The MPS Account of Investigation and the Unanswered Questions in the 2023 Judicial Review

A public interest analysis of the criminal investigation undertaken which relates to CRN 6029679/21

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In 2023, the Metropolitan Police advanced a distinction between reviewing allegations of crime and conducting a criminal investigation. Its 2023 Summary Grounds of Resistance placed the decision to record a crime before the commencement of a criminal investigation. The CPIA 1996 framework, however, expressly includes investigation to establish whether a crime has occurred. That difference goes to the foundation of the account presented by the Metropolitan Police, to the Administrative Court.

This paper examines the MPS submissions, Mr Justice Poole's permission decision of 17 November 2023, Detective Superintendent Tor Garnett's letter of 18 May 2022 and PC Amanda Cousins' report dated 16 September 2026.

Its conclusion is that the MPS distinction was not demonstrated by applying the statutory test to the work actually undertaken and the court's published reasons do not supply the missing analysis.

What the Commissioner told the court

Paragraph 22 of the Summary Grounds stated:

"If the police decide to record the incident as a crime, then a criminal investigation will be commenced."

It continued:

"If the police decide not to report the incident as a crime, then a criminal investigation will not be commenced."

The word *"report"* in the second sentence is reproduced as written.

Paragraph 27 distinguished a review undertaken to determine whether to record a crime from a criminal investigation into an allegation already recorded as a crime.

Paragraph 28 then applied that distinction:

"In the claimants' case, the defendant undertook a review but declined to commence a criminal investigation because the result of that review was that on the balance of probabilities the circumstances of the claimants' report did not amount to a crime defined by law."

The proposition was consequential. A process examining material supplied in support of alleged misconduct in public office and manslaughter was placed outside the category of criminal investigation because it preceded a decision to record a crime.

The papers needed to establish why that process fell outside the CPIA definition. Calling it a review did not establish that conclusion.

The legal test is purpose rather than classification

The relevant legislation is the Criminal Procedure and Investigations Act 1996, or CPIA.

Section 22(1) defines a criminal investigation by reference to police work directed towards ascertaining whether a person

should be charged with an offence or whether a charged person is guilty.

The Code issued under section 23 provides the essential clarification for the present question.

Paragraph 2.1 expressly includes:

"investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings".

The 2020 Code was in force from 31 December 2020 and therefore applies to investigations beginning in December 2021.

That wording directly challenges the sequence advanced at paragraph 22 of the MPS grounds. The framework encompasses investigation undertaken while the existence of a crime remains uncertain. It does not make a prior administrative decision to record a crime the defining condition of such an investigation.

The decisive enquiry is what the officers were doing and why.

Where police examine the substance of criminal allegations to establish whether offending has occurred with a view to

possible proceedings, the legal character of that work follows its purpose. It cannot be settled by the name assigned to the process on an internal system or in litigation.

A negative result does not erase the investigation

The report of 20 December 2021 alleged criminality. The MPS grounds themselves identify allegations of misconduct in public office, gross negligence manslaughter and corporate manslaughter connected with the vaccine programme.

The ensuing examination of evidence was directed to whether those allegations disclosed offences.

The question whether that examination found sufficient evidence is separate from whether it occurred - An investigation which ends without a charge remains an investigation.

A conclusion that the available material does not establish criminality cannot retrospectively remove the investigative character of the process which produced that conclusion.

There is no intermediate CPIA category of an “almost a criminal investigation” which permits investigative examination of

suspected offences to escape the applicable definition merely because the outcome is negative.

The argument advanced here concerns substantive investigative work directed towards possible criminal proceedings. It rests on the acknowledged examination of these allegations, not simply on the existence of a reference number.

The defect in the MPS presentation to the Court is therefore specific:

It substituted the crime-recording sequence for an explanation of the purpose and substance of the work. The published grounds do not demonstrate why that work was outside the statutory definition.

Garnett acknowledged investigation before the 2023 proceedings

Detective Superintendent Tor Garnett's letter of 18 May 2022 was expressly cited in the MPS grounds, with references to pages 410 - 411 of the claimants' bundle. It was therefore part of the documentary history identified to the court.

The issue is how that letter's contents were characterised.

Garnett wrote:

“If you, or any of the complainants, were informed that the allegation was subject to an investigation, this would not have been an inaccurate representation; the allegations were, in fact, being reviewed/investigated to determine whether a crime should be recorded.”

That is an express acknowledgment of investigative activity. Garnett identified the work as an examination of the allegations to determine whether crime recording was justified.

The 2023 grounds later relied upon that same recording purpose to place the work outside criminal investigation.

The CPIA Code makes investigation to ascertain whether a crime occurred part of the definition. The MPS needed to explain the substantive difference because repeating the administrative distinction did not do so.

Cousins confirmed that an investigation was opened

The complaint outcome report created on 16 September 2026, reference PC/06389/26, records PC Amanda Cousins' recent examination of the crime report.

In the rationale addressing Concern 1, she stated:

"I have reviewed crime report 6029679/21 and can confirm that an investigation was opened in relation to the matter recorded."

This is the complaint handler's own conclusion, rather than an allegation copied from the complainant and it requires the MPS to identify the investigation she found, its opening date, its purpose and the contemporaneous records supporting her confirmation.

Her sentence does not itself provide those particulars. It nevertheless adds a direct police confirmation which the institution must reconcile with the position advanced to the Court in 2023.

The question is not resolved by placing the word *"criminal"* before one account and omitting it from another.

Garnett's explanation and Cousins' confirmation concern a report alleging criminal offences. A substantive explanation must address the investigative work, the potential proceedings

towards which it was directed and the legal test governing its character.

The documents show that activity was undertaken to examine the criminal allegations. The outstanding question is why the MPS represented that work to the Court as a review outside criminal investigation without demonstrating any distinction under the applicable framework.

What the court decided and what it did not explain

On 17 November 2023, Mr Justice Poole refused permission, certified the application as totally without merit and ordered costs.

His reasons addressed delay, investigative discretion, the assessment of the allegations and the proposition that police must investigate every crime report. This was a permission decision on the papers.

The order does not expressly make a reasoned finding that no investigation had taken place. That matters, because criticism must address the decision actually given.

My forensic objection is that the reasons leave the MPS distinction between review and criminal investigation untested against the CPIA definition and Garnett's acknowledgment.

At reason 6 the judge stated:

"The grounds indicate that the Defendant is under a duty to investigate all reports of a crime. That is clearly not so for the reasons set out by the Defendant."

That conclusion addresses a general duty to commence investigation. It does not answer the different question whether the work already undertaken was itself a criminal investigation.

The existence and character of completed investigative activity cannot be determined by rejecting a proposition about the duty to investigate every report.

Discretion did not answer the classification question

Reason 4 referred to *Corner House and Soma Oil and Gas* and the exceptional circumstances in which courts intervene in investigative decisions.

Whatever weight the court attached to that discretion, the reasons needed to distinguish a decision about how far to pursue an investigation from the legal character of work already carried out. The order, however, gives no such analysis.

Reason 5 relied on the support of government, agencies, researchers, practitioners and others for the vaccination programme. It concluded that, irrespective of whether those bodies were right or wrong, the MPS was entitled to consider that the reported circumstances did not disclose criminal activity on the balance of probabilities, but institutional support for a public programme is not an answer to the CPIA classification issue. It establishes neither the purpose of police enquiries nor whether those enquiries met the definition of criminal investigation. Nor does a catalogue of institutional support explain, offence by offence, why the particular allegations were rejected.

The published reason offers no examination of the elements of the alleged offences against the material relied upon.

The order also treated lateness as a ground for refusal. This paper addresses its substantive reasoning; it does not claim that resolving the investigation issue would, by itself, dispose of the separate procedural ruling.

The criticism remains:

The merits discussion did not explain the legal foundation of the MPS distinction.

Why the unresolved distinction matters publicly

The distinction affects the accuracy of the institutional account of CRN 6029679/21.

An investigation undertaken and discontinued is a different history from an investigation never commenced.

The public is entitled to expect the MPS to describe that history consistently, particularly where its account was used to resist judicial scrutiny.

The CPIA framework also matters to the handling of investigative material. Sections 22 - 23 and the Code address the conduct of investigations and the recording, retention and treatment of relevant information. Those responsibilities cannot sensibly be assessed until the institution identifies what work occurred and its legal character.

This is a demand for a documented account of that work, not an assertion of an automatic public entitlement to every item in the file.

The necessary records are identifiable:

- The original tasking and allocation history;
- the dates and purposes of substantive examination;
- the assessments of the alleged offences;
- decisions to stop or continue enquiries;
- and the record upon which Cousins relied.

The MPS should explain how those records support the characterisation advanced at paragraphs 22, 27 and 28 of its 2023 grounds.

The force should also state whether it maintains that an investigation cannot commence before a crime is formally recorded and if so, identify the legal authority for that proposition.

The court's published reasons do not supply it. A reference to counting rules does not replace an application of the CPIA test.

The conclusion the documents demand

The MPS acknowledged investigative examination of criminal allegations, represented the work in 2023 as a review preceding criminal investigation and later confirmed that an investigation was opened.

The CPIA Code expressly encompasses investigative work to ascertain whether a crime occurred with a view to possible proceedings.

The missing explanation concerns substance, not vocabulary.

The 2023 reasons do not resolve that problem. They reject a universal duty to investigate, invoke discretion and endorse the assessment of the allegations, but do not explain why the acknowledged work fell outside criminal investigation.

There is a material gap between the statutory framework, the police accounts and the reasoning published by the court. That gap requires documentary explanation and independent examination. It cannot be closed merely by repeating the word *“review”*.

Source documentation

- Commissioner of the Metropolitan Police, Summary Grounds of Resistance, CO/2254/2023, particularly paragraphs 8, 12 - 13, 18 - 28 and 39 - 48. Supplied primary document.

- Mr Justice Poole, permission decision, 17 November 2023, CO/2254/2023 / AC-2023-LON-001880, reasons 2 - 7. Supplied primary document.

- Detective Superintendent Tor Garnett's letter to Philip Hyland, 18 May 2022, CRN 6029679/21, second page; core bundle pages 410 - 411. Supplied primary document.

- PC Amanda Cousins, Complaint Outcome Report PC/06389/26, created 16 September 2026, page 6. Covering letter dated 18 September 2026. Supplied primary document.

- Ministry of Justice, CPIA Code of Practice 2020, paragraph 2.1 and sections 3 - 5. In force 31 December 2020.

- Criminal Procedure and Investigations Act 1996, sections 22 - 23.

- Attorney General, written statement HCWS662, 17 December 2020, confirming commencement of the Code on 31 December 2020.

- CPIA Code of Practice 2020

- CPIA 1996 sections 22 and 23
- Commencement statement HCWS662