Neutral Citation Number: [2020] EWHC 496 (Admin)

Case No: CO/5091/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/03/2020

Before :

MR JUSTICE FREEDMAN

- -

Between :

REGINA (SIMON PRICE)	**Claimant**
- and -	
THE CROWN COURT AT SNARESBROOK	**Defendant**
- and -	
CROWN PROSECUTION SERVICE	**Interested Party**

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- -

The Claimant appeared in person
Mr Michael Newbold (instructed by **the Crown Prosecution Service "CPS"**) for the **Interested Party**

Hearing dates: 20 November 2019, 26 November 2019 and 3 December 2019

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Approved Judgment

Mr Justice Freedman:

Introduction

1. This is an application in judicial review proceedings to reinstate a claim following judgment entered for breach of a peremptory order. The Claimant is in HM Prison Wakefield and is currently serving a 10-year default term for non-payment of a confiscation order, following a 25-year prison sentence for drugs offences/fraudulent evasion on prohibition on importation. In these proceedings, the Claimant seeks permission to challenge decisions of HH Judge Zeidman QC, the Honorary Recorder of Redbridge ("the Judge") in the Crown Court at Snaresbrook.

The procedural history

2. The background is as follows. On 13 July 2005, the Claimant was convicted of organising the importation of 700kg of high purity cocaine into the UK worth £35 million. He was sentenced to 28 years' imprisonment (reduced on appeal to 25 years on account of unseen medical evidence) and 11 years concurrently for assisting in the UK the commission of an offence punishable under a corresponding law. On 20 March 2007, the Crown Court made a confiscation order in the sum of £2,340,017.40 on the basis of hidden assets, payable within 15 months with 10 years' imprisonment in lieu of payment by the Snaresbrook Crown Court. He has made no payments, although the Court appointed receiver collected some comparatively small sums.

3. The Judge determined that the Claimant has a 50% interest in a property in France, Le Manoir at Les Cailletieres, 16170 Genac ("the Property in France"). His daughter and step-son are understood to reside there. At the time when the confiscation order was made on 20 March 2007 pursuant to the Drug Trafficking Act 1994 ("DTA"), the Judge found that the Claimant had benefited from drug trafficking in the sum of £2,340,017.40. The Court excluded the Property in France from the calculation of benefit as there would be a serious risk of injustice were the Property in France to be used to calculate the benefit figure: see section 4(4)(b) DTA.

4. The confiscation order was upheld by the Court of Appeal on 14 December 2009: see [2010] EWCA Crim 2918; [2010] 2 Cr App R (S) 44 and paragraphs 26-34. At paragraph 27, Moses LJ said:

> *"There was no dispute as to the figure for the benefit which had been arrived at. The total amount was £2.34 million odd. It was made up by valuing the drugs at 80 per cent purity, at £1.9 million and various other items of expenditure, either through the bank, expenses, gifts and motorcars with some amounts for cash, wine, furniture and a gym. Property, by reason of disputed interests, was left out of account."*

5. On 18 July 2013, Mr Justice Ouseley dismissed the latest in a number of attempts by the Claimant (and his daughter and step-son) to exclude the Property in France from consideration under the Drug Trafficking Act regime. On 16 October 2014 an appeal was dismissed by the Court of Appeal due to a failure to rectify the appeal bundles. On 15 May 2015, the Kent Magistrates' Court issued a warrant of commitment for non-payment of the confiscation order, and the Claimant commenced to serve the 10-year default term.

6. On 31 March 2017, the Judge granted the CPS application for a Certificate under Regulation 11 of the Criminal Justice and Data Protection (Protocol No.36) Regulations 2014 ("the 2014 Regulations") concerning the Property in France. This was on the basis that property did amount to "proceeds of crime" under the definition in Regulation 3(2)(c)(ii) "any property which is the equivalent in value to the full value or part value of the property". There was no reason why the discretion to grant the certificate should not be exercised. The Judge set out his reasons fully as to why the application for the certification of the confiscation order pursuant to the DTA 1994 came within the Regulations, and why it was, in the exercise of his discretion, right to grant the certificate.

7. On 18 July 2017, the Claimant requested that the Crown Court should grant an extension of time and state a case for the opinion of the High Court. The Claimant says that, despite two further attempts, on 22 August 2017 and 4 September 2017, he was unable to get somebody to issue his application for judicial review of the decision not to state a case until it was issued on 3 November 2017.

8. The claim for judicial review was that the failure of the Crown Court to state a case was unreasonable. In its Acknowledgement of Service, the Crown Court stated that it did not intend to file a submission. On 20 May 2018, the Claimant filed form N434 "Notice of Change" claiming that Messrs Goldkorns are going on the record as acting in the proceedings.

9. The CPS says that it first became aware of the judicial review proceedings on 23 November 2018 when Goldkorns solicitors said that it was instructed in these proceedings and that it had been requested by the Court to serve the relevant bundle. It served an incomplete claim form missing pages 2 and 10 and missed out some pages of an accompanying document (page 32 and possibly pages 16-17). Page 2 of the claim form, which the CPS say was not served until 3 July 2019 contained the claim number, the issue date, the court seal and details of the decision to be reviewed. There was also missed out pages 20-21 of a transcript.

10. An order was made by Lane J on 29 November 2018 stating that *"unless the claimant serves the interested party no later than 18th January 2019 and immediately confirms to the Court that he has done so, the claimant's claim will be struck out".* There was purported compliance with the order by service of documents on 9 January 2019, save that the missing documents were still not sent. Further, there was a failure to serve a statement saying that there had been compliance with the documents. On 19 March 2019, the Court confirmed to Goldkorns that the judicial review proceedings had been struck out for failure to comply with the order of Lane J. I shall consider in greater detail below the circumstances leading to the striking out of the claim.

11. On 16 May 2019, the Claimant through Goldkorns issued further judicial review proceedings the object of which was to reinstate the struck-out proceedings. This did not identify the CPS as an Interested Party, unlike the original judicial review proceedings which did so following an order made by HH Judge Davis-White QC on 5 September 2018.

12. On 18 June 2019, HH Judge Mark Raeside QC made an order giving directions in respect of the reinstatement proceedings. On 24 July 2019, pursuant to those directions, the CPS filed its opposition to the application to reinstate with a witness statement and

bundle, albeit not formally by way of skeleton arguments. Pursuant to an order of, the Claimant apparently in person on 15 August 2019 filed a response to the CPS representations as per the directions, again not formally by way of skeleton argument.

13. Prior to the Court hearing this matter in November 2019, the following had occurred. An application had been made on 5 November 2019, the afternoon before a hearing in certificate of inadequacy proceedings by Goldkorns solicitors to adjourn the certificate of inadequacy proceedings of the Claimant on the basis that the Claimant was unrepresented. The Claimant's counsel appeared only for the adjournment application and confirmed that no legal aid application had been made by the Claimant. There was said to be a possibility about a counsel acting pro bono if the case were re-fixed, but Steyn J concluded that this was speculation. The adjournment was refused, and the matter was heard and dismissed.

14. In apparently similar vein, an application was made on about 19 November 2019 to adjourn the case which I first heard on 20 November 2019 as the Claimant did not have legal aid funding in place. The CPS objected to the application by a letter of 19 November 2019. It stated that the position was similar to the hearing earlier that month before Steyn J referred to above when the application to adjourn had been refused. By a letter also of 19 November 2019, Goldkorns solicitors wrote to say that the Claimant would not be represented at the hearing scheduled for the next date. The Claimant wrote on 20 November 2019 seeking that the case be adjourned for legal aid to be obtained. Following enquiries made by the Court of Goldkorns, it emerged that they had established that there was no possibility of legal aid being obtained for the instant application until such time as permission was obtained. At the point when the Court decided to continue with the application, it was only after finding out that there was no possibility of legal aid and that Goldkorns would not represent him at the hearing (and no other possibility of representation was indicated).

15. The approach of Goldkorns before this Court and before Steyn J appears to have been to provide some degree of assistance to the Claimant, but ultimately not to represent him except when he has legal aid: alternatively to seek to obtain an adjournment to enable him to obtain legal aid. When it appeared to the Court that the Claimant was without representation and that there was no possibility of legal aid, the Court gave an opportunity to the Claimant to appear in person.

16. To that end, the Court adjourned the hearing on 20 November 2019 to enable the Claimant to appear by video-link. An email was sent by the Court to Goldkorns asking *"Would they endeavour to make contact with Mr Price before 2pm today and ask him (given the absence of legal aid) whether he would wish to make representations by video link to the Court on a date to be fixed next week, that is the week commencing 25 November 2019?"*. This then led to a hearing being fixed for 26 November 2019 to give the opportunity to the Claimant to appear by video-link.

17. Unfortunately, despite a court hearing convened for 26 November 2019 attended by Counsel for the CPS, it was not possible to make connection with the HM Prison at Wakefield. Subsequently, the hearing then took place on 3 December 2019 when the Claimant acted in person by video link from the Wakefield Prison.

18. It is clear from the two page skeleton argument attached to the application made in May 2019 that at the heart of the application is an assertion that the Property in France could

not be the subject of a certificate unless it could be treated as being used or intended to be used for the purposes of an offence or was the proceeds of an offence. The Claimant's case is that since the value of Mr Price's interest in the Property in France cannot be traced to drug trafficking, it is not the proceeds of an offence.

Proceeds of crime

19. A recent judgment of the Court of Appeal has provided assistance to the court in respect of the point at the heart of the challenge of Mr Price. In *R v Moss* [2019] EWCA Crim 501 in which judgment was given on 26 March 2019, the Court of Appeal (Davis LJ giving the judgment of the Court) considered a submission that a certificate could not be made in respect of what was called 'clean property'. At paragraphs 37-38, the judgment stated the following:

> *"37. Both the wording and purpose of the 2006 Framework Decision are plain enough in this regard. It is obvious – and consistent also with Conventions such as the Strasbourg Convention – that the whole scheme is designed to extend, equally and without differentiation, both to value confiscation and to property confiscation systems. The domestic system here is a value based system – albeit it is perfectly capable of also extending to (and often will in particular cases extend to) specific items of property which are in actuality derived from crime. The point remains that the available amount, under the 2002 Act, can include property which may have no taint of criminality. That is the way the domestic scheme works. The link with criminality is provided by the link with benefit. For benefit is identified by reference to general criminal conduct or to particular criminal conduct: and a confiscation order for the recoverable amount may not exceed the amount of the benefit. Accordingly a value based scheme of this kind is comprehended in and respected by the 2006 Framework Decision. Since, self-evidently, Regulation 11, read with Regulation 3 of the 2014 Regulations, is seeking to give effect to Article 7, read with Article 2, of the 2006 Framework Decision, the 2014 Regulations are to be interpreted accordingly.*
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> *38. Moreover, the appellant's argument has difficulties even at a narrower level of interpretation. It is true that Regulation 11(2)(b)(ii) – with the introduced requirement (for whatever reason) of a good arguable case – must relate to property which "is the proceeds of the offence". But proceeds of an offence is then the subject of the interpretative provision – albeit not, by reason of the word "includes", a definition as such - contained in Regulation 3(2)(c).* ***In particular, Regulation 3(2)(c)(ii) is, in our view, apt to extend to "clean" property, as being part of the available amount. The argument on behalf of the appellant would seem to deprive Regulation 3(2)(c)(ii) of purpose and effect and effectively would make it otiose. But there is no reason not to give full and wide effect to Regulation 3(2)(c)(ii). It therefore follows that there is no requirement, for the purpose of seeking a certificate, that the Crown must at that stage engage in an evidential tracing exercise seeking to show that a specified asset derives from criminal conduct. Indeed, given the evident intent of the 2006 Framework Decision to treat both systems of confiscation equally and given the evident intent to make recognition and enforcement relatively straightforward, it is difficult to comprehend why a value based confiscation***

> ***jurisdiction should, at the stage of certification, then be intended by the 2014 Regulations to be required positively to engage in the potentially complex process of tracing in order to show that a particular asset derives from criminality"*** (emphasis added).

20. The approach to confiscation under the DTA was replaced by the regime under the Proceeds of Crime Act 2002 ("POCA"), which affected the assumptions made in order to arrive at the benefit figure. The instant case is a DTA case and not a POCA case: the benefit was assessed under the DTA regime and matters relating to sentence and the confiscation order have been before the Court of Appeal in 2009: as noted above, the calculation of the benefit was not challenged in the Court of Appeal. At the certificate stage, the 2014 Regulations apply. Articles 3 and 10 of the Proceeds of Crime Act 2002 (Commencement No.5, Transitional Provisions, Savings and Amendment) Order 2003 (SI 2003/33) saved the provisions to make and enforce DTA confiscation orders for offences committed before 24 March 2003. Further, the 2014 Regulations apply to confiscation orders made under the DTA. This is by virtue of Regulation 20(1)(b) which states that "(1) Chapter 2 of this Part applies to a saved order under…(b) section 2 of the Drug Trafficking Act 1994 (confiscation orders)," The effect is that the DTA order against the Claimant can be enforced even after the repeal of the DTA in 2003.

21. In *R v Moss* above at paragraphs 31-32, the Court of Appeal confirmed that the 2014 Regulations have retrospective effect and can be used to enforce confiscation orders made before the Regulations came into effect. Further, contrary to the Claimant's submission, the enforcement under the 2014 Regulations does not depend upon proving that the assets against which enforcement is made had come from the particular drugs offence or from proceeds of previous drug trafficking. As Davis LJ said in R v Moss as above cited, *"there is no requirement, for the purpose of seeking a certificate, that the Crown must at that stage engage in an evidential tracing exercise seeking to show that a specified asset derives from criminal conduct."* The effect is that the principal point of the submission of the Claimant is bound to fail.

22. I have considered all of the material advanced by the Claimant, and I am satisfied that there are no points of substance, and that his challenge is bound to fail. If and insofar as the Claimant challenges any of the other points of the Judge including his points of discretion, I am satisfied for the reasons which he set out fully in his judgment that they provide a total answer to any challenge.

Case stated

23. There is an additional point about the case stated procedure. The CPS submits that this would have been inappropriate in that any appeal should have been to the Criminal Division of the Court of Appeal since a confiscation order is part of the sentence of the Crown Court relating to trial on indictment: see section 50(1)(d) of the Criminal Appeals Act 1968. That cannot be subject to an application for a case stated, nor a judicial review: see sections 28(2)(a) and 29(3) of the Senior Courts Act 1981 and the 2014 Regulations. This has not been contested before this Court.

24. On this basis, if the striking out order were set aside, it would in due course meet two insuperable barriers. First, an appeal by way of case stated was the wrong procedure, and so the failure to accede to the request on the part of the Crown Court was of no consequence since it would only have incepted a process that was liable to be struck

out. Secondly, the correct process of an appeal to the Criminal Division of the Court of Appeal was also liable to be struck out on the substantive ground for the reasons set out by the Court of Appeal in *R v Moss* above and because there are no points of challenge of substance.

Judgment as a result of failure to comply with an unless order

25. The application is made on the part of the Claimant for relief from the sanction of judgment for failure to comply. It occurred in the following circumstances. The CPS says that it first became aware of the judicial review proceedings on 23 November 2018 when Goldkorns solicitors said that it was instructed in these proceedings and that it had been requested by the Court to serve the relevant bundle. It served an incomplete claim form missing pages 2 and 10 and missed out some pages of an accompanying document (page 32 and possibly pages 16-17). Page 2 of the claim form, which the CPS say was not served until 3 July 2019 contained the claim number, the issue date, the court seal and details of the decision to be reviewed. There was also missed out pages 20-21 of a transcript.

26. An order was made by Lane J on 29 November 2018 stating that *"unless the claimant serves the interested party no later than 18th January 2019 and immediately confirms to the Court that he has done so, the claimant's claim will be struck out".* There was purported compliance with the order by service of documents on 9 January 2019, save that the missing documents were still not sent. Further, there was a failure to serve a statement saying that there had been compliance with the documents.

27. The CPS says that the failure to serve a complete version of the claim form led to the claim being significantly delayed in that absent a full copy of the claim form, the CPS was unaware that time had begun to serve an acknowledgment of service and grounds of opposition. It was said that without page 2 and in particular the claim number, the CPS was unable to identify, despite enquiries with the Court whether the claim had even been issued

28. In those circumstances, there was a breach of the Court order, and accordingly the penalty was that the case was struck out for want of compliance.

29. Before this Court, the Claimant submitted that the order of Lane J was not required because the CPS may already have had most of the relevant documents or the knowledge about the claim. That did not make the order a nullity or entitle the order not to be complied with. There was no application to set aside the order, and it remained in force. There was a detailed account about this given by the Claimant. There seemed to be some force in the argument that the CPS was not as much in ignorance as it contended and that it ought to have been able to piece together the information such that the failure to serve page 2 and the other documents would not have prevented the CPS from knowing about the claim.

30. It has been difficult to unravel the true position, but the submissions of the Claimant were cogent to the effect that the ignorance of the CPS might have been avoided. However, despite the submissions of the Claimant, once the order had been made, until and unless it is set aside, it is binding. It is not an answer that an application to set aside the order may have succeeded: no such application was made. Further, it is not an answer that the information could have been pieced together.

31. At best, to the extent that these submissions were well made, they go to whether the breach was serious or significant. In view of the reasoning which follows, I shall assume for the purpose of this application that the breach was not serious or significant.

32. If correct, it might have given a complexion that breach was not particularly serious or significant. There was a debate between the parties as to whether the CPS needed, in particular, the missing pages in order to identify the relevant case number. As regards the failure to provide a statement saying that there had been compliance, the CPS contended that that was serious or significant in that the whole purpose of this was to ensure that there had been total compliance with the order, and the absence of a statement was total non-compliance with the second part of the order. Nonetheless, in case there was no real problem to the CPS caused by the non-compliance, I am prepared for the purpose of this application to assume that the breach even of the second part of the order was not serious or significant.

The applicable law regarding relief from sanctions

33. In these circumstances, the usual order is to grant relief from sanctions. In *Denton v TH White Limited*, there was set out the three-stage process of considering (1) whether the breach was serious or significant, (2) whether there was a good reason for a breach, and (3) all the circumstances of the case. In the usual case, if the breach was neither serious or significant, then it would not be necessary to go further. Likewise if there was a good reason for a breach. However, that is not invariably the case. The Court of Appeal in Denton said the following:

"35…the more serious or significant the breach the less likely it is that relief will be granted unless there is a good reason for it. Where there is a good reason for a serious or significant breach, relief is likely to be granted. Where the breach is not serious or significant, relief is also likely to be granted.

36. But it is always necessary to have regard to all the circumstances of the case. The factors that are relevant will vary from case to case."

32. The case of *Denton* went on to say that the merits of the case will not generally be explored at the interim stage following failure to observe a peremptory order. However, there is an exception to this where the case can be shown as if on a summary judgment to be bound to succeed or to fail. The language used in this connection was in the case of *HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud (Appellant) v Apex Global Management Ltd and another* [2014] UKSC 64 where Lord Neuberger said that the strength of a party's case is generally irrelevant in case management issues. However, there was a possible exception where a case was strong enough to obtain summary judgment. However, he cautioned that in order to avoid unfairness, the point as to merits must be signalled very clearly in advance.

33. This was applied in the case of *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633. This was a case which decided that the merits of the appeal in the context of an application to extend time for bringing the appeal were in most cases not relevant to the exercise of the discretion. However, the Court of Appeal referred to the above-mentioned judgment of Lord Neuberger, saying the following:

> *"46. If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them. Here too a robust exercise of the jurisdiction in relation to costs is appropriate in order to discourage those who would otherwise seek to impress the court with the strength of their cases.*
>
> *47. Support for that conclusion can be found in the recent decision of the Supreme Court in HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd [2014] UKSC 64, in which the court had to consider the extent to which the merits of a claim or defence were relevant to granting relief from the sanction of striking out in default of compliance with an "unless" order. Lord Neuberger, with whom Lord Sumption, Lord Hughes and Lord Hodge agreed, held that, even in a case of striking out, the merits of the claim or defence were relevant only when they were so strong that there was no real answer to them, in other words, in cases where an application for summary judgment could be expected to succeed."*

Application of law to the instant facts

34. In the instant case, the submissions are such that the application for permission in this case would be bound to fail. That is because even if it were established that the application to state a case could or should have been dealt with (to the extent that this was not the case), it would have made no difference. Even if a case could have been stated, it would have been bound to fail because the interest of the Claimant in the Property in France was in the light of the case of *R v Moss* considered to be part of the proceeds of an offence even if it were not traceable to the receipt of drugs money. Further and in any event, the proper course would have been to have sought to appeal to the Court of Appeal rather than to have a case stated. However, even if that route had been followed, the case would have been bound to fail because of the reasoning in *R v Moss* set out above.

35. In those circumstances, there would be no point in giving relief from sanctions because it would progress a case which was bound to fail. There is no unfairness in this course being adopted. The CPS had stated very clearly its reliance on *R v Moss* in the grounds of opposition to reinstatement of the CPS dated 18 July 2019 (as well as the correct course being an appeal to the Court of Appeal). This was set out with great clarity at paragraph 27 that *"the judgment in Moss also provides a definitive answer to the Claimant's principal challenge to the certificate made in the instant case."* In conclusion, the final words of the skeleton are that *"the underlying claim is misconceived in any event."*

Further submissions of the Claimant

36. At the hearing of 3 December 2019, mindful that the judgment was being reserved, I afforded a yet further opportunity to the Claimant to address the underlying merits of the Crown Court's decision which ultimately led to the claim for judicial review. This was taken by written submissions of the Claimant dated 10 December 2019. The CPS responded by written submissions dated 19 December 2019.

37. There was a point taken by Mr Price about access to justice. He said at paragraph 6 of his submissions that the Court would not give time to obtain legal representation. In fact, the true position is as noted above. In November 2019, Goldkorns had sought an adjournment to obtain legal aid. By a letter on 20 November 2019, the Claimant also wrote to the Court seeking that his application be adjourned to enable him to obtain legal aid. However, Goldkorns then confirmed to the Court that legal aid would not be obtained until permission to pursue the judicial review had been obtained. From that point, it was apparent that there was to be no legal representation of the Claimant. It was in those circumstances that the Court made arrangements to give to the Claimant, who was in custody, the opportunity to be heard in person, which he has taken. Thus, the Court did not deny legal representation to the Claimant. Thereafter, the steps taken above occurred and the Claimant has appeared in person through video link. Further, he was given an opportunity to supplement his submissions which he has done in writing. It had been hoped that this judgment would be completed before the vacation, but this was not possible, and in any event, the written submissions did not arrive with me until after the vacation.

38. The reference to cases where challenges were made against the legal aid commission in respect of a failure to provide legal aid are not in point. There has been no such challenge in this case.

39. This is not a case where the Claimant has been deprived of an opportunity to seek legal representation: he has had that opportunity, and it has not been forthcoming. He has not been able to obtain legal aid. The ECHR recognises that given the limited resources available, a system of legal aid can only operate efficiently by establishing a machinery to choose which cases qualify for support. This is not a case of such complexity that without representation, there could not be a fair hearing or where the Court cannot do justice because it has no confidence in its ability to grasp the facts and principles of the particular matter. Further, having heard the clear and cogent way in which the Claimant presented his arguments and the very detailed written argument with extensive citation of authority, it is clear that there has not been a breach of the Claimant's Article 6 rights.

40. The Claimant raises in his supplemental submissions a request which he says he has made to the Court of Justice of the European Union ("CJEU") to give a preliminary ruling on the compatibility of the 2014 Regulations with the Council Framework decisions: see paragraphs 25-28 of his submissions. Compatibility in particular with the Council Framework Decision 2006/783/JHA was confirmed by the Court of Appeal in *R v Moss* above at paragraphs. 34-39. In my judgment, there is no reason at this stage without more not to follow the decision of the Court of Appeal to contrary effect.

Conclusion

41. The judicial review proceedings are hopeless. There is no prospect of even permission being granted. They are misconceived because the case stated procedure is inappropriate. Any appeal would have to be brought to the Criminal Division of the

Court of Appeal. It follows that the resort to judicial review is misconceived. In any event, substantively too, the complaint is also misconceived. The Judge in his ruling on 31 March 2017 stated fully reasons for reaching granting the certificate which are unassailable. Further, the Judge's ruling is entirely consistent with the subsequent judgment of the Court of Appeal in *R v Moss* is entirely consistent. Thus, even if the correct appellate route had been followed, the challenge would have been bound to fail. In the circumstances of the principal basis of the underlying claim and any other points of challenge of the decision of the Judge are hopeless.

42. It follows that even if the breach were not serious or significant, which, without deciding, I have assumed for the purpose of this application that it was not, there is no purpose in giving relief from sanctions. This would simply be to revive a claim which has no basis. That would be pointless. Accordingly, the application is dismissed.