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*(subject to editorial corrections)**

IN THE HIGH COURT IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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2016 No. CV/16/05/01095

IN THE MATTER OF AN APPLICATION BY BRIAN SHERIDAN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY THE POLICE OMBUDSMAN FOR NORTHERN IRELAND DATED 22 FEBRUARY 2016

AND IN THE MATTER OF A CHALLENGE TO THE POLICY OF THE CHIEF CONSTABLE OF NORTHERN IRELAND AS REGARDS APPROACHES BY POLICE OFFICERS TO MEMBERS OF THE PUBLIC, IN WHICH OFFICERS SEEK INTELLIGENCE FROM MEMBERS OF THE PUBLIC

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MAGUIRE J

Introduction

[1] The applicant in this application for leave to apply for judicial review is Brian Sheridan ("the applicant"). There are two intended respondents: one is the Police Ombudsman for Northern Ireland ("PO") and the other is the Chief Constable of the Police Service of Northern Ireland ("PSNI"). The applicant complains, in the case of the former, about a decision of PO dated 22 February 2016. As regards the latter, PSNI, the applicant seeks to make a challenge to what is alleged to be the "policy of the Chief Constable … as regards approaches by police officers to members of the public in which officers seek intelligence from members of the public".

[2] The factual background to the application is contained in an affidavit filed by the applicant on 13 October 2016. In this affidavit he states, *inter alia*, that:

> "2. In 2011, I was arrested by the police in South Armagh when I was in a car being driven by one of my friends. The police found rifles and handguns in the car and alleged that my friends and I were going to

bury the weapons. I pleaded guilty and was sentenced to imprisonment.

3. Since my release, I have sought to avoid interactions with the police. As part of my prosecution, press reports suggested that I was a member of the Real IRA or another proscribed organisation. I have always denied this. However, the fact remains that I live in Armagh, an area where there is paramilitary activity. This means that anyone who has contact with the police is potentially at risk. I strongly believe that those who are thought to be "touts" are at serious risk of harm.

4. In February 2015, I went on holiday with my partner to Oslo in Norway. One day, a number of men approached me. One of the men introduced himself as 'Fergie'. Another man indicated that they were police officers and said that they wanted to speak to me. I asked the men to leave me alone. I was scared and confused. It seemed that they must have followed me out of Ireland on holiday. This caused me particular distress.

5. On 15 February 2015, the three men approached me again outside the hotel at which I was staying with my partner. Once again, the three officers asked to speak to me. I asked the men to leave me alone once again. The repeat approaches caused me particular alarm and distress.

6. My partner and I came home to Armagh. I had no further contact from the police until 22 October 2015 when I was driving up the Newry Road at 6.00 am. I noticed that there was a checkpoint on the road. A police officer in full uniform indicated that I had to pull my car over. When I stopped, he asked me for my licence. After looking at my licence, the officer asked me to pull over into the hard shoulder. I parked in the hard shoulder near the checkpoint. The Newry Road is a busy road and anyone who drove past would have seen me. I am well known in the area and my friends, neighbours and family would instantly have recognised my car.

> 7. While I was parked on the hard shoulder, another car pulled up behind his car. Two men got out of the car and approached me. To my astonishment, I recognised one of the men as 'Fergie', one of the men who had approached me in Norway. This caused me to feel a degree of terror. It was as if I was being hunted in different countries by this man. After 'Fergie' approached me, the uniformed officer discontinued the checkpoint. This man made me think that the checkpoint had been a ruse simply to entrap me. The uniformed officer remained at the scene in a parked car. 'Fergie' and the other officer attempted to make conversation with me. Once again, I told them firmly to leave me alone. I was scared, in particular, that someone would see me at the side of the road in conversation with the police in this strange set up. I was scared that people would think I was doing some sort of deal with the police. As explained, above, if this rumour were to have circulated, my life would have been at risk. 'Fergie' give me a laminated card with a mobile telephone number on it and told me to give him a call."

[3] The sequence of events after the last of the incidents described above appears to be as follows:

(i) The applicant contacted his solicitors as he wanted the conduct described above to stop. The precise date of his first contact is not provided.

(ii) He met with his solicitor on 27 October 2015. On this occasion he gave to him the laminated card that "Fergie" had given to him.

(iii) His solicitor rang the number on the card in the applicant's presence. The applicant overheard the conversation. A man answered the phone. The applicant's solicitor asked the man who he was. The man asked the applicant's solicitor who he was. The applicant's solicitor said he was the applicant's solicitor. He then explained that the applicant was concerned about the officer's approaches. The man who answered the call did not appear to be concerned by the applicant's solicitor's comment. If anything he seemed relaxed. The man said something like "if I want to speak to Brian, I will get him again" and then hung up.

(iv) Thereafter, with the help of his solicitor the applicant by letter made a complaint to the PO. This appears to be dated 27 October 2015. Having described the incidents and the telephone call made by his solicitor, the letter goes on:

"I now wish to make a formal complaint to the Police Ombudsman's Office complaining about the conduct of this individual, whom has purported to be an undercover police officer. I would like clarity as to whether or not he is in fact a police officer and secondly I would like to complain about the misuse of a road checkpoint which I feel was deliberately set up to facilitate a further approach by this individual in an attempt to recruit me as a covert human intelligence source.

Firstly, I feel that this individual has absolutely no cognizance for the danger he was putting me in by approaching me in public. Should the wrong individual perceive me to be an agent of the State, covert human intelligence source I feel that my life would be at risk. Such an approach on a very busy main road (Newry Road) deliberately puts my life at risk.

Secondly, I had asked that this individual desist from approaching me, as I did not want to speak to him, yet he continued to approach me for a second time which I feel was a direct attack on my privacy and right to private life.

Thirdly, I believe that these individuals are completely unaccountable and unregulated and fear that they will continue to approach me and try to contact me. Such is clear from his response to my solicitor on the phone that he would not be speaking with my solicitor but instead would try to speak to me directly. I fear that this is a direct threat by this individual that he will continue to try and contact me, and at which I feel is again a direct interference of my right to private life and is misuse of his position and I feel distressing and harassing conduct.

Fourthly, I am very concerned by the fact that both approaches have been pre-planned. In the first instance these individuals took a deliberate decision to travel to Norway deliberately with the intention of approaching me, which they did on two occasions, and on the second occasion I was approached very early in the morning (6.00 am) to which was again a

> significant element of pre-planning given the fact that the PSNI had used an illegal checkpoint to facilitate such an approach.
>
> This I believe is a misuse of direct surveillance techniques as they have been deliberately used to facilitate an approach on my person.
>
> I have been advised by my solicitor all of the above constitutes breaches of Article 2, Article 3 and Article 5 and Article 8 of the ECHR and thereafter I would like to make a formal complaint to the Police Ombudsman.
>
> Given the fact that I am very concerned that this may happen again I would ask the Police Ombudsman to treat this matter as urgent."

(v) On 7 December 2015 the applicant made a statement to the PO.

(vi) On 8 February 2016 the PO took a statement from the applicant's solicitor.

(vii) On 22 February 2016 the PO sent a letter to the applicant indicating that his complaint had been rejected. A copy of this letter was also sent to the applicant's solicitors.

The letter of 22 February 2016

[4] The essence of the letter of 22 February 2016 reads as follows:

> "**Our investigation**
>
> The Police Ombudsman for Northern Ireland obtained all relevant police documentation in respect of your allegations of February 2015 and October 2015. This material was subsequently examined and reviewed.
>
> A detailed statement of complaint was recorded from you and a witness interview and statement of witness was recorded from your … solicitor.
>
> Police officers in carrying out their duties to prevent and detect serious crime regularly seek the assistance of members of the public who they believe may be in a position to help them. Police officers when dealing

> with members of the public are bound by the standards set in the Police Code of Ethics. There has been no evidence obtained to suggest that when you were approached in February 2015 and October 2015 the behaviour of the officers fell below that standard.
>
> **Conclusion**
>
> As there is insufficient evidence to support the allegations that you made, this case has now been closed. I can assure that the matter has been investigated and an objective assessment has been made of the evidence available. The Police Ombudsman will retain a record of your complaint on file."

[5] The applicant being dissatisfied with the above closure letter *via* his solicitor wrote on 15 March 2016 requesting a review of the decision within 14 days. This was followed up by a pre-action protocol letter being sent by the applicant's solicitor to the PO and PSNI.

[6] On 13 April 2016 a response was provided from the PO to the applicant's solicitors in respect of their correspondence of 15 March 2016. The material parts of this letter are as follows:

> "In responding I have tried to provide as much detail as I can but given the sensitivities involved in such cases there are some matters I cannot elaborate on …
>
> Your client made a number of allegations which are detailed in his statement of complaint dated 7 December 2015.
>
> As you are aware the Regulation of Investigatory Powers Act (RIPA) does not specifically cover an approach made to an individual. However, PSNI Best Practice Guidance advocates that all approaches are planned, fully documented and signed off by a senior authorising officer. In the course of our investigation we carefully examined the interaction PSNI officers had with your client, how that was conducted, where it was conducted and was sufficient consideration given to protect your client's rights under ECHR and RIPA legislation.

> Having reviewed that material we are satisfied that on these occasions the action of the officers were proportionate, necessary and conducted within the relevant legal framework. I also note in your correspondence that you are very concerned that the approaches were pre-planned. To protect an individual's rights I would expect that such matters to be planned.
>
> In addition the Road Traffic (Northern Ireland) Order, this allows a constable in uniform to stop any person driving a mechanically propelled vehicle on a road or other public place. The Police Ombudsman's Office has examined the matter of the VCP and is satisfied it was lawful and permissible within the standards set out in the Police Code of Ethics and Force Guidelines.
>
> Unfortunately I am not in a position to answer if the officer's approaches has caused your client to feel distress and anxious as no supporting medical evidence was submitted by you or your client."

[7] Eventually proceedings were issued in this case against both of the intended respondents on 23 May 2016. As already noted, the applicant's affidavit in support of his application was filed on 13 October 2016.

The case against the PO

[8] The applicant seeks an order of *certiorari* to bring up and quash the decision of the PO dated 22 February 2016. This is on the basis that the decision was unreasoned and/or unreasonable; and/or was unlawful contrary to section 6 of the Human Rights Act 1998, as in breach of Article 2, 3 and 8 of the Convention, in that the PO had failed to adequately investigate the applicant's complaints under those articles of the Convention. In order to assess those grounds it is necessary to briefly describe and summarise the terms of the Police Act (Northern Ireland) 1998 which is the statute under which the PO operates.

[9] Part VII of the above statute is the legal basis for the role of the PO in dealing with complaints from members of the public.

[10] Section 51(1) provides that there shall be a PO for Northern Ireland.

[11] Section 51(4) indicates that the PO shall exercise his powers under Part VII in such manner and to such extent as appears to him best calculated to secure (a) the efficiency, effectiveness and independence of the police complaints system; and (b) the confidence of the public and members of the police force in that system.

[12] Section 52(1) deals with the receipt of complaints. In the present case, the complaint of the applicant was made to the PO by a member of the public. The PO, needless to say, is concerned with "complaints about the police force" (section 51(1)) so that if there is a question about this the PO would have to resolve it.

[13] Section 52(3) requires the PO to (a) record and consider each complaint made or referred to him under sub-section (1); and (b) determine whether it is a complaint to which sub-section (4) applies.

[14] Section 52(4) applies to "a complaint about the conduct of a member of the police force which is made by, or on behalf of, a member of the public".

[15] It seems clear that section 52(4) requires an assessment of whether the sub-section is fulfilled in a given case.

[16] Section 52(8) deals with the circumstances where the PO has determined that a complaint made under section 52(1) is a complaint to which section 52(4) applies. Where this is so, the complaint "shall be dealt with in accordance with the following provisions of this Part".

[17] Under section 54(1) where the complaint does not appear to the PO to be a suitable one for informal resolution, it shall formally be investigated as provided for in sub-sections (2) or (3).

[18] Section 54(2) provides that where the complaint is a serious complaint, the PO "shall formally investigate it in accordance with section 56".

[19] Section 54(3) indicates that "in the case of any other complaint" the PO may, as he thinks fit – (a) formally investigate it in accordance with section 56 or refer it to the Chief Constable for a formal investigation by a police officer in accordance with section 57.

[20] Section 56 deals with formal investigation by the PO. Under sub-section (1) where the matter is to be formally investigated the "PO shall appoint an officer of the Ombudsman to conduct the investigation".

[21] In accordance with section 56(6) at the end of the investigation under this section, the person appointed to conduct the investigation shall submit a report on the investigation to the PO.

[22] It appears from the provisions of section 56 that the statute does not seek to define how an investigation is to be carried out by the person appointed to investigate. The PO's investigator must enjoy a very considerable degree of latitude and flexibility in respect of how he/she sets about investigating the matter in question.

[23] Once the investigation is carried out, in accordance with section 58(1), the PO "shall consider any report made under section 56(6)". He must determine whether the report "indicates that a criminal offence may have been committed by a member of the police". Where this is so, the PO "shall send a copy of the report to the Director of Public Prosecutions together with such recommendations as it appears to the PO to be appropriate".

[24] The other main way in which a report under section 56(6) may be dealt with is where it involves the possible step of disciplinary proceedings being taken against the police officer. Section 59(1)(B) requires the PO "to consider the question of disciplinary proceedings". Section 59(2) indicates that "the PO shall send the appropriate disciplinary authority a memorandum containing –

> "(a) his recommendation as to whether or not disciplinary proceedings should be brought in respect of the conduct which is the subject of the investigation;
>
> (b) a written statement of his reasons for making that recommendation; and
>
> (c) where he recommends that disciplinary proceedings should be brought, such particulars in relation to disciplinary proceedings which he recommends as he thinks appropriate."

[25] It seems clear from these provisions that the main role of the PO in respect of disciplinary proceedings is to provide the disciplinary authority with his recommendation as to whether disciplinary proceedings should be brought in respect of the conduct of an officer.

[26] Under section 62 legal authority is provided to enable the PO to make statements about the exercise of his functions. He is given a discretion to publish a statement as to his actions, his decisions and determinations and the reasons for them.

[27] Overall the main obligations of the PO in a standard case appear to be to set up an investigation and to enable his investigator to report to him. Once the report is received the PO will consider the report and decide whether it indicates that a criminal offence has been committed or, alternatively, whether he should recommend disciplinary proceedings. How the PO goes about his task is predominately a matter for him. There must in this context be operational discretion.

The PO's correspondence

[28] The key letter in the above correspondence is that of 22 February 2016. This contains the PO's decision in respect of the investigation. Notably it refers to the role of the PO as being to consider whether an officer's behaviour fell below the standards set out in the Police Code of Ethics.

[29] In order to consider the applicant's complaint, it seems clear from this letter that a detailed statement of complaint was taken from the applicant and his solicitor. In the light of this the PO has obtained all relevant police documentation and has examined it. There is no sign that any police officer had been interviewed.

[30] The conclusion concentrates on the behaviour of the officers. This seems to be a tacit acceptance that officers were involved. Their behaviour, it is asserted, did not suggest that they fell below the standard, *i.e.* the standard found in the Code of Ethics. The applicant was told by the letter of 22 February that the case was closed.

[31] The second letter from the PO was dated 15 April 2016. It refers to the "sensitivities involved". There is reference to "some matters I cannot elaborate on". It advocates that all approaches of the sort involved in this case should be planned, fully documented and signed off by a senior authorising officer. This is language of the Regulation of Investigatory Powers Act 2000 ("RIPA"), though the letter refers to the Act as not covering an approach made to an individual. Ultimately, the letter provides a clean bill of health to the officers.

Assessment of the case against the PO

[32] The main case made against the PO is that he has failed to provide adequate reasoning to support the conclusion contained in his letters. It is argued on behalf of the applicant that the PO is under a duty to provide reasons for what he does and that in this case he has failed to do so.

[33] The Court considers that it is arguable that the PO is under a duty to provide reasons for his conclusions. There is legal support in the authorities for such a view. In particular, the Court refers to the case of R (Dennis) v The Independent Police Commission [2008] EW8C 1158 (Admin). In this case Saunders J held that in respect of the operation of the Independent Police Complaints Commission, it was important and necessary that its conclusions in respect of an investigation should be clear and the reasons for those conclusions can be readily understood by the complainant. This suggests a duty to give at least basic reasons. A similar reference can be found in the Northern Ireland case of In an Application by Officer O for Judicial Review [2008] NIQB 52: see paragraph [50].

[34] In the Court's view it is arguable that the contents of the PO's letters failed to explain sufficiently the process by which the decisions arrived at were made. The problem, in short - presumably because of the constraints the PO considered he was

under about what might be said – is that the reasoning provided is either absent or opaque.

[35] As regards the issue of human rights, the letter of 13 April 2016 from the PO to the applicant's solicitors implies that these were considered by the PO. The conclusion reached was that there had been compliance by police officers with human rights standards but notably nothing specific is said about how this conclusion was reached. Notwithstanding this, the ground of judicial review put forward by the applicant is that it is the PO who has breached the applicant's human rights by the way he has dealt with his investigation. In the court's opinion, while it can appreciate that there may be an argument about whether the applicant's treatment at the hands of the police breached his human rights, it is difficult to discern an arguable case that the PO has done so. In any event, if the court is wrong about this, it is evident that the applicant has available to him the ability to pursue civil action in this regard against the PO.

[36] The case has been made by the applicant that the PO's decision is an unreasonable one. The court is concerned about the viability of this ground. Undoubtedly the PO did investigate and consider the applicant's complaints and reached a conclusion about them. On the face of it, the court has no reason to believe that the conclusion reached - that the officers did not fall below the standard found in the Code of Ethics - is wrong, never mind unreasonable. While the court has accepted that it is arguable that there may have been a failure to provide the reasons for this conclusion, this in itself does not mean that the outcome of the investigation was unreasonable.

Delay

[37] It seems clear to the court that the applicant has not acted promptly in mounting this judicial review. The decision which is impugned is dated 22 February 2016 yet no proceedings were issued until 23 May 2016. No real explanation has been provided for the delay. It appears that legal aid was sought only 2 days before the expiry of the outer time limit of 3 months. The application was outside the 3 months' outer time limit, albeit by one day.

[38] The question for the court is whether or not to extend time in these circumstances. The court will return to this issue shortly.

Alternative remedy

[39] A question which arises in this case is as to whether the applicant had available to him other forms of remedy which could be used by him, recognising that judicial review is a remedy of last resort. Undoubtedly, the applicant is in a position to take civil action against the police. He could also sue the PO if he maintains that his human rights have been breached by the PO. More particularly, it has been argued that he has available to him the ability to mount proceedings before

the Investigatory Powers Tribunal. The court will return to these issues after considering the position of the other proposed respondent, the Chief Constable of the Police Service of Northern Ireland.

The case against the Chief Constable

[40] The second intended respondent in these proceedings is the Chief Constable of the PSNI. The applicant in his Order 53 Statement seeks to make a case against the police on the basis of his concern about the policy of the Chief Constable as regards police approaches to him. There is no statement in the papers depicting exactly what the Chief Constable's policy is said to be. The matter is dealt with by the use of phrases such as the "applicable policy" and "any applicable policy". The court, on the basis of the Order 53 Statement, does not know what the content of the impugned policy is said to be.

[41] The grounds of challenge are that the policy is (a) inadequate and (b) unlawful. This is said to be contrary to the rule of law which requires a transparent statement of the circumstances in which "broad statutory discretion" will be exercised. What the content of any relevant statutory criteria are is not disclosed in the papers. It is also asserted that the policy is contrary to section 6 of the Human Rights Act 1998 on the basis that it is not adequately accessible and/or foreseeable and did not provide legal protection against arbitrariness and does not indicate with sufficient clarity the scope of the discretion conferred on police officers in the manner of its exercise.

[42] It appears that the applicant's solicitor wrote to the PSNI, by way of a pre-action protocol letter, on 7 April 2016. This appears to be the first formal contact with the PSNI about the matter complained of. The PSNI provided a response on 22 April 2016. In its response the PSNI pointed out that a complaint in this area can be made to the Investigatory Powers Tribunal. It is stated that "RIPA and the associated Code of Practice regulates matters relating to the recruitment, authorisation and conduct of surveillance and covert human intelligent sources". It is therefore necessary to consider the terms of the RIPA legislation.

[43] The Regulation of Investigatory Powers Act 2000 at Part II seeks to regulate, *inter alia*, the conduct and use of covert human intelligence sources: see section 26(1)(c). What is meant by the conduct and use of covert human intelligence sources is dealt with at section 26(7). This states:

> "In this part –
>
> (a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of sub-section (8), or is incidental to anything falling within any of those paragraphs; and

> (b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source".

[44] For the purposes of RIPA a person is a covert intelligence source (according to section 26 (8) of the Act) if –

> "(a) He establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c)"...

In accordance with section 26 (9) (c), a relationship is used covertly and information obtained as mentioned in sub-section (8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

[45] Section 29 *et seq* of RIPA deals with the authorisation of covert human intelligence sources. It appears clear that authorisation is necessary in respect of the conduct or use of such sources.

[46] A Code of Practice dealing with this area was published by the Home Office in December 2014. This Code of Practice is made pursuant to section 71 of RIPA. The Code of Practice is an extensive document which runs to some 67 pages.

[47] At page 9 there is reference to the scope of "use" or "conduct" authorisations. As paragraph 2.5 it is stated that:

> "2.5 Subject to the procedures outlined in Chapter 3 of this Code, an authorisation may be obtained under Part II of the 2000 Act for the use or conduct of CHIS.
>
> 2.6 The use of a CHIS involves any action on behalf of a police authority to induce, ask or assist a person to engage in the conduct of a CHIS or to obtain information by means of the conduct of a CHIS. In general, therefore, an authorisation for use of a CHIS will be necessary to authorise steps taken by a public authority in relation to a CHIS.
>
> 2.7 The conduct of a CHIS is any conduct of a CHIS which falls within paragraph 2.1 above or is incidental to anything falling within that paragraph. In other

> words, an authorisation for conduct will authorise steps taken by the CHIS on behalf, or at the request, of a public authority".

[48] At paragraph 2.24 of the Code the following appears:

> "2.24 Determining the status of an individual or organisation is a matter of judgement by the public authority. Public authorities should avoid inducing individuals to engage in the conduct of a CHIS either expressly or implicitly without obtaining a CHIS authorisation".

[49] Considering the provisions of RIPA referred to above, together with those provisions set out from the Code of Practice, the court is satisfied that the activities the applicant has complained about fall within the phrase "the conduct and use of covert human intelligence source". In particular, the court is satisfied that inducing, asking or assisting a person to engage as a human intelligence source requires authorisation under the RIPA scheme. This means that the PO was wrong in its letter of 13 April 2016 when it was said that RIPA did not specifically cover an approach made to an individual.

[50] The court is in no substantial doubt that reading together the complaints of the applicant in this case with the two letters produced by the PO the picture which emerges is that PSNI officers were engaged in a process of seeking to persuade the applicant to become a CHIS.

[51] This finding has significant repercussions for the applicant's case against the police.

[52] First of all, it appears clear that if the activity here at issue is covered by Part II of RIPA (as the Court holds) this means that the activity is regulated. The regulation involves a process of statutory authorisation under RIPA and is also governed by a detailed Code of Practice. In these circumstances, the applicant's contentions concerning the failure to regulate the actions of the police as disclosed on the facts of this case is misconceived and the court holds do not disclose an arguable case for judicial review.

[53] Secondly, and independently of the first point, it is clear that the complaints the applicant seeks to make in this judicial review against the police, on a correct analysis, should be made to the Investigatory Powers Tribunal. That Tribunal is established under section 65 of RIPA. The jurisdiction of the Tribunal is dealt with at section 65(2). Paragraph (a) of that sub-section indicates that the jurisdiction of the Tribunal shall be that the Tribunal is the only appropriate Tribunal for the purposes of section 7 of the Human Rights Act 1998 in relation to any proceedings under sub-section (1)(a) of that section. It therefore appears that the applicant's

complaints about breach of his human rights under the Act in the circumstances which have arisen, if they are to be pursued at all, must be pursued before the Tribunal. In any event, the scope of proceedings before the Tribunal, in accordance with section 65, appears to encompass any conduct to which Part II of the Act applies. As the approaches made to the applicant fall within Part II it seems to the court that any complaint directed at such conduct should form the basis of proceedings before the Tribunal.

[54] For the reasons given above, the court is satisfied that there is no arguable case in respect of which the court should grant leave to apply for judicial review against the PSNI and that any complaint the applicant may have in this area should be directed the Investigatory Powers Tribunal and not this court.

Delay

[55] Even if the court was wrong about the above, the matters about which the applicant complains against the police have been known about for a considerable period of time. In this case proceedings were not brought against the police until 23 May 2016. Such proceedings, in the court's view, were not initiated promptly or within a period of 3 months from the matters complained about. The proceedings therefore are in breach of Order 53, rule 4. No good reason for the delay in mounting the proceedings has been provided to the court. For this independent reason, the court would also refuse leave to apply for judicial review against the second intended respondent. In reaching this conclusion the court bears in mind that, in addition to the availability of proceedings before the Investigatory Powers Tribunal, the applicant also has available to him the ability to take civil action against the police where this is appropriate.

How is the case against the PO affected by these conclusions?

[56] The court has found that the applicant's argument that the decision of the PO in this case may be unlawful insofar as it fails to afford the applicant with the reasons for it, to be arguable.

[57] On the other hand, the court has reached the conclusion that the applicant's complaints as a whole are complaints which could be made to the Investigatory Powers Tribunal. This is an important finding in that the IPT is a specialist tribunal which is designed to enable matters relating to intelligence and the regulation of CHIS to be dealt with in a forum designed for this purpose.

[58] As regards human rights complaints arising in this area, it appears that the intention of the legislature in the 2000 Act was that the IPT should have exclusive jurisdiction to deal with this type of complaint, though the same does not apply to other complaints. The applicant maintains that his human rights complaints have not been dealt with by the PO but any adjudication of these, it seems to the Court, would be a matter for the IPT.

[59] It is the court's view that as matters stand the grant of leave to apply for judicial review against the PO would serve little purpose as the applicant has the ability to pursue the matter before the IPT.

Conclusion

[60] The court concludes as follows:

(i) The court will stay the proceedings against the PO as the correct way for the applicant to proceed is to make a complaint to the IPT which is the correct forum for dealing with his concerns, particularly those relating to alleged breach of his human rights. The issue of delay in the context of the taking of these proceedings against the PO in these circumstances need not be decided now. The court will accordingly leave this aspect open as the question of whether to extend time would be affected by the court's view of the public interest to be served by the proceedings – a matter best judged after the applicant has brought his case to the IPT.

(ii) The court will dismiss the proceedings against the Chief Constable and PSNI on the basis that –

(a) there is no case for leave on its merits;

(b) the applicant should proceed before the IPT he is wishes to proceed at all; and

(c) the applicant is guilty of delay and the court, in all the circumstances, declines to extend the time.