Neutral Citation Number: [2024] EWHC 990 (KB)

Case No: KA-2023-000118

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2024

**Before** :

**MR JUSTICE KERR**

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**Between :**

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|---|---|
| **LM** | **Claimant/Respondent** |
| **- and -** | |
| **CHIEF CONSTABLE OF KENT POLICE** | **Defendant/Appellant** |

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**The Claimant** appeared in person
**Ms Gemma McNeil-Walsh** (instructed by **Clyde and Co LLP**) for the **Defendant**

Hearing date: 11 March 2024

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# Approved Judgment

This judgment was handed down remotely at 10 am on 1 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE KERR

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down remotely by email at 10am on 1 May 2024 may be treated as authentic.

**Mr Justice Kerr :**

## Introduction and Summary

1. The appellant (the defendant below) is in operational charge of policing in Kent. The respondent (the claimant below) pleaded guilty in 2016 to nine charges of possessing indecent images of children. He brought a claim in 2022 against the appellant under the Data Protection Act 2018 (**DPA 2018**) alleging that part of a police officer's witness statement used in the 2016 criminal proceedings was personal data and was inaccurate. Broadly, the allegedly inaccurate statement was about use of a computer attributed to the respondent.

2. The respondent claimed damages and injunctive relief. In April 2022, the appellant applied to strike out the claim and/or for summary judgment. The appellant asserted, first, that the claim was an abuse of process because it was an attempt to re-litigate the criminal proceedings and a subsequent judicial review in which permission had been refused. Second, the appellant submitted that the respondent had no reasonable prospect of showing that the personal data in the witness statement used in the criminal proceedings was inaccurate.

3. The application was heard in May 2023 by His Honour Judge Parker at Canterbury County Court. He dismissed the application, for reasons he gave in an extempore judgment. He rejected both limbs of the application, finding that the claim was not an abuse of process and that the respondent had a reasonable prospect of showing that the personal data was inaccurate. He gave directions for the claim to proceed to trial.

4. The appellant appealed against the order dismissing the application. Hill J in November 2023 granted permission to appeal. She thought it was arguable that the judge had erred on both issues; and that there was a compelling reason for the appeal to be heard, namely that it "may well … clarify the law as to the accuracy of personal data in the context of law enforcement purposes". The appeal was ably argued before me by Ms McNeil-Walsh for the appellant and the respondent in person. Both also appeared below.

## The Facts

5. In May 2014, DC Brett of Kent police searched the respondent's home in Dover and seized computer equipment. A digital analysis was carried out by Mr Gary Bates of Kent police. The respondent was arrested. On 4 February 2015, DC Brett made a witness statement for use in criminal proceedings against the respondent. It contained the following words (**the personal data**):

> "During the times that searches/downloads were occurring, with respect to indecent images of children, a person was logged into a Facebook account in the name of [LM]."

6. Mr Bates also made a witness statement (undated on my copy). He described himself as a digital forensic analyst. It is not disputed that DC Brett relied in his witness statement on the expert evidence of Mr Bates. The personal data was a summary of Mr

Bates' evidence as set out in his statement, which included the following passages, quoted by the judge below in his judgment:

> "…These dates show that videos containing indicative titles were being downloaded and shared … between 15 August 2013 and 18 May 2014.
>
> 4.4 A number of potentially indecent videos were located in the eMule downloads folder.... These videos were made available to DC Brett for categorisation.
>
> 4.5 Using Internet Evidence Finder (IEF) software… I extracted all internet history associated with [various search engines] and searched that history for terms that, in my experience, are associated with indecent material. The results of the search showed that a user of this computer had used the Safari browser to conduct internet searches for '12 years old sex older girl' and 'sex 12 year old boy'…
>
> 4.6 Internal artefacts recovered with IEF case shows recovered internet activity that indicates a user… accessed a Facebook account with a profile name lxx.mxx.79… between 2nd April 2014 and 1st May 2014. However, this Facebook account is no longer active and cannot be viewed."

7. The respondent was charged with possession of indecent images of children. The prosecution evidence against him included the statements of DC Brett and Mr Bates. In July 2016, the respondent pleaded guilty to nine counts of possessing indecent images of children. On 26 August 2016, he was sentenced to 10 months' imprisonment and was made subject to notification requirements and a sexual harm prevention order (**SHPO**) for a period of 10 years.

8. In about the early summer of 2017, the appellant discovered that the respondent had moved to Leicestershire. The appellant provided the relevant local authorities in Leicestershire with details of the respondent's convictions and provided a copy of DC Brett's statement, which included the personal data. On 12 June 2017, a child protection conference relating to two children was held in Leicestershire. Reference to the personal data, derived from DC Brett's statement, was made in a report to the conference.

9. The respondent discovered this and in September 2017 complained to the then Independent Police Complaints Commission (**IPCC**) that part of the evidence of Mr Bates and DC Brett was false. The appellant rejected this complaint in November 2017, stating that the complaint was made too late and commenting that the place to dispute the prosecution evidence against the respondent was during the trial process in August 2016. The respondent was disappointed but did not appeal against the rejection of his complaint.

10. On 8 October 2018, the respondent breached the SHPO. He was arrested on 12 October but not kept in custody. On 23 October 2018, he again breached the SHPO. He sought to reopen the matter of his complaint, bringing a late appeal to the Independent Office for Police Conduct (**IOPC**), as it had by then become. He wrote to the appellant, the Chief Constable, personally; and to DC Brett asking him to withdraw his "false statement".

11. On 13 November 2018, the appellant again rejected his complaint and stated that it considered the matter concluded. On 21 December 2018, the IOPC dismissed his

complaint. In or about January 2019, the respondent applied for permission to seek a judicial review of those two decisions, though naming only the appellant as defendant, not the IOPC. The application came before Ms Karen Steyn QC (as she then was), sitting as a Deputy High Court judge.

12. In her order of 25 February 2019, Ms Steyn QC refused permission on the papers. She noted that the IOPC was not a defendant and in any case there were no grounds for impugning its decision. The complaint against the present appellant was a re-run of the earlier complaint that had concluded 10 months earlier; it was out of time. Furthermore, the respondent "would have been made aware of the statements in 2016 as they were disclosed by the prosecution prior to his conviction, and the attempt to challenge his conviction via the complaint process is an abuse of process" (reasons, paragraph 8).

13. Then in July 2019, the respondent was convicted after a trial at Canterbury Crown Court of two offences of failure to comply with his notification requirements and of the two breaches of the SHPO committed the previous year. For the two breaches of the SHPO he was sentenced to concurrent sentences of two years' imprisonment. For the two breaches of the notification requirements he was sentenced to concurrent sentences of one year, to run consecutively to the two year concurrent sentences; making a total of three years' imprisonment.

14. The Court of Appeal refused leave to appeal against those sentences at a hearing in February 2021 (but allowed an appeal against the Crown Court judge's decision to vary the terms of the SHPO). So the prison sentences stood. In July 2021 the respondent made a further complaint to the appellant about the disclosure of DC Brett's statement to the Leicestershire local authorities responsible for protecting children. He asked that the relevant paragraph (i.e. the personal data, quoted above) should not be shared and that agencies it had been shared with "should be contacted to have the information withdrawn".

15. The appellant rejected that complaint and after pre-action correspondence the respondent brought the present claim under the DPA 2018, on 25 January 2022. The claim was made in the High Court under CPR Part 8 and was then transferred to Canterbury County Court. The appellant unsuccessfully applied to strike out the claim or for summary judgment, as already related, followed by the present appeal. I will come in a moment to the judgment of HHJ Parker below, given extempore on 24 May 2023.

16. The respondent made an attempt to change his case in this appeal by filing an unorthodox "notice of discontinuance" on 16 January 2024, stating that he "wishes to discontinue to claim against the assertion made by the Defendant that the Claimant was logged into Facebook during times that downloads were occurring". Certain procedural steps have been taken as a result of the respondent filing that notice, both in this court and Canterbury County Court; but I do not think I need set them out as they do not affect this appeal.

## The Judge's Decision

17. When a claim of this kind is brought under the DPA 2018, the claimant must show that personal data about him is inaccurate. I need not set out here the detailed provisions of the DPA 2018 to that effect. It was obvious that, to have any real prospect of succeeding

in his claim, the respondent would have to show at trial that the personal data was inaccurate. The judge had to consider whether the respondent had any real prospect of succeeding on that issue at trial.

18. The judge also had to consider and rule upon the appellant's contention that the claim was an abuse of process because the respondent was, as it was put in the witness statement of the appellant's solicitor, mounting "a collateral attack on his criminal conviction"; or, as the judge paraphrased Ms McNeil-Walsh's submission, seeking "to re-litigate an issue which has already been before the courts", namely "the issue of the falsity … of DC Brett's witness statement".

19. The judge quoted the content of the personal data and the fuller account of Mr Bates in his witness statement – the same passages as I have set out above – He then recorded what the respondent's objection was: that the personal data in DC Brett's statement suggested, separately, both (i) that a person was logged into Facebook during times that downloads were occurring and (ii) that a person was logged into Facebook during times that searches were occurring. That, the respondent contended, was inaccurate.

20. The judge then referred to the respondent's complaints to the appellant and to the IOPC and the ensuing unsuccessful application for permission to apply for judicial review. He had before him the order and reasons for refusing permission made by Karen Steyn QC, but not the judicial review claim form, nor all the other relevant documents. He commented that the way in which the issue of the alleged falsity of DC Brett's statement had come before the court previously was "a little complicated".

21. However, the judge was able to reconstruct the essential chronology of events and quoted the relevant passages from Ms Steyn QC's reasons. He then asked himself whether the respondent "is attempting to relitigate the matter". He concluded that the respondent was not attempting to do so:

> "… this case is not an attempt today by LM to relitigate the matter that went before the Administrative Court. The claim that LM now brings relates to a very specific section in DC Brett's report. It is not a general complaint, as Judge Steyn understood the judicial review proceedings to be, about false statements leading to an unjust conviction. The two matters appear to me quite different. The focus in this case is very much narrower."

22. He then turned to consider the meaning of DC Brett's statement, i.e. the personal data. He noted the appellants' interpretation of it: that "*during various times at which searches and downloads of indecent photographs of children were taking place a user accessed a Facebook account with the profile name [LM]*." The "essential difference between the parties" was, he said:

> "the defendant [appellant] says this is just a statement by DC Brett that within the same space of time three different things (searching, downloading, and accessing Facebook) happened, but not necessarily simultaneously. LM [the respondent] says the statement means that the searches and downloads were simultaneous with the Facebook logins."

23. Pausing there for a moment, if DC Brett's statement meant that the searches, downloads of indecent images and Facebook access had all occurred simultaneously, that would not be what Mr Bates had said in his more detailed statement. Mr Bates, the expert, was saying in the passages I have quoted, that relevant videos were downloaded and shared from August 2013 to May 2014; that searches were carried out using the Safari

browser using search terms likely to lead to such videos; and that a user had accessed a Facebook account with a profile name lxx.mxx.79 between 2 April 2014 and 1 May 2014.

24. Returning to the judgment below, the judge concluded that the respondent's meaning was "at least arguably right". DC Brett had referred to the "times", in the plural, at which searches and/or downloads were occurring. The use of the plural, rather than "time", in the singular, suggested that "times" meant "occasions" when searches and/or downloads were done rather than "the period within which searches or downloads were made".

25. The judge then referred to Mr Bates's report which would be relevant context; indeed, DC Brett had said earlier in his statement that he was summarising that of Mr Bates. The latter, the judge noted, "was not actually saying that use of Facebook was simultaneous with searching for or downloading indecent images." The judge accepted the respondent's argument that a reader would not necessarily go as far as to look at Mr Bates's statement, but might just look casually at that of DC Brett, without looking any further.

26. The judge went on to consider the issue of accuracy or lack of it. The respondent's point was that a causal reader of DC Brett's statement would draw the wrong conclusion that the searching, downloading and accessing Facebook had been simultaneous. The personal data was therefore inaccurate. The judge accepted that the apparent inconsistency between DC Brett's statement (if it bore the meaning the respondent contended for) and that of Mr Bates, was enough to establish that the personal data was prima facie inaccurate.

27. The judge then went on to consider an issue which, I am told, was not mentioned in the appellant's application: "whether the game is worth the candle". This, as practitioners in the field are aware, is a species of the *de minimis* doctrine holding that some data protection claims are so trivial that they ought not to be entertained by the court. The judge noted that the success of the claim would not affect the convictions; the damages claim was not adequately pleaded; and a "compliance order" under the DPA 2018 is a discretionary remedy.

28. The judge asked himself whether the respondent had any prospect of securing a compliance order at trial. He noted that the respondent had not yet put in evidence; the appellant had failed to warn him in the application notice of the need to do so. The respondent asserted, and might show at trial, that he was prejudiced by what was revealed at the child protection conference in Leicestershire, where the content of DC Brett's statement had been made known. An email from a Leicestershire police officer supported that.

29. The judge accepted that the respondent might, at trial, show that he had received negative responses from friends and family members not just because of the convictions but "in relation to their understanding that he was, while on Facebook and maybe even while communicating with them on Facebook, searching for or downloading indecent images." The falsity of DC Brett's statement and its subsequent dissemination, arguably, unfairly depicted the respondent as having not just possessed indecent images but as having, perhaps, indulged in Facebook contact with friends and family while doing so.

30. The judge reminded himself that on a summary judgment application, he should "bear in mind not merely the evidence which is currently before it [the court], but the evidence which may later be produced". The lack of formal evidence at the interim stage was not fatal, as evidence from the respondent was likely to be called by him at trial to the same effect as his assertions during the hearing of the strike out and summary judgment application.

31. He accepted the potential for prejudice to the respondent, which could be established at trial. That was relevant to whether the claim should proceed. He considered whether the claim should be stopped on the ground that it was "pointless and wasteful litigation". He added:

> "The notes in the White Book at 3.4.14 mention pointless and wasteful litigation. Few submissions were made to me on this issue. It seems to me from the White Book notes that, although the principle is not limited to such cases, the instances of courts striking out on this basis are generally in relation to claims in defamation where, as is said by Lord Phillips in *Jameel*, there is no proportionate procedure available. Even if a defamation claim is small, the issues are complex and subject to a special procedure under the CPR. This is not a defamation case, so those particular considerations do not apply here."

32. The judge therefore dismissed the appellant's application, commenting that "[n]one of this is to be taken as a ringing endorsement of LM's claim". He was not persuaded that it was "doomed to failure" and declined to stop the case, instead giving directions for trial.

## First Ground of Appeal: Re-Litigation

33. The first ground of appeal is that the judge should have upheld the submission that the claim is an abuse of process. Ms McNeil-Walsh began by returning me to well trodden jurisprudential ground, eliciting the principles from speeches and judgments such as that of Lord Bingham in *Johnson v. Gore Wood & Co* [2002] AC 1; Dingemans LJ in *Mueen-Uddin v. Secretary of State for the Home Department* [2022] EWCA Civ 1703, [2022] EMLR 23; and Lord Diplock in *Hunter v. Chief Constable of West Midlands Police* [1982] AC 529.

34. These cases show that the categories of abuse of the court's process are not closed and that a broad merits based approach must be adopted, taking into account all the public and private interests involved and all the facts. The editors of the Whtie Book (2023) state that an abuse is, broadly, a use of the court's process for a purpose or in a way significantly different from its ordinary and proper use (see the commentary in volume 1, at paragraph 3.4.3).

35. Ms McNeil-Walsh submitted that the attempt in the present data protection proceedings to re-litigate the issue of falsity of DC Brett's statement was an attempt to undermine (albeit not directly challenge) the respondent's convictions in the criminal proceedings; and to re-litigate the more recent judicial review in which he had sought to attack the complaints process in which, similarly, he had not been allowed him to raise that same issue.

36. The respondent could have challenged the correctness of DC Brett's statement in the criminal proceedings but did not do so; nor did he contest the charges or appeal against his sentence of 10 months' imprisonment. The public interest in criminal convictions

only being challenged by way of appeal (identified by the Court of Appeal in *Allsop v. Banner Jones Ltd* [2021] EWCA Civ 7) extends also to the evidence supporting a criminal prosecution, Ms McNeil-Walsh submitted; in particular, because of the principle of witness immunity.

37. Ms McNeil-Walsh pointed out that in documents forming part of his complaints, the respondent had stated that "law enforcement agencies should not be permitted to continue in their processing of inaccurate data especially where a miscarriage of justice is a possibility" and that DC Brett's witness statement had "forced a guilty plea … for a lesser sentence"; while in the present appeal he had written in January 2024 that the judgment below "casts doubt over the accuracy of DC Brett's statement as a whole" and "[c]onvictions based on false evidence are not safe". These statements demonstrate that the respondent's purpose is to mount an abusive collateral attack on his convictions.

38. Furthermore, the appellant submitted, even if DC Brett's statement were inaccurate and the claim otherwise worthy of being entertained, it should be stopped as an abuse of the "*Jameel*" kind, i.e. a case where "the game is not worth the candle" (see the judgment of Lord Phillips MR in *Jameel v. Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946, at [69]-[70]). Contrary to the judge's remark, that kind of abuse is also applied in data protection cases (per Nicklin J in *Higinbotham v Teekhungam* [2018] EWHC 1880 (QB) at [45]).

39. The respondent, representing himself in this appeal, submitted that his claim is not an abuse of process. Its purpose is to prevent Kent police from sharing inaccurate information about him with other agencies and his family members. Sharing inaccurate information makes accurate risk assessments about the respondent impossible, he said. The DPA 2018 (mirroring the General Data Protection Regulation, which the DPA 2018 implements in domestic law) provides an absolute right to a judicial remedy for processing inaccurate data.

40. That could not be circumvented by invoking the principle of witness immunity, the respondent argued. The present claim was not re-litigation because no court had ruled on the accuracy of the data in DC Brett's statement until the issue came before HHJ Parker. The respondent's pleas of guilty meant that the issue was not tested in the criminal proceedings. Nor had it been tested in the complaints process or in the judicial review proceedings.

41. However, the respondent did not now wish to press his case that DC Brett had wrongly stated that he, the respondent, had been logged into Facebook during times that *downloads* were occurring. He wished to "discontinue" that part of his claim because, he said, Kent police were "using it to distract from the second part" concerning *searches*.

42. The respondent disputed Ms McNeil-Walsh's proposition that the present claim tends to bring the administration of justice into disrepute, pointing out that in *Bates v. Post Office Ltd (No 6: Horizon Issues)* [2019] EWHC 3408 (QB) the court had entertained a civil action in which a frontal attack was made against the convictions of many postmasters and postmistresses.

43. I think the judge was wrong to reject the submission that the present claim was an abuse of process. I accept Ms McNeil-Walsh's submission that the claim is an attempt to re-

litigate an issue that arose or could have arisen in the criminal proceedings; and that this claim is also an attempt to revisit the judicial review proceedings. I do not accept that the claim should proceed because DC Brett's statement disparages the respondent falsely, suggesting he not only downloaded indecent images but also talked to Facebook friends while doing so.

44. Assuming for present purposes that DC Brett's statement is reasonably capable of bearing that meaning (which is the subject to the second ground of appeal, considered below), the respondent had every opportunity to make it clear in the criminal proceedings that he accepted guilt only on the basis of having searched for and/or downloaded the indecent images and that, to be clear and for the avoidance of any doubt, he did not accept any suggestion that he was conversing with others on Facebook while doing so.

45. That could have been put in a "basis of plea", in the usual way; and it is very unlikely that the prosecution would have troubled to challenge it or that the court would not have accepted it for sentencing purposes. The sting of the charges was not talking on Facebook but possessing indecent images of children. I find that the two sets of proceedings since – first, the judicial review and second, the present data protection claim – are both abusive of the court's process.

46. The judicial review was an abuse for the reasons given by Ms Steyn QC (as she then was) in her order. This claim is an abuse for essentially the same reasons. I do not accept the judge's reasoning that this was not re-litigation because the respondent accepted that his convictions would be unaffected. A collateral attack on the safety of a conviction in subsequent civil proceedings (as in *Hunter v. Chief Constable of West Midlands Police*) will never lead directly to the quashing of the conviction, because the proceedings are civil not criminal.

47. Nor do I accept, as the judge did, the respondent's nice distinction between downloading indecent images and doing so in an aggravating way, i.e. by conversing on Facebook at the same time. It is artificial and far-fetched to say that risk assessments about the respondent could be affected by that distinction. The claims in the *Bates v. Post Office Ltd* litigation were wholly exceptional and in no way comparable to the present case. In that litigation it was the prior criminal proceedings that had, in numerous cases, been an abuse of process.

48. I do not base my conclusion on witness immunity, which was not the subject of any detailed argument before the judge below. The respondent, representing himself, was not able to make detailed submissions on that subject, either below or to me. It is not necessary in this case to go into the question whether the law enforcement context of DC Brett's statement should render non-justiciable a claim under the DPA 2018 based on it being inaccurate. I note that in *Darker v. Chief Constable of West Midlands Police* [2001] 1 AC 435, the House of Lords held that witness immunity does not extend to the investigation process.

49. Nor do I base my decision on the proposition that "the game is not worth the candle" and the litigation would be pointless and wasteful because it is so trivial. The judge thought that *Jameel* abuse applies only to defamation claims. He was mistaken about that, as Ms McNeil-Walsh has demonstrated. But the appellant had not relied in his

application on that kind of abuse of the court's process. If he had done, it is unlikely the judge would have made the error.

50. While most people would be far less exercised than the respondent about the inaccuracy of the personal data, if it was inaccurate (as to which see the second ground), to strike out a claim based on *Jameel* abuse is an exceptional course which defeats the important right of access to the court. Judges should be slow to exercise that exceptional power and I do not need to do so in this appeal, since I have found that the claim is an abuse for a different reason, re-litigation.

## Second Ground of Appeal: Accuracy of the Personal Data

51. The success of the first ground of appeal is sufficient to dispose of the appeal. I will address the second ground quite briefly. Ms McNeil-Walsh referred me to the detailed provisions of the DPA 2018 about accuracy of personal data in the context of law enforcement. It is unnecessary to set these out here. Personal data is "inaccurate" if it is "incorrect or misleading as to any matter of fact": section 205(1) of the DPA 2018.

52. As noted above, the judge found that it was arguable that DC Brett's statement fell into that category, at least if not read with the benefit of Mr Bates's more detailed statement. The respondent says he was right to reach that conclusion. Ms McNeil-Walsh accepts that the judge had to address the meaning of the personal data in order to determine whether it was arguably inaccurate. The court follows the same approach as in a defamation claim.

53. The appellant's contention was that the judge embarked on an over-elaborate analysis and took too literal an approach to the content of DC Brett's statement, in determining its natural and ordinary meaning. The judge should have accepted the defendant's suggested meaning: "*during various times at which searches and downloads of indecent photographs of children were taking place a user accessed a Facebook account with the profile name [LM]*".

54. On this issue, I prefer the meaning contended for by the respondent, if DC Brett's statement is read without cross-referring it to Mr Bates's more detailed statement. On that footing, I tend to agree with the judge that the respondent's meaning is arguably correct. At any rate, the judge's conclusion as to meaning was open to him. I do not accept that his analysis was over-elaborate and technical. It seems to me to have been plain and straightforward.

55. He relied in particular on the use of the plural "times" rather than "time" or "period". The defendant's suggested meaning likewise uses the word "times" in the plural. I think use of the plural "times" does connote, at least arguably, that the searches and/or downloads occurred while the user was actually on Facebook. I would have inclined to the view that the context should have included reference to Mr Bates's statement, but I think the judge was entitled to treat that issue as one for the trial judge.

56. The issue whether there was "simultaneity" or not might have troubled the jury if the respondent had pleaded not guilty and had run the defence that someone else must have used his profile name to search for and download the indecent images. But it was a non-issue because the respondent pleaded guilty. It was at the most a marginal factor

in the sentencing exercise but, as I have said, the respondent could have clarified his position that there was no simultaneity by putting in a "basis of plea" document.

57. Ms McNeil-Walsh submitted that the determination of meaning should have taken account of the context that the document containing the personal data was a statement intended for criminal proceedings (relying on the approach of Collins Rice J in *Shah v. Up and Coming TV Ltd* [2020] EWHC 3472 (QB), at [61] and Johnson J in *AB v. Chief Constable of British Transport Police* [2022] EWHC 2749 (KB), at [70]-[72]).

58. I do not see how the natural and ordinary meaning of the personal data is affected by it being in a witness statement. DC Brett's statement was not an occurrence summary report recording information received from a member of the public. It was the product of police investigative work, intended to state the evidence he would, if necessary, give before a jury.

59. The wider context might well have been relevant to whether the respondent could have obtained any remedy in the event that his claim went to trial and the personal data were found to be inaccurate. As I have said, I am unwilling to go into questions of witness immunity (or related issues) in the context of the DPA 2018, since those issues do not now arise and need not be resolved in this appeal.

## Conclusion and Disposal

60. For those reasons, the appeal succeeds on the re-litigation ground. The appeal does not succeed on the second ground. The judge was entitled to find that the meaning of the statement was as he found it to be and that the respondent had a reasonable prospect of demonstrating at trial that it was inaccurate and obtaining a remedy. However, the success of the first ground of appeal is fatal to the claim, which will proceed no further. I will consider any further submissions on what order the court should make to give effect to this judgment.