



Neutral Citation Number: [2023] EWHC 1542 (Admin)

Case No: CO/1159/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 22nd June 2023

Before:

MR JUSTICE FORDHAM

Between:

**THE KING (on the application of CLIVE
ALEXANDER SOLLY)**

Claimant

- and -

CROWN PROSECUTION SERVICE

Defendant

The **Claimant** in person

The **Defendant** did not appear and was not represented

Hearing date: 22.6.23

Judgment as delivered in open court at the hearing

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.

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. Permission for judicial review in this case was refused on the papers by Sir Duncan Ouseley. Permission falls to be considered “afresh” by me at this oral renewal hearing. That means I have to reach my own independent view. In doing so I proceed with special caution, remembering that the Claimant (as I shall call Mr Solly) is acting in person and that a refusal of permission for judicial review in a “criminal cause or matter” is the end of the road for judicial review proceedings.
2. The Claimant has commenced the claim for judicial review challenging the decision on 25 January 2023 of a Deputy Chief Crown Prosecutor not to proceed with consent for private prosecution by the Claimant of alleged offences under the Bribery Act 2010. The consent of the DPP to such a prosecution is required by section 10 of that Act. The January 2023 decision concluded that there was an insufficiency of admissible evidence supplied by the Claimant. That same conclusion had been arrived at in previous decision letters of 17 November 2022 and 23 December 2022, in a decision making process which had included a CPS letter of 14 October 2022 requesting that all evidence be sent to the CPS by the Claimant. At the heart of the pleaded claim for judicial review – maintained in his grounds of renewal – is a legal contention to which I will return.
3. The 25 January 2023 decision focuses squarely on alleged bribery offences. So does the pleaded claim for judicial review. As the 25 January 2023 decision letter explained, the Claimant had also attempted a private prosecution for perverting the course of justice, ambulance chasing, and breaching the Legal Services Act 2007. The letter said that the Claimant had submitted warrants of arrest for 8 persons. The magistrates court had decided that it would not be in the interests of justice to issue any summons or arrest warrant, there being no details of any alleged conduct that would amount to an offence known to law. All of this was set out in the decision letter of 25 January 2023, by way of explanation for why the focus was on the alleged bribery offences.
4. The Claimant has provided to the CPS and to this Court a skeleton argument, uploaded on 9 June 2023, within more than a thousand pages of uploaded documents. He tells me it was intended to help, for the purposes of today’s hearing, to show the seriousness of the matters with which this case is concerned, and to illustrate the need for action. In it, he describes the influence which he says various individuals and agencies have had, and the consequences, in a context culminating in criminal and family proceedings. He describes what he says were false accusations against him. He also describes what he says were failures of mental health support and a refusal to require a mental health assessment in relation to others. He makes reference to matters such as alleged breaches of the Legal Services Act 2007 and contempt of court. In relation to bribery, the skeleton argument refers to section 2(5) of the Bribery Act 2010 which makes it a bribery offence by “R” if “in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly (a) by R, or (b) by another person at R's request or with R's assent or acquiescence”. The skeleton argument says that the action of a CAF/CASS officer in taking steps to influence a judge in family proceedings to refuse a mental health assessment was, in the Claimant’s view, a

section 2(5) offence of bribery. The skeleton argument also sets out section 4 of the Act which makes provision, regarding “improper performance to which a bribe relates”, about a “relevant function or activity”. The Claimant says an “improper function” was that of a mental health provider in failing to provide a proper assessment and treatment and, as he puts it, in exploiting symptoms through collaboration with other agencies.

5. In his oral submissions this afternoon the Claimant has emphasised the following in particular. He has found it very difficult to put together an evidenced case of the wrongdoing which, as he sees it, constitutes criminal conduct. He says there is a lot more to it than is in the skeleton argument. He says he asked throughout for help and advice as to how he should go about compiling admissible evidence. He says he was brushed aside and obstructed by the CPS, notwithstanding the CPS having clear duties under the Code.

The Legal Contention

6. That brings me to the legal contention which is at the heart of the claim. It is as follows. The CPS have breached an applicable duty arising under paragraph 3.2 of the Code for Crown Prosecutors. That Code is issued under section 10 of the Prosecution of Offences Act 1985. Paragraph 3.2 appears within section 3, which is headed: “The decision whether to prosecute”. Within that section it is later stated (para 3.7) that in respect of offences which can only be taken to court with the DPP’s consent, the DPP or a prosecutor acting on their behalf “applies the Code in deciding whether to give consent to a prosecution”. Paragraph 3.2 of the Code includes this:

Prosecutors should advise the police and other investigators about possible reasonable lines of enquiry, evidential requirements, pre-charge procedures, disclosure management and the overall investigation strategy.

The Claimant was an “other investigator” for the purposes of paragraph 3.2. He needed advice and he asked for it. There was an advisory duty to advise him of “possible reasonable lines of enquiry”. No such advice was ever given. In its absence, the decision could not lawfully be taken or maintained that DPP consent to his proposed private prosecution would not be pursued.

Discussion

7. In my judgment, it is not arguable on this basis – with any realistic prospect of success – that the target decision of January 2023, or for that matter the prior decisions of November and December 2022, involved any public law unlawfulness, unreasonableness or unfairness. I will explain why I have arrived at that view.
8. The focus of paragraph 3.2 of the Code is on coordination between prosecuting and investigating agencies, as a matter of good practice. The nature of the coordination is reflected in the other matters on which prosecutors should advise the police and other investigators:

evidential requirements; pre-charge procedures; disclosure management and the overall investigation strategy.

The function and purpose of advice about “possible reasonable lines of enquiry” is spelled out later in paragraph 3.2, when the Code says that such advice is to assist the police and other investigators to “complete the investigation within a reasonable period of time” and to “build the most effective prosecution case”. All of this is in a setting where paragraph 3.2 begins by emphasising that it is the police and other investigators who are responsible for conducting inquiries into alleged crime and for deciding how to deploy their resources. Paragraph 3.3 then explains the impact of any failure to pursue an “advised reasonable line of enquiry”, or of any failure to comply with a request for information, in terms of its relevance to Prosecutors in deciding whether to defer the application of the “full code test” or in deciding whether the test can be met at all.

9. Above all, it is in my judgment obvious that the function of paragraph 3.2 “advice as to possible reasonable lines of enquiry” arises where it is appropriate, and where the Prosecutor has ‘something to go on’ for the purpose of giving such advice.
10. None of this in my judgment, even arguably, constitutes an enforceable public law duty to provide a private prosecutor, whose proposed prosecution for bribery is straightforwardly assessed as lacking any evidential support, with advice on lines of enquiry; nor for that matter advice on evidence, procedures, disclosure or strategy. And none of this in my judgment, even arguably, precludes the CPS from refusing to proceed with DPP consent to the proposed private prosecution for bribery, or maintaining that refusal, in a case straightforwardly assessed as lacking any evidential support.
11. This is a case which was straightforwardly assessed as lacking any evidential support. I can see no arguable ground for judicial review, on the paragraph 3.2 point, nor any other which has been raised or referenced. In these circumstances and for these reasons, permission for judicial review is refused.