Neutral Citation No. [2006] NIQB 71 | *Ref:* **GIRF5674**

Judgment: approved by the Court for handing down | *Delivered:* **25/10/2006**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY RYAN HANSON FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

GIRVAN J

[1] In this application the applicant Ryan Hanson challenges as unlawful a decision made by the Police Service of Northern Ireland to arrest him in that at the time of the arrest the arresting officer took into account an irrelevant consideration, namely a policy of the Coleraine District Command Unit ("DCU") requiring the arrest of suspects in domestic violence cases.

[2] On 12 February 2006 members of the Police Service were tasked to an address in Portrush in response to a radio transmission about an alleged domestic incident. On arrival the police spoke to the applicant who alleged that his partner Ursula Henry ("the complainant") had telephoned the police for no reason. When the complainant was spoken to she alleged that she had gone to bed. The applicant had come home, gone upstairs, grabbed her by the hair and dragged her out of the bed and downstairs where he proceeded to start hitting and kicking her. The police noted that she had cuts on her forehead and on her cheek and a large bruise on the left thigh. She wanted the applicant to leave. As the applicant was going down the stairs he was observed to make a gesture towards the complainant pulling his finger across his throat. There was clearly prima facie evidence that the applicant had assaulted the complainant.

[3] The complainant after the alleged assault obtained a non-molestation order against the applicant and this order was served on the applicant on 16 February 2006.

[4] On 24 February 2006 the applicant voluntarily attended Coleraine Police Station in relation to the police investigation. The applicant's solicitor was informed that no statement of complaint had been made by the complainant and the complainant had stated that she did not wish to make a statement of complaint, and having obtained a non-molestation order wished to leave the matter there. When the applicant's solicitors queried the basis of the proposed interview and arrest in a situation where no statement of complaint existed, Police Constable Wilson stated that a written direction from the Coleraine District Council Unit Commander provided that when police attend at the scene of an alleged domestic dispute the

police must investigate by way of arrest and questioning in police detention regardless of whether a statement of complaint has been made. The applicant was advised by his solicitor to decline to make a voluntary statement. He was then arrested on suspicion of common assault.

[5] Inspector Dempsey of the Community Safety Branch in the PSNI in his affidavit refers to the formulation and adoption of the Policy Directive 02-04 ("the Directive") which is the current corporate policy for responding to domestic incidents. The responsibility for delivery of the Directive lies with District Commanders who may issue further local guidance to complement corporate policy providing there is no conflict between them. Coleraine District Command Unit policy file No. 51 issued on 21 September 2005 detailed procedures in relation to no complaint cases and provided further clarification on local guidance on the application of police policy. Inspector Dempsey did not consider that it had in any way conflicted with the Directive. The Directive states that "Where a power of arrest exists officers should give full consideration to exercising that power. An officer should fully record their reasons for a decision not to arrest …" (Section 7.4(c) at page 8 of the Directive). It further states in Section 7.4(5) that "In pursuing an investigation, officers must look at the entire incident not just the oral or written evidence of the victim. Victims have a right to protection from domestic violence and police officers have a responsibility to investigate and obtain sufficient evidence to prosecute an offender". The Directive advocates the view that it is for the police and appropriate prosecuting authority to decide if a case should proceed. Section 7.5(2)(b) states "Where a victim has declined to prosecute, the domestic violence officer will examine all available evidence in consultation with their line manager and where the police consider it to be in the public interest prepare and submit a report with appropriate recommendations to the Director of Public Prosecutions via CJ4 (Criminal Justice Department) outlining the full circumstances of the incident, including any relevant history, for consideration in respect of criminal proceedings. Where it is not in the public interest to prosecute a report will be prepared and submitted as per current service instructions".

[6] In the circumstances where a complainant wishes to withdraw a complaint, the policy states "A full withdrawal statement should be obtained in writing from the victim that criminal proceedings have commenced" (see Section 7.12(1)(b)) and that "This information will enable the prosecutor to make an informed judgment as to whether the case could still proceed and the victim be compelled to give evidence" (Section 7.12(1)(c)). The Coleraine policy document in its summary states that no complaint does not always mean no prosecution. The police should always seek to address the suspect and at the same time protect the victim. Actions on a no complaint are set out, these include that the inquiry should proceed and the suspect should be spoken to. For minor offences this could simply be a doorstep interview or informal advice and warning. For more serious offences this could include arrest, interview, taking of samples etc.

[7] Mr Sayers on behalf of the applicant argued that the Coleraine DCU policy exceeded the scope granted to the District Commander by the Policy Directive and authorised officers to act in a manner inconsistent with the policy directive. Counsel argued that the DCU policy document failed to observe two key distinctions established in the policy directive between cases in which criminal proceedings have commenced and cases in which criminal proceedings have not commenced, and cases in which the alleged injured party has made a statement of complaint and cases in which the alleged injured party does not wish to make a statement of complaint. The effect of the error is that the DCU policy document fails to direct officers in cases in which criminal proceedings have not commenced and the alleged injured party does not wish to make a statement of complaint to follow the procedure governed by Section 7(3) of the Policy Directive. Counsel argued that the DCU policy document directs officers to take action in contravention of Section 7(3). That provision provides that in the context of reports received via the 999 system if the victim did not wish to make a formal complaint, full details of the incident will be recorded "the victim must be informed that although no police action will be taken, the details will be recorded". In paragraph 3(2) under the heading Reports by Telephone, the policy says that if the victim does not wish to make a formal complaint or police to attend their home, full details of the incident must be recorded and an 1RF form completed and submitted. The victim must be informed that although no police action will be taken the details will be recorded. Under paragraph 4 under the heading Reports in Person, it is provided that if after speaking to the victim it becomes clear that they do not wish to make a written complaint, a form 1RF will be completed. The victim should be informed that although no police action will be taken the details will be recorded. Counsel contended that in purporting to arrest the applicant on the authority of the Coleraine DCU policy document in a case in which criminal proceedings had not commenced and the alleged injured party did not wish to make a statement or complaint, the police acted outside their lawful authority. Not being in accordance with law the arrest failed to observe the applicant's rights under Article 5 and Article 8 of the Convention.

[8] As Mr McAllister on behalf of the respondent pointed out, Section 32 of the Police (Northern Ireland) Act 2000 provides that it is the general duty of police officers –

> "(a) to protect life and properties;
>
> (b) preserves order;
>
> (c) to prevent the commission of offences;
>
> (d) where an offence has been committed, to take measures to bring the offender to justice".

The overriding duty imposed on the police by Section 32 cannot be abrogated by any mere statement of policy by the Police Service and any policy would have to

be read and given proper effect in the light of the overriding duties imposed by the police under Section 32. The police attendance at the alleged victim's home was the first step in the investigative process. I accept Mr McAllister's contention that Section 73(1)(g) did not apply. Paragraph 4(5) in Section 7 provides –

"In pursuing an investigation officers must look at the entire incident not just the oral or written evidence of the victim. Victims have a right to protection from domestic violence and police officers have responsibility to investigate and obtain sufficient evidence to prosecute an offender. Failure to do so without good and sufficient reason may result in a breach of a victim's human rights".

Earlier in paragraph 4(g) it is stated that the first duty of a police officer when attending a domestic incident is to protect the victim and any children from further risk. Where a power of arrest exists officers should give full consideration to exercising the power. An officer should fully record reasons for a decision not to arrest. The second duty is to hold the offender accountable.

[9] There was clearly prima facie evidence of an assault by the applicant on the complainant. The fact that the victim was not willing to provide a written statement and did not want the matter to be proceeded with further in light of the non-molestation order, was only part of the equation. The police obligation to investigate the prima facie case laid the basis for an arrest of the applicant for questioning under caution. If the policy were purporting to say that if a victim does not wish to make a formal complaint then the police must cease to carry out any further investigation and that they have no power of arrest thereafter, the policy would run counter to the statutory duty of the police and would to that extent be an unlawful policy. Reading the policy as a whole however I do not consider that it so provides. The arrest in the circumstances was not a wrongful arrest since the police had an evidential basis and justification for effecting the arrest in order to pursue their investigation. In consequence the applicant was not unlawfully detained.

[10] Mr McAllister also raised the argument that the application was misconceived because the applicant had an alternative remedy by way of bringing civil proceedings for unlawful arrest and false imprisonment. He contended that the proceedings in that form would be more appropriate for determining issues of fact between the applicant and the respondent. I consider that there is considerable force in Mr McAllister's contention on that issue. However, I have dismissed the application on the basis that the applicant has not made out a case on the basis of any conflict between the terms of the directive and the Coleraine Policy.