Hilary Term
[2026] UKSC 7
On appeal from: [2024] NICA 48

JUDGMENT

Boyd (Respondent) *v* Public Prosecution Service for Northern Ireland (Appellant)

before

Lord Lloyd-Jones
Lord Burrows
Lord Stephens
Lady Simler
Sir Declan Morgan

JUDGMENT GIVEN ON
25 February 2026

Heard on 18 November 2025

Appellant
Philip Henry KC
Lauren Cheshire
(Instructed by Public Prosecution Service for Northern Ireland)

Respondent
Donal Sayers KC
Lara Smyth
(Instructed by MacElhatton Solicitors (Belfast))

LORD STEPHENS AND SIR DECLAN MORGAN (with whom Lord Lloyd-Jones, Lord Burrows and Lady Simler agree):

1. This appeal deals with the circumstances in which a District Judge (Magistrates' Courts) in Northern Ireland may reopen a case in which sentence has been passed in order to impose a different outcome. The legal power is found in article 158A of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order"). Section 142 of the Magistrates' Courts Act 1980 ("the 1980 Act") contains an identical provision so the outcome is also relevant to Magistrates' Courts in England and Wales.

Background

2. On 28 June 2021 the respondent pleaded guilty at Ballymena Magistrates' Court to possession of an offensive weapon in a public place, common assault, and criminal damage. The District Judge adjourned the case for the preparation of a probation report. The criminal damage charge related to damage to the home of a person who was unknown to the respondent and in her statement to police the homeowner undertook to forward the repairs estimate to police when received.

3. The sentencing hearing proceeded on 10 August 2021. The District Judge enquired whether the Public Prosecution Service for Northern Ireland ("PPS") had received either an estimate for the cost of the damage or an invoice but was advised that neither had been received. He imposed a probation order with conditions for a period of 12 months and a restraining order for the protection of the occupants of the property for a period of two years.

4. On 31 August 2021 and 8 September 2021, the prosecutor with carriage of the case issued post decision information requests to the investigating officer, who responded on 19 October 2021. The prosecutor with carriage of the case had left her employment before this reply was received.

5. The file was reviewed by a senior public prosecutor in March 2023 and on 6 April 2023 the prosecution lodged an application pursuant to article 158A of the 1981 Order requesting that the sentence be varied to include a compensation order in favour of the landlord. After hearing oral and written submissions, on 31 August 2023 the District Judge made a compensation order in the sum of £250.

6. The respondent lodged a case stated application which was the subject of Court of Appeal proceedings as a result of which on 28 March 2024 the District Judge stated a case seeking determination of two points of law:

(a) whether article 158A empowers the Magistrates' Court to vary a sentence by imposing a compensation order in circumstances where a compensation order was not previously imposed? and

(b) whether the purpose for which the District Judge purported to exercise the power under article 158A was a lawful purpose, given the terms on which the power is conferred by article 158A?

Relevant Statutory Provisions

7. Article 158A(1) of the 1981 Order provides as follows:

> "158A.—(1) A magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make."

8. Article 14 of the Criminal Justice (Northern Ireland) Order 1994 ("the 1994 Order") provides for compensation orders on conviction.

> "14.—(1) Subject to the provisions of this Article, a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Article … referred to as 'a compensation order') requiring him to pay compensation for any personal injury, loss or damage resulting from that offence … and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this Article empowers it to do so.
>
> (2) Compensation under paragraph (1) shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecution …

> (9) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall—
>
> > (a) have regard to his means so far as they appear or are known to the court …
>
> (10) Where the court considers—
>
> > (a) that it would be appropriate both to impose a fine and to make a compensation order; but
> >
> > (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,
>
> the court shall give preference to compensation (though it may impose a fine as well) …
>
> (12) A compensation order shall be enforceable—
>
> > (a) if made by a magistrates' court, in the same manner as any other sum adjudged to be paid by a conviction of that court …"

9. In the case stated the District Judge found that there had been a series of mistakes including a failure by the prosecution to secure the information necessary to apply for a compensation order, a failure of the prosecution to apply for an adjournment in order to get such information, and a failure by the court to adjourn the application to enable that information to be obtained. In addition, it may be said that there was a failure by the District Judge to address the requirements of article 14(1) of the 1994 Order since this was a case where the court was entitled to make an order in respect of the criminal damage.

10. In submissions to the District Judge the respondent had contended that the application was out of time. Arguing that the PPS has only 21 days to appeal any court's decision, a time limit which is strictly observed, it was submitted that reopening cases years later would undermine finality, closure, and effectiveness in the criminal justice system creating chaos. The District Judge addressed the point and concluded that, in light of the extent of the damage caused and the financial loss incurred by the property owner,

of which the offender was aware, the balance fell in favour of making the order despite the passage of time.

11. The Court of Appeal accepted the argument advanced by the respondent on the first question of law (see para 6 above) that the proper approach was to disaggregate each element of the sentencing package and determine whether the proposal involves a variation of that element or an addition to the sentencing package. Since, in this case, the relevant orders were a probation order and a restraining order, a compensation order could not be a variation of either and accordingly the court concluded that the District Judge erred in law since an addition could not be a variation. The court also accepted that the purpose of the legislation was to correct mistakes in limited circumstances to avoid the need for additional proceedings. The court held, however, that it was extremely difficult to envisage any case in which mistakes made by the prosecution would engage the power to make a variation and that the decision by the court not to adjourn the proceedings was not a mistake just because it might have been better or more prudent to do so.

12. The finding on the first question as reformulated by the court was sufficient to dispose of the appeal. The court went on, however, to consider the respondent's additional submission (in support of the second ground of appeal in para 6 above) that the interests of justice in certainty and finality were such that it could not be correct to permit the reopening of cases years after the event where further information had been obtained. The court accepted the submission of the prosecution that the District Judge had considered the question of delay and taken this into account in assessing the sum ordered. His purpose was to give effect to article 14 of the 1994 Order and to avoid unnecessary proceedings in other courts. The court concluded that this was a course that was reasonably open to him.

The appellant's concession

13. The Statement of Facts and Issues in this case focused on the first question determined by the Court of Appeal namely whether the making of the compensation order on 31 August 2023 constituted a variation of the sentence or other order imposed or made on 10 August 2021. In particular, the respondent did not initially apply to raise the argument advanced in the Court of Appeal that the application was unlawful by reason of the passage of time.

14. The appellant, however, at paragraph 15 of its written submission to this court stated that on careful reflection the PPS accepted that it should not have made the application because of the period of time that had elapsed since the original sentencing hearing. Mr Henry KC indicated that the concession was made on the basis that the PPS now accepted that it was not in the interests of justice to pursue the matter having regard to the period which had elapsed.

15. The concession was properly made. The common law principle that a sentence was effective from the date on which it was pronounced has long been recognised by the courts (*R v Menocal* [1980] AC 598). Prior to the abolition of the Assizes the practice in both Northern Ireland and England and Wales was that the sentence was not treated as effective until the assize record had been signed by the Assize judges. This provided an opportunity to correct any errors or to review occasionally sentences that needed some moderation.

16. When the Crown Court was established in Northern Ireland by the Judicature (Northern Ireland) Act 1978 section 49 of that Act provided that a sentence imposed, or other order made, by the Crown Court when dealing with an offender may be varied or rescinded by the Crown Court within the period of 28 days beginning with the day on which the sentence or other order was imposed or made unless the court otherwise directed. That reflected the Assize practice that there should be a short window in which sentences might be reconsidered for lawfulness and in some cases for leniency. Although it also enabled a judge to increase a sentence, that was an exceptional course.

17. Similar provisions were made earlier in England and Wales, now contained in section 385 of the Sentencing Act 2020, and in each jurisdiction the time limit has now been increased by statute to 56 days. The time limit is strictly applied and the increase in the permitted time reflects the fact that in a number of apparently deserving cases the relevant material justifying the application was not apparent until the 28 day period had elapsed.

18. The existence of such a power in the Magistrates' Courts first appeared in section 142 of the 1980 Act. By section 142(4) the power to vary or rescind a sentence or other order imposed or made by it when dealing with an offender was only exercisable within the period of 28 days beginning with the day on which the sentence or order was imposed. Although the 1981 Order was similar in many respects to the 1980 Act it contained no provision for such a power to vary a sentence or other order in Northern Ireland.

19. The provisions in both jurisdictions were amended by the Criminal Appeal Act 1995 which amended the 1981 Order by introducing article 158A and removed the time limit in section 142 of the 1980 Act. In each case the provision for a time limit was replaced by an interests of justice test. The statutory history up to 1995 provided a limited time in which there could be departure from the common law principle. That remains the position in the Crown Court albeit that the time period for adjustment has been extended. The interests of justice test did not undermine the legal policy that departure from the general rule could only be made if there was expedition. That is particularly the case where it is proposed to increase the penalty.

20. That position is supported by long standing authority. *R (Holme) v Liverpool City Justices* [2004] EWHC 3131 (Admin); 169 JP 306 was a dangerous driving case in which

an application was made to increase a sentence on the basis that the court had left out of account the impact of the driving on the victim. The application was made five months after the delivery of sentence. The Court held that if the power was to be available the interests of justice required that it should be used very expeditiously. On that basis the application could not succeed.

21. In this case the application was made 19 months after the sentence had been given and the variation was made more than two years after the original sentence at a time when the probation order and the restraining order were no longer in force. These periods are far beyond those that could be permitted in the interests of justice.

22. Having properly made the concession Mr Henry accepted that there should be no interference with the order of the Court of Appeal quashing the variation order imposed by the District Judge. He submitted however that the court should proceed to hear and determine the issues arising on the first question of law.

23. The court was informed that this power is commonly used in cases in which a mandatory disqualification is required under article 40 of the Road Traffic Offenders (Northern Ireland) Order 1996 on reaching 12 penalty points. On occasions the information on accumulated penalty points is either not available or not put before the court when the 12 point limit has been reached. An application under article 158A is necessary in these cases to correct the order by imposing a mandatory disqualification. If the reasoning of the Court of Appeal is correct its approach is likely to have a significant impact on these and other cases.

24. In light of the concession by the appellant and agreement that the order of the Court of Appeal quashing the variation order should not be disturbed there is no longer a live issue between the parties. It remains the case, however, that the provision at issue is one which is regularly used and the dispute between the parties about how it operates is not one which depends on the facts of this particular case.

25. In *R v Secretary of State for the Home Department ex parte Salem* [1999] UKHL 8; [1999] 1 AC 450 ("*Salem*") the House of Lords established that in cases involving a public authority as to an issue of public law there is a discretion to hear the case even if there is no longer a live issue between the parties. The discretion must be exercised with caution in such cases and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so. This is a case involving a discrete point of statutory construction, not dependent on the facts of the case, on which a significant number of similar cases is likely to be affected. There is a need to resolve the issue in the near future. Applying the *Salem* principles, this is a case in which it is appropriate to proceed on this appeal to deal with the issues arising from the first question of law.

The interpretation of article 158A of the 1981 Order

26. The Court of Appeal concluded that the meaning of the words "sentence or other order" in this section required consideration of each component of the sentence or orders made and determination of whether what was proposed was a variation of that component. Inevitably that ruled out any utilisation of the section if some feature had been omitted in error. The appellant contended that the words in question referred to the sentencing package imposed by the judge and that the sentencing package could be varied by adding some component that had been omitted but is thought appropriate.

27. Normal principles of statutory interpretation are engaged. The courts in conducting statutory interpretation are seeking to ascertain the meaning of the words used in a statutory provision in the light of their context and the purpose of the provision: see for instance, *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 28–29; *News Corp UK & Ireland Ltd v Revenue and Customs Comrs* [2023] UKSC 7; [2024] AC 89, para 27; *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2025] AC 1473, paras 61–63; *Darwall v Dartmoor National Park Authority* [2025] UKSC 20; [2025] AC 1292, para 15; *X v Lord Advocate* [2025] UKSC 44; [2026] 2 WLR 43, para 22.

28. A leading statement of principle was given by Lord Hodge in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department*, with whom those in the majority agreed. He stated, at para 29:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the

> statutory context as Lord Nicholls explained in *Spath Holme*, p 397: 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

29. The purpose of article 158A of the 1981 Order was addressed by Carswell LCJ in *In re Director of Public Prosecutions for Northern Ireland's Application for Judicial Review* [2000] NI 49 at p 54C:

> "The main purpose of art 158A(1) is to enable magistrates to remedy mistakes or to amend a sentence or order when they have imposed or made it under a misapprehension and it is in the interests of justice that they should put matters right. In particular the provision allows them to impose a sentence or make an order within their jurisdiction if they have inadvertently exceeded their powers, without the necessity to come to this court to have the sentence quashed. It is not, however, restricted to this and the court may vary or rescind any sentence or order whenever it is in the interests of justice to do so. We do not feel that we should attempt to define the power any more closely."

30. In *R (Williamson) v City of Westminster Magistrate's Court* [2012] EWHC 1444 Admin); [2012] 2 Cr App R 24 Burnett J stated, at para 31, that the introduction of the power in section 142 of the 1980 Act was designed to deal with an obvious mischief; namely the waste of time, energy and resources in correcting clear mistakes made in Magistrates' Courts by using appellate or review proceedings.

31. The Crown Court power in England and Wales to exercise this jurisdiction which is now contained in section 385 of the Sentencing Act 1980 was considered in *R v Luxton (Bradley)* [2024] EWCA Crim 340; [2024] 1 WLR 4804. At para 34 Edis LJ discussed the breadth of the power:

> "34. It is to be noted that the [Sentencing Act 2020] does not require some error of law or fact as a condition precedent of the exercise of the power. Specifically, it does not provide that if an error has occurred, there is no power to correct it because the error was that of the prosecutor. It is possible that the phrase 'slip rule' suggests a more restrictive approach than the [Sentencing Act 2020] requires …"

He went on to comment on the basis for the exercise of restraint in the use of the power at para 38:

> "38. In our judgment this restriction is a matter of practice not jurisdiction … It reflects good sentencing practice. There must be some finality to decision making and a judge should avoid revisiting reasonable decisions. Judges are busy people and do not have time to do every case twice. It is unkind to victims, defendants and others involved in the proceedings and disruptive to the conduct of other cases to convene post-sentencing hearings where they are unnecessary …"

Those comments are also appropriate for those cases being dealt with in the Magistrates' Court under article 158A of the 1981 Order or section 142 of the 1980 Act.

32. There is little practical difference between the approaches of Carswell LCJ and Edis LJ. Both recognise the breadth of the provision and Edis LJ complements that in his analysis of the practical considerations in play. Both agree with Burnett J that the main purpose of the provision is to deal with an obvious mischief, namely the waste of time, energy, and resources in correcting clear mistakes made in Magistrates' Courts by using appellate or review proceedings. The provision is available even if the error was that of the prosecution.

33. The Court of Appeal took an unduly narrow approach to the exercise of this provision. First, the reference to "sentence or other order" in article 158A of the 1981 Order is clearly a reference to the entire sentencing package. The similar term is used in article 140 of the 1981 Order to describe the sentencing package in the context of an appeal. Although there is an express provision in article 140 to make that position clear, it would be surprising if the same term in article 158A in the context of a provision correcting an error in the sentencing process carried a different meaning.

34. Second, the primary purpose of the section is to provide a mechanism for the correction of mistakes that can be conveniently rectified in the Magistrates' Court thereby avoiding further proceedings by way of appeal or judicial review. Such errors can arise in various ways including as a result of conduct by the prosecution. The statutory purpose is not achieved by narrowing the nature of mistakes that can be addressed and thereby increasing the number of cases that must go through the appeal or judicial review route. The interests of justice test provides an appropriate safety net against misuse.

35. Third, the range of sentencing options available has become more diverse including probation and restraining orders as in this case as well as a range of non-custodial sentences balancing the needs of retribution, deterrence, rehabilitation,

reparation and public safety. With these provisions come obligations to impose orders such as disqualification, to advise offenders of their duty to register in certain circumstances or as here to consider a compensation order and give reasons if not making such an order. There is no basis for concluding that the statutory purpose would be served by not allowing the power to be used where there had been an omission to consider some such order or to so advise the offender. The power must include the power to vary by addition.

36. Fourth, a restriction on the use of the power to vary can give rise to absurdity. Article 2 of the 1981 Order dealing with interpretation provides that "order" in the 1981 Order includes a refusal to make an order. In this case the District Judge did not make a compensation order at the sentencing hearing although he did ask about the cost of the damage. On the basis of the Court of Appeal's approach, if he had refused to make a compensation order it would then have been within the competence of the court to vary that refusal, but because he merely failed to make any order there was no power to use the provision.

37. The Court of Appeal was right to consider that the orders made by the District Judge including the compensation order were individual elements of the sentence but wrong to confine the power to vary to those individual elements and wrong to conclude that errors made as a result of prosecution mistakes were outside the scope of the article.

Conclusion

38. For the reasons given, the variation order should remain quashed.