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**IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**IN THE MATTER OF A DECISION OF DISTRICT JUDGE MARSHALL TO REFUSE TO STATE A CASE**

**Between:**

**PATRIK HORVATH**

**Applicant**

**and**

**THE NORTHERN IRELAND COURTS AND TRIBUNALS SERVICE**

**Respondent**

**and**

**PUBLIC PROSECUTION SERVICE**

**Notice Party**

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**Mr Maguire KC with Mr Donnan (instructed by Swift Solicitors) for the Applicant**
**Mr Henry KC (instructed by the Crown Solicitor's Office) for the PPS**
**Mr McQuitty KC (instructed by the Departmental Solicitor's Office) for the NICTS**

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**Before: Keegan LCJ and McFarland J**

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**KEEGAN LCJ (*delivering the judgment of the court*)**

***Introduction***

[1] By this application, the court is requested to compel District Judge (Magistrates' Courts) Marshall ("the judge") to state a case, pursuant to Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order"), in terms which the judge had refused. These are in summary:

(i) Did the learned district judge err in law in her interpretation and exercise of her power contained within Article 155 of the 1981 Order to amend summary charges laid against the applicant.

(ii) Did the learned district judge err in law by exercising her power to amend the summary charges … considerably outside the statutory time limit of six months, contrary to Article 19 of the 1981 Order.

[2] A written application to state a case on the relevant points of law was made on 2 October 2023. The impugned decision refusing the application to state a case was made on 23 November 2023.

***Factual background***

[3] The case arises amid a family law case and charges relating to child abduction of two children which we summarise as follows. The applicant has two older sons, aged 11½ and 8½, with a previous partner who no longer lives in Northern Ireland and has no contact with the applicant, the children or the Belfast HSC Trust ("the Trust"). They are the subject children in the present proceedings. He also has a 3½ year old daughter with his current partner, PS. PS has another daughter aged 5½ with a previous partner who resides with the family also.

[4] On 14 May 2021, PS made an alleged disclosure, whilst attending a medical appointment, that she and the children had been assaulted by the applicant. These claims were reported to Social Services who had previous and ongoing contact with the family. They went to the family home and offered alternative accommodation for PS and the children; but she declined their assistance. The applicant, who was with the subject children, was not present at the family home at this stage. Social Services contacted the Police Service of Northern Ireland ("PSNI") that the four children residing at the applicant's home address were at risk of suffering significant harm if left in the custody of the applicant.

[5] On 14 May 2021 the PSNI attended the home with social workers and authorised the removal of the two younger children into police protection under Article 65 of the Children (NI) Order 1995 ("the 1995 Order"). The exercise of police powers under this provision is sometimes referred to as the making of a "police protection order." However, this is a misnomer since the exercise of the powers does not involve the making of any court order. The two younger girls were placed with emergency foster carers. Efforts were made to contact the applicant and to locate the subject children. When the applicant returned home without the subject children, he did not inform the police where they were.

[6] The applicant was arrested later that evening outside Newry travelling towards Dublin with his father and his partner, PS; but the two subject children were not in the car. The applicant would not provide the details of the two boys' whereabouts other than to say they were with his mother in Dublin. The applicant was arrested for obstructing police and taken to Banbridge PSNI Station where he was held overnight. He was released the next day without interview or charge.

[7] On 16 May 2021 the PSNI made a 'Missing Boys Appeal' in the media. Emergency Protection Orders ("EPOs") were granted in respect of all four children at Belfast Family Proceedings Court the next day on 17 May 2021.

[8] PSNI attended at the applicant's home on 18 May 2021, and he was arrested on suspicion of common assault, child cruelty and child abduction. He was conveyed to Musgrave PSNI Station for interview and was cautioned. He was interviewed about a variety of allegations, including assaults on the children and his partner; he was also asked about the whereabouts of the two missing boys. The applicant largely gave "no comment" answers to police questions or said he was advised not to answer. The applicant was granted police bail on the investigation into common assault and child cruelty; however, he was refused bail on the child abduction claim and held overnight.

[9] On the morning of 19 May 2021, the applicant was charged with two counts of keeping a child from a responsible person, contrary to Article 68(1)(b) of the 1995 Order. The charges were as follows:

> "KEEPING A CHILD AWAY FROM THE RESPONSIBLE PERSON – That you on the 14/05/2021 knowingly and without lawful authority or reasonable excuse, kept a child in care, namely X away from the responsible person, namely SOCIAL SERVICE, contrary to Article 68(1)(b) of the Children (Northern Ireland) Order 1995.
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> KEEPING A CHILD AWAY FROM THE RESPONSIBLE PERSON – That you on the 14/05/2021 knowingly and without lawful authority or reasonable excuse, kept a child in care, namely Y away from the responsible person, namely SOCIAL SERVICE, contrary to Article 68(1)(b) of the Children (Northern Ireland) Order 1995."

[10] Bail was refused by Laganside Magistrates' Court on 20 May 2021. He was remanded into custody to HMP Maghaberry where he remained until 26 May 2021 when High Court bail was granted. The two subject children were located by An Garda Síochána in Co Tipperary with their parental grandmother on 25 May 2021. They were transported to the border and taken into the care of Social Services under a stranger fostering arrangement. Interim care orders have been in force since 24 May 2021 in respect of all four children.

***Procedural history***

[11] The matter proceeded in the magistrates' court on the basis of four-week remands. Evidence was served on 2 March 2022 after which the applicant entered "not guilty" pleas on 3 March 2022. The criminal proceedings have been subject to a series of adjournments at the request of the defence due to related family and

judicial review proceedings. The case was also listed for contest on three occasions (13 December 2022, 13 June 2023 and 2 August 2023) but was vacated before the date of the first two listings and on the day of the third listing. On several occasions, the Public Prosecution Service ("PPS") indicated an intention to the applicant to proceed "as per the charge sheet."

[12] On 14 April 2022, the defence informed the court of the nature of ongoing High Court family proceedings after which it was agreed with the PPS that an adjournment should be sought to allow for the High Court to deliver a ruling on the lawfulness of the decision to remove the two younger children into police protection. The applicant avers that representations were made by the PPS to the effect that the charges would be withdrawn if it was found that the exercise of police powers under Article 65 of the 1995 Order was unlawful.

[13] The High Court judgment in the family case was delivered on 21 July 2023 ex tempore by Fowler J. The judge made findings that the threshold of significant harm was met as a result of the applicant's and PS's parenting. On the same date the applicant's solicitor also received authority from Fowler J to release the transcript of DC Martin McGearty's evidence to the PPS. In that evidence DC McGearty, who was the investigating officer in the index criminal case against the applicant, confirmed *inter alia* that "emergency protection orders were not granted until the afternoon of 17 May 2021 and this is the point at which a legal authority (the Trust) gained parental responsibility."

[14] On 25 July 2023 the applicant's solicitor wrote to the PPS enclosing the relevant portions of the transcript of DC McGearty as confirmation that the Trust did not acquire parental responsibility until 17 May 2021. On foot of this the solicitor asked for the charges to be withdrawn as prior to this date, the only person with parental responsibility for the subject children, was the applicant (which he shared with their mother who did not live in Northern Ireland).

[15] In response, by email dated 6 September 2023, the PPS stated the following:

> "It has become apparent that the date of the offence as stated on the charge sheet presently before the court is incorrect as it states that the date of the offence is 14th May 2021. You have correctly identified that the date of the offence should in fact be after the order of the court was granted, as this is indeed the prosecution case on the tendered evidence in this case. The date selected by the police in charging was 14th May as this was the date on which your client was first arrested in respect of this incident. When taking a decision to prosecute the directing officer did not identify that the incorrect date had been selected by police. This issue was identified in May 2022 and at this time the directing officer instructed

> the court prosecutor to make an application to amend the date of the offence. The instruction was dated 17 May 2022, but it would appear that the application was not made on 19 May 2022. As the issue arises from error and oversight it is considered that the test for prosecution remains met in this case and it is the intention of the prosecution to apply to amend the date of the offence before the court at the next hearing on 13 September 2023."

[16] On 13 September 2023, two years and four months after the charges were laid, the PPS submitted an application to vary the dates on the above charges to "dates between 17 May - 19 May 2021." The judge allowed the application to amend the charges on 18 September 2023, following which the defence lodged an application to state a case.

[17] Thereafter, the judge refused the application to state a case on 23 November 2023. A certificate of refusal was provided along with a letter from the Northern Ireland Courts and Tribunal Service ("NICTS") outlining the judge's decision.

[18] The judge stated her reasons for refusal of the case stated application as follows:

> "1. The applicant's proposed questions relate to the power to amend charges as set out in Article 155 of the Magistrates' Courts (Northern Ireland) Order 1981, which has already been considered by the Court of Appeal in *DPP v Douglas* [2016] NICA 14. The Court of Appeal found that amendments could be made outside the 6-month limitation period if three criteria were met and I was satisfied that they were in this case, based on the facts set out in the papers. There was no new evidence served and the charge remained the same but was amended to correctly reflect the relevant date the relevant Emergency Protection Orders were granted. I was satisfied there was no prejudice to the defence by the granting of the amendment and it was necessary for raising the real issues at stake.
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> 2. This is a case where the first appearance before the court was on 20/05/2021 and the evidence was subsequently served on 02/03/2022. It has been adjourned on multiple occasions since then at the request of the defence due to related family proceedings and judicial reviews in respect of same. When granting the

amendment, I indicated I would allow further time for a new defence statement, if desired, and for preparation, notwithstanding the delay to date in this case.

3. The application is considered to be frivolous."

***Relevant law***

[19] Both charges refer to Article 68(1)(b) of the 1995 Order, which makes it an offence to knowingly keep a child, who is in care, under an EPO or in police protection, away from the responsible person without lawful authority or reasonable excuse. Subsection (3) specifies that it is a summary only offence. Under Article 19 of the 1981 Order, a magistrates' court must hear a complaint regarding a summary only offence within six months. The period can be varied by specific provisions contained within some statutory offences, such as some health and safety offences, and it does not apply if the offence is capable of being prosecuted on indictment.

[20] A further provision of the 1995 Order which it is necessary to draw attention to is Article 63(4), found under the heading "Orders for emergency protection of children." It provides:

"(4) While an order under this Article (an "emergency protection order") is in force it—

(a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant;

(b) authorises—

(i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there; or

(ii) the prevention of the child's removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and

(c) gives the applicant parental responsibility for the child."

[21] Under Article 146(1) of the 1981 Order any party dissatisfied with any decision of the court upon any point of law may apply to the court to state a case for the opinion of the Court of Appeal. The magistrates' court may refuse to state a case only if it is of the opinion that the application is "frivolous" (Article 146(4)). As

recently stated by this court, this "is obviously a high threshold" (see *Public Prosecution Service v Lewis* [2024] NICA 17 at para [12]). If a magistrates' court refuses or fails to state a case the applicant can apply to a judge of the Court of Appeal for an order directing the magistrates' court to do so (Article 146(7)).

[22] In *McClenaghan (Chief Inspector) v Maxwell* [2000] NIJB 109 the court considered what constituted a "frivolous" application. Carswell LCJ referred to the passage in the judgment of Lord Bingham LCJ in *R v Mildenhall Magistrates' Court, ex parte Forrest Heath District Council* (1997) 161 JP 401 at 408, where Lord Bingham stated that "what the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic." Carswell LCJ opined that "the test is that of hopelessness or academic nature as set out by Lord Bingham LCJ."

[23] More recently, in *Public Prosecution Service v Pearson* [2019] NICA 30, Deeny LJ adopted Carswell LCJ's elucidation of the test in *McClenaghan v Maxwell*, "that the Magistrates' Court should not be rejecting an application for case stated unless it is hopeless or of an academic nature" (para [15]) [emphasis added]. (See also Stephens LJ's discussion, confirming the above interpretation, in the context of a refusal to state a case pursuant to Article 61(4) of the County Courts (NI) Order 1980 in *Murphy v Murphy* [2018] NICA 15 at para [10]).

[24] The two remaining provisions relevant to this court's assessment of the impugned decision are Articles 154 and 155 of the 1981 Order. The former, commonly known as 'the defect provision', states:

> "(1) No objection shall be allowed in any proceedings before a Magistrates' Court to any complaint, summons, warrant, process, notice of application or appeal or other document for any alleged defect in substance or in form or for variation between any complaint, summons, warrant, process notice or other document and the evidence adduced on the part of the complainant, plaintiff, applicant or appellant at the hearing, unless the defect or variance appears to have misled the other party to the proceedings."

[25] Subsection (2) reveals that a discretionary remedy is available to the courts where a party to the proceedings has been misled by such a defect;

> "(2) Without prejudice to the generality of Article 161 (adjournments) or 163 (costs), where a party to the proceedings has been misled by such defect or variance as is mentioned in paragraph (1) the court may, if necessary, and upon such terms as it thinks fit, adjourn the proceedings."

[26] Article 155 of the 1981 Order, often referred to as the 'amendment provision', provides for an express power to amend any complaint and sets out the statutory test to be applied:

> "155. A magistrates' court may during any proceeding upon such terms as it thinks fit, make any amendment in any complaint, summons, warrant, process, notice of application or appeal or other document which is necessary for the purpose of raising the real questions at issue and arriving at a just decision."

[27] The specific issue of whether the prosecution can amend a summary offence after six months is comprehensively dealt with in the decision of *DPP v Douglas* [2016] NICA 14. In this case the prosecution sought to amend a complaint of "taking and driving away" contrary to Article 172 of the Road Traffic (Northern Ireland) Order 1981 to one of "vehicle interference" contrary to Article 8 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983. The District Judge allowed the application even though the six-month period for summary offences had elapsed.

[28] Weatherup LJ, delivering the majority judgment in *Douglas*, conducted a comparative review of the law in England and Wales. The judge discussed the decision in *R v Scunthorpe Justices* [1998] EWHC 228 (Admin) where it was held that a completely new summary only offence could be added by amendment after the expiry of the 6-month limitation period. Dyson J explained that a two-stage test should be applied, namely: (i) Did the new offence involve the "same misdoing"; and (ii) Was it in the interests of justice to allow the amendment? When examining whether the new offence involved the "same misdoing", Dyson J observed that this phrase ought not to be interpreted too narrowly.

[29] Weatherup LJ also noted that the equivalent statutory provisions in England and Wales were less generous than the cumulative effect of Articles 154 and 155 of the 1981 Order. In England and Wales, they have only the equivalent of Article 154, the 'defect provision' (see section 123 of the Magistrates' Courts Act 1980), but there is no equivalent of Article 155. Weatherup LJ extracts from this, and other relevant case law in this jurisdiction (see *DPP v Edens and others* [2014] NICA 55 and *Doonan v McCarney* [1991] NI 213), a three-stage test as follows:

> "[27] In light of the foregoing it is concluded that, in determining whether it is necessary for the purpose of raising the real questions at issue and arriving at a just decision, a summons may be amended after the expiry of the 6-month period, even to allege a different offence or different offences, provided that:

(i) the new offence arises out of the same (or substantially the same) facts as gave rise to the original offence and

(ii) there is a close connection between the new offence and the original offence

(iii) the amendment can be made in the interests of justice."

We adopt this approach.

[30] In any event the parties are *ad idem* that the judge applied the correct legal test identified in *Douglas*.

[31] Before discussing the legal issues that arise, we remind ourselves that the court's jurisdiction is limited to correcting errors of law. The exercise of a discretion by a District Judge, who has applied the correct test, can only amount to an error of law if the decision was *Wednesbury* irrational and/or unreasonable, a notoriously high threshold. (see *ABO Wind (NI) Ltd* [2022] NIQB 3, paras [60]-[61]; *Hegarty* [2018] NIQB 108, para [16]; *McCann* [2022] NICA 60, paras [126] and [129])

***Discussion of the issues***

[32] First, we are bound to say that we do not consider there to be any material difference between the two questions identified in this case stated application. Therefore, having set out the factual background and relevant law, the following questions emerge:

(i) Was the judge wrong in law to allow a prosecution application to amend the date on two charges two years and four months after they were laid.

(ii) Was the judge wrong to conclude that the application to state a case was frivolous and to refuse it.

[33] The starting point in our consideration is that parental responsibility was given to Social Services by the granting of an EPO on 17 May 2021, pursuant Article 63 of the 1995 Order. Evidently, the offence of "keeping a child away from the responsible person, namely, Social Services", as per the charge sheet, could only have been committed following the EPO. The factual question of whether the subject children were in police protection on 14 May 2021 does not have any bearing on this issue. Therefore, we find it difficult to ignore that much of the delay to the criminal proceedings could, in large part, have been avoided.

[34] It was not, in our view, necessary to adjourn the case pending the outcome of parallel family proceedings in order to determine the basic position, as is apparent

from Article 63(4) of the 1995 Order, that the granting of an EPO results in the obtaining of parental responsibility by Social Services. This is a rudimentary principle of family law which we are surprised has caused so much confusion. Self-evidently it is a matter that criminal practitioners should be familiar with and that further training should be provided upon.

[35] With the legal issue in mind, we move to discuss the submissions on the application of the *Douglas* test. The applicant concentrates on the first and third elements of the test, conceding that the second element is met on the facts of this case. We pause to note that the first element is, of course, a factual matter and it is therefore incumbent on the applicant to demonstrate that the new charges are inconsistent with the facts alleged and that this leads to a different case against him. In essence, his argument is that the allegations have effectively changed insofar as the PPS are now suggesting that he, despite not being directly in control of the children due to his incarceration between 18-26 May 2021, was involved in a conspiracy with other family members to keep the children away from Social Services. The applicant adds that there is little evidence to support this new case as most of it relates to events which transpired on 14 May 2021.

[36] We are not persuaded by the applicant's arguments on the first limb of the *Douglas* test. The applicant had some difficulty divorcing the first element from his central submission that the amendment, given the period of delay and representations made by the PPS, was not in the interests of justice. Therefore, at this juncture, we accept Mr Henry's submissions on this point that the applicant is being prosecuted for the same offence, only now with the correct date described in the charges. No additional charge is raised. In our view, this is consistent with the terms of the original charges which as stated above refer to keeping the children away from the responsible person "namely, Social Services."

[37] Moreover, we are not convinced that the nature of the allegation has changed as suggested by the applicant. If it is believed that the applicant could not possibly have committed the offence due to his incarceration on the relevant dates this is an issue which can, and should, be ventilated at trial.

[38] Therefore, we turn to what is the gravamen of the applicant's complaint which was put to the court as follows: was it in the interests of justice that, in summary only proceedings where it has been indicated to the defendant throughout the period of delay that the PPS intended to proceed as per the charge sheet, to amend the charges?

[39] It is argued that the applicant was misled over a substantially prolonged period into believing that the correct dates had been identified. Mr Maguire was at pains to highlight efforts taken by the applicant to point this issue out in correspondence with the PPS. The court was directed to the applicant's defence statement lodged on 19 April 2022. This records the applicant taking issue with the date of the original charge (14 May 2021), which it is stated "is an impossibility as

the only person with parental responsibility was Mr Horvath." The applicant notes that a date of contest was fixed on three occasions and that it was not until after the request from the applicant's solicitor on 25 July 2023 that the PPS indicated an intention to amend the charges.

[40] Given the foregoing, the applicant argues that he was entitled to labour under the belief that the charges raised against him related to 14 May 2021. This is compounded, in the applicant's view, by the representations made by the PPS to the effect that the charges would be withdrawn should the result of the family proceedings reveal that the two subject children were not in police protection on 14 May 2021. Mr Maguire made the additional point that as a consequence of the amended dates, evidence not directly relevant to the new charge is effectively inadmissible as bad character evidence.

[41] The PPS maintains that "it has been patently obvious" since the inception of the case that the subject children were not in the care of Social Services until the EPO was granted. Mr Henry pointed to the statement taken from DC Philip Cummings during the applicant's police interview on 18 May 2021 which states:

> "… I informed Patrik Horvath … that I was further arresting him on suspicion of 2 counts of keeping a child away from the responsible person subject to an emergency protection order in relation to [the sons' names]."

[42] Mr Henry further drew court's attention to the final lines of the interview summary, concluding as follows:

> "Q. I put it to you that you were aware of the EPO, you are aware of the offence of child abduction, are aware of where the children are, and you are without lawful excuse, are willingly keeping them away from lawful responsibility. Anything you wish to say to that?
>
> A. I've been advised not to answer that question. I refer to the statement I made to police before, that they are with a trusted friend."

[43] Accordingly, in the notice party's view, it cannot be said that the applicant was led to believe, even with the alleged representations made by a PPS representative, that the charges would be withdrawn. It is further argued that there is no new evidence relied upon to meet the new date and that a substantial amount of the tendered evidence post-dates 14 May 2021. On the issue of the delay, the respondent makes the point that the applicant, as the author of the delay, should not be permitted, in the interests of justice, to profit from it.

[44] In any case, the notice party notes that the applicant will have the benefit of a fair trial, which has not been put in jeopardy by the amendment. Finally, reliance is placed on what McCloskey J termed in *Re Quigley* [2010] NIQB 132 as the "strong general rule" that it is in the public interest that every person charged with a criminal offence should normally be tried (para [30]).

[45] Mr McQuitty, appearing on behalf of the NICTS, adopted in full the notice party's arguments on the core issues reemphasising that the amended charges allow the trial judge to deal with the real questions at issue. Mr McQuitty also made the point that there is no issue of general importance presented by this case that would apply to magistrates' courts generally and which would require attention by this court. Additionally, it was queried whether the questions posed by the applicant raise any point of law such as they are related only to the application of established law and/or the exercise of discretion by the District Judge.

[46] It follows inexorably from the discussion above that this case boils down to whether the judge erred in her assessment of the third element of *Douglas,* the interests of justice test. In dealing with this point, we remind ourselves that the third element of the *Douglas* test is clearly a matter of discretionary judgment for the District Judge, and we reiterate that the threshold to be surpassed is a high one.

[47] Having considered the submissions made we must simply decide whether the judge has made an error of law or strayed outside the boundaries of her discretion so that her decision could be said to be irrational in the *Wednesbury* sense. The following factors are relevant.

(i) The applicant has not been misled as to the nature of the charge communicated to him from the beginning; evidence remains the same and the applicant has not been unfairly prejudiced. This is particularly evidenced by the content of the interview referred to at para [42] herein.

(ii) The applicant clearly understood the charges as he sought clarification on them. (He could have pursued the case to trial at an earlier stage to potential success as one of the central ingredients of the offence was not met pre amendment of the charges).

(iii) The PPS accepted responsibility for mishandling and the technical error (no allegation of abuse of process).

(iv) The applicant was the main reason for the delay in progressing this case, a point which was also found by the District Judge.

(v) No obvious issue of general importance that would be necessary for the court to address in terms of clarification on the exercise of powers under the 1981 Order arises.

(vi) The PPS may not be said to have acted unreasonably or irrationally by considering the amendment to be in the interests of justice as there is a strong public interest in prosecuting those charged with offences of this nature.

(vii) Even if satisfied that the applicant had been misled as to the evidence presented against him (which is not the case as the tendered evidence remains the same) as per Article 154 of the 1981 Order there is the option of adjournment.

[48] Accordingly, when dealing with whether the judge was incorrect to refuse the case stated on the basis that it was "frivolous", we ask ourselves whether the judge was wrong to conclude that the application was hopeless or academic. Given the discussion above and the factors set out at para [47] which, to our mind, favour the amendment, we find no evidence that the judge was wrong in so holding that the statutory test for refusal was met and accordingly, we find no error of law or irrationality on the part of the judge in applying the interests of justice test.

[49] Properly analysed, the real question at issue is whether the defendant is guilty of the Article 68(1)(b) offences he is being prosecuted for. We understand that the appellant denies the charges and he is entitled to the presumption of innocence. We understand that the applicant has some grievance about how this matter was handled. However, he also chose a litigation strategy which delayed the case and ultimately allowed the PPS to apply to amend the charges. In addition, the undeniable fact remains that the applicant retains the right to contest the charges and to make an abuse of process application at an early stage on the basis of the argument Mr Maguire has raised before us in this application. There is therefore no injustice occasioned by virtue of us refusing this case stated application, and the interests of justice clearly dictates that the serious charges should now be tested in court. Lest there by any residual concerns, we are satisfied that the applicant will have the benefit of a fair trial which we recommend is conducted before a different District Judge as soon as possible.

***Conclusion***

[50] The application to compel District Judge Marshall to state a case for this court is therefore refused.