IN THE COURT OF APPEAL **Appeal No:**
(CIVIL DIVISION)

ON APPLICATION FOR PERMISSION TO APPEAL FROM THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, ADMINISTRATIVE COURT
CO/3835/2019; CO/3590/2020
The Hon. Mr. Justice Swift
[2022] EWHC 217 (Admin)

B E T W E E N:

(1) GRIZZIO LTD
(2) ONLINE CURRENCY CORP LTD
(3) ILDAR SHARIPOV

Applicants

-v-

CHIEF CONSTABLE OF MERSEYSIDE POLICE

Respondents

GROUNDS OF APPEAL AND PTA SKELETON

Introduction

1. This is an application for permission to appeal under CPR 52.8 against the decision of Swift J dated 4 February 2022 refusing permission in relation to a claim in which the Applicants applied for judicial review.

2. The Applicants respectfully seek leave to appeal the court's decision on the Applicant's application on the following grounds addressing the order of 7 February 2022 (the "order"), made by Mr Justice Swift (the "judge", "J Swift"), the judgement of 4 February 2022 (the "judgement"), the Summary Grounds of Resistance (the "SGoRs") of 16 October 2019 and 20 October 2020, the underlying decision of the Respondent of 4 July 2019 (the "decision") made in relation to the complaints against Merseyside Police's (the "MP") Economic Crime Team (the "MPECT") and the failure to make a fresh decision upon fresh invitation to do so made by the Applicants on 6 July 2020.

3. For the avoidance of doubt, every ground listed below stems from and endorses the initial grounds of the Statement of Facts and Grounds (the "SoFG") of 2 October 2019 and 6 October 2020, with the difference that they are structured in a way to better address the impugned order's reasoning, the underlying SGoRs and decision as the applied by the judge part of that reasoning. The difference is, however, that, where the initial grounds were aimed to demonstrate why the claim was to be upheld, the grounds listed below are aimed to demonstrate that the claim is arguable, which is, of course, a different, and much lower, test.

Abbreviations

4. The following abbreviations will be in use in the current letter of appeal (and its index):

A3 – Ildar Sharipov	**PO** – Production Order
OCC – Online Currency Corp	**FCA** - Financial Conduct Authority
AFO – Account Freezing Order	**MOI** – Mode of Investigation
MPPSD – Merseyside Police's Professional Standards Department	**MPECT** – Merseyside Police's Economic Crime Team
IOPC – Independent Office for Police Conduct	**SCA 1981** – Senior Courts Act 1981
PSD - Professional Standards Department	**CoE** – Code of Ethics
MP – Merseyside Police	**PRA** – Police Reform Act 2002
ACC – Assistant Chief Constable	**SCP -** Service Confidence Policy
COA – Court of Appeal	

Short overall background

5. The Third Applicant ("A3") is a Fintech businessman engaged in the financial brokerages since 2007, employing more than 450 staff worldwide (predominantly in developing countries with cheap manpower). His businesses, *inter alia*, sponsored Liverpool FC[1] between 2014 and 2018 and sponsor[2] Borussia Dortmund FC since 2019. The previously supplied to the

[1] https://www.liverpoolfc.com/news/first-team/167572-lfc-announce-partnership-with-instaforex
[2] https://www.bloomberg.com/press-releases/2019-09-05/borussia-dortmund-and-leading-online-forex-trading-company-instaforex-today-announce-a-two-year-partnership-that-will-run

High Court list of selective expenses of A3's businesses for the period between 2009 and 2019, for sports and IT software expenses [aimed to demonstrate the significant and legitimate business footprint of A3] is available within the supplementary bundle.

6. In 2016, A3 had a plan to move his family to the UK, for which purpose he arranged £3,400,000 to be transferred to the local bank accounts opened in accordance with tax advice: moving money to the UK before becoming a tax resident would allow to exclude it from taxation when it would be started to be used after the arrival (the transmittance-basis taxation regime of the UK that is aimed to ensure they do not need to pay taxes from earnings accrued before settling to the UK). The plan to move family was postponed and the money remained in the UK bank accounts of A3. The same year, A3 [got onset of an autoimmune disease, which spiked with severe joints pain]. This has caused his stop any traveling for two years, whilst coping with the outbreak. Naturally, monies transferred to the UK and the bank accounts have become dormant.

7. Being unaware of A3's illness causing him to stop traveling to the UK from his home country – Singapore – where he stayed throughout that period with the family, MPECT, in whose jurisdiction the bank accounts were opened, found those dormant bank accounts with multi-million balances and applied, on 23 April 2018, for an order which would allow them to forfeit monies in A3's absence ("AFO" application). Because the real reason of A3's absence was in his illness (and not what MP assumed – that he has left the UK and money in his UK bank accounts for good, having no intention to return), having learned about the AFO application (from an alternative source, as its notice was never sent to him for his personal bank accounts), A3 contacted (through his staff and the directly) and challenged MP officers and demanded for clarifications of the reasons of making it. Having then obtained a copy of the AFO application, he found that it was outrageously and deliberately misleading. As a result of the discovery, MP officers were informed about the intent to file a complaint (which was then subsequently filed on 17 April 2019) but, instead of apologising (as A3 offered) for filing an outrageously misleading the court AFO application, have maintained that their investigation has merit and will be pursued, shifting agenda from the initial AFO application being apparently dishonest and amounting to very serious conduct for themselves. In September 2018, A3 travelled from his country of staying since 2013 – Singapore – 10,000 miles specifically to attend a 6-hour interview with MPECT officers. Ever since then A3 and MPECT officers are, in effect, in a vendetta, which has now involved the IOPC, as a result of MPPSD's internal

procedures having repeatedly failed to properly address the concerns of A3 raised in his complaints.

8. That vendetta's development led to emerging of 19 JR claims[3], by which A3 has challenged both MP and the IOPC for their failures to properly address concerns of misleading the court in the initial AFO application, from which the portrayed to be legitimate criminal investigation codenamed "Operation Kobus" started, as highlighted by A3's complaints.

9. Further chronology of the events will be available at the Chronology document of the Core Bundle of the appeal.

Background of the concerned claim

10. MPPSD's decision of 4 July 2019 addressed by the concerned in the current appeal's claim CO/3835/2019 and the refusal to make a fresh decision upon invitation of 6 July 2020 (addressed by the claim CO/3590/2020) are submitted by the Applicants to be part of a culture of cover-up and / or failing safeguards system of MP, which was ought to address indications of serious corruption on MPECT's side but has failed to do so up to now.

11. The failure of MPPSD and then of the ACC of the force to make a recusal decision, in its turn, triggered a complaint against them having been filed on:

    a. 7 August 2019 (for the decision of 4 July 2019 reiterated on 23 July 2019) against DCI Vaughan. That complaint is a subject of the parallel application in CO/1727/2020, which is invited to be decided by the COA in conjunction with the current application.

    b. 29 November 2019 and 3 August 2021. The first of these complaints is a subject of the parallel application in CO/1576/2021, which is invited to be decided by the COA in conjunction with the current application. The second is yet to be challenged within Administrative Court.

12. Having been presented with the evidence stated to raise a reasonable (and significant) concern of serious corruption and the integrity / dishonesty in MPECT (and, as a result, of inevitable bias), DCI Vaughan on 4 July 2019 and then ACC Critchley on or after 6 July 2020 refused to recuse a single police officer from the exercise of police powers against the complainant of their conduct, as was invited by A3 with the objective of allowing the criminal investigation to be continued without the objective risk of being tainted by the issues of the integrity and bias in MPECT. The refusal (to recuse MPECT and / or its individual officers) decision of 4 July 2019 followed by the refusal to make a fresh decision upon invitation to do so, made by A3 with fresher

[3] Of which two were refused and discontinued, two are still before the Administrative Court.

evidence of MPECT's conduct on 6 July 2020, are subject of the current application and the underlying claims.

13. The parallel application to the COA, for the claim CO/636/2020 In relation to the decision of ACC Critchley dated 21 November 2021 (made, unlike for the current application, with the legal representation of Mr Chris Daw QC), is also invited to be considered in conjunction with the current claim as it addressed the identical failure of MP to recuse the officers of MPECT. The interplay between the claims CO/3835/2019, CO/636/2020 and CO/3590/2020 is that they address the same decision of MP (or a refusal to make it, leading to the same effect), that have taken place at different points in time. Naturally, it can be said that, at least to a certain extent, those claims supersede each other, by which reason claim CO/3835/2019 is appealed only in the aspect of the costs, whereas the COA is invited to consider the appeals in CO/636/2020 and CO/3590/2020 in full, by the reasons that those claims proceeded different factual matrix and, astonishingly, the Administrative Court has concluded that only CO/636/2020 was not duplicative. Claim CO/3590/2020, to the contrary, was marked as TWM due to being duplicative (beside some other concerns elaborated below) and unnecessary, despite it having addressed fresher evidence, which decision of J Swift is appealed by the current application.

PTA Skeleton issue

14. The current grounds are prepared in a way which incorporates certain elements of skeleton such as legal framework and dealing with explaining the evidence. The reason of that is that there is an intent to apply for a permission to serve the court with the consolidated skeleton for all 15 appeals before it as a single document. Because, as of the moment of filing this appeal, it is unknown whether the application is to be granted, out of abundance of caution the all grounds include these elements which are later to be transferred to the consolidated skeleton, thus, reducing the volume of the grounds and removing repetition between them for the parallel appeals that are being filed on 11 February 2022. It is of note that a previous permission to supple the consolidated skeleton for the already filed 6 appeals was granted by the court.

LEGAL FRAMEWORK

15. As per the explained in the previous para logic, this part will be transferred to the consolidated PTA skeleton upon (and in case) granting the permission to include the current's appeals PTA skeleton points into the single skeleton document dealing with all 15 appeals before the court at once. In that case

the court would be supplied with perfected appeal's ground, the repeating parts being removed from it in favour of the consolidated skeleton .

Recusal of police officers

Power to suspend / re-deploy4 (recuse)

16. The IOPC has a power to make substantive / operational decisions to "recuse" i.e. to suspend or redeploy officers. The Police (Conduct) Regulations 2012, regulation 10 provides:

"Suspension

10.— *(1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned from his office as constable and (in the case of a member of a police force) from membership of the force.*

(2) An officer concerned who is suspended under this regulation remains a police officer for the purposes of these Regulations.

(3) A suspension under this regulation shall be with pay.

(4) The appropriate authority shall not suspend a police officer under this regulation unless the following conditions ("the suspension conditions") are satisfied—

(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case; and

(b) it appears to the appropriate authority that either—

(i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended; or

(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that he should be suspended.

(5) The appropriate authority may exercise the power to suspend the officer concerned under this regulation at any time from the date on

[4] Re-deployment is a softer alternative of suspension, tested under the same regulation 10 of Police (Complaints and Misconduct) Regulations 2012. The Service Confidence Policy's route, elaborated below, deals only with re-deployment option, i.e. the suspension's option is available only under the PRA and re-deployment both under the PRA and under the Service Confidence Policy.

which these Regulations first apply to the officer concerned in accordance with regulation 5 until—

(a) it is decided that the conduct of the officer concerned shall not be referred to misconduct proceedings or a special case hearing; or

(b) such proceedings have concluded.

(6) The appropriate authority may suspend the officer concerned with effect from the date and time of notification which shall be given either—

(a) in writing with a summary of the reasons; or

(b) orally, in which case the appropriate authority shall confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.

(7) The officer concerned (or his police friend) may make representations against his suspension to the appropriate authority—

(a) before the end of 7 working days beginning with the first working day after his being suspended;

(b) at any time during the suspension if he reasonably believes that circumstances relevant to the suspension conditions have changed.

(8) The appropriate authority shall review the suspension conditions—

(a) on receipt of any representations under paragraph (7)(a);

(b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;

(c)in any other case—

(i) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (7)(b) or otherwise); or

(ii) before the end of 4 weeks beginning with the day after the previous review.

(9) Where, following a review under paragraph (8), the suspension conditions remain satisfied and the appropriate authority decides the suspension should continue, it shall, before the end of 3 working days

beginning with the day after the review, so notify the officer concerned in writing with a summary of the reasons.

(10) Subject to paragraph (12), where the officer concerned is suspended under this regulation, he shall remain so suspended until whichever of the following occurs first—

(a) the suspension conditions are no longer satisfied;

(b) either of the events mentioned in paragraph (5)(a) and, subject to paragraph (11), (5)(b).

(11) Where an officer concerned who is suspended is dismissed with notice under regulation 35 he shall remain suspended until the end of the notice period.

(12) In a case to which paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies, the appropriate authority must consult with the Commission—

(a) in deciding whether or not to suspend the officer concerned under this regulation; and

(b) before a suspension under this regulation is brought to an end by virtue of paragraph (10)(a).”

17. Suspension is an important consideration under the PRA and there is a positive duty upon officers investigating a complaint to provide the appropriate authority (the officer overseeing the complaint’s investigation under the delegated power of the chief officer) with the information that is relevant to the suspension / re-deployment decision, as is outlined at paragraph 19E of Schedule 3 to the PRA 2002:

“***Duty to provide certain information to appropriate authority***

19E (1) This paragraph applies during the course of an investigation within paragraph 19C(1) (a) or (b).

(2) The person investigating the complaint or matter must supply the appropriate authority with such information in that person's possession as the authority may reasonably request for the purpose mentioned in sub-paragraph (3).

(3) That purpose is determining, in accordance with regulations under section 50 or 51 of the 1996 Act, whether the person concerned should be, or should remain, suspended

—

(a) from office as constable, and

(b) where that person is a member of a police force, from membership of that force.]"

Service Confidence Policy

18. As to policy and guidance, the Service Confidence Policy provides an alternative route/framework for re-deployment decisions:

"Statement

Merseyside Police Force recognises that it is legally accountable and subject to public scrutiny in respect of its delivery of policing services. It also acknowledges that in order to maintain and enhance public confidence in the Force it must create an ethically robust, corruption resistant, organisation.

This policy introduces an ethical framework for dealing with loss of confidence in individual members of staff. The Force will take positive action to protect its staff, members of the public and its assets from risk. …

1.2 Conventional criminal or disciplinary outcomes will be sought whenever appropriate. However, if at any stage of the investigation it becomes apparent that criminal or misconduct proceedings are not possible or appropriate then the Assistant Chief Constable will consider the invocation of this Service Confidence Procedure.

1.3 It must be emphasised that criminal or misconduct procedures will always remain the preferred course of action, and only when they prove to be unsuitable will this Service Confidence procedure be invoked.

[…]

1.5 There will be occasions when verifiable confidential or source-sensitive material comes to the notice of investigators, which brings into question the suitability of a member of staff to continue to perform their current role or duties. When the circumstances do not warrant criminal or misconduct proceedings yet are such as to raise serious concerns that require immediate management action both for the protection of individuals and the Force, individuals will be considered for transfer to a less vulnerable post.

1.6 The test of whether there are 'Serious Concerns' about an individual's integrity will be based on an assessment of all the

intelligence and evidence, including source sensitive material. The evidence must establish that it is more probable than not that the individual's integrity is in question. Due regard will be paid to the principles of fairness as outlined above. This test is to be applied at all stages of the procedure."

19. The same policy also explains what may be considered to represent 'serious concerns':

'2.1 Serious Concerns

2.1.1 It is not possible to provide a precise definition. Each set of circumstances must be judged on merit. As a guide, however, considerations could include:

a) Whether the alleged action(s) of the individual concerned was / were undertaken knowingly or recklessly.

b) A risk assessment of the likelihood and impact of recurrence.

c) The damage to the credibility of the individual as a 'witness of truth' in Police/CPS Prosecutions, and the requirements for disclosure of such issues to prosecutors.

d) The nature of the current role or duties, and an assessment of potential risk to the public, colleagues or Police investigations or operations if the individual remains in post.

e) An assessment of risk caused by improper association with criminals or their close associates, and the potential for corruption.'

<u>Impartiality of police officers</u>

20. The police have a general duty to act in an even handed, open minded, and fair way towards suspects:

a. This duty is reflected in the Code of Practice issued under section 23(1), CPIA (in its March 2015 edition): '*In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect.'*

b. The duty is also clear from the College of Policing "Code of Ethics"[5], which include a foundational duty:

[5] https://assets.college.police.uk/s3fs-public/2021-02/code_of_ethics.pdf page 12 of 28.

i. At [1.1.1]: *'The policing profession has a duty to protect the public and prevent crime. The public expects every person within the profession to fulfil this duty by being fair and impartial and giving a selfless service'.*

ii. At [3.1], identifying the standards of professional behaviour*: 'I will act with fairness and impartiality'*; elaborating the standard: *'According to this standard you must: […] treat people impartially'*; and providing the example of the standard: '*act and make decisions on merit, without prejudice and using the best available information'*.

c. The duty is further underscored by the College of Policing guidance on "impartiality"[6]:

> *'As a police service, we must show impartiality throughout all our dealings with colleagues, partners and members of the public. This is achieved by being unprejudiced, fair and objective. We consider different sides of a situation and ensure that each side is given equal consideration. We do not favour one person or group over another, acknowledging that discrimination increases feelings of unfairness and makes our jobs harder to do. We must not allow personal feelings, beliefs or opinions to unfairly influence our actions in any situation.*
>
> *We assess each situation based on its own merits ensuring we are fair and consistent in our actions. We are clear in our rationale for the decisions or actions we take ensuring they are clear and evidence-based.'*

21. The police also have specific duties to act with candour in *ex parte* court applications, putting on their "defence hat" and disclosing any material which is potentially adverse to the application; which *might* militate against the grant of the order; or which *may* be relevant to the judge's decision. It hardly needs stating that police officers are subject to the criminal law and are thereby prohibited from submitting dishonest and misleading statements to the courts. They are further subject to the specific criminal offence of Improper / corrupt exercise of police powers under section 26 of Criminal Justice and Courts Act 2015, which prescribes up to 14 years imprisonment for the offenders and would plainly be committed by the pursuit of dishonest applications to the courts in the course of a criminal investigation.

<u>Applicable test for recusal / re-deployment</u>

[6] https://profdev.college.police.uk/competency-values/impartiality/

22. Albeit the recusal / re-deployment test as it is defined in the PRA and Service Confidence Policy is wider than the possibility of bias and is in whether there is any objective concern / question of integrity that automatically triggers weighing whether the public interest warrants suspension or re-deployment, for the purposes of the claims 2, 4 and 7 the issue in question is narrower and more explicit in that there is an apparent and direct conflict of interest between the complainant (A3) and the police officers who hold an investigation against him and his businesses (C1 and A3) and, potentially, are using it as a leverage against his complaint (*irrelevantly* from whether would be that very same investigation well-founded if it were performed by the other officers). It is even more explicit where the investigated business (as is the case) was destroyed by the alleged conduct of misleading the court at the outset, due to the misleading application to the court having coincided with the re-authorisation procedure of the company, causing its inability to renew the financial licence.

23. The applicable test when considering an invitation to "recuse" under bias considerations is whether *'a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility'* of bias: per *Porter v Magill* [2002] AC 357 at 102. '*Real possibility*' is a low-threshold objective test, which, it is submitted by the Claimants, was overwhelmingly met when the evidence of MPECT's conduct and their chosen defences in response to the complaints' investigation are considered by the reasonable observer. Of course, for that conclusion to be reached, or the reasonableness of the failure to reach it to be weighed, the reasonable observer would need to look into that evidence and assess it against this applicable test of '*real possibility*', as is explained above. In the present case, the mechanics of a *'real possibility'* of bias are simple: where there would be a '*real possibility*' that MPECT have misled the courts deliberately, there would be automatically a *'real possibility'* of bias on their side against the person affected by that conduct, i.e. A3 and his destroyed UK business (A3), which they then, after destroying it by a coincidence[7], persisted to investigate, despite the initial AFO being strikingly baseless and deeply misleading[8]. Hence, the ultimate question before the decision maker in the recusal issue (first DCI Vaughan, in July 2019, and then the ACC, in November 2019) always was whether there was a 'real possibility', when all evidence was considered, that the court was misled deliberately. For the test of a recusal decision to be met, there was no

[7] The AFO application of 23 April 2018 coincided by time with the re-authorisation process of C2, which was required by the regulations at the time for all payment companies. Obtaining re-authorisation was a process identical to getting a new licence, which C2 was unable to obtain in the circumstances of the AFO having been granted.

[8] Would be there proper reasons to suspect, there would be no need to mislead the court so outrageously and widely.

need for the decision maker to be satisfied that the court *was* misled deliberately; there was a need to be satisfied that it could be reasonably concerned on the available evidence that the court *might* have been misled deliberately.

Invariability and obligation of recusal decision in relation of MPECT

24. The fact that, in the present challenges (under claims 2, 4 and 7), the issue in question is narrowed to the test of bias (as opposed to the wider issue of integrity of question), is of importance in that a recusal decision is ***invariable*** where there is a '*real possibility of bias*', as was established in AWG Group Ltd v Morrison [2006] EWCA Civ 6; [2006] 1 W.L.R. 1163 (emphasis added):

> "*Disqualification for apparent bias is not discretionary; either there is a 'real possibility' of bias, in which case the judge is disqualified, or there is not.*"

GROUNDS

CO/3835/2019

Ground 1 – Procedural challenge: It was not open for the court to refuse the claim and award costs where all efforts were done by the Claimants to bring it up to date and the application for amendment was simply stalled by the court for 23 months

25. Following the fresher decision of MP on the issue of recusal, dated 21 November 2019, on 17 January 2020, the claim was applied to be amended and was ought to be seen in consonance with the claim CO/636/2019. The amendment application accompanied by the N244 form and followed by further representations of 19 February 2020 made it clear that there was a request to the court to allow to bring the claim CO/3835/2019 up to date with the latest developments.

26. It was the insistence of MP that, instead of an amendment, a separate claim were to be filed as well, which was done, out of caution, resulting into CO/636/2019. There is nothing to suggest that the actions of the Claimants in pursuing the claim were inappropriate: there were two independent decisions which were addressed by two independent claims. Because the Claimants could not know which route (amendment or fresh claim) would be preferred by the Administrative Court, both routes were pursued so as to not lose the case on a procedural basis.

27. As follows from the supplementary note of 19 February 2020, it was and is the primary position of the Claimants that the court was ought to permit amending the initial claim by the freshest decision of ACC dated 21 November 2019 and the failure of the court to consider that application during 22 months after it

having been made did not represent a proper basis for refusing this claim: it existed as a result of the court's own delay whereas the Claimants have made everything necessary to save its time. Fundamentally for the purposes of the current ground, before CO/626/2020 was issued, significant costs were incurred by the Claimants for preparing and issuing claim CO/3835/2019 and the matter of its viability (seen, inter alia, in the context of the court's failure to decide the amendment application earlier than the permission hearing) was and is decisive for the purposes of the costs determination that is part of the order dated 7 February 2022. Even where the Court of Appeal would disagree with the necessity of the claim in the presence of the fresher claims, it could and would still need to deal with the issue of costs connected to that claim as the Claimants could not and were not ought to guess (absent any indications) that a fresh decision would be made by MP, when filing the claim; where it was made, it did not annul the Defendant's responsibility over the costs for issuing the initial claim, let alone where the new decision had reprinted the initial recusal decision.

28. On the other hand, neither could the Applicants argue the costs issue for the claim CO/3835/2019 within the High Court where the fresher claims were refused as well: their permission's refusal has prejudiced the ability to do so, making this appeal on the costs issue required.

CO/3590/2019

Ground 2 – Procedural challenge: The claim was made on the basis of the fresh failure to act upon fresh evidence and the judge has failed to recognise that

29. The judgement observes in para J/52:

> "52. … *Mr Sharipov's request that Operation Kobus be conducted by a different police force had already been considered and determined by ACC Critchley: see his decision dated 21 November 2019, challenged in CO/636/2020. There was no legal obligation on the Defendant to reconsider that decision.*"

30. This fails to recognise that the fresh challenge on (a formal invitation to make) recusal decision was made on 6 July 2020 in the light if the freshest development at the time – MPPSD's report of 5 May 2020, which had revealed wholly incoherent defences of MPECT to the allegations (which can be now seen from the fact that the appeal over that report was upheld for 61 out of 70 items of allegations by the IOPC on 20 October 2020). It was that report and the new evidence (the response of MPECT where they were collected, however limited that exercise was) that have aggravated the factual matrix even more towards the recusal decision.

31. Failing to recognise that fresh evidence created a positive duty to review it as a measure of preserving the public interest by maintaining the integrity of policing as per the requirements of the Code of Ethics, the judge fell into procedural error, concluding that fresh evidence does not produce locus for a fresh reconsideration of the previous position in the face of a positive duty to maintain the integrity of policing.

Ground 3 – Procedural challenge: The judge failed to deal with the issue of MPPSD's recusal at all

32. Claim CO/3590/2020 differed from the two previous 'recusal' claims (CO/3835/2019 and CO/636/2020) not only in that it concerned a fresher evidential matrix but also in that it incorporated a further aspect, i.e. the recusal of MPPSD from further handling A3's complaints.

33. It was the very core of the recusal invitation of 6 July 2020 that MPPSD had wholly failed its function by vindicating MPECT as a result of collecting responses to the allegations which did not withstand basic logical scrutiny. By the time of assessing this evidence in relation to MPECT, the reasonable decision maker would, inevitably (see ground 5 below dealing with the evidence), conclude not only that MPECT's integrity was in serious question but also that so was the integrity of MPPSD, who, in effect, had turned a blind eye on unthinkably hopeless defences erected by MPECT's responses to the investigation. In these circumstances to do nothing and retain handling of A3s complaints within MPPSD was contradicting to the very same positive duty of recusal which existed in relation to MPECT: MPPSD is in no way different from MPECT in their being bound by the professional standards of the Code of Ethics; likewise, their work is probably even more critical than the work of MPECT as they are gatekeepers of MPECT's access to police powers.

34. The fresh evidence supplied by the letter of 6 July 2020, the 9-page extract of which will, inevitably, need to be considered by the COA when deciding this appeal, provided safe basis to conclude that MPECT's integrity was in serious question as was the integrity of MPPSD itself. This created the need for MP to make a recusal decision in relation of MPPSD from further handling of A3's complaints where it was repeatedly intimated by him that the deep failures of MPPSD would be imminently addressed by his complaints.

35. For the purposes of the current ground it will suffice to observe that the aspect of the claim dealing with the recusal of MPPSD was not addressed at all, as if it never existed, despite the SoFG clearly indicating it.

Ground 4 – Error in law: The judge erred in law by concluding that exercise of police powers can be done with bias and / or that the bias test from Magill does not apply

36. The judgement observes in para J/32:

> "*32. … Although the claim is put as a claim of apparent bias, relying on the very familiar case law in that area (specifically the judgment of the House of Lords in Porter v Magill [2002] 2 AC 357 and the judgment of the Court of Appeal in AWG Group v Morrison [2006] 1 WLR 1163), the notion of apparent bias explained in those authorities is not applicable in this context. The cases relied on are instances of judicial or similar (i.e., adjudicative) decision-making. The role of the police in the course of an investigation is very different, as is the context provided by the criminal investigation process.*"

37. By erecting this proposition the judge has failed to recognise that the exercise of police powers is one of the strongest powers available to the public servants and goes, probably, right after the judges and high-ranking governmental position in terms of its criticalness for the public interest and damages to an individual's life is abused.

38. The same conclusion also fails to recognise that police powers encompass a number of decisions that are being made in accordance with discretion, the non-exhausting list of which includes:

    a. A decision to give a status of suspect (which can be life-changing event for a professional engaged in financial industry, by way of example);

    b. A decision to continue / discontinue investigation (the presence of which has, again, life-altering effect on the individuals, which is difficult to over-estimate);

    c. A decision to make an arrest on the spot or a planned arrest, in both cases no judiciary approval being required (it is difficult to imagine a person who would want for this discretion to be applied with bias and by an officer whose career and freedom are concerned by the suspect's complaint);

    d. A decision to undertake certain enquiries which, it can be pre-assumed or known informally, would support the suspect's case (by way of example, it took 2 working days for MPECT to confirm with [ABCD] [genuineness of certain documentation] in June 2018 and, in contrast with that, seven months were required to confirm that the [allegation was incorrect], after a clarification was provided by A3; the number of similar anomalies in MPECT's '*failed*' enquiries is overwhelming as elaborated in the complaints);

e. A decision to disclose to the court certain evidence in an application, which could support the suspect's case.

39. This non-exhausting list gives just a glance of what decisions a police officer or a group of officers acting with bias can make in a way prejudiced by their bias. As the court will know where discretion is available to a decision maker in the public office, two opposite decisions made against the same evidential matrix can be perfectly reasonable as long as they are within the scope of discretion. In these circumstances, a conclusion of Swift J that police deals with some other impartiality than the judges and that there are, in effect, two types of impartiality – one for judges or similar decision makers and another one for the rest public servants provides a very unsafe basis for the considerations of the public interest.

40. But that – the invention by Swift J of the *two standards of impartiality* – is the only reading of the judgement that is alternative to direct and prima facie unlawful suggestion that police do not owe duty of impartiality to the suspect. What Swift J has suggested is, in effect, that the Code of Ethics and the College of Policing Guidance refer to another type of impartiality, which is different from judges and similar decision makers. Erecting this curious proposition, he has referred to the existence of safeguards available to the suspects such as the CPS and the criminal trial but this fails to explain how these safeguards can act in the types of decisions examples of which were provided immediately above.

41. To put the conclusion of Swift J in most explicit format, it follows, a police officer can exercise police powers against anyone with bias, i.e. participate in investigating family members, make operational arrest decisions against someone who has made claims or complaints against them (however reasonable and evidentially sound) and perform wide range of operational actions heavily and directly interfering with an individual's life and human rights without any requirement of that discretion being applied with impartiality of the judges' level.

42. Such proposition begs then the question what is then the difference between these two types of impartiality – the one of the judge-level standard and the one of the police-level standard? Lack of shedding light on this question and proposing a suggestion that safeguards are available to suspects on later stages, the judgement, in effect, suggests that the special type of impartiality inherent for police officers differs from the one inherent for judges and similar decision makers in that police officers can do everything they want as long as the CPS and the courts are not involved (and where they are involved, they will need to deal with the evidential matrix prejudiced by evidence-gathering operational decisions performed with bias). But this is in prima facie

contradiction with what the College of Policing Guidance and the Code of Ethics state, the latter circling around the issues of the integrity, honesty and fairness. If Swift J were correct, then all these standards outlined in the Code of Ethics were ought to be deemed futile declarations that have no practical meaning.

43. The reasonable observer is invited to conclude that, when choosing between the suggestion of there being two standards of impartiality, explicitly suggested by the judgement, and there being one standard of it, one chooses, in effect, between the scenario (1) where the Code of Ethics, directly referred to by the PRA 2002 as the foundation of policing standards, matters not, and (2) where the Code of Ethics (and the PRA 2002 which invokes it) is a powerful and having real-world meaning instrument of preserving the public interest prescribed by the parliament to act as such. The reasonable observer is invited to conclude that only the second scenario can be correct, in which case the judge's conclusion of there being two standards of impartiality is *prima facie* wrong in law.

44. The reasonable observer is further invited to conclude that the hopeless character of the Swift J's proposition must be inevitably extrapolated to his agreement that the raising of concern of MPECT's bias and integrity was "*an attack on the substance of the investigation of the Claimant*". It was all the more hopeless where it was repeated an overwhelming number of times in all thinkable submissions of the Claimants (including the grounds and the hearing's skeleton) that they welcome the investigation into themselves and even ***insist*** that it is to be continued (offering all necessary interlocutory orders, not yet discharged voluntarily by the CPS upon reading the complaints) to be extended voluntarily, any PO complied with without challenging in the courts, with the simple requirement that any such investigation must be performed without bias and by the officers of integrity. The judge's ignorance to this clear and explicit position does not assist in comprehending why, on which basis was the suggestion of there being "*an attack on the substance of the investigation*" made. A bare statement to the same effect does not begin to explain how a request of dealing with non-biased decision makers, about whose own conduct a reasonable and objective concern of criminality cannot be raised, amounts to such an '*attack*'. Not only was such suggestion wholly misplaced, it has insulted the public interest being clearly entitled to be preserved by impartial policing and the policing with the integrity, as, in effect, it is suggested that anyone who makes claims or complaints about the integrity of the investigator, is, by definition, a crook trying to abuse safeguards system with ulterior motives. This is, of course, prima facie prejudice that has further poisoned the judgement's logical sustainability as the reasonable observer is invited to recognise.

Ground 5 – Error in law: The judge erred in law by concluding that any concerns of the integrity of police officers can be efficiently safeguarded by the CPS and the courts

45. The concept of integrity lies at the heart of policing and the Code of Ethics and is separate from the concept of impartiality: one's being susceptible to bias is not equal to one's integrity being in question. Apparent bias can arise by a number of innocent reasons such as having a financial interest, dealing with family members and similar situations, which may occur naturally and, despite requiring a recusal, would not necessarily amount to there being any basis of criticism about the public servant concerned.

46. In the present case, the situation is different that the very way how the existence of apparent bias on the side of MPECT is said to appear is through their dishonest conduct in past, which is now addressed by the Applicants' complaints. Of course, the mere fact of the complaints having been made, does not begin t ogive raise neither to the apparent bias nor to the question of integrity of MPECT: it is the objective evidence supplied and highlighted by those complaints that is a decisive factor. Once it is accepted by the reasonable observer that the evidence supplied by the complaints has met the low-threshold test of objective risk of MPECT having acted dishonestly, both the test of reasonable question of their integrity and the apparent bias become inevitable. That is so not least because the test of objective risk and of reasonable question are, in fact, similar, if not the same: objective risk of something creates reasonable question of the same and the opposite, i.e. it is simply a matter of choosing an English term. Apparent bias, for the purposes of the Applicants cause, is a common-sense consequence of the reasonably concerned dishonesty: once there is a reasonable concern of MPECT having acted dishonestly and misled the courts, a complaint addressing that reasonable concern (or even the risk of it being made) creates insurmountable basis for concluding of there being personal interest on the side of MPECT to damage the complainant – A3.

47. Erecting his proposition of there being some lower standard of impartiality, Swift J has, in effect, suggested the same for the integrity: that is so because finding of apparent bias, in the present case, is produced through the allegations of dishonesty. Defending that unsafe approach, the judge has suggested that the CPS and the criminal trial provide sufficient arrangement of safeguards against any wrong to the affected persons. Whilst the logical unsustainability of this proposition is addressed by the previous ground dealing with bias, for the purposes of the independent issue – the integrity of the officers – the reasonable observer is invited to recognise that before any mentioned by Swift J safeguard comes into play, the evidence collected by

the potentially dishonest officers prejudices their efficacy in that a dishonest police officer can manipulate and alter evidence in a way that would be informed by their bias.

48. It is, hence, impossible for the CPS and the criminal trial (and, in the case of the concerns of the integrity of MPPSD – for the IOPC) to act as an efficient safeguard of the public interest where the evidential basis before these safeguards may be interfered by the dishonest operational decision makers. This strikes at the heart of Swift J's belief that the role of operational decision makers in the police is so small that it matters not if they are biased and / or there is concern of their integrity when there are safeguards in place. Such belief fails to recognise that police officers are trusted by the public to exercise evidence-gathering function, under their discretion and the public's expectation that it would be performed honestly. The objective risk of that honesty being tainted prejudices the evidential matrix, upon which any safeguard is expected to act. It would be absurd to assert that no matter if the police officer is dishonest and themselves is prepared to act criminally (let alone when his own freedom and / or career are at stake in the face of the allegations made by the suspect), because the evidence collected by them is to be scrutinized by the CPS or the criminal trial, that dishonesty does not matter. It matters, by the simple common-sense principle that a safeguarding function can be exercised efficiently for the public interest only when the evidence is gathered and processed fairly and with integrity rather than dishonesty directed by an apparent bias.

49. It is that operational role of police officers in gathering the evidence, which Swift J considered so immaterial as compatible with the impaired impartiality and the lack of there being the need of integrity, that destroys his own invention of lower standards of the impartiality and - for the purposes of the current ground – integrity expected from police officers. Police officers are not judges but judges are dependent on the product of the work of investigators, as does the CPS. It may be well the case that a defendant in criminal proceedings may succeed in defending their case by a proactive position which would rectify any manipulations with the evidence; it may be similarly the case where the dishonesty and efficacy of evil motives on the operational side of the investigating team would be so strong that these efforts would be unsuccessful. An invitation of Swift J for all members of the public to readily participate in this curious kind of lotter, beside otherwise significant failure to recognise what kind of life-altering effect interaction with maliciously acting police officer has even before any trial is started, fails to meet basics of common sense, once the dramatic effect on an individual's life is reconciled against the simple remedy of recusal of the investigators when a reasonable concern of the integrity is raised with objective evidence. This, of course,

makes that evidence the decisive factor, making another failure of the judge – to deal with it wholesale, fatal as well, as will be elaborated under a separate ground and the last ground of this appeal's application

50. For the purposes of the current ground the reasonable observer is invited to conclude that reliance of Swift J on the safeguards in criminal procedure as a self-sufficient answer to the issue of the integrity of policing is misconceived in that it misses the fact that any safeguard would deal with the evidential matrix already interfered by the potentially dishonest police officers, making that safeguarding function irreparably failing the expected by the public level of the famous British Rule of Law. It, of course, also misses the otherwise inevitable fact that the Code of Ethics circles around the issue of the integrity of policing not as a matter of academic declaration but because this matter is at the heart of policing, as is its impartiality. Having failed to understand the importance of impartiality, the judge has mirrored this failure for the issue of the integrity of policing.

51. The court, and earlier the decision makers in the recusal decisions, were not invited to recognise of there being, to the civil standard, bias or dishonesty; the public interest would warrant a positive recusal decision (as it did) from the moment of establishing an objective risk of ***any*** of these two factors having place. Both of them were having place in the present case only made it absolutely insurmountable for the public interest warranting a positive recusal decision, but that simultaneous presence was not a pre-requisite for the need of a positive recusal decision. To put it simply, once the integrity of a police officer is concerned, there will be a very limited set of roles, if any, which can be assigned to them before such concern is cleared. Access to the evidence-gathering role, let alone in relation to the complainant of the officer's conduct would be absurd, which the judge has failed to recognise. But that was so because all the failing conclusions made in the judgement of 4 February 2022 were interconnected and could not sustain without each other: to justify one unsafe logical proposition one needs to create a network of logical bridges to similarly unsustainable from the standpoint of common sense conclusions.

52. The reasonable observer is invited to recognise that the same logic will work the other way around too: once it is established in the judicial system that some of the Claimants' claims have sound basis, it will be not difficult to finally recognise that all of them do.

53. Finally, if any precise way of the test of integrity for the purposes of the recusal is required by the court, the many times referred to SCP of MP readily provides it:

> "*1.6 The test of whether there are 'Serious Concerns' about an individual's integrity will be based on an assessment of all the intelligence and evidence, including source sensitive material. The evidence must establish that it is more probable than not that the individual's integrity is in question*."

54. It will be immediately apparent for the reasonable observer that, independently from whether was the SCP's or the PRA's recusal route applicable at certain moment in time, the concept of the integrity as outlined in the SCP, was applicable to both of these routes: there cannot be two tests of the integrity just like there cannot be two types of impartiality.

55. Whilst being worded slightly awkwardly (the words "*more probable than not*" have a smack of suggesting the civil test, which, it is presumed by the current application, will not confuse the honourable court), the applicable test of the integrity being in question is a very low-threshold one and, at any material time, was overwhelmingly met by the evidence of MPECT's conduct.

Ground 6 – Error in law: The judge was wrong to conclude that the SCP is not applicable where the complaints procedures were terminated / suspended by MP

56. The judgement observes in para J/32:

> "*I accept the Defendant's submission that the SCP was irrelevant to the decision taken by ACC Critchley. The SCP is relevant only when a complaint against a member of the Merseyside Police cannot be addressed through the formal complaints procedure. Patently this was not such a case.*"

57. The whole argument around the SCP was misconceived rom the onset because the only two impacts it could have were that:

    a. It established a positive duty upon the ACC to consider recusal;

    b. It cited (but not established, as is explained under the previous ground) the test of the integrity of an officer being seriously concerned.

58. For the purposes of the positive duty of considering a recusal decision the SCP is academic in that whether under the SCP or under the PRA, there is a positive duty (invoked by the inevitable warranting of that by public interest) to consider the recusal where the integrity of policing is in question (including as a result of bias). That positive duty is stemming from the Code of Ethics and its focusing on the issue of the integrity of policing. The SCP is merely an instrument of outlining the power and the duty to make a recusal decision where such power and duty are not otherwise available under the PRA procedure and regulation 10. Such cases may happen where, for example,

the complaint's procedure is finished and regulation 10 cannot be invoked anymore. In other words, the SCP is simply an alternative venue of something that otherwise will always exist under the SCP or the PRA; the positive duty to consider recusal decisions where the integrity of policing (including as a result of apparent bias) is in question.

59. By arguing with the SCP's applicability, MP could only support the fact that the same recusal decision would be warranted by the PRA, under regulation 10: whether was the SCP applicable or not would be academic for the existence of a positive duty to preserve the integrity of policing. On the other hand, because the ACC's involvement was invited by MP themselves, as was his assurance that the previously made decision on recusal were to be periodically reviewed, the SCP was not required for him to be under the positive duty to act in performing that review in the face of the fresh evidence as highlighted by the letter of representations from A3 of 6 July 2020.

60. However, for the purposes of the current claim the court is invited to observe that for both impugned decisions (and, in the second case, a refusal to make one) of 4 July 2019 and 7 July 2020 it was the position of MP that the complaint's procedure was either suspended (as of July 2019) or finalized by a PSD report finding no case to answer (July 2020). In these circumstances it was not reasonably open for MP to suggest that, having that position, it was not ought to invoke the SCP policy: the same body cannot maintain two opposite positions on the same issue – the complaint procedure either was suitable / ongoing or it was not. Patently, both in July 2019 and July 2020 it was considered by MP to be either suspended or finalised, which strikes the question, on which basis the SCP was considered to be non-applicable. A public body cannot cherry-pick from different strands of its position developed at different times those that support its actions even where these choices are made from the contradicting to each other approaches.

61. On this basis, it is respectfully suggested that the judge erred in law by finding that, where a complaint's investigation is suspended or finalised, the SCP is not applicable: by making each type of these decisions the public body (MP) would need to satisfy itself that the PRA route is not suitable for handling the issue of the integrity by way of considering recusal under regulation 10 of Police (Conduct) Regulations 2012 and, as a result, invoke the SCP, which provides an alternative power to perform the same action. It was, at the very least, incumbent for MP to invoke the SCP in the situation where it has finalized the complaints against MPECT, finding a '*learning outcome*' for several allegations of serious corruption (however absurd it may sound) as would be otherwise clear from the SCP which does not preclude its application after misconduct procedure is over in a way which does not

amount to finding of gross misconduct but retains a concern of the integrity of the officer (emphasis added):

> "***3.1 Stage 1 - Referral***
>
> *3.1.1 Where following Misconduct / Discipline proceedings, serious concerns are raised regarding the integrity of the individual in question, the Chair of the Panel or the Chair of the Staff Discipline meeting has a duty to make a report to the Head of the Anti Corruption Unit.*
>
> *3.1.2 Where information or intelligence becomes available which raises serious concern that an individual's integrity is in question, the recipient has a duty to make a report to the Head of the Anti Corruption Unit.*"

62. Patently, finalizing the complaints on 12 May 2020, MP were bound to conclude that the complaint's procedure is over, recognising by that the domain of the SCP. The judge erred in law by failing to observe the same.

Ground 7 – Error in law: The judge erred in law by concluding that a finding of no case to answer was ought to prejudice recusal decision

63. The judgement observes in para J/52:

> "52. … *The suggestion in the pleading that because the PSD investigation had found no misconduct that itself provided cause under the SCP for the Merseyside Police to hand Operation Kobus over to another police force is absurd.*"

64. Despite the apparent conclusion of Swift J as to the opposite, as is demonstrated by the citation of the SCP's para 3.1.1 in para 61 above, it is the exact nature of the SCP that it is invoked where the complaint's procedure is over or not suitable, yet the officer, whose integrity is in question, retains his membership within the police force, making it necessary to consider whether the role exercised by them is safe for the public interest when reconciled against the concern of their integrity. It would be otherwise logically obvious from the fact that an officer who is dismissed as a result of misconduct proceedings cannot be recused / re-deployed.

65. The second failure in making the observation of it being '*absurd*' that, where a complaint's outcome leads to no case to answer, there cannot be proper basis for a positive recusal decision, is in missing the obvious fact that the test of case to answer, which is very near to the civil one (but slightly lower in that it requires the decision maker to incorporate discretion for a reasonable misconduct hearing or meeting), is much higher than the test of the integrity being in question: it can be perfectly the case that the officer's guilt could not

be established, on an evidential basis, to the civil standard, but the remaining concern would warrant their recusal as a measure of preserving the public interest. That is so because, applying two different tests of different heights, one can get opposite results; this is basics of common sense.

66. That being so made it wholly misplaced for the judge to conclude there being absurd in something (a recusal decision) that is the natural flow of the SCP and the normal-practice route of its work. His misconception could be informed by the artificial putting the arch of the recusal issue to high ("*hand Operation Kobus over to another police force*") where it was always open for MP to recuse, at the least, individual officers. However, the apparent confusion of the tests and the difference between the recusal / re-deployment action and a complaint being upheld is nevertheless apparent: the judgement fails to recognise that a recusal / re-deployment is not a form of punishment of the officer; it is a form of preserving the public interest which assumes neutral effect over the officer themselves in that making a recusal decision does not mean there was nay wrong on the side of the officer – instead, the change of the officer's tole is merely an instrument of addressing the *objective risk* of their integrity being tainted. That test is a low-threshold one and by that very same reason the recusal action is a very light step, which has no bearing over the officer's standing within the police force.

67. The evidence supplied to the ACC in representations of 6 July 2020, plainly, met this low-threshold test and overwhelmingly so. This warranted a positive recusal decision, which was failed, resulting into the claim CO/3590/2020 issued for the purposes of quashing the decision not to recuse a single officer of MPECT or MPPSD from further dealing with the Claimants or their complaints. However, what is material for the purposes of the current ground is not the evidential soundness of the allegations but the erroneous approach of the judge assuming that a positive recusal decision could be made only where the complaints were substantially upheld, which was to fundamentally confuse the two applicable tests.

<u>Ground 8 – Procedural challenge: The judge has failed to consider evidence before the decision maker</u>

68. The assumption under the current ground is that the judge did not consider any evidence at all, proceeding on all claims in the view that it is not required for weighing reasonable openness of the impugned decisions. This can be inferred from the following:

    a) nowhere in the judgement it is stated that the evidence was considered;

b) in dealing with '*recusal*' claims J Swift refers to the ACC's interpretation of evidence (the same which is subject of the current claim) accepting it on face value as a matter of fact;

c) in dealing with MOI claims J Swift refers to it being for the IOPC to make interpretation of evidence[9], which, again, creates inference that the evidence was not considered as a matter of the applied procedure in the assumption;

d) J Swift repeatedly refused invitation to allow the court to have sufficient reading time and has proceeded with the hearing dealing with hundreds of pages of evidence with no reading time at all.

69. This was a wholly futile for the purposes of the proceedings approach in that, in order to weigh the reasonable openness of a decision made by the public servant, the court was ought to reconcile the test before the decision maker with the evidence before them. Without that incumbent (in those claims that are not fettered by the pure issue of law) step, weighing reasonable openness of the decision becomes a meaningless exercise: measuring something without a *yardstick*, weighing the issue without a *touchstone*, navigating in the evidence purely through the bare statements of the decision makers which interpret and represent it in a way that benefits their decision and without addressing the core of the challenge that the evidence was misrepresented or, indeed (as was the case with the IOPC in each instance of the claims made against it, except CO/285/2021 which deals with its assessment of the evidence), simply ignored and not looked at as a matter of procedure.

70. Unsafety of that regrettably chosen[10] approach for the public interest can be suitably demonstrated by erecting two examples, directly correlated with the issue of the failed recusal decision (the main locus of the complaint against DCI Vaughan).

71. These example provided below are abstract because the current ground deals with the procedural - but *fatal* – error in J Swift's approach: failing to assess the evidence against the applicable test and weighing the reasonableness of the decision in an opaque and unclear way, in a vacuum was as futile as was then concluding this series of this missing the point exercise by a finding that

[9] "*12. The decision under paragraph 15 of Schedule 3 to the 2002 Act is for the Director General and is not to be second-guessed by a court", "59. The IOPC's decision is fully reasoned, running to over 80 pages", "61. … each ground of challenge comes to no more than disagreement with evaluations made with IOPC", "61. … The IOPC's reasons disclose no error of law; the assessments made by the IOPC were permissible in every respect*".

[10] Despite the Claimants' repeated invitations to look into evidence, section of the skeleton under subheading '*Golfrate and the need to look into evidence in rationality-challenge JR claims*' in para 75-95 outlining that need explicitly with an example of case law and para 113 to 137 of the skeleton explaining the evidence for different claims, including CO/1727/2019.

A3 is a vexatious litigant, without considering a single claim against a proper yardstick, i.e. by weighing evidence against the applicable tests. That weighing reasonableness of the impugned decisions in vacuum having been then complimented by bare statements that grounds did not have any substance '*at all*' does not resolve the fatal unsafety of the chosen approach and represents part and parcel of it: to weigh grounds one needed to weigh the underlying evidence, unless those are fettered by the issue of law (which they were not).

Example of two identical decisions being perfectly reasonable and wholly unreasonable

72. Where the decision maker in a public office makes a decision by applying certain test against certain evidence, that same decision can be either perfectly reasonable and even inevitable or absolutely irrational and bizarre. What would differ the two scenarios is what evidence was before the decision maker: it could either overwhelmingly support the decision or make it woefully lamentable / deeply failing the public interest.

73. It will be immediately apparent for the reasonable observer that, depending on what was the evidence before the decision maker, the assessment of it being reasonably open can switch from one extreme to another. The pictures drawn by two sets of evidence before the decision maker in these two examples form the borders of the spectrum of possible pictures before the decision makers in similar cases in that, for each individual case, its individual evidence will put the corresponding picture at some point between those two extremes and from how far would be that point from / near to one of the two opposite extremes depends whether the decision is reasonably open for the public servant. Those decisions made on the basis of evidential matrix that would be in the middle between the two extreme scenarios would largely fall to be within the public servant's discretion (the scope of discretion); those distanced from the middle of spectrum to the side of one of the two opposite extremes would be more likely vulnerable to rationality challenges, the proximity to one of these two extreme points becoming the factor which would be correlating with that risk's size.

74. It would have been not only open but *incumbent* for J Swift to look into the evidence before the decision makers in each of nine claims before him, in what was a rationality challenge and, where he were to conclude that the factual matrix had made it open for the decision makers to reach the decisions they have reached, to state so clearly. It would be, however, difficult for him for some claims including CO/1727/2020 because neither did the decision makers in the impugned decisions look into evidence with the purpose of applying against the correct test (this is addressed under ground 6). That

endorsement and reliance on the IOPC's approach provided an unsafe basis for J Swift's own weighing process.

75. By way of further elaboration of the same example, if there were a police station approached by a member of public asserting that, in 200 meters from it two men are trying to kill each other, an officer who, having been in the process of compiling an attendance report, would simply continue his paperwork exercise doing nothing in response to the challenge, would commit misconduct by failing the public interest in addressing such a serious circumstance, even where it could not be established whether it was real: the objective risk of it being real warranted reaction. On the other hand, would the same police officer be approached by a member of public asserting that there is giant dinosaur walking across the street in 200 meters from the police station, the officer would be forgiven to do nothing and treat the report as fanciful. This example demonstrates how two identical decisions (to do nothing) lead to different outcomes depending on what is put before the decision maker. It also demonstrates that a failure to act, obviously, can represent misconduct. What matters in each individual case is the evidence before the decision maker and nothing else.

Example with paedophilia allegation against a police officer

76. The best way to demonstrate why the failure to act in the case of the recusal challenge was materially frustrating the public interest would be to replace the much (and unlawfully so) prejudicial picture of a suspect addressing PSD with evidence of serious corruption on the side of the investigators by an allegation against a police officer of having been involved in paedophilia. Where there is evidence raising a clear, reasonable and objective concern of the allegation being potentially (but not yet likely) correct, it will be immediately apparent for the reasonable observer, that a decision maker on the recusal issue would be <u>bound</u> to recuse such officer from further exercising any duties related to vulnerable persons. A formalistic hiding behind procedures, (non-)application of the Service Confidence Policy, let alone blatant statements that there is no power to make a recusal decision where it is, plainly, available under regulation 10, would do nothing for a decision maker to defend the failure to recuse such officer from any roles that would put vulnerable persons and / or children in danger.

77. It is so obvious and inevitable that does not require any elaboration. But, as the reasonable observer will be bound to recognise, the same is not fettered by the issue of paedophilia, as the same mechanics relates to the case where an investigator is alleged to be dishonest: from the moment when such allegation is supported by evidence raising a reasonable and objective concern of that potentially being correct, such investigator must be positively

barred from exercise of any investigative / evidence-gathering function by the simple reason that no safeguard can exist against his malice where and if he alters / manipulates evidence ***before*** it reaches such a safeguard (which will be always the case), be it the court, the CPS or any other body. The latitude of available ways of manipulating, altering and impacting the evidence available to investigators is so wide that it becomes next to unthinkable that an investigator, whose own integrity and potential criminal conduct are in a reasonable question, would be permitted to perform any investigative function let alone against the complainant of that criminal conduct of himself.

78. To put simply, an officer alleged to be involved in paedophilia must be barred from any positions concerning the interests of vulnerable persons as much as the investigator alleged to manipulate evidence and be dishonest must be barred from dealing with any evidence-gathering / processing work (not only in relation to the complainant of his conduct but especially so for the complainant). What matters in both cases is not the fact of the allegation having been made per se but that allegation being reasonable, i.e. raising a reasonable concern, when seen in the face of the provided evidence. The same allegations having been made in these two examples (of paedophilia and serious corruption) without evidence which would be capable to raise an objective, reasonable concern of the allegation potentially being correct would do nothing to justify / require the recusal. Likewise, where the evidence is sufficient to raise a reasonable concern (i.e. an objective risk of the allegation being correct), it warrants a recusal. Hence, it is the evidence that matters – first, in its ability to justify the allegation / concern as reasonable and, second, in its nature (the potential paedophile is to be recused from dealing with children, the potentially dishonest officer – from dealing with evidence), and once it is established that the evidence is of such nature and soundness that it requires a recusal, the recusal decision is warranted and invariable.

Conclusion on the procedural error with evidence

79. The examples above demonstrate why, without looking into evidence, the reviewing safeguard, in this case the Administrative Court, could not, in any meaningful way, properly apply the applicable test before the decision maker – ACC Critchley. Erecting an edifice of misconceived points ranging from prima facie mistaken view of there being no power to recuse to insinuating about '*true colours of the Claimants'*, i.e. the complaint having been attempted to be used as a means of changing the decision, the judge did not start engaging with the evidence before ACC Critchley.

80. That approach was fatal for proper deciding the claim, as will be apparent from the examples elaborated under the current ground, by the simple reason

that, depending on what evidence was before the decision maker, the same decision can be either inevitable or woefully failing the public interest.

Ground 9 – Rationality challenge for the purposes of art. 31 of the SCA 1981 (substantial-difference test): The evidence before the decision maker did not leave it open for him to make the decisions reached

81. It was explained under previous ground that it was incumbent for the judge to look into evidence that was before the decision makers, when assessing the reasonable openness of the decisions reached. Because it was failed, the appeal can be upheld on that basis alone. However where it is to be assumed that the evidence, in fact, were looked at by J Swift and / or and if, for the purposes of article 31 of the SCA 1981 (substantial-difference test), i.e. to assess whether it would change the outcome if looked at, the COA decides to engage with the evidence, the current ground provides a venue of doing so in an informed way.

82. When challenged by letter of 6 July 2020 to make a recusal decision,ACC Critchley was invited to take into account the following evidence:

    a) Complaint of A3 dated 17 April 2019 about the misleading of the court by MPECT in ex parte AFO application of 23 April 2018;

    b) Three further primary complaints of A3 against MPECT filed between 24 July 2019 and 11 October 2019 and addressing MPECT's conduct in the subsequent and one preceding ex parte applications to the courts;

    c) Representations with further fresher evidence elaborated in the letter of 6 July 2020 itself.

83. As to "a" the evidence presented within the complaint of 17 April 2019, which addressed apparently dishonest nature of it, included the following examples of misleading portrayals:

        i. Falsely linking A3 to US$4 billion of criminal activity through mention of a media article which did not create such link[11].

        ii. False claiming A3 / his businesses had no business footprints and no websites, when the opposite was known to be true.

        iii. Falsely portrayal that A3 had no clear source of money whilst (as is admitted by now) knowing his worldwide business profile by the time and any amounts on the UK bank accounts coming

[11] Both MPPSD investigations confirmed that failure but 'upheld' the complaint with a 'learning outcome'.

from his or his wife's personal accounts in Singapore where they resided, as was known from his visa application.

iv. Withholding the wide body of information available, which suggested that A3 and his businesses had a high profile worldwide and were legitimate, e.g. sponsorship of major sports teams and players (including Liverpool FC in the UK) and company registrations at Companies House (showing their up to date UK financial position).

v. Withholding from the courts the fact that the OCC was FCA-regulated payment processing company in the UK and that A3's businesses were licensed for financial brokerage services by regulators in several other reputable jurisdictions, including the EU-wide licensed company.

vi. Falsely implicated the OCC as being directly implicated in an online investment fraud when in fact it had acted only as a payment processor for a third-party corporate client (in the manner of a bank or other financial institution processing client payments) as was known to MPECT from the very Action Fraud reports they referred to.

vii. Misrepresenting to the court Action Fraud reports, none of which was made against OCC (mentioning it merely as a licensed payment processor) but was portrayed to be the direct perpetrator of the fraud.

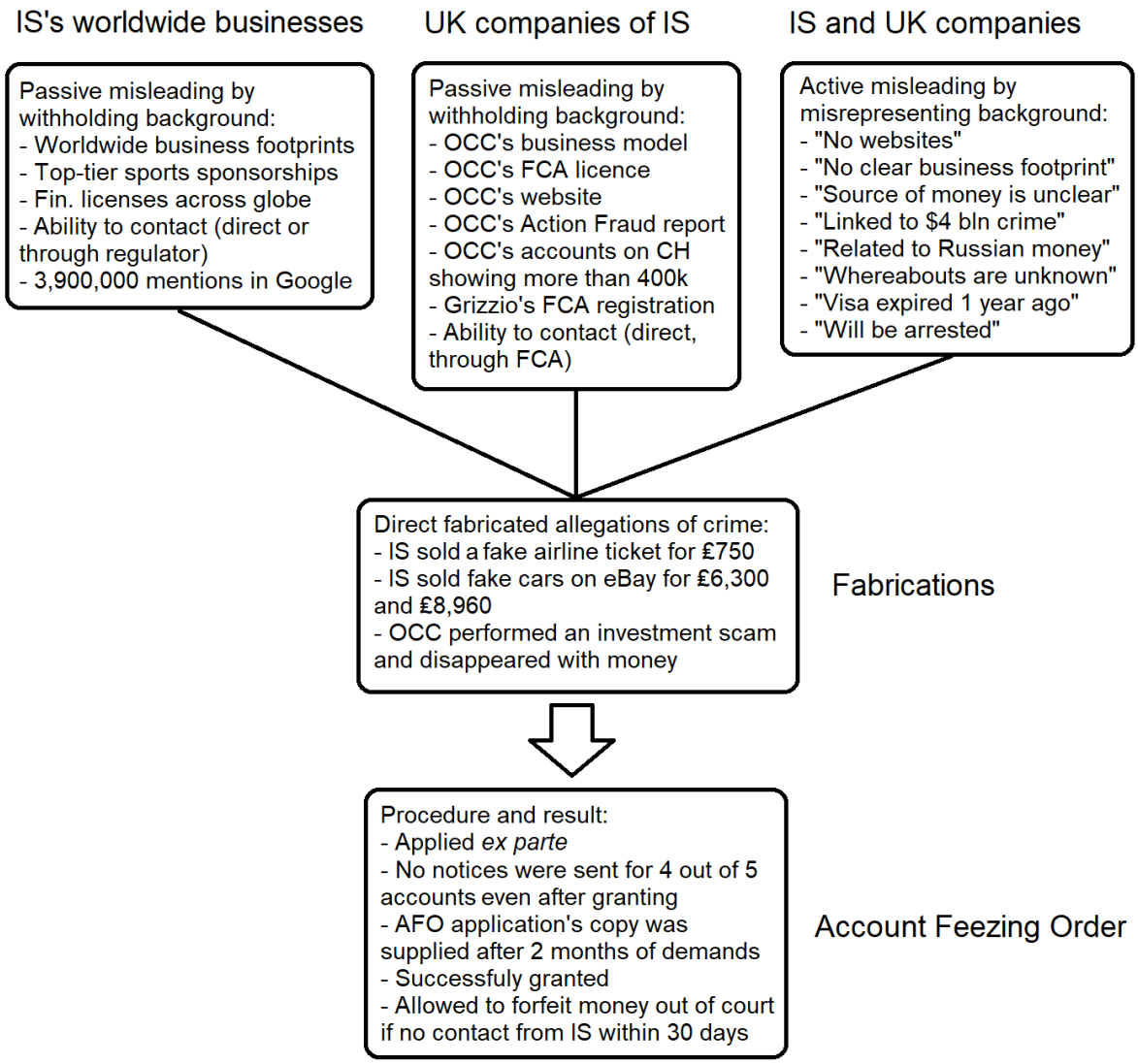
viii. Falsely alleging that A3's businesses were directly responsible for low-level UK offending, such as the fraudulent sale of airline tickets and cars.

ix. Stating that A3 would be arrested if he came to the UK, when no such intention[12] or grounds existed.

x. Claiming that A3 was difficult to contact when all of his UK businesses had public contact information and were registered (with contact information) with the FCA.

84. That picture of misleading can be suitably visualized in the following way:

[12] As is now confirmed by the latest investigation report of MPPSD.



85. As to “b” from para 82 above, non-upholding of these complaints amounting to further 80 pages of text was appealed together with the complaint over the initial AFO application of 23 April 2018 on 25 June 2020 and the appeal was upheld by the IOPC for 61 out of 70 allegations of serious corruption by its decision letter of 20 October 2020. Because it is belief of A3 that the matters raised by the complaint of 17 April 2019 are self-sufficient for the purposes of the current appeal and as a measure of saving the court’s time and reducing the volumes, the COA will be invited to deal isolatedly with the evidential matters concerning the complaint of 17 April 2019. The concerns addressed by it were listed and visualized above.

86. Point “c” of para 82 above refers to the fresher representations made upon receipt of fresher evidence – the MPPSD’s finalization report of 5 May 2020, which had provided to A3 the opportunity to reconcile the (however selectively given) defences of MPECT with the allegations set out in the complaint of 17

April 2019. The court is invited to read the 9-page extract of the letter of 6 July 2020 in full, but, for the purposes of explaining its highlight and the apparent inconsistencies of the defences chosen by MPECT the following citation of para 270 of the appeal to the IOPC of 25 June 2020 against that report's finding will be made below:

'270. As a final conclusion on Complaint 1, related to the initial misleading AFO application, it is IS's position that:

d. *The £1.577-million AFO application, properly analysed by reference to the information and material known and/or available to MPECT, provides an extremely clear illustration of the "mindset" or culture of MPECT in routinely misleading the courts in ex parte applications, by (i) advancing positively false statements and (ii) withholding from the courts information and material that would have cast those statements in a different (and proper) light [including, in many instances, by directly contradicting them]. In the process, MPECT [it is IS's position, deliberately[13]] deprived the court of the ability to fulfil its independent function of assessing the true picture against the relevant legal criteria for the grant of an AFO; and deprived IS – who was necessarily excluded by MPECT from participation by proceeding ex parte without notice – from correcting the picture presented.*

e. *The number and nature of the examples of MPECT misleading the courts is incompatible with good faith, and in reality, creates an irresistible inference of bad faith. Regrettably, PSD's investigation has both reached unsupportable conclusions on individual heads of complaint and has failed to consider the true scale, seriousness, and cumulative quality of MPECT's misleading of the courts. The decision itself does nothing to promote public confidence in the integrity of the complaints system.*

f. *Indeed, the conclusions PSD have reached are unsafe, and serve to underscore why this complaints investigation should never have been undertaken by PSD but required independent and objective consideration of IS's complaints applying the requisite scrutiny. Without repeating seriatim the respects in which the PSD decision was flawed, set out below is a non-exhaustive list of those propositions which*

[13] The MPPSD investigation report regrettably failed entirely to assuage IS's concerns in that respect.

emerge from the PSD report which we submit illustrate the inadequacy (and indeed perversity) of the PSD findings:

i. *It was not positively misleading to withhold from the court that OCC was a licensed payment processor when all allegations were related to fraudulent payments (Complaint 1C);*

ii. *It was not positively misleading to portray IS's licensed payment company as a perpetrator of fraud with no website and no clear business footprints (Complaint 1K), in circumstances in which it obviously had both;*

iii. *It was not positively misleading to state to the court that there were no clear business footprints [known to MPECT], whilst withholding IS's prominent business profile (Complaint 1O);*

iv. *It was not positively misleading to state that IS' companies had no websites and to highlight that lack of internet presence as highly unusual, when they did have websites [known to MPECT] (Complaint 1E, 1O);*

v. *It was not positively misleading to state, about a businessman, that "his whereabouts are unknown", "his businesses have no websites", his "source of the monies is unclear" whilst simultaneously withholding from the court his sponsorships of inter alia Liverpool FC and ownership of financial businesses licenced in four jurisdictions [known to MPECT] (Complaint 1M, 1O);*

vi. *It was not positively misleading to suggest to the court that a businessman was suspected to be involved in low-level frauds valued at circa 1/1000 of the cost of the Liverpool FC sponsorship alone, and despite knowing [as PSD has confirmed] that he had been a Fintech businessman for 10 years with a prominent business profile (Complaint 1J);*

vii. *It was a perfectly tenable position to take in response to PSD that the AFO application was focused on Grizzio (and so a single Grizzio bank account), even through the application related also to IS's personal bank accounts and specifically addressed OCC as well [where MPECT considered addressing*

such wider matters as benefitting MPECT's case contained in the AFO application]; such that the court was required to weigh the full picture in order to assess the merits of MPECT's asserted suspicions (Complaint 1O, [147]);

viii. *The above was a viable position to take, despite the clear obligations on applicant officers to "put on the defence hat" and inform the court of the matters that the subject of the application i.e. IS would have raised if present. Instead, MPECT appear to have an entirely distorted mindset in which the obligation on the applicant officer is to "prove" a suspicion, and in which the officer is entitled to adopt whichever artificial selection best serves that end;*

ix. *It was a viable position to take, in response to PSD, that withholding from the court the Action Fraud report that OCC itself filed (a report which made clear OCC's regulated status and payment processing business model), rather than a matter that might undermine its theory that OCC was a perpetrator of an investment scam (and not a secondary victim), would "only reinforce" the strength of MPECT's application and the withholding of the Action Fraud report from the court was a "considered decision" made in good faith (Complaint 1K);*

x. *It was proper for MPECT to maintain their investigation was in its "infancy" ([76]) 8 months after the initial PO application and to fail to make a single enquiry of the FCA (despite the obvious evidence that demonstrated awareness of the regulated status of OCC) or (even without that knowledge) of [ABC, the UK company IS dealt with within the UK bank system, which was information available to MPECT from the Production Order it obtained 8 months before the AFO application];*

xi. *There is no inconsistency in MPECT admitting knowledge of IS's business footprints ([75]) to the PSD and maintaining the position that genuine attempts were made to contact him but without success ([545]);*

xii. *"There is no evidence that the FCA status of OCC was known at the time of the AFO application" [despite one of MPECT's own officers, DS Brown, admitting in evidence on oath on 21 October 2019 that MPECT had knowledge of, and had visited, OCC's website MegaTransfer.com at least eight months before MPECT's ex parte AFO application] (1C, [44]) (emphasis added);*

xiii. *There is no contradiction in MPECT mentioning the OCC MegaTransfer.com website in the PO application of 10 August 2017 and yet asserting they were unaware of the website 8 months later (1E, [60]);*

xiv. *There is no contradiction in DC Cooper admitting he knew of OCC's relationship to MegaTransfer [37] but did not know of OCC's website [60] (1C, 1E);*

xv. *It was a viable explanation that, not knowing Grizzio's relationship to OCC (even if that was accepted at face value), MPECT could, acting in good faith, have portrayed OCC, in relation to the Action Fraud report related to ACM, as a perpetrator of that investment scam, whilst withholding the real and known role of OCC [including, but not limited to (i) the inherent implausibility of OCC being criminally complicit in a fraud that it had reported to Action Fraud (ii) OCC's regulated and licensed status and (iii) (as MPECT would have known, being a specialist economic crime team) the susceptibility of any financial business (and especially a Fintech business such as OCC) to being misused by criminals seeking to commit online fraud and to transfer their fraudulently obtained funds without the knowledge or involvement of the payment processing company] (Complaint 1C, 1K);*

xvi. *There was no contradiction for MPECT to maintain that they did not realise the connection between Grizzio and OCC in circumstances in which Grizzio was paying taxes for OCC, salaries to OCC employees, transferring £390,000 to OCC's brokerage account, receiving £190,000 from OCC's bank account and plainly was involved in payments processing, with hundreds of recipients and senders recorded in its bank*

statements/accounts [and, it might be added, (i) Companies House records demonstrating that OCC was an owner of all the shares in Grizzio, and (ii) MPECT making no enquiries in the 8 months prior to the AFO application despite the bank statements available to MPECT clearly revealing the connections] (Complaint 1D);

It was not material to check whether MPECT received from Santander a fax sent by IS in February 2018, which, as IS has made clear to MPECT [MPPSD, and repeatedly[14]], explained the role of Grizzio in OCC's payment business (cf. what MPECT repeatedly and misleadingly asserted to different courts and to PSD itself); and which fax was likely the very reason/prompt for MPECT's application for the AFO (the fax requested Santander permit a transfer of funds from Grizzio's bank account to an OCC account, following which MPECT applied for the AFO in April 2018). [In other words, IS believes that the principal reason for the timing of the AFO application was that Santander, having received IS's fax and so the request it contained to process the transfer, submitted to a DAML/SAR seeking consent. The information contained in the fax, however, undermined directly MPECT's suggestion that it did not know of Grizzio's role.]

87. Against that evidential backdrop the choice of the ACC not to make a fresh recusal decision was made. In order to weigh the reasonable openness of that decision, the court was ought to consider the same evidence and reconcile it with the low threshold of concern of apparent bias and / or integrity elaborated under grounds 4 and 5 above respectively.

[14] During the course of MPPSD's investigation, IS repeatedly invited MPPSD to make an enquiry of MPECT in relation to this fax, which is dated 9 February 2018 and which was sent by IS to Santander on MegaTransfer letterhead. The fax explained Grizzio's role in OCC business and asked Santander to allow the withdrawal of Grizzio's balance and its transfer to OCC. IS believes it is highly likely that Santander filed a request for a Defence Against Money Laundering ("DAML") in order to proceed with the withdrawal, in which DAML request it would inevitably have described the contents of the fax. It is IS's belief that the request triggered the AFO application and if this fax was provided to MPECT, it would directly contradict MPECT's position (repeated by MPECT officers on oath) that MPECT was unaware of the link between OCC/Grizzio/MegaTransfer at the time of the AFO application. It is therefore IS's belief that this fax is of critical significance to the investigation, and that it would provide damning evidence that MPECT, having received the fax, had supressed it/its content; and that MPPSD, having failed to request it (despite express requests from IS to do so, and despites its clear significance) had permitted MPECT to maintain a wholly false narrative. It is entirely unclear why MPPSD chose to ignore IS's requests to make that reasonable enquiry of MPECT; however, its failure to make a straightforward enquiry of this kind provides IS little confidence as to the quality and integrity of MPPSD's approach to the investigation of his complaints. IS maintains that it is difficult to see how an investigator acting in good faith could fail to check the existence of such a document given the significance the document holds to IS's concerns, the ease which the enquiry could be made (it requires no more than a simple internal enquiry of MPECT itself) and the repeated invitations of IS to undertake this line of enquiry.

88. Quite bizarrely (and most likely due to having not considered evidence at all, as a matter of the chosen procedure) Siwft J has identified in his judgement the conduct of MPECT, as '*an error*':

> "*33. In particular, I can see no proper legal basis for a submission that would equate error in the course of an investigation with a conclusion that the officers or the police force responsible for the error could no longer properly conduct the investigation.*"

89. The assumption of Swift J having never looked at evidence is based on the simple observation that tre is no reasonable decision maker, who, having reviewed evidence of MPECT's conduct (i.e. serial misleading of the courts, serious corruption in the sense of perverting the course of justice and criminal offence of improper / corrupt exercise of police powers under s. 26 of Criminal Justice and Courts Act 2015), would refer to it as '*an error*'. The very fact of using such term is absolutely unthinkable, let alone in the situation where the IOPC has upheld, for 61 out of 70 items of allegations of serious corruption, the appeal of A3. However, the current ground proceeds on the assumption that either Swift J has looked into evidence and / or the COA, having agreed with the grounds raising the error-in-law and procedural challenges will want to look into it for the purposes of the substantial difference test.

Considering evidence in the context of the failure of the ACC to make a fresh recusal decision in July 2020

90. Having been presented with these prima facie examples of incoherent defences of MPECT as to why the courts were potentially deliberately misled, ACC Critchley did nothing to address the concern of MPECT's (and, hence, of policing) integrity and apparent bias.

91. That failure was in direct contravention of the particularized (in addition to otherwise clear requirements of the Code of Ethics and College of Policing guidance as to the same) by the Service Confidence Policy concept of the police powers being required to be exercised with the integrity:

> "*1.6 The test of whether there are 'Serious Concerns' about an individual's integrity will be based on an assessment of all the intelligence and evidence, including source sensitive material. The evidence must establish that it is more probable than not that the individual's integrity is in question.*"

92. It would be clear for the reasonable observer that this test from the SCP was met. Whether was the SCP applicable or not, the concept of the integrity of policing exists, inevitably, independently from it as was explained under ground 5 above. The SCP is simply a technical route as to how this concept is

pursued as a matter of positive duty: be it under the SCP or the PRA route, the test of the integrity of policing outlined in the SCP is applicable because it stems not from the SCP but from the CoE.

93. Irrelevantly from the SCP's role in forming the concept of integrity of policing, the requirement of police powers being exercised with impartiality also stems from the College of Policing Guidance as was elaborated in the legal framework for the current appeal, in addition to that being inevitable flow of basic common sense.

94. How the issue of the integrity of policing interferes with the need of recusal was explained under ground 8 above, which has provided examples of how tainted integrity of the policing prejudices any safeguards available to members of the public. The same ground has demonstrated that it is not only the investigation against A3 and his businesses from which MPECT were ought to be recused, but any evidence-gathering role as a whole because it is an absurd proposition that someone reasonably and with objective evidence of that alleged to eb dishonest could be trusted by the public to investigate others for the wrongdoing: the Rule of Law starts from those who pursue it, in the first place.

95. In addition to the issue of the integrity, which was already a self-sufficient basis for MPECT's recusal, the issue of apparent bias as per Magill's test would be similarly inevitable from the evidence: those objectively shown to be potentially dishonest would be inevitably biased against the victim of their dishonesty, let alone where it was addressed explicitly by his challenges and complaints. This brings the issue of recusal to even more overarching level as compared to there being *merely* either apparent bias or the question of the integrity: combined, these two elements of the picture form an insurmountable basis for the positive recusal decision as it is next to unthinkable to assert that there can be the public interest in a potentially biased and dishonest police officer exercising police powers against the complainant of his own criminal conduct. Of course, not the mere fact of the allegation about misconduct having been raised makes this opposed to the public interest but the objectiveness of the tests of bias and of the question of integrity which are met by the supplied evidence. Both these tests are low tests and were, inevitably and overwhelmingly (as opposed to merely) met by the evidence before ACC Critchley.

96. The judge's failure to properly assess that evidence has resulted into the potential need (subject the desire to do so, as opposed to upholding the appeal on procedural basis) for the COA to look into evidence and satisfy itself that one or both of these two low-threshold tests were met.

Conclusion

97. From the moment when the decisions of ACC Critchley were to be upheld by the courts (i.e. the Court of Appeal, if the current appeal were to be refused), it would mean that any decision maker in any police force can turn a blind eye to any evidence of serious corruption (as the IOPC and the courts don't even look into it) and blatantly ignore the powers available to them under the PRA 2002 and the positive duty under the Code of Ethics to exercise those, simply doing nothing when presented with evidence of serious corruption raising a reasonable and objective concern of the allegations being correct. By allowing that to happen, the honourable court will deprive the public interest from forging in stone that this is not the level of the modern UK's Rule of Law.

98. The Rule of Law starts from making these *rules* followed in each instance as opposed to being declared but simply ignored by everyone in practice. Assuming that lack of action (i.e. turning a blind eye on serious corruption) cannot amount to misconduct creates a temptation for decision makers to facilitate serious corruption by way of silent enabling it. For that to be changed in such critical and controversial field as policing, case law is needed which would finally outline the perimeter of where discretion of those turning a blind eye on misconduct stops. It stops, as is respectfully submitted, exactly where the parliament has prescribed: within the powers and positive duties conferred by the PRA 2002, the Code of Ethics and the SCP, as was wholly ignored wholesale by ACC Crtichley, the IOPC and then the Administrative Court's judgement that has demonstrated fundamental misunderstanding of the otherwise complicated issue of police law and, in a wider context, of the accountability of public servants for where the public entrusts them critical decisions to be made.

ILDAR SHARIPOV

Litigant in person, on behalf of all Applicants

11 February 2022