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Judgment: approved by the Court for handing down | *Delivered:* **1/10/2010**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Morgan's (Paul) Application

AN APPLICATION BY PAUL MORGAN FOR JUDICIAL REVIEW

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TREACY J

Introduction

[1] The applicant is Paul Morgan, a prisoner at HMP Magilligan.

[2] By this judicial review he seeks, inter alia, a declaration that the Northern Ireland Prison Service ("the respondent") unlawfully failed to provide library services in breach of its duty under Rule 54(1) of the Prison and Young Offender Centre Rules (NI) 1995 ("the Rules").

Factual Background

[3] The applicant has been a prisoner at Magilligan since July 2009. He has averred that the library facilities available to him and other prisoners during that time have been very poor and at times non-existent; that since October 2009 prisoners have not been allowed access to the library based within the education department of the prison and have been confined to accessing the mobile library but only on a once weekly basis and then only for 5-10 minutes. He avers that even this limited mobile service did *not operate* between **November 2009 and February 2010** or between March **and 6 May 2010**.

[4] The applicant complained internally about access to library services and indeed to the prison ombudsman who in July 2010 upheld his complaint about access to library services.

[5] Moreover, inspection reports from HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland have previously criticised the library facilities offered to prisoners at HMP Magilligan. In its report of September 2010 (following an inspection between 29 March and 2 April) the library services are described as *inadequate, unsatisfactory with no consistent and reliable access* (see, for example, para26 of the summary, and paras6.13, 6.14 and 6.17).

[6] In fairness to the now retired Governor Woods who furnished an affidavit in this case, he has acknowledged that the issue of access to library facilities has been "an issue of concern" to him as Governor and that access was more limited he would have liked. He then sets out in some detail the underlying resource and related problems which provide the context for the inadequate access and describes some of the steps that are being taken to improve the situation.

[7] Rule 54 of the 1995 Rules as amended provide:

> **"54 – (1) A library shall be provided in every prison and every prisoner shall be allowed to have books or other items borrowed from the library, and to exchange them, under such *conditions* as the Governor or the Department of Justice may determine.**
>
> **(2) *As far as practicable,* and subject to the requirements of security, control and good order, prisoners shall be allowed to go to the library and to chose their books and other items there."**

The Parties Submissions

[8] The applicant submitted that Rule 54 is in two parts (1) there must be a library and prisoners must be able to access the books in it (subject to such conditions as determined) and (2) a prisoner must be allowed access to the library but only if it is (a) practicable and (b) in keeping with security etc. Rule 54(2) is framed in terms that are more generous to the prison authorities and appear to allow them to argue that access to the library itself is not practicable because of staffing issues. However, in contradistinction to 54(2), 54(1) does not have a "practicability" constraint. A prisoner's right to access the books – as opposed to the actual library, is stronger. Thus, the applicant submits, the respondent should have devised a system for *borrowing* books from the library even if the prisoners cannot access it.

[9] The respondent, on the other hand, points out that there is a library in the establishment that is supplemented by the mobile library van and that the applicant is allowed to borrow books and other items from the library and to exchange them. They submitted that, properly construed, 54(1) leaves the conditions of use to the discretion of the Governor and does not afford the applicant the right to use of the

library facility in any regimented or structured fashion. The statutory provision, it was asserted, is framed in such a manner as to take account of the possibility of operational variation in the delivery of the library service without placing the respondent in breach of its obligations under Rule 54. Thus it would not be a breach according to the respondent to provide borrowing access which was *infrequent, inadequate, irregular and unpredictable.*

Discussion

[10] I do not accept the respondent's contention. Various of the prison rules are qualified like 54(2), by a practicability constraint. In this context the discussion in ***Re Hughes*** **[2004] NIQB 25** is helpful. In that judgment Weatherup J contrasts the differences between Rule 51 (work) which had no such constraint and 52 (education), 53 (handicrafts and hobbies) and 54(2) which did have such a constraint. The legal significance of that was that, at para26 of his judgment, he concluded that since the provision of work or other purposeful activities was not qualified by practicability the requirement to provide such work etc during the normal day had *not*, on the facts, been satisfied in that case. Whereas in respect of the other complaints grounded on the other rules the Court expressed itself satisfied that the facilities were being provided to *the extent practicable.*

[11] The importance of a mandatory requirement to provide a library from which prisoners "shall" be allowed to have books *borrowed* is obvious. It benefits the prisoner, promotes the rehabilitative principles underlying modern prison philosophy and is conducive, ordinarily, to good order and discipline within the prison.

[12] It is no doubt with such considerations in mind that there is in my view a clear distinction not only between certain prison rules (as evidenced by ***Hughes***) but in this case within the rule itself. This difference in wording was plainly deliberate. The public interest and the wider underlying objectives intended to be achieved by Rule 54(1) are only likely to be achieved if there is reasonable, effective, reliable and predictable access.

[13] In the present case the respondent is, in reality, seeking to equate the reference to "such conditions as the Governor ... may determine" in 54(1) with the test of practicability in Rule 54(2). The use of materially different language between 54(1) and 54(2) powerfully indicates that this was not the legislative intention.

[14] Rules 54(1) and 54(2) are clearly related but they are not dealing with the same entitlement whish is subject to materially different qualifications. 54(1) is dealing with the prisoner's entitlement to *borrow* books from the library whereas 54(2) is dealing with a prisoner's right to "*go to*" the library to chose their books subject to practicability and the constraints of security etc.

[15] Ordinarily of course prisoners will access books by going to the library to browse and choose. But the constraints of practicability, security etc may prevent that from taking place in a particular case or indeed more generally. However, the presence of the qualifying constraints on the presumptive right of the prisoner to "go to" the library do not operate to qualify the prisoner's right to "borrow". The right to borrow books under such "conditions" as the Governor may determine does not permit the right to borrow books from the library to be emasculated. The point of imposing "conditions" must surely be to provide for provision in a predictable and structured fashion. This would include, for example, the number of books that a prisoner can borrow, for how long they can be borrowed etc. The conditions may be subject to change for operational reasons but the total absence of provision, as occurred in this case, is not a "condition" nor is access which is unsatisfactory, unreliable, unpredictable and unsatisfactory – features which have the capacity to frustrate the important objectives underlying the mandatory, and differently drafted, requirements of 54(1).

[16] In the present case this applicant, in breach of Rule 54(1) was, for significant periods of time, not allowed to *borrow* books from the library (static or mobile).The resource and staffing issues do not absolve the respondent from performance of the 54(1) duty.

[17] In view of the above finding it is unnecessary to consider the applicant's more difficult argument that there had also been a breach of Art10 of the European Convention.

[18] For these reasons and to the extent outlined above the application for judicial review is successful.