Neutral Citation No.: [2008] NIQB 103 | *Ref:* **DEE7254**

Judgment: approved by the Court for handing down | *Delivered:* **12/09/08**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

In re McC's application [2008] NIQB 103

AN APPLICATION FOR JUDICIAL REVIEW BY McC

AND IN THE MATTER OF DECISIONS OF THE PRISON SERVICE OF NORTHERN IRELAND AND THE DEPARTMENT OF HEALTH FOR NORTHERN IRELAND

DEENY J

[1] This application is brought by McC with regard to an alleged repeated failure to provide her with adequate treatment when in the custody of the first respondent or living in the community. Mr John Larkin QC appeared for her with Mr David Schofield. Mr Paul Maguire QC appeared with Mr Peter Coll for both respondents. The second respondent should properly be the Department of Health, Social Services and Public Safety, I was informed. The Northern Ireland Human Rights Commission had been given leave to file written submissions. In the course of the hearing Mr Michael Potter for the Commission was given leave to file an additional written submission.

[2] In the course of the hearing I clarified with Mr John Larkin that he was not seeking to establish that any part of the Mental Health (Northern Ireland) Order 1986 was incompatible with the European Convention on Human Rights. In listening to his argument it occurred to me that that was a possible view that might be argued. He clarified that that was not a part of the case he was seeking to make. Subsequently, on the afternoon of the second day of the case Mr Potter suggested that that was a course that should commend itself to me. Mr Maguire QC objected to that as coming far too late in the day. The hearing would have had to have been adjourned to give adequate notice to the Crown, although he did represent two of its emanations. I took this into account. I took into account Mr Potter's information that it would be some months before the report of the Bamford Review now being conducted by Dr Roy McConnell. I was informed that that report would sound on the issue of the legislative treatment of personality disorder. It had also been announced

in the Gracious Speech at the commencement of the parliamentary session that the Government would introduce a mental health bill which would address the issue of the treatability test for persons suffering from certain disorders. This would also be highly relevant to any conclusion one might reach with regard to the legislative provisions here. In all those circumstances it does not seem to me appropriate for the court to move towards a consideration of incompatibility at this time. It may well be that a consensus about this matter would emerge. Any view of the court at this time might well be premature and obiter.

[3] McC was born on 15 November 1986. She has a long criminal record which commenced at the early age of 12. As a result of the various offences committed by her, some of them quite serious, she has probably spent more time in institutional care of one kind or another since that age than she has in the community. While at one stage a provisional diagnosis of schizophrenia had been made in respect of her there now appears to be a consensus among a number of psychiatrists who have examined her that she is not suffering from that illness but suffers from a personality disorder. It is right to say that at times she has indicated that she has been in the past the victim of abuse but I was told that this had not led to any police investigation as she was reluctant to enlarge upon it.

[4] The court had the benefit of very helpful written and oral submissions from counsel. Mr Larkin properly disclosed at the commencement of the proceedings that his client was in fact about to be released from prison and this duly happened. On foot of that he sought only declaratory relief relating to the matters of which his client complained at the Order 53 statement. It might well be said that her release rendered the matter almost academic. I concluded that that was not quite the case but in the circumstances I consider that I can deal with the matter rather more concisely than might otherwise have been the case. I received no information since then as to whether or not the applicant has returned to custody.

[5] One important aspect of the applicant's complaints was that treatment for personality disorder of this sort in a specialised unit was not available in the prison system in Northern Ireland nor indeed for the general population at the time of these events. However I do not find on the facts that this amounted to a breach of duty by either of the respondents. While under the care of Down and Lisburn Health Trust McC had in fact been sent to the Roycroft Unit in England at a cost of over £200,000. She was there for some 8 months but showed no improvement on the evidence. Furthermore Mr Maguire pointed out that the respondents had been willing at one point to send her across the water again but at the time she declined it. At the time of the hearing there was information that she was willing to go and the possibility that that would occur. However the decision as to whether that is the best thing for her, and that the cost of that would be justified seems to be

very much within the margin of appreciation of whichever of the respondents was at the time responsible for her. I say that because I am satisfied that there is at least arguably as good an alternative of medication and a good working relationship with an experienced councillor. Although in theory her condition was diagnosed as one not responding to treatment, in practice neither respondent declined to attempt to treat her. As indicated above I do not think it appropriate in this judgment to go into the underlying view as to the correctness of the treatability test. The fact of the matter is that whether by happy error as Mr Larkin submitted or on foot of a caring and responsible approach the respondents did resort to conscientious and reasonable means to address the applicants' psychological and social difficulties.

[6] Mr Larkin in his submissions contended for breaches of Article 2 and Article 14 of the European Convention on Human Rights. Furthermore he made submissions suggesting that there were breaches of a number of the Prison and Young Offenders Centre Rules (NI) 1995. I have considered his submissions in that regard, the evidence and the respondents' submissions and have come to the conclusion that there was no breach of prison rules nor any breach of her Article 2 or Article 14 rights. Nor in the circumstances do I think there is any breach of any Article 8 or Article 3 right in the light of all the circumstances including the need to do the best for the applicant.

[7] The contention of discrimination because of the presence of better facilities in England and Wales must be addressed in a rational and proportionate way. The population of this part of the United Kingdom is only approximately 3% of the whole. There is nothing disproportionate or, indeed, even surprising that there might be specialist units across the water which do not exist here.

[8] Criticisms were made by counsel for the applicant of the management care plan relating to the applicant at one stage. I consider that on paper counsel's comments had some foundation because of the limited nature of the plan. However, the reality of care is more important than the paper plan. I am satisfied while in Hydebank the applicant was seen by nurses and other members of the health team, not to mention a nun and solicitor and representative of the Human Rights Commission. There was no question of isolation or of her being ignored. His criticism of Dr McGuckin because the minutes of a meeting in August of 2006 disclosed that she had not seen the applicant for several months was effectively answered by Mr Maguire. He pointed out that when one looked at the records the prisoner had in fact been keeping quite well over the summer period and there was therefore no need to summon a psychiatrist to see her.

[9] I accept his submissions more generally that the choices made by the respondent were within their discretionary area of judgment, per Lord Hope, in Ex parte Kebeline [1999] 4 All ER 801 at 843-844 and per Lord Steyn in

Brown v Stott [2001] 2 All ER 97 at page 121 c-f. I accept his submissions to put it another way that the respondents acted reasonably in what I consider were difficult circumstances with a very difficult prisoner in custody or in their care. In the circumstances I do not think it appropriate for me to comment further on the legal issues raised by counsel.

[10] In all the circumstances I decline to grant the relief sought by the applicant and find for the respondents.