



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

CO/796/2021

In the matter of an application for judicial review

THE QUEEN

on the application of NR

Claimant

-and-

THE COMMISSIONER OF POLICE OF THE METROPOLIS

First Defendant

-and-

THE INDEPENDENT OFFICE OF POLICE COMPLAINTS

Second Defendant

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of Service filed by the Defendant and/or Interested Party]

ORDER BY MR MICHAEL KENT QC sitting as a deputy judge of the High Court

1. As the claimant is entitled to life-long anonymity by virtue of section the section 1 of the Sexual Offences (Amendment) Act 1992 and the defendants were wrongly named in the claim form, but there is no objection by them to a correction being made, the title of these proceedings shall be amended as above.
2. Pursuant to CPR 39.2(4) the Claimant shall hereinafter be referred to in these proceedings as NR.
3. Pursuant to CPR 39.2(4) there shall not be disclosed in any report of the proceedings the name or address of the Claimant or any details which would lead to the Claimant's identification.
4. The application for permission to apply for judicial review is refused.
5. The application is certified as totally without merit.
6. The costs of preparing the Acknowledgement of Service are to be paid by the Claimant to the Defendants, summarily assessed in the sum of £ 3,000.
7. Paragraph 6 above is a final costs order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Defendants a notice of objection setting out the reasons why she should not be required to pay costs (either as required

by the costs order, or at all). If the Claimant files and serves notice of objection, the Defendants may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Defendants' response is served, file and serve submissions in reply. Thereafter, a Judge will decide on the basis of the written representations referred to above, what order for costs, if any, should be made.

Reasons

Service on the first defendant

The first defendant raises an issue as to whether she has been served with the claim form. However the claimant has filed a certificate of service confirming that she served the papers by "Royal mail signed for" and that appears to me to be a method approved by the COR 6.3 (1) (b) and PD 6A.3. There is no basis for going behind that certificate and, although she has been invited to provide details of a tracking number, she is not obliged to do so to establish effective service. I therefore hold that the first defendant has been validly served

First Defendant: Delay

Section 3 of the claim form, which was issued on 4 March 2021, refers to a decision dated 19 January 2021 but there is no such decision of the first defendant. The claimant complains of the adequacy of the investigation concluded on 23 July 2020 and of the re-investigation of part of her complaint concluded on 11 September 2020. In so far as she raises any complaint about the decision on 23 July 2020 she is long out of time to do so and in any event in relation to what has been described as "Allegation 3" that decision is now academic in light of the re-investigation. A challenge to the decision of 11 September 2020 also relates to a decision taken nearly 6 months before these proceedings were started which would require the claimant to seek an extension of the time laid down by CPR 54.5 (1) (namely promptly and in any event not later than three months after the grounds to make the claim first arose). However in relation to that decision, if there were an arguable claim, I would not refuse permission merely on the ground of delay as it appears that the claimant was only notified of the outcome of her appeal to the second defendant in relation to the new decision of the first defendant on 19 January 2021.

The merits of the claim against the first defendant and the second defendant.

The court will not allow a claim for judicial review to proceed where the claimant has an adequate alternative remedy. It follows that unless there is some defect in the decision of the second defendant on the second appeal submitted by the claimant on 11 September 2020, the claimant was able to have put right any error made by the first defendant by the re-investigation of Allegation 3. The focus should therefore be on the claim that the second defendant erred in dismissing that appeal and, to that extent, it is necessary to look back to see what the first defendant did or failed to do when re-investigating the matter.

It is difficult however to discern any proper public law grounds of complaint in the statement of grounds. It is not enough to refer in general terms to "malpractices, illegality irrationality and procedural impropriety". As far as I can see the nearest that the grounds get to bringing forward a challenge on public law grounds are the contention that there was undue delay in dealing with her complaint and the refusal of either defendant "to explain the evidence not relied on in the complaint procedures".

Otherwise the claimant is essentially doing no more than saying that she is aggrieved that her complaint was not upheld and the first defendant's officers failed to identify who had in fact released sensitive information to her brother. It is not however this court's function to reinvestigate matters but only to adjudicate on any proper challenge to the lawfulness of actions taken by either of the defendants.

The first defendant reinvestigated the only allegation which the second defendant had required to be looked at again, namely as to how the claimant's brother became aware of the assault allegations. The steps taken by the first defendant then included speaking to the claimant herself, to her brother and to the claimant's sister. The latter said that she had become aware of the allegations because the claimant had disclosed them as part of civil court proceedings between her mother and her father.

The claimant appears to think that it was insufficient to leave it there. However the second defendant concluded that this had been a proportionate enquiry into the complaint. It seems to me to be a perfectly proper conclusion. The first defendant's investigation had apparently eliminated any police officers who had access to the information as the source from which the claimant's brother might have obtained it and, having established that there were other circumstances in which other members of the claimant's family might have come to know about it, it was plainly open to the first defendant to conclude (and the second defendant to accept) that the nature of the case was not one which required any further attempts to identify how the Claimant's brother came into possession of the information.

In my view the claims against each defendant are totally without merit.

Costs

Although, having chosen to name two defendants in these proceedings, the claimant was at risk of having to pay two sets of costs there is clearly an overlap between the defendants as to the materials that would have to be put before the court in response to the claims and I order only one set costs in favour of both defendants (to be apportioned equally between them) summarily assessed in the sum of ~~£5,000~~. £3,000.

I note that the claim form indicates that there is a civil legal aid certificate in place in favour of the claimant but that does not in fact appear to be the case. If it is, then the claimant is entitled to the benefit of costs protection under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In that case the amount of costs that the Claimant shall pay shall be determined on an application by the Defendant under regulation 16 of the Civil Legal Aid (Costs) Regulations 2013. Any objection by the Claimant to the amount of costs claimed would be dealt with on that occasion.

CPR 54.12(7) APPLIES. THE CLAIMANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION TO APPLY FOR JUDICIAL REVIEW BE RECONSIDERED AT A HEARING.

Signed: MICHAEL KENT QC 17.9.21

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]
or the Claimant's, and the Defendant's [and the Interested Party's] solicitors

Date: 17/09/2021

Solicitors: IN PERSON
Ref No.