Neutral Citation No: [2021] NIMag 1 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **[2021] NIMag 1** ***ICOS No:*** ***Delivered:*** **05/01/21**

IN THE DOMESTIC PROCEEDINGS COURT IN BELFAST

D
(Applicant)

AND

M
(Respondent)

District Judge (Magistrates' Courts) John I Meehan

1. This is an application for a Non-Molestation Order, pursuant to Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (hereinafter "the 1998 Order"). There was at the outset an additional application that it be heard immediately, without notice to the Respondent.

2. The Application Form F1 was signed in the corporate name of a Solicitor's office and dated 2nd November. The grounding Statement on the Applicant's part was unsigned and undated.

3. The Guide issued by the Office of the Lord Chief Justice in respect of the Covid-19 exigencies provides;
   … as a temporary measure subject to review, to verify grounding statements in *ex parte* applications **in the Domestic Proceedings Court**, a solicitor may provide written confirmation from the applicant, including by text or email, to confirm that (s)he agrees the Statement, or, if that is not feasible for reasons stated, a written assurance from the

solicitor that the Statement has been read to the applicant and approved.

4. However, the fact that this protocol had not been followed was not the reason for refusing leave to proceed *ex parte*. This is an application by a daughter who, it appears, originates from England and who had been removed from her parents' care on a number of occasions in childhood until the final and permanent care arrangements in 2004, by which point the family had moved from England to Scotland. The Applicant accounted for these events by reference to allegations of violence and mental illness on the part of her mother, the Respondent, speculating that she might have suffered from bi-polar disorder or paranoid schizophrenia and Post Traumatic Stress Disorder. It was also asserted that the Respondent had been an in-patient in mental health facilities in England at times. The Respondent, meanwhile, continues to reside in Scotland.

5. The Applicant moved to Northern Ireland at some point and is employed here. She complained of an anonymous and malicious message sent to her present employers a few years ago, alleging that she was a "lunatic troublemaker" and which she believed came from the Respondent mother. More recently, and the catalyst for the application, the Respondent resorted to Twitter and has there made serious and offensive allegations against the Applicant, the last of these being on 29th October 2020. That was reported to the Police in Northern Ireland and the Applicant indicates that a harassment investigation is currently underway. Indeed, the Respondent has advised the Court that she has since been interviewed by Scottish Police.

6. In the grounding Statement, the Applicant went on to assert that her mother's behaviour was escalating rapidly and the Applicant was afraid that "… given her nomadic lifestyle she may evade the police and attempt to carry out threats against me or my family." No other details of this "nomadic" lifestyle were offered.

7. In these circumstances, the Applicant sought leave to seek *ex parte* relief on the basis that she feared for her safety, especially when the Respondent learned that the Applicant had made a complaint to the Police and she continued, "*Therefore, I respectfully request the protection of the court through an ex parte Non-Molestation Order as I believe that if the Respondent knew I was making this application to the court she would attempt to stop me*."

8. I dealt with the issue of *ex parte* Non-Molestation Orders in the case of H v W [2017] NIMag 1, where I was guided by a 2009 judgment of Stephens, J, as set out in paragraph [28] of my own treatment;

> [28] In RH & Ors v IH, Stephens, J emphasised the requirement for a properly reasoned case on the additional issue, where the Applicant also seeks an ex parte order pending the full hearing;
>
> > [31] In this case the only reference in the statement of RH as to the need for an ex parte order was as follows:-
> >
> > "I am making this application ex parte because the children and I require immediate protection. I am also fearful of the response of the Respondent should a Summons be served upon him without the protection of an Interim Order"
> >
> > Generalised assertions such as this without any details or particulars are insufficient to justify bringing applications on an ex parte basis. In this case the statement should have set out the reasons to believe that IH would take action which would defeat the purpose of the order rather than merely asserting a fear that he would do so. The applications should not have been made on an ex parte basis.

9. It is worth noting Stephens J's phrasing here. It is not that a judge should not entertain an *ex parte* application mounted on such thin terms; it is that the application should not be made, which is a matter for the Applicant's Solicitor.

10. In H v W, I also pointed out that it was necessary to show an imminent risk of significant harm in mounting an application for *ex parte* relief. This reflects terms of Article 23 of the 1998 Order;

> Ex parte orders
> 23.—(1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even

though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In determining whether to exercise its powers under paragraph (1), the court shall have regard to all the circumstances including—
(a) any risk of *significant harm* to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made *immediately*,
(b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately, and
(c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
(i) where the court is a court of summary jurisdiction, in effecting service of proceedings, or
(ii) in any other case, in effecting substituted service.

(*my emphasis*)

11. It seemed to me quite obvious that the Respondent being resident in Scotland, there being no mention of any occasion on which she had ever come over to Northern Ireland in the several years of the Applicant's residence here, the complaints being simply of offensive and defamatory publications, there was no credible basis for concluding that such imminent risk of serious harm had been established. These applications are not properly based on bare speculation, nor on formulaic assertions of fear, but rather on reasoning, from the history of previous conduct, that serious harm is imminent unless an Order be made. In the absence of any such evidence, I refused leave.

12. In those circumstances, a Summons was issued. Where the Respondent does at least live elsewhere in the United Kingdom, there would seem to have evolved a practice of posting it out by recorded delivery. That is what happened here. Indeed, there can be no doubt that the Summons did reach the Respondent, because she sent me a lengthy letter dated 18th November 2020, running to almost 10 densely-typed pages and asserting, in detail, that it was she who had been the victim of longstanding abuse from the Applicant. It is more

relevant for present purposes that the Respondent clearly anticipated that I would consider all that she asserted in her letter when weighing up the evidence given in court by the Applicant. Indeed, she asked that the matter be heard in her absence, having regard to her poor health.

13. The case was first listed in Court on 2nd December. I then raised the issue as to whether it could be said that the Summons had been served in accordance with the Rules and whether, if not, I could proceed to hear the case in the absence of the Respondent. In that context, I mentioned the case of PPS v Gallagher [2012] NIMag 2. I also raised the problem about whether to grant an Order would serve any purpose, since any prosecution for a breach of its terms would have to be predicated upon strict proof of service of the Order upon the Defendant. In the same discussion with counsel, I also asked why the Applicant's Solicitors had not engaged agents in Scotland to seek redress there. Counsel for the Applicant, appearing on Sightlink, took up the second point, advising that her instructing Solicitors would telephone Scottish police, to see if they would agree to serve such an Order. In addition, counsel asked for time to prepare a skeleton argument on the service point and the matter was adjourned to 9th December accordingly.

14. The provision for serving the Summons by recorded delivery is found in Rule 13 of the Magistrates' Courts Rules (Northern Ireland) 1984 ("the 1984 Rules");

> *Postal Service of Summons other than for offences prosecuted by the Police Service of Northern Ireland or the Director of Public Prosecutions* [am. from 1 Dec 2003]
> 13.- (1) Where a resident magistrate or the clerk of petty sessions is satisfied that it is not reasonably practicable to serve a summons to which paragraph (2) of Rule 11 applies in accordance with that Rule, the resident magistrate or clerk of petty sessions may give permission by an endorsement signed by him on the original summons for service to be effected by post in accordance with paragraph (2)(a).
> (2) The summons server of the petty sessions district in which the proceedings are brought shall -
> (a) send by registered post or by the first-class postal recorded delivery service (using the advice of delivery

form, save where the resident magistrate in exceptional circumstances dispenses with this requirement) a copy of the summons in an envelope addressed to the person to be served at his usual or last-known place of abode or at his place of business; and

(b) endorse on the original summons the name of the summons server, the date on which it was posted and the serial number on the envelope and on the Post Office receipt of postage.

(3) Unless service shall be proved by affidavit or a certificate of service in Form 110A the person who serves the summons shall attend at the hearing of the complaint to depose, if necessary, to such service and shall produce to the court, or, as the case may be, attach to the affidavit or certificate of service the following documents:-

(a) the original summons endorsed by him with the particulars referred to in paragraph (2)(b);

(b) the Post Office receipt of postage;

(c) subject to paragraph (2)(a), the relevant Post Office advice of delivery.

(4) Subject to paragraph (2)(a) a summons proved to have been posted and delivered as aforesaid shall, unless the contrary is shown, be deemed to have been served on the person to whom the envelope containing it was addressed at the time stated in the Post Office advice of delivery.

(5) Nothing in this Rule shall derogate from the provisions of any enactment within the meaning of section 1 of the Interpretation Act (Northern Ireland) 1954 (other than Rule 11) under which proof of personal service of a summons upon the person to be served is required.

(6) Where the summons server informs the clerk of petty sessions that the envelope containing a copy of a summons, postal service of which has been permitted under paragraph (1), has been returned by the Post Office on the ground that delivery of the envelope was not accepted by anyone at the address of the person to be served, the clerk shall forthwith give notice thereof in writing to the complainant named in the summons or to his solicitor and transmit to the complainant or, as the case may be, his solicitor the documents listed in paragraph (8)(a), (b), (c) and (d).

(7) The complainant or his solicitor may thereupon either verbally or in writing request a resident magistrate to grant permission for the summons to be served by ordinary post.

(8) A resident magistrate may grant such permission upon production of-

(a) the original summons endorsed under paragraph (2)(b);

(b) the Post Office receipt of postage;

(c) the copy of the summons enclosed in the envelope containing it returned by the Post Office as undelivered;

(d) the form of advice of the Post Office that the envelope containing such copy could not be delivered according to the practice of the Post Office as to delivery by registered post or, as the case may be, by the recorded delivery service because delivery of the envelope was not accepted by anyone at the address of the person to be served;

(e) a certificate in Form 117 signed by the complainant or his solicitor or other person authorised to do so on his behalf that, having regard to the reason given by the Post Office for non-delivery of the envelope containing the copy summons addressed to the person to be served stated in the form of advice referred to in sub-paragraph (d), to the best of his knowledge or belief a copy of the summons is sent by ordinary post to the person to be served at the address stated in the summons will, for the reason stated by the complainant in the certificate, come to the notice of that person a reasonable time before the date on which he is summoned to appear before the court:

and shall endorse such permission on the original summons.

(9) Where such permission is granted the summons server shall -

(a) send the copy of the summons by ordinary post in an envelope addressed to the person to be served at his usual or last known place of abode or at his place of business; and

(b) endorse on the original summons the place and date of posting of such copy to the person to be served.

(10) Subject to paragraph (11) the summons server shall attend at the hearing of the complaint stated in the summons to depose as to compliance with this Rule.

(11) Where proof of such compliance is given on affidavit or by a certificate of service in Form 110A in accordance with Article 126 of the Order the documents referred to in paragraph (8)(a) to (e) shall be attached to the affidavit or to the certificate of service.

(12) The copy of the summons posted in accordance with this Rule shall, unless the contrary is proved, be deemed to have been served at the time at which the envelope containing it would have been delivered in the ordinary course of post.
(13) In this Rule a reference to the summons server includes any person who has under Rule 11(2)(b) received the permission of a resident magistrate, justice of the peace or clerk of petty sessions to serve a summons.

15. These default provisions contained in Rule 13 are predicated on it being not "reasonably practicable" to serve the process in accordance with Rule 11(I2). The relevant portions of Rule 11 read as follows;

Service of summons [am. from 1 Dec 2003]
11.- (1) …[concerning criminal prosecutions] …

….(2) In other cases, the summons shall, subject to paragraph (3A) and Rule 12 be served by-
(a) the summons server of the petty sessions district in which the proceedings are brought or in which the defendant or witness resides; or
(b) any person who has received permission from a resident magistrate or other justice of the peace or from the clerk of petty sessions to serve the summons;
and any such permission shall be endorsed on the original summons and signed by the person giving it.
(3) …
(3A) …
(4) Subject to paragraph (3A), Rule 12A and Rule 13 every summons shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or, where he is a [child] within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998 or a parent of such [child] summoned in connection with proceedings against such [child] or where the summons alleges a summary offence or is issued upon complaint in a civil matter or is a witness summons, by leaving it for him with some person apparently over the age of sixteen years at his usual or last known place of abode or at his place of business.

(5) Subject to paragraph (3A), in the case of a corporate body, a summons shall be served by delivering a copy to the secretary or clerk of the body or by leaving a copy for him with some person apparently over the age of sixteen years at its registered or principal office or at any place of business maintained by such body in Northern Ireland, or by sending a copy by registered post or by the recorded delivery service (using the advice of delivery form) in an envelope addressed to such corporate body at such office or place of business.

Notwithstanding anything in paragraph (2), in a case where service is effected by registered post or by the recorded delivery service, the envelope containing the copy summons may be posted by any person other than the complainant.

(6) Every summons shall be served a reasonable time before the hearing of the complaint.

(7) In every case the person who serves a summons shall endorse on the original the date, place and manner of service and, unless service may be proved by an affidavit or a certificate of service in Form 109A, Form 109B, Form 109C or Form 110A shall attend at the hearing of the complaint to depose, if necessary, to such service and in the case of service by registered post or the recorded delivery service there shall be attached to the affidavit or certificate of service or be produced in court the certificate of posting and, subject to Rule 13(2)(a), the advice of delivery issued by the Post Office.

(8) Nothing in this Rule shall affect the provisions of any statutory provision dealing with the time and manner of service and the person who may serve summonses in particular cases.

16. It is to be noted that the primary mode of service is to be by a process server "of the petty sessions district in which the proceedings are brought or in which the defendant … resides". Therein lies the first indication that the Rules intend a Province-only ambit. It is implicit that service of a Magistrates' Courts Summons only takes place in Northern Ireland.

17. It is also useful to consider the terms of Rule 11(5), governing service upon a corporate body. It makes clear that only such bodies as have

registered offices in Northern Ireland can be served, even where resort is being had to recorded delivery post. In other words, the territorial limitation in respect of individuals applies equally to corporate bodies.

18. In the case of service upon an individual, however, the interpretation which has evolved over time has been to find a facility for service by recorded delivery to an address outside Northern Ireland, pursuant to Rule 13, by the simple determination that it is not otherwise "reasonably practicable" to serve the defendant in person.

19. In the present case, one finds that the Summons and related papers were supplied to the local process server. She then filed an application for permission to serve by recorded delivery. This was by way of a pro forma document, which simply points out that "it is not reasonably practicable to serve it otherwise". There is no provision for setting out why that is so, but it was of course obvious that our local process server could not serve the Summons personally at an address in Scotland. The Clerk of Petty Sessions then completed the integral pro forma document declaring that she was satisfied that it was not reasonably practical to serve the Summons and accompanying documents in accordance with Rule 11 and authorised service "by post in accordance with Paragraph 2(a) of Rule 13".

20. I am of the view that Rule 13 does not incorporate an extension of the jurisdictional reach of Rule 11 and I do not think it to be legitimate to read one into it. Rule 11 allows for service within the petty sessions district in which the proceedings are brought, or in which the Respondent resides. There are of course no longer any petty sessions districts in Northern Ireland, so in effect, Rule 11 provides for service anywhere in Northern Ireland. Rule 13, in turn, provides for an alternative mode of service through the postal system, but at no point provides that the Defendant/Respondent may be served other than, still, at a postal address in Northern Ireland. *Valentine's* annotations cite the Irish case of R (Fegan) v Cork JJ [1911] 2 IR 258 as authority for the proposition that the words "usual or last known place of abode" mean a residence, not temporary lodging – and, I might add, not the premises of that party's Solicitors[1].

[1] Note, however, that Rule 60(b) of the 1984 Rules provides for service upon Solicitors in the specific matters of Debt or Ejectment proceedings.

21. One must then turn to the provisions set out in Rule 12, since counsel for the Applicant places much weight on it. The Rule reads as follows;

> *Service of a summons in England and Wales or Scotland*
> 12.- (1) A summons requiring a person in England and Wales or Scotland charged with an offence to appear before a magistrates' court in Northern Ireland may, subject to paragraph (4), be served by any member of a home police force within the meaning of the Police Act 1969 or by a person employed by the chief officer of police or the police authority for the area in which the summons is to be served who is authorised by the chief officer of police to serve summonses.
> (2) Service of the summons may be proved by an affidavit in Form 109 sworn in England and Wales before a justice of the peace or clerk to the justices or in Scotland before a sheriff, justice of the peace or sheriff clerk or by a certificate of service in Form 110A.
> (3) The summons shall be served by delivering a copy to the person charged at least 14 days before the date of the hearing.
> (4) Where the summons is to be served on a corporate body in England and Wales or Scotland, paragraph (5) of Rule 11 shall have effect as if the words "in Northern Ireland" were omitted.
> (5) Paragraphs (4) and (6) of Rule 11 shall not apply to the service of a summons under this Rule.

22. In a passage appearing in the Skeleton Argument, counsel reasons as follows;
Under Rule 12 it states that "A summons requiring a person in England and Wales or Scotland charged with an offence to appear before a magistrates' court in Northern Ireland" *requires service by any member of a home police force or a person employed by the chief officer of police or the police authority for the area in which the summons is to be served. Rule 12 only applies therefore to a summons prosecuted by the DPP and does not apply to other types of summonses. Therefore as Rule 11(2) is subject to Rule 12 and Rule 12 does not provide anything to the contrary, a summons other than for offences prosecuted by the DPP which is being served in Scotland can be served as per Rule 11(2) – by a summons server or by any other person who has received permission.*

23. I do not follow counsel's reasoning on this point. To my mind, the proviso contained in Rule 11(2), which limits the ways in which a process may be served, is subject to Rule 12, which allows for service of a criminal process in the other parts of the United Kingdom through police agencies there. Civil processes are covered by Rule 11. A Non-Molestation Summons does not contain a criminal charge and Rule 12 cannot therefore apply. For much the same reason, I am not persuaded by counsel's suggestion that, if I were to find the mode of service previously used here to be ineffective, I could authorise Scottish Police to re-serve.

24. Article 10(2) of the Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996 reads;

> *Applications under the Order of 1998*
> 10.- (1) An application by way of complaint to a justice of the peace [now lay magistrate] or clerk of petty sessions for an occupation order or a non-molestation order under the Order of 1998 shall be made in writing in Form F1.
> (2) An application in Form F1 shall be supported-
> (a) by a statement which is signed and is declared to be true; or
> (b) with the leave of the court, by oral evidence.
> (3) Any summons issued in consequence of such an application shall be prepared in triplicate in Form F2 and a copy shall be served (together with a copy of the written application referred to in paragraph (1) and any supporting statement referred to in paragraph (2)) on the respondent not less than two days prior to the date fixed for hearing.
> (4) The court may abridge the period specified in paragraph (3).

25. To the extent that the method of service is not specified here, resort must be had to Rule 1(3);

> (3) The Magistrates' Courts Rules (Northern Ireland) 1984 shall have effect subject to the provisions of these Rules.

It follows that Rule 11 of the 1984 Rules can therefore be invoked, to warrant service by recorded delivery post in an Application of this kind.

26. Of the issues raised in the Gallagher case, counsel dealt with these in the final paragraph of her Argument;
The Court referred to the case of PPS v Gallagher [2012] NIMag 2. *Counsel has considered this case and would respectfully submit that whilst some of the discussion is relevant, the facts are very different and the case can be distinguished from the present case as it involved a summons in respect of a prosecution by the DPP, and it involved service of a summons outside of the UK.*

27. One might formulate the *ratio decidendi* of Gallagher by way of the proposition that the Northern Ireland legislature cannot make laws applying outside the Province, since legislation affecting the whole of the UK, as indeed with legislation having wider international effect, is a matter reserved to the Imperial Parliament at Westminster. Therefore no subordinate legislation, in turn, made only on the authority of Northern Ireland primary legislation can apply outside the Province either[2].

28. In Gallagher, I did seek to explain that Rule 12 does not conflict with the foregoing. Rule 12 is not grounded upon any Northern Ireland legislation. It is grounded on the authority of Section 39(2) of the Criminal Law Act 1977, a Westminster enactment;

> (2)A summons requiring a person charged with an offence to appear before a court in Northern Ireland may, in such manner as may be prescribed by rules of court, be served on him in England, Wales or Scotland.

29. Whilst it is certainly correct that the Gallagher judgment concerned pleas of Guilt, pursuant to papers served by post upon Defendants living in Ireland, the fundamental matter at issue, the territorial reach of Rules made under local legislation, is just the same as in the present case.

30. I therefore cannot find that these proceedings have been served on the Respondent in accordance with the Rules.

31. Article 81 of the Magistrates' Courts (Northern Ireland) 1981 ("the 1981 Order") states:-

[22] It is also only right to point out that Gallagher, a decision of a District Judge (MC), has never been authoritatively tested in a higher Court.

> Non-appearance of defendant
> 81.—(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint in a civil matter, the complainant appears but the defendant does not, the court may, without prejudice to its powers under this Order or any other enactment, adjourn or further adjourn or, subject to paragraph (2), proceed in his absence.
> (2) The court shall not begin to hear the complaint or proceed in the absence of the defendant, unless either it is proved to the satisfaction of the court, upon oath or by affidavit or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint.

32. In this instance, the Respondent has not appeared before the Court. Likewise, service of the Summons cannot be proven in a manner prescribed.

33. Counsel also contends that the wording of Article 81(2) is wide enough so that I might determine that the Respondent has been served, because papers were sent to her and she sent letters in response – to the Applicant's Solicitors on 10th November and to the Court on the 18th; that she has asked (and, I might add, was expecting) that the case be heard in her absence. I do not accept this line of argument; it disregards the clear terms of the legislation. Service is to be proven "upon oath, or by affidavit or in such other manner as may be prescribed", where the Respondent has not appeared before the court. Service must be proven in a prescribed manner. It is not contended that the Respondent has made an appearance before the Court, by virtue of her correspondence. Such an appearance must be either by the Respondent personally, or by her legal representative and without reservation as to jurisdiction.

34. Rule 13(2)(a) also provides for "registered post" and counsel's line of argument would allow for proceedings to be served upon a Respondent at any address in the world, provided that one were able to find service proven in reliance upon some response deemed to be received from the absent Respondent. It is an argument which invites our Magistrates' Courts to import world-wide litigation and I simply

do not think this was ever intended. We are back at precisely the issue addressed in Gallagher;

> 25. Proof of lawful service or evasion of service of a Summons is a pre-requisite to proceeding if the Defendant does not appear: Maguire v Murray [1979] NI at 107G. Thus, service cannot take place on a Sunday (Farrell [2005] NIQB 6). A Defendant who is served on Sunday knows full well the time and place of the intended hearing of the case against him; but the court still does not have jurisdiction to proceed, because of that defect in service. A person in County Donegal, likewise, may know of a process against him being before a Court in Northern Ireland, but that alone is not sufficient.

35. DPP v Marie Brown [2009] NICA 32 addressed the procedural requirements associated with the facility for Defendants in criminal casework (always in Northern Ireland up to that point) to notify the Magistrates' Court of a plea of Guilt and a request that the case be heard in the Defendant's absence. While it was not in contention that the Defendant had returned the document supplied (and not simply written a free-standing letter, as has been suggested elsewhere), the Northern Ireland Court of Appeal agreed that the Magistrates' Court could still not proceed in her absence, because the documentation was not in strict nor substantial compliance with the procedural rules. As was pointed out by Girvan, LJ;

> [30] Article 24 of the 1981 Order contains a special statutory procedure which must be followed if the court is to be permitted to proceed to hear and dispose of a case in the absence of the accused in the event of him or her purporting to give notice of an intention to plead guilty by post. It is clear as a matter of principle that before any court proceeds to hear a case in the absence of the accused it must be satisfied that the accused is aware of the proceedings and aware of his or her right to attend the hearing and present his or her case. The entry of a plea of guilty by post is an exceptional procedure and must be set about by safeguards so that the court can be satisfied that the accused knows his or her rights before entering the plea. Where a statutory procedure is laid down for the entry of a plea of guilty by post the court must satisfy itself that the defendant fully understood the position and

> was properly informed of his rights and that the statutory procedure was followed. Article 24 contains a *statutory* procedure. It is not merely a procedure laid down by subordinate regulations. The court's jurisdiction to deal with the case in the absence of an accused is dependent upon the fulfilment of the statutory requirements. If those procedures fixed by statute are not followed the court must adjourn the trial for the purpose of dealing with the complaint in the normal way. Even if the procedure is properly followed the court retains a discretion whether to proceed in the absence of the accused and if it decides not to it must adjourn the trial. When the trial is so adjourned notice of the adjourned hearing is to be given to the accused and the notice must specify the reason for the adjournment. When the adjourned matter comes back before the court the court will have to be satisfied that the accused was properly served with the summons and was given proper notice of the date of the adjourned hearing and the reasons for the adjournment.

36. I have quoted that paragraph in full, even though a great deal of it can of course be distinguished on the facts. For one thing, this Respondent does not seek to concede the case against her. Nonetheless, what is important, and powerfully expressed, is the judicial anxiety to interpret restrictively any statutory derogation from the core precept of service being strictly proven, in all respects. It also manifests a caution in weighing up any communication from an absent party out of a proper concern that the correspondent may have an imperfect grasp of her rights and risks.

37. The other ethos which is implicit is the above passage from DPP v Marie Brown is a concern to protect the defending party's right to participate in a fair hearing. Part of that has to be a concern that the court's reach is not stretched so far that the concept of the other party being able to comply with the "command" that she attend the hearing becomes all but meaningless. Any legislation, primary or otherwise, which facilitates a justice process conducted in the absence of one of the parties must, in my view, be interpreted constrictively.

38. In this case, I consider it apparent from the Respondent's correspondence that she mistakenly believes that a fair trial can be properly conducted through a process of weighing up the assertions

made in her letters (and emails) against the sworn testimony of the Applicant. Indeed, she has also intimated an intention, still in hand, to gather up certain documentation which she believes would corroborate her version of events.

39. In circumstances where the proceedings cannot be properly served upon the Respondent, the Court can only hear the case if she appears before the Court. Then again, it happens that to make an appearance in court in these Covid-19 days, a physical attendance is not required currently.

40. Schedule 27 (Use of Live Links in Legal Proceedings: Northern Ireland), Paragraph 2 provides as follows;

Power to give direction for participation by live link

2(1)A person may, if a court or statutory tribunal so directs, participate in any proceedings in the court or tribunal through a live link.

(2) A direction may not be given under this paragraph as respects a person's participation in proceedings as a member of a jury.

(3) A direction may be given under this paragraph in respect of a person—

(a) of the court or tribunal's own motion,

(b) on application by the person, or

(c) on application by a party to the proceedings.

(4) A court or tribunal may not give a direction under this paragraph unless the court or tribunal is satisfied that it is in the interests of justice to do so.

(5) In deciding whether to give a direction under this paragraph, the court or tribunal must consider all the circumstances of the case.

(6) Those circumstances include (in particular)—

(a) the views of the person;

(b) the views of the parties to the proceedings;

(c) public health interests.

(7) Where a court or tribunal refuses an application for a direction under this paragraph, it must—

(a) state openly its reasons for doing so, and

(b) if it is a magistrates' court, cause the reasons to be entered in the Order Book.

(8) Power of a court or tribunal to give a direction under this paragraph is additional to, and does not limit, any other power of the court or tribunal.

41. In effect, this means that the Respondent, should she so wish, could seek leave to appear by live link (and I might add here that I see no reason to refuse any such request).

42. I note from her correspondence that the Respondent bridled at receiving that "command" to attend a Northern Ireland court, found, apparently, in an envelope in her hallway on returning home one day [but that is another issue]. She quite rightly recognised the unfairness of being supposedly commanded to attend a Northern Ireland Magistrates' Court when residing permanently in Scotland.

43. The Respondent should therefore understand that it is entirely a matter of her free choice whether to make an appearance at this court by live link (by herself or by a legal representative), or to simply let these proceedings collapse, for want of lawful service. In the latter event, it would be for the Applicant to consider whether to raise an equivalent application in Scotland and there secure lawful service.

44. I trust that the parties may be provided with a copy of this Judgment at this stage, so that the Respondent may have an opportunity to make an informed decision before the next court listing on 13th January.

5th January, 2021

John I Meehan
District Judge (Magistrates' Courts)
Belfast