



**In the High Court of Justice  
King's Bench Division  
Administrative Court**

CO/618/2023

**In the matter of an application for judicial review**

**THE KING**

**on the application of**

**ERROL DIXON**

**(by his son and litigation friend DAVID DIXON)**

**Claimant**

**-and-**

**INDEPENDENT OFFICE FOR POLICE CONDUCT**

**Defendant**

**(1) COMMISSIONER OF POLICE OF  
THE METROPOLIS**

**(2) PC CHRISTOPHER READ**

**(3) PC ALLEN MEEHAN**

**Interested Parties**

**Notification of the Judge's decision on the application for permission to  
apply for judicial review (CPR 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the  
Acknowledgments of service filed by the Defendant and First Interested Party;

**Order by the Honourable Mrs Justice Lang DBE**

1. The application for permission to apply for judicial review is granted on  
Grounds 1, 2 and 3.
2. The application for permission to apply for judicial review is refused on  
Ground 4.
3. The hearing is to be listed for 2 days; the parties to provide a written  
time estimate within 7 days of service of this order if they disagree with  
this direction.
4. Venue: London
5. The First Interested Party's name has been amended to "Commissioner  
of Police of the Metropolis".
6. PC Read is to be named as the Second Interested Party and PC  
Meehan is to be named as the Third Interested Party. Their names are  
to be amended so as to add their first names.
7. The Claimant has permission to rely upon his Reply.

8. The Defendant has permission to adduce in evidence the video clips that are relevant to the claim by any effective means.
9. At the commencement of the hearing, the Court will hear submissions and rule on the admissibility at the substantive hearing of the statement by Mr Richard Cruise, the decision maker, dated 8 March 2023, in which he purports to re-make the decision, applying the correct legal test.
10. Costs in the case.

### **Case Management Directions**

11. The Defendant and any other person served with the Claim Form who wishes to contest the claim or support it on additional grounds shall, within 35 days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on.
12. The Claimant may file and serve any Reply and any further evidence within 21 days of the date of service of the Detailed Grounds and/or evidence.
13. The Claimant must file and serve an agreed hearing bundle, not less than 28 days before the date of the hearing. The electronic version of the bundle shall be prepared and lodged by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant must also lodge two hard-copy versions of the hearing bundle at the Administrative Court Office, not less than 28 days before the date of the hearing.
14. The Claimant must file and serve a Skeleton Argument not less than 21 days before the date of the hearing.
15. The Defendant, and any Interested Party wishing to participate in the proceedings, must file and serve a Skeleton Argument not less than 14 days before the date of the hearing.
16. The Claimant must file and serve an agreed authorities bundle, not less than 5 days before the date of the hearing. The electronic version of the bundle shall be prepared by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant must also lodge a hard-copy version of the authorities bundle at the Administrative Court Office, not less than 5 days before the date of the hearing.
17. If permission has been granted on some grounds but refused on others, the Claimant may request that the decision to refuse permission be reconsidered at a hearing by filing and serving a completed Form 86B within 7 days after the date this order is served on the Claimant. The reconsideration hearing will be fixed in due course, and may be listed on the same occasion as the substantive hearing.

### **Observations:**

### **Grounds of challenge**

Grounds 1, 2 and 3 are clearly arguable and merit consideration at a full hearing.

I have refused permission on Ground 4 as I do not consider that it is arguable that the decision maker applied the wrong legal test or departed from guidance, nor that the decision was irrational or insufficiently reasoned on this issue. However, the Claimant is correct in his submission that if the decision is quashed, on any of Grounds 1,2 and 3, it will have to be made afresh, in all respects, including on the discrimination issue.

The Defendant concedes that the decision maker failed properly to apply the correct “case to answer” test (Ground 1) and that the decision maker’s decision was not supported by intelligible reasons (Ground 2).

On all four grounds, the Defendant submits that permission should be refused, pursuant to section 31(3D) of the Senior Courts Act 1981, because it is highly likely that even if the decision maker had applied the correct legal test, the outcome would have been the same, namely that no reasonable misconduct panel could, on the balance of probabilities, have made a finding of misconduct or gross misconduct.

I have had regard to the helpful summary of the relevant principles set out in *R(Cava Bien Limited) v Milton Keynes Council* [2021] EWHC 3003 (Admin), per Kate Grange KC, sitting as a Deputy High Court Judge, and the submissions of the parties.

I am not satisfied that the test in section 31(3D) of the Senior Courts Act 1981 is met in this case. It is a high hurdle to overcome. In my view, the Defendant is inviting me to stray in the forbidden territory of fact finding and assessing the merits.

Mr Cruise’s attempt to re-make the decision during the course of the litigation has to be treated with caution, because in such circumstances a decision maker is likely to be influenced by the desire to rebut the criticisms made against him and the desire to defeat the legal challenge.

### **Interested Parties**

In accordance with standard practice, Interested Parties should be separately identified, and their first and last names included in the title to the claim. I have amended the title to the claim accordingly.

### **Reply**

The Claimant is permitted to rely on his Reply as it is relevant to the issues in the claim.

### **Video clips**

The parties are in agreement that the video clips should be adduced in evidence. The Defendant must include an updated link with its skeleton argument, and check with the Judge’s clerk prior to the hearing that the link is effective.

Signed: *Mrs Justice Lang*

Dated: 24 April 2023

**The date of service of this order is calculated from the date in the section below**

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**For completion by the Administrative Court Office**

Sent / Handed to **either** the Claimant, and the Defendant [and the Interested Party] **or** the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: 24/4/2023

Solicitors: BHATT MURPHY SOLICITORS  
Ref No. SRN 9492

**Notes for the Claimant**

To continue the proceedings a fee is payable.

**For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.**

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the Justice website <https://www.gov.uk/get-help-with-court-fees>

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.