Neutral Citation Number: [2021] EWHC 1060 (Admin)

Case No: CO/590/2020

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

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 30/04/2021

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court

Between:

THE QUEEN (on the application of YZ)	**Claimant**
- and -	
THE CHIEF CONSTABLE OF SOUTH WALES POLICE	**Defendant**

Mr Ramby de Mello (instructed by **Instalaw Solicitors**) for the **claimant**
Ms Amy Clarke (instructed by **South Wales Police Legal Services**) for the **defendant**

Hearing dates: 19 March 2021

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Approved Judgment

HH Judge Jarman QC:

1. In September 2016 the claimant stood trial at Cardiff Crown Court on three counts of raping his former wife whilst they remained married. He is a Moroccan national and she is British with Pakistani heritage. He was acquitted by the jury on each count. However, details of the acquittals and other details about the claimant remain on the Police National Computer (PNC) and these proceedings concern whether such retention is lawful.

2. The marriage was short-lived. The couple met through social media when the claimant lived in Morocco and his future wife lived in the UK. They took part in an online event purporting to be a ceremony of marriage in 2007. She went out to meet him in person in Morocco a short time later, when she stayed for several weeks. There were further such visits before the claimant obtained a visa and came to the UK. Their son was born in 2009. Towards the end of 2010 the relationship finally broke down.

3. At the trial the claimant's wife gave evidence against him, in which she said that the first rape happened about two weeks into her first visit to Morocco. Her account was that her husband forcibly removed her clothes, pinned her down by her neck and penetrated her despite her protests. She alleged that the subsequent rapes happened in similar ways, although she accepted that these occasions were interspersed with consensual sex. She said that she stood by him because he told her that a Muslim wife must obey her husband. She also said that she did not threaten to report these incidents to the police as it would bring shame within her community. However, she did later report him for assault and for taking monies without consent from her bank account. She also said that towards the end of the relationship he assaulted her father, and her parents also gave evidence to that effect. She also said that he would slap their child. As the relationship broke down, the couple sent a large number of texts to one another, many of which, on both sides, were abusive and/or threatening. In his evidence in the trial, the claimant accepted that some of the texts which he sent, for example threatening his wife with lashings, were "oppressive" but said they were a reaction to the abusive language she was using in her messages.

4. The claimant also gave evidence in his own defence, in which he said that all sexual relations with his former wife were consensual and denied any assault or fraud. Thus, direct evidence as to the alleged rapes came only from the two of them.

5. In March 2018 the claimant applied to the Records Deletion Unit (RDU) of the Criminal Records Office (ACRO) for deletion of all of his personal data held on the PNC. By email dated 16 March an officer of the RDU replied that it was not possible to process the application at that time because the claimant had not specified the offence which he wished to be considered for deletion and he had not provided any information in relation to the grounds for deletion which he had chosen on his application form namely "unlawfully taken" and "malicious/false allegation."

6. The claimant sent another email in response which brought forth another response from the RDU saying that he had not provided enough information in support of the grounds of unlawfully taken and malicious/false allegation and that without a convincing argument to delete records they would be retained on the PNC until the individual is deemed to have reached 100 years of age.

7. The claimant responded by email on 22 March, which included the following:

> "Everything I noted down is clear however feel free to put my application under the category that makes you satisfied. The experience of being locked up for no case to answer and purely because the officers involved hold immense and boundless hatred toward people of my colour and faith. The experience has deranged me and I'm a mental health service user since my release so I'm very unwell and don't have the stamina to go through a marathon of red tape and correspondence exchanges. My demand is very simple I want all my details held by the police deleted. I have zero convictions it's my right to have them deleted. The reason for that which I have already answered in the forms and to answer your question again I don't trust the police and I'm 100% certain that they would frame me the grudge and hatred they hold against people of my colour and race is relentless."

8. The application was then processed. By letter dated 16 May 2018 addressed to the claimant from the RDU it was stated that the claimant's application had been considered by the defendant but had not been agreed. The letter continued:

> "The ground(s) cited in your application were Unlawfully Taken and Malicious/False Allegation. Accordingly South Wales Police has provided the following response: After reviewing the case and representation of [YZ] it has been decided that the request for record deletion has been declined. [YZ] was arrested lawfully in March 2012 for the offence of Rape. His fingerprints and DNA samples were taken in compliance with the Police and Criminal Evidence Act. [YZ] was charged to court and found not guilty however there is no evidence to suggest that the case was based on a malicious or false allegation. Therefore, South Wales Police do not agree that the grounds of "unlawfully taken' and 'no crime' are met. The PNC record will be retained."

9. I shall refer to that Act as the 1984 Act. The letter went on to note that prior to the claimant's application, his biometric information, specified as fingerprints and/or DNA profile, was automatically deleted in accordance with the provisions contained in the Protection of Freedoms Act 2012 (the 2012 Act). Finally, it was stated that the record would be retained on the PNC until the claimant was deemed to reach 100 years, in accordance with the current policy outlined in the guidance "Deletion of Records from Nation Police Systems" (the guidance).

10. By letter dated 3 October 2019, expressed to be a letter before action, solicitors for the claimant wrote to the defendant to challenge the ongoing failure to "delete reference to the Claimant's prior acquittal" from the PNC which was "unlawful, unreasonable and irrational." The defendant replied on 18 October, saying that the claimant had a right to appeal the decision of 16 May 2018, and by email dated 21 October the claimant's solicitor asked that that be treated as a request for the decision to be appealed.

11. By letter dated 3 June 2020 headed "Data Protection Act 2018 -Record Deletion: [YZ]" from Mark Russell, a records information officer employed by the defendant, to the claimant's solicitor, Mr Russell said this:

> "I have reviewed your client's record in relation to his application for deletion of information from his police record. Taking into account [YZ's] original application, along with the information provided in your email, I have fully reviewed [YZ's] records and I must inform you that the original decision to retain the record has been upheld."

12. No further reasons were given, but the claimant's right to seek judicial review of that decision and to request an independent review by the Information Commissioner's Office were referred to. I shall refer to the 2018 Act as the DPA 2018.

13. By a claim form filed on 7 February 2020 the claimant had already applied for judicial review of the defendant's refusal to delete details of his acquittal. Proceedings were stayed pending the appeal but reinstated once it had been determined. Permission was granted on the papers by Holman J by order dated 21 July 2020, by which the claimant and his advisors were encouraged to identity their best point.

14. The defendant filed in these proceedings a witness statement from Mr Russell dated 21 August 2020. In that statement Mr Russell states that the claimant's application for deletion had been put on the basis that the allegations of his former wife against him were false and malicious and that his DNA and fingerprints had been unlawfully taken. Mr Russell says that this request was considered by the defendant's record deletion panel. The panel did not find any firm evidence to support the suggestion that the allegations were malicious or that the claimant was dealt with unlawfully and accordingly refused the application.

15. It was Mr Russell who dealt with the appeal. In his witness statement, he referred to other personal data of the claimant held by the defendant in occurrence logs from 2009 onwards. His statement includes the following paragraphs, referring to the claimant as YZ and to his former wife as AS:

> "24. An occurrence in July 2011, was created as a concern for safety for AS and her child over fears that YZ had alluded to his intention to abduct the child. Intelligence received in connection with the occurrence in July 2011, suggested that YZ is obsessed with becoming British as had said that he has plans to change the world when he becomes British. He had made it clear to AS that he wants to be remembered in this world by doing something that would hurt the West and he mentioned the word 'infidels'…
>
> 25. Further intelligence received in July 2011, suggests that YZ has expressed extreme views and has stated that he was put on Earth to kill important people and that he wants to make lots of changes; he agrees with suicide bombings and the actions of the Taliban; his likely targets are large organisations and he feels

> that the West have stolen from the Arabs. He has attended a training camp somewhere in the world and he has expressed an intention to kill Tony Blair and Gordon Brown.
>
> 26. Intelligence was also received that YZ had stopped attending the Al Manar Mosque in Cardiff as he had fallen out with numerous Muslims of the Mosque, who did not accept his extreme views and found him to be disrespectful/troublesome to the scholars.
>
> 27. The intelligence, in paragraphs 24 to 26, whilst not linked to sexual harm it was reviewed in consideration to the ongoing retention of the rape case, as it significantly raised the risk of harm to others, something which is considered as part of the National Retention Assessment Criteria (NRAC) process. This is a national process that was developed alongside the Code of Practise on the Management of Police Information (MoPI). The rape case is the only apparent evidence of the potential for sexual harm, but these intelligence reports support the potential risk of further violence."

16. Mr Russell also made reference the claimant's acquittal in paragraph 31 as follows:

> "In September 2012 [sic], there were major concerns for the safety of AS and their child following YZ's acquittal from the rape case. A PPD1 submitted at the time, makes reference to an allegation that YZ has forwarded £70,00 form the proceeds of fraud offences, using his wife's financial accounts, to Palestine. Intelligence received at the same time suggests that YZ admitted in court to having sent a series of texts and emails to AS throughout their relationship, which were abusive, contained sexual content and made frequent references to Islam and religion, and him being a "teacher." This information obtained during the trial gives weight to a number of other pieces of intelligence linked to international terrorism."

17. A PPD1 is a public protection referral form. There was also this reference to the claimant's mental health:

> "34. In November 2015, a strategy meeting was held over concerns YZ would abduct his child. Following the meeting it was agreed that there were significant concerns for AS's and their child's safety. It was considered that concerns over YZ's mental health would make him capable of carrying out these threats, stating that he was 'unpredictable'. The report also documents police concerns that YZ presents as a 'liar' and violent as well as an intelligence male who is able to adapt himself dependant on his audience."

18. In paragraph 37, he refers to earlier assault charges against the claimant made by his wife and her father which were then dropped:

> "Review of the available court transcripts for the rape trial do not provide any evidence that the case was maliciously brought against YZ. In fact the witness and her father's withdrawal from previous cases, where they had cited community pressure to drop the cases, in conjunction with information on the MG3 for the case that the victim is willing to pursue the case despite community pressure, gives weight to the allegation. I note the case of Perjury that was alleged by YZ against the victim of the rape case, AS. YZ had provided an email that he had report to have received from AS, however the Police investigation was unable to determine whether this email was sent from AS's email account. This, therefore does not provide substantial proof that the rape allegations were malicious or false."

19. Form MG3 is a request for legal advice as to whether there is sufficient evidence to justify a charge. At paragraph 39, Mr Russell said that the accuracy of the trial transcript was not in dispute and that when considered in relation to other occurrences on his record, the decision was made that it was not in the public interest to dispose of this offence at that time as the evidence formed part of a pattern of allegations against him. He observed that such a discharge does not automatically mean the jury believes the claimant was innocent, but it may also mean that there was insufficient compelling evidence to convince the jury that he was guilty beyond reasonable doubt.

20. At paragraph 42 he referred to the MoPI requiring a 10-year clear period of offending prior to a review being undertaken, that the outcome has little impact on this review, and that this allows the police to identify potential links to subsequent allegations and to assist in later investigations. He continued "Allegations of a serious nature, such as the rape case, are of particular significance in relation to child welfare and family proceedings, which are evident in this case."

21. These and other references in Mr Russell's statement to personal data held on the claimant records at PNC led the claimant to apply by notice dated 25 November 2020 to add additional grounds to the claim. The claim, which had been filed in London, was shortly afterwards transferred to Cardiff, and unfortunately in that process the application was overlooked until it was put before me in February 2021 with the substantive hearing set for 19 March 2021.

22. The additional grounds were set out in a document attached to the application as follows:

> "The decision to process, retain and not erase his sensitive personal data (including that he expressed extreme views – and was mentally ill i.e. Events History) is not lawful under Data Protection Act 2018, and second the decision is also incompatible with Article 8 ECHR and or unreasonable."

23. I granted that application by order dated 2 March 2021 in which it was also ordered that the additional grounds should be limited to those set out above and the claimant would not be able to rely on any other grounds without permission of the court on an application in due form. No such application was made. I also ordered that the

defendant if so advised may serve amended summary grounds of defence in response to the additional grounds and/or may deal with the same in its skeleton argument.

24. The day before the substantive hearing the defendant applied to adjourn the hearing on the basis that it had not had sufficient time to deal with the additional grounds, notwithstanding the fact that they arose out of the further information contained in Mr Russell's witness statement. Rather than adjourn the entire hearing and having regard to the overriding objective, the course I adopted was to hear the submissions of Mr de Mello on behalf of the claimant on the original and amended grounds, and the submissions of Ms Clarke on behalf of the defendant on the original grounds and to allow her to renew her application in respect of the additional grounds at that point. She did so, on the basis that it would be unjust if the defendant were not allowed further time to file further evidence and submissions on the amended grounds. I granted permission for the defendant to do so and for the claimant to file written submissions in response. I indicated I would deal with the additional grounds on the basis of such written submissions. In the event, despite an extension of the time in which such evidence and submissions were to be served, none were forthcoming.

25. In his oral submissions, Mr de Mello made several criticisms of the guidance, but ultimately made clear that it was not the claimant's case that the guidance was unlawful in any respect. Rather, his submission was that to the extent that its provisions are incompatible with the 2018 Act, the latter must prevail. The relevant sections of the 2018 Act were brought into force on 25 March 2018.

26. The first version of the guidance was produced in March 2015 by the National Police Chief's Council (NPCC) who agreed to it being circulated to and adopted by police forces in England and Wales. Its purpose was expressed to be ensuring that a consistent approach is taken in dealing with applications for the deletions from three national police systems, namely the PNC, the National DNA Database and the National Fingerprint Database. There have been a number of versions of the guidance.

27. The guidance is issued pursuant to the 1984 Act as amended by the 2012 Act and has statutory effect only in relation to destruction of DNA profiles. As the claimant's biometric information has been deleted, these proceedings concern only his personal data contained on the PNC, so in this regard the guidance is relevant but does not have statutory effect.

28. As the guidance makes clear, PNC records can be created by any police force operating in the UK and shows whether a person had been convicted (including cautions, conditional cautions, reprimands and warnings) of a recordable offence or a non-recordable offence associated with a recordable offence. However, paragraph 1.4.4 provides as follows:

> "A PNC record also contains information about non-conviction outcomes including "Not Guilty' adjudications, 'acquittals,' 'discontinuances' and 'No Further Action' (NFA) disposals. In this Guidance non-conviction outcomes are referred to a person's 'Event History.'"

29. The principles to be applied are set out in section 1.5 and paragraphs 1.5.4-5 are relevant:

> "Chief Officers are Controllers as defined by the Data Protection Act 2018 (DPA)…Under this Guidance, PNC records are required to be retained until a person is deemed to have reached 100 years of age. However, Chief Officers can exercise their discretion, in exceptional circumstances, to delete records for which they are responsible, specifically those relating to non-court disposals e.g. adult simple cautions as well as any 'Event History' owned by them on the PNC but only where the grounds for so doing have been examined and agreed."

30. The grounds and supporting evidence are dealt with in section 5.3. Paragraph 5.3.1 provides that on the whole, the basis for record deletion will be that an individual is no longer a suspect for the offence for which they were arrested or summonsed, that is that they have been eliminated from enquiries based on the grounds set out in Annex B.

31. Paragraph 5.3.3 provides that the submission of a record deletion application to the force should be treated as a MoPI review prompting forces to review all the information that they hold. Paragraph 5.3.4 states:

> "Examples of the grounds that Chief Officers are obliged to consider are provided at Annex B. The list is indicative not prescriptive, thus allowing Chief Officers to exercise professional judgment in deciding whether the early deletion of biometric information and the deletion of the associated PNC record is reasonable, based on all the information that is available to them."

32. Annex B sets out that there are no set criteria for the deletion of records, for example beyond reasonable doubt or on the balance of probabilities, but that is for chief officers to exercise professional judgment based on the information available. Examples of circumstances where deletion may be considered are then given, and these include unlawfully taken information, mistaken identity or unlawful arrest, where it is established that a recordable crime has not been committed, malicious or false allegations, proven alibi, judicial recommendation, where another person is convicted of the offence, or where deletion is in the wide public interest.

33. Paragraph 5.3.11 deals with supporting evidence and states that individuals are encouraged to include: the offence/event which they are seeking to have deleted to enable the ACRO and the force to verify the relevant entry for deletion; a full explanation of the circumstances of the arrest and outcome of the investigation; and the reasons why records should be deleted.

34. Non-conviction outcomes at court are dealt with in section 6.2 as follows:

> "6.2.1 Acquittal at court, dismissal at court, or a conviction being overturned on appeal or by other judicial process, is not itself ground for record deletion as PACE allows biometric information to be lawfully retained for three years if an individual is charged with, but not convicted of, a Qualifying

> offence. Insufficient evidence to convict does not necessarily mean there is sufficient evidence to be eliminated as a suspect.
>
> 6.2.1 If an individual applies for the removal of a record in relation to a 'Not Guilty' outcome at Court then they are encouraged to clearly 'evidence' one of the grounds in Annex B."

35. Section 6.4 deals with the requirement for positive evidence, namely that chief officers must establish positive evidence that supports a decision to delete relevant records. An example is given where a victim withdraws an allegation and it is stated that the allegation is malicious or false, that does not of itself provide the basis for record deletion.

36. Section 8 deals with the appeal process, and although it is stated that there is no formal process, the procedure is set out for challenging an outcome and for a decision to be made whether or not to uphold an appeal. Section 9 confirms that an individual has the right to seek judicial review of they wish to challenge a decision.

37. Mr de Mello relies on the DPA 2018 and the principles set out in Part 3, Chapter 2, relating to law enforcement processing. Section 34(3) provides that the controller in relation to personal data, and it is not in dispute that this applies to the challenged decision, is responsible for, and must be able to demonstrate, compliance with that chapter

38. Mr de Mello relies in particular on the first data protection principle set out in section 35, the material subsections of which are as follows.

> "(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.
>
> (2) The processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law and either—
>
> (a) the data subject has given consent to the processing for that purpose, or
>
> (b) the processing is necessary for the performance of a task carried out for that purpose by a competent authority.
>
> (3) In addition, where the processing for any of the law enforcement purposes is sensitive processing, the processing is permitted only in the two cases set out in subsections (4) and (5).
>
> (4) The first case is where—
>
> (a)the data subject has given consent to the processing for the law enforcement purpose as mentioned in subsection (2)(a), and

> (b) at the time when the processing is carried out, the controller has an appropriate policy document in place (see section 42).
>
> (5) The second case is where—
>
> (a) the processing is strictly necessary for the law enforcement purpose,
>
> (b) the processing meets at least one of the conditions in Schedule 8, and
>
> (c) at the time when the processing is carried out, the controller has an appropriate policy document in place (see section 42)…
>
> (8) In this section, "sensitive processing" means—
>
> (a) the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;
>
> (b) the processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual;
>
> (c) the processing of data concerning health;
>
> (d) the processing of data concerning an individual's sex life or sexual orientation."

39. The conditions set out in Schedule 8 include processing which is necessary for the administration of justice and safeguarding children and individuals at risk.

40. As noted by Holman J, the claimant's grounds are widely framed but in his in oral submissions Mr de Mello adopted a more focussed approach. He put his case on the supremacy of the DPA 2018 over the guidance and upon the need for the competent authority to justify its processing of the claimant's data as lawful and fair. In this regard he submitted that the guidance was not compatible with this statutory requirement as it put the onus on an applicant for deletion to give reasons for the deletion.

41. It is clear that a new version of the guidance was issued expressly with various changes to its content following the DPA 2018. This was version 1.7 issued in June 2018. Version 2.0, described as a final version agreed, was issued in October of that year. The version put before me was version 2.1 dated May 2019 which incorporated changes in respect of turnover time. As noted above, the guidance makes specific reference to the DPA 2018. I did not understand it to be in dispute before me that the guidance must be read in light of and subject to the DAP 2018, and in my judgment that is clearly so. The guidance has no statutory force in respect of removal of information from the PNC, whereas of course the DPA 2018 insofar as it is relevant to such removal, does have such force.

42. It is also clear that coming to his decision, Mr Russell had express regard to the DPA 2018. This is expressly referred to in the heading of his decision letter dated 3 June 2020.

43. In my judgment, the guidance, in encouraging individuals to give reasons why records should be deleted from the PNC, does not detract from the principle that it is for the controller to demonstrate compliance with the DPA 2018 and that processing for law enforcement purposes must be lawful and fair in the ways set out in section 35. An individual may be able to put forward reasons, previously unknown to the controller, which make it unlawful or unfair.

44. The requirement in the guidance for positive evidence in the guidance must be read in the context that the elimination of an individual as a suspect, the withdrawal of an allegation, or a case not proceeded with because of a technical legal argument, does not itself mean that there is sufficient evidence to provide a basis for the deletion of their PNC record. In my judgment this does not put the onus of proof on the application. It means that something more may be required than such elimination or withdrawal.

45. It is clear in my judgment that Mr Russell did not approach his decision on the basis that it was for the claimant to show that his record should be deleted. For example, he had regard to all of the evidence at the trial to establish whether there was evidence that the allegations were malicious, and he decided that there was not.

46. Mr de Mello submitted that it was implicit from the acquittals that the allegations of the claimant's wife at the trial were rejected by the jury and suggests that they were false and malicious as was put to her in cross-examination on the claimant's behalf. Accordingly, it was perverse of Mr Russell to conclude there was no evidence of falsehood or malice.

47. I cannot accept that submission. In the present context, no more should be read into the acquittals than the jury did not accept that the prosecution had proved the claimant's guilt beyond reasonable doubt. That was the approach which Mr Russell took and in my judgment that was an approach which he was entitled to take.

48. Mr de Mello further submitted that this approach offends against the principle of presumption of innocence and means that the claimant continues to be under suspicion. In my judgment however, two difference regimes are in play. The criminal process in respect of these allegations has been completed and the claimant has been acquitted. The presumption of innocence has no continuing relevance, except to prohibit a public authority from suggesting that the acquitted defendant should have been convicted (see *R (Hallam v Secretary of State for Justice* [2019] UKSC 2).

49. However, what is being considered in deciding whether or not to delete his data from the PNC is the issue of law enforcement and the safeguarding of individuals and in particular the welfare of the claimant's former wife and the child of the relationship. It is no part of the latter process to suggest that the claimant should have been convicted. Rather it is a question of taking the allegations into account with other information and deciding whether retention is necessary.

50. Mr de Mello further submitted because the PNC records of the claimant include data revealing racial or ethnic origins, political opinions, religious believes and his mental health, this amounts to sensitive processing within the meaning of section 35(8) of the DPA 2018 so that such processing is only permitted in the first case in subsection (4) or the second case in subsection (5). As the claimant has not given his consent then only the latter is relevant. Accordingly, the processing must be strictly necessary for law enforcement purposes, must meet at least one of the conditions in Schedule 8, and at the time there must be an appropriate policy document in place. I accept that submission.

51. In my judgment, the processing of all the information on the claimant's PNC record is strictly necessary for law enforcement, for the safeguarding of the child of the relationship and/or his former wife, and the guidance does amount to a policy within the meaning of that subsection. The information, taken as a whole, deals with the risk which the claimant poses to his former wife and child, in particular. The information relating to the claimant's religious or political views goes further than just recording such views because it includes concerns of extremism, which impacts upon the safeguarding concerns. So too does information regarding the claimant's mental health. The decision to retain it is rational and fair in my judgment.

52. Mr de Mello further submitted that the decision to retain the information until the claimant is deemed to be 100 years is excessive. A similar argument was rejected in a recent decision of the Divisional Court, referred to me by Ms Clarke in *R (QSA and others) v National Police Chiefs' Council* [2021] EWHC 272 (Admin).

53. That case, unlike the present, involved the request to remove convictions from the PNC. Bean LJ and Garnham J in giving the judgment of the court, said at paragraph 119:

> "In our view, the objective of the 100-year rule, namely to maintain a comprehensive record of convictions, is sufficiently important to the criminal justice system alone to justify interference with the Claimants' Article 8 rights. When taking into account in addition the importance of the PNC to all the other public services referred to above, the case for the maintenance of the rule is very powerful. The possibility that those records were incomplete would to a significant extent undermine that value. The removal of even a single recordable offence would meant that the PNC could not be relied upon as containing a complete record of any individual's convictions."

54. The court there referred to a decision of the Supreme Court dealing with processing of non-conviction data in *R (Catt) v Association of Chief Police Officer of England, Wales and Northern Ireland* [2015] UKSC 9, which concerned the retention of data recording information relating to attendees of political policing purpose. The court found that such information, even where it did not involve the commission of a crime or the likely commission of a crime could be of importance for the prevention and detection of crime associated with public demonstrations and to enable the great majority of such demonstrations which were peaceful to take place without incident and without an overbearing police presence. Accordingly, the police had shown that retention was justified by the legitimate requirements of police intelligence-gathering

in the interests of the maintenance of public order and the prevention of crime. However, the case went to the European Court of Human Rights which found the retention disproportionate (*Catt v United Kingdom* (2019) 69 EHHR 7.)

55. In my judgment the defendant has shown that the 100-year rule is justified on the facts of this case even without convictions. Although the risk to the child, and perhaps to the claimant's former wife, is likely to diminish in time, it cannot be said that this, especially in respect of the latter, will diminish to the point of insignificance in the claimant's lifetime.

56. Accordingly, in my judgment, the challenged decision complies with the requirements of the DPA 2018.

57. I turn now to Article 8 EHCR, incorporated as Article 8 of Schedule I to the Human Rights Act 1998, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the county, for the prevention of disorder or crime, or the protection of health or morals, or for the protection of the rights of others."

58. It is now well established that the retention of data on the PNC amounts, or can amount, to interference with the rights of the individual concerned under article 8, see *Catt and QSA.* I have already found that the retention of the data on the claimant's PNC record is in accordance with the law. In my judgment it is also in the interest for the prevention of crime or for the protection of the rights of others, namely the claimant's child and/or his former wife.

59. It follows that the claim fails.

60. I invite the parties to file a draft order, agreed if possible, together with written submissions on any consequential matters which cannot be agreed, within 14 days of handing down of this judgment. I will then determine any such matters on the basis of the written submissions.