

# Judicial Communications Office

3 March 2023

## COURT DISMISSES CHALLENGE AGAINST DECISION NOT TO RECALL GARFIELD BEATTIE

### Summary of Judgment

Mr Justice Colton, sitting today in the High Court in Belfast, dismissed an application for judicial review of the decision of the Department of Justice (“the Department”) not to revoke the licence of Garfield Beattie and recall him to prison under the terms of his life sentence at the end of his current sentence of imprisonment.

Denise Mullan (“the applicant”) is the daughter of Denis Mullan who was murdered by Garfield Beattie on 1 September 1975. Beattie was one of the “Glenanne Gang” and was convicted in 1976 of the murders of Denis Mullan, Frederick McLaughlin and Patrick McNeice. He received a life sentence for each offence and was released on life licence around March 1993, having served 14 years in prison.

In September 2017 the applicant was approached by Beattie who admitted murdering her father. In August 2020, she issued civil proceedings against him seeking damages in respect of her father’s murder. Beattie replied to the applicant’s solicitor indicating that he would not be responding to the writ of summons and suggesting that the matter was a waste of time. In September 2020, the applicant received a note purporting to be from East Tyrone UVF saying there would be personal consequences for her and her family from taking the court action and advising her to “think again and consider the long-term consequences on your own personal health”. Beattie subsequently admitted responsibility for sending the note. He was charged with the offence of attempted intimidation and pleaded not guilty on the basis that he had no intent to cause fear or injure the applicant. He was found guilty and sentenced to 15 months’ imprisonment. Beattie appealed the matter, and the sentence was increased to 17 months’ imprisonment.

### **The application**

The applicant challenged the decision of the Department dated 7 February 2022 not to recall Beattie under the terms of his life sentence to prison at the completion of his current term of imprisonment. The son of Patrick McNeice also issued proceedings as a notice party. In correspondence to the applicant, the Department referred to the completion of a review by the Multi-Agency Risk Assessment Panel (“MARAP”) and its conclusion that the threshold for initiation of revocation of licence proceedings had not been met. It said the Panel was satisfied that the risk presented by Beattie could be safely managed on licence when he was released after serving the custodial element of his current sentence. This decision was the culmination of a series of meetings at which there was a wide-ranging discussion about the risk and the Panel had adopted a two-fold test: whether there has been an increase in the risk of harm/serious harm to the public; and whether that risk could be safely managed in the community. The court noted:

“The Panel accepted that there has been an increase in the risk of harm to the public but determined that it can be safely managed in the community with appropriate licence conditions. Accordingly, the Department decided the most appropriate course

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of action was to seek a recommendation from the [Parole Commissioners] to put in place additional licence conditions to manage the increased level of risk. Mr Beattie's situation is under continuing review. This is important since part of the evaluation of the risk will include work done by him whilst in custody."

The key public law point raised in this application was an assertion that in the circumstances of this case there was an obligation on the Department to refer the matter to the Parole Commissioners for Northern Ireland ("PCNI") for a recommendation that Beattie's licence be revoked and that he be recalled to prison. Counsel argued that decisions on recall have been the domain of the PCNI having regard to their specialism and experience. It was also submitted that Article 9 of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order"), which provides for the recall of life prisoners while on licence, envisages that "deliberative jurisdiction" should be within the remit of those having operational responsibility for the management of offenders and having the capability of evaluating issues of recall independently. Counsel argued that the Department had fettered its discretion conferred on it under Article 9 of the 2001 Order by failing to inform itself of a material consideration (namely whether revocation is recommended by the PCNI).

The court said that, plainly, it could not be argued in every case in which there is an alleged breach of a prisoner's licence that the Department must refer the matter to PCNI for a recommendation to recall:

"As a matter of statutory construction, it is clear that the discretion to recall is placed on the Department. If the Department decides that a recall is appropriate, then it must refer the matter to the Parole Commissioners for a recommendation. Even after a recommendation is made the Department retains a discretion whether to follow the recommendation. It is free to reject it, if it so decides. Thus, it is plain, that the decision is one for the Department. In this context the role of the Parole Commissioners is an advisory one."

The court noted that in the 2001 Order, the power to revoke the prisoner's licence and recall him to prison is expressly conferred on the Department and that there is no statutory obligation which requires that a referral is made to the PCNI in circumstances where a revocation of licence is being considered:

"The correct approach must be that the relevant agency (in this case the Department) should first consider whether the test for revocation is likely to be satisfied when considering whether to seek a referral to the PCNI for recommendation for recall. In so doing, it is entitled to, and must, make an assessment of both limbs of the legal test [under Article 9 of the 2001 Order]. I can see no logical basis for arguing that it should only make an assessment of the first and, if it decides that this limb is met it must then refer the matter to the PCNI. In this case, the Department exercises this function by means of the MARA Panel which is chaired by a representative of the Department, and which receives advice and guidance from relevant agencies including the PSNI, the PBNI, NIPS, and a specifically designated supervising officer."

The court considered that the mechanism whereby the Department decides whether to initiate revocation proceedings via MARAP cannot be criticised and does not constitute a delegation of its decision making. It noted that the supervising officer is an experienced probation officer qualified to carry out assessments as to the risk posed by terrorist risk offenders and that the assessment is

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subject to scrutiny. The court said this was entirely appropriate. It concluded that the Department clearly has the jurisdiction to make a decision as to whether to refer the matter to the PCNI and is clearly competent to do so. There is no legal obligation on it to refer the matter to the PCNI if it considers that the test for revocation of a licence is not met.

Counsel for the applicant also submitted that this was a case where referral to the PCNI (and ultimately a revocation of the licence) was appropriate. Counsel was also critical of the Panel's failure to carry out further inquiries including affording the applicant the right to provide testimony as to the nuance of the offences and the impact that it had upon her. He argued that without a proper interrogation of these issues it was not possible for the panel to consider the extent of the risk presented by Beattie and whether it could be safely managed in the community.

The court noted that the Panel had the benefit of a pre-sentence report compiled by "LJ" who was an experienced probation officer qualified to carry out assessments as to the risks posed by terrorist related offenders. It also had access to medical evidence in the form of a psychiatric report on Beattie which dealt with his ability to plead to the charges. The court said it was clear from the detailed minutes of the consideration of the issue by the Panel that it applied the correct legal test, it considered all the relevant issues, and it came to a rational conclusion in relation to the recognised risk presented by Beattie and how it should be managed. The court concluded that the decision of the Department fell within the range of reasonable options open to it and cannot be considered as irrational or unlawful.

## Conclusion

The court identified no public law error in the decision under challenge and dismissed the application for judicial review.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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