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Judgment: approved by the Court for handing down | *Delivered:* **20/02/09**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

HER MAJESTY'S REVENUE AND CUSTOMS
Applicant/Respondent;

and

J M GORRY & SON
Respondent/Appellant.

CASE STATED BY A RESIDENT MAGISTRATE

Before: KERR LCJ, HIGGINS LJ & COGHLIN LJ

COGHLIN LJ

[1] This is a case stated by the deputy resident magistrate in accordance with the provisions of Article 146 of the Magistrates (Northern Ireland) Order 1981. On 14 June 2006, after earlier sittings in September 2005 and March 2006, the deputy resident magistrate sitting in Belfast determined that two Volvo lorries, registration numbers K21 OUJO and J48 RDD, the property of the appellant, should be forfeited in accordance with the provisions of Section 139 and 141 of the Customs and Excise Management Act 1979 ("CEMA").

The Relevant Facts

[2] The facts have been set out by the deputy resident magistrate in the course of an admirably clear and succinct case stated. They are as follows:

(a) The vehicles that are the subject of these proceedings were the property of the appellant. They were seized in the presence of a senior officer of the respondent who was on duty at Warrenpoint Harbour on 9 April 2006. Within 30 days of the seizure the appellant's solicitors sent a letter of objection to the respondent in accordance with the provisions of paragraph 3 of

Schedule 3 to the Customs and Excise Management Act 1979 ("CEMA"). However, the respondent's Notice of Application filing the forfeiture proceedings was dated 21 December 2003, one year and nine months after the date of seizure.

(b) Each vehicle was equipped on either side with two large fuel tanks. The capacity of each tank was estimated to be approximately 1,250 litres. These tanks were legitimate items of Volvo equipment fitted by that firm on request.

(c) The vehicles consisted of two tractor units neither of which was attached to a trailer. Neither vehicle had a driver but each had simply been placed upon a ferry at Heysham to be collected upon arrival at Warrenpoint. On the date of seizure, on arrival at Warrenpoint, there was no fuel in the tanks of either vehicle.

(d) The journey between the ports of Heysham and Warrenpoint by sea takes approximately 8 hours. A schedule prepared on behalf of the respondent based upon the manifests retained in relation to each vehicle at Warrenpoint Harbour confirmed that each of the vehicles had been ferried between the two ports approximately 90-100 times between September 2001 and March 2002. The manifests confirmed that the vehicles often embarked on one day and made the return journey on the following day.

[3] The deputy resident magistrate also recorded that it had been common case that no excise duty had been paid in the United Kingdom on the fuel contained in the tanks of the vehicles but that the appellant had made a claim from the Revenue authorities in the Republic of Ireland in respect of Value Added Tax to which fuel purchased in that jurisdiction was subject. Documentation was provided by the Revenue Commissioners in the Republic of Ireland that confirmed purchases of large amounts of fuel in that jurisdiction by the appellant company. The deputy resident magistrate found that the appellant company is an English based company and no evidence was produced to confirm or indicate that it carried on any business in either Northern Ireland or the Republic of Ireland. No tacograph charts were produced on behalf of the appellant to indicate the mileage of either of the two vehicles that were the subject of seizure.

The Relevant Statutory Framework

[4] Section 141 of CEMA provides as follows:

> "141.- **Forfeiture of ships, etc. used in connection with goods liable to forfeiture.**

(1) Without prejudice to any other provisions of the Customs and Excise Acts 1979, where anything has become liable to forfeiture under the Customs and Excise Acts –

(a) Any … vehicle … which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable… shall also be liable to forfeiture."

[5] The relevant parts VII and VIII of the Magistrates' Court (Northern Ireland) 1981 ("the 1981 Order") provide as follows:

"**Part VII**
Appeals and applications to courts of summary jurisdiction.

Proceedings to be commenced by notice.

76-(1) Where an enactment –

(a) provides for an appeal to be made to a court of summary jurisdiction and neither that enactment nor magistrates' courts rules provide for the procedure to be adopted on such appeal; or

(b) authorises an application for a licence, permit, certificate or other authorisation or for the removal of a disqualification or disability to be made to a magistrates' court and either that enactment or magistrates' court rules direct that the provisions of this Part shall apply;

(c) Authorises an application to a magistrates' court for the disposal, destruction or forfeiture of property;

such appeal or applications shall be initiated by notice under this Part.

Part VIII
Civil Proceedings Upon Complaint

Jurisdiction exercisable upon civil complaint

Nature of jurisdiction upon civil complaint

77-(1) For the purposes of this Part `civil matters' means a matter in which proceedings, other than proceedings under Parts V to VII, may be brought before a court of summary jurisdiction.

(2) Proceedings in a civil matter shall be upon complaint and in accordance with this Part. ….

Time within which civil complaint must be made to give jurisdiction.

78-(1) Subject to this Article and Article 98(1) and to Article 35 of the Domestic Proceedings (Northern Ireland) 1980 and without prejudice to the provisions of any other enactment as to the time within which proceedings may be commenced, a court of summary jurisdiction shall not have jurisdiction to hear and determine a complaint in a civil matter unless the complaint is made within 6 months from the time when the cause of complaint arose, or, where the cause of complaint is a continuing one, from the time such cause last ceased to continue. …"

[6] The relevant provisions of the Travellers Reliefs (Fuel and Lubricants) Order 1995 ("the 1995 Order") are as follows:

"3 – **Relief for fuel and lubricants contained in a commercial vehicle –**

(1) Subject to the provisions of this Order, a person who has travelled from another member state shall on entering the United Kingdom be relieved from payment of excise duty on the fuel and lubricants contained in a commercial vehicle that he has with him.

(2) The reliefs afforded by this Order apply only to fuel that –

(a) is contained in the vehicle's standard tanks; and

(b) is being used or is intended for use by that vehicle.

(3) The reliefs afforded by this Order apply only to fuel on which –

(a) excise duty has been paid in the member state in which the fuel was acquired at a rate that is appropriate to the use to which the fuel is being or is intended to be put; and

(b) the excise duty paid on that fuel has not been remitted, repaid or drawn back.

(4) The reliefs afforded by this Order apply only to fuel and lubricants that were taken into the vehicle within the European Union and are of a type and quantity necessary for the normal operation of the vehicle during its journey.

4 – **Conditions**

(1) The reliefs afforded by this Order are subject to the following conditions; and if any condition is not complied with the fuel and lubricants shall, unless non-compliance was sanctioned by the Commissioners, be liable to forfeiture.

(2) The fuel and lubricants are used only in the vehicle and are not removed from the vehicle except –

(a) temporarily, to facilitate repairs; or

(b) permanently, to be destroyed.

(3) The fuel and lubricants are used only for purposes appropriate to the rate of excise duty paid in the member state in which the fuel was acquired.

(4) The excise duty paid on the fuel and lubricants is not remitted, repaid or drawn back."

[7] Section 127 of the Magistrates Courts Act 1980, the legislation in England and Wales equivalent to the 1981 Order, ("the 1980 Act") provides as follows:

"**127 Limitation of time**

(1) Except as otherwise expressly provided by any enactment and subject to sub section (2) below, a magistrates' court shall not try on information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose."

The appellant's submissions

[8] On behalf of the appellant Mr Larkin QC, who appeared with Mr Ronan Lavery, advanced the following submissions:

(1) That the deputy resident magistrate was wrong in law in finding that the respondent had been free to choose whether to proceed by way of Article 76 or Article 77 of the 1981 Order and that the respondent should have proceeded under Article 77 since these were civil proceedings. In support of his submissions Mr Larkin relied upon the decisions in *Begley v. Jeffrey* [1967] NI 137, *McAfee v. Gilliland* [1979] NI 179 and *Customs and Excise v. Venn* [2001] EW HC Admin 1055.

(2) That the distinction between Northern Ireland and the rest of the United Kingdom with regard to the 6 months' limit for summary forfeiture proceedings constituted discrimination against the appellant contrary to Article 1 of the First Protocol and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The 1995 Act applied across the United Kingdom. Throughout the United Kingdom the respondent had one month in which to give notice of the application objecting to forfeiture. Customs and Excise was a reserved matter and a policy decision could not have been taken to extend a Northern Ireland Order to the United Kingdom. It would be both absurd and irrational for there to be no time limit in Northern Ireland for this Customs and Excise application but a strict time limit of 6 months in the remainder of the United Kingdom.

(3) That no adequate evidence had been called before the deputy resident magistrate that fuel purchased in the Republic of Ireland had ever been used in

the two vehicles seized by the respondent and that, in any event, since no contravention of the 1995 Order or evasion of duty would take place until any fuel contained in the vehicles had been decanted and used in a different vehicle in England and Wales no contravention had occurred. No adequate evidence had been called to confirm that decanting had ever taken place and the deputy resident magistrate was not entitled to infer from the ships' manifests and fuel purchases in the Republic of Ireland that such decanting had taken place.

(4) That even if a specific statutory time limit did not apply in this case the standard as to what was reasonable should be measured against the 6 months time limit set out in Article 78 of the 1981 Order and, accordingly, since no good reason for delay had been established on behalf of the respondent the proceedings should be stayed on the grounds of unreasonable delay.

Discussion

The facts

[9] The deputy resident magistrate was entitled to take into account the facts that each vehicle was equipped with fuel tanks with the potential to hold 2,500 litres of fuel, that the vehicles were regularly and frequently travelling between Heysham and Warrenpoint without either trailers or drivers and that there was evidence of substantial purchases of fuel in the Republic of Ireland by the appellant, despite the complete absence of any rational explanation for such a pattern of events, such as working operations carried out by the appellant in the Republic of Ireland or Northern Ireland. In addition there was the documentation confirming regular significant claims by the appellant for repayment of VAT paid in the Republic of Ireland in the context of a concession that no excise duty on fuel had been paid by the appellant in the United Kingdom. In such circumstances we are quite satisfied that the deputy resident magistrate was entitled to reach the factual conclusions recorded in the case stated on the balance of probabilities.

The procedural argument

[10] Schedule 3 to CEMA contains provisions relating to forfeiture and paragraph 8 of that Schedule provides that proceedings for condemnation of any article as forfeited shall be civil proceedings and may be instituted in England and Wales in either the High Court or a magistrates' court, in Scotland either in the Court of Session or the Sheriffs' Court and in Northern Ireland either in the High Court or in a court of summary jurisdiction. Such proceedings in a court of summary jurisdiction in England and Wales would be subject to a six month period of limitation in accordance with Section 127 of the

1980 Act – see *Commissioners for Customs and Excise v. Venn and Others* [2001] EWHC Admin 1055. However, no such time limit would be applicable to any such proceedings if brought in the High Court in England and Wales or in Northern Ireland or in Scotland if taken before either the Court of Session or the Sheriffs' Court. We also note that CEMA itself does not prescribe a time limit for civil forfeiture proceedings. Schedule 3 paragraph 8 of CEMA refers to proceedings for condemnation as civil proceedings but in our view the wording of Part VIII of the Order of 1981 is quite clear in providing that for the purposes of that Part "civil matters" means proceedings, **other than** (our emphasis) proceedings under Part V to VII. Article 76(1)(*c*) authorising an application to a Magistrates' Court for the disposal, destruction or forfeiture of property is contained in Part VII of the 1981 Order and the Article provides that any such proceedings **shall** (our emphasis) be initiated by notice under that part. In such circumstances we consider that the deputy resident magistrate fell into error when he expressed the view that it was open to the respondent to proceed under either Article 76 or Article 78 of the 1981 Order. However we also consider that the application was correctly initiated by the respondent under Article 76.

[11] In *MacAfee v. Gilliland* [1979] NI 97, a decision of this court, Lord Lowry LCJ decided that proceedings for condemnation of an article as forfeited were properly described as an application for the forfeiture of property and properly brought under Section 86(1) of the Magistrates' Courts Act (Northern Ireland) 1964, the equivalent of Article 76(1) (*c*) of the 1981 Order. We note that the respondent in *MacAfee* pleaded guilty to a charge of bringing goods into the United Kingdom for the purpose of export in contravention of the Agricultural Levies (Export Control) Regulations 1977 contrary to Section 56(1) of the Customs and Excise Act 1952 but there is nothing in that decision to indicate that such a conviction played any part in the reasoning or conclusion of the Court of Appeal. We do not consider that the decision in *Begley v. Jeffrey* [1967] NI 137 to be of any real assistance in determining these proceedings since that decision concerned different legislative provisions that have subsequently been repealed and replaced by a different legal framework.

The CEMA argument

[12] On behalf of the appellant Mr Larkin submitted that Section 141 of CEMA did not permit forfeiture of the vehicles unless and until the fuel contained therein had become liable to forfeiture. He further argued that, prima facie, the fuel contained in the vehicle had been entitled to relief from payment of excise duty in accordance with Article 3 of the 1995 Order unless there had been a failure to comply with one of the conditions set out in Article 4. It was in such circumstances that Mr Larkin submitted that no liability to forfeiture could arise until after the decanting of the fuel subsequent to the vehicle's arrival at Heysham. As noted above there was no fuel in the tanks of either vehicle at the time of seizure.

[13] We reject that submission. The "Conclusions" set out by the deputy resident magistrate suggest at (a) that he considered that the respondent had not been entitled to relief under the provisions of the 1995 Order as a consequence of the successful claims to be repaid duty in the Republic of Ireland. It seems to us that, logically, the reclaiming of duty paid in the Republic would be more likely to occur after any particular consignment of fuel had been delivered. However, the factual findings by the deputy resident magistrate make it abundantly clear that the intention of the appellant, at all material times, was to decant the fuel for use in other vehicles after arrival at Heysham, apart from some portion thereof that would have been used in the short journey from the point of purchase in the Republic of Ireland to Warrenpoint. As we have indicated earlier, we accept that he was entitled to reach such a conclusion. In such circumstances the fuel to be decanted would never have attracted the relief available under Article 3 of the 1995 Order by virtue of Article 3(2)(*b*). In our view Articles 3 and 4 of the 1995 Order might have been more happily drafted so as to indicate clearly that forfeiture was not to be limited to cases of breach of the conditions set out at Article 4. Forfeiture for breach of the conditions detailed in Article 4 presupposes that relief under Article 3 was available prior to such breach. However, it cannot have been the intention of the legislature that fuel being transported with the intention that it was to be removed and used in other vehicles and which, therefore, never attracted the relief afforded by Article 3 should not also be subject to forfeiture.

The argument relating to Article 1 of the first protocol and Article 14 of the Convention

[14] Mr Larkin advanced the submission that the absence of a limitation period in Northern Ireland in relation to summary proceedings for forfeiture in contrast to the six month period applicable to such proceedings in England and Wales constituted discrimination against the appellant in respect of his right to peaceful enjoyment of his property contrary to Article 1 of the first protocol and Article 14 of the Convention.

Article 1 of the first protocol provides that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Article 14 provides a prohibition against discrimination and states that:

" The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination o any ground such as sex, race, colour,

language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[15] In support of this submission he relied upon cases such as *Magee v. UK* [2001] 31 EHRR 822 and *R (Carson) v. Secretary of State for Work and Pensions* [2006] 1 AC 173. Mr Maguire QC, who intervened on behalf of the Lord Chancellor in support of the submission that Article 76 of the 1981 Order was compatible with the relevant Convention provisions, conceded that the proceedings in the present case fell within the ambit of Article 1 of the first protocol and thereby established the necessary connection to bring Article 14 into play – see *M v. Secretary of State for Work and Pensions* [2006] 2 AC 91 and *Regina (Clift) v. Secretary of State for the Home Department* [2007] 1 AC 484 at paragraph [13]. However, he rejected the submission that the appellant had been discriminated against in the sense of being treated less favourably than someone in a comparable position or that any such discrimination was on "any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other social status" – see Article 14.

[16] It was common case that forfeiture proceedings of this kind do not have a time limit in the High Court in England, in the Court of Sessions or Sheriffs' Court in Scotland or in the High Court or magistrates' court in Northern Ireland. The six month limitation period in England and Wales is imposed by Section 127 of the Magistrates' Court Act 1980. That time limit is imposed by the 1980 Act generally in relation to any "civil proceedings" in the Magistrates' Court. The equivalent of Section 127 in Northern Ireland is Article 78 of the 1981 Order which applies a similar six month limitation period to complaints in civil matters, with certain exceptions. However, Article 77 of the 1981 Order under the heading "**Nature of jurisdiction upon civil complaint**" defines "civil matters" as meaning a matter in which proceedings other than proceedings under Parts V to VII may be brought before a court of summary jurisdiction. As noted above the application to a magistrates' court for forfeiture of property is contained in Article 76(1)(*c*) of Part VII of that Order.

[17] Mr Maguire submitted that the true comparison in this case was between people or entities within and subject to the separate jurisdiction of the Northern Ireland legal system and, when the focus was properly so directed, the appellant was unable to identify any differential treatment. He submitted that it was unsustainable for the appellant to base a claim for discrimination upon the distinction between the quite general limitation period fixed by the 1980 Act in respect of civil matters and the separate and specific manner in which the application for forfeiture was dealt with under the provisions of Part VII of the 1981 Order. He argued that such a difference merely reflected the measure of autonomy available to the legal system in Northern Ireland. Mr Maguire further submitted that, in any event, Article 14 only applied in respect

of discrimination grounded upon personal status or characteristics of the type specifically identified in Article 14.

[18] In *Magee v. UK* the applicant had complained that suspects arrested and detained in England and Wales under Prevention of Terrorism legislation could have access to a lawyer immediately and were entitled to the presence of a lawyer during interview, facilities that were not available at that time in Northern Ireland. In addition, in England and Wales, at the relevant time incriminating inferences could not be drawn from an arrested person's silence during interview in contradistinction to the position under the 1988 Order in Northern Ireland. These differences were alleged to amount to a violation of the applicant's rights under Article 14 giving rise to discrimination on the ground of national origin and/or association with a national minority. At paragraph 50 of its judgment the European Court of Human Rights ("ECHR") observed that:-

> "50. The court recalls that Article 14 of the Convention protects against a discriminatory difference in treatment of persons in an analogous positions in the exercise of the rights and freedoms recognised by the Convention and its protocols. It observes in this connection that in the constituent parts of the United Kingdom there is not always a uniform approach to legislation in particular areas. Whether or not an individual can assert a right derived from legislation may accordingly depend on the geographical reach of the legislation at issue and the individual's location at the time. For the court, insofar as there exists a difference in treatment of detained suspects under the 1988 Order and the legislation of England and Wales on the matters referred to by the applicant, that difference is not to be explained in terms of personal characteristics, such as national origin or association with a national minority, but on the geographical location where the individual is arrested and detained. This permits legislation to take account of regional differences and characteristics of an objective and reasonable nature. In the present case such a difference does not amount to discriminatory treatment within the meaning of Article 14 of the Convention."

[19] The reasoning set out by ECHR in *Magee* has been adopted by the courts in this jurisdiction in cases such as *Re Shaw's application* [2004] NI 149 at paragraphs [43] to [46] and *Re McAuley's* application [2004] NI 298 at paragraphs [31] to [37]. The interpretation of "status" in Article 14 as a personal characteristic adopted by the ECHR in *Kjeldsen v. Denmark* [1976] 1 EHRR 711 has been recognised by the House of Lords in *R (Clift) v. Secretary of*

State for the Home Department [2007] 1 AC 484. In the latter decision, after referring at paragraph 58 of her judgment to a substantial number of Strasbourg cases in which violations of Article 14 were found to have been established upon the grounds prescribed by the Article or something very close thereto Baroness Hale went on to observe at paragraph 59:-

> "59. More instructive are the cases in which the basis of the discrimination has been held to fall outside the prescribed grounds. One example is different laws in different jurisdictional regions within the territory of a member state. Thus, it was not a difference in treatment on the grounds of personal status for people in Scotland to be subject to the poll tax before people in England (*P v. United Kingdom* (Application No 13473/87) (unreported) 11 July 1988) or for juvenile offenders in Scotland not to be entitled to the remission granted to juvenile offenders in England and Wales: *Nelson v. United Kingdom* [1986] 49 DR 170."

[20] In support of his submissions Mr Larkin also drew our attention to the decisions in *Chassagnou and Others v. France* (Applications Nos 25088/94, 28331/95 and 28443/95) 29 April 1999 and *Carson and Others v. United Kingdom* (Application No 42184/05) 4 November 2008. He emphasised the fact that the CEMA legislation applied across the British Isles and that no satisfactory justification had been produced on behalf of the Lord Chancellor for the distinction in the way in which forfeiture proceedings were dealt with between the jurisdiction in England and Wales and that in Northern Ireland. According to Mr Larkin each of the reasons put forward by Mr Maguire on behalf of the Lord Chancellor would apply with equal weight to persons or entities bringing fuel into England and Wales from another EU member state.

[21] In our view the two additional authorities cited by Mr Larkin do not materially advance his case. *Chassagnou* concerned a number of smallholder farmers living in the Dordogne and Creuse départements of France who sought to have their lands excluded from those over which the local municipal hunters associations had the right to hunt upon the grounds that they had as much right as larger land holders to avoid compulsory transfer as well as an ethical objection to hunting and a wish to protect wildlife. The "Loi Verdeille" of 1964 provided for the creation of approved municipal hunters associations and required the owners of landholdings smaller in area than certain thresholds, varying from one département to another, to become members of any association set up in their municipality and to transfer to it the hunting rights over their land in order to create municipal hunting grounds. The Loi Verdeille applied in all but three of the départements of metropolitan France, the three exceptions being subject to a special regime inherited from German law. The applicants argued that this law amounted to discrimination contrary to Article

14 of the Convention both in terms of their property rights and their freedom of thought and ethical beliefs. They argued that owners of landholdings exceeding the relevant thresholds had the means to erect fences and were exempted from the obligation to transfer hunting rights to the associations. They also contended that hunt groups received rights over private land free of charge by compulsory transfer whereas nature conservation associations could not acquire protective rights over the lands of their own members. The case did not concern distinctions between separate legal systems within a member state. The jurisprudence of cases such as *Nelson and P* was not cited and the decision predated *Magee v. UK*. The case turned upon the differing treatment afforded to smaller and larger landowners under the provisions of the same law. Perhaps not surprisingly, the court concluded that, since the result of the difference in treatment between large and small landowners was to give only the former the right to object to the compulsory transfer of their lands and the right to use their land in accordance with their conscience, the applicants had established discrimination on the ground of property within the meaning of Article 14 of the Convention.

[22] In *Carson* the ECHR was concerned with applicants who had retired or emigrated from the United Kingdom to countries such as South Africa, Australia and Canada but, having done so, whose state pension payments had remained fixed and had not been increased in line with inflation as would have occurred had they remained resident in the UK. At paragraph 75 and 76 of the judgment the ECHR recorded that the words "other status" in Article 14 had been given a wide meaning so as to include, in certain circumstances, a distinction drawn on the basis of a place of residence. In doing so it reviewed the relevant authorities and noted that:-

> "It is true that regional differences of treatment, resulting from the application of different legislation depending on the geographical location of an applicant have been held not be explained in term of personal characteristics (see, for example, *Magee v. United Kingdom* judgment of 6 June 2000 No 28135/95 and 50 ECHR 2000/1). However, as pointed out by Stanley Burnton J, these cases are not comparable to the present case, which involves the different application of the same pensions legislation to persons depending on their residence and presence abroad."

[23] In this case the legislation that applies across the United Kingdom, CEMA, does not impose a limitation period for applications for forfeiture by way of civil proceedings although it does provide a time limit in respect of criminal offences of 20 years after the commission of an indictable offence and 3 years in the case of summary offences – see Section 146 A. In such circumstances the provisions in Northern Ireland under the 1981 Order in fact reflect the CEMA provisions. The difference in treatment in this case flows

from the provisions, respectively, of the Magistrates' Courts Act 1980 applicable only in England and Wales, and the Magistrates' Courts (Northern Ireland) Order 1981, applicable only in the separate legal jurisdiction of Northern Ireland.

Delay

[24] It is common case that the appellant notified the respondent by letter within 30 days of the seizure of the vehicles in accordance with Schedule 3 of CEMA but that the Notice of Application was not issued and served until some 1 year and 9 months after the date of seizure. Mr Larkin argued that the measure of what might constitute reasonable delay should be by analogy with the 6 month limitation period established by Article 78 of the 1981 Order and that any additional delay should be strictly justified by the respondent. In the skeleton argument submitted on behalf of the appellant it was asserted that the appellant had sustained prejudice as a consequence of being deprived of a speedy determination of the case and, if it succeeded, in being deprived of the vehicles over a period of some 6 years. During the hearing before this court, while Mr Larkin accepted that his client had not called any evidence establishing prejudice before the deputy resident magistrate, he maintained that the delay on the part of the respondent remained unexplained. Mr Hanna QC, who appeared with Mr Ritchie on behalf of the respondent, drew the attention of the court to the fact that no evidence had been called to indicate any impairment of the respondent's right to a fair trial and he pointed out that, in the event of a successful appeal, the respondent would be entitled to be compensated for the loss of use of his vehicles. He relied upon the following observations made by Lord Bingham in the course of giving judgment in *Attorney General's Reference (No 2 of 2001)* [2004] 2AC 72:-

> "16. In its application to civil proceedings, the rationale of the reasonable time requirement is not in doubt. The state should not subject claimants to prolonged delay in pursuing their claims, whatever the outcome, nor defendants to prolonged uncertainty and anxiety in learning whether their opponents' claims will be established or not. The ill consequences of delay in civil litigation, immortalised in *Bleak House*, need no elaboration. In domestic law, a battery of statutory limitations, procedural rules and equitable doctrines address the problem.
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> . . .
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> 21. Secondly, as the Court of Appeal recognised at page 1875, para 19, a rule of automatic termination of proceedings on breach of the reasonable time requirement

> cannot sensibly be applied in civil proceedings. An unmeritorious defendant might no doubt be very happy to seize on such a breach to escape his liability, but termination of the proceedings would defeat the claimant's right to a hearing altogether and seeking to make good his loss in compensation from the state could well prove a very unsatisfactory alternative."

[25] Lord Bingham's observations were considered in this jurisdiction in *Her Majesty's Customs and Excise v. Isherwood* [2008] NIQB 104, a case that concerned a claim by the plaintiff to recover a sum in excess of £2.5 million paid to the defendant pursuant to claims for draw back of duty on alcoholic liquor. The relevant delay was one of approximately 3 ½ years. At paragraph [3] of his judgment Girvan LJ, after referring to the judgments of Lords Bingham and Hope in Attorney General's Reference (No 2 of 2001) went on to say:-

> "That Attorney General's Reference related to criminal proceedings but the reasoning of the House of Lords is also persuasive in connection with civil proceedings having regard to the House's conclusion that only if the delay renders a trial unfair could a stay be considered appropriate. There are other lesser remedies which may be just if a trial can fairly be heard. In the present context, for example, the court may consider that the plaintiff's claim for interest may be disallowed or reduced to take account of culpable delay."

In the light of the statements by Lord Bingham and Lord Hope, Girvan LJ concluded that Article 6 of the Convention did not afford the defendant any different or greater right to a stay of proceedings in respect of delay than was available to him under the want of prosecution line of authorities at common law.

[26] Applying the principles articulated by the House of Lords and adopted in this jurisdiction we do not consider that the respondent has established any violation of his right to a fair and public hearing within a reasonable time in accordance with Article 6 of the Convention nor do we consider that the deputy resident magistrate erred in his finding in relation to that issue.

[27] Accordingly, for the reasons set out above we propose to dismiss the appeal and to answer the questions raised in the case stated as follows:

1. Yes.
2. Yes.
3. Yes.
4. Does not arise.

5. Yes.
6. No.