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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	21/25729
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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

DIVISIONAL COURT

**IN THE MATTER OF AN APPLICATION BY MICHELLE ANNE HUGHES
FOR JUDICIAL REVIEW**

Applicant

and

**THE CHIEF CONSTABLE OF THE POLICE SERVICE OF
NORTHERN IRELAND**

Respondent

**Mr Desmond Fahy KC with Mr Michael Forde (instructed by Toal Heron Donnelly,
Solicitors) for the Applicant**
**Mr Tony McGleenan KC with Mr Philip McAteer (instructed by the Crown Solicitor's
Office) for the Respondent**

Before: Colton J and Humphreys J

COLTON J (delivering the judgment of the court)

Introduction

[1] This application involves a challenge to the decision by the Police Service of Northern Ireland ("PSNI") to issue the applicant with a fixed penalty notice ("FPN") pursuant to the Health Protection (Coronavirus Restrictions) (No.2) Regulations 2020 as Amended ("the Regulations").

[2] This case was one of a number of cases raising similar issues. Some of those resolved, but this case and the case of *Klara Kozubikova* went to a full hearing.

[3] Orders have been made in respect of the *Kozubikova* case by this court on 29 May 2024. Judgment was reserved in respect of this application.

Statutory background

[4] Before considering the application it is useful to set out the statutory background. The Regulations were made by the Department of Health in exercise of the powers conferred by sections 25C(1), (3)(c), (4)(d) and 25F(2) of the Public Health Act (Northern Ireland) 1967 [see Coronavirus Act 2020 (Chapter 7) Schedule 18].

[5] Regulations 4-6 and Schedule 2 of the Regulations impose restrictions and requirements on members of the public. Schedule 2 at para (3)(a) provides that:

“No person may participate in a gathering indoors in a private dwelling which consists of persons from more than one household.”

[6] The Regulations create offences and penalties arising from contraventions of the Regulations. Regulation 8(1) provides as follows:

“8-(1) A person who, without reasonable excuse contravenes a requirement in Regulation 4 to 6, or Schedule 2 commits an offence.”

[7] Regulation 9 provides for fixed penalty notices (FPNs). It provides:

“9-(1) An authorised person may issue a fixed penalty notice to anyone that the authorised person reasonably believes:

(a) has committed an offence under these regulations;

...

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the authority specified in the notice.

...

(4) Where a person is issued with a notice under this regulation in respect of an offence:

(a) No proceedings would be taken for the offence before the end of the period of 28 days following the date of the notice;

- (b) The person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- ...
- (5) A fixed penalty notice must:
 - (a) give reasonably detailed particulars of the circumstances alleged to constitute this offence;
 - (b) state the period during which (because of para (4)(a)) proceedings will not be taken for that offence;
 - (c) specify the amount of the fixed penalty;
 - ...
 - (f) inform the person to whom it is given of the right to ask to be tried for the offence."

Factual background

[8] On 3 January 2021, police were called to 3 Killowen Drive, Magherafelt, by the applicant who reported that a Mr Woods was refusing to leave her property.

[9] On attendance at the property, two males were located along with the applicant. All three that were present were intoxicated. FPNs were served on all three and what is known as a Prohibition Notice was served on the applicant.

[10] The Occurrence Enquiry log report indicates that the police officers attending the premises believed that due to their intoxicated state those present would not understand the notice.

[11] The PSNI say that the environment was stressful and confrontational. At the time of issuing the notices, the payment time limit and the opportunity to request a court hearing were both read out loud to those present. Mr Woods ripped the copy of his FPN in half when he received it and threw it in the direction of the police. He refused to sign the notice. The applicant accepted her ticket and signed it.

[12] The FPN served on the applicant did not provide any details of the offence. Under the heading "**OFFENCE DETAILS (Only select one offence per recipient per incident).**" None of the three options in the proforma notice were ticked.

Events subsequent to the issuing of the fixed penalty notice

[13] The applicant did not pay the £200 fixed penalty. Neither did she make a request for a court hearing which she was entitled to do by completing Part B of the FPN within 28 days of its issue.

[14] As a consequence the Chief Constable of the PSNI issued a registration certificate under section 66(3) of the Justice (Northern Ireland) Act 2011 requiring a sum equal to the fixed penalty plus one half of the penalty (£300) to be registered under section 67 of the Act for enforcement as a fine. A Collection Order was made by a District Judge without a hearing on 4 February 2021 requiring payment of the £300 to be made before 4 March 2021. Her failure to pay the £300 will result in the applicant being liable for further enforcement action which could include deducting money from her benefits or wages; freezing her bank accounts to the value of the outstanding amounts; vehicle seizure and, ultimately, selling her vehicle to cover the outstanding amount; a warrant of distress; a Supervised Activity Order or a warrant committing her to prison.

The applicant's case

[15] By these proceedings the applicant seeks the following:

- “(i) An order of certiorari quashing the decision to issue a fixed penalty notice.
- (ii) A declaration that the impugned decision was unlawful, ultra vires, and of no force or effect.”

Consideration

[16] There can be no doubt that the FPN served on the applicant does not comply with the provisions of Regulation 9(5)(a). Not only was there a failure to provide “reasonably detailed particulars”, but no particulars at all were provided. Even if one of the boxes ticked to the effect that the recipient was in breach of either Regulation 8(1), (2), (3) that exercise would not constitute compliance with the mandatory requirement as the court found in the case of *Kozubikova*.

[17] At the leave hearing the court was informed that the respondent has since re-issued instructions to officers regarding the need to record reasonably detailed particulars of the circumstances alleging to constitute the offence on fixed penalty notices.

[18] The respondent has accepted that the fixed penalty notice did not comply with the Regulations. Thus, it is argued, that the public law issue identified does not require further consideration.

[19] The only issue arising, therefore, is what are the consequences of the respondent’s admitted breach of the Regulations in failing to provide reasonable particulars.

[20] At the hearing there was some discussion about the implications of the Prohibition Notice which was served on the applicant under Regulation 7(2) which makes provision, inter alia, for restrictions on gatherings at private dwellings. That notice included a statement that the relevant constable had “reasonable grounds for believing that you are contravening a requirement in the Regulations as set out in Part B below and that it is necessary and proportionate to give you this Prohibition Notice to prevent continued contravention of the requirement.”

[21] Part B provided for a restriction on gatherings in private dwellings and stated that:

“Police attended 3 Killowen Drive, Magherafelt, today on Sunday 03/01/2021. Police found Michelle Hughes and two men from different households, drinking alcohol and intoxicated. This is a violation of Covid Regulations at a time where the infection rate is high in Northern Ireland.”

[22] The action required of the applicant set out in Part C of the notice was stated to be:

“The occupant, Michelle Hughes, must not invite or host other people from different households at her address of 3 Killowen Drive, Magherafelt.”

[23] Part D pointed out that failure to comply with this notice, without reasonable excuse, is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

[24] As indicated in the leave judgment, the court takes the view that this notice does not and could not remedy the failure of the respondent in respect of the mandatory requirements concerning the FPN.

[25] By definition, the Prohibition Notice is a forward-looking document which serves a different purpose from a FPN. It may not necessarily identify the offence for which a FPN has been issued.

[26] That said, Mr McGleenan argues that it is another factor to be considered when the court looks to the consequences of the breach in relation to the FPN. In short, he argues that by reason of the Prohibition Notice the applicant was aware of the reason for the issuing of the FPN.

[27] Mr McGleenan’s primary submission is that the court should not grant any relief to the applicant in this case because of her failure to exercise her right to seek a court hearing as explained in the FPN and which the police say was explained to the applicant at the time the notice was issued.

[28] By reason of that failure the applicant cannot challenge the circumstances giving rise to the FPN in the magistrates' court.

[29] Because breaches of the Regulations are "summary only" offences, there is a six-month time limit for laying a complaint with a lay magistrate before a summary only offence is time barred. Article 19(1)(a) of the Magistrates' Court (Northern Ireland) Order 1981 states:

"A magistrates' court shall not have jurisdiction to hear and determine a complaint charging the commission of a summary offence other than an offence which is also triable upon indictment unless the complaint was made within six months from the time when the offence was committed or ceased to continue."

[30] The relevant six-month time limit has passed and so it is not open for the Public Prosecution Service to issue a summons alleging a breach of the Regulations by the applicant.

[31] Mr McGleenan argues that where the recipient of a FPN chooses not to invoke the simple and cost-efficient remedy available, it would be wrong of this court to take on the statutory role of the magistrates' court on the sole basis of the recipient's conscious or negligent failure to invoke that jurisdiction in the proper manner.

[32] It is argued that this is not a case appropriate for intrusive relief having regard to the failure of the applicant to avail of the straightforward statutory avenue open to her.

[33] As in all judicial review applications, the question of relief is a matter for the discretion of the court.

[34] In this regard, the court does have a concern that someone such as this applicant, would be in a better position than the applicant *Kozubikova* who did exercise her right to seek a court hearing. As a consequence, she faces a hearing in the magistrates' court where she is at risk of a conviction and penalty. In those circumstances, it would seem wrong that this applicant would escape such a risk when she had failed to avail of that facility and where the passage of time means she is not liable to a summons. On the face of it, this would appear inequitable. It may be argued, of course, that that is merely a consequence of the established breach of the Regulations.

[35] However, Mr Fahy addressed this issue at the substantive hearing. He points out that a challenge to a Notice of Registration of a sum under section 67 of the 2011 Act can only be made within 21 days, and clearly that time period has now elapsed.

[36] A court of summary jurisdiction can, nonetheless, set aside a sum enforceable under section 67, if it is deemed to be “in the interests of justice.” Section 69(1) of the 2011 Act states:

“Setting aside of some enforcement under section 67

69(1) A court of summary jurisdiction may, in the interests of justice, set aside a sum enforceable as a fine as a result of section 67.

(2) Where a court sets aside such a sum it must give a direction that either –

(a) no further action is to be taken in respect of the alleged offence that gave rise to the penalty notice concerned; nor

(b) if the case is to be treated as if the person concerned had given notice requesting to be tried in respect of the offence.

(3) When a court gives a direction under subsection (2)(a) the penalty notice concerned, and the registration that any proceedings taken for enforcing payment of the sum registered shall be void.”

[37] Mr Fahy says that the appropriate way forward in this case, if the court is minded to quash the FPN, is for the applicant to make an application to the court of summary jurisdiction to set aside the collection order made by the District Judge. At such a hearing the applicant would have to persuade the court that it would be “in the interests of justice” to do so.

[38] Importantly, section 69 goes on to provide:

“(4) Where a court gives a direction under subsection (2)(b):

(a) The registration of any proceedings taken for enforcing payment of the sum registered shall be void; and

(b) Article 19(1)(a) of the Magistrates’ Courts (Northern Ireland) Order 1981 (NI 26) (Limitation of Time) shall have effect as if for the reference to the time when the offence was committed there

was substituted a reference to the date of the setting aside.

(5) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum (including the making of a collection order)."

[39] Thus, Mr Fahy points out that if the applicant is successful in having the collection order set aside, then the time limit for the issuing of a summons in relation to any alleged offence will run from that date.

[40] Therefore, if successful, the applicant runs the risk of receiving a summons in respect of her conduct which gave rise to the FPN within six months.

[41] In that event she returns to the position she would have been in had she exercised her right to seek a court hearing. It also places her on a level playing field with the applicant *Kozubikova*. In Mr Fahy's pithy comment a successful application under section 69 is not "a free bet."

Conclusion

[42] The court accepts that the applicant can be criticised for her failure to exercise her right to seek a court hearing when served with the fixed penalty notice. Of course, it is not for this court to examine the actual circumstances giving rise to the issuing of the FPN. We are only concerned with issues of public law.

[43] There is no dispute that the FPN under challenge in this case did not comply with the mandatory requirements of the Regulations.

[44] The notice has adverse consequences for the applicant. Not only has it resulted in a fine and collection order with a risk of further sanctions, but it will remain on official records.

[45] The court is concerned about the issuing of the FPN in circumstances where it clearly was in breach of the mandatory requirements of the Regulations which gave rise to the power. The powers granted to PSNI officers were wide ranging and intrusive. Courts should be alive to ensure that any unlawfulness in the issuing of such notices should be corrected insofar as it is possible to do so.

[46] This is the only forum in which this FPN can be challenged. That would be so even if the applicant had exercised her right to seek a court hearing. In the event that the court grants the applicant the relief sought it would be open to her to apply to have the collection order set aside. In that event she is exposed to the risk of prosecution for any criminal activity proven against her.

[47] In these circumstances, the court takes the view that it is appropriate to quash the decision to issue the fixed penalty notice challenged in this application and the court so orders.