Neutral Citation Number: [2018] EWHC 3573 (Admin)

Case No: CO/2744/2017 and CO/2751/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2018

Before:

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
and
MR JUSTICE JAY

- -

Between:

THE QUEEN on the application of DENNIS SLADE and RICHARD PEARMAN	**Claimants**
- and –	
HM ATTORNEY GENERAL OF ENGLAND AND WALES	**Defendant**
-and -	
THE DIRECTOR OF PUBLIC PROSECUTIONS	**Interested Party**

- -
- -

Leonie Hirst (instructed by **Stokoe Partnership**) for the **First Claimant**
Joanne Cecil (instructed by **Stokoe Partnership**) for the **Second Claimant**
Tom Little QC (instructed by **Government Legal Department**) for the **Defendant**
Duncan Atkinson QC (instructed by **CPS Appeals Unit**) for the **Interested Party**

Hearing date: 11th December 2018

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Approved Judgment

SIR BRIAN LEVESON P:

Introduction

1. Dennis Slade and Richard Pearman ("the claimants") apply for judicial review of the decision of HM Attorney General ("the AG") given on 27th February 2017 declining to ask for a separate review of the claimants' cases, in particular the circumstances in which their retrial for murder collapsed in November 2015 and their related robbery convictions. Permission was granted by Supperstone J.

2. The Director of Public Prosecutions ("the DPP"), as ultimately responsible for these criminal prosecutions, is an interested party to these proceedings.

3. Ms Leonie Hirst for the claimants contends that this claim raises serious issues of public law, most importantly the AG's exercise of his superintendence function and the open and transparent administration of criminal justice. In my view, she overstates the position: this claim is entirely fact-specific and, despite its many unusual features, does not raise any point of legal principle. Applying straightforward public law principles, following the hearing, we dismissed the claim for judicial review but, having regard to the issues, decided to reduce our reasons for doing so into writing.

4. Before examining the factual background, it is necessary to address Ms Hirst's first submission that an appearance of bias has arisen such that both Jay J and I should recuse ourselves from hearing the claimants' application. On 9th May 2018 there was a without notice hearing before this court as presently constituted. The purpose of the hearing was to give consideration to documentary material, in particular, the reports prepared by Mr Paul Greaney QC for the AG said to form the basis of a claim advanced by the DPP for public interest immunity ("PII"); we upheld that PII claim. It is said by Ms Hirst that, having seen and considered the undisclosed material, it would be neither appropriate nor fair for us to continue to hear the substantive judicial review of a decision based on the same material. It has been pointed out that, in related proceedings before the Court of Appeal (Criminal Division) concerning the robbery convictions, I did decide to recuse myself to avoid any appearance of unfairness.

5. The short answer to Ms Hirst's application is that the criminal appeal of Dennis Slade does require the Court to examine the factual merits of the prosecution and its conduct; in that context, having seen undisclosed material, there could be a perception of unfairness given that the claimants had not. The present proceedings, however, justifiably give rise to no such perception.

6. The grounds on which the claimants seek judicial review raise issues of process rather than of substance. In that regard, the undisclosed material is irrelevant; further, to the extent that we are still able to recall any of the detail, we must in any event exclude it from our consideration of this case. The consequence of upholding the PII claim must be that this material is not before us in any shape or form and cannot, even if it were relevant, be taken into account. In these circumstances, a fair-minded and informed observer would not conclude that there was a real possibility of bias (see *Porter v Magill* [2002] 2 AC 357). We therefore proceeded to hear this application.

Factual Synopsis

7. On 20th August 2009, the claimants were convicted at Leeds Crown Court on a four-count indictment alleging amongst other things conspiracy to murder. On 1st February 2010 they were convicted of various robbery offences and sentenced to indeterminate sentences of imprisonment for public protection which they are still serving. The two prosecutions were connected inasmuch as the murder allegations arose from information gathered by covert surveillance of the claimants during investigation of the robbery allegations.

8. On 10th March 2015, the Court of Appeal (Criminal Division) quashed the convictions in relation to the murder indictment and ordered a retrial ([2015] EWCA Crim 71). This commenced on 10th November 2015 before Globe J sitting with a jury at Sheffield Crown Court.

9. The prosecution case at the first trial had relied on voice recognition evidence that was said to show that the claimants had been in an Audi RS6 when conversations were recorded discussing the alleged conspiracy. A central part of the prosecution case was that cell site evidence, which showed that the claimants' mobile phones had not been in this vehicle at relevant times, had been deliberately manufactured by them, having given their phones to others to create a false alibi. A number of applications were made both before and during the retrial in relation to this evidence: it was contended that the police and the prosecution had been aware since the first trial that this voice recognition evidence did not identify the claimants (the then defendants) in the vehicle, thereby presenting a false case at the original trial and in the appellate proceedings.

10. On 17th November 2015, there were two *ex parte* hearings and, on the following day prosecution counsel, Paul Greaney QC, stated in open court that as part of a continuing review of disclosure the Crown had decided that it could no longer properly rely on the phone alibi evidence, from which it followed that there was no reasonable prospect of convicting the claimants. No further evidence was offered, and Globe J directed the jury to return not guilty verdicts.

11. On the same day, Globe J wrote to the AG setting out the relevant history and concluding in the following terms:

> "I am satisfied that the greatest possible care has been taken by prosecuting counsel and those working with him to fulfil their prosecution responsibilities and to decide whether any further evidence should be offered in the case. I am also satisfied that consultation has taken place with the appropriate senior members of the Crown Prosecution Service. Nonetheless, this case has a long history and this retrial has ended prematurely and unexpectedly. It is in these circumstances that I have decided to take the unusual course of directing that the case papers should be forwarded to you to give consideration to the commencement of an investigation into what has occurred in relation to the prosecution of the case and its sudden end."

12. The AG requested that Mr Greaney provide a briefing note to assist him and the DPP, and this was done on 27th November. The note was not provided to the claimants who remained unaware of it.

13. On 7th December 2015, the Chief Crown Prosecutor instructed Mr Greaney to write a detailed report on the collapse of the murder trial and the safety of the robbery convictions. On 14th December the claimants' solicitors, who were still unaware of the foregoing, sent a detailed letter with a significant amount of supporting documentation to the AG. At the same time as Mr Greaney was preparing his report, West Yorkshire Police commissioned DCI Stevenson to provide a report into the original police investigation.

14. On 5th April 2016 Mr Greaney provided his provisional view on the safety of the robbery convictions to the DPP. He indicated that he wished to consider DCI Stevenson's report once it was available before reaching a concluded view. A prosecution disclosure review was also carried out by Mr Ben Campbell, junior counsel in the retrial proceedings.

15. On 21st September 2016, Dennis Slade lodged an appeal against conviction on the robbery indictment on the single ground that bad character evidence, namely the convictions on the murder indictment which were subsequently quashed, had been wrongly admitted in the 2010 trial, rendering his convictions on this indictment unsafe.

16. On 24th September 2016, DCI Stevenson's final report into the police investigation was provided to the CPS, and later to Mr Greaney.

17. On 28th December 2016, Mr Greaney concluded his 75-page report for the DPP and it was sent to the AG on 16th January 2017.

18. On 27th February 2017, the AG wrote to Globe J in the following terms:

> "As you acknowledged in your letter, prosecutors act independently of me and therefore it is an unusual step for a case to be referred to me. … Self-evidently something went seriously wrong in this case. … Notwithstanding the independence of the CPS, as the minister accountable for its work, it is right that where significant concerns are raised, I should consider whether a separate review of the case is needed.
>
> I have seen a detailed report about what happened in the conspiracy to murder case from Paul Greaney QC on behalf of the CPS. The CPS has also identified a number of training and policy issues which will be addressed as a result of what happened in this case to ensure that similar issues do not arise in other cases.
>
> I am satisfied that both prosecution counsel and the CPS have taken what happened in this case very seriously and changes to CPS procedures have been introduced as a result. I have written to the Home Secretary so that she can consider whether any further review needs to be conducted of the police actions or procedures.

> …
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> Having considered the factors set out above, I have concluded that there is no need for me to ask for a separate review of these cases."

A copy of this letter was provided to the claimants' solicitors. On the same day Ms Michelle Crotty, Deputy Legal Secretary and Head of Operations at the AG's Office, wrote in similar terms to the claimants' solicitors save that the final paragraph from the above citation was omitted, albeit she added that the AG would "consider any further representations".

19. On 28th February Globe J acknowledged receipt of the AG's letter and "noted" its contents. This was subsequently copied by the AG's office to the claimants' solicitors.

20. On 9th June 2017, the claimants issued this claim for judicial review. It is unnecessary to set out the history of these proceedings to date, save to record that, following the without notice PII hearing on 9th May 2018, the claimants' application for disclosure of Mr Greaney's and DCI Stevenson's reports was dismissed by the Divisional Court (Sir Brian Leveson P, Jay and McGowan JJ) on 17th May: see [2018] EWHC 1451 (Admin). On 1st November 2018, the Court of Appeal (Civil Division) (Sharpe and Simon LJJ) refused permission to appeal although whether there was jurisdiction to hear the appeal on the basis that it was a criminal cause or matter is now open to question: see *R* (*Belhaj*) v *Director of Public Prosecutions* (*No. 1*) [2018] 3 WLR 435.

21. On 6th November 2018, Dennis Slade's criminal appeal was listed for a directions' hearing before the Court of Appeal (Criminal Division). It was on this occasion that I recused myself from hearing the substantive criminal appeal: this was on the basis that I had seen the report to the AG which impacted on the merits of the criminal prosecution which was the subject of that appeal. The claimants rely on the fact that, at that hearing, it was also contended that DCI Stevenson had played what they describe as "an active role" in their arrests. Mr Greaney informed the Court that he had not been previously made aware of that information; in any event, it is in issue.

22. On 15th November 2018, the AG published his *Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System* in which it was noted that:

> "Cases that collapse or are stayed and convictions that are quashed because of serious deficiencies in disclosure are fair neither to the complainant and the defendant nor to the public and they undermine confidence in the administration of criminal justice."

The Claimants' Grounds

23. The claimants advance three judicial review grounds. These were not clearly outlined in the Summary Grounds filed in June 2017 and no Detailed Grounds have ever been filed. In fact, the claimants' developed case appears for the first time only in a skeleton argument originally filed on 29th November 2017 and updated for the purposes of this substantive application (unhelpfully, Ms Hirst's recent skeleton

argument still bears the November 2017 date). Despite these procedural failings, I will address the claimants' case in its most recent iteration.

24. The three grounds are as follows:

(1) the AG's decision not to review the prosecution of the claimants was an improper and irrational delegation of his public interest superintendence function.

(2) the AG's decision was inadequately reasoned.

(3) the procedure adopted by the AG was unfair in that no opportunity was afforded to the claimants to make meaningful representations before arriving at the impugned decision, and the AG relied indirectly on material which was said to be independent, namely DCI Stevenson's report, but was not.

25. In developing her first ground, Ms Hirst submitted that it was incumbent on the AG to exercise his discretionary power to review the actions of the prosecution agencies in a manner independently of those agencies. This was an extremely unusual case and the letter from Globe J to the AG was unequivocal evidence of that fact. Ms Hirst submitted that the AG failed to take all reasonable steps to inform himself fully and in a balanced way, did not himself review any of the underlying material, that his consideration of the case was confined to reading the product of Mr Greaney's work, and that he ultimately did not ask himself the right question and properly balance the public interest. It follows, submits Ms Hirst, that the AG delegated his superintendence function, and that in that regard it was an irrational and unlawful exercise of his discretion.

26. As for the second ground, Ms Hirst submitted that the particular circumstances of the instant case – a review in the public interest – called for more than the limited reasons set out in the AG's letter to Globe J or Ms Crotty's witness statement dated 8th February 2018.

27. In developing her third ground, Ms Hirst submitted that the question of whether a fair procedure was adopted is one for the Court itself to determine and is not subject to *Wednesbury* review. At all material times before February 2017, the claimants were unaware of the role of Mr Greaney or DCI Stevenson, and their reports have been withheld. It is said that the claimants therefore did not have an adequate opportunity to address the AG's concerns or to make effective representations in favour of a review. Further, Ms Hirst expressed concern that both Mr Greaney's report and the AG's decision not to review the prosecution were based in part on a police report that was thought to be independent of the investigation but was not.

Discussion

28. Tom Little QC for the AG has conceded for the purposes of these proceedings only that his client's decision is amenable to judicial review. He wished to defend this application on its merits leaving for another occasion the possibility of contending that this court lacks jurisdiction to address this sort of public law challenge.

29. Section 3 of the Prosecution of Offences Act 1985 provides:

> "**Functions of the Director**
>
> (1) The Director shall discharge his functions under this or any other enactment under the superintendence of the Attorney General."

30. The *Protocol between the Attorney General and the Prosecuting Departments*, published in July 2009, provides insofar as is material:

> "**Superintendence of casework**
>
> 4(d)1. As set out at the opening of this section, the Attorney General will have no involvement in the vast majority of cases. And as set out at 2.4 above, the Attorney General is responsible for safeguarding the independence of prosecutors taking decisions whether or not to prosecute in individual cases.
>
> 4(d)2. The Attorney General's responsibilities for superintendence and accountability to Parliament mean that he or she, acting in the wider public interest, needs occasionally to engage with a Director about a case because it:
>
> - is particularly sensitive; and/or
> - has implications for prosecution or criminal justice policy or practice; and/or
> - reveals some systemic issues for the framework of the law, or the operation of the criminal justice system.
>
> 4(d)3. In these circumstances the Attorney General will be alerted to a case by the Director at the earliest opportunity, or may call for information about a case, or will discuss the case with the Director. The Director will keep the Attorney General informed as significant developments occur. The Attorney General may express any concerns. The decision in these cases remains the Director's.
>
> 4(d)4. Directors may raise with the Attorney General for advice or discussion any cases, except those at 4(c) above [not applicable] at any time …"

31. Ms Hirst submitted that the Protocol is inapplicable because the instant case falls outside the ambit of "casework". In my opinion, that submission takes an overly narrow view of that concept and overlooks the breadth of paragraph 4(d)2. In any case, it is difficult to see how that submission avails her because the AG's assessment of the balance of the public interest is ultimately a matter for him, subject only to the *Wednesbury* considerations I address below.

32. I might add that the *Protocol* expands on *Pretty v DPP* [2001] EWHC 788 (Admin), paragraph 17. The superintendence role includes responsibility for prosecution policy in general and for the overall effectiveness of agencies such as the CPS.

33. Ms Hirst makes no criticism of the conduct of Mr Greaney either during the retrial or subsequently, nor does she maintain that it was wrong to obtain information from him which was relevant to the AG's decision. Her criticism is that this could not be material on which the AG could properly or rationally place *sole* reliance in deciding whether the public interest required an independent review.

34. However, formulating her case in this way immediately exposes its fundamental difficulty. The letter from Globe J in November 2015 did not require the AG to carry out an investigation, still less one in any particular form; given the separation of powers, it could not, in any event, have been couched in such terms. Globe J was merely inviting the AG to consider how to respond to the collapse of a criminal trial involving offences of the utmost seriousness in what, on the face of it, were troubling circumstances.

35. In response to Globe J's invitation, it is clear from paragraph 8 of Ms Crotty's witness statement dated 8th February 2018 that a decision was made involving both the AG's Office and the Chief Crown Prosecutor to instruct Mr Greaney to carry out a detailed review. Ms Crotty also informs the Court that there were discussions between the AG and the DPP on two occasions in December 2015 and on 28th January 2016. It follows that this case was considered at the highest possible level. As Ms Crotty states, the reason why Mr Greaney was instructed was that he was very familiar with the detail of the case, and the trial judge had made no criticism of him in any way.

36. Thus, the initial decision to instruct Mr Greaney cannot be impugned. Ms Hirst cannot submit that *at that stage* there was any impermissible delegation of the AG's superintendence function or that there was insufficient inquiry: c.f. *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014. In any event, it is obvious that the claimants are now out of time to challenge the decisions made in late 2015; and no extension of time has been sought whether because of lack of knowledge or for any other reason.

37. Moving forward to February 2017, the AG gave consideration *at that stage* to the question whether to ask for a separate review. Plainly, this was a decision made against the backdrop of Mr Greaney having provided a lengthy report which led to changes in CPS procedures. The question for the AG was whether in these circumstances anything *further* should be done in the exercise of his superintendence function.

38. Taking this in stages, Ms Hirst cannot (and does not) challenge the rationality *per se* of the AG's decision not to do anything further. Deprived of the underlying documentation, it was impossible for Ms Hirst to advance such a contention. In any event, however, there are almost insuperable legal obstacles confronting such an argument at the level of principle. It is well established that the circumstances in which this Court will intervene in relation to prosecutorial decisions are very rare indeed, the principle of the separation of powers leading, as Sir John Thomas P (as he then was) put it in *L v DPP* [2013] EWHC 1752 (Admin) (at [7]) to the adoption of a "very strict self-denying ordinance". The most authoritative statement of this

principle has been given by Lord Bingham of Cornhill in *R (Corner House Research) v SFO* [2009] 1 AC 756:

> "30. It is common ground in these proceedings that the Director is a public official appointed by the Crown but independent of it. He is entrusted by Parliament with discretionary powers to investigate suspected offences which reasonably appear to him to involve serious or complex fraud and to prosecute in such cases. These are powers given to him by Parliament as head of an independent, professional service who is subject only to the superintendence of the Attorney General. There is an obvious analogy with the position of the Director of Public Prosecutions. It is accepted that the decisions of the Director are not immune from review by the courts, but authority makes plain that only in highly exceptional cases will the court disturb the decisions of an independent prosecutor and investigator: *R v Director of Public Prosecutions, Ex p C* [1995] 1 Cr App R 136 , 141; *R v Director of Public Prosecutions, Ex p Manning* [2001] QB 330 , para 23; *R (Bermingham) v Director of the Serious Fraud Office* [2007] QB 727, paras 63–64; *Mohit v Director of Public Prosecutions of Mauritius* [2006] 1 WLR 3343, paras 17 and 21 citing and endorsing a passage in the judgment of the *Supreme Court of Fiji in Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 735–736; Sharma v Brown-Antoine [2007] 1 WLR 780, para 14(1)-(6). The House was not referred to any case in which a challenge had been made to a decision not to prosecute or investigate on public interest grounds.
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> 31. The reasons why the courts are very slow to interfere are well understood. They are, first, that the powers in question are entrusted to the officers identified, and to no one else. No other authority may exercise these powers or make the judgments on which such exercise must depend. Secondly, the courts have recognised (as it was described in the cited passage from *Matalulu v Director of Public Prosecutions*)
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> > "the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits."
>
> Thirdly, the powers are conferred in very broad and unprescriptive terms."

39. In my judgment, the present case is *a fortiori* that of *Corner House Research*. This is because, as Lord Bingham makes clear, the superintendence of the AG is one stage removed from prosecutorial decisions made on a case-by-case basis. If the latter are justiciable only in exceptional cases, this must be all the more so in a situation where the AG was deciding whether or not to undertake further inquiry in a case where a

detailed investigation had already been carried out under the aegis of the DPP. In that regard, it is worth adding that this was an investigation which neither the DPP nor the AG was under any duty to perform.

40. In my judgment, these fundamental hurdles cannot be successfully surmounted by the argument put before us by Ms Hirst to the effect that there has been a delegation of function, or an inadequate inquiry. In deciding whether to undertake further inquiry in February 2017, the AG did not delegate his superintendence function to anyone; he made that decision himself, taking into account, as he was entitled to, the work that had already been done. Moreover, it is not arguable that the AG failed to undertake proper inquiry (per *Tameside*): his obligation was, and is, to superintend; and, pursuant to that obligation, bring about further inquiry only if, in his estimation, the need arose.

41. On the face of the letter to Globe J (see paragraph 17 above), the AG did ask himself the right question: whether further inquiry or investigation was necessary in the public interest. Ms Hirst objects that these last four words are missing from the actual text, but that submission flies in the face of reality and common sense. Whether the letter to Globe J is consistent with other evidence available to us raises a separate question which I address below in relation to the second ground.

42. In reality, therefore, Ms Hirst's submissions on her first ground impermissibly elide the two stages in the relevant decision-making process: the first stage, in conjunction with the DPP, was to instruct Mr Greaney to prepare a report; the second stage, taken without reference to the DPP, was to leave the matter there and take no further steps. For all these reasons, I reject the claimants' first ground.

43. As to the second ground, the AG gave brief reasons in the letter under challenge explaining why a further review was in his opinion not required. At paragraphs 10 and 15 of her witness statement Ms Crotty has supplemented these as follows:

> "10. It was the Defendant's view that a further review at that stage was not required because (a) the fundamental reason for the failure of the Prosecution did not relate to the actions of those coming within the Defendant's superintendence function (b) Paul Greaney QC had addressed all the issues requiring consideration and (c) in addition to the Paul Greaney QC review there had been the additional investigation/review by a Detective Chief Inspector and Ben Campbell. In addition, given the content of Paul Greaney QC's documentation, there was no need to consider the recordings of the PII hearings before Globe J. However, the Defendant did not raise his concerns in writing with the Secretary of State for the Home Department.
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> …
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> 15. Second, the Defendant has considered whether any additional reasons can be given for his decision. I am authorised by the Defendant to confirm that the documentation reveals that the collapse of the retrial was not due to the actions of Prosecution counsel or of the Reviewing Lawyer but was a

> failure of the disclosure process on the part of the investigators. It was in those circumstances that the decision was made by the Defendant that there was no need for further review. The issues that had caused the collapse of the case were therefore not those covered by the Defendant's superintendence function and it was in those circumstances that the Defendant wrote to the Secretary of State for the Home Department."

44. Ms Hirst submitted that the "additional reasons" set out in Ms Crotty's witness statement are inconsistent with those contained in the February 2017 letters, and in any event that fairness required considerably more. She referred to well-known authority on the duty to give reasons for administrative decisions: *R v Secretary of State, ex parte Doody* [1994] 1 AC 531, *R v Higher Education Funding Council, ex parte Institute of Dental Surgery* [1994] 1 WLR 242 and *Stefan v GMC* [1999] 1 WLR 1293. She did not draw our attention to the most recent decision of the Supreme Court on this topic, namely *Dover District Council v Campaign to Protect Rural England* [2017] UKSC 79, [2018] 1 WLR 108. The Supreme Court reaffirmed the principle that there was no general duty to give reasons for administrative decisions but that such a duty could arise where fairness demanded it. In a planning context, this might be whether a planning committee disagreed with an officer' report.

45. There was some limited force in the submission that paragraphs 10 and 15 of Ms Crotty's witness statement say something slightly different from the AG's letter to Globe J, and for that reason I invited Mr Little to assist us on that issue. I accept his submission that there is no inconsistency. The fundamental reason for the collapse of the trial was the disclosure failures perpetrated by those for whom the AG is not responsible. However, Mr Greaney's report did reveal a number of training and policy issues for the CPS which the AG stated "will be addressed". These issues, as paragraph 10(b) of Ms Crotty's witness statement suggests, were on the AG's bailiwick. He said that he had written to the Home Secretary to draw her attention to the disclosure failures which were her ultimate responsibility. It was a combination of these two factors which led the AG to conclude that a separate review was not needed in the public interest.

46. I should point out that this aspect of Ms Hirst's argument was in danger of proving too much. She could hardly be in a better position in these proceedings if Mr Greaney's report had revealed no significant concerns in relation to the CPS.

47. Turning now to the substance of the reasons challenge, it is unnecessary to decide whether the AG was under any duty to give reasons for his decision not to undertake further inquiry in the circumstances of this case. On any view, this was not a situation where he was under a statutory duty to give reasons; the issue pertains to the existence and extent of his common law duty. Assuming in Ms Hirst's favour that a duty existed, the real question is whether what is set out in the Attorney General's letter dated 27th February 2017, as supplemented in Ms Crotty's witness statement, is sufficient to enable the claimants to understand the basis for the adverse decision and bring judicial review proceedings if so advised. The common law does not require reasons to be ample and detailed, just adequate. In my judgment, the reasons set out in both documents meet that standard. It is quite clear to me, as it must be to the claimants, why the AG has decided to take no further action. The fact that the

claimants have not seen the underlying material, and that I am excluding it from consideration, does not, of course, raise a reasons challenge.

48. Ms Hirst also appears to be placing some reliance on the Report of the House of Commons Justice Committee published on 17th July 2018. Putting to one side matters of Parliamentary privilege, it is inadmissible as post-dating the AG's decision. It thus follows that the claimant's second ground must be rejected.

49. As for the third ground, the short answer to it is that the claimants were afforded an opportunity to make "meaningful representations" on the matters set forth in Globe J's letter, and they availed themselves of it. The claimants' real complaints are that they were not afforded an opportunity to make representations on Mr Greaney's briefing note and report, or on the AG's decision (prior to it being issued) not to undertake further inquiries in the light of that material. Put in these terms, the fallacy underlying the claimants' case is clearly revealed. In May, this court decided that the claimants should not have disclosure of the Greaney materials, or of any gist of them, in these judicial review proceedings, and the DPP's PII objections have been upheld. The claimants' fairness argument cannot begin to start if they have no right to see the underlying material.

50. Furthermore, the present case is not in the category of cases where a decision-maker, bound by the highest standards of fairness, should be required to convey his provisional view to the affected party before reaching any final decision: c.f. *Secretary of State for the Home Department v Thirakumar* [1989] Imm AR 402 at 414, and the special principles which applied to asylum cases before the statutory right of appeal was introduced. I return to what I said earlier: the AG's decisions in this domain are only amenable to judicial review in exceptional circumstances.

51. Although not the subject of oral submissions, in her written argument Ms Hirst also relies on DCI Stevenson's lack of independence which, she submitted, supports her case on unfairness. The evidential basis for Ms Hirst's submission is strongly contested by the DPP (see the witness statements of DCI Stevenson dated 26th November 2018 exhibited to the statement of Nigel Gibbs from the CPS dated 10th December 2018), but it is both unnecessary and undesirable for this Court to enter this debate, still less to rule upon it. As the AG contends, this report was not determinative of the decision not to hold an independent review (his responsibility not extending to the police) but was relevant to the consideration of the prosecutor in relation to the appeal which remains outstanding. Whether or not Mr Slade wishes to develop this point in his criminal appeal, the short answer to Ms Hirst's submission is that the AG was entitled to conclude that no further investigation or inquiry was required on the facts known to him in February 2017; post-decision evidence of this sort cannot bolster the claimants' case.

Conclusion

52. It is for these reasons that, in relation to each of the grounds argued, we dismissed the application for judicial review.

JAY J :

53. I agree.