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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND (JUDICIAL REVIEW)

BETWEEN:

PATRICK HIGGINS

Appellant:

and

THE CHIEF CONSTABLE OF THE PSNI

Respondent:

_____

Mr Ronan Lavery KC and Mr Stephen Campbell (instructed by Paul Campbell Solicitors) for the Appellant
Mr Ian Skelt KC and Mr Joseph Kennedy (instructed by the Crown Solicitor's Office) for the Respondent

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Before: McCloskey LJ, McAlinden J and Scoffield J

McCLOSKEY LJ (*delivering the judgment of the court*)

Preface

The procedure adopted in this case from the outset has been based on the uncontroversial premise that these proceedings are not a criminal cause or matter within the meaning of the Judicature (NI) Act 1978.

Introduction

[1] Patrick Higgins (the "appellant") appeals against the judgment and ensuing order of the High Court dismissing his application for judicial review. The appellant's challenge, in a nutshell, raises the pure question of law, one of statutory construction, of whether a custody officer is empowered by statute to alter, retrospectively or otherwise, the terms upon which a person released on police bail is required in compliance therewith to attend a specified police station at a specified time on a specified date. The High Court held that such a power exists.

[2] This court having directed, and considered, written submissions on the question of whether this appeal is academic, thereby attracting the application of the "Salem" principle, ruled in advance that it would reserve its determination of this issue pending consideration of the parties' arguments on all issues at the substantive hearing, which ensued on 20 January, 24 February and 25 March 2025. For reasons which will become apparent, we are satisfied that the appeal should not be dismissed on the basis that it is academic.

Factual matrix

[3] As the times and dates in the factual framework are of some importance, the court directed the compilation of an agreed chronology by the parties and gratefully reproduces this at this juncture, omitting the immaterial. Some of the language in this chronology is that of the parties' legal representatives and parts have been removed by the court in the interests of clarity, refinement and fidelity to the statutory language.

19th May 2022	The appellant was arrested in relation to an allegation of assault. Following police interview he was released from Banbridge Police Station on pre-charge bail, with a return date of 17th June 2022.
16th June 2022	A Detective Constable informed the appellant's solicitor, via email, that medical evidence which he wished to put to the appellant was not yet available and

	the bail return date was amended to 16th August 2022.
15th August 2022	The same Detective Constable informed the appellant's solicitor, via email, that the awaited medical evidence remained outstanding and the bail return on 16th August 2022 would not go ahead.
20th September 2022	The same Detective Constable informed the appellant's solicitor, via email, that the medical evidence remained outstanding and that he had sought a further extension of the bail return to 19th October 2022.
14th October 2022	The same Detective Constable informed the appellant's solicitor, via email, that the medical evidence remained outstanding and that he had sought a further extension of the bail return to 23rd November 2022.
9th November 2022	The appellant's solicitor emailed the Detective Constable seeking confirmation as to whether the outstanding medical evidence was received. No response was received.
16th November 2022	The Detective Constable was unable to attend work due to sickness, and did not return until 29th November 2022.
22nd November 2022	The appellant's solicitor again emailed the Detective Constable seeking confirmation as to the availability of the awaited medical evidence. No response having been received, the appellant's solicitor attempted to reach the Detective Constable via telephone, unsuccessfully.
23rd November 2022	The appellant's solicitor contacted the Custody Sergeant on duty at Banbridge Custody Suite. It was agreed between them that the appellant would delay his attendance until the arrival of the Detective Constable (who was, unbeknownst to both, on sickness leave). The Detective Constable not having attended, neither the appellant nor his solicitor attended Banbridge Custody Suite.
29th November 2022	The Detective Constable returned from sickness leave.
30th November 2022	The appellant's solicitor emailed the Detective Constable setting out the history of the matter. No

	response was received.
1st December 2022	The Detective Constable sought an extension of the appellant's bail return to 6th January 2023. The Detective Constable did not communicate with the appellant's solicitor.
8th December 2022	In the course of a discussion with the custody sergeant in relation to an unrelated matter, the appellant's solicitor sought confirmation that the case was being dealt with by way of a report to the Public Prosecution Service. The appellant's solicitor was informed of a further bail surrender extension to 6th January 2023. The appellant's solicitor sought confirmation as to the legal basis for this extension, but none was received.
22nd December 2022	The appellant's solicitor issued a PAP letter addressed to the Police Service.
22nd December 2022	A holding response was issued on behalf of the Police Service.
5th January 2023	The Detective Constable informed the appellant's solicitor that he had sought a further bail surrender extension to 15th February 2023, to "*allow adequate time for any legal proceedings to go ahead before the bail return*." No confirmation of this "extension" was provided subsequently.
16th February 2023	The appellant did not surrender to custody on 15th February 2023. The next day he was arrested in respect of this failure. On his solicitor's attendance at Banbridge Custody Suite on that date, the custody sergeant was informed that, inter alia, the Detective Constable had not confirmed the date of any bail surrender extension with either the appellant or his solicitor. The Detective Constable's email of 5th January 2023 having been produced to the custody sergeant, the appellant was not charged with any offence and was released with a bail return date of 29th March 2023.
27th March 2023	The judicial review leave application proceeded before Horner LJ and McFarland J.
29th March 2023	The appellant was charged with the offence of causing grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861.
5th June 2023	Leave to apply for judicial review was granted.

15th November 2023	Substantive hearing before Horner LJ and Colton J.
27th November 2023	The appellant was acquitted of the charge of Grievous Bodily Harm and convicted of the lesser offence of Assault Occasioning Actual Bodily Harm. The sentence imposed was 5 months' imprisonment, suspended for a period of 18 months.
26th March 2024	The judicial review application was dismissed.
3rd May 2024	Notice of Appeal lodged.

[4] Summarising, the key events are these: on 19 May 2022 the appellant was arrested by police, interviewed and released on bail subject to (a) specified conditions and (b) a specified surrender arrangement detailing the appointed time, date (17 June 2022) and place; on four subsequent occasions a police officer informed the appellant that the "return" (surrender) date had been "deferred" to a later date, thereby excusing him from surrendering to police custody as otherwise required; the last (fifth) of these "deferred" dates was also similarly varied; following its lapse a new "return" date of 6 January 2023 was retrospectively authorized; this new arrangement was not communicated but was discovered by his solicitor; in advance of this new date these proceedings were commenced and the appellant was informed of a request for authorization of yet another "deferral" to a later date; no such authorization or deferral was subsequently communicated to the appellant; the new deferred bail surrender date having passed, the appellant was arrested on suspicion of having failed to surrender; and he was then released on bail with a new surrender arrangement and was not charged with any "non surrender" offence.

[5] The entire period under scrutiny is 19 May 2022 to 16 February 2023. The appellant, on police bail throughout, did not surrender to police custody at any time during this period. In advance of the originally specified first surrender date (17 June 2022), a police officer purported to vary the surrender arrangement specified in the original bail authorization. On six subsequent occasions successive variations of the surrender arrangements were purportedly made by a police officer. As discussed further below, on two (only) of these five occasions some of the statutory formalities pertaining to the surrender variation were observed by the police.

The relevant statutory provisions

[6] These are found, for the most part, in the Police and Criminal Evidence (Northern Ireland) Order 1989, as amended ("PACE"). The PACE provisions considered *infra* are contained in a freestanding chapter of the legislation, Part IV, entitled "Arrest." This is followed by Part V, "Detention." While Article 48 occupies centre stage in the judgment under appeal and the parties' arguments, it is necessary

to pay attention to certain anterior provisions (as the trial judge did). First, there is the discrete regime constituted by Articles 32, 32A and 32B (often referred to as "street" bail), which evidently did not feature at first instance. This regime regulates the discrete case of a person arrested and bailed other than at a police station.

[7] It provides, *inter alia,* that such a person may be released on bail by a constable before arriving at a police station. Where bail is granted in this way Article 32B requires the constable to provide the person concerned with a notice in writing compliant with certain requirements. Per Article 32B(2):

> "(2) The notice must state—
>
> (a) the offence for which he was arrested; and
>
> (b) the ground on which he was arrested.
>
> (3) The notice must inform him that he is required to attend a police station.
>
> (4) It may also specify the police station which he is required to attend and the time when he is required to attend.
>
> (5) If the notice does not include the information mentioned in paragraph (4), the person must subsequently be given a further notice in writing which contains that information.
>
> (6) The person may be required to attend a different police station from that specified in the notice under paragraph (1) or (5) or to attend at a different time.
>
> (7) He must be given notice in writing of such change as is mentioned in paragraph (6) but more than one such notice may be given to him."

This is supplemented by Article 32C(1):

> "A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required."

This latter provision should be juxtaposed with the kindred provisions in Article 48(7) and (8) *infra*.

And per Article 32D:

> "(1) A constable may arrest without warrant a person who—
>
> (a) has been released on bail under Article 32A subject to a requirement to attend a specified police station; but
>
> (b) fails to attend the police station at the specified time.
>
> (2) A person arrested under paragraph (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.
>
> (3) In paragraph (1), "specified" means specified in a notice under paragraph (1) or (5) of Article 32B or, if notice of change has been given under paragraph (7) of that Article, in that notice.
>
> (4) For the purposes of—
>
> (a) Article 32 (subject to the obligation in paragraph (2)); and
>
> (b) Article 33,
>
> an arrest under this Article is to be treated as an arrest for an offence."

[8] Pausing, the dominant feature of the discrete "street" bail regime is the release of an arrested person on bail in accordance with a notice in writing having certain obligatory contents. This notice has the effect of obliging such person to surrender to police custody at a place, time and date all of which must be expressly specified. This duty of surrender can, however, be varied. This can occur only if the person is given notice in writing that surrender is to take place at a different police station or at a different time. Furthermore, this duty of surrender can be waived, per Article 32C(1). Obviously, these notices must be given in advance of the surrender date. By Article 32D, a person who fails to comply with the attendance requirement is liable to be arrested, which act is "…to be treated as an arrest for an offence." Articles 4–6 of CJO 2003 may be juxtaposed here.

[9] Next, Article 35(6)-(8) of PACE, arranged within Part V dealing with 'Detention', are also material:

"(6) Where—

(a) it appears to the custody officer—

(i) that there is need for further investigation of any matter in connection with which that person was detained at any time during his detention; or

(ii) that proceedings may be taken against that person in respect of any such matter; and

(b) the custody officer considers that, having regard to all the circumstances, that person should be released only on bail,

the custody officer shall so release that person.

…

(8) For the purposes of this Part a person who—

(a) attends a police station to answer to bail granted under Article 32A;

(b) returns to a police station to answer to bail granted under this Part; or

(c) is arrested under Article 32D or 47A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail under Article 32A or this Part."

[10] Article 48, by some measure the dominant statutory provision in these proceedings, provides:

"**Bail after arrest**

48.—(1)The duty of a person who is released on bail under this Part to surrender to custody under Article 4 of the Criminal Justice (Northern Ireland) Order 2003 consists of a duty—

(a) to appear before a magistrates' court at such time and at such place as the custody officer may appoint; or

(b) to attend at such police station at such time as the custody officer may appoint.

(1A) A person released on bail and subject to a duty to appear before a magistrates' court in accordance with paragraph (1)(a) shall be deemed for the purpose of Articles 48 and 49 of the Magistrates' Courts (Northern Ireland) Order 1981 to have been remanded on bail.

(2) The time to be appointed under sub-paragraph (a) of paragraph (1) shall be either the date of the next petty sessions at the place appointed or a date not later than 28 days from the date on which the person is released.

(2A) The custody officer shall make a record of the time and place appointed under paragraph (1)(a) or (b) and if the person released on bail so requests, the custody officer shall cause a copy of the record to be given to that person as soon as practicable after the record is made.

(3) No recognisance for his surrender to custody shall be taken from him.

(3A) Except as provided by this Article—

(a) no security for his surrender to custody shall be taken from him;

(b) he shall not be required to provide a surety or sureties for his surrender to custody; and

(c) no other requirement shall be imposed on him as a condition of bail.

(3B) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(3C) He may be required, before release on bail, to give security for his surrender to custody; and the security may be given by him or on his behalf.

(3D) He may be required to comply, before release on bail under Article 38(2) or (7)(b) or Article 39(1) or later, with such requirements as appear to the custody officer to be necessary to secure that—

(a) he surrenders to custody;

(b) he does not commit an offence while on bail; and

(c) he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3E) Where a custody officer has granted bail he or another custody officer serving at the same police station may, at the request of the person to whom it is granted, vary the conditions of bail; and in doing so may impose conditions or more onerous conditions.

(3F) Where a custody officer grants bail to a person no conditions shall be imposed under paragraph (3B), (3C), (3D) or (3E) unless it appears to the custody officer that it is necessary to do so for the purpose of preventing that person from—

(a) failing to surrender to custody;

(b) committing an offence while on bail; or

(c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(3G) Paragraph (3F) also applies on any request to a custody officer under paragraph (3E) to vary the conditions of bail.

(3H) Where a custody officer varies any conditions of bail or imposes conditions under paragraph (3B), (3C), (3D) or (3E), he shall make a record of the decision and shall, at the request of the person to whom bail was granted, cause a copy of the record

to be given to that person as soon as practicable after the record is made.

(4) A magistrates' court may, on an application by or on behalf of a person released on bail under Article 38(2) or (7)(b), vary the conditions of bail.

(5) A person who has been released on bail under Article 38(2) or (7)(b) may be arrested without warrant by a constable if the constable—

(a) has reasonable grounds for believing that the person is likely to break any of the conditions of his bail; or

(b) has reasonable grounds suspecting that the person has broken any of those conditions.

(5A) A person arrested under paragraph (5) must be taken to a police station (which may be the station where the conditions of bail were set or varied or any other police station) as soon as practicable after the arrest.

(6) Paragraphs (7) to (11) apply to a person who is released on bail subject to a duty to attend at a police station in accordance with sub-paragraph (b) of paragraph (1).

(7) The custody officer may give notice in writing to such a person as is mentioned in paragraph (6) that his attendance at the police station is not required.

(8) Where it appears to the custody officer that such a person is, by reason of illness or other unavoidable cause, unable to appear at the police station at the time appointed, the custody officer may extend the time for such further period as may appear reasonable in the circumstances.

(9) Where a person is detained under Article 38(3), any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part.

(10) Nothing in this Article shall prevent the re-arrest without warrant of such a person as is mentioned in paragraph (6) if new evidence justifying a further arrest has come to light since his release.

(11) Where such a person is re-arrested, the provisions of this Part shall apply to him as they apply to a person arrested for the first time; but this paragraph does not apply to a person who is arrested under Article 47A or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by Article 35(8) to have been arrested for an offence).

(12) In Article 129 of the Magistrates' Courts (Northern Ireland) Order 1981, for paragraph (2) there shall be substituted the following paragraph—

"(2) Where a warrant has been endorsed for bail under paragraph (1)—

(a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and

(b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement." .

(13) In this Part "bail" means bail granted in accordance with this Article."

[11] **Originally**, Article 48(1) and (2) of PACE were in these terms:

"**Bail after arrest**

(1) A person who is released on bail shall be subject to a duty— (a) to appear before a magistrates' court at such time and at such place as the custody officer may appoint; or (b) to attend at such police station at such time as the custody officer may appoint.

(2) The time to be appointed under paragraph (1) shall be either the date of the next petty sessions at the place appointed or a date not later than 28 days from the date on which the person is released."

Thus, pre–amendment, in the case of a suspect released on bail from police custody the bail authorisation had to specify a surrender date not later than 28 days thence. This requirement was revoked by the amended Article 48, set out in the immediately preceding paragraph, which took effect on 1 March 2007. Now, the 28-day limitation applies only to police bail to appear before a magistrates' court and *not* to police bail to attend at a police station.

[12] The next material pieces in the statutory jigsaw are Articles 4 and 5 of the Criminal Justice (Northern Ireland) Order 2003 ("CJO 2003"). These are concerned with the duty of a person released on bail to surrender to custody and the consequences of failing to do so:

"**Surrender to custody**

4.—(1) A person released on bail shall be under a duty to surrender to custody.

(2) In this Part—

surrender to custody means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail)—

(a) into the custody of the court at the time and place for the time being appointed for him to do so; or

(b) at the police station and at the time appointed for him to do so or

(c) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.

Offence of absconding by person released on bail

5.—(1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.

(2) If a person who—

(a) has been released on bail, and

(b) has, with reasonable cause, failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(2) A person guilty of an offence paragraph (1) or (2) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine or to both."

Article 6(1) is a sister provision, addressing a person's failure to surrender to the custody of a court having been released on bail, empowering the court to issue a warrant for the person's arrest.

[13] Article 47A of PACE (perhaps out of logical sequence) addresses the scenario of a person released on police bail. It provides:

"**47A.**—(1) A constable may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this Article shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purposes of—

(a) Article 32 (subject to the obligation in paragraph (2), and

(b) Article 33,

an arrest under this Article shall be treated as an arrest for an offence."

Summary

[14] From the amalgam of statutory provisions rehearsed above, all of which are concerned with the provision of police bail to an arrested person suspected of, but not charged with, an offence and the outworkings thereof, the following main legal rules are deduced (all, with the exception of the last, derive from PACE):

(i) A grant of police bail to such a person arises where the police do not consider it appropriate to either charge or unconditionally release the suspect and one of the two circumstances specified in Article 35(6)(a) of PACE applies.

(ii) A person released on police bail has a duty to surrender to police (or to the Magistrates' Court) at a later date in accordance with the surrender arrangement specified in the bail authorisation: Article 48(1).

(iii) The future surrender arrangement must be recorded by the custody officer and copied to the suspect on request: Article 48(2A).

(iv) The bail authorisation may enshrine conditions, but only where it appears to the custody officer that this is necessary for one of the specified purposes: Article 48(3A), (3D) and (3F). Where conditions are imposed, the custody officer shall make a record of this and shall provide the suspect with a copy on request: Article 48(3H).

(v) A variation of such conditions is possible: this must be recorded and again copied to the suspect on request: Article 48(3H).

(vi) The released suspect may subsequently be arrested without warrant by a constable on reasonable grounds for believing a likely breach of condition or on reasonable grounds for suspecting that a breach has occurred: Article 48(5).

(vii) The custody officer may give notice in writing to a suspect released on police bail that his future attendance at the police station (to surrender) is not required: Article 48(7).

(viii) The time provision in a police bail authorisation may be extended by the custody officer where it appears that the suspect is unable to honour the surrender obligation by reason of illness or other unavoidable cause: Article 48(8).

(ix) The surrender to police custody duty pursuant to a "street" bail authorisation may be varied by police: Article 32B (6) & (7).

(x) The same duty may be waived in its entirety: Article 32C (1).

(xi) There is provision for re-arrest of the suspect: Article 48(10).

(xii) Where a suspect released on police bail subsequently surrenders, as required, at a police station they are treated as arrested in respect of the offence underpinning the preceding grant of bail: Article 35(8).

(xiii) A suspect who fails to honour the surrender obligation specified in a police bail authorisation may be arrested by a constable and must then be taken to the police station appointed for his surrender to custody as soon as practicable after the arrest: Article 47A.

(xiv) A person released on police bail (and Magistrates' Court bail) who fails without reasonable cause to surrender to custody shall be guilty of an offence: Articles 4(1), 5(1), and 6(1) of CJO 2003.

Relevant evidential matrix

[15] In addition to the paragraph [3] chronology, certain further sources of the uncontested evidence before the court must be considered. The first of these is the affidavit of the investigating police officer which, in material part, is reflected in the paragraph [3] chronology. The deponent describes, *inter alia,* a series of acts involving the "pushing back" of the "return date."

[16] On 1 December 2022, following the "push back" effected on 23 November 2022, the investigating officer, per his affidavit:

> "…contacted Banbridge Custody and requested a bail return date to be set for Friday 6th January 2023…"

There is no averment from him regarding any response to this "request." A brief Occurrence Enquiry Log ("OEL") record was made. The next relevant entry, made on 8 December 2022, was:

> "I have discussed this investigation with the IO. We still await the medical reports so we can finalise the appropriate offence based on level of injury to IP. DC

> Beckett – Please can you confirm that all matters around the bail / re-bail of persons is up-to-date and correct i.e. bail dates are set and suspects aware."

From other police affidavit evidence, it is clear that on 8 December 2022 the appellant's solicitor telephoned Banbridge police station and was informed by the custody sergeant that "…there was a return date of 6 January [2023]."

[17] From a further Police Service affidavit provided at the request of this court, the responsible Chief Inspector in the Criminal Justice Branch has provided additional information about "the operation of pre-charge police bail and the fixing of bail return dates by PSNI officers." This affidavit addresses two specific scenarios raised by the court:

(i) The practice whereby a custody officer "extends" the surrender date of a person previously released on police bail is "a very frequent occurrence", which typically arises in cases where no further interview of the suspect is appropriate because there has been no material development in the police investigation. This practice conveniences both the police and the suspect and their legal representative.

(ii) The practice whereby a person released on police bail does not surrender to police custody and is the subject of the police <u>subsequently</u> amending/deferring the elapsed surrender date to a future date is "less frequently occurring … but certainly does arise from time to time." This occurs most typically in cases where it is established that there is good reason for the subject's failure to surrender. The deponent does not elaborate on the particulars of this practice and in particular whether any formalities are observed. He suggests that the defaulting person at all times retains the status of a person subject to all of the provisions in their bail authorization.

The deponent further explains the concepts (in police and practitioners' parlance) of "cancellation of bail" and "release on report":

> "...when an individual has their police bail cancelled, they are informed in writing. The PSNI have a 'bail cancellation notice' pro forma [exhibited]. Where a suspect is released on report, the suspect would be provided with the Bail Cancellation Notice. This notice should be given to the suspect or their solicitor **and is provided to comply with Article 48(7) of PACE…**"
> [our emphasis.]

[18] The aforementioned Chief Inspector swore a second affidavit in order to address further questions raised by the court. The deponent indicates that when a suspect is being released on police bail, Form PACE 13/1(A) (see *infra*) is completed

digitally, signed digitally by the suspect, printed and furnished to the suspect. (This is a laudable practice, which exceeds the statutory requirements detailed above). In every case of surrender to police bail and further release on police bail a new Form 13/(1)(A) is generated. This does not occur in cases where the suspect has been excused from honouring their surrender obligation, with a later date being arranged. In this scenario "…adjustments to dates are updated on NICHE…" (denoting a police computer system). In this scenario, further, nothing is provided as a matter of course, digitally or otherwise, to the suspect or their solicitor. It appears that the NICHE entry may be migrated to the digital custody record.

[19] Bail decisions are also routinely recorded on the OEL, another digital record which evidently is generated for the first time when the suspect is initially arrested and is updated periodically thereafter. It was further confirmed to the court that the mechanism of the so-called "Bail Cancellation Notice" is activated in the case of a suspect previously released on police bail who subsequently surrenders in accordance with the bail authorisation and is then either (a) liberated unconditionally or (b) liberated unconditionally and informed that there will be a police report to the PPS – thereby stimulating the possibility of a future prosecution.

Form PACE 13(1)(A)

[20] At this juncture, it is necessary to focus on Form PACE 13/1(A), which is the formal incarnation of what we have heretofore described as the "police bail authorization." This is not a statutory document *per se*. However, it clearly derives from PACE and the PACE Codes of Practice. It is entitled "Bail to Appear at a Police Station." This Form requires the signature of the "person bailed", the signature of the "officer granting", the surname of the same officer and the rank and number of the same officer. There is but one of these in the present case: see the first entry in the paragraph [3] chronology above.

[21] Several of the foregoing requirements were not observed in this instance. This is a disturbing fact. From those parts of the Form which were completed one learns that the appellant was granted police bail at 22.40 hours on 19 May 2022; no surety was required; and there were three express conditions of bail: no contact with the injured party, geographic exclusion from an identified area and place of residence. The "Grounds for Imposing Conditions" section of the Form, in common with the other requirements already noted, was not completed (albeit each condition was accompanied by a reason related to that specific condition). This is another notable default. One discrete section of the Form is in the following terms:

> "I understand that I am granted bail and must appear personally at Banbridge Custody Police Station on 17th June 2022 at 1pm unless I receive notice in writing from the Police Service of Northern Ireland that my attendance is not required and not to depart the station without leave. I have been informed that if I fail to do so I may commit

> an offence and can be arrested, fined, imprisoned or all three…"

This may be linked to a later part of the Form:

> "I understand that I am granted bail with conditions and must surrender to the police … I have been given a copy of this Form."

Each of the aforementioned sections of the Form required the appellant's signature. No signature was appended to the first. *Ditto* the second, where one finds only the barely legible initials "PH." This is a third disturbing fact.

The central issue

[22] It is necessary to identify the first target of the appellant's challenge, by reference to the paragraph [3] chronology and the summary in paragraph [4] above, as this was the central focus of the judge's attention, from paragraph [32] of his judgment. Per paragraph 3.1 of the Order 53 Statement, as ultimately amended:

> "The applicant challenges the respondent's decision on 1 December 2022 to extend/impose pre-charge bail conditions, administratively, some 8 days after his bail return and the expiry of his pre-charge bail."

The judge labelled the respondent's act on 1 December 2022 "the extension of pre-charge bail." He concluded that this was a lawful act. The kernel of his reasoning is in paragraph [40]:

> "The court considers that Article 48(1)(b)…provides the necessary legal basis for the extension of pre-charge bail. The court considers that the fact that Article 48(7) permits a custody officer to give notice in writing that attendance is not required provides strong support for the contention that bail return dates may be extended…
>
> Article 48(1)(b) provides in unequivocal terms for a duty to surrender at a police station at a date appointed by the custody officer. No restriction is placed on the discretion of the custody officer to choose a date or to adjust the bail return date."

[23] Before this court the arguments of the parties essentially mirror those recorded in the judgment of Colton J. Mr Lavery KC and Mr Campbell, of counsel, on behalf of the appellant, contend, in essence, that the judge's conclusion is unsustainable as it entails a misconstruction of Article 48(1)(b). They submit that the

judge in substance invoked the principle of necessary implication and erred in doing so. Their arguments also pray in aid the principle of legality and Article 5 ECHR.

[24] Mr Skelt KC, *contra*, took his stand squarely on Article 48(1)(b) of PACE. In doing so, he supported fully the reasoning and conclusion of the trial judge. This is particularly clear from the following pithy passage in counsels' skeleton argument:

> "The respondent relies…upon the clear and broad power under Article 48(1)(b) as regards the setting of a return date."

As will already be apparent, it is necessary for this court to scrutinise the legality of the police conduct throughout the period under consideration. To focus solely on the police conduct revolving around the date of 1 December 2022 would be fallacious.

Governing principles

[25] The appellant's core submission engages certain long recognised principles of statutory construction. In *R (on the application of O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, Lord Hodge, with whom those in the majority agreed, stated at paragraph 29:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldho-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397:

> 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

[26] In *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687, at paragraph 8, Lord Bingham of Cornhill explained that legislation is usually enacted to make some change, or address some problem, and the court's task, within the permissible bounds of interpretation, is to give effect to that purpose. He also approved as authoritative that part of the dissenting speech of Lord Wilberforce in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, 822, where Lord Wilberforce said:

> "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs."

[27] To like effect, in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684, at paragraph [28] Lord Nicholls of Birkenhead highlighted another principle of some antiquity, namely the importance of having regard to the ascertainable purpose of the statutory provision under scrutiny:

> "...the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."

Further, by a principle of equally venerable antiquity, a construction which produces an absurd, impractical, illogical, anomalous or unworkable result is almost invariably inappropriate as this is most unlikely to have been intended by the legislature: see *R v McCool* [2018] UKSC 23; [2018] NI 181, [2018] 1 WLR 2431, paragraphs [23] and [24].

[28] In a celebrated passage in *Fothergill v Monarch Airlines* [1981] AC 251, at 279, Lord Diplock stated:

> "The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining "the intention of parliament"; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretative role, as well as when it is

> engaged in reviewing the legality of administrative action, is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law made by Parliament constitutes a rule binding upon him and enforceable by the executive power of the state. Elementary justice or, to use the concept often cited by the European Court, the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself."

The issue of statutory construction analysed

[29] It is abundantly clear from the statutory provisions considered above that a person released on police bail is under a duty to honour the surrender arrangements specified in the bail authorization by surrendering at the time, on the date and at the location specified therein. This takes the form of a surrender to police custody. At this point the person's status becomes that of an arrested person, *per* Article 35(8) of PACE. It is equally clear that the performance of this duty can be waived where the person receives advance notice in writing that they are not required to attend –

(i) per Article 32C(1) PACE (the "street" bail scenario) or

(ii) where the scenario in Article 48(7) of PACE applies.

While in the "street" bail scenario, the police station and time of surrender may be varied, per Article 32B (6) of PACE, this simply entails a variation of the surrender arrangement rather than a waiver of the surrender duty. *Ditto* in the Article 48(8) scenario.

[30] The next question which we shall address (though not central to this appeal) is whether a "waiver" notice under Article 32C(1) or Article 48(7) of PACE can lawfully alter the bail surrender arrangement by deferral to a later date. These provisions do not specify the circumstances in which resort to them is permitted. However, in our view the two key words "no longer" in Article 32C(1) provide a sure guide to its permitted scope and function. These words convey clearly that the released person's interaction with the criminal justice system is at an end. The person is either no longer the subject of the reasonable suspicion giving rise to the initial arrest and ensuing grant of police bail or is to be dealt with in a way (perhaps by way of report to the PPS for a summons) which does not require them to remain on bail and is released from their surrender obligation accordingly. This probably correlates to the "bail cancellation" concept (a non-statutory one) noted in the Chief Inspector's first affidavit (paragraph [17] above).

[31] We consider that Article 48(7) of PACE has the same effect as Article 32C(1), although they are in slightly different terms. In both cases, the cancellation of the requirement to surrender at the specified police station occurs at a time when the suspect is at liberty pursuant to the anterior bail authorization. It relieves the suspect of the fundamental obligation embedded in the bail authorisation, namely the obligation to surrender to a police station in accordance with the authorisation. It follows that Article 48(7) would not have provided lawful authority for the police conduct on 1 December 2022. Moreover, as explained further below, if it did so that would render Article 48(8) entirely nugatory, which cannot have been the legislature's intention. We would add that had this been a case of "street" bail, Article 32C(1), similarly, would not have provided lawful authority for the police conduct.

[32] The critical question is whether there is any statutory authority for the conduct of the police officer/s concerned on the multiple occasions noted in paragraph [5] above. This conduct had one central, and recurring, element, namely, the officers concerned purported to vary the appellant's surrender obligation and arrangement to a later date; and with scant, or no, attention to relevant statutory formality. On the fifth occasion this conduct had the additional ingredient of purporting to vary the surrender obligation and arrangement retrospectively by backdating this to the previously expired surrender date.

[33] In our judgement, the starting point must be (as the judge recognised) the absence of any words in Article 48(1) of PACE authorising either of the police practices identified in paragraph [17] above. For the judge, the answer to this was that Article 48(1)(b) did not impose any express restriction on the discretion of the custody officer "…to choose a date or to adjust the bail return date." We agree with the judge that Article 48(1)(b) invests the custody officer with a discretion. This discretion is expressed in superficially broad terms.

[34] However, this discretion is not open ended. First, it must be exercised in accordance with the *Padfield* principle ie in furtherance of the policy and objects of the statutory regime. This means that the true content of this discretion falls to be ascertained by reference to all of the surrendering statutory provisions. Second, this essential contextual exercise must involve asking whether the power identified by the judge and for which the respondent contends is in any material way compounded by any of the other statutory provisions. These are the only provisions of their kind in the statutory matrix. This consideration, coupled with the *expressio unius* principle, supports the assessment that there is no statutory authority for either of the police practices considered in this judgment.

[35] In our view, the single most important consideration in this respect is that the legislation in four particular situations specifically empowers the police to interfere with a bail surrender arrangement. These are detailed in paragraph [14] (vii)–(x) above.

[36] We further consider that the language of Article 48(1)(b) has a clear focus on the conduct of the custody officer at the time when the suspect is released from police custody. This is also consistent with the wording of Article 4(2) of CJO 2003 which defines surrender to custody as meaning surrendering "according to the requirements of the grant of bail…" Furthermore, the concept of "appointment", which is central to the Article 48 regime and is repeated in Articles 4 and 5 of CJO 2003, contemplates appropriate formal solemnity. We have identified above the specific formal requirements which must be observed by the custody officer in the matter of releasing a suspect on police bail and we have further drawn attention to the applicable Form. These are not mere bureaucratic formal stipulations. Rather, they all belong to a context involving the liberty of the citizen and the possible commission of an offence, with associated loss of liberty. Observance of these requirements entails direct physical interaction between the custody officer and the suspect. Self-evidently, the suspect cannot execute a signature, request a document or receive a document if not physically present in the custody suite of the police station concerned.

[37] A further material factor is that there must be alertness to the released suspect's extant conditions of bail on every bail surrender occasion. Mr Skelt correctly points out that the suspect and their lawyer can make representations about the extant bail conditions at any time. However, realistically, there may be scenarios where they have no basis for doing so because material information is in the possession of the police only. Thus, by illustration, a geographical exclusion condition would be rendered inappropriate by an injured party having acquired a place of residence elsewhere, unknown to the suspect. Furthermore, this new circumstance might have a significant bearing on other conditions, frequently restricting the suspect's liberty. Furthermore, the evidence in the present case illustrates the difficulties which can confront a suspect and their legal representative from making "remote" representations about variations of bail conditions. In this case, repeated email communications from the appellant's solicitor to this effect in December 2022 elicited no police response.

[38] This discrete function could not realistically be performed in the absence of direct interaction between the police officer/s concerned and the suspect and their legal representative (where appropriate). This interaction would entail representations to be made by the suspect or the legal representative. It would also protect the interests of the injured party, given the possibility that new or revised bail conditions – such as an altered geographical exclusion area - could be appropriate in their interest. The police conduct in this case on each of the occasions under scrutiny was incompatible with this duty.

[39] For the reasons given above, we consider the respondent's reliance upon the custody officer's power to appoint a time, date and police station for the suspect's future surrender to bail, enshrined in Article 48(1)(b) of PACE, as authorising either of the practices noted in paragraph [17] above, to be misplaced. The substance of the

respondent's submission was that this permits a custody officer from time to time to appoint and re-appoint any or all of these prescriptions. Any such construction is defeated by our analysis in the immediately preceding paragraphs and is further confounded by the Article 48(2A) requirement prescribing that a record be made and (upon request) furnished to the suspect being released on bail.

[40] The powers for which the police contend in these proceedings are notably informal in nature. Not having the authority of any express statutory provision, they would be subject to no specific statutory constraint, albeit public law constraints would apply. If these powers exist the courts would in reality be left to legislate on the issue of their qualifying conditions, criteria and constraints on a case-by-case basis. This would self-evidently be an inappropriate judicial exercise and cannot have been the intention of the legislature.

[41] The police conduct on 1 December 2022 and the evidence pertaining to police practice in the two scenarios identified in paragraph [17] above is characterized by the relaxed, the informal and the casual. We consider that the legislature, in a context overshadowed by the liberty of the citizen, involving the possible commission of an offence and imbued with rigorous formality in the matter of police powers, cannot plausibly have intended to sanction police conduct and practices of this kind.

[42] Furthermore, the powers for which the police contend stand in sharp contrast with the statutory regime governing court remand and the grant of bail after a suspect has been charged with an offence. In this situation, the citizen has the protection of judicial oversight at fixed intervals which can only be reduced and cannot be extended. The four weekly reviews provide the opportunity for enquiry into and representations about the legality of the legal process, bail and bail conditions. We recognise the distinction between the police bail scenario and the court remand/bail scenario. Notwithstanding the differences, we consider that the legislature cannot have intended that the protections and safeguards available to the individual in the pre-charge context should be materially less than those applicable in the post-charge court context. It must be remembered that a person who has been arrested and then released on police bail is subject to a significant stigma, coupled with the burdens and restrictions flowing from the police bail authorization, particularly where the latter enshrines conditions of conduct.

[43] In addition, Article 48(3E) provides a power to a custody officer to vary the *conditions* of bail (at the request of the person to whom it has been granted) and permits the imposition of conditions or more onerous conditions. However, the requirement to surrender to custody, and the details of that requirement, are not a mere condition of bail. In the statutory scheme, the duty to surrender (dealt with under Article 48(1)(b) and (2A), (3) and (3A)(a) and (b), (3B) and (3C) for present purposes) is conceptually distinct from the imposition of conditions (dealt with under Article 48(3A)(c), (3D)-(3G) and (4)). Separate powers of arrest are also provided for a breach of a condition of bail (see Article 48(5)) and for failing to

answer police bail respectively (see Article 47A PACE). Alteration of the requirement to surrender to custody is a much more fundamental step than mere amendment of a condition. It is for this reason that the power is constrained in Article 48(8) to circumstances of some exceptionality.

[44] This court does not overlook the factor of the convenient and the expeditious in the so-called "real world." This applies to both the police and the legal profession. Convenience must, however, yield to the solemnity and formality of the statutory regulation of police powers. Likewise, where fundamental rights are engaged. The citizen's right to liberty is one such right. The rigorous statutory requirements and formalities in the regime examined cannot be sacrificed on the altar of human convenience.

[45] Summarising at this juncture, Article 48 of PACE, properly construed and considered in its full context, provides no express support for the legality of the police practices identified in paragraph [17] above. This conclusion stimulates the question of whether Article 48 has this effect by virtue of the doctrine of necessary implication, to which we hereby turn.

Necessary Implication?

[46] Properly analysed, we consider that the finding by the learned trial judge endorsing the two police practices noted in paragraph [17] above entailed the application of the principle of necessary implication. To this we shall now turn.

[47] In *R (Morgan Grenfell and Co Ltd) v Special Commissioner of Income Tax*, Lord Hobhouse noted at paragraph [45]:

> "A necessary implication is not the same as a reasonable implication…A necessary implication is one which necessarily follows from the express provisions of the statute construed in their context. It distinguishes between what it would have been sensible or reasonable for Parliament to have included or what Parliament would, if it had thought about it, probably have included and what it is clear that the express language of the statute shows that the statute must have included. A necessary implication is a matter of express language and logic not interpretation."

In *R (Black) v Secretary of State for Justice* [2017] 2 UKSC 81, at paragraph [36] Lady Hale clarified that this reference to a necessary implication needing to follow from the language of the legislation construed in its context, "must be modified to include the purpose, as well as the context, of the legislation." The arguments of Mr Lavery KC and Mr Campbell also invoked the principle against doubtful penalisation and the passage in *Bennion, Bailey and Norbury on Statutory Interpretation* at Section 26.4.

[48] The arguments on behalf of the Chief Constable did not engage with the principle of necessary implication in any meaningful way. As noted, the Chief Constable's case was rooted firmly in what Article 48(1)(b) of PACE permits. We consider that the principle of necessary implication lends no support to the Chief Constable's case because it is defeated, firstly, by the clear meaning of express provisions of the statute highlighted above. In our estimation, these provisions evince a clear legislative intention that the power which the Chief Constable contends can be elicited from Article 48(1)(b) of PACE does not exist and is not to be implied.

[49] Secondly, we are unable to identify any necessity requiring the implication of the power for which the Chief Constable contends. In this respect, the necessary and the merely desirable are to be distinguished. We are alert to the factor of convenience (see paragraph [44] above). The evidential matrix before the court, particularly the second affidavit of the Chief Inspector, indicates that the two police practices under scrutiny are broadly convenient for everyone concerned. They absolve the suspect and/or their legal representative from the inconvenience and expense of travelling to a police station in accordance with the prescribed surrender arrangement and the further inconvenience of spending time there and then travelling to their chosen destination. These practices are also plainly convenient to the police since, fundamentally, they obviate an investment of time and resources which would otherwise be required. Thus, the desirability of these practices is readily apparent.

[50] However, necessity denotes an altogether more elevated threshold than desirability. The threshold of necessity, *arguendo*, might be overcome in this context if, for example, it was demonstrated that without these two practices the system would be practically unworkable. We consider that the evidence falls well short of warranting an assessment of this kind. Furthermore, there is no warrant for the view – again for example – that the construction of the relevant statutory provisions espoused by this court gives rise to some absurdity or illogicality. If it did have this effect, this could support the necessary implication case. But we consider it clear that it does not.

[51] Finally, we are unable to identify anything in the legislative context or the ascertainable underlying policy to warrant the implication of the police powers involved in the two practices under scrutiny. The factor of the liberty of the citizen and the rights enshrined in Article 5 ECHR, protected under the scheme of the Human Rights Act, coupled with the long-established theme of formality in police conduct and practices, point firmly in favour of the stricter construction which we have adopted. This conclusion is further reinforced by the principle against doubtful penalization.

The principle of legality

[52] The principle of legality also featured in one of Mr Lavery's more imaginative submissions. The contours of this principle are familiar. The general presumption is that Parliament does not intend to legislate contrary to fundamental rights, and that as such it will not be taken to have done so unless it makes its intention to this effect very clear either by way of "express language or necessary implication." The classic formulation of this presumption is to be found in the judgment of Lord Hoffman in *R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115 at 131:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

[53] This passage was considered in *R(Ingenious Media Holdings plc) v Revenue and Customs Commissioners* [2016] UKSC 54 at [19]–[20], Lord Toulson stating, "Lord Hoffman said that this presumption will apply "even" to the most general words, but I would say further that the more general the words, the harder it is likely to be to rebut the presumption," In *Ahmed v HM Treasury* [2010] UKSC 2, at paragraph [45], Lord Hope observed, "The closer those measures come to affecting…the basic rights of the individual, the more exacting this scrutiny will become." It is submitted that it is apparent that the more fundamental the right interfered with, the clearer legislation will need to be before it should be read as authorising such interference.

[54] In the present case, the appellant was deprived of his liberty on one occasion, following his arrest on 16 February 2023. *Bennion* (op cit), Section 27.2 addresses the interaction between the principle of legality and rights and liberties in the following terms:

> "The governing principle is that a person's physical liberty should not be curtailed or interfered with except

> under clear authority of law. In the context of statutory construction, this gives rise to a presumption that 'in enacting legislation Parliament is presumed not to intend to interfere with the liberty of the subject without making such an intention clear.'"

Although dealing with a different point, this approach to the interpretation of PACE is evident in *R (on the application of G) v Chief Constable of West Yorkshire Police* [2008] EWCA Civ 28, wherein the Court of Appeal of England and Wales indicated at paragraph [29]:

> "The starting point is the hallowed principle that each and every detention must be justified by clear, unequivocal, legal authority."

[55] We agree with Mr Lavery that the construction of Article 48(1)(b) of PACE favoured by the trial judge is in conflict with the principle of legality. In the language of this principle, the statutory words in question are characterised by their generality and corresponding lack of specificity and definition. It follows that the principle of legality provides a further basis for the statutory construction which we have espoused. Furthermore, in this particular case, the principle of legality is buttressed by the principle against doubtful penalization, also prayed in aid by Mr Lavery.

The continuing duty of surrender issue

[56] One discrete issue canvassed in the submissions of Mr Skelt is that of whether a person released on police bail who fails to observe the surrender arrangement in the bail authorization is subject to a continuing duty of surrender. In practice, the default will typically arise through non- observance of the time and/or date prescriptions in the bail authorization. Any default of this kind is, incontestably, the most fundamental violation of the bail authorization imaginable. To view such a person as being subject to a continuing duty of surrender would seem to involve the analysis that following their default and for so long as this persists, they remain on bail and continue to be subject to any conditions specified in the bail authorization. On the other hand, as our analysis of the statutory framework above highlights, a defaulting suspect of this kind is liable to be arrested and prosecuted. It is at once apparent that this is an issue of a little complexity. We are satisfied that if the correct analysis is that of a continuing duty of surrender on the part of a defaulting bail suspect, this makes no difference to our analyses and reasoning above. We would add that this issue may require appropriately detailed consideration in some suitable future case where it is of material importance. Likewise, the influence of Article 5 ECHR.

Conclusion

[57] For the reasons given, and disagreeing with respect from the trial judge, before whom this challenge clearly did not have the sharply refined emphasis and further evidence from which this court has benefited, we allow the appeal. For self–evident reasons, we consider that the *Salem* principle is inapplicable. Any appropriate amendment of PACE consequential upon this judgment will be a matter for the appropriate agencies.

Remedy?

[58] The issue of whether any remedy should follow and, if so, in what terms, will be addressed separately in the event that the parties are unable to achieve consensual resolution. In this respect, we take this opportunity to highlight the discretionary nature of judicial review remedies. We observe that the two main remedies pursued by the appellant are (a) a declaratory order and (b) damages for false imprisonment.

[59] The second remedy pursued appears to relate to a very brief period of some few hours on 16 February 2023. This might well be capable of bilateral pragmatism and consensual resolution. If any further adjudication of this court is required, it will be contained in a supplement to this judgment. The issue of conversion under Order 53, Rule 9(5) might also arise. However, the court also draws attention to the fact that the applicant did not surrender to police custody (as required, on our analysis) in answer to his bail on 17 June 2022, or at any time thereafter until the arrest of which he complains. Prima facie, therefore, he was liable to arrest under Article 47A(1) of PACE from that time.

[60] We would further invite the parties to reflect on whether the remedy of a declaratory order – and if so in what terms – might be appropriate.