

Neutral Citation No. [2014] NIQB 20

Ref: STE9176

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

Delivered: 11/02/2014

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (Crown Side)

E and X's applications for bail

IN THE MATTER OF APPLICATIONS BY E AND X FOR BAIL

STEPHENS J

[1] I anonymise this judgment given that the substantive criminal charges are outstanding.

[2] These bail applications raised an issue as to the prioritisation of forensic investigations. Relevant considerations in relation to the grant of bail include the strength of the evidence against the applicant, see by analogy Article 39 (2A) (d) of the Police and Criminal Evidence (Northern Ireland) Order 1989 and whether there has been any undue delay in the proceedings. It was initially perceived that the question that arose for determination was undue delay in obtaining forensic evidence in circumstances where both applicants were in custody facing a weak prima facie case but it being anticipated by the prosecution that substantial evidence implicating them in the offences with which they have been charged might be forthcoming in the form of forensic evidence. In the event, once these applications were opened fully to me, it became clear that there is a strong prima facie case against the applicant's quite irrespective of any forensic evidence that might become available. Accordingly, any delay in the provision of forensic evidence was not of the anticipated level of importance. I consider that the suggestion that there has been delay in the provision of forensic evidence in the event has no impact on these bail applications. However, I consider that it would be appropriate to draw attention to a few matters in relation to the provision of forensic evidence.

[3] The Service Level Agreement between Forensic Science Northern Ireland, an agency within the Department of Justice, and the PSNI provides that 98% of all reports will be turned around within 150 days of the last submission. 150 days is approximately 5 months. Any case in which an individual is in custody and there is a weak prima facie case, but it is anticipated by the prosecution that substantial evidence implicating the individual might be forthcoming in the form of forensic evidence, should be identified, so that the highest priority is given to the forensic investigation. I make it clear that it would be quite unacceptable for anyone to be deprived of their liberty over a 5 month period in anticipation that at the end of that period there will be sufficient forensic evidence to strengthen a weak prima facie case. If there is sufficient evidence to raise only a weak prima facie case, it being anticipated that forensic evidence will be of significance and an accused person is in custody, then the highest priority should be given to the forensic investigation and the failure to give such priority might well amount to undue delay which is one of the factors to be taken into account in considering whether to grant or to refuse bail.

[4] I attach as an appendix to this short judgment a redacted copy of a letter dated 9 February 2014 from Forensic Science Northern Ireland which sets out information as to the Service Level Agreement and the existing policies in relation to priorities to be afforded to forensic investigations.

Appendix

Re. Suspected Arson, at ... on ...

This report is for information purposes only and is not intended for evidential use.

On 4 February 2014, FSNI received a request for an update and additional information in relation to the above case. This was directed through the PSNI Investigating Officer (IO), and received by email. In this request the Agency was asked to provide a further update to the court covering:

- 1) What date were the items received by FSNI in relation to this case?
- 2) What process is undertaken to achieve a target date? Who is this set by?
- 3) Why was the original target date set for 08/01/2014 for the biology/fabric results?
- 4) Does FSNI take into account when there are accused in Custody in order to prioritise workload?
- 5) Who makes changes to the set target date? What reasons?
- 6) Does FSNI have a system of prioritising particular lists from Police? What is the system?
- 7) Why was the target date changed in this case? From 08/01/2014 to 14/02/2014.
- 8) Does FSNI have a system of informing Police why the date has changed?

These questions are answered in detail below.

1) *What date were the items received by FSNI in relation to this case?*

Items 1 (DP2) to 5 (GMG15) were received at the Agency on 30 September 2013. These items were authorised by the PSNI Forensic Submissions Unit for priority examination. The results of this examination were relayed by telephone to the D/Sgt on 2 October 2013.

Further items 6 (TIM5) to 30 (GMG10) were received by FSNI on 25 October 2013. This work comprised fibres analysis on 11 items of clothing, plus blood/DNA examination on swabs. The analytical stages were completed by 16 January 2014, except for one blood sample for DNA returned at the end of the following week.

Finally, the Agency received item 31 (BSP 11) for a forensic drugs analysis on 8 November 2013.

2) *What process is undertaken to achieve a target date? Who is this set by?*

With the exception of Priority 1 (urgent work), the target dates for case requests are governed by the terms of FSNI's Service Level Agreements (SLAs) with PSNI and PPS. The target dates are based on levels of demand versus funded capacity in the specialism concerned and the type/nature of the work itself. Priority 1 work is completed in an urgent timeframe agreed between the FSNI Duty/Lead Scientist and the PSNI Investigating Officer and is based on the nature of the work requested and the context of other priority requests. All Priority 1 work must have prior approval by the PSNI Forensic Authorisation Unit and/or the PSNI Scientific Support Manager, with the exception of out-of-hours urgent requests.

The Key Performance Indicator in the FSNI-PSNI SLA is that 98% of all reports for submissions within contracted demand will be turned around within 150 calendar days of the last submission in respect of a discipline/request. This 150 day KPI is a "percentile", which reflects the exceptional complexity and/or duration of a small proportion (2%) of cases. 150 days is neither the average of all cases, nor the minimum in any one case. For example, 80% of Biology reports would be completed in 100 days and expedited reports in a significantly shorter timeframe.

On submission to the Agency, the submitting party is advised of the standard 80% indicative target date for the completion of the work requested. This is reviewed upon receipt of further work requests and/or demands and notification of any change in priority.

3) Why was the original target date set for 08/01/2014 for the biology/fabric results?

The submission on 30 September was automatically given the default 80% in 100 day turnaround target of 8 January. The urgent element was completed as authorised and reported verbally to PSNI within 3 days. There was a subsequent submission received on 25 October for further work on additional items. At this time, the target date was not reset (as permitted under the SLA) and the Biology Team sought to meet the original timeframe.

The Drugs unit received a request and a further submission on 8 November 2013 and the police would have been advised of the default 100 day target for this. The work was actually completed and a full statement issued on 4 February 2014 (i.e. within 86 calendar days).

4) Does FSNI take into account when there are accused in Custody in order to prioritise workload?

FSNI relies on information provided to it regarding the custody status and age of the person and any additional information supplied to us by PSNI, the PPS or the court. This additional information may include court dates and the readiness of a case for progression/direction. When such information is available, it is used to inform prioritisation of casework, including in response to the Attorney General's guidance on Human Rights. It is however often the case that FSNI are not provided with the necessary information.

5) Who makes changes to the set target date? What reasons?

Changes to the target date are requested by the Reporting Officer and approved or otherwise by team managers, based on a set of agreed business rules. These include 1) unreasonable work request to be able to meet timeliness targets, 2) late or additional work requests/submissions received on subsequent dates, 3) work on hold pending return of items from external parties or additional information from the submitting authority and 4) internal business outages (staff, equipment, etc.). In revising dates, the RO's and their managers conform to the SLA and to any notified priorities. Such changes are generally discussed with the Investigating Officer to update them on progress of work.

6) Does FSNI have a system of prioritising particular lists from Police? What is the system?

The Agency uses information supplied to it by the PSNI in prioritising its workload. Generally this is supplied directly by the Investigating Officer, or a deputy, though there is more limited access to some information supplied through IT systems.

Where over-demand exists, FSNI turns to PSNI and PPS to prioritise their collective demands. PSNI priorities are notified through a senior police operational management group and a monthly updated priority list is provided to FSNI. The Agency also receives a monthly list from PPS on their priorities where forensic updates/reports are required in order to progress a case.

7) Why was the target date changed in this case? From 08/01/2014 to 14/02/2014.

The target date was updated in line with SLA procedures. The original target for the Biology aspect was based on the September submission. The further submission in October impacted this target, as did the heavy Priority 1 caseload in the Agency at that time.

The date was changed to 14 February which, whilst outside the 100 day interim target for both the September and October submissions, would still be within the key 150 day performance indicator for either request.

8) Does FSNI have a system of informing Police why the date has changed?

The FSNI Reporting Officer will normally advise and/or discuss these with the PSNI Investigating Officer.

The overall picture on target date changes is notified to the PSNI Scientific Support Manager as part of FSNI's quarterly reports and is discussed at SLA performance review meetings.

Comment/Explanation of Delay

Work on this specific case has been progressed balanced against other case demands and priority submissions. FSNI were informed by the IO in early/mid January 2014 of the particular court need, regarding an outstanding report for bail review. A date for completion of the final report, 14 February, was advised by return. The priority aspect of the case submitted in September was verbally reported at that time.