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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY SAMUEL HENRY FOR JUDICIAL REVIEW

WEATHERUP J

The Application

[1] The applicant is a prisoner serving a discretionary life sentence at HMP Maghaberry. He applies for judicial review of a number of decisions that he be removed from association with other prisoners and detained in the close supervision unit.

[2] The Prison and Young Offenders Centre Rules (Northern Ireland) 1995 were made under section 13 of the Prison Act (Northern Ireland) 1953. Rule 32 provides for restriction of association as follows –

> "(1) Where it is necessary for the maintenance of good order or discipline, or in his own interests that the association permitted to a prisoner should be restricted, they are generally offered particular purposes, the Governor may arrange for the restriction of his association.
>
> (2) A prisoner's association under this rule may not be restricted under this rule for a period of more than 48 hours without the agreement of a member of the Board of Visitors or of the Secretary of State.
>
> (3) An extension of the period of restriction under paragraph (2) shall be for a period not exceeding one

month, but may be renewed for further periods each not exceeding one month.

(4) The Governor may arrange at his discretion for such a prisoner as aforesaid to resume full or increased association with other prisoners and shall do so if in any case the medical officer so advises on medical grounds.

(5) Rule 55(1) (exercise and association) shall not apply to a prisoner who is subject to restriction of association under this rule but such a prisoner shall be entitled to one hour of exercise each day which shall be taken in the open air, weather permitting."

The Applicant's Grounds

[3] The applicant's grounds of challenge resolve to four issues.

(1) Procedural fairness required that the applicant should have notice of the reasons for his removal from association and an entitlement to make representations.

(2) The decisions were Wednesbury unreasonable.

(3) The circumstances of the restricted association amounted to a breach of Article 3 of the European Convention on Human Rights prohibiting inhuman or degrading treatment or punishment.

(4) The power of the Secretary of State to order restriction of association could not be exercised by an official on his behalf.

Removal from Association by the Governor

[4] In November 2002 prisoners in Erne House, Maghaberry staged a protest in relation to their treatment and conditions arising from the working practices of prison staff who were in dispute with their own authorities. On Friday 22 November 2002 an incident occurred when some prisoners refused to lock up after breakfast. Prisoners wrecked the recreation room and the surrounding wing and a state of emergency was declared. The applicant was present during these disturbances. Later that day the applicant was removed to the close supervision unit as his cell area was uninhabitable. He was placed on report for refusing to obey an order and was later adjudicated.

[5] On 19 December 2002 Governor Jeanes chaired a meeting of the Anti-Bullying Strategy Board involving prison staff, chaplains, members of the psychology and probation departments and members of the Board of Visitors. Governor Maguire, the Governing Governor, attended the meeting, which discussed the events of 22 November 2002. Governor Maguire stated on affidavit that it was the belief of staff that the incident had been orchestrated by a number of ringleaders and that a number of prisoners had been forced under threat to engage in acts of indiscipline and that later, threats had been issued to ensure that those who organised the disorder would not be identified. He continued –

> "In the case of the applicant information was put before the board from reliable sources which implicated the applicant in involvement in the matters which were of concern to the board. There was information that the applicant had been one of the ringleaders aforesaid and had before, during and after the event issued threats to other prisoners and there was also information before the board that the applicant had threatened staff on a number of occasions.
>
> Intelligence before the board, moreover, suggested that there was a likelihood of further trouble, engineered by the ringleaders of the earlier disorder, recurring over the Christmas period. In this context the applicant was named as one of the persons likely to be involved."

[6] Governor Maguire decided that it was necessary for the maintenance of good order and discipline that the applicant be removed from association under rule 32. He further decided that the applicant should not be informed in advance of his restricted association as that would not have assisted in the prevention of disorder but might only have served to precipitate disorder. Further, Governor Maguire deputed two governors to inform the applicant of the reasons for his restricted association, with care being taken that the identities of those members of staff and prisoners who had provided intelligence should not be revealed to the applicant.

[7] Governor Maguire drafted a letter to the applicant –

> "Following a multi-agency bullying incident board held this morning and after consideration of all available information, it has been decided to remove you from association with other prisoners under prison rule 32.

> It is intended that this measure will remain in place until such time as there is evidence that you are working towards modifying your behaviour and a return for normal association does not pose a threat to other prisoners and staff."

[8] Governors Jeanes and Caulfield attended the applicant and made a record of the visit. The record indicates that Governor Maguire's statement was read to the applicant and a copy was given to him and it was explained that the decision was taken after a meeting of the Board and that information had been received from staff and prisoners. The applicant was said to be angry and demanded to know the identity of the prisoners. The applicant complained about being bullied by staff. He further named a particular prisoner who he said should not be believed and asked if he was the source of information.

[9] The applicant disputes certain aspects of the record of events. However, in his affidavit he recorded that in December 2002 he was aware that certain prisoners had been providing information to the prison authorities. In general he asserted that the information received was not reliable and he had not been a ringleader nor had he issued threats.

Removal from Association by the Board of Visitors

[10] Two members of the Board of Visitors attended the Board meeting on 19 December 2002. After the meeting they considered the information that had been placed before the meeting and then visited the applicant, and being satisfied that it was necessary in the interests of good order and discipline, they decided to extend the restriction of association for a period of up to 28 days.

[11] The members of the Board of Visitors state on affidavit that on visiting the applicant he was informed that they had been present at the multi-disciplinary meeting to discuss bullying of prisoners and staff and that there was information available which implicated the applicant in such activity. They say that the applicant got to his feet and started shouting and threatened them. He complained that he would be abused in the unit because of a relationship he had had with a prison officer's wife. The applicant denied that the members of the Board of Visitors had any evidence implicating the applicant as a ringleader or in any threatening activities and he denied any threat to the visitors. There are other disputes about aspects of events on 19 December. The members of the Board of Visitors confirm that they had access to the evidence that was presented at the Board meeting implicating the applicant.

[12] After the events of 19 December 2002 I am satisfied that the applicant knew that there was information (that he disputed) that he had been threatening to other prisoners and staff. He believed that other prisoners had given information and he had told those who relied on that information that the other prisoners were not reliable. He knew that his case had been considered at the Board and that the information implicating him had been presented to the Governor and to the members of the Board of Visitors.

[13] While the applicant was on restriction of association he was visited daily by a Governor and had occasional visits from members of the Board of Visitors. On such a visit on 23 December 2002 exchanges occurred between the applicant and a member of the Board of Visitors, which the visitor regarded as threatening, although the applicant denies that that was the case. The members of the Board of Visitors were provided with the weekly written reports on the applicant, and a verbal report from senior prison staff on the applicant's progress, and prison staff and the applicant were interviewed before a decision was made on whether it was necessary to continue the restriction of association in the interests of good order and discipline. On 15 January 2003 the members of the Board of Visitors extended the applicant's restriction of association for a further 28 days.

[14] Governor Jeanes as Chairman of the Board devised what was described as an exit strategy for the applicant on 3 February 2003 and this was presented to the applicant by members of the Board of Visitors on 11 February 2002. The exit strategy noted that the applicant refuted the allegations of bullying and stated that it was desirable that he should engage with the designated representatives of the Board, namely Mr Reid of Probation and Governor Caulfield, as one aspect of behaviour monitoring. The applicant was also required to adhere to the regime in the special supervision unit in a positive manner. On 11 February 2002 the applicant refused to participate in an exit strategy. On that day the members of the Board of Visitors extended the applicant's restriction of association for a further 28 days.

[15] The applicant complained about his treatment by prison officers. He denied being involved in bullying and therefore was "unable to accept and cooperate with any exit strategy proposed by the prison." He considered that he was in an impossible position and in protest he began a "hunger strike" on 1 March 2003.

[16] On 10 March 2003 the members of the Board of Visitors extended the applicant's restriction of association for a further 5 days. The record of the Board of Visitors' interview states that "the conditions in which Henry is held are unacceptable". By affidavit the member of the Board of Visitors

stated that the concern was lack of furniture in the applicant's cell and a broken window, which required a book to be placed over the break to keep out the wind. These conditions had developed because there had been a change of the applicant's cell since the date of the previous extension on 11 February 2003. The members of the Board of Visitors confirm that it remained their view that it was necessary in the interests of good order and discipline to restrict the applicant's association.

Removal from Association by the Secretary of State

[17] The Governor then engaged Mr Murray, a Deputy Director of Operations in the Northern Ireland Prison Service, to consider the issue of the restriction of the applicant's association. Mr Murray was briefed on the applicant's history. He secured access to the minutes of the board meetings in respect of the applicant. He obtained sight of all reports relied on at the meeting on 19 December 2002. He obtained the documentation in relation to the applicant during his period on rule 32. He enquired as to the limited extension of restriction of association on 10 March 2003 and established that it related to concerns about the conditions in which the applicant was being held. He was made aware that the applicant had gone on hunger strike. On 14 March 2003 Mr Murray interviewed the applicant about further extension of restriction of association and he states that the applicant swore at him and left the meeting. Mr Murray authorised an extension of restriction of association for 28 days from 14 March 2003. At that time it is stated that the conditions of the applicant's detention, which had concerned the members of the Board of Visitors, had been rectified.

[18] On 28 March 2003 the applicant was transferred to the prison hospital. On 31 March 2003 Mr Murray attended a meeting of the Anti-Bullying Strategy Board when it remained the view of the Board that continued restriction of association was necessary in the interests of good order and discipline in the prison. The applicant remained on hunger strike and was transferred between the prison hospital and the Belfast City Hospital. On 10 April 2003 Mr Murray authorised extended restriction of association for a further period of 28 days. The record of interview indicates hostility from the applicant and this was confirmed by Governor Jeanes who was present at the interview. There was a further meeting of the Board on 28 April 2003 which recommended continuing restriction of association for the applicant and on 7 May 2003 Mr Leonard as Director of Operations on behalf of the Secretary of State extended the restriction of association for a further 28 days.

[19] A change occurred on the part of the applicant. He attended a case conference on 12 May 2003 with Governor Jeanes who noted that the applicant had made progress on his exit strategy by engaging with Mr Reid, Governor Caulfield and other staff. On 28 May 2003 the applicant

was discharged from the prison hospital and moved to Lagan House where he began integration back into normal regime. On 1 July 2003 he was relocated to Erne House.

Ground (1) Fairness and Removal from Association

[20] The applicant contended that he was not given the particulars of the information on the basis of which he was removed from association and so he could not make informed representations on the issue. In essence he required disclosure of the information on which he was judged to be a threat to good order and discipline so that he could respond to that information.

[21] The requirements of fairness in the operation of restricted association was an issue considered by the Court of Appeal in Conlon's Application (2002) NIJB 35.

> "We are in general agreement with the proposition that a prisoner should where feasible be informed of the reasons for his removal from association, but we do not consider that a hard and fast rule should be laid down, for the circumstances may be infinitely variable. We would accept that the conclusion reached by Tudor Evans J in *Williams v Home Office* can no longer be sustained. It does not follow that because a prisoner does not have to be guilty of an offence before he is removed from association, he has no right to be heard. The trend of recent decisions in this area of the law has been to increase the instances in which reasons have to be furnished and an opportunity given to make representations.
> The generalised requirements of fairness articulated by Lord Mustill in *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 at 560 will, however, apply to a decision to remove him. It is important to bear in mind the essentially flexible nature of the principles set out in that case. A decision to remove a prisoner from association may have to be taken and put into effect quickly. It may not be appropriate to enter into a debate about the matter before removing him. In some cases it may not be possible to disclose to the prisoner the information upon which the decision is based, in which event any uninformed representations which he may make may be of little value. For these reasons we would not go so far as to say, as the judge did,

> that a prisoner must always be informed of the reasons for his removal from association at the earliest opportunity. We would not go further than to propound a general rule that the governor should at an early stage, but not necessarily before the removal of a prisoner from association, give him where possible and where necessary sufficient reasons for taking that course and afford him the opportunity to make representations about its justification. Whether this will apply on the extension of a period of removal will depend on the circumstances, and comprehensive rules cannot be laid down. Nor do we think that there should be any hard and fast requirement about the form in which the reasons are given to the prisoner. As the judge observed, the important thing is that he is given sufficient information to permit him to understand why he was removed from association and why the visitors accept that his removal should continue. Whether this can be given satisfactorily by oral explanation or whether some documentary material is required depends on the facts of the case, although it seems likely that in most cases the gist of the prison authorities' reasons for wishing to continue the removal can be given in interview."

[22] What does fairness require when those making a decision under rule 32 in the interests of good order and discipline in the prison have received information they judge to be credible and the source and details of that information cannot be revealed to a prisoner? Fairness is a flexible principle depending upon "the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates". In any scheme of statutory decision-making the courts will imply "so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness" Lord Bridge and Lloyd -v- McMahon (1987) AC625.702.

[23] In general it is a central requirement of procedural fairness that a party has the right to know the case against him and the right to respond to that case. The right to know and to respond requires the disclosure of material facts to the party affected and the statutory context may allow disclosure of the substance of material facts and may not require the details or the sources of those facts. In the context of prison management and the assessment of the needs of good order and discipline within the prison and the need to protect sources of information, there are necessary limitations on the extent of disclosure of such information to a prisoner.

That context includes the consideration that removal from association is not a disciplinary action and that the initial decision of a Governor is limited to a two-day removal. Any extended removal is a matter for the Board of Visitors or the Secretary of State.

[24] The Court of Appeal decision in Conlon's Application contemplates, first of all, that there will be some cases where it will not be possible to disclose to the prisoner the information on which the decision was based, and secondly, that in most cases the gist of the reasons for wishing to continue the removal from association can be given in interview. In this context where it is judged that information cannot be disclosed to the prisoner I consider that fairness requires that extensions of restricted association include a system of anxious scrutiny of the information by those charged with making the decision to extend the restricted association. Those given in effect a supervisory role by the statutory regulations, namely the members of the Board of Visitors and the Secretary of State must have access to the information and be able to subject it to such scrutiny as they consider necessary. Accordingly, fairness in this context would involve in the first place, that there must be information, which is judged to be reliable, upon which it can be determined that the prisoner represents a risk to good order and discipline. Secondly, the information must be available to be assessed by those making the decision in relation to removal from association. Thirdly, the gist of the concern should be disclosed to the prisoner. Fourthly, the details of the information and the sources should be protected to the extent that that is considered necessary in the interests of the informants. Fifthly, the independent scrutiny by the members of the Board of Visitors and the Secretary of State should include ongoing assessment of the information available and of the risks to informants.

[25] The applicant was aware that the concern was that of threats to prisoners and staff as appeared from the Governor Maguire's letter presented to the applicant. Governor Maguire's first affidavit sworn 7 January 2003 referred to the applicant as a ringleader and that description of his involvement had not been used in earlier reasons for his removal from association. The applicant contended that the applicant's alleged status as a ringleader could not be relied on by the respondent as a reason for his removal from association as it had not been advanced at the time of the December decisions. Reliance was placed on R v Secretary of State for the Home Department ex parte Martin Lillycrop [1996] EWHC Admin 281 at paragraph 35 where Butterfield J stated –

> "Accordingly we conclude that where evidence is proffered to elucidate correct or add to the reasons contained in the decision letter a Court should examine the proffered evidence with care, and should

> only act upon it with caution. In particular, a Court should not substitute the reasons contained in the proffered evidence for the reasons advanced in a decision letter. To do so would unquestionably raise the perception, if not the reality, of subsequent rationalisation of a decision that had not been properly considered at the time."

Being alert to the need to scrutinise added reasons I consider that the reference to the applicant as a ringleader does not undermine the stated basis of the decisions to remove from association. The threats were the basis of the decision and it is apparent that the applicant was considered to be in the forefront of the problems encountered. He was aware of the description of ringleader before the extension of 15 January 2003.

[26] In present case I am satisfied that the requirements of procedural fairness were satisfied on 19 December 2002 when the Governor made the initial decision to apply Rule 32. The members of the Board of Visitors made four extensions of the restriction of association, namely on 19 December 2002, 15 January 2003, 11 February 2003, in each case for 28 days, and on 10 March 2003 for a period of 5 days. The Director of Operations on behalf of the Secretary of State made three extensions of the restriction of association, namely 14 March 2003, 10 April 2003 and 7 May 2003, in each case for a period of 28 days. In each case I am satisfied that the decisions maker(s) were able to scrutinise the information, the details of which was not made available to the Applicant, and in each case satisfied themselves in relation to that information, which was then taken into account in determining whether it was necessary to extend the restriction of association. Further the gist of the information was disclosed to the applicant to the extent that that was considered possible in the circumstances. Accordingly I am satisfied that in the circumstances of the present case the requirements of procedural fairness were met.

Ground (2) Reasonableness

[27] The applicant has challenged the reasonableness of the decisions to restrict association. He was not charged with any disciplinary offence on the basis of the information received. The identities of the informants were protected. This makes it all the more important that the decision makers had access to the information and were able to be satisfied on its reliability and on the risk to the informants. Governor Maguire stated on affidavit that the information concerning the applicant came from what were considered to be reliable sources. I am satisfied that the decision-makers proceeded on the basis of what they judged to be reliable and reasonable information which represented the applicant as a risk to good order and discipline in the prison. The applicant rejected such information from the

outset and I am satisfied that from time to time he was hostile to the decision-makers. The information was not such that the details or the sources could be disclosed to the applicant. The statutory scheme provides for the involvement of the Board of Visitors and the Secretary of State in any extension of the restriction of association and they carried out the scrutiny referred to above. I could not categorise any of the decisions as unreasonable.

[28] With further extensions of the restriction of association anxious scrutiny must continue. An exit strategy was devised which involved the applicant in engagement with representatives of the Board and the demonstration of a positive approach. The applicant felt unable to cooperate with that strategy. In the circumstances the decision makers remained satisfied that there had to be further extensions of restriction of association. I am satisfied that the decisions were taken in the interests of good order and discipline and not to punish the applicant for his reaction. The applicant did not comply with the strategy until May 2003 after which he returned to normal regime. None of the decisions to extend restriction of association can be considered to be Wednesbury unreasonable.

[29] The Governor engaged the Director of Operations at the Northern Ireland Prison Service in decision-making as to extended restriction of association of the applicant after the members of the Board of Visitors limited to 5 days the extension of 10 March 2003. Had that represented an avoidance of the decision of the members of the Board of Visitors then it may have called into question the decision of the Director of Operations. However, I am satisfied that the decision of the members of the Board of Visitors of 10 March 2003 was concerned with conditions in the applicant's cell and not with the absence of necessity for detention in the close supervision unit in the interests of good order and discipline. Further, I am satisfied that the Director of Operations was aware of the basis of the decision of the members of the Board of Visitors and that those concerns were rectified before he made his decision on 14 March 2003.

Ground (3) Article 3 of the European Convention

[30] The applicant complains of a breach of Article 3 of the European Convention by reason of his restriction of association in circumstances where he was subjected to assault, verbal abuse and harassment by prison staff and he resorted to hunger strike as a response to his grievances. Article 3 provides that –

> "No one shall be subjected to torture or inhuman or degrading treatment or punishment".

[31] The European Court reviewed the operation of Article 3 in the context of allegations of ill treatment in prison in Labita -v- Italy (6 April 2000). It was stated that –

> 120. The Court recalls that ill treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the *Tekin v. Turkey* judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, paras 52 and 53, and the *Assenov and others* judgment cited above, p. 3288, para 94).
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> Treatment has been held by the Court to be "inhuman" because, *inter alia,* it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account (see, for instance, *V v. the United Kingdom* [GC]and the *Raninen v. Finland* judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, para 55), but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.
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> 121. Allegations of ill treatment must be supported by appropriate evidence (see, *mutatis mutandis*, the *Klaas v. Germany* judgment of 22 September 1993, Series A no. 269, p. 17, para 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence

> of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see the *Ireland v. United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, para 161 *in fine*)".

[32] The issue of inhuman and degrading treatment was also considered by the Court of Appeal in Conlan's Application –

> "The court has not adopted any comprehensive definition of inhuman or degrading treatment. The assessment of the level of severity of treatment required to come within the term is relative, and depends on factors which include the duration of the treatment, its physical or mental effects and the age, vulnerability and state of health of the victim – Ireland -v- United Kingdom (1978) 2 EHRR 25, paragraph 162. The conditions in which a person is held may violate Article 3. It has been stated that although solitary confinement does not in itself constitute inhuman or degrading treatment, it is capable in some circumstances of violating Article 3, depending on its stringency and duration and the affect on the prisoner."

[33] In his affidavit of 25 March 2003 the applicant referred to various allegations of assault on five dates between 22 November 2002 and February 2003. Governor Jeanes has indicated that each of those allegations was the subject of investigation. In two cases a police investigation was ongoing. In one case a video recording of events was available that did not substantiate the allegation and the applicant declined an interview with an investigating Governor. In another case the applicant declined an interview with the Police Service Liaison Officer. In the other case there was no record of a report having been made. Those allegations of assault where the applicant agreed to be interviewed will be subject to appropriate police action. On the available evidence I can not be satisfied to the requisite standard that the alleged ill treatment occurred. However this is a matter that is the subject of police investigation and the police can examine the matter more thoroughly that can be undertaken on an application for judicial review.

[34] In respect of the allegations of verbal abuse and harassment the applicant attributed these matters to his relationship with the wife of a prison officer. The prison authorities were aware of this relationship and had taken steps to ensure that there was no contact between the applicant and the prison officer concerned. I am satisfied that the prison authorities did not intend any abuse or harassment of the applicant. However the report of Dr Bownes indicates that some prison officers made

inappropriate remarks to the applicant. I am not satisfied that the complaints of abuse and harassment are capable of reaching the standard of conduct amounting to inhuman or degrading treatment. The applicant contends that the complaints of ill treatment by prison officers in the close supervision unit should have resulted in the applicant or the officers concerned being removed from the unit. There was no direct attack on the operation of the complaints system or the rules that operate in relation to the movement of officers against whom complaints have been made. However there is in place a system for dealing with all complaints and it was invoked in this case to institute police investigation. I am not satisfied that the complaints made by the applicant required any additional measures. Nor am I satisfied that the conduct complained of by the applicant, when taken in conjunction with his restriction of association, is capable of amounting to a breach of Article 3.

[35] From 1 March 2003 the applicant's circumstances included the effects of his hunger strike. The European Court of Human Rights considered the conditions which result from the prisoner's own behaviour in McFeely -v- UK (1981) 3 EHRR 161, which concerned the dirty protest at the Maze Prison. Starmer on European Human Rights Law summarises the position as follows –

> "However, the fact that the prisoners were engaged in an unlawful challenge to the authority of the prison administration did not absolve the State from its obligation under Article 3. This required the prison authorities, with due regard to the ordinary and reasonable requirements for imprisonment, to exercise their custodial authority to safeguard the health and well-being of prisoners including those engaged in protest insofar as may be possible in the circumstances. Such a requirement made it necessary for the prison authorities to keep under constant review their reaction to recalcitrant prisoners engaged in a developing and protracted protest. The Commission expressed concern that the authorities had taken an inflexible approach to the applicants, being more concerned to punish offenders against prison discipline than to explore ways of resolving such a serious deadlock."

[36] The prison authorities were obliged to safeguard the health and well being of the applicant so far as possible in the circumstances. The applicant was monitored daily by a Governor and medical attention was available. He was examined by Dr Bownes, Consultant Forensic Psychiatrist, on 31 March 2003. His report indicates the applicant's history of contact with psychiatric services and hunger strikes in prison. Dr

Bownes concluded that the applicant showed no evidence of the onset of any mental illness process to which his refusal of food could be attributed and he was content that the applicant had embarked on the protest to draw attention to injustices he had experienced in recent months. The applicant's condition arising from his hunger strike required the prison authorities to monitor the applicant's health and well-being. The applicant was subject to such monitoring and was attended to in the prison hospital and in the Belfast City Hospital as was considered necessary.

Ground (4) Delegation by the Secretary of State

[37] The applicant contends that the extension of the restriction of association by the Director of Operations on behalf of the Secretary of State was invalid, as rule 32 requires the power to be exercised by the Secretary of State personally. The respondent relied on the Carltona principle derived from the decision in Carltona Limited -v- Commissioners of Work (1943) 2 All ER 560. Lord Greene MR stated at 563A that -

> "It cannot be supposed that this regulation meant that, in each case, the Minister in person should direct his mind to the matter. The duties imposed upon Ministers and the powers given to Ministers are normally exercised under the authority of the Ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official, of course, the decision of the Minister. The Minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the task, the Minister would have to answer for that to Parliament. The whole system of departmental organisation and administration is based on the view that Ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where a complaint must be made against them".

[38] The applicant questions whether Parliament could have intended this power to be exercised by officials and if so whether the particular official had suitable grading and experience. In McKernon v The Governor of HM Prison (1983) NI 83 the Court of Appeal considered a

similar power of the Secretary of State under rule 24 of the Prison Rules (NI) 1954 which in that case had been exercised by a Minister of State. The Court of Appeal accepted that the power did not have to be exercised by the Secretary of State personally but did not express any view on the purported exercise of the power by an official.

[39] De Smith, Woolf and Jowell in Judicial Review of Administrative Action (5th ed.) at pages 369-373 discuss the Carltona principle with the caveat that it may be that there are certain matters of such importance that the Minister is legally required to address himself to them personally. The Carltona principle has been applied in many contexts and I am satisfied in all the circumstances that the exercise of this power can properly be undertaken by officials on behalf of the Secretary of State.

[40] In the present case Mr Murray made the decision as Director of Operations at Prison Service Headquarters. The applicant objected to Mr Murray acting on behalf of the Secretary of State as it was said he was a Prison Governor who was acting up as Director of Operations. I did not receive evidence on this issue but was informed by counsel that Mr Murray had been a Prison Governor but had ceased to be so. He was an official in Prison Service Headquarters and held the post of Director of Operations, which was the level at which rule 32 decisions were taken on behalf of the Secretary of State. It would not have been appropriate for Mr Murray to make the decision had he retained the rank of Governor in the Prison Service but I am not satisfied that that was the case.

[41] Accordingly, I have not been satisfied that any of the applicant's grounds for judicial review have been made out and the application will be dismissed.