Pinnick v Court of First Instance No 2 of La Linea De La Conception, Spain

CO/1373/2013

High Court of Justice Queen's Bench Division the Administrative Court

21 March 2013

[2013] EWHC 1034 (Admin)

2013 WL 617767

Before: Mr Justice Ouseley

Thursday, 21 March 2013

Representation

Ms R Barnes (instructed by Kaim Todner) appeared on behalf of the Appellant.

Mr N Hearn (instructed by The Crown Prosecution Service) appeared on behalf of the Respondent.

Judgment

Mr Justice Ouseley:

1 This is an appeal against the decision of District Judge Arbuthnot made on 1 February 2013 ordering the extradition of the appellant to Spain, to put it neutrally, in relation to an offence against public health, namely a conspiracy for the importation of drugs (cocaine in particular) into Spain.

2 One issue is whether this is an accusation warrant, rather than merely a warrant for questioning, which would not be a valid European Arrest Warrant. The first issue, however, is whether it is a valid EAW on a different ground. This turns on whether the EAW meets the requirements of section 2(2)(a) and section 2(4) . I turn to those provisions. By subsection (2):

> "(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—
>
> (a) the statement referred to in subsection (3) and the information referred to in subsection (4), or
>
> (b) the statement referred to in subsection (5) and the information referred to in subsection (6) … "

The information that is required by subsection (4) is:

> "(a) particulars of the person's identity;
>
> (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
>
> (c) particulars of the circumstances in which the person is alleged to have committed the

> offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;
>
> (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it."

It is section 2(4)(c) which is of importance for this particular case.

3 Box E of the EAW form reads as follows in relation to the description of the circumstances in which the offence was committed:

> "PRELIMINARY ENQUIRIES NUMBER 1398/11 WHERE [sic] INSTITUTED FOR AN ALLEGED OFFENCE AGAINST PUBLIC HEALTH. THE APPROPRIATE TELEPHONE INTERCEPTIONS WERE AUTHORISED. FROM THE ENQUIRIES AND SURVEILLANCE BY THE GUARDIA CIVIL, AS HAS BEEN RECORDED, SUFFICIENT PRIMA FACIE EVIDENCE HAS BEEN OBTAINED AGAINST FRANK MITCHELL DOWIE, WHO WAS ARRESTED AS HE WAS TRAVELLING ON BOARD THE SHIP 'POSEIDON' FROM PANAMA TO LA LINEA DE LA CONCEPTION WITH DRUGS CONSISTING OF 50 KG OF A LIQUID SUBSTANCE WHICH APPEARS TO BE A COCAINE SOLUTION. ADDITIONALLY, FROM INFORMATION RECORDED, IN PARTICULAR FROM THE TELEPHONE CONVERSATION TRANSCRIPTS, THERE IS EVIDENCE OF THE EXISTENCE OF AN AGREEMENT BETWEEN FRANK MITCHELL DOWIE AND CRAIG ALEXANDER PINNICK TO BRING FROM SOUTH AMERICA THE DRUGS SEIZED AND TO SUBSEQUENTLY PROCEED WITH THEIR SALE IN OUR COUNTRY.
>
> ANNEXED IS A COPY OF THE POLICE REPORT."

That last sentence is crucial to this case.

4 It was conceded before the district judge, a concession maintained before me, that unless the police report could be read as part of the EAW, insufficient particulars have been provided in the EAW to meet the requirements of section 2(4)(c) . Notably, the date or time of the offence is missing. There may be room for an issue as to where the offence is said to have taken place as well.

5 In the English translation of the police report, which runs to 14 pages and is introduced by a reference to "preliminary enquiries 1359/2011", followed by a reference to the requesting court in La Linea De La Conception, sufficient detail, subject to what Ms Barnes described as very much secondary submissions, contains sufficient information to satisfy section 2(4)(c) if it is to be read as part of the EAW.

6 I mention here that I have considered those secondary submissions about the particulars as to where the agreement was alleged to have been made and a lack of support for the allegation that the country where the drugs were to be sold was Spain. There is nothing, with respect to her submissions, in those points. If the police report is part of the EAW, the EAW is valid; if the police report is not part of the EAW, the EAW is not valid.

7 Both parties put their case on a high basis. Ms Barnes, for the appellant, submitted that an annex could not be part of an EAW and would always be extraneous to it. Mr Hearn, for the respondent, submitted that an annex referred to in the EAW would be a part of it, or at least part of it provided that the annex was sufficiently identified in the EAW itself, by which I mean the EAW using the form in the schedule to the Framework Decision.

8 Ms Barnes pointed to some factual oddities about the annex which had not been raised before the district judge and so there had been no response by the respondent. It would not be right for this court on appeal to resolve those factual issues as if a court of first instance. Ms Barnes submitted that I could treat those oddities as illustrative of the sort of problem which could arise if annexes were to be treated as part of an EAW. I make no findings on those factual points, and treat them as no more than hypothetical illustrations of the sort of problems which Ms Barnes relies on.

9 I mention them here. The Spanish version of the police report is shorter than the English version: the English language version runs to 14 pages; the Spanish language version stops about halfway through page 11 of the English version. That does not go to its sufficiency, but it is a point which may illustrate a problem which could arise. It is next unclear what was the original Spanish source for the extra English pages. The English pages refer in translation to the illegible signatures of compilers of the report which is not a translation of any part of the Spanish version. The timings on the fax headers make it unclear when the English version was sent. The arresting officer's evidence says that it was the Spanish version of the EAW served on the appellant, but it is not clear from that evidence whether what was served included an annex or not.

10 I add, although it is clear that the police report relates to the events in box E and uses the same preliminary enquiries reference as is in the EAW form, there is no greater degree of identification of a specific report, either by reference number or page length or manner of annexure. I also add that there is no evidence of the manner in which the police report was annexed to the EAW, or how it would survive transmission by fax or photocopying. As I say, those are illustrative of the sort of problems which a case might create, because, on the parties' submissions, the case stands or falls on whether an annex can be part of an EAW, however closely stitched in and however closely identified by number or other means.

11 Ms Barnes, in her submissions, referred me not just to the language of section 2 , but also to the Framework Decision, and in particular article 8. This provides:

> "1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex."

I do not need to set out the information which is required, because that is for these purposes covered by section 2(4) .

12 The schedule to the Framework Decision is in the form with which courts in this country, and no doubt across the European Union, have become familiar. It includes box E, which is where the description of the circumstances in which the offence was committed, including time, place and degree of participation, are to be set out. It is clear that, although in the schedule there are only three lines provided in the form for that material, modern technology permits almost indefinite expansion of that as circumstances require. It is an expandable template, rather than one which by virtue of some imposed brevity will necessitate the use of a separate sheet of paper.

13 Ms Barnes also *referred me to the decision in Dabas v High Court of Justice in Spain [2007] UKHL 6, [2007] 2 AC 31* . A number of passages in this decision are of relevance. Lord Bingham made the point that the national law, that is section 2 , had to be interpreted:

> "&…so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU."

14 In paragraph 6, he referred to the information required by article 8 and said:

> "This information must be set out in accordance with the form contained in the annex to the decision."

15 At paragraph 8, he dealt with whether there was a requirement for a separate certificate. He said this (although he was dealing with whether there was some additional requirement, but it is relevant to the question of the significance of that which is set out):

> "If it is [ie if the warrant is invalid without a separate certificate] the effect of the Act would be to introduce a requirement not found in the Framework Decision and thereby to impede, to some extent, achievement of the purpose of the Framework Decision, by reintroducing an element of technicality which the Framework Decision is intended to banish and by frustrating the intention that a warrant in common form should be uniformly acceptable in all member states. Happily, as I think, the House is not driven to

> that conclusion, since I consider that the Spanish judge, by signing the warrant, has given his authority to and thereby vouched the accuracy of its contents. Thus the warrant is in substance if not in form a certification by the judge. It would be inconsistent with the trust and respect assumed to exist between judicial authorities to insist on any additional verification, which would impede the process of surrender but do nothing to protect the rights of the appellant."

16 I then turn to what Lord Hope said. At paragraph 35, he emphasised the point that the provisions of domestic legislation:

> "&… must be approached on the assumption that, where there are differences from what the Framework Decision lays down, they were regarded by Parliament as a necessary protection against an unlawful infringement of the right to liberty."

17 At paragraph 50, in a well-known passage, he said this:

> "I wish to stress, however, that the judge must first be satisfied that the warrant with which he is dealing is a Part 1 warrant within the meaning of section 2(2) . A warrant which does not contain the statements referred to in that subsection cannot be eked out by extraneous information. The requirements of section 2(2) are mandatory. If they are not met, the warrant is not a Part 1 warrant and the remaining provisions of that Part of the Act will not apply to it."

I add that this is not a case where supplementary information has been sought and considered.

18 The question of what is extraneous, and what additional material may be considered, has been dealt with in two cases upon which Mr Hearn relied and which Ms Barnes sought to distinguish. The first is Sanjay Dhar v National Office of the Public Prosecution Service of the Netherlands [2012] EWHC 697 . King J delivered the judgment of the Divisional Court, with which Moore-Bick LJ agreed. That case concerned the validity of an EAW on which, before certification or commencement of any proceedings in reliance upon it, the issuing Judicial Authority had added handwritten amendments to the form of EAW. The question was whether, applying the dictum of Lord Hope, this was extraneous material or part of the EAW. King J considered the dictionary meaning of "extraneous" in paragraph 57. Mr Hearn put reliance upon it. The judge said:

> "There was nothing 'extraneous' about this information, giving 'extraneous' its ordinary meaning as in the Oxford English Dictionary, as connoting something of 'external origin separate from the object to which it is attached'. If this is to be treated as a case of an amendment made to the warrant, I agree with the District Judge's analysis that

'the amendment occurred prior to certification and is integral to the certificated EAW and the information contained in it is therefore information included in the EAW.'"

19 On the facts the information contained in the handwritten amendment was included before certification, arrest or the commencement of any procedures. It had not been introduced from outside or to supplement the warrant already under consideration. Mr Hearn relied upon the description of the definition of 'extraneous'; Ms Barnes pointed to the factual circumstances as showing that it was dealing with a different issue from that before me.

20 Mr Hearn also relied upon Freer v Government of Germany [2002] EWHC 1259 (Admin), a decision relating to the 1989 Extradition Act . The question in that case was whether the requirement in section 9(9) that if a court committed a person "it shall issue a certificate of the offence against the law of the United Kingdom" was satisfied where a certificate which did not refer to the offence, and which did not actually refer to any schedule, in fact had a schedule of the offences annexed to it. The court, whilst saying that it would have been preferable for the certificate of committal on its face to refer to attached charges, took the view that the document

was sufficient; no one would be prejudiced by the form of certificate; and it was to be noted that the document was not one upon which a foreign court would rely if the order for extradition would be made. Mr Hearn relies on that to show the efficacy of an annexure if no one is prejudiced, and Ms Barnes submitted that it was distinguishable because of the circumstances in which it had its part to play. Here, of course, the EAW is something which is relied on by a foreign court.

21 In my judgment, although technical points have bedevilled extradition procedures, and it is important, despite the best endeavours of lawyers, that they should not be resurrected under the 2003 Act, there are limits to the informality, flexibility or indeed looseness which can be allowed where the liberty of the individual is at stake. The Framework Decision and the Extradition Act 2003 set out few formalities, some clearly going to the jurisdiction of the court. The language of the Framework Directive is clear: it is the form in the schedule which has to contain the information required by article 8. United Kingdom legislation has to be interpreted conformably with that, as Dabas makes clear in the passages I have already cited.

22 But in any event, even without that interpretive assistance, the language of the 2003 Act in section 2 is clear: a single document is contemplated as being the EAW, rather than a multiplicity of documents incorporated by reference and annexure. I do not say that a warrant is invalid if it contains an annex, for example voluntary additional particulars, so long as that which is in the body of the form prescribed by the schedule satisfies the requirements of article 8 or section 2(4).

23 Dabas , in the passages I have already cited, supports my judgment that the requirement for an EAW to contain information to be valid means that the information must be in the form set out in the Framework Decision. I have in mind in particular what Lord Hope said in paragraph 50. I see no reason why the Act should be given a different meaning, and many good reasons why an annexure should not be regarded as part of an EAW. First, a point of importance made by Lord Bingham in Dabas is that the EAW form scheduled to the Framework Decision is for use throughout the EU and between countries other than the United Kingdom. Simple uniformity of practice, understanding and trust is engendered by requiring the particulars to be in the scheduled form rather than in such form or annexures according to the style which may be adopted by courts varying from part of one country to another or between countries.

24 Second, there is, on Mr Hearn's submissions, no limit to the material which could be set out in an annexure. The EAW on his submissions could be entirely bereft of information in the prescribed or scheduled form, and other information contained in one or more annexes according to the style or view of the issuing Judicial Authority.

25 Third, however a Judicial Authority is construed, issuing the EAW is one of its tasks and requires a Judicial Authority decision, having applied its mind to the ingredients necessary for a valid EAW. That analysis of material by a Judicial Authority or in a judicial capacity is part of the safeguards which someone potentially subjected to an EAW is entitled to enjoy. It would be wrong to treat the EAW process as a mere means of sending a police report from one country to the executing Judicial Authority of another for it to analyse and put into the relevant parts of the EAW the requirements which would satisfy subsection (2). It is for the issuing authority to do that and take what time it requires to examine the police reports, rather than for the executing Judicial Authority to do. This requirement is not a large one; it can speedily be done. Time was pressing here and very little more was required.

26 Fourth, there are also practical issues which permitting an annex or more to be a part of an EAW could give rise to. They are illustrated by some of the points made here: is the court examining the same report as the issuing Judicial Authority, where there may be two versions? When was the report annexed? Did it accompany the transmission of the form, bearing in mind that the manner of annexure is likely to cause it to become detached for the very purpose of transmission by fax, and it may well become detached for the purposes of photocopying? The manner of annexure may require to be considered. The question of what document was used when the individual was arrested may arise. All of these are capable of giving rise to factual disputes requiring the calling of evidence for them to be resolved as matters of fact and degree before the district judge. It seems to me that it is clear that a single form, as scheduled to the Framework Decision, was intended to obviate that sort of factual dispute which could be time-consuming, expensive and delaying.

27 It is my judgment for those reasons that, however annexed or cross-referred to, an annex is not part of an EAW. Once an annex is allowed to be part of an EAW, factual disputes are bound

to arise and there is no logical stopping point before all the relevant information becomes merely an annexure to an EAW. Accordingly, construing the EAW without the police report, it is accepted that it is not a valid EAW, and I so conclude. I am not concerned with those cases where further information is sought in respect of a valid warrant, to deal with disputed issues e.g. for dual criminality.

28 I turn briefly in the light of that conclusion to Ms Barnes' second submission, which is that the EAW was not an EAW at all because it was not an accusation warrant, but was a warrant merely for questioning. Section 2 of the 2003 Act contains in subsection (2) to which I have already referred a requirement that there be a statement set out in subsection (3). Section 2(3) says that the required statement is one that:

> "(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence and
>
> (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence."

29 This warrant says that the Judicial Authority requests that the person mentioned in it:

> "be arrested and surrendered for the purposes of conducting a criminal prosecution … "

I have omitted the reference to executing a custodial sentence. That part, as is common, has not been deleted from the front page of the warrant, but it is perfectly clear that it is not what is commonly called a conviction warrant; it is an accusation warrant so far as the frontispiece is concerned.

30 The basis upon which Ms Barnes makes her submission is that the decision on which the warrant is based is this:

> "WARRANT DATED 23–11–12 ISSUED WITHIN PRELIMINARY ENQUIRIES 1359/11."

"Preliminary enquiries" for these purposes is a translation of the Spanish phrase *"diligencias previas"* . The nature of *diligencias previas* was considered by Moses LJ sitting as a single judge in R (on the Application of Meizoso-Gonzalez) v Juzgado De Instruccion Cinco De Palma De Mallorca, Spain [2010] EWHC 3655 (Admin). It was argued that the introduction of the words *diligencias previas* introduced uncertainty as to whether the warrant was for mere questioning or whether the warrant was for questioning necessary for the purpose of pre-trial procedures, as is the case in so many countries to which the European Arrest Warrant applies.

31 In paragraph 9, the nature of *diligencias previas* was discussed. It includes the necessary pre-trial questioning before a case can proceed. In paragraph 12, Moses LJ said this:

> "In my judgment, having regard to the need for trust in the judicial authorities of those countries which fall within Part 1 of Category 1 and Part 1 of the Extradition Act 2003 , it is not possible for this court to go behind the express statements from the judicial authority as to the purpose of the extradition. True it is that she refers to investigation but there is ample authority and example of cases where, notwithstanding the fact that the extradited person or others are to be questioned and notwithstanding the fact that investigations are continuing, the process still forms part of the process of prosecution. Examples were provided to this court in decisions such as Paschayan v Government of Switzerland [2008] All ER(D), [2008] EWHC 388 . In my view the District Judge was entitled to look at the extraneous material but was none the less bound to follow that which the warrant said was the purpose of the extradition in the light of the statements made by the judicial authority. The judicial authority showed that she appreciated the purpose for which an extradition warrant could be issued and made clear that the statement which it contained was an accurate description of its purpose. In those circumstances, I dismiss the appeal advanced on the ground that the purpose of the warrant was investigation and not prosecution."

32 Ms Barnes submitted that it was unclear what the position was, or indeed by reference to the known material as to the origin of the EAW it was clear that it was intended to do no more than enable the police to question Mr Pinnick in the way the police report showed the police had questioned Mr Dowie. I reject that contention. It is clear from the front of the EAW, as certified and signed by the Spanish judge, that this is a warrant for accusation. The fact that the procedures are within *diligencias previas* does not contradict that, as Meizoso-Gonzalez makes clear. No other factor has been put forward to suggest that that is wrong. SOCA were asked a question to which it said that the Spanish would have to apply to issue an EAW. The question they were asked is not known, but there is no reason to suppose that SOCA gave a wrong answer as to the requirements for an EAW, or that the issuing Judicial Authority issued it for one purpose while asserting it was issued for another. That would be in each instance to suppose that SOCA or the issuing Judicial Authority had abused the European Arrest Warrant procedure in order to please the Spanish police.

33 Accordingly, if that were the only point that had been raised, the appeal would have failed. However, my conclusions in relation to the main ground which concerns the annexure means that this appeal succeeds.

34 What order do you seek, Ms Barnes?

35 MS BARNES: My Lord, in light of your judgment, might I apply for your Lordship to quash the decision of the district judge and discharge the appellant.

36 MR JUSTICE OUSELEY: Is it quashing?

37 MS BARNES: Quashing the order of extradition.

38 MR JUSTICE OUSELEY: Do I not just allow the appeal against District Judge Arbuthnot's decision?

39 MS BARNES: No, my Lord. The details are in section 27 of the Act. I just turn to the relevant section. If the court allows the appeal it must order the person's discharge and quash the order for his extradition. That is subsection 5.

40 MR JUSTICE OUSELEY: Yes. So I will quash the order for your client's extradition and order his discharge.

41 MS BARNES: My last application is in respect of the order for legal aid representation, if I might have a detailed assessment.

42 MR JUSTICE OUSELEY: Yes.

43 MS BARNES: I am grateful, my Lord.

44 MR JUSTICE OUSELEY: Before I just finally say, is there anything you want to say in relation to relief?

45 MR HEARN: Yes, my Lord. There is an application to certify a question of public importance. Clearly, my Lord, I would submit that your judgment in the present case is a broad application, because it would of course apply to any European Arrest Warrant where an annex is included, not just of course Mr Pinnick's case.

46 I further suggest there were no authorities that directly decided the issue prior to the judgment that you have just delivered. I say that the issue is important because, between the two points of view, you rightly recognise that the cases were put highly by both parties. I submit there could be room for exploration between those two high points.

47 MR JUSTICE OUSELEY: Possibly, but is this a common form? I cannot remember coming across it before.

48 MR HEARN: My learned friend and I have discussed this. It is something we have both encountered. I think we would both say it is not common, but I have certainly seen warrants with annexes before.

49 MR JUSTICE OUSELEY: But annexes in lieu of particulars? As I say, I can understand there may be circumstances in which there is an annexure that is not required for validity but, if you

like, is voluntary additional particulars.

50 MR HEARN: I do not think my learned friend and I could point to an example where it has occurred that reliance has been placed on the annexes for the satisfaction of those particulars. I am not aware, but I do suggest that it could quite easily arise again in further cases.

51 My Lord, one has identified powerful reasons why there may be practical difficulties with reliance on annexures. But I would submit there are potential avenues within the Act for dealing with that in terms of section 4 which deals with the proper service, so if matters were missing from a document when it was served then a requested person would be entitled to argue that he had not been served the warrant in its whole and would be entitled to ask for discharge on that basis.

52 There is also the Serious Organised Crime Agency certification procedure where they review warrants, so it is of course incumbent upon them to make sure that all documents referred to within the European Arrest Warrant are present. So that provides a further protection against the potential practical problem that my Lord has identified.

53 So, my Lord, for those reasons I would submit that this is a decision which could potentially have application on other cases. In this case, the European Arrest Warrant issued by the judge, you certainly made some comments in relation to judges should not be simply sending police reports and I would certainly not seek to dissuade you in relation to those, but the contrary point has to be, I would submit, that there has to be an assumption that the judge dealing with an individual case has considered carefully the material that has been attached to a warrant, absent evidence on the face of the papers that that is not the case. So that would be, I submit, open to argument. So for those reasons, my Lord, I suggest there is potentially a wider implication.

54 MR JUSTICE OUSELEY: But as I understand it, you have not come across a case in which it has been used to supplement an invalid warrant?

55 MR HEARN: This is the first case I have encountered, but I would submit it is quite easy to imagine circumstances, especially in cases where one is dealing with serious cases where a fugitive is being sought urgently, that it may arise. I would also submit that the use of annexures is perhaps more likely to occur in serious cases than in less serious cases because of complexity or the need or the wish to include details of a larger investigation or something of that nature. So it may be a small number of cases in which the point could arise, but those cases, like the present one, are likely to deal with serious criminality.

56 MR JUSTICE OUSELEY: Ms Barnes?

57 MS BARNES: My Lord, my main points in response would be the fact that my learned friend, with respect, talks in hypotheticals. I am simply aware of one reported case where there has been an annexure for voluntary further particulars, not one in which it has ever been relied upon to supplement box E. My learned friend quite rightly accepted the same in the terms of both his research and his own experience, so there is not an issue of public importance and wider in this particular case. So I would resist it on that first ground.

58 Secondly, in relation to the practical issues that my Lord identified in your judgment, those were certainly my interpretations. Again, possibility as opposed to any ratio. It would not be relied upon in that extent, and the issue of whether or not there is a problem under section 4 , whether a person is properly served with a warrant, that simply would not arise because the power of a district judge is a discretionary one in relation to discharge. So I do not think there is an issue there. A person is either served with a warrant or they are not, and then the appropriate judge makes a determination on the facts in a particular case. I would say there is not a question of public importance to be decided here.

59 MR JUSTICE OUSELEY: Any response?

60 MR HEARN: Just on the section 4 point, what I am seeking to point out is that it is quite possible with a European Arrest Warrant without annexure for material to be missing, because the point my Lord makes in respect of annexures that they may need to be photocopied and emailed or faxed equally applies to a single European Arrest Warrant document. So it is possible for mistakes to occur and for an individual to be served with a warrant that has pages missing, and the ordinary course of action were that to be raised at the initial hearing.

61 So I suggest that section 4 does provide a certain protection for the idea that somebody may be served with incomplete material. So that is why I say that and the certification process that the Serious Organised Crime Agency undertake, it may be capable of submitting that those two areas deal with my Lord's concerns in relation to the general practicalities and that may be something that is of public importance for future cases.

62 MR JUSTICE OUSELEY: I am not going to certify. It seems to me that actually the case turns on a fairly straightforward issue of statutory construction, for which, even if some of the practical points I make may have some answer, there is no reason in the practical consequences for a different meaning than the normal meaning to be given to the words of the statute.

63 Secondly, it is not a general problem. It is, as I understand it, the first time this problem has arisen to the knowledge of counsel and is to be distinguished from the position where voluntary additional particulars are served attached to the warrant, a practice which I recognise does not give rise to a validity issue so long as the warrant itself contains that which section 2(4) requires.

64 Thirdly, if there is an incipient practice, the sooner it stops the better. If there are decisions which emerge later from other courts of coordinate jurisdiction in this area which take a different view, then of course there may be scope for it to be considered by a Divisional Court. But that, I think, would be the next step rather than their Lordships being troubled to read what I regard as in the end, with respect to Mr Hearn, a tolerably clear answer. So I refuse the application.

65 You were successful, Ms Barnes. Could you provide the associate with a draft order?

66 MS BARNES: My Lord, yes.

67 MR JUSTICE OUSELEY: Will you be able to do that today?

68 MS BARNES: I will do.

69 MR JUSTICE OUSELEY: Thank you very much.