

# Judicial Communications Office

26 April 2019

## COURT DELIVERS JUDGMENT ON POWER OF DISTRICT JUDGE (MAGISTRATES' COURTS)

### Summary of Judgment

The Court of Appeal<sup>1</sup> today held that a District Judge (Magistrates' Courts) did not have power to refuse jurisdiction and attempt to commit the accused to the Crown Court where he had already elected for summary prosecution and had entered guilty pleas to the offences.

#### Background

James McNamara ("the appellant") was arrested in April 2017 and charged with 20 offences including burglary, theft, attempted theft, criminal damage and handling stolen goods. The offences were a mixture of ones that could be dealt with summarily, hybrid offences and indictable offences. Following an appearance at Lisburn Magistrates' Court on 8 May 2017 his solicitor applied to have him arraigned and sentenced. The appellant was put on his election and plea for the indictable triable summarily offences. He consented to be dealt with summarily and entered guilty pleas. His solicitor entered guilty pleas to the remaining hybrid offences.

The District Judge (Magistrates' Courts) ("DJMC") had not heard the facts prior to the appellant being arraigned. She only had the charge sheet and was not provided with a file or statements. After the hearing of the facts, the DJMC formed the view that the offences coupled with the appellant's record meant that this was too serious a matter for the Magistrates' Court given that the maximum sentence at this tier under the Theft Act (NI) 1969 is 12 months. The DJMC informed the parties of her concern that she believed her powers were insufficient to deal with the case and adjourned the matter to afford the prosecution and the defence time to address her on her power to refuse jurisdiction in the Magistrates' Court. Both the prosecution and defence contended that the matter should remain in the Magistrates' Court stating that once a defendant had been convicted the power to reconsider a decision to deal summarily with Theft Act offences lapsed by virtue of Article 46(2) of the Magistrates' Courts (NI) Order 1981 ("the 1981 Order"). The DJMC, however, stated that she had no opportunity to assess the case as the full facts of cases in the Magistrates' Courts are not outlined in open court until a plea of guilty is entered. She refused jurisdiction and further remanded the appellant for preliminary enquiry papers to be prepared.

The DJMC stated the following question for the opinion of the Court of Appeal: "Was I correct in law that I had the power to refuse jurisdiction under Article 46(1) of the [1981 Order] in the circumstances whereby the appellant had elected for summary prosecution and had entered guilty pleas to the offences before the court?"

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<sup>1</sup> The panel was Lord Justice Treacy (delivering the judgment of the Court) and Lord Justice Stephens.

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## The Statutory Background

The Court of Appeal set out the power of the Magistrates' Courts when dealing summarily with indictable offences and hybrid offences in paragraphs [14] – [23] of its judgment. It said the provisions provide a clear statutory sequence so that where:

- i. An adult is charged with an indictable offence specified in Schedule 2 to the 1981 Order; and
- ii. The DJMC, having regard to the matters set out in Article 45(1)(b) of the 1981 Order thinks it expedient to deal summarily with the charges; and
- iii. In accordance with Article 45(1)(c), the accused consents to be dealt with summarily, the DJMC may, subject to the provisions of Article 45 and Article 46, deal summarily with the charge and convict and sentence the accused whether upon the charge being read to him he pleads guilty or not guilty.

The Court commented:

“In short, the DJMC must first appraise himself of the case having regard to the matters set out in Article 45(1)(b)(i)-(v) and, having done so, decide whether he thinks it expedient to deal summarily with the charge. After deciding that it is expedient to deal with the case summarily the accused, following the requisite notice in writing of his right to be tried with a jury, must consent to the matter being dealt with summarily. If the accused so consents the DJMC must then ask him “do you plead guilty or not guilty”.

## Did the DJMC have power to refuse jurisdiction?

Article 46(2) of the 1981 Order provides that a DJMC may reconsider their decision to deal summarily with an offence under Schedule 2 at any time prior to convicting a defendant. Case law clarifies that once the DJMC has pronounced a finding of guilt or accepted a plea of guilty he cannot reconsider his decision to try summarily but this is without prejudice to the power to allow a defendant to withdraw his plea of guilty at any time before sentence. The Court commented:

“We consider that it is clear from the express terms of Article 46(2) of the 1981 Order that once the issue of guilt has been determined it is not open to a magistrate to reconsider a decision to deal with Schedule 2 offences summarily. The authorities and commentaries reinforce what, in our view, is already plain from the express terms of the statutory provision. The prosecution and the defence were correct to have submitted to the District Judge that she did not have the power to refuse jurisdiction under Article 46(2) of the 1981 Order.”

It said that DJMCs have a plain duty to make sufficient enquiry into the facts of the case to satisfy themselves that, so far as the facts are concerned, their powers of punishment are adequate. The duty of sufficient inquiry must be discharged prior to conviction otherwise the power to reconsider the decision to deal with the matter summarily will have lapsed by virtue of Article 46(2). The prosecution has an obligation to bring any relevant matters to the attention of the DJMC so that she can discharge her obligation to make sufficient enquiry.

## Conclusion

The Court of Appeal concluded that the DJMC did not have the power to refuse jurisdiction where the appellant had already elected for summary prosecution and had entered guilty pleas.

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## 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**

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