

Neutral Citation no. (2000) 2085

<i>Ref:</i> CARE3208

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

<i>Delivered:</i> 18/ 05/ 00

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

**IN THE MATTER OF AN APPLICATION BY EVELYN WHITE
FOR JUDICIAL REVIEW**

CARSWELL LCJ

Introduction

In this application the applicant, a resident of the Garvaghy Road area of Portadown, challenges the validity of the appointment by the Secretary of State of the members of the Parades Commission for Northern Ireland (the Commission) and seeks a declaration that their appointment was unlawful, together with other remedies by way of mandamus, prohibition and an injunction. The gravamen of her complaint is that as eventually constituted the Commission contained no women members, which she claims is in breach of the terms of the Public Processions (Northern Ireland) Act 1998 (the 1998 Act) and is also invalid on a number of other grounds. The case made by the Secretary of State, the respondent to the application, is that in the circumstances of the case it became impracticable to appoint a woman member, which had been his original intention, and that there was no breach of the 1998 Act or any other obligation imposed upon him by the law.

Intervention by the Human Rights Commission

At the commencement of the hearing counsel instructed on behalf of the Human Rights Commission for Northern Ireland applied for leave to intervene and to present an argument in support of the applicant in the course of the proceedings. Kerr J had earlier given the Human Rights Commission leave to present a written submission but had not then given leave to intervene. I respectfully agree that that was an advisable course to adopt. Where a judge at the stage of giving leave to apply for judicial review or on review of the case before the substantive hearing receives an application from a body such as the Human Rights Commission for leave to intervene, it would, I suggest, be the most appropriate course at that stage to restrict any leave which he may give to furnishing a written submission. The judge who hears a subsequent application for leave to intervene will then be able to read this and determine whether oral argument from the body would be of sufficient assistance to justify adding an extra party to the application.

I do not think that it would be profitable to attempt to lay down categories of cases where it would be justified to give leave to an intervener to present oral argument at the hearing of a substantive application, but in my view leave should be very sparingly given, certainly at first instance. Higher appellate tribunals may perhaps derive greater assistance from an intervener in some cases, but I think that a judge at first instance should give leave only when he considers that there is an issue of sufficient consequence which cannot be adequately dealt with by counsel for one of the parties to the application. In the present case I did not consider, having read the written submission, that it was such a case, and accordingly I declined to give leave to intervene.

The Process of Appointment

The Commission was established by the 1998 Act, section 2 of which defined its functions:

"2(1) It shall be the duty of the Commission -

- (a) to promote greater understanding by the general public of issues concerning public processions;

- (b) to promote and facilitate mediation as a means of resolving disputes concerning public processions;
 - (c) to keep itself generally informed as to the conduct of public processions and protest meetings;
 - (d) to keep under review, and make such recommendations as it thinks fit to the Secretary of State concerning, the operation of this Act.
- (2) The Commission may in accordance with the following provisions of this Act -
- (a) facilitate mediation between parties to particular disputes concerning proposed public processions and take such other steps as appear to the Commission to be appropriate for resolving such disputes;
 - (b) issue determinations in respect of particular proposed public processions.
- (3) For the purposes of its functions under this section, the Commission may, with the approval of the Secretary of State -
- (a) provide financial or other assistance to any person or body on such terms and conditions as the Commission may determine;
 - (b) commission research."

Advance notice of a proposal to organise a public procession has by section 6 to be given to the RUC, with details of date and time, route, numbers likely to take part, bands and arrangements for control. Under section 8 the Commission is empowered to issue a determination in respect of a proposed public procession, including conditions as to the route of the procession.

The composition of the Commission is laid down by Schedule 1. It is to consist of a chairman and not more than six other members, appointed for a term not exceeding three years by the Secretary of State, who may by order vary the number of members. Paragraph 2(3) provides: "The Secretary of State shall so exercise his powers of appointment

under this paragraph as to secure that as far as is practicable the membership of the Commission is representative of the community in Northern Ireland."

The term of office of the first chairman and members of the Commission was due to expire on 18 February 2000. In October 1999 the Secretary of State put in train the process of appointment of a fresh set of members, to take up office on 19 February 2000 for a two-year term. The appointment of the chairman was dealt with in a separate process. Advertisements inviting applications for appointment were placed in the press in early October 1999, setting out the function of the Commission and the terms of appointment of the members. The advertisement described the skills required for membership of the Commission as follows:

"Assessing/Evaluating ... able to evaluate options from complex information and take account of legal constraints, with the capacity to assess the probability of future events, leading to clear and well informed judgments.

Decision Making ... capable of responding in controversial situations and determining courses of action under significant time constraints, often during periods of continuous pressure. This requires real intellectual stamina and resilience.

Team Working ... a high level of interpersonal skills enabling the individual to work within a diverse group.

Presentation ... skilled in presenting issues and judgment in different contexts, including media interviews."

The advertisement also stated:

"Completed forms should be returned by 5th November 1999. Any forms received after that date will not be considered. The Northern Ireland Office is committed to equality of opportunity, and appointments will be made on merit."

In addition to the advertisements in the press for applications, the Minister of State wrote to the leaders of all the political parties and the main churches, asking them to encourage anyone whom

they considered appropriate to apply, and a similar request was made to the Irish Government.

The Northern Ireland Office did not in the event refuse to receive applications submitted after 5 November 1999, since it was given to understand, in consequence of the requests to the political parties, that some applications would be received after that date. Two such applications were received on 8 and 16 November respectively, then another unexpected application came in on 17 November. The NIO decided to accept all of these, since it had taken no step to consider any of the applications submitted by 5 November.

A total of 82 persons applied for membership of the Commission, of which 46, or 83%, were male and 14, or 17%, were female. The annex to this judgment contains tables specifying the total number of applicants, those shortlisted and interviewed, those who passed the merit test and those proposed for membership. An interview panel was convened to consider the applications and prepare a short list. It did so by assessing from the application forms the extent to which each candidate possessed the skills and qualities requisite for appointment which had been set out in the advertisements. The candidates had been asked to give an account in their forms of how they had demonstrated these skills and qualities. The number of candidates shortlisted was 23, of whom three, or 13%, were female. The interviewing panel then interviewed the candidates on the short list and assessed in respect of each the level of his or her relevant skills and qualities, the object being to ensure that each met the standard required for appointment in respect of all the skills and qualities. Those who did not satisfy this test were excluded, bringing the total down to 16, consisting of 13 Protestant males, one Catholic male, one Protestant female and one Catholic female. These 16 persons were ranked in order of merit by the panel, which recommended to the Secretary of State that he should appoint the first six. Those six persons consisted of four Protestant males, one Catholic male and one Catholic female. The reserve list, being the remainder of the 16 ranked persons, then consisted of one Protestant female and 13 Protestant males.

The Secretary of State accepted the panel's advice and the NIO approached the six persons

selected. Initially all of them indicated their willingness to accept appointment, and arrangements were made to announce the composition of the new Commission on Monday 7 February 2000. On Friday 4 February the female appointee informed the NIO that she would not accept an offer of appointment.

The Secretary of State was then faced with the necessity to adopt one of several possible courses of action, none of which was ideal. He considered and rejected the following as undesirable, for the reasons set out against each:

(a) to go to the reserve list -- as the persons on this list were all Protestants, the appointment of one of them would have meant an undesirable religious imbalance in the membership of the Commission;

(b) to appoint a Catholic female who did not get on to the reserve list -- he considered that it would be contrary to the requirements of the general law prohibiting discrimination on grounds of sex or religion to appoint a woman who was not as well qualified as those on the reserve list (and did not reach the merit threshold for the post) in order to maintain a religious balance;

(c) to put back the date on which the new Commission was to take up office -- there would then have been a period of indeterminate length when no Commission was in operation;

(d) to let the new Commission commence its work without filling the vacancy -- it would then have operated for a period with a religious imbalance until a suitable appointment could be made.

It might perhaps have been possible to re-appoint the existing Commission for a period, if its members could be persuaded to continue in office until a suitable appointment could be made. Mr Watkins refers to this possibility in his affidavit, but does not specify the reasons against it. I am therefore not aware whether all the outgoing members could all have been persuaded to remain in office and were all in a position to do so, but this would have been a necessary precondition if balance were to be maintained. In the event a different expedient was adopted by the Secretary of State, as Mr Watkins sets out in paragraph 14 of his affidavit:

"The Secretary of State on 4 February 2000 decided that in the exceptional circumstances which had arisen we should approach a person directly who we judged met the necessary competences. On this basis an existing member of the Commission who had not applied for membership was approached but he declined to consider appointment. An approach was then made to Mr Quinn who had considerable experience in the context of the parades issue and had been a facilitator in talks concerning the Drumcree parade in 1998 and 1999. The Secretary of State met Mr Quinn personally on 7 February 2000 and Mr Quinn indicated that he would accept appointment."

He then reported to the Commissioner for Public Appointments what he proposed to do, explaining the circumstances to her. She gave her approval to the method of appointment, stating that she was satisfied that the NIO had made every effort to ensure both that the Commission was representative of the community, as far as practicable, and had been appointed on merit.

The Issues

The issues which arose may be summarised as follows:

1. Whether the Secretary of State ensured that the membership of the Commission was representative of the community, and if not, whether it was practicable for him to do so.
2. Whether the Secretary of State took into account the proper factors in making the appointments.
3. Whether the appointments were invalidated by failure to follow proper appointing procedures.
4. Whether the appointments were invalidated by failure to comply with section 75 or section 76 of the Northern Ireland Act 1998.
5. Whether the appointments were unreasonable in the *Wednesbury* sense.

The Representative Nature of the Membership

The main theme of Mr Macdonald's argument on behalf of the applicant was that because of the absence of female members the membership of the Commission could not be said to be

representative of the community in Northern Ireland. Mr Weatherup QC for the respondent accepted that the gender imbalance made the membership unrepresentative, but argued that the Secretary of State had done his best in the circumstances to secure mixed gender membership and that it had been impracticable to do so. Mr Macdonald also disputed the validity of the Secretary of State's view that it would have been unlawful for him to become involved in acts of positive discrimination by appointing a woman who was less qualified than a male candidate who was not appointed.

I am not altogether persuaded that the phrase "representative of the community" in paragraph 2(3) of Schedule 1 to the 1998 Act was intended to mean that there should be gender balance, or at least some representation of each gender in the make-up of the Commission. Counsel drew my attention to the view expressed in paragraph 12.33 of the North Report, which led to the enactment of the 1998 Act:

"The Parades Commission would need to have a geographical spread, and both cross-community and gender balance. We were struck, on several occasions during our meetings, with the different approaches of men and women to the parading issue. We think it is important that women should have an effective voice on the Parades Commission."

While it is obviously desirable that the Commission should not be composed entirely of persons of one gender, the legislation does not refer in terms to that factor. The phrase in paragraph 2(3) has to be taken in its context and against the regular usage of the word "community". As Mr Watkins observed in paragraph 17 of his affidavit,

"The parades or marching issue is primarily an issue which engages the sectarian division within Northern Ireland. It is that division which, in a body as small as the Commission, must be the principal focus of the Secretary of State in making appointments to it."

The phrase in question does not refer to gender or to the make-up of the population of the Province. It refers specifically to "the community", which in the context of parades is constantly used to

denote the different sectarian blocks – see, for example, the reference in paragraphs 1.15 and 1.16 of the North Report to "another part of our community" and "the other part of the community", which are plainly references to the sectarian divide. In the context of the 1998 Act, therefore, it is in my view a tenable proposition, notwithstanding Mr Weatherup's concession, that paragraph 2(3) imposes a requirement only to ensure sectarian balance in the composition of the Commission. I should, however, prefer to have further argument directed specifically to this point before attempting to decide it finally, and in view of my conclusions on the practicability issue it is not necessary to do so in this judgment.

Practicability

The Secretary of State is enjoined by paragraph 2(3) of Schedule 1 to the 1998 Act to ensure that the membership of the Commission is representative of the community "as far as practicable". This phrase appears frequently in statute law and has been interpreted in many authorities, but it is always necessary to bear in mind the context of the statutory provision in which it appears. Some common threads run through the case law. "Practicable" is a more stringent standard than "reasonably practicable": see, eg, *Gregson v Hick Hargreaves & Co Ltd* [1955] 3 All ER 507 at 516, per Parker LJ. In many contexts it means feasible, which is probably the nearest to a synonym for the term. Perhaps the most apposite comment on the word is that of Boreham J in *Brooks v J & P Coats Ltd* [1984] 1 All ER 702 at 719g, where he was dealing with a factory occupier's statutory duty under section 4 of the Factories Act 1961 to make effective and suitable provision to render harmless, so far as practicable, all such fumes, dust etc as might be injurious to health. He stated in the course of his judgment:

"I take practicable in this context to mean a precaution which could be taken or undertaken without practical difficulty."

In the present context the obligation placed upon the Secretary of State to ensure the representative nature of the membership of the Commission is qualified by the provision that it is to be

representative of the community as far as is practicable. Certain practical limits are placed by the small size of the Commission upon his ability to make the membership representative. The need to observe the merit principle in appointments constitutes another very important practical constraint. Limitations of this type are no doubt what the legislature envisaged when requiring the Secretary of State to ensure that the membership was representative of the community. The phrase is in my opinion capable of encompassing practical difficulties such as those encountered in the present case, when a prospective appointee pulled out at the last minute, it was desirable to proceed without delay to make the appointments to reconstitute the Commission, and the appointment of a candidate from the reserve list would have made for religious imbalance, as would leaving the vacancy unfilled for a period while another appointment was made. Because of those practical difficulties and the need to appoint on merit and avoid religious imbalance, the Secretary of State was unable to do what he had originally intended to do, appoint at least one woman to the Commission. If the all-male membership of the Commission means that it is not representative of the community – a point on which I do not propose to rule – he took all practicable steps open to him to make it so representative.

Mr Macdonald, implicitly acknowledging the force of this argument, then relied on two contentions. He argued first that even if the Secretary of State had been stymied by events from achieving the object of making the membership properly representative, he had left himself in that position by the inadequacy of his original trawl for candidates. I do not think that this contention is well founded on the facts of the case. The process of advertisement and trawl produced a field of 68 candidates, including 14 women of mixed denominations. Although the number of appointable women was reduced to two during the sifting processes, that is insufficient proof that the net was cast insufficiently widely in the first place or that if any other method had been chosen there would have been a wider selection of suitable female candidates. Secondly, Mr Macdonald submitted that the Secretary of State was entitled to appoint a Catholic woman to replace the candidate who

dropped out, notwithstanding the fact that such an appointee would have been less well qualified for appointment than those on the reserve list. He argued in support of this contention that positive discrimination of this kind would have been lawful, notwithstanding the general anti-discrimination legislation, in order to fulfil the requirements of the 1998 Act. The basis for this argument was Article 78 of the Fair Employment and Treatment (Northern Ireland) Order 1998, which repealed and re-enacted with amendments the Fair Employment (Northern Ireland) Acts 1976 and 1989. The material portion is Article 78(1)(a), which re-enacted section 41 of the 1976 Act:

- "78.—(1) Nothing in this Order renders unlawful anything done in order to comply with a requirement –
- (a) of primary legislation passed or made before the date on which this Order is made ..."

Mr Macdonald argued that since the 1998 Act was passed before the 1998 Order Article 78(1)(a) applied to preserve the lawfulness of acts done in pursuance of the requirement contained in paragraph 2(3) of Schedule 1. Accordingly, he submitted, the Secretary of State was bound to make the membership of the Commission representative of the community, and could with impunity indulge in positive discrimination for that purpose.

This argument disregards the fact that the obligation in paragraph 2(3) is not absolute, but is qualified by the provision that he is to make the membership representative as far as is practicable. Moreover, the same argument cannot be advanced in respect of sex discrimination, because of the terms of Article 52 of the Sex Discrimination (Northern Ireland) Order 1976, which contains a provision similar to that of Article 78 of the Fair Employment and Treatment (Northern Ireland) Order 1998. The 1998 Act is certainly not an earlier enactment than the 1976 Order and therefore Article 52 of the latter cannot operate to preserve the lawfulness of acts done to comply with any requirement in the former. The discrimination which it is suggested that the Secretary of State

should have exercised was sex discrimination, not religious discrimination, and it would, as the Secretary of State correctly apprehended, have been unlawful for him to appoint a less qualified woman ahead of a better qualified man. I accordingly do not consider that these contentions advanced by Mr Macdonald are well founded.

Taking Matters into Account, Procedural Fairness and Legitimate Expectation

Taking Matters into Account

Paragraph 3(ii) of the applicant's statement sets out a number of matters which it is claimed the Secretary of State failed to take into account in reaching his decision:

"(ii) The Secretary of State failed to take into account relevant factors in arriving at the said decisions, including, in particular the following factors:

- (a) the purposes, powers and duties of the Commission, in particular, its power to adjudicate on contentious parades are such that its members must be and must be seen to be impartial and independent;
- (b) the purposes, powers and duties of the Commission are so that its composition must be sufficiently balanced to the extent to which it is representative of the community in order that it may discharge its functions fairly and objectively;
- (c) the Independent Review of Parades and Marches 1997 ('The North Report') considered that 'the composition of the Parades Commission will be of critical importance to its success' and that the Commission will 'need widespread acceptance', command respect, be balanced and be free from external political pressure (Paragraphs 12.31-35);
- (d) the North Report recommended that the members of the Commission should be appointed in accordance with the current procedures for appointments to public bodies of this kind, taking into account the implementation of the recommendations in Lord Nolan's Report of 1995;

- (e) The appointments should be made in accordance with the Policy Appraisal and Fair Treatment (PAFT) Guidelines;
- (f) The statement made by Minister Adam Ingram at Stormont House on 27th October 1999 that members of the Commission would be appointed in accordance with the Nolan procedures, creating a legitimate expectation that these procedures would be adhered to in the appointment process;
- (g) In view of the limited supervisory jurisdiction exercised by the Court in respect of decisions made by those with the power to adjudicate on contentious parades (see *Re Conor Murphy* [1991] NIJB 88) it is particularly important to ensure that the composition of the decision making body is fair and balanced and that as far as is practicable the membership of the Commission is representative of the community in Northern Ireland;
- (h) There are no women members of the Commission;
- (i) There are only two Catholic and one Nationalist members of the Commission."

It is clear from the evidence which I have discussed that the Secretary of State did have regard to the factors set out in (a), (b), (c), (g), (h) and (i). The purport of sub-paragraphs (d) and (f) is that the Secretary of State should have had regard to the appointing procedures contained in the Guidance published by the Commissioner for Public Appointments. He obviously did have regard to them, for he went so far as to consult the Commissioner before appointing Mr Quinn. The applicant's complaint is a rather different point, that he did not follow them to the letter. In the ordinary way there is no legal obligation upon a minister to do so, and an appointment is not invalidated if he fails to follow them. The applicant claims, however, that an undertaking was given to the Garvaghy Road Residents Coalition on 27 October 1999 by the Minister of State Mr Adam Ingram on behalf of the Government that these procedures would be followed, and it was submitted on her behalf that this gave rise to a legitimate expectation that this would be done. It is

also contended in paragraph 3(iii) of her statement that on this ground the manner in which the Secretary of State arrived at his appointing decisions was procedurally unfair.

Procedural Fairness

I can deal with the last point first. Three applications were received after the closing date specified in the press advertisements, but were considered along with the others. It appears that one at least of these applicants was eventually appointed. Mr Watkins states, however, at paragraph 8 of his affidavit that no consideration had been given to the other applications by the time the last of the late entries had been received. All the applications were then considered together, and I cannot see that any prejudice was thereby caused to any of those whose applications were submitted by the stated closing date or that the process was unfair to them. It has not been suggested that there are any other persons who would have applied, and might have been successful, if they had known that late applications would be received. When it came to the appointment of Mr Quinn, the Guidance was not followed, because of the exigencies of the situation, but before he made the appointment the Secretary of State consulted the Commissioner in order to obtain her views on the propriety of proceeding as he proposed to do, and she approved his course of action. I therefore do not consider that there was any procedural unfairness.

Legitimate Expectation

It is suggested that Mr Ingram's assurance gave rise to a legitimate expectation that the Commissioner's Guidance would be followed in all details and that failure to do so in the respects to which I have referred invalidates the procedure. I am unable to accept this. In the first place, the evidence contained in paragraph 11 of the applicant's affidavit is insufficiently precise or specific to ground a legitimate expectation, failure to fulfil which would invalidate the procedure. Secondly, the Guidance was followed in all matters of substance except the two particular respects, departures for which there was in the circumstances good reason and which caused no ascertainable prejudice

to any person. Thirdly, the contention would have to be founded on a "substantive" legitimate expectation, and it is by no means clear that this, rather than a "procedural" legitimate expectation, represents the law today. I do not propose, however, in this judgment to pursue or decide this last point, as the matter is concluded against the applicant without it.

PAFT and sections 75 and 76 of the Northern Ireland Act 1998

In paragraph 3(ii)(e) of her statement the applicant claimed that –

"The appointments should be made in accordance with the Policy Appraisal and Fair Treatment (PAFT) Guidelines."

In paragraph 3(iv) she claims that the Secretary of State –

"Made appointments in circumstances where the making of the said appointments failed to comply with the statutory obligations on public authorities required by Section 75 of the Northern Ireland Act 1998 and constituted discrimination on the ground of political opinion, contrary to Section 76 of the Northern Ireland Act 1998."

As Kerr J held in *Re Armstrong's Application* (1998, unreported), the PAFT Guidelines are not applicable to the appointment of members to the Commission. Nor does section 75, which is a statutory incorporation of PAFT, apply to the Northern Ireland Office. Section 76(1) provides:

"It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion."

I assume for the purposes of considering this issue that the word "discriminate" is to be construed as having the same meaning as in the fair employment legislation, treating the persons concerned in a less favourable manner than persons of a different political opinion would be treated. I do not consider that the applicant has established that the Secretary of State was guilty of any discrimination against any persons on the ground of political opinion. He was scrupulous in his attempt to achieve a community balance, which reflects broadly not only religious but political differences. Mr Macdonald complained that there was a shortage of nationalists in the make-up of

the Commission membership. Mr Weatherup disputed the correctness of this assertion, but it appears quite clear in any event that there is no evidence of any discrimination against persons holding nationalist opinions. I therefore reject this ground of complaint.

International Conventions

I have given consideration to the written submission furnished by the Human Rights Commission for Northern Ireland. I have already dealt with that part of the submission which relates to domestic law and need not repeat my conclusions.

It goes on to set out the provisions of a number of international conventions, suggesting that these may be material to the issues in the present application. I do not find it necessary in this judgment to enter into the question whether any person may have a legitimate expectation arising out of the terms of such conventions to which the Government has adhered. I do not consider that any of the provisions of the several conventions cited by the Human Rights Commission adds anything of consequence to those of domestic law. The International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women and the Convention on the Political Rights of Women each contain provisions for the elimination of discrimination. I do not see any provision in any of them which might be said to impose any obligation germane to the issues in the present case which is not already imposed by domestic law. Nor do I consider that the provisions of the Framework Convention for the Protection of National Minorities assist the court in dealing with those issues. To dilate further on these conventions would be an unnecessary elaboration and lengthen this judgment unnecessarily, and I do not propose to spend further time on them. I would express the hope that if outside bodies wish in future to apply to intervene in litigation or present written submissions, they will confine themselves strictly to relevant and apposite matters which directly address the issues before the court.

Conclusion

For the reasons which I have given in detail in this judgment I reached the conclusion which I announced after the conclusion of the hearing, that the applicant has not made out any of the grounds on which she relied in support of her case and the application must be dismissed.

ANNEX

**Applicants for Membership of the Parades Commission
by Religious Background**

	Male	Female	Total
Protestant	46	6	52
Roman Catholic	18	6	24
Other/Unspecified	4	2	6
Total	68	14	82

**Breakdown by Religious Background of Candidates
Shortlisted and Interviewed**

	Male	Female	Total
Protestant	15	1	16
Roman Catholic	5	2	7
Total	20	3	23

**Breakdown by Religious Background of Candidates
who passed the Merit Test**

	Male	Female	Total
Protestant	13	1	14
Roman Catholic	1	1	2
Total	14	2	16

**Breakdown by Religious Background of Candidates
Proposed for Membership of the Commission
by the Interviewing Panel**

	Male	Female	Total
Protestant	4	0	4
Roman Catholic	1	1	2
Total	5	1	6

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

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**IN THE MATTER OF AN APPLICATION BY EVELYN WHITE
FOR JUDICIAL REVIEW**

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JUDGMENT

OF

CARSWELL LCJ
