

Judicial Communications Office

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LORD CHIEF JUSTICE DISMISSES APPLICATION TO QUASH DECISION TO INTRODUCE TASERS IN NORTHERN IRELAND

Summary of Judgment

The Lord Chief Justice, Sir Declan Morgan, sitting today in the High Court, dismissed an application seeking to quash the decision to introduce tasers for use by the Police Service of Northern Ireland.

The application was brought by an eight year old girl. She was seeking two orders: one quashing the decision of the Chief Constable to introduce tasers for use by the PSNI, and one quashing the decisions of the NI Policing Board ("the Board") that the deployment of tasers was an operational matter for the Chief Constable and its decision to support the Chief Constable in his proposal to introduce tasers.

The application identified four issues which the court needed to determine:

- 1. That the Board erred in concluding that the decision to introduce tasers was an operational decision for the Chief Constable.** The Lord Chief Justice reviewed the legislation establishing the Board and setting out its role and functions. He concluded that the decision to provide and deploy tasers was an operational decision wholly for the Chief Constable and not a decision for the Board.
- 2. The decision to proceed with the introduction of tasers on a pilot basis despite the fact that an Equality Impact Assessment ("EQIA") had not been completed.** The Northern Ireland Act 1998 sets out what a public authority must do in order to meet its duty to promote equality of opportunity. This might include the publication of an EQIA on the likely impact of a proposed policy. The court heard evidence of the PSNI's justification for its decision to proceed with a pilot scheme while the EQIA process was continuing. The PSNI had obtained information that it was the only police force in GB and Ireland that did not have tasers available for use as a less lethal option to firearms. Two human rights advisers retained by the Board had advised that they were satisfied in substance that the draft

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Operational Procedure and Guidance prepared by the PSNI complied with the Human Rights Act 1998. The advisers were satisfied that there was clear evidence that there was a capability gap between the PSNI and other police forces and the case for need for the tasers had been met. They were also content with the training provided to those officers who were to take part in the operational pilot.

The court also heard that the Chief Constable discussed his proposal with the Board and the Equality Commission for Northern Ireland. Following these discussions he decided both to engage in an equality screening exercise of his policy and to conduct an EQIA. The Lord Chief Justice said this suggested a preparedness to enter into dialogue and to alter one's position as a result of that dialogue. He also said that it was of significance that the human rights advisers were satisfied that the deployment, operational guidance and training were in accordance with the Human Rights Act 1998 even though the Board were opposed to the pilot being conducted prior to the EQIA. The Lord Chief Justice concluded that he was "entirely satisfied that the decision to deploy tasers on a pilot basis was well within the range of rational decisions that was available to the Chief Constable ... and therefore the decision to deploy in the circumstances did not constitute a breach of section 75 of the Northern Ireland Act 1998".

3. Whether the applicant is a victim for the purposes of the Human Rights Act 1998. The court heard that the applicant's grandmother was killed in disputed circumstances in 1981 by a plastic bullet fired by police. The child lives in an area of west Belfast where a feud between two families gives rise from time to time to incidents of violence and disorder on the streets. The court was also told that evidence suggests that children are vulnerable to the use of tasers. The Lord Chief Justice said that "no factual scenario was put forward which raised any material risk that the applicant would be exposed to the possible use of a taser". He did not accept that it could be said that the child was directly affected by the decision to introduce tasers either on a pilot basis or permanently and concluded, therefore, that she is not a victim for the purpose of the Human Rights Act 1998.

4. Whether the decision to introduce tasers for use by the PSNI is contrary to Article 2 of the European Convention on Human Rights ("ECHR"). Article 2 protects the right to life and applies in any circumstances in which the state deprives the individual of life irrespective of whether the force used is described as lethal, non-lethal or potentially lethal. The Lord Chief Justice referred to the PSNI operational guidelines which indicated that the use of tasers would be justified "where the officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury". This test is set at a slightly lower threshold than that for the use of

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lethal force which requires an honest belief that such use is absolutely necessary to prevent death or serious injury. The guidance is intended to cover a situation where an officer honestly believes that the situation is in immediate danger of escalating to a point where the use of lethal force may be required. The human rights advisers retained by the Board accepted that the test proposed by the Chief Constable complied with the ECHR. The Lord Chief Justice said that in his view, they were right to do so. He concluded that the procurement and deployment of tasers by the Chief Constable did not constitute a violation of Article 2 of the ECHR.

For these reasons the Lord Chief Justice dismissed the application for judicial review.

NOTES FOR 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 Court Service website (www.courtsni.gov.uk).

ENDS

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