that the correct decision had been made. Against this background the applicant on the merits has in my view no arguable case in respect of the grounds pleaded at 3(b) of the Order 53 Statement which I shall now deal with seriatim. Reasons were provided; the proposed respondent did not, as alleged, proceed under any mistake of fact; plainly on the material available to the primary decision maker the applicant did not meet the criteria for transfer under the Steele Report; no evidence of unequal treatment has been demonstrated; the applicant simply failed to meet the criteria for transfer. The only legitimate expectation that the applicant might have had was an expectation to be transferred if he satisfied the criteria but he did not satisfy the criteria and therefore the asserted legitimate expectation does not arise. The decision was not even arguably irrational or in breach of convention rights. On the contrary the decision maker was purporting to vindicate the applicant's convention rights by adhering to the strict criteria for transfer and in particular criteria (e).

Delay

[8] The application, in any event, is irredeemably out of time and no good reason has been furnished for not complying with the time limits in Order 53. Accordingly the application for leave to judicially review is rejected.

Conclusion

[9] For the above reasons the application is dismissed.