

**Neutral Citation No. [2009] NICA 32**

Ref: **GIR7523**

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

Delivered: **17/6/09**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

**ON APPEAL BY WAY OF CASE STATED UNDER THE MAGISTRATES'  
COURT (NORTHERN IRELAND) ORDER 1981**

**BETWEEN:**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Complainant/Appellant;**

**-and-**

**MARIE BROWN**

**Defendant/Respondent.**

**Higgins LJ Girvan LJ and Coghlin LJ**

**GIRVAN LJ**

**Introduction**

[1] This appeal comes before the court by way of a case stated by District Judge (Magistrates' Court) Meehan. The District Judge poses questions in the case stated namely:

(1) Was I correct in law in considering that I should not proceed to hear and determine the complaint against the defendant on the ground that an acknowledgement of service on Form 110B appearing to be signed by the defendant or her solicitor was not produced to the court.

(2) Would I be correct in law to decline to proceed to hear and determine a complaint on foot of a notification of a plea of guilt by post, notwithstanding that the requisite and

acknowledgment in Form 110B had been produced, unless satisfied in addition that the documents mentioned in Article 24(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 as amended had been served upon the accused with the summons.

[2] The form of case stated is in an unsatisfactory form. In Emerson v Hearty [1946] NI 35 Murphy LJ set out clearly the proper principles applicable to the drafting of a case stated:

“The case should be stated in consecutively numbered paragraphs each paragraph being confined, so far as possible, to a separate portion of the subject matter. After the paragraph setting out the facts of the case there should follow a separate paragraph setting out the contentions of the parties and findings of the judge. The case should set out clearly the judge's findings of fact, and should also set out any inferences or conclusions of fact which he drew from those findings. The task of finding the facts and of drawing the proper inferences in conclusion of facts from the facts so found is the task of the judge. It does not fall within the province of this court. Accordingly it is not legitimate by setting out the evidence in the case stated and admitting any findings of fact to attempt to pass the task of finding the facts of the Court of Appeal. What is required in the case stated is a finding by the judge of the facts and not a recital of the evidence.”

[3] In this case the case stated contains a lengthy statement by the District Judge of the legal position as he saw it, his approach to the statutory questions raised and a discussion of his views as to the shortcomings on the part of the Public Prosecution Service (“the PPS”) in how it dealt with the procedural requirements relating to pleas of guilty by post. The second of the District Judge's questions is a hypothetical question which does not arise out of his decision to refuse to hear the summons which was based on his conclusion that the summons had not been shown to have been properly served. The case stated procedure under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (“the 1981 Order”) is intended to permit a party dissatisfied with a decision on a point of law involved in the determination of the proceedings or any issue as to its jurisdiction. Accordingly since no determination was reached by the District Judge on the hypothetical second question posed on the case stated, it was not an appropriate question of law for this court. Nevertheless the case stated raises important questions as to the proper procedure to be followed in relation to

notification of pleas of guilty by post. It is thus necessary for this court to address the procedural issues which are raised by the District Judge in the case stated and which will have wider implications.

[4] Mr Valentine appeared on behalf of the appellant. The respondent did not appear. Mr Valentine very properly in those circumstances argued the case on an ex parte basis and presented the arguments for and against the points which the appellant sought to put before the court. The court is indebted to him for his helpful submissions.

### **The preliminary question as to this court's jurisdiction**

[5] Mr Valentine at the outset drew the court's attention to the procedural requirements of Article 146 of the 1981 Order which provides that within 14 days from the date on which a Clerk of Petty Sessions dispatches the case stated to the applicant such date to be stamped by the Clerk of Petty Sessions on the foot of the case stated the applicant shall transmit the case stated to the Court of Appeal and serve on the other party a copy of the case stated with the date of transmission endorsed on it. The case stated bears an imprint from Dungannon Magistrates' Court saying "Filed 20 August 2008". This appears to be the date on which the settled case stated was filed in the court office on receipt from the District Judge. It did not state the date on which it was dispatched to the PPS. According to the affidavit of Jacqueline Flynn of the PPS the case stated was dispatched on 22 August 2008. The breach of the court's duty to stamp the date of dispatch falls to be treated as a breach of directory not a mandatory requirement (Commissioners of Antrim v Reside [1978] 4 NIJB). The case stated was transmitted to the Court of Appeal on 28 August and the case stated was posted by recorded delivery and delivered to the respondent's house on 4 September.

[6] If the date of dispatch of the case stated is taken to be 20 August 2008 then the last day for service of a case stated on the respondent was 3 September. If the date of dispatch of the case stated is taken to be 21 or 22 August service on 4 September was in time.

[7] An attempt to serve the document was made on 2 September but the respondent was on holiday and service could not be effected. Subsequently postal service was effected. Accordingly, it was argued that every practicable step had been made to serve the respondent within time so that the court was not deprived of jurisdiction since a mandatory statutory requirement is deemed to be directory and non-compliance by the court can be waived if it is not possible to comply with the requirements because of the actions of the respondent. Mr Valentine argued that the appellant should not be damnified by a failure cause by an act outside its control (Dolan v O'Hara [1975] NI 125).

[8] The appellant cannot be prejudiced by the court's failure to stamp the date of dispatch on the case stated since this is an action outwith its control and within the control of the court. In the absence of a date properly stamped by the court the time would run from any date when on a balance of probabilities the case stated was dispatched. The document was received on 22 August and appears to have been sent by post. It might, accordingly, have been dispatched on 20 August, the date of filing, or on 21 August, the day before receipt. If was sent on 21 August the service on the respondent was in time. If it was sent on 20 August while it was one day out of time reasonable efforts had been made to serve within time and it was the respondent alone which made that impossible due to her absence. Whichever date was the date of dispatch the court has jurisdiction on the appeal. There being no evidence to suggest that the case stated was in fact dispatched earlier than 21 August this court in any event can apply the presumption *omnia praesumuntur rite esse acta* and assume that it has jurisdiction, the contrary not having been shown.

### **The background to this substantive issue**

[9] By a summons dated 4 April 2008 the respondent was summoned to appear on 14 May 2008 at Dungannon Magistrates' Court on the hearing of two complaints. The first complaint was that she on 16 January 2008 contravened a 30 mph speed limit at a street in Moneymore, County Londonderry contrary to Article 43 of the Road Traffic Regulation (Northern Ireland) Order 1997. The second complaint was that on 16 January 2008 she drove a vehicle without being the holder of a driving licence contrary to Article 3(1) of the Road Traffic (Northern Ireland) Order 1981.

[10] The summons was accompanied by a letter from the PPS dated 2 April 2008. This letter informed the respondent, *inter alia*:

“(a) If you wish to plead guilty to the offences then you can do so by post and avoid the necessity of attending court.

(b) You should sign this receipt immediately and return it in the pre-paid envelope. If you fail to do this within 14 days arrangements will be made to have the summons served personally on you by the police. By signing this receipt you are neither pleading guilty or not guilty to the offences for which you are to be prosecuted.

(c) You must attend court if you wish to contest the case against you however you can plead guilty by post and avoid the requirement to come to court ... to

plead guilty by post complete the enclosed form titled Plea of Guilty by Post and Statement of Mitigating Circumstances.”

[11] A document was returned purporting to be completed and signed by the respondent with a date of birth endorsed below the signature and giving an address which was the same address as that given for the respondent on the face of the summons and on the letter from the PPS dated 2 April 2008. The reference note on the foot of the completed notification form corresponds to that set out at the foot of summons.

[12] When the summons came on for hearing before the District Judge he ruled that he did not have jurisdiction to deal with the summons in the absence of proper proof of service.

[13] In the case stated the District Judge states that he had no particular recollection of the summons against the respondent but he pointed out that he had already in the course of May 2008 articulated a difficulty which he had perceived in relation to his jurisdiction to hear such summonses in the absence of proper proof of service. He had begun to follow a practice of declining jurisdiction in such cases. He considered that in the absence of proof of service or of an acknowledgement of service of the summons in Form 110B he had no jurisdiction to hear the summons notwithstanding the respondent’s purported plea of guilty.

[14] Although the District Judge in the case stated states that he ruled that he did not have jurisdiction to deal with a summons in the absence of proof of service the order book records that on 14 May 2008 “the court deemed that the summons not served”.

[15] In the notification of plea of guilty and statement of mitigating circumstances which was in fact in Form 6 prescribed by Article 24(2) and Rule 10 the respondent acknowledged receipt of the summons and the witness statements by ticking the boxes shown on the form. The respondent stated that she had read the witness statements and was pleading guilty to the complaints detailed in the summons. In the event of the court dealing with the case in her absence she asked the court to take into account the circumstances set out in the box entitled “Mitigating Circumstances”. Although the section in the form is split into two sections (“About the offence(s)” and “About my personal and financial circumstances”) the respondent inserted a response which covered both sub-sections of the box:

“I did present to Strand Road Police Station but it was at a later date as I was ill. I presented my licence and details and received a caution for being late. All of my information was returned to me and I was not

allowed to settle this matter. I have been driving for 20 years and have never had any offences and was not familiar with the system which I found confusing.”

[16] In his witness statement receipt of which the respondent acknowledged in the Form 6 document PC Irvine referred to using a speed measuring device at Lawford Street, Moneymore within a 30 mile limit and recording a speed of 50 mph in relation to the vehicle driven by the respondent. The respondent was stopped and informed of her speed and required to produce her driving licence at Strand Road Police Station, Londonderry.

[17] It is immediately apparent from the face of the notification and plea of guilty as signed and filled in by the respondent that she was claiming to be the holder of a driving licence and sought to explain the late presentation of it at Strand Road Police Station by reference to illness. Since the respondent was charged with driving without being the holder of driving licence but was claiming to have had a licence and presented, albeit late, the notification of a plea of guilty was not an unequivocal plea of guilty to that offence. In fact it denied the offence had occurred. That being so the court could not properly have proceeded to hear the case in the absence of the respondent in any event since fairness would have required the court to give the respondent an opportunity to present her defence to that complaint if the prosecution wished to continue with that charge. There is nothing in the case stated or in the supporting documentation that indicates that the prosecution had indicated that they were not proceeding with that complaint nor was there any indication that the prosecution was seeking to amend the charge to one of failing to produce a licence in due time. Where ex facie the defendant is not in fact pleading guilty to a charge then the District Judge would not have been able to deal with that complaint as a plea of guilty. Fairness would have required the matter to be adjourned under Article 24(2)(b) and under Article 24(6) notice of adjournment would have had to have been served on the respondent specifying the reason for the adjournment.

[18] It is apparent that the District Judge did not consider that issue but took the view that the proper procedure was not followed in the first place because it had not been shown that the summons had been served.

### **The statutory context**

[19] Under Article 23 of the 1981 Order it is provided that:

“(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the accused fails to appear, a

Magistrates' Court may adjourn the hearing or, if satisfied that there are no sufficient grounds for adjournment or further adjournment, may subject to this article proceed in his absence.

(2) Where the accused has failed to appear in answer to a summons, the court shall not proceed in his absence unless it is proved that the summons was duly served upon him or that he is evading service."

[20] Article 24 provides so far as material:

(1) Subject to paragraph (7), this article shall apply where a summons has been issued requiring a person to appear before a court of summary jurisdiction, other than a youth court, to answer to a complaint charging a summary offence, not being:

- (a) an offence which is also triable on indictment;  
or
- (b) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding six months,

and the Clerk of Petty Sessions is notified by or on behalf of the complainant the documents mentioned in paragraph (1A) have been served upon the accused with the summons.

(1A) The documents referred to in paragraph (1) are:

- (a) a notice containing such statement of the effect of this article as may be prescribed; and
- (b) either of the following:
  - (i) a concise statement in the prescribed form of such facts relating to the charges as will be placed before the court by or on behalf of the complainant if the accused pleads guilty without appearing before the court; or

- (ii) a copy of such written statement or statements complying with subsections (2)(a) and (b) and (4) of Section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (proved by written statement) it will be so placed in those circumstances.

(2) Subject to paragraphs (3) or (5), where the Clerk of Petty Sessions receives a notification in writing purporting to be given by the accused or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing before the court, the clerk shall inform the complainant of the receipt of the notification and if at the time and place appointed for the hearing or adjourned hearing of the complaint, the accused does not appear it proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that the documents mentioned in paragraph (1A) have been served upon the accused with the summons, then

- (a) subject to this article and Article 23(3) the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the complainant is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty; or
- (b) if the court decides not to proceed as mentioned in sub-paragraph (a), the court shall adjourn or further adjourn the trial for the purpose of dealing with the complaint as if that notification had not been given.

...

(6) Where the court adjourns in pursuance of this article, notice of the adjournment shall be served on the accused and that notice shall specify the reason for the adjournment."

[21] Rule 10 of the Magistrates' Courts Rules (Northern Ireland) 1984 provides that:



“(1) Where it is intended to make the procedure of pleading guilty by post under Article 24(1) of the Order available to the defendant the summons shall be accompanied by Forms 3 and 4 and Form 6 or 6A as appropriate.

(2) Notice in writing of the service of such a summons shall be given by or on behalf of the complainant to the Clerk of Petty Sessions pursuant to Article 24(1) of the Order and shall be in Form 5.

(3) Where the defendant elects to enter a plea of guilty in writing pursuant to Article 24(2) of the Order he shall do so in Form 6 or Form 6A as appropriate.”

[22] Rule 11 of the Rules provides that subject to Rule 12A in the case of an offence prosecuted by the PPS that a summons shall be served by a member of the PSNI who is not in charge of the investigation or prosecution of the offence. Every summons shall be served on the person to whom it is directed by delivering to him a copy of such summons or where the summons alleges a summary offence by leaving it for the defendant with some person apparently over the age of 16 at his usual or last known place of abode or his place of business. The person who serves the summons shall endorse on the original the date, place and manner of service.

[23] Rule 12A which took effect from 1 December 2003 permits service of a summons in relation to a summary offence to be effected by post by sending a copy of the summons by ordinary post in an enveloped addressed to the person at his usual or last known place of abode or his place of business. The person posting the envelope containing the copy of the summons shall endorse on the original summons his name, rank and designation on the date and place of posting and shall complete a certificate of service in Form 11A. Rule 12A(4) provides:

“If the person summoned fails to appear to answer to a summons served in the manner authorised by paragraph (2) such service shall not be valid unless an acknowledgement of service in Form 110B appearing to be signed by the defendant or a solicitor is produced to the court.”

[24] By Rule 12A(5) it is provided that unless the contrary is proved the signed acknowledgement shall be taken as proof of service.

[25] Article 126 of the 1981 Order provides that:

“Without prejudice to any other mode of proof, service on a person of any summons, notice, process or document required or authorised to be served in any proceedings before a Magistrates’ Court and the handwriting or seal of any Resident Magistrate or other Justice of the Peace, Clerk of Petty Sessions or other officer or person on any warrant, summons, notice, process, recognizances, or other document may be proved by affidavit.

(2) Any affidavit purporting to be made and attested in the prescribed manner shall be received in evidence and shall be deemed to be duly made and attested until the contrary is shown.”

[26] Article 154 provides:

“(1) No objection shall be allowed in any proceedings before a Magistrates’ Court to any complaint, summons, warrant, process, notice of application or appeal or other document for any alleged defect in substance or in form or for variation between any complaint, summons, warrant, process notice or other document and the notice adduced on the part of the complainant, plaintiff, applicant or appellant at the hearing, unless the defect or variance appears to have misled the other party to the proceedings.

(2) Without prejudice to the generality of Articles 161 or 153, where a party to the proceedings has been misled by such defect or variance as is mentioned in paragraph (1) the court may, if necessary and upon such terms as it thinks fit, adjourn the proceedings.”

### **The District Judge’s conclusions on the service question**

[26] The District Judge noted that no acknowledgement of service of the summons in Form 110B had been returned by the respondent and it was on that basis that he concluded that he had “no jurisdiction to treat the document purporting to be a notification of the defendant’s plea of guilty (sic)”. He concluded that no Form 3 had accompanied the summons and that the PPS accompanying the summons did not satisfy the requirements to furnish a Form 3 nor had a Form 4 been given to the respondent. The PPS letter did not

contain all the information required to be set out in Form 4 or Form 6. The District Judge concluded that the PPS was using one universal form of notification rather than ensuring that the respondent had the proper form of Form 6 or 6A since the District Judge had a discretionary power to disqualify the defendant from driving the proper form which should have been used was Form 6A this contains a portion entitled "Warning". The District Judge considered the omission of that section from the form as of significance and regarded the omission as one of the indicators that the statutory text had been modified by the PPS with a view to increasing the prospects of securing admissions of guilt by post. The PPS did not supply the notification to the Clerk of Petty Sessions as set out in Form 5 as it should have done and as it could not do so because Forms 3 and 4 nor had there been compliance for the purposes of Rule 8(7) of the Magistrates' Courts Rules which required that the summons bears an endorsement in Form 2B, the statutory warning and the consequences for the accused of not supplying her driving licence. He concluded that in the absence of an acknowledgment of service in Form 110B the postal service was not valid having regard to the clear wording of Rule 12A(4).

[27] The District Judge in this case stated that if he was wrong in his conclusion that the breach of the statutory requirements deprived of the statutory jurisdiction he would not have been minded to exercise his discretion in ease of the PPS. The District Judge considered that the PPS form of letter was objectionable on a number of grounds. In his view the PPS had usurped the role of the Rules Committee and is representing to defendants the advantages to be gained by an immediate admission without the need for the defendant to attend court. The letter effectively rewrites Form 3 and omits reference to using a solicitor and to a deadline of three days before the date fixed for the hearing. The postal pre-procedure followed by the PPS applies to all summary offences even though in many cases the court will, because of the gravity of the offence, direct the defendant to be informed and be required to attend in person.

### **The appellant's arguments**

[28] Mr Valentine argued that service or evasion of service is a condition precedent to jurisdiction if the defendant does not appear. The order of the court ("the court deemed summons not served") showed that the court had failed to consider whether it was proved that the summons was duly served on her. The 1981 Order does not specify the manner in which a summons must be served. The Rules provide for modes of service but the 1981 Order does not say that the summons must be served in the manner prescribed by the Rules where procedural steps are good on their face there is a presumption of regularity unless one knows what actually happened. The court can presume that the police served the summons duly in accordance with the statute and in accordance with the rule and that it came into the

possession of the respondent because she acknowledged receipt of it. There had been a substantial compliance with the rules as to service of the summons in that the defendant acknowledged receipt on the notification of plea of guilty albeit not in Form 110B. It was also argued that the District Judge could have dealt with the defendant in her absence on proof of the tendered evidence even if notification of plea was not itself valid. The jurisdiction of the Magistrates' Court depended on the making of a complaint and the effect of giving of notice of the court hearing to the defendant even if by an invalid summons. The restriction placed by Article 24 on the discretion of a Magistrates' Court to proceed in the absence of the accused who had notified the court in writing of his intention to plead guilty without appearing before the court does not apply when the court is acting in accordance with the powers conferred in Article 23.

[29] With what he described as a modicum of diffidence, Mr Valentine contended that the letter from the PPS satisfied the requirements of Article 24(1A)(a) Rule 10 and the prescribed Form 3. He accepted that the letter did not refer to the accused's right to withdraw the plea of guilty but the form of notification of plea signed by the respondent did give that information. It was conceded that the respondent was not informed of the right to attend the court hearing but neither Article 24 nor Rule 10 expressly stipulated that requirement. The form of notification of plea of guilty was materially the same as Form 6A except that no Section B and no warning about the need to produce her driving licence was included in although this featured prominently in the PPS letter. It was submitted that there was substantial compliance with the statutory procedure and any deviation or irregularity was not such as to mislead or prejudice the defendant. Mr Valentine did, however, appreciate that it was vital that any procedure laid down must be observed and that a conviction based on a plea of guilty by post must be obtained by substantial compliance with the prescribed means. Mr Valentine very properly did indicate the line of a counter argument that could be made on behalf of the respondent that argument being that a statutory procedure was prescribed in Article 24 and that in the absence of compliance with it the District Judge did not have jurisdiction to entertain the plea of guilty by post.

## **Conclusions**

[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.

[31] The court's power to proceed under Article 24(2) to hear the case in the absence of the accused only arises where the Clerk of the Petty Sessions receives a notification in writing purporting to be given by the accused or by her solicitors that the accused desires to plead guilty without appearing before the court. As a preliminary to that power becoming exercisable the Clerk of Petty Sessions must have been notified by or on behalf of the PPS in this instance that the documents mentioned in Article 24(1A) have been served on the accused with the summons. The documents in question are firstly a notice containing such statement of the effect of Article 24 as may be prescribed; secondly, a concise statement in the prescribed form of the facts relating to that charge as will be placed before the court by the complainant or a copy of written statements made under Section 1(2)(a) or (b) and (4) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.

[32] Before the court can proceed to dispose of the case the complainant must prove either on oath or by affidavit or in the prescribed manner that the documents mentioned in paragraph 1A have been served on the accused together with the summons. The prescribed form of notice under Article 24 1A(a) is Form 3. In this instance no Form 3 was served and the PPS could not notify the Clerk of Petty Sessions that a notice in prescribed form had been served. The letter from the PPS to the respondent did not purport to be a notice in the prescribed form although the letter contained some but not all of the information required in the prescribed form. It did not attach the appropriate copy of Form 6A for completion by the defendant. It did not contain the information in Form 3 that neither the notice nor the reply limited the defendant's right to appear at court and plead guilty or not guilty. The PPS letter cannot be considered as being in substantial form the service of a

notice in Form 3. Furthermore, the letter did not spell out what would have been contained in Form 4 which would have been attached to the Form 3 prescribed. For this reason the jurisdiction of the court to proceed under Article 24(2) did not arise.

[33] Even if the procedural steps required by Article 24 had been taken in this case, the contents of the respondent's response, for the reasons given, could not have been treated as a plea of guilty to the second charge and on that basis alone the case could not have proceeded in her absence.

[34] Furthermore, even if, contrary to our conclusion, the letter from the PPS could be taken to have been a substantial compliance with the requirements of the prescribed statutory forms the District Judge was not bound to proceed in the absence of the respondent and retained a discretion with or not to proceed in her absence. In exercising his discretion he would have been entitled to review the overall procedure followed, consider the adequacy of the information supplied to the respondent set against the statutory procedures prescribed and consider whether there was adequate evidence of proper service of the relevant documents including the summons.

[35] The first question raised in the case stated focused on the question whether the District Judge was correct not to proceed to hear and determine the complaint on the ground that an acknowledgment of service in Form 110B had not been produced. Under Rule 10A of the Rules service of a summons may be affected by post. By Rule 12A(4) if the person summoned fails to appear in answer to a summons so served such service shall not be valid unless an acknowledgment of service in Form 110B appearing to be signed by the defendant or solicitor is produced in court. Where a defendant opts to give a notification of a plea of guilty Form 6 or 6A requires the defendant to acknowledge receipt of the summons. Since both Form 110B and Form 6 (in relation to the notification of a plea of guilty) are designed to show an acknowledgment of service, if a defendant has already acknowledged receipt of the summons in Form 6 or 6A it would be an unnecessary requirement to require the defendant in addition to sign an additional Form 110B which would add nothing to what is contained in the Form 6 or 6A which acknowledges receipt of the summons. Rule 12A with its requirement to produce a Form 110B accordingly must be read subject to the special provisions which relate to notification of pleas of guilty under Article 24 and Rule 10. Accordingly the District Judge's focus on the lack of a Form 110B was misplaced if the proper procedures under Article 24 had been fulfilled and the respondent had in the appropriate Form 6A acknowledged receipt of the summons the issue of whether service of the summons had been proved would not have arisen as a discrete question. The true question was whether the District Judge on the facts had jurisdiction to proceed to hear and determine the complaint in the absence of the respondent that necessitated considering whether the statutory procedure set out in Article 24 had been

properly complied with and that the appropriate prescribed documents had been served together with the summons.

### **Disposal of the appeal**

[36] For these reasons accordingly we consider that the question posed by the District Judge should be reformulated to read:

Whether I was correct in refusing to proceed to hear and dispose of the complaints against the respondent under the procedure established by Article 24 of the Magistrates' Court (Northern Ireland) Order 1981 in the absence of the respondent?

We answer that question 'Yes'. The matter accordingly must be remitted to the District Judge to complete the proceedings in accordance with law, taking account of the contents of this judgment.