

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**AN APPLICATION FOR JUDICIAL REVIEW BY**

**DENIS HAYES**

**WEATHERUP J**

[1] This is an application for Judicial Review of the failure of the Northern Ireland Prison Service to apply identification marks to the uniforms of members of the Standby and Search Teams at HMP Maghaberry. Mr Hutton appeared for the applicant and Mr McGleenan for the respondent.

[2] The applicant is a life sentence prisoner at HMP Maghaberry. His affidavit refers to an incident that occurred on 12 November 2007 "by way of example only". The search team entered his cell, two members remaining in the cell and four remaining at the cell door. They forced the applicant to strip, everything in his cell was upended, a poster was ripped from the wall, his radio was taken, he was physically threatened and subjected to sectarian insults. His affidavit continues that he wished to complain but felt powerless to do so because he was unable to identify any prison officer involved as the members of the search team wore no identifying marks. The search teams wore blue overalls, earpieces, black boots and carried truncheons.

[3] The applicant seeks a Declaration that the failure of the Prison Service to introduce identification marks for the search teams is unreasonable, unlawful and void and further seeks an Order of Mandamus requiring the Prison Service to consider the introduction of identification marks for the search teams. The applicant's grounds for judicial review are that the present failure to require identification marks for the search teams is unreasonable and unlawful as it prevents prisoners from properly reporting abuse, frustrates the rights of prisoners to a prompt, effective and impartial investigation, frustrates prisoners access to justice, frustrates prisoners access to greater transparency and accountability within prisons and creates a

distinction between the rights of English prisoners, where the prison staff wear identification marks, and the rights of Northern Ireland prisoners.

[4] While the incident of 12 November 2007 is used by the applicant as illustrative of the issue he raises, in the event he was able to make a complaint about the incident, a complaint that was in different terms to those appearing in the applicant's affidavit. The complaints records show that a complaint was made on 13 November 2007 and the nature of the complaint was that on the previous day a member of the search team had threatened the applicant with violence and stolen the applicant's bird. This complaint was noted as having been referred to the Prisoners Ombudsman. At stage 1 Senior Officer McNally responded that he had been present during the search and that the applicant had not been threatened. The applicant proceeded with the complaint to stage 2 and reported that Mr McNally had been very insulting, intimidating and threatening, to which SO McNally objected. The applicant proceeded to stage 3 and the matter was investigated by Principal Officer Payne who concluded that the allegations were unfounded. The applicant had been in communication with Kevin McQuillan, an investigative case worker in the Prisoner Ombudsman's Office, about this and other complaints. By letter to Mr McQuillan date stamped in the Prisoner Ombudsman's Office on 27 December 2007 the applicant withdrew all outstanding complaints.

[5] Mark McGookin, the Deputy Director of Finance and Personnel at the Northern Ireland Prison Service, avers that the issue of changes to the Prison Service uniform has been the subject of discussions since early 2008. The details of a new uniform for the Prison Service were said to have been agreed at a meeting on 31 July 2008. In relation to the applicant's issue about identification marks on search team uniforms Mr McGookin states that the introduction of the new uniform provides an opportunity for a numeric identification system to be introduced for all prison staff grades and for all specialisms. It was stated to be the intention that the new uniform with numeric identifiers would be introduced to all staff, including search teams, in the Spring of 2009. Accordingly the respondent contends that the application for judicial review is academic and should now be dismissed. However the applicant objects that it is not apparent that there had been agreement on the introduction of identification marks for search teams.

[6] Prison Service staff and members of the Prison Officers' Association met on 21 March 2008 to discuss prison staff uniform issues. A memo from Mr McGookin of 9 April 2008 referred to two items on the agenda. The first item was the revision of the PECCS uniform (Prison Escort and Court Custody Service), where it was agreed that white shirts with epaulettes would have an embroidered rank and identifying number. The other issue on the agenda was the general prison officers uniform, where it was agreed that the Prison Service would engage with the Prison Service in England and Wales who had completed a specification for a modern uniform. It was considered

that Northern Ireland might adopt the English proposals and might participate in the English contract for the supply of the new uniform. Accordingly it was agreed that a joint Prison Service/POA team would visit the English Prison Service. Later correspondence indicated that at this meeting of 21 March 2008 the POA agreed in principle to the introduction of identifying marks on all uniforms, including the search teams. That may be so but it is not apparent from Mr McGookin's memo of 9 April 2008 that such agreement had been reached in respect of all uniforms.

[7] The joint Management/POA trip to the English Prison Service took place in May 2008. At a Management meeting on 19 May 2008 there was discussion of the English uniform and reference was made to discussion with POA representatives about adopting the English identification system that involved numbering badges sequentially and identifying grades by a coloured line. Management preference was stated to be for the existing agreement with POA where grades were shown in writing as opposed to a coloured line. It was agreed that the uniform issue would be discussed at the next meeting of the Management Board. Mr McGookin prepared a paper dated 27 June 2008 recommending adoption of the English uniform with certain modifications. This included having epaulettes showing a unique numeric identifier for each officer and carrying the rank of support staff in alpha characters. The recommendations were approved at the July meeting of the Management Board. By letter of 7 August 2008 to the Chairman of the POA Mr McGookin confirmed adoption of the proposals and expressed his understanding that the POA endorsed the approach that had been adopted.

[8] The applicant's solicitors and the Crown Solicitor's Office exchanged correspondence on the application of the proposals to search teams. By letter dated 29 October 2008 the Crown Solicitor's Office stated that search teams would have numerical ID. It was stated however that Prison Service was consulting on the method to be adopted, which could have included ID on the breast pockets of the boiler suits or the introduction of epaulettes for search teams. It was stated that the new uniform incorporating the numerical ID system would be introduced for all staff including search teams during the Spring of 2009. Further correspondence resulted in a letter from the Crown Solicitor's Office dated 12 December 2008 stating that consideration of the method of displaying numeric ID for staff including search teams was ongoing. The hope was expressed that agreement would be reached with the POA by the end of January 2009. The new uniform has not yet been introduced.

[9] The applicant seeks a Declaration that the failure to introduce identification measures for search teams is unreasonable, unlawful and void. There are many good reasons for the introduction of identification marks for prison staff including search teams. The Prison Service and the POA have agreed in principle to the introduction of identifying marks for prison staff

including search teams. The introduction of identification marks will coincide with the introduction of new uniform arrangements for prison staff including search teams. The outworking of all the details relating to the introduction of the new uniform is ongoing. Counsel for the applicant seeks an Order of Mandamus directing the Prison Service to introduce the identifiers and seeks a judgment of the Court offering guidelines on the introduction and the issues raised by the applicant's grounds for judicial review. Counsel for the respondent contends that the applicant's approach is an attempt to micro-manage Prison Service uniform policy and that it is not for the Court to become embroiled in the negotiations between the Prison Service and the POA on matters that will ultimately require ministerial approval.

[10] At the stage to which matters have now progressed I accept the respondent's approach. It is now agreed by all concerned that all Prison Service staff including search teams will wear identifying marks. A practical decision has been made that the introduction of the scheme for identification marks will coincide with the introduction of the new uniform arrangements. Issues have been discussed in relation to the general Prison Officer's uniform, the PECCS uniform, nurses uniforms, search team uniforms, ceremonial uniforms, the use of epaulettes, numbers, grade colours, alpha characters, breast pocket identifiers, embroidery, baton holders, colours, overcoats, fleeces, headgear. Interested parties are being consulted on these details. There are management and employment issues affected by this process. Target dates for implementation have not been met. It may well be the wish of all parties that these matters had been resolved earlier. However it is not proposed to intervene to require resolution of outstanding issues on any particular basis or to require the introduction of an identification scheme without agreement on outstanding issues. I am satisfied that the relief sought by the applicant is the subject of agreement in principle and the details of the implementation of that agreement are being settled and are subject to general agreement on the introduction of new uniforms. There is nothing to suggest that the agreement in principle on the introduction of identifiers is not capable of implementation. I am satisfied that the process will not be aided by the intervention of the Court at this stage.