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Ref: TRE11514

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

ICOS No: 18/61998

Delivered: 13/05/2021

IN THE HIGH COURT IN NORTHERN IRELAND

DIVISIONAL COURT

Between:

TERRENCE DUFFY

Applicant

and

(1)THE COMMISSIONER OF THE CITY OF LONDON POLICE  
(2)THE MAGISTRATE SITTING AT WESTMINSTER MAGISTRATES' COURT  
(3)THE LAY MAGISTRATE RESIDING IN BELFAST

Respondents

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested Party

Before: Treacy LJ, McAlinden J, Sir Richard McLaughlin

Legal representatives - for the Applicant, Terence Duffy: Tim Moloney QC and Conan Fegan instructed by Madden & Finucane; for the First Respondent, The Commissioner of the City of London Police: John-Paul Waite and David Messling; for the Second Respondent; The Lay Magistrate Residing in Belfast: Aidan Sands and for the Interested Party The Secretary of State for the Home Department: Terence McCleave.

TREACY LJ (*delivering the Judgment of the Court*)

**Introduction**

[1] This application for judicial review concerns the application for and the issuing of search warrants by Westminster Magistrates' Court and their subsequent execution in Northern Ireland. The principal issue raised is whether on its proper construction the Petty Sessions (Ireland) Act 1851 provides a process for the

execution in Northern Ireland of a search warrant in respect of an offence committed in England and Wales.

## **Factual Background**

[2] The applicant was the subject of an investigation by the City of London Police into four allegedly fraudulent travel insurance claims believed to have been made by the applicant during 2014 and 2015, in contravention of section 2 of the Fraud Act 2006.

[3] On 27 February 2018 PC Fryatt, the investigating officer, made an application to Westminster Magistrates' Court ("WMC") under Section 8 of the Police and Criminal Evidence Act 1984 for a warrant for entry and search. The material sought included insurance claim documentation, travel documents, and items of property claimed in the four relevant travel insurance claims. The application was made in respect of two premises identified in the warrant, both in Northern Ireland.

[4] The application was granted on 27 February 2018 by Hazel Vinson, a Lay Magistrate, who signed the application forms and stated, in writing, that she was satisfied that there were reasonable grounds for believing that an indictable offence had been committed, that evidence might be found at the addresses to support this, and that it was necessary and proportionate to issue the warrant. Two warrants (one in respect of each of the premises) were issued under section 8 of the 1984 Act ("the Search Warrants").

[5] On 26 March 2018 PC Fryatt appeared before Belfast Magistrates' Court (at Laganside Courthouse), where the Search Warrants were endorsed by a Lay Magistrate, Collette Forester, who countersigned each warrant. The Search Warrants were executed later the same day by PC Fryatt and officers of the Police Service for Northern Ireland ("the PSNI").

[6] The applicant challenges three decisions:

- (i) the first respondent's decision to apply for the Search Warrants and its act in executing the Search Warrants;
- (ii) the second respondent's decision on 27 February 2018 to issue the Search Warrants; and
- (iii) the third respondent's decision on 26 March 2018 to endorse the Search Warrants for execution.

[7] In its pre-action letter response the second respondent explained that the decision to grant the Search Warrants was *functus officio* and that it would not oppose any application for judicial review and would, in effect, take a neutral position.

[8] In its position paper provided for these proceedings, the third respondent indicated that it did not intend to play an active part in proceedings beyond presenting relevant facts and providing assistance to the court.

[9] Following the grant of leave the court directed that the first respondent was to be regarded as the main respondent and added the Secretary of State for the Home Department as an Interested Party to the proceedings.

### **The Legislative Provisions**

[10] The relevant Search Warrants were issued under Section 8 of the Police and Criminal Evidence Act 1984 (“PACE”), which provides for a warrant to be issued in England and Wales on the following grounds:

**“8.— Power of justice of the peace to authorise entry and search of premises.**

(1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

(a) that an indictable offence has been committed; and

(b) that there is material on premises mentioned in subsection (1A) below likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and

(c) that the material is likely to be relevant evidence; and

(d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(e) that any of the conditions specified in subsection (3) below applies in relation to each set of premises specified in the application, he may issue a warrant authorising a constable to enter and search the premises.”

[11] The equivalent provision for Northern Ireland is found in Article 10 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE (NI)”):

**“10.— Power of justice of the peace to authorise entry and search of premises**

- (1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing –
- (a) that an indictable offence has been committed; and
  - (b) that there is material on premises mentioned in paragraph (1A) which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
  - (c) that the material is likely to be relevant evidence; and
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
  - (e) that any of the conditions specified in paragraph (3) applies in relation to each set of premises specified in the application

he may issue a warrant authorising a constable to enter and search the premises.”

[12] Backing of a warrant occurs whenever it becomes necessary to execute it out of the jurisdiction in which it was granted. Statutory footing for the backing of warrants between Northern Ireland and the other jurisdictions of the UK is provided by The Petty Sessions (Ireland) Act 1851 (“the 1851 Act”). The 1851 act was amended by the Justice Act (Northern Ireland) 2015 to reflect the introduction of a single magistrates’ court jurisdiction in Northern Ireland.

[13] The 1851 Act established a system for the mutual backing of warrants, both between the districts of Ireland itself and between Ireland and the other parts of the United Kingdom. Section 28 provides for warrants issued in Ireland to be backed for execution in England and Wales:

**“Warrants addressed to other Persons than the Constabulary**

28. Whenever a Warrant shall be addressed to any other Person or Persons than the Constabulary, and it shall appear that the Person against whom the same shall have been issued or his Goods, as the Case may be, are in any of the places out of Ireland hereinbefore mentioned, it shall be lawful for any Justice or other such Officer as

aforesaid of such Place, upon Proof on Oath of the Handwriting of the Justice who shall have signed the Warrant, to indorse the same for Execution in such Place in like Manner as is hereinbefore provided as to any Warrant indorsed by the Inspector General of Constabulary.”

[14] Section 29 refers to persons and provides for the backing of warrants from England into Ireland (which was part of the UK at that time):

**“Backing Warrants from England, &c. into Ireland**

29. Whenever any Person against whom any Warrant shall be issued by any Justice or other such Officer as aforesaid in England or Scotland, or in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, for any Crime or Offence, shall reside or be, or be suspected to reside or be, in any Place in Ireland, it shall be lawful for the said Inspector General or for either of the said Deputy Inspectors General, or for any Justice of the said last-mentioned Place, to indorse the same in like Manner and upon like Proof as aforesaid, authorizing the Execution of the same within his Jurisdiction.”

[15] Section 30 extended the scope of Section 29 to include persons suspected of having committed offences:

**“Warrants for arrest issued by justices, judges &c.**

30. The aforesaid provisions as to the indorsement of warrants shall equally apply to any warrants for the arrest of any person charged with any indictable crime or offence for which he is punishable by law, whether the same shall be signed or indorsed or issued by a justice of the peace, or by a judge of her Majesty’s Court of Queen’s Bench, or justices of oyer and terminer and general gaol delivery, in England or Ireland, or by the Lord Justice General, Lord Justice Clerk, or any of the Lords Commissioners of Justiciary, or by any sheriff depute or substitute, in Scotland, or by the chief or under-secretary to the Lord Lieutenant.”

[16] Whereas Section 29 deals with the backing of warrants from England into Ireland Section 31 deals with warrants which have been so backed being valid for execution.

**“Warrants so backed to be valid for Execution**

31. Whenever any warrant, addressed either to the constabulary or any other person, shall be so indorsed by the said inspector general or by either of the said deputies inspector general or by any justice or other such officer as aforesaid, it shall be a sufficient authority to the person bringing such warrant, and also to all constables or peace officers to execute the warrant by arrest, committal, or levy, as the case may be, and in the case of a warrant to arrest any person to convey him when arrested before any district judge (magistrates’ courts) to be dealt with according to law.”

[17] The 1851 Act also contains, in the Schedule to the Act, a number of specified forms to be used in proceedings under the Act. Section 48 of the 1851 Act confirms that the Schedule forms part of the Act. In particular, Form (E) includes the following five forms for warrants:

- a. “Warrant of Execution (Summary Jurisdiction)”;
- b. “Warrant to commit (or detain) for Trial, &c”;
- c. “Warrant to convey before a Justice of another county”;
- d. “Warrant to discharge from Gaol”;
- e. “Warrant to search.”

[18] Form E(e), the form for a “Warrant to search”, is as follows:

(E e.) *Warrant to search.*

\_\_\_\_\_ *Complainant.* } Petty sessions district of \_\_\_\_\_  
 \_\_\_\_\_ *Defendant.* } County of \_\_\_\_\_

Whereas it appears on the oath of *A.B.* of *M.N.*, that the following articles of property, viz. <sup>(1)</sup>

(1) DESCRIPTION of articles stolen.

were stolen, and that there is reason to suspect that the same is concealed in \_\_\_\_\_, at \_\_\_\_\_:

This is, therefore, to authorize and require you to enter in the daytime into the said premises, and to search for said property, and to bring the same and the persons in whose possession the same may be found before me or some other justice.

Signed \_\_\_\_\_, Justice of the said county.

(2) ADDRESS.  
 “The sub-inspector (or head constable) of constabulary,” or name of person who is to execute the warrant.

(2) To \_\_\_\_\_ of \_\_\_\_\_, This \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_.

[19] In addition, the Schedule to the 1851 Act provides forms for the indorsement of warrants. This includes Form G(c), which provides for the backing of a warrant by another justice, and is as follows:

BACKING by inspector general (G c.) It being (4) \_\_\_\_\_ to me  
 or other justice. (4) For commissioners of police as above, I hereby indorse the within warrant for execution  
 or constabulary—*Certified.* in said county of \_\_\_\_\_ (5) (or metropolitan district or  
 For bailiff—*Proved on oath.* other place).  
 (3) In backing warrant to arrest, add, if so intended—  
*and to bring the said person before me or some other justice of said county.* Signed \_\_\_\_\_  
 Inspector general (or deputy, or justice).  
 This \_\_\_\_\_ day of \_\_\_\_\_, 185 .  
 To \_\_\_\_\_

## Proper Construction of the 1851 Act

[20] On its proper construction the first respondent contends that: (i) the 1851 Act provides a process for the execution in Northern Ireland of a search warrant in respect of an offence which is committed in England and Wales; (ii) the meaning of s29 of the 1851 Act is to provide for the backing of any warrant and that this is not displaced by the wording of s31 and is supported by the Schedule to the 1851 Act; (iii) the context of 1851 Act and subsequent legislation referring to the 1851 Act support a conclusion that the Act was intended to provide backing for a variety of warrants including search warrants; (iv) a finding that the 1851 Act extended only to warrants executable by “arrest, committal or levy” would be inconsistent with the existing framework for backing warrants between other jurisdictions of the United Kingdom and would mean that Northern Ireland was placed in an anomalous position, with there being no means to execute search warrants issued in another part of the United Kingdom within Northern Ireland or vice versa.

[21] The first respondent contends that the words “*Arrest, Committal or Levy*” in section 31 are merely examples of situations where the backing under the 1851 Act provides sufficient authority. Reliance is placed on the use of the words “*as the case may be*” as demonstrating that a variety of warrants are anticipated and these words indicate that the power is not limited to the examples of types of warrants specified in s.31. This interpretation is adopted by Mr McCleave on behalf of the interested party.

[22] We cannot accept these submissions as we consider it to be clear that, on a proper construction of the 1851 Act, there is no power under that legislation to back these search warrants.

[23] The phrase “*as the case may be*” is used immediately after the sequence of words “*arrest, committal, or levy,*” of which only one word is applicable to the circumstances. Which of the words in the sequence is referred to depends on the factual context in which the provision is invoked. The ordinary meaning of the phrase “*as the case may be*” is “*whichever of the alternatives applies.*” In the provision there are three alternatives none of which is on its face applicable to embrace the warrants in the present case. The contrary interpretation of “*as the case may be*” as meaning, in effect, “*or any other process*” is to impermissibly strain the meaning of the statutory words. Indeed, if the phrase was intended to bear such a construction there would have been no need to give specific examples.

[24] When construing a statute, it is legitimate to look at all of the Act to see whether the same words under question have been used elsewhere in the Act and thus find assistance in discerning the intention of Parliament. As Lord Bingham said in *R (on the application of Quintaville) v Secretary of State for Health* [2003] UKHL 13:

“The Court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the context of the situation which lead to its enactment.”

[25] It is presumed that, since legislative instruments are to be read as a whole, words, and phrases are intended to have a consistent meaning throughout the instrument. In *Assange v Swedish Prosecution Authorities* [2012] UKSC 22, [2012] 2 AC 471 [75], Lord Philips said:

“When considering the meaning of a phrase that is used more than once in the same instrument, one starts with a presumption that it bears the same meaning wherever it appears.”

[26] This presumption applies with greater force where the word or phrase appears in the same or neighbouring provisions. In *R (Harrison) v Secretary of State for Health* [2009] EWHC 3086 (Admin) [44], Silber J held that:

“where a word, like services, has no one settled meaning, it must take its colour from the context in which it is found and a fundamental aspect of that context is the use given to that word in other neighbouring provisions of the same Act.”

[27] We agree with the applicant that looking at the 1851 Act as a whole demonstrates a plain meaning for “*as the case may be.*” This phrase is found in the neighbouring provisions of Sections 28, 32 and 33 of the Act.

[28] Section 28 illustrates the meaning of “*as the case may be*” by juxtaposing a ‘person’ or their ‘goods’ and explaining that the section applies in either of the alternative circumstances. It provides:

***“XXVIII. Warrants addressed to other Persons than the Constabulary***

Whenever a Warrant shall be addressed to any other Person or Persons than the Constabulary, *and it shall appear that the Person against whom the same shall have been*



*issued or his Goods, as the Case may be, are not to be found within the County in which the Justice issuing the same shall have Jurisdiction, but in some other Place in Ireland, or in any of the Places out of Ireland hereinbefore mentioned, it shall be lawful for any Justice or other such Officer as aforesaid of such Place, upon Proof on Oath of the Handwriting of the Justice who shall have signed the Warrant, to indorse the same for Execution in such Place in like Manner as is hereinbefore provided as to any Warrant indorsed by the Inspector General of Constabulary.” (emphasis added)*

[29] Section 28 thus specifies two alternatives (‘Person’ or ‘his Goods’) and the section is applicable when one of the alternatives applies. Each alternative is, effectively, a ‘case’ and the section applies in either ‘case.’ We agree with the applicant’s analysis that a ‘case’ is, in effect, a “*specific set of circumstances*” and the plain meaning, in context, of “*as the case may be*” is “*whichever of the alternative specific set of circumstances applies.*” This analysis is confirmed by the use of identical statutory phrases in sections 33 and 32.

[30] Section 33 provides:

***“XXXIII. Return of unexecuted Warrants***

Whenever the Person to whom any Warrant shall be so addressed, transmitted, or endorsed for Execution *shall be unable to find the, Person against whom such Warrant shall have been issued, or his Goods, as the Case may be, or to discover where such Person or his Goods are to be found,* he shall return such Warrant to the Justices by whom the same shall have been issued within such Time as shall have been fixed by such Warrant (or within a reasonable Time where no Time shall have been so fixed), and together with it a Certificate (G a.) of the Reasons why the same shall not have been executed; and it shall be lawful for such Justice to examine such Person on Oath touching the Non-execution of such Warrant, and to reissue the said Warrant again, or to issue any other Warrant for the same Purpose from Time to Time as shall seem expedient.” [Emphasis added]

[31] Section 32 provides:

***“XXXII. Execution of Warrants***

The Manner in which Distresses and Committals under Warrants shall be made shall be as follows:

When addressed to Constabulary;

When addressed to other Persons.

Distress may be sold in a certain Time.

On Payment of Penalty, &c. Distress not to be levied.

Distress may be sold by Auction without Licence.

If Sum paid after Committal, Prisoner to be discharged.

Gaoler to give Receipt for Prisoners.

To what Prisons Offenders shall be committed in Summary Proceedings.

1. Whenever any Warrant to levy any Penal or other Sum by Distress shall be addressed to the Constabulary, the Sums levied under it shall be accounted for, under the Provisions of the "Fines Act, Ireland, 1851;" but whenever any such Warrant shall be addressed to any other Person than the Constabulary, such Person shall pay over the Sum levied under it to the Person who shall appear by such Warrant to be entitled to the same, or in such other Manner, and subject to such Account of the same, as the Justices shall direct:

2. In every *Case* where a Distress shall be made under any such Warrant it shall be lawful for the Person charged with its Execution to sell the said Distress within such Period as shall be specially fixed by the said Warrant, or if no Period shall be so fixed, then within the Period of Three Days from the making of the Distress, unless the Sum for which the Warrant was issued, and also the reasonable Charges of taking and keeping the said Distress, shall be sooner paid; and in every *Case* where he shall sell any such Distress he shall render to the Owner the Overplus, if any, after retaining the Amount of the said Sums and Charges:

3. In every *Case* where any Person against whom any such Warrant shall be issued shall pay or tender to the Person having the Execution of the same the Sum in such Warrant mentioned, or shall produce the Receipt of the Officer of the Court for the same, and shall also pay the Amount of the Expenses of such Distress up to the Time of such Payment or Tender, such Person shall refrain from executing the same:

4. In every *Case* where any Sub-inspector or Member of the Metropolitan Police Force shall be empowered to distrain any Goods under such Warrant, he may and is hereby authorized to sell or cause the same to be sold by Auction by any *Head Constable of the said Constabulary Force, or by any Member of the said Metropolitan Police Force, as the Case may be,* without procuring any Licence to act as an Auctioneer, and may deduct out of the Amount of such Sale all reasonable Costs and Charges actually incurred in effecting the same:

5. In every *Case* where any Person who shall be apprehended under any such Warrant shall pay or cause to be paid to the Keeper of the Gaol in which he shall be imprisoned the Sum in the Warrant mentioned, the said Keeper shall receive the same, and shall thereupon discharge such Person if he be in his Custody for no other Matter:

6. Whenever the Warrant shall be to commit any Prisoner to Gaol, the Head or other Constable or other Person whose Duty it shall be to convey such Prisoner to Gaol shall deliver over the said Warrant and the said Prisoner to the Keeper of the Gaol, who shall thereupon give to such Head or other Constable or other Person a Receipt for such Prisoner (Form F.), setting forth the State and Condition in which he shall have been delivered into the Custody of such Keeper:

7. In any *Case* of Summary Jurisdiction in which a Justice shall order any Person to be committed to Gaol for any Period, either in default of Payment of any Sum, or in default of Distress, or as a Punishment for any Offence, such Committal shall be to the County Gaol, District Bridewell, or House of Correction of the County in which the Party shall be arrested, unless where such Arrest shall be made in any County adjoining to that in which the Warrant shall have been issued, in which *Case* the Committal shall be to any of the said Prisons of such last-mentioned County; and whenever any Justices shall order any Person to be committed on account of any Adjournment of the Hearing, or until the Return of a Warrant of Distress, or for any like temporary Purpose, such Committal shall be either to the Gaol or House of Correction District Bridewell, or to any Bridewell or Lock-up of the County built or supported by County

Presentment, according as shall appear to the Justices most convenient for that Purpose.”

[32] The phrase “as the case may be” is used repeatedly in the same instrument and in those circumstances there is a presumption that the phrase bears the same meaning wherever it appears. As the cases show where a word or phrase has no one settled meaning it must take its colour from the context in which it is found and a fundamental aspect of that context is the use given in other neighbouring provisions of the same Act. In our view what plainly emerges from a consideration of these provisions is that ‘case’ connotes a specific set of circumstances” and more fundamentally that the meaning of “as the case may be” is “whichever of the alternative specific set of circumstances applies.” Moreover, there is no mention of ‘search warrants’ in the relevant sections.

[33] In our view it is clear that the use of the phrase “as the case may be” immediately after “arrest, committal, or levy” in section 31 gave no power to execute a warrant from England in Ireland other than one or other of the three alternatives specified. This was also the view expressed in “The Irish Justice of the Peace: A Treatise on the Powers and Duties of Justices of the Peace in Ireland” 2<sup>nd</sup> Ed. by James O’Connor published in 1915. The author was HM’s Solicitor – General for Ireland. Under the section entitled “search warrant” (p1186 *et seq*;) the author notes, *inter alia*, that a search warrant is an order of a justice of the peace authorising the persons named or described therein to enter a specified building, to search for goods named or described, and to seize them if found and that at common law the only right to issue a search warrant was in respect of stolen goods (Entick v Carrington (1765) 19 State Trials 1030; 2 Hale 113, 149, 150; 5 Burn, 30<sup>th</sup> ed., 1180). Specifically addressing the form of warrant given in the Petty Sessions (Ir.) Act 1851, (Sch E e) the Solicitor-General stated without qualification that “there is no power to back this warrant.” We have not been provided with any other treatise, academic or other authority which has ever questioned that pronouncement. Indeed, a proper construction of the 1851 Act reinforces the correctness of that view.

[34] Furthermore, the context which lead to the enactment of the 1851 Act supports this construction of s.31 of the 1851 Act.

[35] The position in the 18<sup>th</sup> century was that there was no common law power to search a person’s property. In order for any power to be created, specific provision was required. In *Entick v Carrington* 95 E.R. 807 and the judgment of Lord Camden [pp. 11 and 12]:

“In the case of Wilkes, a member of the Commons House, all his books and papers were seized and taken away; we were told by one of these messengers that he was obliged by his oath to sweep away all papers whatsoever; if this is law it would be found in our books, but no such law ever existed in this country; our law holds the property of

every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law. The defendants have no right to avail themselves of the usage of these warrants since the Revolution, and if that would have justified them they have not averred it in their plea, so it could not be put, nor was in issue at the trial; we can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society for papers are often the dearest property a man can have."

[36] Our attention was drawn to "The report of the Law Reform Commission of Ireland on *Search Warrants and Bench Warrants* (LRC 115 - 2015)" to demonstrate that the context in which the 1851 Act was passed was one where powers of search were much more limited than today and that any provision permitting such actions would accordingly be required to be clear and unambiguous:

**"Evolution of search warrants in English and Irish law to the 20th century**

1.09 By the 19th century, the search warrant system based on procedural safeguards had become established in both England and the United States. In addition, an increasing number of Acts were enacted in the 19<sup>th</sup> century providing for specific search warrant powers. Further Acts were enacted in the 20<sup>th</sup> century which contained specific provisions governing search warrants.

1.10 The approach adopted in Ireland reflected these developments. In discussing the rejection of general warrants in 1842, Hayes noted the acceptance that "[a] general warrant to search all suspected places is decidedly illegal." Similarly, a number of procedural rules consistent with those advocated by Sir Matthew Hale and implemented in *Entick v Carrington* had been applied in Irish law in the 19th century. For example, the law in Ireland required that a justice receive sworn information of suspicion during the making an application for a warrant, that the place intended to be searched "be stated with convenient certainty", that no search could be made beyond the premises specified in the warrant, and that in executing a warrant of search and seizure the officer(s) "should strictly obey its directions." Further rules were also set out concerning issues such as

the time at which the warrant should be executed, the use of force, the person to whom the warrant should be addressed and the procedure to be carried out once execution was completed. The approach that developed in 19th century Ireland formed the basis of the law as it stood on the foundation of the State in 1922. “

[37] Accordingly, any extension of powers of search at and around the time of the enactment of the Petty Sessions (Ireland) Act 1851 was specific, incremental and explicit. The Law Reform Commission reaffirmed the position at the time of the 1851 Act in explaining (p.27 - 2.17 to 21.9)

*“Over 300 existing search warrant provisions*

2.17 A large number of statutory provisions on search warrants currently exist in Ireland. Appendix A to this Report contains a list of 300 separate legislative provisions (143 Acts and 159 Statutory Instruments) that, as of 2015, confer powers to issue search warrants. As the Commission noted in the Consultation Paper, while the majority of these statutory provisions share common features, notably that the application for a search warrant is usually made on oath to a judge of the District Court, they also contain differences relevant to their own statutory context. Walsh has commented:

“[T]he current statutory powers to issue search warrants constitute an unwieldy collection of disparate provisions which have been developed in a piecemeal fashion over the past two centuries. Each authorises the issue of a search warrant only when its own peculiar requirements have been satisfied.”

2.18 The Commission agrees with this criticism and accepts that, since many of the existing statutory provisions on search warrants overlap with each other and contain sometimes small but significant differences, there is a need for overarching reform.

2.19 The common law power to issue search warrants was limited to searches for stolen goods. This power was placed on a statutory footing in section 103 of the Larceny Act 1861. Since then, the list of statutory provisions that authorise the issuing and execution of search warrants has grown enormously and has a wide scope, as the list of

over 300 provisions in Appendix A of this Report clearly indicates.

*The position at common law in 1851 was therefore that there was no power to search a person's property, save for the search for stolen goods. Indeed, a good illustration of the incremental and explicit development of search powers at this time, is provided by s.6 of the 1851 Act itself.*

It creates a specific power for a justice to issue a search warrant if satisfied on oath that any relevant papers are held by a person who refuses to give them up. ...”

[38] The context in which the 1851 Act was passed was thus one where powers of search were much more limited than they are today and any provision permitting such actions would accordingly be required to be clear and unambiguous.

[39] Counsel relied for confirmation of this position in *Regina v Government of Belmarsh Prison ex parte Gilligan; Regina v Government of Exeter Prison ex parte Ellis* (2001) HL(E) 2001 AC 84 and in particular the observations of Lord Steyn at [89H to 90C]. In this passage he referred to the review of the relevant history of the backing of warrants in counsel's argument in *ex P Hammond*. The analysis of counsel referred to by Lord Steyn is contained within *R v Metropolitan Police Comr. Ex p Hammond* [1965] AC 810 814 - 817. We set it out below with what we consider the most obviously relevant passages underlined:

*“The scheme of the Act*

When the scheme of the Act itself is examined, it is clear that the purpose of the Act was to provide for the establishment and operations of the courts and to give powers to the courts to enforce its sentences. The long title is consistent with this interpretation: ‘An Act to consolidate and amend the Acts regulating the Proceedings at Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions, in Ireland.’ The sections of the Act can be grouped with similar consistency thus:

- (a) Sections 1-14 concern the establishment and the operation of the court:
  - s.1 – Formation of Petty Sessions Districts
  - ss. 2 to 6 – Appointment of Clerk
  - s.7 – Local Jurisdiction
  - s.8 – Place of Hearing
  - s.9 – Publicity of Proceedings
  - s.10 – Information and Complaints

- s.11 - Process to Enforce Appearance - by warrant (indictable offences) or summons (summary offences)
- s.12 - Summons Server
- s.13 - Forcing Witness to Attend
- s.14 - Taking the Evidence

(b) Sections 15-19 concern indictable offences

(c) Sections 20-24 deal with summary jurisdiction:

- s.20 - the trial process
- s.21 - the judgment
- s.22 - sentencing powers
- s.23 - enforcement of orders (by way of warrant for execution of sentence)
- s 24 - appeal

(d) Section 25-28 deal with warrants to be executed upon commission of an offence:

- s 25 - addressing of the warrant
- s 26 - by whom the warrants may be executed
- s 27 - the backing of warrants
- s 28 - deals with the execution of warrants out of Ireland

(e) **Section 29** deals with warrants from England into Ireland. It is of note that the warrant only issues following conviction 'for any Crime or Offence' and is therefore to be executed to enforce the penalty:

*Whenever any Person against whom any Warrant shall be issued by any Justice or other such Officer as aforesaid in England or Scotland, or in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, for any Crime or Offence, shall reside or be, or be suspected to reside or be, in any Place in Ireland, it shall be lawful for the said Inspector General or for either of the said Deputy Inspectors General, or for any Justice of the said last-mentioned Place, to indorse the same in like Manner and upon like Proof as aforesaid, authorizing the Execution of the same within his Jurisdiction.*

(f) Section 30 - follows and makes clear that the same applies to judges' warrants.

(g) **Section 31** - provides that it is sufficient for the person bringing the warrant or an officer to execute the warrant by 'arrest, committal or levy' - i.e. to enforce the sentence and ensure punishment in accordance with the



appropriate process. This is the same as with section 23. It also provides for warrants for arrest.

(h) Section 32 – s.32 – sets out the process for arrest, committal or levy, whichever is done by execution of the warrant.

(i) Section 33 – deals with what happens if the warrant is not executed

(j) Section 34-48 – deal with the following matters:

s 34 – form of recognizances

s 35 – offences of officers, clerks, summons servers and other persons involved in the administration of justice.

s 36 – s 37 refers to the validity of the scheduled forms

s 38 – description of property to be given

s 39 – variances between information and evidence

s 40 – stamp duty

s 41 – Act does not extend to Dublin Metropolis

s 42 – Revenue excluded from the Act

s 44-s48 – deals with interpretation, title, extent and schedule of the Act.”

[40] We agree with the applicant’s observation that the execution of warrants under the 1851 Act is concerned with the enforcement of sentences of the court following conviction and warrants for arrest of persons. It is not to do with the investigation of *suspected* crime. The Act refers to “arrest, committal, or levy, as the case may be” because those are the ways that the warrants enforcing the punishment would be executed. They could not be executed by ‘search of a property for evidence supporting an allegation’, as happened with the applicant.

## **Conclusion**

[41] The respondents and the interested party referred us to numerous statutory provisions enacted subsequently to the 1851 Act in support of the conclusion that the Act was intended to provide for a variety of warrants including search warrants. We do not accept section 31 of the 1851 Act can legitimately be ‘interpreted’ to have the broader meaning contended for. This is particularly so where the purpose of the Act was to provide for the establishment, operation and enforcement of the orders of the Petty Sessions in Ireland, not for the investigation of suspected crime.

[42] Accordingly, we allow the judicial review and quash the impugned warrants. The parties are within 14 days to agree the form of the final Order including appropriate remedy.