

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 19th April 2021

Before:

HH JUDGE EYRE QC

Between:

THE QUEEN
(on the application of ANTHONY ROSE)

Claimant

- and -

**THE CHIEF CONSTABLE OF GREATER
MANCHESTER POLICE**

Defendant

Victoria Ailes (instructed by **Edmonds Marshall McMahon**) for the **Claimant**
Remi Reichhold (instructed by **Siân Williams**) for the **Defendant**

Hearing date: 26th March 2021

JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time of hand-down was 2.00pm on 19th April 2021

HH Judge Eyre QC:

Introduction.

1. On 12th July 2017 the Claimant made a complaint to the Independent Police Complaints Commission (“the IPCC”). Although made in 2017 the complaint has been referred to by the Claimant as “the 2018 Complaint”. That was because it was formally recorded in 2018 and to distinguish it from the Claimant’s other complaints. I will adopt that designation of it. The 2018 Complaint related to the Greater Manchester Police and the IPCC accordingly sent it back to the Defendant. It was then addressed through the local resolution process and closed without further action. The Claimant appealed against that outcome contending that local resolution was not appropriate and that his complaint met the criteria for mandatory referral to the Independent Office of Police Complaints (“the IOPC”) as the IPCC had become¹. On 2nd October 2019 Appeals Officer Brennan rejected that appeal and concluded that local resolution of the complaint had been appropriate. The Claimant seeks judicial review of that decision pursuant to permission given by HH Judge Stephen Davies.
2. The Claimant’s central contention is that Appeals Officer Brennan’s decision (“the Decision”) was wrong in law because the 2018 Complaint was a complaint of serious corruption. As such it had satisfied the criteria for mandatory referral to the IPCC when it was made in July 2017 and consequently it should have been referred to the IOPC as a result of the appeal. The Defendant disputes this contending that the decision was lawful and that referral to neither the IPCC in July 2017 nor the IOPC in October 2019 was mandatory in the circumstances here. The central issues between the parties concern the proper interpretation of paragraph 4 of Schedule 3 of the Police Reform Act 2002 (“the PRA”) and of regulation 4 of the Police (Complaints and Misconduct) Regulations 2012 (“the Regulations”) and the application of those provisions to the 2018 Complaint.

The Claimant’s Complaints and their Treatment.

3. The Claimant was formerly an owner of R & H Roberts, Bakers, Butchers and Confectioners. That business operated a bakery and butchers’ shop in Wigan. In early 2014 the Claimant came to suspect that staff members were stealing money and goods from the business. He reported those concerns to Greater Manchester Police and an investigation followed. The investigation was principally conducted by PC Davies but other officers were also involved. The matter was considered by the Crown Prosecution Service on a number of occasions with further evidence being provided by the police officers as their investigations proceeded. However, the CPS repeatedly concluded that there was no realistic prospect of the conviction of any of the suspects and no prosecution was commenced. The consideration of the matter by the CPS concluded in May 2016 when the Claimant’s invocation of the Victim’s Right of Review process resulted in the CPS upholding the decision not to prosecute.

¹ In this judgment I will normally refer to the IPCC when addressing the events before 2nd October 2019 and when setting out the relevant law and to the IOPC when considering the decision of 2nd October 2019 and the events thereafter but nothing turns on the change of name.

4. The Claimant came to believe, and still believes, that the investigation was influenced by the fact that the suspects included the wife and mother of a serving police officer with other suspects being friends of those persons and of the officer. The Claimant believes that this meant that relevant evidence had been deliberately withheld from the CPS and potentially relevant lines of inquiry were not pursued.
5. It was those concerns which prompted the Claimant to make his first complaint on 31st May 2016 (“the 2016 Complaint”). In that complaint the Claimant said that the officers had deliberately withheld “crucial evidence” including CCTV footage and witness statements. He said that the evidence in question had related to “a policeman’s mother, his wife, and a friend of all 3 suspects” asserting that Greater Manchester Police had “practiced nepotism and thereby corrupted the case”. The letter set out the following matters on which Mr. Rose sought a full review:
 - “Evidence on the Policeman's Wife Withheld
 - Policeman's Mother given preferential treatment
 - Significant statements withheld.
 - Evidence Tampered with in Police Custody
 - CPS deliberately misled due to GMP withholding information.
 - The Professionalism of the Officers involved.
 - ALL the relevant evidence not watched and/or collated
 - Accomplices not arrested/charged.
 - The CPS deliberately misled over the quality of the CCTV footage
 - Witnesses not interviewed.
 - Critical other evidence withheld.”
6. The Claimant then listed five police officers based at Leigh police station saying that he wished to raise complaints about their “professional standards”.
7. The complaint was sent to the IPCC but was then forwarded by that body to the Defendant. The Defendant’s Professional Standards Branch then referred the matter to Chief Inspector Jones of the Manchester force’s Wigan Division for him to review the 2014 investigation. On 5th August 2016 CI Jones wrote to the Claimant setting out the results of his review. CI Jones concluded that the complaint should be closed with no further action being taken. Mr. Jones said that “all necessary statements” had been taken and had been put before the CPS; that (following the involvement of the Cheshire Constabulary Professional Standards Branch) “no evidence was substantiated to suggest collusion due to family links with a police service”; and the material which the Claimant had provided did not justify either the reopening of the investigation into the alleged thefts or further review of the manner of that investigation.
8. The Claimant appealed against the decision of CI Jones and on 8th November 2017 Appeals Officer Brennan dismissed that appeal. In his decision letter Mr. Brennan said that he considered that the complaint had been suitable for local resolution because the conduct complained of would not justify bringing

criminal or disciplinary proceedings against the officers involved. Having concluded that local resolution was appropriate Appeals Officer Brennan then concluded that the decision reached by CI Jones had been correct noting that:

“There is no evidence from the entries recorded on the action board of the ROC [report of crime] to support allegations of improper conduct by police investigators”.

9. In the meantime on 12th July 2017 Mr. Rose had made the 2018 Complaint.
10. It is necessary to consider the terms of that complaint in some detail. It was entitled “Greater Manchester Police and Crime Number 020729P/14 [that being the crime number of the original investigation]” and “C I Jones and complaint reference Y665/16 [the reference of the first complaint]”. Mr. Rose began the letter by saying that he was writing about “the above crime and resulting complaint”.
11. The complaint then rehearsed some of the correspondence before saying that “there were 5 conspiracies covered up in total”. Mr. Rose described the outcome of CI Jones’s investigation as being “most biased” and that “conveniently” Mr. Jones had not mentioned the tampering with evidence in his “dismissive letter”. He then referred to the copies of the material with which he had been provided and contended that the extensive redactions “show that PC Davies withheld evidence”. Mr. Rose then said:

“First of all, I would like to make a complaint about the Professionalism of C.I Jones. It is not acceptable to just ignore the complainant. Furthermore, I wish to complain about his:

 - Failure to investigate the complaint
 - Making libellous statements in print.
 - Failure to follow procedures.”
12. The Claimant stated “my allegations are very serious” and then he set out a series of bullet point lists of allegations against three officers involved in the original investigation. The lists included allegations that the officers variously:

“Withheld evidence from the CPS
Removed a policeman’s wife from the investigation
Favoured a policeman’s mother
Failed to disclose significant statements
Tampered with evidence
Manufactured a viewing log to deceive the CPS
Lied to the CPS”
13. Mr. Rose criticised the officer in charge of Leigh police station for refusing to meet him and for authorising a police constable to “lead the investigation into

some serious crimes”. The contentions were summed up in the assertion that “far from upholding the law these officers have assisted others in breaking it”.

14. After asserting that his list was not exhaustive and that his allegations are not made lightly or without proof Mr. Rose reverted to commenting on the conduct of CI Jones saying:

“These officers never followed any Act, any Code, any Procedure or any Guideline. C.I. Jones by his inactivity follows suit and fails to follow procedures. He has in fact condoned it.

Indeed C.I Jones has proven my point by ‘circling the wagons’ and protected those officers. The very officers I placed my trust and faith and who in turn perverted the course of justice.”

15. Mr. Rose had made the complaint to the IPCC but on 18th July 2017 that body informed him that it had sent the matter back to Greater Manchester Police. Initially both the IPCC and Greater Manchester Police treated the complaint as being further material in support of the Claimant’s appeal against CI Jones’s decision. The assessment was, however, reviewed and on 21st February 2018 the IPCC told Mr. Rose that the police force was proceeding to treat the complaint “as a new complaint against CI Jones”.
16. The force’s Professional Standards Branch referred the matter to Inspector Coburn, the local Neighbourhood Inspector at Leigh police station, for investigation at the local level. Inspector Coburn determined the matter by way of local resolution setting out his conclusions in a letter of 2nd July 2018.
17. In that letter Inspector Coburn explained that he had assessed Mr. Rose’s main concerns as being: first, that the matter had not been investigated properly; second, that the investigating officers had passed on to the CPS negative comments regarding Mr. Rose’s business practices; and third, that the comments had impacted on the CPS decision not to prosecute. As to the first of those Inspector Coburn noted that this aspect had been considered in the determination of the 2016 Complaint but added that his own investigations had satisfied him that “the matter was recorded and investigated in a proportionate and measured manner”. Inspector Coburn regarded the second concern as relating to the contents of an MG3A form sent by the investigating officers to the CPS. Inspector Coburn concluded that the comments in question amounted to the officers’ general observations and that they were neither deliberately trying to mislead the CPS nor meaning to be disrespectful of the Claimant’s business skills or competence. Finally, he concluded that the comments would not have “seriously impacted” on the CPS decision not to prosecute. In summary Inspector Coburn noted that there was evidence available that the Claimant’s trust had been betrayed by his employees and that it was unfortunate that there was sufficient evidence to warrant a prosecution. He proceeded to apologize for “any additional distress or anxiety” which the comments on the MG3A had caused to Mr. Rose.
18. The Claimant appealed that decision by his letter of 26th July 2018. The appeal took the form of a short letter together with a ten page “Covering Letter” and a document entitled “Complaint” which ran to forty pages and which contained

a mixture of contentions by Mr. Rose; extracts from other documents; and transcripts of conversations between Mr. Rose and some of the officers concerned. The Covering Letter began by saying that the complaint was not suitable for local resolution and did not meet the statutory criteria for local resolution. The Claimant then set out matters under a number of headings.

19. The first was that of “professionalism” the passage in relation to which concluded with the contentions that:

“20. Ch. Insp. Jones breached both his Oath of Office and the Code of Ethics. His behaviour fell well short of the standard expected. This amounts to serious misconduct.

21. Ch.Insp. Jones failed to report improper (criminal) behaviour when faced with overwhelming evidence to prove the officers complained about had perverted the course of justice.

22. Ch. Insp. Jones failed to follow the STATUTORY Guidelines in investigations.

23. Ch.Insp. Jones’s report was false, misleading and inaccurate. His honesty was compromised.

24. Ch.Insp. Jones’s failure to contact complainant ensured the outcome was extremely prejudicial.

25. His inaccurate two-page dismissive letter warranted answers. He failed to respond to the complainant’s two letters requesting information dated 25th August 2016 and 22nd September 2016 respectively. He was insincere and untruthful and his integrity compromised.

26. Covering up the crimes and misconduct of others by Ch. Inspector Jones is tantamount to SERIOUS CORRUPTION and MALPRACTICE.”

20. The next heading was that of “failure to investigate”. In that it was said that CI Jones failed to investigate in a “professional and statutory (sic) compliant manner”; that he “protected officers culpable of malfeasance in public office”; that he “curtailed the investigation”; that he “interfered with the investigation” and “deliberately misled” Mr. Rose. The section concludes by saying that the failure to investigate “amounted to perverting the course of justice”.

21. Under the heading of “libel” Mr. Rose took issue with a reference in CI Jones’s report to the allegedly substandard auditing practices of the business. That section includes an allegation that PC Davies had made false statements about Mr. Rose and had done so deliberately to ensure that the wife of a serving police officer was removed from the investigation. It is then said that CI Jones had facilitated this “by his deliberate inaction regarding the misconduct of PC Davies”.

22. The document then contains a section entitled “failure to follow procedure”. Reference is made there to regulation 4 and it is said that the criteria for mandatory reference to the IPCC had been fulfilled. That passage concluded with a reference to Operation Embley which was said to be an operation investigating corruption in the Metropolitan Police with the corruption having taken the form of interference with investigations against police officers. Mr. Rose said that the similarity between that operation and his complaint against CI Jones was “compelling” and that CI Jones had “ensured that the outcome (sc of his investigation) was prejudiced”.

23. Appeals Officer Brennan made the Decision on 2nd October 2019. He referred to the Guidance and noted that he had to be satisfied that the conduct complained of would not justify bringing criminal or disciplinary proceedings against the officers involved. Mr. Brennan characterised the 2018 Complaint as being about the contents of the MG3A form. He then rejected the appeal setting out his conclusions that the complaint had been suitable for local resolution; that the conduct complained about would not have justified bringing criminal or disciplinary proceedings against the officers involved; and there was “sufficient detail in Inspector Coburn’s letter to resolve [the Claimant’s] complaint.”
24. While awaiting the outcome of that appeal the Claimant had on 30th September 2019 made a further complaint (“the 2019 Complaint”). Mr. Rose sent this to the Defendant. The complaint was headed “Data Protection Act 2018, Tampered till transaction and Personal Data Abuse”. In the body of the complaint the Claimant alleged that PC Davies had tampered with evidence in the original theft investigation by writing on a till receipt. The complaint is not expressed in the most orderly of format but it asserts that PC Davies tampered with the evidence and in particular the till receipt as a result of “collusion” and because the receipt related to a transaction between the potential suspects who were the mother and the wife of a serving police officer. Mr. Rose summarised his complaint thus:
- “1. Rectification of damaging inaccurate data. First requested to you 15th November 2018. Admitted by PC Davies 8th August 2018 and a failure to inform Ch. Insp. Jones in his investigation that his 'generalisations' were never verified, leading to a false accusation of “substandard” business practices by the Chief Inspector.
 2. A till transaction involving a conspiracy between a policeman's mother and wife was tampered with by PC Davies. Scientifically confirmed on 13th September 2019.
 3. A false allegation by the Disclosure Officer Sgt Harrison accusing the victim of evidence tampering. Scientifically confirmed on 13th September 2019.
 4. Serious data breaches by PC Davies on 17th October 2017 (I.C.O. and Three Subject Access requests overly redacted by PC Davies prior) and 26th May 2019 handing over sensitive data belonging to other individuals.”
25. The Defendant concluded that the further complaint met the criteria for mandatory referral to the IOPC on the ground that it alleged corruption and consequently it made that reference on 14th November 2019. On 18th November 2019 the IOPC gave notice of its decision that the matter should be subject to a local investigation and expressed its view that independent oversight was not required at that stage. The investigation was carried out by DC Brady of the Defendant’s Professional Standards Branch. On 1st July 2020 DC Brady informed the Claimant that the complaint had not been upheld annexing a report setting out his conclusions and the reasons for them. On 25th July 2020 Mr. Rose appealed to the IOPC in respect of that conclusion and on 24th August 2020 the IOPC rejected that appeal. The Defendant has contended that even if the Decision was wrong in law section 31 (2A) of the Senior

Courts Act 1981 precludes the court from giving relief because the outcome for the Claimant would not have been substantially different if the error had not occurred. That contention is based on the outcome of the third complaint and to the extent that I conclude any of the grounds relied on by the Claimant is made out it will be necessary to consider the 2019 Complaint and its treatment in rather more detail.

The Grounds of Challenge.

26. The Claimant puts forward four grounds of challenge to the Decision and has permission for each of those but it is the first ground which is the Claimant's principal contention with the others being to varying degrees subsidiary and alternative.
27. The first ground is the contention that the Decision was wrong in law because the 2018 Complaint met the criteria for mandatory referral and should have been referred to the IOPC by Appeals Officer Brennan. The Claimant seeks the quashing of that decision and the ordering of a referral to the IOPC.
28. The second ground is the contention that Appeals Officer Brennan should have concluded that the 2016 Complaint had satisfied the criteria for mandatory referral but had not been referred and that he erred in law in failing so to conclude and in failing to refer that complaint in 2019. In the event that the claim succeeds on ground 1 the Claimant contends that the court should also order that the 2016 Complaint be referred to the IOPC as being a complaint arising from the same incident as the 2018 Complaint.
29. The third and fourth grounds are subsidiary and only fall for consideration if both the first two grounds fail. The third ground is that the Decision was wrong in law because of Appeals Officer Brennan's alleged failure to give adequate reasons for the Decision. Finally, ground four asserts that the Decision was irrational in providing for the investigation of the actions of Chief Inspector Jones by Inspector Coburn who was a more junior officer from the same district.

The Applicable Rules and their Interpretation.

30. Section 13 of the PRA applied Schedule 3 ("the Schedule") and the Regulations to complaints. The Regulations have recently been replaced by the Police (Complaints and Misconduct) Regulations 2020 but the lawfulness of the Defendant's actions is to be determined by reference to the law as it was in October 2019 and there has, in fact, been no change in the wording of the provisions which have replaced those which are relevant here.
31. The complaints process is triggered by the recording of a complaint by the appropriate authority (in the circumstances here the Chief Constable is the appropriate authority). Paragraph 2 (1) of the Schedule provides that if a complaint is made to the IPCC it is to give notification of that complaint to the appropriate authority with a view to the authority making the decision on recording unless the IPCC considers that there are exceptional circumstances which justify such notification not being given (paragraph 2 (2)). Paragraph 2 (8) provides that an appropriate authority is not required to record a complaint

which is within a description set out in the Regulations for that purpose. The description was contained in regulation 3 (2) which provided that an appropriate authority was not required to record a complaint “in the case of which [it] considers that-

- (a) the matter is already the subject of a complaint made by or on behalf of the same complainant;
- (b) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (c) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (d) the complaint is repetitious; or
- (e) the complaint is fanciful.”

32. Paragraph 4 (1) of the Schedule provides that:

“It shall be the duty of the appropriate authority to refer a complaint to the Commission if-

...

(b) the complaint is of a description specified for the purposes of this sub-paragraph in regulations made by the Secretary of State...”

33. Regulation 4 (2) specified the following complaints for the purposes of paragraph 4 (1)(b):

- “(a) any complaints not falling within paragraph 4(1)(a) of that Schedule but alleging conduct which constitutes—
- (i) a serious assault, as defined in guidance issued by the Commission;
 - (ii) a serious sexual offence, as defined in guidance issued by the Commission;
 - (iii) serious corruption, [including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship,] as defined in guidance issued by the Commission;
 - (iv) a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission;
 - (v) a relevant offence, or
- (b) complaints which arise from the same incident as one in which any conduct falling within sub-paragraph (a) or within paragraph 4(1)(a) of Schedule 3 to the 2002 Act is alleged.”

34. The Claimant contends that the 2018 Complaint fell within this definition as being a complaint of serious corruption within the meaning of regulation 4 (2)(a)(iii).
35. The relevant guidance is the Independent Police Complaints Commission Statutory Guidance of May 2015 (“the Guidance”).
36. At paragraph 3.4 the Guidance notes that “the police complaints system is not straightforward or easy to understand, particularly for complainants...”. Then at paragraph 3.9 it defines a complaint thus:
- “A complaint is an expression of dissatisfaction by a member of the public about the conduct of a person serving with the police. This could, for example, be about the way the person has been treated or the service he or she has received. A complaint does not need to be communicated in writing nor does it need to say explicitly it is a complaint. It can simply be a statement of dissatisfaction.”
37. Section 5 of the Guidance addresses the local handling of complaints and at paragraph 5.1 says:
- “The great majority of complaints will not need to be referred to the IPCC and will be handled, at least initially, by the appropriate authority (usually forces themselves). Local handling covers a wide range of activity. Some can be dealt with through local resolution. This is a process which focuses on resolving the complaint in the most appropriate way, and which therefore allows the appropriate authority to work with a complainant to take the necessary action (see below for more detail). However, local resolution cannot be used for complaints that reach a certain threshold of seriousness. Those complaints must be dealt with by a formal local investigation, which may result in disciplinary or criminal sanctions, and carry a right of appeal to the IPCC if the complainant is dissatisfied with the outcome.”
38. Section 8 of the Guidance deals with referral to the IPCC and begins with this statement of principle at paragraph 8.1:
- “Referral to the IPCC is an important part of ensuring public confidence in the independence, accountability, and integrity of the police complaints system.”
39. The mandatory referral criteria set out in the Regulations are repeated in section 8 of the Guidance and the statement of those criteria is followed by paragraph 8.5 saying:
- “Where there is doubt about whether a complaint or recordable conduct matter must be referred, the IPCC encourages referral. The appropriate authority can seek the IPCC’s advice about general policy on referrals or about whether to refer a specific incident or allegation.”
40. At paragraph 8.13 the Guidance defines serious corruption thus:
- “The term serious corruption refers to conduct that includes:
- any attempt to pervert the course of justice or other conduct likely seriously to harm the administration of justice, in particular the criminal justice system;

- payments or other benefits or favours received in connection with the performance of duties amounting to an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months;
- abuse of authority;
- corrupt controller, handler or covert human intelligence source (CHIS) relationships;
- provision of confidential information in return for payment or other benefits or favours where the conduct goes beyond a possible prosecution for an offence under Section 55 of the Data Protection Act 1998;
- extraction and supply of seized controlled drugs, firearms or other material; or
- attempts or conspiracies to do any of the above.”

41. That definition is followed by:

“8.14 The law requires that allegations of serious corruption are referred to the IPCC without delay. It is therefore not appropriate to wait until there is sufficient information to make an arrest.

8.15 Where an allegation of serious corruption is made or potential serious corruption is identified this may require covert investigation. This should not prevent or delay referral to the IPCC.

8.16 The IPCC expects covert cases to be referred if any of the following factors are present:

- reasonable suspicion that a criminal offence has been committed
- the investigation has moved to an operational phase
- covert intrusive tactics are about to be deployed
- the allegations are extremely sensitive or likely to have an adverse impact on public confidence.

8.17 If it is unclear whether any of these factors are present the case should be discussed with the IPCC to establish whether referral is necessary.”

42. Paragraph 5 of the Schedule directs that when a complaint is referred to it by an appropriate authority the IPCC is to determine whether it is necessary for the complaint to be investigated. If the IPCC determines that investigation is necessary then paragraph 15 (2) provides that the IPCC is to determine the form which the investigation is to take and paragraph 15 (4) specifies the permissible forms of investigation as being:

- “(a) an investigation by the appropriate authority on its own behalf;
- (c) an investigation by that authority under the direction of the Commission;
- (d) an investigation by the Commission.”

43. For the Claimant Miss. Ailes contends that the assessment of whether a complaint is a complaint of serious corruption and as such subject to the mandatory referral provisions is to be made by reference to the nature of the conduct alleged in the complaint and does not involve any determination by the appropriate authority of whether the complaint does or does not have substance. Mr. Reichhold says that the assessment is to go beyond mere consideration of the language of the complaint and that the appropriate authority has to make a judgement as to the merits and circumstances of the complaint so as to determine whether the criteria for a mandatory referral are met.
44. I am satisfied that the Claimant's interpretation of these provisions is correct. The appropriate authority is to look at the conduct which is alleged in the complaint and consider whether that conduct, if substantiated, would constitute serious corruption as defined in the Guidance. If it would then the criteria for mandatory referral are met. The appropriate authority is not at that stage to consider the merits of the complaint but instead to focus on the nature of what is being alleged. Whether the conduct alleged falls within the definition is a matter of objective interpretation of what is being alleged by reference to the definition. It will not be sufficient for a complainant simply to say that "serious corruption" is alleged but once a complainant goes beyond that and alleges particular conduct then the assessment is to be whether such conduct if substantiated would fall within the scope of the definition in the Guidance.
45. That conclusion follows from both the wording and the purpose of the provisions governing referral to the IPCC.
46. In considering the wording of the provisions I find the language of regulation 4 (2)(a)(iii) to be clear namely that there is to be referral of "any complaints ...alleging conduct which constitutes serious corruption" (emphasis added). The focus is to be on the conduct as alleged. It is to be noted that the complaint in question will already have been recorded so the appropriate authority will not have exercised its power to decline to record the complaint by reference to paragraph 2 (8) and regulation 3 (2). It follows that the complaint will not be one which the appropriate authority considers to be vexatious, repetitious, or fanciful. The contrast between the language of regulation 3 (2) and that of regulation 4 (2) is significant. Complaints falling within the former provision are those "which the appropriate authority considers" meet certain criteria. Consideration of whether a complaint is vexatious, oppressive, abusive, or fanciful inevitably requires consideration of the merits of the complaint. By way of contrast regulation 4 (2) does not provide that the complaints specified for the purposes of paragraph 4 (1)(b) of the Schedule are those which the appropriate authority considers fulfil the relevant definitions. Instead it says that the specified complaints "are" those listed. Thus I come back to the point that the relevant complaint is one which is "alleging conduct which constitutes" (for these purposes) "serious corruption".
47. The same conclusion follows when one considers the importance and purpose of referral to the IPCC as explained in the Guidance. Thus paragraph 8.1

emphasises the importance of referral to the IPCC in ensuring public confidence in the police complaints system. Paragraph 8.5 encourages referral in cases of doubt. Paragraph 8.14 explains that “allegations of serious corruption are to be referred to the IPCC without delay” adding that it is “not appropriate to wait until there is sufficient information to make an arrest”. There will be sufficient information to make an arrest if there is material giving grounds for reasonable suspicion of an offence having been committed and so the direction that the appropriate authority is not to wait until it has such information is a strong indication that the focus is to be on the nature of the allegation rather than its merits. The same indication is given by the direction in paragraph 8.15 that the need for covert investigation is not to prevent or delay referral to the IPCC. The effect of paragraphs 5 and 15 of the Schedule are also of note in this regard. Paragraph 5 provides for the IPCC to determine whether or not it is necessary for the complaint to be investigated and paragraph 15 provides for the IPCC to determine (within the prescribed forms) the way in which the complaint is to be investigated with provision for such investigation to be by the appropriate authority. Those provisions are a potent indication that the determination of whether a complaint alleging serious corruption merits investigation is to be a matter for the IPCC and not for the appropriate authority.

48. Mr. Reichhold mounted a strenuous opposition to that interpretation but I did not find his arguments persuasive when seen in the light of the language and purpose of the provisions for the following reasons.
49. Mr. Reichhold contended that the reference in regulation 4 (2)(a)(iii) to “serious corruption” necessarily required the appropriate authority to assess whether the complaint had substance because there needed to be an assessment of the gravity of the alleged conduct. That argument overlooks the opening words of the regulation which refer to a complaint alleging conduct constituting serious corruption. More significantly it fails because the regulation refers to “serious corruption ... as defined” in the Guidance. At paragraph 8.13 the Guidance defines “serious corruption” with the consequence that there is no need for the appropriate authority to make a separate assessment of the gravity of what is alleged provided it otherwise comes within that definition. In that regard it is to be noted that “any” attempt to pervert the course of justice is within the definition with the consequence that there is to be a referral regardless of the seriousness or gravity of such an attempt. Similarly, the reference in that paragraph of the Guidance to “other conduct likely seriously to harm the administration of justice” does not require an assessment of the merits of the complaint. It does require consideration of the likely consequences of the conduct alleged but that is a matter of the objective assessment of those consequences rather than of the merits of the allegation.
50. It is relevant, in Mr. Reichhold’s submission, that the mandate of the IPCC is limited to investigation of only the most serious complaints against the police. Mr. Reichhold deduced that proposition from the limited categories set out in regulation 4 (2)(a) and from paragraph 5.1 of the Guidance with its indication that the “great majority of complaints will not need to be referred to the

IPCC”. It is true that the Guidance contemplates that only a limited number of complaints will be referred to the IPCC. I do not, however, derive any assistance from that fact when interpreting the definitions in the Guidance of those matters which are to be referred. Still less do I accept that this is a factor which should cause the Regulations or the Guidance to be interpreted as providing for an assessment of the merits of a complaint (other than by way of the decision as to the recording of the complaint) with a view to determining whether it is or is not within the category referral of which to the IPCC is mandatory. In addition and even without making reference to the Schedule or the Guidance an allegation of corruption by police officers must be regarded as a serious matter and the limitation of references to the IPCC to serious matters would not without more preclude all complaints of corruption being seen as suitable for referral.

51. Mr. Reichhold drew attention to paragraph 8.17 of the Guidance with its contemplation of cases where it was “unclear whether any of these factors” were present and where it would be appropriate for the appropriate authority to consult with the IPCC to establish if referral was necessary. Mr. Reichhold contended that this should be read as indicating that there would be cases where it was unclear whether the threshold for serious corruption had been met. I disagree. Although the language could have been more tightly drawn I am satisfied that the words “these factors” in paragraph 8.17 refer back to paragraph 8.16. It is said there that the IPCC expects covert cases to be referred “if any of the following factors are present” and four factors are then listed. The uncertainty contemplated in paragraph 8.17 is in relation to the presence of those four factors and not as to whether the complaint is one of serious corruption.
52. Mr. Reichhold supported his contentions by drawing an analogy with the approach adopted by Sweeney J in *R (Yavuz) v Chief Constable of West Yorkshire* [2016] EWHC 2054 (Admin), [2017] PTSR 228. Sweeney J was there concerned with the operation of paragraph 19B of the Schedule. Paragraph 19B addressed circumstances arising in the course of the investigation of a complaint and provided at (1):

“If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have (a) committed a criminal offence, or (b) behaved in a manner which would justify the bringing of disciplinary proceedings, the person investigating must certify the investigation as one subject to special requirements.”
53. If the investigation was found to be one subject to special requirements then the person investigating was required to take further steps including checking the disciplinary record of the officer concerned; giving notice to the officer; and considering suspension.
54. In *Yavuz* the reviewing officer overseeing the investigation had concluded that certification was not required. The judicial review proceedings were brought on the basis that there should have been such a certification. The claimant there contended that the threshold was a low one. Although he accepted that it

would be open to the reviewing officer to conclude that the complaint was totally without foundation he said that could only be done in the clearest of cases and that the starting point for determining whether certification was appropriate should be to take what was said in the complaint as true. He contended that in the particular case the conclusion that certification was not merited was not open to the reviewing officer.

55. The defendant there had asserted that the paragraph 19B exercise required an assessment of the merits of the complaint which was not to be taken at face value. He included amongst the instances of matters which ought not to be certified (see [79]):

“An allegation of corruption against a senior officer when the complainant has a history of making false complaints against officers, there is no independent evidence to support the complainant’s assertions, and the allegations appear to be without foundation.”

56. Sweeney J concluded that the determination under paragraph 19B involved an exercise of judgement by the officer concerned which was to be undertaken in the light of the circumstances and the evidence with a view to seeing if the assertion in the complaint was undermined by other evidence or was inherently unlikely. Thus at [142] he said:

“The use of the words “appears”, “an indication” and “may” in paragraph 19B(1) are clearly intended to ensure that the threshold is a relatively low one. However, paragraph 19B(1) does not limit the application of the test to the face of the complaint, and the guidance makes clear that it is not so limited; which is also consistent, in my view, with the position in relation to exemption from recording. Applying, for example, the 2015 version of the IPCC Statutory Guidance, the IO is entitled to consider the circumstances and evidence available at the time, and whether or not a bare assertion is undermined by other material or is inherently unlikely. That fits in with the likelihood that, in accordance with the duty to obtain and retain evidence as soon as practicable, surrounding evidence will be available, if not from the outset (as in this case), then at a very early stage.”

57. At [144] Sweeney J said that it “would indeed be a nonsense” if certification was required in the kind of situations postulated by the defendant which had included the baseless corruption allegation referred to at [79] in his judgment.

58. Mr. Reichhold contended that the decision in *Yavuz* was of assistance in interpreting the provisions with which I am concerned and that it was of note in showing that even when an allegation of corruption was being made the complaint was not to be taken at face value and that an element of judgment including consideration of the circumstances was required.

59. I do not derive any assistance from the approach adopted in *Yavuz*. The fact that a decision for the purposes of paragraph 19B involves an assessment of the merits does not assist in determining what is required for the purposes of paragraph 4 and regulation 4. Not only is the wording of the provisions different but even more significant is the stage in the process at which the decision is being made. The paragraph 19B decision is one which is expressly to be taken “during the course of the investigation”. What is envisaged is the

investigating or reviewing officer obtaining evidence and forming a view on that evidence as the investigation progresses. The provision contemplates the material obtained causing the officer to form a view which in turn triggers the certification requirement. It is apparent that this influenced Sweeney J in reaching the conclusion which he did. This can be seen from the closing sentence of [142] but even more so from [149] and [150] where Sweeney J summarised the material which was available at the time the paragraph 19B decision was made and accepted the defendant's submission that this was material which undermined the claimant's account. The question of referral to the IPCC arises at a much earlier stage in the complaints process and before any investigation is underway. Indeed, the purpose of the referral is to determine by whom the investigation is to be undertaken and the considerations relevant to how that decision is to be taken are very different from those governing decisions taken in the course of an investigation.

60. Mr. Reichhold also referred me to the decision of Michael Fordham QC sitting as a deputy judge in *R (Shakoor) v Chief Constable of West Midlands Police* [2018] EWHC 1709 (Admin). The deputy judge, as he then was, was considering the distinction between a case suitable for local resolution and one suitable for a local investigation. That distinction turned on whether the complaint involved a "conduct matter". Mr. Fordham explained that that question involved a "consideration of the complaint, not on its merits but on the face of it, and considering what the consequences could be if the claim in the complaint were proved". He concluded that this involved "an exercise of judgment as to which a judicial review court would be slow to interfere with the judgment of the relevant body." The assessment to be made there was as to the potential disciplinary consequences which would follow a finding upholding the complaint. The deputy judge was clearly right to characterise that as an exercise of judgement. That does not, however, assist me in determining the nature of the exercise to be undertaken for the purposes of paragraph 4 and regulation 4 where the assessment to be made is as to the nature of the complaint and not its potential consequences. In particular it does not suggest that the exercise is one of judgement rather than being, as I have concluded it is, one of interpretation of the wording of the complaint in the light of the terms of the provisions.
61. At paragraph 36 of his skeleton submissions Mr. Reichhold asserted that the statutory framework and the Guidance "call for some measure of flexibility". He accepted that "referral should be mandatory for the vast majority of complaints that allege 'serious corruption'" but then said that "there must be some flexibility in exceptional cases". Mr. Reichhold said that the 2018 Complaint was such an exceptional case. I was unable to identify any indication in the terms of the Schedule, the Regulations, or the Guidance that there is an exceptional category of case where the appropriate authority is entitled to conclude that the otherwise applicable duty to refer the complaint to the IPCC does not apply. In this context it is relevant to note again the point made at [31] and [46] above that the duty to refer a complaint of serious corruption to the IPCC only arises once the complaint in question has been recorded by the appropriate authority. A complaint which is vexatious, repetitious, or fanciful will not have been recorded. That provision is the

safeguard which the Regulations provide by way of filter against patently unmeritorious complaints and there is no basis for implying into the Regulations the flexibility for which Mr. Reichhold contended.

62. Thus it is not sufficient for a complainant simply to say that he or she is complaining of “serious corruption” for a complaint to be referred to the IPCC. However, once conduct constituting serious corruption as defined in the Guidance is alleged there must be such a referral and there is no scope for the appropriate authority to consider the merits of the allegations before making that referral provided that the complaint has met the requirements for being recorded.

Was the Decision wrong in Law?

63. In the light of that conclusion was Appeals Officer Brennan’s decision wrong in law? Should the 2018 Complaint have been seen as a complaint of serious corruption as defined in the Guidance and referred to the IOPC as a matter of duty on the part of the Defendant? The answer will turn on whether properly considered the complaint was alleging conduct which if substantiated constituted an attempt to pervert the course of justice or conduct likely seriously to harm the administration of justice.
64. The Defendant says that the complaint was in respect of CI Jones and criticised his professionalism and competence but did not allege that he had attempted to pervert the course of justice. The Defendant accepts that the complaint includes allegations against the officers involved in the original investigation of the alleged thefts from Mr. Rose’s business. However, he says that those were not relevant because those matters were addressed in the first complaint which had already been determined and because the 2018 Complaint was against CI Jones and not against them.
65. The letter of 12th July 2017 has to be read as a whole remembering that it is not a professionally drafted document but rather a letter from a layman setting out a complaint and calling for the investigation of that complaint. The Defendant is right to say that if the letter is properly to be seen as simply alleging that Mr. Jones’s investigation of the earlier complaint had been deficient by reason of incompetence or error or the like then that would not be a complaint of conduct constituting serious corruption and the mandatory referral obligation would not be triggered. It is also correct that parts of the letter when read in isolation would indicate that this was the nature of the complaint. Thus the Claimant says that he is seeking to complain about the “professionalism” of CI Jones. However, I am satisfied that when read as a whole and properly interpreted the complaint goes beyond that. In the letter Mr. Rose said in clear terms that the original investigation into the alleged thefts had involved a conspiracy by the named police officers to protect the culprits of crime and to prevent the criminal prosecution of the family members of serving police officers. Mr. Rose proceeds to say that Mr. Jones’s actions amounted to condoning those actions and that he deliberately “circled the wagons” to protect the other officers. There is a clear allegation that the original criminal investigation involved a deliberate cover up to pervert the course of justice and also an allegation that CI Jones deliberately sought to

cover up that conduct in turn. The allegation could be read as being either that CI Jones knew of the earlier conspiracy and sought to cover it up because of that knowledge or that he feared that a proper investigation might reveal a conspiracy and for that reason chose not to investigate. The difference between those two positions is immaterial because the letter does contend that the alleged failure by CI Jones to investigate matters properly was deliberate and was because of concern on his part as to what would come to light if there were to be a proper investigation.

66. Mr. Reichhold sought to persuade me that the reference to “circling the wagons” and to the condoning of the conduct of the original officers were references to the effects of CI Jones’s actions rather than to his intention. He argued that the letter was alleging that the inadequacies of Mr. Jones’s investigation had the effect of condoning the earlier behaviour by failing to uncover it rather than saying that there had been a deliberate attempt to conceal matters. In my judgement that would be an unduly narrow reading of the complaint. I am satisfied that when read as a whole the complaint is that CI Jones’s actions were deliberate and were a continuation of the earlier actions.
67. That conclusion follows from interpreting the wording of the 12th July 2017 letter in isolation. However, in interpreting that wording the consideration cannot confine itself solely to what is said about the alleged acts or omissions of CI Jones. The allegations in respect of that officer must be seen in the light of what is being said as to the conduct of the officers who conducted the criminal investigation. The fact that Mr. Rose is asserting that there was a deliberate cover up in that investigation and saying so in clear terms colours how his allegations against CI Jones are to be interpreted.
68. In addition to the letter of 12th July 2017 the appeal of 26th July 2018 and the accompanying material were before Appeals Officer Brennan. The “covering letter” and the accompanying Complaint made it clear that the Claimant was alleging that CI Jones’s actions were deliberate and that he was acting to protect the officers who had conducted the original investigation. To the extent that it was unclear whether the letter of July 2017 was or was not alleging conduct capable of constituting serious corruption Mr. Brennan could have derived assistance from these documents. It was clear that in those Mr. Rose was not seeking to make a new or different complaint but was expanding on the allegation he had already made and in that expansion was expressly alleging deliberate conduct on the part of CI Jones.
69. It is to be noted that Mr. Brennan characterised the complaint as being about the contents of the MG3A form. Although the 2018 Complaint was not set out in the clearest of terms it could not properly have been interpreted as being confined to that matter.
70. It follows that Appeals Officer Brennan should have concluded that in the 2018 Complaint the Claimant was alleging conduct which if substantiated would constitute an attempt to pervert the course of justice and that the criteria for mandatory referral to the IOPC were met. His failure to do so meant that his decision to dismiss the appeal and to decline to refer the matter to the IOPC was wrong in law.

Ground 2: The Treatment in the Decision of the 2016 Complaint.

71. In Ground 2 the Claimant contends that the Decision was wrong in law in failing to uphold a complaint that the 2016 Complaint should have been referred to the IPCC by reason of having satisfied the mandatory referral criteria. It is also said that this part of the complaint should be referred to the IOPC along with the 2018 Complaint under regulation 4 (2)(b) as arising “from the same incident” as that in respect of which the conduct constituting serious corruption is alleged.
72. There is an element of artificiality in this ground of challenge. If the 2018 Complaint had been referred to the IOPC that referral would have had to be on the basis that the Claimant was alleging that CI Jones had attempted to pervert the course of justice by deliberately covering up the actions of the original investigating officers in themselves attempting to pervert the course of justice. Any referral document would have been meaningless (or at least would have been seriously incomplete) if it had not explained what it was that CI Jones was said to have covered up or deliberately failed to expose. The IOPC would then have been in a position to determine what form the investigation into CI Jones’s conduct should take and it is difficult to see how there could have been any proper investigation of that conduct which did not involve also some consideration of the earlier investigation.
73. The 2018 Complaint was set out in the letter of 12th July 2017. It was not contended there that the 2016 Complaint had satisfied the criteria for a mandatory referral to the IPCC. That should have been said in the 2016 Complaint or by way of a judicial review claim in respect of the decision of 8th November 2017 which had dismissed Mr. Rose’s appeal against the local resolution of that complaint.
74. It is to be noted in his appeal against the local resolution by Inspector Coburn the Claimant did contend that the 2016 Complaint had satisfied the criteria for mandatory referral to the IPCC and that CI Jones should have made such a referral. That was not, however, part of the 2018 Complaint as originally expressed. Moreover, the decision to refer the 2016 Complaint to the IPCC was not a matter for CI Jones. The referral, if appropriate, should have been made by the Defendant at the stage of deciding how to address the complaint. Once the Defendant had decided that the matter was not to be referred and was to be investigated by CI Jones it was not open to the latter himself to make the referral.
75. It follows that Appeals Officer Brennan did not err in law in failing to say in 2019 that the 2016 Complaint met the mandatory referral criteria and should have been referred to the IPCC.
76. The Claimant contends that the 2016 Complaint and the 2018 Complaint arise out of the same incident and that referral of the latter to the IOPC should have occasioned the mandatory referral of the former under regulation 4 (2)(b). This argument overlooks the fact that the 2016 Complaint had already been determined. It did not remain in being and was not capable of being referred to the IOPC at the time the 2018 Complaint was being considered. Regulation 4

(2)(b) is concerned with complaints which have not been determined and does not require the referral of a complaint which has already been determined in the event that a further complaint arising out of the same incident is made and falls to be referred as under regulation 4 (2)(a).

77. In addition the 2016 Complaint does not arise out of the same incident as the 2018 Complaint. Both are, indeed, against the background of the investigation into the alleged thefts and of Mr. Rose's contention that that investigation was tainted by an improper desire to prevent the prosecution of the family members of a serving police officer. Moreover, as I have already noted investigation of the actions of CI Jones will require consideration of the earlier investigation. Nonetheless the complaints are distinct and arise out of different incidents. The 2016 Complaint relates to alleged corruption in the original investigation whereas the 2018 Complaint relates to the conduct of CI Jones in his subsequent investigation.
78. Ground 2 accordingly fails.

Grounds 3 and 4.

79. I can deal with these grounds briefly. Ground 3 falls away in the light of my finding on ground 1. If ground 3 had stood alone it would not have succeeded. In the Decision Appeals Officer Brennan did give reasons for the decision which was being made. The Decision explains that he characterised the complaint as being as to the contents of the MG3A form and states that the conduct alleged would not justify criminal or disciplinary proceedings. That is a readily comprehensible explanation for the Decision albeit one based on a misreading of the 2018 Complaint.
80. Ground 4 also falls away. It would only have arisen if the criteria for a mandatory referral had not been met. If that had been the position then a conclusion that it had been appropriate for an inspector to investigate the actions of a chief inspector would have been well within the range of conclusions open to Appeals Officer Brennan acting rationally even when both officers were from the same district of the Defendant's force.

Relief.

81. In the Claim Form the Claimant seeks the quashing of the Decision and a mandatory order directing the Defendant to refer the 2018 Complaint to the IOPC. The Defendant says that even if the Decision is found to have been wrong in law section 31 (2A) of the Senior Courts Act 1981 precludes the grant of relief.

82. Section 31 (2A) and (2B) provide that:

“(2A) The High Court—
(a) must refuse to grant relief on an application for judicial review,

...

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

(2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.”

83. As I have already noted the complaint of 30th September 2019 was referred to the IOPC and that body directed a local investigation to be undertaken by the Defendant. The investigation dismissed the complaint and the IOPC rejected Mr. Rose’s appeal against that dismissal. The Defendant says that substantially the same outcome would have resulted if the 2018 Complaint had been referred to the IOPC. The Decision was on 2nd October 2019 and the 2019 Complaint was referred to the IOPC on 14th November 2019. In the light of that the Defendant contends that if Appeals Officer Brennan had referred the 2018 Complaint to the IOPC the outcome would have been the same save that the IOPC would have been seized of these matters approximately six weeks earlier than it was.
84. The Claimant submits that the 2019 Complaint was narrower than the 2018 Complaint in that the 2019 Complaint focused on the allegation about alteration of the till receipt. Miss. Ailes said that consideration by the IOPC of the 2019 Complaint was, accordingly, not a substitute for consideration of the 2018 Complaint. The effect of the Decision has been that there has been no investigation by the IOPC of CI Jones’s actions. There would have been such an investigation if the 2018 Complaint had been referred to the IOPC and that would be a substantially different outcome for the Claimant than was the case. In addition Miss. Ailes submitted that if the 2018 Complaint had been referred to the IOPC that body would have been considering wider questions than were raised by the 2019 Complaint and it may not have concluded that a local investigation undertaken by the Defendant without supervision was the appropriate course.
85. In referring the 2019 Complaint to the IOPC the Defendant described it as alleging corruption and malpractice against PS Harrison and PC Davies together with allegations of perjury and a failure to disclose information against PC Davies and of neglect and failure in duty against Inspector Coburn and PS Harrison. The referral document summarised the complaint with the core allegations being set out in the concluding three paragraphs in these terms:

“Mr Rose alleges that Insp Coburn was aware of PC Davies failings and damaging assertions to the CPS as he confirmed this in a letter to Mr Rose on 15th August 2018.

Mr Rose alleges that in an email sent to Mr Rose on 08th August 2015 Sgt Harrison accused Mr Rose of tampering with the till roll. Mr Rose believes this was to cover up the fact that PC Davies had tampered with the till roll and states he has scientific evidence to prove PC Davies was the culprit. Mr Rose also alleges that PS Harrison failed to submit this crucial evidence because it had been tampered with by PC Davies as Sgt Harrison had signed the disclosure certificate stating that all evidence in the investigation had been submitted.

Mr Rose alleges that PC Davies did not divulge to the CPS that the two main suspects were the mother and the wife of a serving officer ... Mr Rose alleges that PC Davies destroyed evidence on both [the suspects] despite CPS asking for the evidence on the officer's wife ... Mr Rose also alleges that PC Davies made

unverified and damaging assertions to the CPS which was confirmed by Insp Coburn in a letter on 08th August 2015. Mr Rose alleges that PC Davies breached the data protection act when he was given sensitive restricted information in the form of CCTV viewing logs on 19th August 2015 that were left in an evidence box. He also states this was left on the PC's desk unattended overnight.”

86. It was in the light of that referral that the IOPC assessed the complaint as being one that the officers had tampered with evidence and had withheld evidence from the CPS.
87. The investigation was undertaken by DC Brady and the fruits of that investigation were set out in DC Brady's fifteen page report. DC Brady's terms of reference were drawn from the Defendant's referral to the IOPC and were:
- “1) To establish if and why PC Davies wrote on an exhibit.
 - 2) To establish if and why PS Harrison accused the complainant of writing on the exhibit.
 - 3) To establish if and why any documents have been falsified / destroyed and if a breach of the law has taken place as a result.
 - 4) To establish if any personal data has been disclosed breaching data protection.
 - 5.) To establish if there are any points of learning for the officer or for the organisation.
 - 6) To establish what comments made by the CPS were attributed to the complainant, by who and why.
 - 7.) To consider if any officer may have committed any misconduct offences and provide a rationale to explain how this is supported or negated.
 - 8) To consider if the investigation, at any stage, should be reasonably adjusted due to a disability.
 - 9) To keep the severity assessment under review during the course of the investigation and bring any matters to the attention of the AA.”
88. DC Brady dismissed the complaint. He concluded that rather than PC Davies and PS Harrison seeking to prevent prosecution of the police officer's family members they had believed that those persons had been responsible for the thefts and had sought to persuade the CPS to prosecute with the decision not to do so being that of the CPS. DC Brady concluded that the material sent to the CPS had not sought to exclude those persons but had identified them as suspects and that although PC Davies had written on a till receipt he had not done so with the intention of undermining the case or harming the evidence.
89. The Claimant appealed to the IOPC against DC Brady's conclusion. In rejecting that appeal the IOPC acknowledged that the Claimant was alleging that PC Davies had “failed to disclose, destroyed/fabricated evidence” but it accepted DC Brady's analysis that there had been an “honest mistake” by PC Davies in writing on the till receipt and also accepted his analysis that the officers had been pressing for a prosecution and seeking to assist Mr. Rose rather than to prevent a prosecution.
90. The Defendant accepts that there was not a complete overlap between the 2018 Complaint and the 2019 Complaint. Mr. Reichhold does, however, emphasise that the referral of the latter was expressly on the footing of

corruption taking the form of concealing and destroying evidence because it could implicate the family members of a police officer. He also points out that in investigating the 2019 Complaint DC Brady expressly considered the original investigation into the suspected thefts. He concluded that the officers involved in that investigation had been doing their best to persuade the CPS to initiate a prosecution. That conclusion was incompatible with the Claimant's contention that those officers had deliberately sought to prevent the prosecution of the family members of a serving officer. The same conclusion would, the Defendant says, have been reached by any further investigation. If the original officers were found to have been acting in good faith then it would, the Defendant says, be highly unlikely that any further investigation would conclude that CI Jones had deliberately sought to pervert the course of justice in his investigation of the 2016 Complaint. In that regard it is to be noted that the main elements of the allegations which Mr. Rose made against PC Davies and PS Harrison in the 2018 Complaint were that they had withheld evidence from the CPS; sought to exclude the family members of a police officer from consideration as suspects; and had tampered with evidence. Those were the matters which were addressed in DC Brady's investigation of the 2019 Complaint.

91. It is necessary to consider what is meant by the "outcome" for the Claimant. Is it to be seen as an ultimate finding that there was or was not corruption in the original investigation or is it to be assessed by reference to the action taken by the IOPC? It is also necessary to remember that the question is whether it is "highly likely" that the outcome would not have been "substantially different". In the light of DC Brady's analysis it is unlikely that any further investigation will result in the finding of corruption on the part of the original officers and/or CI Jones for which Mr. Rose contends. It seems that far from seeking to forestall a prosecution the original officers were pressing for one. If that was the stance of the original officers then it would appear there was nothing of substance for CI Jones to cover up and that makes a conclusion that he deliberately sought to conceal matters unlikely even though it is not determinative of that question. Nonetheless the Defendant's error of law in the Decision has deprived the Claimant of the IOPC's consideration of his complaint against CI Jones and of a decision by that body as to how the complaint should be investigated. It has, moreover, deprived Mr. Rose of the opportunity of an appeal to the IOPC in the event that he disagreed with the outcome of such an investigation. If the error of law had not occurred the complaint against CI Jones would have been referred to the IOPC and would have been referred on the footing that it was being alleged that the Chief Inspector had deliberately sought to cover up the actions of the officers who had deliberately thwarted the original investigation. That is somewhat different from the terms in which the third complaint was referred to the IOPC. It cannot be said that it is "highly likely" that faced with such a referral the IOPC would have directed a local investigation without supervision. Even if such a direction were to have been given it would seem necessary for any such investigation to have wider terms of reference than those of DC Brady's investigation. Similarly although, as I have just noted, it appears unlikely that any further investigation will conclude that there was corruption at any stage in this matter I must be alert to the need for caution in predicting the outcome

of an investigation which has not taken place. It follows that I am not able to say that it is “highly likely” what the outcome of such an investigation would be. This means that whether the outcome for Mr. Rose is seen as the conclusion of an investigation as directed by the IOPC or as the fact of the IOPC considering the matter and deciding upon the form of an investigation it is not possible to conclude that it is “highly likely” that the outcome for the Claimant would have been the same but for the Defendant’s failure to refer the 2018 Complaint to the IOPC. Accordingly, section 31 (2A) does not preclude the granting of relief.

92. In the light of that conclusion I can deal very briefly both with the Claimant’s invocation of section 31 (2B) and with the Defendant’s contention that I should decline relief as a matter of discretion because it would serve no useful purpose. The former issue does not arise since I have found that section 31 (2A) does not preclude relief but important though the public interest in the proper investigation of complaints against police officers is (and all the more so in the case of complaints of corruption) I would not have found that it was an “exceptional” public interest such as to bring section 31 (2B) into play. Although the Defendant’s “no useful purpose” argument is distinct from the reliance on section 31 (2A) as a matter of law it does not add anything to that section on the facts of this case. I have explained why I am unable to conclude that it is highly likely that the outcome for the Claimant would not have been substantially different but for the Defendant’s conduct and the considerations I set out in that explanation also mean that I cannot conclude that the grant of relief would be pointless.
93. It follows that the Decision is to be quashed. Mr. Reichhold submitted that no further relief would be needed and in particular there was no need for a mandatory order requiring referral of the 2018 Complaint to the IOPC. In support of that submission Mr. Reichhold said that if the Decision were to be quashed then the Defendant would apologize to the Claimant and that the Defendant accepted that in those circumstances reconsideration of the 2018 Complaint would follow almost as a matter of course. I did not understand Miss. Ailes to be pressing for a mandatory order in the light of that and subject to further submissions following the handing down of this judgment I am minded to confine the relief granted to the quashing of the Decision.