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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 21/046314

Delivered: 27/04/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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

**IN THE MATTER OF AN APPLICATION BY GERARD HOUSTON
FOR JUDICIAL REVIEW**

**Mr F O'Donoghue KC with Mr M Ward (instructed by Oliver Roche & Co, Solicitors) for
the applicant**

**Ms N Murnaghan KC with Mr C Summers (instructed by the Departmental Solicitor's
Office) for the respondent**

O'HARA J

Introduction

[1] On 1 October 2020 the applicant pleaded guilty to a charge of driving with excess alcohol. A District Judge identified special reasons for not disqualifying him from driving for the otherwise minimum period of 12 months and imposed instead a disqualification for only 28 days. I am not concerned with the decision to impose that reduced period of disqualification. Instead, the issue raised in this application for judicial review was whether the applicant was required to sit the driving test again after his period of disqualification. It was his contention that he was not so required. The respondent, the Driver and Vehicle Agency, contended that he was.

[2] Following an exchange of skeleton arguments counsel for the applicant conceded that the application for judicial review is without foundation. It was, however, suggested that this is an issue upon which there is some confusion and inconsistency of approach. In the circumstances, I was invited to make the position as clear as possible.

Statutory Framework

[3] The applicant was charged with driving with excess alcohol on 2 December 2019, contrary to Article 16(1)(a) of the Road Traffic (NI) Order 1995 ("the 1995

Order”). That offence is considered to be an offence involving both obligatory disqualification and obligatory endorsement of the licence pursuant to Articles 3 and 4 and Schedule 1 of the Road Traffic Offenders (NI) Order 1996 (“the 1996 Order”).

[4] Article 3 of the 1996 Order specifies those offences for which an endorsement is obligatory. They include driving with excess alcohol. Article 4 then defines the offences which involve obligatory disqualification and those which involve discretionary disqualification. The various offences are set out in Schedule 1. An Article 16(1)(a) offence carries with it obligatory disqualification and obligatory endorsement whereas, for example, an Article 16(1)(b) offence of being in charge of a motor vehicle with excess alcohol also carries an obligatory endorsement but only a discretionary disqualification.

[5] Article 35 of the 1996 Order then provides:

“35.—(1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than 12 months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.”

Since the disqualification was obligatory in this case, the court had to and did find special reasons, otherwise the disqualification for the applicant would have been not less than 12 months.

[6] Article 41 of the 1996 Order then provides:

“Disqualification until test is passed

41.—(1) Where this paragraph applies to a person the court must order him to be disqualified until he passes the appropriate driving test.

(2) Paragraph (1) applies to a person who is disqualified under Article 35 on conviction of —

- (a) manslaughter by the driver of a motor vehicle, or
- (b) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving) or Article 10 of that Order (dangerous driving).

(3) Paragraph (1) also applies —

(a) to a person who is disqualified under Article 35 or 40 for such period, in such circumstances or for such period and in such circumstances as the Department may by order prescribe, or

(b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

(4) Where a person to whom paragraph (1) does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test)."

[7] On a proper analysis of Article 41, the court must order him to be disqualified from driving until he passes the appropriate driving test even though he was only disqualified for 28 days. That is because under Article 41(3) he is a person who was disqualified under Article 35 and therefore falls within Article 41(1). There is a clear difference between Article 41(3) and Article 41(4). The effect of this distinction is that if the disqualification is obligatory then the court must order the individual to be disqualified until he passes the appropriate driving test. On the other hand, if it is only the endorsement which is obligatory, and not the disqualification, a court may order him to be disqualified until he passes the appropriate test, but it is not mandatory that the court does so.

[8] To the extent that there is any confusion about this position, it stems from the provisions of Article 42 of the 1996 Order. Under the heading "Effect of order of disqualification" it provides as follows:

"42.—(1) Where the holder of a licence is disqualified by an order of a court, the licence shall be treated as being revoked with effect from the beginning of the period of disqualification.

(2) Where—

(a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or

(b) the order is made under Article 28,

paragraph (1) shall not prevent the licence from again having effect at the end of the period of disqualification."

[9] It appears that this has somehow been understood to mean that where a disqualification of less than 56 days is imposed, a licence may be effective again from the end of the period of disqualification. It is, however, clear from the wording of Article 42(2)(a) that this only applies where the endorsement was obligatory but not where the disqualification was obligatory. So, applying that to the circumstances of this case, the fact that Mr Houston was only disqualified for 28 days does not mean that he falls within Article 42 because it was not just the endorsement of his licence which was obligatory but also his disqualification.

[10] If any further confirmation of this approach is required it is found in Article 2 of the Road Traffic Offenders (Appropriate Driving Test) Order (NI) 1997 ("the 1997 Order"). Under the heading "Circumstances in which a person is disqualified until appropriate driving test passed", it provides:

"2. The circumstances prescribed for the purposes of Article 41(3)(a) of the Order of 1996, in relation to a person who is disqualified under Article 35 of that Order, are where a person is convicted of an offence under any of the following provisions of the Order of 1995, that is –

- (a) Article 14 (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs),
- (b) Article 15(1) (driving or attempting to drive while unfit),
- (c) Article 16(1)(a) (driving or attempting to drive with excess alcohol), and
- (d) Article 18(7) (failing to provide a specimen), where that is an offence involving obligatory disqualification."

[11] The effect of Article 2 of the 1997 Order on a person such as Mr Houston who has been convicted under Article 16(1)(a) of the 1995 Order of driving with excess alcohol is that even if his disqualification is only for a reduced period such as 28 days, he is disqualified from driving until he has passed an appropriate driving test. Thus, the effect of a reduced period of disqualification for 28 days is more serious than it first appears as a result of the provisions of Article 2.

Conclusion

[12] It was the position of the Driver and Vehicle Agency, the respondent, that Mr Houston had to re-sit his driving test after his 28 day disqualification. The

analysis of the legislation set out above was the analysis submitted to the court on behalf of the respondent. It has been conceded on behalf of the applicant that this analysis is correct, a view which I share.

[13] The only consolation for a person whose disqualification has the effect of requiring him to re-sit the driving test, in accordance with Article 41(3)(a), is found in Article 42(4) which provides:

“(4) Notwithstanding anything in Part II of the Order of 1981, a person disqualified by an order of a court under Article 41 is (unless he is also disqualified otherwise than by virtue of such an order) entitled to apply for, obtain and to hold a provisional licence and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted.”

[14] The effect of this provision is that when the period of disqualification comes to an end, the individual may obtain a provisional driving licence and drive on the conditions which have to be complied with by all holders of such a licence, unless and until, that individual passes the driving test.