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

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Delivered: 09/04/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY McGEOWN LOGISTICS LIMITED
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Mr Ronan Lavery QC with Ms Niamh Horscroft BL (instructed by McNamee McDonnell
Solicitors) for the Applicant

Mr Paul McLaughlin QC with Mr Ben Thompson BL (instructed by the Crown Solicitor)
for the Respondent

ROONEY J

Introduction

- [1] The applicant is McGeown Logistics Limited, an international haulage company, trading from premises at 67A Rathfriland Road, Carneyhaugh Industrial Estate, Newry ("the premises").
- [2] In the early hours of Tuesday, 30 March 2021, the PSNI Serious Organised Crime Unit carried out an intelligence led search at the said premises and on 1 April 2021 seized a number of vehicles belonging to the applicant, namely -
- (a) 7 x tractor units;
 - (b) 4 x trailers;
 - (c) 1 x Massey Ferguson tractor;
 - (d) Trailer unit for the tractor;
 - (e) 1 x tipper unit.
- [3] In a statement filed pursuant to Order 53, Rule 3(2)(a) of the Rules of the Court of Judicature (NI) 1980 the applicant seeks to challenge the respondent's decision to (a) seize the vehicles and (b) retain the vehicles "indefinitely."

- [4] The grounds of challenge are as follows:
- (i) the decision is *ultra vires*, namely beyond any powers available to the Respondent under PACE or otherwise;
 - (ii) the decision is irrational, arbitrary, *Wednesbury* unreasonable and disproportionate;
 - (iii) the decision fails to take into account a material consideration, namely, the interests of the continuation of the business and the impact financially and socially upon the employees of the business;
 - (iv) the respondent, as a public authority, has failed to take into account the rights of the people employed by the applicant and is acting in breach of their rights pursuant to Article 1, Protocol 1 and Article 8 ECHR.
- [5] The application for leave to apply for Judicial Review of the decision is opposed by the respondent. In essence, the respondent states that the vehicles were lawfully seized pursuant to Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) following lawful entry by PSNI Officers onto the said premises on foot of a search warrant.
- [6] A search warrant was obtained pursuant to Section 23(3) of the Misuse of Drugs Act 1971 to enter the premises and to search for Class B drugs. The lawfulness of the search warrant has not been challenged.
- [7] The respondent states that in the course of the search, PSNI uncovered in excess of 900 kg of herbal cannabis which was concealed within pallets of tiles in a trailer. Tachograph irregularities were also found within the associated tractor unit. Additional vehicles on the premises, including the 7 x tractor units and 4 x trailer units were also searched for the presence of drugs during the operation with negative results.
- [8] Essentially, the respondent states that the seizure of the vehicles was lawful pursuant to Article 21 of PACE for the purposes of forensic examination and the PSNI wish to retain the vehicles for that purpose.

Background

- [9] The background to the search of the premises and seizure of the vehicles is as detailed in the helpful submission from Mr Paul McLaughlin QC, senior counsel for the respondent, dated 6 April 2021. I also have the benefit of the affidavit from Detective Chief Inspector Thornton of PSNI Organised Crime Unit who is the Senior Investigating Police Officer for this investigation. Attached to DCI Thornton's affidavit is a bundle of relevant documents to which I will refer in due course.

[10] I take into consideration the urgency of this application and acknowledge that, despite the short timescale to prepare a response to this application, Mr McLaughlin's submission and DCI Thornton's affidavit (including documents) are comprehensive and succinct.

[11] From the above documentation, I draw the following facts:

- (i) The applicant, McGeown Logistics Limited, is an international haulage company based at 67A Rathfriland Road, Newry. There are two adjacent premises. No. 67A is the headquarters of the business. It encompasses offices, garages and an area of hard-standing. The seized vehicles were located at these premises. No. 67 is a domestic residence immediately adjacent to No 67A.
- (ii) Based on intelligence, a search warrant was obtained pursuant to Section 23(3) of the Misuse of Drugs Act 1971 to enter the premises and to search for Class B controlled drugs. The warrant was obtained on 29 March 2021 and executed at 1.26 a.m. on Tuesday, 30 March 2021.
- (iii) A trailer parked on the premises was found to be partially opened and contained 24 x pallets of ceramic tiles. A search of the pallets revealed purpose built wooden "hides" containing multiple bags of herbal cannabis. Photographs have been exhibited to DCI Thornton's affidavit which depict the interior of some of the hides after the cannabis has been removed.
- (iv) A total of 764 bags of suspected herbal cannabis were detected within the hides with a combined weight of 916 kg and an estimated street value of £13 - £14 million.
- (v) In addition to the pallets recovered from the trailer, the PSNI also located similar empty purpose built "hide" pallets on the premises.
- (vi) Later on 30 March 2021, Gary McGeown, who is one of the two directors of the applicant company, was arrested and charged with a total of 6 offences relating to the importation, possession and supply of controlled drugs. The other director, Ms Donna Mackin, is the deponent in this proposed challenge.
- (vii) During the initial inspection and assessment of the premises, the PSNI noticed CCTV cameras. It was considered that footage from the cameras may contain valuable evidence about movements to, from and within the premises. In order to obtain access to electronic storage devices which might contain CCTV footage, two additional warrants were obtained under Article 10 of PACE. Copies of the said warrants are attached at pages 23 - 25 of the paginated bundle of relevant documents.

- (viii) A search of the tractor unit also revealed irregularities with the tachograph. PSNI discovered that a card, which would have linked the driver to the unit, was not used.
- (ix) PSNI also found a Massey Ferguson tractor and a transporting trailer unit. The front of the tractor was fitted with mechanised brushes. PSNI suspect that this vehicle may have been used as part of a cleaning operation and intend to carry out a forensic examination of both the tractor and its trailer. This vehicle and a tipper lorry discovered on the premises will be considered in further detail below.

Criminal Cause or Matter

- [12] At the outset of the application and during the course of legal arguments, the question was raised as to whether the contested issue constituted a criminal cause or matter.

The Statutory Scheme

- [13] Order 53 Rule 2 sets out that “*in a criminal cause or matter the jurisdiction of the Court on or in connection with an application for judicial review*” shall be exercised by a Divisional Court:

“2-(1) Save as otherwise provided by this Order and subject to paragraph (3) and to Rules 3(3) and 8(1), in a criminal case or matter the jurisdiction of the Court on or in connection with an application for judicial review shall be exercised by three judges sitting together.

(2) Where the Lord Chief Justice so directs, such jurisdiction may be exercised by two judges.

(3) In vacation any jurisdiction under this Rule may, where necessary, be exercised by a single judge.

(4) No appeal shall lie from an order made by a judge exercising jurisdiction under paragraph (3), but an application may be made by motion within 10 days to the court, constituted in accordance with paragraph (1) or (2) to set aside or discharge the order and to substitute such other order as the Court may think fit.

(5) Where in accordance with paragraph (2) a matter is heard before two judges and those judges differ in opinion, it shall be re-heard and determined by three judges.

(6) *Notwithstanding this rule, any jurisdiction on consent may be exercised by a single judge in accordance with Section 16(5) of the Act.*

(7) *A court of two or more judges exercising jurisdiction pursuant to this rule shall be called a Divisional Court."*

[14] The phrase "criminal cause or matter" is repeated in the same context in relation to the rights of appeal from the High Court. In civil judicial reviews, an appeal can be made to the Court of Appeal. An appeal to the Court of Appeal in a criminal cause or matter is prohibited by Section 35(2)(a) of the Judicature (NI) Act 1978:

"35.(1) Subject as otherwise provided in this or any other statutory provision, the Court of Appeal shall have jurisdiction to hear and determine in accordance with rules of court appeals from any judgment or order of the High Court or a judge thereof.

(2) *No appeal to the Court of Appeal shall lie:*

(a) except as provided by the following provision."

[15] Instead, by virtue of Section 41 of the Judicature (NI) Act 1987, the appeal route with regard to a criminal cause or matter is to the Supreme Court. Such an appeal requires leave of either the court below or the Supreme Court and such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court that the point ought to be considered by the Supreme Court:

"41. Appeals to Supreme Court in other criminal matters

(1) *Subject to the provisions of this section, an appeal shall lie to the Supreme Court, at the instance of the defendant or the prosecutor -*

(a) *from any decision of the High Court in a criminal cause or matter;*

(b) *from any decision of the Court of Appeal in a criminal cause or matter upon a case stated by a county court or a magistrates' court.*

(2) *No appeal shall lie under this Section except with the leave of the court below or of the Supreme Court; and, subject to*

Section 45(3), such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court, as the case may be, that the point is one which ought to be considered by the Supreme Court.

- (3) ...
- (4) ...
- (5) ...

(6) *In this Section, Sections 44 and 45 and Schedule 1 –*

(a) *any reference to the defendant shall be construed –*

- i. in relation to proceedings for an offence, and in relation to an application for an order of mandamus, prohibition or certiorari in connection with such proceedings, as a reference to the person who was or would have been the defendant in those proceedings;*
- ii. in relation to any proceedings or order for or in respect of contempt of court, as a reference to the person against whom the proceedings were brought or the order was made;*
- iii. in relation to a criminal application for habeas corpus, as a reference to the person by or in respect of whom that application was made,*

and any reference to the prosecutor shall be construed accordingly.”

[16] Section 120 of the Judicature (NI) Act 1978 deals with interpretation. The following are relevant:

“‘cause’ includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by or in the name of the Crown;

...

‘defendant’ includes any person served with any writ of summons or process or served with notice of, or entitled to attend, any proceedings;

‘matter’ includes every proceeding in court not in a cause; ...”

[17] With regard to the said statutory scheme, Lord Sales said in the recent decision of the Supreme Court in *McGuinness* [2020] UKSC 6 that:

“63. It is unsatisfactory that there should be uncertainty regarding the meaning of the important procedural provisions in Section 41(1) of the 1978 Act (for Northern Ireland) and Section 18(1) of the 1981 Act (England and Wales: ‘Section 18(1).’) The phrase ‘criminal cause or matter’ as employed in those provisions defines a legal category of cases before the High Court from which there is only a highly circumscribed possibility of appeal to the Supreme Court, involving specified procedural hurdles; and outside which there is the usual right of appeal to the Court of Appeal, involving different procedural hurdles. Parties in a matter before the High Court need to be able to understand into which category their case falls, so that if they want to appeal they can know what their right of appeal is and how it may be exercised.”

Whether Criminal Cause or Matter

[18] In oral and written submissions, both Mr Lavery QC and Mr McLaughlin QC agreed that the issue raised in this case was not a criminal cause or matter. In arriving at this conclusion, both counsel referred to the decision of the Supreme Court in *McGuinness* [2020] UKSC 6 and, in particular, emphasised the following -

(i) The significance of appeal rights to rectify errors in individual cases has long been recognised in the civil and criminal legal systems. As stated by Lord Sales:

“68. Accordingly, an overly expansive interpretation of the phrase ‘a criminal cause of matter’ in Section 41(1) and Section 18(1) would have the effect of reducing to an unacceptable degree parties’ access to justice at appellant level, leaving pockets of unchangeable, potentially erroneous first instance decisions.”

(ii) Lord Sales stated that when construing the intended meaning and effect of the ‘criminal cause or matter phrase’, *“it is to be inferred that the intention is that the phrase defines a reasonably tightly drawn category of case focused directly on the process for bringing and determining criminal charges.”* (paragraph 68).

(iii) Challenges to decisions to prosecute and to extradite will involve a criminal cause or matter (paragraph 71).

(iv) Similarly, challenges to decisions not to prosecute will also involve a criminal cause or matter (paragraph 72).

- (v) The decision has to relate to the question of prosecution of a specific person in relation to a particular offence (paragraph 73). So, a judicial review of the refusal of the DPP to publish details of his policy as to the circumstances in which a prosecution will be brought for an offence of aiding or abetting suicide would not relate to a “*criminal cause or matter.*” See *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45.
- (vi) When the High Court is invited to exercise its judicial review powers in relation to the criminal process and the trial of a person on a criminal charge, the proceedings are directly related to the trial and qualify as a criminal cause or matter (paragraph 75).
- (vii) One of the key passages in *McGuinness* is paragraph 77:

“77. The speeches in Amand in the passages set out above, explain how to identify what counts as a decision in ‘a criminal cause or matter’ for the purposes of knowing which appeal rights apply. This involves asking the question in relation to the proceedings which underlie those in the High Court: are the proceedings “the direct outcome of which may be trial of the applicant and his possible punishment for an alleged offence by a court claiming jurisdiction to do so” (p. 156 per Viscount Simon LC) and “which, if carried to [their] conclusion, might result in the conviction of the person charged and in a sentence of some punishment” (p. 162 per Lord Wright)? If so, the proceedings in the High Court to challenge such a criminal process will be categorised as ‘a criminal cause or matter’, taking their character from the nature of the underlying proceedings. This guidance strikes a coherent and principled balance regarding rights of appeal, giving appropriate but not extensively wide content to the phrase ‘a criminal cause or matter’ in the present statutory context.”

Application of the Principles in McGuinness to this Case

- [19] Applying the principles in *McGuinness* as stated above, I must confess that my task of deciding whether the issues in this case involve a criminal cause or matter remains difficult. A reasonable argument could be made that the challenged decision, namely to seize the vehicles for forensic examination, focuses directly on the process for bringing and determining criminal charges. Therefore, if the applicant was David McGeown in his personal capacity, then the challenged decision would relate to a criminal cause or matter in that there would be a possible and foreseeable outcome relating to the prosecution and punishment of Mr McGeown for a criminal offence.
- [20] However, in this case, there are a number of relevant features which, on balance, persuade me that the challenged decision is not a criminal cause or

matter. Firstly, the applicant is a company. The applicant is not the defendant in criminal proceedings. The company's interest lies in its possession and use of its vehicles in furtherance of its business. David McGeown has been arrested in his personal capacity.

- [21] Secondly, at present there are no criminal proceedings against the applicant; rather an ongoing investigation.
- [22] Thirdly, the focus of this judicial review application is to challenge the decision of the PSNI to seize vehicles belonging to the applicant and to have the vehicles returned. The alleged legal wrong is a failure of the PSNI to comply with its statutory powers of seizure under Article 21 of PACE. The rights sought by the applicant are more akin to civil disputes in relation to property rights than criminal proceedings.
- [23] Fourthly, while the assets and records of the applicant company may be of relevance to the investigation into individuals, there is no indication at this stage that the applicant company is in risk of criminal jeopardy.
- [24] Finally, as emphasised by the respondent, the language of Section 41(1) of the Judicature (NI) Act 1978 (which defines the appeal rights in a criminal cause or matter) is consistent with this case falling outside its scope. It provides in relevant part as follows -

"41. Appeals to Supreme Court in other criminal matters

- (1) *Subject to the provisions of this section, an appeal shall lie to the Supreme Court, at the instance of the defendant or the prosecutor -*
- (a) *from any decision of the High Court in a criminal cause or matter;*
- (b) *from any decision of the Court of Appeal in a criminal cause or matter upon a case stated by a county court or a magistrates' court."* [emphasis added]

- [25] I agree with the respondent that this is a further indicator that the issues raised in these proceedings are not "*a criminal cause or matter.*" An appeal in a criminal cause or matter may only be made by the "*defendant or prosecutor.*" In these proceedings, the applicant company would not fall within this provision. Accordingly, if the challenged decision was categorised as a criminal cause or matter, the applicant company may have no right of appeal at all, let alone a restricted one. The respondent submits, and I agree, that such an outcome is unlikely to have been intended by Parliament.

[26] For the reasons detailed above, it is my decision that the issues raised in these proceedings do not qualify as a criminal cause or matter.

The Substantive Issue: The Seizure and Retention of the Vehicles

[27] The applicant's main ground of challenge is that the decision to seize the vehicles is ultra vires, namely beyond any powers available to the respondent under PACE or otherwise. In response, the respondent claims that the seizure and retention of the vehicles is lawful pursuant to Articles 21 and 24 of PACE.

[28] Article 21 of PACE is concerned with the general powers of seizure. The material part of Article 21 is as follows:

"21. – (1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing –

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing –

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(5) The powers conferred by this Article are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any statutory provision (including a statutory provision passed or made after the making of this Order) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege." [emphasis added]

[29] Mr Lavery QC presented a convincing argument that the respondent could not rely on Article 21(2) to justify the seizure of the vehicles. He claimed that the respondent had not produced any evidence that the vehicles had been seized on the basis that there was a reasonable ground for belief that they had been "*obtained in consequence of the commission of an offence*" (Article 21(2)(a)). During oral argument, Mr McLaughlin QC, in my opinion, correctly conceded that the lawfulness of the seizure could not be justified under Article 21(2) of PACE.

- [30] The focus of the attention then turned to Article 21(3) of PACE. Mr Lavery QC argued that there were no reasonable grounds for a belief that seizure of the vehicles may reveal evidence in relation to the offence under investigation (or other offences) and that it was necessary to seize the vehicle in order to prevent the evidence from being concealed, lost, damaged, altered or destroyed.
- [31] In respect of Article 21 of PACE, it must be emphasised that the power of seizure is exercisable if the constable is "*lawfully on any premises*" and relates to "*anything*" located on the premises provided that there are reasonable grounds for "*believing*" that it may be evidence in relation to the offence under investigation or another offence and that seizure is necessary in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.
- [32] I remind myself that the standard required in Article 21 is "*reasonable grounds for belief*." "Belief" and "suspicion" involve different standards, with belief requiring more evidence than suspicion (see *A v Secretary of State for the Home Department* [2004] EWCA Civ 1123). The question as to whether or not there were reasonable grounds at the time is an objective one. This approach was applied in the context of entry, search and seizure powers by the House of Lords in *R v IRC, ExP Rossminster* [1980] AC 952.
- [33] In his submission, Mr McLaughlin QC referred inter-changeably to "*reasonable grounds for belief*" and "*reasonable grounds for suspicion*." As emphasised above, the relevant standard is "*relevant grounds for belief*." The affidavit from DCI Thornton with regard to the powers exercised by the detective constable under Article 21 of PACE refers both to the belief of the police officer and the reasonable grounds upon which that belief is based.
- [34] Having considered the submissions from Mr McLaughlin QC and the affidavit of DCI Thornton, it appears that the reasonable grounds advanced for seizing the vehicles were as follows:
- Firstly, the vehicles in question were owned by the applicant company and located at its business premises at 67A Rathfriland Road, Newry. PSNI only seized vehicles which appeared roadworthy and in use. PSNI did not seize vehicles owned by the applicant company which were situated outside the business premises.
 - Secondly, a search of the trailer unit revealed a significant quantity of Class B drugs which had been sealed in sophisticated, purpose built "hides" located inside pallets of tiles.
 - Thirdly, in addition to the hides recovered from the said trailer, the Police also located similar empty purpose built "hide" pallets in the yard area of the applicant company. According to DCI Thornton, "*These empty pallets together with other relevant evidence and intelligence gave (sic) Police reasonable grounds to*

believe that these pallets may have previously been unloaded and removed from the scene, whether from the same trailer or from another vehicle or vehicles.” (See paragraph 12).

- Fourthly, the Police investigation related to a suspected large scale and sophisticated international drugs supply operation which was still at an early stage of investigation with further enquiries ongoing.
- Fifthly, with particular regard to the tractor units and trailers, these vehicles were seized for forensic and evidential purposes in order to determine whether they had been used to transport controlled drugs. Police also wished to inspect the tachographs within each of the tractor units. (See the affidavit of DCI Thornton at paragraph 18).
- Sixthly, with regard to the Massey Ferguson tractor, it was noted by Police to be fitted with a sweeping attachment. PSNI suspect that it may have been used as part of a clearing operation and consider it necessary to carry out a forensic analysis of the tractor and the trailer used to transport the tractor. Similarly, the Police suspect that the tipper lorry may have been used to move pallets or other items containing drugs and also require a forensic examination.

[35] In summary, based on the above, the respondent submits that the vehicles were lawfully seized pursuant to Article 21(3) on the basis that there were reasonable grounds for believing that:

- (a) they may provide evidence in relation to the offence under investigation or any other offences; and
- (b) that it is necessary to seize them in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

Put simply, the vehicles were lawfully seized under Article 21(3) of PACE for forensic analysis for drugs, preservation of forensic integrity and to prevent destruction of evidence.

[36] In considering this matter, I bear in mind that the applicant need only establish an arguable case which has been described as a modest threshold.

[37] Having carefully considered the submissions of the respective parties and the factors highlighted above, it is my decision that the respondent has lawfully exercised its powers under Article 21 of PACE and that the vehicles in question have been lawfully seized. Accordingly, I am not satisfied that the applicant has discharged the burden of establishing an arguable case that the decision was ultra vires or irrational, arbitrary, Wednesbury unreasonable or disproportionate.

- [38] A further ground of challenge is that the decision fails to take into account a material consideration, namely the interests of the continuation of the business and the impact financially and socially upon the employees of the business. In the affidavit of Donna Mackin dated 1 April 2021, it was suggested that the PSNI intended to physically seize all the company's vehicles which would result in the immediate loss of employment of all the employees and the loss of the company's contracts. This was not the case. As stated above, the PSNI only seized seven tractor units, four trailers, a tractor, trailer and tipper lorry. The respondent drew my attention to the applicant's website which described the company's fleet as comprised of almost 30 trucks, 15 refrigerated trailers and 30 Euroliners. In a further affidavit from Ms Donna Mackin dated 7 April 2021, it was claimed that the company currently had 12 vehicles available for use, excluding the vehicles seized by the PSNI. Ms Mackin's affidavit also refers to the seizure of other items, which do not fall within the scope of these proceedings. On the basis of the affidavits from Ms Mackin, it seems clear that the decision to seize the vehicles will interfere with the running of the applicant's business. However, I am not satisfied that such interference is sufficient to outweigh the clear public interest in the investigation. It is my view that the seizures were necessary and proportionate measures in furtherance of the important public interest in the investigation into serious criminal offences.
- [39] The final ground of challenge as stated in the Order 53 statement is that the respondent failed to take into account the rights of the applicant's employees and that the respondent breached their rights pursuant to Article 1 Protocol 1 and Article 8 ECHR. Legal arguments in respect of this ground were not advanced at the hearing. Even if these rights are engaged, in my view any interference was in accordance with the law and for a legitimate purpose. I would further determine that any such interference was proportionate.
- [40] Furthermore, I take into consideration that if the applicant is concerned that PSNI retains the seized items for an unreasonable period of time, two statutory safeguards exist.
- [41] First, pursuant to Article 24 of PACE, PSNI may retain any item seized under Article 21, only "for so long as is necessary in all of the circumstances" [per Art.24(1)]. Where the item is seized for use in an investigation, it may be retained to be used as evidence and may also be retained for the purposes of forensic examination [per Art.24(2)].
- [42] Second, an express statutory mechanism is available by which to obtain a court order for the return of item or items in the possession of police. S.31 Police (NI) Act 1998 provides in relevant part as follows:

"(1) Where any property has come into the possession of the police in connection with their investigation of a suspected

offence, a court of summary jurisdiction, on an application under this subsection, may –

(a) make an order for the delivery of the property to the person appearing to the court to be the owner of the property; or

(b) where the owner cannot be ascertained, make such order with respect to the property as the court thinks fit.

(2) An application under subsection (1) in relation to any property may be made –

(a) by a member of the police force; or

(b) by a person claiming an interest in the property.”

[43] Mr McLaughlin QC emphasised that the vehicles were lawfully seized pursuant to Section 21 of PACE. However, he drew the court’s attention to Article 21(5) which stated that the powers conferred by Article 21 were in addition to any power otherwise conferred. In this regard, it was indicated to the court that on Thursday 1 April 2021, after seizure under Article 21 of PACE took place, investigators within the PSNI Economic Crime Unit also attended the scene and decided to exercise seizure powers under Section 195C of the Proceeds of Crime Act 2002. This provision authorises the PSNI to seize items pending an application for a restraint order. The court was advised that an application for such an order was likely to be made in the near future. However, the court was also advised that seizure under Section 195C of the Proceeds of Crime Act 2002 was additional to the primary seizure for evidential purposes under Article 21 of PACE.

[44] For the purposes of this application, I make no comment on the seizure powers pending application for a restraint order under the Proceeds of Crime Act 2002.

Conclusion

[45] For the reasons set out, I am not satisfied that the applicant has discharged the burden of establishing an arguable case in any of the alleged grounds of challenge to the decision. Accordingly, leave is refused.