

Judicial Communications Office

Tuesday 20 September 2011

COURT DIRECTS APPROACH FOR DEALING WITH BARRING LIST CASES

Judge Burgess, Recorder of Belfast, sitting in Belfast Crown Court today, ruled that defendants whose names were automatically placed on the Independent Safeguarding Authority's Barring List disqualifying them from working with children should have the opportunity to make an application to the court to argue why such an order should not be made.

Article 23 of the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) provides that where a defendant aged 18 or over at the time of the offence is convicted of a listed offence and sentenced to imprisonment or detention of 12 months or more or made subject to a Hospital Order or Guardianship Order, the Court will make a disqualification order. If the Court does not make an order, it must state its reasons for not doing so and cause those reasons to be included in the record of the proceedings.

Following the McDermott brothers' case, the Northern Ireland Courts and Tribunals Service carried out a review of court orders that had been made in sexual offence cases. The review identified a number of cases where the criteria for making a disqualification order under Article 23 of POCVA had been met but no order was made nor reasons given for not making the order. The Lord Chief Justice agreed that these cases should be referred back to the judge to confirm if it was the intention that a disqualification order be made. In those cases where the judge intended to make an order, arrangements would be made to have the case relisted in order to afford the defendant the opportunity to make representations.

Solicitors for two defendants, TM and WD, sought an application for judicial review to the Divisional Court of this approach. They claimed it would lead to the court making a further order and that this would not be appropriate given the passage of time since the defendants were sentenced. The Divisional Court delivered its judgment on 10 August 2011. It remitted the matter back to the Crown Court to decide how this matter should be decided. This was the basis for the ruling given by the Recorder today.

The Recorder said he believed the defendants had misunderstood the nature of the legislation. The starting point is that the provisions are mandatory, ie that where the conditions are met then an order "must" be made. Article 23(5) of POCVA allows the court on any submission to it to consider whether the circumstances of an individual case would make it unlikely that the individual would commit any further offence against a child. If so, the court has the power not to make an order. The Recorder stated that in each of these cases no such submission was made and therefore the court gave no consideration to disapplying what would otherwise be a mandatory obligation to impose the orders.

The Recorder said he intended to proceed on the basis that, since the impact of a mandatory order could place defendants at the risk of losing their liberty, the court should revisit each

Judicial Communications Office

case if requested by an applicant in order to consider whether it should exercise its power not to make an order. He considered this approach was in the interests of justice and in keeping with the Human Rights Act. Each defendant will be given 21 days in which to make an application. Pending the hearing of any such applications, the restriction under Article 23 of POCVA will continue to apply to each defendant and their name will be included on the Independent Safeguarding Authority's "Barring List" relating to children.

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

ENDS

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