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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)
BEFORE A DIVISIONAL COURT

Before Morgan LCJ and McCloskey J

In the Matter of an Application by Bryan Grindy
for a Writ of Habeas Corpus ad Subjiciendum
and
for Leave to Apply for Judicial Review

In the Matter of an Application by Andrew McCallum
for Leave to Apply for Judicial Review

MORGAN LCJ and McCLOSKEY J

Introduction

[1] This is the considered, written version of the judgment given *ex tempore* by this court during the evening of 8th November 2011, to which both members have contributed.

[2] These applications for judicial review and habeas corpus, which were heard as emergency cases, are materially indistinguishable. Both were brought against the Police Service for Northern Ireland ("*Police Service*"). There are two basic factors common to each case. The first is that each Applicant is a remand prisoner who, on 7th November 2011, was committed to detention at a police station by a District Judge in the exercise of the power contained in Article 47(4A) of the Magistrates Courts (NI) Order 1981, as amended ("*the 1981 Order*"). The second is that both Applicants complain that, consequent upon the events which have occurred

pursuant to the aforementioned committal orders, there has been a failure to authorise their continued detention in accordance with Article 43 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE 1989”).

[3] Both applications were heard together. In the first case (that of Mr. Grindy) the offending failure was the stimulus for an application for a writ of habeas corpus, coupled with an application for leave to apply for judicial review. The primary relief sought by this Applicant was an order of certiorari quashing his continuing detention by the Police Service. He also sought declaratory relief. The relief sought by the second Applicant, Mr. McCallum, was essentially the same. Factually, it was not disputed that following the detention of both Applicants at a police station, pursuant to the committal orders of the district judge, the authorisation of continued detention regime enshrined in Article 43 of PACE 1989 had not been applied to either of them. In essence, both Applicants made the case that this failure rendered their continuing detention at the police station unlawful.

[4] It appeared to the court at the outset that both applications constituted a criminal cause or matter (see *Re JR 27's Application* [2010] NIJB 273) and all parties agreed.

Article 47, 1981 Order

[5] Article 47 of the 1981 Order is inserted in the chapter entitled “Remands” and bears the subheading “Period of Remand in Custody or in Bail”. By Article 47(2), where an accused person is remanded in custody the general rule is that the period shall not exceed 28 days. The specific provision of Article 47 of relevance for present purposes is paragraph (4A), which provides:

“In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a Magistrates Court may, on an application made under this paragraph by a member of the [Police Service] not below the rank of inspector, commit the accused to detention at a police station”.

In Article 47(4B), there is an identically worded provision authorising committal of an accused person to the custody of a constable other than at a police station. Article 47(4C) provides:

“The period for which an accused is remanded under (4A) or (4B) shall not exceed three days commencing on (and including) the day following that on which he is remanded”.

By virtue of Article 47(4D), these powers of committal apply only to an accused person who is aged twenty-one years or older *and* is not already detained under a

custodial sentence. The purpose of these discrete powers of committal emerges in Article 47(4E), which provides:

“(4E) An accused shall not be committed to detention at a police station under paragraph (4A) unless there is a need for him to be so detained for the purposes of inquiries into other offences; and, if a person is committed to such detention-

(a) he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings;

(b) he shall be treated as a person in police detention to whom the duties under Article 40 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (responsibilities in relation to persons detained) relate; and

(c) his detention shall be subject to periodic review at the times set out in Article 41 of that Order (review of police detention).”.

Article 47(4F) provides:

“47(4F) An accused shall not be committed to the custody (otherwise than at a police station) of a constable under paragraph (4B) unless there is a need for him to be kept in such custody for the purposes of inquiries into other offences; and if a person is committed to such custody, he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings.

(5) The court may order the accused to be brought before it at any time before the expiration of the period for which he has been remanded.

(6) In this Article, “custodial sentence” includes-

(a) an order for detention in a young offenders centre within the meaning of the Treatment of Offenders Act (Northern Ireland) 1968;

(b) a juvenile justice centre order within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998.”

The final noteworthy provision of Article 47 is paragraph (5), which provides:

“The court may order the accused to be brought before it at any time before the expiration of the period for which he has been remanded”.

[6] Article 47(4A) – (4F) of the 1981 Order form a collection of inter-related provisions inserted by Article 3 (1) of the Criminal Justice (Northern Ireland) Order 1991 (*“the 1991 Order”*). In common with most criminal justice statutory reforms, this measure contains an assortment of provisions and has no discernible overarching or central purpose. The provisions with which this judgment is concerned were inserted by Article 3. They were, presumably, stimulated by some perceived lacuna in existing legislation or other mischief. The equivalent English statutory provision is Section 128(8) of the Magistrates Courts Act 1980, as amended, which was inserted by Section 48 of the Police and Criminal Evidence Act 1984. While the structure and wording of Section 128(8) are not identical to Article 47(4A) – (4F) of the 1981 Order, there is no material difference of substance and it would appear that the Northern Ireland statutory provisions are modelled on their English counterpart. In particular, Section 128(8) and Article 47(4E) are materially indistinguishable.

PACE 1989

[7] Article 47(4E) of the 1981 Order makes specific reference to two provisions of PACE. The first is Article 40, which provides:

“40. - (1) Subject to paragraphs (2) and (4), it shall be the duty of the custody officer at a police station to ensure-
(a) that all persons in police detention at that station are treated in accordance with this Order and any code of practice issued under it and relating to the treatment of persons in police detention; and
(b) that all matters relating to such persons which are required by this Order or by such codes of practice to be recorded are recorded in the custody records relating to such persons.
(2) If the custody officer, in accordance with any code of practice issued under this Order, transfers or permits the transfer of a person in police detention-
(a) to the custody of a police officer investigating an offence for which that person is in police detention; or
(b) to the custody of an officer who has charge of that person outside the police station,
the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Order and of any such codes of practice as are mentioned in paragraph (1).

(3) *If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this Article and the codes of practice have been complied with while that person was in his custody.*

(4) *If an arrested juvenile is taken to a place of safety in pursuance of arrangements made under Article 39(6), the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1).*

(5) *Where an arrested juvenile is taken to a place of safety in pursuance of such arrangements, it shall be the duty of the occupier of that place to make available to him such advice and assistance as may be appropriate in the circumstances.*

(6) *Where-*

(a) *an officer of higher rank than the custody officer gives directions relating to a person in police detention; and*

(b) *the directions are at variance-*

(i) *with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part; or*

(ii) *with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty, the custody officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer."*

The second is Article 41, which provides:

"41. - (1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this Article-

(a) *in the case of a person who has been arrested and charged, by the custody officer; and*

(b) *in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.*

(2) *The officer to whom it falls to carry out a review is referred to in this Article as a "review officer".*

(3) *Subject to paragraph (4)-*

(a) *the first review shall be not later than six hours after the detention was first authorised;*

(b) *the second review shall be not later than nine hours after the first;*

(c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed-

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in paragraph (3), it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of sub-paragraph (a)-

(i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time no review officer is readily available.

(5) If a review is postponed under paragraph (4) it shall be carried out as soon as practicable after the latest time specified for it in paragraph (3).

(6) If a review is carried out after postponement under paragraph (4), the fact that it was so carried out shall not affect any requirement of this Article as to the time at which any subsequent review is to be carried out.

(7) The review officer shall record the reasons for any postponement of a review in the custody record.

(8) Subject to paragraph (9), where the person whose detention is under review has not been charged before the time of the review, Article 38(1) to (6) shall have effect in relation to him, but with the modifications specified in paragraph (8A). [am. 1 March 2007]

(8A) The modifications are –

(a) the substitution of references to the person whose detention is under review for references to the person arrested;

(b) the substitution of references to the review officer for references to the custody officer; and

(c) in paragraph (6), the insertion after sub-paragraph (a) of –

" (aa) asleep;" .

(9) Where a person has been kept in police detention by virtue of Article 38(9), Article 38(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(10) Where the person whose detention is under review has been charged before the time of the review, Article 39(1) to (6) shall have effect in relation to him, but with the modifications specified in paragraph (10A). [am. 1 March 2007]

(10A) The modifications are –

(a) the substitution of references to the person whose detention is under review for any reference to the person arrested or to the person charged; and

(b) in paragraph (5), the insertion after sub-paragraph (a) of—

" (aa) asleep;" .

(11) Where-

(a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and

(b) the directions are at variance-

(i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(12) Before determining whether to authorise a person's continued detention the review officer shall give-

(a) that person (unless he is asleep); or

(b) any solicitor representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to paragraph (14), the person whose detention is under review or his solicitor may make representations under paragraph (12) either orally or in writing.

(14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour."

[8] For completeness, it is appropriate to set out Article 42 of PACE:

"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.

(2) The time from which the period of detention of a person is to be calculated (in this Order referred to as "the relevant time")-

(a) in the case of a person arrested outside Northern Ireland, shall be-

(i) the time at which that person arrives at the first police station to which he is taken in Northern Ireland; or

(ii) the time 24 hours after the time of that person's entry into Northern Ireland, whichever is the earlier;

(b) in the case of a person who-

(i) attends voluntarily at a police station; or

(ii) accompanies a constable to a police station without having been arrested,

(iii) is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953; and is arrested at the police station, shall be the time of his arrest; or

(ba) in the case of a person who attends a police station to answer to bail granted under Article 32A, the time when he arrives at the police station; [added 2004 NI 9 from 1 Jan 2005]

(c) in any other case, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Paragraph (2) shall have effect in relation to a person arrested under Article 33 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(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.

(5) Subject to paragraph (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Paragraph (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with Article 43 or 44.

(7) A person released under paragraph (5) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this paragraph does not prevent an arrest under Article 47A."

It was argued on behalf of both Applicants that the authorisation regime of Article 43 of PACE applied to their detention. Article 43 provides:

“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; [am. 1 March 2007, extended to any 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.

(2) Where an officer such as is mentioned in paragraph (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in paragraph (1) are still satisfied when he gives the authorisation.

(3) No authorisation under paragraph (1) shall be given in respect of any person-

- (a) more than 24 hours after the relevant time; or*
- (b) before the second review of his detention under Article 41 has been carried out.*

(4) Where an officer authorises the keeping of a person in police detention under paragraph (1), it shall be his duty-

- (a) to inform that person of the grounds for his continued detention; and*
- (b) to record the grounds in that person's custody record.*

(5) Before determining whether to authorise the keeping of a person in detention under paragraph (1) or (2), an officer shall give-

- (a) that person; or*
- (b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,*

an opportunity to make representations to him about the detention.

(6) Subject to paragraph (7), the person in detention or his solicitor may make representations under paragraph (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit

to make such representations by reason of his condition or behaviour.

(8) Where-

(a) an officer authorises the keeping of a person in detention under paragraph (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by Article 57 or 59,

the officer-

(i) shall inform him of that right;

(ii) shall decide whether he should be permitted to exercise it;

(iii) shall record the decision in his custody record; and

(iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under paragraph (1) or (2), he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless-

(a) he has been charged with an offence; or

(b) his further detention is authorised or otherwise permitted in accordance with Article 44.

(10) A person released under paragraph (9) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this paragraph does not prevent an arrest under Article 47A."

[9] PACE contains a definition of "a person in police detention". This is found in Article 2(3), which provides:

"2 (3) Subject to paragraphs (4) and (4A), a person is in police detention for the purposes of this Order if-

(a) he has been taken to a police station after being arrested for an offence or after being arrested section 41 of the Terrorism Act 2000 by an examining officer who is a constable; or

(b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it, or

(c) he is arrested at a police station after being taken to the station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953, and is detained there or is detained elsewhere in the charge of a constable."

For completeness, the immediately ensuing paragraphs provide:

“(4) A person-
(a) who is at a court after being charged; or
(b) who has been taken from a custodial establishment and held in police custody pending his appearance at a court, is not in police detention for those purposes.
(4A) Where a person is in another's lawful custody by virtue of paragraph 8, 22(1) or 23(2) of Schedule 2 to the Police (Northern Ireland) Act 2003, he shall be treated as being in police detention for the purposes of this Order.
(5) In this Order “custodial establishment” includes a prison, a young offenders centre, a juvenile justice centre and a remand centre.”.

The Committal Orders and Ensuing Detention

[10] In each of these cases, the committal order of the District Judge under Article 47(4A) of the 1981 Order was made at 12.20 hours on 7th November 2011. In both cases, the order recited, in material part:

“AND WHEREAS upon application by a member of the Police Service of Northern Ireland not below the rank of inspector, the court ordered that the Defendant be committed to detention at a police station for a period of three days for the purpose of inquiries into other offences ...

THIS IS TO COMMAND YOU, to whom this warrant is addressed, to detain the Defendant at a police station for the above-mentioned period (or, if the inquiries are completed or are no longer required before the expiration of that period, to bring the Defendant on such earlier occasion before a Magistrates Court having jurisdiction to conduct the proceedings).

AND for this purpose the present warrant shall be a sufficient authority to all whom it may concern ...

The period for which an accused is remanded in these circumstances must not exceed three days commencing on (and including) the day following that on which the Defendant is remanded”.

Both committal orders were addressed to the District Commander of the Police Service, Belfast South DCU.

[11] Both Applicants' custody records documented that they were arrested at 12.20 hours on 7th November 2011 at Laganside Magistrates Court, Belfast. The

reason for their “arrest” was specified as “murder”. The “circumstances of arrest” were detailed as follows:

“Leslie White was last known to be alive on 6/11/2010. Information held by police would suggest that Mr. White was murdered. Police investigations to date would show that the detainee is suspected of being involved in the murder.”

The custody record also documents, in both cases:

“Detainee produced to Laganside MC this date and an Article 47 MCO order warrant issued,”

The custody records further document that each of the Applicants exercised their right to consult with a solicitor. The applications to the Divisional Court which ensued were heard approximately eighteen hours following the making of the committal orders.

Consideration and Conclusions

[12] It is appropriate to highlight at the outset that there is no challenge to the legality of either of the committal orders. It was suggested in the submissions of counsel that orders of this kind may, in practice, be made in something of a cursory fashion. We take this opportunity to observe that where the exercise of a Magistrates Court’s power under Article 47(4A) of the 1981 Order is invoked, this requires, formally, a specific application to the court, made by a police officer of at least the rank of inspector. The legislation is not prescriptive about the procedure for making or determining such applications. However, applying elementary principles, we consider that:

- (a) An application of this kind should be made on prior notice to the accused person in question.
- (b) The essential basis of the application should be specified.
- (c) The accused person should have an opportunity to make representations to the District Judge.
- (d) The District Judge should exercise the power enshrined in Article 47(4A) only where satisfied that the application has a proper basis, as explained below

The essential pre-requisite to the lawful exercise of the power contained in Article 47(4A) is spelled out clearly in paragraph (4E): there must be “*a need for [the accused] to be so detained for the purposes of inquiries into other offences*”. This is the

fundamental touchstone by reference to which applications of this kind are to be determined. It is also essential to bear in mind that the overarching purpose of applications and orders made under Article 47(4A) is the investigation of offences and the detection, prosecution and punishment of offenders. The making and determination of applications under Article 47(4A) must be conducted in a manner which does not frustrate these overarching purposes. We would expect that in the generality of cases undue elaboration and excessive formality will not be required in establishing the pre-condition essential to the making of an order of this *genre*.

[13] Although not directly in point in either of these challenges, the second matter which we address concerns the period to be specified in any committal order made under Article 47(4A). In accordance with paragraph (4C), this shall not exceed three days (as calculated). We are satisfied that the intention underlying paragraph (4C) is that a committal order should not routinely specify a detention period of three days. Rather, in the application to the Magistrates Court, the question of the necessary period of detention should be specifically addressed and this, in turn, should be expressly considered by the court in determining the application. In every case, the question for the court, adopting the language of paragraph (4E), will be: for how long is it necessary to detain the accused person for the purpose of the relevant inquiries into the other offences concerned? This analysis is consistent with Article 47(4E) itself and the immediately following subparagraph (a), which provides unequivocally that “*as soon as that need ceases*” the accused person “*shall*” be brought back before the Magistrates Court. It is clear that, at the stage of return, the power to be exercised by the court is that contained in Article 47(1) viz. to remand the accused either in custody or on bail.

[14] Article 47(4E) provides explicitly, in subparagraphs (b) and (c), that an accused person who is the subject of a committal order made under paragraph (4A):

- (a) Shall be treated as a person in police detention to whom the duties under Article 40 PACE relate; and
- (b) Shall have periodic review of his detention at the times specified in Article 41 PACE.

The burden of the argument addressed on behalf of both Applicants to the court was that the words “*are treated in accordance with this Order*”, in Article 40(1)(a) PACE, are to be construed as imposing on the custody officer a duty to ensure that the continued detention of those committed under Article 47(4A) is governed by the regime for the authorisation of continued detention contained in Article 43 PACE. It was submitted that “*treatment*” encompasses both the conditions of the accused person’s detention and all relevant rights and protections contained in PACE. We reject this argument. Our fundamental reason for doing so is that in enacting the collection of provisions contained in Article 47(4A) – (4E) of the 1981 Order, the legislature has clearly addressed its mind to the question of which provisions of PACE should apply to accused persons who are the subject of this particular type of

committal order. This is the unmistakable conclusion which follows from the way in which Article 47(4E)(b) and (c) are framed. These provisions, in our view, are indicative of a clear legislative intention that *only* Articles 40 and 41 of PACE should apply to this discrete class of detained persons. Accordingly, the Applicants' central argument is confounded by the terms of the statutory provisions themselves and we reject it.

[15] The rationale for applying Articles 40 and 41 only of PACE to this particular class of detained persons is not difficult to ascertain. It is found in the strong judicial element in the Article 47 regime, which has the following central ingredients:

- (a) This species of detention can be effected only by a judicial order following a specific application for the exercise of the power in question.
- (b) In every case, the propriety of exercising the relevant statutory power must be duly considered by the judicial officer concerned, who must be satisfied that there is a proper basis for the application.
- (c) Thereafter, the authority for the detention of the accused person at the relevant police station is the committal order made by the District Judge.
- (d) The accused person must be brought back before the Magistrates Court at the appropriate time.
- (e) The court is specifically empowered to order the accused person to be brought back before it at any time prior to expiry of the authorised remand period.

Accordingly, the model established by Article 47 of the 1981 Order entails judicial scrutiny and supervision from beginning to end. This model differs markedly from the typical arrest/detention scenario, constructed around Article 26 of PACE, which has no judicial involvement whatsoever. Article 43 of PACE is, in our view, designed to provide a measure of protection for those who have been arrested by the police and are, in consequence, "*in police detention*" within the meaning of Article 2(3). This species of protection is not required for accused persons committed to custody at a police station pursuant to Article 47(4A) of the 1981 Order, having regard to the safeguards contained in the Article 47 regime as a whole.

[16] It follows that, in our view, the verb "to treat" and its derivatives, in Article 40 of PACE, are to be accorded their obvious and simple meaning. This does *not* encompass anything bearing on the legality or continuation of the individual's detention. Rather, the concept of "treatment" is clearly directed to matters such as cell accommodation, meals, exercise, medical treatment and the reporting of complaints: these are all examples of matters of treatment for which the various

Codes of Practice make provision. The “treatment” of those in police detention also embraces matters such as searches and the taking of fingerprints and samples, all addressed in subsequent provisions belonging to this part of the statute. An examination of the English PACE statute yields the same analysis.

[17] We further consider that an accused person who is the subject of a committal order under Article 47(4A) of the 1981 Order is, plainly, not “*a person in police detention*” for the purposes of PACE, within the meaning of Article 2(3) of the latter. This explains why it was necessary for the legislature to specifically address its mind to the question of whether any of the provisions contained in the “Detention” chapter of PACE (Part V) should be applied to members of this class. This also illuminates the inclusion of subparagraphs (b) and (c) in Article 47(4E) and is indicative of an underlying legislative intention that other provisions in Chapter V, in particular Article 43, should not govern the detention of such persons. We are unable to conclude that there is anything accidental or aberrant to the inclusion in Article 47(4A) of the 1981 Order of references to Articles 40 and 41 of PACE only.

[18] We would also draw attention to Article 47(4F) of the 1981 Order. It is clear from the terms of this provision that the Magistrates Court has a continuing supervisory role after making an order under Article 47(4A). Paragraph [5] clearly contemplates, in appropriate cases, an application to the Magistrates Court for an order requiring the accused person to be brought back before it prior to expiry of the period specified in the committal order. It appears to this court that an application of this kind could, in principle, be founded on a contention that there is no enduring need for the person concerned to remain in custody at a police station. These provisions, in our view, disclose an underlying legislative intention that a challenge to the continuing detention at a police station of an accused person pursuant to a committal order under Article 47(4A) should normally be brought before the Magistrates Court. In a typical case, that court will be familiar with the application and determination giving rise to the impugned detention and should, in principle, be equipped to deal with any challenge expeditiously and with minimum formality. We are impelled to the conclusion that, as a general rule, any challenges of this kind should be made in the Magistrates Court. It seems to us that to bring proceedings in this court would be the exception, rather than the rule.

[19] Finally, in one of the two cases giving rise to this judgment there was a combined application for a writ of habeas corpus and judicial review. We acknowledge that legitimate doubts about whether one of these forms of legal procedure is more appropriate than the other can arise in borderline cases and we take this opportunity to draw to the attention of practitioners the extensive consideration given to this discrete topic in *Re Campbell's Application* [2009] NIQB 82, paragraphs [9] – [15].

Disposal

[20] For the reasons elaborated above, the court dismissed these applications.

