

**Neutral Citation No: [2024] NICA 17**

**Ref: KEE12457**

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

**Delivered: 29/02/2024**

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

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**THE PUBLIC PROSECUTION SERVICE**

**v**

**LEWIS BOYD**

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**Mr Donal Sayers KC with Ms Lara Smyth (instructed by MacElhatton Solicitors) for the  
Appellant  
Ms Lauren Cheshire (instructed by the Public Prosecution Service)**

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**Before: Keegan LCJ and Horner LJ**

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**KEEGAN LCJ** (*delivering the judgment of the court ex tempore*)

***Introduction***

[1] In this case we have received an application to compel a magistrates’ court to state a case pursuant to Article 146 of the Magistrates’ Courts (Northern Ireland) Order 1981 (“the 1981 Order”). We are able to provide a ruling in relation to this application today.

[2] The application relates to a refusal of District Judge Broderick to state a case for the opinion of the Court of Appeal. The case concerns criminal proceedings at Ballymena Magistrates’ Court. The charges against Mr Boyd were possession of an offensive weapon (namely a spanner) in a public place, common assault and criminal damage.

[3] The charges were initially contested. However, on the day of contest on 20 May 2021 the defendant pleaded guilty to all three charges. Sentencing was adjourned to 10 August 2021 as the court had directed a pre-sentence report.

[4] We do not need to dilate on the background circumstances save to say that a sorry picture is presented given the damage caused to the victim’s home who is a

person who was unknown to the defendant. There was an issue about the cost of the damage to the home canvassed at the hearing.

[5] In any event, the District Judge sentenced on 10 August 2021. He made a probation order for 12 months and a restraining order against the defendant. All of that is uncontroversial. The legal issue arises because subsequently on 6 April 2023, that is one year and eight months after the initial sentencing exercise, the District Judge was contacted by the Public Prosecution Service (“PPS”) who sent an email to the court office asking that pursuant to Article 158A of the 1981 Order the matter be listed again before the magistrates’ court. This was to deal with the issue of a compensation order.

[6] It is of note that at the original hearing the PPS made no application for a compensation order, nor did they apply to adjourn the case, nor did the District Judge adjourn the proceedings of his own volition. This is notwithstanding the fact that we can see that there was some discussion about the insurance excess.

[7] In any event, there were further proceedings and submissions made to the judge about the making of a compensation order. We have read the written submissions, in particular, the well-focused submissions filed by Ms Smyth at the lower court which highlight the objection to the making of a compensation order given that it was not made at the time of sentencing.

[8] The judge did consider the issues raised by counsel. He then set out in a written ruling his rationale for making a subsequent compensation order in the sum of £250. That was half of the insurance excess of £500 which was known by the subsequent hearing. Thereafter, the defendant who was subject to the compensation order applied to this court to state a case, the District Judge having refused to state a case.

### *Legal provisions in play*

[9] The provisions of Article 158A of the 1981 Order, which was added by section 27 of the Criminal Appeal Act 1995 reads:

“Power to rectify mistakes etc.

Power of magistrates’ court to re-open cases to rectify mistakes etc.

“158A.-(1) A magistrates’ court may vary or rescind a sentence or other orders imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid which the court has power to impose or make.”

[10] Article 14 of the Criminal Justice (NI) Order 1994 deals with the making of a compensation order. In particular, the following provisions apply:

“14.-(1) Subject to the provisions of this Article, a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Article and Articles 15 to 17 referred to as “a compensation order”) requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road, and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this Article empowers it to do so.

(2) Compensation under paragraph (1) shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecution.

...

(9) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall –

(a) have regard to his means so far as they appear or are known to the court ....

(11) The compensation to be paid under a compensation order made by a magistrates’ court in respect of any offence of which the court has convicted the offender shall not exceed £5,000 or, if the offender is under 18, £1,000.”

*The points of law*

[11] The following points of law are raised in the case and were addressed by the judge as follows:

- (a) Was I correct to grant the PPS application for an order under Article 158A of the Magistrates' Courts (Northern Ireland) Order to vary the sentence imposed by the order of 10 August 2021 to include a compensation order. In particular, in granting the application was I correct in law to determine that:
- (b) Article 158A empowers the magistrates' court to vary a sentence by imposing a compensation order in circumstances where a compensation order was not previously imposed.
- (c) The purpose for which I purported to exercise the power under Article 158A was a lawful purpose given the terms in which the power is conferred by Article 158A.

### *Conclusion*

[12] We will not repeat the ruling of the District Judge on the legal issues save to say that he was made aware of the test on a case stated by reference to a case concerning the county court contained in Article 61(4) of the County Courts Order (Northern Ireland) 1980. Care must be taken with this because Article 146 of the 1981 Order is not the same as the equivalent county court provision we have referred to. In so far as the former provides that a judge can refuse to state a case if they consider the application to be "frivolous, vexatious or unreasonable" the latter simply refers to "frivolous." So that is the question for this court – was the judge right to refuse the case stated on the basis that it was frivolous? This is obviously a high threshold.

[13] We have heard argument today on whether the threshold is met from Mr Sayers and from Ms Cheshire. This is a preliminary application and so all this court must consider is whether there is sufficient substance in the legal point to require argument. We do consider, having reflected on the arguments made before us today, that there is sufficient substance in the point to require argument.

[14] In summary, the legal question is - how can you vary or rescind an order, in this case a compensation order, that was not made in the first place at sentencing, a year and eight months on when there should be certainty in sentencing? It is not a frivolous case stated. Ms Cheshire's arguments for a wide interpretation of the relevant statutory provision given reference to "the interests of justice" can be examined at a hearing. The hearing will deal with the intention behind Article 158A and the application of cases such as *Re DPP* [2000] NI 49 and in *R v Williamson* [2012] EWHC 1444.

[15] In compelling the District Judge to state a case we have already said during this hearing that this case is unfortunate given the level of compensation at issue versus all of the legal costs that are going to be occasioned in the case. However, we consider

that this case stated will provide necessary and timely clarification on the powers under the 1981 Order to correct orders made in the magistrates' court. Simultaneously, within three weeks we require the PPS to file statistics on the use of this provision to make compensation orders after sentencing.

[16] As the case stated is to be received by this court within three weeks, we ask for an accompanying skeleton argument by the appellant and we allow two weeks after for reply, one week after for a joint agreed Book of Appeal and authorities. We will list the case for 9 May. We reserve costs.