

Judgment Approved by the court for handing down. Jabbar v Crown Court at Sheffield



Neutral Citation Number: **[2022] EWHC 516 (Admin)**

Case No: CO/4141/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

10 March 2022

Before :

LADY JUSTICE THIRLWALL

MR JUSTICE LINDEN

Between :

R (on the application of) MUSFER JABBAR Claimant

- and -

THE SHEFFIELD CROWN COURT Defendant

- and -

(1) THE DIRECTOR OF PUBLIC PROSECUTIONS

(2) THE LORD CHANCELLOR Interested Parties

RUPERT BOWERS QC and VICTORIA SMITH-SWAIN (instructed by **Liberty Solicitors**) for the
Claimant

TOM LITTLE QC (instructed by the **Director of Public Prosecutions**) for the **Defendant**

Hearing dates: 20.01.2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be

10:30am on Thursday, 10 March 2022.

Lady Justice Thirlwall:

1. This is the judgment of the court.

2. The claimant seeks judicial review of a refusal by the Recorder of Sheffield to release him on bail at a hearing on 21 October 2021. It is his case that the decision to remand him in custody was ultra vires and arose from the judge's erroneous interpretation of s22(5)(b) of the [Prosecution of Offences Act 1985 \(POA\)](#).

3. The question in this case is: where, as here, a judge refuses to extend a Custody Time Limit (CTL) and, for that reason, releases a defendant on bail before the expiry of the CTL, what are the consequences in terms of the application or otherwise of the CTL regime in the event that the defendant is subsequently remanded into custody?

4. It was the view of the Recorder that, the judge having granted bail "in consequence of the expiry of a" CTL, the CTL regime no longer applied and there was therefore no limit applicable to any further period on remand. The claimant argues that that was wrong; the effect of the judge's decision to grant bail was to pause the CTL clock, which would be reactivated should the defendant later be remanded into custody. Any further period in custody would therefore be subject to the remainder of the CTL which originally applied and, in the absence of an extension to the CTL during that period of remand, the defendant was entitled to be released on bail when the CTL was reached.

5. The claimant is 21. He is charged, with others, on indictment, on a count of burglary of a gun shop in Sheffield in which many firearms were stolen. The burglary took place on the night of 3/4 April 2020. Some of the firearms are known to have been used in serious crimes shortly afterwards. Some have been recovered.

6. The claimant was arrested on 9 April 2020. He was brought before Sheffield Magistrates' Court on 23 April 2020 and remanded in custody from that date onwards. He faces charges of burglary contrary to s9(1)(b) of the [Theft Act 1968](#), possessing a firearm without a certificate contrary to s1(1)(a) of the [Firearms Act 1968](#) and possessing a shotgun without a certificate contrary to [s2\(1\) of the Firearms Act 1968](#).

7. The time limit of 182 days beyond which the claimant could not be detained, as a result of the operation of the regime for CTLs under [POA](#), was due to expire on 22 October 2020 absent a successful application to extend the limit under s22(3) [POA](#).

8. Applications by the Crown Prosecution Service (CPS) for extensions of CTLs in respect of the claimant and a co-defendant, Coy, were listed before HHJ Dixon in the Crown Court at Sheffield on Friday, 2 October 2020. The CTL in Coy's case was due to expire on the following Monday, 5 October. In the case of the claimant, it was due to expire on 22 October 2020 so some 20 days remained before the limit would be reached. Listing the applications together was in accordance with good case management and the overriding objective. There is no complaint about that.

9. The judge refused both applications because he was not satisfied that the prosecution had acted with all due diligence and expedition. They therefore could not satisfy the statutory test for an extension. He released the claimant and Coy on bail forthwith, subject to conditions of residence, reporting and curfew. The judge encapsulated his decision as follows: "Mr Jabbar and Mr Coy, as a result of the Crown's failings I am going to grant you bail, having refused the application to extend custody time limits".

10. The following day, 3 October 2020, the claimant was arrested for breaching his bail conditions. He was held in police custody and brought before the Magistrates' Court on Monday 5 October, when he

was remanded in custody. On 7 October 2020 he made a bail application in the Crown Court. Bail was granted on the same terms as before.

11. The case was listed on 16 February 2021 for a case management hearing. The claimant did not attend, and a warrant was issued for his immediate arrest, not backed for bail.

12. The claimant was arrested on 16 April 2021 and brought before the Crown Court. He was remanded in custody and a sentence of 14 days' imprisonment was imposed for the failure to appear.

13. The case against the claimant and his co-defendants was listed for trial on 4 October 2021 but the claimant tested positive for Covid and so could not be brought to court. The co-defendants pleaded guilty. The claimant's trial was adjourned and is now listed for April of this year. He remained in custody and nothing was said about the lawfulness of his continued remand.

14. Later in October the CPS contacted the court and asked that the claimant's case be listed as a matter of urgency as they considered that he was being held in custody unlawfully. That application came before the Recorder of Sheffield on 21 October 2021.

The Statutory Framework

15. [Section 22 Prosecution of Offences Act \(POA\) 1985](#) begins, so far as is relevant:

“(1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for an offence, as to the maximum period—

(a) to be allowed to the prosecution to complete that stage;

(b) during which the accused may, while awaiting completion of that stage, be—

(i) in the custody of a magistrates' court; or

(ii) in the custody of the Crown Court;

in relation to that offence.

(2) [The regulations](#) may, in particular—

...

(c) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of [the regulations](#);

...

16. [Section 22\(3\)](#) reads:

“(3) The appropriate court may, at any time before the expiry of a time limit imposed by [the regulations](#), extend, or further extend, that limit; but the court shall not do so unless it is satisfied—

(a) that the need for the extension is due to—

(i) the illness or absence of the accused, a necessary witness, a judge or a magistrate;

(ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or

(iii) some other good and sufficient cause; and

(b) that the prosecution has acted with all due diligence and expedition." (emphasis added)

17. **Section 22(5) POA reads:**

"(5) Where—

(a) a person escapes from the custody of a magistrates' court or the Crown Court before the expiry of a custody time limit which applies in his case; or

(b) a person who has been released on bail in consequence of the expiry of a custody time limit—

(i) fails to surrender himself into the custody of the court at the appointed time; or

(ii) is arrested by a constable on a ground mentioned in [section 7\(3\)\(b\)](#) of the [Bail Act 1976](#) (breach, or likely breach, of conditions of bail);

the regulations shall, so far as they provide for any custody time limit in relation to the preliminary stage in question, be disregarded." (emphasis added)

18. **Regulation 5(2)(b)** of the [Prosecution of Offences \(Custody Time Limits\) Regulations 1987](#) ([the Regulations](#)) defines a CTL as the maximum period during which a defendant may be in the custody of the Crown Court in relation to an offence, or any other offence included in the indictment preferred against him, while awaiting the preliminary stage of the proceedings.

19. **Regulation 6(1)**, under the heading "bail on expiry of Crown Court custody time limit", sets out the process to be followed by the prosecution where the expiry of the time limit is imminent. The prosecution must:

"(a) not less than 5 days before the expiry of the time limit give notice in writing to the appropriate officer of the Crown Court and to the accused or his representative stating whether or not it intends to ask the Crown Court to impose conditions on the grant of bail in respect of the accused and, if it intends to do so, the nature of the conditions to be sought; and

(b) make arrangements for the accused to be brought before the Crown Court within the period of 2 days preceding the expiry of the time limit."

20. **Regulation 6(6) provides:**

"(6) The Crown Court, on being notified that an accused who is in custody pending trial there has the benefit of a custody time limit under [Regulation 5](#) above and that the time limit is about to expire, shall [with some exclusions which are not relevant here] grant him bail in accordance with the [Bail Act 1976](#), as from the expiry of the time limit, subject to a duty to appear before the Crown Court for trial."

21. Two practical points: defendants are not released from custody at midnight on the final day of the CTL even where bail is expressed to be granted as from the expiry of the CTL. They are released earlier, sometimes hours earlier on the same day, sometimes days before the date. In addition, [the Regulations](#) provide that where the limit expires at a weekend the defendant is entitled to be released on the preceding Friday.

22. **Regulation 7** directs that notice of an application to extend a CTL be served not less than 5 days before a hearing in the Crown Court, although the court may dispense with or reduce the notice period if it was not practicable to comply (see [Reg 7\(4\)](#)).

23. Applications for extensions of CTLs are generally listed a few days before the expiry date, sometimes a week or two before it. This allows for further steps to be taken by either side to ensure that the application before the judge is supported by evidence. It also allows the CPS sufficient time (usually a number of days) to seek a judicial review, with interim relief where an extension is refused. Where there are several defendants the expiry dates are often within days of each other. As in this case it is often convenient to hear applications for extensions at a single hearing. Not only is this good case management; it keeps to a minimum the court resources required to determine the merits of applications involving the same material. CPS guidance advises that these applications be listed not less than two weeks before the expiry of the CTL.

24. There was reference by both parties before the Recorder of Sheffield, and in writing before us in the pleadings, to the provisions of ss22(6) and (6A) [POA](#). We include them here for ease of reference but say immediately that they have no application to cases about CTLs. They are concerned not with CTLs but with Overall Time Limits (which were piloted but never implemented nationally). The hearing before the Recorder of Sheffield proceeded on the basis that the provisions were applicable, as we shall describe below. In the hearing before us Mr Bowers did not refer to either section. In his skeleton Mr Little QC, on behalf of the DPP, said neither section applied.

25. [Sections 22\(6\) POA](#) reads:

“(6) Subsection (6A) below applies where—

(a) a person escapes from the custody of a magistrates’ court or the Crown Court; or

(b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time;

and is accordingly unlawfully at large for any period.

(6A) The following, namely—

(a) the period for which the person is unlawfully at large; and

(b) such additional period (if any) as the appropriate court may direct, having regard to the disruption of the prosecution occasioned by—

(i) the person’s escape or failure to surrender; and

(ii) the length of the period mentioned in paragraph (a) above,

shall be disregarded, so far as the offence in question is concerned, for the purposes of the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time.”

26. [Section 4\(1\) and \(2\) Bail Act 1976](#) provides:

(1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.

(2) This section applies to a person who is accused of an offence when—

(a) he appears or is brought before a magistrates’ court or the Crown Court in the course of or in connection with proceedings for the offence, or

(b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

27. Schedule 1, paragraph 2(1) [Bail Act 1976](#) provides:

“(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.”

28. The CPS submitted in writing that by operation of ss22(6) and (6A) of [POA](#), at the time that the claimant was remanded into custody on 16 April 2021 there remained 17 days of the CTL still to run. The period was not extended and so the claimant should have been released on bail pursuant to [Regulation 6\(6\)](#), on 2 May 2021. The effect of the release on bail on 2 October 2020 was, in accordance with s22(6), to suspend the running of the CTL which suspension would have been lifted when he was returned to custody. The time would have continued to run and, in the absence of an extension of the CTL, the claimant should have been released on bail at the expiry of the CTL. Accordingly, his continued detention from the end of April was unlawful. Those submissions were taken up on behalf of the claimant.

29. Mr West, who had appeared at the hearing on 4 October 2020 and thereafter, explained to the judge that in his view the detention was lawful, but he had been instructed by the CPS to advance the argument above which aligned with that of the defence.

30. The Recorder of Sheffield heard full argument on the application on 21 October 2021. He gave an ex tempore judgment. He concluded that the claimant was lawfully detained as his case was no longer subject to a CTL, the limit having fallen away on his release on bail on 2 October 2020. He said, “at the moment bail is granted, the custody time limit dies with that decision, in my judgment. It does not continue in some form of abeyance. It is terminated with that decision.”

31. Towards the end of the judgment he set out in short form his conclusions:

“First. When a judge grants bail only because the custody time limit has not been extended, the custody time limit dies with that decision. Providing the decision to grant bail was in consequence of the expiry of a custody time limit, then thereafter the custody time limit regime does not apply.

Second. If, in wholly different circumstances a defendant either escapes or is granted bail during the operational period of what would otherwise be a custody time limit, then the period when either having escaped or having been granted bail is held in suspense if at a later stage the defendant is legitimately remanded into custody. In that circumstance, the custody time limit regime obtains.”

32. He noted that HHJ Dixon having refused to extend the CTL on 2 October 2020, the claimant was entitled at the end of the period to bail by operation of [Regulation 6](#) of the [POA](#) (CTL) Regulations 1987. He observed that where a judge declines to extend a CTL it is usually the case that bail is granted forthwith with conditions. He said:

“Some judges grant bail immediately, given that there are usually only a few days left and there is little point wasting public money keeping a person in custody for few days longer when they have to

be released shortly thereafter. Other judges wait until the very end and grant bail from a certain date. Whatever the view, the only reason the judge has granted bail is in consequence of his decision not to extend the custody time limit.”

33. The consequences of s22(5)(b) therefore flowed. He rejected the substantive argument based on ss22(6) and (6A) as having “nothing to do with the current scenario”. As we have said, the argument was in any event misplaced and has not been repeated.

34. The claimant’s representatives initially lodged an application for the Crown Court to state a case for an appeal to the High Court. By the time the matter reached a hearing before us (and after a great deal of correspondence with Sheffield Crown Court) it was accepted that, as the Recorder of Sheffield had advised, the appropriate route of challenge was by way of Judicial Review. There is no need to consider that matter any further.

35. The claim for Judicial Review was filed on 7 December 2021 with an application for expedition – and a request for a final hearing by 21 December 2021. The Judge in Charge of the Administrative Court ordered a rolled up hearing before this court this term.

The claimant’s case

36. The claimant seeks an order quashing the decision of the Recorder of Sheffield and remitting the matter for a fresh decision.

37. The claimant’s case before us was narrower than at first instance. Mr Bowers QC and Ms Smith-Swain submit that the question for the court is as to the meaning and purpose of s22(5)(b) [POA](#) which should be determined in the light of the intention of Parliament in enacting it and [the Regulations](#). After referring to some parts of the bill’s passage through Parliament they submit that the purpose of the legislation was adverted to by Lord Bingham CJ in **R v Manchester Crown Court, ex parte McDonald [1999] 1 WLR 841**. We shall return to that later in the judgment. They accept that where s25(5)(b) is engaged the CTL regime does not apply to a further period of remand in custody for the reasons specified in the subsection. But they submit that the subsection does not apply here because the release of the claimant on bail on 2 October 2020 was not “in consequence of the expiry of a custody time limit”.

38. They submit that Reg 6(6) could not be clearer in its terms and effect. A CTL is to be regarded as a “benefit” to a defendant. If the Crown Court realises that a CTL is about to expire in relation to a defendant then it “shall grant him bail in accordance with the [Bail Act 1976](#), as from the expiry of the time limit...”. They submit that if, as here, bail is granted prior to the expiry of the CTL then it is not granted in accordance with Reg 6(6). They point out that had the judge followed the course set out in [Regulation 6](#) the claimant would have been released 20 days later. They say that in releasing him 20 days early the judge was depriving him of the benefit of the CTL.

39. They submit that the grant of bail on 2 October 2020 was the result of an exercise of discretion by the judge, quite separate from his refusal to extend the CTL. That the judge did not follow [Regulation 6](#) supports the submission that the grant of bail was separate from, and not in consequence of, the expiry of the custody time limit. That being so, there remained 17 days before the expiry of the CTL when the claimant was remanded in custody on 16 April 2021 (the earlier remand in custody having used the other days). At that point the CTL clock restarted for a second time and, in the absence of an extension of the CTL (no further application having been made), it expired on 2 May 2021. Since that was a Sunday, the effect of [Regulation 2\(5\)](#) was that release on bail should have occurred on Friday 30

April. His detention since that date has been unlawful. The Recorder's finding, which the DPP seeks to uphold, strains the ordinary meaning of the words "in consequence of the expiry of the custody time limit". Since the CTL had not expired at the time of the claimant's release, he cannot have been released "in consequence of" its expiry.

40. Mr Bowers accepts that Reg 6(6) cannot, in practice, mean that a person entitled to release must be released at midnight on the last day. He argues that release earlier in the day, or a day or two before the expiry, would be regarded as a de minimis derogation from the requirement of the Regulation. Such a release would be "in consequence of the expiry" of the CTL. He further submits that on the facts here it was open to the CPS in April 2021 to make a further application for an extension of the CTL given the changed circumstances, including the fact that the claimant had been on bail, had breached its terms and was now in custody. Had an extension been granted then the claimant would have remained in custody lawfully. Had it been refused he was entitled to be released on expiry of the existing CTL.

41. He reminds the court that a person who falls within either s22(5)(b)(i) or (ii) is in the same position as someone who escapes from lawful custody; they may be detained without statutory limit upon capture or arrest for a breach of bail conditions or failure to surrender. A defendant who is released before the expiry of his CTL at the discretion of the Judge should not be placed in the same position as someone in one of these categories.

42. Mr Bowers submits that a CTL can come to an end in one of only two ways:

- i) by the preliminary stage being reached during the currency of the CTL; or
- ii) by the expiry of the CTL.

The statute does not allow for the period to finish early.

43. Mr Bowers also referred to the CPS Guidance on CTLs, whilst recognising that it has no status in law. Updated on 17 November 2020, it sets out the CPS approach. It reads:

"Problems can occur where bail is granted a few days before a CTL expires because any re arrest for breach of bail may mean a CTL expires before the defendant appears at the court dealing with the case... If the CTL expires, a defendant must be released no matter how serious the breach. To avoid this situation arising, the attention of the judge must be drawn to [Regulation 6\(6\)](#) and to the release of the defendant on the CTL expiry date. Any future remand following a breach of bail will not be subject to a CTL: the defendant's bail or remand will be at the discretion of the court (s22(5)(b) of the Act)."

44. We add that Mr Little submits that this part of the Guidance is incorrect, written without the benefit of any authority on the point.

45. Mr Bowers recognises that the purpose of the CTL regime is as set out by Lord Bingham CJ in **R v Manchester Crown Court ex parte McDonald [1999] 1 WLR 841 at 846D**, i.e. "to ensure that the periods for which unconvicted defendants are held in custody awaiting trial are as short as reasonably and practically possible." We agree with Mr Little that it is not necessary to review the debates in Parliament to construe the statutory provisions.

46. In all applications for an extension of a CTL s22(3)(b) [POA](#) requires that the Crown must demonstrate that it has acted with all due diligence and expedition. If the Crown fails to do so then the application is dismissed. The entitlement to bail at the expiry of the CTL overrides any of the reasons for refusing bail set out in the [Bail Act 1976](#). As Mr Little pointed out, there are obvious and

clear distinctions between the granting of bail where the grounds for refusing bail are not made out and release on bail because the CTL is about to expire and the criteria for extending it are not met. Release on bail in the latter situation may not include a surety or security (see Reg 8(2)). It also occurs notwithstanding that grounds for refusing bail under the Bail Act exist.

47. A judge may consider the grant of bail at any stage when a defendant is in custody. If the statutory objections to bail are not made out then the judge will grant bail, with or without conditions.

48. A judge may also grant bail as a matter of discretion because the CTL is about to expire, even if the point has not yet been reached where release is required by [Regulation 6\(6\)](#). If the defendant does not breach bail or commit another offence before the trial starts, the CTL becomes irrelevant. As to what should occur in the event of a breach of bail, further offence and remand in custody, the provisions in respect of “other time limits” ([sections 22\(6\)](#) and (6A)) were not replicated in respect of CTLs (see above). It follows that Parliament did not intend that an analogous approach to the approach in those provisions would apply. Were it the intention of Parliament that such breaches should lead to the same consequences as breach of bail granted in consequences of the expiry of a CTL, that would have been clear on the face of the statute.

49. In our judgment, where bail is granted other than as a consequence of the expiry of the CTL the clock is paused when the defendant is released, as the Recorder of Sheffield observed in his judgment. If he is brought back before the court because of a breach of bail or further offence and remanded in custody on the original offence, the CTL clock restarts. This approach does not require the prosecution to seek an extension until such time as the restarted period is approaching its limit. This is consistent with the purpose of the legislation and yields a coherent regime.

50. We reject the submission that the grant of bail by HHJ Dixon was not in consequence of the expiry of a CTL within the meaning of s22(5)(b). We agree with the decision of the Recorder of Sheffield and accept the submissions of Mr Little. The application before the court was for an extension to the CTL. It was refused. We repeat what HHJ Dixon said to the claimant and his co-defendant: “Mr Jabbar and Mr Coy, as a result of the Crown’s failings I am going to grant you bail, having refused the application to extend custody time limits”. The defendant could have been in no doubt as to the reason he was being released.

51. The fact that the judge did not follow the procedure in [Regulation 6](#) as to the timing of release does not affect the construction of s22(5), the Regulation being secondary to the primary legislation.

52. There was no bail application before the court, still less an application on the usual grounds, and there was no separate exercise of discretion in relation to such an application. The judge granted bail because of the expiry of the CTL, as he explained to both defendants. It is not straining the ordinary meaning of the words to conclude, as we do, that his release was “in consequence of the expiry of the CTL”. In every case where a defendant is released solely because an extension to the CTL has been refused, or when no extension has been sought, the practical reality is, as we have described, that release is before the expiry of the time limit – whether it is a matter of hours or days. Each such release is in consequence of the expiry of the CTL and the CTL comes to an end upon such release.

53. We reject the argument that being released on bail 20 days earlier than the CTL constituted the deprivation of any part of the benefit of the CTL regime. On the contrary, the benefit to a defendant of the CTL is that there is an upper limit of time in which he will be kept in custody and by which the prosecution must be ready for trial (subject to extensions). A defendant who is released before the CTL is reached, because the CTL is about to be reached, receives the benefit of the CTL which has

achieved one of its purposes - namely avoiding the unnecessary prolongation of detention of a person awaiting trial. Put another way, the release was the slightly early receipt of, and not the loss of, a benefit. Absent any further breaches of bail or further offences the claimant would have remained at liberty until his trial, having served less time in custody than the maximum permitted by the CTL. Whether he was returned to custody was entirely in his hands.

54. We reject the proposition that the claimant or someone in his position should not be treated in the same way as others caught by the terms of s22(5). He breached bail and failed to attend a hearing of his case. There was no reason not to treat him as s22(5) requires.

55. In response to the submission that it was open to the Crown to make a further application for an extension of the CTL before the end of April 2021, Mr Little argues that such an application would have been an abuse of process, given the findings by HHJ Dixon. The parties did not explore at the hearing the details of what had happened between October 2020 and April 2021 and, given our view as to the meaning of s22(5), there is no need for us to decide that point. It is sufficient to say that a decision having been made against the Crown in respect of expedition and due diligence this may not have been an easy application. The fact that the claimant had been remanded into custody was a reason to encourage the listing of the case as soon as possible but it did not, of itself, provide a reason for the extension of the CTL.

56. Our view of the meaning and effect of s22(5) does not, as was suggested, expose the claimant to custody without limits. Irrespective of the reason why a defendant is remanded into custody, he may apply for bail if the circumstances have changed - if, for example, the trial date is put back. In addition, as the Recorder of Sheffield put it rather vividly, "the fact that the CTL provisions are to be disregarded does not mean that "the demands of acting with appropriate celerity are jettisoned. Far from it." Resident Judges and their listing officers are guided by the imperative to list such a trial as soon as possible. The imperative is the more urgent after the expiry of the CTL.

57. We are wholly unpersuaded by each of the claimant's arguments that the judge was in error in refusing to order the claimant's release and we therefore refuse permission to apply for Judicial Review.