THE HIGH COURT

JUDICIAL REVIEW

2017 No. 660 J.R.

BETWEEN

L.E.

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr Justice Garrett Simons delivered on 28 June 2019.

SUMMARY

1. The Applicant herein seeks to restrain the further prosecution of criminal charges pending against her on the basis of prosecutorial delay. The alleged offences are said to have occurred at a time when the Applicant was fifteen years old and thus a "child" as defined under the Children Act 2001. It is contended that had the criminal investigation been conducted expeditiously, then the Applicant would have been tried prior to her eighteenth birthday. The charges against her would have been determined in accordance with the Children Act 2001. This would have afforded the Applicant certain statutory safeguards in respect of *inter alia* anonymity. The benefit of these statutory safeguards is not now available in circumstances where the Applicant has reached the age of majority prior to the trial of the offences.

2. The qualifying criterion for the procedural protections provided for under the Children Act 2001 is the age of the accused as of the date of the trial of the offences (as opposed to his or her age as of the date when the alleged offences are said to have occurred). Thus, an alleged offender who has transitioned from being a "child" (as defined) to an adult between (i) the date on which the offences are said to have occurred, and (ii) the date of the hearing and determination of criminal charges arising from those alleged offences, cannot avail of most of the procedural protections under the Act. (The principal exception is in respect of the right to have the record of a criminal conviction expunged under Section 258 of the Children Act 2001. This is discussed further at paragraph 80 below).

3. The Supreme Court has held that, in the case of a criminal offence alleged to have been committed by a child or young person, there is a special duty on the State authorities, over and above the normal duty of expedition, to ensure a speedy trial. See *B.F. v. Director of Public Prosecutions* [2001] 1 I.R. 656 and *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762.

4. The case law indicates that the existence of blameworthy prosecutorial delay alone will not automatically result in the prohibition of a criminal trial. Rather, something more has to be put in the balance to outweigh the public interest in the prosecution of offences. What that may be will depend upon the facts and circumstances of any given case. Factors to be considered can include (i) the age of the accused at the time the alleged offences occurred; (ii) the seriousness of the alleged offences; (iii) the length of the delay; and (iv) whether the accused has made any admissions.

5. For the reasons set out in detail in this judgment, I have concluded that, whereas there were pockets of delay in the police investigation in this case, the effect of same was offset by the fact that an expedited trial date had been allocated. The time period between (i) the date upon which charges were preferred, and (ii) the scheduled trial date before the Circuit Criminal Court was much shorter than usual. Taken in the round, therefore, there was no culpable or blameworthy prosecutorial delay. The Applicant has been charged with very serious offences and—but for these judicial review proceedings—would have had these determined by a jury of her peers at a trial fixed for a date just over two years after the date of the alleged offences.

6. Lest I am incorrect in these findings, I have also carried out *de bene esse* the balancing exercise required under *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762. The principal factor in favour of allowing the prosecution to proceed is that the offences alleged against the Applicant are very serious offences. In particular, the offence alleged under the Non-Fatal Offences against the Person Act 1997 carries a potential sentence of imprisonment for a term of 10 years. There is an obvious public interest in having prosecutions for such serious offences heard and determined.

7. On the other side of the scales, the Applicant asserts that she will be prejudiced by the loss of the benefit of reporting restrictions under Section 92 of the Children Act 2001. This type of prejudice appears to be one expressly contemplated by the Oireachtas insofar as it has not extended the statutory safeguards to persons who have transitioned from being a "child" (as defined) to an adult. This prejudice is not sufficiently serious to tip the balance in favour of an order of prohibition. Different considerations might apply if the case had involved allegations of sexual abuse. In such circumstances, the loss of anonymity would have a far greater prejudicial effect as offences of that type attract particular public opprobrium. See, by analogy, the judgment of the High Court (O'Malley J) in *G. v. Director of Public Prosecutions* [2014] IEHC 33, [108].

8. I am satisfied, therefore, that the balance lies in favour of allowing the prosecution to proceed.

9. It is also contended that the Applicant had been suffering from poor mental health at the time of the alleged offences. It is pleaded that this has resulted in the Applicant experiencing stress and anxiety above the norm for an accused person awaiting trial for a criminal offence.

10. The medical reports confirm that—much to the credit of the Applicant and her mother—the Applicant has made significant progress since the time when she was first referred to the Child and Adolescent Mental Health Service ("*CAMHS*") in September 2015. Whereas the prospect of facing a criminal prosecution will inevitably impose stress and anxiety upon an accused person, this cannot, of itself, be a reason to prohibit a criminal trial. The medical condition of an applicant would have to be wholly exceptional to justify an order of prohibition. This threshold has not been met on the facts of the present case.

THE ALLEGED OFFENCES

11. The charges against the Applicant arise out of an alleged incident said to have occurred on the evening of 19 September 2015 whereby a young male was assaulted and stabbed. I will refer to this individual as "the complainant". It is alleged that the Applicant and the complainant had had an altercation earlier that evening when the complainant had intervened in a dispute between the Applicant and another young female. The Applicant is alleged to have shouted at the complainant: "*I'm going to get you fucking sliced up*".

12. A short time later, the Applicant is said to have approached the complainant with her brother and a number of other young males. The complainant was assaulted and stabbed. He had to be taken to hospital by ambulance, and he had suffered a number of serious injuries.

13. Six individuals, including the Applicant and her brother, have since been charged with offences arising out of this alleged incident. The Applicant has been charged with the following offences.

> (i) That contrary to Section 5 of the Non-Fatal Offences Against the Person Act 1997, the Applicant without lawful excuse made a threat, intending the complainant to believe it would be carried out, to kill or cause serious harm to the complainant.
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> (ii) That contrary to Section 15 of the Criminal Justice (Public Order) Act 1994, the Applicant committed violent disorder and that she used or threatened to use unlawful violence and such conduct, taken together, was such as would cause a person of reasonable firmness present at the said place to fear for his or another person's safety.
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> (iii) That contrary to Section 3 of the Non-Fatal Offences against the Person Act 1997, the Applicant assaulted the complainant causing him harm.

THE JUDICIAL REVIEW PROCEEDINGS

14. The within judicial review proceedings were instituted on Monday, 24 July 2017. An *ex parte* application for leave to apply for judicial review was moved that day before the High Court (Heneghan J.). The High Court ordered that the Director of Public Prosecutions ("*the DPP*") be put on notice of the application for leave to apply, and the matter was adjourned for hearing to the following Monday, 31 July 2017. In the interim, an affidavit was filed on behalf of the DPP by Garda Proudfoot.

15. On the adjourned date, the High Court (Faherty J.) granted leave to apply for judicial review. It seems that the intention at that stage was that the judicial review proceedings would be case managed by Faherty J., with a view to ensuring that the judicial review would be heard and determined prior to the trial before the Circuit Criminal Court, which had been scheduled for 5 December 2017. To this end, a tight timetable for the exchange of pleadings was directed, with both parties being required to file pleadings and affidavits during the Long Vacation.

16. The state of play as of the date the judicial review proceedings were instituted on 24 July 2017 was as follows. First, the Applicant had not yet reached the age of eighteen years and was, accordingly, still a "child" for the purposes of the Children Act 2001.

17. Secondly, the Applicant had had the benefit of one of the most important procedural benefits under the Children Act 2001, namely a hearing under Section 75. This provision allows the District Court to deal summarily with a "child" charged with any indictable offence unless the court is of opinion that the offence does not constitute a minor offence fit to be tried or dealt with summarily. (There is an exception in the case of an offence which is required to be tried by the Central Criminal Court and in the case of manslaughter). This allows for the possibility of an indictable offence to be disposed of on a summary basis. On the facts, the District Court had declined jurisdiction.

18. Thirdly, the Applicant had already been allocated a trial date on 5 December 2017. Thus, the Applicant would have had the charges against her heard and determined within a period of two years and two months from the date of the alleged incident on 19 September 2015. The reasonableness of this timescale has to be assessed against a background where (i) the Applicant had not made any admissions of guilt; (ii) the alleged offences involved six suspected offenders and thus entailed a complex investigation; and (iii) the offences alleged were of a very serious nature. I am satisfied that had matters proceeded as intended, i.e. with a trial taking place on 5 December 2017, then there would be no question of a finding of culpable or blameworthy prosecutorial delay.

19. As it happens, however, the trial did not proceed as scheduled on 5 December 2017. This was as a consequence in part at least of the institution of the within judicial review proceedings. As a result of various delays in the pursuit of the judicial review proceedings, the practical reality is that the hearing of the criminal charges has been further delayed until a date in 2020. Subject always to the outcome of these judicial review proceedings, it seems that the Applicant and her co-accused will find themselves in the position of having to face charges some five years after the date of the alleged incident. This is, self-evidently, unsatisfactory but the cause of this delay lies largely at the feet of the Applicant.

GROUNDS OF CHALLENGE

20. In circumstances where the judicial review proceedings were instituted on 24 July 2017, the grounds of challenge are all directed to the delay alleged to have accrued as of that date, i.e. a period of some two years. The delay is reckoned from the date of the alleged offence on 19 September 2015 to the scheduled trial date before the Circuit Criminal Court on 5 December 2017. No application has since been made to amend the statement of grounds so as to include any *subsequent* events or any additional period of alleged blameworthy delay.

21. The statement of grounds is admirably concise. In effect, two broad heads of challenge are advanced as follows. First, that the Applicant has been prejudiced by the alleged delay and, in particular, she has lost the benefit of statutory protections which would otherwise have been available to her under the Children Act 2001. Secondly, the fact that the Applicant has not enjoyed good mental health is said to have had the effect that the delay has resulted in the Applicant experiencing stress and anxiety above the norm for such proceedings.

22. The application for leave to apply for judicial review had been grounded on the affidavit of the Applicant's solicitor. No affidavit has been filed, at any stage, on behalf of the next friend, the Applicant's father. This is unsatisfactory. Much of the content of the affidavit of the Applicant's solicitor is hearsay. Whereas it might be appropriate to have a solicitor swear a separate affidavit deposing to procedural matters, the next friend should swear his or her own substantive affidavit in judicial review proceedings. The absence of an affidavit from the Applicant's father is all the more remarkable in circumstances where he appears to have interacted with the

Gardaí in September 2015, and, again, in August 2016. As appears below, the events of these dates are central to the allegation that there has been culpable or blameworthy prosecutorial delay.

23. The Applicant has reached the age of eighteen years since the institution of the proceedings and, accordingly, the title of the proceedings should be amended to reflect the fact that they are now being pursued in the Applicant's own name.

MEDICAL EVIDENCE

24. A number of medical reports have been exhibited in support of the claim that the Applicant's state of mental health is such that the criminal proceedings impose additional stress on her. A letter from a consultant child and adolescent psychiatrist dated 26 May 2017 has been exhibited. This letter indicates that the Applicant had been prescribed an antidepressant (namely, sertraline) for problems with anxiety and panic, with good effect. The letter also indicates that the Applicant has attended therapy in the hope of repairing her relationship with her mother, and also to help her to accept and to get on with her stepfather.

25. The same consultant child and adolescent psychiatrist has filed a psychiatric report dated 8 September 2017. Insofar as the alleged effect of the proceedings on the Applicant's mental health is concerned, the following passages from the report appear to be most relevant.

> "4.5 Her Mother urgently requested review and [the Applicant] was seen next on 27/04/17 – [the Applicant] had received news that she would be charged with involvement in a serious crime dating from 2015. This was the first time that the CAMHS services had been informed about this crime event. [The Applicant] was understandably upset by this news but it appeared she was coping relatively well, especially as there had not been any serious threats or acts of self-harm and she was still taking her medication and attending Youth Reach. Due to a misunderstanding by [the Applicant's] mother, Sertraline dose had been actually reduced to 50 mg instead of being increased to 100 mg so the dose was brought back up to 75 mg. In any case, [the Applicant] was adjusting to her legal situation about which she felt more hopeful."
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> […]
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> 4.10 Future treatment plans – [the Applicant] will remain on her prescribed antidepressant until after her Court date, planned for November. She will turn 18 years old in October but discharge will be delayed until the end of the next academic year during which time, depending on circumstances, medication may be withdrawn which if successful will represent completion of treatment so she can be discharged back to the care of her GP."

26. The conclusions in the report are summarised as follows.

> "She will however need the support of CAMHS going forward, especially in the context of her current legal situation, as there is a significant risk reflecting her past history of impulsive self-harm, including overdoses, that [the Applicant's] mental state will deteriorate due to the pressures of facing a criminal trial.
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> [The Applicant] will turn 18 yrs old in October 2017 but is it is likely that her discharge will be deferred until the end of the next academic year in June 2018. Medication may be withdrawn during this time and if so she will be discharged back to the care of her GP, if not she will be transferred if indicated to Adult Mental Health services."

APPLICABLE LEGAL PRINCIPLES

27. The leading judgment on prosecutorial delay in cases involving offences alleged to have been committed by a child is that of the Supreme Court in *Donoghue v. Director of Public Prosecutions* [2014] IESC 56; [2014] 2 I.R. 762 ("*Donoghue*").

28. The judgment indicates that the first question to be determined by a court is whether there has been culpable or blameworthy prosecutorial delay. In the event that there has been such delay, then the court must next carry out a balancing exercise.

29. On the facts of *Donoghue*, members of the Gardaí had called to the minor applicant's home where a substance was found which was believed to be heroin. The applicant was aged 16 years at the time. A weighing scales was also found. The applicant immediately took responsibility for the items, and he signed an admission to this effect. The applicant was then arrested, and, during the course of interview, he again took full responsibility for the items found. Subsequently, the items found at his home were forwarded to the forensic science laboratory for an analysis, and it was confirmed that the substance was indeed heroin. A period of one year and four and a half months elapsed between the date of the applicant's arrest and his eventually being charged with an offence under the Misuse of Drugs Act 1977. As of this date, the applicant had reached the age of majority.

30. The Supreme Court, *per* Dunne J., held that, having regard to all the circumstances of the case and bearing in mind the fact that the accused was a child at the time of the commission of the alleged offence, there was ample evidence before the High Court to enable the trial judge to reach the conclusion that this was a case in which there had been significant culpable prosecutorial delay.

31. As appears from the analysis of the delay at pages 770 and 773 of the reported judgment, the Supreme Court attached some significance to the fact that the criminal case was a straightforward one, and that admissions had been made by the accused.

> "[25] When the overall period of delay between March 2010 and August 2011 is being considered, it is necessary to bear in mind the nature of the case (including its complexity), the need to engage with the National Juvenile Office, the period of delay and the reasons offered for that delay. This was a straightforward case on the facts where admissions had been made by Mr. Donoghue. The reasons put forward for the delay in this case are unsatisfactory. The delay in completing the investigation file was not adequately explained. I have no doubt that the statements of the two Gardai mentioned were necessary but as it appears that those statements were required in relation to the period of detention of Mr. Donoghue in Coolock Garda Station, it should have been a straightforward matter to prepare and obtain the statements."

32. The Supreme Court went on to hold that blameworthy prosecutorial delay alone will not suffice to prohibit a trial. Rather, the court must conduct a balancing exercise to establish if there is something additional to the delay itself to outweigh the public interest in the prosecution of serious offences.

> "[52] There is no doubt that once there is a finding that blameworthy prosecutorial delay has occurred, a balancing exercise must be conducted to establish if there is by reason of the delay something additional to the delay itself to outweigh the public interest in the prosecution of serious offences. In the case of a child there may well be adverse

consequences caused by a blameworthy prosecutorial delay which flow from the fact that the person facing trial is no longer a child. However, the facts and circumstances of each case will have to be considered carefully. The nature of the case may be such that notwithstanding the fact that a person who was a child at the time of the commission of the alleged offence may face trial as an adult, the public interest in having the matter brought to trial may be such as to require the trial to proceed. Thus, in a case involving a very serious charge, the fact that the person to be tried was a child at the time of the commission of the alleged offence and as a consequence of the delay will be tried as an adult, may not be sufficient to outweigh the public interest in having such a charge proceed to trial. In carrying out the balancing exercise, one could attach little or no weight to the fact that someone would be tried as an adult in respect of an offence alleged to have been committed whilst a child if the alleged offence occurred shortly before their 18th birthday. Therefore, in any given case a balancing exercise has to carried out in which a number of factors will have to be put into the melting pot, including the length of delay itself, the age of the person to be tried at the time of the alleged offence, the seriousness of the charge, the complexity of the case, the nature of any prejudice relied on and any other relevant facts and circumstances. It is not enough to rely on the special duty on the State authorities to ensure a speedy trial of the child to prohibit a trial. An applicant must show something more as a consequence of the delay in order to prohibit the trial."

33. The Supreme Court held that the trial judge was correct to attach significance to the fact that the accused in *Donoghue* would not have the benefit of the protections of the Children Act 2001. Three particular aspects of the Children Act 2001 were referenced as follows. First, the reporting restrictions applicable to proceedings before any court concerning a child (section 92). Secondly, the principle that a period of detention should be imposed on a child only as a measure of last resort (section 96). Thirdly, the mandatory requirement to direct a probation officer's report (section 99).

34. The Supreme Court then stated its conclusions as follows.

> "[56] The special duty of State authorities owed to a child or young person over and above the normal duty of expedition to ensure a speedy trial is an important factor which must be considered in deciding whether there has been blameworthy prosecutorial delay. That special duty does not of itself and without more result in the prohibition of a trial. As in any case of blameworthy prosecutorial delay, something more has to be put in the balance to outweigh the public interest in the prosecution of offences. What that may be will depend upon the facts and circumstances of any given case. In any given case, the age of the young person before the courts will be of relevance. Someone close to the age of 18 at the time of an alleged offence is not likely to be tried as a child no matter how expeditious the State authorities may be in dealing with the matter. On the facts of this case, had the prosecution of Mr. Donoghue been conducted in a timely manner, he could and should have been prosecuted at a time when the provisions of the Children Act 2001 would have applied to him. The trial judge correctly identified a number of adverse consequences that flowed from the delay. Accordingly, I am satisfied that the trial judge was correct in reaching his conclusion that an injunction should be granted preventing the DPP from further prosecuting the case against Mr. Donoghue."

(1). WHETHER DELAY WAS CULPABLE OR BLAMEWORTHY?

OVERVIEW

35. The first matter to be addressed under the principles in *Donoghue* is whether there has been culpable or blameworthy prosecutorial delay. The longest single period of delay relied upon by the Applicant in the present case is that between the date of the alleged offences on 19 September 2015 and the date of the Applicant's arrest on 8 August 2016. The treatment of the Applicant is contrasted with that of her brother who had been requested to attend for interview on 23 September 2015, and had subsequently been charged in May 2016. The delay in arresting the Applicant had the consequence that she was not charged until 12 April 2017, i.e. almost a year later than her brother.

36. The explanation offered on behalf of the prosecuting authorities for this period of delay is that the Applicant's mother had led the Gardaí to believe that the Applicant had emigrated to England in late September 2015. More specifically, it is alleged that the Applicant's mother informed Garda McGrath that the Applicant had gone to England to reside with her sister, and would be attending school there. The Applicant's mother is also said to have undertaken to inform the Gardaí when the Applicant returned and to bring her (the Applicant) to the Garda Station then.

37. The actual position was that the Applicant had not emigrated, and returned from a short visit to the United Kingdom on 13 October 2015. The mother did not notify the Gardaí of the Applicant's return.

38. The prosecuting authorities' position is that the Gardaí only became aware for the first time in May 2016 that the Applicant had returned from United Kingdom. The precise circumstances in which this intelligence is said to have come to their attention is unclear. The affidavits merely indicate that it came by way of confidential information. It seems that certain confidential information had been provided to a particular garda, and he then passed on this information to Detective Garda Healy. The receipt of this information is not recorded in any of the documentation which has been disclosed to the Applicant's legal team. Garda Sergeant Proudfoot explained in her oral evidence to the court that details of the receipt of confidential information would not, for obvious reasons, be formally recorded on the PULSE system.

39. It seems that the intelligence which the Gardaí had received in May 2016 also indicated that the Applicant was residing with her mother at a new address in a named housing estate. The intelligence did not, however, extend to the number of the house within the named housing estate at which the Applicant and her mother were said to be residing. On his return to work in August 2016 following scheduled extended leave, Detective Garda Healy attended at the housing estate. He successfully identified the Applicant's mother's house by cross-checking the registration plates of cars in the housing estate against the register of ownership. A car registered in the mother's name was parked outside one of the houses in the estate. Relevantly, the address to which the car was registered had not been updated by the mother to reflect her change of address. Arrangements were then made for the Applicant to attend by appointment at Coolock Garda Station. On 8 August 2016, the Applicant duly attended. She was arrested and interviewed by the Gardaí. (The details of the new address were ultimately updated on the PULSE system in November 2016).

40. Counsel on behalf of the Applicant submits that the delay between September 2015 and August 2016 was culpable and blameworthy. It is further submitted that the explanation proffered on behalf of the prosecuting authorities, namely that the Applicant's mother misled the Gardaí into thinking that the Applicant had emigrated, cannot be relied upon to justify the delay for the following reasons. First, it is denied that the Applicant's mother had indicated to the Gardaí that the Applicant had emigrated. Reliance is placed in this regard on the oral evidence of the Applicant's mother on the second day of the hearing.

41. Secondly, it is submitted that, even if such a representation had been made, the Gardaí were not entitled to rely upon same. Rather, it is submitted that the Gardaí have a duty to investigate criminal matters expeditiously, and that it would be inconsistent with this duty for the Gardaí to accept, at face value, a representation by a relative of a suspected offender to the effect that that person had emigrated. The Gardaí were required to carry out their own independent investigation to confirm this. Counsel points to the fact that *subsequent* to the institution of these proceedings, the Gardaí were, apparently, able to obtain passenger records from Dublin airport which indicated that the Applicant had departed the State on 28 September 2015 and had returned on 13 October 2015. Counsel points out that these records could, presumably, have been checked at a much earlier stage.

42. Thirdly, it is submitted that, as a matter of fact, the Gardaí had had a number of dealings with the Applicant's mother during the relevant period. At the very least, these dealings would have indicated that the mother had not emigrated, and, would also have afforded the Gardaí an opportunity to ask the mother directly as to the whereabouts of the Applicant. In particular, it seems that the Applicant's mother had attended at and given evidence at a criminal trial of another family member at which a number of the Gardaí associated with the investigation into the alleged incident in September 2015 had also been in attendance. It seems that, on at least one occasion, the Applicant herself may have been in attendance at the trial. Separately, the Applicant's mother had made a complaint in respect of an alleged robbery at her former residence. It seems that the mother had met with members of the Gardaí at the residence on 19 February 2016. Again, this is said to have provided an opportunity to enquire as to the whereabouts of the Applicant.

DISCUSSION

43. The principal justification offered on behalf of the DPP for the lapse in time between the date of the alleged incident and the arrest of the Applicant is that—until May 2016—the Gardaí were labouring under the misapprehension that the Applicant had emigrated to the United Kingdom towards the end of September 2015. This misapprehension is said to have arisen as a result of a statement made by the Applicant's mother to Garda McGrath. The alleged statement was to the effect that the Applicant had gone to live with her sister in the United Kingdom, and would be attending school there. The Applicant's mother has denied having made any such statement. Before turning to consider the question of whether, *as a matter of law*, the Gardaí would have been entitled to rely on such a representation as an answer to the alleged prosecutorial delay, it is first necessary for this court to attempt to resolve the factual dispute between the parties.

44. The state of the evidence can be summarised as follows. Garda McGrath has made the following averment in his affidavit of 27 September 2017.

> "4. I say that shortly after the alleged offence I met with the mother of the Applicant in order to arrange an interview with the Applicant. I was informed by the Applicant's mother that the Applicant was no longer in the jurisdiction and that she was in fact in the United Kingdom. The Applicant's mother informed me that the Applicant was going to live with a relative in the UK and attend school there. The Applicant's mother undertook to inform me as soon as the Applicant returned to the Republic of Ireland, but failed to do so. I did leave my contact details with the Applicant's mother but she never contacted me to advise me that the Applicant had returned to Ireland."

45. The position of the Applicant's mother has changed during the course of the proceedings. Her initial position, as set out in her affidavit of 21 June 2018, had been to the effect that the only discussion of the Applicant's visit to the United Kingdom had been by way of telephone conversation.

> "8. […] I say that the Applicant travelled to England on 28th September 2015 and returned on 13th October 2015. I say further that I was in communication with her almost every day during the period she was in England.
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> […]
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> 10. I say that I can recall receiving a phone call from a Garda who, I was given to understand, was the Garda Juvenile Liaison Officer, while my daughter was away in 2015. I do recall a conversation about bringing her to the Garda Station on her return. I may have stated that I would bring my daughter to the Garda Station when she returned but I have no clear memory of same. I did not say at any time that she emigrated to the United Kingdom or that she would be attending school there. That was not the case and was never contemplated as being a possibility."

46. The implication of this averment is that there had been no face-to-face discussion on this issue. However, during cross-examination on the content of her affidavit at the hearing before me on 20 June 2019, the Applicant's mother conceded that her affidavit contained a number of mistakes. In particular, the mother stated that the telephone conversation described in her affidavit did not take place in September 2015, but had occurred sometime subsequent to February 2016, i.e. after she had moved to her new house.

47. The mother accepted that she did, in fact, have a face-to-face conversation with Garda McGrath at her house towards the end of September 2015. At this stage, the Applicant was in the United Kingdom. The mother accepted under cross-examination that she had told Garda McGrath that she would bring the Applicant to Coolock Garda Station for questioning on her return from the United Kingdom. She also confirmed that Garda McGrath had given her his contact details. The mother maintains, however, that she did not indicate to Garda McGrath that the Applicant had emigrated to the United Kingdom.

48. (By way of background, the mother explained to the court that as of September 2015 the Applicant was suffering from a mental illness, and that she would not have been in a fit state to move to England or to attend school there).

49. The court is thus presented with the somewhat unsatisfactory situation whereby there is a direct conflict between the oral evidence given on behalf of the mother and the affidavit evidence of Garda McGrath. The Applicant did not seek leave to cross-examine Garda McGrath on his affidavit. This was so notwithstanding that notices to cross-examine had been served, and leave to cross-examine granted, in respect of two of the deponents from the Gardaí.

50. The Applicant's mother conceded during cross examination that there were errors in her affidavit, and also indicated that she did not have a clear recollection of the events of September 2015. She described this as being a very difficult time for her and her family.

51. Against this background, I have concluded that, on the balance of probabilities, the recollection of Garda McGrath as set out in his affidavit is more likely to be accurate than that of the mother. Garda McGrath's version of events also appears to be corroborated by an entry in the PULSE system. An updated entry on 9 October 2015 includes the following narrative.

> "L.E. has been sent to England to live confirmed with her mother [named redacted]. Will question her on her return."

52. I am satisfied, therefore, that the Applicant's mother did indicate that the Applicant had emigrated to the United Kingdom. Perhaps more importantly, however, it is now common case that the Applicant's mother had confirmed to Garda McGrath that she (the mother) would ensure that the Applicant attended for questioning at the Garda Station on her return. Even if the Applicant had emigrated to the United Kingdom, it would be reasonable to assume that she might return home from time to time to visit her family.

53. I turn next to consider whether the reliance placed by the Gardaí on (i) the representation that the Applicant had emigrated, and (ii) the Applicant's mother's undertaking that, on her return to Ireland, she (the mother) would ensure that the Applicant would present at the Garda Station for interview, was inconsistent with their obligation to seek to expedite the trial of offences alleged to have been committed by a child.

54. Garda Sergeant Proudfoot, who was the incident room co-ordinator, explained in her oral evidence on 20 June 2019 that the approach initially adopted by the Gardaí had been to seek a direction from the DPP to charge the Applicant. The existence of a decision to charge would then allow a European Arrest Warrant ("*EAW*") to be issued seeking the surrender of the Applicant from the United Kingdom. This approach was confirmed by Detective Garda Healy during the course of his cross-examination on 20 June 2019. There is also reference to an EAW at paragraph 25 of the statement of opposition filed on 25 September 2017.

55. To this end, the Gardaí completed their investigation into all six suspected offenders, i.e. including the Applicant. This was done within three months of the alleged incident. The investigation file was then submitted to the DPP for directions on 7 December 2015. In the event, however, the DPP indicated in February 2016 that it was not open to charge the Applicant until the requirement for compliance with the juvenile diversion programme under Part 4 of the Children Act 2001 (as amended) had been satisfied. This would necessitate an interview with the Applicant.

56. (As an aside, it should be noted that if this is the correct interpretation of the interaction between the Children Act 2001 and the Framework Decision on a European Arrest Warrant, then it gives rise to a Catch-22 situation whereby the surrender of a suspected child offender who has left the jurisdiction cannot be sought until the child has first been interviewed within the jurisdiction. Put shortly, it is a condition precedent to an application for surrender that the child be available for questioning within the jurisdiction. Of course, if the child were available, then surrender would not be required. It is not necessary in the present case for me to rule on whether this is the correct interpretation, in circumstances where the Applicant had not, in fact, emigrated and was available in the jurisdiction from 13 October 2015).

57. I am satisfied that the conduct of the investigation between September 2015 and February 2016 when the directions were received from the DPP was reasonable, and that there was no culpable or blameworthy prosecutorial delay. It was reasonable for the Gardaí to rely on the representation made by the Applicant's mother that her daughter had emigrated, and to respond by seeking a direction to charge the Applicant with a view to applying for her surrender by way of an EAW. The Applicant's mother had been co-operative with the Gardaí in all of her prior dealings with them. In particular, it seems that the mother had been instrumental in ensuring that the Applicant's brother had attended at the Garda Station as requested in September 2015. Against this factual background, there was no reason for the Gardaí to assume that the mother's statement to the effect that the Applicant had emigrated was incorrect.

58. During the course of the hearing before me, there was some discussion as to whether, at the level of general principle, it could ever be reasonable for the Gardaí to rely on a representation from a family member to the effect that a suspected offender had left the jurisdiction and was unavailable for questioning. It was suggested that it would be contrary to the public interest were the Gardaí not to be required to carry out their own independent inquiries to corroborate such representations. Counsel for the Applicant submitted that any argument that such a passive approach to policing is acceptable would, *reductio ad absurdum*, mean that suspected offenders could readily avoid arrest by the simple expedient of having a family member misinform the Gardaí as to their whereabouts.

59. There is merit in this submission on behalf of counsel for the Applicant. With respect, however, the function of this court on an application for judicial review is not to purport to lay down rules for the conduct of police investigations in general. Nor is it the function of the court to conduct a granular review of each of the operational decisions and steps taken in an investigation. Rather, the court's role is confined to determining whether, in the particular circumstances of an individual case, the prosecuting authorities have complied with their obligation owed to a child or young person—over and above the normal duty of expedition—to ensure a speedy trial. If the conduct of a suspected offender or of a member of his or her family has contributed to the delay in investigating or prosecuting an alleged offence, then this is, in principle, something which the court is entitled to have regard to in assessing the overall position in relation to delay. This is not to relieve the Gardaí of their duty to investigate alleged offences nor of their obligation to make reasonable inquiries.

60. On the specific facts of the present case, I am satisfied that the conduct of the investigation during the period between the date of the alleged offences and the receipt of directions from the DPP dated 10 February 2016 did not involve any culpable or blameworthy delay. In particular, I am satisfied that the reliance placed upon the representation and undertaking of the Applicant's mother of September 2015 was reasonable when coupled with an intention to seek the Applicant's surrender. However, once the option of seeking the surrender of the Applicant by way of a European Arrest Warrant had been excluded in February 2016, a new approach was called for on the part of the Gardaí. A direction to charge the Applicant could not be obtained until the requirements of the juvenile diversion programme under Part 4 of the Children Act 2001 had first been complied with. This necessitated that the Applicant be interviewed. The Gardaí were obliged to make reasonable efforts to ascertain the whereabouts of the Applicant, and whether she would be available for interview in the jurisdiction. Even if the Applicant had emigrated to the United Kingdom, it would be reasonable to assume that she might return home from time to time to visit her family. An obvious first step would be to contact the Applicant's mother and inquire as to her daughter's whereabouts.

61. It seems that following receipt of the DPP's directions in February 2016, Detective Garda Healy was tasked with ascertaining the whereabouts of the Applicant. (Detective Garda Healy had been a garda at the material time, but has since been appointed as a Detective Garda). Detective Garda Healy has sworn an affidavit in the proceedings, and was cross-examined on that affidavit on the afternoon of the second day of the hearing on 20 June 2019. Detective Garda Healy confirmed that he attempted to contact the Applicant's mother using the mobile telephone number which was then on the PULSE system. He telephoned that number five or six times, but the calls were not answered.

62. Detective Garda Healy also attended at the Applicant's mother's last known address. The dwelling house was boarded up, and it seems that the Gardaí then assumed that the Applicant's mother had joined her daughters in the United Kingdom. (The mother had an adult daughter who resided in the United Kingdom permanently). Such an assumption would have been entirely reasonable but for the fact that, coincidentally, there were formal dealings between other members of the Gardaí and the Applicant's mother at this time. It would have been apparent from these dealings (i) that the Applicant's mother was resident in the jurisdiction, and (ii) that the

Applicant's mother had moved to a new house in a named estate. This information was not communicated to Detective Garda Healy and does not appear to have been fully recorded on the PULSE system.

63. One of the dealings was in respect of an incident whereby part of a fitted kitchen had been removed from the mother's former dwelling house. Two gardaí attended at the house on 19 February 2016. This incident was initially reported as a robbery, but it subsequently transpired that the kitchen units had been sold by another family member to a neighbour. It appears that this was done without the consent of the mother, but at all events, the Applicant's mother indicated that she did not wish to pursue a criminal complaint in this regard. As a consequence, the record of the incident on the PULSE system was "invalidated".

64. There is no evidence that the Applicant's mother informed the two gardaí of the precise details of her new address at this time.

65. The next phase of the alleged delay is said to have occurred between May 2016 and August 2016. It will be recalled that towards the end of May 2016, the Gardaí had received confidential information to the effect that the Applicant had returned to the State and was resident with her mother at a named housing estate. The confidential information did not, however, identify the house number.

66. With some hesitation, I have concluded that there was blameworthy delay on the part of An Garda Síochána *as an organisation* during the period between the end of May 2016 and early August 2016 when contact was made with the Applicant. I make no criticism of the individual officers involved, but it seems to me that given the fact that the Applicant was a "child" suspected of having committed an offence, a greater priority should have been afforded to locating the Applicant at the time. Garda management should have tasked the job of locating the Applicant to another officer in circumstances where Detective Garda Healy was on scheduled extended leave.

67. The next phase of the investigation related to the juvenile diversion programme. This issue has been dealt with in the affidavit of Garda Hession. The file was sent to the Garda Youth Diversion Programme on 5 January 2017. It seems that a formal decision that the Applicant was unsuitable for inclusion in the juvenile diversion programme was made on 23 January 2017, i.e. some four or five months after the Applicant had been arrested and interviewed in August 2016.

68. The evidence as to where the blame for the delay over the period August 2016 to January 2017 is unsatisfactory. It seems that at least part of the blame is attributable to the Applicant herself in that she failed to attend for a juvenile liaison meeting on 20 October 2016. The precise circumstances in which this arose, and why there was a gap between August 2016 and October 2016 has not been explained. In circumstances where the onus of proof lies with an applicant in judicial review proceedings, it seems to me that the Applicant has not discharged this onus. There is no evidence of culpable or blameworthy prosecutorial delay over this period of time.

69. Similarly, during the period between 9 February 2017 and 3 March 2017 when directions were sought from the DPP, there is again no culpable prosecutorial delay. The Applicant was charged on 12 April 2017.

70. At most, therefore, it seems that there were relatively short periods of time during which the police investigation could, arguably, have been dealt with more expeditiously. This is especially so in relation to the period between May 2016 and August 2016. Crucially, however, as explained next, the delay had no practical impact on the timelines. This is because the Circuit Criminal Court made an order on 17 July 2017 directing that the Applicant's trial be joined to that of her brother and the other accused. This trial had been scheduled for 5 December 2017.

71. Notwithstanding the fact that the charges were not preferred against the Applicant until April 2017, that is, almost one year later than the date upon which charges had been preferred against her brother, the prosecution against her had, in effect, caught up with the proceedings against her brother and the other accused. The practical consequence of this is that any alleged delay in the earlier stages of the investigation had been off-set.

72. To put the matter another way:– taking the Applicant's case at its height, she maintains that she should have been arrested and charged within a number of months of the alleged offences on 19 September 2015. Even if this had occurred, she would not, in all likelihood, have received a trial date any earlier than that allocated to the other accused, i.e. 5 December 2017.

73. It is also important to note that the Applicant had been charged with the offence on 12 April 2017, i.e. some six months *prior* to her eighteenth birthday. The significance of this is twofold. First, the Applicant was able to avail of the procedure under Section 75 of the Children Act 2001. This hearing took place on 7 June 2017. Secondly had the Applicant elected to plead guilty, she would have been dealt with as a child before the Circuit Court. The Applicant, as she is perfectly entitled to do, is insisting on her right to a jury trial. The reality is that the pressure on the Circuit Criminal Court is such that trial dates cannot be allocated for 12 months hence. No complaint has been made in the proceedings as to this delay. It is not suggested that there is systemic delay or that there is a problem this regard. Rather the case as pleaded in the statement of grounds is clearly directed to the two-year period during which the investigation was carried out.

DECISION

74. Whereas there were pockets of delay in the police investigation in this case, the effect of same was off-set by the fact that an expedited trial date had been allocated. The time period between (i) the date upon which charges were preferred, and (ii) the scheduled trial date before the Circuit Criminal Court was much shorter than usual. Taken in the round, therefore, there was no culpable or blameworthy prosecutorial delay. The Applicant has been charged with very serious offences and—but for these judicial review proceedings—would have had these determined by a jury of her peers at a trial fixed for a date just over two years after the date of the alleged offence.

BALANCING EXERCISE

75. In circumstances where I have concluded that there has been no culpable or blameworthy prosecutorial delay, it is not, strictly speaking, necessary to go further and to carry out the balancing exercise as set out by the Supreme Court in *Donoghue*. This is because the Applicant has failed to meet the delay threshold. However, lest I be incorrect in my conclusion or lest this case be subject to appeal, I think that it is appropriate to go on to perform the balancing exercise *de bene esse*.

LOSS OF PROTECTIONS UNDER THE CHILDREN ACT 2001

76. The principal prejudice alleged by the Applicant is the loss of certain procedural entitlements under the Children Act 2001. More specifically, the Applicant submits that *but for* the alleged prosecutorial delay, the charges against her would have been heard and determined in accordance with the Children Act 2001. The Applicant complains in particular that she will not now have the benefit of the reporting restrictions provided for under Section 92(1). The subsection in full reads as follows.

"(1) In relation to proceedings before any court concerning a child —

(a) no report which reveals the name, address or school of any child concerned in the proceedings or includes any particulars likely to lead to the identification of any such child shall be published or included in a broadcast or any other form of communication, and

(b) no still or moving picture of or including any such child or which is likely to lead to his or her identification shall be so published or included."

77. The effect of Section 92 in proceedings involving an adult who is being tried or sentenced in respect of offences alleged to have been carried out when he or she was a "child" (as defined) has been considered in detail by the High Court (McDermott J.) in *Independent Newspapers (Ireland) Ltd. v. I.A.* [2018] IEHC 120.

"43. While it is clear that the protection conferred by s. 93 continues for life in respect of a child who is prosecuted, convicted and sentenced under the age of eighteen, there is no specific provision extending those benefits when a child passes the threshold age limit of eighteen years in the course of the criminal proceedings. Thus for example, a child whose eighteenth birthday occurs in the middle of criminal trial or is convicted the day after his eighteenth birthday would not have the protection of s. 93 or the sentencing regime that would apply to a child. These specific protections under the Children Act 2001 only apply to a child – a person under eighteen years of age. In cases where offences committed by a child are only detected when they enter adulthood, he/she does not obtain the benefit of any of the provisions of s. 93 or any other provisions of the Children Act. There may be good policy reasons to vest in a court a discretion to extend the protections of anonymity in cases which overlap the transition between childhood and adulthood but this has not been addressed by the Oireachtas which has confined the protections to those under eighteen years. This is consistent with the well-established principles of sentencing applicable to an adult who has committed an offence as a child but comes to be sentenced as an adult considered in the case law set out above.

44. The court must uphold the provisions of Article 34.1 of the Constitution that justice shall be administered in public 'save in such special and limited cases as may be prescribed by law'. The restriction on publication or reporting matters that might tend to identify a child is specifically limited to persons under eighteen years. In *Irish Times Ltd. v. Ireland* [1998] 1 I.R. 359 the Supreme Court held that it was a fundamental right in a democratic State and a fundamental principle of the administration of justice under Article 34.1 that the people have access to the courts to hear and see justice being done save for limited exceptions. Any order restricting the contemporaneous reporting of legal proceedings by the press must be viewed as a curtailment of access by the people. Accordingly, any trial held in such circumstances is not a trial held 'in public' within the meaning of the provisions of Article 34. There is no discretion to order a trial otherwise than in public. However, the court also held that the exercise of rights conferred by Article 34.1 could be limited not only by acts of the Oireachtas but also by the courts where it was necessary in order to protect an accused person's constitutional right to a fair trial, a right which was superior to any rights arising from the provisions of Article 34.1. In this case the trial had concluded when the publication occurred. Thus there was no threat to the right to a fair trial. I ndeed the learned trial judge did not base her decision to continue the restriction on reporting on any perceived prejudice to the exercise of that right."

78. There was some discussion at the hearing before me as to whether the loss of anonymity could be mitigated by the trial court making an order that the criminal proceedings against the Applicant be heard otherwise than in public. There was also discussion as to whether the High Court has jurisdiction to make an order in judicial review proceedings prohibiting the publication of material which might identify the Applicant. As it happens, the order of 31 July 2017 granting leave to apply for judicial review in these proceedings includes the following order.

"IT IS ORDERED

1. that pursuant to Section 45 of the Courts (Supplemental Provisions Act 1961 and/or section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 or otherwise directing the redaction of the pleadings herein and prohibiting the publication of or broadcast of any matter relating to the proceedings which would or could identify any non professional persons referred to herein for the entire duration of these proceedings".

79. Counsel on behalf of the DPP, Lily Buckley, BL, submitted that the court had jurisdiction to make such an order pursuant to Section 45 of the Courts (Supplemental Provisions) Act 1961. Reliance was placed in this regard on the judgment of the High Court (Humphreys J.) in *M. McD. v. Director of Public Prosecutions* [2016] IEHC 210. That judgment suggests that Section 45(1) of the Courts (Supplemental Provisions) Act 1961 is in deliberately wide terms, and is not confined to proceedings relating to persons who are children at the time the matter comes before the court. This interpretation has since been followed by the High Court (Barrett J.) in *R.D. v Director of Public Prosecutions* [2018] IEHC 164, [5] and in *S.W. v. Director of Public Prosecutions* [2018] IEHC 364, [5].

80. With respect, I am not satisfied that Section 45(1) of the Courts (Supplemental Provisions) Act 1961 can be interpreted in this way. It is well established that statutory exceptions to the constitutional imperative that justice should be administered in public must be strictly construed, both as to the subject matter and the manner in which the procedures depart from the standard of a full hearing in public. See *Gilchrist v. Sunday Newspapers Ltd*. [2017] IESC 18; [2017] 2 I.R. 284. It seems to me that in circumstances where the Oireachtas has made express provision under Section 92 of the Children Act 2001 for restricting the reporting of criminal proceedings involving offences alleged to have been committed by children, but has omitted to extend that protection to cases where the hearing takes place *after* the child has become an adult, weight should be given to this legislative preference. It is not open to this court to sidestep this legislative preference by calling in aid the *general* provisions of Section 45(1) of the Courts (Supplemental Provisions) Act 1961. The specific circumstances in which criminal proceedings in respect of offences alleged to have been committed by minors can be held otherwise than in public is regulated under the Children Act 2001. There is an obvious tension between the principle that justice be administered in public, and a desire to shield child defendants from publicity lest it frustrate their rehabilitation or undermine their future prospects in life. The compromise chosen by the Oireachtas is to provide anonymity in cases where the defendant is still a "child" as defined at the time of the criminal proceedings. If the child has reached the age of majority, then they are confined to the benefit of Section 258 of the Children Act 2001. Section 258 provides, in effect, that criminal convictions for offences committed as a child shall be expunged after a period of three years. This is subject to certain exceptions, e.g. it does not apply to an offence which is required to be tried by the Central Criminal Court, or where the defendant has been dealt with regarding an offence in that three-year period.

81. Whereas there might well be different opinions as to whether this compromise is the most appropriate one, that is not a matter for this court. The interpretation of Section 92 of the Children Act 2001 is unequivocal, and the benefit of the reporting restrictions is not

available in the case of an adult defendant.

82. The legal position is, therefore, that the Applicant will not have the benefit of the reporting restrictions otherwise available under Section 92 of the Children Act 2001. If, contrary to my finding under the previous heading, there had been culpable or blameworthy delay on the part of the prosecuting authorities, then the loss of this statutory safeguard would constitute an instance of prejudice caused by the delay. The balancing exercise posited under the principles in *Donoghue* requires this prejudice to be balanced against the public interest in allowing the prosecution to proceed. The principal factor in favour of allowing the prosecution to proceed is that the offences alleged against the Applicant are very serious offences. In particular, the offence alleged under the Non-Fatal Offences against the Person Act 1997 carries a potential sentence of imprisonment of 10 years. There is an obvious public interest in having prosecutions for such alleged offences heard and determined. Regard must also be had to the fact that the Applicant in this case had the benefit of a hearing pursuant to Section 75 of the Children Act 2001. The District Court judge declined jurisdiction.

83. I have concluded that the balance in this case lies in favour of allowing the prosecution to proceed. The seriousness of the alleged offence outweighs the limited prejudice caused to the Applicant by the loss of the reporting restrictions under Section 92 of the Children Act 2001. This type of prejudice appears to be one expressly contemplated by the Oireachtas insofar as it has not extended the statutory safeguards to persons who have transitioned from being a "child" (as defined) to an adult. This prejudice is not sufficiently serious to tip the balance in favour of an order of prohibition. Different considerations might apply if the case had involved allegations of sexual abuse. In such circumstances, the loss of anonymity would have a far greater prejudicial effect as offences of that type attract particular public opprobrium. See, by analogy, the judgment of the High Court (O'Malley J) in *G. v. Director of Public Prosecutions* [2014] IEHC 33, [108].

STRESS AND ANXIETY CAUSED BY OUTSTANDING CRIMINAL PROCEEDINGS

84. It is also submitted on behalf of the Applicant that she has a history of mental health difficulties, and that this constitutes an exceptional circumstance which would make it unfair or unjust to place her on trial. It is also submitted that the delay in the prosecution of the charges has resulted in a greater level of stress and anxiety for her than would be the norm for a person accused of a criminal offence.

85. Leading counsel on behalf of the Applicant, Ronan Munro, SC, places particular emphasis on the judgment of the High Court (Dunne J.) in *A.C. v. Director of Public Prosecutions* [2008] 3 I.R. 398. The applicant in that case was described as having had "an extremely troubled background". In particular, it seems that the applicant had been engaging in self-harm and other adverse behaviour. The applicant had been placed in a number of residential and foster placements by the Health Service Executive, all of which broke down. The applicant had then been detained for her own safety. The High Court described the applicant as a young person with particular vulnerability, and stated that the fact that she had been subject to an order for her detention spoke volumes in this regard.

86. The High Court in *A.C.* cited the judgment of Fennelly J. in *M.O'H v. Director of Public Prosecutions* [2007] IESC 12; [2007] 3 I.R. 299 to the effect that it is stressful for any individual to have to face criminal proceedings, and that in order to prohibit a trial there would have to be something more than normal, something extra caused by the alleged prosecutorial delay. On the facts of *A.C.*, the High Court accepted that the delay in the case had not been the cause of the applicant's current state of difficulty but that in her vulnerable state, the delay in dealing with the prosecution can only have exacerbated the situation. The court concluded that the case came within the category of wholly exceptional circumstances where it would be unfair or unjust to put an accused on trial. An order of prohibition was granted.

87. The facts of the case before me are entirely distinguishable to those under consideration in *A.C. v. Director of Public Prosecutions*. The relevant medical reports have been set out at paragraph 24 above. As appears therefrom, whereas the Applicant has, undoubtedly, suffered from mental health difficulties in the past, these were of a different order than those suffered by the applicant in *A.C.*

88. Moreover, the medical reports confirm that—much to the credit of the Applicant and her mother—the Applicant has made significant progress since the time when she was first referred to the Child and Adolescent Mental Health Office in September 2015. Whereas the prospect of facing a criminal prosecution will inevitably impose stress and anxiety upon an accused person, this cannot, of itself, be a reason to prohibit a criminal trial. The medical condition of an applicant would have to be wholly exceptional to justify an order of prohibition. This threshold has not been met on the facts of the present case.

PROPOSED ORDERS

89. For the reasons set out above, I have concluded that there was no culpable or blameworthy prosecutorial delay in this case. Lest I be incorrect in this finding, I have also conducted, on a *de bene esse* basis, the balancing exercise required by the judgment of the Supreme Court in *Donoghue v. Director of Public Prosecutions.* I have concluded that the balance lies in favour of allowing the prosecution to proceed. Accordingly, I propose to make an order dismissing the judicial review proceedings in their entirety.

90. The Applicant has reached the age of eighteen years since the institution of the proceedings and, accordingly, the title of the proceedings should be amended to reflect the fact that they are now being pursued in the Applicant's own name.

91. I also propose to make an order *pro tem* restricting the reporting of any matter which would identify the Applicant. I think that it is necessary to do this, otherwise any right of appeal against my finding that Section 45 of the Courts (Supplemental Provisions) Act 1961 should not apply to these proceedings would be rendered nugatory.

92. There is to be no reference to the Applicant's name, to her address or to the area where she now resides. Reference can be made to the fact that the Applicant is from Coolock, and to the events of the alleged incident on 19 September 2015. Reference can also be made, in general terms, to the fact that the Applicant has suffered from mental health difficulties. This order will lapse twenty-eight days after the perfection of the High Court order in this case *unless* an appeal or an application for leave to appeal, as the case may be, has been filed with either the Court of Appeal or the Supreme Court. In the event an appeal is filed, then such order is to remain in place until such time, if any, as set aside by the Court of Appeal or the Supreme Court or the appeal is dismissed. The parties have liberty to apply to this court as necessary.

APPENDIX: KEY DATES

19 September 2015 Alleged incident

23 September 2015 Applicant's brother arrested and interviewed

28 September 2015 Applicant travels to the United Kingdom

13 October 2015 Applicant returns from the United Kingdom

7 December 2015 File submitted to the Director of Public Prosecutions for directions in respect of all six suspected offenders, i.e. including the Applicant

10 February 2016 Director of Public Prosecutions indicates that charges cannot be preferred against the Applicant until she has been assessed for the purposes of the juvenile diversion programme

February 2016 Garda Healy attends at the Applicant's mother's former house and finds it boarded up

19 February 2016 Gardaí attend at the Applicant's mother's former house, with the Applicant's mother, in response to an alleged robbery.

May 2016 Confidential information received to the effect that the Applicant has returned and is residing with her mother at a named housing estate

August 2016 Garda Healy locates the house within the housing estate, and arrangements are made for the Applicant to attend at Coolock Garda Station by appointment

8 August 2016 Applicant attends by Garda Station by appointment, is arrested, detained and interviewed

20 October 2016 Applicant fails to attend for juvenile diversion programme interview

January 2017 Juvenile Liaison Office decide that the Applicant is not suitable for the diversion programme

3 March 2017 DPP directs that the Applicant is to be charged

12 April 2017 Applicant is charged

July 2017 Circuit Criminal Court makes an order directing that the Applicant be tried at the same time as the other five accused on the scheduled trial date of 5 December 2017

24 July 2017 Judicial review proceedings instituted