Neutral Citation Number: [2022] EWHC 78 (Admin)

Case No: CO/1791/2021

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

17th January 2022

Before:

THE QUEEN (on the application of MT)

Claimant

and

(1) CHIEF CONSTABLE OF LINCOLNSHIRE POLICE
(2) LINCOLNSHIRE POLICE AND CRIME COMMISSIONER

Defendants

and

(1) JT
(2) DK

Interested Parties

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The **Claimant** in person
The **Defendants** and the **Interested Parties** did not appear and were not represented

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Hearing date: 17/1/22

Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission for judicial review. The mode of hearing was in-person. The Claimant, who is a litigant in person, has asked me to give my ruling and my reasons today rather than to give a reserved written judgment at a subsequent time. I am content to take that course.

The Order of HHJ Davis-White QC

2. This is a case in which there have been two important previous court Orders. The first was an Order made on the papers by His Honour Judge Davis-White QC on 1 September 2021. At that stage, the Court had before it the Claimant's claim for judicial review, seeking to challenge a 'decision' of the First Defendant (said to be on 29 March 2021) that an investigation did not meet the 'evidential threshold' for prosecution. This was in the context of the "complaints" which the Claimant had made: first, a complaint on 30 June 2020, which had been upheld in part by the First Defendant on 13 October 2020; then a subsequent complaint on 22 February 2021 which had been rejected by the First Defendant on 15 April 2021. The First Defendant had filed an Acknowledgement of Service and Summary Grounds on 8 June 2021, in which it had named the Second Defendant as a relevant Interested Party. That was because the Second Defendant had considered a "review", sought by the Claimant on 15 October 2020, relating to the same investigation, that review 'not having been upheld' by the Second Defendant, by a decision of 17 March 2021. In his Order, HHJ Davis-White QC directed that the Second Defendant be made a defendant to these proceedings, and indicated that the Claimant should consider whether to apply to amend the grounds for judicial review to seek to challenge the Second Defendant's decision of 17 March 2021. The Judge made other directions in that order. One was that the question concerning the pursuit of this claim in the absence of a Litigation Friend for the First Interested Party should be considered after any decision by this Court in relation to permission for judicial review. Another was that the same course should be adopted in relation to the Claimant's application for a protective costs order.

Anonymity

3. In identifying the First Interested Party in his Order, HHJ Davis-White QC used letters rather than a name. One of the things which I raised with the Claimant, at the outset of the hearing today, was the question of anonymity. The First Interested Party was a three year old child at the time of the events which are at the heart of this case, and is still a very young child. I was anxious to consider whether there was a necessity for an Order prohibiting the publication of details of names and other information given that a young child is at the heart of this case. In response, the Claimant – as the First Interested Party's mother – explained that she was not inviting an anonymity order, since her son is blameless and is not being said, by anyone, to have done anything wrong. However, she very sensibly and properly said she would "leave to the Court" the question of whether anonymity protection for her son was appropriate. I am quite satisfied that anonymity protection, for her young son, is appropriate and is necessary. Having regard to Article 8 and Article 10 as scheduled to the Human Rights Act 1998, pursuant to a CPR 39.2 and acting of my own motion, I ordered that the identity of the First Interested Party should not be disclosed in order to protect his interests. I also ordered, for the

same reason, that the identity of the Claimant and the Second Interested Party should not be disclosed, since disclosure of their identity could readily lead to his identification.

The Order of HHJ Belcher

4. The second important Order which has been made in this case was the decision of Her Honour Judge Belcher, on considering the papers, on 11 November 2021. She refused permission for judicial review and refused permission to amend the grounds for judicial review. The position at the time of her consideration of the papers included the Second Defendant by then having filed an Acknowledgement of Service on 5 October 2021 with relevant materials.

This hearing

5. The Claimant has the right to make a renewed application for permission for judicial review at a hearing, provided that the judge on the papers has not certified the case as totally without merit. There was no such certification in HHJ Belcher's order. I have had the opportunity at today's oral hearing to consider all the submissions that have been made in writing and orally, and all the materials that have been put before the Court. I have had the opportunity of examining in various respects, with the Claimant's assistance, what it is that she has been submitting to the Court. Following the Order of HHJ Belcher the Claimant submitted detailed "grounds of renewal" to this Court. To a large extent those grounds provided the framework for the points that she has made today orally, though she has supplemented those points with other submissions, she has been able to show me relevant documents and explain her position in relation to key features of the case, and she has been able to assist me with questions that I have raised with her. In approaching the question of permission for judicial review, I am quite satisfied that it is appropriate for me to form my own independent view looking at all of the materials "afresh".

6. The role of the judicial review Court is a limited one. The court has a "supervisory" jurisdiction in relation to the decisions and actions and omissions of public authorities. That includes the police and various public authorities which are associated with the police. Judicial review can only be granted, in the exercise of that supervisory jurisdiction, on the basis of the set of established rules and principles. For the purposes of today's hearing the question is whether there is an "arguable" case having a "realistic prospect of success". If I am satisfied that that test is met then, as long as there is no "discretionary bar", permission for judicial review should be granted. But, if I am not satisfied that that arguability test is met, then my responsibility is to refuse permission for judicial review. The basic reason for that is that it could not be right for the Court to allow a case to proceed to a further hearing, with further delay and with costs being incurred by those parties who are legally represented, if the position is that the case has no realistic prospect of success.

7. I have approached this case on the basis that it is "a criminal cause or matter". The relevant test is identified in paragraph 25.7.1 of the Administrative Court Judicial Review Guide 2021. It is whether the direct outcome of the proceedings which underlie the judicial review proceedings are that a person stands to be placed in jeopardy of criminal trial and punishment for an alleged offence. The relevance of this is that if this Court refuses permission for judicial review, that is the 'end of the road' so far as the

judicial review proceedings are concerned. The Court of Appeal has no jurisdiction to consider an appeal in a "criminal cause or matter". It is right for this Court to have in mind that restriction when considering the question of permission for judicial review. I approach this case on the premise that refusal in this Court would be the 'end of the road' for judicial review.

The central point of substance

8. In this case it is important, in my judgment, to keep clearly in mind the difference between the point of substance that is really at the heart of the Claimants case (and her position on that point of substance) on the one hand, and the various avenues that have been open to her (and their pursuit by her) on the other hand. So far as avenues and their pursuit is concerned, there are the following in this case in particular. The first avenue is the "complaint" made on 30 June 2020 by the Claimant, which led to a decision by the First Defendant on 13 October 2020. That avenue was the pursuit of a complaints mechanism. The second avenue was the request for a "review" which the Claimant made on 15 October 2020, which was considered by the Second Defendant, and which led to its decision on 17 March 2021. That avenue was the pursuit of a review by the Second Defendant of the way in which the complaint had been dealt with by the First Defendant. The third avenue was a second "complaint" made by the Claimant on 22 February 2021, which was dealt with by the First Defendant on 15 April 2021. Those are the three key avenues which the Claimant has been pursuing since June 2020.

9. The point of substance, that the case is really about, concerns a criminal investigation which was undertaken by the First Defendant. The key question is – and has always been – whether that criminal investigation by the First Defendant has been an adequate one. The Claimant's position throughout has been that there has been no adequate investigation in this case. Her position is that the First Defendant acted unlawfully, in public law terms, in closing the investigation and in not taking it further. It was back on 14 June 2020 that the First Defendant's officers told the Claimant that the investigation had at that time been "closed". That closure was the subject of the "complaint" that she made on 30 June 2020. On 13 October 2020 the Claimant was told that that complaint was upheld in part and that the service which she had received from the First Defendant had not been "acceptable". At that stage what was said was that the investigation was being "reopened" so that a further step could be undertaken. However, also at around the same time she was told that all avenues had now been explored and the investigation was once again "closed". It was in that context that (on 15 October 2020) she sought the "review" by the Second Defendant of the decision made on the first complaint. It was also in that context that the Claimant then (on 22 February 2021) raised the second complaint which culminated in the 15 April 2021 decision of the First Defendant. On the face of it, the Claimant's judicial review proceedings (issued on 19 May 2021) were "in time" so far as concerns the Second Defendant's decision not to uphold the review (17 March 2021); and so far as concerns the First Defendant's decision not upholding the second complaint (15 April 2021).

10. The Claimant tells the Court that her pursuit of all of these avenues was focused on the key point of substance, about the adequacy of the investigation and about whether or not it could lawfully be treated as closed. The relief (remedies) that the Claimant seeks in her judicial review claim (19 May 2021) very clearly involved orders requiring the First Defendant to reopen the criminal investigation. The Claimant says that, acting as a private individual, and doing her best to navigate the avenues open to her, she has –

throughout – been raising her concerns about the central point of substance. She submits that on judicial review this Court should require the investigation to be reopened and should order the pursuit of further lines of enquiry and further lines of evidence-gathering. She submits that all of the points she has raised have, in substance, been about the same key question: namely whether, the "evidential threshold" to pursue a prosecution has been met in this case. She emphasises that the challenge is to the closure of the investigation or the action not to pursue it any further.

11. For the purposes of the hearing before me today, I am quite satisfied that it is appropriate to focus on the central point of substance, and not to become distracted by any complications arising in relation to the nature and shape of the "avenues" which the Claimant has been pursuing. In my judgment there are really two ways to look at the central point of substance arising in this case. The first is to consider the First Defendant's action – of not proceeding with a full investigation, in not proceeding with a prosecution, and in not proceeding with a referral to the Crown Prosecution Service – with all of those matters being viewed through the "prism" of the "complaints" mechanism and the "review" mechanism which the Claimant has invoked in order to raise that central point. The second way to look at the matter is this. Had the Claimant not pursued these mechanisms, which she was told were open to her, and had she instead come directly to this Court complaining about the closure of the investigation, she would in my judgment undoubtedly have been told that there were alternative remedies open to her by which she could "complain" and could seek a "review". That is precisely what she has been doing. In my judgment, it is necessary and appropriate in the present case, in the interests of justice, to look at the central point of substance that she has been raising throughout, about the investigation and about its adequacy, by reference to the "evidential threshold" for a prosecution. In this respect, I have in mind in particular that the Claimant is a litigant in person who has clearly done her very best throughout, and who has been pursuing the steps that she has been led to consider were necessary and appropriate next steps.

12. Having said all of that, the "avenues" that were available to the Claimant, and the decisions which have been made by the relevant decision-makers, following consideration by those with the responsibility of undertaking evaluative appraisals, are in my judgment plainly relevant when considering the central point of substance. I will need to explain in some more detail the way in which those avenues, appraisals and outcomes are relevant to the central point of substance that the Claimant has, throughout, been raising.

The essence of the Claimant's case

13. The essence of the Claimant's submissions to this Court, made in writing and orally today, can in my judgment be grouped in the following ways. As I will explain, in the first group of points the Claimant emphasises a series of steps that she submits have not been taken by the First Defendant in the context of its investigation.

14. The case centres on a disclosure which the Claimant describes her then three-year-old son (the First Interested Party) as having made to her in relation to events on Friday 6 March 2020. What happened on that day was that the Claimant's then 18 year old half-brother (the Second Interested Party) had been acting as a babysitter for the First Interested Party. In consequence of what came to light on and after that occasion, the Claimant's mother and stepfather – the mother and father of the Second Interested Party

– responded (on 8 March 2020) to what she was raising, having been alerted by what had been disclosed by the First Interested Party. Later on that day (8 March 2020) the police attended. There were then steps taken which included police interviews on 9 and 10 March 2020 of the First Interested Party, undertaken by relevant personnel; and then a "forensic examination" of the First Interested Party which took place on 11 March 2020. That was the background, in broad terms, without getting into matters of detail.

15. In relation to the points about steps not taken by the First Defendant, the Claimant emphasises the following. She says: that nappies were not tested; that voice recordings which she took were not considered; that evidence from the First Interested Party's nursery was not requested and not considered; that the narrative description which the First Interested Party was giving to the police was not approached properly by them; that swabs were not tested; that clothing was not forensically tested; that a comfort blanket was not forensically tested; that adequate investigative steps were not taken so far as concerns the interviews with the Second Interested Party; nor insofar as concerns swabs taken from him; that the police were inappropriately involved in the forensic examination on 11 March 2020; that the Claimant's stepfather (himself employed by the police) took action, and was permitted to be in a position of taking action, which enabled him to influence or frustrate the proper investigation of the serious physical and sexual abuse which the First Interested Party had disclosed. These, then, are the sorts of steps identified in this group of contentions made by the Claimant.

16. There is then a set of contentions which the Claimant makes which concern evidence. She emphasises that she has not had from the First Defendant disclosure of the evidence which the police hold. She also emphasises that, in her submission, this Court on judicial review should order the disclosure of evidence, for the purposes of determining this case. The Claimant gave me today a list of evidence for which she said the judicial review Court should ask. The Court, she said, should ask for: the forensic report; videos; police reports; DNA testing (including any testing relating to DNA arising from any "general touch"); the forensic evidence; the nursery documents; the mouth and groin swabs taken from the First Interested Party; the testing of the comfort blanket; the police emails with the Claimant's Member of Parliament; the witness statements which the police have obtained; the evidence, whether obtained by the police or obtained now by this Court, from all those involved in the case; evidence regarding the involvement of a therapy service called Service 6; the police database; records of police phone calls including with the Claimant stepfather; records of all interviews; and evidence from all staff involved in the investigation. The Claimant emphasises in her submissions that she has not seen, and needs to see, evidence that further forensic testing which was said to be necessary has in fact taken place, as to which she submits that 'an email stating that it has taken place' is not sufficient. She emphasises that it is necessary to know what has been missed by the police, and what is being hidden by the police.

17. The Claimant also emphasises the importance of questions as to whether correct policies and procedures been followed in this case. Then a distinct strand in her claim for judicial review, as I see it, relates to the fact that the First Defendant did not refer the evidence in this case to the Crown Prosecution Service, but rather discontinued the investigation by reference to the evidential question without taking a step which would have involved the CPS making up its own mind. The Claimant has emphasised in her submissions in writing (as she puts it in her grounds of renewal): "I don't feel responsible lines of enquiries were made nor evidence, my questions and concerns were

not answered or addressed". She emphasised in her oral submissions to me what she says she observed by way of physical marks and physical injuries that are inexplicable unless there was physical and/or sexual abuse of her young son (the First Interested Party) by her half-brother (the Second Interested Party). How, she says, was that physical evidence not enough by way of evidence to take the case through to prosecution? She showed me, during her oral submissions today, a news story on the BBC website dated 15 January 2021 and entitled "Lincolnshire police child protection 'needs action'". She submits by reference to what is said in that, and other, public domain material that there is support for the concerns which she has raised in the context of this particular case. She emphasised, in powerful terms, the lack of faith and trust which she has in the police. She submitted that they are capable of control and manipulation, and that they have something to hide. She portrayed, in moving terms, her young son as innocent and brave, having told a story that has never changed, and having disclosed sexually graphic information which is quite inexplicable unless it is because the abuse of the First Interested Party, which she says clearly took place in this case on 6 March 2020 on the part of the Second Interested Party, did indeed take place.

My assessment

18. I need to turn now to explain what I have made of all of the materials and submissions in this case, in light of the responsibility which I have as the permission judge in judicial review. It is at this point, in my judgment, that the various steps – taken in the context of the "avenues" which were open to the Claimant and which were pursued by her – become relevant, notwithstanding that the central point of substance is the one that I identified earlier in this judgment.

19. When the Claimant was informed (on 14 June 2020) by the First Defendant that the investigation was closed she promptly made her complaint (on 30 June 2020) relating to that decision. She put forward her concerns: as to the inadequacies and the incompleteness of the investigation; and as to the inappropriateness of the police deciding to discontinue it. The 'Officer in Charge' of the case was DC Forster, whose supervisor was DS Walker. The Claimant's complaint was put in the hands of a complaint handler – DI McKean – who was appointed, who considered the matter and who reported. That "Complaint Handler's Report" was in the form of a "Plan". DI McKean's (undated) report recorded: that the investigation had been "fully reviewed"; that he had spoken to DC Forster (being the Officer in Charge); that he had spoken to DS Walker (being the supervisor); and that he had spoken to the relevant forensic scientist. DI McKean's report recorded these outcomes: that having "fully reviewed" the investigation, he found it was "very comprehensive", that it had been "completed well" by DC Forster and "supervised well" by DS Walker; that the investigation had also been "passed to T/DCI Coleman to review prior to closure"; that he (DI McKean) "agree[d] with the reasons for closure"; but that he had "asked for the forensic scientist to consider whether there was anything else forensically that could be completed"; that the forensic scientist had "suggested" one "further test" that could be completed; that the further test had "a low probability of success"; but that "having discussed it with forensic" it was "agreed" that that further step would "be completed"; that in those circumstances the investigation "has been re-opened"; that DC Forster had been "requested to submit the relevant exhibit for testing"; and that the Claimant had been "updated" by DI McKean "regarding this". In the light of all of that, the decision taken by the First Defendant (CI Outen) on 13 October 2020 was that the Claimant's

complaint was upheld in that "the service provided was not acceptable" and that it "fell short of our standards".

20. What happened shortly after this "outcome" was reported and communicated to the Claimant was, as she accepts, that she was then told that the remaining forensic step had now been undertaken, and that it did not assist. There is a chain of emails in the Court documents. It includes an email from DI McKean on 17 October 2020. That email records: "We have explored all forensic opportunities available from the evidence that we have collected & the scientists have advised us that there are no further forensic lines of enquiry that will assist us with our investigation". That email goes on to explain that the police "do not always refer all of our investigations to [the] CPS", as the police "have to decide if the case meets the evidential threshold to seek CPS advice"; and that in the present case the decision had been that there was no "'realistic prospect of a conviction' based on the evidence we have" and the police did not "have the evidence to meet the threshold and hence did not refer the decision to the CPS".

21. When the Claimants, in light of all of that, sought a review (on 15 October 2020) by the Second Defendant, a reviewer (Ms Leona Naish) was appointed to review the reasonableness and proportionality of the way in which the complaint had been dealt with by the First Defendant. The work undertaken by the reviewer culminated in a review report which is before the Court. That report gave a reasoned basis why Ms Naish did "not recommend this review is upheld" and to recommend that "no further action is required". That was because the complaint had been handled reasonably and proportionately. That recommendation was accepted by the Police and Crime Commissioner for Lincolnshire, the Second Defendant (Mr Marc Jones) on 17 March 2021. The review report makes clear that Ms Naish was not "enter[ing] the realms of investigating the original case or how it was handled", and that she was not "re-investigat[ing] incident(s) leading to police attendance/involvement or the complaint itself". But her report set out in detail the way in which the complaint handler (DI McKean) had addressed the Claimant's complaint. I do not need to repeat points which I have already made. But Ms Naish's report records that, in "two lengthy endorsements" written by DI McKean on the file: "Points covered include[d] the decision-making rationale regarding the additional forensic submission, a full assessment of all the evidence and its value when considering a realistic prospect of conviction and consideration as to whether anything has been missed or could be further garnered". She added that DI McKean "in completing" the various steps had "effectively conducted a VRR" – that is, a victim's right to review – albeit that it was not the CPS who had taken the decision to close the case.

22. When (on 22 February 2021) the Claimant made her second complaint to the First Defendant, there were really two strands. The first strand concerned the insufficiency of the investigation. The second strand concerned some specific points relating to 'disclosures' which the Claimant complained should not have taken place. The disclosures were considered by a complaint handler and the complaint relating to them was, in the event, not upheld. There was no separate consideration of the first strand in the second complaint which related to the sufficiency of the investigation. A reason was given for that. The reason was that this aspect of the second complaint was covering the same ground which had been the subject of the first complaint (which had been resolved through the identification and pursuit of the remaining forensic step). It was

on that basis that (on 15 April 2021) the First Defendant told the Claimant that her second complaint had not been upheld.

23. If I posit this Court dealing with judicial review at a substantive hearing, in the light of all of this material which has been made available to the Court, in my judgment there is no realistic prospect that the Court would conclude that the First Defendant has breached a public law duty in relation to the nature of the investigation which has been undertaken in this case. Whether viewed in terms of legality, or justification by reference to relevant human rights, or in terms of the public law standard of reasonableness, or the public law standard of procedural fairness, in my judgment this is a case which – on the materials – is clear as to the prognosis. This is not a case in which it is arguable that the First Defendant has breached some public law duty, in the way in which the investigation has been approached, or in its curtailment.

24. It is helpful, in my judgment, to take some of the examples of the complaints which have been raised in order to test and illustrate that position. One example concerns the taped interviews which the Claimant herself had with her son, the First Interested Party. One taped interview which she had with him was on Sunday 8 March 2020, and another took place on 2 June 2020. Each of those conversations contained the First Interested Party giving a narrative description to his mum. She supplied them to the First Defendant for consideration in the investigation. Part of her claim for judicial review involves the contention that those interviews were "not considered" by the First Defendant. As she told me in her submissions today "I do not believe they were listened to". In support of her contention the Claimant describes an email which she says she received from the Defendants' legal representative (Ms Elizabeth Briggs of East Midlands Police Legal Services, who acts for both Defendants), at some stage during 2021. On investigation it was not possible to track down that email within the bundle of documents provided by the Claimant to this Court. But I do not hold that against her. She has told me, in clear terms which I accept, of the practical difficulties which she faces and how reliant she has been on the support of others in having materials printed for her. I am quite sure that I have a complete print out of the various documents which she has filed with the Court. But, more importantly, I accept what she tells me. The Claimant tells me that there was an email, in 2021, from the lawyer which explained that the lawyer (Ms Briggs) did not have the taped interviews, as a consequence of which the Claimant sent copies of them to Ms Briggs. The problem is that that, in my judgment, very clearly is not evidence that the taped interviews were not "listened to" by the police and were not "considered" by them. One of the documents before the Court is an email dated 15 October 2020. That is an email from the Claimant sent to the First Defendant, to both DC Forster and DI McKean. It records what the Claimant had been told about the taped interviews. The email says this: "you also have voice recordings of [the First Interested Party] which goes into detail but state its too leading". That is a reference to the Claimant having been told that those interviews had included 'prompting' of the First Interested Party by the Claimant. That is what is meant by the word "leading". The point is that it is very clear, from that email, that the police had "considered" the taped interviews and they had "listened to" them. Otherwise, they would not have been in a position to make, and they would not have made, any observations about the nature of what had been said by the Claimant in those interviews. Those tapes were available. They had clearly been considered. They were put alongside the other interviews and, in particular, the two Louth interviews which had been

undertaken on 9 and 10 March 2020. The Claimant was not present during those interviews but relevant police officers and other facilitators were.

25. When I examine, on this illustrative point, the position on the evidence it reinforces the conclusion which I have reached. There is no realistic prospect of this Court concluding that the taped interviews were not "considered" or not "listened to". The investigative evaluative judgment was one for the police. And in the present case it has been the subject of the consideration described in the materials. I repeat that included a "review" prior to "closure" by T/DCI Coleman; it included the review by the complaint handler DI McKean; and it included the points which DI McKean recorded on the system as were described by Ms Naish in her review report.

26. A second graphic example, emphasised in the Claimant's submissions before me today, relates to the forensic test which – in October 2020 – it was being said needed to be undertaken, in an investigation which was being said to have been "re-opened". The Claimant emphasises that, as at a meeting on 5 October 2020, she was being told about a step which had been identified to be undertaken, but that by about 13 October 2020 – and at the same time that her complaint was being in part upheld by CI Outen – she was in fact being told that there were no further steps to be undertaken. The Claimant referred to a screenshot message in "May 2020", but what we identified in the bundle of Court materials is a screenshot message from "9 October 2020" which is more directly relevant to this point. In it, DI McKean himself describes the position where he was being told (by DC Forster) that "the forensic results did not assist". The Claimant's point is this: how on earth could it be that this important further forensic investigatory step could have been undertaken so quickly, given the timeline that is needed for the steps. She has been told that this forensic step was undertaken. She told me: "I do not believe" that it was ever undertaken. And she submits that this chronology, and these documents, support her in relation to that.

27. Again, I am in a position to consider the picture on the evidence before the Court. At the heart of all of this is the role of DI McKean as the complaint-handler. He was the one who considered whether all forensic steps had been taken. He was the one who had a discussion with the forensic scientist. He identified a step that required to be taken. He also explained that it had been agreed that that step would be undertaken. It was as a result of DI McKean's actions that that step came to light. It is clear, on the documents, but DI McKean considered that that step needed to be undertaken. But it is equally clear, on the documents, that by the time DI McKean came to be communicating with the Claimant, that step had indeed been undertaken. In other words, the very same complaint-handler – reviewing the investigation – whose initiative had given rise to the need for action was the same individual who was providing the assurance that that action had now been taken. I cannot accept, even arguably, that there is something in the timeline that makes that impossible. DI McKean was writing up a report which set out the steps he had taken and the conclusions at which he had arrived. It was clear in the way in which he wrote up that report (the Plan) that he had identified this step along the way, and that he had alerted those concerned to the need to undertake it. And it was he who then communicated to the Claimant, as she accepts, that that step had indeed been undertaken. It simply would not make any sense for one person to expressly be raising and communicating the need for a step and then somehow to be 'covering up' and misleading the Claimant as to whether that step had in fact subsequently been taken.

28. Another practical example which the Claimant was able to bring to my attention relates to a 'disclosure'. The Claimant showed me, in the Court documents, photographs of letters written – she says – at Christmas 2020 to her grandparents by her parents (her step-father and his wife) which said the case "was independently investigated". As I saw it, there were really two points that arose from that. The first is that insofar as "independently" is a reference to the IOPC (Independent Office for Police Conduct), it did not make sense at all, since no step was taken to communicate with the IOPC by the Claimant until 17 March 2021, as a consequence of which she was told that if she wished to pursue this matter further that would need to be by way of judicial review. That was in a communication she told me, and I accept, that she received on 29 March 2021. I accept that there cannot possibly have been any reference to the IOPC in any 'disclosure' to the parents, prior to Christmas 2020. The second point arising from this, as it seems to me, concerns the Second Defendant's "review" mechanism, which had been triggered by the Claimant on 15 October 2020. But that mechanism was not completed until the decision (by Marc Jones) on 17 March 2021. The Claimant's position is that the fact that reference was made in a letter in Christmas 2020 to an 'independent investigation' indicates that there had been an unjustified and inappropriate 'disclosure' of material or information, to the Claimant's parents, without her consent. It was these sorts of 'disclosure' complaints that formed the second strand, which I described earlier, in the Claimant's second complaint (on 12 February 2021), which in the event was not upheld by the First Defendant (on 15 April 2021).

29. I am quite satisfied that this chronology – regarding Christmas 2020 letters – cannot relate to inappropriate 'disclosures' in relation to the IOPC; nor in relation to any culmination of any action by the Second Defendant since the review had not been completed until March 2021. But, more importantly, the 'disclosure' strand has been considered by the First Defendant under the complaints mechanism. Entirely understandably, the Claimant did not then seek a review by the Second Defendant of the way in which that strand had been dealt with by the First Defendant. I say "entirely understandably" because, as I have emphasised throughout this judgment, what stands at the heart of this case is a central point of substance: as to the nature of the investigation; as to the discontinuance of it; as to the application of the "evidential threshold"; and as to the decision not to proceed to prosecution or to refer the case to the CPS.

Conclusion

30. I have been able, with the assistance in writing and orally by the Claimant, to consider carefully whether there is in this case any ground of challenge which has any realistic prospect of succeeding at a substantive hearing. If I thought there was one, I would grant permission for judicial review and there would be a fully contested substantive hearing. But I am quite satisfied that there is no arguable ground with a realistic prospect of success. I am also satisfied that it would not be appropriate for this Court to make orders for disclosure, such as those which are sought; and that the absence of that disclosure in this at this stage is not material to the consideration of the viability and prognosis for this claim for judicial review. Given the limited function that this Court has in the exercise of its supervisory jurisdiction over the police – but given the important 'gatekeeper' function which this Court also has the permission stage of a judicial review claim – I am quite satisfied that the appropriate course in this case is the same that was taken (for different reasons of her own) by HHJ Judge Belcher when she

considered the case on the papers. For all these reasons, I refuse the application for permission for judicial review. In those circumstances I dismiss the applications for disclosure orders and for a protective costs order. The anonymity order stands.

17.1.22