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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE QUEENS BENCH DIVISION (JUDICIAL REVIEW)

AN APPLICATION BY PAUL LAVERTY FOR JUDICIAL REVIEW

Between

PAUL LAVERTY

Appellant

-v-

POLICE SERVICE FOR NORTHERN IRELAND

and

POLICE APPEALS TRIBUNAL

Respondents

Morgan LCJ, Weatherup LJ and McBride J

WEATHERUP J (delivering the judgment of the Court)

[1] The appellant appeals against the decision of Treacy J dated 19 March 2015 dismissing the appellant's application for Judicial Review by reason of the appellant's delay. Mr C. Coyle appeared for the appellant and Mr J. Kennedy for the respondents.

[2] By notice lodged on 11 July 2014 the appellant applied for leave to apply for Judicial Review of decisions of the Police Appeals Tribunal made on 16 September 2013 and 23 October 2013 whereby, in disciplinary proceedings, the appellant was dismissed from the Police Service for behaving in a way that was likely to bring discredit on the Police Service. The application for leave was not made promptly or within 3 months of the decision, as required by the rules.

[3] Horner J granted leave to the appellant on 12 November 2014. He required the Police Service of Northern Ireland to be joined as a respondent, gave leave to the appellant to amend his application accordingly and deferred to the substantive hearing the issue of the appellant's delay in bringing the application for leave to apply for Judicial Review.

[4] Treacy J dealt with the issue of the appellant's delay at a substantive hearing on 19 March 2015. The written decision of the Tribunal confirming the dismissal of the appellant from the PSNI was issued on 23 October 2013 and the application for leave to apply for Judicial Review was lodged on 11 July 2014. Treacy J stated that the application was not made promptly or within 3 months, the whole of the period of delay needed to be explained and any extension had to be for good reason. He concluded that the delay had not been satisfactorily explained. It was stated not to be in the interests of good administration for the matter to be permitted to proceed. The appellant's costs of the Tribunal hearing had been ordered to be paid from police funds. The respondents would be put to the expense of holding a reconvened hearing and the Northern Ireland Policing Board put to the expense of presenting the case in any further appeal and witnesses would be required to attend and give evidence again. Treacy J concluded that there was no good reason for extending time and dismissed the application.

[5] The appellant's Notice of Appeal relies on 3 grounds, namely that Treacy J -

(i) erred in failing to conclude that the PSNI had acted unlawfully by using material unlawfully provided to it by An Garda Siochana and information arising from it for the purposes of a misconduct investigation and internal disciplinary proceedings.

(ii) erred in failing to conclude that the Police Appeals Tribunal had acted unlawfully by failing to exclude from relying upon in its proceedings material unlawfully provided for the PSNI by An Garda Siochana and information arising from it.

(iii) erred in failing to determine any of the appellant's grounds of judicial review and grant any of the forms of relief.

[6] It will be apparent that the appellant's grounds of appeal do not concern themselves with the basis on which Treacy J dismissed the application, namely the appellant's delay in commencing the proceedings.

[7] Nevertheless, the appellant's skeleton argument on this appeal did address the issue of delay. The appellant noted that Treacy J had not addressed the substantive issues but had been concerned only with the issue of delay. The appellant contended that the question of delay must ordinarily be determined at the leave stage. Thus, if leave is granted, the appellant contended that the question of delay and whether there are valid grounds for extending time and whether there

would be prejudice or hardship or detriment to good administration should not be re-opened at the substantive hearing, unless the respondent has brought a successful application to set aside the grant of leave. Reliance was placed on R v Criminal Injuries Board ex parte A [1999] 2 AC 330 at 341 and Turkington's Application [2014] NIQB 58.

[8] The appellant noted that the respondents had not brought any application to set aside the grant of leave and therefore contended that Treacy J should not have dismissed the application without consideration of the merits nor should this Court do the same.

[9] The appellant accepted that delay may otherwise be relevant at the substantive hearing if the Court is of the opinion that the delay is such as to justify the exercise of discretion to refuse to grant relief by reason of that delay. However the appellant contended that, having considered the merits, this Court, in all the circumstances, had no grounds to exercise discretion to refuse relief to the appellant by reason of delay. The appellant contended that there were good grounds for the grant of relief on the merits of the application.

[10] After some uncertainty on the part of Counsel as to the treatment of the issue of delay at the leave hearing before Horner J on 12 November 2014 we have listened to the recording of the proceedings and are satisfied that Horner J reserved the issue of delay to the substantive hearing. Accordingly this is not a case where a respondent proposing to revisit the issue of delay was required to make an application to set aside the grant of leave.

[11] Order 53 Rule 4(1) of the Rules of the Court of Judicature requires -

> "An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made."

[12] In England and Wales, in addition to the Rules of Court, section 31(6) of the Supreme Court Act 1981 provides –

> "Where the High Court considers there has been undue delay in making an application for judicial review, the court may refuse to grant –
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> (a) leave for the making of the application; or
> (b) any relief sought on the application,
>
> if it considers that the granting of the relief sought would be likely to cause substantive hardship to, or substantially

prejudice the rights of, any person or would be detrimental to good administration."

[13] Section 18 of the Judicature (Northern Ireland) Act 1978, which confers jurisdiction on the High Court in this jurisdiction in relation to Judicial Review, does not contain a provision equivalent to section 31(6) of the Supreme Court Act 1981.

[14] The present wording in Order 53 Rule 4 was introduced in 1989. Carswell J took the view that while the time question could be argued at the leave stage it could be further argued and further evidence could be considered on the substantive hearing – Wilson's Application [1989] NI 415.

[15] In relation to the delay provisions in England and Wales, the House of Lords took the view that once leave had been granted the Court could not refuse relief at the substantive hearing on the time point under the rules of court unless the Court had set aside the grant of leave – R v Criminal Injuries Board ex parte A [1999] 2 AC 330.

[16] Girvan J adopted the same approach in this jurisdiction in relation to Order 53 Rule 4(1) in Bell's Application [2000] NI 245.

[17] The issue of delay may be deferred at the leave hearing. Further evidence may be required in order to address the issue. While Gillen J did not consider that delay was so inordinate as to be necessarily fatal at the leave stage, the proposed respondent was permitted to re-canvass the issue of promptness in light of an affidavit to be made by the applicant dealing with the question of delay. The question was to be fully addressed prior to the hearing of the substantive matter - Sheridan Millennium Limited's Application [2008] NIJB 1.

[18] Where the grant of leave had been unopposed by the respondent in an out of time application a notice party later raised the issue of the applicant's delay. Treacy J adjourned the matter for argument on delay and the application was dismissed as there was stated to be no good reason to proceed. The matter appears to have been treated as an application to set aside the grant of leave - Turkington's Application [2014] NIQB 58.

[19] In relation to England and Wales the test applied by Kay J in R v Secretary of State for Trade and Industry ex parte Greenpeace Limited [2000] Env LR 221 was as follows:

(i) Is there reasonable objective excuse for applying late?

(ii) What, if any, is the damage in terms of hardship or prejudice to third party rights and detriment to good administration which would be occasioned if permission were now granted?

(iii) In any event does the public interest require that the application should be permitted to proceed?

[20] Bearing in mind that the overall test for extension of time in this jurisdiction is stated in Order 53 Rule 4(1) to be whether there is 'good reason' to extend time, the above matters would be included in the Court's consideration of whether there is good reason to extend time.

[21] The position may be summarised as follows –

(i) An application for leave must be made promptly and in any event within three months.

(ii) If there has been delay, the application for leave should include (a) an application to extend time stating the grounds relied on and (b) an affidavit explaining all aspects of the delay.

(iii) The Court may extend time for good reason. Although not stated in legislation in this jurisdiction, consideration of good reason would include consideration of the likelihood of substantive hardship to, or substantial prejudice to the rights of, any person and detriment to good administration. Also included would be whether there was a public interest in the matter proceeding.

(iv) At the leave hearing the Court may grant or refuse leave and also may (a) defer leave for further consideration of delay or (b) grant leave subject to further consideration of delay, in each case either as a preliminary matter or at the substantive hearing.

(v) If time has been extended for good reason and leave granted, a party proposing to raise delay or to re-examine delay should apply to set aside the grant of leave.

(vi) On a substantive hearing delay may impact on the relief granted.

[22] In the present case leave was granted with the issue of delay being deferred by Horner J at the leave stage. In the event the issue of delay was dealt with by Treacy J as a preliminary matter prior to a substantive hearing.

[23] This application was not made promptly or within 3 months. The Court must consider whether there is good reason to extend time.

[24] A period of 9 months elapsed between the issue of the written decision and the making of the application. The appellant referred to a legal aid application made in September 2013 and refused on appeal in November 2013, to his moving house and his solicitor being unable to make contact until the end of November 2013, to the

solicitor suffering a family bereavement which put back consideration of the case until prior to Christmas 2013 when a letter before application was sent and to an application for legal aid being made in early January 2014. The 3 month period elapsed in January 2014. A reply to the letter before application was received at the end of January 2014 and legal aid was granted in June 2014.

[25] There is no explanation for the failure to make the application for leave to apply for Judicial Review promptly or within 3 months of the decision of 23 October 2013. There is no explanation for the failure to make the application until July 2014. It appears that the grant of legal aid was awaited prior to making the application.

[26] The delay in proceeding with the application has not been fully explained. There is no good reason for extending time based on the outstanding application for legal aid. Although an application for legal aid may be a factor contributing to good reason to extend time an applicant must make and pursue the legal aid application in a timely fashion. That did not occur in the present case.

[27] A reason advanced for not extending time was stated to be the interests of good administration based on the arrangements for the appellants costs of the disciplinary hearings and the effect of a further hearing before the Tribunal. This Court agrees that these matters would be relevant considerations in assessing whether there was good reason for extending time. However it is not clear that a further hearing before the Tribunal would arise. If the Tribunal decision were to be quashed because the evidence had been poisoned by the initial receipt by PSNI of the AGS data then there may be no basis for any further Tribunal hearing.

[28] Other factors relevant to the consideration of good reason to extend time would include whether the application raised an important point of law, whether a determination of the matter in dispute concerned a wider public interest, the strength of the applicant's claim and the consequences of proceeding or not proceeding for the applicant, the other parties and the public generally. These matters require some assessment of the merits of the application.

[29] The appellant provided his summary of the background in an Order 53 statement as follows. A complaint was made against the appellant to An Garda Siochana arising from an alleged incident on 14 July 2010 at the Bronze Age Tanning Salon in Letterkenny; the appellant was interviewed on 2 September 2010 by AGS officers but informed that no crime was committed; he has never been cautioned or charged with an offence arising from the events of 14 July 2010; subsequently, AGS disclosed information relating to the allegations to the PSNI which resulted in the PSNI initiating its own investigation on 10 September 2010; AGS provided further information to the PSNI in furtherance of its investigation on 30 November 2010 which included witness statements and CCTV evidence; as a result of the PSNI investigation disciplinary proceedings were initiated against the appellant arising from the information disclosed by AGS; the Data Protection Commissioner's Office of the Republic of Ireland subsequently held that AGS had accepted that the

disclosure of the information to the PSNI was without legal basis and therefore unlawful; as a result of the Data Commissioner's Office investigation and findings in January 2012 AGS formally asked the PSNI to return the data; despite being made aware by AGS that the information had been provided to the PSNI without lawful basis the PSNI continued to pursue the disciplinary proceedings against the appellant and to make use of the material in the course of the proceedings; although the PSNI claimed in July 2012 to have returned the material disclosed by AGS, in the course of the Tribunal proceedings, it retained copies of this material and used it and information derived from it throughout the disciplinary process; the investigation by the PSNI and the disciplinary proceedings resulted in the appellant being dismissed from the PSNI; the Tribunal determined on 16 September 2013 that there was no reason to exclude the material unlawfully provided by AGS to the PSNI and information arising from its consideration; the Tribunal relied upon the information admitted on 23 September 2013 to uphold the appellant's dismissal from the PSNI.

[30] Accordingly, the appellant sought the quashing of:

(i) The decision of the PSNI to initiate an investigation and misconduct proceedings and to continue those proceedings against the appellant based on the information unlawfully disclosed by AGS.

(ii) The decision of the Tribunal of 16 September 2013 determining that there was no reason to exclude material unlawfully obtained from AGS and information arising therefrom.

(iii) The decision of the Tribunal of 23 September 2013 affirming the decision of 16 September 2013 and upholding the applicant's dismissal from the PSNI based on material unlawfully obtained from AGS and information arising from it.

[31] The information furnished by AGS to the PSNI comprised the following:

(i) Statement provided to Garda English dated 16 September 2012.

(ii) Statement provided to Garda dated 9 September 2009.

(iii) Statement provided to Garda dated 17 July 2009.

(iv) An after caution statement made by the appellant on 2 September 2010.

(v) A CCTV disk obtained by Garda from the Bronze Age Tanning Salon, Letterkenny, and working copies made from same.

(vi) An investigation report in connection with suspicious approaches to females in the vicinity of Ballymacool Wood.

[32] The appellant was charged with two disciplinary offences under the Police Service of Northern Ireland (Conduct) Regulations 2000 as amended. The first charge was that on 14 July 2010 whilst off duty he behaved in a manner that was likely to bring discredit upon the PSNI. The second charge was that during September 2010 the appellant failed to report to the Chief Constable that he was the subject of a criminal investigation by AGS having made a statement under caution to Garda English on 2 September 2010 and subsequently failed to notify the Chief Constable.

[33] On 3 August 2011 a misconduct hearing was convened and evidence given by three civilians as to the events of 14 July 2010 and the CCTV footage was shown to the Panel. The Panel were satisfied on the first charge and the sanction of dismissal was imposed. The Panel was satisfied on the second charge and the sanction of reprimand was imposed.

[34] On 10 October 2011 Chief Constable Matt Baggot conducted a review by reading the case papers and viewing of the CCTV footage. Both the finding and the sanctions imposed by the Panel on 3 August 2011 were upheld by the Chief Constable.

[35] The appellant complained to the UK Information Commissioner's Office by letter dated 3 December 2011 referring to the Data Protection Act 1998 and the processing of data in relation to the appellant. By letter dated 22 December 2011 the Information Commissioner's Office responded to the appellant's complaint by stating in a letter to the PSNI -

> "In this case, we have decided that it is likely that PSNI has complied with the requirements of the DPA. This is because there is no strong indication that they have unfairly processed Mr Lavery's personal data in the circumstances of this case."

[36] The decision of the Data Protection Commissioner in the Republic of Ireland was issued to the appellant on 19 April 2012. It was stated that on 20 December 2011 the Data Protection Commissioner received a response from AGS informing him that following its investigation into the matter it was satisfied that there was no legal basis for the disclosure of the appellant's file to the PSNI and that AGS was satisfied that the breach was unintentional. The Data Protection Commissioner then expressed the opinion that AGS had contravened the Data Protection Acts 1988 and 2003 at section 2(1)(d) by disclosing the appellant's personal data to a third party without his knowledge or consent by supplying to the PSNI a file containing the appellant's personal data without his prior knowledge or consent.

[37] The AGS data was returned to AGS. However that data was used by the PSNI as the trigger for the PSNI investigation. The PSNI investigation led to the interview of the witnesses to the events of 14 July 2010 and their aftermath and the

obtaining of statements, that information being described as the PSNI data. The appellant objects to the use made by the PSNI of the AGS data and of the PSNI data generated by the investigation of the AGS data.

[38] The appellant appealed to the Tribunal. A hearing on 16 September 2013 was concerned with the admissibility of evidence. The decision referred to documentation and information provided directly by AGS to PSNI which resulted in a disciplinary investigation and witnesses being interviewed by the PSNI and statements taken. CCTV recorded information was also received and viewed by PSNI. This activity resulted in the gathering of new information by the PSNI which the Tribunal referred to as "the PSNI Data". The preliminary issue before the Tribunal was stated as follows -

> "The core issue which requires to be determined by this tribunal is whether or not, in the light of the return of the AGS data by PSNI and exclusion of this AGS data from the papers and other information to be considered by the Tribunal, the entirety of the PSNI data may be properly admitted in evidence before the Tribunal."

[39] The appellant's argument was that the impugned PSNI data arose directly on account of the existence of and the transfer to PSNI of the AGS data and this was referred to as the fruits of the poisoned tree. The appellant referred to the PSNI Code of Ethics 2008. The respondent referred to the Regulations where the matter of the admissibility of evidence was stated to be a matter to be determined by the presiding officer of the Tribunal. Regulation 12(4) of the Appeals Regulations provides that any question as to whether evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the Tribunal. The Tribunal referred to the UK Information Commissioners determination in the letter of 3 December 2011, to the absence of any competent authority having found the PSNI to have acted in breach of any material provision, to the general rule of law in civil proceedings that if evidence is relevant it will ordinarily be admissible and concluded that all the PSNI data could properly be admitted as it was relevant and material.

[40] The Tribunal resumed on 23 September 2013 and having heard the evidence and arguments in relation to the charges preferred decided that the appellant's appeal be dismissed. The written decision of the Tribunal issued on 23 October 2013.

[41] The Tribunal stated its finding that on the basis of the evidence and upon the balance of probabilities the appellant engaged in an act of intentionally looking over a partition when the lady in the next cubicle was in a state of partial undress and that the appellant was observed by that lady undertaking this action. The effect of the appellant's intentional action was stated to have been portrayed in evidence in a very clear compelling and distressing account of matters emerging from the contemporaneous CCTV and from the oral testimony to the Panel and the Tribunal.

Throughout the process the appellant had maintained a version of events which the Tribunal stated was improbable to the extent of being not in any manner credible.

[42] The Data Protection Act 1998 contains the statutory regime. Data is information that is recorded and processed. Personal data is any information about a living individual from which they can be identified. Sensitive personal data includes personal data consisting of information on the alleged commission of any offence. It is the information that is protected. Processing includes obtaining, recording, holding or using the information or data. The PSNI obtained information from AGS and used that information. The supplier of the information acted in breach of the statutory regime in the Republic of Ireland. Schedule 1 to the 1998 Act contains the Data Protection principles. The first principle is –

> "Personal data shall be processed fairly and lawfully and in particular shall not be processed unless –
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> (a) at least one of the conditions in Schedule 2 is met, and
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> (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

[43] On the interpretation of the first principle Part II of Schedule 1 provides -

> 1. In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.
>
> 2. For the purposes of the first principle personal data are not to be treated as processed fairly unless the data controller ensures so far as practicable that the data subject has made readily available to him the identity of the data controller, the purpose or purposes for which the data are intended to be processed and any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

[44] The conditions in Schedule 2 include –

at paragraph 3, that the processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract,

at paragraph 5, that the processing is necessary for the administration of justice and for the exercise of any functions conferred on any person by or under any enactment and for the exercise of any other functions of a public nature exercised in the public interest by any person.

[45] The conditions in Schedule 3 include –

at paragraph 2(1), that the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment,

at paragraph 6, that the processing is necessary for the purpose of or in connection with, any legal proceedings or is otherwise necessary for the purpose of establishing, exercising or defending legal rights,

at paragraph 7(1), that the processing is necessary for the administration of justice or for the exercise of any functions conferred on any person by or under an enactment.

[46] Part IV of the 1998 Act contains exemptions which include –

at section 35(2), disclosure that is necessary for the purposes of or in connection with any legal proceedings or is otherwise necessary for the purpose of establishing, exercising or defending legal rights.

[47] The duties and responsibilities of the PSNI are set out in the Police (NI) Act 2000. PSNI disciplinary proceedings are governed by the RUC (Conduct) Regulations 2000 and the RUC (Appeals) Regulations 2000. The Conduct Regulations at Schedule 4 contain the Code of Ethics 2008. The charges preferred against the applicant concerned breaches of the Code of Ethics. The PSNI Policy Directive on Integrity and Professional Standards (PD 11/07) states the responsibility for promoting the integrity of the PSNI and the aim of generating pride and trust in the PSNI through the enforcement of the Code of Ethics.

[48] Article 3.1 of the Code of Ethics provides that police officers shall gather, retain, use and disclose information or data in accordance with the right to respect for privacy and family life contained in Article 8 of the European Convention on Human Rights and shall comply with all relevant legislation (which includes the Data Protection Act 1998) and PSNI policy and procedure governing the gathering, retention, use and disclosure of information or data. It is clear that the Code applies to confidential information and data obtained about other police officers and to any

investigation, hearing or decision relating to disciplinary proceedings for misconduct.

[49] This Court is satisfied that, within a statutory framework, the investigation into the conduct of the appellant and the disciplinary proceedings against the appellant were undertaken in furtherance of the public interest in the integrity of the PSNI and its membership and the removal of those adjudged to be unsuitable.

[50] This Court is satisfied that the exemption in section 35 (2) applies, namely that disclosure was necessary for the purposes of or in connection with legal proceedings and was otherwise necessary for the purpose of establishing, exercising and defending legal rights. The PSNI has the legal right to regulate the conduct of its members and to remove those adjudged unsuitable.

[51] In any event this Court is satisfied that, for the purposes of the first principle, at least one of the conditions in Schedule 2 is met, namely the conditions at paragraphs 3 and 5 above. The processing of the information was necessary for compliance with the legal obligation to conduct disciplinary proceedings against police officers and for the administration of justice and for the exercise of functions conferred by the legislation and for the exercise of functions of a public nature exercised in the public interest.

[52] Further, this Court is satisfied that, in the case of this sensitive personal data, for the purposes of the first principle, at least one of the conditions in Schedule 3 is met, namely under paragraphs 3, 6 and 7 above. The processing of the information was necessary for the purposes of exercising or performing a right and obligation conferred or imposed by law in connection with employment and for the purpose of and in connection with legal proceedings and for the purpose of establishing, exercising and defending legal rights and for the administration of justice and for the exercise of functions conferred under the legislation.

[53] The first principle also provides that personal data must be processed fairly and lawfully.

[54] In determining whether the personal data was processed fairly regard is to be had to the method by which the data was obtained. We are satisfied that the AGS data was obtained innocently. It was provided innocently by AGS although it later transpired that the transfer of information to the PSNI was in breach of the legislation in the Republic of Ireland. The AGS data was received innocently by the PSNI in that it was not known on receipt to have been provided in breach of the legislation in the Republic of Ireland. The AGS data was subsequently returned to AGS.

[55] Further, the personal data will not have been processed fairly unless the appellant knew the identity of the PSNI as data controller and the purpose of

processing the data and information about the processing of the data, a requirement that was satisfied in the present case.

[56] We look to the overall fairness of the use of the information. The AGS data was used as the trigger for the investigation by the PSNI. The investigation resulted in further statements being obtained from the witnesses and these became the PSNI data. The information that went to the proof of the disciplinary charges was the oral evidence of the witnesses to the Panel and the Tribunal. The conduct of the appellant outlined by the witnesses was not disputed by the appellant. What was in issue was the appellant's explanation for his conduct. The Tribunal's conclusion was not based directly on the information supplied by AGS or the information gathered by the PSNI but rather on the oral evidence presented to the Tribunal and the Tribunal's assessment of the witnesses and the appellant.

[57] Had the lady in the cubicle made a complaint to the PSNI about the appellant's conduct on 14 July 2010 it is to be expected that an investigation and disciplinary proceedings would have followed to the same effect.

[58] Had the appellant reported the AGS investigation to the PSNI, as he should have done, it is to be expected that an investigation and disciplinary proceedings, in relation to his conduct on 14 July 2010, would have followed to the same effect.

[59] In the circumstances outlined above this Court is satisfied that the data and the information were used fairly.

[60] In addition the data must be processed lawfully. Such unlawful conduct as occurred in the Republic of Ireland did not of itself invalidate the use of the information by the PSNI in this jurisdiction.

[61] Article 8 of the European Convention on Human Rights should be brought into the equation and provides as follows –

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country for the prevention of disorder or crime for the protection of health or morals or for the protection of the rights and freedoms of others."

[62] To the extent that the use of the information constituted an interference under Article 8(1), that interference must be justified under Article 8(2). Any interference

must be in accordance with the law. The processing of information and data by AGS has been found to be in breach of the Data Protection Act 1988, as amended in 2003, as applied in the Republic of Ireland. The appellant contends that, where there has been a finding in one Member State that information was not processed in accordance with the law, another Member State cannot be satisfied that the processing of the information is justified under Article 8(2). This Court cannot accept that contention. The finding in the Republic of Ireland relates to the processing of the information by AGS. This Court is concerned with the processing of information by the PSNI and the Tribunal, with which the Commissioner in the Republic was not concerned.

[63] We are satisfied that the use of information by the PSNI and the Tribunal was not in breach of the Data Protection Act 1998 applicable in this jurisdiction, for the reasons set out above.

[64] Was the processing of the information in this jurisdiction otherwise in accordance with the law? The applicant contends that the actions of AGS, not being in accordance with the law, tainted the actions of the PSNI in reliance on that information in their investigation and tainted the actions of the Tribunal in admitting the evidence that resulted from that investigation. Ultimately the objection is to the admissibility of the evidence against the applicant on the basis that it was the result of information supplied illegally by AGS. However, assuming for present purposes that the evidence had also been obtained illegally by the PSNI, such evidence is not thereby inadmissible in legal or disciplinary proceedings. For example, in criminal proceedings the general rule is that evidence obtained unlawfully, improperly or unfairly is admissible as a matter of law, subject to certain exceptions and the discretion to exclude evidence, as to which see the discussion in Blackstone's Criminal Practice, 2016 Edition, from paragraph F2.13. The Tribunal admitted the evidence, as it was entitled to do.

[65] The Court has been satisfied that the processing of information and data by the PSNI and the Tribunal has not been in breach of the 1998 Act or any other domestic legal requirement.

[66] Any interference must be necessary for a specified legitimate purpose. The legitimate aims include the protection of the rights and freedoms of others. The proceedings undertaken against the appellant were for that purpose, namely the discipline of those holding the office of constable whose conduct was adjudged to bring discredit on the police service.

[67] Further there must be proportionality between the measures undertaken and the legitimate aim. The means employed in the use of the information concerned the investigation and pressing of disciplinary charges to achieve a legitimate aim and the means employed were those required to achieve the aim. Thus the measures applied were proportionate. Any interference was justified.

[68] Accordingly the Court has not been satisfied that there are any grounds to interfere with the decision of the PSNI to initiate the investigation and the misconduct proceedings or the decision of the Tribunal to admit in evidence the PSNI data or the decision of the Tribunal to uphold the dismissal of the applicant.

[69] Returning to the issue of the appellant's delay, the Court is satisfied that the present case does not raise an important point of law nor does it involve a dispute that concerns a wider public interest nor does the preliminary assessment of the strength of the appellant's case nor the consequences for the parties indicate that time should be extended.

[70] The Court is satisfied that the appellant did not apply for leave to apply for Judicial Review either promptly or within three months of the issue of the written decision of the Tribunal and there is no good reason to extend time.

[71] In any event, had the Court been satisfied on any of the grounds for substantive relief advanced by the appellant, the Court probably would have exercised its discretion to refuse the grant of relief to the appellant. The Court is mindful that the consequences for the appellant in effect involve the loss of employment. Nevertheless his conduct and the investigation by AGS should have been reported by him to his superiors. His explanation for his conduct was rejected by the Tribunal. In those circumstances his removal from the police was virtually inevitable. Such conduct brings discredit on the police force. It would not be in the public interest that any relief be granted.

[72] The appellant's appeal is dismissed.