

**Neutral Citation Number: [2011] EWHC 1578 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**ADMINISTRATIVE COURT**

Sitting at:  
**Manchester Civil Justice Centre**  
**1 Bridge Street West**  
**Manchester**  
**M3 3FX**

Date: Thursday, 19<sup>th</sup> May 2011

**Before:**

**THE HONOURABLE MR JUSTICE McCOMBE**

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**Between:**

**THE QUEEN (ON THE APPLICATION OF  
THE CHIEF CONSTABLE OF GREATER  
MANCHESTER POLICE)** **Claimant**

**- and -**

**SALFORD MAGISTRATES' COURT** **Defendant**  
**and**  
**PAUL HOOKWAY** **Interested  
Party**

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Ms A Whyte QC appeared on behalf of the **Claimant**.

The **Defendant** and the **Interested Party** did not appear and were not represented.

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**Judgment**

**MR JUSTICE McCOMBE:**

1. This is an application for judicial review of a decision of the City of Salford Magistrates' Court of 5 April 2011 refusing an application made under Section 44 of the Police and Criminal Evidence Act 1984 by the present claimant, the Chief Constable of the Greater Manchester Police, for an extension of a warrant for the further detention of the interested party, Mr Paul Hookway. Mr Hookway was originally arrested on 7 November 2010 on suspicion of the murder of a Mr Malcolm Short.
2. The chronology of events is as follows. At about 13:25 hours on 5 November the interested party called the ambulance service to attend upon Mr Short, who he reported as being unconscious. Police were also contacted and both police and ambulance services attended the scene. Mr Short was taken to hospital but sadly died at about 18:00 hours on that day. The post mortem carried out on 6 November, concluding at about 20:45 hours, determined that Mr Short had died from injuries inflicted in a violent assault. At 12:20 hours on 7 November Mr Hookway was arrested on suspicion of the murder of Mr Short. He was conveyed to Swinton police station, arriving there at 12:40 hours. His detention was authorised at 13:01.
3. In accordance with section 41 of the Act it followed that Mr Hookway could lawfully be detained for 24 hours until 12.40 on 8 November. Section 41 of the Act provides as follows:

"(1) Subject to the following provisions of this section and to sections 42 and 43 below, a person shall not be kept in police detention for more than 24 hours without being charged."

4. The period of detention is determined by the following provisions of section 41. Subsection (2) provides the calculation of what is known as "the relevant time". On reflection I take the view that the detention period in this case is fixed by virtue of section 41(2)(d) rather than by section 41(2)(a) as I, and I think counsel too, was inclined to think at the time of the hearing. Section 41(2)(a) only applies when, as set out in subsection (3) of that section, the person's arrest is sought in one police area in England and Wales and he is arrested in another police area. That was not this case. Section 41(2)(b) deals with arrests outside England and Wales and section 41(2)(c) deals with voluntary attendance at a police station before arrest. None of those paragraphs applies so one is left with Section 41(2)(d) which read with the introduction words of Section 41(2), is as follows:

"The time from which the period of detention of a person is to be calculated (in this Act referred to as "the relevant time")—

[...]

d) in any other case, except where subsection (5) below applies, shall be the time at which the person

arrested arrives at the first police station to which he is taken after his arrest."

It is that provision which seems to me covers this case and fixes the relevant time, for the purposes of the Act in this case, as that of Mr Hookway's arrival at Swinton Police Station at 12.40 hours on 7 November.

5. The Act however contains a power whereby an officer of the rank of superintendent or above can authorise a suspect's detention for a further 12 hours. That power is found in section 42 of the Act and is in the following terms:

"(1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that—

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is an indictable offence; and

(c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time."

6. Pursuant to this provision, at 11:40 hours on 8 November, an hour before Mr Hookway would have had to be released in the ordinary course pursuant to the provisions of section 41, a superintendent authorised his continued detention until 00:40 hours on 9 November 2010. On the same day an application was made to the court under a further statutory power contained in section 43 of the Act for a warrant of further detention. Section 43 provides as follows:

"(1) Where, on an application on oath made by a constable and supported by an information, a magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention."

There are then provisions for informing the suspect of the contents of the relevant information that is to go before the court, for arranging for his attendance at the hearing and for his legal representation.

7. Subsection (4) deals with the question of justification of the further detention in the following terms:

"(4) A person's further detention is only justified for the purposes of this section or section 44 below if—

(a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is an indictable offence; and

(c) the investigation is being conducted diligently and expeditiously."

8. Subsection (5) is relevant as to timing. That provides as follows:

"(5) Subject to subsection (7) below, an application for a warrant of further detention may be made—

(a) at any time before the expiry of 36 hours after the relevant time; or

(b) in a case where—

(i) it is not practicable for the magistrates' court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but

(ii) the court will sit during the 6 hours following the end of that period,

at any time before the expiry of the said 6 hours."

So in this case the application had to be made before the expiry of 36 hours after 12:40 on 7 November, ie before 00:40 hours on 9 November, the time of the expiry of the further detention period that had been authorised by the superintendent at 11:40 hours on 8 November.

9. If a warrant is to be issued the following provisions of the Act apply. Section 43(10) provides:

"A warrant of further detention shall—

(a) state the time at which it is issued;

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it."

Subsection (11) goes on to provide:

"Subject to subsection (12) below, the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it."

Then subsection (12):

"The period shall not be longer than 36 hours."

10. The application was made and at 18:22 hours on 8 November a warrant for further detention was issued. As I have said, the warrant had to state the time at which it was issued and the period for which the extension was being granted. In this case the warrant provided this. It set out the date, "8.11.10", and the time, "18.22 hours", and recited the making of the information. Then its operative part said this:

"You, the constables of Greater Manchester Police Force, are hereby authorised to keep the above named defendant in police detention for 36 hours from the time of issue of this warrant."

11. Therefore, Mr Hookway's continued detention was authorised, on the terms of the warrant itself in the statutory form, until 06:22 hours on 10 November 2010. However, at 22:19 hours on 9 November Mr Hookway was released on bail subject to conditions. According to calculations supplied to me this was some 27 hours and 57 minutes into the 36 hour extension period granted under the warrant. Accordingly there was at that stage an unexpired time of some 8 hours and 3 minutes remaining. Thereafter the interested party answered to police bail on 11 November 2010, 18 November 2010, 8 January 2011, 13 January 2011 and 9 February 2011.

12. On 5 April 2011 at 10:06 the interested party once again answered his bail. At that stage, however, his further detention was authorised by the custody officer. Following the earlier attendances on the police, on the dates that I have mentioned, it was thought that some 7 hours and 14 minutes remained of the 36 hours granted by the warrant of further detention which had been granted by the court back in November 2010. This proceeds upon the assumption that upon release following the issue of a warrant, if the period of the extension has not expired, that period remains in suspension until used up by later periods of detention.

13. When the interested party attended on 5 April 2011 the police were of the view that the permitted period of detention would expire at 17:03 hours on that day. It is provided by section 47(6) of the Act that when a suspect answers bail previous periods of detention shall be counted in determining any period which "falls to be calculated" under the relevant part of the Act. I shall return to that subsection below.

14. The police therefore decided to apply under section 44 of the Act for an extension of the warrant that had been granted in the previous November. The provisions relating to that application are to be found in section 44 of the Act. It is necessary to read the first three subsections of that provision:

"(1) On an application on oath made by a constable and supported by an information a magistrates' court may extend a warrant of further detention issued under section 43 above if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3) below, the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—

(a) be longer than 36 hours; or

(b) end later than 96 hours after the relevant time."

15. Again there are procedural provisions made for the suspect to be told of the contents of the information to go before the court, for him to attend the hearing and for him to be legally represented. The hearing in this case commenced at 15:00 hours, about two hours before what was considered to be the time remaining unexpired on the warrant that had been issued in the previous November. The Interested Party was legally represented at the hearing and his solicitor apparently stated that the application would not be opposed. It appears that the learned District Judge hearing the case expressed the view that the extension was justified and was proposing to grant it. However, the legal adviser intervened to say that the original warrant appeared to have expired in November 2010 and could no longer be extended. I am told that the applicant police officer alluded to what he said was the common practice, during the initial 24 hours period of detention, of granting suspects bail pending further inquiries, during which time it was considered that the detention clock halts and may only recommence when the suspect returns to answer his bail. The District Judge rejected that argument and he dismissed the application. He directed that the interested party be released. In this respect section 44(7) of the Act provides as follows:

"Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8) below, released, either on bail or without bail."

16. The claimant submits that the learned District Judge's decision was wrong in law and applies for judicial review of it. Permission to apply was granted by HHJ Pelling QC on 20 April and he directed an expedited hearing before a High Court judge. The judge in charge of the Administrative Court list in this city, Langstaff J, gave his approval to the matter being heard by a single High Court judge rather than by a Divisional Court.
17. The application was presented carefully, fully and frankly by Ms Whyte QC for the claimant in the absence of the Defendant and the Interested Party, neither of whom appeared or was represented. I am very grateful to Ms Whyte for her full and careful argument although, in a case like this, it would have been of some assistance to the court to have heard submissions on behalf of the Interested Party.
18. There can be no doubt that police practice in this case has been conducted on the basis that, while any authorised period of detention remains unexpired, the suspect may be released on bail and that his detention can be reauthorised so that he can be reinterviewed at any time during the theoretically "unused" period of authorised detention. Indeed in the case of serious offences where extensive investigations have to be conducted, as in this case, it is common for there to be a series of bail dates leading up to a final charging decision with or without further interview.
19. However, on reflection it seems to me that in many such cases a suspect is bailed and only re-interviewed on a re-arrest when new evidence has come to light, see for example sections 41(9), 42(11) and 43(19) of the Act. It is only in cases like the present, where there is a desire to re-interview a suspect without fresh evidence having come to light, that any problem arises. I do not consider therefore that rejection of the claimant's submissions would be as damaging to police practice as Ms Whyte was perhaps inclined to submit.
20. The difficulty in the claimant's way, however, is that in every case the limits of detention are expressed in terms as being for a period calculated from "the relevant time". The relevant time is defined for most cases as being, as already cited, that provided for in section 41(2) of the Act. In this case the relevant time was 12:40 hours on 7 November 2010. In this case where the expression "the relevant time" has to be applied it is the same, namely 12.40 on 7 November 2010. In the course of her argument Ms Whyte submitted, perhaps hesitantly, that this was not necessarily the case when it came to the application of section 44(3), which is the subsection setting the limits of any permitted extension of a warrant for further detention. However, I do not think that she developed that submission to the extent of telling me what, in her submission, "the relevant time" was in that subsection the context of this case. I can see no alternative to reading the phrase as meaning precisely the

same throughout, namely 12.40 on 7 November 2010. The Act says that “the relevant time” from which a period is to be calculated is the same.

21. There is apparently no previous authority on the present problem. Ms Whyte submits that the principal issue for me to decide is that set out in paragraph 10 of her skeleton argument as follows in sub paragraph (a):

"Can a lawful warrant of further detention be extended under section 44 PACE 1984 if the suspect in question has been released pre-charge on bail during the currency of but before the expiry of the period of the warrant of further detention? In other words, is the power to detain under a WFD extinguished if the police release the suspect on police bail pre-charge before the expiry of the period of further detention or does the unexpired time on the PACE clock carry over under such time as the suspect answers his police bail?"

22. With respect, it seems to me however that this formulation really begs the question in the present case: was the warrant still current on 5 April 2011 or had it already expired? In my judgment moreover the question in this case is not whether a release on bail before the expiry of the warrant extinguishes an unexpired period of authorised detention. The questions are the logically anterior ones, namely, what was the period of extension granted on 7 November 2010; has it expired, and, whether expired or not, can it be extended under section 44. Section 43 has already been quoted. It provides that a warrant for further detention can be granted before the expiry of 36 hours after the relevant time, I repeat, 12.40 on 7 November 2010. If further detention is justified within the meaning of section 43(4) of the Act, the court can grant a warrant of further detention. It is provided by section 43(10) that the warrant is to state the time of issue and authorise the detention for the period stated in it. The period is not to be longer than 36 hours. In this case the authorisation was for 36 hours "from the time of issue of the warrant", ie 36 hours from 18:22 on 8 November 2010. On any ordinary reading of that language as Ms Whyte's skeleton argument expressly acknowledges (in the grid set out in paragraph 6) this time expired on 10 November at 06:22 hours. That is what the warrant provided for and, therefore, subject to any further statutory saving, the period expired on 10 November 2010. It was not running on the occasions when Mr Hookway attended at the police station thereafter. As a matter of simple language none of those dates was within 36 hours "from the time of the issue of this warrant".

23. The next question however is whether section 44 would permit an extension of time notwithstanding the expiry of the time granted under warrant itself. I have already quoted section 44, which does not identify any time limit for the making of an application for an extension of a WFD; however it does provide that a warrant may be extended for such period as the court thinks fit but with limits. The limits are those set out in Section 44(3). As already stated, that provides:



"(3) The period shall not—

(a) be longer than 36 hours; or

(b) end later than 96 hours after the relevant time."

24. Accordingly again in accordance with ordinary language, the court could not grant any extension for a period which ended later than 96 hours after 12.40 on 7 November 2010, ie 12.40 on 10 November. Again subject to further statutory provisions I do not see how the Magistrates' Court on 5 April could have granted an extension to a date later than 96 hours after 12.40 on 7 November. That time had long since passed; the court was powerless. Subsection 44(3) provided a statutory buffer to any period of extension and that buffer had long since been reached. It was no longer possible for the court to extend the warrant for a period ending before that time. It seems to me therefore that that is an end of the matter.

25. It remains for me to consider whether, as suggested, section 47(6) provides a solution. I have referred to that section briefly already. It is in the following terms:

"Where a person who has been granted bail and either has attended at the police station in accordance with the grant of bail or has been arrested under section 46A above is detained at a police station, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act."

26. I am afraid that I am unable to see how that subsection can operate to push back the date laid down expressly as the end date for any period of extension or warrant of further detention that has been set out in Section 44(3). It simply provides that if a suspect has been released on bail the time in detention must be counted in any period which "falls to be calculated under this part of this Act". If a period has expired it no longer falls to be calculated at all. If the suspect has been released on bail before the expiry of the statutory period which has not expired and is bailed to return within that period his earlier detention must be counted. However, that does not affect the limit of the court's powers expressly stated in section 44(3). If time in fact remains it can be used up. However, section 47(6) cannot alter the express limits on the court's powers set out in Section 44(3). I do not see that Professor Zander QC is saying any more than this in the fifth edition of his celebrated work on the Act, in paragraphs 4.85 and 4.86 at page 180 of the book. He is saying nothing about the limit or extent of the court's powers to grant extensions to warrants as laid down in section 44.

27. It seems to me however, for reasons identified, the consequences are not as severe as might be feared in impeding police investigations in the vast majority of cases. This is simply because in the usual case a suspect returning on bail will either be released because the evidence is not sufficient to warrant a charge or he will be re-arrested under statutory powers because new evidence has come to light. However, for the reasons that I have endeavoured to explain, the present application must be dismissed.

**MS WHYTE:** My Lord, I ....

**MR JUSTICE McCOMBE:** Ms Whyte?

**MS WHYTE:** Thank you. I wonder if you would grant me perhaps five or ten minutes to take instructions.

**MR JUSTICE McCOMBE:** Of course, certainly.

**MS WHYTE:** In relation to appealing because my Lord will appreciate that, given this is a criminal cause or matter, any appeal would require certification from your Lordship.

**MR JUSTICE McCOMBE:** Yes. And I believe it ... obviously give you some time to formulate anything you want to formulate.

**MS WHYTE:** Indeed.

**MR JUSTICE McCOMBE:** but it would need some care.

**MS WHYTE:** Thank you.

**MR JUSTICE McCOMBE:** Thank you very much indeed. I will only be in my room so just call me when you are ready. Take longer than five minutes if you want to.

**MS WHYTE:** Thank you, my Lord.