

THE HIGH COURT

Record Number: 2006 No. 299 JR

BETWEEN

WILLIAM GOODISON
AND
SUPERINTENDENT D.J. SHEAHAN

APPLICANT

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 2nd day of May 2008

1. The applicant describes himself in his grounding affidavit herein as a long term recreational shooting enthusiast, and states that for over thirty years he has held firearm certificates issued to him in respect of two double barrel shotguns, and one rifle of .220 inches, pursuant to the provisions of s. 3 of the Firearms Act, 1925, as amended ("the Act"), and has never been refused an application for such a certificate until the 7th October 2005 when his application for a firearm certificate in respect of a Glock 9mm semi-automatic pistol was refused by letter of that date for the reasons set forth therein.

2. That decision to refuse him a firearm certificate in respect of that particular weapon is the subject of the present application, wherein he seeks an order of *Certiorari* quashing that decision, as well as a declaration that the decision is *ultra vires* and without any basis in law. Leave to seek these reliefs by way of judicial review was granted to the applicant by order of the High Court dated 13th March 2006.

The relevant statutory provisions

3. Before dealing with other relevant facts and the legal submissions of the parties I will set out certain relevant provisions contained in the Act.

Section 3 (1) empowers a superintendent to grant a firearm certificate and provides as follows:

(1) The Superintendent of the Garda Síochána of any district may, subject to the limitations and restrictions imposed by this Act, upon the application of any person residing in such district and upon the payment by such person of the fee (if any) for the time being required by law, grant to such person a firearm certificate.

4. There are a number of other subsections in s. 3, but none are relevant on the present application.

Section 4 provides for three matters of which such a superintendent must be satisfied before granting a firearm certificate:

4. Before granting a firearm certificate to any person under this Act the superintendent of the Garda Síochána shall be satisfied that such person –

(a) has a good reason for requiring the firearm in respect of which the certificate is applied for, and

(b) can be permitted to have in his possession, use, and carry a firearm or ammunition without danger to the public safety or to the peace, and

(c) is not a person declared by this Act to be disentitled to hold a firearm certificate.

5. A consideration of paragraphs (a) and (b) of s. 4 are central to the present application, since they circumscribe the bases on which the superintendent could, as in this case, make a decision to refuse the firearm certificate applied for by the applicant. Paragraph (c) has no relevance to this applicant.

6. A power to revoke a firearm certificate appears in Section 5 of the Act which provides:

5. The superintendent of the Garda Síochána of the district in which the holder of a firearm certificate resides may at any time revoke such certificate if he is satisfied that the holder of such certificate –

(a) has no good reason for requiring the firearm to which the certificate relates, or

(b) is a person who cannot, without danger to the public safety or to the peace, be permitted to have a firearm in his possession, or

(c) is a person who is declared by this Act to be disentitled to hold a firearm certificate, or

(d) where the firearm certificate limits the purpose for which the firearm to which it relates may be used, is using such firearm for purposes not authorised by the certificate.

Factual background

7. On about the 6th October 2004, the applicant made a written application for a firearm certificate for the Glock 9mm pistol already referred to which he had purchased from an authorised dealer but had not yet taken possession of pending the granting of the certificate. While he had already been granted certificates for two shot guns and a rifle, he had never applied for a certificate for a pistol because, according to his grounding affidavit, there had been a long-standing fixed but non-statutory policy that a certificate would not be granted for a pistol. He states that this policy emanated from the Minister for Justice, Equality and Law Reform and was directed to all superintendents with regard to the exercise of their discretion under s. 3 of the Act.

8. He has exhibited a number of letters received in recent years by other applicants (with their consent) from a number of different Garda superintendents who have refused certificates for pistols based on such a policy. He has exhibited also a letter dated 10th April 2002 from the Department of Justice, Equality and Law Reform which described the policy as follows:

"The policy regarding the licensing of firearms is that, following a Government Decision in 1972, the Garda Síochána only

licence sporting firearms, i.e. shotguns having barrels of not less than 24 inches in length, unrifled air guns and rifled firearms of a calibre not exceeding .22 inches. Crossbows, which were classified as firearms in 1990 are also licensed. A further Government Decision in 1993 replaced this policy to allow for the licensing of bolt action rifles of a calibre up to .270 for the purpose of deer hunting and target shooting only.

The policy is not set out in a statutory instrument."

9. The applicant avers that this policy no longer exists as a result of a number of court challenges by unsuccessful applicants for such certificates. According to his affidavit, a situation now exists where some superintendents around the country, in the exercise of their discretion, have commenced issuing such certificates in respect of firearms which exceed .22 calibre.

10. The applicant states that he was glad to see the reversal of what had been a rigid policy of not issuing certificates for such weapons, since it opened up the possibility for him that he could compete and participate in a sport which he loves, and he set about the purchase of such a weapon for use in target practice and for competitive use at gun clubs. He also states that the reversal of this policy has led to a proliferation of pistol shooting in the State, and that there are now a number of new pistol clubs and frequent competitive events. It is not disputed on this application that the applicant is a bona fide recreational shooting enthusiast.

11. Having submitted his application to his local Garda station for a certificate for the Glock 9 mm pistol. According to the first replying affidavit filed by the respondent the application was "processed" by a Garda Killeen, and the applicant states that he was informed by Garda Killeen that it would be necessary for his gun cabinet to be inspected.

12. This inspection took place in October 2004 when Sgt. Tim Cronin came to the applicant's home for that purpose. It was apparently indicated to him on that inspection that he would need to install a new cabinet for the purposes of his pending application, and he duly purchased a suitable cabinet and installed it in his home. This new cabinet was inspected by Sgt. Cronin, and, according to the applicant's affidavit, Sgt. Cronin was satisfied with it and informed the applicant that the certificate would issue in two to three weeks time. The respondent disputes this, and states that the applicant misunderstood the advice by Sgt Cronin that he would need to install a new cabinet. In his said replying affidavit the respondent states that he has been told by Sgt. Cronin that he did not tell the applicant that if such a new cabinet was installed the firearms certificate would issue, and that in any event Sgt. Cronin would not have had any authority to make such a statement.

13. The applicant states that after a few months had passed he contacted Gda. Killeen to ask why the certificate had not yet issued, and that in answer he was told that the application had not in fact been submitted as "*it would not have been the right time to do so*" and that the application would have been refused. The applicant then requested a letter of refusal, but it was indicated to him that the application would be sent to Ballybricken Garda Station in Waterford City where, it would appear from the letter of refusal which issued on the 7th October 2005, the respondent is the superintendent. The applicant states that about two weeks after his said conversation with Gda. Killeen, the latter called to his home and informed the applicant that the application had passed and that it would take about two weeks for the certificate to issue from Dublin. However, it appears that after a further two weeks, Gda Killeen contacted the applicant and informed him that the certificate had been "*recalled*" as it had issued by mistake. On hearing this, the applicant requested a meeting with the respondent.

14. The respondent deals with this "mistake" in his said replying affidavit, and states that following the submission of the applicant's application "*it was returned to Garda Killeen informing him that the application had been approved. This was in error*", and that Garda Killeen being unaware of the error informed the applicant that it had been approved. He states that as soon as that error was discovered Garda Killeen was so informed, and that it was in those circumstances that he contacted the applicant to inform him that it had been a mistake to inform him that the certificate had been issued. The respondent states that it not correct to characterise that contact by Garda Killeen as informing the applicant that the certificate had been *recalled*, and that in fact the certificate had never in fact been issued. The respondent goes on to state that he told Garda Killeen that he (the respondent) needed to meet the applicant in order to discuss the application.

15. That meeting took place on the 29th September 2005. The applicant states that at that meeting he explained that he wanted the pistol so that he could participate in target shooting and that he was a member of the South East Pistol Club, and that he wanted to be able to participate in all club events including club competitions and competitions with other clubs. The applicant states that at this meeting the respondent told him that he "*had his mind made up not to grant the certificate*" but that he would give the applicant a chance to put his case to him, and told him that he would think it over and see the applicant again in about a week's time. The applicant states that he returned to the superintendent about a week later, but was informed on that occasion that the respondent was too busy to see him, and that having made a number of further unsuccessful attempts to speak to the respondent, a letter of refusal finally issued on the 7th October 2005.

16. The respondent disagrees with the applicant's version of these events. In his said replying affidavit, the respondent rejects the claim made by the applicant that at the outset of the meeting he indicated that he had his mind made up in relation to the application. He describes the purpose of the meeting as being to allow the respondent to obtain further information from the applicant as to his reasons for "*wanting the particular firearm the subject of the application*". He states that he needed this further information so that he could consider the application submitted and make a properly informed decision, and that he is obliged to have as much information as possible when considering an application "for a particular firearm", and that having met the applicant and obtained as much information as possible, he then made the decision to refuse to issue a certificate "on the grounds set out in his letter of refusal. I will set out the terms of that refusal, but before doing so will refer to the fact that in his said affidavit the respondent denies that, as alleged by the applicant, the real reason for refusing to issue the certificate was "the type of firearm in question", and he states that the reasons for his refusal are clearly set forth in his letter of refusal.

The letter of refusal

17. The body of this letter of refusal states:

"I have considered the application carefully and I am of opinion that I should not issue a Certificate under the Firearms Acts by virtue of the following:

- I am not satisfied that you have good reason for acquiring the firearm.*
- I am not satisfied that the type of firearm in question can be used without danger to public safety.*

I have taken particular note of the following:

- *The Glock 9mm Pistol is of military/police design/style.*
- *It is not a genuine target calibre.*
- *Half of this firearm is of plastic for lightness to carry for ease in combat shooting.*
- *It has safety of (sic) the trigger and thus not designed for target shooting.*
- *Its of high capacity.*

This decision does not prevent you from making further representation to me in relation to the refusal to grant the said firearm certificate should you so desire. Nor, does it prevent you from making an application for a .22 inch rim fire pistol which is specifically used in target shooting."

18. The applicant in his grounding affidavit states that in his view this letter evidences that the real reason for refusal is the type of firearm in question and not any of the considerations identified in s. 4 of the Act. He states that he gave the respondent ample reason for acquiring the firearm in question, and that it is "nonsensical" to suggest that it cannot be used without danger to the public when other firearms in his possession and for which he was issued certificates can be so used without danger to the public. He submits that *"the firearm is as safe or as dangerous as the person who has control over it"*, and that if he can possess three firearms without danger to the public safety, he fails to see why he is not equally capable of possessing an additional firearm more suited for target use. He proceeds to take issue with the characterization of the Glock pistol as a military or police style firearm, even though some military and police undoubtedly use them, and does not accept that this means that it is exclusively suited to such use. He has exhibited some material in relation to the use of the Glock 9mm pistol supporting the use of the Glock as a competition pistol. He also disputes that it does not have a genuine target calibre, and does not understand on what basis the respondent has reached that conclusion.

19. He also derides the respondent's rejection of his application having had regard to the fact that the pistol has a safety mechanism on the trigger, and the suggestion that this pistol is "of high capacity" simply because it is a higher calibre. In that regard he states that at the meeting which he had with the respondent, the latter seemed *"genuinely surprised"* when he informed the respondent that many people around the country had rifles more powerful than the Glock pistol, and he believes as a result that the respondent has *"little knowledge about firearms"*. However, in his second affidavit, the respondent states that the applicant has deliberately misunderstood what he had stated about the existence of a safety mechanism on the Glock, and states that he referred to this feature because it a standard feature on weapons which are used by military and police forces, and requires training for its proper use.

20. Other matters referred to in the letter of refusal are disputed by the applicant in his second affidavit filed in response to the respondent's first affidavit.

21. In his first affidavit the respondent states that he decided the applicant's application on its own merits, and that much of what the applicant states in his grounding affidavit about the existence of a policy of refusing certificates for such weapons is irrelevant to the present application. He agrees that at the meeting already referred to the applicant informed him that he wanted this pistol "to participate in pleasure and target competitions", but goes on to say that he understands that the normal calibre of weapon used for such target competitions are of .22 and .177 calibre pistols, and he also believes that when the applicant accepted at that meeting that the Glock 9mm pistol was normally used for defensive purposes, he was accepting also that such a calibre of pistol is not normally used for target shooting. But the respondent accepts that it could be used in situations other than combat/military/ police situations, while saying also that even though it could be used for the sporting purposes which had been put forward by the applicant, that does not mean that he must consider that reason to be a good reason for the purpose of s. 4(a) of the Act.

22. The respondent states in his affidavit, also, that for the reasons stated already he was not satisfied that the purpose for which the applicant requires the gun is a good reason *"particularly in the light of the fact that there were other guns available to him which are suitable for target shooting"*. He states that when considering if an applicant has "good reason" for requiring such a gun he must balance the needs and wants of the applicant against the needs of the public in terms of safety, and in this case he is of the view that the characteristics of the gun in question are over and above the need for which the applicant requires it *"and that he has no good reason for requiring the particular gun which would otherwise outweigh public safety considerations."*

23. At a later point in the same affidavit the respondent states that the type of firearm in question was a consideration for him when making his decision, but that he did not refuse the certificate *"because of the type of firearm in question but rather that [the applicant] had not satisfied me that the reason why he required that type of firearm or the particular firearm was a good reason"*.

24. The respondent also rejects any suggestion made by the applicant that he has a fixed policy in relation to applications for certificates for this type of gun.

25. In his second affidavit filed in response to that of the respondent, the applicant expresses his belief that the respondent has refused a certificate to any applicant to him who sought a certificate in respect of any firearm over .22 calibre, and that no matter what reason was put forward by the applicant for wanting such a certificate, it would always be refused. In relation to the second reason for refusal, namely that on grounds of public safety, the applicant states that this reason ignores the fact that he is already in possession of three firearms, and that it is the *"quality and character of the holder and where the gun will be used which determines the public safety element of his considerations and not the calibre of the firearm"*.

26. In this second affidavit, the applicant stands over his account of the conversation with Garda Killeen referred to already in which he was told that the application had been approved, and notes that his version of what transpired between him and Garda Killeen is not contradicted by an affidavit by Garda Killeen himself. He also stands over his recollection of the meeting with the respondent and his statement that his [the respondent's] mind was already made up by that meeting to refuse the application.

27. The respondent has filed a further affidavit sworn on the 13th October 2006. He responds further to the allegation made by the applicant that he has a fixed policy in relation to refusing certificates for firearms in excess of .22 calibre. He again denies any such fixed policy by him, although he accepts that he is slow to grant such certificates *"given the danger presented by such firearms"*. This, he states, stems from his concern for public safety and the risk posed in that regard *"by guns in general and large calibre handguns in particular"*. He states that he is willing to grant such certificates when he is satisfied that the applicant can be permitted

to use, carry and possess the firearm without danger to public safety and that he has good reason for requiring it. At paragraph 7 of this affidavit he states that he has in fact granted firearms certificates for weapons above .22 calibre, but that since he was promoted to the rank of superintendent in February 2004 he has received only five applications for *pistols* in excess of .22 calibre, and that in respect of each such application he has interviewed the applicant, discussed the issues arising, and carried out his own enquiries, and considers each application on its own merits. He makes the point also that if, as the applicant states, he had his mind made up already when he met with the applicant in February 2005, he would simply have issued a decision to refuse without seeking to obtain further information from the applicant at that meeting.

28. He also states again in this affidavit that the applicant has not satisfied him in relation to these matters. He goes on to say that at no stage prior to the issue of these proceedings did the applicant inform him that he intended using this pistol for target shooting other than target shooting sports which are recognised by the Olympic movement. This refers to earlier averments related to the type of target shooting so recognised and the fact that the standard calibres used in such sports were .22 and .177. In such circumstances the respondent now feels he has limited information as to precisely what sport or target shooting the applicant intends participating in, and that such information is essential for him when making his decision on the application. In so far as the applicant had stated in his second affidavit at paragraph 10 thereof that he does not seek to participate in Olympic sport, and that some sporting disciplines only permit the use of 9mm weapons, such as competitive shooting and "practical shooting", the respondent states that competitive, sporting disciplines and practical shooting are vague and imprecise terms and in such circumstances he cannot be satisfied that the applicant requires this gun for a "good reason" or that he can be allowed to carry, use or possess same without danger to the public safety. It is worth noting at this point that the letter of refusal in this case states that the refusal does not prevent the applicant from making further representations to the respondent in relation to the refusal of a certificate for the Glock 9mm pistol should he wish to do so.

Applicant's submissions

29. Gerard Hogan SC for the applicant refers to the discretion vested in the respondent by s. 3 of the Act to grant or refuse a firearm certificate, but submits that this is not an unlimited discretion, but one which must be exercised within the boundaries of the Act itself. In that regard he has referred in his written submissions to the judgment of Walsh J. in *East Donegal Livestock Mart Ltd. v. The Attorney General* [1970] IR 312, where at p. 341 the learned judge states, in relation to the exercise of a discretion conferred by an Act of the Oireachtas:

"All the powers granted to the Minister by s. 3 which are prefaced or followed by the words "at his discretion" or "as he shall think proper" or "if he so thinks fit" are powers which may be exercised only within the boundaries of the stated objects of the Act; they are powers which cast upon the Minister the duty of acting fairly and judiciously in accordance with the principles of constitutional justice, and they do not give him an absolute or an unqualified or an arbitrary power to grant or refuse at his will. Therefore, he is required to consider every case upon its own merits, to hear what the applicant or the licensee (as the case may be) has to say, and to give the latter an opportunity to deal with whatever case may be thought to exist against the granting of a licence or for the refusal of a licence or for the attaching of conditions, or for the amendment or revocation of conditions which have already attached, as the case may be".

30. Mr Hogan refers to s. 4 of the Act and to the two bases only (as applicable in this case) on which the respondent could lawfully exercise his discretion to refuse the applicant's application for a certificate for the Glock 9mm pistol in question, namely (a) that the applicant has no "good reason for requiring the firearm" (i.e. the Glock pistol), and (b) that the applicant cannot "be permitted to have a firearm [i.e. any firearm] or ammunition without danger to the public safety or to the peace".

31. Mr Hogan submits that it is clear from this section that (a) refers only to the non-existence of a "good reason", whereas (b) can refer only to whether this particular applicant is a person who can hold any firearm without danger to the public safety.

32. In relation to (a) he submits that it is accepted even by the respondent that the applicant is a bona fide sportsman who has a genuine interest in target shooting, including pistol shooting, and that the term "good reason" must be taken as meaning a legitimate reason, and that the respondent cannot decide in the exercise of his statutory discretion that the applicant's reason is not a good reason simply because he himself believes that he has already in his possession sufficient weapons with which to pursue his hobby or interest in target shooting. He submits that the assessment of "a good reason" cannot be subjective on the basis of this opinion of the respondent as to weapons already possessed by the applicant. He submits that it cannot be concluded that an interest in target shooting is not a good reason within s. 4(a) of the Act, and that for the respondent to conclude that there is no good reason requires that he be of the view that the reason for which the applicant requires the Glock pistol is an illegitimate or unlawful reason, or a reason other than a bona fide reason. He submits that it is irrelevant to the respondent's consideration of "good reason" that he is of the opinion that a smaller calibre weapon is appropriate for target shooting. He points also to the fact that there is nothing in the way the letter of refusal has been worded to indicate why the respondent considers that there is no good reason.

33. As far as (b) is concerned, Mr Hogan submits that the applicant could not possibly be considered to be someone whose possession, use or carrying of a firearm or ammunition constitutes a danger to the public safety, since he has for many years been the holder of firearm certificates for the three weapons already referred to, and points to the fact that no application has ever been made to have those certificates revoked pursuant to the provisions of s. 5 of the Act. He submits that nowhere in the respondent's affidavits has it been suggested that the applicant is an unsuitable person to hold a firearm from a public safety point of view, and that accordingly the respondent's reasons for refusal as shown in the letter of refusal dated 7th October 2005 must be interpreted as meaning simply that this particular weapon (i.e. the Glock 9mm pistol) cannot ever be the subject of a firearm certificate, no matter who might apply for it. He submits that this is the real reason for refusal, and that therefore it is clear that the respondent has a fixed view about the weapon, and that accordingly he has, by the adoption of such a fixed view, fettered his discretion, and has acted *ultra vires* the provisions of s. 4 of the Act by refusing the application for the reasons he has given in that letter.

34. Mr Hogan submits also that the reasons for refusing the applicant's application must be gleaned only from the letter of refusal, and not by reference to any elaboration or explanation of those reasons which may have been stated by him in his affidavits on this application. He submits that the mere denial by the respondent in his affidavit that he operates a fixed policy in relation to the Glock 9mm pistol is not sufficient to undermine the submission that the terms of the letter of refusal so indicate. He submits that when exercising his discretion the respondent must act in a genuinely independent manner, and the exercise of his administrative functions, such as under the Firearms Act, 1925 in relation to considering applications for firearm certificates must fall to be governed by the requirements of administrative law regarding the exercise of discretionary powers. Mr Hogan refers in this regard to the decisions of the High Court and Supreme Court in *Dunne & ors v. Donohoe & ors* [2002] 2 IR 533, where it was held, inter alia, that the superintendent's discretion under the Firearms Act, 1925 could be exercised only by him/her and within the relevant statutory limitations, and not abdicated to someone else or by reference to any policy dictated by any other body or authority. He submits that in so far as the respondent has fettered his own discretion by having a fixed view about this particular weapon regardless of who is the applicant for a certificate, this is impermissible, and refers to the judgment of Kelly J. in *Mishra v. Minister for Justice* [1996] 1 IR

189, where he states at p. 205:

"... Care must be taken to ensure that the application of this policy or rules does not disable the Minister from exercising her discretion in individual cases. In other words, the use of a policy or a set of fixed rules must not fetter the discretion which is conferred by the Act."

35. It is submitted also that the only logical inference to be drawn from the evidence in this case is that the respondent's refusal constitutes an attempt to perpetuate a policy of refusing to certify firearms over a certain calibre, and that this amounts to a prohibition on a particular type of firearm by the respondent. Mr Hogan submits that the Act makes no distinction between types of firearm which may be the subject of a certificate, and that the parameters of the Act are drawn by reference to the personal characteristics of the applicant for a certificate rather than the characteristics of the weapon in respect of which the certificate is sought. It is submitted that the respondent cannot refuse the applicant the certificate sought in this case where demonstrably the reason given for having the weapon is a good reason, and the personal characteristics of the applicant are not disputed, because of the nature of the weapon where it is suitable for the use for which the applicant seeks to use it, i.e. target shooting. In so far as the respondent has done exactly this, it is submitted that his decision is *ultra vires* the section.

36. The decision to refuse is also submitted to be unreasonable since the applicant has demonstrated at length in his affidavits the reason for seeking a certificate for this pistol, has explained that reason to the superintendent prior to the refusal, the respondent has not disputed that this is the reason, and has simply said that it is not a good reason, and has not indicated in the decision any basis for considering target shooting not to be a good reason.

37. It is submitted that in setting out in the letter of refusal the various matters of which he had "*taken particular note*" as set out above, the respondent has shown that he took into account irrelevant considerations, misconstrued the scope of his discretion, and failed to apply the correct test. Accordingly, it is submitted that he did not determine the application in accordance with the requirements of s. 4 of the Act.

Respondent's submissions

38. Conor Dignam BL for the respondent submits that when considering under s. 4(a) of the Act whether the applicant has a good reason for requiring the firearm, he must be entitled to consider the particular characteristics of that firearm in the context of the reason put forward by the applicant for wanting it i.e. target shooting. He submits that issues of safety of the weapon, or other characteristics thereof can be considered in this context also within s. 4(a), and that the concept of "good reason" cannot be limited to whether the reason itself given by the applicant is a legitimate or lawful one. In this regard Mr Dignam refers to the various matters which, according to the letter of refusal, the respondent took particular note of.

39. It is submitted that the legislature has conferred a discretion on the respondent, and that in this case the respondent was in possession of the information given to him by the applicant, has considered that information, and has reached the view that since the applicant can pursue his hobby or interest in target shooting with pistols of lower calibre, the reason for requiring the Glock 9mm pistol is not a good reason. He submits that if this is not so, s. 4(a) of the Act is redundant, and consideration would have to be given to the application only by reference to the personal characteristics of the applicant under s. 4(b) of the Act, once the reason given is not an unlawful reason.

40. He accepts that the discretion given to the respondent is not an unfettered one, but that the respondent has sworn in his affidavits that his view about the Glock pistol is not a fixed view or derived from any fixed policy, and that he considers each application on its own merits. Mr Dignam accepts that the respondent cannot simply take the view that he does not like the Glock 9mm pistol and will never therefore grant a certificate, but that he is entitled to take the view, a personal view, that the reason given by the applicant does not justify or require the ownership of a weapon of the calibre of the Glock pistol. In this regard he refers to the fact that the respondent in his affidavits is not stating that target shooting *per se* is not a "good reason", but rather that, based on what he knows, that sport is one pursued using only .22 or .177 calibre weapons, and that weapons of higher calibre than that (i.e. the Glock) are not used in such competitions. For this reason the respondent has come to the view that the reason put forward prior to the decision to refuse for requiring this particular weapon is not a good reason.

41. Mr Dignam accepts that if the respondent had a fixed view or adopted a fixed policy in relation to such applications, then this Court would have to set aside the decision without having to consider the other grounds put forward. But he refers to the respondent's second affidavit filed herein in which he deals with that point and I have already set out what he has stated in this regard.

42. Mr Dignam accepts that the submission which he makes in this regard, if correct, would result in a situation where the granting or refusal of a certificate for this type of pistol might depend on which superintendent's area a particular applicant resided in, given that different superintendents could have differing views as to whether or not a Glock 9mm pistol is suitable for target shooting, and whether target shooting is a good reason for having the weapon. But he states that that is the nature of a discretion, and that different persons determining all sorts of applications on similar facts may reach different decisions.

Conclusions

43. The letter of refusal in this case gives two reasons for refusing to issue the applicant with a firearm certificate for the Glock pistol. The second reason is that the respondent is not satisfied that such a pistol "can be used without danger to public safety". The letter does not state whether that reason is one under s.4(a) or s. 4(b) of the Act. In my view it cannot be a reason under s. 4(a), which deals only with whether there is "good reason" for the applicant requiring it. If it is a reason which the respondent is entitled to take into account at all, as expressed in the letter of refusal, it must therefore be one under s. 4(b). However, that paragraph is specific in its terms. It quite clearly entitles the respondent to refuse a certificate where the respondent is not satisfied that *the person "cannot be permitted to have in his possession, use, or carry a firearm or ammunition without danger to the public safety or to the peace."* (my emphasis)

44. That must be interpreted as meaning that before granting a certificate for the particular firearm, the applicant must be someone whose possession, use or carrying of *any kind of firearm* does not pose a danger to the public safety or the peace. Where, as in this case, such a person has been the holder over many years of three firearm certificates for three other weapons, and where no application has ever been made to revoke same, or indeed no grounds have been put forward in this application why this applicant's possession of those other weapons poses such a danger, there cannot in my view be grounds for refusing the application under s. 4(b) of the Act. There is nothing in that provision which entitles the respondent to consider the applicant's suitability in relation to a particular weapon where certificates are held in respect of others. Either the applicant is a person who can possess, use or carry "a firearm" or he is not. In this case he must be seen as a person who can. In so far as the respondent appears to have stated the second reason in the context of considering public safety issues referred to in s. 4(b) of the Act, and specifically in relation to the

Glock pistol under consideration, he has acted *ultra vires*, and the decision to refuse on that ground is outside his powers.

45. In addition, it is worth saying that, even if it were found to be an *intra vires* reason, there is nothing in the decision which indicates in what way the public safety or peace is endangered by the "type of firearm". While certain features of the Glock are referred in the paragraph which states a number of matters of which the respondent took particular note, it is unclear how any of these matters enabled him to form the view that this weapon poses a danger to public safety or the peace, as opposed to any other weapon. All weapons are inherently dangerous, and it would in my view need to be indicated in the letter of refusal just how this particular weapon poses such a danger where the others in respect of which the applicants hold certificates do not. To the extent that the reason is unclear and unstated it is incapable of being reviewed and is invalid for that reason also.

46. The decision remains then to be considered in relation to the first ground of refusal under s. 4(a) of the Act. It is safe to assume that the matters taken particular note of were so taken note of in relation to the first reason also. But it is important to bear in mind, that when considering the basis on which the respondent concluded that he was not satisfied that the reason put forward by the applicant for requiring this particular firearm was a good reason, that he did so in the light of the reasons put forward by the applicant in the application form itself or in his conversation with the respondent at the meeting which took place between them on the 29th September 2008. In so far as the applicant has later in his affidavits on this application explained or elaborated upon exactly why he requires this particular firearm for target shooting, (i.e. competitive shooting and practical shooting), these are irrelevant since the respondent had to make his decision on the basis of facts made known to him prior to making that decision. Indeed, Mr. Hogan, as I have stated above, submitted that the respondents could not seek to explain his decision in his replying affidavits and that the decision had to speak for itself. In my view the same applies in relation to the information given to the superintendent by the applicant prior to the making of the decision.

47. Curiously, the form of application provided to the applicant for the purpose of seeking a firearm certificate does not, as far as I can glean from the rather bad copy thereof produced to the court, contain any question as to the purpose for which the Glock 9mm pistol is required by him. That perhaps in part explains why the superintendent adopts the practice, as he did in this case, of meeting any applicant and obtaining information in order to enable him to make the required decision to either grant or refuse the application.

48. On the 29th September 2005 such a meeting took place. The applicant has stated in his grounding affidavit, as I have set forth, that at this meeting he explained to the respondent that he was "*keen to participate in target shooting*" and that he was "*a member of the South East Pistol Club*", and that he was anxious to participate in all club events including club competitions and competitions with other clubs. The first replying affidavit by the respondent states in relation to this meeting that the applicant informed him that he wanted this particular pistol "*to participate in pleasure and target shooting competitions*" (paragraph 7). That seems consistent with what the applicant has stated in his grounding affidavit as to the purpose for which he requires the weapon. The respondent then goes on to explain what he knew about the calibre of weapons used in such target shooting competitions, namely calibres of not more than .22 or .177 pistols. He states that the Glock is not used in target shooting "*as I understand that term*", and states that he understands that these are the calibres which are used in Olympic competitions. Accordingly he was not satisfied that the Glock was a firearm required for such competitions, and therefore that the applicant's reason for requiring it was not "*a good reason*".

49. The applicant in his second affidavit at paragraph 10 thereof refers again to that meeting, and states that he does not require the Glock pistol in order to compete in Olympic sports, and that "*the 9mm calibre is widely used in competitive shooting in this country and indeed some sporting disciplines only permit use of a 9mm (for example, the sport of practical shooting only permits participation by persons licensed to hold a 9mm)*". It is not apparent from any of the affidavits filed that this particular aspect was discussed during the meeting. It is something now being stated by the applicant in response to what is averred by the respondent. The respondent in his second affidavit at paragraph 6 thereof states that "*it now appears from [the applicant's] supplemental affidavit that, in fact, he does not seek to participate in sports within the Olympic umbrella*", and that he (the respondent) has "*limited information as to precisely what sports or target shooting [the respondent] proposes to participate in*". He goes on to state that "*the reference to competitive shooting and sporting disciplines and practical shooting is imprecise and vague and in this those circumstances [he] cannot be satisfied that the reason for which the applicant requires the firearm is a good reason....*" It seems clear from the affidavits filed that the particular competitions or practical shooting where a 9mm pistol is required are not matters in respect of which the applicant provided any information to the respondent either in his application form or at the meeting of the 29th September 2005, and that accordingly the respondent had no opportunity to consider these matters when making his decision to refuse the application being made at that time. No third affidavit was filed by the applicant in response to the respondent's averments in this regard.

50. It follows, therefore, that the respondent was entitled, based on the information provided by the applicant prior to the decision being made, to form the view that the applicant had not by that time satisfied him that this particular weapon was reasonably required for target shooting as that term was used by the applicant at the meeting of the 19th September 2005, and as understood by the respondent. That does not mean that the respondent formed the view that "target shooting" itself is not "*a good reason*". He is required to be satisfied that the applicant has a good reason for requiring "the firearm in respect of which the certificate is being applied for. That means that he is entitled under s. 4(a) to have regard to the particular firearm and the use to which it is intended to be put by the applicant, as explained prior to the decision being made, and not by reference to matters explained afterwards in affidavits filed in these proceedings. The onus is on the applicant to provide all relevant information prior to that decision being made.

51. Since I have concluded that issues of public safety can be addressed only in relation to the suitability of the applicant personally under s. 4(b) of the Act, and that the applicant cannot be found to be somebody who is not a person who "*can be permitted to have in his possession, use, and carry a firearm or ammunition without danger to the public safety or to the peace*", it follows that the applicant is entitled to an order for certiorari in respect of the decision to refuse the certificate applied for, but on that ground alone. Given my finding in relation to the reason for refusal under s. 4 (a) of the Act, I will not grant the declaration sought at paragraph II of the Notice of Motion.

52. In the light of my conclusions the applicant may well consider it appropriate to re-apply to the respondent for a certificate on a more complete basis bearing in mind what he has stated in his affidavits in these proceedings as to the precise competitions or sports in which he wishes to participate and for which a 9mm Glock pistol is "required". That application can then be considered by the respondent in the light of my conclusions, and in the light of all necessary and relevant information in relation to the precise reasons why the applicant requires this particular weapon, so as to discharge the applicant's onus in that regard. The letter of refusal in fact invites the applicant to make such further representations to him.