

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 29/04/05

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND ON  
APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN  
IRELAND**

**IN THE MATTER OF AN APPLICATION BY ANNE MARIE  
McCALLION, LORRAINE McCOLGAN AND ANNE McNEILL FOR  
JUDICIAL REVIEW**

**CAMPBELL LJ**

[1] I agree with the judgment of Coghlin J. and with the order that he proposes.

[2] As we have come to a different conclusion on the need to give reasons to that reached by the learned trial judge I would make the following observations:

[3] There is no statutory requirement to give reasons and as Lord Mustill observed in *R v Secretary of State ex parte Doody* [1993] AC at 564, "the law does not at present recognise a general duty to give reasons for an administrative decision". Though he added that such a duty may in appropriate circumstances be implied, and he went on to refer to the analyses in *Reg v Civil Service Appeal Board, Ex parte Cunningham* [1991] 4 All E.R. 310 of the factors, such as the nature of the decision maker, the context and whether it is required for fairness, that will often be material to such an implication.

[4] Mrs McCallion is unable to show that there was any unfairness in the failure to give reasons for the refusal of her application. The fact that her late husband was convicted of attempted murder of a soldier and sentenced to imprisonment for 18 years was sufficient reason for the Secretary of State to decline to exercise his discretion and in addition Mr Brannigan provided reasons in his affidavit

[5] Mr McColgan was convicted of riotous behaviour in 1983 and ordered to be detained in the Young Offenders' Centre for a month suspended for two years. In 1987 he was convicted of possession of explosives with intent to endanger life or property and possession of ammunition with intent. These are serious offences. But for the level of the sentences imposed the Secretary

of State could not, in my view, have been expected to give reasons for declining to exercise his discretion. A sentence of two years' imprisonment and in particular one that is suspended, for offences of possession of explosives or ammunition with intent indicates that there must have been very considerable mitigating circumstances such as that the role played by the offender was of a minor nature. This being so in my judgment the applicant was entitled to be told why the Minister had declined to exercise his discretion in her case. She would then know if the Minister had taken into account the nature of the sentence passed on her late husband. I do not accept that to give her the reason would involve the articulation of a difficult value judgment and would be inappropriate.

[6] For the reasons given by Coghlin J. I would allow the respondent's appeal in the case of Mrs McNeill. I would remit her case for reasons to be given though I do so with some hesitation. When he was nineteen years' of age Mr McNeill was convicted of possession of a firearm and ammunition in suspicious circumstances and sentenced to be detained in the Young Offenders' Centre for four months. Thirteen years later he was killed. Each case must be considered on its own merits but there must also be some degree of consistency if every applicant is to be treated fairly. In his letter of 21 February 2002 Mr Brannigan was able to say that on the eight occasions the Secretary of State's discretion has been exercised,

- the average age of the deceased at the date of his conviction was twenty;
- the average time between conviction and the application was fourteen years;
- the sentences ranged from an absolute discharge to four years' imprisonment.

Mrs McNeill's application comes within these averages with the exception of the time between conviction and application where it falls short by one year. These factors cannot be decisive but they do allow her to question why she has been treated differently especially in view of the level of the sentence that her husband received for possession of a firearm and ammunition even taking into account his age at the time of the offence. I am persuaded therefore that Mrs McNeill is also entitled to be given the reasons why her application failed.

[7] Often it will be obvious why an application under article 10(2) has failed and in those cases the Secretary of State will not have to provide reasons. It will only be necessary to do so where a reasonable person could question why, in the particular circumstances of that application, it has failed.