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*(subject to editorial corrections)**

2013 No: 070262/01

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

GMJ's Application [2014] NIQB 135

IN THE MATTER OF AN APPLICATION BY GMJ FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION BY THE MINISTER OF JUSTICE DATED 4 APRIL 2013

HORNER J

Introduction

[1] GMJ was granted leave to challenge the decision of the Minister of Justice made on 4 April 2013 by Mr Justice Weir on 30 September 2013. The decision which the applicant seeks to challenge is the refusal by the Minister of the applicant's appeal against the earlier decision of the Chief Constable of the PSNI revoking the applicant's Firearm Certificate ("FAC").

I want to express my gratitude to both legal teams in general, and counsel in particular, for the submissions, both written and oral, which I have received in this application.

Background Facts

[2] The applicant was a part-time security guard. He claims, without contradiction, to have poor literacy skills although his precise proficiency remains unknown. He comes from a "strong country sports background". He is a keen clay pigeon shooter, he helps control vermin for local farmers and he is a member of two shooting clubs. His father and younger brother are also deeply immersed in this

culture. Both his father and younger brother are holders of FACs. In addition, the applicant has been a member of the Scottish Association of Country Sports ("SACS") since December 2007.

[3] In November 2007 the applicant applied for a FAC. Because of his reading and writing skills, he enlisted the support of the Secretary of the Knocknacross Gun Club called John Doherty. The application form states that the person completing it must "read the guidance notes before completing this form".

[4] There is a warning on the form which states:

> "It is an offence for anyone to knowingly or recklessly make a false statement in order to obtain the grant of variation of any certificate, either for themselves or someone else (Article 73 Firearms (NI) Order 2004)."

It asks at A13:

> "Do you currently have, or have you ever had Epilepsy?"

A similar question is asked in respect of depression at A15.

[5] The form concludes with a declaration in the following terms:

> "I declare that the statements made in this form are true. I understand that I will be subject to a check of police records and that my details may be held on computer. It is an offence for any person to knowingly or recklessly make a statement which is false in any material particular for the purposes of procuring either for themselves or another person the grant or variation of a firearm certificate."

[6] On the application form the applicant answered 'NO' to these questions A13 and A15. In January 2008 the applicant was diagnosed as suffering from epilepsy following a blow on the head in October 2007. Consequently upon the diagnosis of epilepsy, he appears to have developed a depressive illness in the summer of 2008. This followed on from the loss of his job which was tied up with his diagnosis of epilepsy. The applicant recovered from his depression in May 2010.

[7] There is no requirement under the Firearms (NI) Order 2004 ("2004 Order") for a FAC holder to inform the Minister that a diagnosis of epilepsy or depression has been made. The requirement to make disclosure arises only on the application for a new licence or to vary an existing one.

[8] The applicant was duly granted a FAC in August 2009. That was valid from 17 August 2009 to 16 August 2014. It was subject to a number of conditions. None of those conditions required him to contact the Chief Constable if he was subsequently diagnosed with epilepsy or depression.

[9] The applicant then made an application to vary his certificate on 19 December 2008 after purchasing an additional gun from a store in Strabane, namely a double-barrelled Baikal shotgun. The applicant needed to complete a variation form to allow him to add this gun to his certificate. The gun store owner, Mr McDaid, had copies of the relevant form available in his shop. The applicant asked Mr McDaid to help him with the form, which he did. Subsequently, the applicant brought him a copy of his original application form, which he had completed some 2 years previously with help from Mr John Doherty, when he first applied for a FAC. Mr McDaid completed the application to vary the licence using details from the copy of the original application form and the applicant's FAC. This application form for a variation of the FAC is identical in respect of the questions asked about previous medical history to the original application which the applicant signed and importantly includes the declaration that the statements made in the form are true.

[10] The applicant then made a separate application to vary the firearms included on his FAC in March 2010 so as to allow him to hold an AYA 12-guage double barrel shotgun which he had purchased from Mr Stephen Brown, the then Treasurer of Carrigans and St Johnston Gun Club. The applicant said that he adopted the same procedure as before. He gave Mr Brown a copy of the original application form which he had completed in October 2007 to use as a template when completing the variation application form. Again, in answer to the questions whether or not he had ever had epilepsy or depression, he answered "NO". Both Mr McDaid and Mr Brown have confirmed in writing that the applicant asked them to help fill out the application forms. Both were advised that the applicant had difficulty in reading and writing. Mr McDaid says that he did so from a copied version of the original form, which the applicant gave to him. Mr Brown does not mention how he obtained instructions to complete the form. Both Mr Brown and Mr McDaid did not know that the applicant suffered from epilepsy.

[11] In November 2010 the applicant received a letter from the PSNI Firearms and Explosives Branch ("FEB") in the following terms:

> "It has been brought to the attention of the Firearms and Explosives Branch that you may suffer from Epilepsy and alcohol abuse. Accordingly, this branch requested and is now in receipt of a factual medical report regarding your condition. This report raises concern about your suitability to possess firearms at this time. It is further noted that you have answered "NO" to question A14 on your last variation on Form 30/1 which states: "Do you currently have or have you ever had Epilepsy?", and also

> on your two previous applications. That is an offence under Article 73(1) of the Firearms (NI) Order 2004 …
>
> In view of the foregoing police are minded to revoke your certificate.
>
> Before a final decision is made I invite you to make any comment or representations which you would like to address."

[12] It would appear that unknown to the applicant, an investigation into his fitness had commenced in late July/early August 2010 following receipt of an anonymous letter alleging that the applicant suffered from epilepsy and fits, in addition to him having a severe drink problem. It also made an allegation that his father took strong medication for his disability and that neither the father nor the son were sufficiently responsible "to hold firearms due to their medical background".

[13] The applicant sought the assistance of SACS to respond to this letter. By email of 25 November 2010, Mr Clarke of SACS stated in respect of the decision on whether to revoke his FAC, the following:

> "Firstly, [GMJ] tells me that he has serious difficulties with both reading and writing, and thinks he may also be dyslexic, although this has not been formally diagnosed.
>
> As a result, **when he is required to complete a complicated form such as the FAC applications, he invariably asks someone to complete the form for him** so that all he has to do is to sign it. You mention in your letter not only his recent application for variation but also two previous applications, and I trust that a close look at all three of these forms will confirm that the form was completed by someone else on his behalf and merely signed by him.
>
> This is significant as I will explain below.
>
> Secondly, [GMJ] tells me that he rarely drinks at all, and he has no idea why anyone would suggest that he does. I discussed with him the blood tests that are available to assist liver function and determine the level of alcohol consumed, if any, and he is perfectly happy to have such tests carried out if you wish to clarify this point beyond doubt.

> On the matter of epilepsy, he tells me that until 31 October 3 years ago, he had no idea that he may have had epilepsy. On that date, he had a seizure for the first time in his life, the diagnosis was not made until sometime in January 2008. Accordingly, any FAC applications made prior to that date were correctly completed by marking the "NO" box for the epilepsy question, since he had no reason to think he suffered from epilepsy, and in fact may not have had it at that point.
>
> The error, which he admits freely, occurred in his most recent application. By the time he made this last application, he was personally aware that he suffered from epilepsy, but of course the person who completed the form for him did not know, and merely ticked the "NO" box as before without asking him. **As usual, [GMJ] did not read the form in detail, and simply signed it and sent it to you.**" (Emphasis added)

This email did not suggest that the applicant could not read the form, only that he needed help to complete so complicated a form. This is also the case made by the applicant at paragraph 22(a) of his first affidavit. It is common case that the allegation of the applicant having a drink problem was completely without foundation.

[14] The medical evidence contains, inter alia, the following records:

(i) A record of him having a short seizure in the month before 12 May 2011.

(ii) A letter from Dr Hunt, Consultant Neurologist, of 15 September 2011 recording that he had approximately 4-5 convulsive events and probably at least one in his sleep. There was also a reference to him having what may be "myoclonus in the evening times".

(iii) On 10 May 2012 Dr Hunt wrote to Dr Morrison stating that:

> "He has had no major fits since changing over (from Tegretol to Epilim) **but he still gets episodic myoclonus**." (Emphasis added)

(iv) On 1 June 2012 Dr Morrison wrote to the Firearms and Explosives Branch referring to the applicant as having had a short seizure after a mix up with his tablets.

(v) Subsequently a report was received from Dr Hunt dated 26 October 2012. It notes:

(a) That myoclonus can be defined as an involuntary muscle jerk, that myoclonic events in the applicant's case have not been predictable and that they could affect his ability to be "in full control of the firearm at all times".

(b) Dr Hunt went on to say that he was prepared to accept that what the applicant had told him at his assessment on 24 October 2012 as being an accurate version and that he now thought that the applicant had not experienced any form of tonic clonic seizure or myoclonic jerk from the time when he was commenced on Epilim, that is for over one year. Consequently his epilepsy was controlled. He went on to say that he fulfilled the criteria laid down by the DVA for a Class 1 driving licence.

[15] A notice of revocation had been served on 25 January 2011 and this stated:

> "In the event of you not appealing this decision you are required to legitimately dispose of your firearms and ammunition under the provision of the said Order within 30 days from the date on which you receive this Notice."

[16] The methods of legitimate disposal were:

(i) Sale to a firearms dealer.

(ii) Sale to a firearms certificate holder who has been authorised by the Chief Constable to acquire the firearm and/or ammunition.

(iii) Surrender to the police for disposal by them (in this event no compensation is payable).

[17] The applicant put in an appeal which was dated 24 March 2011. He offered the following reasons for the appeal, inter alia:

(i) His involvement with two shooting clubs and the family history of shooting as a pastime.

(ii) The fact that there had been a genuine mistake. He said:

> "I have admitted to the error contained in this most recent application for variation of my firearms certificate, which I wholeheartedly apologise for. However, I would emphasise that this error arose not as a result of my lack of honesty or any intention to be

> deceptive on my part, but as a result of the person assisting me in the completion of the subject form being entirely unaware that I had developed epilepsy."

[18] On 13 March 2013 Mr Kidd sent a memorandum to the Minister of Justice setting out in very considerable detail and highlighting objectively the relevant factors. I consider that there is considerable force in the contention at paragraph 10 of his affidavit from Mr Kidd that:

> "(a) The Applicant was fully aware of the issues which were of interest to the Minister in considering the appeal;
>
> (b) that the Applicant had every opportunity to make representations about those issues; and
>
> (c) that the Applicant did make full and detailed representations about those issues."

Mr Kidd stated after setting out the various claims and counterclaims and the facts that the applicant "did not reveal his health conditions to the people who completed the application forms for him. FEB view this as deception." Significantly, his recommendation to the Minister that he refuse the applicant's appeal was on the ground that:

> "…..he failed to fulfil his responsibilities as a FAC holder. As the applicant signing the FAC application form it was his responsibility to ensure that all of the information he gave was correct. We cannot therefore be satisfied that he is fit to be entrusted with firearms (and ammunition) without danger to public safety or peace."

[19] It was to this recommendation that the Minister has written in manuscript the following:

> "Appeal refused.
>
> (i) the applicant failed to declare his medical condition on his FAC application; and
>
> (ii) the medical evidence is that he suffers from epilepsy – too short a time has elapsed to assess the full implications.

> Each of these, independently, suggests the applicant is not a fit person."

[20] It is this decision that the applicant now seeks to challenge by way of judicial review.

Statutory Framework

[21] (A) Article 4(1) of the 2004 Order requires that an application for the grant of a firearms certificate must:

> "(a) be made to the Chief Constable on a form provided by him for the purpose;
>
> (b) contain such information as may be required by the form; and
>
> (c) comply with any other requirement specified in the form."

(B) Article 5(1) provides:

> "If he is satisfied that the applicant can be permitted to have in his possession without danger to public safety or to the peace a firearm or ammunition in respect of which the application is made, the Chief Constable may grant a firearm certificate."

(C) It goes on to state at Article 5(2):

> "The Chief Constable shall not grant a firearms certificate unless he is satisfied that the applicant:
>
> (a) is a fit person to be entrusted with a firearm;
>
> (b) has a good reason for having in his possession, or for purchasing or requiring each firearm and any ammunition to which the certificate relates."

(D) Article 9(2) provides that the Chief Constable may revoke a firearm if he has reason to believe that the holder –

> "(a) Is not a fit person to be entrusted with a firearm."

(E) Article 10(1) provides that where a FAC is revoked under Article 9(1) the Chief Constable shall by notice in writing require the holder to surrender it and the relevant firearms and ammunition.

Legal Principles

[22] The following legal principles were not contentious:

(a) The 2004 Order is a scheme which embodies the public interest in the regulation of the possession and use of firearms in order to ensure public safety: see In the Matter of an Application by Chalmers Brown for Judicial Review (20 May 2002).

(b) No member of the public has a right to possession and use a firearm, other than in accordance with the 2004 Order: see Chalmers Brown above.

(c) Where there is a conflict between:

(i) the aspiration of a member of the public to possess and use a firearm; and

(ii) the public interest in ensuring public safety, the public interest will invariably prevail over private aspiration: see In the Matter of Applications by Donnelly and Donnelly for Judicial Review [2007] NIQB 34 ("Donnelly").

(d) The policy behind the firearms' legislation is that the authorities must have full confidence in the holder of firearms certificates. The granting of firearm certificates is a function to be carried out with great care and circumspection having regard to the public danger if inappropriate persons have access to firearms: see Donnelly (see supra).

(e) The threshold of Wednesbury irrationality is high and in the context of the manifest public interest in play in firearms cases, the Minister necessarily enjoys considerable but not unfettered latitude in forming his judgment as to fitness or unfitness to hold a firearm: see in Re DGD [2011] NIQB 123.

(f) In a case concerning a firearms certificate, the Minister's decision is concerned with ensuring the important public interests that only fit persons are licensed to possess firearms. That is a judgment for the Minister to make on the basis of the material presented to him. It is not the function of the court to substitute its judgment as to whether an applicant is or is not a fit person. That would be constitutionally impermissible: see Re DGD (see supra).

(g) A member of the public affected by a decision in respect of his aspiration to possess and use a firearm is entitled to make representations to the decision maker: see JR20's (Firearms Certificate Application) [2010] NIQB 11.

(h) Very often the member of the public affected by the decision will be entitled to receive information about concerns which the decision maker has, for example, about his fitness to possess and use a firearm: see JR20 (see supra).

(i) There are circumstances when the member of the public affected by the decision will not be entitled to receive such information: see In the Matter of an Application for Judicial Review by Liam McDonnell (28 September 2005).

(j) An instance in which a member of the public will not be entitled to receive such information is where to do so might harm the public interest, for example, frustrate the operation of the regulatory scheme, or impede the effectiveness of policing: see Re Frazer's Application for Judicial Review [2004] NIQB 68.

(k) In any event, to ensure overall procedural fairness, the decision maker must subject the information before him to close scrutiny: see JR20 (see supra).

(l) Finally, the courts have always taken a strict line about the consequences that flow when someone signs a document which is intended to have legal consequences. "Where the agreement of the parties has been reduced to writing and the document containing the agreement has been signed by one or both of them, it is well established that parties signing will ordinarily be bound by the terms of the written agreement whether or not he has read them and whether or not he is ignorant of the precise legal effect.": see Chitty on Contracts Volume I 29th Edition and L'Estrange v Graucob Ltd [1934] 2 KB 394. A party of full age and understanding is normally bound by his signature on a document, whether he reads it or not. If, however, a party has been misled into executing a deal or signing a document essentially different from that which he intended to execute or sign, he can plead non est factum in an action against him. Such a defence is lost if the party signing it has been careless: see Saunders v Anglia Building Society [1971] AC 1004.

The Challenge

[23] The applicant's challenge to the decision of the Minister to revoke his FAC can be broken down in to four different grounds. These are:

(i) The decision was procedurally unfair in that the applicant had never seen the anonymous letter which acted as a catalyst for the PSNI investigation into the fitness to hold a FAC. Allied to this was the decision that the applicant was unable to review or comment upon the submission of Mr Kidd to the Minister which was also procedurally unfair. I will refer to these complementary grounds as "Procedural Unfairness".

(ii) The applicant also complains that the Minister had acted irrationally in refusing his appeal on the basis that the applicant had failed to declare his

medical condition on application forms for variation of the firearms certificate ("Irrationality 1").

(iii) The applicant also complains that the Minister had acted irrationally in concluding that too short a time had elapsed to assess the full implications of the applicant's epilepsy ("Irrationality 2").

(iv) Finally the applicant claims that there had been a breach of Article 1 of the First Protocol ("A1 P1") of the European Convention on Human Rights ("ECHR") and/or discrimination under the section 21B of the Disability Discrimination Act 1995 (as amended) ("Convention and Disability Discrimination").

Discussion

Procedural Fairness

[24] Morgan LCJ dealt with the questions of fairness in Re Davidson's (James) application for judicial review [2011] NICA 39 at paragraph [13] when he said:

> "The general principles of procedural fairness were reviewed by Lord Mustill in R v Secretary of State for the Home Department ex p Doody [1994] 1 AC 531 at 560. Although the requirements of procedural fairness are now more demanding that reflects Lord Mustill's comment that the standards of fairness are not immutable and may change with the passage of time. What fairness requires depends on the context of the decision. It will often require that the person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with the view to producing a favourable result or after it is taken with a view to securing its modification. A person affected usually cannot make worthwhile representations without knowing what factors weighed against his interests and it will often be necessary to ensure that he is aware of the gist of the case he has to answer."

There is no absolute right, for example, to see an original letter of complaint. There is the public interest in the Minister not disclosing an original letter so as to ensure that the identity of the person providing the information is not revealed. The applicant knew the contents of the anonymous letter. He was not restricted in any way in respect of the submissions he was able to make regarding the letter. He has

not been able to point to any way in which he would have approached the appeal differently if he had had possession of the original letter.

[25] The applicant complains that the sight of the submissions made by Mr Kidd should have been available to him because it would have made a material difference to his approach to the appeal. He says that the Minister might have been confused by the submission about the number of seizures he had, that he might have understood that he had been drinking and taken an irresponsible attitude to his medication, that his other health problems might interfere with taking his epilepsy medication and that he admitted that he did not reveal his health conditions to the gentlemen assisting him complete the form.

[26] The Minister was given all the underlying documents and had an opportunity to consider them, including the applicant's health records. Mr Kidd and the applicant's solicitors were only making submissions. The Minister was able to check the original documents, where necessary. The summary of the applicant's medical history by Mr Kidd was not unfair. It is clear from the affidavit sworn by Mr Kidd that the Minister had the opportunity to consider all the medical evidence. The Minister had all the relevant documents necessary for him to make a fair determination.

[27] As Mr Kidd makes clear in his affidavit, the progress of the appeal was characterised by detailed correspondence, exchanges and submissions over a protracted period of time. Mr Kidd in his submission states at 15(1):

> "He had a difficult time beginning with epilepsy, brought on by an unexplained, blow to the head, and depression brought on by the diagnosis of epilepsy and his losing his job. He has had a number of seizures, at least one of which happened when he had been drinking and had not taken his medication. There was also episodic myoclonus, mainly in the evenings, although it appears that this and the epilepsy are under control as long as he takes his medication. GMJ has a number of other medical conditions including pain from a fracture of the spine in 2008, which solicitors say are not relevant to his firearms appeal. They do not explain. He might consider that they must be taken into consideration as GMJ became depressed by the diagnosis of Epilepsy and they could interfere with him taking his Epilepsy medication. There is no evidence that he has ever abused alcohol."

Such a submission appears to the court to be fair, even handed and sympathetic. The court does not find that there has been any procedural unfairness demonstrated to the applicant in the circumstances of this appeal.

It is common case that the applicant did not tell either person who helped him complete the forms that he had epilepsy.

[28] In respect of some of the specific complaints made, it is noteworthy that:

(a) There was evidence the applicant had suffered "a number of seizures, namely in 2007 (pre-diagnosis); September 2008 (when on holiday, when he had consumed alcohol and not taken his medication); and in May 2011 (when his medication ran out).

(b) The applicant did have a seizure when he had been drinking and failed to take his medication. The circumstances of this matter were set out fairly in submission to the Minister which made it expressly clear that "there was no evidence that (the applicant) had ever abused alcohol".

(c) As to the other medical conditions, which the submission made clear were considered by the applicant to be irrelevant, the Minister was entitled to have regard to the fact that the applicant had suffered from depression.

In all the circumstances there is no substance in the complaint of "Procedural Unfairness."

Irrationality 1

[29] There are a number of possible explanations for the applicant's failure on two occasions to disclose his epilepsy on two different forms for variations to his licence. They are:

(i) His failure to disclose his epilepsy was entirely innocent and occurred without any fault on the part of the applicant.

(ii) His failure to disclose his epilepsy was due to carelessness on the part of the applicant.

(iii) He had signed the forms recklessly in circumstances where he should have known that he had to disclose epilepsy.

(iv) He knew he had to disclose his epilepsy but signed the forms anyway without disclosing this condition.

[30] Submissions were made to the Minister by Mr Kidd, the Head of FEB, and the applicant's solicitor, Mr Brian Moss of Worthingtons. It is not clear from the terse

and laconic comment provided by the Minister what view he took of the applicant's failure to disclose his epilepsy, not once, but twice on forms seeking variation of his FAC. His decision, which follows on immediately from the recommendation of Mr Kidd that it should be refused on the ground that he had failed to fulfil his responsibilities as a FAC holder, records that:

> "….it was his responsibility to ensure all of the information he gave was correct".

Consequently it was not possible to be satisfied "that he is fit to be entrusted with firearms." There can be no dispute that the applicant did fail to disclose his medical condition of epilepsy on both FAC applications to vary his licence and that the ultimate responsibility for this omission lay with the applicant.

[31] There is no way on the evidence that the applicant can be considered blameless. Taking his case at its very height, he completed a form which he knew had important legal consequences and signed it without checking it.

[32] Giving the applicant the benefit of every doubt, it was careless on his part to sign an important legal document without reading it or without having it read to him. It was irresponsible of him not to check that the information he was providing was correct in each and every respect. There is a real public interest in making sure that any person who holds a FAC is careful, responsible, reliable and trustworthy. The failure of the applicant for whatever reason to ensure that the applications to vary his licence were accurate, demonstrates that he lacked these qualities. These were two important forms. Yet the applicant did not act responsibly. In the court's view, the Minister was entitled to revoke the applicant's FAC because of his failure to accurately complete both these applications. The Minister was entitled to conclude that his failure to disclose his medical condition on these applications was fatal to his right to remain the holder of a FAC. This was not irrational. It comes clearly within the range of reasonable responses given the public interest in ensuring that the holder of a FAC is reliable, responsible, careful and trustworthy.

[33] Furthermore, on the evidence, the Minister would have been entitled to conclude that the applicant had attempted to deceive the authorities by not disclosing his medical history to the authorities when he knew or should have known that it was his responsibility to do so. The court's reasons for so concluding are as follows:

(a) The applicant comes from a family which is obviously steeped in a country sports background. His father and brother are holders of FACs. He himself is a member of two gun clubs. It would be highly unlikely that the applicant coming from such a background, did not realise that when he was diagnosed as being an epileptic, then there was a real risk that he would lose his FAC. In those circumstances given that he completed his form in December 2008 and March 2010, the question of his epilepsy and its consequences for him as a

holder of a FAC is a matter that the Minister could have concluded was likely to have been upper most in his mind. It is difficult to accept therefore that when he completed these forms he could, as he now claims, have forgotten that there was any question about his medical history in the original application forms and/or that he was required to disclose his epilepsy.

(b) Significantly no evidence has been provided as to the applicant's ability to read and write. The evidence, at its height, says that he might be an undiagnosed dyslexic. It says that he has difficulty with reading and writing. Despite the detailed submissions that have been made on his behalf by his solicitor and two extensive affidavits that have been sworn by the applicant in this application, the court (and the Minister) is still in the dark about the applicant's ability to read and write. When I did raise this point, Mr Scoffield QC for the applicant, asked at the end of the hearing for leave to adduce further evidence. I refused leave. I consider the applicant has had a full opportunity to set out his case during the four years that this matter has been the subject of an ongoing debate. The evidence before the court and the Minister included, inter alia, the observation that the applicant requires help to complete "a complicated form such as the FAC" and that "as usual, GMJ did not read the form in detail, and simply signed it …". There is no averment that the applicant was unable to read the application form, even if he could only read it with difficulty. The Minister was entitled to draw an inference from this omission.

(c) The case was never made by the applicant or on his behalf that he did not know the form included a declaration that the statements he made in the form were true when he signed it.

(d) Nowhere is the case made by an applicant or on his behalf that he did not know that it was a criminal offence to knowingly or recklessly make a false statement in either the application form or the ones to vary his FAC.

(e) In the letter of his solicitor of December 2010, when at that stage his solicitor should have had full instructions, it is never asserted on behalf of the applicant that he knew he had to disclose his epileptic condition, but had simply forgotten all about it. For the record, this explanation appears for the first time in his affidavit sworn on 3 July 2013.

[34] In all the circumstances the Minister could reasonably have concluded that the applicant by failing to disclose his medical condition in his two applications to vary his FAC had tried to deceive the authorities by knowingly or recklessly failing to disclose that he had been diagnosed with epilepsy. Such a conclusion was within the range of reasonable responses open to a decision maker on the facts of this particular case.

[35] It seems to this court that where there has been a failure on the part of an applicant to disclose a relevant medical history on an application for a FAC or a variation of a FAC, that the applicant, save in exceptional circumstances, and there are none here, will have no cause for complaint if the Minister refuses his appeal. Such a failure to disclose a relevant medical condition (save in exceptional conditions) will show (at best) that the applicant is irresponsible, unreliable, careless and untrustworthy. The Minister is entitled to conclude (although not obliged to do so) that such an applicant given the public interest in being satisfied that such a person is fit to be entrusted with a firearm, should not be permitted to hold a FAC.

Irrationality 2

[36] The Minister had all the medical evidence. It is clear that there is an inconsistency in this medical evidence. Dr Hunt wrote to Dr Morrison on 10 May 2012 making clear that the applicant was still suffering from episodic myoclonus. It is significant that this letter, as far as this court can judge, was sent for the purposes of treatment of the applicant and had nothing to do with the application for his FAC. The report from Dr Hunt of 26 October 2012 appears to be prepared for the purpose of the appeal to the Minister, and that therefore the applicant would have had an interest in persuading Dr Hunt that he had not been suffering from episodic myoclonus in May 2012. In this report, Dr Hunt revises his opinion on the basis of what the applicant told him at the assessment in October 2012 which he now describes as being the accurate version. He gives no explanation as to how he came to write to Dr Morrison "in error" on 10 May 2012. Yet he concludes that the applicant did not experience any form of tonic clonic seizure or myoclonic jerk from the time that he was commenced on Epilim. This was after the applicant's visit to Dr Hunt in September 2011. Dr Hunt is quite clear that someone who has episodic myoclonus should not be in control of a firearm. He also makes it clear that it is on the basis of the applicant not having suffered any event that he would consider as being potentially on an epileptic basis for more than one year that makes him consider that his epilepsy is controlled.

[37] The Minister did not have to accept the opinion of Dr Hunt, based as it was on a new and apparently inconsistent history given by the applicant to him in October 2012. This is especially so against a background where the applicant has provided inaccurate information to the authorities as to his medical condition on at least two occasions. The Minister was entitled to conclude that the public interest demanded that he should be certain that the applicant's epilepsy was controlled rather than rely on the applicant who, at best, had been proven to be an unreliable historian. On the basis of the evidence it cannot possibly be said that the Minister's decision was irrational. It was not perverse for the Minister to exercise caution and conclude that too short a time had elapsed before he could assess whether or not the applicant's epilepsy was fully controlled.

Convention and Disability Discrimination

[38] In Re Chalmers Brown's Application for Judicial Review [2003] NIJB 168 the applicant, Mr Chalmers Brown, brought a judicial review application in respect of refusal to renew a firearms certificate which he had held. On appeal the Court of Appeal had to consider, inter alia, the issue of the interference with the rights which the applicant enjoyed under A1P1 of the ECHR.

[39] A1P1 states:

> "Every natural and legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interests and subject to the conditions provided for by law and by the general principles of international law."

The Court of Appeal did not consider that the right to hold a firearm certificate for possession of a shotgun did constitute a property right within A1P1. It held that:

> "The prevention of the enjoyment of a sport or hobby is not the deprivation of a possession. In RC v UK App No. 37664/97 (1 July 1998, unreported) European Commission on Human Rights held manifestly ill-founded applications by a number of applicants who had lost the right to pursue shooting as a leisure activity in consequence of legislation controlling the use of handguns, declaring that the right to pursue a hobby cannot be said to constitute a possession for the purposes of Article 1 of the First Protocol."

This decision was followed at first instance by Treacy J in Re DGD's Application [2011] NIQB 123.

[40] Mr Scoffield QC seeks to distinguish this case on the basis that in that case the court focused wrongly on the "right to pursue a hobby" as a relevant possession, rather than the effect of the revocation of the licence on the applicant's property rights in his actual firearms. I do not consider that this case can be distinguished. The issue was the same. This court is duty bound to follow the decision of the Court of Appeal even, if it is claimed, it is inconsistent with subsequent decisions of the European Court of Human Rights: e.g. see The Queen (In the Application of Debbie Purdy) v Director of Public Prosecutions and another [2009] EWCA Civ. 92.

[41] If the court is wrong, and in taking account of the decisions of the European Court of Human Rights, it can depart from the binding judgment of the Court of Appeal, then I still do not consider that there is a breach of the rights enjoyed by the

applicant under A1P1. In Uzukauskas v Lithuania (Application No. 16965/04) the European Court of Human Rights ("ECHR") held that the revocation of the appellant's firearms licence had meant "that he was obliged to hand in the guns which he already owned to the State authorities for disposal, albeit for exchange of money". It went on to say that there can be little doubt this involved interference with another civil right guaranteed by "… Article 1 of Protocol No. 1 of the Convention, that is to say, the right to the protection of property". A similar conclusion was reached by the European Court of Human Rights in the case of Pocius v Lithuania (Application No. 35601/04).

[42] However, if this court was free to decide this case untrammelled by the Court of Appeal's decision, it would still not conclude that there had been a breach of the applicant's A1P1 rights for the following reasons:

(i) Any deprivation of property, namely the applicant having to sell his firearms or hand them into the police, was in the public interest. There is a wide margin of appreciation given to what is in the public or general interest. It is clear that there is a public interest in depriving persons of guns where they are not considered fit to hold a licence, because of a medical condition which will affect their ability to control a gun safely or because of their reliability and trustworthiness. It is proportionate, namely striking a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights, "the search for a fair balance being inherent in the whole of the Convention": see Sporrong and Lonnroth v Sweden [1982] 5 EHRR 35.

(ii) Further, there is legal certainty in that the "deprivation" is subject to the conditions provided for in law and is set out in the 2004 Order.

For all those reasons, I reject the applicant's claim that there has been a breach of any right which he enjoys under A1P1 of the Convention.

[43] The applicant also relies on Section 21B of the Disability Discrimination Act 1995 (as amended) and says that the applicant has been discriminated against by a public authority when carrying out its functions. This is because the Minister has refused the applicant's appeal for a reason relating to his disability, when the reason was "flawed and not justifiable". For the reasons given the court does not accept that the decision was either flawed or not justifiable. The Minister was entitled to conclude, given the previous inconsistent history of the applicant to Dr Hunt, that caution should dictate that he wait for a further period before concluding that the applicant's epilepsy was controlled. This was a perfectly reasonable conclusion given the potential for disaster if the user of a firearm has epilepsy which is not fully controlled.

[44] In any event the respondent is entitled to rely on Section 21D(4)(a) of the 1995 Act (as amended) which provides what would otherwise be discriminatory conduct

is not unlawful if that "… treatment is necessary in order not to endanger the health or safety of any person (which may include that of a disabled person)". I consider that on a fair reading of all the medical evidence, a decision maker was entitled to conclude in respect of the applicant's epilepsy that it was premature to allow him to hold a FAC.

[45] In the circumstances, the revocation of the licence was necessary to ensure that the health and safety of other persons was not endangered.

Conclusions

[46] For the reasons I have set out, I reject this application for judicial review of the decision of the Minister of Justice dated 4 April 2013. Finally, I should comment that the "original decision" to revoke the applicant's licence was made nearly four years ago. Since that time there has been:

(a) Extensive correspondence.

(b) An appeal with detailed grounds of appeal.

(c) Written submissions.

(d) A judicial review with detailed skeleton arguments in writing supported by extensive oral arguments.

(e) The trial bundle exceeds 300 pages. No stone has been left unturned in an effort to win the applicant back his FAC.

[47] While the court appreciates that it is important to the applicant that he be permitted to indulge in his hobby of shooting, there has been enormous effort and expense and substantial use of court resources. In these times of austerity, and cutbacks in public funding, it might be thought that the effort, the expertise, the expense, the costs and the use of court resources cannot all be justified given the issues at stake in this type of case.