

# Judicial Communications Office

24 January 2019

## COURT CLARIFIES POSITION ON ISSUING OF SUMMONSES BY THE PPS

### Summary of Judgment

The Divisional Court today dismissed an application for judicial review of a decision of a District Judge (Magistrates' Court) to accept a summons issued by the PPS without it having been signed by a Lay Magistrate or the Clerk of Petty Sessions.

On 29 June 2017, the Public Prosecution Service (PPS) sent three complaints to the Northern Ireland Courts and Tribunals Service ("NICTS") relating to driving offences allegedly committed by Rosaleen McDonagh ("the applicant"). A summons was sent out to the applicant later that day to answer the complaint. It was signed by a Public Prosecutor and not by a Lay Magistrate, District Judge or Clerk of Petty Sessions. The applicant's solicitor challenged the legality of the summons being issued by the PPS without judicial consideration but this was rejected by the District Judge (Magistrates' Court). The applicant was convicted and subsequently sought a judicial review of the judge's decision.

#### **The Statutory Background**

Section 93 of the Justice Act (Northern Ireland) 2015 ("the 2015 Act") altered the procedure with regard to the issuance of summonses in the Magistrates' Courts by allowing a Public Prosecutor to issue the summons rather than it being done by a Lay Magistrate or Clerk of Petty Sessions on the application of a prosecutor. The intention of the legislation was to enable a prosecutor from the PPS to issue a summons without first having to get a Lay Magistrate to sign the summons provided that a complaint had been made to a Lay Magistrate.

Counsel for the applicant submitted that the relevant provisions of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order") had not been expressly amended by section 93. Article 20 of the 1981 Order requires a Lay Magistrate to issue a summons. Article 21 of the 1981 Order allows for a Clerk of Petty Sessions to sign a summons rather than having to get a Lay Magistrate to do so. Counsel for the applicant contended that there should have been an express amendment of the 1981 Order to address this point. He further argued that the need for a Lay Magistrate to look at a complaint before a summons was issued introduced a measure of judicial independent purview which was of importance.

#### **Consideration**

Lord Justice Deeny, delivering the judgment of the Divisional Court, referred to section 93(5) of the 2015 Act which provided that any existing statutory provision which applied to a complaint made or summons issued under Article 20 of the 1981 Order shall apply to a complaint made or summons issued by a Public Prosecutor. He said it was not right for counsel for the applicant to say that the legislature had overlooked Article 20 of the 1981 Order when enacting section 93 of the 2015 Act. He considered it was not necessary for the legislature to go further than it did by abolishing or

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amending the reference to a Lay Magistrate in Article 20 of the 1981 Order as this role of issuing a summons still exists for a Lay Magistrate:

“It is important to remember, as can be seen from section 31(3) of the Justice (Northern Ireland) Act 2002, that the PPS does not have a monopoly of prosecutions in Northern Ireland. If complaints are laid by other “persons”, for example, Her Majesty’s Revenue and Customs, they are not entitled to issue the summons of their own motion. In such cases a Magistrate or a Clerk of Petty Sessions on his behalf must still agree to and sign the summons. Therefore it is perfectly proper for Article 20 of the 1981 Order to continue in force and provide for those circumstances”.

Counsel for the applicant made a broader argument that a judicial element in the issuing of summonses existed and had been wrongly removed. Lord Justice Deeny said this argument seemed to be misplaced. Firstly, the legislature is entitled to take this step. Secondly, the receipt of a complaint is a ministerial matter which can be delegated to a member of staff, and now received electronically. Finally, it is the complaint itself which requires the defendant to come before the court and the court’s jurisdiction does not depend upon a summons or warrant being issued: “The legislature has empowered a Public Prosecutor to exercise a role previously exercised by the Clerk of Petty Sessions on behalf of Magistrates”.

Lord Justice Deeny further commented that section 93 of the 2015 Act provides that “the Public Prosecutor may issue a summons” to the person named in the complaint. He said this leaves open the possibility that he may choose to ask the court to issue the summons and while this may not happen in practice, it does seem that the Lay Magistrate could still perform that role personally or by delegation to the Clerk of Petty Sessions.

## **Conclusion**

The Divisional Court concluded there was no good reason in law to criticise the decision of the District Judge (Magistrates’ Court). The effect of section 93 of the 2015 Act is to empower a Public Prosecutor (ie a barrister or solicitor in the service of the PPS and so designated by the Director of Public Prosecutions) to issue a summons to a defendant, provided a complaint has been laid before the Magistrates’ Court according to law. The Court concluded that the complaint and summons in this case are both valid and dismissed the application for judicial review.

## **NOTES TO EDITORS**

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

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