Neutral Citation No: [2019] NIQB 31	*Ref:* **McC10920**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered ex tempore: 21/03/19*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

BEFORE A DIVISIONAL COURT

IN THE MATTER OF AN APPLICATION BY XX FOR HABEAS CORPUS

-v-

CHIEF CONSTABLE OF PSNI

Before: McCloskey J and Huddleston J

McCloskey J (delivering the judgment of the court)

Anonymity

[1] The court grants the Applicant anonymity, on two grounds. First, while he has been arrested and remains in police detention, he has not been charged with any offence to date and there has been no involvement of any court exercising jurisdiction in the sphere of criminal justice. Mere suspects are not routinely, if at all, identified in our legal system and the presumption that he is an innocent man bites. Second, much of the evidence bearing on the main issues relates to personal medical matters which, at this stage, clearly fall within the embrace of Article 8(1) ECHR, thereby engaging the court's duty as a public authority under section 6 of the Human Rights Act 1998.

[2] Accordingly, there shall be a prohibition on publication of the Applicant's true identity or of any information which could reasonably lead to his identification. He shall be known as "XX" for all purposes.

The Challenge

[3] By this application for habeas corpus the Applicant challenges the legality of his continuing police detention and seeks from this court a remedy requiring his release.

[4] The case was processed with appropriate expedition. An *inter-partes* hearing was conducted within some four hours of notification of the challenge. A panel of two judges was established having regard to Order 54 Rule 4(2) of the Rules of the Court of Judicature. At the time when the court pronounced its decision *ex tempore* the Applicant had been in police custody for around 46 hours, the proceedings having been initiated some six hours previously.

Factual Matrix

[5] The essential, salient facts are uncontentious. They are documented in a custody record, a series of medical pro-formae (Form PACE15 and Form PACE15/1) and a hospital medical report addressed to the custody sergeant and "FMO" (Forensic Medical Officer) concerned. We identify no material difference between the facts to which the Applicant's solicitor has deposed in the affidavit grounding the application and what is recorded in the aforementioned documentary sources.

[6] The Applicant was arrested at 16.15 hours on 19 March 2019 on suspicion of having committed the offence of manslaughter.

[7] There was engagement between the Applicant and the on duty FMO at several stages of his detention. The first medical assessment occurred some 15 minutes following his arrival at the police station. The corresponding report documents *inter alia* that the Applicant had been prescribed various forms of medication for anxiety, evidently in the wake of the tragedy. The doctor certified that he was fit to be detained and interviewed and, further, that a medical review was not required.

[8] It is clear from the documentary evidence that certain representations about the Applicant's mental well-being were made by his solicitor to the custody sergeant. These included assertions that, arising out of the tragedy, the Applicant had attended a counsellor and his general practitioner. Having conferred with the FMO a decision was made to convey him to a local hospital "*for mental health assessment*". No assessment of this kind was carried out at the hospital. However, it is recorded that the Applicant was "*seen by medical staff*" there and "*returned*** *with no additional treatment*".

[** to the police station]

[9] Following the Applicant's return from hospital to the police station the active involvement of the FMO continued, resulting in a second escorted transit to the hospital at 15.24 on 20 March 2019. The evidence establishes clearly that, on this occasion, the Applicant was assessed in the "Liaison Psychiatry Department" of the

hospital. In a resulting report addressed to the custody Sergeant and FMO, the twofold recommendation of "*appropriate monitoring*" and a further FMO review was made. The Applicant returned to the station at 20.52 hours on the same date. He was at once reassessed by the FMO, giving rise to the evaluation that he was fit to be detained and fit to be interviewed.

[10] This was followed by the first – and only – interview of the Applicant by police. It is agreed that this had a duration of approximately one hour. Following this there was a consultation between solicitor and client. It would appear that the Applicant was then returned to his cell. The next material development was a PAP letter from the solicitor and, some three hours later, the court was notified of imminent urgent legal proceedings.

Statutory Framework

[11] The Applicant's case revolves around a single provision of the Police and Criminal Evidence (NI) Order 1989 ("PACE"). The subject matter of Article 42 is "Limits On Period Of Detention Without Charge". Paragraph (4) provides:

> "*When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part, but any other time while he is in hospital or on his way there or back shall not be so included.*"

The basic scheme of the assorted provisions in Part V of PACE is that a person can be detained by the police for a maximum period of 24 hours, subject to extension thereof for a further maximum of 24 hours by a superintendent's authorisation and, thereafter, only for the maxima permitted on foot of judicial authorisation.

Consideration and Conclusions

[12] It is common case that a superintendent's authorisation was given in the present case. Accordingly the Applicant could be lawfully detained for a maximum period of 48 hours. The question which arose for our determination was how this period should be calculated, having regard to Article 42(4).

[13] On behalf of the Applicant Mr Conor Hamilton (of counsel) advanced the following primary submission. Article 42(4) has no application to the Applicant's detention because "*medical treatment*" (the statutory words) does not encompass psychiatric assessment. From this it followed, he argued, that Article 42(4) had no role to play in the calculation of the relevant 48 hour period.

[14] Counsel's second, alternative submission was that in the event of the primary submission failing:

(a) Article 42(4) had to be disregarded in the detention time calculation because the Applicant received no "*treatment*" of any kind upon the first visit to the hospital.

(b) *Ditto*, because upon the second visit to the hospital the treatment provided comprised a psychiatric assessment which falls short of, or outwith, "*medical treatment*".

[15] The court can identify no merit in any of these arguments. Our construction of Article 42(4) can be conveniently expressed in a series of propositions:

(i) The removal of a detained person from police detention to a hospital "*because he is in need of medical treatment*" does not require a flawless prediction on the part of the police officer/s and/or FMO (where involved) that medical treatment will be provided. Article 42(4) clearly contemplates that an assessment at the police station, with or without medical input, that the detained person may require medical treatment will suffice. This, in every case, will be a matter of evaluative judgement and good faith on the part of the decision maker/s. If "*medical treatment*" does not materialise, this will not be an invalidating factor unless, possibly, a misuse of power of some material kind or improper motive can be demonstrated.

(ii) It follows that Article 42(4) will not be disapplied on the simple ground that, in the events which occurred following removal from the relevant police station (or otherwise) to hospital, no medical treatment was in fact provided.

(iii) "*Medical treatment*" clearly encompasses psychiatric/mental state assessment, examination and interview. To exclude psychiatric conditions would give rise to a quite unjustifiable anomaly, indeed an absurdity.

(iv) Article 42(4) protects the public interest by ensuring that interview possibilities lost as a result of journeys to and from, and sojourns and delays at, a hospital can be "recovered", via the specified calculation mechanism.

(v) Article 42(4) also operates to protect the detained person. It would be absurd to hold that this protection is, in effect, restricted only to detained persons whose possible medical

needs and requirements are not of a psychiatric, psychological or mental nature.

(vi) Article 42(4) is a reflection and expression of the duty owed by the police for the welfare of all detained persons. To hold that this duty does not apply to the cohort of detainees who may be in need of psychiatric/psychological/mental assessment and/or treatment would be absurd as it would entail concluding that the welfare duty is not owed by the police to the members of this discrete cohort of the population.

[16] In counsel's submissions, the sole foundation of the argument to the contrary was an extract from Stroud's Judicial Dictionary of Words and Phrases (9th Edition) Vol 2, page 1553. This extract contains the briefest of digests of definitions of, and judicial decisions concerning the meaning of, the phrase "*medical treatment*" in a series of unrelated statutory contexts. The court derives no assistance from these manifestly different contexts. We draw attention to the dangers inherent in any attempt to compare the words of one statute with those of another, however comparable superficially: see Johnson v Gilpins [1989] NI 294, at 331 – 332 especially, per Kelly LJ. Nor is the Applicant's case advanced by the only other source which counsel invoked in argument, namely section 41 of the Terrorism Act 2000. See in this context the brusque rejection of a comparable argument in O'Hara v Chief Constable of The RUC [1997] AC 286.

[17] Finally, the court drew to the attention of counsel the general principles engaged in cases involving deprivation of liberty outlined in Re Hegarty's Application [2018] NIQB 20 at [28] – [31]. No argument based upon these principles was formulated.

Order

[18] The final order of the court has the following components:

(a) The application for habeas corpus is dismissed.

(b) The Applicant's costs shall be taxed as an assisted person.

(c) The Applicant shall pay the Respondent's costs, to be taxed in default of agreement, but not to be enforced without further order of the court.

[19] We observe, finally, that this being a criminal cause or matter there is no question of any appeal to the Court of Appeal having regard to section 41 of the Judicature (Northern Ireland) Act 1978.