Neutral Citation Number: [2023] EWHC 101 (Admin)

Case No: CO/1401/2022

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

Tuesday, 24th January 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

THE KING (on the application of PETER ROBERT STOREY)	**Claimant**
- and -	
CROWN COURT AT LEEDS	**Defendant**
-and-	
CROWN PROSECUTION SERVICE	**Interested Party**

- -
- -

The **Claimant** in person
The **Defendant** and **Interested Party** did not appear and were not represented

- -

Hearing date: 16.1.23

- -

Approved Judgment

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

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. In July 2019 the Claimant was tried, convicted and sentenced in the West Yorkshire Magistrates' Court on a charge of stalking contrary to section 4A of the Protection from Harassment Act 1997. Section 4A is an "either-way" offence, which can be tried in the Crown Court or in the Magistrates' Court. Crown Court trial is known as "trial on indictment" or being "tried on indictment". Trial in the Magistrates' Court is known as "summary trial" or being "tried summarily". There is a Memorandum of an Entry in the Register of the Magistrates' Court in the present case, which records:

> ***Plea: Not Guilty – 21/11/2018***
> ***Mode of Trial: Defendant Elects Summary Trial – 21/11/2018***

The following is not in dispute: (1) The Claimant appeared in the Magistrates' Court on 21 November 2018 ("the Magistrates Hearing"), before a district judge ("the District Judge"). (2) He entered a plea of not guilty. (3) He was represented by the duty solicitor, Mr Yogesh Patel of ABR Solicitors, with whom he had a meeting before the hearing started ("the Meeting"). (4) Mr Patel made some manuscript notes during the Meeting (one page); and during the Magistrates Hearing (a further page). This case is about election of summary trial (or, as it can also be put, consent to summary trial); and about what happened at the Meeting and at the Magistrates Hearing.

Election of Summary Trial

2. Pursuant to section 20 of the Magistrates' Courts Act 1980, where the Magistrates' Court decides that an either-way offence appears to it to be more suitable for summary trial, the Court has a statutory duty (section 20(2)) to:

> ***explain to the accused in ordinary language: (a) that it appears to the court more suitable for him to be tried summarily for the offence; (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and (c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court…***

Rule 9.11(2) of the Criminal Procedure Rules says:

> ***(2) The court must explain, in terms the defendant can understand (with help, if necessary) that – (a) the court considers the case more suitable for trial in a Magistrates' Court than in the Crown Court; (b) if the defendant is convicted at a Magistrates' Court trial, then in some circumstances the court may commit the defendant to the Crown Court for sentence; (c) if the defendant does not agree to a Magistrates' Court trial, then the court must send the defendant to the Crown Court for trial; and (d) before deciding whether to accept Magistrates' Court trial, the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at such a trial, but the court need not give such an indication.***

The choice of the accused to consent to trial summarily (by the magistrates), referred to in section 20(2) and rule 9.11(2), is known as "electing summary trial". The process under section 20 is known as a "mode of trial" ("MOT") process. Three cases concerning the MOT process have been referred to in the Claimant's written and oral submissions in this case. They are: R v Birmingham Justices ex p Hodgson [1985] 1 QB 1131; R v Bourne Justices, ex p Cope (1989) 153 JP 161; and R v Gould [2021] EWCA Crim 447 [2021] 1 WLR 4812. The section 20 MOT procedure is designed to

ensure that "the right to trial by jury is not lost through ignorance" (Gould §102). There being "no transcript of proceedings" before the magistrates, one purpose of the statutory duty is to "achieve a situation where the Crown Court can safely assume that this significant procedure has been properly undertaken" (Gould §102). The failure to follow the section 20 procedure "renders what follows a nullity and liable to be quashed" (Gould §103).

The Application

3. In conjunction with his appeal to the Crown Court against his July 2019 conviction – with new solicitors and Counsel – the Claimant made an application to vacate the election of summary trial ("the Application"). The Application was headed: "Application to Remit Case to Magistrates' Court". Written grounds (11 pages) were put forward in writing by his barrister, Kama Melly QC, on 1 March 2020. In response to Ms Melly QC's grounds of application, the Crown Court had a skeleton argument (1.3.20) and supplementary skeleton argument (14.4.20) from Ashleigh Metcalfe, Counsel for the Interested Party (the "CPS"). The application was dealt with at a hearing of an issue on 20 January 2022 in the Crown Court ("the Crown Court Hearing"), where HHJ Bayliss QC ("the Judge") sat with two magistrates ("the Justices"). The Court rejected the Application, for reasons (i) given orally by the Judge at the end of that hearing and (ii) produced to the parties in writing the following day (21.1.22). Having rejected the Application, and – in doing so – having made adverse credibility findings against the Claimant, the Judge and the Justices recused themselves from dealing with the appeal. The appeal has yet to be dealt with on its substantive merits. As the Claimant put it at the hearing before me, ultimately the issue in this case is whether his right to a hearing in the Crown Court should now be a fresh-start hearing with a jury (trial on indictment) or a rehearing on appeal without one.

The Claim

4. The claim for judicial review with which I am dealing was commenced on 20 April 2022. The grounds for judicial review occupied 28 pages and 242 paragraphs advancing nine contentions under three headings. Permission for judicial review was refused on the papers by HHJ Klein on 18 August 2022. Grounds of renewal were filed by the Claimant on 8 September 2022. The transcript of the hearing on 20 January 2022 was provided by the Claimant on 9 January 2023 and, without hesitation, I grant permission to rely on it as well as the 2-page witness statement which stood as Mr Patel's evidence in chief. The hearing before me had been listed for 2-hours at 14:00 to include time for an ex tempore judgment (if appropriate). The Claimant had prepared – he told me – oral submissions which would take around 30 minutes; plus whatever time was needed to respond to any questions from the Court. He made reference to a 10-page skeleton argument for the hearing before me, and to Mr Patel's two-page witness statement. Unfortunately, these two documents had not reached me (due to human error in the internal uploading of received documents) and so had not been part of my pre-reading. I proceeded as follows. I paused the hearing to read both documents fully. I allowed the Claimant to address me for 2 hours, until he had finished at 16:20, to make sure all points had been covered. Having needed to make additional time available in that way, at 16:20 I said I would give a written, rather than an oral, judgment.

Documents

5. Among the documents in this case are the following. There is the transcript. There is the Court Register Entry to which I have already referred. There is a Hearing Record for 21 November 2018, made by the CPS lawyer, which says:

> ***DJ [District Judge] considers SST [suitable for summary trial] but indicates may still commit for sentence if convicted.***

There were the two pages of manuscript notes of Mr Patel. Mr Patel's one-page note made during the Magistrates Hearing was not provided to me, but its contents are discussed extensively in the transcript. The Claimant accepts that this note recorded: (i) the offence charged was "section 4A"; and (ii) that there was an "MOT" (followed by "summary"). There was the exchange of subsequent correspondence. In particular, there was an email of 18 January 2019 from the Claimant to Mr Patel ("the January Email") which raised various points about the case and concluded with this paragraph:

> ***Lastly, could you confirm whether the trial itself will take place in the Magistrates' Court? I have read (though my interpretation may be flawed, as this is merely amateur research) that there is no jury in a Magistrates' Court and decisions are instead made by the judge. If this is true, I think the trial should be in the Crown Court with a jury, if this is at all possible, as I would much prefer a jury to be deciding the case.***

In response, there was a letter dated 21 January 2019 ("the January Letter") signed by Mr Patel, which said in its final paragraph:

> ***Finally in the last paragraph of your last email you ask whether or not the matter can be taken to the Crown Court. The allegation you have been charged with is a summary only offence and can only be dealt with in the Magistrates' Court. If you are convicted and you wish to appeal against the conviction and/or sentence then you can go to the Crown Court.***

<u>The Crown Court Hearing</u>

6. The Crown Court Hearing on 21 January 2022 began at 11:32. It ended at 16:53. Live evidence was called. There was an hour break for lunch. The transcript occupies 104 pages. I will give page references here, to give a feel for the way in which the hearing time was used. After a discussion at the beginning of the hearing, including as to the appropriate sequence for the hearing (pp.1-16), the CPS first called Mr Patel, who adopted his two-page witness statement as his evidence in chief and was examined in chief by Ms Metcalfe (pp.16-24). Mr Patel was then cross-examined by Ms Melly QC (pp.24-44). There was no re-examination. Then at 13:23 to 14:23 there was the one hour break for lunch. Next, after a brief discussion about documentation (p.44), Ms Melly QC called and examined in chief the Claimant (pp.45-64). Next, the Claimant was cross-examined by Ms Metcalfe (pp.64-78). There was some re-examination (pp.78-79). There was then some brief discussion (pp.79-81) and Ms Melly QC called Stanley Storey (the Claimant's father) who was examined in chief (pp.81-84) and cross-examined (pp.84-85) and Edward Storey (the Claimant's brother) who was examined in chief (pp.86) and cross-examined (pp.87). Ms Melly QC then made her closing address (pp.88-95). The Judge and Justices then rose at 16:25 and returned at 16:30 when the Judge informed Ms Metcalfe that the Court did not need to hear from her ("I needn't trouble you") (p.95). The Judge proceeded to give an ex tempore (oral) ruling rejecting the application (pp.95-100). There were some final discussions (pp.100-104) and the proceedings concluded at 16:53.

7. The essence of the Claimant's case, as advanced at the Crown Court Hearing can be seen from Ms Melly QC's Grounds of Application (1 March 2022) and from the transcript. In my judgment, it can fairly be summarised as follows. The Claimant had been deprived of the option of trial by jury. The key question in deciding whether to vacate the election of summary trial was the question identified in Hodgson: did the Claimant make an election, properly understanding the nature and significance of the choice put to him? The Crown Court had jurisdiction to entertain the application and answer that question, by reason of section 142 of the 1980 Act. As Ms Melly QC's Grounds of Application put it:

> ***It has always been the [Claimant's] instructions that his previous solicitors told him repeatedly that he could not be tried by a jury as the offence was summary only and that the [Claimant] has no recollection of being asked by the Court what his election was.***

The January Letter written by Mr Patel was clear evidence that Mr Patel had misunderstood. He had believed that the section 4A offence was summary only. He had believed that the Claimant had no right to trial by jury. At the Meeting, there had been no discussion about any choice. There had moreover been no, or no adequate, MOT process at the Magistrates Hearing. The answer to the question identified in Hodgson was that the Claimant did not make an election, properly understanding the nature and significance of the choice put to him.

The Ruling

8. The Crown Court's written ruling (21.1.22) is a 4-page, 21-paragraph document. In my judgment, its essence can fairly be summarised as follows. The Court was satisfied in the Claimant's favour (§§6-7) that it had jurisdiction to entertain the Application, either by virtue of section 142 of the 1980 Act (together with section 66 of the Courts Act 2003); or by virtue of section 48 of the Senior Courts Act 1981 (the Court referred to 1948) (§7). The Court accepted that the key question was the one identified in Hodgson (§8). The Court's conclusion (§9) was to reject the Claimant's contention that he did not appreciate the nature and significance of his choice at election; and to find that he made his election of trial in the Magistrates' Court with full knowledge of his options. The Court expressed itself confident (§12) that the "ordinary language" explanation would have been given by the Magistrates' Court, applying the assumption described in Gould §102 (§11); adding that that explanation was being given to an intelligent and articulate individual whom the Court had observed (§12). The Claimant was perfectly capable of questioning what was occurring if he was confused, notwithstanding "the circumstances", which included the trauma of his arrest and detention and the general fear engendered by criminal proceedings (§12). It was wholly incredible: that he would not have appreciated that he was being given a choice of Crown Court trial by jury or Magistrates' Court trial; or that he would not have questioned the choice with Mr Patel if he did not understand the difference (§12). The Court accepted Mr Patel's evidence that (i) he advised the Claimant on his ability to choose venue and (ii) the Magistrates' Court itself made clear that the Claimant could exercise a choice to elect trial in the Crown Court (§13). Mr Patel's clear evidence was that he explained that it was a matter which can be tried in magistrates or Crown Court and explained the advantages of both jurisdictions, as to (i) sentence (ii) Crown Court being before a judge and jury (iii) chances of acquittal and (iv) costs (since the Claimant would not qualify for legal aid) (§14). In light of Mr Patel's evidence, and despite evidence from the Claimant's father and brother who were present and gave evidence that they never heard the Claimant

asked about his election, the Court could not accept that the Claimant was never asked for his election, which would fly in the face of the statutory obligation (§15). Mr Patel's evidence was that the Claimant was an intelligent man who understood exactly what he was saying and made the election for summary trial (§16). As to the suggestion (§17) that Mr Patel was negligent and never advised the Claimant about the options available to him as to venue, the January Letter erroneously stated that the charge was summary only but Mr Patel had acknowledged the clear error (§18) and his handwritten notes of the Magistrates Hearing recording "MOT" supported his evidence that he knew this to be an either way offence and conducted the Magistrates Hearing and Meeting accordingly (§18). Although the Claimant may have later repented of his decision to elect summary trial, and even if that preceded the January Email, the Claimant had elected summary trial knowing what he was being asked by the court to do having properly been advised by a solicitor as to his choices (§19). The Court had no doubt that the Claimant understood the nature and significance of the choice put to him (§19) and rejected as not credible his contention that he did not understand the nature and significance of the choice (§20).

The Claimant's Points

9. The Claimant has made a very large number of points, developed in writing and orally. I think it important that I give the flavour of them. The Claimant has identified three 'heads' (as I will call them) of grounds of challenge.

i) The first is that the Ruling "cannot logically or rationally follow from the evidence which was given". Under this head, the Claimant's Skeleton Argument identifies and challenges each of these conclusions: (i) that the MOT procedure did take place correctly on 21 November 2018; (ii) that the Claimant was able to participate fully in that procedure; (iii) that the Claimant fully understood the ramifications of that procedure and consented willingly to summary trial in the Magistrates' Court; (iv) that Mr Patel had given the Claimant correct legal advice; and (v) that the Claimant – and his witnesses – are dishonest when they claim that none of them (all having been present in Court) had understood that the Claimant had apparently been given the opportunity to elect trial by jury.

ii) The second is that "key elements of the evidence presented in Court and provided in skeleton arguments are unaddressed or misreported". Under this head, the Skeleton Argument identifies these points: (i) the Crown Court's reasons do not acknowledge the evidence given that the hearing in the Magistrates' Court was interrupted and occurred in two halves, despite the fact that the transcript makes clear that the Court accepted this; (ii) there is no comment on the fact that the charge was – at some point – changed from a summary-only to an either-way offence; (iii) there is no acknowledgement of the fact that the Magistrates' Court hearing happened in the Remand Court and therefore that the Claimant was, for the entirety of proceedings, behind thick glass, impairing his hearing; (iv) there is no acknowledgement of the fact that the Complainant had not eaten or drunk anything in almost twenty-four hours (due to OCD issues preventing him accepting food or drink from anyone he does not trust) and had not slept; (v) there is no comment on the fact that the eventual charge brought in the Magistrates' Court was in fact wrongly worded, or the failure to record consent; (vi) there is no engagement with the contents of the January Email the Claimant sent to the solicitor, demonstrating clearly that he

had not understood the mode of trial procedure (even if it had happened); (vii) there is no consideration of what the motivating factors would have been for the Claimant to have elected the particular mode of trial apparently chosen; (viii) there is no consideration of whether, given that the CPS papers were not served until December, the Claimant could possibly have been in any position to make an informed decision as to mode of trial in November; (ix) the Crown Court does not remind itself that trial by jury is an absolute right; (x) there is no consideration of 'why' the matter is being raised at this stage; (xi) there is no comment on other evident errors Mr Patel, the solicitor, made, nor how his very evidence to the Court might have been different had he responded properly in the correspondence in question; (xii) there is no evaluation of the proportional effect of the decision to be made.

iii) The third is that the Crown Court Hearing "was not conducted in a fair manner, did not approach key questions in a logically sound or rigorous manner, resulting in a Ruling which includes elementary and unacceptable mistakes of fact". Under this head, the Skeleton Argument identified these principal contentions: (i) the Crown Court Judge interrupted the Claimant's Counsel when cross-examining the solicitor, Mr Patel, and prevented her from continuing a line of questioning which was still bearing fruit; indeed, the Crown Court's decision appears to be based on the assertion that the solicitor's evidence was 'clear', when in fact he was being entirely equivocal and may well have been pushed to accept that fact, had cross examination on that point been permitted to continue, as the Claimant suggests it should have been; (ii) the Crown Court Judge similarly refused to allow the Claimant's Counsel the opportunity to take instruction from the Claimant when the Claimant wanted to communicate with her, thus blatantly denying him the opportunity to engage fully in the hearing; (iii) the Crown Court Judge was openly dismissive of the relevance of the evidence given by the Claimant's witnesses before they even entered Court, and his lack of attention to their evidence is reflected in the fact that he misnames them in his written reasons; (iv) the Crown Court did not invite final submissions on the case to allow both sides to summarise their cases; (v) hence there was no opportunity in Court for proper debate on the merits of the case between the Claimant's Counsel and the Representative of the Crown and, as such, it is not even possible to establish which particular facts were agreed between Applicant and Respondent; (vi) despite the complexities of the case, the Judge and Magistrates met for less than five minutes to discuss the evidence presented, showing a worrying lack of rigour when it comes to their analysis of the facts; (vii) the Crown Court's written reasons imply dishonesty on the part of the Claimant which was never alleged prior to the issuing of those reasons (certainly never directly asserted by the representatives of the Crown) and to which the Claimant therefore never had opportunity to make response and defend his credibility; (viii) moreover, there was no cross examination which specifically put to the Claimant's witnesses that their evidence was untrue, yet similarly their evidence seems to have been found not to be credible without them ever being given an express opportunity to defend their credibility (ix) the Crown Court Judge's description of the letter (Mr Patel's letter) as a 'difficulty' betrays the fact that he is not neutral as to the outcome of the matter, rather he has a preferred outcome, and his task (as he sees it) is to circumnavigate the 'difficulty' which prevents him formulating a decision which aligns with that

preconceived view; (x) it is also quite unusual that the application began with evidence from the respondent – rather than the applicant going first – and without any opening speeches, no apparent justification for this departure from the standard is given.

10. Alongside all of this, the pleaded Grounds for Judicial Review contained this series of 9 Contentions. (1) There is ambiguity as to which power(s) was/were used to make the ruling. (2) The ruling is over-reliant on the 1980 Act and paraphrases it incorrectly. (3) The ruling fails to acknowledge key evidence placed before the Court. (4) Case law from the Court Appeal is cited without due regard for context. (5) Key witnesses are misnamed in the ruling, showing a worrying lack of rigour. (6) The ruling distorts important elements of the evidence presented in Court. (7) There is no engagement with arguments raised in Counsel's skeleton arguments. (8) The management of the hearing and the approach to key questions was flawed. (9) The Judge completely failed to engage with the contents of important correspondence (namely demonstrably wrong advice, given by the Claimant's then solicitor).

Analysis

11. This is the permission-stage of judicial review proceedings. The question is whether the claim is properly arguable with a realistic prospect of success. If so, I should grant permission and allow the case to proceed to a substantive hearing. There is no discretionary bar. In my judgment, the threshold of arguability with a realistic prospect of success is not satisfied in this case. There are two principal reasons for that. First, the Ruling makes clear findings of fact, reached with the advantage of hearing oral evidence including extensive cross-examination, by Counsel, of Mr Patel and of the Claimant, and in light of the other evidence. Secondly, the judicial review Court has a secondary, supervisory function. Judicial review is not a forum for disagreement on the merits, or for rearguing the case, still less doing so with new arguments on the merits not advanced below. The combination of these two points, in the circumstances of the present case, is a powerful one. The Ruling contains findings of fact which are unassailable and – beyond argument – squarely within the latitude for factual appreciation and evaluation by the Crown Court. None of the many points made, individually or collectively, are capable of establishing a public law basis for overturning the Ruling.

12. A lot of points were raised in the oral evidence, with searching cross-examination. What I am going to do here is to identify a few of the key passages which, in my judgment, were at the heart of the case. The oral evidence of Mr Patel in chief included this (pp.21-23):

> ***During the hearing, from my memory – and I know that Mr Storey was in custody, appeared in court remanded in custody – I went to see him. Prior to that, I had obtained the court papers and you can see that in my handwritten notes I've made notes of the prosecution witnesses and I would have gone through this with him, show him what the evidence against him is, asked him what his initial-- whether he was going to plead guilty or not guilty. At the same time, I would have also explained to him the fact that this is a matter which can be tried in the Magistrates' Court or the Crown Court. I would have explained to him the advantages of both jurisdictions. For example, in the Magistrates' Court, if he's convicted, the sentence is likely to be lower and the likely costs awarded against him would be lower; the advantages of going to the Crown Court is that the matter will be heard before a judge and jury and the chances of acquittal, as far as my experience shows, are higher in a Crown Court than they are in the Magistrates' Court… What I would in addition also say, that having spoken with***

> ***a client who'd handed me the papers, it was clear that they had stated to me as well that they would accept summary trial, they would suggest summary trial to the magistrates in respect of this matter and that was also indicated to my client. Mr Storey was, I recall, I think he was a lecturer. He was an intelligent man and understood exactly what I was saying and made the decision for a summary trial. Part of the decision, I think, part of the reason for the decision was he was also, due to his income, I believe, he wouldn't have qualified for legal aid and he wanted to pay privately and the costs were discussed, just very briefly, but the cost of a Crown Court trial would be substantial compared to that of a Magistrates' Court trial, but I was confident that he understood that the trial could take place either in a Magistrates' Court or the Crown Court. We agreed and-- well, we decided and agreed that it would be in the Magistrates' Court. That is confirmed by my recollections that during the hearing the Crown, following the indication of a plea of not guilty, the mode of trial took place and the Crown indicated summary trial, the magistrates accepted summary trial and the question was put to Mr Storey as to whether or not he wished to have this matter tried in a Crown Court or the Magistrates' Court at Leeds. He elected summary trial… When I saw him in the cells, he understood everything. As I said, he was an intelligent man, as far as I saw. He understood what the procedures were, what the evidence against him was and I had no concerns as to his capacity to understand what was going on.***

13. The oral evidence of Mr Patel, in cross-examination by Ms Melly QC, included this. Asked about the January Letter, Mr Patel said (p.25):

> ***It states that, "The allegation you've been charged with is a summary only offence and can only be dealt with in the Magistrates' Court". That bit is clearly wrong because we had a mode of trial and that was dealt with with the client present and he was-- I explained to him exactly what he could do and the advantages of both matters. He's a clever chap. He understood the situation. He's the one who the court asked to confirm where he wanted the trial to take place and that was asked by the court, not me.***

On that same topic, later, there was this (p.41):

> ***Q You understand what's been suggested to you, Mr Patel, don't you, that the reason why in a letter you say that the charge that Mr Storey faces is a summary only one is because that was your state of knowledge of that offence, Mr Patel? A The letter, as I've said, states that but it is wrong because my handwritten notes and my recollection clearly show otherwise. There was a mode of trial being dealt with. The Crown wouldn't have indicated to me that it's summary because it would have been their view and mode of trial is suitable for a summary trial. They wouldn't have said that to me if that wasn't the case.***

Asked about the Meeting, there was this exchange (p.36):

> ***Q That there simply wasn't a conversation between you and Mr Storey about where his trial should take place and it simply didn't happen at that first consultation, Mr Patel, did it? A It did happen.***

Asked about the Magistrates Hearing, there was this (pp.36-37):

> ***MISS MELLY: And when you say the election would have been put to the client, what do you mean actually happened? It was stated… A What would have happened by that is either the court clerk or the district judge, and I think it was the district judge in this case, would have asked the client, "We've heard what the court have said in relation to mode of trial but the decision is yours", and he would have then been asked where he wants the trial to take place and at that stage he's answered, "Summary trial"---- Q Thank you. A -- or in a Magistrates' Court. That's where he wanted the matter to be dealt with. Q Thank you. It's right then that, when those questions are asked and put, that the question of jury trial is not mentioned? A The question, jury trial, is---- Q Implicit? A -- what I advised him of, you know, if he wants to go before a judge and jury in the Crown Court, that's where he would go. The court was asking whether he wants his trial to take place in the Crown Court or the Magistrates' Court…***

14. The Claimant's evidence in chief included this (p.53), regarding the Meeting:

> ***Q Was there a conversation between you and Mr Patel about the nature of the charge and who was going to try that charge, who was going to make decisions about whether or not you'd done it? A No. JUDGE BAYLISS: Sorry? No discussion at all? A Not a discussion about who would be trying the case, no. MISS MELLY: If there had been discussions – and we heard what Mr Patel said about the pros and cons, the increased cost but risk of more sentence but greater chances of acquittal but more costs and so forth at the Crown Court – did he give you those pros and cons in that discussion at that point? A If it's at all possible that he could have said anything relating-- that was brief about saying summary trial or trial in the Crown Court, then it certainly escaped my notice and attention and wasn't something that was a big feature. There was no extended---- JUDGE BAYLISS: So if he said anything about---- MISS MELLY: Summary trial---- A If he said anything about summary trial and Crown Court trial, it must have been very brief because it didn't-- it certainly was not an extended conversation which had any weight to it. JUDGE BAYLISS: And you said it had escaped what? Escaped? A Well, it certainly escaped my attention in that I do not recall that I did not-- I did not enter the courtroom under the impression that I had a decision to make. I entered the courtroom under the impression that I was going to enter a plea and say "Not guilty" to this charge and it would be taken from there.***

15. The Claimant's evidence in cross-examination by Ms Metcalfe included this (p.64):

> ***Q Mr Storey, I just want to make my understanding as clear as it can be about your case. A Mmm. Q Firstly, is it your case that Yogesh Patel did not advise you at all as to the different modes of trial? A We didn't have a discussion about that, no. Q Is it your case---- A Can I just clarify that point? Q No---- A Just to say that we didn't have a discussion about mode of trial at all on the day of the initial hearing. The closest that we ever come to that is the email correspondence of me asking him about---- Q And is it your case---- MISS MELLY: Sorry---- MISS METCALFE: -- that mode of trial procedure in the hearing did not happen at all with the district judge speaking to you? A So I'm not familiar with the way that things should work. What I do know is that it was difficult for me to ascertain most things that were happening in that hearing. I only clearly remember speaking to give my name, address, date of birth and to enter "Not guilty", which I was very vehement and strong about. I did not need anybody to tell me what to say in regard to that. I certainly have no recollection of speaking at any other point and I'm not sure as to the formulation of what should have been asked of me exactly and what I should have said.***

And this (p.71):

> ***Q But for somebody who describes themselves as wanting to talk about things very precisely and in detail, you didn't do that with Mr Patel? A Well, I wasn't under the-- what we did discuss, we discussed the major issue of that day, as I saw it, which was for me to protest my innocence and state "Not guilty" and to be released on that day and not be held captive. Q Your evidence, I think, and you'll correct me if I'm wrong, is that at no point during your conference with Mr Patel was there any discussion as to venue for plea? A No, there wasn't. Q Venue for trial, sorry. A There was no discussion of venue for trial. Q There was no discussion as to the Crown Court? A There was one mention of the Crown Court and that was in relation to bail. He said, "The Crown Prosecution Service are wanting to refuse bail but we're going to put in an application for you to get bail. If this is refused here, I'll take it to the Crown Court and we'll try and argue there".***

16. This evidence illustrates the evidential setting for the findings of fact in the Ruling. To take one important theme, one of the things that can clearly be seen from these extracts in the oral evidence concerns the Meeting. Mr Patel's evidence about the Meeting was that he advised the Claimant about the advantages and disadvantages of trial in the Crown Court and in the Magistrates' Court, <u>specifically</u> including by reference to the "Crown Court" having a "jury". For his part, the Claimant's evidence about the Meeting was that there was no such discussion; and the only reference made by Mr Patel to the

Crown Court was in relation to bail. In the Ruling, the Court accepted the evidence of Mr Patel, and rejected the evidence of the Claimant, on this key point. The conclusions are unassailable on judicial review. That was not the only point. But it was a central point. There were the points about what happened at the Magistrates Hearing. There too, the central adverse findings of fact are unassailable on judicial review.

Even If

17. In his submissions at the hearing before me, the Claimant contended that even if Mr Patel had given the explanation which he described in the evidence, that could not be sufficient. His points included the following: (a) Mr Patel did not, in terms, describe saying that a Magistrates' Court did not have a jury. (b) The Claimant's evidence at the Crown Court Hearing was (transcript pp.50, 57) that he had believed that "all trials have a jury". (c) Critical in the application of the Hodgson question is the accused's understanding and frame of mind. (d) The January Email shows that the Claimant had not previously understood that magistrates sit without juries. (e) The Ruling did not find that the Claimant understood that magistrates trials have no jury. (f) Even section 20(2) and Rule 9.11(2) do not say that Crown Court trial is by jury and Magistrates' Court trial involves no jury. (g) It is the right to trial by jury – an absolute right – which must not be lost through ignorance. This is not the way in which Ms Melly QC presented the case at the Crown Court Hearing. She did not submit in her closing submissions that, even if Mr Patel's evidence were accepted, the Application could succeed. Nor did she put the January Email to Mr Patel in cross-examination. The Claimant's position – advanced and maintained after Mr Patel had given that evidence – was that there had been no such advice; and that the only reference to the Crown Court had been a reference to bail. The case advanced on his behalf was that Mr Patel's misunderstanding, evidenced in the mistaken January Letter, had been operative on 21 November 2018, which was why there had been no advice at all about any choice, because Mr Patel mistakenly thought there was none. This argument cannot undermine the conclusions in the Ruling. Mr Patel's evidence was that he explained that in "the Crown Court … the matter will be heard before a judge and jury"; that he did so in making a comparison, explaining advantages and disadvantages of Crown Court, compared with magistrates trial; and that he advised the Claimant that "if he wants to go before a judge and jury", he should go to the Crown Court. All of this was all specifically in relation to "jury". That was appreciated, and accepted, in the Ruling.

Section 2A

18. Also in his submissions before me, the Claimant contended that there is a specific, evidenced reason which would explain why Mr Patel would not have advised at the Meeting in relation to the choice of trial. The Claimant points to the fact that – as Ms Melly QC pointed out after the lunch break (transcript p.44) the hearing record sheet indicated that the Magistrates Hearing was in two-parts, with a "hiatus". The Claimant points to the CPS Hearing Record as reflecting the fact that originally the charge was a lesser offence under section 2A, which is a summary-only offence. This would explain why at the Meeting there was no discussion about a choice of MOT; why there was no note of such a discussion in Mr Patel's notes of the Meeting; and why Mr Patel later wrote the January Letter describing a summary offence. The position had changed by the second part of the Magistrates Hearing, by which time there was a section 4A charge. Again, this is not the way in which Ms Melly QC presented the Claimant's case at the Crown Court Hearing. It was not put to Mr Patel – nor contended to the Crown

Court – that the charge had been section 2A, that it was still section 2A at the time of the Meeting, and that it only became section 4A mid-way during the hearing. The case was that Mr Patel had been mistaken about section 4A, at the time of the Meeting as at the time of the January Letter, not that he had been correct but in relation to an original charge of a section 2A offence. Nor does the CPS Hearing Record assist the Claimant. That document records that the change to section 4 A had been made "prior to court"; and it records that the reason for the hiatus was that the District Judge asked for the section 4A charge to be amended "to include reference to the incidents" which was done by the CPS amending to add dates and details that the claimant was said to have attended the complainant's house and followed her on a number of occasions.

Other Matters

19. I have dealt specifically with two new lines of argument which were advanced for the first time before this Court. So far as the other points are concerned, none of them has any realistic prospect on a substantive judicial review hearing of impugning the Ruling.

 i) I can group together a number of legal points. The Claimant says that the ruling left an ambiguity as to which jurisdictional route was being relied on. But the answer to that is that jurisdiction was decided in his favour and the Ruling addressed the Hodgson question on which his own application rested. The Claimant says the burden of proof being inappropriately placed on him. But the Ruling was not a function of a particular characterisation of the burden of proof: the Crown Court concluded that the Claimant had made his election in full knowledge of his options. The Claimant says that the Ruling revealingly misdescribes section 20(2) of the 1980 Act, which does not use the word "jury", in saying (Ruling §10) that that subsection "requires the court to explain in 'ordinary language' that he may either consent to summary trial or elect trial by jury". But the word "jury" is not inapt in describing the substance of the "ordinary language" requirement. The Claimant says it was an error of approach to "assume" compliance with the statutory duty (Ruling §11), and to reject the evidence of the Claimant, his father and brother, because "it would fly in the face of the statutory obligation laid down" (Ruling §15). But the assumption, derived from Gould §102, operates only "unless the contrary is shown", as the Judge said when drawing attention to Gould (transcript p.2) and the Court did no more than give the statutory duty significant weight alongside consideration of the evidence as a whole. The Claimant says that the Crown Court should have recognised the need for a "record" of the "consent", but this (another new point) is not a precondition within the Hodgson question. The Claimant submits that the Ruling rejected the evidence of the Claimant's father (Stanley Storey) and brother (Edward Storey), that the Claimant was addressed by the District Judge only to confirm his details and enter his not guilty plea, without it being put to those witnesses that they were lying. But this is another new point (Ms Melly QC did not submit that the nature of the cross-examination of those witnesses meant the Application must succeed) and the reliability of such evidence could be evaluated, alongside the other evidence, and did not involve finding – or putting – that they were telling lies.

 ii) I can group together a number of points about the evidence. The Claimant says that the issue was ultimately his word against Mr Patel's; that the contemporaneous documents supported him; that the January Email strongly

evidences his state of knowledge; and that the January Letter reflects Mr Patel's misunderstanding. He says Mr Patel's limited degree of recollection undermined his evidence; as did his state of health. The Claimant submits that key matters were not grappled with in the Ruling. But the Court plainly had well in mind the evidence given, and points ventilated. It gave legally adequate reasons which dealt with the principal controversial issues.

iii) I can group together a number of points about procedure. The Claimant points out, correctly, that the Ruling gives incorrect names for his father and brother. But that is not a vitiating error, material to the reasoning or outcome; nor was it picked up for correction in the written reasons, by anybody, when the Judge used incorrect names in the oral reasons. The Claimant says that the Judge was dismissive of those two witnesses before they even gave their evidence by saying "family members, well, there we are, whatever they're going to say". But that was in the context of their evidence being limited in nature ("limited" was the very word used about their evidence by Ms Melly QC). The Claimant says that the Judge wrongly warned Ms Melly QC "this is the last time this question is going to be asked" (transcript p.35). But that was a reference to a specific question, in "the area of repetition" and the cross-examination continued for another 9 pages of the transcript. The Claimant says the Judge was wrong, during Ms Melly QC's closing submissions, not to let her deal with a point by taking "instructions" from the Claimant. But the point was whether Mr Patel's hearing note "MOT" reference showed that he had not thought at the hearing that he was dealing with a summary-only offence. That was properly a matter for submission. The Claimant says he would have been able to prompt Ms Melly QC to take the section 2A point, but if that were a good point, she would have been taking it already, and the contemporaneous CPS hearing record shows it to be a bad point. The Claimant says the Court should have heard closing submissions from Ms Metcalfe, to allow a "dialogue" and clarity as to what was or was not "accepted" by the CPS, which could then have affected Ms Melly QC's position in relation to the email. But the Court did not need to trouble Ms Metcalfe having heard a closing speech in which Ms Melly QC was able to make all of her points, based on the evidence adduced. The Claimant submits that the hearing was all the wrong way round because it started by hearing from Mr Patel, the CPS witness. But the Court ventilated this with Ms Melly QC, was plainly a course open to the Court, involved no unfairness and rightly provoked no protest. The Claimant submits that 5 minutes was far too short a period for deliberation. But the Judge and Justices, who will have been prepared and had been involved with the case all day, were in a position to agree if they did – as they did – as to the analysis. The Claimant says the Judge's use of the phrase "the difficulty" to describe the January Letter shows that an unfair predisposition. But "difficulty" was the word used by Ms Melly QC too, and the Court needed to consider – as it did – to what extent the January Letter undermined Mr Patel and supported the Claimant.

Conclusion

20. In my judgment, there is nothing in these points, or any others, individually or collectively to constitute an arguable claim for judicial review with a realistic prospect of success. I am not going to deal, separately, with every single one of the points that

have been raised. They include points like aspects of the circumstances not having been addressed (the Ruling referred to "the circumstances" as "including" three listed features); Mr Patel not being an experienced solicitor (his evidence was 15 years prior experience as a partner in a firm); and CPS papers had not been served (another new point which goes nowhere). I have considered them all. I can see no viable claim for judicial review. There is no arguable basis with a realistic prospect of success of impugning the Crown Court's ruling in this case, on any of the points, whether individually or collectively. For these reasons I refuse permission for judicial review.

Consequential Matters

21. This final section of the Judgment has been added following circulation of a confidential draft judgment to the parties. There is no order as to costs. I record that, alongside his minor observations and more substantive suggestions, there were from the Claimant 20 further points described as "absolute disagreements" with the draft Judgment, which the Claimant rightly and courteously recognised were "perhaps not what has been intended for invitation". That leaves two matters.

22. The first is that the Claimant invited me to deal with his application for "reimbursement of the £275 which it cost to make the application to rely on the transcript". The "basis" of that application was that: "(a) the Administrative Court Judicial Review Guide was not clear as to when such a transcript could be provided and gave no indication that a fee would be payable, and (b) that even had the Claimant known that the transcript should have been submitted with the original claim form, it simply could not have been ready at this time, and that is through no fault of the Claimant". I decline to make the direction sought. Assuming (without deciding) that I have power to make the Order sought for reimbursement, I am satisfied that there is no basis for exercising that power in the circumstances of this case. The Claimant's Grounds for Judicial Review raised the question of "a transcript of proceedings" and stated the position that he would "seek to obtain if permission is granted to hear this matter in Court". In the event, he sought to obtain it and file it in support of his renewed application for permission for judicial review. He was entitled to take that course, at that stage. But an application to rely on the transcript was needed; and a fee was payable. There is no basis for any reimbursement.

23. The second is a question about resort to the Court of Appeal. After the text found in §20 above, the confidential draft judgment circulated to the parties had ended with this:

> ***The Claimant is aware that were permission refused, there would be no costs order, and he has a right to apply to the Court of Appeal. The Order I make is simply that permission for judicial review is refused, with no order as to costs.***

Having received the draft judgment, the Claimant asked for clarification – in light of this indication – as to access to the Court of Appeal. The reference to a right to apply direct to that Court had come from me at the end of the hearing, in identifying possible consequential matters. I communicated to the Claimant, via my Clerk, that I would add this clarification at the end of the Judgment:

> ***The Judge has considered this further. The general position is set out in the Administrative Court Guide 2022 para 26.3.3. But the position as to a "criminal cause or matter" is as set out in the [Guide] para 26.7. In light of the test for a criminal cause or matter (para 26.7.1), the Judge considers that the Court of Appeal will conclude in the present case that it does not***

have jurisdiction. Nor would the Supreme Court have jurisdiction (para 26.7.5). It would be a matter for any claimant whether they would wish to seek to persuade the Court of Appeal that there is jurisdiction.