

CRN 6029679/21, THE METROPOLITAN POLICE, THE INVESTIGATION QUESTION AND THE DUTY OF CANDOUR OWED TO THE ADMINISTRATIVE COURT

Did Mr Justice Nigel Poole actually read Tor Garnett's letter of 18 May 2022?

An Ethical Approach UK Evidential Review

There is a problem at the heart of the Metropolitan Police's account of CRN 6029679/21.

It is not simply a disagreement about whether Mark Sexton and Philip Hyland were entitled to demand that the police investigate allegations reported to them.

It is more fundamental than that.

It concerns what the Metropolitan Police had actually done, what its own records said it had done and what the Administrative Court was told about it.

In November 2023, Mr Justice Nigel Poole refused Mark Sexton and Philip Hyland permission to seek judicial review.

Their claim was certified “*totally without merit.*”

The Court accepted the Metropolitan Police's essential case that the force had conducted a review for crime-recording purposes but had not commenced a criminal investigation.

That might appear straightforward, but it is far from so.

Material subsequently obtained from the Metropolitan Police through a Subject Access Request reveals what the claimants (Mark and Philip) did not themselves possess when their judicial review application was decided: The Metropolitan Police's internal case record and that record raises questions which go directly to the factual basis upon which the Court appears to have proceeded.

What the claimants did not know

The SAR material was not available to Mark Sexton or Philip Hyland when they brought their judicial review.

They could not place before Mr Justice Poole records which they did not possess.

They did not control the Metropolitan Police's internal systems.

They could not know every officer allocated to the matter, every internal classification, every supervisory action, every

CID transfer, or every internal description of what the police themselves were doing.

However, and this is very important: The Metropolitan Police could.

Indeed, the Metropolitan Police created those records.

That is why the later SAR disclosure matters so very much.

It is not “new evidence” with which to criticise an old judgment retrospectively.

It is contemporaneous police evidence which already existed within the Defendant's (the Met's) own systems when the judicial review was being defended.

What the police record now reveals

Start with the first page.

The Metropolitan Police record identifies:

“Screening Decision: IN”

It identifies the Investigating Officer's rank as DC, names DC Hussey and records allocation on 29 December 2021.

The historical investigation record is even more explicit.

On 22 December 2021, it records:

“Screened In”

That is not an interpretation. Those are the Metropolitan Police's own words.

The SAR record also records successive changes of OIC and states:

“This has been transferred to the CID by the CMS.”

The report therefore did not simply arrive at a front counter, receive a reference number and disappear. The force's own records show that it was screened in, transferred to CID, allocated within the organisation and subjected to continuing internal handling.

The record is actually headed “*Details of Investigation*”

That feature should not be overlooked.

The internal chronology through which these actions are recorded is headed:

“Details of Investigation”.

Under that heading, the original reporting officer recorded that four informants had attended Hammersmith Police Station with evidence, that they said they possessed a large quantity of evidence on memory sticks and in other documents and that the matter concerned allegations relating to Covid-19 vaccines.

The following day a sergeant recorded his view that the report appeared to constitute a protest rather than a legitimate allegation of crime, which, frankly, appears rather odd, in itself.

Then came:

- “*Screened In*”
- Then OIC changes.
- Then transfer to CID.
- Then further handling.

This matters because the case subsequently presented to the Administrative Court relied upon a comparatively clean binary distinction:

- review on one side;
- criminal investigation on the other.

The internal record shows something much less linguistically tidy than what the Metropolitan Police appears to have placed before the Court.

It was under continuing supervision

The SAR record also contains a substantial chronology of supervision.

It records supervision on:

- 29 December 2021;
- 5 January 2022;
- 13 January 2022;
- 28 January 2022;
- 1 March 2022;
- and subsequently on later dates.

It then states:

“Screening Decision: IN Crime screened ‘in’ for further investigation.”

with the reason:

“92 Proportionate Investigation”

The historical entries themselves are dated.

“Screened In” is recorded against 22 December 2021.

The CID transfer belongs to December 2021.

The allocation and repeated supervision pre-date the judicial review application.

Metropolitan Police Directorate of Legal Services was involved

The internal record becomes still more important in February and March 2022.

On 24 February 2022, DC Hussey entered an Outcome Code 99 entry stating that the material provided showed, in the officer's assessment, no basis for the allegation and:

“Due to this the MPS is not pursuing an investigation into these offences.”

Then on 1 March 2022 a Detective Sergeant recorded:

“Legal wording has now been provided by legal services and this has been served.”

and:

“OC99 agreed. No offences”

The significance is obvious.

The internal record does not merely say, *there was never an investigation.*

It uses language describing an existing process which the MPS was *“not pursuing”* further and Legal Services had become involved in the wording used to communicate the outcome.

This makes the factual history substantially more complicated than the simple proposition: A review occurred; an investigation did not.

Then there is Tor Garnett's letter

The Metropolitan Police itself gave Philip Hyland perhaps the clearest contemporaneous explanation.

On 18 May 2022, Detective Superintendent Tor Garnett wrote concerning CRN 6029679/21.

The letter said that the MPS had undertaken a proportionate review of the material.

But it did not stop there.

On the following page Garnett expressly addressed whether the complainants might properly have been told that the allegations were under investigation.

She wrote that if they had been informed that the allegation was subject to an investigation:

“this would not have been an inaccurate representation”

because:

“the allegations were, in fact, being reviewed/investigated to determine whether a crime should be recorded.”

That passage appears on page 3 of the relevant disclosure, exhibited in the judicial review proceedings.

This is exceptionally important.

The letter **was** before the Administrative Court.

We therefore have two different evidential categories.

The internal SAR record was not possessed by the claimants, whereas Garnett's letter was. And, Garnett's letter **was** actually presented to the Court.

What the Metropolitan Police told the Court

The Metropolitan Police's Summary Grounds of Resistance characterised the position rather differently.

It told the Court:

“There is an important difference between the defendant undertaking a review of material sent to the police by a complainant for the purposes of determining whether to record a crime, and the defendant commencing a criminal investigation...”

It then said:

“In the claimants' case, the defendant undertook a review but declined to commence a criminal investigation...”

That was the distinction upon which a substantial part of the defence rested.

That was evidently the means by which the MPS wished the Court to proceed, but, of course, there was another fact which required confronting: Its own senior detective had already expressly said that describing the allegations as

being subject to an “*investigation*” would not have been inaccurate.

And she went on to explain why.

They were, “*in fact, being reviewed/investigated.*”

The most revealing three words in the Summary Grounds

The Summary Grounds expressly referred to the 18 May letter.

At paragraph 26 the Metropolitan Police told the Court:

“*To similar effect*” the 18 May letter stated that the MPS had reviewed the material and considered that the threshold for crime recording had not been met.

But, the letter was not merely “*to similar effect.*”

It contained the critical additional acknowledgement that the allegations were “*reviewed/investigated*” and that it would not have been inaccurate for an officer to have told the complainants that their allegations were subject to an investigation.

That is actually the uncomfortable point.

The Court was told about the letter.

The Court was directed to it.

But its most awkward sentence for the MPS's later formulation appears to have disappeared from the Defendant's description of what the letter said.

“reviewed/investigated” instead, when presented to the Court by the MPS, became *“reviewed”*.

That is not an insignificant editorial difference when the very issue before the Court concerned whether investigation had occurred.

Now add the internal police record

At the time, Mark Sexton and Philip Hyland could point to Garnett's words.

What they could not point to was the internal record which has now subsequently surfaced.

We now know that the Metropolitan Police system also recorded:

- *“Screened In”*;
- a named Detective Constable as Investigating Officer;
- transfer to CID;
- multiple OIC changes;
- repeated supervisory entries;
- a section expressly called *“Details of Investigation”*;

- and a screening description ultimately appearing as:
“Crime screened ‘in’ for further investigation” with: *“92 Proportionate Investigation.”*

The later disclosure therefore does something so important - It gives substantial contemporaneous context to Garnett's otherwise rather unusual expression:

“reviewed/investigated.”

Her wording no longer stands alone. It corresponds with an internal record demonstrating structured investigative handling.

The claimants, Mark and Philip, did not have the cards

That brings us to the duty of candour.

The Treasury Solicitor's official guidance explains judicial review in unusually memorable terms.

The process must be conducted:

“with all the cards face upwards on the table”

because:

“the vast majority of the cards will start in the authority's hands.”

Few cases illustrate the reason for that rule more clearly than this one.

Mark Sexton and Philip Hyland did not hold the Metropolitan Police's internal CRIS/SAR record, but the Defendant, the Metropolitan Police, certainly did.

The claimants did not know that an internal record expressly said “*Screened In.*”

The Defendant's organisation did.

The claimants did not know the record identified an Investigating Officer, CID transfer and successive supervision.

The Metropolitan Police did, or at the very least those facts were contained within the systems it actually controlled.

The claimants could not be expected to tell the Administrative Court facts concealed within the Defendant's own internal records.

That is precisely why the duty of candour rests upon public authorities.

The duty was not to wait for the claimants to discover the documents and that principle matters.

Judicial review does not normally depend upon ordinary standard disclosure because the public authority owes the Court the more exacting duty of candour.

The official guidance says the authority must set out:

“fully and fairly all matters that are relevant”

and that the duty extends to information which assists the claimant or gives rise to an otherwise unknown ground of challenge.

It also requires:

“full and accurate explanations of all the facts relevant to the issue that the court must decide.”

And the guidance could hardly be clearer:

“Inconvenient facts or relevant considerations must not be ignored.”

The Administrative Court's own 2022 Guide, applicable at the relevant period, likewise stated that the public authority's duty is “*self policing*” and that, at permission stage, Summary Grounds should identify material facts and highlight material matters of factual dispute.

That is highly significant here.

The investigation question was not collateral. It was central to the claim.

What ought the Metropolitan Police to have told the Court?

This paper does not assert that every internal CRIS entry necessarily had to be copied into the court bundle.

That would overstate the duty.

The proper issue is whether the Court was given a full and accurate account of the material facts relevant to the disputed investigation question.

On the material now available, there is a serious question as to whether that occurred.

The Defendant was the Commissioner of Police of the Metropolis. The relevant information was contained within Metropolitan Police records concerning the very CRN whose handling was under challenge.

The applicable duty was not satisfied merely by what an individual litigation lawyer happened already to know.

The Treasury Solicitor guidance explains that a solicitor dealing with judicial review requires full knowledge of relevant documents and full instructions on matters material to the challenged decision.

It further emphasises the responsibility to investigate carefully rather than simply accept an incomplete account from the client.

The Metropolitan Police Directorate of Legal Services, or others Representing them in the relevant proceedings either knew of its own material records, or ought, through a proper candour exercise, to have identified them before presenting a categorical factual account to the Administrative Court.

What Mr Justice Poole was told

The Court's reasons show the importance of the Defendant's account.

Mr Justice Poole said that the claim faced a “*very high hurdle*” because courts interfere with decisions of independent investigators only in highly exceptional circumstances.

He then accepted that the Defendant had been entitled to determine that the reported circumstances did not amount to a crime.

He concluded:

“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.”

Notice those final words:

“for the reasons set out by the Defendant.”

The Defendant's presentation therefore mattered and the Defendant's presentation was that it had undertaken a review but had declined to commence an investigation.

What about the facts now visible though?

The difficulty is that the underlying contemporary police history was not nearly so neat.

It records:

- *“Screened In.”*
- It records CID involvement.
- It identifies an Investigating Officer.
- It records months of handling.
- It records repeated detective supervision.
- It records Legal Services involvement.
- It records an officer saying the MPS was *“not pursuing an investigation”* - language which at least invites the obvious question of what process had existed before the decision not to pursue it further.

And, we know that the Court itself possessed Garnett's letter acknowledging that the allegations had been:

“reviewed/investigated.”

That plainly complicates the Defendant's factual proposition.

This was exactly the sort of complication which a court determining a judicial review ought arguably to have been told about.

The question for Mr Justice Poole becomes even more troubling

We must separate two things.

The SAR record apparently was not before Mr Justice Poole.

The 18 May Garnett letter however, was before him.

We therefore cannot criticise the Judge for failing to divine internal police documents which neither claimant possessed and which apparently were not placed before him by the Metropolitan Police.

The responsibility for that evidential asymmetry principally raises questions for the Defendant public authority (the Metropolitan Police) and those responsible for discharging its duty of candour.

The Garnett letter itself though, produces a separate question.

Did Mr Justice Poole actually read and appreciate its crucial passage?

His written reasons make no reference to it at all. He does not quote it. He does not reconcile it with the Defendant's contention that there was merely a review. He does not explain why Garnett's express acceptance that “*investigation*” would not have been an inaccurate description made no difference. Indeed, it is almost as though the judges eyes were never at all cast upon the relevant words now in question.

The judgment is silent on the matter.

That is precisely why the question remains legitimate.

Was the Court given a muddled factual picture?

That is ultimately the concern.

The factual history should not and cannot be altered.

What actually happened is of crucial importance.

The internal police record disclosed suggests a process involving screening-in, CID transfer, investigative allocation, supervision, assessment of evidence and a subsequent no-crime outcome.

Garnett herself, a senior detective, head of CID, called that process:

“reviewed/investigated.”

Yet, the Summary Grounds, presented to the Court by the police, distilled the history into:

“the defendant undertook a review but declined to commence a criminal investigation.”

In a judicial review proceeding governed by a stringent duty of candour, the question is not simply whether the Defendant can construct a defensible characterisation. It is whether the Court was given the material facts necessary to assess that characterisation for itself. The Court must not be led away from what actually took place.

The subsequent SAR makes the point impossible to dismiss

One particularly stark entry appears at the conclusion of the SAR record:

“Screening Decision: IN Crime screened ‘in’ for further investigation.”

“Reason: 92 Proportionate Investigation”

The historical chronology separately records “Screened In” on 22 December 2021.

That is not something invented after the litigation - It was an event logged within the Metropolitan Police's own contemporaneous handling.

If this material was not identified when the Metropolitan Police prepared its Summary Grounds, that itself poses questions about the adequacy of the candour exercise.

If it was identified, different questions arise:

- *Why was it not squarely explained to the Court?*
- *Why were all cards not placed onto the table, face up?*

Either route deserves an answer.

Mark Sexton's present complaint

That history gives additional significance to Mark Sexton's current correspondence with Metropolitan Police Professional Standards.

Mark has made clear that his present complaint concerns the handling of CRN 6029679/21 and the conduct of those responsible.

He has complained that those now handling his complaint appear unable to access or scrutinise significant evidence which formed part of his submission.

He has explained that the online form was character-limited and that evidential links were deliberately supplied for that reason.

He has also challenged what he considers to be the recategorisation of his complaint into a service/actions issue rather than examination of the conduct and evidence alleged.

The broader allegations made by Mark remain allegations and must be tested as such, but one point is difficult to dispute:

A complaint about whether the Metropolitan Police accurately represented its handling of CRN 6029679/21 cannot sensibly be determined without examining the actual police records of that handling and the SAR record demonstrates why.

This is not about whether the original allegations were right

Nothing in this paper determines whether the original allegations concerning Covid issues were well-founded.

Nothing here determines whether any person committed a criminal offence.

Nothing here establishes that the Metropolitan Police was legally required to commence a full criminal investigation.

These were separate questions.

This paper concerns something more elementary:

Was the Administrative Court given an accurate and sufficiently complete account of what the Metropolitan Police itself had actually done?

That question cannot be answered by debating vaccine efficacy.

It is answered by comparing:

- the police records;
- the police correspondence;
- the Defendant's pleadings;
- and the Court's decision.

The extraordinary information imbalance

The position can be stated very simply.

When Mark Sexton and Philip Hyland went to the Administrative Court, they had to challenge a public authority using the information available to them.

The Metropolitan Police held the operational record.

The claimants did not.

The Metropolitan Police knew, or should through an adequate internal enquiry have established, that its own

records contained a more complicated history than a bare “review”.

Then, and only then, after the litigation had ended, the SAR put some of those cards onto the table for everyone.

They include:

- SCREENED IN.
- CID.
- INVESTIGATING OFFICER: DC.
- ONGOING SUPERVISION.
- PROPORTIONATE INVESTIGATION.
- LEGAL SERVICES.

Those are the MPS's records, not the claimants' descriptions.

And one of the very documents already before the Court stated:

“reviewed/investigated.”

Conclusion

Mr Justice Poole certified the claim as totally without merit.

That is a severe judicial conclusion.

It prevented the claimants from seeking reconsideration of the permission refusal at an oral hearing.

Such a conclusion assumes particular importance where the Defendant (the Metropolitan Police) held material information which the claimants did not.

The SAR revelations raise a serious and legitimate question about the factual foundation presented by the Metropolitan Police to the Court.

The public authority's duty was not merely to win the argument. It was to assist the Administrative Court with the material facts, including inconvenient ones - The official guidance says so, expressly.

The claimants could not disclose records they had never seen.

The Metropolitan Police held them.

The Metropolitan Police knew, or ought reasonably to have ascertained through the candour process, how CRN 6029679/21 had actually travelled through its own systems.

And its own senior detective had already acknowledged in writing that describing the allegations as subject to an investigation:

“would not have been an inaccurate representation.”

That letter **was** before the Court and the later revealed SAR result now tells us why that sentence matters so much.

The final questions are therefore unavoidable:

- *Why was the Administrative Court apparently presented with the much cleaner proposition that there had merely been a “review”?*
- *Why do Mr Justice Poole's reasons contain no apparent consideration of the MPS's own “Screened In”, CID and investigative history?*

The answer to the second question may simply be that the Court was never told.

If so, that is not principally a question for the Judge. It is a question for the Metropolitan Police and the duty of candour it owed to the Judge.

But one question remains for the judgment itself

Tor Garnett's 18 May 2022 letter was before Mr Justice Poole.

It said that calling the process an investigation *“would not have been an inaccurate representation.”*

Did the Judge actually grapple with that evidence before declaring the claim totally without merit?

On the face of his written reasons, we cannot see that he did and, indeed, after the Metropolitan Police's own internal records have now finally emerged, that silence is considerably more difficult to ignore.

Ian Clayton

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