Neutral Citation Number: [2023] EWHC 507 (Admin)

Case No: CO/3659/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/03/2023

Before :

MR JUSTICE LAVENDER

- -

Between :

The King **on the application of** **SIMARPAUL THANDI**	**Claimant**
- and –	
SEVENOAKS MAGISTRATES' COURT	**Defendant**
CROWN PROSEUCTION SERVICE	**Interested Party**

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Hannah Edwards (instructed by **Blackfords LLP**) for the **Claimant**
Paul Jarvis (instructed by **Crown Prosecution Service**) for the **Interested Party**

Hearing date: 26 January 2023

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Approved Judgment

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MR JUSTICE LAVENDER

Mr Justice Lavender :

(1) Introduction

1. The claimant applies for judicial review of the defendant's decision to adjourn his trial, which commenced on 3 August 2022 and which was adjourned on the same day. The clamant seeks a declaration that the decision was unlawful, an order quashing the decision and an order mandating the defendant court to enter a not guilty verdict on the one charge which he faced, which was a charge of impersonating a police officer, contrary to section 90(1) of the Police Act 1996.

(2) Background

2. In the very early hours of Saturday 9 January 2021, at about 37 minutes past midnight, the claimant went to the home of Deepak Singh Bains. Mr Bains has a Ring doorbell which records both video and audio footage of people standing at his door. The recording is not continuous, but is activated by a motion sensor.

3. According to the recordings from that system which were subsequently provided by Mr Bains to the police, the claimant had his hand over the Ring doorbell for much of the time when he was present, but he said, inter alia, as follows:

   i) "Hello, mate, it's Kent Police. Kent Police, mate."

   ii) "The police are here."

   iii) "Mate, I am a police officer and I'm asking you to open the door."

   iv) "Excuse me, mate, can you open the door please? I am the police officer that has been asked to attend your property. Can you please open the door?"

   v) "Mate, you can see my ID and you can see my uniform and my badge number when you open the door."

   vi) "Open the door, mate. It's the police."

   vii) "I'm a police officer from the Kent police and if you don't open the door, mate, we will be forcefully entering your property. There is an alleged crime against you for harassment."

   viii) "You can see my epaulettes, number, you can see my uniform and you can see who I am."

   ix) "Mate, I can do what I want, I'm a policeman."

4. It does not appear to be disputed that the claimant said what he was recorded as saying in those recordings, but he denies that he was guilty of the offence with which he was charged. He contends that he did not intend to deceive Mr Bains.

5. The claimant was arrested at the conclusion of the incident. He was interviewed and answered no comment to all questions. On the same day the police obtained a statement from Mr Bains. He also gave them the Ring doorbell footage to which I have referred. He gave this to PC Yates on a USB stick at 10.19 am. There were four clips:

   i) The first started at 00:37:05 and lasted for 1 minute and 11 seconds.

   ii) The second started at 00:43:48 and lasted for 30 seconds.

   iii) The third started at 00:44:42 and lasted for 55 seconds.

   iv) The fourth started at 00:45:42 and lasted for 6 minutes and 24 seconds.

6. I am told, however, that the individual clips were not continuous and that the time stamp jumped from time to time within those clips. The claimant contends that the video footage has been edited and/or tampered with. It is not clear when he first made this allegation, but it may have been at the first hearing, on 4 March 2021, and PC Yates certainly appears to have been aware of the allegation by 13 April 2021, when he spoke to Mr Bains about it.

7. In February 2021 the police seized Mr Bains' computer and hard drive in connection with another investigation.

8. The four video clips were compiled to form one exhibit, exhibit DSB/02, to a statement made by Mr Bains which was served on the claimant, but the MG5 case summary, which was served at or before the first hearing, made clear that exhibit DSB/02 consisted of four separate clips.

9. The claimant first appeared before Medway Magistrates' Court on 4 March 2021, when he was represented by the duty solicitor. He pleaded not guilty. On the Preparation for Effective Trial Form ("the PET form") the disputed issues were identified as follows:

> "No intention to deceive. The complainant was aware of Mr Thandi before statements were made."

10. On 12 April 2021 the Claimant instructed solicitors, Matwala Vyas LLP. On the same day, they sent an email to the Crown Prosecution Service ("the CPS") requesting a copy of the PET form.

11. On 19 April 2021 PC Yates made a statement, in which he said that he had spoken to Mr Bains on 13 April 2021 and that Mr Bains had said that he had not edited the Ring doorbell footage and that all the footage he had would be saved on the hard drive which had been seized by the police. This statement was served on the claimant, who was thereby informed that Mr Bains' hard drive had been seized by the police.

12. On 23 April 2021 the claimant's solicitors sent an email to the CPS requesting confirmation that the Ring doorbell footage was a complete and unedited recording of the whole incident.

13. On 12 May 2021 the claimant's solicitors sent an email to the CPS stating that the claimant had reviewed the Ring doorbell footage served on him and asserting that the footage provided had been edited and was interrupted. A request was made for what was called "the complete, raw footage".

14. On 10 June 2021 the claimant's solicitors were served with a copy of the schedule of unused material and a link to the 999 call. Mr Bains' hard drive was not listed in the schedule of unused material.

15. On 10 August 2021 PC Yates made a statement, which was served on the Claimant's solicitors on 20 August 2021. PC Yates said:

> "On FRIDAY 6th AUGUST 2021 approximately 12:00 hours I contacted RING support services … and spoke with an expert on RING doorbell devices who gave her name as […]. She explained to me that RING does not store their customers recordings in any sort of archive system, a customer can log into their device and review their RING activation recordings from the past 30 days, beyond this point they are deleted. A person can save recordings from their ring account to a device such as a computer."

16. PC Yates said that he had also made enquiries about the possibility of editing Ring doorbell footage. Then he said as follows:

> ""PC 14907 MORTIMER has reviewed BAINS' hard drive in relation of if any further footage is in need of disclosing and has stated in an email to myself on 3rd AUGUST 2021: Whilst reviewing the videos on the downloaded devices there were none that related to the incident in your investigation therefore there is no further footage available as far as I can see".

17. This disclosed to the claimant that the police had at least had access to Mr Bains' hard drive. However, the claimant's solicitors did not at any stage write to the CPS requesting access to the hard drive or saying that they wanted an expert to inspect either the hard drive or the video footage provided to PC Yates by Mr Bains. Indeed, it was not suggested to me that the claimant ever instructed an expert, even to look at exhibit DBS/02.

18. On 10 September 2021 the claimant's case was listed for trial at Medway Magistrates' Court. The trial was listed for half a day. The claimant's counsel, Miss Edwards, applied for an order under section 78 of the Police and Criminal Evidence Act 1984 excluding the Ring doorbell footage, which she submitted was incomplete and was not the raw, unedited footage, but a tampered version which did not accurately reflect events. Prosecution counsel opposed the claimant's application and asserted that the footage provided to the claimant was complete and no other footage existed. The application was refused by the court.

19. Once the legal argument had been heard, there was insufficient time for the trial to proceed on 10 September 2021 and the case was adjourned until 29 September 2021 at Maidstone Magistrates' Court, with an increased time estimate of 1 day.

20. Miss Edwards submitted that she made clear at the hearing on 10 September 2021 that the claimant would have wanted to instruct an expert to examine Mr Bains' hard drive, but that is not included in the claimant's statement of facts and grounds and, if it was said, it was not followed up by the claimant's solicitors.

21. On 6 October 2021 an updated schedule of unused material was served. Mr Bains' hard drive was not included in this schedule. Miss Edwards submitted that the claimant's solicitors assumed, as a result of this schedule, that the police had not retained Mr Bains' hard drive, but that too is not included in the claimant's statement of facts and grounds. As I have said, the claimant's solicitors did not at any stage write to the CPS saying that they wanted an expert to inspect either the hard drive or the video footage provided to PC Yates by Mr Bains. Nor did they write to complain that the hard drive had been returned to Mr Bains, if that is what they believed had happened.

22. The trial was adjourned administratively to 28 January 2022, but there was insufficient court time for the trial to be heard on that day and the trial was adjourned to 3 August 2022 at Sevenoaks Magistrates' Court.

23. At the trial on 3 August 2022 Mr Bains gave evidence. When he was cross-examined, he denied that he knew that it was the claimant outside his door. He said that he had not edited the Ring doorbell footage. He said that the four video clips which he had provided to the police were all of the footage of the incident. He also said that his computer and hard drive had been seized by police in February 2021 and were still with the police.

24. Enquiries were made by prosecution counsel over the lunch adjournment and it was confirmed that Mr Bains' computer and hard drive had been seized by the police in February 2021. Prosecution counsel was instructed to make an application to adjourn the trial, on the basis that he would offer no evidence if the application was refused. In making this application, prosecution counsel conceded that there had been a disclosure failing, such that the prosecution had not fulfilled their obligations pursuant to the Criminal Procedure and Investigations Act 1996 ("the 1996 Act"), and confirmed that the failing could not be rectified that day.

25. The failing was said to be that neither Mr Bains' hard drive nor the four clips of ring doorbell footage had been identified on the schedule of unused material. Prosecution counsel said that he had had sight of an email between the CPS and the police dating from August 2021 which made clear that the prosecution had been on notice of the claimant's defence that there had been doctoring/editing of the footage and his request for the raw Ring doorbell footage for over a year. No explanation was provided as to why this supposed disclosure failing had occurred.

26. The magistrates questioned the relevance of the hard drive, despite the concessions from prosecution counsel as to its relevance in this case. For the claimant, Miss Edwards opposed the adjournment. Amongst her submissions, she contended that the disclosure failing only came to light during the cross-examination of the complainant and therefore could not have been foreseen by the claimant.

27. Following a period of retirement, the magistrates delivered their decision, which was to adjourn the trial. The reasons given were as follows (according to a note made by Miss Edwards, the accuracy of which is not challenged):

> "We have very carefully considered the points raised by both prosecution and defence in relation to prosecution application to adjourn this case part heard. In our deliberations we have had regard to Practice Direction 24C…. we note in particular under 24C9 when the prosecution asks for adjournment the court must consider not only the interest of the defendant in getting the matter dealt with without delay but also the public interest in ensuring that criminal charges are adjudicated upon thoroughly, with the guilty convicted as well as the innocent acquitted. With a more serious charge the public interest that there be a trial will carry greater weight. We consider it is in the interests of justice to allow an application to adjourn a trial part heard…"

28. Miss Edwards requested full reasons for the magistrates' decision, but the legal advisor confirmed that the only reasons which would be provided were those which had been delivered orally. The magistrates declined Miss Edwards' invitation to recuse themselves, but, following discussion about the availability of courtrooms, the magistrates decided to adjourn the trial to 3 November 2022 to be heard afresh by a new bench of magistrates at a different magistrates' court. In the event, however, the claimant's trial has not recommenced.

29. At the hearing before me, Miss Edwards clarified that the claimant's case is not that the video clips had been edited so as to put words into the claimant's mouth, but rather that footage has been edited out which the claimant contends would demonstrate that he did not intend to deceive Mr Bains and that the time stamp has been changed in places. She submitted that, in order to have a fair trial, the claimant needed an expert to look at the raw footage and the hard drive to see if there was any evidence of doctoring.

(3) The Law

(3)(a) Disclosure

30. Turning to the law, I start with the law concerning the prosecutor's duty of disclosure. A distinction is to be drawn between "used" and "unused" material. Exhibit DSB/02 constituted used material. The 1996 Act concerns the disclosure of unused material.

31. Section 3 of the 1996 Act provides as follows:

> "(1) The prosecutor must—
>
> (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for

> the prosecution against the accused or of assisting the case for the accused, or
>
> (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a)
>
> (2) For the purposes of this section prosecution material is material—
>
> (a) which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused, or
>
> (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.
>
> (3) Where material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section—
>
> (a) by securing that a copy is made of it and that the copy is given to the accused, or
>
> (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so;
>
> and a copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded."

32. I note that:

i) As appears from subsection 3(2)(b), the disclosure obligation imposed by subsection 3(1)(a) applies not only to material which is in the prosecutor's possession, but also to material which has been inspected in connection with the case.

ii) The code referred to in subsection 3(2)(b) is the Criminal Procedure and Investigations Act Code of Practice ("the CPIA code"). It applies in respect of all criminal investigations conducted by police officers.

33. Section 4 of the 1996 Act provides as follows:

> "(1) This section applies where—
>
> (a) the prosecutor acts under section 3, and
>
> (b) before so doing he was given a document in pursuance of provision included, by virtue of section 24(3), in a code operative under Part II.
>
> (2) In such a case the prosecutor must give the document to the accused at the same time as the prosecutor acts under section 3."

34. This is the provision which has the effect of obliging the prosecutor to give schedules of non-sensitive unused material to the defendant. That is because:

i) Section 24(3) of the 1996 Act provides as follows:

> "(1) This gives examples of the kinds of provision that may be included in the code by virtue of section 23(5).
>
> (2) …
>
> (3) The code may provide that if the person required to reveal material has possession of material which is of a description prescribed under this subsection and which he does not believe is sensitive he must give a document which—
>
> (a) indicates the nature of that material, and
>
> (b) states that he does not so believe."

ii) Paragraph 6.2 of the CPIA Code provides as follows:

> "Material which may be relevant to an investigation and has been retained in accordance with this code, and which the disclosure officer believes will not form part of the prosecution case, must be listed on the appropriate schedule of unused material."

iii) Paragraph 2.1.8 of the CPIA Code provides that:

> "material may be relevant to an investigation if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case"

35. It will be noted that schedules of non-sensitive unused material should list all relevant material, which is not necessarily limited to material which has to be disclosed pursuant to subsection 3(1) of the 1996 Act.

36. Section 6 of the 1996 Act provides, in effect, that a defendant in a case which is to be tried in a magistrates' court may give a defence statement to the prosecution and the court.

37. Section 7A of the 1996 Act requires the prosecutor to keep under review until acquittal or conviction whether there is prosecution material which ought to be disclosed. In particular, section 7A(5) provides as follows:

> "(5) Where the accused gives a defence statement under section 5, 6 or 6B—
>
> (a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, he must do

so during the period which, by virtue of section 12, is the relevant period for this section;

(b) if the prosecutor considers that he is not so required, he must during that period give to the accused a written statement to that effect."

38. The effect, therefore, of serving a defence statement ought to be to trigger a review by the prosecutor of the scope of disclosure. In addition, section 8 of the 1996 Act applies where the defendant has given a defence statement to the prosecutor and the prosecutor has complied with section 7A(5) or has purported to comply with it or has failed to comply with it. Subsections 8(2) and (3) provide as follows:

"(2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 7A to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him.

(3) For the purposes of this section prosecution material is material—

(a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused.

(b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused, or

(c) …"

39. It is to be noted that subsection 8(3)(b) means that a defendant can apply for, and the court can order, disclosure of material which is not in the possession of the prosecutor. Material in the possession of a third party can be obtained by the police either with the co-operation of the third party or by the issue of a witness summons. Chapter 5 of the CPS Disclosure Manual contains guidance in this respect.

(3)(b) The Overriding Objective and the Duties of the Parties

40. Rule 1.1 of the Criminal Procedure Rules ("the CPR") provides as follows:

"(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes—

(a) acquitting the innocent and convicting the guilty;

(b) … ;

(c) dealing with the prosecution and the defence fairly;

(d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

(e) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

(f) dealing with the case efficiently and expeditiously;

(g) … ; and

(h) dealing with the case in ways that take into account—

(i) the gravity of the offence alleged,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the defendant and others affected, and

(iv) the needs of other cases."

41. Rule 1.2 in the CPR provides as follows:

"(1) Each participant, in the conduct of each case, must—

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules, practice directions and directions made by the court; and

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule."

42. Rule 3.1 of the CPR provides as follows:

"The court must further the overriding objective in particular when—

(a) exercising any power given to it by legislation (including these Rules);"

43. Rule 3.3 of the CPR provides as follows:

"(1) Each party must—

(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and

(b) apply for a direction if needed to further the overriding objective.

(2) Active assistance for the purposes of this rule includes—

(a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;

(b) after that, communication between the parties and with the court officer until the conclusion of the case;

(c) by such communication establishing, among other things—

(ii) what is agreed and what is likely to be disputed,

(iii) what information, or other material, is required by one party of another, and why, and

(iv) what is to be done, by whom, and when (without or if necessary with a direction);

(d) reporting on that communication to the court—

(i) at the first hearing, and

(ii) after that, as directed by the court;

(e) …

(f) alerting the court to any potential impediment to the defendant's effective participation in the trial;"

(3)(c) Trial Adjournment in Magistrates' Courts

44. Section 10(1) of the Magistrates' Courts Act 1980 provides that:

> "A magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial …"

45. In *R v Aberdare Justices, ex parte Director of Public Prosecutions* [1990] 155 JP 324 Bingham J said as follows at page 330:

> "First, a decision as to whether or not proceedings should be adjourned is, as counsel for the defendant rightly urged, a decision within the discretion of the trial court. It is pre-eminently a discretionary decision. It follows as a matter of undoubted law that it is a decision with which any appellate court would be very slow to interfere and accordingly would interfere only if very clear grounds were shown for doing so."

46. Despite that, there have been a number of cases in recent years in which magistrates' or district judges' decisions to adjourn, or not to adjourn, trials have been found to be unlawful. Six such decisions were cited to me and I have taken account of all of them. I do not refer to them in detail because each case turns on its own facts and the claimant relies primarily on Part 24C of the Criminal Practice Directions ("the CPD"), which now encapsulates much of what is said in those and other authorities.

47. I will refer, however, to what Lord Bingham of Cornhill CJ said in paragraphs 30 and 31 of his judgment in *R v Hereford Magistrates' Court, ex parte Rowlands* [1998] QB 110 at pages 127-128:

> "30. … It is not possible or desirable to identify hard and fast rules as to when adjournments should or should not be granted. The guiding principle must be that justices should fully examine the circumstances leading to applications for delay, the reasons for those applications and the consequences both to the prosecution and the defence. Ultimately, they must decide what is fair in the light of all those circumstances.
>
> 31. This court will only interfere with the exercise of the justices' discretion whether to grant an adjournment in cases where it is plain that a refusal will cause substantial unfairness to one of the parties. Such unfairness may arise when a defendant is denied a full opportunity to present his case. But neither defendants nor their legal advisers should be permitted to frustrate the objective of a speedy trial without substantial grounds. Applications for adjournments must be subjected to rigorous scrutiny."

48. Hand in hand with the requirement for magistrates to subject applications for adjournments to rigorous scrutiny is a requirement to give cogent reasons for their decisions on such applications. As Chamberlain J said in paragraph 39 of his judgment in *Saunders v Bristol Magistrates' Court* [2022] EWHC 2544 (Admin):

> "Any decision to adjourn must be cogently reasoned, by reference to the Criminal Procedure Rules and Practice Directions and the relevant case law."

49. Chamberlain J said as follows of the magistrates' decision in that case, at paragraph 46 of his judgment:

> "As to the first question, both Crim PD 24C.1 and the authorities make clear that applications to adjourn summary trials require "rigorous scrutiny" and decisions on such applications must be cogently reasoned. In this case, what the presiding justice said expressed a conclusion: that an adjournment was justified in the interests of justice. This showed that he had applied the right overarching test, but did not explain why it was in the interests of justice to adjourn the trial. Describing the prosecution's failure to serve Dr Mars' statement or warn him to attend the trial as an "admin error" did not help. Overall, what the presiding justice said did not demonstrate that he had taken account of the factors identified as relevant in the Practice Direction and authorities. The "reasons" were therefore inadequate, as Mr Grieves-Smith candidly accepted."

50. Turning to Part 24C of the CPD, paragraph 24C.7 makes clear that the starting point is that the trial should proceed and sets out the explanation of the basic approach given by Gross LJ in *Director of Public Prosecutions v Petrie* [2015] EWHC 48 (Admin):

> "successive initiatives … have repeatedly exhorted the magistracy and District Bench to case manage robustly and to resist the granting of adjournments. Although there are of course instances where the interests of justice require the grant of an adjournment, this should be a course of last rather than first resort – and after other alternatives have been considered. … It is essential that parties to proceedings in a magistrates' court should proceed on the basis of a need to

get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly dispelled."

51. Paragraph 24C.9 identifies principles which are relevant to applications to adjourn trials, as follows

i) "the court's duty is to deal justly with the case, which includes doing justice between the parties."

ii) "the court must have regard to the need for expedition. Delay is generally inimical to the interests of justice and brings the criminal justice system into disrepute. Proceedings in a magistrates' court should be simple and speedy."

iii) "applications for adjournments should be rigorously scrutinised and the court must have a clear reason for adjourning. To do this, the court must review the history of the case."

iv) "where the prosecutor asks for an adjournment the court must consider not only the interest of the defendant in getting the matter dealt with without delay but also the public interest in ensuring that criminal charges are adjudicated upon thoroughly, with the guilty convicted as well as the innocent acquitted."

v) "with a more serious charge the public interest that there be a trial will carry greater weight. It is, however, reasonable for the court to expect that parties should have given especially careful attention to the preparation of trials involving serious offences or where the trial has significant implications for victims or witnesses."

vi) "where the defendant asks for an adjournment the court must consider whether he or she will be able to present the defence fully without and, if not, the extent to which his or her ability to do so is compromised."

vii) "the court must consider the consequences of an adjournment and its impact on the ability of witnesses and defendants accurately to recall events."

viii) "the impact of adjournment on other cases. The relisting of one case almost inevitably delays or displaces the hearing of others. The length of the hearing and the extent of delay in other cases will need to be considered."

52. Paragraph 24C.10 states that a potential consequence of the starting point that the trial should proceed without an adjournment may be that the prosecutor is unable to prove the prosecution case, but that "may be a just consequence of inadequate preparation."

53. Paragraph 24C.11 states that, if the adjournment is needed because of fault on the part of the applicant, that "weighs against" granting the adjournment, carrying weight "in accordance with the gravity of the fault". Paragraph 24C.12 states that a fault will be regarded as serious "where there is no reasonable explanation for that act or omission", adding that the "more serious the default, the less willing the court will be to adjourn".

54. Paragraphs 24C.23-26 deal specifically with determining applications to adjourn where there has been a failure to comply with disclosure obligations. Pursuant to paragraph 24C.24, where the matter cannot be resolved by the giving of disclosure immediately,

the court should consider whether the parties have complied with their obligations under CrimPR 3.3 (case management powers) and should consider the fault of the parties.

(3)(d) Remedies

55. Finally, in relation to the law, I turn to the question of remedies. The question of what, if any, remedy to grant on a successful application for judicial review is, of course, a matter for the court's discretion. However, in the present case it is relevant to have regard to section 31 of the Senior Courts Act 1981, which provides, inter alia, as follows:

> "(5) If, on an application for judicial review, the High Court makes a quashing order in respect of the decision to which the application relates, it may in addition–
>
> (a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or
>
> (b) substitute its own decision for the decision in question.
>
> (5A) But the power conferred by subsection (5)(b) is exercisable only if–
>
> (a) the decision in question was made by a court or tribunal,
>
> (b) the quashing order is made on the ground that there has been an error of law, and
>
> (c) without the error, there would have been only one decision which the court or tribunal could have reached.
>
> (5B) Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal."

56. Subsection 31(5A)(c) only applies to the "substitutionary" remedy provided for in subsection 31(5)(b), but in my judgment the principle which it embodies also applies when a court is considering whether to make an order under subsection 31(5)(a). Thus:

i) If the High Court decides to quash a decision by reason of an error of law and decides that, without the error, there would have been only one decision which the court or tribunal could have reached, then the High Court can direct the court or tribunal to reconsider that matter and reach that decision. In cases such as the present, that can lead to a direction to the magistrates' court to acquit the defendant, as in *Saunders v Bristol Magistrates' Court*.

ii) But if the High Court decides that, without the error, there would have been more than one decision which the court or tribunal could have reached, then it would not be right for the High Court to direct the court or tribunal to reach any

particular decision when it reconsiders the matter. In the words of subsection 31(5)(a), such a direction would not be "a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court".

(4) The Magistrates' Decision

57. The claimant has permission to advance two grounds for judicial review, grounds 2 and 3. By ground 2, it is alleged that the magistrates erred by failing to take account of or, alternatively, giving insufficient weight to, relevant considerations set out in Part 24C of the CPD. By ground 3, it is alleged that the decision to adjourn the trial was *Wednesbury* unreasonable.

58. Although the magistrates said that they had had regard to Part 24C of the CPD, the reasons which they gave were so brief that it is unclear how they had arrived at their decision and they did not demonstrate either that they had applied rigorous scrutiny to the case or that they had properly taken account of all relevant factors, which included, as the claimant contends:

i) the starting point that the trial should proceed;

ii) the fact that this was the third trial listing of the case and the defendant was paying privately; and

iii) the fact that the alleged offence was over 19 months old.

59. For the CPS, Mr Jarvis submitted that it was clear that the magistrates had applied the correct test, i.e. whether it was in the interests of justice to adjourn the trial, they had taken account of the right Part in the CPD, there were a range of interests for the magistrates to consider, including the interests of Mr Bains and the public interest in there being a trial of a serious charge, and that, having heard the trial thus far, they were familiar with the evidence.

60. Nevertheless, it is clear that this was not the sort of cogently reasoned decision which Chamberlain J recognised in *Saunders v Bristol Magistrates' Court* is required when magistrates are deciding whether or not to adjourn a trial. It follows that the decision was unlawful.

61. In the circumstances, I need say nothing more about grounds 2 and 3. However, I should make clear that this is not a case in which I consider that, if the magistrates had given cogent reasons which demonstrated that they had approached their task properly, there was only one decision which they could have arrived at. I consider that magistrates applying rigorous scrutiny and taking account of all relevant considerations might or might not have decided to adjourn the trial.

62. It is not for me to re-make the magistrates' decision, so I merely indicate some of the factors which might have led the magistrates to decide to adjourn the trial, when balanced against the considerations pointing towards refusing an adjournment.

63. First, PC Yates had carried out investigations in relation to the claimant's contention that the video footage had been edited and tampered with. Those investigations

included PC Mortimer reviewing Mr Bains' hard drive. The nature and results of those investigations were disclosed to the claimant in PC Yates' statements of 19 April and 10 August 2021. Although the CPS had not included the hard drive in the schedule of non-sensitive unused material, they had informed the claimant by those statements that the hard drive had been seized by the police had been inspected in connection with this case. That information in itself would have enabled the claimant to ask for an opportunity for an expert instructed by him to examine the hard drive and, if that was not forthcoming, to serve a defence statement and then apply for an order under section 8 of the 1996 Act requiring the CPS to disclose the hard drive and/or a witness summons requiring Mr Bains to produce the hard drive.

64. Secondly, it was the claimant's case that exhibit DSB/02 itself contained indications that it had been edited and/or tampered with, but, so far as I am aware, he had not instructed an expert to examine exhibit DSB/02.

65. Thirdly, I am told that the claimant wanted an expert to examine the video footage given by Mr Bains to the police, of which exhibit DSB/02 was a copy, but at no stage did his solicitors ask for such an opportunity. Exhibit DSB/02 was used material and one would not expect to see it, or the footage of which it was a copy, in a schedule of unused material.

66. Fourthly, what led to the application for an adjournment was Mr Bains' evidence that his hard drive was in the possession of the police, as to which Miss Edwards submitted that the claimant and his lawyers had until then assumed that the hard drive was not in the possession of the police. However, even if the hard drive was not in the possession of the police, that did not prevent the claimant from: (a) instructing an expert to examine exhibit DSB/02; (b) requesting an opportunity for an expert to examine the video footage from which exhibit DSB/02 had been copied; (c) requesting an opportunity for an expert to examine the hard drive (whether it remained in the possession of the police or not); and (d) if necessary, seeking an order for disclosure of the hard drive and/or a witness summons for its production.

67. Fifthly, in the light of the first four considerations, it was certainly arguable that the claimant had not complied with his obligations under CPR Rules 1.2(1)(a) and 3.3(1)(a) and (b).

68. I stress that I am not re-making the magistrates' decision. I have merely identified factors which might have counted on one side in the balancing exercise which the magistrates had to conduct. There were factors which counted on the other side. The decision was one for the magistrates.

(5) Remedy

69. Successful challenges to decisions to order, or not to order, adjournments inevitably give rise to practical difficulties. This court cannot turn back the clock.

70. At the hearing, Miss Edwards submitted that, if I decided that the magistrates' decision was unlawful, then I should quash it and remit the case to the magistrates' court with a direction to the magistrates to acquit the claimant. She submitted that that was the

appropriate course to take because prosecution counsel had indicated on 3 August 2022 that his instructions were to offer no evidence if the application for an adjournment was dismissed and because it would be unfair to the claimant not to give such a direction, since: (a) that would be equivalent to allowing the adjournment; (b) the CPS would be able to change its position and even to withdraw the application for an adjournment; and (c) the CPS might be able to rely on material which was not before the magistrates on 3 August 2022.

71. Mr Jarvis submitted that the right course was for me to remit the case the magistrates without giving any such direction. He submitted that: (a) prosecution counsel's indication on 3 August 2022 that he would offer no evidence if the adjournment was refused was based on a misunderstanding of the true position; (b) there would be no prejudice or injustice to the claimant in denying him an acquittal to which he was not entitled; and (c) there were other interests to be considered as well as the claimant's, namely the interests of Mr Bains and the public interest.

72. I canvassed with the parties an intermediate approach, such as directing the magistrates to reconsider the application for an adjournment on the footing that the CPS could not rely on evidence which had come into existence since 3 August 2022, could not withdraw the application for an adjournment and/or should offer no evidence if the application was refused. However, both parties identified objections to such an approach, both practical and principled, including that the discretion as to how to prosecute the case resides with the CPS and not the court. The parties persuaded me that I had to make a choice between the alternatives of directing, or not directing, the magistrates to acquit the claimant if the adjournment application was refused.

73. Following the hearing, I notified the parties that I considered that subsections 31(5) and (5A) of the Senior Courts Act 1981 may be relevant to the question of remedy in the present case and said that I would welcome any written submissions which the parties may wish to make on that issue. Both parties filed written submissions, for which I am grateful.

74. In her written submissions, Miss Edwards conceded that if I concluded, as I have done, that the magistrates' decision was unlawful, but that a decision to grant the adjournment sought would have been within the magistrates' discretion, then it would not be open to me to direct the Claimant's acquittal. However, she also submitted that, in those circumstances, I should remit the matter back to the magistrates for the decision to be made afresh and I should make the following supplementary orders:

    i) An order prohibiting the magistrates from taking into account any further material which had been served after 3 August 2022.

    ii) An order directing the magistrates to acquit the Claimant if the magistrates refused the application to adjourn.

75. In his written submissions, Mr Jarvis submitted that I should declare that the magistrates' decision to adjourn was unlawful and leave the matter there. On that basis, he submitted that the part-heard trial could be resumed. The position adopted by Mr Jarvis on behalf of the CPS was that it was a mistake for the prosecution to seek an

adjournment in the first place and that, consequently, the prosecution do not propose to seek an adjournment when the matter is next before the magistrates and that, if an adjournment is to be applied for, it is the claimant who should apply for it.

76. In exercising my discretion as to the appropriate remedy, I have to consider all the circumstances of the case, including, in particular, the potential for prejudice or unfairness to either party. I bear in mind the authorities to which I have referred and the paragraphs which I have cited from the Criminal Procedure Rules. I am very conscious that delays in the Magistrates' Courts are to be discouraged.

77. One consideration is that a retrospective decision now by the magistrates as to whether the hearing should have been adjourned on 3 August 2022 would be an artificial exercise. As to that:

    i) The simple fact is that the option of refusing to adjourn the trial on 3 August 2022 is no longer available.

    ii) The CPS's considered position is that an adjournment was unnecessary. I assume, therefore, that the CPS intend to be ready at the next hearing before the magistrates either to continue the trial or to start the trial afresh, depending on whether the next hearing is before the same, or a different, bench of magistrates.

    iii) Ms Edwards submitted that a retrospective decision by the magistrates to refuse the adjournment application would have no practical effect unless I made an order directing the magistrates to acquit the claimant if the adjournment were refused.

    iv) However, I do not consider that it would be appropriate for me to make an order directing the magistrates to acquit the claimant if the adjournment were refused:

        a) The discretion whether or not to offer no evidence resides with the CPS. I am not persuaded that I should interfere with the exercise of that discretion.

        b) If the magistrates had subjected the adjournment application to rigorous scrutiny, as they were obliged to do, then that might well have led them to identify the matters which I have concluded might have led them to adjourn the trial. It is also the case that the identification of those matters might have led the CPS to adopt a different approach to the adjournment application.

        c) In all the circumstances, I cannot be confident that the claimant would have been entitled to an acquittal if the trial had not been adjourned.

78. This latter consideration is also relevant to the potential prejudice to the claimant of my decision as to remedy. In that context, I also note that, in the interval between this judgment and the next hearing in the magistrates' court, the claimant will have the opportunity to instruct an expert to review exhibit DSB/02, the video footage provided to PC Yates by Mr Bains and Mr Bains' hard drive. I am sure that the CPS and the police would co-operate with such an exercise. If they did not, I anticipate that the magistrates would deal with that situation appropriately. If an expert instructed in this

way were to conclude that the claimant is right in what he says about the Ring doorbell footage, that might assist him to demonstrate that the CPS cannot prove his guilt to the criminal standard.

79. In all the circumstances, I consider that the proper course is to declare that the decision to adjourn taken on 3 August 2022 was unlawful, but to make no further order. I note that, as I have already said, the last decision made by the magistrates was that the trial should be heard afresh by a new bench of magistrates.

(6) Summary

80. I declare that the magistrates' decision made on 3 August 2022 to adjourn the trial was unlawful, because it was insufficiently reasoned. I make no further order.