

Neutral Citation No: [2025] NIKB 61	Ref: McLA12892
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 25/62991/01
	Delivered: 18/11/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY JR344
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**Mr Mullan (instructed by Hunt & Co Solicitors) for the Applicant
Mr McAteer (instructed by the Crown Solicitor's Office) for the Proposed Respondent**

McLAUGHLIN J (*delivered ex tempore*)

Introduction

[1] This is an application for leave to apply for judicial review arising out of a press release issued by the PSNI on 2 May 2025. It was the second of two press releases issued by the PSNI relating to an incident of public disorder which occurred on Ballyholme beach on 11 April 2025 as a result of which the applicant was subsequently arrested for serious criminal offences. The applicant is currently 16 years of age and is therefore a minor. The criminal proceedings are therefore pending before a Youth Court.

[2] It is common case that the press release does not contain the name, address, photograph or other personal details of the applicant. However, it does include the date and location of his first appearance in court, together with the charges which he and his co-accused face and the fact that those charges arise out of the incident on Ballyholme beach on 11 April 2025. The applicant claims that the PSNI press release of 2 May 2025 was sufficient for a "jigsaw identification" when considered along with the substantial amounts of information which had been circulating on social media in relation to the incident. This included commentary, photos and videos arising from the incident.

[3] The applicant seeks leave to apply for judicial review on two grounds. The first is that there has been a breach of Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 ("the 1998 Order") and the second is that there has

been a breach of his rights under Article 8 of the European Convention on Human Rights (“ECHR”).

Article 22, 1998 Order

[4] On the first limb of the challenge, the applicant contends that the press release identified him and amounted to a breach of Article 22(1) of the 1998 Order. It provides in relevant part:

“22.—(1) Where a child is concerned in any criminal proceedings (other than proceedings to which paragraph (2) applies) the court may direct that—

- (a) no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and
- (b) no picture shall be published as being or including a picture of the child, except in so far (if at all) as may be permitted by the direction of the court.”

In response to this ground, the proposed respondent contends that there has been no breach of Article 22 on the basis that it does not provide for a complete prohibition upon any reporting of which might identify a child involved in Youth Court proceedings. The prohibition is limited to making a “report”, which is defined by Article 22(7) to mean “... a report in a newspaper and a report included in a programme service.” Accordingly, the proposed respondent submits that Article 22(1) only prohibits a report contained in a newspaper or a “programme service” which is also defined by Article 22(7) to have the same meaning as is contained in the Broadcasting Act 1990 and refers to broadcasting of sound, images or other service by means of a telecommunications system [per section 201 Broadcasting Act 1990].

[5] It is not disputed that the police press release in this case was neither a programme service nor a report in a newspaper. Nevertheless, the applicant contends that the 1998 Order is out of step with modern methods of communication and should be interpreted generously to include other means of public dissemination of information such as the internet or social media. In response, the proposed respondent contends that whatever the original philosophy behind this provision or however outdated it may be in light of modern methods of communication, it is an instrument of primary legislation which is unambiguous in its scope and that it was not breached in this case. In support of this submission, the proposed respondent also relies upon Article 22(5) which creates a criminal offence for a breach of Article 22(1). Accordingly, it submits that it would be inappropriate to give Article 22(1) a wide interpretation. On the contrary, it is submitted that when construing any statutory criminal offence, the appropriate principle of interpretation

is to construe the provision narrowly. In my view, these are unassailable submissions and it is not arguable that the 2 May 2025 press release constituted a breach of Article 22(1). I, therefore, refuse leave on this ground.

Article 8 ECHR

[6] The second ground of challenge is a more complex one. The applicant contends that even if the press release does not fall within the scope of the Article 22(1) prohibition on reporting, it nevertheless contributed to a jigsaw identification and amounted to an unjustified interference with his Article 8 ECHR rights.

[7] The applicant's affidavit evidence included a selection of social media posts which relate to the Ballyholme beach incident and which provided the backdrop to the PSNI press release. It also included an account of events on the day of his first appearance when two members of the public attended court and directed inappropriate comments towards him, which he claims made him fear for his safety and confirmed in his own mind that his identity and his connection to charges arising out of the Ballyholme incident had been compromised. The applicant's evidence included extracts from his own social media account, which contained commentary from third parties about the incident. These were posted on Snapchat and disappeared before the applicant was able to record a screenshot. While the court does not therefore have evidence of the precise content of these posts, the applicant contended that these individuals had clearly been able to both identify him and track him down online. Accordingly, he contends that the PSNI press release, when considered in connection with the social media postings, was sufficient to give rise to an argument that the police press release facilitated or contributed to a jigsaw identification.

[8] The proposed respondent submitted that none of the social media posts which have been put in evidence actually name or otherwise identify the applicant. It was also submitted that one of the posts which contained his photograph did not name him or make any express connection to the incident on Ballyholme beach. Rather it referred to a separate incident in Helen's Bay.

[8] It appears clear to me from a consideration of the totality of the materials which have been put in evidence that they probably represent an incomplete picture of the materials about this incident which were available online for someone who was sufficiently motivated to search.

[7] For the purposes of article 8 ECHR, if there has been an arguable identification, the question arises whether there has been an interference with the applicant's article 8 rights. The principles governing the scope of article 8 private rights in this area are now well settled. They have been explained in a number of recent leading authorities, including two decisions of the Supreme Court: *JR38* [2015] NI 190 and *Sutherland v HM Advocate for Scotland* [2020] 3 WLR 327. These authorities were also considered recently by the NI Court of Appeal in *Re Cavanagh*

[2021] NICA 37. They make clear that an individual's reasonable expectation of privacy is a very important factor, if not the most important factor, in determining the scope of article 8 rights where private information has been disclosed to the public. In *JR38*, Lord Clarke (at [114]) also emphasised that when determining whether an interference with article 8 rights had occurred in a case involving the disclosure of private information about a child, in addition to considering the child's reasonable expectation of privacy, it was also necessary to take account of all other relevant factors, including matters such as age and consent. The view of Lord Clarke is in accordance with the later decision of the Supreme Court in *Sutherland*, in which it confirmed that a reasonable expectation of privacy would be a very important factor in every case, but not the sole or determining factor when assessing whether an interference had occurred (at [51], per Lord Sales).

[8] In light of the clear importance which the law places upon protecting the identity of children who are subject to criminal court proceedings (as reflected in Article 22 of the 1998 Order), I consider that it is at least arguable that the applicant had a reasonable expectation of privacy in relation to his alleged commission of criminal offences on Ballyholme beach and hence that any identification of him may amount to an interference with his article 8 ECHR rights. On the facts of this case, the more difficult question is whether any identification can be attributable to the actions of the PSNI in making the press release, as opposed to the information about the applicant which appears already to have been circulating on social media. In my view, this issue is not clear cut and is at least arguable that the press release has contributed to an identification of the applicant and that an article 8 interference occurred which would require justification. Accordingly, I consider that the article 8 claim is arguable and I grant leave on the second ground of challenge.

[9] However, the grant of leave is not an end of the matter. It has been urged upon me by the proposed respondent that even if leave is granted, this is not an appropriate case for judicial review because the evidence which will be required to determine the extent to which the PSNI press release might have contributed to any identification, when viewed in the context of what preceded it on social media, will involve a detailed and fact sensitive inquiry, which is unsuited to resolution on affidavit. In support of this submission, the proposed respondent relies upon authorities such as *Re Martin* [2006] NIQB 1 (at [1], per Girvan J); *Re McCann* [2016] NIQB 5 (at [73], per Keegan J) and *Re Wright* [2017] NIQB 29 (at [17]-[18], per Keegan J).

[10] The current evidence relied upon by the applicant appears clearly to provide an incomplete picture of what may or may not have been posted on social media. Resolution of that issue is likely to require discovery, whether by the applicant or possibly by third parties, such as social media providers. Determining the issue of justification will also require detailed factual evidence from the PSNI about what information was available to it, what motivated it to issue the press release and to do so in the terms which they did. Some of that evidence could properly be provided on affidavit but, in my mind, it is clear that the gathering, testing and assessment of

the evidence which is likely to be required on both sides is not well suited to resolution by means of a judicial review.

[11] In light of the lack of dispute about the applicable legal principles, I consider that, in substance, this claim amounts to a relatively straightforward claim for breach of Article 8, albeit one which arises out of an unusual set of facts. The applicant realistically accepts that this is not a case in which the court could order certiorari of the press release and that, if successful, the appropriate relief is likely to be a declaration and/or damages. Since both of those forms of relief and any clarity on police practices could be addressed through a judgment delivered in an ordinary civil claim, the article 8 claim could have been commenced and certainly can easily be progressed by that means. In light of the factual issues which are likely to arise and the possible need for disclosure, including third party disclosure, I also consider that a civil claim is a much more appropriate and effective procedural mechanism to progress the claim.

Conclusion

[12] For all of the reasons set out above, I refuse leave on Ground 1. I will grant leave on Ground 2 and I will exercise my power under Order 53, rule 9(5) to convert the proceedings into a writ action. I will order that the Order 53 statement and the affidavits stand as pleadings in that case and the proceedings are transferred to the King's Bench Division to be progressed by the senior King's Bench Judge. In its written submissions, the proposed respondent contended that the article 8 claim could easily be accommodated within the County Court jurisdiction. However, it confirmed in oral submissions that it is not (at least at this stage) requesting the court to make an order for remittal. That appears to me to be appropriate. Pursuant to Order 78, an order for remittal may only be made upon the application of one party or upon the consent of both parties, which is not currently the case. For present purposes, the action is therefore converted and will be progressed in the King's Bench Division. In light of this order, there is no requirement for the applicant to file a notice of motion.

[13] The costs of the leave hearing shall be costs in the cause in the civil proceedings, save that I make clear that the costs to date on both sides should ultimately be taxed as having been properly incurred as an application for leave to apply for judicial review, rather than simply being subsumed into the costs of a civil action.