

Judicial Communications Office

19 March 2019

IN THE MATTER OF AN APPLICATION BY ELIZABETH McGOWAN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

PSNI

Summary of Judgment

[1] Elizabeth McGowan, the Applicant in these proceedings, is the mother of David McGowan deceased (hereinafter "*the deceased*") who died in police custody on 30 May 2014.

[2] She appeals to this court against the judgment and order of Maguire J dated 21 December 2017 whereby her application for judicial review was dismissed.

[3] There is now no issue regarding anonymity.

[4] On 29 May 2014 the Applicant's son was detained by the PSNI in Lisburn station. The following day he died in a police cell. While the precise cause of his death is not agreed the Report of Autopsy states that it was due to the combined effects of alcohol and drugs, recording that he was moderately intoxicated with alcohol and had ingested at least three prescription drugs before being taken into custody.

[5] The custody sergeant (the "*officer*") on duty at the material time was initially suspended. Some five months later the suspension was revoked. The officer was assigned to administrative duties at PSNI HQ, entailing no contact with the public. The Applicant challenges the reinstatement and redeployment of the officer. Her case is that he should have remained suspended from all duties.

[6] Some 18 months later (May 2016) the Public Prosecution Service ("*PPS*") decided to prosecute the officer for the alleged offences of manslaughter and misfeasance in public office. The officer was again suspended from duty.

[7] In October 2018 the trial of the officer resulted in a jury verdict of not guilty directed by the trial judge.

[8] The following month the officer was again redeployed on PSNI HQ administrative duties entailing no contact with the public. This continues. The Police Ombudsman (NI) ("*PONI*") has not made any final decision regarding possible disciplinary action against the officer. Furthermore an inquest into the death of Mrs McGowan's son has not yet been held.

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[9] Mrs McGowan brought judicial review proceedings against the PSNI. She claimed that the restricted redeployment of the officer during the abovementioned period of some 18 months was unlawful, seeking the following remedies:

- (i) A declaration that the decision to reinstate the officer and the failure to suspend him until 10 May 2016 were arrived at in a manner incompatible with the Applicant's rights protected by Article 2 of the European Convention on Human Rights ("ECHR"), in contravention of the Human Rights Act.
- (ii) A declaration that the policy applied by the PSNI when arriving at these decisions was unlawful because it resulted in an unacceptable risk of a breach of the requirements of Article 2 ECHR.

[10] The High Court dismissed Mrs McGowan's application for judicial review. She appealed to the Court of Appeal ("*this Court*").

[11] The PSNI contended that the redeployment of the officer on restricted administrative duties was in furtherance of the statutory duties owed by them to the public. This, ultimately and in substance, was the reason for permitting him to return to work. No improper motive was alleged.

[12] In determining the appeal this Court recognises that there is scope for differing views and opinions. The context is, self-evidently, all important. In this case, care was taken to ensure that the officer would not perform the duties of a custody sergeant or, indeed, those of a police constable during the whole of his redeployment period. He was allocated purely administrative duties and his reassignment ensured that he was remote from the State investigation into the death. There is no suggestion of any lack of co-operation with PONI or the PPS on his part or that of PSNI. The reassignment of the officer concerned, and others, was, via the news media, in the public domain. There was no evidence of any public outcry or outrage. Nor was there any critical reaction on the part of the statutory policing watchdog, the NI Policing Board ("NIPB"). Furthermore, the reinstatement and reassignment of the officer was a temporary measure which was the subject of frequent reviews and, ultimately, was terminated when the PPS prosecution decision was formally notified.

[13] This court is mindful of the disappointment and objections of the family of the deceased, made known to PSNI through their solicitors' letters and, ultimately, reflected in these proceedings. The family's feelings and stance are understandable and attract a measure of sympathy. Furthermore (although unevidenced) it may be that certain other members of the Northern Ireland community disagreed with the reinstatement and redeployment action in a society where policing matters have frequently generated heated and polarised views.

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[14] This Court considers that the reinstatement and reassignment decision in November 2014, its subsequent maintenance and, ultimately, its discontinuance in the light of the formal PPS decision to prosecute the officer in May 2016 all clearly lay within the margin of appreciation available to the senior police officers concerned.

[15] This Court further considers that, as a matter of law, the reinstatement and redeployment of the officer was unrelated to the State investigation into the death of Mrs McGowan's son.

[16] It is clear that at all stages there was appropriate communication between a PONI liaison officer and the family of the deceased. This family involvement was enhanced by the steps taken by their solicitors during the relevant period.

[17] This Court concludes that Article 2 ECHR did not apply to the actions involving the reinstatement and redeployment of the officer following the death, with the consequence that there was no breach of Mrs McGowan's human rights.

[18] Insofar as the Court's primary conclusion does not dispose of the challenge to the relevant PSNI policy, this Court is satisfied that the policy can be operated and applied in a manner compatible with Article 2 ECHR.

[19] The final element of Mrs McGowan's challenge entails the contention that the decisions involving the reinstatement and restricted redeployment of the officer during the relevant period were unreasonable in the narrow legal sense. This Court considers that having regard to the history of policing in Northern Ireland, the political settlement in 1998, the extensive statutory intervention which followed and the intensity of the enduring public debate about certain structural and operational aspects of policing in this jurisdiction, considered in tandem with the material facts of this case, the decision to reinstate and redeploy the officer in November 2014 and to maintain this *status quo* until May 2016 calls for careful judicial scrutiny applying a standard of review exceeding that of bare rationality. This court has subjected the impugned decision and its subsequent maintenance to more penetrating scrutiny.

[20] Both the impugned decision and the decision making process, coupled with the subsequent reviews, bear the hallmarks of careful and conscientious consideration on the part of those concerned. A reasoned justification was identified at the material time (November 2014) and released into the public domain subsequently and this endured thereafter to the stage of the formal PPS decision to prosecute the officer.

[21] This Court rejects the unreasonableness ground of challenge.

Omnibus Conclusion

[22] For the reasons given, this Court affirms the judgment and order of the High Court and dismisses this appeal.

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NOTES TO EDITORS

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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