



Neutral Citation Number: [2024] EWHC 2868 (Admin)

Case No: AC-2024-LON-000212

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/11/2024

Before :

LORD JUSTICE EDIS
MR JUSTICE SAINI

Between :

BEN WHITEHEAD	<u>Claimant</u>
- and -	
WESTMINSTER MAGISTRATES' COURT	<u>Defendant</u>
- and -	
ROBBIE JEPHCOTT	<u>Interested Party</u>

The Claimant in person
The Defendant did not appear and was not represented
Patrick Hill (instructed by Straw and Pearce Solicitors) for the Interested Party

Hearing date: 5 November 2024

Approved Judgment

This judgment was handed down remotely at 2pm on Wednesday 13 November 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

Lord Justice Edis and Mr Justice Saini:

I. Overview

1. This is a claim for judicial review. Pursuant to permission granted by Johnson J on 9 October 2023, the Claimant, Ben Whitehead, seeks to privately prosecute the Interested Party, Police Sergeant Robbie Jephcott of the Dorset Police, for criminal offences allegedly committed in the course of his duty as a police officer. As we describe in more detail below, the alleged offences are said by the Claimant to arise out of a traffic stop on 30 October 2020. During that stop the officer had an interaction with the driver of a car, Karl Carpenter (“Mr Carpenter”). The incident did not in any way involve the Claimant who learned about it after it had happened and when he saw some footage of the incident which someone had posted on YouTube.
2. The Claimant applied to the Westminster Magistrates’ Court for the issue of a summons and/or a warrant for the arrest of the Interested Party, relying on section 1 of the Magistrates’ Court Act 1980. The application was made in the wrong form on 25 January 2021 and corrected in response to a direction from the court on 21 September 2021. Although no timing point is taken against the Claimant, we note that the corrected form was submitted more than 6 months after the alleged offences, which include summary only matters.
3. The application came before the Deputy Senior District Judge, DJ(MC) Ikram (“the Judge”). The Judge refused to issue the summons in a reserved ruling (“the Ruling”), having received detailed oral and written submissions. The Ruling is concise, as we would expect. Although the core conclusions are in paragraph 3.5, it is convenient to set the Ruling out in full:

1. JUDGE IKRAM: Consideration of an Application for a Private Prosecution against the Defendant.

2. **The Law**

2.1 I must consider in general terms:

- a. whether the allegation is an offence known to law, and, if so whether the ingredients of the offence, are, *prima facie*, present;
- b. whether any time limit for prosecution operates as a bar to the issue of the summons
- c. whether the court has jurisdiction
- d. whether the informant has the necessary authority to prosecute, and
- e. any other relevant facts

2.2 There is, generally, no legal requirement in English Law for corroboration.

2.3 There is no requirement to afford the Defendant an opportunity to respond to this application though there is a judicial discretion to allow to do so.

2.4 An oral hearing took place and both parties were able to make representations.

3 Allegation

3.1 The Applicant, seeks to bring a prosecution and the issue of a summons against the named person per:

False Imprisonment

by unlawfully and intentionally or recklessly detaining a person, contrary to common law.

The particulars being:

“The proposed defendant (a police sergeant) arrested the victim (Karl Carpenter) (KC) without lawful authority, restraining the victim by use of handcuffs and forcing the victim to remain in custody for a period of time. This arrest was arbitrary, and the proposed defendant had no grounds on which to make a lawful arrest.

Common Assault

by causing a person to suffer or apprehend immediate unlawful violence, Contrary to S39 Criminal Justice Act 1988. The particulars being:

“The proposed defendant extended and raised his police baton to KC’s car window to threaten the use of violence. The proposed defendant stated this was “because you wouldn’t open your door” and stated, “I’m being aggressive because you’re not doing as you are told” neither of which provided lawful justification for such use of violence or threats thereof”.

An offence contrary to s.4(1)(a) Public Order Act 1986

Using threatening or abusive words of behaviour towards another person with the intent to cause that person to believe that immediate unlawful violence will be used against him or another whereby that person is likely to believe that such violence will be used contrary to.

The particulars being:

“Further to the conduct discussed under ‘Common Assault’ above, the proposed defendant continued to threaten and raise his voice during the incident. The proposed defendant forced

KC to do as instructed on threat of use of violence. KC believed unlawful violence would be used against him.”

An offence contrary to s.5 of the Public Order Act 1986.

Using threatening or abusive words or behaviour which are likely to cause harassment, alarm or distress with intention of awareness that such behaviour may be threatening or abusive.

The particulars being:

“The proposed defendant was aggressive throughout the incident admitting as identified above that his conduct was aggressive. The proposed defendant knew that his behaviour was threatening and likely perceived as threatening and likely to cause harassment alarm or distress.”

3.2 I have considered carefully the papers including exhibits that have been served upon me.

3.3 Kevin Carpenter who encountered the police officer in the video has previously not to make a criminal complaint (the incident took place in October 2021 and his statement made March 2022). He did, however, make a complaint to Dorset Police Professional Standards. Whilst such does not constitute a criminal investigation, the police are therefore aware of the allegations and no criminal prosecution has followed.

3.4 The Applicant appears to operate a business offering legal advice to the general public. A google search reveals:

‘Providing London and Yorkshire with affordable lay legal advice, representation, and information, our professional, trained advisers can assist with a range of areas, including small claims court, personal injury, employment tribunals, meetings, small business dealings, police action...’

The Applicant makes the application giving Unit 26231 PO Box 6945 as his address and legalistic as his email address. [in fact the claimant used ben.whitehead@legalitic.co.uk when lodging his application in the correct form, and gave a postal address of “Unit 26231, PO Box 6945, London W1A 6US”. He lives in Barnsley].

Kevin Carpenter has been approached by the Applicant after he saw a video of an incident on YouTube. The Applicant who is not a qualified lawyer (and not subject to regulation by the SRA or BSB), has taken a witness statement from Mr Carpenter (who I did not hear from). Mr Carpenter had not made criminal complaint previously but does so now. The Applicant appears to be making an application through what

appears to be his commercial concern. This troubles me as it raises the suggestion that he has approached Mr Carpenter to create 'business'. That is an improper motive.

3.5 There must be *prima facie* evidence as regards each of the allegations made. The Defendant was a lone officer who was dealing with a perceived unco-operative driver. Indeed, Mr Carpenter accepts that his car door did not unlock. He also states that the officer wanted him out of the car so the situation was 'safe.'

I am NOT satisfied that there is *prima facie* evidence of **unlawful** force or threats / conduct made to Mr Carpenter.

I find no *prima facie* case is made out against the Defendant as regards the offences alleged.

DECISION

4

4.1 For the reasons, I set out above, I refuse to issue a summons directing the Defendant to appear before this court in relation to the offences at para 3.1 above.

II. The Grounds

4. The Claimant acts in person, as he did below. He presented his written and oral arguments in a clear and attractive way. He also prepared the hearing and authorities bundles in a way which was of substantial assistance to us. The Claimant originally pursued 3 grounds for judicial review, one of which was a procedural complaint that the Judge had failed to properly consider his application for a summons. The Claimant has abandoned that procedural complaint and advanced two grounds before us:
 - (a) That the Judge was wrong to hold that the application for summons did not present sufficient evidence to meet a *prima facie* threshold test (**Ground 1**); and
 - (b) That the Judge was wrong to hold that the Claimant had an improper motive in bringing the prosecution (**Ground 2**).
5. In the normal way, the court below took no part in the proceedings before us. The Interested Party was represented by Patrick Hill of Counsel, who did not appear below. In his concise submissions, Mr Hill argued that in relation to Ground 1 the Judge correctly set out the law and was entitled to find there was no *prima facie* evidence of unlawful conduct. He argued that this conclusion alone was a sufficient basis for the Judge's refusal to issue a summons. As to Ground 2, Mr Hill argued that the Judge's reasons for holding, on a subsidiary basis, that there may have been an improper motive were open to him on the facts he set in the Ruling. He emphasised

however that the Judge did not ultimately and finally determine this point given the Claimant's failure on the issues raised by Ground 1.

III. The Facts

6. Like the Judge, we were provided with a transcript of the dashcam and mobile phone videos ("the videos") of the interaction between Mr Carpenter and the Interested Party on the evening of 30 October 2020, as well as a witness statement taken by the Claimant from Mr Carpenter. The transcript shows that both the Interested Party and Mr Carpenter on occasion used heated, sarcastic and unhelpful language during the interaction, which we can summarise as follows.
7. The Interested Party was on duty and in uniform and "single-crewed" in a police vehicle. At around 8pm, he stopped a vehicle being driven by Mr Carpenter near the Bournemouth International Centre. The officer had clear cause to investigate the vehicle being driven by Mr Carpenter because it appeared to be a different colour (blue) to that indicated by its recorded DVLA registration (black). In these circumstances, at the time of the stop the Interested Party was investigating a number of potential criminal offences, principally under the Road Traffic Act 1988. Once the car had stopped, Mr Carpenter placed the keys on the dashboard. The Interested Party approached the vehicle, and sought to open the car door, which was locked. He then asked Mr Carpenter to open the car door. Mr Carpenter refused. He also said he was not carrying his licence or insurance documents. As the exchanges with Mr Carpenter developed, and in particular given Mr Carpenter's conduct and demeanour (which can fairly be described as argumentative, non-cooperative, and involving a refusal to unlock the car door) it appears that the Interested Party also became concerned that Mr Carpenter was driving whilst intoxicated. Mr Carpenter refused to accompany the officer to his car while the licence position was checked and in order to assess whether he was intoxicated. We note that at one point during the interaction, the Interested Party raised his police baton to the driver's side window of the vehicle, stating "if you don't open the door, I'm going to smash it". Eventually, Mr Carpenter opened his car door and accompanied the officer.
8. Ultimately, the suspected offences for which Mr Carpenter was arrested included wilful obstruction of a constable in the execution of his duty contrary to section 89 of the Police Act 1996 (the basis relied on being that Mr Carpenter made it more difficult for the Interested Party to take such reasonable steps as appeared to him necessary for investigating and preventing crime). Shortly after the incident, Mr Carpenter was "de-arrested". The videos of the incident were posted online and appear thereby to have come to the attention of the Claimant.
9. The Claimant approached Mr Carpenter, a stranger to him, and offered to seek privately to prosecute the Interested Party. Neither Mr Carpenter nor the Claimant reported the matter for prospective criminal investigation of the Interested Party. Instead, by an application made in January 2021, the Claimant sought a summons from Poole Magistrates' Court in order that he, the Claimant, could *qua* litigant in person prosecute personally. The application came before the Judge sitting at Westminster Magistrates' Court. The Claimant was afforded an opportunity (a) to make written submissions; (b) oral representations; and (c) to make further written representations after 17 June.

10. By a decision written of 17 January 2023, having considered the application and all additional written and oral submissions the Judge handed down his Ruling refusing to issue a summons.
11. We turn to the relevant law. Although a large number of authorities were provided to us, there was no dispute as to the principles, which are well-established.

IV. The Law

12. Section 1 of the Magistrates' Court Act 1980 (MCA) provides, insofar as material:

“Issue of summons to accused or warrant for his arrest.

(1) On an information being laid before a justice of the peace that a person has, or is suspected of having, committed an offence, the justice may issue-

(a) a summons directed to that person requiring him to appear before a magistrates' court to answer the information, or

(b) a warrant to arrest that person and bring him before a magistrates' court.”

13. The role of the court when considering an application by a private prosecutor for a summons, was summarised in the following guidance given by the Divisional Court (Gross LJ and Sweeney J) in *R (on the application of Kay and Anor) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin); [2018] 2 Cr App R 27 (“*Kay*”). It was common ground that this case set out the relevant test. Sweeney J set the test out at [22] and Gross LJ agreed with Sweeney J’s judgment:

“(1) The magistrate must ascertain whether the allegation is an offence known to the law, and if so whether the essential ingredients of the offence are *prima facie* present; that the offence alleged is not time-barred; that the court has jurisdiction; and whether the informant has the necessary authority to prosecute.

(2) If so, generally the magistrate ought to issue the summons, unless there are compelling reasons not to do so – most obviously that the application is vexatious (which may involve the presence of an improper ulterior purpose and/or long delay); or is an abuse of process; or is otherwise improper;

(3) Hence the magistrate should consider the whole of the relevant circumstances to enable him to satisfy himself that it is a proper case to issue the summons and, even if there is evidence of the offence, should consider whether the application is vexatious, an abuse of process, or otherwise improper.

(4) Whether the applicant has previously approached the police may be a relevant circumstance.

(5) There is no obligation on the magistrate to make enquiries, but he may do so if he thinks it necessary.

(6) A proposed defendant has no right to be heard, but the magistrate has a discretion to: (a) Require the proposed defendant to be notified of the application. (b) Hear the proposed defendant if he thinks it necessary for the purpose of making a decision.”

14. Para 22(1) of this test has been referred to in the case law and before us as the “threshold” test. In *R (on the application of Boris Johnson) v City of Westminster Magistrates' Court* [2019] EWHC 170 (Admin) at [20]-[24], the Divisional Court (Rafferty LJ and Supperstone J), in reiterating the requirement set out at para. 22(1) of *Kay* (the requirement of a *prima facie* case), rejected the submission that this created a “low threshold”. The Court explained that a failure to insist upon a high threshold, so as to confine the offence of misconduct in public office (the offence in issue in that case) within its proper ambit, would place a constraint upon the conduct of public officers in the proper performance of their duties, contrary to the public interest.

V. Ground 1

Submissions

15. Mr Whitehead took us through the ingredients of each of the offences and submitted that whilst the Judge made reference to the threshold test, he failed to conduct a rigorous analysis of the legal framework, as required by *R (DPP) v Sunderland MC* [2014] EWHC at [22], or otherwise to consider the allegations and evidence to that required standard. In the alternative, he argued that the Judge’s decision was *Wednesbury* unreasonable. He referred in particular to paragraph 3.5 of the Ruling (which we have set out in full above). Mr Whitehead described this as “an exceptionally brief determination” that *prima facie* evidence of unlawful force or conduct was not made out. He argued that the Judge appeared to imply that the Interested Party acted under certain “unexplained” police powers which empowered him to conduct himself in the manner he did throughout the incident. Mr Whitehead submitted that in assessing an application for summons, a judge should not consider the validity of a lawfulness defence when applying the threshold test and/or that a *prima facie* case may still be made out in circumstances in which a defence is merely “arguable” but not “irrefutable”. He argued that the threshold test was to be aligned with the arguability test applied in determining whether permission to apply for judicial review should be granted. His submission was that this was lower than the first element of the test in the Code for Crown Prosecutors which requires there to be a “realistic prospect of conviction”.
16. Mr Hill submitted in response that the Judge was entitled to find that there was not *prima facie* evidence of unlawful conduct by the Interested Party. He argued that the Judge’s Ruling, although brief, shows that he identified that the key issue was

lawfulness and he was entitled on the basis of the evidence before him (essentially the transcripts of the videos and witness statement of Mr Carpenter) to find that the threshold test was not made out. Mr Hill also submitted that the experienced Judge was well aware of the ingredients of the various alleged offences and was not required to set them out. As to the nature of the *prima facie* or threshold test, Mr Hill argued that it required more than mere arguability and imported a higher test which required a court to consider whether a sufficient evidential case was established in respect of each element of an offence.

Analysis and conclusions

17. We were not persuaded that Ground 1 was made out. Before explaining our reasons, we would underline that there is no requirement for any judge determining a summons application concerning allegations of a common and uncomplex kind (as in this case which involved a routine traffic stop), to provide a detailed written ruling. While a court will conduct a rigorous analysis, that does not carry with it a requirement to provide a detailed written ruling in the form of a judgment. Indeed, we note that the standard summons application form provides only that ‘the court should give a brief indication of its conclusions’. That simply requires that the applying party should be told why his application has failed, and that a reviewing court should be able to satisfy itself that the Judge directed himself correctly in law.
18. In our judgment the reasons provided in the Ruling were, in all the circumstances of this case, sufficient. The Judge directed himself correctly in law and can be taken to be well-familiar with the ingredients of the relatively common alleged offences, and as to the requirement to show unlawful action on the part of the Interested Party (we note that the Interested Party’s written submissions below dealt with this matter at some length). His core task in this case was to consider the question whether there was *prima facie* evidence of *unlawful* conduct which was an ingredient of each of the offences. The Judge was entitled to hold that he was not satisfied that this test was met for the reasons he set out at paragraph 3.5 of the Ruling.
19. The judge wisely did not seek to explain in the Ruling what the test means when it requires that “the ingredients of the offence, are, *prima facie*, present”. This is not further explained in the cases. It might mean merely that there must be evidence on which a jury or magistrates’ court could properly convict the proposed defendant of the charges to be contained in the proposed summons. We would suggest that it means at least that. False imprisonment is indictable only and, if the summons were issued and the case sent for trial to the Crown Court an application to dismiss might be made. Section 2 of the Crime and Disorder Act 1998 sets out the test which is then to be applied:-

“(2) The judge shall dismiss a charge (and accordingly quash any count relating to it in any indictment preferred against the applicant) which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for him to be properly convicted.”

20. That test was the subject of judicial interpretation in *R. (Inland Revenue Commrs) v Crown Court at Kingston* [2001] EWHC Admin 581; [2001] 4 All E.R. 721, DC at [16]:-

“[The Act] expressly provides that the judge will decide not only whether there is any evidence to go to a jury, but whether that evidence is sufficient for a jury properly to convict. That exercise requires the judge to assess the weight of the evidence. This is not to say that the judge is entitled to substitute himself for the jury. The question for him is not whether the defendant should be convicted on the evidence put forward by the prosecution, but the sufficiency of that evidence.”

21. It might be thought that the observations of the Divisional Court in *Boris Johnson* referred to at [14] above require a “high threshold” and suggest that the test is more demanding than the test applied on a dismissal application or a submission of no case to answer. That higher test is not fully articulated in that case and it is not necessary for us to make a finding about it. We reject Mr. Whitehead’s submission that the test is one of “arguability” akin to that applied on an application for permission to bring judicial review proceedings. The test is certainly more demanding than that. It may perhaps be a less demanding test than the CPS Full Code Test of “reasonable prospect of conviction”: see *Blackstone’s Criminal Practice* (2024) (“*Blackstone’s*”) at [D2.210] for a detailed description of the Full Code Test and the “evidential” and “public interest” stages. There is authority for the proposition that private prosecutors are not bound to apply the same test as a public prosecutor, see *R (On the application of Charlson) v Guildford MC* [2006] EWHC 2318 (Admin) at [18], citing *R v DPP ex parte Duckenfield* [2000] 1 WLR 55. It is not necessary for our decision to consider whether that is a correct statement of the law, and we do not do so. It is not obvious why private prosecutors should be allowed to bring prosecutions where there is no realistic prospect of conviction, and the proceedings are not in the public interest. Such prosecutions will waste valuable and limited public resources which could otherwise be used trying serious cases where the Full Code test is met.
22. There is high authority that a private prosecution is a valuable safeguard against misbehaviour or inaction by official prosecuting authorities: *Gouriet v Post Office Workers* [1978] AC 435, at 497 H to 498 B. More recently however the courts have expressed greater scepticism about private prosecutions. So in *Jones v Whalley* [2006] UKHL 41, [2007] 1 AC 63, Lord Bingham said at [16]:

“...A crime is an offence against the good order of the state. It is for the state by its appropriate agencies to investigate alleged crimes and decide whether offenders should be prosecuted. In times past, with no public prosecution service and ill-organised means of enforcing the law, the prosecution of offenders necessarily depended on the involvement of private individuals, but that is no longer so. The surviving right of private prosecution is of questionable value, and can be exercised in a way damaging to the public interest...”

23. In *R (on the application of Gujra) v CPS* [2012] UKSC 52; [2013] 1 AC 434. it was held that the CPS's policy of taking over a private prosecution with the intention to discontinue it, unless the evidential stage of the Full Code Test was met, was lawful and did not frustrate or emasculate the objects underpinning the right to maintain a private prosecution in section 6 of the Prosecution of Offences Act 1985 ("the 1985 Act"). See further the CPS Legal Guidance, *Private Prosecutions* (2019) and *Blackstone's* at [D2.23] for a description of the CPS's approach. The Supreme Court in *Gujra* did not apply the observations of Laws LJ in *ex. p. Duckenfield*, see [34] (Lord Wilson JSC) and [72]-[73] (Lord Neuberger PSC).
24. It may also be necessary to consider the impact of Part 7 of the Criminal Procedure Rules on this question. A private prosecutor who is a public authority or other person falling within CrimPR 7.2(5) is not required to supply the additional material which any other private prosecutor is required to supply by CrimPR 7.2(6). Although we did not hear argument about this, this may be because the court relies on the prosecutors falling within CrimPR 7.2(5) to have assessed the case against the Full Code Test, whereas other private prosecutors are required to equip the court to make its own evaluation. CrimPR 7.2(14) gives examples of cases where a court may decline to issue a summons, but this list is expressly a list of examples, and does not purport to be exhaustive.
25. Whatever may be the correct formulation of the threshold test, the Judge in this case based his decision, it is clear, on the ground of evidential sufficiency and applied a test akin to that which would be applied on a dismissal application as explained above. This is on any view an element of the right test. If the application fails that test, then the summons should not be issued. The arguable issue is whether there is some further or (to use the word in *Boris Johnson*) "higher" threshold which must be satisfied. It is not necessary for us to consider that further because of the way the Judge approached this case.
26. We turn to the individual alleged offences relied upon by the Claimant and whether the Judge was right to hold that the threshold test had not been satisfied:
 - (1) In relation to the allegation of assault contrary to section 39 of the Criminal Justice Act 1988, the prosecution would need to prove that Mr Carpenter apprehended immediate *unlawful* violence. The Claimant relies here on the Interested Party's threat to use his baton to enter the car when Mr Carpenter had refused to open the vehicle. Officers acting in the course of duty, as the Interested Party was, have powers in aid of the prevention of crime and effecting lawful arrest. See section 3 of the Criminal Law Act 1967 and *Blackstone's* at [A3.55]: a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders. Section 117 of the Police and Criminal Evidence Act 1984 (PACE) is also relevant. An officer may use reasonable force if necessary in the exercise of a power conferred under the Act: see *Blackstone's* at [D1.7]. This includes the power of arrest under section 24 of PACE, by which a police officer may arrest a person whom he has reasonable grounds to suspect of having committed an offence, or being in the act of committing an offence. A requirement of suspicion is a low test. Further, the '*necessity*' test in section 24(4) of PACE does not

require that arrest need be the last resort. It may be sufficient for it to be the practical and sensible option: see *Blackstone* at [D1.25]. On the facts we have summarised above, it is not arguable that the Interested Party did not have reasonable grounds for suspecting a number of driving offences had been committed.

- (2) As to false imprisonment, the Claimant relies upon the arrest of Mr Carpenter. The imprisonment must be “false”, that is unlawful: see *Smith, Hogan and Ormerod's Criminal Law* (16th Edition) at [16.11.2.2.]. Establishing a *prima facie* case of that offence accordingly required the Claimant to satisfy the Judge that the element of unlawfulness was present in the arrest as an ingredient. Absent this false imprisonment was not made out. The Judge was entitled to find he did not do so. We have set out above the relevant powers of lawful arrest which were engaged.
 - (3) In relation to the allegation of an offence under section 4(1)(a) of the Public Order Act 1986, the prosecution would need to prove (inter alia) that the officer intended to cause Mr Carpenter to believe that ‘immediate *unlawful* violence’ would be used against him. The Judge was again entitled to find that the Claimant had not satisfied him (at the *prima facie* level) of the element of unlawfulness.
 - (4) In relation to the allegation of an offence under section 5(1)(a) of the Public Order Act 1986, the prosecution would need to prove that the officer used unlawfully (in the criminal sense) abusive or threatening words or behaviour likely to cause harassment, alarm or distress, and which he intended to be abusive or threatening. The allegation failed for the same reason relating to unlawfulness. The Judge was entitled to find, having read the transcript of the videos, that the language used by the Interested Party was not unlawful. Accordingly, applying the threshold test, a crucial ingredient was not made out.
27. In our judgment, when the case law refers to the concept of a “*prima facie* case”, that does not import a requirement that the court must ignore the fact that the potential defendant is a police officer purporting to exercise police powers. The burden of proof is on the prosecution to establish that his actions were unlawful, as an ingredient of each relevant offence, and there must be evidence to prove that. The Judge was entitled to find that evidence was either absent or weak on the facts before him. His decision was accordingly rational and lawful.

VI. Conclusion

28. Given our conclusion that Ground 1 fails, and the Judge was entitled to find that a *prima facie* case was not made out, we do not need to address Ground 2, the issue of improper motive. The concern raised on behalf of the Interested Party was that the Claimant was acting in effect as an unqualified and unregulated litigator with some form of potential interest in the proceedings which had not been disclosed. Reliance was placed on the fact that the Claimant used an email address (@Legalitic.co.uk) of an entity which appears to offer legal advice. If the Claimant had in fact acted as some type of litigation services provider, this would have been problematic given the terms of section 13 of the Legal Services Act 2007. However, given that the Judge came to no final conclusions on the issue of improper motive, we say nothing further about this matter save to record that the Claimant confirmed to us in open court that he had no financial or commercial interest in these proceedings or their outcome.

29. The claim for judicial review is dismissed.