

Did the Court Fully Consider the Disclosed Garnett Letter of May 2022?

A Question Arising from the Judicial Review Proceedings in CO/2254/2023

Introduction

The integrity of judicial review depends upon the Court determining issues on the evidence placed before it.

Where contemporaneous documents appear capable of bearing upon the central issue in dispute, it is legitimate to ask how those documents fit within the legal arguments advanced.

This paper concerns one such document.

It is not suggested that the High Court failed to fully consider the letter discussed below. Nor does this paper seek to criticise the Court's decision.

It asks a narrower constitutional question.

How does the disclosed correspondence of Detective Superintendent Tor Garnett, dated 18 May 2022, sit alongside the litigation position ultimately advanced by

the Metropolitan Police during the judicial review proceedings?

That question arises because the letter itself formed part of the evidence before the Court.

It appeared as Exhibit PH10B within the claimants' bundle.

The Garnett Letter

The letter was written following a request that the Metropolitan Police reconsider its decision not to record the complainants' allegations as crimes.

It confirms that material supplied by the complainants had been reviewed before the Metropolitan Police concluded that the threshold for crime recording had not been met.

However, one passage is particularly significant.

Detective Superintendent 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."

This wording is notable because it expressly accepts that describing the matter as being under investigation would not have been inaccurate.

Whether that investigation was ultimately sufficient to justify crime recording is a different question.

The point is simply that the Metropolitan Police itself acknowledged investigative activity of a kind that could properly be described as an investigation.

The Litigation Position

During the subsequent judicial review proceedings, the Metropolitan Police drew a distinction between two separate processes.

- Firstly, reviewing material to determine whether a crime should be recorded.
- Secondly, commencing a criminal investigation following the recording of a crime.

The Summary Grounds of Resistance state:

"...there is an important difference between the defendant undertaking a review of material... for the purposes of determining whether to record a crime, and the defendant commencing a criminal investigation..."

The Metropolitan Police therefore invited the Court to distinguish between these two concepts.

That distinction became central to the defence of the claim.

The Court's Decision

Permission for judicial review was refused.

Among the reasons given, the Court held that the Metropolitan Police had been entitled to conclude that the reported circumstances did not amount to a crime and also rejected the proposition that every report necessarily gives rise to a duty to investigate.

The Court also treated the decision communicated by 18 May 2022 as the definitive decision for limitation purposes.

None of those findings are criticised here.

The question is different.

The Unanswered Question

The Garnett letter was certainly before the Court and the Court's decision itself evidences that the letter had been considered, at least to a degree.

The letter expressly stated that telling the complainants their allegations were under investigation would not have been inaccurate because they were *"being reviewed/investigated"*.

The Summary Grounds, however, invited the Court to distinguish sharply between a review and a criminal investigation. Both propositions formed part of the same documentary record.

That naturally gives rise to an obvious question.

How were those two positions reconciled?

Was the wording of the Garnett letter understood simply as describing an internal review?

Or was greater significance attached to the acknowledgement that informing complainants an investigation was taking place *"would not have been an inaccurate representation"*?

The publicly available judgment does not explain.

That observation is not criticism. It is simply recognition that the reconciliation is not apparent from the published material.

Why This Matters

This issue extends beyond one case, simply and obviously because public confidence depends upon precision in the language used by public authorities.

When police correspondence acknowledges that describing a matter as "*under investigation*" would not have been inaccurate, yet subsequent litigation relies upon a distinction, advanced by the same policing institution, between "*review*" and "*criminal investigation*", it is legitimate to ask how those two descriptions fit together.

The answer may be straightforward. Equally, it may require closer examination of the contemporaneous operational record (which is a separate issue and one which has already been considered, with relative action undertaken and a paper pertaining thereto published).

The fact is, judicial review exists to scrutinise the legality of public decision-making.

That scrutiny depends upon contemporaneous documents carrying their ordinary meaning unless there is a principled reason why they should not.

The Garnett letter remains one such document.

- It was disclosed.
- It was before the Court.
- It forms part of the documentary record.

Its significance is therefore a legitimate subject for very careful public examination.

Ian Clayton

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