Neutral Citation Number: [2024] EWHC 76 (Admin)

Case No: AC 2023 MAN 000481

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

Friday, 26th January 2024

Before:
FORDHAM J

- -

Between:

THE KING (on the application of ANDREW OSARINMWIAN)	**Claimant**
- and -	
MANCHESTER CROWN COURT	**Defendant**
- and -	
MANCHESTER CROWN PROSECUTION SERVICE	**Interested Party**

- -
- -

Ian Whitehurst (instructed by Abbey Solicitors) for the **Claimant**
Mark Kellet (instructed by CPS) for the **Interested party**
The **Defendant** did not appear and was not represented

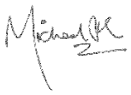
- -

Hearing date: 22.1.24
Draft judgment: 22.1.24

- -

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.



- -

FORDHAM J

FORDHAM J:

Introduction

1. This is a claim for judicial review of a Manchester Crown Court decision to extend a custody time limit ("CTL") in an EncroChat case. Many of the features of the case are as described in R (Sierotko) v Manchester Crown Court [2023] EWHC 1187 (Admin) [2024] 1 Cr App R 2.

2. The circumstances were these. The Claimant's trial had been rescheduled for Monday 9 October 2023. At a hearing on Tuesday 27 June 2023 – with that trial 15 weeks away – HHJ Dean KC ("the Judge") dealt with a defence application for an order for disclosure of "v3 evidential packs" for 17 EncroChat handles, so that the experts could write reports relating to the issue of "reliability" (see Sierotko §5). The application was pursuant to s.8 of the Criminal Procedure and Investigations Act 1996. It had been served on 20 April 2023. The Judge ordered disclosure by the Interested Party ("the prosecution") to the defence expert Dr Campbell, to take place within 10 days (by Friday 7 July 2023). Dr Campbell's report on reliability was then due within a further 6 weeks (by Friday 18 August 2023). The prosecution expert Mr Shrimpton was to respond within a further 4 weeks (by Friday 15 September 2023). That was all intended to take place in good time for the trial to begin as scheduled, on 9 October 2023.

3. But that is not what happened. The materials were not provided as ordered. The position was such that, at a hearing on 5 October 2023, the Judge vacated the trial. A new trial date (25 March 2024) was set. Dr Campbell explained the position from his perspective in a statement dated 3 October 2023. That left the important question of extending the CTL. Then, after receiving detailed written representations and hearing oral submissions from Mr Kellet and Mr Whitehurst at a further hearing on 12 October 2023, the Judge extended the CTL from 13 October 2023 to 28 March 2024.

4. It was and is agreed that the central issue was whether the prosecution had "acted with all due diligence and expedition" as required by statute and as discussed in the authorities (see Sierotko §§11-14). It is also agreed that the central issue in this claim for judicial review is whether the Judge's conclusion – that this due diligence precondition was satisfied – was reasonable in public law terms. Mr Whitehurst rightly accepts that, if the Judge reasonably found the due diligence precondition met, the discretion to extend the CTL was lawfully exercised. The judicial review Court's role is described in Sierotko at §16 and is seen in action in Sierotko at §§22vii, ix.

Claiming Judicial Review

5. As Mr Whitehurst accepts, the way in which the judicial review claim was brought before the Court was sub-optimal. The position after 12 October 2023 was this. The CTL had been extended to 28 March 2024. The trial had been set for 25 March 2024. The lawfulness of deciding that the Claimant should spend a further 5½ months in custody on remand was in issue. Judicial review was sought in the following way. On 19 December 2023 – more than two months after the impugned decision and two days before the end of the legal term – judicial review papers were filed with the Court and Mr Kellet was informally made aware of them. There was no prior warning to the Court

or the prosecution. There was no letter before claim. The explanation for the passage of time was: (a) that a transcript was awaited of the hearing on 12 October 2023; (b) that legal aid was being secured; and (c) that the papers were then being prepared. When the judicial review claim was then lodged (19.12.23), there was a Form N463. That is an urgent consideration form. It asked a Judge to make a decision "within 3 days". Form N463 described, as "interim relief" being sought, an order for the Claimant's immediate release on bail. A decision on permission for judicial review was also described as being sought "within 6 days", with a substantive hearing to take place no later than "3 January 2024". I recorded in my Order giving directions on 21 December 2023 that there was a procedural ambition in what was being sought. The position was this. Having taken more than two months to effect the steps for filing the claim, the Court was being asked effectively to dispose of the claim – by ordering release as interim relief and/or as substantive relief – all within a matter of days. This was over the holiday period. It necessarily meant minimal opportunity for the prosecution to respond. The Claimant's solicitors understandably emphasised that the liberty of the individual was at stake and that, if the CTL extension was unlawful, the Claimant had spent two months incarcerated as a result of that unlawful decision. But a realistic way forward had to be found for dealing with these cases fairly, speedily and effectively. I fully appreciate that securing legal aid was a necessary step (see R (Mensah) v MCC [2023] EWHC 2372 (Admin) at §2). This was a case involving a short point, where both parties had filed detailed chronologies for the Judge, and where both teams would have had their notes of a ruling which occupies 5 pages of the transcript. I think the Court could have been forewarned, that the prosecution should have been forewarned and kept informed, and that an approach could have been taken which enabled proper planning and coordination, and a sensible timeframe, consistent with proper urgency.

Rolled-Up Consideration

6. In the event, I made an order on 21 December 2023, adjourning the applications to an oral hearing provisionally listed for 19 January 2024, with directions for a response by the prosecution, and warning the parties to be prepared to deal with the case on a 'rolled-up' basis. I directed the prosecution to file grounds of defence, and that the grounds of claim and grounds of defence stand as skeleton arguments. I made arrangements to be available to hear the case. I made clear that I was prepared to deal with the case as a remote hearing, but allowed for any requests for an in-person hearing. In the event, I acceded to joint requests for an in-person hearing, deferred to 22 January 2024. I also acceded to a joint invitation to give reasons in writing rather than reconvene in the afternoon of 22 January 2024 for an ex tempore judgment. Mr Kellet did not, in the event, oppose permission for judicial review. He was right not to do so. The claim is properly arguable. I will formally grant permission for judicial review. Having put the Court in a position to deal with the claim on a 'rolled-up' basis, the parties and I were all able to focus on the substantive claim. That, in my judgment, is how it should be. Judicial review in these cases is a supervisory review, and not a rehearing, still less on fresh evidence. These cases can speedily be prepared on both sides. Granting interim relief in such a case would be likely, in its practical effect, substantively to resolve the claim in the Claimant's favour. I would have been very reluctant to contemplate any order for release on bail without effectively resolving the legal merits. Far, far better to deal with the claim and the question of substantive relief, with suitable expedition. Mr Whitehurst belatedly (in his oral reply) invited me to access the crown court's Digital Case System. He did not press the invitation. This course could have been appropriate.

But it came far too late here. In my directions I had required a judicial review bundle from the Claimant's team. A transcript was subsequently added by the Claimant's team. My clerk had sent several emails to Counsel explaining what materials I had and asking whether either side said the Court needed anything else. Nothing further was suggested. There was a full and fair opportunity for each side to identify any further materials.

The Claimant's Case

7. Mr Whitehurst adopted the grounds for judicial review without repeating them, adding targeted oral submissions. He says the Judge's conclusion that the prosecution had acted with all due diligence and expedition was not reasonably open to him. The essence of the claim as to why this is so, as I saw it, came to this:

8. The Judge described "how complex some of the issues are, particularly in understanding what the experts require in terms of disclosure, why they require it and how long it might take to, in fact provide the disclosure that is required". But that reference to complexity was not an apt characterisation of the case. These were "v3 evidential packs". That is a species of EncroChat evidence that was already, by June 2023, very well-established and well-known to both Mr Shrimpton (prosecution expert) and Dr Campbell (defence expert). The v3 evidential packs were needed for the critical "indictment period", namely a period between 28 March 2020 and 13 June 2020. It was, or should have been, very clear that this was what was being ordered for the 17 relevant EncroChat handles. This was not one of the early trials in the sequence.

9. Next, the service of such v3 evidential packs has been straightforwardly achieved in some 10 other cases, including Sierotko in fact. Indeed, the position was described by HHJ Field in the Sierotko case – at a hearing on 5 July 2023 – as involving evidence packs (in that case 23 of them) which were "like books on a library shelf". At that hearing, that was a description with which Mr Kellet (prosecuting) had then agreed. The v3 evidential packs for the 17 handles in this case could and should, in the same way, have been straightforwardly obtainable and deliverable to Dr Campbell. They too were like books on a library shelf. What is more, there ought to have been no need for requiring and chasing an undertaking from Dr Campbell, as was sought in the present case. No undertaking had been a precondition for the service of v3 evidential packs in any of the other 10 cases. The characterisation of relevant complexity is unjustified.

10. Further, the prosecution should have been in a position to 'hit the ground running' when the order was made on 27 June 2023. The prosecution gave every indication to the Judge at that hearing that it had put itself in that position. The section 8 application for disclosure had been served 2 months earlier on 20 April 2023. Any reasonably diligent prosecutor, conscious of their duties to promote the expeditious progress of the present case, would have taken pro-active steps: to gather together the relevant materials, in readiness for any order by the Judge requiring disclosure. The fact that the prosecution did not oppose the 10 day timeframe on 27 June 2023 itself indicated that any necessary gathering step had already been undertaken. The books should have been on the shelf. The reviewing lawyer ought also to have been in a position to have reviewed the v3 evidential packs. A prosecution letter in the present case, as early as 7 December 2022, had referred to evidential packs of third party handles and the extraction of relevant parts by the officer in the case. This supports the conclusion that there would have been no difficulty in the reviewing lawyer having taken appropriate steps to review the materials. In the event, it transpires that there was no such level of proactiveness and

preparedness, prior to 27 June 2023. That itself constitutes a pre-existing failure of all due diligence and expedition within the prosecution team, in the period between 20 April 2023 and 27 June 2023, which led to and was compounded by the subsequent default.

11. Whatever the prosecution's position prior to and as at 27 June 2023, once there were perceived difficulties, the prosecution was duty-bound to insist on Manchester Crown Court listing the case promptly for a further hearing. The defence team expressly supported such a further hearing from 13 July 2023 onwards, having by that date obtained the transcript of 27 June 2023 and the transcript of the hearing before HHJ Field in the Sierotko case on 5 July 2023. The failure to insist on a prompt listing was in itself a failure of all due diligence and expedition.

12. Next, there is at the heart of what happened a litany of basic errors by the prosecution team, on and after 27 June 2023.

    i) The first error was that the prosecution misappreciated and misrecorded the temporal reach of the Judge's disclosure order. The prosecution immediately limited their focus to "the overlap period" between 13 May 2020 on 15 May 2020. The overlap period had featured in Mr Whitehurst's submissions to the Judge on 27 June 2023. But the rationale of the overlap period was as a function of identifying the relevant handles, namely those used during those 3 days. That did not mean that disclosure was limited to that period. The period for which the evidential packs were required was "the indictment period" between 28 March 2020 and 13 June 2020. It was a basic error by the prosecution to identify the wrong period of time. That error should not been made and it should have been recognised by those experienced individuals within the prosecution team.

    ii) The second error was that the prosecution misappreciated the format in which the materials were required. There were repeated internal references are known to the defence team, and repeated references in correspondence to the Crown Court and the defence team, to what are called "TARS files". TARS files are constituent data from which v3 evidence packs are derived. But what was required by Dr Campbell in this case, as in all the other like cases, was that the TARS files be subjected to that process so as to derive the v3 evidential pack, which was what was to be served.

    iii) The third error was as to the use of an email address for Dr Campbell. Although it is accepted that an appropriate email address ("secure@") was used in seeking to obtain the undertaking from Dr Campbell, it was wholly inappropriate to use that email address for invited access to uploaded evidential packs or materials on the Egress System. A different email was necessary for the purposes of Egress.

    iv) The fourth error was that the prosecution decided to communicate unilaterally with Dr Campbell, rather than copying in the Claimant's solicitors. This had the effect that the defence team was not in a position to point out various other errors and inadequacies in the prosecution's actions.

13. Stepping back, this was a clear and straightforward order of the court. There was a serious and ongoing default. The v3 evidential packs were not, in the event, supplied in

an appropriate format with appropriate access for several months, by which time the trial date had inevitably and causatively been lost. There was no proper room for the Judge's conclusion that "everyone" in the prosecution team had been doing their "best" in the context of a "complex" set of circumstances. Rather, there was a clear and straightforward default of all due diligence and expedition. The statutory precondition could not reasonably be held to be satisfied. It follows that the Claimant was entitled and is entitled to his liberty – release on bail – as the only legally justifiable outcome under the statutory scheme correctly interpreted and reasonably applied.

14. That is the argument.

Discussion

15. I agree with Mr Kellet that these points – individually or cumulatively – do not show that the Judge was unreasonable to conclude, as he did, that the 'all due diligence and expedition' precondition was satisfied in the circumstances of the case.

16. I will start with complexity. There are undoubtedly complexities. For example, neither Counsel could explain straightforwardly the difference between TARS files and the derivative v3 evidential packs. The Judge was talking about complexities in terms of what was required, why they required it and how long it might take to provide it. This is linked to the scope for good faith misappreciation. Most importantly, it is linked to encountered difficulties. The starting point, on the evidence before the Judge, is that what were encountered were real and genuine difficulties following the order on 27 June 2023. A detailed chronology was supplied by the prosecution for the Judge. It explained that action had been taken the day after the order (28 June 2023) by means of a request to the officer in charge. An update had been sent on that day, to something called the Serious Economic and Organised Crime and International Division Venetic team. The idea that disclosure was limited to the "crossover period" was part of the attendance note written by Counsel recording his understanding of what the Judge had ordered on 27 June 2023. The idea of disclosing "TARS files" had come from that team. The team had also identified, as an appropriate stage, the need to remove sensitivities by way of what was subsequently called a sanitisation process undertaken by someone called the Technical Analyst. By Monday, 3 July 2023, the officer in the case was being chased for the TARS files, but had encountered particular difficulties in obtaining them. These arose because materials were held by multiple sources (police forces) at multiple locations. The step was taken of going to the National Crime Agency. These perceived difficulties continued. They had been the subject of a conference meeting including the district crown prosecutor, the reviewing lawyer, the officer in the case and the Technical Analyst. That was on 4 July 2023. That conference meeting identified difficulties in complying with the Court's order, as well as difficulties with the suggestion that materials could simply be emailed to Dr Campbell. And it was in the context of all of that that a letter was written by the prosecution on Wednesday 5 July 2023, two days before the Court's 10 day deadline. That letter was copied to the defence team. It referred to difficulties which had been identified so far as concerned compliance with the court's order. It requested an urgent listing by the Crown Court of the case so that an explanation could be provided and a new deadline date considered. That letter had come on the same day as was the hearing before HHJ Field in the Sierotko case, where books on a shelf had been discussed. Mr Whitehurst accepts that he is not able to counter the description of difficulties which were actually identified in the present case. In my judgment he is right. On the evidence before the Judge – and moreover on the

evidence before me – there were in fact these difficulties being identified with compliance. I turn to Mr Whitehurst's answers.

17. The first answer which Mr Whitehurst put forward to all of this is that it does not withstand scrutiny, as a matter of substance, when the picture in this case is compared to the picture in relation to the 10 other EncroChat cases. But the immediate difficulty, in my judgment, faced by this argument is this. There is no body of evidenced material from which it can properly be concluded that compliance is straightforward and always straightforward. There was the opportunity to put before the Judge any relevant material from any other cases: what was disclosed; how speedily; with what steps; with what straightforwardness. As I have said, a statement was prepared by Dr Campbell himself dated 3 October 2023, in order to assist the Judge. That statement described a number of features of the case including the exercise which Dr Campbell would perform armed with the V3 evidential packs. But I was shown no passage within that statement which described for the Judge the suggested straightforwardness of the supply of the packs, or as to where the materials are held. Dr Campbell is the expert witness for the defence in this series of cases. If it could properly be said, with evidence, that the experience in the other cases shows just how straightforward it is to derive these v3 evidential packs, Dr Campbell could have said so. It is true that, on 5 July 2023, HHJ Field was putting to Mr Kellet his understanding that a series of v3 evidential packs were like books on a library shelf, readily accessible and could be served. But it is also fair to point out that that was in the context of a discussion of evidence packs described by HHJ Field as "in zip files that already exist" having been "prepared by Mr Shrimpton at a time when he was still in the employ of the NCA". Certainly, HHJ Field does not appear to have been contemplating materials needing to be sourced from police forces. I was shown no further material relating to the straightforwardness of the Sierotko case. The directly relevant evidence for the purposes of the present case is the evidence as to the hurdles which were being encountered, in this case, including at that very time. On this part of the case, I have in mind that it was the position of the defence team – in correspondence on 6 July 2023 – that they wanted to obtain transcripts so as to be able to rebut the prosecution suggestions that there were the suggested difficulties of compliance. In my judgment, the defence team had not, by 12 October 2023, built a solid evidenced case for the assertion that compliance was all really very straightforward. Had fresh evidence been put forward to this Court I would have had to consider whether it could be appropriate, at a supervisory review of the reasonableness of the Judge's conclusions, to have regard to that fresh evidence. But in the event, I record that no solid evidenced case has been put forward to me for the asserted straightforwardness.

18. Mr Whitehurst's second answer is that any difficulties encountered in complying with the order of 27 June 2023 were the consequence of a prior absence of due diligence in the period between the application for section 8 disclosure (lodged on 20 April 2023) and the hearing (two months later on 27 June 2023). One immediate difficulty with this suggested analysis is that it does not correspond to the way in which the absence of due diligence was put to the Judge. In the arguments before the judge the focus was very clearly on the sequence of time between 27 June 2023 when the order was made and 12 October 2023 when extension of the CTL was being considered. There is another difficulty. The grounds for judicial review do not adopt this analysis either. They set out a detailed chronology of the relevant events after the hearing on 27 June 2023, starting with 29 June 2023. The grounds expressly claim that there was a failure of all due diligence and expedition by the Crown "during the relevant period from June 2023

2 October 2023". I now have the proposition – advanced by Mr Whitehurst for the first time orally at the substantive rolled-up hearing – that the serving of the section 8 application for disclosure necessarily carried with it an obligation on any competent prosecutor to gather together the relevant materials in order to be able to assist the court. No case or commentary has been cited in support of such a proposition, generally or in any specific context. For reasons I have explained, I do not have the advantage of the Judge's reaction to that contention, since as I have explained it wasn't advanced before him. My own reaction is this. It would surely risk putting the cart before the horse if, on any application for the disclosure of materials, steps were always and invariably necessitated part of the prosecution to have gathered those materials together. That would be the end of any argument about proportionality of gathering steps. I would expect the answer, to what due diligence requires in any individual case, to turn on the specific facts and circumstances of the case. The letter of 7 December 2022, on which reliance is placed, does not in my judgment communicate that all relevant gathering steps had been undertaken in relation to all of the handles which featured in the later section 8 application. It is true that the prosecution did not, on 27 June 2023, suggest any difficulty with complying within 10 days. But the evidence does not – as I read it – support the conclusion that all of the material been collected, or that the Judge or the defence were being told that all of the material been collected. What happened was that, from the following day, steps were put in train to obtain a material and difficulties were then encountered. The matter can be looked at another way. If the prosecution had explained to the Judge, on 27 June 2023, that they now needed to collect the materials, I do not see that the Judge would have found that this ought already to have been undertaken, proactively, and as a basic prosecutor's duty. For all these reasons, I do not accept that the point about pre-existing failure of due diligence can assist the Claimant in the present case.

19. It is Mr Whitehurst's third answer which, in my judgment, is the high water-mark of the claim for judicial review. As has been seen, Mr Whitehurst says that it was incumbent on the prosecution to insist on Manchester Crown Court listing the case promptly once difficulties had been encountered. He relies on the fact that this was supported by the defence from 13 July 2023 onwards. The position, on the evidence before the Judge, and on the evidence before this Court, is as follows. Within a week of the 27 June 2023 order, and two days before the 7 July 2023 deadline – on Wednesday 5 July 2023 – the prosecution were writing to the Crown Court. They were drawing attention to the fact that difficulties that had been identified in relation to compliance with the Judge's order. They were requesting an urgent listing. They were suggesting that hearing, at which an explanation from them be given, so that a new deadline date for the disclosure could be considered. The prosecution subsequently sent Manchester Crown Court a chasing email on 12 July 2023, another chasing email on 20 July 2023 and a third chasing email on 27 July 2023. Notwithstanding all four of those communications, the Crown Court did not list the case for a further hearing until 15 August 2023. The Judge did not consider that this course of conduct constituted an absence of all due diligence and expedition on the part of the prosecution. In my judgment, the Judge was at least reasonably entitled to take that view. There is a further point. Originally, when on 5 July 2023 the prosecution wrote to the Crown Court to ask for an urgent listing, the response from the defence in a letter dated 6 July 2023 written to the Crown Court was specifically to ask the Court not to list the matter. The defence explained that they were requesting urgent transcripts of the hearing before the Judge on 27 June 2023 and of HHJ Field's hearing in Sierotko on 5 July 2023. The defence

letter said: "we would respectfully request that this matter is not listed until those transcripts can be obtained and considered by the defence". It continued by saying that "upon receipt of the transcripts", the defence solicitors would "notify the court" so that the matter could then be listed, and appropriate representations made, with Dr Campbell attending. Although the defence team were supportive of a listing on and after 13 July 2023, which was acknowledged by the prosecution, it is fair to say that the handbrake was originally applied, by reason of the defence's first letter. And, so far as chasing letters went, these were coming from the prosecution rather than the defence. It may be, with hindsight, that all parties and the Court could have been more proactive. But the prosecution were promptly proactive, and they did pursue the matter with several chasing communications.

20. I can now turn to the 'litany of errors' which the prosecution made following the order on 27 June 2023. It is undoubtedly the case that mistakes were made. The prosecution recognise this. So did the Judge. And so do I.

i) First, it is common ground that there was a significant error within the prosecution team relating to the temporal reach of that disclosure order. It is common ground that the order made on 27 June 2023 applied to the entirety of "the indictment period". It was not limited to "the crossover period". What the evidence before the Judge showed is that there was an error, which is accepted to have been in good faith, when prosecution Counsel (Mr Kellet) misappreciated what had been ordered and misrecorded the position in the attendance note, written immediately following the hearing. The fact that the attendance note was being relied on is clear from the evidence. It was moreover explained, in correspondence, when the point eventually came to light. With hindsight, it would have been better if one or both of the parties had insisted on an order which spelled out its temporal reach. The nature of the order was uploaded promptly by the Judge to the Digital Case System accessible by everyone. No date period was included. It is also fair to remember that there was a reference at the hearing on 27 June 2023 to the crossover period. The Judge had been asking questions about eleven particular counterpart evidential packs which were being sought by the defence. Mr Whitehurst for the Claimant told the Judge: "just to explain why we said eleven, the eleven deals specifically with that crossover point in time". Mr Kellet's attendance note records that he understood the disclosure order to have been limited to that crossover point in time. That, it is accepted, is not what the Judge was doing. There was no correspondence immediately following the order about the temporal reach.

ii) So far as the format is concerned, the evidence shows that the prosecution focus following the hearing on 27 June 2023 soon became on obtaining and disclosing the "TARS" files. As I have explained, on the evidence this idea derived from the Serious Economic and Organised Crime and International Division Venetic team. These files are not the "v3" evidential packs which Dr Campbell was expecting and needed. There was ultimately a debate about whether Dr Campbell could himself readily convert material from TARS to v3. I accept that the order required the v3 format. I also accept that that v3 format reflected Mr Shrimpton's own position in EncroChat cases. It was a mistake to think that TARS files sufficed. Having said that, it is also fair to have in mind that various references were made in the prosecution's correspondence to TARS files, but

that the defence team did not immediately pick up on the fact that this was the wrong format. Finally, when the format issue was ultimately pointed out by Dr Campbell it was rectified and the v3 format evidential packs were provided. The evidence suggests that the transition from TARs to v3 was not, in the scheme of things, the cause of any major hold-up.

iii) So far as the email address for Dr Campbell is concerned, the position is this. Mr Kellet's attendance note from the hearing on 27 June 2023 had expressly recorded an email address ("secure@") for Dr Campbell. Dr Campbell had told the Judge at the hearing that the evidential packs could be provided relatively straightforwardly, effectively by email. A quotation from the attendance note was included in the prosecution's chronology for the Judge. The Judge was told that the attendance note had recorded that the v3 evidential packs were "to be disclosed to Dr Campbell by 07.07.2023". It continued: "Dr Campbell confirms that this can be done electronically to "secure@ …" That was the email address used. It contains "secure". The use of "secure@" for the secure Egress access was plainly an error, based on a "secure" email address understood to have derived from Dr Campbell. In his 3 October 2023 statement Dr Campbell explains that the prosecution had not for Egress access "used the correct email address for me". When the attendance note was quoted in the chronology, no evidence was adduced to rebut the idea that the prosecution's understanding had derived from something Dr Campbell had said. Nor did the defence's annotated version of the chronology for the Judge contain a rebuttal. The good faith of what was done is accepted. Whatever happened, there was at most a mistake – probably a straight misunderstanding – in good faith.

iv) So far as concerns email communications and inclusion of the defence team, I would accept that it would have been better if the prosecution emails to Dr Campbell had cc'd the defence team as a matter of course. That would have given the defence team greater visibility. It may have enabled mistakes to be pointed out and promptly corrected. But, again, there was and is no allegation of bad faith. There is no question of a deliberate strategic act of excluding the defence team. Dr Campbell could himself have been in communication with the defence team. And there were references in correspondence which the defence team did see, or did subsequently see, including to TARS files and an email address.

21. Finally, stepping back. The case law makes clear that it is essential in these cases the judge considering extending the CTL is provided with "a detailed chronology" (see Sierotko §12) of what happened during the relevant sequence of events. In this case, the Judge had a very detailed chronology (19 pages) from the prosecution. He also had detailed annotations on that chronology (4 pages) from the defence. He had detailed written submissions and the Campbell statement. He made clear that he read and considered the materials. The Judge was very familiar with the case having dealt with at previous stages, and was familiar with other EncroChat cases. He was made very well aware of what had happened. He was aware of the correspondence and documentation. He was then ably assisted by oral submissions from both Counsel. The Judge rightly had in mind the relevant standard (Sierotko §13). He guarded against applying a perfection standard or a hindsight standard. The Judge characterised the exchanges and difficulties as indicating degrees of confusion, misunderstanding,

miscommunication and sometimes lack of communication. He reminded himself the perfection is not the standard required. He found an absence of obvious incompetence, and found that there were no failings that no prosecutor should fall into. He found that looking at the chronology and the criticisms made of the defence that everyone was trying their best. He found that the prosecution had not failed to act with due diligence and expedition in light of all the circumstances including the complexity of the case, in the sense of what the experts require in terms of disclosure, why they require it and how long it might take to provide. I have read all the materials for myself. I have applied a supervisory scrutiny but with rigour (see Sierotko at §16). In my judgment, the Judge's conclusions were neither wrong nor unreasonable. It was open to the Judge to find that in all the circumstances the prosecution had not failed to act with all due diligence and expedition. Accordingly, the claim for judicial review fails.

Conclusion

22. In these circumstances and for these reasons, I dismiss the claim for judicial review. I record that, had there been any question of the claim succeeding, I would have been inclined to take steps which ensured that the question of bail conditions was considered by the Crown Court rather than this Court (see Sierotko §28). But in the event that does not arise. I will grant permission for judicial review but dismiss the substantive claim. The application for interim relief falls away.