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Judgment: approved by the Court for handing (subject to editorial corrections)* | **Delivered: 27/9/2011**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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Appellant;

-and-

THE PUBLIC PROSECUTION SERVICE

Respondent.

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Before: Higgins LJ, Girvan LJ and Coghlin LJ

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Higgins LJ (giving the judgment of the Court)

[1] This is an appeal by way of case stated from a decision of Strabane Youth Court on 15th January, 2010 whereby it refused an application on behalf of the appellant to exclude, under Article 76 of the Police & Criminal Evidence (NI) Order 1989 (the 1989 Order), evidence of admissions made by the appellant to the police, on the ground that it was obtained during police interview in the absence of an appropriate adult. The appellant was charged with five counts of criminal damage all alleged to have occurred on 14 January 2009. On 15 January 2010 at Strabane Youth Court a Youth Panel presided over by District Judge McNally convicted the appellant on all counts.

[2] The appellant was born on 22 October 1991. On 12 February Police officers called at his home and spoke to his mother. The appellant was not at home. The officers explained that they wished to speak to the applicant about damage to windows and that they were in possession of CCTV footage relevant to the incident. The appellant's mother said she would contact her

son and arrange for him to attend the police station. About 40 minutes later he arrived at the police station. He was not arrested but was told that he was there voluntarily and that he did not have to remain there and that he was entitled to legal advice. Shortly after an interview commenced at which he was reminded that he could have legal advice. The appellant stated that he wished to proceed without a solicitor. He was cautioned and thereafter in the interview he freely admitted that he was involved with others in the breaking of the windows. The substance of the interview was not in dispute.

[3] At the time of the interview the appellant was 17 years and 3 ½ months old. At the conclusion of the prosecution case counsel on behalf of the applicant applied that the evidence of the interview should be excluded.

Three principal grounds were advanced –

i. that the police should have arranged for an appropriate adult to be present during the interview and their failure to do so had such an adverse effect on the fairness of the proceedings that the court should exercise its discretion and exclude the evidence of the interview (presumably under Article 76 of 1989 Order);

ii. that the Youth Panel should exercise its discretion to exclude the evidence of the interview because the Secretary of State for Northern Ireland had failed promptly to amend the Codes of Practice of the Police Service of Northern Ireland following the passing but not implementation of Article 18 of the Police and Criminal Evidence Order (Amendment) (Northern Ireland) Order 2007 (the Order of 2007) which extends the age of those entitled to the presence of an appropriate adult from a person under 17 years to a person under 18 years; which failure was incompatible with the rights of an accused to receive a fair trial under Article 6 of the ECHR and in breach of international Conventions on the rights of children. [The relevant part of the Order of 2007 came into operation on 1 November 2009];

iii. that while the appellant was not a juvenile at the relevant time in accordance with the terms of the 1989 Order, he should have been treated as a 'youth' in accordance with the definition of a child, that is a person under the age of 18 years, as prescribed in the Justice (Northern Ireland) Act 2002.

[4] No application was made during the prosecution case for a voire dire to be held relating to the circumstances of the interview with the appellant. The Youth Panel noted the age of the appellant at the time of the interview, and that he was not a juvenile. They referred to and took into account that interviews with juveniles require considerable care by police officers (per Girvan J in R v DG, unreported); that breaches of the Code do not

automatically mean that evidence is excluded, but that the task of the court where a breach is established is to consider whether it has such an adverse effect on the fairness of the proceedings that justice required the evidence to be excluded (per Saville J in R v Walsh [1990] 91 Cr App R 161). Paragraph 11 of the case stated sets out a passage from Archbold's Criminal Pleading and Practice 2009. This states -

> "11. A 17 year old is not a 'juvenile' within Code C. The absence of an appropriate adult at an interview did not per se involve a breach of the Code. Nonetheless, the interviewing of a detainee of such an age, who is unrepresented, has no previous history of arrest and who has been in custody at the time of the interview, is liable to give rise to issues under Sections 76 and 78 that require anxious consideration: R(DPP) v Stratford Youth Court 165 JP 761 DC."

Paragraph 12 of the case stated refers to the Stratford case -

> "12. The 'Per Curiam' note in the Stratford Youth Court case is of particular assistance on how to proceed in deciding whether to exclude evidence. The Divisional Court determined that the lower court was wrong to find there was a breach of Code C when a 17 year old was not interviewed in the presence of an appropriate adult.
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> The Court also provided Per Curiam: Where a Youth Court is considering the admissibility of a confession under S.76(2) of PACE which was made during an interview given at a police station and the defendant is not a 'juvenile' for the purposes of Code C, the proper practice is for counsel to bring to the attention of the court all the circumstances surrounding any confession. The Court should not underestimate the pressure for a young person to get things over and done (sic) and that young people may be particularly prone to giving information which is misleading and incriminating.
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> Further, the Court should consider such circumstances to decide whether such an interview may be excluded under S 78 on the basis

that its admission may adversely affect the fairness of the proceedings."

In light of the report of the Stratford case the Panel inquired if counsel wished to call any evidence on the sole issue of admissibility. Counsel declined to do so. It was suggested that this placed an onus of some sort on the appellant. We do not agree when the issue was the admissibility of confession evidence. The Panel then considered the following circumstances surrounding the confession –

a) that the appellant's mother was aware that police wished to question him about broken windows and that there was CCTV evidence;

b) that he attended the police station a short time later as a result of a communication from his mother;

c) that the appellant's mother did not attend even though she knew he was to be question about criminal damage;

d) that the appellant was at the time 17 years and 4 months and that he could not be described as a person with "no previous history of arrest and who has been in custody for 24 hours at the time of interview";

e) that the appellant attended voluntarily at the police station;

f) that the appellant was advised by police that he was present in the police station voluntarily and did not have to remain, yet he decided to do so;

g) that he was advised that he was entitled to legal advice but declined to obtain it;

h) that he was advised that if wished to have legal advice during the interview it would be stopped in order for him to obtain it, but he made no such request.

Having considered those circumstances the Panel determined that there was no breach of the Order and that the police were authorised to interview him in the absence of an appropriate adult and that at no time was the case made that he appeared to be under 17 years of age, such as to engage Code C 1.5. The Panel noted that the appellant had failed to point to any area where he had felt vulnerable or disadvantaged when at the police station. They were satisfied that he attended voluntarily, was aware that he could have legal advice but decided not to avail of it. Having taken into account Article 4 of the

Criminal Justice (Children) (Northern Ireland) Order 1998 which requires a court in any proceedings for an offence to have regard to the welfare of any child brought before it and the question of delay, the Panel concluded that the admission of the interview evidence would not have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it. The Panel noted the arguments put forward namely that the admission of any interview of a 17 year old would breach the 'spirit of the Code', and that the failure of the Secretary of State to amend the Order and Codes to bring them into line with other age provisions defining the age of a child as anyone under 18 years of age contravened Article 6 of the ECHR and the UN Convention on the Rights of the Child. The Panel noted that the definition of 'juvenile' in the Order was clear and could not be read down, that the Panel had no power to make a declaration of incompatibility and that international treaties do not affect domestic law unless incorporated into it by some legislative act (per Gillen J in Re Northern Ireland Commissioner for Children and Young People [2007] NIQB 115). Having taken all those matters into account, the Panel refused the application to exclude the interview evidence.

[5] The appellant applied to the Youth Panel to state a case for the opinion of this Court on the question whether the Panel 'were correct in law in refusing to exclude the interview of the appellant from evidence under the provisions of Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989'.

[6] Prior to the hearing the respondent notified the appellant's solicitors that the case stated had not been transmitted to the Court of Appeal and served on the respondent within 14 days from the date on which the clerk of petty sessions dispatched the case stated to the appellant, in breach of Article 146(9) of the Magistrate's Courts Order 1981. In accordance with the practice laid down in Foyle, Carlingford and Irish Lights Commission v McGillion [2002] N.I. 86, the appellant applied for leave to proceed notwithstanding the breach and for an extension of the 14 days period. Leave to proceed and an extension of the period for transmission and service were granted.

[7] It was submitted by Mr Macdonald QC who, with Mr Mooney, appeared on behalf of the appellant, that the Youth Panel had erred in admitting the evidence of the interview with the appellant when it took place in the absence of an appropriate adult. Shortly put, Mr Macdonald's primary submission was that at the time of the interview the appellant was a 'child' at law and should have been treated as such. This was consistent with other legislative provisions, International Conventions and with the amendments to the age below which a person is regarded as a child, as introduced by the Justice Act (Northern Ireland) 2002. Consequently an appropriate adult was required by law to be in attendance at any interview with a police officer and in those circumstances the evidence should have been excluded. His alternative argument was that the Youth Panel misdirected itself by

considering that the Code of Practice was 'in conflict' with other legislative provisions and Conventions and that it was bound to resolve that 'conflict' by giving effect to and following the Code. In so doing the Panel fettered its discretion to exclude the interview evidence under Article 76 of the 1989 Order.

[8] Mr Valentine, who appeared on behalf of the respondent, submitted that the Youth Panel had applied the law as it related, in February 2009, to Police interviews with a person over 16 years of age and under 18 years of age. He submitted that no breach of the Code of Practice nor of the ECHR or any relevant domestic legislative provision had occurred. Parliament had left it to the Secretary of State to decide when the amendment to the 1989 Order should come into effect. The Youth Panel had found correctly that no breach of the 1989 Order and its Codes had taken place and then went on to consider whether there were any circumstances which should cause them to exclude the interview evidence under Article 76 of the 1989 Order. In adopting that approach they could not be faulted. They had not fettered the exercise of their discretion but the exercise of their discretion had been influenced by the submissions disclosing the different provisions, domestic and international, relating to the age at which a person ceases to be a child. It had not been shown that they had exercised their discretion to admit the evidence wrongly.

[9] It became apparent that the question posed in the case stated did not reflect all of the arguments put forward and Mr Macdonald QC submitted that the following questions, in addition to the question posed in the case stated, were appropriate:

> "1. Did the defendant's right to be tried as a child require the Court to treat him as if he had been a juvenile within the meaning of Article 38(14) of the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Code of Practice, at the time of his interview;
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> 2. Did the court err in considering that its discretion whether to exclude the Defendant's admissions was fettered by the definition of a 'juvenile' in Article 38 of the Police and Criminal Evidence (Northern Ireland) Order 1989;
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> 3. Did the Court err in considering that there was a conflict between the Defendant's right to be tried as a child and the definition of a 'juvenile' in Article 38 of the Police and Criminal Evidence (Northern Ireland) Order 1989."

The question posed in the case stated becomes question 4.

[10] The Children and Young Persons (Northern Ireland) Act 1968 defined a child for the purposes of criminal proceedings as a person under the age of fourteen and a young person as a person who had attained the age of fourteen and was under the age of seventeen. The Police and Criminal Evidence (Northern Ireland) Order 1989 introduced changes relating to the powers of police in the investigation of crime and to evidence in criminal proceedings. Part VI is concerned with the questioning of persons arrested and detained in custody. It effected no change to the definitions introduced by the Children and Young Persons (Northern Ireland) Act 1968 referred to above. It did exclude children apparently under the age of 14 years from Part V of the Order (detention). In the same Part Article 38 details the duty of the custody officer before charge, including, at Article 38(11), a duty to ascertain the identity of a person responsible for the welfare of an arrested juvenile. Article 38(14) defines an 'arrested juvenile' as an arrested person who appears to be under the age of 17. Article 65 of Part VII of the 1989 Order requires the Secretary of State to issue Codes of Practice (the Code) in connection with, inter alia, the detention, treatment and questioning of persons by police officers. Several Codes have been issued to date and the Code current at the relevant time in these proceedings was the 2007 edition, which came into effect on 28 February 2007. Code C relates to practice for the detention, treatment and questioning of persons by police officers. Code C 11.15 provides –

> "11.15 A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding his/her involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1, 11.18 to 11.20 apply."

It is not suggested that paragraphs 11.1, 11.18 or 11.20 apply in this case. Code C is designed primarily to cater for arrested persons who are detained in custody. Guidance Note 1A under the heading General states that although certain sections of the Code apply to persons in custody at police stations those there voluntarily to assist with an investigation (under Article 31 of the 1989 Order) should be treated with no less consideration, for example, offered refreshments and able enjoy an absolute right to obtain legal advice. However paragraph 11.15 is clear that a juvenile is entitled to the benefit of an appropriate adult. There is no provision for a voluntary attender who is a juvenile to have the benefit of an appropriate adult. However, it would be inappropriate not to apply Code 11.15 to a voluntary attender who is a juvenile questioned by police officers about a criminal offence.

[11] The distinction between children and young persons was abolished by the Criminal Justice (Children) (Northern Ireland) Order 1998 (the 1998 Order). Article 2(1) defined an adult as a person who has attained the age of 17 and a child as a person under the age of 17. Article 4 provided that in any proceedings for an offence a court shall have regard to the welfare of any child brought before it. The 1998 Order had the effect of bringing persons under the age of 17 within the jurisdiction of the Youth Court. By section 63 of the Justice (Northern Ireland) Act 2002 (the 2002 Act) Parliament declared its intention to extend the youth justice system to persons under 18. Section 87 of the Act makes provision for the commencement of this process.

> "63. Extension of youth justice system to 17 year olds:
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> (1) Schedule 11 makes amendments of enactments and instruments for extending the youth justice system to 17 year olds.
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> (2) The Secretary of State may by order make provision amending any other enactments or instruments (whenever passed or made) for, or in connection with, extending the youth justice system to 17 year olds.
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> Commencement
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> 87. -- (1) The preceding provisions of this Act (with the Schedules) shall not come into force until such day as the Secretary of State may by order appoint.
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> (2) An order may appoint different days for different purposes.

Schedule 11 to the 2002 Act amends various Acts and Orders passed between 1968 and 2000, including several Articles in the 1998 Order. Schedule 11 paragraph 17 amended the definitions of an adult and a child in Article 2 of the 1998 Order so that an adult means a person who has attained the age of 18 and a child as a person under the age of 18. These amendments were brought into force by Article 2 of and Schedule 8 to, the Justice (Northern Ireland) Act (Commencement No 10) Order 2005, with effect from 30 August 2005. The numerous amendments brought about by Schedule 11 have come into effect at different dates since the passing of the 2002 Act. Article 18 of the Police and Criminal Evidence (Amendment) Order 2007 (the 2007 Order) amended the definition of an 'arrested juvenile' in Article 38(14) of the 1989 Order, from a

person under 17 to a person under 18. The 2007 Order received Royal Assent on 7 February 2007. Article 18 was brought into force by Article 2(a) of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (Commencement) Order 2009 with effect from 1 November 2009. This was over 8 months after the interview of the appellant and 2 ½ months before the appellant's trial. On 7 October 2009 the Northern Ireland Office issued a circular to the police and others alerting them to the amendments destined to take effect on 1 November 2009. Paragraph 3 of the circular stated -

> "3. Police custody officers must ensure that from 1 November 2009 all persons under 18 years of age are afforded all protections and safeguards currently available to under 17 year olds. This includes the attendance of an Appropriate Adult from the Northern Ireland Appropriate Adult Scheme (NIAAS) were a parent, guardian, relative or other responsible person is unable or unwilling to attend the police custody suite."

In response to a question in the House of Commons in July 2008 in relation to the commencement of Article 18, the Northern Ireland Secretary of State stated:

> "Article 18 of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 was a statement of intent by the Government to align the definition of a juvenile under PACE with other legislation and International Conventions. Its conclusion was on the proviso that commencement could only take place when a supporting infrastructure was in place to facilitate its effective introduction. A programme of work is currently underway and it is envisaged that these measures will be in place by late 2009."
> (Hansard, July 2008)

It was suggested that there had been delay in implementing the amendment to the 1989 Order. We do not agree. This was one of a series of amendments to various criminal justice provisions introduced by Schedule 11 to the 2002 Act. Given the nature of these changes they were bound to take time and it was important to ensure that supporting infrastructures were in place. We were informed by counsel that a similar amendment to the Police and Criminal Evidence Act in England and Wales has yet to be effected.

[12] The UN Convention on the Rights of the Child (UNCRC) provides that for the purposes of the Convention a child is any human being below the age of 18 years. The Convention has not been incorporated into domestic law.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing rules) defines 'children' as including anyone up to age 18. The ECHR makes no reference to the definition of a child, though Article 5(1) refers to the detention of minors.

[13] It is against this legislative background and history that the appellant submits that, at the time of his trial, he was to be treated as a child for the purposes of the criminal justice system, but not so for the purposes of the 1989 Order or the Code of Practice. This inconsistency lay at the heart of the appellant's submissions.

[14] It is clear, as the Youth Panel found, that no breach of the Code of Practice in fact occurred. If a breach had occurred, then the Panel would have to have considered whether that breach was significant and substantial and if so, whether the standard of fairness required by the 1989 Order had been met and whether the admission of the evidence in light of such a breach of the Code would have such adverse effect on the fairness of the proceedings that the evidence should be excluded. In effect the appellant's argument is that Code C 11.15 should be read as applying to a child as defined by the 2002 Act (as opposed to a juvenile as defined by Article 38(14)) and that such a breach had occurred.

[15] Article 74 of the 1989 Order provides that in any criminal proceedings a confession made by an accused person may be given in evidence against him if it is relevant and not excluded by the court pursuant to Article 74(2). That part of Article 74 requires the prosecution to prove that the confession was not obtained through oppression or in consequence of anything said or done which was likely to render it unreliable. Nothing was alleged in this case which would have rendered the confession inadmissible under Article 74(2). The Youth Panel considered Article 74(2) and found that the admission evidence was not obtained in contravention of that Article. Thus the interview evidence of the appellant was admissible subject to the application of Article 76. This provides –

> "Article 76(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

The circumstances in this instance were that at the relevant time the law relating to 17 year olds had been changed in some respects relating to the

criminal justice system, but not in others. This was duly noted by the Youth Panel. The question for the Panel was then whether in those circumstances the admission of the interview evidence would have an adverse effect on the fairness of the proceedings such that the court ought not to admit it.

[16] In R (DPP) v Stratford [2001] EWHC 615 the District Judge ruled inadmissible evidence of an interview with one of three young men charged with robbery, the accused being 17 at the time and interviewed without an appropriate adult being present. He had been arrested and detained in the police station. The District Judge held that there had been a breach of the Code of Practice and that the accused should have had an appropriate adult present and that the breach was so serious that it required the interview evidence not to be admitted. The DPP appealed. The Code in question was Code C to PACE, paragraph C1.5 of which states (identical to C 1.5 Northern Ireland 2007 Code):

> "If anyone appears to be under the age of 17 then he shall be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he is older."

The Divisional Court presided over by Sedley LJ ruled that it was manifest that the Code C 1.5 did not apply to the accused as he was 17 at the relevant time. Therefore he did not have to be interviewed as a juvenile with an appropriate adult present. The decision of the District Judge was quashed and the case returned to the District Court for further consideration. In so ruling Sedley LJ said that the District Judge would have to consider under Section 78 (Article 76 of the 1989 Order) whether the admission of the evidence would adversely affect the fairness of the proceedings. This was the approach adopted by the Youth Panel – see paragraphs 11 and 12 of the case stated quoted at paragraph 4 above. It would appear that the Youth Panel did not have available to it the full report of the judgment of Sedley LJ. The relevant passage is -

> "11. What I would, however, say before coming to the question of disposal is this. It is clearly relevant, if the point is taken, as it needs to be under section 76 though not under section 78, that a young man of 17, who, although not a juvenile for Code C purposes, is a juvenile for other legal purposes, has been interviewed both at his own election without representation and without an appropriate adult (because Code C does not apply to him) at a distance of time of 24 hours from his arrest. In at least two of these cases we know that the youth in question had not been in a police

> station before. Nobody should underestimate, any more than they should overestimate, the kind of pressure to get things over and done with that such a youngster may experience. This is part of the picture. So is the note for guidance under Code C, note C11(b), to which Mr Menon has helpfully drawn our attention. I will not read it out, but it reminds everybody in the criminal justice process, not least those responsible for initiating and conducting interviews, that young people may be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating.
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> 12. All of that, it seems to me (and Mr McGuinness does not resist this proposition), is material to the broad judgment which the District Judge should have been called upon and will now be called upon to make under PACE. Putting it another way, the question is not has there been an identifiable departure from proper practice, and if so what is it? It is whether, in all the circumstances brought to the court's attention under section 76 or known to the court under section 78, it is possible in the former case that any confession is unreliable or in the latter case that the admission of the interview record would adversely affect the fairness of the proceedings.
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> 13. In these circumstances, it seems to me that the Director is entitled to the quashing order which is sought. This case should, therefore, go back to the Youth Court so that, if it is thought appropriate to do so, a fresh submission may be made, heard and adjudicated upon on behalf of any or all of the three accused. Whether that takes place at a fixed preliminary hearing or at trial is entirely a matter of case management for the court concerned."

It has not been suggested that this advice was wrong in any respect. It was argued that since the coming into force of the Justice (Northern Ireland) Act 2002 the appellant was in law a child and should have treated as such for all purposes including Article 38(14) of the 1989 Order and the relevant Code C. As Code C 11.15 required a juvenile to have the benefit of an appropriate adult present at any interview, the absence of such an adult was a breach of

the Code read with the amendment to the age of child introduced by the 2002 Act.

[17] In the instant case the Youth Panel noted the age of the appellant and that he was not a juvenile for Code C purposes, that an appropriate adult was not present, and that for other purposes in law the appellant was not an adult. They then considered in light of the remarks of Sedley LJ, whether the admission of the interview evidence would have such an adverse effect on the fairness of the proceedings that they ought not to admit it. No adverse effect on the fairness of the proceedings has been identified nor has it been suggested that if the Youth Panel were correct in their approach, that the exercise of their discretion was in some way incorrect. What is suggested is that the Youth Panel should have treated him as a child and applied Code C 11.15. Alternatively the Panel fettered its discretion by forming the view that they must give effect to primary legislation (in this instance Article 38(14)) where it was in conflict with a Convention right. Paragraph 19 of the case stated refers to Section 3 of the Human Rights Act 1998 and the requirement to read primary and secondary legislation in a way which is compatible with Convention rights. It is not clear what convention right was being considered, as Section 3 applies to the ECHR and no right under that Convention has been identified relating to juveniles/children (other than counsel's reference in his submissions to the right of an accused to receive a fair trial). It has not been suggested that in other respects the appellant did not receive a fair trial.

[18] The Youth Panel was correct to consider that the definition of an 'arrested juvenile' in Article 38(14) was quite clear. In paragraph 20 the Panel stated correctly that they had no power to make a declaration of incompatibility. It was submitted that the Youth Panel believed the 1989 Order and the Code were incompatible with a Convention right. At paragraph 21 the Youth Panel had regard to the comments of Gillen J in Re Northern Ireland Commissioner for Children and Young People [2007] N.I.Q.B. 115 where he stated that international treaties or conventions which are not adopted by domestic law, can do no more than 'colour' the court's approach. It was not suggested that this passage did not correctly reflect the legal position in relation to the UNCRC. Mr Macdonald QC submitted that the Youth Panel "recognised there was a problem" but in dealing with that problem the Panel fettered its discretion by finding that they must give effect to the domestic legislation. We do not consider that in approaching the issue in this way that the Youth Panel did fetter its discretion under Article 76. It is not clear what Convention right the Youth Panel was considering in paragraph 19. Section 3 of the Human Rights Act 1998 applies only to the ECHR. If it was Article 6 of ECHR we do not consider that it was breached in circumstances in which the appellant was interviewed in the absence of an appropriate adult and the court had a discretion whether or not to admit the interview evidence. While the route taken by the Youth Panel in paragraph 19 of the case stated may be open to question, their conclusion that they should

give effect to Article 38(14) of the 1989 Order and Code C 11.15 was undoubtedly correct. They reflected the law at that time and the Panel were not obliged to read Article 38(14) and Code C 11.15 as if they applied to a person under the age of 18 as opposed to a person under 17. The Panel then went on to consider the exercise of its discretion under Article 76 of the 1989 Order. They did so in the knowledge of the circumstances relating to the presence of the appellant in the police station, that he was 17 years and 3 months and that for certain legislative purposes he was a child. They were also aware that a process of harmonisation across the entire criminal investigation and justice system was ongoing. In light of all this information and the absence of any disadvantage to the appellant they concluded that the admission of the interview evidence would not have such an adverse effect on the fairness of the proceedings that they ought not to admit it. In so doing we do not consider that it can be said that they exercised their discretion wrongly in admitting the interview evidence.

[19] Accordingly we answer the questions posed as follows –

1. No.
2. No
3. Does not arise.
4. Yes.

The appeal is dismissed.