

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Connelly's (James) Application [2011] NIQB 62

IN THE MATTER OF AN APPLICATION BY JAMES CONNELLY FOR
JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE POLICE SERVICE
OF NORTHERN IRELAND

Before: Morgan LCJ, Weatherup J and McCloskey J

MORGAN LCJ

[1] The applicant applies to quash decisions of the Police Service of Northern Ireland by which it detained the applicant on 1 June 2011 and 6 July 2011 under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) and charged the applicant with offences of burglary and theft on the latter date. He seeks an order releasing him from the obligation to surrender to custody at Belfast Magistrates' Court on 3 August 2011 imposed on the applicant as a bail condition by the Police Service of Northern Ireland and claims damages in respect of his unlawful detention.

[2] The application is pursued on the basis of the decision of the High Court in R (Chief Constable of Great Manchester Police) v Salford Magistrates' Court and Paul Hookway [2011] EWHC 1578 (Admin). In that case McCombe J held that the previous assumption that releasing a suspect on bail effectively paused the detention clock under the equivalent of the 1989 Order was wrong and that the periods which fell to be considered in calculating the period in police detention under Article 42 of PACE included both periods of detention in police custody and periods spent on bail. Mr O'Rourke and Mr Sayers appeared on behalf of the applicant and Mr Maguire QC and Mr Coll for the respondent. We are grateful to counsel for their helpful oral and written submissions.

Background

[3] On the afternoon of 20 April 2011 the applicant attended voluntarily at Antrim Road PSNI Station and at 15.10 hours he was arrested on suspicion of burglary and theft from a dwelling. He was interviewed and released on police bail at 19.53 hours on 20 April 2011 pending analysis of forensic evidence. He was required to sign bail at Antrim Road PSNI Station every Monday between 18.00 hours and 20.00 hours and required to surrender to custody at Antrim Road PSNI Station at 12.00 hours on 1 June 2011.

[4] The applicant surrendered to custody on 1 June 2011. He was detained from 15.29 hours to 15.42 hours and again admitted to bail with the same requirement that he sign weekly. He was required to surrender to custody on 6 July 2011 at 13.00 hours. He was detained on that occasion from 14.01 until 14.29 and charged with burglary and theft from a dwelling. The applicant was not re-arrested on the basis of fresh evidence. His detention was authorised on the basis of his initial arrest and his return to answer his bail. The applicant was then released on bail to appear at Belfast Magistrates' Court on 3 August 2011. No other conditions were imposed.

The submissions of the parties

[5] It is common case that the detention of persons in a police station is governed by the provisions of PACE. These provisions mirror the equivalent provisions in England and Wales under the Police and Criminal Evidence Act 1984. Article 42 of PACE provides that a person shall not be kept in police detention for more than 24 hours without being charged. The applicant contends that the period of 24 hours is a continuous period from the time of arrest and therefore includes both periods when the applicant was detained in police custody after arrest and those periods during which he was admitted to bail. It is submitted in particular by reference to the provisions in relation to extension of that period that any period of police detention falling to be calculated under Part V of PACE must be continuous and that it is not open to police to stop the detention clock by releasing the suspect on bail. This was the conclusion reached by McCombe J in R (Chief Constable of Greater Manchester Police) v Salford Magistrates' Court and Paul Hookway.

[6] The respondent submits that it is necessary to read the relevant Part of PACE in its proper context in order to understand how the provisions apply. Mr Maguire also referred us to the background to the passage of PACE reforms and the Parliamentary debates which he submitted aided his submissions that the periods in police detention referred to in the legislation did not include any periods during which the suspect was on bail. He also relied upon some academic commentary on the Hookway decision.

The statutory scheme

[7] The impetus for the introduction of PACE was the Royal Commission on Criminal Procedure chaired by Sir Cyril Philips. That committee set out the then existing law on police detention.

“There are restrictions on the period a person may be detained in police custody. The person who is arrested under warrant on a criminal charge must be taken before the court issuing the warrant (unless it is endorsed for bail) immediately. In the case of a person arrested without a warrant there are five possible outcomes. First, he may be released without charge, if, after making the arrest, the police discover evidence which exculpates the suspect or they decide there is insufficient evidence to justify his prosecution. Second, he may be released, the question of prosecution still being under consideration (the intention being, if he is prosecuted, that this will be by way of Summons). Third, he may be released on bail to attend at a specified police station if the inquiries into the offence cannot be completed forthwith. Fourth, he may be released on bail to appear before a Magistrates Court. Fifth, he may be retained in custody and brought before a Magistrates Court as soon as practicable.”

It is clear, therefore, that the use of police bail was a well established method of managing investigations. The object of PACE was not to change that practice but to address the uncertainties surrounding the permitted periods during which a suspect may be kept in police custody. That the practice of pre-charge bail continues is clear from the evidence before us. Of the 32,450 persons subject to authorised detention by police custody officers last year 12,153 were granted pre-charge bail.

[8] Both parties treated us to a careful analysis of the relevant provisions of PACE and in particular examined the provisions of Part V. We agree that this is the appropriate starting point for the determination of this issue. Article 2 is the general interpretation section of PACE and sub-section (3) provides that a person is in police detention for the purposes of the Order if he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it and is detained there or is detained elsewhere in the charge of a constable. The starting point for the context within which these provisions must be interpreted is, therefore, that a person on bail is neither detained at a police station or elsewhere in the charge of a constable and consequently cannot be said to be in police detention for the purposes of the Order.

[9] Part V of PACE deals with detention. Article 35(1) provides that a person arrested for an offence shall not be kept in police detention except in accordance with the provisions of that Part. It is immediately clear, therefore, that Part V is concerned with the circumstances of police detention as defined

in Article 2(3). Release on bail in the course of an investigation is considered in Article 35(5) and succeeding sub-sections.

“(5) Subject to paragraph (6), a person whose release is ordered under paragraph (2) shall be released without bail.

(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.”

The scheme of this section indicates, therefore, that the pre-existing practice of detention followed by periods of bail to permit further investigation was to be facilitated but subject to new controls.

[10] The next two sections deal with the appointment of custody officers and the duties of those officers are set out in Article 38.

“38. - (1) Where-

(a) a person is arrested for an offence-

(i) without a warrant; or

(ii) under a warrant not endorsed for bail,

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.”

The test in relation to the detention of a person in respect of whom there is insufficient evidence to charge is necessity and the starting point under the sub-sections for the custody officer is a presumption that the suspect should be released either on bail or without bail.

[11] Article 42 deals with the limits on the periods of detention without charge. The primary rule in relation to the period of detention is set out in Article 42(1).

“42. - (1) Subject to the following provisions of this Article and to Articles 43 and 44, a person shall not be kept in police detention for more than 24 hours without being charged.”

The period of 24 hours relates only to the period kept in police detention without being charged. There is no requirement for the period to be continuous. The period of 24 hours in this sub-section is not affected by any period during which the person is not in police detention and it must follow, therefore, that it does not on the face of it have any relevance to a period during which the suspect is on bail. Whether or not other provisions of Part V require the rejection of such an interpretation is a matter to which we shall return.

[12] Article 42(2) fixes the time from which the period of detention of a person is to be calculated (the relevant time) in the case of the applicant who had attended voluntarily at the police station as the time at which he was arrested. When this applicant was bailed and returned to the police station to answer his bail Article 35(8) operated as a deemed arrest provision and required that he be treated as arrested for the offence in connection with which he was granted bail. There is a respectable argument for contending that this new deemed arrest established a new relevant time but it is unnecessary for the purposes of this decision to reach a view on that point. As we shall see the provisions of Article 48(9) provide that where a person returns to answer bail any previous period spent in detention must be taken into account in calculating any period under Part V.

Article 42(4) deals with a person who may have to be removed to hospital while in police detention.

“(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part, but any other

time while he is in hospital or on his way there or back shall not be so included.”

[13] Clearly in such circumstances a person so transferred to hospital may require medical treatment for some considerable time and one can certainly envisage circumstances where that period will exceed 24 hours. This provision makes plain that even though he remains in police detention no matter how long the period in hospital the detention clock set by Article 42(1) does not run.

[14] The background to the introduction to this Act and the statutory scheme as described so far demonstrate a system where the accused person is detained while the police have some aspect of the investigation to pursue with him which requires his attendance but otherwise can be admitted to bail. Once admitted to bail and no longer in police detention the detention clock set by Article 42(1) stops. It is reactivated by a subsequent return to answer bail or arrest for failure to answer bail.

[15] In Hookway, however, McCombe J held that such an interpretation of the provisions was inconsistent with the provisions in relation to the authorisation of detention beyond the 24 hour period and it is to those provisions that we now turn. Article 43 deals with the power of a police officer of the rank of Superintendent or above to authorise a further period.

“43. - (1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that-

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is an indictable offence; and
- (c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.”

There is a striking change in the use of language between this section and Article 42. Whereas Article 42 prohibits police detention for more than 24 hours without being charged and does not make that period continuous Article 43 fixes its time limit in relation to police detention by reference to a period expiring at or before 36 hours after the relevant time. What is common, however, is that both provisions address only the power of the police to keep a person in police detention. It was submitted by the applicant and was accepted in Hookway that Article 43(1) must be given its literal interpretation. It is submitted that the relevant time is the time of first arrest and the period of 36 hours from that time includes any period spent on bail as well as any period in police detention. The applicants also rely upon Article

43(3) which provides that no authorisation under sub-paragraph (1) shall be given in respect of any person more than 24 hours after the relevant time. It is contended, therefore, that once 24 hours from the date of arrest has passed there is no longer any power to apply for an extension to the period during which the suspect can be kept in police detention.

[16] It is immediately apparent that there is a conflict or at least a discordance between the provisions of Article 43 as interpreted and the earlier provisions that we have examined. Whereas those earlier provisions reflect a scheme where the use of bail limits the periods of time during which the suspect is in custody and also enables the investigator to gather the materials he needs for the next part of the investigation Article 43 on its literal interpretation operates to a clock which is fixed to a specific time.

[17] Article 44 deals with applications to the Magistrates' Court for warrants of further detention. Article 44(5) provides that a complaint grounding such an application may be made at any time before the expiry of 36 hours after the relevant time with a further proviso allowing for an extension of 6 hours. The period of the warrant is provided for in Article 44(10) and following.

“(10) A warrant of further detention shall-

(a) state the time at which it is issued;

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to paragraph (12), the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.”

[18] The final provision in relation to warrants of further detention is contained in Article 45. Article 45(2) provides that the period for which a warrant of further detention may be extended shall be such period as the court thinks fit but sub-section (3) provides that the period shall not be longer than 36 hours or end later than 96 hours after the relevant time. The applicant submits that the relevant time is fixed by the time of the initial arrest of the applicant and the period of 96 hours following that time constitutes the only period during which a suspect could be lawfully kept in police detention. That was the conclusion which McCombe J reached in Hookway.

[19] The last provision to which we wish to refer in Part V is Article 48 which deals with bail after arrest. Article 48(1) provides that a duty of a person who is released on bail consists of a duty to appear before a Magistrates' Court at such time and in such place as the custody officer may appoint or to attend at such police station at such time as the custody officer may appoint. Later provisions provide that the custody officer may advise

the suspect that his attendance is not required or may extend the time for such further period as may appear reasonable in the circumstances. Article 48(2) imposes a time limit on the period of bail. As originally enacted the period of bail was 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 was released. If the applicant's submission is correct and police detention emanating from the original arrest cannot extend beyond 96 hours from the time of that arrest this provision is of limited utility. If the suspect answers his bail outside the 96 hour period there is on that interpretation no power to detain him other than by way of re-arrest. This provision was amended subsequently so that the time limit now only applies where the suspect is bailed to appear before a Magistrates' Court. There is no time limit where he is bailed to attend at a police station. This amendment appears to reflect the potential complexity of police investigations and the fact that periods longer than 28 days may be required in order to put the police into a position to conduct further inquiries with the person suspected.

[20] Article 48(9) provides that where a person is detained before charge for questioning 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 Part V. That sub-section focuses on the period in police detention which is the detention which is the subject matter of the time limit provisions in Article 42. It is to be read with Article 35(8) which introduces the deemed arrest provisions when a person who has been bailed returns to the police station. Article 48(11) provides that where such a person is rearrested the provisions of Part V apply to him as they apply to a person arrested for the first time but that paragraph does not apply to a person who has attended a police station in accordance with a grant of bail and accordingly is deemed by Article 35(8) to have been arrested for an offence. It is clear, therefore, that the provisions of Article 48 contribute to a scheme where periods of police detention are discontinuous and those discontinuous periods are amalgamated for the purpose of calculation under Part V.

Discussion

[21] When police arrest suspects in connection with criminal offences they do so on the basis of reasonable suspicion. In some cases the suspicion is easily dispelled leading to the release of the suspect and in others the evidence available quickly leads to a charge. This case is primarily concerned with the situation where there is insufficient evidence to charge but suspicion remains. In those cases it may be necessary to carry out further investigations with a view to securing more evidence or it may be necessary to collate the evidence with a view to having a coherent interview with the suspect. The provisions to which we have referred in Part V are designed to accommodate the objective of ensuring that the suspect is detained only when it is necessary,

that there is a safeguard for the suspect by limiting the amount of time he has to spend in police detention and providing supervisory mechanisms for limited extensions of that time.

[22] We recognise that a literal interpretation of the provisions in relation to extension establishes a continuous time fixed by reference to the relevant time as defined in PACE. McCombe J concluded that those fixed times informed the interpretation of the duration of the period in police detention provided for in Article 42. He concluded that the initial 24 hour period should similarly run from the time of arrest and include periods on bail as well as those in police detention. The applicant submitted that any other interpretation would require the court to rewrite the statute.

[23] We are unable to agree with the conclusion in Hookway for four principal reasons. First, Article 42 fixes 24 hours as the initial period during which a person may be kept *in police detention*. Article 2(3) provides that police detention occurs at a police station or elsewhere in the charge of a constable. A period during which the person is on bail is not a period in police detention and does not fall to be considered in calculating the 24 hour period.

[24] Secondly the provisions in relation to bail expressly contemplated a period of release of up to 28 days when initially enacted. The subsequent amendment allows an even longer period on bail. Article 48(9) ensures that where a person returns to answer bail any earlier period of police detention before being admitted to bail is included in the calculation of a period in Part V. If Hookway is right Article 48(9) is to be interpreted as including periods on bail as well as those in police detention. The provision does not support that interpretation. It also means that a person who is initially detained for a short time and bailed to return a week later cannot thereafter be detained or interviewed unless rearrested on the basis of fresh evidence. In our view Article 42 does not provide any basis for such a prohibition.

[25] Thirdly the conclusion that the initial period of 24 hours is fixed from the time of arrest gives rise to conflict with Article 42(4) which excludes any period in hospital other than where he is being questioned. The corresponding provision was not discussed in Hookway.

[26] Fourthly, and perhaps most importantly, we consider that the interpretation of the corresponding provisions in Hookway failed to recognise the context within which the words are used. Statutory interpretation requires the court to identify the meaning borne by the words in their particular context (see Lord Nicholls in R v Secretary of State for the Environment, Food and the Regions ex parte Spath Holme [2001] 2 AC 349 at 396). The context for the provisions dealing with extensions is that the period to be extended is the period in police detention. It follows, therefore, that the periods of extension

must similarly be comprised of periods in police detention. Those periods must, therefore, exclude any period on bail.

[27] We conclude, therefore, that the applicant was lawfully required to answer his bail on 1 June and 6 July 2011 and was under an obligation to attend Belfast Magistrates' Court on 3 August 2011 as a result of bail conditions imposed on him by the Police Service of Northern Ireland. We have not found it necessary to rely on or consider the legislative materials in reaching our conclusion. The application for judicial review is dismissed.