Neutral Citation Number: [2024] EWHC 816 (Admin)

Case No: AC-2023-LON-000707

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 April 2024

Before :

LADY JUSTICE NICOLA DAVIES
MR JUSTICE BENNATHAN

- -

Between :

The King (on the application of Darykie Ramos Molina)	**Claimant**
- and -	
Crown Court at Snaresbrook	**Defendant**
- and -	
(1) Crown Prosecution Service	
(2) Barkingside Magistrates' Court	**Interested Parties**

- -
- -

Alex Benn (instructed by **EHB Solicitors**) for the **Claimant**
Denis Barry (instructed by **the Crown Prosecution Service**) for the **First Interested Party**

Hearing date 6 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Nicola Davies and Mr Justice Bennathan:

1. This is the judgment of the court. In these proceedings the claimant seeks judicial review of the determinations of HHJ Dean ("the judge") sitting at Snaresbrook Crown Court on 15 November 2022 that: (i) the court had jurisdiction to determine the prosecution's appeal to the granting of bail to the claimant by Barkingside Magistrates' Court and (ii) allowing the appeal and remanding the claimant in custody. The claimant seeks to quash the defendant's order of 15 November 2022 remanding the claimant in custody. In the alternative, declaratory relief is sought.

2. The proceedings in the Barkingside Magistrates' Court on 11 November 2022 are of relevance to the issue before this court namely, whether the defendant had jurisdiction in respect of the appeal by the Crown Prosecution Service ("CPS") upon the issue of bail granted to the claimant in the magistrates' court.

3. Before this court the claimant was represented by Mx Benn and the first interested party was represented by Mr Barry, who did not appear in the Crown Court. We are grateful to them for their written and oral submissions. The defendant and the second interested party were not represented and made no submissions.

Background

4. The claimant was arrested on 10 November 2022 and charged with four offences: (i) intentional strangulation contrary to section 75A of the Serious Crime Act 2015; (ii) assault occasioning actual bodily harm contrary to section 47 of the Offences Against Persons Act1861 ("OAPA"); (iii) threats to kill contrary to section 16 of the OAPA; (iv) using violence to secure entry to premises contrary to section 6 of the Criminal Law Act 1977. All offences were allegedly committed against his former partner earlier that day. The claimant was refused bail by the police.

5. On 11 November 2022 the claimant appeared in custody before the justices at Barkingside Magistrates' Court. He was represented by his solicitor, Mr Halil, the CPS was represented by Ms Puig Sobredo. The claimant, a person of no previous convictions, indicated pleas of not guilty to all charges. The justices accepted jurisdiction and the claimant exercised his right to elect trial in the Crown Court. The case was "sent" to the Snaresbrook Crown Court pursuant to section 51 of the Crime and Disorder Act 1988 ("the 1988 Act") for a plea and trial preparation hearing on 7 December 2022. Following the transfer, Mr Halil applied for bail on behalf of the claimant which was opposed by the CPS. Shortly before 1:10pm the justices granted Mr Molina conditional bail. What immediately followed the grant of bail in court is not agreed between the parties.

6. The CPS advocate, in an undated witness statement, stated:

> "I gave oral notice of the Crown's intention to appeal against the grant of bail… The Serco (custody) officers were still in the dock at that time and had begun to remove the Claimant. I can recall that his representing solicitor reacted to my application, stating that it was "ridiculous". The Chair of the bench clarified that the Crown had appealed the grant of bail and the legal adviser announced that the Crown had two hours from the giving of oral

> notice to serve the written notice on the Claimant and on the court. At this point the court was adjourned until 2pm."

7. In an email dated 11 November 2022 the legal adviser to the justices stated:

> "The bench were announcing the bail decision and the prosecutor informed me she will be bail appealing so I faced Mr Halil and mouthed to him bail appeal. Once bench had made their decision to grant bail, serco were on their way out, the prosecutor stood up and stated she will be bail appealing and gave the time, the chair repeated to the prosecutor 3x you are bail appealing. One dock officer was near the door and the other dock officer and the defendant in the dock. I then faced the dock and said bail appeal and announced the time and stated defendant will need to be given notice of bail appeal within 2 hours. I said it as loud as I could ….. It is correct that there was a lot of noise and people moving around the court as people began to leave. The bench did not say to the dock officers defendant is remanded in custody until bail appeal is pending.
>
> Therefore there is no blame on the dock officers. I take responsibility that the error is on my part for not ensuring they announced he is remanded in custody…"

8. In a statement dated 11 November 2022 Mr Halil addressed the issue of the oral notice of an intention to appeal by the prosecutor as follows:

> "They [the justices] announced their decision in open court. At that stage I was able to observe the Serco officers in the dock making notes of the outcome and the defendant was then allowed to leave the dock on the direction of the Magistrates. Whilst I did not follow with my line of sight the departure of the defendant and the Serco officers, it was quite clear that they were moving towards the door leading down to the cells.
>
> It was at this point that I looked at the Legal Adviser who "mouthed" to me that the Prosecutor intended to appeal the grant of bail. When I say "mouthed" I mean that she did not speak but simply mimed the word "appeal". Taken a little by surprise by this, I looked across to the Prosecutor. It was quite apparent to me that there must have been some indication by the Prosecutor to the Legal Adviser of her intention to appeal but nothing at that stage was stated verbally in open court.
>
> The Prosecutor then stood up. She spoke directly to the Legal Advisor and expressed her intention to appeal the grant of bail. When I say she said it to the Legal Adviser, I am emphasising this was not a declaration made so that everyone in the courtroom could hear. This was obvious because there then had to be a slight delay further while the Legal Adviser explained to the

> Bench that there was to be an appeal and that time requirements now came into play for the service of notices on the defendant.
>
> I cannot comment upon where the defendant and the SERCO officers were at this moment as my attention was towards the Prosecutor waiting to discuss with her the merits of an appeal. What is abundantly clear, however, is that the dock was empty and no-one within the courtroom directed any comments or directions to anyone inside the dock, specifically not to the SERCO officers whose responsibility it was to remove the defendant back to the cells".

9. Mr Halil attempted to visit the cells in order to speak to the claimant but was unable to access the area as it was the lunch break. He returned to the cell access point just before 2pm but was told by a member of the Serco staff that the claimant had been released.

10. The two dock officers and the senior Serco employee at the court set out their recollections in writing. The dock officers stated that they were not told of any bail appeal and did not hear any mention of one. The senior officer stated that he was told of the bail decision but not of any appeal and therefore released the claimant.

11. The court reassembled shortly after 2pm by which time it was known that the claimant had been released and had left court. Ms Puig Sobredo submitted that the justices should remand the claimant in custody, an application which caused them concern given the absence of the claimant.

12. At 2:32pm, the CPS purported to effect written service of the notice of appeal by sending the same by email to the claimant's solicitor. It also requested the police to visit the claimant's home address to effect service upon him. No information has been provided to this court as to what steps, if any, were taken by the police. It is accepted that the claimant was not served with any written notice of appeal. Further the prosecution made no application under the Criminal Procedure Rules ("CrPR") 4.10(f) which provides for service on a legal representative to count a service on the defendant of "any notice or document served under Part 14" [Part 14 includes the document giving notice of an appeal].

13. Following further submissions from the prosecution and the defence, the justices determined that the failure by the CPS to serve written notice of appeal on the claimant resulted in a disposal of the appeal pursuant to the provisions of section 1(7) of the 1993 Act. This decision was recorded on the second interested party's register as follows:

> "Please add Justices decision on Libra register -;
>
> Justices decision – Matter of bail appeal of defendant, crown bail appealed, defendant was granted bail with conditions. The crown issued notice to appeal but his notice was not served on the defendant within 2 hours, and he was released in error. The CPS requested that the bench remanded the defendant in custody in his absence as the defendant was unlawfully at large. The defence advocate argued that subsection 7 of bail amendment act had not been complied with as the defendant has not been served

> within the appropriate time limit. The crown made submissions with regards to case law that service of notice errors does not undermine the appeal. However, the caselaw submitted includes assessment of prejudice, which CPS and defendants reps agreed, bench do not have jurisdiction to decide on prejudice, this was supported by our legal adviser. The bench therefore determines that the appeal has been disposed off under section 7 of bail amendment act as notice was not served on the defendant within the appropriate time."

14. On the evening of 14 November 2022 the defendant emailed the claimant's solicitor informing him that the claimant's case was to be listed the following morning at the Crown Court for the determination of the prosecution's bail appeal. Early the following morning, the claimant's solicitor responded to the email and questioned whether the listing was a mistake given that the second interested party had disposed of the issue. The defendant responded and stated that the hearing remained as listed. Mr Halil instructed counsel to attend the hearing which was stood out until later in the day to permit the attendance of the claimant who had received no notice of the hearing.

Hearing at Snaresbrook Crown Court

15. At the substantive hearing, counsel instructed on behalf of the CPS outlined the facts which formed the basis of the four offences. As to the proceedings before the justices, the prosecution contended that the legal adviser and the justices acknowledged that the CPS was seeking to appeal against bail, however the justices did not remand the claimant in custody as they were required to do following oral notice to appeal bail, pursuant to section 1(6) of the 1993 Act. (The justices' failure to remand the claimant in custody as required by section 1(6) of the 1993 Act is undisputed). The judge stated that the information she had been given was that:

> "… The CPS lawyer later gave oral notice of her intention to appeal, the CPS served written notice within the required time, however the defendant had been released by the jailers. There followed legal argument where the CPS submitted the lack of service of notice was not detrimental to the appeal and defence argued that the Court could not remand the defendant in custody in his absence. The JPs determined that as the requirement to serve written notice on the defendant had not been complied with, the appeal was disposed of"."

16. Counsel for the CPS submitted that the justices' decision was incorrect and, in agreement with the judge, stated that it was not in accordance with the authority of *R (Cardin) v Birmingham Crown Court and Birmingham Magistrates' Court* [2017] EWHC 2101 (Admin); [2018] 1 Cr.App.R. 3 ("*Cardin*"). The judge followed this by stating "Right, but in any event this Court is now seized of the matter?" with which counsel for the CPS agreed.

17. Mx Benn, on behalf of the claimant, stated that the claimant was not aware that oral notice had been given of the intention to appeal and neither the claimant nor the cell staff were aware of the prosecution's intention. Mx Benn stated that if oral notice had been properly given there should have been a warrant for the further detention of the claimant for a period of two hours until written notice was given but that was not done

(section 1(6) of the 1993 Act). Mx Benn informed the court of Mr Halil's account of proceedings before the justices, as contained in his witness statement.

18. In summary Mx Benn submitted that in the magistrates' court "proper oral notice" was not given, given that it was not clear that the justices received oral notice as no warrant was issued to authorise the claimant's further detention. The Serco staff in court were not aware of any oral notice having been given. No attempt was made to effect service of the written notice of appeal on the claimant for example by attending his home address. Finally there was no application to the court by the prosecution to direct, pursuant to its power under Rule 4.10 of the CrPR, that service could be effected on the claimant's legal representatives thus the direction was never made and the court had disposed of the matter. As to the authority of *Cardin*, Mx Benn relied on distinguishing features notably that in *Cardin* oral notice had been given when both the defendant and his solicitor were present in court.

19. In her ruling the judge, having summarised the alleged facts which led to the arrest of the claimant, stated:

> "… In terms of what happened next was that you were arrested and kept in custody and produced before the Magistrates on Friday morning. Your bail application was successful, and you were granted conditional bail. Everybody accepts that an indication was given that that decision would be appealed, I have not heard evidence from anyone who was present at the Magistrates' Court and so it is very important I do not come to any finding of fact, which cannot be substantiated. But, it is certainly accepted that something was said about it and that written notice was given within the appropriate time. However, over the lunch adjournment you had been taken down to the cells, you were released without that written notice being provided to you and the Magistrates took the view that the Crown had failed to comply with the procedure and so we are now at the Crown Court on Tuesday, within 48 hours, when I have to decide your bail and of course it is argued on your behalf that I do not have jurisdiction to deal with an appeal against bail because the Crown, even if they had indicated orally that they would be appealing the decision, simply did not do it properly at the Magistrates' Court because if they had made it clear properly that they were appealing then the clerk would have issued the two-hour warrant, the cell staff would have known what was going on, no one would have released you over the lunch break and the Crown, on realising their error, could have deployed the Criminal Procedure Rules to enable service to be made on your solicitors.
>
> So, the defence say on your behalf that although the authority of Cardin makes it plain that written notice need not always be given, that does not apply in this case where the prosecution have been pretty slapdash and also there is considerable prejudice because you have been, of course, on bail for the last four days. I am afraid I do not agree with that analysis, I do accept that what

> went on in the Magistrates' Court is pretty, does not appear very satisfactory all round, just look at the fact that the notice of sending records you as having been in custody, whereas the better case management form shows that you were granted bail; this is very poor indeed.
>
> But you were aware that the Crown were going to be appealing the decision and that was followed up by proper notice in the afternoon, I do not know why your solicitors did not choose to contact you on Friday, but be that as it may; but, I take the view that you are properly here before the Court in relation to this appeal."

20. The extent of the information, by way of emails or otherwise, which was provided to the judge in respect of the proceedings in the magistrates' court is unclear.

21. The judge having determined that the bail appeal was properly before the court allowed for the fact that she might be wrong and stated that as the appellant was "now at the Crown Court, you have kindly attended today as I required and bail is a matter for me and I have to decide whether you should be granted bail." The judge refused bail on the grounds that if it were to be granted the claimant would fail to surrender and would commit further criminal offences. She went on to state that there ought to be a "proper bail decision" made later in the week as the court did not have all the information it required and consideration should be given to finding a suitable address for the claimant to live at some distance from the complainant.

22. The claimant was re-admitted to conditional bail by a different judge on 18 November 2022 and was released some days later when all the pre-release conditions were fulfilled. He was subsequently remanded in custody on other matters. This court was informed that at his trial in January 2024, the claimant was found guilty of intentional strangulation and assault occasioning actual bodily harm and at the date of this hearing was awaiting sentence having been remanded in custody.

The Law

23. The Bail (Amendment) Act 1993, section 1 states:

> "**1. Prosecution right of appeal**.
>
> (1) Where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.
>
> ...
>
> (2) Subsection[s] (1) […] above [applies] only where the prosecution is conducted-
>
> (a) by or on behalf of the Director of Public Prosecutions; or

> (b) by a person who falls within such class or description of person as may be prescribed for the purposes of this section by order made by the Secretary of State.
>
> (3) An appeal under subsection (1) […] may be made only if—
>
> (a) the prosecution made representations that bail should not be granted; and
>
> (b) the representations were made before it was granted.
>
> (4) In the event of the prosecution wishing to exercise the right of appeal set out in subsection (1) […] above, oral notice of appeal shall be given to the court which has granted bail at the conclusion of the proceedings in which … bail has been granted and before the release from custody of the person concerned.
>
> (5) Written notice of appeal shall thereafter be served on the court which has granted bail and the person concerned within two hours of the conclusion of such proceedings.
>
> (6) Upon receipt from the prosecution of oral notice of appeal from its decision to grant bail the court which has granted bail shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.
>
> (7) Where the prosecution fails, within the period of two hours mentioned in subsection (5) above, to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.
>
> (8) The hearing of an appeal under subsection (1) […] above against a decision of the … court to grant bail shall be commenced within forty-eight hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal is given.
>
> (9) At the hearing of any appeal by the prosecution under this section, such appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as he thinks fit.

24. Part 14 of the CrPR follows the mandatory provisions contained within section 1 of the 1993 Act. The issue of service as set out in section 1(5) of the 1993 Act is set out in CrPR 14.9 (4) and (b) as follows:

> 14.9 (4) The prosecutor must serve an appeal notice—
>
> (a) on the court officer for the court which has granted bail and on the defendant; and

> (b) not more than 2 hours after telling that court of the decision to appeal.
>
> (5) The appeal notice must specify—
>
> (a) each offence with which the defendant is charged;
>
> (b) the decision under appeal;
>
> (c) the reasons given for the grant of bail; and
>
> (d) the grounds of appeal.

25. CrPR 4.10 addresses the issue of service of the written notice of appeal upon a legal representative as follows:

> "**Documents that may not be served on a legal representative**
>
> 4.10. Unless the court otherwise directs, service on a party's legal representative of any of the following documents is not service of that document on that party—
>
> …
>
> (f) any notice or document served under Part 14 (Bail and custody time limits);
>
> …"

Authorities

26. In *Middlesex Guildhall Crown Court, Ex p. Okoli* [2000] 1 Cr. App. R. 1, DC at para 24 Laws LJ recognised the context of the 1993 Act namely the involvement of the citizen's liberty. He stated, in respect of the subsection 1(8) that: *"the sub-section imposes a mandatory requirement. The context is one where the citizen's liberty is involved. It is of the highest importance that provisions of this kind should be construed so as to promote legal certainty as far as that may be done."*

27. We accept that Laws LJ's comments were made in the context of sub-section 1(8) – in *Okoli* the written notice had been validly served (at 11.50am) but the bail appeal hearing was listed more than 48 hours after service (at 3pm two days later, i.e. some 51 hours later), but we regard his comments as to context as having general applicability. The provisions of the 1993 Act are phrased in mandatory terms and require to be carefully construed so as to promote legal certainty given the potential impact on a person's liberty.

28. In *R v Isleworth Crown Court Ex p Clarke* [1998] 1 Cr App R 257 section 1(4) of the 1993 Act was considered by this Court. The prosecution had given oral notice of their intention to appeal to the court clerk five minutes after the magistrates had risen and served the written notice on the clerk as well. The Divisional Court held that a delay of five minutes did not mean that oral notice had not been effected, and therefore that the

appeal had not been disposed of, particularly in circumstances where the defendant had not yet been released. The Divisional Court appears to have considered the absence of prejudice to the defendant as being of relevance in concluding that the appeal had not been extinguished by the delay.

29. In *R (on the application of Jeffrey) v Warwick Crown Court* [2002] EWHC 2469 (Admin), oral notice was given in the defendant's presence and the prosecutor sought, within the two-hour period to serve the written notice on the defendant pursuant to section 1(5) of the 1993 Act. The defendant was held in prison and, for reasons outside the control of the prosecution, the written notice was served some three minutes late. In determining that the three-minute delay had not frustrated the prosecution's right to appeal and that the appeal had not been disposed of pursuant to section 1(7) of the 1993 Act, the Court held that the defendant knew of the prosecution's intent to appeal and that he was accordingly held in custody (para 9). The Court also noted that s1(7) of the 1993 Act should be read as if the following words were added, "*unless such failure was caused by circumstances outside the control of the prosecution and not due to any fault on its part*".

30. In *Cardin* an administrative error led to the defendant not being served with the written notice within the two-hour window, contrary to section 1(5) of the 1993 Act and the question was therefore whether the appeal had been disposed of pursuant to section 1(7) of the 1993 Act. The notice had not been served on time because a remand warrant for the defendant was erroneously generated which stated, incorrectly, that the written notice of appeal had already been served on the defendant when it had not. When the error was discovered, the prosecution tried to effect service by sending a fax to the prison where the defendant was held (which was not given to this claimant) and serving on the solicitor who had been representing the defendant (who stated he had no instructions to accept service).

31. Whilst acknowledging the mandatory nature of s 1(5) of the 1993 Act, the Divisional Court held that the prosecution's right to appeal had not been disposed of by the failure to serve a written notice on the defendant. The Court was careful to emphasise that this did not mean that the prosecution could opt out of service of the written notice on the defendant, but it endorsed the approach of the Court in *Jeffrey* and held:

> "If bail is granted in circumstances when it should not have been, it cannot have been Parliament's intention that the Prosecution should be deprived of the ability to challenge that decision on appeal by reason of a technical failure to comply with the provisions of the statute that was no fault of the Prosecution and caused the defendant no prejudice."

32. In *Hammond v Governor of HMP Winchester* [2024] EWHC 91 (Admin), which concerned section 1(8) of the 1993 Act (the appeal hearing had been listed more than 48 hours after the initial notice), the Court re-iterated (albeit obiter) that strict non-compliance with section 1(5) may not of itself prove fatal to the continuing right on the part of the prosecution to pursue its appeal, but as the liberty of a person is concerned, the scope for flexibility must be very narrow (para 26). It is therefore on the prosecution to establish that it had acted with due diligence, that the delay was not its fault and that the delay was outside its control and did not prejudice the defendant (para 31).

33. In citing these authorities it is of relevance that none replicates or is based on facts similar to the facts of this case and critically, in no authority was there a determination by the justices that the bail appeal had been disposed of pursuant to section 1(7) of the 1993 Act.

Grounds of judicial review.

34. The claimant applies for judicial review of the judge's decision on three grounds:

    i) the judge exceeded her jurisdiction in determining the prosecution's purported appeal against the grant of bail. The magistrates' court had adjudicated on, and disposed of, the issue of procedure. In the event that the prosecution considered that the magistrates' decision on procedure was wrong in law, there were other, lawful courses of action by which to challenge that decision;

    ii) the judge erred in law in deciding that the matter was properly before the Crown Court because oral notice had been given and written notice served. Even if the magistrates' court had not disposed of the issue of procedure, the prosecution was at fault in failing to comply with the requisite procedure and in causing prejudice to the defendant; and

    iii) the judge erred in law in deciding that, in any event, the Crown Court was seized of the matter because the case had been listed before it. That decision, in effect, bypassed the requirements found in the 1993 Act.

The claimant's submissions

35. On behalf of the claimant Mx Benn contended that:

    i) the Crown Court had no jurisdiction to hear an appeal against the grant of bail as the magistrates' court had made a lawful determination that the appeal was disposed of;

    ii) the events at the magistrates' court were such that the court should find that there was no valid appeal because the claimant had not been lawfully given written notice. Even if the claim was lawfully sent to the Crown Court, the procedures set out in section 1 of the 1993 Act and CrPR 14 were not followed as the prosecution had failed to give proper notice of their intention to appeal. The claimant has suffered prejudice due to this failure. Service of the written notice of appeal upon the claimant's solicitor was not effective because no application pursuant to CrPR 4.10(f) had been made. Further, "oral notice" in section 1(4) of the 1993 Act should be read to mean "a verbal announcement reasonably expected to be audible in the courtroom";

    iii) the court should not accept the judge's alternative route to a lawful hearing, as to do so would deprive the claimant of the protections contained in the 1993 Act. The 'sending' to the Crown Court was wrong, the judge was therefore wrong to find that the Court was seized of the matter.

36. Counsel on behalf of the CPS developed the contentions relied upon in the course of oral submissions before the court which included the following:

    i) a concession that the administration of the magistrates' court cannot do anything contrary to that which the court had decided. Given the disposal determination by the justices an application by the CPS seeking to overturn the determination should have been brought by means of judicial review to this court. It followed that it was not open to the judge to re-litigate the issue of whether an appeal existed. Given the concession, it was contended that it was unnecessary for this court to engage with the events at the magistrates' court and in particular whether they came within the ambit of *Cardin*;

    ii) no further elaboration of the meaning of "oral notice" in section 1 of the 1993 Act is required: such notice need only be given to the court, written notice must be served on a defendant ["the person concerned"];

    iii) the judge was entitled and indeed obliged to review the claimant's bail when the matter came before her as the Crown Court was seized of this issue. The claimant's case had been properly "sent" under section 51 of the Crime and Disorder Act 1998, it followed that there was a legally sound route to the bail decision which the judge made;

    iv) the decision of the judge as to bail was correct, the magistrates were wrong to grant conditional bail, this court should not quash the judge's decision nor make any declaration as events have now moved on and the law is settled.

Discussion

37. The importance which the courts attached to the liberty of the subject is profound. The provisions of the 1993 Act are explicit and are meant to be followed because a failure to do so can lead to a person being wrongly deprived of their liberty. The Crown Court is a creature of statute, established by the Courts Act 1971, now governed by the Senior Courts Act 1981. Its powers are also conferred by other legislation e.g. the 1993 Act, but in consequence it does not possess an inherent jurisdiction to overturn decisions of the magistrates' court unless the same is conferred by the specific provisions of a statute.

38. At the core of this appeal is the determination of the judge that she had jurisdiction under the 1993 Act to hear the bail appeal of the CPS in respect of the grant of conditional bail to the claimant by the justices at Barkingside Magistrates' Court. In order to address this issue it is necessary for this court to consider events at the magistrates' court and the purported transfer of the bail appeal to the Crown Court.

39. We have considered the evidence presented to this court (paras 5 – 14 above) as to events in the magistrates' court and are satisfied that in those proceedings the claimant did not receive written notice of the prosecution's intention to appeal as required by section 1(5) of the 1993 Act. We are satisfied that such oral notice of an intention to appeal as was given by the prosecution advocate was directed to the legal adviser of the justices, who considered it necessary to "mouth" the fact of an appeal to the claimant's solicitor. We are also satisfied that the less than clearly audible oral notice as given by the prosecution advocate was not heard by the Serco staff nor the claimant, who was

released within a short time by the Serco personnel as a result of their honest belief that there were no legal grounds to detain him. It is undisputed that written notice of appeal was not served upon the claimant and that no application was made pursuant to CrPR 4.10 for a direction from the court that service of the written notice of appeal could be effected upon his legal representatives. Also undisputed is the fact that pursuant to section 1(7) of the 1993 Act, the justices formally disposed of the appeal as no written notice had been given by the prosecution.

40. The issue then to be addressed is how a case which had been disposed of by the justices, and recorded as disposed of in the register (para 13 above), found its way from the magistrates' court to the Crown Court. Mr Halil, who is be commended for the manner in which he, at all times, observed his duty to the magistrates' court and to the Crown Court and also sought to serve the best interests of his client, wrote to the senior legal manager of the relevant district within the courts and tribunal service. His purpose was to ask how and when the matter of an appeal was notified to the Crown Court and what contact took place between the court and the CPS following the hearing at the magistrates' court and before the forwarding of the appeal case papers to Snaresbrook. In a reply Mr Halil was informed that on Monday 14 November 2022 the senior legal manager for North and East local justice area and Barkingside Magistrates' Court emailed the notice of appeal to the Crown Court, specifically to the listing officers. Further, it was stated that the Crown Court contacted the CPS on the Monday to confirm whether it was their intention to pursue the bail appeal. The CPS confirmed that they were proceeding, as they had correctly served the written notice within the time limits.

41. We do not understand how or why this process was initiated and taken forward. There had been a formal disposal by the justices. For reasons which have never been explained, an express ruling of disposal by the justices was ignored by one or more members of the courts and tribunals service who wrongly purported to transfer the appeal to the Crown Court. The CPS, whose representative had been in court on Friday 11 November and was aware of the disposal of the matter by the justices, wrongly proceeded with the appeal when they knew or should have known that there was no jurisdiction to do so.

42. As counsel on behalf of the CPS accepted before this court, if the CPS sought to challenge the 'disposal' by the justices it should have been done by means of proceedings for judicial review.

43. At the hearing in the Crown Court the judge acknowledged that she had not heard evidence from anyone who was present at the magistrates' court and stated that it was "very important" that she did not come to any finding of fact which could not be substantiated. Notwithstanding that caveat, what the judge thereafter appears to do is make findings of fact.

44. We are not without sympathy for the judge who dealt with this application at relatively short notice when she was part heard in a trial. Further, her Court's enquiries yielded the reply that: "The CPS confirmed that they were proceeding, as they had correctly served the written notice within the time limits." We struggle to understand how a CPS lawyer could think that sentence accurately reflected what had transpired at the court below. In any event, Mx Benn set out in clear terms the defence position namely that the court had no jurisdiction in respect of a bail appeal and the reasons for the submissions made on behalf of the defendant, all of which were directed to the errors

in the magistrates' court. Mx Benn concluded with the statement that the magistrates' court had disposed of the matter.

45. The judge was aware that the justices had determined that as the requirement to serve written notice on the claimant had not been complied with the appeal was disposed of. The judge stated that the claimant was "aware that the Crown were going to be appealing the decision and that was followed up by proper notice in the afternoon." This is simply wrong. The claimant was not aware of the Crown's intention to appeal the decision. Such written notice as was purported to be served on the Friday afternoon was never served on the claimant. By reason of the provisions of CrPR 4.10, service of written notice upon his solicitor is permitted only following a direction by the court. None was applied for. Further the judge's statement that she did not know why the claimant's solicitors had not chosen to contact him on Friday raises the question as to why there was a need to do so. The matter had been disposed of, there was no imperative to inform the claimant of the disposal of an appeal of which he was unaware.

46. We also have difficulty understanding the judge's reasoning in finally concluding that the claimant was "properly here before the Court in relation to this appeal" when she was aware that no written notice had been served upon the claimant, in contravention of the terms of the 1993 Act and that the matter had been disposed of by the justices. The terms of the statute are clear and are required to be met because the liberty of the subject is paramount.

47. In our judgment, the result of the wrongful transfer of a bail appeal in purported pursuance of provisions of the 1993 Act was that the judge had no jurisdiction pursuant to the statute to consider, still less adjudicate upon, the conditional bail granted by the justices.

48. Given our findings as to the absence of jurisdiction following the disposal of the appeal by the magistrates it is not necessary to consider further the authorities upon section 1 of the 1993 Act.

49. Acceptance of the first ground of challenge having been given to this court by counsel on behalf of the CPS, it was further contended by him that the judge was seized of the matter of bail as the claimant had been "sent" to the Crown Court pursuant to the 1988 Act. We disagree. The reason this matter was brought so swiftly before the Crown Court was because it was wrongfully regarded as an appeal under the provisions of the 1993 Act and was listed as such. Absent the representations from the administration of the magistrates' court and the CPS that this was a valid prosecution appeal, the claimant's case would not have been listed at the Crown Court before the agreed date of 7 December 2022. It follows, and we so find, that the case should not have been listed before the judge on 15 November 2022 as she had no jurisdiction to hear the bail appeal on that day.

50. We accept the claimant's contention that to permit the Crown Court to deploy an early listing and bail review under its general powers when the CPS have manifestly failed to meet the requirements of the 1993 Act in respect of a bail appeal, would be to deprive any defendant of the protections which Parliament have set out in the 1993 Act. Put shortly, such a course would permit the Crown Court to bypass the strict requirements of the 1993 Act which directly impact upon the liberty of the citizen. As Mr Barry conceded, it is rare for a Crown Court judge to remove bail at a first appearance in the

Crown Court when bail has previously been granted by the magistrates' court and there have been no breaches of any bail conditions.

Conclusion

51. Accordingly, and for the reasons given, we grant judicial review upon the three grounds of challenge. We are satisfied that the judge did exceed her jurisdiction in determining the prosecution's purported appeal against the grant of bail to the claimant. We accept that the judge erred in law in deciding that the matter was properly before the Crown Court because oral notice had been given and written notice served. We are also satisfied that the judge erred in law in deciding, in any event, that the Crown Court was seized of the matter because the case had been listed before it.

Relief

52. It is accepted by the parties that events have moved on since the issue of these proceedings for judicial review. We note that the claimant was re-admitted to conditional bail on 18 November 2022 and was released some days later when all the pre-release conditions were fulfilled. The claimant is now in custody, and by the date of this judgment will or should have been sentenced for the two offences of which he was found guilty. Realistically, Mx Benn on behalf of the claimant accepted that the court, in the alternative, could grant declaratory relief and that is the course which we are minded to take. Given the findings we have made, we grant the following relief namely:

    i) a declaration that the Snaresbrook Crown Court on 15 November 2022 had no jurisdiction to determine the prosecution's appeal to the granting of bail to the claimant by the Barkingside Magistrates' Court; and

    ii) a declaration that Snaresbrook Crown Court on 15 November 2022 had no jurisdiction to allow the appeal and remand the claimant in custody.