Neutral Citation Number: [2020] EWHC 1611 (Admin)

Case No: CO/33/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2020

Before :

LORD JUSTICE DINGEMANS
AND
MR JUSTICE DOVE

- -

Between :

Peter John Winder	**Appellant**
- and -	
Director of Public Prosecutions	**Respondent**

- -
- -

Leslie Smith (instructed by **Hogan Brown Solicitors**) for the **Appellant**
Paul Jarvis (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 11th June 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be listed on 19th June 2020 at 1030.

Judgment Approved by the court for handing down.

Mr Justice Dove :

1. This is an appeal by way of case stated following a hearing at Poole Magistrates' Court on 3 September 2019 at which, following an application by the appellant, the District Judge ruled that the charges he faced had been brought in time.

2. The complainants in this matter, Mr and Mrs Jones, are customers of the Santander Bank. They had been on holiday, and on return noticed potentially fraudulent activity occurring on their bank account. Mrs Jones rang the bank on 13 March 2018 and spoke to a fraud investigator, who it is clear was the appellant. They had a heated argument. The prosecution case is that the appellant then used the bank's internal system to discover the complainants' mobile and landline telephone numbers. On 18 March 2018 and 19 March 2018, Mrs Jones received a number of calls on her landline from a withheld number. These were concluded to be harassing rather than threatening calls. On 20 March 2018 Mr Jones received a call from a male saying that he knew where Mr Jones lives and that he was coming to get him.

3. On 18 April 2018 the appellant was arrested and interviewed by the police and his mobile phones were seized and subsequently examined. In the interview the appellant gave no comment and provided a prepared statement in relation to the allegations which were put to him. By 6 December 2018 the mobile phone examinations had been completed, and a file had been compiled for submission to the CPS. The file was reviewed by a senior police officer and it was submitted to the CPS on 18 January 2019. In a certificate signed on 17 July 2019 by a Senior Crown prosecutor she certifies that she had evidence within her knowledge sufficient to justify the commencement of criminal proceedings on 5 February 2019 and that she made a decision to charge the appellant on 4 March 2019.

4. The appellant was charged with offences under section 127 of the Communications Act 2003 (see below) by way of a postal requisition dated 17 May 2019. As set out above, on his behalf it was contended, unsuccessfully, before the District Judge that the prosecution had been commenced out of time. This appeal and the questions posed by the District Judge centre on the question of whether or not that decision was correct.

5. At the hearing on 3 September 2019 it was indicated on the appellant's behalf that a guilty plea would be likely to be entered in due course. A pre-sentence report was obtained. At a hearing on 30 September 2019 the District Judge was informed of the application that had just been made to state a case in respect of his ruling that the prosecution was in time. The District Judge indicated that in the event it was necessary for him to sentence the appellant he would be minded to impose a community disposal. Thus, the view was taken that the outcome of this question in relation to the timeliness of charging is central to the result of these proceedings.

6. The charges which were preferred were as follows:

> "That between 17 March 2018 and 21 March 2018 19 Brookfield Avenue Liverpool L23 3DN Mr Winder persistently made use of an electronic communications network for the purposes of causing annoyance, inconvenience or needless anxiety to another, contrary to section 127 (2)(c) and (3) of the Communications Act 2003;

That on 20 March 2018 at 19 Brookfield Avenue Liverpool L23 3DN Mr Winder sent by means of a public electronic communications network a communication that was grossly offensive or of an indecent, abusive or menacing character, contrary to section 127 (1) (a) and (3) of the Communications Act 2003."

7. Section 127 of the Communications Act 2003, so far as relevant to these proceedings, provides as follows:

"127 (1) a person is guilty of an offence if he-

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent.

(2) a person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he-

(a) sends by means of a public electronic communications network, a message that he knows to be false,

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network.

(3) a person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or to both.

…

(5) an information or complaint relating to an offence under this section may be tried by a magistrates' court in England and Wales or Northern Ireland if it is laid or made-

(a) before the end of the period of 3 years beginning with the day on which the offence was committed, and

(b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings.

…

(7) a certificate of a prosecutor as to the date on which evidence described in subsection (5)(b) or (6)(b) came to his or her knowledge is conclusive evidence of that fact."

8. The offences created by section 127(1) and (2) of the 2003 Act are summary only. Section 127(5) provides time limits for the bringing of a charge. It is sensible to conclude that the postal requisition process equates, for the purposes of section 127(5), to the laying of an information given that it is the commencement of the criminal proceedings.

9. It is common ground that, whilst the application to the Magistrates' Court for the court to state a case pursuant to section 111 of the Magistrates' Court Act 1980 was made in time, the application to appeal to this court was brought one day out of time. It was further common ground that this court has jurisdiction to extend time for the appeal to be brought before the court by virtue of the provisions of the CPR (see CPR 52.15). The explanation for the failure to comply with the time limit is simply that there was an administrative oversight by those representing the appellant. It is pointed out that it was not the appellant's fault that this occurred. Whilst it is beyond argument that a failure to comply with the time limit provided in CPR PD 52E para 2.2 is a serious failure to which significant weight should attach, and bearing in mind the fact that there is in truth no real excuse for the default, nonetheless having regard to the particular circumstances of the case and in particular the fact that the notice of appeal was submitted only one day too late and the consequences for the appellant are very significant involving criminal liability, I am satisfied that it would nonetheless be just to allow the appeal to proceed out of time.

10. A further preliminary point has been raised in relation to whether it is proper for the court to consider this appeal, on the basis that it is in effect an appeal by way of case stated at an interlocutory stage of proceedings. Mr Smith, who appears on behalf of the appellant, contends that in exceptional cases it is permissible for the court to consider an appeal by way of case stated in relation to a matter arising at an interlocutory stage. He relies upon the decision of this court in the case of *R(on the application of Yogesh Parashar) v Sunderland Magistrates Court* [2019] EWHC 514 (Admin); [2019] 2 Cr. App. R. 3, which was a case concerning the treatment by the court of an application to vacate a trial date in advance of the case being heard. A point was taken in relation to whether or not it was appropriate for the court to consider a challenge to such a decision, prior to the court proceedings being ultimately disposed of. The relevant authorities were reviewed by Bean LJ in a passage which was relied upon by Mr Smith:

> "33 Mr Boyd for the CPS relied on what he described as the *Buck* rule. This is a reference to the decision of this court in *R v Rochford Justices ex parte Buck* (1979) 68 Cr. App. R. 114. Lord Widgery CJ cited with approval the decision of this court in *R v Carden* (1879) 5 QBD 1. In *Carden* Cockburn CJ had said that "while we have authority to issue a mandamus to hear and determine we have no authority, as it seems to me to control the magistrate in the conduct of the case or to prescribe to him the evidence which he shall receive or reject as the case may be".
>
> 34 Lord Widgery CJ said that there was an obligation on this court "to keep out of the way until the magistrate had finished his determination" and that "there was no jurisdiction in this court to interfere with the justice's decision, that not having been reached by termination of the proceedings below."

> 35 The "*Buck* rule" is no longer a rule. More useful guidance is to be obtained from the judgement of Hughes LJ in this court in *R. (Crown Prosecution Service) v Sedgemoor Justices* [2007] EWHC 1803 (Admin). This was, as the name of the case indicates, an application for judicial review by the CPS to challenge a ruling of the justices that the evidence of analysis of the accused's blood specimen was inadmissible. Hughes LJ said (at [3]):-
>
> > "in general terms this court will not entertain, whether by application for judicial review or by way of appeal by case stated, an interlocutory challenge to proceedings in the magistrates court…"
>
> He added, however (at [5]) that "it is right to say that this court has sometimes been persuaded to consider a case which is at the interlocutory stage where there is a powerful reason for doing so."

11. Mr Smith submitted that the observations of Hughes LJ in the *Sedgemoor Justices* case supported his submission, at least by inference, that there could be cases where an application for appeal by way of case stated could be used to challenge an interlocutory ruling by the Magistrates' Court. He therefore submitted that there was, in principle, jurisdiction for the court to entertain this appeal, on the basis that the way in which the case had been approached by the District Judge amounted to unusual or exceptional circumstances justifying proceeding in this way.

12. On behalf of the respondent, Mr Jarvis submitted that there was no jurisdiction for the court to consider an appeal by way of case stated in relation to a criminal matter which had yet to be finally determined in the Magistrates' Court. He relied in particular upon the case of *Downes v RSPCA* [2017] EWHC 3622 (Admin); [2018] 2 Cr. App. R. 3, in which Julian Knowles J, having analysed the relevant authorities in relation to this issue, reached the following conclusions at paragraph 23 of his judgement (with which Holroyd LJ agreed):

> "23. It seems to me that the relevant principles to be drawn from these cases are as follows: (a) where a jurisdictional point is taken before the magistrates court, then if the court declines jurisdiction that decision can be challenged either by judicial review or by way of case stated… (b) where such a point is taken and they court accepts that it has jurisdiction then there is nothing in *Streames* to suggest that the magistrates court has the power to state a case. The only remedy is for the aggrieved party to seek judicial review, and the magistrates in such an event should not adjourn unless there are particularly good reasons to do so. It will very usually be better to carry on and complete the case, allowing for all matters to be raised on appeal at the conclusion of the case in the normal way; and (c) in all other cases there is no power to state a case in relation to an interlocutory ruling. A magistrate should proceed to determine the case finally and then to state a case if appropriate to do so. In a "special case" (the words used in *Streames*) and if the defendant has obtained leave to seek judicial review then the magistrates might consider adjourning.
>
> …

> 30. In so far as the appellants suggest that we should circumvent the jurisdictional issue by treating this appeal as a rolled-up application for permission to seek judicial review, it would not be proper to do so in my judgement and Mr Hardy in the end did not press the point. The starting point is that as *Streames* makes clear, the onus is on the defendants to suggest what good reasons there are for seeking judicial review. No, or no sufficient, reasons have been advanced.
>
> 31. Secondly, the defendants chose to commence this appeal by way of case stated despite the very considerable jurisdictional bar which obviously lay in their way, which they wholly failed to grapple with in their skeleton argument. It is not for this court to fashion a solution for them.
>
> 32. Thirdly, if the consequences of our allowing an application for judicial review were that the case before the District Judge would be finished once and for all, then I for my part could see some attraction in allowing the application to proceed. But that would not be the outcome because, as I have said, there are other in-time charges which will have to be determined on the merits in any event. Thus there may be issues of cross-admissibility or other evidential reasons why it might be undesirable for us to start adjudicating at this stage as an exercise of discretion by judicial review.
>
> 33. For all of these reasons, had we been invited to do so I would decline to treat this application as a rolled-up application for permission to seek judicial review of the District Judge's ruling."

13. Mr Jarvis also drew attention to the recent case of *Highbury Poultry Produce Limited v CPS* [2018] EWHC 3122 (Admin), in which having reviewed the authorities, this court concluded, following *Downes*, that there was no jurisdiction to entertain an appeal by way of case stated in relation to an interlocutory matter, but that in the circumstances of that case it was appropriate to proceed by way of judicial review.

14. In the light of the authorities it is clear to me that there is no jurisdiction for this court to consider this case as an appeal by way of case stated, on the basis that it relates to a challenge to an interlocutory or preliminary issue brought by a defendant whose case has yet to be finally determined. There are sound practical reasons for awaiting the conclusion of the proceedings in the Magistrates' Court prior to this court addressing a defendant's contentions in relation to an adverse preliminary or interlocutory by way of an appeal by case stated. For instance, the defendant may, in the result, be acquitted. I do not consider that this approach is inconsistent with the observation made by Hughes LJ in *Sedgemoor Justices*. In that remark he was capturing in summary all the circumstances in which an appeal by way of case stated might arise, including by the prosecution in relation to an interlocutory decision which effectively becomes a terminating ruling. What he said does not, however, assist the appellant in the present case.

15. As the authorities demonstrate, this is not an end of the matter in relation to jurisdiction and it is open to the court in appropriate cases to convert the case as an application for judicial review, treat this hearing as a rolled-up hearing of the

application for permission to apply for judicial review and if permission is granted, the substantive hearing. On behalf of the prosecution, Mr Jarvis objected to this course. He pointed out that although there had been an indication of a guilty plea before the Magistrates Court, and the District Judge considered that a community sentence would be appropriate, there was no guarantee that the appellant would in fact plead guilty. Someone in the position of the appellant could wrong-foot the prosecution, by returning to court many months after the interlocutory ruling was given and an unsuccessful application to this court had been made and change their mind in relation to their plea, potentially putting the prosecution in evidential difficulties. In my view there is considerable force in this submission, and the court should exercise considerable caution before exercising the discretion to convert an appeal by way of case stated in relation to an interlocutory matter into a judicial review. The practical difficulties and potential prejudice which could arise may well be considerable, and significantly outweigh any justification for permitting the action to continue and be resolved as a judicial review: see, for instance, *Downes* at paragraph 32.

16. Faced with these submissions, and following an enquiry by the court, the appellant has submitted an undertaking to the court that, in the event of his case being unsuccessful and the matter being returned to the Magistrates Court, he will enter a guilty plea. In my view this adds a further consideration in relation to the question of whether, in the present case, there is good reason to permit this appeal to be converted into an application for judicial review. I have reached the conclusion that it would be permissible in the particular circumstances of the present case for it to be permitted to continue as a judicial review, albeit this is an unusual course to adopt. My reasons are as follows. Unlike *Downes*, the point that is taken in this case will effectively resolve these proceedings one way or the other, in particular in the light of the undertaking which has been given in relation to the entering of a guilty plea, which effectively obviates the concerns about the appellant changing his mind about his plea and the prosecution being prejudiced. As the District Judge rightly observed, there is a practical danger in the circumstances of this case that the appellant may have served a community disposal before this appeal might have been heard, and therefore there is good sense in giving definitive consideration to the single issue upon which the appellant's guilt turns without any risk of him serving a sentence and then subsequently being acquitted. Whilst it is inappropriate for this matter to proceed by way of a case stated, it is appropriate for it to be treated as an application for judicial review, for permission to be granted, and for it to be heard substantively.

17. In this case the argument focuses on the meaning of section 127(5)(b) of the 2003 Act, it being accepted that the long-stop time bar in section 127(5)(a) does not arise. The appellant contends that the evidence which was sufficient to justify proceedings was available to the police well before six months prior to the appellant in fact being charged. In particular, Mr Smith stresses that by the time that the appellant was interviewed on 18 April 2018 the police had collated all of the evidence necessary to make out the charges under the 2003 Act upon which they relied before the Magistrates Court. This material included the witness statements from the complainants and the appellant's employer about his accessing their systems which were used to prove the case. In reality, the other enquiries which were undertaken after the interview did not add materially to the case which the appellant faced. On the basis that these were summary only offences, which the police were perfectly entitled

to charge, the appellant submits that the limitation period in section 127(5)(b) has been breached in circumstances where the police had sufficient evidence before them to be satisfied that charges should be brought.

18. The respondent relies upon the contention that the prosecutor for the purposes of section 127(5)(b) of the 2003 Act is in this instance the person at the CPS who was permitted to authorise the prosecution. This court has previously given consideration to the question of who is to be taken as being the prosecutor along with the time limits for bringing a prosecution in relation to very similarly worded legislation contained in section 31(1) of the Animal Welfare Act 2006, in the case of *Letherbarrow v Warwickshire County Council* [2015] EWHC 4820 (Admin). The court concluded in relation to the phrase "the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge" that the proper interpretation was that this did not apply to any employee of the prosecuting local authority, but only the employee who was entrusted to make the decision to prosecute on behalf of the local authority using the skill and experience which had led them to be identified as the person to act in that capacity, bearing in mind the broad range of considerations which needed to be taken into account in determining when a prosecution may be appropriate. Bean LJ observed as follows:

> "16 But reference was also made to *RSPCA v Johnson* [2009] EWHC 2702, in which, as in this case, the prosecution was brought under the Animal Welfare Act 2006. In *Johnson* this court (Pill LJ and Rafferty J) declined to hold that *Donnachie* established any principle of law and took the view that the prosecutor for the purposes of section 31 was the RSPCA's case manager given responsibility for making the important decision of whether to prosecute.
>
> 17 This court held that time did not begin to run just because some other employee of the RSPCA may have had prior knowledge of the relevant evidence. At paragraph 33 of his judgement Pill LJ said this:
>
> > "There is no principle of law that knowledge in a prosecutor begins immediately any employee of that prosecutor has the relevant knowledge, and *Donnachie* does not establish one. It is right that prosecutors are not entitled to shuffle papers between officers or sit on information so as to extend a time limit. There is, however, a degree of judgement involved in bringing a prosecution, and knowledge, in my judgement, involves an opportunity for those with appropriate skills to consider whether there is sufficient information to justify a prosecution."
>
> I agree with those observations of Pill LJ and, in my view, the particular terms of section 31(1) strongly support them. It is an unusual time limit provision in that it extends the time limit for prosecution potentially well beyond the usual 6 months set out in the Magistrates' Court Act 1980. It creates a first alternative, a long stop time limit of 3 years and a second alternative, 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge. If the prosecution do nothing at all for more than 2 years, then stir themselves and issue summonses

> within 5 months of evidence coming to their knowledge, then they would be within the time limit set out in section 31 (1).
>
> What the section does show is that Parliament expected the consideration of a prosecution under this section to be the subject of a careful decision. The decision which the prosecutor has to make under this subsection is not whether there is a prime facie case but whether the evidence is sufficient to justify a prosecution. That will involve, as this court said in *Davies v Environment Agency (Wales)*, a consideration of what is in the interests of justice. It will usually involve (and certainly in the present case was rightly regarded as involving) the opportunity for the defendant to make a statement either at interview or, as Mr Letherbarrow did, in writing by way of mitigation. Such further material may show that the defendant's animal husbandry practices are now improving; or, conversely, that matters are so bad that the authority ought to press on with an application for a ban to prevent him from keeping livestock altogether.
>
> …
>
> 19 As this court held in the *Davies* case, the prosecutor is the Council, but the Council does not decide collectively whether evidence is sufficient to justify proceedings. Section 31(1)(b) involves the exercise of judgement by an individual, namely (see *Johnson*) the individual who is given responsibility for making the important decision whether to prosecute. Prosecutors are entitled to have a system which lays down at what level of seniority this decision is made. In the present case, it was laid down that it should be made at the level of Group Manager (Trading Standards) and Ms Faulkner duly made the decision on 5 August 2013. That was not paper pushing, as Pill LJ described it in *Johnson*, it was a proper internal system for having these important decisions taken at an appropriate level."

19. This approach was specifically endorsed by Hickinbottom LJ (with whom Kerr J agreed) in *R v Woodward and ors* [2017] EWHC 1008 (Admin) at paragraph 23, in particular in sub-paragraphs (iii) and (iv) as follows:

> "(iii) For the purposes of this appeal, an understanding of the nature of the decision which the prosecutor is required to make under section 31(1)(b), as set out by Bean LJ in that passage, is crucial: the relevant date is the date upon which the prosecutor considers that, upon the available evidence, it is in the public interest to prosecute the particular individual or individuals. That decision needs to be made with especial care; and it cannot be avoided or delayed by – to use the phrase of Pill LJ in *Johnson* (at [33]) – the mere "shuffling of papers", or by information being sat on so as to extend the time limit. So far as substance is concerned, it demands, not merely consideration of whether there is a *prima facie* case, but whether it is in the public interest for such a prosecution to be brought. That requires consideration of, and often investigation into, factors which bear upon that issue, for which a prosecutor is entitled to reasonable time, even

> after the primary evidence has been gathered in, and even after the prosecutor has decided that there is or may be a *prima facie* criminal case against someone or even identified individuals. That remains good law, the relevant passages from both Johnson and Letherbarrow being recently endorsed by Gross LJ (with whom Andrews J agreed) in Riley at [17].
>
> (iv) In *Lamont-Perkins* at [26], it was said by Wyn Williams J (with whom Sir John Thomas PQBD, as he then was, agreed) that the phrase "the prosecutor" "applies to anyone who initiates a prosecution under the [2006] Act, and not merely those who prosecute under some statutory power to prosecute". However, in *Letherbarrow* at [19], Bean LJ considered more particularly who is, for these purposes, "the prosecutor". His conclusion on that issue was, of course, informed by what he had said in [17] about the nature of the decision that "the prosecutor" is required to make under section 31(1)(b); and he drew the well-established distinction between investigators and prosecutors in criminal proceedings. He said this:
>
> > "… [T]he prosecutor is the Council, but the Council does not decide collectively whether evidence is sufficient to justify proceedings. Section 31(1)(b) involves the exercise of a judgment by an individual, namely… the individual who is given responsibility for making the important decision whether to prosecute. Prosecutors are entitled to have a system which lays down at what level of seniority this decision is made…".
>
> This was endorsed by Gross LJ in *Riley*, at [15], where, in a case indistinguishable from the one before us, he held that those working for the FSA were investigators, the prosecutor being the CPS. Mr Glenser conceded that *Riley* was binding upon this court; and he conceded that the District Judge erred in proceeding on the basis that, for the purposes of section 31, he should consider the date when the evidence was in the hands of the FSA. That concession was well made."

20. In the case stated by the District Judge he records at paragraph 8 that the police had all of the evidence necessary to consider a charge by 6 December 2018. He sets out the submissions made on behalf of the appellant and the respondent, which in broad terms reflected the submissions made before this court. Having set out the conclusions in the case of *Woodward* the District Judge in the present case stated his conclusions as follows:

> "11 The court having considered the submissions made the following ruling:
>
> 1 That the DPP's Guidelines on Charging were guidelines and there was no reason why the police would be precluded from seeking CPS advice.

> 2 That the police had not acted unreasonably in seeking charging advice.
>
> 3 That there had not been any unreasonable delay in the police gathering the evidence and sending it to the Crown Prosecution Service.
>
> 4 That the Crown Prosecution Service had considered that evidence within one month and authorised the issue of the requisition.
>
> 5 That for the purposes of the legislation, the prosecutor was the Crown Prosecution Service and that the proceedings were issued in time."

21. The questions which he presents for the consideration of this court in the case stated are as follows:

> "12 The court poses the following questions for the High Court:
>
> 1 Was I right in concluding that for the purposes of the legislation the prosecutor was the Crown Prosecution Service
>
> 2 That the proceedings were issued in time?"

22. The term prosecutor is not further defined either in section 127(5) or elsewhere in the 2003 Act. We have had our attention drawn to the Director's Guidance on Charging, which makes clear that it is possible for the police to charge the offences under section 127(1) and (2), essentially on the basis that the offences are summary only. That is not, however, an answer to the question as to whether the police were the only party who could be a prosecutor for the purposes of section 127(5) in the present circumstances. It is clear, and not challenged, that the CPS are an organisation who were authorised and competent to bring the charges in the present case. There is a strong sense in which that is an end of the matter: given that they are authorised and competent to decide that a prosecution should be brought, the CPS undoubtedly fall within the definition of the term prosecutor. The certificate makes plain that these charges were brought within the time limits provided for by section 127(5).

23. There is good reason for the terms of the statute enabling more than one organisation, if properly authorised, to be capable of charging the offences under this section. Firstly, as is pointed out by the respondent, the evidence on the file in the present case disclosed potential offences with which the appellant could have been charged which were triable either way and therefore required a decision by the CPS as to whether or not the appellant should be charged with those offences. Potential offences arose under the Computer Misuse Act 1990 and the Malicious Communications Act 1988. The police would not have had authority to charge those matters. The need to take a broader view of the potential overall offending, and give consideration to matters which the police could not charge, supports the approach set out above in relation to the term prosecutor. Further, there may be cases in which the particular expertise of the CPS is required to resolve complex evidential issues which would justify their involvement in the question of whether or not a suspect should be charged. It is inappropriate to interpret the legislation so as to restrict the term prosecutor in the way

contemplated by the appellant. For the reasons given, that approach is far too narrow and does not properly reflect the language of the statute. In short, for the purposes of this legislation the person who initiates the prosecution and brings the charges with authority to do so is the prosecutor.

24. It was submitted by Mr Smith that this approach would lead to potentially lengthy delays with investigations hanging over the head of an individual without charges being brought. He also contended that it would lead to potential abuse, with the police passing a file to the CPS simply for the purpose of avoiding the application of s127(5)(b) in circumstances where they had been in possession of the necessary evidence to justify a charge for more than 6 months. In relation to the first point, it is in my view clear that this is simply a feature of the way in which Parliament deliberately drew together the statutory time limits for these offences and does not justify any different approach to the one taken above: see *Letherbarrow* at paragraph 17 above. In relation to the second point, it may be possible to conceive of cases where arguments in relation to abuse of process could arise and provide a remedy. Such cases will be rare and depend on their particular facts, but this is not one of them.

25. Having examined the issues raised in this application were the matter being dealt with as an appeal by way of case stated both of the questions raised by the District Judge would have been answered in the affirmative. In the event, and treating the matter as an application for judicial review, the appropriate outcome in this case is that the application should be dismissed.

Lord Justice Dingemans

26. I agree. As appears from the judgement of Mr Justice Dove this case could not proceed by way of appeal by case stated on behalf of the appellant, because he had not yet been convicted. I also agree that in the particular circumstances of this case, which include the fact that it was clear that the appellant would be convicted, on his own plea of guilty, when the matter returns to the Magistrates' Court, that this Court should determine the substantive question of whether the proceedings were brought in time as a claim brought by way of judicial review.

27. This is possible because there is jurisdiction in this court to entertain challenges to interlocutory decisions of the Magistrates by way of proceedings for judicial review, as appears from *CPS v Sedgemoor Justices*. However although there is jurisdiction to entertain such challenges I agree with Hughes LJ's statement in *CPS v Sedgemoor Justices* that there will need to be a "powerful reason" to entertain such a challenge. That is because proceedings in the Magistrates' Court are summary and intended to be speedy. Challenges to interlocutory rulings will increase cost and delay, and should be avoided without a powerful reason.