[2019] IEHC 852

THE HIGH COURT

2019 198 SS

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857 (AS EXTENDED BY SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961)

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA GRAHAM DOOLIN)

PROSECUTOR

AND

R.K.

RESPONDENT / ACCUSED

JUDGMENT of Mr. Justice Garrett Simons delivered on 13 December 2019

INTRODUCTION

1. This matter comes before the High Court by way of a consultative case stated from the District Court. The case stated concerns the procedural requirements attendant upon the making of a barring order under the Domestic Violence Act 1996. More specifically, it concerns the form of notification which must be given to the respondent. The parties are in disagreement as to whether it is an essential proof in a prosecution for failure to comply with a barring order to establish that the respondent was not only aware, in general terms, of the making of the barring order, but had, in fact, been furnished with a copy of the order.

2. The resolution of this dispute turns largely on the correct interpretation of Section 10 of the Domestic Violence Act 1996. (It should be noted that the Domestic Violence Act 1996 has since been repealed by the Domestic Violence Act 2018. The commencement date was 1 January 2019. The alleged offence the subject-matter of the case stated is said to have occurred upon a date prior to this repeal).

REPORTING RESTRICTIONS

3. Section 16 of the Domestic Violence Act 1996 (as modified by section 40 of the Civil Liability and Courts Act 2004) provides that proceedings under that Act are to be heard otherwise than in public. To ensure compliance with the spirit of the legislation, I have made an order directing that the case stated proceedings before this court be heard otherwise than in public. An order is also made prohibiting the publication or broadcasting of any information which would, if published or broadcast, be likely to lead members of the public to identify the married couple who are the parties to the barring order.

STRUCTURE OF JUDGMENT

4. This judgment is structured as follows. First, an overview of the legislative provisions governing the making of barring orders will be provided. Secondly, the specific provisions which govern the notification of the making of a barring order will be examined. Thirdly, the terms of the case stated will be summarised. Finally, the specific questions raised in the case stated will then be discussed and an answer provided.

NOMENCLATURE

5. There are, self-evidently, two parties to a barring order, i.e. the moving party, and the person against whom the order is directed. The Domestic Violence Act 1996 describes the moving party as "*the applicant",* and the party to whom the order is directed as "*the respondent*". For the sake of consistency, the same nomenclature will be employed throughout this judgment.

6. The case stated arises out of a criminal prosecution for an alleged contravention of a barring order. The prosecution has been taken against R.K., the respondent to the relevant barring order (hereinafter "*the Accused*").

BARRING ORDERS: OVERVIEW

7. The Domestic Violence Act 1996 makes provision for the protection of a spouse, civil partner or cohabitee (and of any children or other dependent persons) whose safety or welfare are at risk because of the conduct of another person in the domestic relationship concerned. This is achieved by empowering the District Court and the Circuit Court to make various orders directed to a person in a domestic relationship ("*the respondent").*

8. The case stated is in respect of a form of order known as a "barring order". The principal effect of a barring order is to prohibit one party to a domestic relationship from residing at, or even entering, a place where the other party (or any dependent person) resides. See subsection 3(2) as follows.

> (2)(a) Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires, it may, subject to section 7 and having taken into account any order made or to be made to which paragraph (a) or (d) of subsection (2) of section 9 relates, by order (in this Act referred to as a 'barring order')—
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> (i) direct the respondent, if residing at a place where the applicant or that dependent person resides, to leave such place, and
>
> (ii) whether the respondent is or is not residing at a place where the applicant or that dependent person resides, prohibit that respondent from entering such place until further order of the court or until such other time as the court shall specify.
>
> (b) <u>In deciding whether or not to grant a barring order the court shall have regard to the safety and welfare of any dependent person in respect of whom the respondent is a parent or in loco parentis, where such dependent person is residing at the place to which the order, if made, would relate.</u>

9. A barring order may have other incidents: for example, the order may prohibit a respondent from watching or besetting a place where the applicant resides. The type of ancillary orders which may be made are set out at subsection 3(3) as follows.

> (3) A barring order may, if the court thinks fit, prohibit the respondent from doing one or more of the following, that is to say:

(a) using or threatening to use violence against the applicant or any dependent person;
(b) molesting or putting in fear the applicant or any dependent person;
(c) attending at or in the vicinity of, or watching or besetting a place where, the applicant or any dependent person resides;

and shall be subject to such exceptions and conditions as the court may specify.

10. Subsection 3(8) provides that a barring order shall expire three years after the date of its making, or on the expiration of such shorter period as the court may provide for in the order. This is subject to the possibility of the making of a *further* barring order pursuant to subsection 3(9).

11. Section 17 provides that a respondent who contravenes a barring order "shall be guilty of an offence". The penalties prescribed, on summary conviction, are a fine not exceeding the euro equivalent of £1,500, or, at the discretion of the court, a term of imprisonment not exceeding 12 months, or both.

12. Section 18 authorises a member of the Garda Síochána, who has reasonable cause for believing that an offence is being or has been committed under section 17, to arrest the respondent concerned without warrant.

13. As appears from the foregoing overview of the legislative regime, the nature and extent of the matters included in any particular barring order will vary from case to case. For example, the barring order may or may not contain ancillary orders. The period of time for which the barring order will remain in force is within the discretion of the District Court, subject to a maximum period of three years. Given these potential variations, it is not surprising that the precise nature of the information which must be contained in a barring order has been prescribed under the District Court Rules.

14. The form of a barring order relevant to the case stated is that which had been prescribed under the pre-2019 version of Order 59, rule 5(2) of the District Court Rules. (Amended rules have since been introduced to give effect to the Domestic Violence Act 2018, but these are not directly germane to the case stated).

15. The prescribed form of barring order must indicate *inter alia* the date upon which the order will expire, and whether any additional prohibitions have been included pursuant to subsection 3(3).

16. Relevantly, the prescribed form of barring order also includes a "Warning" in the following terms.

WARNING

A respondent who contravenes this order, or who, while this order is in force, refuses to permit the applicant or any dependent person to enter in and remain in the place to which this order relates or does any act for the purpose of preventing the applicant or such dependent person from so doing, may be arrested without warrant by a member of the

Garda Síochána, and on conviction for such an offence may be fined [EUR 1,904.61] or be sentenced to twelve months imprisonment or be both fined and imprisoned.

A copy of this order is being sent to the Garda Síochána station at

.....

*IT IS AN OFFENCE under section 9 of the Family Home Protection Act, 1976 , as applied by section 8 of the Domestic Violence Act, 1996 , for a spouse to DISPOSE OF OR REMOVE ANY OF THE HOUSEHOLD CHATTELS while this order is in force unless the other spouse consents or the Court on application permits it.

A spouse who contravenes that provision shall be liable on conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding six months, or to both.

*Delete where inapplicable

17. Finally, before concluding this overview of the jurisdiction to make barring orders, it is instructive to compare the nature of a barring order with an injunction in civil proceedings. This comparison is relevant to one of the arguments advanced on behalf of the Accused: see paragraph 50 below. The consequences for a respondent of the making of a barring order are more stringent than those arising upon the grant of an injunction in civil proceedings. Relevantly, breach of a barring order constitutes a criminal offence, and a respondent may be arrested *without warrant* by a member of the Garda Síochána who has reasonable cause for believing that such an offence is being or has been committed.

18. A similar comparison between the legal effect of an interlocutory injunction and an interim barring order had been drawn by the Supreme Court in *D.K. v. Crowley* [2002] 2 I.R. 744. It must be emphasised, however, that the underlying issue in the Supreme Court appeal had been directed to an *interim* barring order which had been granted on an *ex parte* basis, i.e. without the respondent having had an opportunity to be heard. The judgment is principally directed to the fairness of such a procedure, and, in particular, the omission from the then version of the legislation of any time-limit on the operation of an interim barring order. The Supreme Court ultimately held that this omission was "inexplicable", and that the failure to prescribe a fixed period of relatively short duration, during which an interim barring order made *ex parte* is to continue in force, deprived the respondents to such applications of the protection of the principle of *audi alteram partem* in a manner and to an extent which was disproportionate, unreasonable and unnecessary. The Domestic Violence Act 1996 had been amended subsequently to introduce a time-limit of eight working days.

19. Notwithstanding the issues in the appeal were very different to those arising on the case stated, the judgment in *D.K. v. Crowley* is nevertheless of some relevance insofar as it emphasises the Draconian consequences for a respondent of the making of an interim

barring order, and how this compares with an injunction in civil proceedings. See pages 758/59 of the reported judgment as follows.

> "It is understandable that the legislature, in dealing with the problem of domestic violence should have conferred on the courts the jurisdiction to grant what are effectively injunctions to protect spouses and dependent children against such violence. As has already been noted, however, there are significant differences between the statutory jurisdiction conferred on the District Court to grant barring orders and the jurisdiction traditionally enjoyed by courts of chancery to grant injunctions in civil cases where damages would not be an adequate remedy.
>
> The mandatory nature of the interim barring order, even when granted on an *ex parte* application, is in sharp contrast to the nature of the interim or interlocutory injunctions typically granted in civil proceedings. Such injunctions are normally intended to do no more than preserve the status quo pending the determination of the parties' rights in plenary proceedings. While they may on occasions be mandatory in nature, that is unquestionably the exception rather than the rule. It is even rarer for mandatory injunctions to be granted on an interim basis on the ex parte application of the plaintiff.
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> [...]
>
> The interim barring order, moreover, even where obtained on an ex parte application, is not merely mandatory in its effect but brings in its wake draconian consequences which are wholly foreign to the concept of the injunction as traditionally understood. A person who fails to comply with such an injunction commits no offence, although the plaintiff may put in train the process of attachment for contempt in order to obtain compliance with the order. In the case of an interim barring order obtained *ex parte* in the absence of the respondent, the latter automatically commits a criminal offence in failing to comply with the order, even if it should subsequently transpire that it should never have been granted. He or she is, moreover, liable to be arrested without warrant by a garda having a reasonable suspicion that he or she is in breach of the order."

20. As discussed at paragraph 50 below, counsel for the Accused relies on a similar rationale to argue that the notification requirements for a barring order should be analogous to those applicable to an injunction in civil proceedings.

NOTIFICATION OF MAKING OF BARRING ORDER

21. The Domestic Violence Act 1996 attaches enormous significance to the notification of the making of a barring order. Notification is a prerequisite to a barring order taking effect. See subsection 10(1) as follows.

> (1) A safety order, barring order, interim barring order or protection order shall take effect on notification of its making being given to the respondent.

22. The Act makes express provision for three forms of notification as follows.

23. First, the default position is that a copy of the order must be given or sent as soon as practicable to the respondent. This is provided for under subsection 11(2) as follows.

> (2) The court on making, varying or discharging a barring order or an interim barring order shall cause a copy of the order in question to be given or sent as soon as practicable to—
>
> (a) the applicant for the barring order,
> (b) the respondent to the application for the barring order,
> (c) where the Child and Family Agency by virtue of section 6 made the application for the barring order concerned, the Child and Family Agency,
> (d) the member of the Garda Síochána in charge of the Garda Síochána station for the area in which is situate the place in relation to which the application for the barring order was made, and
> (e) where the order in question is a variation or discharge of a barring order or an interim barring order and the place in respect of which the previous order was made is elsewhere, to the member of the Garda Síochána in charge of the Garda Síochána station for the area in which is situated that place but only if that member had previously been sent under this subsection a copy of such barring order or interim barring order or any order relating thereto.

24. The pre-2019 version of Order 59, rule 10(2) of the District Court Rules (as amended by the District Court (Domestic Violence) Rules 2005 (S.I. No. 202 of 2005)) provides that the Clerk shall give or send a certified copy of the order in question as soon as practicable to inter alia the respondent to the application for the barring order by ordinary prepaid post.

25. Two alternative forms of notification are provided for under subsections 10(2) and (3) as follows.

> (2) Oral communication to the respondent by or on behalf of the applicant of the fact that a safety order, barring order, interim barring order or protection order has been made, together with production of a copy of the order, shall, without prejudice to the sufficiency of any other form of notification, be taken to be sufficient notification to the respondent of the making of the order.
>
> (3) If the respondent is present at a sitting of the court at which the safety order, barring order, interim barring order or protection order is made, that respondent shall be taken for the purposes of subsection (1) to have been notified of its making.

26. The first alternative form of notification allows for oral communication to the respondent by or on behalf of the applicant. This is subject, however, to an express requirement that a copy of the order be produced to the respondent. The second alternative form of notification can be characterised as a type of constructive notice: a respondent who had

been present at the sitting of the court at which the barring order had been made is, in effect, deemed to have been notified of the making of the order.

27. The central dispute in the case stated turns largely on whether the proviso under subsection 10(2), i.e. the subclause which reads "without prejudice to the sufficiency of any other form of notification", introduces a fourth form of notification.

THE CONSULTATIVE CASE STATED

28. The case stated has been made by Judge Gráinne Malone and is dated 19 February 2019. To ensure that the anonymity of the parties to the barring order is respected, certain details have been omitted from the summary which follows.

29. The case stated arises out of a prosecution for an alleged offence pursuant to section 17 of the Domestic Violence Act 1996. The District Court had previously made a barring order in April 2018 which directed the Accused to leave premises at a named address (hereinafter "*the family home*"), and prohibited him from entering the family home until a date in April 2021. The barring order also contains a number of ancillary orders pursuant to subsection 3(3). The following additional words have been endorsed upon the barring order: "Gardaí To Serve". The prescribed warning, as required under the pre-2019 version of the District Court Rules, is set out on the face of the barring order.

30. The Accused is charged with having entered the family home on a specified date in 2018 contrary to section 17(1) of the Domestic Violence Act 1996. It is explained in the case stated that, at the conclusion of the prosecution case, an application for a direction of "no case to answer" had been made on behalf of the Accused. In particular, it was submitted that there was no evidence that the Accused had been furnished with a copy of the barring order.

31. It is further explained in the case stated that the only two pieces of evidence before the District Court which are potentially relevant to the question of notification were as follows.

    (i). One of the Gardaí who had attended at the family home gave evidence of the following exchange with the Accused: "upon speaking to [Name Redacted], I asked him was he aware that there was a barring order in force and he said that he was". The Garda stated in evidence that he then cautioned the Accused, and made an arrest pursuant to section 18 of the Domestic Violence Act 1996. The same Garda later stated that he was aware that there was a court stamp on the face of the barring order for the Gardaí to serve the order and that the Gardaí could provide an escort to the applicant spouse, but that he was not aware if either of these actions were undertaken.

    (ii). The applicant spouse stated in evidence—seemingly in response to a question from the District Court judge herself in respect of the endorsement for the Gardaí to serve the order—that "the Police were alert to that and came up and issued a barring order".

32. The District Court judge summarises her decision on the application for a direction as follows.

> "11. At the 'case to answer stage' of proceedings, I made the following findings of fact: based on the evidence adduced by the prosecution at the hearing, the respondent was both aware of the existence of the barring order and that his presence in [Address redacted] was prohibited by that order. Sufficient notification in accordance with the terms of Section 10 (2) of the Domestic Violence Act 1996 was therefore proven in this case taking into account the evidence given together with the wording of the legislation, specifically *'without prejudice to the sufficiency of any other form of notification'*."

33. The District Court judge explains that the prosecutor had requested that she state a case to the High Court. Two questions of law are then set out as follows.

> In considering whether an order as specified under Section 10 (1) of the Domestic Violence Act 1996 has taken effect:
>
> 1. Was I correct to find, based on the evidence present in this case, that the prosecution had proven that the Barring Order had taken effect within the meaning of Section 10(1) & (2) of the [Domestic Violence Act 1996]?
> 2. Was I correct to interpret the wording present under Section 10 (2) of the Act namely '*without prejudice to the sufficiency of any other form of notification'* as expressly providing for other forms of notification to be deemed as satisfactory by a court taking into account the evidence present in each case or should I require evidence that the respondent has received oral communication together with production of a copy of the order?

SUBMISSIONS OF THE PARTIES

34. The Director of Public Prosecutions submits that it is not an essential proof to a prosecution under section 17 that the respondent/accused had been furnished with a copy of the barring order. Rather, it is said that the trial judge is at large, subject to the rules of evidence and any issues of fairness and proportionality, to decide what alternative methods of notification short of the furnishing of the barring order might be acceptable.

35. Counsel on behalf of the Director further submits that the phrase "without prejudice to the sufficiency of any other form of notification" under subsection 10(2) is not qualified by the balance of the section. In particular, it is not necessary that any alternative form of notification actually involve the production of a copy of the barring order.

36. In response, counsel on behalf of the Accused submits that in order for notification to be sufficient, the respondent must, first, be aware of the detail of the barring order, i.e. in terms of the person, place, time and prohibited actions; and, secondly, be aware of the consequences of a breach of the barring order. Counsel attaches significance to the fact that the prescribed form of barring order under the District Court Rules includes a warning. Counsel also draws an analogy with civil proceedings, and the requirement that an order bear a "penal endorsement".

DISCUSSION AND DECISION

37. The second of the two questions of law posed by the District Court presents an issue of principle, while the first question is directed to the *application* of that principle to the particular facts of the case. I propose to address the issue of principle first.

38. The issue of principle can be summarised thus: is it enough that a respondent has been notified of the making of a barring order in general terms, or, alternatively, is it necessary that he or she have been furnished with a copy of the order.

39. The Domestic Violence Act 1996 attaches enormous significance to the notification of the making of a barring order. Notification is a prerequisite to a barring order taking effect. (See subsection 10(1)).

40. The default position under the Domestic Violence Act 1996 and the District Court Rules is that a barring order must be given to or sent to a respondent by way of prepaid post. (Section 11 and Order 59).

41. An alternative form of notification is allowed for under subsection 10(2). This is subject to a proviso which indicates that the alternative form of notification is "without prejudice to the sufficiency of any other form of notification" ("*the proviso*").

42. It may assist in achieving a proper interpretation of this subsection to consider the wording of same initially with the proviso omitted.

> (2) Oral communication to the respondent by or on behalf of the applicant of the fact that … a barring order … has been made, together with production of a copy of the order, shall … be taken to be sufficient notification to the respondent of the making of the order.

43. This subsection allows for the possibility of the fact of the making of an order to be communicated to a respondent by the applicant directly, i.e. as opposed to awaiting the sending of a copy of the barring order to the respondent by the District Court Clerk by way of prepaid post. For this alternative form of notification under subsection 10(2) to be effective, however, a copy of the barring order must be produced to the respondent. Put otherwise, it is not enough that the *fact* of the making of the order has been communicated, a copy of the order must also be furnished. This ensures that the respondent is on notice of the precise terms of the order and has sight of the prescribed warning.

44. The Director of Public Prosecutions seeks to argue that the proviso to subsection 10(2) indicates that other forms of notification may be sufficient, and that these do not necessarily require the production of a copy of the barring order. The submission continues to the effect that in circumstances where the legislation does not provide examples of what might be seen as sufficient notification, the court of trial is at large, subject to the rules of evidence and any issues of fairness and proportionality, to decide what this might entail based on the evidence. See, in particular, §24 of the Director's written legal submissions.

45. With respect, I cannot accept this submission. The proviso under subsection 10(2) ("without prejudice to the sufficiency of any other form of notification") cannot be read in isolation. Rather, it must be interpreted in context. The Domestic Violence Act 1996 expressly provides for three forms of notification: (i) the sending of a copy of the barring order by prepaid post; (ii) oral communication together with the production of a copy of the barring order; and (iii) deemed notification as a result of the respondent's presence in court for the hearing of the application for the barring order. In each instance, the authorised form of notification ensures that the respondent is not only aware of the *fact* that a barring order has been made, but will also have actual or constructive notice of the precise terms of the order. The respondent will either be in receipt of a copy of the barring order or will have been present in court when the order was made.

46. This interpretation is consistent with the requirement that a barring order be in a prescribed form, and include an express warning as to the consequences of a breach of the order.

47. The insertion of the proviso under subsection 10(2) had been necessary to ensure that there was no conflict between the introduction of the alternative form of notification, i.e. oral communication together with the production of a copy of the order, and the default form of notification under section 11. The proviso confirms that the alternative form of notification is "without prejudice" to other forms of notification, i.e. it is not exclusive or mandatory.

48. The existence of the proviso cannot be interpreted as having been intended to allow for a *fourth* form of notification which falls short of the requirement for actual or constructive notice. It would set the elaborate statutory scheme at naught—and the other three forms of notification would be redundant—were a fourth freestanding form of notification to be allowed. It will be recalled that, on the Director's argument, the court of trial is to be at large, subject to the rules of evidence and any issues of fairness and proportionality, to decide what constitutes sufficient notification. Crucially, it would not be necessary, on this argument, to establish actual or constructive notice of the terms of the barring order.

49. More generally, it would be contrary to the principles of natural and constitutional justice to interpret the Domestic Violence Act 1996 as authorising the arrest and subsequent conviction of a respondent for breach of the terms of a barring order in circumstances where the respondent did not have actual or constructive notice of the precise terms of the order nor of the consequences of a breach of the order.

50. In this regard, the analogy which counsel on behalf of the Accused has drawn with the "penal endorsement" in civil proceedings is well made. It is a condition precedent to a successful application for attachment and committal for breach of a court order in civil proceedings that the respondent have been served with a copy of the order containing a "penal endorsement". See, for example, Order 41, rule 8 of the Rules of the Superior Courts as follows.

8. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered, shall state the time, or the time after service of the judgment or order, within which the act is to be done; and upon the copy of the judgment or order which shall be served upon the person required to obey the same, other than an order directing a mortgagor to deliver possession to a mortgagee, or an order under section 62 subsection (7) of the Registration of Title Act 1964, there shall be endorsed a memorandum in the words or to the effect following, viz.:

> 'If you the within named A.B. neglect to obey this judgment or order by the time therein limited, you will be liable to process of execution including imprisonment for the purpose of compelling you to obey the same judgment or order.'

51. As appears, not only must the respondent be informed of what it is that he or she must do, they must also be informed that failure to obey the order may result in imprisonment.

52. The rationale for the imposition of the requirement to inform a respondent of the consequences of the breach of a court order has been explained as follows by the High Court (Peart J.) in *J. O'G. v. Governor of Cork Prison* [2006] IEHC 236; [2007] 2 I.R. 203, [40].

> "It is essential in a situation where a person is at risk of losing his liberty in the event of not complying with an order of the court directing him to do some act, that he is fully aware of that possibility. It seems obvious that the new wording* was regarded by the Rules Committees in question, and the legislature subsequently, as bringing home to such a person the seriousness of any failure to observe the terms of the order. I cannot countenance a situation where, even though a person may in fact be aware of the consequences of his failure to comply with an order, the strict compliance with service of the order and the terms of the penal indorsement could be overlooked so as to facilitate the incarceration of the defaulter. On this ground also I would find that the detention of the applicant is unlawful."
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> *The reference above to the "new wording" of the Rules is to an amendment to the Circuit Court Rules which had added the words "including imprisonment" to an earlier version of the penal indorsement.

53. This rationale applies by analogy to the breach of a barring order. As discussed at paragraphs 18 and 19 above, the Supreme Court in *D.K. v. Crowley* [2002] 2 I.R. 744 had observed that the consequences for a respondent of the making of an interim barring order are more stringent than those arising upon the grant of an injunction in civil proceedings. It must follow that if a respondent in civil proceedings is entitled to the benefit of a warning as to the consequences of the breach, i.e. by way of a "penal endorsement", then a respondent to a barring order must be entitled to an equivalent type of warning. This is especially so where the effect of the barring order may be to exclude a respondent from his or her family home and/or from property in respect of

which he or she has a proprietary interest. The barring order may have the effect of making unlawful what would otherwise have been lawful acts. It is essential therefore that the respondent is on notice of the precise terms of the order and of the consequences of a breach of the order. This is achieved by producing a copy of the order with the prescribed warning.

54. In conclusion, therefore, it follows both from the literal and a purposive interpretation of the Domestic Violence Act 1996 that it is an essential proof in a prosecution for an alleged breach of a barring order to establish that the accused person had been given notification of the making of the barring order. It would not be sufficient that the accused person had been merely notified of the *fact* that a barring order has been made, rather he or she must have been furnished with a copy of the barring order. The only exception to this is where the accused person had been present at a sitting of the court at which the barring order was made.

55. There is some flexibility as to the precise method by which a copy of the barring order is furnished to a respondent. It can, for example, be furnished by way of prepaid post or by way of personal service effected by the applicant or by members of An Garda Síochána. In principle, it might even be appropriate—in urgent cases at least—to provide a copy of the order electronically, for example, by way of email or as an attachment to a text message. The essential requirement, however, is that a copy of the barring order must have been furnished to the respondent.

56. I turn next to apply these general principles to the particular circumstances of the case stated. The only two pieces of evidence before the District Court which are potentially relevant to the question of notification have been summarised at paragraph 31 above. Neither of these establishes that the Accused had been furnished with a copy of the barring order. The first piece of evidence—namely, the admission by the Accused to the attending Garda that he was aware that there was a barring order in force—establishes, at the very most, that the Accused may have been aware of the *fact* that a barring order had been made. This is not sufficient notification. The second piece of evidence, namely the applicant spouse's statement that "the police came up and issued" a barring order is ambiguous. There is no evidence as to when it is said that An Garda Síochána attended the family home (if, indeed, this statement can properly be interpreted as referring to the family home at all). Moreover, the use of the phrase "issued a barring order" is inapt to describe formal service of a copy of the barring order on the Accused.

57. As with any criminal prosecution, the onus of proof is upon the prosecutor. It appears that the prosecutor failed to adduce any evidence to establish that a copy of the barring order had been produced to the Accused. The evidence, such as it is, from the applicant spouse seems to have been provided in response to a question from the District Court judge herself. The prosecutor did not seek to clarify this evidence by way of further questions. Moreover, the Garda who had given evidence in the District Court had been unable to confirm that service had been effected.

58. It would have been unsafe to convict the Accused on the basis of the evidence before the District Court, as summarised in the case stated.

CONCLUSION

59. For the reasons set out in detail above, the answer to the two questions posed is as follows.

In considering whether an order as specified under Section 10 (1) of the Domestic Violence Act 1996 has taken effect:

1. Was I correct to find, based on the evidence present in this case, that the prosecution had proven that the Barring Order had taken effect within the meaning of Section 10(1) & (2) of the [Domestic Violence Act 1996]?

   No.

2. Was I correct to interpret the wording present under Section 10 (2) of the Act namely '*without prejudice to the sufficiency of any other form of notification*' as expressly providing for other forms of notification to be deemed as satisfactory by a court taking into account the evidence present in each case or should I require evidence that the respondent has received oral communication together with production of a copy of the order?

   No. See paragraphs 54 and 55 above as to the form of notification required.

Appearances

Oisín Clarke, BL for the Prosecutor instructed by the Chief Prosecution Solicitor

Paul O'Higgins, SC and Simon Donagh, BL for the Accused instructed by Niall O'Connor & Co. Solicitors