

<b>Neutral Citation No: [2020] NICA 55</b>	<b>Ref: MOR11354</b>
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>
	<b>Delivered: 24/11/2020</b>

**IN HER MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND**

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**PPS**

**-v-**

**LEE BROWN**

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**Mr Henry (instructed by PPS) for the Prosecution**  
**Mr Moriarty (instructed by Madden and Finucane Solicitors) for the Defendant**

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**Before: Morgan LCJ, Treacy LJ and Keegan J**

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

[1] This is an application to require a County Court Judge to state a case in respect of the conviction of the applicant on the hearing of an appeal from the Magistrates’ Court of an offence contrary to Article 10 of the Public Order (Northern Ireland) Order 1987 (“the 1987 Order”).

[2] The prosecution arose from the distribution by the appellant of leaflets at Moat Rd, Ballymena on 20 October 2018. The leaflets were headed “Stop the Influx of Migrants into Ballymena...Now!” The content of the leaflet referred to the people of Ballymena being furious at the massive influx of gypsy migrants from Eastern Europe and referred to antisocial behaviour, attacks on local residents and the draining of council resources that could have been spent on the people of Ballymena. The leaflet purported to be directed to the need for local politicians to take action.

[3] Article 10 of the 1987 Order provides as follows:

“A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if-

- (a) he intends thereby to stir up hatred or arouse fear or;

- (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.”

[4] The prosecution served written evidence of the content of the leaflet, its distribution and the interview of the applicant. The case proceeded thereafter on the basis of submissions both in writing and orally from the prosecution and defence. The trial judge determined that the only issue for the court to determine was whether the contents of the leaflet were protected by Article 10 of the European Convention on Human Rights.

[5] The learned trial judge indicated that she was satisfied having regard to the rights of freedom of expression both at common law and under the Convention, the contents of the leaflet had crossed the boundary and the appeal was dismissed.

[6] The applicant applied to the judge to state a case setting out 4 points of law which he wished to pursue. At the hearing before us the only point pursued was the first:

“Was the appellant’s conviction under Article 10 of the Public Order (NI) Order 1987 compatible with Article 10 of the European Convention on Human Rights and Fundamental Freedoms?”

[7] As a result of the disruption to court hearings at that time the matter was not brought to the attention of the learned trial judge until 29 April 2020. By letter dated 22 May 2020 the judge indicated that in her opinion the points raised in the letter of 18 March ostensibly raised a matter of law but the issue in the case was the court’s interpretation of the leaflet and whether the contents thereof in fact contravened Article 10 of the 1987 Order. She considered that the court dealt exclusively with findings of fact in respect of the contents of the leaflet and therefore refused to state a case for the opinion of the Court of Appeal.

[8] Article 61 of the County Courts (Northern Ireland) Order 1980 provides for the circumstances in which the case may be stated for the opinion of the Court of Appeal.

“61.-(1) Except where any statutory provision provides that the decision of the county court shall be final, any party dissatisfied with the decision of a county court judge upon any point of law may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this Article, it shall be the duty of the judge to state the case....

(4) If the county court judge is of opinion that an application under paragraph (1) is frivolous, vexatious or unreasonable he may, subject to paragraphs (5) and (6), refuse to state a case and, if the applicant so requires, shall give him a certificate stating that the application has been refused on the grounds stated in the certificate....

(6) Where a county court judge refuses to state a case or fails to state a case within such time as may be prescribed by county court rules, the applicant may apply to a judge of the Court of Appeal for an order directing the county court judge to state a case within the time limited by the order, and the judge of the Court of Appeal may make such order as he thinks fit.”

[9] Plainly the learned trial judge must have considered that the application fell within Article 61 (4) of the 1980 Order. It is unfortunate that at no stage of these proceedings was the learned trial judge referred to the decision of Maguire J in Jolene Bunting’s Application [2019] NIQB 36 which contains between paragraphs [37] and [44] a careful analysis of the impact of Article 10 of the Convention on certain types of speech. We feel sure that if she had been so referred she would have taken a different view.

### **Conclusion**

[10] We are satisfied that we should direct the County Court judge to state a case on the point of law set out at paragraph [6] above within 28 days. The applicant should submit a draft of the case to the judge and the prosecution within seven days and the prosecution should provide its response to the defendant and the judge within a further seven days.