Neutral Citation Number: [2022] EWHC 3307 (Admin)
Case No: CO/1676/2022

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

Birmingham Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DS

BEFORE:

HIS HONOUR JUDGE RICHARD WILLIAMS
(Sitting as a Judge of the High Court)

BETWEEN:

JOHN ALEXANDER MELVIN HEMMING	**CLAIMANT**
- and -	
INDEPENDENT OFFICE OF POLICE CONDUCT	**DEFENDANT**
CHIEF CONSTABLE OF GWENT POLICE (1) **CHIEF CONSTABLE OF STAFFORDSHIRE POLICE (2)**	**INTERESTED PARTIES**

Representation

Mr John Alexander Melvin Hemming (Claimant), Litigant in Person
Mr David James Messling (Counsel) on behalf of the Defendant
Mr George Charles Apthorp (Counsel) on behalf of the First Interested Party
The Second Interested Party was not in attendance and not represented

Judgment

Judgment date: 18 November 2022

(start and end times cannot be noted due to audio format)
This Transcript has been approved by the Judge.

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His Honour Judge Richard Williams:

Introduction

1. This is my judgment following the hearing of a renewed application for permission to bring judicial review proceedings after HHJ Rawlings refused permission on the papers (by order dated 19 August 2022 and for the reasons stated in that order).

Background

2. By way of brief background, the Claimant is Mr Hemming, who served as a Member of Parliament representing Birmingham Yardley from 5 May 2005 to 30 March 2015.

3. On 12 February 2015, EB made her initial complaint to the Second Interested Party ("***the SIP***") about historic sexual abuse, directed against a number of potential suspects.

4. On 12 October 2015, the Claimant was voluntarily interviewed under caution. He was never arrested for any offence and consistently denied any wrongdoing.

5. The SIP concluded their investigation and, on 20 May 2016, submitted their entire case to the CPS for a charging decision. The file included a number of suspects and was not limited to the Claimant.

6. On 31 August 2017, the CPS sent their decision that there would be no further action, having concluded that there was insufficient evidence to provide a realistic prospect of conviction against the Claimant or other suspects.

7. On 29 June 2018, the Claimant met with the SIP, who agreed to reopen a criminal investigation into EB including attempting to pervert the course of justice.

8. On 13 September 2019, the SIP sent a file to the CPS requesting advice on the allegations against EB. The matter remains under consideration.

9. On 15 September 2019, the Claimant made a complaint regarding the handling of the criminal investigations by the SIP. On 28 July 2021, the First Interested Party ("***the FIP***") upheld one of 14 complaints made by the Claimant.

10. The Claimant appealed the outcome of his complaints to the Defendant on 22 August 202.

11. On 23 February 2022, the Defendant did not uphold any of the complaints.

12. On 11 May 2022, the Claimant issued these proceedings, claiming that the Defendant acted unlawfully in not upholding his appeal against the outcome of the FIP's investigations into three of his complaints, being, in summary,:

    a. firstly, the SIP referred the Claimant to the CPS, despite already knowing that he was innocent, and the evidential test for charging was not met in his case ("***Complaint 1***");

b. Secondly, the SIP delayed the criminal investigation into EB in order to hide their errors ("***Complaint 2***"); and

c. Thirdly, it was inappropriate for the SIP to continue to refer to EB as a victim ("***Complaint 3***").

13. The Claimant, who represents himself, acknowledged in his oral submissions that it is difficult for him to remain dispassionate. At times, with no disrespect intended to the Claimant, his submissions lacked a degree of focus. I have to say that is perfectly understandable, bearing in mind the abuse that he and his family have suffered as a result of the allegations made against him.

Legal framework

14. Whilst I have considerable sympathy for the Claimant, the role of the Court in judicial review is a limited one in that the Court is exercising a supervisory jurisdiction.

15. For the purposes of this judgment the question I must determine is whether there is an arguable case having a realistic prospect of success. If that test is met, then permission for judicial review should be granted. If I am not so satisfied, then I should refuse permission, since it is in nobody's interest to allow a case to proceed where that case ultimately has no realistic prospect of success.

16. The statutory guidance from the IPCC, now the Defendant, on such appeals was as follows. In Section 13:

> "**Principles of appeal handling**
>
> 13.2 An appeal offers a final opportunity to consider whether the complaint could have been handled better at a local level and, where appropriate, to put things right. If a complainant is still dissatisfied after an appeal he or she may seek to challenge the appropriate authority's decision through judicial review.
>
> 13.3 An appeal should be dealt with in good faith, fairly and in a timely manner.
>
> 13.4 Appeals should be handled consistently and proportionately.
>
> 13.5 Consideration of an appeal must involve a fresh consideration of the case. Although it is not a re-investigation it should not merely be a 'quality check' of what has happened before.
>
> 13.6 An appeal must be given impartial consideration. There needs to be clear separation between the original decision-maker and the person who decides the appeal.
>
> 13.7 The complainant's appeal contains their representations, which must be given due consideration.

13.8 The person who made the decision that is being appealed should be allowed the opportunity to comment on the appeal so that this can be taken into account when determining it.

13.9 The right of appeal allows the complainant to challenge a decision or outcome. If the appeal is upheld, relevant action must be taken by the appropriate authority.

13.10 The complainant and, where applicable, the person complained about should be provided with a clear explanation of the outcome of the appeal and the reason for any decision made.

……………..

Consideration of appeals

"13.63 When deciding whether the outcome is a proper one, the focus should be on whether the outcome is appropriate to the complaint, not simply on the process followed to reach that outcome. The decision should be made on the basis of the evidence available.

13.64 In making a decision about the appeal, the relevant appeal body should take the following into consideration:

• any representations the complainant has provided as part of his or her appeal about why the outcome is not a proper outcome

• whether an action plan was drawn up and agreed with the complainant setting out the steps to be taken when locally resolving his or her complaint. The outcome of the local resolution should be a clear consequence of the actions agreed

• whether both the complainant and the person complained against had the opportunity to comment on the complaint during the local resolution process

…………….

• whether any explanation given was sufficiently clear and comprehensive to address the complainant's concerns …"

17. In ***R (on the application of Ramsden) v Independent Police Complaints Commission & Anor*** [2013] EWHC 3969 (Admin), Stephen Morris QC sitting as a Deputy High Court Judge set out the general approach to take to challenges to such appeal decisions as follows:

"(1) The question for the police investigation is whether the allegations made in the complaints have been established on the balance of probabilities, taking account of proportionality …

(2) The IPCC's appeal procedure is by way of review; …., the IPCC's task is to ensure that, *following a proportionate investigation*, an appropriate

conclusion has been reached by the police investigation … Was the conclusion in the police investigation one which was fair and reasonable?

(3) An IPCC appeal decision is not expected to be 'tightly argued' - nevertheless the conclusion should be clear and the reasons readily understandable …

(4) The function of the Court on an application for judicial review of an IPCC appeal decision is confined to the question whether the IPCC has reached a decision which was fairly and reasonably open to it, even if the court might have reached a different conclusion. IPCC decisions involve matters of judgment and the court will allow the IPCC a discretionary area of judgment …

(5) Where the IPCC upholds the decision of the police investigation, the question for the Court involves an element of 'double rationality': was the decision of the IPCC that the decision of the police investigation was fair and reasonable itself fair and reasonable? The question is not whether the Court would necessarily have reached the same conclusion as the police or the IPCC, nor whether it can be seen with hindsight that an error may have been made …"

18. In that context, I now consider in turn each of the Claimant's three complaints.

Complaint 1

Ground 1

19. The Claimant argues that the FIP and the Defendant should have concluded that it was perverse, an unlawful fettering of discretion and/or a breach of human rights for DCI Davies, the senior investigating officer with the SIP, to refer the case to the CPS in the knowledge and belief that the Claimant was innocent. The Claimant relies in particular upon an email sent on 15 May 2017 by DCI Davies in which she stated as follows:

> "He [the Claimant] has asked for a short statement from myself as SIO so that he can show to the Parliamentary Office to understand his status within the investigation. I am very conscious a formal decision has not been made by CPS, although I know informally that the allegations against [him] are untrue and will not meet threshold."

20. The Defendant's decision letter in this regard states as follows:

"……..

College of Policing Authorised Professional Practice

………

"Gold group

If there is the possibility of any national consequences arising from a complex child abuse investigation, consideration should be given to establishing a gold group. A clear understanding of the expectation and

capability of each partner in gold group is essential to developing a joint-working relationship. The function of the gold group is to set policy and strategy and secure the funding and resources necessary for the investigation.
Liaising with the CPS
The SIO should liaise with the CPS at the earliest possible stage and at an appropriate level to obtain their views on the scope of any proposed investigation so as to focus operational resources appropriately. They should also obtain relevant and ongoing advice from the CPS to support the investigation.

…….

Analysis
I have examined the email where DCI Davies provided a further response explaining that the investigation was very much directed by the Gold team, who insisted that the CPS had to be involved and that they would make the decision around any prosecution. DCI Davies also recalls that it was the CPS decision to place Mr Hemming as one of the main suspects within the file, following discussions with them. DCI Davies also explains that it was the CPS who requested the way in which the file was submitted as their premise was around full disclosure so they could realistically understand if prosecution was feasible.

The officers in this investigation were dealing with a large volume of information provided by one person but relating to a number of different incidents, events and people over a lengthy period of time. DCI Davies was duty bound to ensure that the investigation was as detailed, wide reaching, and meticulous as possible. This involves collecting all evidence regardless of whether it supports or refutes the allegations, in order for a genuinely independent decision to be made.

In cases of this nature that would amount to an indictable offence, only the CPS can make a decision about charges and the police are legally required to provide all evidence to them in order to do so. The police investigation process is not an indication of guilt or innocence, it is simply a way to gather evidence. It is also important to highlight that neither the police or CPS prosecutors are responsible for deciding guilt or innocence, particularly in such serious and complex cases. That is the role of the courts and judicial process. The police responsibility is to obtain all available evidence and provide a case file to the CPS. The CPS prosecutors will then review and consider the evidence, request further evidence and examine all of the information before a decision is made about who, if anyone, should be charged and with which specific offence based on the realistic prospect of conviction test and other threshold tests.

It is for the Court to decide guilt or innocence and it is important to make clear that the police are making no judgments about guilt as any potential suspect is considered innocent unless proved guilty and that the person concerned is not able to defend her/himself at this stage of the process. Therefore, for DCI Davies to make a decision that any person allegedly involved may or may not be guilty…. would significantly undermine and

frustrate the entire judicial process. Furthermore, to make such decisions outside the actual legislative process would leave the police open to severe criticism and legal challenge in such serious, sensitive, and complex cases.

Decision
…….. The decision not to bring any charges was a result of the CPS decision that there was insufficient evidence to proceed based on all the information the police had and were required to obtain.

When such complex and sensitive cases are being investigated, police officers have a duty to ensure that all available evidence and information is provided to the CPS as it is the CPS who make the charging decisions based on consideration of that evidence, and it is not for the police or individual officers to make that decision."

21. In my judgment, it is not properly arguable that the Defendant's appeal decision in this regard was not fairly and reasonably open to it and having regard in particular to the following matters:

    a. Firstly, whilst police decision makers have an important role in identifying and stopping cases where the evidential test cannot be met, the guidance for rape cases expressly states "that the Police decision to NFA only applies to any case that **clearly cannot and will not be able** to meet the evidential standard……i.e. because all reasonable lines of enquiry have been exhausted, there is no prospect of further evidence/enquiries strengthening the case and the evidence is still insufficient for the case to <u>eventually</u> meet" the evidential standard;

    b. Secondly, the investigation related to historic, complex child abuse allegations. As a result, and in accordance with the College of Policing Authorised Professional Practice, a Gold group was established and early advice was sought from the CPS;

    c. Thirdly, it was Gold command, not DCI Davies, who directed that the matter should be referred to the CPS for a charging decision; and

    d. Fourthly, DCI Davies' personal belief as to the Claimant's innocence was not relevant to Gold command's assessment of whether the evidential test had been met. Ultimately, it is for the Criminal Court to decide guilt or innocence.

<u>Ground 2</u>

22. The next ground of challenge in relation to Complaint 1 is the Defendant's failure to consider properly or at all the Claimant's allegations of apparent bias, which are in two parts:

Part 1

23. Firstly, the Claimant relies upon an email sent on 15 May 2020 by the FIP's complaints investigator, DI Thomas, to an officer at the SIP. The Claimant alleges that the content of that email evidences an improper motive on the part of DI Thomas in seeking to assist the very body he was investigating in defending parallel court proceedings.

24. A copy of the relevant email is included in the hearing bundle. It states as follows:

> "Hi [NAME REDACTED]
>
> This the latest from [NAME REDACTED] I can see nothing from the PND return and the information that has been given to me that suggests that Staffordshire or any Force has investigated [NAME REDACTED], [NAME REDACTED] or Sam Smith for anything detailed below. This would be other than the historic offences alleged by [NAME REDACTED].
>
> It may be that if we confirmed this then this would go some way in allaying [NAME REDACTED] concerns and lessening some of the elements of the lawsuit being taken against your Force (I'm not sighted on that but I could imagine this may be included). I won't send anything yet but can you and your SMT consider this. Otherwise I can still plough on but I would be asking the same question and answering it in the final report."

25. In response, the SIP officer stated:

> "Afternoon Simon,
>
> I'm just in the process of realigning SS's complaints.
>
> We have never confirmed whether or not [NAME REDACTED] had been investigated for harassment.
>
> Personally, I would think it best addressed in the final report. My rationale for that would be that [NAME REDACTED] is not asking for a specific was he or was he not being investigated. His allegation as he explains below, is more complicated. Additionally the information can't be weaponised again until the final report is signed off and sent, providing you with some top cover too."

26. In his second appeal letter, dated 6 October 2021, the Claimant stated:

> "**<u>The New Evidence</u>**
>
> ………….
>
> …….. DI Simon Thomas who was supposed to be investigating Staffordshire Police stated in writing that he intended to help Staffordshire Police defend or mitigate my claim.
>
> Ironically, since I now have that email, the reverse is true. ……..
>
> **<u>The Criminal Conduct by Simon E Thomas and Gwent Police</u>**
>
> ………….

I refer to his email of 15 May 2020 14.23, to an officer at Staffordshire Police in which he proposes a limited disclosure of information would assist them – "*lessening some of the elements of the lawsuit being taken against your force*". It is not a proper motive for an officer investigating corruption to wish to assist officers in mitigating a claim against them."

27. Neither the Defendant's appeal decision nor summary grounds of defence make any reference to this particular complaint, although the Defendant's pre-action response letter does state that it has not had sight of the email and has not been presented with any evidence that the police acted maliciously to mitigate or lessen the impact of ancillary legal actions. I refer to the statutory guidance and the principles of appeal handling and, in particular, the need to give due consideration to the complainant's appeal representations, the need for the person whose decision is being appealed to be allowed the opportunity to comment on the appeal so that this can be taken into account, and the complainant being given a clear explanation of the reasons why any decision has been made.

28. In my judgment, it is properly arguable that the Defendant failed properly to deal with this particular aspect of the Claimant's appeal.

Part 2

29. The second allegation of apparent bias is that DCC Amanda Blakeman, who signed off in support of the conclusions reached by DI Thomas, previously worked for a different police force, as a colleague of the senior police officer against whom EB made allegations. I do not consider this ground is properly arguable, for the following reasons:

    a. Firstly, this particular complaint was never put to the Defendant in either of the Claimant's appeal letters; and

    b. Secondly, even if it had been put to the Defendant, the mere fact that DCC Blakeman was previously an officer of West Mercia Police does not of and in itself give rise to the appearance of bias, particularly where DCC Blakeman's decision was made in relation to an investigation into the actions of the SIP and not West Mercia Police.

Complaint 2

30. Turning to consider the second complaint, in his first appeal letter the Claimant stated as follows:

    "**.....The police have subsequently deliberately dragged out matters whilst failing to take action, in order to hide their errors. What they should have done was open an investigation into perverting the Course of Justice immediately after my interview under caution in October 2015 or in any event, as soon as they realised there was no probable case to refer to the CPS.**

    The conclusions here are perverse and ignore known facts.

    DI Thomas records the following:

‘*On 01/03/19 DCS Oomer documented in his policy book that the investigation into allegations that Attempted to Pervert the Course of Justice would be placed as low priority. This was due to the following:*

(1) There was no apparent risk to any persons or subjects.
(2) *This was supported by the fact that the allegations were historical*.”

DI Thomas goes on to conclude that,

“*Often difficult decisions have to be taken by senior officers with regard to prioritising demands sometimes at the expense of delaying other enquiries. In this case, staff shortages and other pressing matters took priority*.”

DI Thomas was of course on notice that points 1 and 2 of DCS Oomer’s decision making were false. Firstly, the allegation I made included ongoing harassment and were not in fact historical. [EB] was harassing me directly, by publicly repeating her allegations (this does not have to be directed at me), and indirectly by harassing Sam Smith and Andi Lavery. It is well recognised in law and the CPS guidance that you can harass someone by harassing their friends and associates.

Later in 2019, [EB] was found to have engaged in racist harassment of Andi Lavery, and which was said to be in part motivated by Lavery’s support for myself and which put Mr Lavery’s life at risk. [EB] was ordered to pay damages and restrained. At all material times, there was a risk to Mr Lavery’s life. DI Thomas was provided with a copy of the judgment.

Later in 2019, [EB] was found to have engaged in defamation of myself by repeating the allegations. These allegations had led to harassment of myself, death threats and mental and emotional harm to my minor children. At all material times there was a risk to myself and my children of harm and death. At all material times, the conduct was ongoing.

[EB] also harassed Mr Smith. At all material times, there was a risk of harm to herself. Eventually, due to police inaction Mr Smith also sued [EB] and her various defences were struck out. She consented to a restraining agreement attached to a High Court order. Although she did not admit guilt, most of her defences were struck out. At all material times, the conduct was ongoing. At all material times, there was a risk of harm. DI Thomas was given a copy of the judgment. At all material times, DI Thomas and DI Oomer knew that Mr Smith had an eye disability and would put him at risk of physical harm.

Additionally [EB] has incited third parties who have incited further third parties to harass myself and my family……...

…………..

The conclusion that it was reasonable to treat the investigation into my complaint as low priority is perverse and unreasonable. The only correct conclusion is that the DCS Oomer's decision was wrong, that it breached my Article 2 and 3 rights, as well as Mr Lavery's and Mr Smith's. The approach of DI Thomas is either negligent or dishonestly biased………..”

31. In his second appeal letter, the Claimant again stated:

> “ “*On 01/03/19 DCS Oomer documented in his policy book that the investigation into allegations that* [EB] *Attempted to Pervert the Course of Justice would be placed as low priority. This was due to the following:*
>
> *(1) There was no apparent risk to any persons or subjects.*
> *(2) This was supported by the fact that the allegations were historical.*
> *(3) The Major Investigation Team who were supporting this investigation were dealing with other pressing matters and were suffering from staff shortages.*
>
> *In September 2019 an advice file was submitted to the CPS*.”
>
> DI Thomas knew that both grounds 1 and 2 were false, but nonetheless concluded that
>
> “*Often, difficult questions have to be taken by senior officers with regard to prioritising demand and sometimes at the expense of delaying other enquiries. In this case, staff shortages and other pressing matters took priority.*”
>
> DI Thomas of course knew that I had mentioned at the time that I had been threatened with death, that [EB] was repeating her allegations and that Andi Lavery was suing her for her harassment which endangered his life. Andi eventually prevailed (as did Sam Smith and I). He knew 1 was false.
>
> However, DI Thomas also knew that 2 was false, again based on disclosed information he omitted from his report that I would not have known had it not later come to me from another source. In fact, [EB] had made further allegations of rape in Merseyside, which Merseyside were considering. There was a meeting between Staffordshire and Merseyside Police on 4 April 2019. Discussed were allegations of rape already known to the officers made by [EB] in June 2018 and in March 2019. It was feared these allegations were fabricated………
>
> Javid Oomer knew that [EB] was continuing to make false rape allegations, most likely against persons far less wealthy and powerful than myself, and blighting countless lives. He marked it as low priority. Being on notice of these matters, DI Thomas concealed them………”

32. The Defendant's appeal decision states as follows:

> “*CPS……..Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases involving Allegedly False Allegations of Rape and/or Domestic Abuse”:*

Prosecutions for these offences in the situations above will be extremely rare and by their very nature, they will be complex and require sensitive handling. On the one hand, victims of rape and/or domestic abuse making truthful allegations require the support of the criminal justice system. They should not be deterred from reporting their allegations. Nor should they be criminalised for merely retracting an allegation because true allegations can be retracted for a broad range of reasons. Very often such allegations are made by a person who is vulnerable or in the context of a relationship, often with a protracted and complicated history, all of which is bound to have a bearing on the issues in the case. On the other hand, false allegations of rape and/or domestic abuse can have serious adverse impact on the person accused. This is why these cases must be examined thoroughly by suitably experience prosecutors who should strike the right balance between ensuring genuine victims are believed and not criminalised whilst recognising the need to protect the innocent from false allegations.

The second question will be whether there is sufficient evidence to prove that an allegation was in fact false. If the evidence is such that the original allegation might reasonably be true then there is not a realistic prospect of conviction and no charge should be brought. The mere fact that the original allegation did not meet the evidential stage of the full code test does not mean that the prosecution can prove that it was false."

……….

CPS:*…….*
"<u>Reconsidering a prosecution decision</u>
Some cases may involve the reconsideration of a prosecution decision not to prosecute a case or to discontinue a prosecution…….

………

The CPS has set up specific procedures to facilitate victims' requests for a review of a decision not to prosecute a case. These include the Victims' Right to Review scheme (VRR), which applies to all alleged offences involving a victim......"

Analysis:
If a case is not charged by the CPS or is stopped before a trial, this does not mean the complainant made a false allegation. A decision to stop a case on evidential grounds does not mean that an allegation is false. It means that the case does not meet the evidential test required to put an allegation before a jury under the Code for Crown Prosecutors. In the same manner, an acquittal does not automatically mean there was a false allegation. The tests applied to a criminal conviction are beyond reasonable doubt. The test for charges of reasonable prospect of conviction and the test for investigation are reasonable suspicion that a crime may have been committed.

…………

> False allegations of rape or sexual assault can have a very damaging impact on a person falsely accused. Such cases are dealt with robustly and those falsely accused should feel confident that the CPS will prosecute these cases wherever there is sufficient evidence and it is in the public interest to do so…...
>
> The IO has clearly and correctly explained that all potential criminal proceedings, CPS decisions and VRR decisions would take precedence over an allegation of perverting the course of justice. Again, to do this before all possible proceedings have been completed would be unreasonable and frustrate the judicial process for all parties.
>
> ……….
>
> I….. fully appreciate that, for Mr Hemming, resolving his concerns are clearly and understandably his main priority as he is directly affected. However, it is the duty of DCS Oomer to take a wider view and consider many factors, including resources and other case priorities. Whilst Mr Hemming is extremely unhappy with the rationale for not making his claim of perverting the course of justice a priority, it has been fully explained and is entirely reasonable, in my view, based on the justification provided.
>
> In the absence of an unlimited budget, time and available officers, difficult decisions like this have to be made and making such decisions that are appropriately rationalised does not amount to a conduct issue. Rather, this is a disagreement with an operational decision."
>
> **Decision**
> Whilst Mr Hemming believes the force should have undertaken an investigation immediately and as a priority, this is his opinion rather than an identification of any failure in duty as it is part of DCS Oomer's role to make such decisions……"

33. In my judgment, it is not properly arguable that the Defendant's decision regarding the timing of the police investigation into EB was not fairly and reasonably open to it, having regard in particular to the fact that the investigation was opened on 24 June 2018, which was only some three months after the VRR concluded, on 23 March 2018, and the operational need to strike a balance between a victim's right to review over an investigation into her alleged lying.

34. However, the Claimant's complaint was not only in relation to the timing of the opening of the investigation into EB but also, once opened, the fact that it was then assigned low priority.

35. I do not consider that it is properly arguable that the Defendant failed to consider that DCS Oomer's decision did not take into account as a relevant consideration the historic use of police resources consumed by EB's allegations, since that point was never raised in either of the Claimant's appeal letters.

36. The Claimant's appeal letters do, however, allege in some detail that DCS Oomer's low priority decision was based upon false facts, and which facts were known to be false by DI Thomas. The Defendant's decision letter states that the priority decision has been fully explained and is entirely reasonable, but neither that decision letter nor

the summary grounds of defence address the Claimant's specific allegations that the priority decision was based upon false facts (no apparent risk to any persons and/or the allegations were historic), whilst the Defendant's summary grounds of defence expressly acknowledges that:

> "[56]……there are ancillary criminal matters linked to the investigation stemming from [EB]'s allegations. The Claimant was subjected to abusive behaviour and there was a conviction against Declan Canning in February 2018 for sending the Claimant malicious communications. There were threats against third parties linked to the investigation and the Defendant understands there were threats made against Mr Lavery and Mr Smith."

37. Again by reference to the statutory guidance and the principles of appeal handling, I consider that it is properly arguable that the Defendant failed properly to deal with this particular aspect of the Claimant's complaint.

Complaint 3

38. Turning to consider the third complaint, that it was unreasonable and in breach of the Claimant's human rights for the SIP to continue to call EB a victim even after all investigations into alleged crimes against her had ended, the underlying ground of challenge is that it was perverse of the Defendant not to uphold this complaint.

39. In its decision letter, the Defendant stated that DCS Oomer had provided a reasonable rationale for a decision he was entitled to make. The FIP's decision sets out in some detail the difficult and careful balancing exercise DCS Oomer carried out, by reference to the need thoroughly to investigate the Claimant's allegations whilst also safeguarding EB. The Defendant concluded that whilst the Claimant disputed this rationale, this was not, on its own, evidence of a conduct issue. Rather, it was a disagreement with an appropriately justified and reasoned decision. Being classed as a victim does not automatically mean EB is right any more than being a suspect or subject of investigation means the Claimant is guilty.

40. In my judgment, this ground of challenge is unarguable. The Defendant's decision is clear and the reasons readily understandable. It was a decision, on the evidence, that was fairly and reasonably open to the Defendant to make.

Conclusion

41. In conclusion, therefore, I grant permission but on the limited ground that the Defendant's appeal decision is arguably unreasonable, unfair and contrary to the statutory guidance on the principles of appeal handling, by not properly dealing with the Claimant's specific complaints:

    a. firstly, of apparent bias arising from the exchange of emails between DI Thomas and the officer at the SIP on 15 May 2020; and

    b. secondly, that DCS Oomer's decision to assign the investigation, once opened, into EB as low priority was based upon false facts being that (i) there was no apparent risk to any persons and/or (ii) the allegations were historic.

42. It was submitted on behalf of the FIP that the Claimant has adequate alternative remedies, since he has issued separate proceedings against the SIP and served a letter before action on the FIP, with both claims arising out of the same facts that are relied

upon in the present claim. I have not seen either the particulars of claim or the letter before action. However, it appears likely from the contents of the defence, which is included in the hearing bundle, that both those claims are for damages, whereas the remedies sought here are that the Defendant's appeal decision be quashed and the Defendant reconsider its appeal decision. That relief would not be available in any parallel proceedings.

43. Finally, by his order, HHJ Rawlings refused the Claimant's application, dated 9 June 2022, for specific disclosure and an adjournment of the permission stage, pending that specific disclosure. The reasons given by HHJ Rawlings for his decision were as follows

> "The claim for judicial review is a claim for judicial review of the decision of the Defendant. In making its decision, the Defendant can only have acted upon documents which were before it and not upon any of the documents that the Claimant now seeks disclosure of. The further documents that the Claimant seeks disclosure of cannot therefore be relevant to the application for judicial review of the Defendant's decision."

44. The Claimant submits, as part of his stated "Grounds for Oral Renewal of Application for Permission" that HHJ Rawlings was wrong to dismiss his application dated 9 June 2022. However, I do not consider that it is for me at an oral renewal hearing in relation to permission to determine whether or not HHJ Rawlings was wrong to dismiss the Claimant's application for specific disclosure and an adjournment pending that specific disclosure. That particular challenge ought properly to have been considered before now, either on a separate application to set aside that part of the order of HHJ Rawlings or by way of an appeal against that part of the order.