

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN MANCHESTER
DIVISIONAL COURT

Civil Justice Centre, 1 Bridge Street
West, Manchester M60 9DJ

Date: 24/07/2019

Before:

LORD JUSTICE HICKINBOTTOM
and
MR JUSTICE BUTCHER

Between:

**THE CHIEF CONSTABLE OF GREATER
MANCHESTER POLICE**

Appellant

- and -

RAYYAN ALI

Respondent

**Ms Sarah Thomson (Solicitor Advocate instructed by the Legal Services Section,
Greater Manchester Police) for the Appellant**
The Respondent neither appeared nor was represented

JUDGMENT

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Mr Justice Butcher:

Introduction

1. This is an appeal by way of a case stated from a decision made by David Batten JP (“the Magistrate”) in the Greater Manchester Magistrates’ Court on 31st August 2018.
2. The factual background is as follows. On 31st August 2018 two police officers, PC Andrew Pearson and DC John Lonsdale, appeared before the Magistrate, sitting in Tameside Magistrates’ Court. PC Pearson applied *ex parte* for two search warrants for the Respondent’s address in Oldham under s. 8 Police and Criminal Evidence Act 1984 and s. 23 Misuse of Drugs Act 1971. Both applications were granted.
3. In addition to those search warrant applications, PC Pearson also submitted a written application for “appropriate approval” under s. 47G(2) Proceeds of Crime Act 2002 (the “2002 Act”) to search for realisable property at the Respondent’s address.
4. The Magistrate declined to give “appropriate approval” on the basis that the condition in s. 47B(2) of the 2002 Act was not met because the Respondent had not been arrested for an indictable offence at the time that this application was made.

The Case Stated

5. The Magistrate subsequently stated a case, which is dated 30th November 2018. That case set out the facts which I have already summarised. It also included paragraphs 13 and 14, as follows.

“13. Appropriate approval under s. 47G(2) Proceeds of Crime Act 2002 was refused as the officer could not satisfy what Mr. Batten interpreted to be the pre-requisite condition in section 47B(2)(b) Proceeds of Crime Act 2002 at the point that the application was made, namely that (b) a person had been arrested for the offence.

14. PC Pearson was informed that he could seek appropriate approval from a senior police officer, as defined by s. 47G(4) Proceeds of Crime Act 2002, once the conditions set out in s. 47B(2) Proceeds of Crime Act had been met and if it was not practicable to secure the approval of a Justice of the Peace”.

6. The question which the magistrates’ court posed for the opinion of the High Court was:

“In refusing to give appropriate approval under s. 47G(2) Proceeds of Crime Act 2002, did I correctly interpret the legislation as requiring that one of the sets of conditions in section 47B(2)-(8) has to have already been met before approval can be given?”

The Statutory Provisions

7. It is necessary to set out the relevant provisions of the 2002 Act in some detail in order to address the question which has been posed.
8. S. 47B(1) provides: “An appropriate officer may exercise the powers conferred by section 47C if satisfied that any of the following conditions is met”.
9. As to that provision, firstly, the “power conferred by section 47C” is the power to seize realisable property, specified in s. 47C(1). Secondly, “the following conditions” are the seven sets of conditions set out in ss. 47B(2)-(8). These seven sets of conditions cover a number of different situations ranging from the early stages of a criminal investigation to the situation where a person has been convicted of a criminal offence and the prosecutor is pursuing confiscation proceedings under the provisions of Part 2 of the 2002 Act.

10. The first two of the sets of conditions may be referred to as they represent the earliest situations and the ones which are most germane to the present appeal.

They are as follows:

“47B(2) The first condition is that –

- (a) a criminal investigation had been started in England and Wales with regard to an indictable offence,
- (b) a person has been arrested for the offence,
- (c) proceedings for the offence have not yet been started against the person in England and Wales,
- (d) there are reasonable grounds to suspect that the person has benefited from conduct constituting the offence, and
- (e) a restraint order is not in force in respect of any realisable property.

47B(3) The second condition is that –

- (a) a criminal investigation has been started in England and Wales with regard to an indictable offence,
- (b) a person has been arrested for the offence,
- (c) proceedings for the offence have not yet been started against the person in England and Wales, and
- (d) a restraint order is in force in respect of any realisable property.”

11. As I have already said, s. 47C deals with the power to seize realisable property.

S. 47C(1) provides:

“(1) On being satisfied as mentioned in section 47B(1) an appropriate officer may seize any realisable property if the officer has reasonable grounds for suspecting that-

- (a) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against the defendant, or
- (b) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person.”

12. By s. 47C(6) it is provided that:

“The power conferred by this section –

(a) may be exercised only with the appropriate approval under section 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power...”

13. Ss. 47D to 47F deal with search powers of premises, people and vehicles respectively. Under each, an appropriate officer may search for property which he has reasonable grounds for suspecting may be found and which may be seized under s. 47C. Each of these sections provides that the power(s) conferred by the section “may be exercised only with the appropriate approval under s. 47G unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.” None of those sections provides that the officer must, before carrying out the search, be satisfied that one of the sets of conditions in s. 47B is met.

14. In so far as relevant for present purposes, s. 47G provides as follows:

“47G ‘Appropriate approval’

(1) This section has effect for the purposes of sections 47C, 47D, 47E and 47F.

(2) The appropriate approval, in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means –

...

(b) in relation to the exercise of a power by a constable, a senior police officer...

(4) A senior police officer means a police officer of at least the rank of inspector.”

The Arguments on the Appeal

15. On this appeal, the Appellant contends that the Magistrate erred in law in deciding that one of the sets of conditions in s. 47B of the 2002 Act had to be met before appropriate approval could be given. The Respondent has not responded to the claim and has not participated in the appeal or the hearing before us.

16. The argument presented by Ms Sarah Thomson on behalf of the Appellant was as follows.
 - (1) There is no provision in any of ss. 47B to 47F (or within s. 47G) requiring the magistrate or senior officer to be satisfied that one of the sets of conditions in s. 47B is met before giving appropriate approval for the exercise of the search and seizure powers under ss. 47C to 47F.

 - (2) Ss. 47D to 47F each make reference to the search power being exercisable if the appropriate officer has reasonable grounds to suspect that relevant property will be found on the premises, person or in the vehicle. None provides that the search may only be conducted if the appropriate officer is satisfied that any of the sets of conditions of s. 47B is met, unlike the seizure power in s. 47C. Equally s. 47B(1) makes no reference to the powers in ss. 47D to 47F, by contrast with those mentioned in s. 47C.

 - (3) There is a good reason why the provisions should not be construed as meaning that one of the sets of conditions in s. 47B has to be met before there can be an appropriate approval. This is that if there were such a

requirement, it would mean that very many grants of appropriate approval for a search would have to be given by a senior officer rather than a magistrate, and this would undermine Parliament's plain intention to provide for judicial oversight, with approval from a senior officer only being permitted if the obtaining of the approval of a justice of the peace is not practicable in a particular case. This is because, if approval cannot be given before arrest, then applications for appropriate approval will have to be made as a matter of urgency after arrest, before an application could be prepared and brought before a magistrate.

Discussion and Conclusions

17. In my judgment, the argument of the Appellant to the effect that appropriate approval for searches under ss. 47D to F and for seizure under s. 47C can be granted at a stage when none of the sets of conditions in s. 47B has yet been met in full at the time of the application because a person has not by then been arrested, is correct.
18. I consider that the correct analysis of the relevant sections of the 2002 Act is that they do not specify any particular matters of which the magistrate or senior officer must be satisfied for the purposes of giving appropriate approval under s. 47G(2). In particular the 2002 Act does not specify that the magistrate or senior officer has to be satisfied that, at that point, all parts of one of the sets of conditions in s. 47B is met. The decision whether to grant approval is an open discretion conferred on the magistrate or senior officer.
19. Clearly, however, the decision as to whether or not appropriate approval is given for a search or seizure is a very important one. It is one which involves a

significant invasion of a person's privacy and it is one which must be properly justified.

20. Approval would be unlikely to be given unless the magistrate or senior officer was shown that the matters in respect of which the appropriate officer has to be satisfied at the time of the proposed search or seizure will apply. In relation to seizure under s. 47C this means that the magistrate or senior officer would need to be satisfied that at the point at which it is sought to seize property, the appropriate officer will be satisfied that one of the sets of conditions in s. 47B is fully met. Furthermore, in practice the magistrate or senior officer is likely to need to be satisfied that all the parts of one of those sets of conditions has already been met at the time of the application, save only that if reliance is placed on one of the first two sets of conditions, an arrest may not already have been made. But in that case, the magistrate or senior officer is likely to need to be satisfied that an arrest is likely to have been effected by the point at which it is sought that the power may be exercised.
21. Similarly, the magistrate or senior officer is likely to need to be satisfied that there are good grounds to believe that at the time any search or seizure is to be carried out, the appropriate officer will have the relevant grounds for suspicion specified in ss. 47C(1), 47D(1), 47E(1) or 47F(1).
22. With respect to the decision of the Magistrate, I do not consider that the construction of the sections of the 2002 Act which he favoured is the correct one. In my view it was clearly intended that the situations in which appropriate approval for a search under ss. 47D to 47F may be given are not confined to ones where all of the requirements of one of the sets of conditions in s. 47B is

met. None of those sections refers to the s. 47B conditions, nor does s. 47B refer to those sections. If appropriate approval could only be obtained for searches after an arrest, it would be likely that very many if not most such approvals, if obtainable at all, would have to be obtained from a senior officer rather than a magistrate, because of the length of time it would take to make the application to the magistrate, and the risk that in the meantime the realisable property would be dissipated. That would not, in my judgment, be consonant with the intention of s. 47G(2), which envisages that the first port of call should be a magistrate and only a senior police officer if it is not practicable to obtain the approval of a justice of the peace in the particular case.

23. Moreover, if appropriate approval can be granted for a search under one of ss. 47D to 47F before there has been an arrest and therefore before any of the sets of conditions in s. 47B is fully met, as I consider it clearly can, it would be surprising and inconvenient if appropriate approval for a s. 47C seizure could not be given until after an arrest has been made. That would mean that a second appropriate approval might very well have to be sought for the seizure after the search and arrest. If that was indeed required, then that second appropriate approval would again very probably have to be given by a senior officer rather than a magistrate, because it would have to be obtained in circumstances where it was impracticable to prepare an application and obtain approval from a magistrate. Again, I do not consider that to be consonant with the intended primacy of judicial control provided for by s. 47G(2). As I have said, I consider that the correct analysis is that the magistrate or senior officer can grant an approval for there to be a seizure if an arrest which has not been made at the time of the application has been effected before the seizure takes place and, in

practice, will require to be satisfied that there are good grounds to believe that an arrest will occur.

24. I do not consider that there is anything in the Criminal Procedure Rules, rule 33.28, which indicates a different conclusion. Those rules cannot influence the construction of the primary legislation, which in my judgment is as I have set out. However, in any event, where in rule 33.28.3(a)(ii) it is specified that the application must explain how a “proposed” seizure “meets” the conditions prescribed by s. 47B and other sections, I consider that what this refers to is how the proposed seizure will meet the relevant condition at the material time.
25. For these reasons, I would answer the question posed for the opinion of the High Court: “No, it is not necessary for one of the sets of conditions in section 47B(2) to (8) of the 2002 Act to have already been met before an appropriate approval may be given under s. 47G(2) of the 2002 Act”.

Lord Justice Hickinbottom:

26. I agree.
27. As my Lord, Butcher J, has explained, the Magistrate erred in confusing, on the one hand, matters upon which *as a matter of law* the magistrates’ court is required to be satisfied before approving the exercise of search and/or seizure powers under sections 47(b)-(g) of the Proceeds of Crime Act 2002; and, on the other hand, matters upon which *in practice* the court may need to be satisfied before approving the exercise of those powers.
28. In approving the exercise of the powers, section 47(g) gives an open discretion to the magistrates’ court; and, as a matter of law, the scheme does not require

the court to be satisfied that any particular condition or conditions are met at the time of the application. However, as my Lord has described, in practice, unless the magistrates' court is satisfied that conditions in respect of which the appropriate officer has to be satisfied at the time of the proposed search and/or seizure have been met at the time of the application, the court is unlikely to give its approval; because the position with regard to most of the conditions will not in practice change between the date of the application and the date of the exercise of the powers to search and/or seize. In respect of other conditions, the court will no doubt have to be persuaded that, prior to their exercise, it is the intention to comply with all conditions that must be met at the time of the exercise of the powers, and in fact they will likely be met by that time. But those practicalities do not convert the matters into statutory requirements in respect of which, as a matter of law, the court has to be satisfied before giving its approval.

29. In respect of disposal, I agree with my Lord that the answer to the question posed by the magistrates' court to this court is "No". Therefore, the appeal will be allowed. However, as we understand from Ms Thomson that the relevant matters relating to the Respondent have now completely run their course, we shall make no further order.