

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
(ADMINISTRATIVE COURT)  
B E T W E E N

THE KING  
(on the application of Ms LAMIA EL-FADDI)

-and-

THE DIRECTOR GENERAL OF THE INDEPENDENT  
OFFICE FOR POLICE CONDUCT ("IOPC")

-and-

(1) COMMISSIONER OF POLICE OF THE METROPOLIS

First Interested Party

(2) A/DC MARSH

Second Interested Party



Claim No: ~~XXXXXXXXXX~~ 10 Nov 2023

AC-2023-LON-002078

CO/2497/2023

AC-2023-LON-002078

Claimant

Defendant

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~~DRAFT~~ CONSENT ORDER

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UPON the Defendant having reached a final determination pursuant to para 23(5A) of Schedule 3 of the Police Reform Act 2002, as communicated to the Claimant on 31 March 2023 that the Second Interested Party has no case to answer for misconduct or gross misconduct ("the Decision").

UPON the Claimant and the Defendant having consented to the Order in the terms below on the basis of the statement of reasons annexed hereto;

AND UPON the Defendant agreeing (subject to the Court quashing the Decision) that: (i) a new delegated decision-maker, without prior involvement in the case, will take a fresh case to answer decision pursuant to para. 23 (5A) of Schedule 3 of the Police Reform Act 2002 ("the 2002 Act") (without any input or involvement of the previous IOPC decision-maker); (ii) to grant the Claimant an opportunity to make representations to the new decision-maker, subject to the representations being provided within 28 days of the date of this Order; and (iii) that the new decision-maker will consider whether there are compelling reasons to reinvestigate pursuant to s.13B of the 2002 Act

**IT IS AGREED BY CONSENT THAT:**

1. The Claimant be granted permission for judicial review and the said claim be allowed.
2. The Decision is quashed.

3. The Defendant is to pay the Claimant's reasonable costs of the claim, such costs to be subject to detailed assessment if not agreed.
4. Within 28 days of service of a draft Bill of Costs, the Defendant is to make an interim payment on account of the Claimant's costs in the sum of 30% of the total sum outlined in the draft Bill. Any interest will be payable only on the balance of the Claimant's costs as assessed or agreed from the date of the interim payment.
5. There be detailed assessment of the Claimant's publicly funded costs.
6. Liberty to apply as to carrying such terms into effect.

Approved by DHCJ David Pievsky

10/11/2023

BY THE COURT

## STATEMENT OF REASONS

1. This is a claim for judicial review of a decision of a delegate of the Defendant, Neil Orbell, communicated in a letter dated 31 March 2023 (“**the Decision**”) finding no case to answer for professional misconduct on the part of the Second Interested Party.
2. This matter arises out of the death of Ms Wafah Yasmin Chkaifi who was killed by her former partner Mr Leon McCaskie in West London on 24 January 2022. At the time of her death there was an outstanding warrant for Mr Leon McCaskie’s arrest for breaching a stalking protection order. The Second Interested Party was the officer in the case in respect of the breach of the stalking protection order.
3. Following Ms Chkaifi’s death, the Defendant conducted an independent investigation into the circumstances of Ms Chkaifi’s death, addressing five allegations of breaches of the Standards of Professional Behaviour. The underlying complaint and disciplinary allegations were in respect of the professional standards of (1) Orders and Instructions; and (2) Duties and Responsibilities. The Decision concluded that a panel could find that there were failings in how the case was managed including how the risk to Ms Chkaifi had been assessed and that the warrant for Mr McCaskie’s arrest had not been executed. However, the Defendant concluded that the established failings did not meet the threshold for misconduct and were appropriate for a Reflective Practice Review Process.
4. The Claimant sent a pre-action protocol letter before claim on 11 May 2023 setting out the following proposed grounds of judicial review:
  - Ground 1: failure to have regard to the gravity of the failure to protect victim of domestic violence (relevant to all allegations);
  - Ground 2: breach of the public sector equality duty (relevant to all allegations);
  - Ground 3: failure to investigate and/or consider responsibility of police officers to appraise themselves of relevant policy and/or to seek guidance from supervisors/colleagues (relevant to all allegations);
  - Ground 4: failure to have regard to relevant consideration, failure to apply case to answer test, and/or irrational conclusion regarding the allegations of inadequate risk assessment and failure to safeguard (relevant to allegations 1 and 2);

- Ground 5: Failure to have regard to relevant considerations, failure to apply case to answer test and/or irrational basis for finding no case to answer in respect of T/DC Marsh did not adhere to MPS ‘Stalking – Secondary Investigation Policy (relevant to allegation 4);
  - Ground 6: Failure to apply case to answer test and/or irrational conclusion in respect of allegation relating to enactment of warrant (relevant to allegation 5);
  - Ground 7: unlawful and irrational reliance on culpable MPS supervisor witness as expert evidence (relevant allegation 5).
5. By email dated 6 June 2023 the Defendant communicated its agreement that in light of the issues raised in the letter before claim, and subject to the Court quashing the Decision, that a fresh decision should be made by a new decision maker with no involvement of those involved in the previous investigation and decision.
6. The Defendant also agreed that, before a fresh decision is made, consideration will be given by the new decision maker as to whether a re-investigation is required pursuant to s.13B of the Police Reform Act 2002 in light of the Claimant’s contention in the pre-action letter that further investigative steps are required. The IOPC has therefore agreed that the Claimant will have an opportunity to provide written representations within 28 days of the date of the Order which will be considered by the new decision-maker. The same opportunity will be provided to the First and Second Interested Party.