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

Delivered: 08/03/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

BEFORE A DIVISIONAL COURT

**IN THE MATTER OF APPLICATIONS BY ANTHONY PARKER AND
JAMES CALDWELL
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

Before: Keegan LCJ & Humphreys J

**The Applicants appeared in person
Philip Henry (instructed by the Departmental Solicitor's Office) for the first proposed
Respondent
Joseph Kennedy (instructed by the Departmental Solicitor's Office) for the second
proposed Respondent**

HUMPHREYS J (delivering the judgment of the court)

Introduction

[1] By two separate applications, the applicants seek leave to apply for judicial review of the decisions and actions of the Public Prosecution Service ('PPS') and the Northern Ireland Court and Tribunal Service ('NICTS'). Given that the applications raise identical issues, it is convenient to deal with both of them in a single judgment. We have considered the written material and oral submissions made by both applicants, to include additional material filed after the hearing which was to facilitate the applicants in responding to the court's questions and, in particular, the case of *Re McDonagh's Application* which we address infra.

[2] Each of the applicants is a defendant in criminal proceedings before the magistrates' court in Newtownards. The first applicant, Mr Parker, was summonsed to answer two complaints which were made on 15 March 2022 namely:

- (i) That he contravened the speed limit on the Antrim Road, Belfast on 19 September 2021 contrary to Article 43 of the Road Traffic Regulation (Northern Ireland) Order 1997 ('the 1997 Order'); and
- (ii) That he failed to give information which might lead to the identification of the driver of a vehicle, having been required by a constable to do so, contrary to Article 177 of the Road Traffic (Northern Ireland) Order 1981 ('the RTO 1981').

[3] The second applicant, Mr Caldwell, was summonsed to answer four complaints which were made on 18 November 2021:

- (i) That he contravened the speed limit on 7 August 2021, contrary to Article 43 of the 1997 Order;
- (ii) That, on 10 August 2021, he failed to give information which might lead to the identification of the driver of a vehicle, having been required by a constable to do so, contrary to Article 177 of the RTO 1981;
- (iii) That, on 23 May 2021, he drove a motor vehicle at a speed in excess of that specified for the vehicle, contrary to Article 39 and Article 43 of the 1997 Order;
- (iv) That, on 24 May 2021, he failed to give information which might lead to the identification of the driver of a vehicle, having been required by a constable to do so, contrary to Article 177 of the RTO 1981.

[4] The applicants seek to impugn the decisions of the PPS to prosecute them, and also the steps taken in the course of the criminal proceedings to date in the magistrates' court.

Background

[5] The evidence reveals that a decision was made to prosecute the first applicant by Julian Hale, a public prosecutor in the PPS office, on 14 March 2022. This was entered onto the PPS Case Management System and two electronic criminal complaints were transmitted to the NICTS on 15 March 2022. Once receipt of these was acknowledged, a summons was printed and signed by Karen Murray, public prosecutor, on 16 March 2022. However, this was not served, and the summons was re-issued, signed by Grainne Boyle, public prosecutor, on 4 July 2022 and served personally on 29 July 2022.

[6] In the case of the second applicant, a decision to prosecute was taken on 18 November 2021 and the criminal complaints transmitted to the NICTS that same day. The summons was printed and signed by Nicola Leonard, public prosecutor, on 22 November 2021. Again, this was not served, and the summons was duly re-issued and signed by Una McClean, senior public prosecutor, on 8 April 2022. This was served personally on 5 May 2022.

[7] The complainant in each summons is named as the Director of Public Prosecutions.

[8] The first applicant appeared before District Judge Keown on 8 September 2022 and the second applicant before District Judge Brady on 2 September 2022. Both appeared before District Judge Hamill on 30 September 2022. On each occasion, issues were raised in relation to the jurisdiction of the court to hear and determine the complaints. The cases were fixed for contested hearings but now stand adjourned pending the outcome of these applications.

The Grounds for Judicial Review

[9] The grounds advanced by each applicant closely mirror one another. There is some overlap between them but they resolve to the following issues:

- (i) The validity of the complaints and summonses;
- (ii) The jurisdiction of the magistrates' court;
- (iii) Procedural unfairness in the conduct of the cases to date.

The Test for Leave

[10] In order to obtain leave to apply for judicial review, the applicants must establish that they have an arguable case with realistic prospects of success – see the judgment of McCloskey LJ in *Re Ni Chuinneagain's Application* [2022] NICA 56.

Witness Evidence

[11] As a preliminary issue, the applicants sought to have witnesses required to attend court and give oral evidence. In *Re McCann's Application* [13.5.92, QBD unreported], Carswell J stated that it is only in exceptional cases that a court exercising its supervisory jurisdiction in judicial review should require witnesses to give oral evidence and be cross-examined. Having considered the applications, we did not find that there were any exceptional circumstances in the instant cases which would require or justify the admission of such evidence. This is particularly so given the underlying criminal proceedings which remain paused pending these applications.

Satellite Litigation

[12] It is a well established principle in the field of criminal law that legal issues which can be dealt with in the context of extant criminal proceedings should not be brought before the Divisional Court, save in exceptional circumstances – see *R v DPP ex p Kebilene* [2000] 2 AC 326.

[13] In *Re Bryson & McKay's Application* [2021] NIQB 110, this court recently reviewed the jurisprudence in relation to satellite litigation in criminal proceedings. Keegan LCJ stated:

“This court is a court of last resort. The specialist criminal framework is better suited to determination of these types of issues. The applicants are not prejudiced by this outcome because they can bring pre-trial applications for No Bill or applications at trial including abuse of process and thereafter there are appeal rights embedded in the criminal law process. Also, there is nothing to stop the applicants raising any points of law in the Crown Court.”

[14] These observations apply equally to cases being tried summarily as they do to proceedings on indictment. All the points raised by the applicants in these applications for leave to apply for judicial review could be aired before the decision maker in the magistrates’ court. The appropriate forum for taking issue with the complaints, the summonses, the procedures adopted, and the fairness of the process is the magistrates’ court itself.

[15] This finding is sufficient to dispose of the applications. Leave to apply for judicial review in each application is refused since all the issues raised by the applicants can be addressed within the framework of the criminal proceedings.

[16] However, since we received detailed written and oral arguments on the specific points raised by the applicants, we propose to deal with those in this judgment.

The Complaints

[17] The applicants submitted that the complaints were not properly made, and in those circumstances, the magistrates’ court has no jurisdiction to hear and determine them.

[18] The purpose of a complaint is to commence a prosecutorial process and enable a summons to be issued. Magistrates’ courts are inferior courts of record, and therefore exclusively creatures of statute. Article 16(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (‘the 1981 Order’) states:

“A magistrates’ court has jurisdiction...to hear and determine a complaint charging any summary offence”

[19] Article 19(1)(a) of the 1981 Order provides for a time limit of six months from the date of commission of a summary offence to the making of a complaint. By Article 20(1):

“On a complaint being made to a lay magistrate that a person has, or is suspected of having, committed a summary offence, the lay magistrate may issue a summons directed to that person requiring him to appear before a magistrates' court to answer to the complaint.”

[20] By Article 21 of the 1981 Order a clerk of petty sessions could exercise the power of a lay magistrate to issue a summons.

[21] Section 93 of the Justice Act (Northern Ireland) 2015 introduced a new procedure for the issue of summonses in that a public prosecutor (as defined in that Act) could issue a summons as well as a lay magistrate or clerk of the petty sessions:

“(1) Where a complaint has been made by a public prosecutor to a lay magistrate that a person has, or is suspected of having, committed a summary offence, the public prosecutor may issue a summons directed to that person to appear before a magistrates’ court in answer to the complaint

(5) Any existing statutory provision which applies to a complaint made or summons issued under paragraph (1), (2), (3) or (4A) of Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 shall apply (with appropriate modifications) to a complaint made or summons issued by a public prosecutor under the corresponding subsection of this section.”

[22] Rule 7 of the Magistrates’ Courts Rules (Northern Ireland) 1984 states:

“(1) A complaint may be made by the complainant in person or by his solicitor or by any other person authorised in that behalf.

(2) Subject to any enactment, where it is intended that a summons only shall issue to require the attendance of any person, the complaint may be

made either upon or without oath, and either in writing or not, as the lay magistrate receiving the complaint thinks fit.

- (3) Where a complaint is in writing it shall be signed by the person making it and by the justice receiving it.
- (5) Any person against whom a complaint has been made in writing or his counsel or solicitor shall be entitled on request to receive from the clerk of petty sessions a copy of such complaint.
- (6) The original complaint shall be deposited with and, except as provided by Rule 28(2), Rule 42(1) or Rule 155(1), retained by the clerk of petty sessions."

[23] By virtue of Article 154 of the 1981 Order, no objection is permissible on the basis of any alleged defect in substance or form in a complaint or summons unless the defect appears to have misled the other party to the proceedings.

[24] In *Re McFarland's Application* [1987] NI 246, this court held that omissions to sign a complaint or to deposit it with the clerk of petty sessions were not fatal to its validity since the requirements of rule 7(3) and 7(6) were directory and not mandatory. Further, it was held that an unsigned summons was a 'sufficient complaint' and Article 154 served to answer any objection as to substance or form.

[25] Girvan LJ in *DPP v Long* [2008] NICA 15 followed the decision of the House of Lords in *R v Manchester Stipendiary Magistrate ex p Hill* [1983] AC 328 and stated:

"The reasoning of the House of Lords decision is to be found in the speech of Lord Roskill which established the following propositions:

- (a) What magistrates' courts had jurisdiction to try summarily in a criminal matter was an information and in a civil matter a complaint. What is required to give them that jurisdiction to try summarily the matter is that the information or complaint has been laid before them. Their jurisdiction does not depend upon a summons, or a warrant being issued (by way of interjection at this point it is to be noted that under the Northern Ireland legislation the different terminology of 'information' and 'complaint' has been dropped in favour of the single term 'complaint' (see *Re McFarland* [1987] NI 246 at 255E-F).

(b) The laying of an information or the making of a complaint is a matter for the prosecution or complainant, and it is a matter for them how it should be formulated.

(c) It is the prosecutor's duty if he wishes to prosecute to lay the information before the magistrate. That means procuring the delivery of the document to the person authorised to receive it on behalf of a magistrate. The acts of delivery and the receipt are ministerial, and the magistrate or clerk may delegate to an appropriate subordinate authority to receive the information which the prosecutor delivers. It can be sensibly inferred that any member of the staff in the office of the clerk will have such an authority. Accordingly, once received at the office of the clerk or the justices the information will have been laid or the complaint made.

(d) If a summons is required the information or complaint must be laid before a justice of the peace. The function of determining whether a summons should be issued is a judicial function which must be performed judicially and cannot be delegated."

[26] In *Re McDonagh's Application* [2019] NIQB 5, this court rejected a challenge to the issuance of a summons by a public prosecutor and held that the complaint and summons were both valid. In that case it was accepted that a complaint could be laid electronically.

[27] From these various statutory provisions and authorities, the following principles can be distilled:

- (i) The jurisdiction of the magistrates' court is engaged by the laying of a complaint;
- (ii) A complaint is duly laid when it is received by any member of staff in the relevant court office;
- (iii) A complaint does not require to be in writing, it can be made orally or by electronic means, and does not require to be on oath;
- (iv) A complaint does not have to be received personally by a lay magistrate;
- (v) The receipt of a complaint is an administrative rather than a judicial act and can therefore be delegated;

- (vi) The issue of a summons cannot be delegated but must be done by an individual with legal authority to do so, which includes a public prosecutor;
- (vii) Any objection to a defect in form or substance of a complaint or summons can only be made to the court when the other party has been misled by the defect.

[28] Applying these principles to the facts of these applications, it is clear that both the complaints and the summonses are valid. The complaints were laid electronically within the statutory time limit and were received by a relevant member of court staff. The summonses were issued by public prosecutors who had authority to do so. The applicants' claims in relation to the complaints and summonses are unarguable. The fact of electronic complaints is now established in law and accords with modern practices. This judgment should provide that clarity. We also think that, if requested, the PPS should be able to provide proof of an electronic complaint as it did in these cases at the prompting of the court.

The Jurisdiction of the Magistrates' Court

[29] The case is also advanced by the applicants that certain of the offences can only be charged against servants of the Crown. This submission relies upon Article 70 of the 1997 Order which states:

"Subject to paragraph (2), the provisions of this Order apply to vehicles and persons in the public service of the Crown"

[30] It would be a most surprising conclusion if this legislation which deals with speed limits, traffic signs and other road safety measures only regulated the driving habits of civil servants. The doctrine of Crown immunity means that Crown servants and Crown property are exempt from the provisions of the criminal law unless a statute provides otherwise. Article 70 is such a provision - it extends the provisions of the 1997 Order to Crown vehicles and Crown servants rather than limiting them.

[31] The applicants also contend that as citizens of Eire they are not subject to the jurisdiction of the magistrates' court in Northern Ireland. This is manifestly incorrect. The offence of contravening the speed limit in this territorial jurisdiction under Article 43 of the 1997 Order applies to "any person" regardless of their citizenship or origin. Article 177(1)(c) of the 1981 Order similarly applies to "any other person."

[32] A complaint is also made that the magistrates' court is an "administrative court under the executive branch of government" and that these applicants are entitled to trial before a "judicial court." This is a legal nonsense. The jurisdiction of the magistrates' court to hear and determine complaints is established by statute,

enacted by the legislative branch of government and such courts are presided over by independent judicial officers. The system is entirely compliant with the principle of the separation of powers and the rights enshrined in the European Convention on Human Rights.

[33] The contentions of the applicants in relation to the magistrates' court are patently unarguable.

Abuse of Process

[34] It is asserted that at the hearing on 30 September 2022 District Judge Hamill 'closed' the court, thereby depriving the applicants of a fair trial. The cases were listed for mention on that day in order to fix dates for trial. A number of defendants and their supporters attended on that occasion. All the defendants, but not all their supporters, were admitted to the court room. The cases were duly fixed for trial in December 2022 and there is no basis whatsoever to contend that there has been any deprivation of article 6 ECHR fair trial rights or an abuse of the process of the court.

[35] There is also a suggestion that there has been a breach of article 6 as a result of some perception of bias. The applicants claim that "all court actors work for the same party", which is identified as the Northern Ireland Road Safety Partnership. It is not entirely clear who is being referred to in terms of "court actors" and, in any event, the district judge is an independent judicial officer who will adjudicate on whether or not the complaints which have been laid have been proven to the requisite standard.

Procedural Fairness

[36] The applicants say that they have been deprived of a procedurally fair hearing as a result of the following:

- (i) The lack of a case management hearing;
- (ii) The refusal of disclosure;
- (iii) The refusal of counsel/McKenzie Friend;
- (iv) The failure to consider four motions filed on 8 September 2022.

[37] Case management within the magistrates' court is a matter within the discretion of the district judge. The applicants have not demonstrated that any lack of case management has given rise to some unfairness or prejudice to them. The applicants will be able to appear as defendants and make their respective cases at trial.

[38] On 7 and 25 January 2023 requests for disclosure were made to the PPS which were responded to by letter dated 26 January 2023. There is no evident failure in relation to disclosure and, if they so wish, the applicants are at liberty to file defence statements and make an application under the Criminal Procedure and Investigations Act 1996.

[39] If either or both of the applicants wishes to receive help and advice from a McKenzie Friend then the appropriate course of action is to make an application (preferably in advance of the date of hearing) to the district judge who will determine it in accordance with established principles. In addition, as discussed at the hearing before us, the applicants have the option of seeking legal advice.

[40] If the applicants seek any other relief in the context of the criminal proceedings in the magistrates' court, then they should likewise make the appropriate application to the district judge. There is no evidence of the applicants having been subjected to any unfairness as matters stand.

[41] The applicants also advanced a case that the conduct of the district judges was motivated by an improper purpose and/or by bad faith and that they have been subjected to 'judicial torture' which is said to be contrary to article 3 ECHR and the Geneva Convention. There was not a shred of evidence to justify the making of such allegations.

[42] Insofar as the applicants also sought to have these procedural issues classified as a breach of a claimed substantive legitimate expectation, they suffered from the same evidential weakness. All the procedural points we regard as unarguable.

[43] The procedural issues referred to merely serve to underline the initial conclusion of this judgment, namely that the matters raised by way of judicial review are properly analysed as impermissible satellite litigation. As a matter of principle, issues relating to the procedures adopted in the magistrates' court must be raised and dealt with by the district judge and, if necessary, by the county court judge on appeal.

Conclusions

[44] For the reasons outlined, we find that the case advanced by the applicants amounts to impermissible satellite litigation and, furthermore, that none of the grounds give rise to an arguable case with realistic prospects of success.

[45] We therefore dismiss the application for leave. We are minded to follow the court's usual approach on leave applications to make no order as to costs but we will hear the parties if any alternative order is sought.