

# The Application, The Resistance, The Revelation

## The Continuing Duty of Candour to the Administrative Court

**Author: Ian Clayton**

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### Executive Summary

The purpose of this paper is not to criticise the Administrative Court, nor to suggest that the Court reached an incorrect decision when determining the application for judicial review in *R (Sexton & Hyland) v Commissioner of Police of the Metropolis*.

The Court was required to determine the application upon the evidence and submissions placed before it at the relevant time.

This paper concerns something different.

Since the conclusion of those proceedings, a substantial body of official documentation has entered the public domain concerning Operation Talla, the National Police Chiefs' Council (NPCC), national policing coordination and the handling of reports made by members of the public relating to Covid-19 and the related vaccination programme.

Some of those documents provide additional operational context concerning Metropolitan Police Crime Reference Number

6029679/21, the very crime reference which formed the factual basis of the judicial review proceedings.

The chronology therefore presents an important constitutional question.

***What is the position where official documents, unavailable to both the applicants and the Court at the time proceedings were determined, subsequently enter the public domain and provide additional context concerning the matters before the Court?***

The paper does not seek to answer that question.

It explains why that question now arises.

In doing so, it examines the constitutional importance of the continuing duty of candour owed to the Administrative Court and the role which that duty plays in maintaining public confidence in the rule of law.

# Chapter 1

## The Application

On 20 December 2021, allegations of criminality connected with the United Kingdom's Covid-19 programme were reported to the Metropolitan Police Service.

The report was allocated Crime Reference Number 6029679/21.

During the weeks which followed, substantial documentary material was provided to the Metropolitan Police by the complainants.

The Metropolitan Police subsequently reviewed that material before deciding not to record the allegations as crimes and not to commence a criminal investigation.

The complainants disagreed with that decision.

After correspondence between the parties into 2022, proceedings were commenced before the Administrative Court in 2023.

The application sought judicial review of the Metropolitan Police's refusal to investigate the allegations advanced by the applicants.

Judicial review performs a constitutional function.

Its purpose is not ordinarily to determine whether allegations of criminality are true or false.

Instead, it enables the Court to examine whether a public authority has exercised its powers lawfully, rationally and fairly.

The Administrative Court therefore became responsible for determining whether the Metropolitan Police's decision-making process was legally sustainable upon the evidence and submissions presented by the parties.

The Court could only determine the application on the material available to it at that time.

That principle is fundamental to the administration of justice.

It is equally fundamental that parties appearing before the Court assist it by ensuring that material relevant to the issues before it is presented openly and fairly.

The constitutional importance of that obligation becomes central to this paper.

## Chapter 2

### The Resistance

The Metropolitan Police resisted the application.

Its Summary Grounds of Resistance set out several principal arguments.

Firstly, it argued that the claim had been brought significantly out of time because the substantive decision not to investigate had already been communicated during 2022.

Secondly, it argued that there exists no general legal duty requiring police to investigate every allegation made by members of the public.

Instead, it distinguished between two separate processes.

The first was the review of material supplied by complainants for the purpose of determining whether an allegation should be recorded as a crime.

The second was the commencement of a criminal investigation following the recording of a crime.

The Metropolitan Police submitted that only the first of those processes had occurred.

Having reviewed the material provided by the applicants, it concluded that the threshold for recording a crime had not been met.

Accordingly, no criminal investigation was commenced.

The Summary Grounds further submitted that challenges to police decisions not to commence criminal investigations are exceptional.

Reliance was placed upon established authorities emphasising the broad discretion afforded to investigators and the limited circumstances in which courts should interfere with investigative decisions.

Finally, the Metropolitan Police submitted that the statutory Covid-19 Inquiry represented a more appropriate mechanism through which the applicants' concerns could be examined.

It argued that, should the Inquiry later identify evidence suggesting that criminal offences may have been committed, the Metropolitan Police would then reconsider whether a criminal investigation ought to be commenced.

These submissions formed the basis upon which the Administrative Court considered the application.

They represented the Metropolitan Police's explanation of the decision-making process as it was presented to the Court.

The Court's task was to determine the application on that evidential and legal foundation.

Nothing in this paper criticises the Court for doing precisely that.

## Chapter 3

### The Revelation

When the Administrative Court considered the application for judicial review during 2023, it necessarily relied upon the documentary material then made available to it.

The Court could not consider documents which had not been presented. Nor could the applicants (Sexton and Hyland) place before the Court documents of which they themselves had no knowledge.

Since those proceedings concluded, however, a substantial body of official material concerning Operation Talla has been disclosed through Freedom of Information legislation and the UK Covid-19 Inquiry.

Amongst the most significant documents are three which, when read together, establish a chronology extending beyond the Metropolitan Police itself.

#### ***The Chief Constables' Council***

The first document is the minutes of the National Police Chiefs' Council Chief Constables' Council meeting held on 12 January 2022.

The meeting was attended by chief constables and senior officers from across the United Kingdom and beyond, including several senior representatives of the Metropolitan Police Service.

Those present included:

- Deputy Commissioner Sir Stephen House;
- Assistant Commissioner Helen Ball;
- Deputy Assistant Commissioner Amanda Pearson; and
- Assistant Commissioner Matt Jukes.

The minutes record that an Operation Talla Covid-19 Update was provided to Chiefs.

That update referred specifically to what it described as anti-vaccination correspondence being received by police forces before Christmas.

The minutes continue:

*"Most forces received a letter from an anti-vax group before Christmas. A crime report was made to the Met and the final assessment should be complete next week when a clearer steer can be communicated."*

The significance of that passage is not that it determines whether the Metropolitan Police's assessment was correct.

Its significance lies elsewhere.

By 12 January 2022, the Metropolitan Police complaint had become a matter being discussed at the highest national level of police leadership within the framework of Operation Talla.

The meeting concluded with an agreed action.

The minutes record:

*"Action: Op Talla team to share the results of the peer review assessment relating to the Crime Report submitted to the Met Police in relation to Anti-Vaccinations with all Chiefs."*

That action demonstrates that the Metropolitan Police crime report was no longer simply an internal Metropolitan Police matter.

It had become part of a nationally coordinated discussion taking place within Operation Talla.

### ***The National Communication***

Six days later, on 18 January 2022, Assistant Chief Constable Owen Weatherill, acting as Operation Talla Silver and National Mobilisation Coordinator, circulated a national communication addressed to Chief Constables and Force Duty Gold Officers.

The document referred to:

*"attempts to report 'criminal' offence complaints with Forces to engage the police in investigations relating to the vaccination programme."*

It also explained that forces had become aware of complaints referencing a Metropolitan Police crime reference number.

The communication stated:

*"Forces may be aware of or have received themselves 'complaints' from Anti-Vax activists and in some cases referencing a 'crime number' from the Metropolitan Police."*

The document then addressed Crime Reference Number 6029679/21 directly.

It stated:

*"The 'complaint' received by the MPS on 20th December is actively being inaccurately reported on social media channels by Anti-Vax activists - I can confirm that currently NO investigation has been initiated."*

The communication proceeded to provide agreed Metropolitan Police communications for use by police forces receiving similar enquiries.

Accordingly, by 18 January 2022, the handling of CRN 6029679/21 had become part of nationally circulated operational guidance issued through Operation Talla.

### ***A Different Context***

Taken together, these two official documents establish a chronology which differs materially from one in which CRN 6029679/21 is viewed solely as an isolated Metropolitan Police decision.

By mid-January 2022:

- the matter had been discussed by the Chief Constables' Council;
- the Metropolitan Police assessment had been identified as requiring a national operational steer;
- and nationally agreed communications concerning CRN 6029679/21 had been circulated to Chief Constables and Gold Commanders across the United Kingdom.

None of those documents appears within the material considered by the Administrative Court.

This paper does not suggest that they should necessarily have altered the outcome of the proceedings. It simply observes that they provide additional operational context which was not available to the applicants and does not appear to have formed part of the documentary record before the Court.

## Chapter 4

### The Wider Context

The chronology did not end with the national communication issued on 18 January 2022.

A further official document, which did not enter the public domain until several years later, demonstrates that the operational significance of CRN 6029679/21 extended beyond the Metropolitan Police Service.

#### ***The Police Scotland Publication***

On 25 January 2022, then Assistant (now Deputy) Chief Constable Alan Speirs, Operation Talla Silver Commander for Police Scotland, issued an internal operational publication concerning Covid-19-related activity by members of the public.

The publication addressed reports from individuals seeking police involvement in relation to the United Kingdom's vaccination programme.

It stated:

*"The Metropolitan Police Service received a complaint and a number of documents on 20 December 2021. The MPS provided the complainers with a crime reference number and is reviewing the content of the documents."*

It continued:

*"However, the MPS has been clear that nothing has been found to suggest any offences or grounds for an investigation, and that no such investigation is taking place."*

The publication also referred to the National Police Chiefs' Council's position before directing Police Scotland personnel as follows:

*"Should any officer or member of staff be approached or contacted by people requesting assistance in line with any of the above, then these requests should be rejected."*

It further instructed that intelligence should be submitted through specified internal systems and that Operation Talla should be informed.

### ***A Different Characterisation***

The significance of this publication is not confined to the operational direction it contains.

Its importance lies in what it demonstrates about the status of CRN 6029679/21.

By 25 January 2022, the Metropolitan Police complaint had become part of an operational publication issued by another United Kingdom police force.

CRN 6029679/21 was no longer simply a matter internal to the Metropolitan Police.

It had entered the wider operational documentary record of Operation Talla.

That observation is one of chronology, not criticism.

### ***The Provenance Revealed***

For several years, the basis upon which the Police Scotland publication had been issued remained unknown publicly.

That changed on 20 March 2025.

Responding to a Freedom of Information request concerning the publication, Police Scotland stated:

*"This was published on the advice of the National Police Chiefs' Council and the UK Gold Command Structure in place to support Covid 19, PSOS engaged with the forum and advice stemmed from NPCC. The decision to issue the directive came via the Gold Command."*

That official response is significant because it addresses the provenance of the publication.

It explains, in Police Scotland's own words, the basis upon which the January 2022 publication came to be issued.

The response distinguishes between two separate matters.

The first is the content of the publication itself.

The second is the route by which the publication was authorised and issued.

Both are now matters of official record.

## ***The Position Before the Administrative Court***

None of these documents formed part of the documentary record referred to within the Summary Grounds of Resistance and they do not appear to have been before the Administrative Court.

This paper makes no assertion that they would necessarily have altered the Court's decision. Nor does it suggest that the Court should somehow have been aware of documents which had not been placed before it, or which had not yet entered the public domain. The point is a different one.

The documentary context surrounding CRN 6029679/21 has changed materially since the 2023 judicial review proceedings concluded.

The Metropolitan Police complaint submitted in December 2021 is now known to have formed part of:

- discussion within the NPCC Chief Constables' Council;
- a nationally circulated Operation Talla communication to Chief Constables and Gold Officers;
- an operational publication issued within Police Scotland; and
- a publication which Police Scotland later confirmed had been issued on NPCC advice and via the UK Gold Command structure.

Those developments do not determine the legal consequences.

They do, however, demonstrate that the factual context surrounding CRN 6029679/21 is now materially richer than it was when the Administrative Court considered the judicial review application.

## Chapter 5

### The Continuing Duty of Candour

The constitutional issue raised by the chronology set out in the preceding chapters is not whether the Administrative Court reached the correct decision. Nor is it whether the Metropolitan Police's legal arguments ultimately succeeded or failed.

The question is a different one.

It concerns the constitutional duty owed by parties to judicial review proceedings to assist the Administrative Court through full and fair disclosure of material relevant to the issues before it.

#### ***The Purpose of the Duty***

Judicial review differs from ordinary civil litigation.

The Administrative Court is not simply concerned with resolving disputes between opposing parties.

Its constitutional function is to supervise the lawfulness of public decision-making.

That function depends upon the Court receiving an accurate and complete account of the relevant factual and legal context.

For that reason, public authorities appearing before the Administrative Court owe what has become known as the duty of candour.

The purpose of that duty is straightforward - It exists to assist the Court in arriving at the correct legal conclusion.

The duty is owed to the Court itself. It is not merely an obligation owed to the opposing party.

### ***A Continuing Duty***

The duty of candour is not confined to the moment proceedings are commenced. It continues throughout judicial review proceedings.

More fundamentally, where material facts subsequently become known which may bear upon the Court's understanding of the issues determined, questions may arise concerning the continuing operation of that constitutional duty.

The precise legal consequences will depend upon the circumstances of the individual case.

Those consequences are matters for the parties and ultimately, for the Court.

This paper expresses no concluded view upon those questions.

### ***The Chronology***

The chronology described in this paper gives rise to a sequence of events which did not exist within the documentary record available to the applicants during the judicial review proceedings.

By the time the Administrative Court considered the application:

- the applicants were unaware of the 12 January 2022 Chief Constables' Council discussion;
- they were unaware of the national communication issued on 18 January 2022;
- they were unaware that agreed Metropolitan Police communications concerning CRN 6029679/21 had been circulated nationally;
- they were unaware that, by 25 January 2022, the Metropolitan Police complaint had become incorporated into operational guidance issued within Police Scotland; and
- they were unaware that Police Scotland would later officially explain that publication as having been issued on NPCC advice and via the United Kingdom Gold Command structure.

Those documents entered the public domain only later.

Accordingly, the applicants themselves could not have placed them before the Administrative Court.

That is simply a matter of chronology.

### ***The Metropolitan Police Position***

The documentary record also demonstrates that the Metropolitan Police Service was not operating in isolation during January 2022.

Senior Metropolitan Police officers attended the NPCC Chief Constables' Council meeting on 12 January 2022 at which the Metropolitan Police crime report and the forthcoming national operational steer were discussed.

Six days later, nationally circulated communications issued by Assistant Chief Constable Owen Weatherill contained agreed Metropolitan Police messaging concerning CRN 6029679/21 and provided operational guidance for police forces encountering similar reports.

This paper makes no finding as to the knowledge of any individual officer or legal representative. Nor does it suggest that any particular document was consciously withheld from the Court.

However, the official chronology demonstrates that the Metropolitan Police Service participated within the wider national operational framework in which CRN 6029679/21 was discussed, operationally communicated and subsequently relied upon beyond the Metropolitan Police itself.

Against that background, it is legitimate to ask whether the later-emerging documentary record gives rise to questions concerning the continuing duty of candour owed to the Administrative Court.

That question is one of constitutional principle. It is not an allegation.

### ***Why the Question Now Arises***

The importance of the later disclosures is therefore not that they determine the outcome of the judicial review. Rather, it is that they demonstrate that the factual landscape surrounding CRN 6029679/21 has evolved materially since the proceedings concluded.

The Administrative Court could determine only the issues presented upon the evidence then available.

The documentary record has subsequently expanded.

Whether that expanded record has any legal significance is not a matter determined by this paper.

It is, however, a question capable of proper consideration within the constitutional framework governing judicial review and the continuing duty of candour.

## Chapter 6

### Where Matters Now Stand

The purpose of this paper has been to examine a chronology.

It has not sought to determine whether the Administrative Court reached the correct decision in 2023. Nor has it sought to criticise the Metropolitan Police Service or any individual involved in the judicial review proceedings.

It has examined how the documentary landscape surrounding CRN 6029679/21 has changed since those proceedings concluded.

That chronology now extends beyond the Metropolitan Police Service.

Official documents demonstrate that, during January 2022:

- the Metropolitan Police complaint was discussed within the National Police Chiefs' Council Chief Constables' Council;
- nationally agreed operational communications concerning the complaint were circulated to Chief Constables and Force Duty Gold Officers throughout the United Kingdom;
- and the complaint subsequently formed part of operational guidance issued by Police Scotland, which Police Scotland later confirmed had been issued on NPCC advice and through the United Kingdom Gold Command structure.

Those official documents were not available to the applicants when judicial review proceedings were commenced. Nor do they appear to have formed part of the material before the Administrative Court. That is simply the evident chronology.

### ***The Position in 2026***

During 2026, the Metropolitan Police Directorate of Legal Services was provided with the subsequently disclosed official material and invited to consider its significance in light of the judicial review proceedings.

The purpose of that correspondence was not to criticise the Administrative Court. Nor was it to challenge the constitutional principle that courts determine cases upon the material placed before them.

It was to draw attention to official documents which had entered the public domain after the proceedings had concluded and which, it was suggested, provided additional operational context concerning CRN 6029679/21.

The Metropolitan Police Directorate of Legal Services did not however engage substantively with that invitation.

This paper expresses no conclusion as to the reasons for that decision of the Metropolitan Police Service. It simply records that the later documentary material was brought to the attention of the Metropolitan Police and that no substantive reconsideration followed.

## ***A Constitutional Question***

The constitutional question which now arises is therefore a narrow one.

It is not whether the Metropolitan Police was entitled to resist the judicial review application and it is not whether the Administrative Court reached the correct decision. Nor is it whether the later-emerging documents ultimately alter the legal position.

The question is simply this:

***Where official documents, unavailable to both the applicants and the Court at the time proceedings were determined, subsequently enter the public domain and materially expand the factual context surrounding those proceedings, what, if any, consequences arise under the continuing duty of candour owed to the Administrative Court?***

That question is one which, in the interests of the rule of law, deserves careful constitutional consideration.

Whether the answer ultimately proves to be that no further action is required, or that some procedural step should now be taken, is not a matter for this paper.

It is a matter for those upon whom the relevant constitutional duties rest.

## Conclusion

The rule of law depends not merely upon courts deciding cases. It depends upon courts deciding cases upon the fullest and fairest account of the relevant facts that can reasonably be provided.

That principle protects every participant in judicial proceedings.

- It protects applicants.
- It protects defendants.
- It protects public authorities.

Above all, it protects the constitutional integrity of judicial decision-making itself.

This paper has deliberately avoided expressing conclusions regarding the legal consequences of the chronology it describes.

Its purpose has instead been more modest - It has sought to demonstrate, through primary official documentation, that the factual context surrounding CRN 6029679/21 has evolved significantly since the Administrative Court determined the judicial review application in 2023.

Those developments are now matters of official record.

They cannot alter the historical fact that the Court decided the application upon the material then available.

They may, however, give rise to legitimate constitutional questions concerning the continuing operation of the duty of candour.

In a society governed by the rule of law, such questions should neither be feared nor avoided - They should be examined openly, carefully and by reference to the documentary evidence.

That is the purpose of this paper.

Nothing more - Nothing less.

## Final Observation

Every judicial review is determined upon the evidence and submissions placed before the Administrative Court.

That principle is fundamental.

Courts cannot decide cases upon documents that have not been disclosed, nor upon facts that have not yet entered the public domain.

Equally fundamental, however, is the constitutional principle that parties to judicial review proceedings owe a duty of candour to the Court.

That duty exists because the Court performs a public constitutional function.

It depends upon parties assisting it through openness, accuracy and fairness.

This paper has deliberately avoided making findings of legal fault.

It has not suggested that the Administrative Court reached an incorrect conclusion.

Nor has it asserted that the Metropolitan Police Service or any individual breached the duty of candour.

Instead, it has set out a chronology established by primary official documents.

That chronology demonstrates that, after the judicial review proceedings had concluded, official material entered the public

domain showing that Crime Reference Number 6029679/21 had become part of a wider national operational context involving the National Police Chiefs' Council, Operation Talla, nationally circulated communications and operational guidance issued beyond the Metropolitan Police Service.

Those documents were not before the Administrative Court.

The applicants themselves could not have relied upon documents of which they had no knowledge.

The documentary record has therefore changed.

Whether those developments ultimately have any legal consequence is not a question answered by this paper.

It is a question which belongs within the constitutional framework governing judicial review and the continuing duty of candour owed to the Administrative Court.

The purpose of this paper has been a modest one - To place the chronology in the public domain and to distinguish clearly between evidence, chronology and legal consequence.

It also seeks to recognise that, in a constitutional democracy governed by the rule of law, confidence in public institutions depends not merely upon decisions being made, but upon their continuing ability to withstand careful scrutiny when new evidence emerges.

That is not a criticism of the justice system.

It is one of the ways by which the justice system maintains its integrity.

## Evidence Annex

NPCC Chief Constables' Council Minutes - 12 January 2022.

[https://ethicalapproach.co.uk/14\\_january\\_2022\\_260406\\_032139.pdf](https://ethicalapproach.co.uk/14_january_2022_260406_032139.pdf)

ACC Owen Weatherill - National Communication to Chief Constables and Force Duty Gold Officers - 18 January 2022.

[https://ethicalapproach.co.uk/communication\\_to\\_police\\_chiefs\\_18\\_012022.pdf](https://ethicalapproach.co.uk/communication_to_police_chiefs_18_012022.pdf)

ACC Alan Speirs - Police Scotland Operational Publication - 25 January 2022.

[https://ethicalapproach.co.uk/FOI\\_25\\_0673\\_police\\_scotland\\_speirs\\_directive.pdf](https://ethicalapproach.co.uk/FOI_25_0673_police_scotland_speirs_directive.pdf)

Police Scotland FOI 25-0673 - 20 March 2025.

[https://ethicalapproach.co.uk/FOI\\_25\\_0673.pdf](https://ethicalapproach.co.uk/FOI_25_0673.pdf)