Neutral Citation No: [2019] NIQB 73 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **McC11031** **Ex tempore** *Delivered:* **06/06/2019**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY BRENDAN McCONVILLE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

DEPARTMENT OF JUSTICE

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MCCLOSKEY J

[1] This is an application for leave to apply for judicial review in which the court has made but a single case management directions order to date.

[2] The Applicant, Brendan McConville, is a sentenced prisoner. He is one of some 40 Republican prisoners accommodated in separated (or segregated) conditions at HMP Maghaberry, specifically in "Roe House No. 4". The essence of his complaint is that the proposed Respondent, the Department of Justice ("DOJ"), is unlawfully denying him and others access to certain educational and other library materials. In his particular case it is complained that this is frustrating his attempts to complete an Open University degree.

[3] The challenge is, in substance, to a continuing state of affairs or policy rather than a specific freestanding decision.

[4] I readily acknowledge that it is in the public interest that the rehabilitation of convicted offenders be enhanced and promoted by education and related activities. However, the true cause of the impediment, or disadvantage, asserted by the Applicant invites some reflection.

[5] On the evidence, it is not clear that the Applicant is incapable of remedying the disadvantage concerned. Indeed it might be said to be an impediment of choice. Separated, or segregated, accommodation for certain Republican prisoners dates from the so-called "Steele Review" which was undertaken in August 2003. This

gave rise to a tailor made "compact" for separated prisoners. Next there was a special "Maghaberry Prison agreement" in August 2010. This was followed by a further independent review in September 2014. This report took note of the forthcoming NIPS Prison Reform Program (2015) and a Criminal Justice Inspection report (May 2018).

[6] The PAP letter was written in April 2019. This elicited a response containing two passages of note. First:

> *"NIPS would reiterate that all prisoners are permitted to attend* [the] *library and* [are] *permitted to have access to books and other items from the library. However, separated prisoners such as the Applicant have by remaining in separated conditions refused to integrate with other integrated prisoners and have refused to engage positively with prison officers…*
>
> *NIPS have not restricted attendance by the Applicant at the library, but it is the case that he has imposed on himself the restriction by his choice…".*

Second:

> *"…it is nevertheless expected that a process will be in place shortly to allow separated prisoners and others unable to attend the library* [sic] *and they will be able to avail of the full stock of books by choosing from this list. In addition the NIPS is currently considering how we implement the recommendations made by the B9 Fresh Start Panel".*

[7] Next it is appropriate to draw attention to certain correspondence in the evidence in a related case, that of **Sean McVeigh** [19/65837/1], which establishes that the same solicitors have made a recent complaint to the Prisoner Ombudsman which remains unresolved. Bearing in mind the duty of candour, I record that this correspondence has not been produced in the evidence in the present case.

[8] Linked to [7] above, the third matter to be highlighted is that of whether the Applicant has discharged his duty of candour to the court in other respects: in particular, whether he has proactively engaged with the self-imposed and voluntary nature of the impediment of which he complains. It suffices to say that there are certain reservations about this at this juncture.

[9] Judicial review is a remedy of last resort. The recourse of pursuing a complaint to the Prisoner Ombudsman has not been exhausted. I am not prepared to rule at this stage that this would be something other than an efficacious remedy. Furthermore, I consider that DOJ should be afforded a reasonable opportunity to respond to the B9 report. Given these considerations I conclude that the appropriate course, giving effect to the overriding objective, is to stay these proceedings until

October 2019. The Applicant's solicitors will provide an updated report in writing to the court at that stage and the case is provisionally listed for further consideration on 17 October 2019. Further directions may follow in advance of that date.