Neutral Citation No: [2023] NIDIV 3 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **COL12204** *ICOS No:* **23/019921/01** *Delivered:* **10/07/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION CROWN SIDE
DIVISIONAL COURT
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY DARREN McCANN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

IN RESPECT OF THE DECISIONS, ACTS AND OMISSIONS OF THE CHIEF CONSTABLE OF NORTHERN IRELAND, THE PUBLIC PROSECUTION SERVICE OF NORTHERN IRELAND AND THE NORTHERN IRELAND COURTS AND TRIBUNAL SERVICE AND THE DEPARTMENT OF JUSTICE OF NORTHERN IRELAND

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The applicant is a litigant in person
Mr Philip Henry (instructed by Bridgeen Cromwell) appears on behalf of the proposed Respondent the Public Prosecution Service
Mr Joseph Kennedy (instructed by Christopher Wallace of the Departmental Solicitors Office) appears for the proposed Respondents the Northern Ireland Courts and Tribunal Service and Department of Justice
Mr Ben Thompson (instructed by Mark Murray of the Crown Solicitors Office) appears for the proposed Respondent the Police Service of Northern Ireland

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Before: Keegan LCJ and Colton J

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COLTON J (*delivering the judgment of the Court*)

[1] By these proceedings lodged on 7 March 2023 the applicant seeks to challenge three separate criminal prosecutions, two of which resulted in his conviction at Newry Magistrates Court on 24 September 2021 and 18 October 2022. The third prosecution is ongoing.

Background to the two convictions

First prosecution/conviction

[2] On 3 July 2021, the applicant was charged with the offence of using a mobile phone whilst driving. The charge sheet records that the particulars of the offence were:

> "That you on 03/07/2021 within the vicinity of ARMAGH ROAD, NEWRY, ARMAGH, Northern Ireland, BT35 0BY, whilst driving a motor vehicle used a hand-held mobile telephone in contravention of regulation 125A(1)(a) of the Motor Vehicle (Construction and Use) Regulations (Northern Ireland) 1999, contrary to Article 56 A (b) of the Road Traffic (Northern Ireland) Order of 1995."

[3] On 23 July 2021 the applicant received a document headed "Notice to Defendant" from the Director of Public Prosecutions for Northern Ireland which included the statements of the witnesses the prosecution intended to tender in evidence in support of the charge.

[4] In summary those statements alleged that on 3 July 2021 members of the Police Service of Northern Ireland ("PSNI") observed the applicant driving whilst using a mobile phone. He was approached by police officers who spoke with the applicant and offered him a Fixed Penalty Notice (FPN). He denied the offence, declined to accept the FPN and began to video record the police officers. It was explained to him that refusing the FPN would mean that he would be reported to the PPS. He was asked to provide an address so that a summons could be issued. It was indicated that a work address would be acceptable if he was not prepared to confirm he lived at any of the previous addresses linked to him. He refused to provide an address and indicated that he would decline to accept a summons. He was warned that he would be arrested if he did not provide an address. Having persisted in his refusal he was arrested, conveyed to the police station and charged with the offence of using a mobile phone while driving and released to appear at Newry Magistrates Court.

[5] The case was listed for a contested hearing at Newry Magistrates Court on 24 September 2021.

[6] There is a dispute about what actually occurred on that date. In his Order 53 statement the applicant asserts that he was the victim of assault and battery by five or six plain clothes police officers, that he was forcibly removed and locked out of the court and was further unlawfully assaulted by both PSNI officers and G4S staff. In the position papers provided on behalf of the various proposed respondents it is stated that the applicant attended with a large group of supporters, approximately six to nine in number. When the case was reached, the District Judge directed that the applicant be called into court. The applicant and a large group of people approached the doors and indicated they were all appearing. There was some

shouting from within the group and three attending police officers approached to assist G4S staff. It is asserted that the staff attempted to explain to the group that due to COVID-19 restrictions only the applicant would be permitted to the courtroom, unless any of the others were legal representatives. There was some attempt to reach a compromise where one other person would be permitted to enter with the applicant. However, the group were dissatisfied and attempted to enter the court room as a group. The group was prevented from entering. No arrests were made. The District Judge allowed the applicant further time to appear for his contest, but he failed to do so. The case then proceeded in his absence.

[7] As per the certificate of conviction, the applicant was convicted in his absence and the following penalties were imposed: namely a £300 fine, six penalty points and a £15 offender's levy. As a result of an accumulation of penalty points, the applicant was disqualified from driving for a period of six months.

[8] The applicant lodged a notice of appeal on 5 October 2021. He applied for permission to drive pending appeal. This was refused on 5 October 2021 by a different District Judge. The record indicates that appeal bail was perfected on that date. The appeal was listed for hearing on 14 December 2021.

[9] The applicant failed to attend for his appeal. It was dismissed on 14 December 2021.

The applicant's challenge to his first conviction

[10] Given the extent, prolixity and incoherent nature of the Order 53 statement and accompanying documents it is difficult to precisely identify the legal basis upon which the applicant challenges the first conviction. However, two main complaints emerge.

[11] He complains that there was no criminal complaint in Form 1 filed or served in Newry Magistrates Court on or before 20 July 2021, contrary to Article 20 of the Magistrates Court (Northern Ireland) 1981 and contrary to Rule 7 and Rule 17 of the Magistrates Court (Northern Ireland) Rules 1984.

[12] He further complains that he was denied a fair trial by reason of the alleged assaults by the police officers and by reason of his exclusion from the court.

Consideration

[13] Leaving aside for the moment the merits, if any, of the applicant's complaints he faces the fundamental difficulty that these proceedings have been lodged well in excess of the prescribed time limit in Order 53 of the Rules of the Supreme Court (Northern Ireland).

[14] Order 53 rule 4 provides:

> "**4–**(1) An application for leave to apply for judicial review shall be made within 3 months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made."

[15] Turning to the conviction on 24/09/21 the grounds relied upon by the applicant first arose on that date. These proceedings were lodged on 7 March 2023, almost 18 months after that date which is grossly in excess of the three-month period.

[16] The need for expedition in challenges to court orders is obvious. There is an overwhelming public interest that any challenges to court orders, which take effect on the day they are issued, are made timeously. Legal certainty and the good administration of justice require no less.

[17] True it is, that the court has a discretion to extend the time limit for "good reason." The applicant has put forward no good reason as far as the court can assess. Indeed, all the evidence points to the contrary.

[18] Any issue in relation to delay is compounded by the fact that any irregularities at the Magistrate Court in terms of the conviction could be remedied by the applicant's statutory right of appeal. This is a right that he exercised. He chose not to attend on the date of the appeal hearing. Unsurprisingly, the appeal was dismissed.

[19] In this regard, his complaints about the actual conviction at the Magistrates Court are academic. The appeal was the opportunity for the applicant to put forward any defence he had to the charge against him.

[20] It is simply impermissible for the applicant to come along 18 months later and seek to set aside a conviction in circumstances where he served a notice of appeal but failed to attend on the day of the appeal.

[21] In so far as he has any complaints about assaults or tortious acts, then plainly these are matters which should be dealt with by way of a conventional *lis inter partes*.

[22] Manifestly such issues are better suited to civil proceedings which involve oral testimony and testing of claims and counter claims under cross examination. Plainly these issues are not appropriate for consideration by way of judicial review in the Divisional Court.

[23] More importantly for the purposes of this application any allegations of assault or false imprisonment have no bearing on the validity of the orders of

conviction and sentence imposed on 24 September 2021 and the subsequent appeal which was dismissed on 14 December 2021.

[24] We have already referred to the fact that the court has a discretion to consider an application which is out of time if there is good reason. In considering this issue, the court is anxious to assess whether there might be some issue which leads to a concern of unfairness or a miscarriage of justice.

[25] No such issue arises here. The evidence against the applicant on the face of it was compelling. By his own actions, he chose not to answer the charge when requested to do so by the District Judge and he failed to attend at the appeal which he himself had instigated.

[26] A summary court can proceed with a hearing in the absence of a defendant; see Article 23(1) of the Magistrates Court (Northern Ireland) Order 1981.

> "**23**–(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the accused fails to appear, a magistrates court may adjourn the hearing or, if satisfied that there are no significant grounds for adjournment or further adjournment, may, subject to this Article, proceed in his absence."

[27] Similarly, a defendant in a summary court can be sentenced in his or her absence, unless a custodial sentence is to be imposed – see Article 23(3) of the 1981 Order.

[28] For the sake of completeness the court will deal with some of the other issues raised in respect of his first conviction. The alleged failure to provide a criminal complaint in Form 1 is of no consequence. The applicant received a charge sheet which sets out the details of the complaint against him. He was served with the evidence relied upon by the prosecution. Clearly, he was aware of the court hearing as he attended on that date. His subsequent assertions that he was unaware of the outcome of the hearing and in particular that he was unaware that he had been disqualified for driving are simply untenable. He lodged an appeal. He sought leave to drive pending appeal from the court.

[29] In relation to his appeal, at the hearing the applicant argued that the appeal notice was a fraudulent document and had not been submitted by him or on his behalf. He professed no knowledge of the circumstances in which the notice of appeal was lodged.

[30] The court has seen the notice of appeal. It is in the pro forma Notice of Appeal Form under Article 114; Rule 154 – Form 97 of the Magistrates' Court (Northern Ireland) Order 1981. The defendant is correctly identified. The date of

conviction is properly identified. The offence is properly identified. It is dated 5 October 2021. The "address of party appearing, or solicitor or agent for any party appealing" is given as "43 Rossmara Road, Warrenpoint", which is the applicant's address. It is dated as being served on the respondent on 5 October 2021 by "hand." It is correct that it is not signed by the "party appearing" or "solicitor or agent of a party appealing." However, it was clearly treated as a valid notice of appeal and resulted in the appeal being listed on 14 December. Furthermore, we know that the applicant appeared in court seeking leave to drive pending appeal. In relation to the appeal date, he communicated with the office both before and after 14 December 2021.

[31] If the applicant is correct, some unknown person lodged this appeal on his behalf without him knowing or without his instructions. He was not legally represented at this time. This submission is simply bizarre and not worthy of belief. It causes the court to have serious concerns about the applicant's credibility.

[32] As to any complaint against the Director of Public Prosecutions given the evidence available to the Director there is simply no basis for challenging his decision to prosecute the applicant.

[33] The court therefore concludes that it is not appropriate to grant leave in respect of the applicant's conviction on 24 September 2021. The application is significantly out of time. There is no good reason to extend the time. He has exercised an alternative remedy. The threshold for leave, as set out in the case of *Ni Chuinneagain* [2002] NICA 56, of an arguable case having a realistic prospect of success has plainly not been met.

[34] Therefore, leave to apply for judicial review in respect of the first prosecution/conviction is refused.

The second prosecution/conviction

[35] The second prosecution concerns alleged offending on 6 February 2022. The charge sheet records as follows:

> "(1) DRIVING WHILE DISQUALIFIED (offence on or after 16 July 2008) 2022/02/06 - - that you on 06/02/2022, while disqualified for holding or obtaining a driving license, drove a motor vehicle on a road, contrary to Article 16A(1)(c) of the Road Traffic (Northern Ireland) Order of 1981.
>
> (2) USING A MOTOR VEHICLE WITHOUT INSURANCE 2022/02/06 - - that you on 06/02/2022 used a motor vehicle, namely Toyota Rav 4, on a road or other public place namely, WARRENPOINT ROAD,

> NEWRY, ARMAGH, Northern Ireland BT34 2QU, without there being in force in relation to the user of the said motor vehicle by you such a Policy of Insurance or such a Security in respect of third-party risks as complied with requirements of Part VIII of the Road Traffic (Northern Ireland) 1981, contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981., - -
>
> (3) RESISTING POLICE 2022/02/06 - - that you on 06/02/2022 resisted Const Malcolm a Constable in the execution of his duty, contrary to Section 66(1) of the Police (Northern Ireland) 1998."

[36] The charge sheet records that the applicant made "no reply" to each of the charges.

[37] The applicant was subsequently served with a "notice to defendant" including the statements of witnesses the prosecution intended to tender in evidence and also setting out a structured outline of the case.

[38] In short, the evidence indicated that the applicant was stopped by the PSNI whilst driving a Toyota Rav 4 at night. He was not able to produce his driving license when requested to do so.

[39] On checking their records, PSNI indicated to the applicant that he was a disqualified driver. He challenged the officer to produce confirmation of a court document stating that he was disqualified. He queried whether the officers were operating under the common law, among other legal phrases. He refused to get out of the vehicle. A PSNI officer removed the keys. He was arrested. He resisted police in the process.

[40] The applicant appeared at Newry Magistrates Court on 19 October 2022 where he was represented by counsel, instructed by solicitors. He pleaded guilty to the offences. He was sentenced to a fine of £250 on each charge (£750 in total) plus an offender levy of £15.

The applicant's challenge to the second conviction

[41] In relation to the second prosecution, he asserts that he was unlawfully arrested and that the vehicle he was driving was unlawfully searched by PSNI on 6 February 2022. He further complains about an unlawful arrest and detention by the PSNI on 24 March 2022. That issue arose from the applicant's failure to attend the court proceedings on 16 March 2022 when a bench warrant was issued for his attendance. On 24 March 2022, he was arrested on foot of that warrant and held overnight at the police station. He was produced before the court on 25 March 2022 when the warrant was formally executed.

[42] In respect of the conviction itself to which he pleaded guilty, the applicant makes a series of allegations against his lawyers.

[43] In summary, he alleges that he met his barrister in the offices of his solicitors at some point prior to 18 October 2022 when it was represented to him that they would reopen the original conviction of 24 September 2021.

[44] We pause here to indicate that we do not see how there would be any legal basis for doing so as is apparent from our discussion above.

[45] He next met his barrister on the morning of the hearing in Newry Magistrates Court on 18 October 2022. On his account, his barrister advised him that he had no defence to the charges. He was advised, correctly, that driving whilst disqualified is a strict liability offence. His counsel informed him that he had spoken to the District Judge and that if he pleaded guilty a fine of £250 on each charge would be imposed, but if he were to contest the charges he would be disqualified from driving. He claims he then went to a bank and withdrew the £750 which was subsequently paid into court, together with a £15 offender's levy when his plea of guilty to the charges was confirmed. He claims that his plea was not a voluntary one. It was made under coercion, threats and undue influence.

[46] As is the case with the challenge to the first prosecution and conviction, this challenge is also grossly out of time. The grounds for challenge arose on 18 October 2022. These proceedings were issued on 7 March 2023 in excess of five months after the grounds of challenge arose. The applicant does not put forward any good reason as to why the period of time should be extended. As in the case of the first conviction all evidence points to the contrary. Firstly, on the face of it, there was compelling evidence against the applicant. That evidence was served on him in advance of his hearing. He entered a plea of guilty when represented by an experienced solicitor and counsel. He failed to avail of his statutory right to appeal. Having exercised that right of appeal in respect of his first conviction, in circumstances where he was not legally represented, it is clear the applicant is fully aware of his rights of appeal. His failure to exercise that right of appeal is on its own sufficient to refuse leave in this application.

[47] The court notes the applicant's complaints about his legal representation. It has carefully considered this issue. If in fact the applicant entered an involuntary plea the appropriate remedy was to appeal the conviction and apply to have the plea set aside in the county court.

[48] In Valentine on Criminal Procedure in Northern Ireland; second edition the author notes:

> "***Plea of guilty***

> 17.5 In spite of the wording of the statute, a defendant may appeal against a conviction on a plea of guilty if his plea was 'equivocal', or involuntary. Even where he pleaded guilty, he can on appeal raise a special defence of res judicata. In England, if there is a prima facie case that the plea was equivocal, the Crown Court should investigate the issue by requiring affidavits from the District Judge and his cleric; if sufficient evidence emerges that the plea was equivocal the Crown Court should remit the case to the magistrates' court with a direction to re-hear the case, which it must then do. In the Republic of Ireland, it has been held that since an appeal is a re-hearing de novo, the Circuit Court on appeal against an equivocal plea should treat the case as a contest and hear the evidence itself. The County Court cannot, however, allow a voluntary and unequivocal plea of guilty to be changed, nor remit to the magistrates' court for that purpose."

[49] A defendant can appeal against his conviction on a plea of guilty if and only if the plea was equivocal; *R v Marylebone JJ ex p Westminster LBC* [1971] 1 WLR 567; or involuntary; *R v Huntingdon Crown Ct ex p Jordan* [1981] QB 857. Only in such circumstances can the county court allow the appellant to vacate her plea of guilty; *CA v Public Prosecution Service (No 2)* [2014] NIQB 44 (DC) (obiter). In England, if so found the case is remitted to the magistrates' court with a direction to re-hear the case; *R v Plymouth JJ ex p Hart* [1986] QB 950.

[50] The principle established in *Huntingdon Crown Ct* was referred to obiter in *CA* with a county court, apparently by agreement, permitted the applicant to vacate. The judgment does refer to a lack of scrutiny of Article 140 (1) of the Magistrates Court (Northern Ireland) Order 1981 but then refers to the English authorities on pleas entered which are involuntary or equivocal.

[51] We also note that the applicants dispute with the solicitors appears to have arisen in the context of the third prosecution which we discuss below, and which clearly exposes the applicant to a risk of disqualification from driving. Understandably, that is a primary concern for him. In particular the third prosecution relies on the first conviction which resulted in his disqualification from driving. That disqualification is an essential proof in respect of a charge of making a false declaration to obtain insurance. The third prosecution is discussed below.

[52] In the circumstances therefore we do not consider it necessary to determine this case to accede to the applicant's request that we order the disclosure of his file from his previous solicitors or direct affidavit evidence from them or from the counsel they instructed and to direct their attendance at court for the purposes of

cross examination. The applicant is of course entitled to his file and it should be provided to him for the purposes of defending the third prosecution.

[53] As to any allegations of unlawful arrest on 6 February 2022 and on 24 March 2022 plainly these are not matters for the Divisional Court, but matters which should be litigated by way of civil proceedings. The fact that the arrest and detention on 24 March 2022 was pursuant to a bench warrant would suggest that there would be no merit in any such action in any event.

[54] In relation to any challenge to the decision of the DPP, there is simply no ground for such a challenge. Based on the evidence provided to the DPP he was perfectly entitled to direct the charges against the applicant.

[55] Therefore, in respect of the second prosecution and the conviction, the application is clearly out of time. There is no good reason for extending the time. The applicant has failed to exercise an alternative statutory remedy. The threshold for leave set out in the case of *Ni Chuinneagain* [2002] NICA 56 of an arguable case having a real prospect of success has not been met.

[56] Therefore, leave to apply for judicial review in respect of the second prosecution/conviction is refused.

The third prosecution

[57] On 8 April 2022 police observed the applicant leaving Newry Court House and walking across the road to the car park. He entered the driver's side of a Toyota vehicle which he drove out of the car park. Police enquiries identified that the applicant did not hold a valid driving license at the time. Enquiries also identified that the applicant failed to disclose the disqualification imposed on 24 September 2021 to his motor insurance provider.

[58] On 20 July 2022 the applicant attended Ardmore Police Station on a voluntary basis for interviewing. He left the station after a consultation with his legal representative. On 6 September 2022 he again attended for voluntary interview with police. He was legally represented by his solicitors and was interviewed under caution for the offences of driving without a license and making a false declaration to obtain insurance. During interview, the applicant denied being aware of the disqualification. Police reported the applicant to the PPS. The PPS decided to prosecute the applicant. These proceedings remain ongoing before Newry Magistrates Court.

The applicant's challenge to the third prosecution

[59] The applicant complains that there was no summons in respect of his third case. As was the case in relation to the first two convictions, this was because the

complaint was based on a charge sheet issued by the PSNI. It is a charge sheet that acts as the complaint and the requirement to attend court.

[60] He makes various complaints about the conduct of the police interview and the manner in which the PSNI obtained information from his insurance company.

[61] In respect of the third prosecution it is a well-established principle in public law that legal issues which can be dealt with in the context of extant criminal proceedings should not be brought before the Divisional Court, save in exceptional circumstances – see *R v DPP ex p Kebilene* [2000] 2 AC 326.

[62] There are no such exceptional circumstances in respect of the third prosecution. The applicant can adequately challenge that prosecution and raise any issues in his defence at the subsequent hearing in the Magistrates Court and if necessary, by way of appeal to the County Court.

[63] At a case management review the court accepted that the outcome in respect of his challenges to his two previous convictions could have a bearing on the outcome of that prosecution. This is particularly true of the first conviction because, unlike the second conviction, it resulted in him being disqualified from driving. As a result, this court directed that the third prosecution be stayed pending the outcome of the challenges to the two convictions which are the subject matter of this application.

Pre-hearing directions/application for the court to recuse itself

[64] At the hearing on 23 June, the court refused an application by the applicant to recuse itself. We indicated that we would give our reasons after we had heard the application for leave. The court is conscious that the applicant is a litigant in person. It notes that he attends court with the assistance of a McKenzie friend and a number of supporters.

[65] From the outset, his application has been characterised by voluminous documents full of pseudo-legal terminology making serious allegations against all of those who have been engaged in the decisions under challenge and in this application.

[66] Since the receipt of the papers, the court has issued Case Management Directions, all of which appear to be challenged by the applicant, culminating in an application for the court members to recuse themselves.

[67] His initial and main grievance relates to the way in which the court has dealt with his application to challenge the third prosecution. When the matter first came before this court the hearing was listed before the Magistrates Court. In accordance with the well-established principle of public law that the Divisional Court should not engage in satellite litigation when a matter was live before another court, this

court directed that the applicant should first apply to the District Judge who was dealing with the case for an adjournment if that was the applicant's wish. It appears the application was refused. When the court was made aware of this it granted a stay of the proceedings.

[68] The applicant has characterised this approach as one of "judicial torture." The court fails to see how this could in any way be interpreted as indicating any bias on its behalf. On the contrary, the reasons for the court's approach was fully explained to the applicant and the court acceded to his request by granting a stay.

[69] His next substantial grievance relates to the initial direction that the court would proceed with the challenges to the first two applications and not the third. The reason for this was fully explained to the applicant. The issues he has in relation to the third prosecution are live and must be dealt with in the Magistrates Court and if necessary, in any appellate court before any issue of the Divisional Court considering the matter arises. As explained above, in ease of the applicant the court agreed to impose a stay on that prosecution as it recognised that the outcome of the challenge to the first two convictions could have a potential impact on that case. The applicant's response to this ruling is exemplified by para 32 of his affidavit in support of his notice of motion to rescind the Case Management Directions in this case as follows:

> "[32] I Darren state as fact therefore, these are exceptional circumstances in fact and law, as crimes have been committed of misconduct in a public office and the rule of law has not been upheld, as they have not yet been held to account, and therefore, this is not satellite litigation in fact or law, as I have been deprived at every turn in Newry Magistrates Court at both Magistrates Court level at County Court to a remedy of both law and statute, which is in violation of Article 1 and Article 2 of the Bill of Rights [1688], and therefore I reject any allegation of this satellite litigation and I reject the allegation, or averment that the principles of *R v DPP ex parte Kebilene* [2002] AC 326 are activated are alleged erroneously, when stated the principles in that case are not engaged, as each case must be distinguished and evaluated on its own unique facts and evidence, and in that case to the best of my knowledge, it did not involve a District Judge, in a crime of misconduct in public office at common law, by having me arrested and falsely imprisoned for no reason on WED 11 August 2021 and that case does not involve the Senior Cleric entering false and misleading documentary evidence which was submitted unlawfully to Newry Magistrates on, or around 24 October 2022 without just cause, which is a

> criminal offence of misconduct in a public office at common law, and of perverting the course of justice of common law, so these are clearly exceptional circumstances for which the rule of law must be upheld by Judicial Review Court Crown Side divisional court, who have the inherent jurisdiction, and residual jurisdiction given the conclusive facts of these crimes committed, to compel Eamonn King and Grainne Campbell at least in the first instance to provide first hand affidavit evidence to account and explain their actions, before the leave stage commences."

[70] In the course of the Case Management Directions process the applicant has sought to disrupt and postpone the hearing of this application which has been listed for some time.

[71] This has been characterised by entirely inappropriate requests for individuals to file affidavit evidence and for the court to make orders for persons to attend for cross examination.

[72] After the initial Case Management Directions were issued in this case the applicant sought to appeal and/or set aside these directions by way of a notice of motion. The motion included the following:

> "[25] I hereby motion the Kings Bench (Crown Side) Divisional Court that the entire Case Management Direction is rescinded in particular para 2, has been ultra vires, irrational, as it wilfully is breaching the principles of natural justice in its effect, and is a denial of due process of law and denies me a right to a fair trial as I the litigant and moving party I am being unlawfully denied the right to prepare the core bundle myself, which is in clear breach of Practice Direction No. 6/2011 (revised 2021) SEEC para 28, Part D Core Bundles; it is clearly not the Responsibility in fact or law for the Respondents or in particular the Crown Solicitor to provide, file or lodge the core bundle. It is my responsibility as the litigant by way of communication and agreement between the Respondent as shown by para 28; - which states the following: - "in every case where a core bundle is directed by Court or appears to the parties to be desirable the content shall be agreed between/among the parties and the bundle shall be lodged by the plaintiff/applicant/appellant at LEAST FOUR WORKING DAYS BEFORE THE HEARING; in my Judicial Review Proceedings thus far a reported letter was

> issued by an unknown unidentified Judge without explanation in an attempt to block me from holding a further Case Management Hearing to which I entitled as of right under the principles of natural justice, on the grounds that real crimes have been committed of misconduct in the public office, and wilful perversion of the course of justice of common law, and the unidentified judge in a letter served by way of email dated 23 May 2023 appears to be attempting to in an ultra vires manner to prevent me from appealing or setting aside the Case Management Direction, without justification on fact on law, while ignoring all the material evidence currently before the Judicial Review Court."

The court listed that application on 6 June 2023, in which the various complaints about the Case Management Directions were dealt with by way of review. It was explained to the applicant that the Case Management Directions were not matters that could be dealt with by way of an appeal. It was explained to him again that it was for him to establish that he had grounds for seeking leave to appeal the impugned decisions. It was not appropriate for the court to direct affidavit or oral evidence from any of the proposed respondents.

[73] It also gave directions in relation to the filing of core bundles. In ease of the applicant the court directed that the proposed respondents prepare the bundles, on the basis that the applicant could submit any further additional material should he choose to do so.

[74] Rather than accept this Case Management Direction the applicant has sought to reject the core bundles and to suggest that in some way they are unlawful.

[75] After the review on 6 June 2023 the applicant submitted an application that the court recuse itself. This was dealt with as a preliminary issue on the day of the hearing.

[76] The application for recusal, and indeed the substantive application itself, are replete with wild and unsustainable allegations. These include allegations of fraud, misfeasance in public office, torture, breaches of his rights under Article 3, 5 and 6 of the European Convention of Human Rights, criminal activity by public officers and crimes of perverting the court of justice at common law.

[77] A flavour of the applicant's approach to this case and the Case Management Directions issued by the court can be seen from paras 26 and 29 of the recusal application to the court. They are in the following terms:

> "[26] I Darren, state as fact that both Siobhan Keegan and the Judicial Review Office and all of the respondents

> have persistently failed covering the period from 07 March 2023 to 23 June 2023 to answer basic questions of fact, evidence, law, and procedure, such as the issue of locus standi and jurisdiction, of all reported solicitors legal agents for all of the respondents, as the Crown Solicitor is supposed to represent or be the solicitor legal agent for the principal the Public Prosecution Service of Northern Ireland according to Appendix IV Practice Direction 3/2018 and not Bridgeen Cromwell, as this is a conflict of interest as she works as a Principal Prosecutor in the High Court and International Section for the Public Prosecution Service, and has no evidence of agency and does not produce any evidence of agency, locus standi or jurisdiction when the Crown Solicitor of Northern Ireland is currently the appointed Solicitor's Agent for the Public Prosecution.
>
> [29] I Darren, state as fact, fraud upon the court was committed as the case was listed for a Case Management Hearing only and it was held in the Court of Appeal of Northern Ireland and this court has no jurisdiction to hear any Case Management Review as listed for Tuesday 06 June 2023, in the Court of Appeal Room at the Royal Courts of Justice, Belfast, which does not have jurisdiction to hear King's Bench Crown Side matters in fact, evidence or law as it is a creature of statute and does not hold inherent jurisdiction and is the King's Bench Crown Side Divisional Court."

[78] These paragraphs are simply random examples of the pages and pages of material submitted in this case.

[79] In addition to the complaints already identified the applicant complained that during the previous review the Lady Chief Justice asked whether the respondents wished to make any submissions. He argued their failure to do so meant that they had conceded the case. The applicant argued therefore that this court should have immediately quashed the impugned decisions.

[80] Furthermore, he argued that the court should have directed a trial by jury.

[81] The principles for recusal are well established, see *Porter v Magill* [2001] UHL 67.

[82] There are two types of bias namely "actual" and "apparent" bias. Actual bias is taken to exist when a decision-maker is either (1) influenced by partiality or

prejudice in reaching the decision or (2) actually prejudiced in favour of or against a party.

[83] A claim of actual bias is an extremely serious allegation. Such a claim should not be made lightly and will succeed only when supported by the clearest evidence.

[84] As per *Porter v Magill* [2002] 2 AC 357 the test for apparent bias is centred on the question whether "the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias."

[85] It is not clear whether the applicant in this case is alleging actual or apparent bias against the court.

[86] What is the basis upon which the applicant is alleging bias? The fact that he is dissatisfied with Case Management Directions is an insufficient basis for establishing a bias that would justify recusal. It is not for a litigant to choose the court to determine his disputes. This court has been anxious to provide an expeditious hearing to the applicant. It has made appropriate Case Management Directions to facilitate that hearing. It has reviewed those directions when challenged by the applicant. It has sought to fully explain the basis for the directions to him. His unwillingness to accept those directions is not a ground for recusal.

[87] Being as self-critical as we can, we conclude that no fair minded and informed observer having considered the facts would conclude that there was the real possibility of bias on behalf of the court.

[88] The application for recusal was therefore refused and the matter proceeded to hearing.

Conclusion

[89] By these proceedings the applicant has sought to challenge court orders, long after the time for judicial review has elapsed. He has engaged this court in two hearings in respect of Case Management Directions and a substantive hearing. Written Case Management Directions were also required. The court has been obliged to consider a voluminous bundle of documents which are prolix, nonsensical and frankly absurd.

[90] Even after the leave hearing was completed the applicant filed further written submissions raising issues that had already been considered. By way of example these submissions included the following:

> "[2] I seek an emergency order from the Judicial Review Divisional Court Panel that sat on Friday 23 June 2023

in the wrong Court jurisdiction as in law it should have been convened and listed under Kings Bench Crown Side Court no 1 or no 2 for both the recusal application issued against Lady Chief Justice Siobhan Keegan and Justice Colton, for the divisional court panel to compel Phoenix Law by way of seeking an order for disclosure under order 24 (7) Rules of the Court of Judicature (Northern Ireland) 1980 to return my case files as I now wish to issue an immediate civil damages claim in the Kings Bench High Court against Phoenix Law Solicitors Belfast on grounds of negligence, breach of contract, and deceit.

…[4] I Darren also wish for an immediate order and direction from the Judicial Review Office when I am granted leave based on the current and new material evidence now before Lady Chief Justice Siobhan Keegan under order 57 (5) Rules of the Court of Judicature (Northern Ireland) 1980, i wish for a jury trial on any issue of fact and dispute between the respondents and in the absence of any formal pleadings or actual defence from any of the respondents, as they are all corporations and there is of no disputed fact that has been raised and it is clear to me that I am entitled to the objective facts and evidence that I have provided that stands as unrebutted, the convictions must be quashed based on the new material.
Evidence that you Lady Siobhan Keegan referred to as revelations; - see s 62 Judicature (Northern Ireland)

[7] i Darren state as fact that these judicial review proceedings have been predetermined against me for the following key material reason, based on a forensic examination of all the evidence on legal documents and summons and position papers i had in my possession as well as a careful examination of the core bundle illegally compiled by Mark Murray for which it is clear there was a significant degree of pre-planning Siobhan Keegan in allowing Mark Murray

Crown Solicitors Office for Northern Ireland to compile the core bundle without limitation which contains fraudulent
court document and false evidence with the Newry Magistrates which in effect directs all three cases, which means taken
and examination of all the key evidence in its totality the only objective conclusion; the real reason you did not grant the stay
straight away and why i had to fight tooth and nail to get a stay issued in the third case although ultimately it was not granted
until Friday 21 April 2023 you were allowing a particular Mark Murray Crown Solicitor of Northern Ireland and all the other respondents legal agent to enter fraudulent and misleading documents and evidence or which if the stay had straight away
just after 09 March 2023, which should have been on the material fact and evidence of two wrong doing against me in both
case one, two and three, then it is obvious that you deliberately delayed the stay in Newry Magistrates or permit them to enter as much prejudicial evidence on false and fraudulent documents against me which in any event is inadmissible due to the new material evidence provided to you on Friday 23 June 2023 due to the new fraud upon the Court such as Barrister
Conor O'Kane who was judicial review papers on Monday 17 April 2023 along with Amanda Brady, Gavin Booth, and for the purpose of ensuring that my judicial review leave stage did not succeed.

I Darren look forward to providing you with further written and oral submissions before you will give me written judgment which
is my right as a private civilian and constitutional subject under the Bill of Rights [1688] and the Magna Carta Hiberniae 1216 and the
common law, and as i made clear to you at all times in my interactions with the Police Service of Northern Ireland and the Courts
i have always been presenting myself in my private capacity only as a private civilian of constitutional subject for which you

> are duty bound by both the rule of law and under the inherent jurisdiction of the Kings Bench Crown Side Divisional Court to protect
> and preserve my ancient prerogative birth rights of freedom and liberty which Eamonn King unlawfully deprived me of on
> Wednesday 11 August 2021 without probable cause, please see section 4 of Act of Settlement 1700 and the common law case
> of both *Scott v Scott* [1913] AC Eamonn King violated and common law and statutory right as well as my Article 6 right to
> a fair trial in a public without just cause on 24 September 2021, and the case law of *Nichols v Nichols* where no Crown agent
> servant or employee in their public or private capacity can by the judicial misconduct and prohibited in fact evidence on law
> from violating all of my given birth rights and freedoms which were duty bound to protect."

[91] Three public bodies have been compelled to resist these applications which are totally without merit at considerable expense to the public purse.

[92] For the reasons set out above the court refuses the applicant leave to seek judicial review against what have been referred to as the first and second convictions.

[93] In relation to the third prosecution which is ongoing this should now take its course in the normal way in the Magistrates Court. Leave is refused in respect of the challenge to this prosecution as there is an alternative remedy in the Criminal Court. The stay granted by the court is hereby removed, which will allow that case to proceed in the appropriate forum.