Neutral Citation No. [2007] NIMag 1 | *Ref:* **Mag34**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **27/07/07**

In The Petty Sessions District of Craigavon

Director of Public Prosecutions — Complainant

Peter King — Defendant

Judgment

1. The defendant is charged as follows:-

> "That you, between the 7th day of November 2006 and the 19th day of January 2007, being a person to whom the notification requirements of section 85 of the Sexual Offences Act 2003 applies, did fail, without reasonable excuse, to comply with section 85(1) of the said Act in that you did not, within the relevant period, notify to police certain information set out in section 83(5) of the said Act, including your name, home address and date of birth, contrary to section 91(1)(a) of the Sexual Offences Act 2003."

The defendant asserts that he was not legally required to notify the said information to police; alternatively, if he was so required, he had a reasonable excuse for not doing so.

2. The facts of the case are not in dispute. The prosecution evidence was agreed, and the defendant gave brief oral evidence on the issue of reasonable excuse alone.

3. On 10 January 2000, at the Crown Court sitting at Craigavon, the defendant was indicted and pleaded guilty to 10 counts of unlawful carnal knowledge of a girl under the age of 17, contrary to section 5(1) of the Criminal Law Amendment Act 1885. On 4 February 2000, on each count he received concurrent sentences of 12 months' imprisonment suspended for 2 years.

4. At that time, the Sex Offenders Act 1997 was in force, and it contained

a requirement for certain specified sex offenders to notify police of certain details, commonly known as a requirement to sign the Sex Offenders' Register. It is agreed by both sides that the provisions of the 1997 Act relevant to this case were repealed and replaced by identical provisions in the 2003 Act. Since it is the 2003 Act that the defendant is accused of breaching, it is convenient to quote from that Act alone.

5. Section 80 of the Act reads as follows:-

"(1) A person is subject to the notification requirements of this Part for the period set out in section 82 ("the notification period") if-
(a) he is convicted of an offence listed in Schedule 3;
(b) he is found not guilty of such an offence by reason of insanity;
(c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
(d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.
(2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a "relevant offender".

6. The relevant part of section 82 read as follows:-

"(1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him."

The relevant parts of the table are as follows:-

A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person of any other description	5 years beginning with the relevant date

7. Section 18(5)(a) of the Treatment of Offenders Act Northern Ireland 1969 reads as follows:-

"Subject to any provision to the contrary contained in this Act or any enactment passed or instrument made under any enactment after the commencement of this Act
(a) a suspended sentence or order for detention which has not taken effect under section 19 shall be treated as a sentence of

imprisonment, or as the case may be, an order for detention in a young offenders centre for the purposes of all enactments and instruments made under enactments except any enactment or instrument which provides for disqualification for or loss of office of persons sentenced to imprisonment;"

8. The prosecution argue that the combined effect of section 82 of the 2003 Act and section 18(5)(a) of the 1968 Act is that the sentence imposed on the defendant made him subject to the notification requirements of the Act for a period of 10 years, which includes the period of time covered by the charge. While the defence did not formally concede that conclusion, they offered no serious argument to the contrary, and I agree with the prosecution argument.

9. The problem giving rise to this case is that the judge sentencing the defendant in the Crown Court considered that the appropriate notification period was 5 years rather than 10 years. While it is mere speculation, it seems likely to me that the provisions of section 18(5)(a) of the 1968 Act were not drawn to his attention, and he regarded the case as falling in the "catch-all" provision at the bottom of the table.

10. The judge then compounded the problem by making the notification requirement part of the order of the court. The court order reads:-

> "Count Nos. 1-10 Twelve months' imprisonment suspended for two years on each count concurrent. The Judge ordered Defendant to be placed on the Sex Offenders' Register for a period of five years."

11. It is clear that the judge should not have included the notification requirement in the order. In R v Longworth [2006] 1 W.L.R. 313, Lord Mance stated, as regards the scheme in the 1997 Act:-

"**[14]** The starting point is to consider the statutory scheme or schemes. It was accepted on all sides before us that, if there was any requirement to notify under s.1 of the Sex Offenders Act 1997 in consequence of the Appellant's convictions in the proceedings under the 1978 and 1988 Acts, it arose independently of anything provided in those Acts and of any order which was or could be made by the court in the proceedings or on the convictions under those Acts; and further that the only statutory sanction for failure to register was to be found in s 3 of the 1997 Act. It follows that, if and so far as the judge in the present case heard submissions and purported to determine whether any and what

notification requirements arose under the 1997 Act consequent upon the orders of conditional discharge which he made, he had no power to do so."

12. At the conclusion of the judgment, he added:

"**[32]** Finally, nothing in this judgment should be taken as discouraging courts, by or before which an offender is convicted, from following the well-established practice of then informing the offender of any notification requirement which applies, under the Sexual Offences Act 2003, as a consequence of such conviction. If sentence follows immediately on conviction, this should not however be done in a way which appears to make such information part of the sentence or to clothe it with the authority of a further order by the sentencing court. Further, nothing in this judgment detracts from the duties of legal advisers to advise an offender, for whom they are acting, about the consequences of any conviction, including consequences relating to notification under the Sexual Offences Act 2003."

13. Following the order of the Crown Court, the defendant did comply with the notification requirements for five years. He gave evidence that, at the conclusion of the five year period, the last policeman he saw commented that his notification period was over. He did not continue to notify police of his details after that time.

14. However, the case subsequently came to the attention of Constable David Smith, an officer attached to the Community Safety Team in Craigavon. He realised that the legislation required the defendant to comply with the notification requirements for 10 years. He spoke to the defendant by telephone and then met him at his home on 1 November 2006. He spent 1 hour and 45 minutes explaining the position to him, and informed him that, if he did not continue to comply with the notification requirements for the full ten year period, he would be prosecuted.

15. There is a difference between Constable Smith and the defendant as to whether, as alleged by the Constable, the defendant initially agreed to attend the station to complete his annual notification and then later changed his mind, or, as alleged by the defendant, never agreed to do so, but I consider it to be of no consequence. On 7 November 2006, the defendant's solicitor rang Constable Smith to inform him that the defendant would not be attending the station to notify, at which stage Constable Smith began the process leading to this prosecution.

16. During an interview after caution on 19/1/07, and in oral evidence, the defendant said that he was complying with the judge's order, and he

did not consider that he was obliged to notify after the period ordered by the judge had expired.

17. The two issues for the court are (1) whether, notwithstanding the order of the court, the defendant is required by the legislation to notify for 10 years rather than 5, and (2) if he is, whether he had a reasonable excuse for failing to notify on the dates set out in the charge.

18. As regards the first issue, the defendant relies on the decision of the House of Lords in R v Longworth, cited above. In that case, a judge had ordered a defendant who had received a conditional discharge for two offences, to comply with the notification requirements for a period of 5 years. As stated above, the House held that the requirement to notify should not have been made part of the order of the court. While not required to rule on the matter, the House went on to express the view that the imposition of a conditional discharge did not give rise to any obligation to notify under the legislation. (I pause to observe that the law of Northern Ireland may be different in that regard, but that has not been argued before me so I express no view.)

19. The central argument in Longworth was whether, since the judge had no power to make an order in respect of any notification requirements, his purported order was a nullity, and, under the relevant legislation, the Court of Appeal had had no jurisdiction to entertain an appeal. On that issue, the House of Lords followed its previous decision in R v Cain [1985] AC 46. Lord Mance quoted Lord Scarman, who said:-

"An order of the Crown Court, once made, may be in excess of its statutory power or otherwise irregular. But it is not a nullity. And it would undermine the authority of the criminal law if orders made by the highest court of trial in criminal matters could be disregarded as nullities. The order of the Crown Court stands unless and until set aside by the court itself upon application or, if appeal lies, by the appellate tribunal to which the appeal is taken."

20. Lord Mance went on to say that the order made by the judge requiring the defendant to notify was a ruling which was subject to appeal. It was irrelevant to consider whether there could have been consequences, in terms of contempt or otherwise, if the ruling had not been complied with. In answer to a submission that it would have been open to the defendant to ignore the ruling, he said that exercise of that suggested option "would involve boldness unlikely to attract many offenders…"

21. The defendant’s argument in this case is that the order made by the Crown Court requiring him to notify for 5 years is valid unless and until set aside, and takes precedence over the statute.

22. In response, the prosecution say that the facts of the present case can be distinguished from Longworth. As the House of Lords made clear, the requirement to notify is contained in statute, and is independent of any order made by the judge. The judge cannot, by order, dispense with the statutory requirement.

23. In considering these competing arguments, it may be useful to consider something that the House of Lords declined to consider in detail, namely the consequences for Mr. Longworth of declining to follow the judge’s order and notify. Even though the court order was not a nullity, it is clear to me that Mr. Longworth could not have been convicted of a criminal offence of failing to notify. Unlike, for example, the offence of driving while disqualified or breach of a non-molestation order, the relevant criminal offence does not consist of breach of a court order, but rather of breach of a statutory requirement. If, as the House of Lords said, albeit as obiter dicta, there was no statutory requirement, then there was no offence. Further, given that Parliament decided to make it a criminal offence to fail to notify in breach of the statutory requirement, I have the greatest difficulty in contemplating circumstances in which Mr Longworth could properly have been punished for contempt. It may well be, as Lord Mance said, that disobeying the order would have required considerable boldness, but my conclusion is that, in the end, the defendant could have suffered no penalty. The court order may have been “valid” for the purposes of permitting an appeal, but it was ineffective as against the defendant.

24. In passing, I note that if the order in this case had been made by a magistrates’ court, it would have been open to the prosecution to apply to the court under Article 158A(1) of the Magistrates’ Courts (NI) Order 1981 to correct it. I am informed that no similar power exists in the Crown Court. The Court had only 28 days to correct the order, and, of course the error did not come to light for over 5 years. Further, the prosecution had no power at any stage to appeal the order. The unfortunate consequence is that the only way of resolving the matter was to prosecute the defendant.

25. I conclude that, even if the order of the Crown Court was valid, it had no effect on the requirement imposed on the defendant by the statute to register for a period of 10 years. As in Longworth, it may have been “valid”, but it was ineffective as regards the defendant.

26. Even if I had not reached that conclusion, I would have held that the Crown Court order expired after five years, and could not override the statutory requirement to register after that time. In my view, the passage from Lord Scarman’s speech in R v Cain, quoted above, was not intended to rule out the possibility of a court order expiring. He could have added the words “or until it expires” to the ways by which a court order may cease to have effect. The order can be regarded as having been valid and effective for the period it lasted, namely 5 years. During that time it did not conflict with the statutory requirement, but ran alongside it. After 5 years, it expired, but the statutory requirement continued.

28. Whichever way one looks at the issue, I hold that, on the dates alleged in the charge, the statute required the defendant to notify.

29. The second issue is whether, in the light of that finding, the defendant had a reasonable excuse for failing to notify. I can deal with that issue shortly. Prior to the position being explained to the defendant on 1 November 2006, he may well have had a reasonable excuse, on the basis that he had been misled by the court order. Given that he was then provided with a lengthy explanation of a somewhat complicated legal position by a police constable rather than a lawyer, I consider that he was entitled to some time to consider his position and seek his own legal advice.

30. To his credit, the defendant does not seek to argue that he was confused by what the constable told him. It is clear that he did consult a solicitor, as it was his solicitor who rang the police on 7 November to inform them that he would not be notifying.

31. After that date, his excuse, in essence, is that, notwithstanding the explanation he had been given, he believed that the court order took precedence over the statute. He has not suggested that he was acting on legal advice, although I do not consider that it would have made any difference if he was. “Ignorance of the law is no excuse” is a well known legal principle. I cannot see how an incorrect view of the law could ever amount to a reasonable excuse. I have concluded that his view of the law was incorrect, and I am therefore satisfied that his reason for not notifying did not amount to a reasonable excuse.

28. I should note, for the sake of completeness, that the defendant also referred to the stress and illness he had suffered as a result of the requirement to notify. As I pointed out, this would have occurred whether the period was 5 years or 10 years, and it was not seriously suggested that this could amount to a reasonable excuse.

29. In conclusion, while I am not without sympathy for the defendant's position, something I can reflect in the sentence I impose, I am satisfied beyond reasonable doubt that the defendant failed to notify police as he was required to do during the period alleged in the charge, and further, that he had no reasonable excuse for the said failure. I therefore convict him of the offence.

Alan White R.M.