

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**BEFORE A DIVISIONAL COURT**

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**Lynch's (Stephen) Application [2016] NIQB 4**

**AN APPLICATION BY STEPHEN LYNCH  
FOR JUDICIAL REVIEW**

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**Before Weatherup LJ, Maguire J and Colton J**

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**WEATHERUP LJ (delivering the judgment of the court)**

[1] This is an application for Judicial Review of a decision of District Judge King made on 24 April 2015 at Newtownards Magistrates' Court adjourning a hearing in respect of an alleged breach of bail by the applicant and remanding the applicant in custody. Mr R Lavery QC and Mr McKeown appeared for the applicant and Mr Henry appeared for the notice party, the Public Prosecution Service.

**The background.**

[2] The following facts appear from the affidavit of Joe Mulholland, solicitor for the applicant. On 22 April 2015 the applicant was charged with burglary following a voluntary attendance PACE interview and was released on police bail to attend the Magistrates' Court in 28 days. It was a condition of the applicant's bail that he be subject to curfew from 11pm each night.

[3] On 23 April 2015 the applicant was arrested by police on suspicion of breach of the curfew condition of police bail. The police officer arrested the applicant on the basis that he was on the street after 11pm and therefore in breach of his bail whereas the applicant disputed that at the time of his arrest it was after 11pm.

[4] On 24 April 2015 the applicant appeared before Newtownards Magistrates' Court on suspicion of breach of bail and on a charge of burglary that had been brought forward. The police officer who had arrested the applicant on suspicion of breach of bail was unable to attend the Court. As the applicant disputed the breach of bail, the prosecution sought an adjournment. Mr Mulholland, on behalf of the applicant, objected to any adjournment. District Judge King adjourned the breach of bail hearing until Monday 27 April 2015 and remanded the applicant into custody.

[5] On Monday 27 April 2015 the breach of bail hearing resumed before Deputy District Judge Archer who concluded that he had no jurisdiction to deal with an adjourned breach of bail hearing. The issues before this Court are whether the District Judge had power to adjourn the breach of bail hearing and to remand the applicant in custody.

### Breach of bail hearings

[6] The provisions dealing with arrest for breaking conditions of bail are contained in Article 6 of the Criminal Justice (Northern Ireland) Order 2003 ("the 2003 Order")(*italics added*)-

*(3) A constable may arrest without warrant any person who has been released on bail and is under a duty to surrender into the custody of a court-*

*(a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;*

*(b) if the constable has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or*

*(c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a constable in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.*

*(4) A person who is arrested under paragraph (3) shall be brought before a magistrates' court as soon as practicable after the arrest and in any event not later than the next day following the day on which he is arrested.*

(5) Where the day next following the day on which that person is arrested is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than the next following day which is not one of those days.

(6) *Where a person is brought before a magistrates' court under paragraph (4) the court-*

*(a) if of the opinion that he-*

*(i) is not likely to surrender to custody, or*

*(ii) has broken or is likely to break any condition of his bail,*

*may remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions; or*

*(b) if not of that opinion, shall grant him bail subject to the same conditions (if any) as were originally imposed.*

### General power to adjourn

[7] Article 161 of the Magistrates' Court (Northern Ireland) Order 1981 ("the 1981 Order") provides that a Magistrates' Court may at any time adjourn proceedings before it.

### The position in England and Wales

[8] In England and Wales the equivalent provision to Article 6 of the 2003 Order, namely section 7(5) of the Bail Act 1976 ("the 1976 Act"), was considered by the Divisional Court in R v Liverpool City Justices ex parte Director of Public Prosecutions [1992] 3 WLR 20. However, unlike Northern Ireland, in England and Wales there was no equivalent to the general power of adjournment contained in Article 161 of the 1981 Order.

[9] In Liverpool City Justices the applicant was charged with unlawful wounding, released on bail on condition that he would not approach the complainant and was later arrested and charged with being drunk and disorderly and being in breach of the bail condition. On being brought to Court the Justice adjourned the breach of bail hearing and remanded the applicant in custody. At the resumed hearing a new Justice concluded that there had been no power to adjourn the breach of bail hearing. On the DPP's application for Judicial Review of the second Justice's decision the Divisional Court held that the first Justice did not have power to adjourn the proceedings under section 7(5) of the 1976 Act.

[10] Roch J referred to those sections of the Magistrates' Courts Act 1980 which gave Justices power to adjourn in specific circumstances. Thus there was express power in section 5(1) to adjourn an inquiry into an offence by examining Justices; in section 10(1) to adjourn the trial of an information; in section 18(4) to adjourn proceedings under sections 19-23 of the Act, being the procedure which had to be followed where the information charged the defendant with an offence triable either on indictment or summarily; in section 30, to adjourn to enable a medical examination and report to be made where the Court was satisfied that the accused did the act or made the omission charged but was of the opinion that the inquiry ought to be made into his physical or mental condition; in section 54(1) relating to the Justices' civil jurisdiction.

[11] Further, Roch J stated that the terms of section 7(5) of the 1976 Act are clear and they are mandatory in form to the extent that, if the Justice is not of the opinion that the person is not likely to surrender to custody or has broken or is likely to break any condition of his bail, the Justice has to grant him bail, subject to the same conditions, if any, as were originally imposed. He concluded that Parliament had intended to and had provided a simple and expeditious method of dealing with the person arrested, without warrant, by a constable who had reasonable grounds for believing that that person had broken a condition of his bail or was likely to break a condition of his bail or was likely to fail to surrender to custody.

[12] There are two themes emerging from the above references to the decision in Liverpool Justices and they must both be qualified in their application to Northern Ireland. The first theme is that the specific instances of the power to adjourn in the English legislation, which did not include breach of bail hearings, indicated that there was no power to adjourn breach of bail hearings. That approach does not translate directly into the Northern Ireland legislation where, unlike England, there is a general power of adjournment, the effect of which will be considered below. The second theme is that the legislature has introduced a simple and expeditious method of dealing with those arrested for breach of bail. That is a matter that does translate into the Northern Ireland legislation, subject to the effect of the general power of adjournment.

#### Power to adjourn breach of bail hearings

[13] In Northern Ireland the additional power contained in Article 161 of the 1981 Order provides District Judges with a general power of adjournment of 'proceedings'. There is no definition of 'proceedings'. The applicant contends that Article 161 does not apply to a breach of bail hearing as that does not constitute a 'proceeding'. Rather, according to the applicant, a breach of bail hearing amounts to a review of the constable's exercise of the power of arrest for breach of bail. Breach of bail does not constitute an offence. The alleged breach of bail results, not in a charge against a defendant, but in the defendant being brought before the Magistrates' Court for a determination as to whether he is in breach of bail and, if so, whether he should be remanded in custody or released on bail.

[14] The Court is unable to accept this argument concerning the nature of 'proceedings'. The defendant is before the Court because of the underlying criminal proceedings. A grant or refusal of bail is a part of the criminal proceedings in respect of the underlying charge. An alleged breach of bail will arise out of a further event but we are satisfied that the breach of bail hearing arises out of the same criminal proceedings. The title appearing above Article 6 of the 2003 Order is "Bail in Criminal Proceedings". We are satisfied that a hearing in respect of an alleged breach of bail is also part of the criminal proceedings. Hearings arising in the course of criminal proceedings are also proceedings. The Court is satisfied that a hearing before a District Judge in respect of alleged breach of bail constitutes 'proceedings' for the purposes of Article 161.

[15] The applicant referred to Article 44 of the 1981 Order which provides for warrants of further detention. Article 44(3) provides in respect of such warrants that a defendant is entitled to legal representation and if he has none, but wishes to have legal representation, "the Court shall adjourn" for the defendant to obtain representation and the defendant may be kept in police detention. The applicant contends that Article 44 involved a specific power to adjourn and that Parliament cannot have intended that Magistrates' Courts should have a general power to adjourn all proceedings or it would not have been necessary to introduce the specific power to adjourn under Article 44(3). However, Article 44(3) provides for mandatory adjournment for a party subject to a warrant for further detention seeking legal representation. This does not impact on the general power of adjournment in Article 161.

[16] Further, the applicant refers to the provisions for reconsideration of decisions granting bail, under Article 133A of the 1981 Order (inserted by Article 10 of the 2003 Order). There is power to reconsider a decision on bail where it is "based on information which was not available to the Court or custody officer when the decision was made." This provision concerns new information becoming available and does not impact on the power to adjourn under Article 161 of the 1981 Order being applied to breach of bail hearings under Article 6(6) of the 2003 Order.

[17] Mr Henry for the prosecution pointed out that Article 6 requires that a person arrested on suspicion of breach of bail shall be "brought" before a Magistrates' Court within 24 hours but does not provide that the Court must form the specified opinion within that period. The terms of Article 6(6) are not at odds with the general power of adjournment in Article 161.

[18] We are satisfied that there is nothing in the nature of breach of bail hearings under Article 6(6) of the 2003 Order that renders inapplicable or inappropriate the general power to adjourn under Article 161 of the 1981 Order

[19] Accordingly, we are satisfied that District Judge King had power under Article 161 of the 1981 Order to adjourn the breach of bail hearing on 24 April 2015.

### The nature of breach of bail hearings

[20] Article 6(6) of the 2003 Order sets out what is to happen when a breach of bail hearing comes before the Magistrates' Court. If the Court forms one of three specified opinions certain events follow. If the Court is unable to form one of the specified opinions other events follow. The opinions are that the defendant is not likely to surrender to custody or has broken or is likely to break any condition of his bail.

[21] If the District Judge forms one of the specified opinions, then the defendant may be remanded in custody or granted bail on the same or different conditions. If, on the other hand, the District Judge does not form one of the specified opinions, the defendant must be granted bail on the same conditions. A defendant cannot be remanded in custody unless the District Judge forms the opinion that the defendant is not likely to surrender to custody or has broken or is likely to break any condition of his bail.

[22] The prosecutor is therefore required to satisfy the District Judge so that a specified opinion may be formed before the defendant may be remanded in custody. The procedures are informal. Materials on which the District Judge may be invited to form one of the opinions do not have to consist of evidence given on oath subject to cross-examination.

[23] There may be circumstances where, on an appearance by a defendant in the Magistrates' Court after arrest for breach of bail, the information is not immediately available upon which the prosecution wish to rely in seeking to satisfy the District Judge so that a requisite opinion may be formed. An adjournment may be considered appropriate to facilitate the provision of that information. As stated above, we are satisfied that the District Judge has power to adjourn. However, there is a tension between the scheme of Article 6(6) to provide a simple and expeditious method of dealing with breach of bail hearings and the power of adjournment of such hearings.

[24] As in the present case, where the basis of the alleged breach of bail is disputed and the Constable is unavailable, there may be grounds for adjournment. The District Judge would no doubt inquire as to the reasons for the unavailability of the material on which the prosecution intend to rely so that a requisite opinion might be formed and of course may refuse to adjourn. We would suggest that the scheme of the legislation is such that in the normal course of events adjournments should not be required.

[25] The Court is mindful that on 24 April 2015 the applicant was also before Newtownards Magistrates' Court on a charge of burglary that had been brought forward. Leave to apply for Judicial Review was not granted in respect of that

matter. The findings of this Court do not relate to the treatment of the burglary charge by the District Judge.

### Declarations

[26] The Court proposes to make the following Declarations -

1. That the District Judge had power under Article 161 of the Magistrates' Courts (NI) Order 1981 to adjourn the breach of bail hearing.
2. That the District Judge, not having formed the requisite opinion for the purposes of Article 6(6) of the Criminal Justice (NI) Order 2003, did not have power to remand the applicant in custody in respect of the alleged breach of bail.