

Appeal brought under sections 29(4), 32(2), 33(3) and 46 of The Firearms and Weapons (Guernsey) Law, 1998, as amended, against the decision of the Chief Officer to revoke, not to renew and not to vary the conditions of the firearm certificate.

[2022]GRC073

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between:

ROBERT PHILLIP CURGENVEN

Appellant

- And -

**THE CHIEF OFFICER OF THE
ISLAND POLICE FORCE**

Respondent

Case heard on: 2nd, 3rd, and 4th August, 2022

Decision handed down on: 14th September, 2022

Before: John Russell Finch, Esq., OBE, Lieutenant Bailiff and

Jurats: Stephen Murray Jones OBE, Joanne Marie Wyatt and David John Robilliard

The Appellant in Person

Counsel for the Respondent: Crown Advocate J. Hill.

Statutes referred to in Decision:

The Firearms and Weapons (Guernsey) Law, 1998, as amended

Article 8 of the European Convention on Human Rights

Ala v Secretary of State for the Home Department [2003] EWHC 521

Gokool v Permanent Secretary for the Ministry of Health and Quality of Life [2008] UKPC 54

R (on the application of the Dart Harbour and Navigation Authority) v Secretary of State for Transport, Local Government and the Regions [2003] EWHC 1494

R v Devon CC ex parte S [1995] COD 181

R v Secretary of State for the Home Department ex parte Daly [2001] UKHL 26

Introduction

In this decision the main protagonists are referred to as follows:

The Appellant, Mr Curgenven

“A”

The Respondent Chief Officer

“R”

The Respondent in his individual capacity	“CO”
The Deputy Chief Officer in his individual capacity	“DCO”
Partner of A	“X”
Son of X	“Y”
The Firearms and Weapons (Guernsey) Law, 1998, as amended	(“The Law”)

1. This is an appeal brought under sections 29(4), 32(2), 33(3) and 46 of the Law against the decision of the CO to revoke, not to renew and not to vary the conditions of the firearm certificate granted to A. The Summons referred to the decisions being both ultra vires and/or unreasonable. The case proceeded on the basis that the decisions were “*an unreasonable exercise of the powers of the Chief Officer*” (section 46(1) of the Law). It was also suggested (paragraph 46(d) of A’s appeal summons) that the CO’s actions breached A’s rights to respect for his private life under Article 8 of the European Convention on Human Rights (“ECHR”).
2. At the hearing, oral evidence was received from A (who represented himself) and X. On behalf of R, the CO, DCO, Mr R Breban (who deals with firearms licensing), PC Simon and L-J Castle gave oral evidence. Three other witnesses tendered on behalf of R: B Moon-Batiste, F Babbé and R Ferbrache, all Police Officers, were not called and not in dispute. The ‘live’ witnesses had made full statements or affidavits, that were in the two-volume bundle (“the bundle”), which contained these items and relevant documents, principally correspondence. R was represented by Crown Advocate J Hill, who was careful to assist A as much as he was able to; A presented his own case, with both fluency and courtesy to the Court.

Outline of Facts

3. The main facts were not greatly in issue. The question was the reasonableness or otherwise of R’s actions, as well as the Article 8 ECHR point. All the witnesses were cross-examined: A, X, the CO, the DCO and Mr Breban in some detail. Both A and Advocate Hill opened and closed their cases. The hearing extended for three days, at the end of which, it was adjourned for a decision. Accordingly, the Judge and Jurats retired and the Judge instructed the Jurats on the Law, after which the Jurats came to a decision on the facts adduced before them. The facts put forward at the hearing were:
 - (i) A was granted a Firearm Certificate on 30th September 2021, with a condition that when not in use the 9 mm Walther Pistol was to be kept in approved storage, i.e., the Guernsey Pistol Club at Chouet. That condition was attached in accordance with A’s request. A attended an interview with the witness, Mr Breban, after which it was concluded that he was a suitable person to hold a Firearms Certificate. A applied 16-days later to add a second weapon, a 9mm Jericho pistol;
 - (ii) following the report of a “domestic” incident involving A and X on 24th October 2021 at the house they resided in (owned by A), the Certificate was revoked by the DCO under the provisions of section 33 of the Law. The wrong grounds were applied. It was considered that A should not be able to hold a firearm without danger to the public safety or the peace, which applies only to section 33(2) of the Law (shot-guns) and not the correct test contained in section 33(1)(a): namely being of “intemperate habits or unsound mind, or is otherwise unfitted to be entrusted with such a firearm” (i.e., not a shotgun);

- (iii) a review was requested on behalf of R, which was conducted by the DCO of the States of Jersey Police. On 25th January 2022, the result was communicated from the Jersey DCO to DCO Scholes. The review (page A286 of the bundle) stated:

“In summary, my view is revocation is disproportionate and I disagree with your decision to revoke on balance, you are being over cautious.”

Adding:

“I also think that your decision to revoke for just 12 months is weak – based on what other than no police calls. The absence of phone calls doesn’t eliminate any perceived risk after 12 months.” (see paragraph 13 below)

As a result, R proposed to return the Certificate to A, still bearing the storage condition originally at A’s request, for storage at an approved place. However, this was not acceptable to A. On 31st January 2022, A’s Advocate wrote to the CO requesting him to reissue the certificate, subject to the condition that he could keep his arsenal at his home address. It should also be noted that by letter of 7th February 2022, A, via his Advocate, notified the relevant officers that he had prospective civil claims against them for “trespass, assault, wrongful arrest, false imprisonment and malicious prosecution” following the domestic incident that took place on 24th October 2021. Any criminal action relating to this was dropped by the Law Officers of the Crown on 29th October 2021, as the facts did not pass the evidential test (the Jersey DCO was in accord with that decision);

- (iv) the present situation has moved-on. It is R’s submission that A should demonstrate he is fit to be entrusted with a Firearms Certificate and that such a thing is a privilege and not a right. R now disputes that A is suitable to hold a Certificate, with or without any conditions (paragraph 18 of R’s skeleton argument, at page B5);
- (v) it is emphasised that both volumes of the bundle include numerous documents, correspondence, statements and reports. Mention of those most relevant to the Jurats’ decision will be made below when the facts are considered.

Grounds of Appeal and Responses

4. As stated, A’s Advocate produced a detailed summons which set-out A’s main contentions in appropriate depth. R’s skeleton argument responds, in concise terms, to the individual Grounds of Appeal. A’s skeleton is at pages A1-A11 of the bundle. A’s witness statement at A13-A29 is a reasonably full exposition of his case and the events he considers significant. Both A and his partner, X (witness statement at pages A31-A40) gave evidence consistently with their statements. R’s affidavits are in volume 2 of the bundle, at pages B9-B701. There are numerous supporting documents. When considering the evidence, the Court had to be mindful that the present matter is one particular issue, and the question of the civil action against the Police is another, even though they arise from the same background. A’s Grounds are set-out at paragraph 46 of the Appeal Summons, and responded to in paragraphs 11-22 of R’s skeleton. In summary, the respective contentions are:

- (i) Wrong criteria applied for revocation. The revocation applied the wrong test (see paragraph 3(ii) above), which applied to a Shotgun Certificate. R submits that A is not a suitable person to be entrusted with a licence unless he addresses the CO’s concerns “in a constructive way” (paragraph 23 of R’s skeleton, at page B6). However, the wrong test was originally applied;

- (ii) possession of a firearm is a privilege not a right. The CO, A argues, wrongly fettered his discretion. R responds that this is a misinterpretation of R’s language. There is no “*right as a matter of course*” for a person to possess a firearm;
- (iii) intemperate habits. A suggests that the CO wrongly took no account of the “requirement” under section 33(1)(a) of the Law that A be of intemperate habits in revoking the Certificate. R’s response is that the relevant phrase “*of intemperate habits or unsound mind, or is otherwise unfitted to be entrusted with such a firearm*” is disjunctive, which it is;
- (iv) Article 8 rights under the ECHR. This is, broadly speaking, the (qualified) right to family/private life. There is, submits R, express provision for the right to be interfered with (in a proportionate manner);
- (v) unreasonable failure by the CO to take into account other incidents, which did not justify revocation or non-renewal. These “domestic incidents”, states A, were not subject to appropriate investigation and assessment. A does not deny them taking place, according to R, but their causes and outcomes were not considered. The CO, it is stated, has consistently outlined “*incidents of domestic violence*” that led to the decision that a condition be imposed to keep the relevant items at an approved place. In the light of the Jersey DCO’s independent review (see paragraph 3(iii) above) the CO decided to review the Certificate subject to the original condition on storage made at A’s request. “*For the avoidance of doubt*” the CO now considers A is not suitable to hold a Certificate with or without conditions;
- (vi) unreasonable imposition of the condition on renewal. The storage condition, A submits, could never be fulfilled in view of the Pistol Club’s stance on his membership. This is demonstrated in the letter to the Police Firearms Officer of 31st December 2021, at page A177 of volume 1. If the Police revoke a Certificate, then the person in question is “*Not a fit and proper person to be firing on the Club’s ranges*”. If the Certificate were to be re-issued, then the Club would consider an application to re-join (page A179). R’s response is that the relationship between the Pistol Club and A is a matter for A. The Club’s letter was in response to the Firearms Officer’s message of the same date, referring to A engaging a lawyer and pushing to “*turn our decision around (which we won’t)*” and seeking support from the Club on anything about A that unsettled them;
- (vii) unreasonable placing of a succession of obstacles and new requirements in A’s path. This includes alleged concerns about A’s mental health. R’s response is that there are legitimate concerns, which have not been resolved;
- (viii) victimisation of A. This is alleged to be a result of A pursuing complaints and a civil action against the Police concerning his arrest. R submits that these played no part in the licensing regime as applied to A. A’s behaviour is, it is stated, such that he is “*unwilling to submit to the strictures of the firearm licensing procedure*” and fails to appreciate R’s “*legitimate concerns*”;
- (ix) unreasonable refusal of the CO to vary the original condition (to enable A to store his firearms on his property, and extend it to his Jericho pistol, as well as his Walther pistol). It is claimed by R that A has no “*legitimate or reasonable justification*” for A to store these items at his home, and that A has failed to identify any. Home storage, it was also suggested, increases the risk of accident or unlawful conduct (by A or any other unauthorised person).

Directions to the Jurats

5. The Jurats were directed that the word to consider from section 46 of the Law is “unreasonable”. Was there therefore “an unreasonable exercise of the powers of the Chief Officer”? The burden lay on A to show, on the civil standard of proof, i.e. the balance of probabilities that the decision was “unreasonable”. (The question of “ultra vires” did not arise. The decision was within the powers conferred on the CO, the point at issue was unreasonableness.) The Jurats were told that the question was whether the decision was “within the range of reasonable responses” (see, e.g. Ala v Secretary of State for the Home Department [2003] EWHC 521, at [44] – [45]). This can also be expressed as “a decision ... within the range of reasonable responses which a reasonable decision-maker might have made in the circumstances”. (Gokool v Permanent Secretary for the Ministry of Health and Quality of Life [2008] UKPC 54, at [18]). It was pointed-out that there are many recorded English cases on this question and, that they were of high persuasive authority in Guernsey. It has also been held that the statutory requirement of “reasonableness” (here in relation to the Secretary of State’s review of harbour licences), should be interpreted with “common sense” and not technically. (R (on the application of the Dart Harbour and Navigation Authority) v Secretary of State for Transport, Local Government and the Regions [2003] EWHC 1494; R v Devon CC ex parte S [1995] COD 181).

6. However, there are different considerations in respect of Article 8 of the ECHR. This applies to A’s private and family life to which public authorities should show appropriate respect. Here the burden is on R (as a public authority) to justify the departure from the rights set-out in Article 8, which, like Articles 9-12, is described as a “qualified right”. The authority is required to demonstrate that the measures in question are “prescribed by the law”; that they pursue a legitimate end, or an end specified in the Article (e.g. public safety); that they are rationally connected to that end; that no less restrictive alternative could have been adopted; and that the measures are necessary, and not merely desirable. Put another, slightly simpler way, the Court is required to conduct a careful exercise of weighing the legitimate aim to be pursued, the importance of the right which is the subject of the interference, and the extent of the interference. (R v Secretary of State for the Home Department Ex parte Daly [2001] UKHL 26.) The Jurats were directed that the decision made by R was prescribed by law – under the statute dealing with the control and licensing of firearms, and that it pursued a legitimate end – public safety. The question to consider, on the facts found, was whether the measures taken were “necessary”, and the question of any alternative.

Jurats’ Findings on the Facts

7. A gave evidence in accordance with his witness statement (at pages A13-A31) and skeleton argument (pages A1-A11). He is an able and intelligent person and quick to think on his feet. As stated, he was courteous to the Court and Crown Advocate Hill throughout. He said that he would accept the Court’s decision and was grateful for having “had his day” in the Court. Allowance was made for the fact that A, and his partner X, were, of course, not used to the environment of the court-room, whereas all R’s witnesses, from the CO downwards, had extensive experience. A very large amount of paperwork has been generated in this case (and the civil action), which demonstrates A’s persistence and willingness to repeatedly argue his point. He stated in cross-examination that the licensing issue had not injured his pride. He accepted that the Police had “cause for concern” arising from the domestic incident on 25th October 2021, which had led to his arrest. He did, he said, try to work with them. He was willing to drop his complaints but the CO would not engage with him. He was not negotiating in the (voluminous) correspondence on his own terms. The other complaints were not a “bargaining chip”. It was not right, A stated, to say that he wanted the Police to do what he wished. It was not a difficult domestic situation. There can be arguments, the Police were called. It all depends on the context. A and X both referred to having what was described as a “time-out” as a method of preventing these tense situations from escalating. A added that he “absolutely can understand the concerns the Police had ...” A large number of WhatsApp

messages between X and her friend Laura-Jane Castle were referred to by Crown Advocate Hill. The ones referred to, A stated, were taken out of context and not an accurate description of the relationship, said A. Every single conversation mentioned was after an argument. There are always ‘two’ when it comes to an argument. X does have self-esteem issues, “*I don’t have a drink problem*”. These messages were referred to extensively in X’s cross-examination. The Jurats consider that the contents are telling and highly relevant to the main issue. The messages will be dealt with when looking at X’s account in the next paragraphs.

8. X gave evidence in accordance with her witness statement (pages A31 – A40). It is important to note that she is full-time carer for her son, an adolescent with very serious special needs, who requires constant care and supervision (see the medical report at pages A303-A309). It is accepted that this is an unusually onerous situation, especially for X. She is an intelligent and capable person, who gave evidence fully supportive of A. Their relationship is of long-standing - the Court was told about 12 years. She was very loyal to A in her account. In appearance and manner, she seemed by no means a ‘shrinking violet’ and this is exemplified by her prowess as a power-lifter. Whilst the Jurats took all of this on board, fairly and rationally, the major issue which they found important in their deliberations, was the messaging between her and her (then) close friend, L-J Castle. The contents of many of these messages, which were put politely to her by Crown Advocate Hill, caused the Jurats serious concern. So, it was important to see how X explained them. The Jurats emphasise that they do not expect individuals to have “*perfect*” relationships without arguments, nor do they consider that people should be immune to the pressures of everyday life and, the Jurats appreciate fully the strain every day of being a carer. All these considerations were kept in mind. However, the messages proved to be, on the Jurats’ assessment of the facts, highly significant.
9. The WhatsApp chat between X and L-J Castle is attached to the latter’s witness statement and to be found at pages B667-B687. It is not intended to set them all out extensively in this Decision, but, to refer to some of those that seemed most relevant and important. The date range given is 18th February 2018 to 31st October 2021. They need to be considered with L-J Castle’s witness statement for the case (at pages B651 – B662), which she accepted as true in her oral evidence. She was nervous and embarrassed at giving evidence. She is an officer of the Guernsey Border Agency, but her account was of personal matters. She was not discredited in cross-examination and the Jurats are entirely satisfied that her rôle in law enforcement (the CO being an ultimate boss), did not impact upon the veracity of her testimony. (In these messages, the witness is referred to as “J” and X by her initials.) The Jurats wish to make it quite clear that they considered all the messages before arriving at any conclusions and carefully took X’s explanations into account when she gave her oral evidence. Upon a full examination of all L-J Castle’s evidence, her veracity is accepted. Where there is a conflict of evidence, her account and explanations are preferred on the balance of probabilities.
10. With these considerations in mind, the Jurats noted the following messages:
 - (i) 02.04.2018 X asks J how she found A last night. J responded, “*he seemed lovely to us but constantly having a pop at you*”. X added a little later, “*Yes and I don’t understand what it is I do for him to be like that with me*” and “*he ripped into me on the way back to his*”. It “*makes me feel a shit girlfriend*”. Later X said, “*I feel worthless*”. Then the next day X messaged, “*Spoke to [A] last night was really emotional. He admitted that he has a nasty streak*” and “*broke down when he realised that this could potentially break us*”.
 - (ii) 25.06.2018 Responding to J’s comment that she guessed that A had “*kicked off*” on the preceding Saturday night, X said, “*I was just numb to it though*” and “*I don’t even think it hurts anymore*”. She “*could not leave him like this. It’s because of me and our relationship has been highlighted how can I walk out on him now*”.

(iii) 05.07.2018 X described an incident and concluded, “I love Rob as you know but I can’t keep letting him do this to me. He’s promised and booked in with Tim Mahy to address his neediness”.

(iv) 04.11.2019 X messaged, “It’s so hard. I love Rob so fucking much when we are on form we are an awesome couple. I want to be the couple we were in Israel but it doesn’t seem that’s possible”.

“The big arguments have stopped but we are picking and bickering with each other on a daily basis. It feels like all I do is get under his skin.” Later on X states, “I know I have issues with security but it’s little things that he says and does that puts me down”.

“I don’t even think that he realises it.”

And the next day she messages:

“Exactly how I feel about it that it is all my fault and I don’t get the opportunity to explain myself as he doesn’t want to hear what I have to say. There’s no interest in me at all anymore.”

(v) 07.11.2019 X says, “I don’t know how I feel to be honest. Part of me just wants to end it all as I don’t think enough for [A] based on what he’s said about me. Then another part of me knows I love him”.

(vi) 22.06.2020 A long message from X, in which she states:

“... spoke a lot with [A], both of us have been brutally honest and although we agree we had way too much to drink he admits that he doesn’t know why he repeats his behaviour and throws me out even when I’m not wanting a fight. Something snaps in him he says and that’s it.”

A was, “going to chat it through” with his doctor.

A bit later on after J expresses sympathy, X responds:

“Hun you have no need to be sorry. I choose to go through this as I am the one who stays in the relationship. The good outweighs the bad overall but this throwing me out has to stop.”

Later on after discussing alcohol, X observed that, “Alcohol is not the problem it’s the person”.

(vii) 12.10.2021 There is a long dialogue with X observing that, “The arguments with [A] have started again”. She adds, “I keep coming back to this fucking dark place all the time”, and later on, “That’s it I no longer know what action to take”.

(viii) 24-31.10.2021 (This is the critical period when the Police were called to the house.) X left with her son, Y. She said, “If for any reason [A] messages you, I’m not at yours and you haven’t heard from me”. The next day X stated, “If anyone should move it should be [A]”. X’s departure from the house was, messaged X, “Yep, for the third time. I worked it out last night this has happened once a year since I moved in with him in 2018”. On the 26th October 2021, J asked X if she was ok, as the Police had phoned the previous night. X responded, “I’m far from ok”.

11. In her oral evidence, L-J Castle drew attention to what transpired when L-P and her son took refuge in her home. The boy Y was pale and shaken up, saying “scared, scared”. She clearly

remembered him saying (see paragraph 30 of her affidavit, at page B659), “*Rob, push, mum, stairs*”. She maintained that these words were said and when cross-examined by A, accepting that the boy’s verbal skills are very limited, and not insistent about the precise order of words. X was adamant she would not report the incident to the Police, but J discussed it with a friend in the Island Police, who (on the facts they knew then) investigated the matter and called round to the house. The witness referred to a voice message at 12:22 on 25th October 2021, which the Court had played. X whilst talking about A, mentioned the Priory in relation to him; also, A’s anger and a conversation with a social worker, who had come round. The message was clear, the Jurats had it played twice, and the meaning could not be ignored, or minimised. The witness has not heard from X or seen her since the end of October, 2021. The account of the incident which L-J Castle stated she heard from X’s lips was a graphic and unpleasant one. On the facts the Jurats accept to the appropriate level of proof that that was what X imparted to her. It is expounded at page B658, paragraph 29 of her affidavit. The Jurats emphasized that they are concerned with this account inasmuch as it relates to the appeal before them, and not the civil actions, which they were, of course, not seised of. A had ejected X and her son Y out of the house and pushed her down the stairs. The boy had done nothing, X said, to deserve this and she deserved much better, “*nobody deserves to be treated this way*”. X added that she was definitely going to leave A this time. She had a red lump in the middle of her forehead, which was not that big, but clearly seen by the witness. In her evidence and her witness statement (at pages A31-A40), X gave a contrary account which the Jurats do not accept, having heard and considered all the evidence. X has returned to A, with whom she was the subject of a controlling relationship, according to the witness, and has allowed herself to paint a picture which does not face up to reality. She could not explain away the plain meaning of the WhatsApp messages and has allowed herself to be an unconvincing supporter of A. This is, with respect, in the experience of the Jurats, a classic controlling relationship, where one party pulls the strings and where the other has low self-esteem, not merited in the circumstances. The Jurats appreciate that they are not dealing with a family law matter, but consider it right to look at these facts fully and carefully, in order to evaluate R’s response to the licensing issue, which is the matter in hand. More will be discussed when (particularly) the CO’s evidence is examined.

12. The CO gave evidence in accordance with his detailed affidavit (pages B297-B330). He was cross-examined by A in some detail, but the Jurats found that his evidence was unimpaired. Indeed, this matter, looking at the papers in the two volumes prepared for the hearing, has necessitated a good deal of detailed work on behalf of R, somewhat disproportionate, it must be said, to the issue in the appeal. There are other priorities and responsibilities for the senior staff of the Island Police, despite the rather fervent way that A has pursued his cause. The UK guidance from the Home Office is attached to the affidavit and the CO referred to some of it in evidence. The CO recounted the history of the initial grant of a certificate, an incident between A and X on 20th June 2020, which was considered as part of the initial certification process and, went into detail in relation to the critical incident on 24th October 2021 which led to the revocation of the certificate by the DCO. The details given rely upon the account of L-J Castle, which has been considered and accepted by the Jurats. They do not need further repetition. X declined to make any complaint when the officers who attended that day spoke to her. The CO draws attention to the similarities between the incidents in October 2021 and June 2020. The earlier matter is described in L-J Castle’s affidavit at paragraphs 19-24, pages B656-B657. On both occasions, X said she wanted to end the relationship but as is frequent in such controlling/abusive situations, did not do so. The incidents are indeed similar, with X referring to A’s “*anger and insecurity*” in her message of 22nd June 2020. The CO, rightly, draws attention to A’s non-acceptance of his behaviour and the consequences. He makes the point that the presence of firearms in the house where this bad behaviour occurred would necessitate “*much more complex risk assessment*” by the Police (paragraph 66 of his affidavit, at page B315). L-J Castle’s affidavit concluded with the words, “*... I am certain as I can be from the evidence of my own eyes and the things told to me by Lucia, that [A] is a manipulative and coercive bully with a temperament which makes him very unstable*”. It is therefore to be

regretted that X has changed her tone and in evidence sought to ‘whitewash’ the facts; but the Jurats understand the difficult position she is in.

13. DCO Scholes revoked A’s Certificate under section 33 of the Law following the incident on 24th October 2021. The CO confirmed that this is “*standard practice following any such incident of this nature*”. A challenged this decision so the CO made a decision that an independent review of the case by the Jersey DCO should be undertaken. The result of this was mailed to DCO Scholes on 25th January 2022. The gist of the review, as stated above (pages A525-A526) is that the decision to revoke was “*disproportionate and not a decision I feel I can verify*”. DCO Gull felt DCO Scholes was being “*over-cautious*”. DCO Gull also considered that the decision to revoke “*for just 12 months is weak*” and added that, “*The absence of Police calls doesn’t eliminate any perceived risk after 12 months*”. It is worthwhile to note that DCO Gull stated that “*heavy mitigation*” existed due to the storage at the Gun Club. “*An alternative to revocation could be further conditions – can only have access and use when accompanied?*” Following this review, the CO took over the decision-making. The CO decided, “*to offer a firearms certificate with conditions of storage and use*”. As paragraph 73 (page B317) of the CO’s affidavit demonstrates, the decision was fully explained and a Certificate would be issued, with the requirements (originally requested by A) of storage and use at the Guernsey Pistol Club. The CO’s letter is at pages B531-B532, and is both fully-reasoned and clear. Two days later, on 28th January 2022, the CO sent a further letter to A regarding the question of membership that was to be resolved by the Pistol Club. A produced a “tick-list”, based on the UK legislation, displayed on an easel. The evidence of the CO was that the points listed were considered as guidelines, and, indeed, were adopted when relevant in this jurisdiction.
14. On that same day the CO received a letter from A’s Advocate, which was bordering on bellicose and somewhat unhelpful. The CO expresses concern about the depiction of the incident on 24th October 2021 as a “*domestic squabble*” and the Jurats concur in finding this phrase inappropriate. A second letter was received from the Advocate on 31st January 2022. These letters are to be found at pages B535 to B545 (excluding responses). Further, time-consuming and detailed correspondence emerged. The communications are to be found following-on from the earlier exchanges. The Jurats have considered all of this material. But on 15th February 2022, the CO wrote to A’s Advocate again, “*as I had become aware of new information*”. This was information given by A to the Custody Officer about his medical situation. The gist of this is set-out in the CO’s affidavit at paragraphs 80-83, at page B319. References were made by A to “*chronic fatigue*”, anxiety and struggling with small spaces. Medication was taken for restless legs, anxiety and also blood thinners. None of this was disclosed when A applied for his certificate. Withholding such information is subject to a highlighted warning in the application (see pages B557 to B568 for the disclosures). Further correspondence came from A’s Advocate on 15th February 2022 and 18th February 2022, essentially asking the CO to reconsider his position to save time and costs. The CO did not change his position. A request was made to A’s Advocate for a report from A’s GP, which was received on 16th March 2022. The GP’s letter is at page B603.
15. The GP knew A for some 4 years. He has a history of recurrent anxiety episodes, with depression and “*a really bad panic attack in a helicopter in 2016*”. He was referred to a private therapist. More recently, A has been treated for mild depression stemming from insomnia and is subject to a number of prescriptions. In November 2021, A was issued with a three-month certificate for an anxiety disorder. The letter ended, “*I can see no reference to any advice for him to give up his firearms licence because of a medical or mental health problem*”. When applying for his Certificate, A named another person as his GP and did not disclose any relevant medical issues – shown at page B391 with “*No*” circled. He did refer to blood-thinners when interviewed. The CO refers to the UK guidance on firearms matters to express his concerns, in particular, “*Firearms licensing: Statutory Guidance for Chief Officers of Police*” (the “CO Guidance”), from the Home Office (pages B355 to B377). Section 2.32 lists “*Relevant Medical*

Conditions” that should be considered by a doctor in supporting the application for a Firearms Certificate. These include depression and anxiety, plus acute stress reaction or an acute reaction to the stress caused by trauma, including PTSD. It is apparent that A has failed to disclose what the CO designates as “*certain critical medical information concerning recent anxiety, depression, incidents of trauma requiring therapy and prescribed medication*” (paragraph 99 of the affidavit, at page B323). (The Jurats consider that, in accordance with the CO Guidance, every applicant for a Certificate should be requested to provide medical details from their GP before the application is determined.) The CO Guidance is very detailed. The CO also refers to sections 3.24 to 3.25 and 3.28. Whilst considering this guidance it is helpful to see the list of factors that “*will usually mean that the certificate is refused or revoked unless exceptional circumstances can be demonstrated*”. Included is, “*domestic violence*” and (in relation to the whole list) “*any of the above in relation to a family member or associate who lives at the address or has unsupervised access to the address*”. When one comes to section 3.28, “*Other serious factors*” are listed that may indicate an increased risk and potential danger to public safety or the peace. The list includes deliberate failure to disclose medical conditions, “*regardless of whether the certificate would have been refused if the appropriate declaration had been made*”.

16. The CO wrote to A’s Advocate on 29th March 2022 seeking “*to engage with*” and “*progress the situation involving the Appellant*” (pages B611 to B614). He set-out the circumstances in detail and referring to “*certain behaviours and attitudes of [A] which added to his concerns as to [A] holding a firearms certificate*”. At page B614, the CO indicated that he was considering the return of the Certificate, if stored at the Guernsey Pistol Club. The CO’s final letter was dated 21st April 2022 (pages B615 to B616). The Club indicated that they would no longer be able to store items in their armoury, as they needed to make room for the 2023 Island Games. A was not a member and would need to re-apply, and this would be considered by the Directors. The CO broadened his position by stating that the items would have to be stored at a gun club or by an approved third-party, such as a Registered Firearms Dealer, and A would only have access at a gun club or range. However, the position at the time of the appeal is shown in paragraph 120 of the CO’s affidavit (at page B329). “*At present I am not prepared to grant a firearms certificate to the Appellant.*” This is not the end of the matter, it will be reviewed “*and subject to an improved situation*” with no further incidents and, (in summary) an improved mental health situation, with full evidence of A’s background in respect of this issue. “[*A*] *should also re-engage with the firearms community so as to ensure secure independent storage of the items, etc.*” The CO’s concerns are detailed in paragraph 119 of his affidavit (pages B328 to B329) linked to “*areas of high risk*” that Chief Officers must consider. The Jurats have noted this list; however, they discount A’s excess alcohol conviction, which he properly disclosed, and which did not affect the original grant of a certificate (still less the speeding). Reference has been made already to A’s medical history and non-disclosure (paragraph 15 above). In summary, the major areas of legitimate concern shared by the Jurats are:

- (i) The domestic situation. Avoidable distress caused to Y, a very vulnerable young person, with a serious medical condition;
- (ii) an alleged physical assault on X. A visible injury seen by another;
- (iii) mental health concerns, involving anxiety and depression;
- (iv) allied to (iii), an apparent serious episode of panic when in a helicopter. Also, a failure to frankly disclose the full mental health situation; failure to disclose the consultations with a therapist;
- (v) clear evidence of being in a controlling and coercive relationship, with wholly unconvincing denials by A and also X. L-J Castle’s evidence is accepted by the Jurats; and

- (vi) an unfortunate habit of not accepting decisions because they do not comply with his wishes and a disproportionate response with reams of correspondence.

It is, therefore, wholly understandable that the CO has taken the stance he has.

- 17. A lot of events have taken place. R's response when dealing with the Pistol Club was clumsy and could have been exercised more tactfully. The CO agreed that there was a difference in interpretation between himself and A in relation to the views given by DCO Gull. The Jurats find that this was genuinely held, and is not material in any significant way to their conclusions.
- 18. DCO Scholes gave evidence also in accord with his affidavit (pages B49 to B61). He was cross-examined, but continued to give clear testimony. The Jurats found him an impressive witness. His account gives a history of the facts and concludes (paragraph 42, at page B61) with the following words:

"... My view of the Appellant is that he is coercive and controlling and is unsuited to be a firearms holder. Even with conditions in place I am firmly of the view that his nature and displayed behaviour cause sufficient concern that he cannot be allowed to hold a firearm without danger to the public or the peace. I do not say this lightly but as a person authorising the issue of firearms licences and therefore carrying the risk I cannot approve an application from the Appellant."

On a fair view of the facts found, and all the evidence both written and oral in this appeal, the Jurats agree with the concerns expressed and the reasons given.

Summary of Jurats' Conclusions

- 19. One matter which the CO mentioned in his oral evidence was that the existence of firearms where there is domestic discord has led, whilst he has been a senior officer in Guernsey, to a murder/suicide and a suicide. He added that firearms are undesirable and should be surrendered when there is a divorce and that some responsible individuals have done so. It is not part of the Jurats' reasoning that fault has necessarily to be ascribed to one party or another, it is simply a volatile area. Nevertheless, the Jurats accepted L-J Castle's evidence, and consider she has been a good support for X and also find X's depiction of the events behind the worrying WhatsApp messages unconvincing. A, with respect, lacks insight and the ability to appreciate the concerns of the Island Police Force. His reaction to this incident was over the top. There is no point in having a CO and DCO spending long periods of their time responding to very lengthy correspondence. On the facts, the evidence of the CO and DCO was not impeached in cross-examination and they are truthful witnesses. All the evidence has been carefully considered, even where not specifically referred to in the Jurats' Findings. The Jurats wish to re-emphasise that they are dealing with the matter of this appeal solely, and that other proceedings will need to be decided elsewhere.
- 20. In accordance with the legal Directions given by the Judge, the Jurats find:
 - (i) the decision to refuse a Certificate was not unreasonable. Not only was it within the range of reasonable responses which a reasonable CO might have made in the circumstances; it was the right decision on the facts found;
 - (ii) the CO has also demonstrated compliance with the requirements of Article 8 of the ECHR. The measures were prescribed by law, they pursued a legitimate end and were rationally connected thereto; there is from the Law no less restrictive alternative; and the measures taken were necessary, on the facts found. (There is no provision for suspension of a Certificate, which is a gap in the Law, but in all the circumstances that would have been hard to apply in this case); and

- (iii) the CO made it clear that the door is not shut forever and A, after a period of appropriate monitoring, can re-apply and have this considered. (It depends on how the legitimate concerns of the Police are met).

21. Appeal Dismissed.

Jurats: S M Jones, O.B.E., J M Wyatt and D J Robilliard

Costs

22. These need to be decided. R's Advocate is requested to mail the Deputy Greffier with any submissions he wishes to make, within 7 days of the date of this decision, copying to A. A then has 7-days to respond in writing on that issue, copying to R's Advocate.

**J R Finch, O.B.E.,
Lieutenant Bailiff**

Dated this 14th September 2022