

Judicial Review Claim Form

In the High Court of Justice
Administrative Court

Help with Fees -
Ref no. (if applicable) **HWF** - [] - [] - []

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

For Court use only	
Administrative Court Reference No.	CO/4164/2018
Date filed	11/10/2018



Is your claim in respect of refusal of an application for fee remission? Yes

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
Ms Bonny Turner

address
[Redacted]

Telephone no. [] **Fax no.** []

E-mail address
[Redacted]

Claimant's or claimant's legal representatives' address to which documents should be sent.

name
Centre for Women's Justice

address
National Pro Bono Centre
48 Chancery Lane
London
WC2A 1JF
DX: 115 London/Chancery Ln

Telephone no. 020 7092 1807 **Fax no.** []

E-mail address
info@centreforwomensjustice.org.uk

Claimant's Counsel's details

name
Jennifer MacLeod

address
Brick Court Chambers
7-8 Essex Street
London
WC2R 3LD

Telephone no. [Redacted] **Fax no.** []

E-mail address
[Redacted]

1st Defendant

name
Director of Public Prosecutions

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name
Crown Prosecution Service: Private Office Legal Team

address
[Redacted]

Telephone no. 0115 8523443 **Fax no.** []

E-mail address
[Redacted]

2nd Defendant

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name
Transaction: 1243714
Fee Code : ADMIN 1.9a
Fee : 6151.00

address
Operator : I CHUCHEA
Dated : 11/10/2018 13:03:58
Payment Refs

Telephone no. [] **Fax no.** []

E-mail address
[]

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name
[]

name
[]

address
[]

address
[]

Telephone no.
[]

Fax no.
[]

Telephone no.
[]

Fax no.
[]

E-mail address
[]

E-mail address
[]

SECTION 3 Details of the decision to be judicially reviewed

Decision:

(i) "Decision" by the Defendant, by the Crown Prosecution Service ("CPS") not to prosecute a man accused by the Claimant of rape; and (ii) a "Secret Policy" applied by the CPS in determining whether to prosecute such cases

Date of decision:

As to (i), the Decision, 11 July 2018; as to (ii), the Secret Policy, unknown and ongoing.

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name
David Hurlstone, Appeals and Reviews Unit at the Crown Prosecution Service

address
Appeals & Review Unit - Crown Prosecution Service
7th Floor
102 Petty France
London
SW1H 9EA

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)?

Yes No

Are you making any other applications? If Yes, complete Section 8.

Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate?

Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application.

Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below.

Yes No

[]

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below.

Yes No

[]

Does the claim include any issues arising from the Human Rights Act 1998?
If Yes, state the articles which you contend have been breached in the box below. Yes No

Articles 3, 8 and 14 of Schedule 1 to the Human Rights Act 1998.

SECTION 5 Detailed statement of grounds

set out below attached

Please see attached Statement of Facts and Grounds of Judicial Review.

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim Yes No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

- (i) a declaration that the Secret Policy is unlawful;
- (ii) a quashing order to quash the Decision, alternatively, a declaration that the Decision is unlawful and must be retaken in accordance with the law; and
- (iii) damages, including damages for just satisfaction in respect of breaches of rights under the European Convention on Human Rights.

SECTION 8 Other applications

I wish to make an application for:-
The directions in the attached draft Order, addressed in Section IV of the attached Statement of Facts and Grounds - (i) that the Defendant be ordered to provide the disclosure sought by the Claimant; (ii) that the claim be stayed pending such disclosure and that the Claimant be permitted 21 days following such disclosure to determine whether to continue with this Claim and if so serve an updated Statement of Facts and Grounds; and (iii) that the Claimant be granted anonymity under r39.2(4).

SECTION 9 Statement of facts relied on

Please see attached Statement of Facts and Grounds of Judicial Review.

[Large empty rectangular box for the statement of facts]

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Kate Ellis

Name of claimant's solicitor's firm Centre for Women's Justice

Signed [Signature]
Claimant (s solicitor)

Position or office held Solicitor
(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate <i>(if legally represented)</i> | | |
| <input type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |
| <input type="checkbox"/> Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's significant assets, liabilities, income and expenditure. | <input type="checkbox"/> included | <input type="checkbox"/> attached |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed

pp- KE

Claimant ('s Solicitor) Kate Ellis

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Case No.....

BETWEEN:

THE QUEEN
on the application of
BONNY TURNER

Claimant

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

STATEMENT OF FACTS AND GROUNDS

References in this Statement of Facts and Grounds are to the attached bundle, in the form [Tab XX].

The Court is respectfully invited to pre-read, alongside this Statement of Facts and Grounds, and to the extent necessary:

- *The Defendant's decision of 11 July 2018 [Tab 1]*
- *The Guardian newspaper article of 24 September 2018 [Tab 2]*

I. INTRODUCTION

1. This case relates to an allegation of rape made by the Claimant. Following a series of reviews undertaken by the Crown Prosecution Service ("CPS") pursuant to the Victim's Right to Review ("VRR") scheme, the Defendant through the CPS decided not to prosecute that alleged rape. The final decision undertaken pursuant to the VRR scheme was on 11 July 2018 (the "Decision") [Tab 1].
2. On Monday 24 September 2018, an article appeared in the Guardian newspaper entitled "Prosecutors urged to ditch 'weak' rape cases to improve figures" (the "Article", at [Tab 2]). The Article indicates that staff in the CPS were urged, by a series of training sessions, to take a proportion of rape cases out of the system - i.e. not to prosecute those cases. That "Secret Policy", which appears in no public-facing literature, appears to be at odds with – indeed, to directly undermine – the public guidance provided to the CPS in the Code for Crown Prosecutors (the "Code").

3. At present, the Claimant only has available to her very limited information about the Secret Policy and the extent to which it was applied. However, the information available to the Claimant is such that at this stage she must assume that: (i) there was an unlawful Secret Policy being applied in the CPS; and (ii) the Decision was taken pursuant to that Secret Policy.
4. The Claimant, who sent a letter pursuant to the Pre-Action Protocol for Judicial Review on 26 September 2018 [Tab 3], and received a response on 4 October 2018 [Tab 4], is not able to seek disclosure on the Secret Policy pre-issue, due to the forthcoming expiry of the time limit in CPR r.54.5(1) (which cannot be extended by agreement: CPR r.54.5(2)).
5. As such, the Claimant seeks the following directions, addressed further in Section IV below:
 - a. that, failing disclosure under the Defendant's duty of candour, the Defendant be ordered to provide the disclosure sought by the Claimant;
 - b. that the claim be stayed pending such disclosure and that the Claimant be permitted 21 days following such disclosure to determine whether to continue with this Claim, and if so to serve an amended Statement of Facts and Grounds; and
 - c. an order under CPR r.39.2(4) that the Claimant's identity not be disclosed.

II. RELEVANT FACTS

A. The alleged rape and the investigation

6. On 4 February 2016, the Claimant alleges that she was raped while asleep in the Premier Inn London Tower Bridge, by a man with whom she had been having a consensual sexual relationship (the "Accused"). In particular, she recalls that the Accused initiated sexual intercourse with her while she was asleep. She did not report the rape immediately to the police, as she had been raped in January 2010 and had not had a positive outcome from reporting it. However, she did confront the Accused about the rape the following morning, and report it to her GP the following week.
7. On 18 February 2018 the Claimant and the Accused had the following interaction on the Facebook Messenger Platform [Tab 5]:

The Accused: "hey, are you ok?"

The Claimant: "No..."

The Accused: "wanna talk?"

The Claimant: "Not really. I feel angry with you for what you did a few days before you left. Very shaken."

The Accused: "[to the Claimant], I am so sorry, really. I made a huge mistake. I was very stupid. If there is anything I could do to make you feel better please tell me."

The Claimant: "It's one thing to gently initiate foreplay with someone you're already a lover with whilst they're sleeping, and if they wake and respond positively to then progress... But I was still fast asleep when you forced yourself inside me. I was frozen with fear, and so deeply sleepy that I thought it was dreaming".

The Accused: "I know. I completely read wrong your signs and I was very selfish. I noticed it too late. I am so sorry.

I made a huge mistake and have been thinking how wrong I was since then. Please forgive me.

I wrongly thought I could change your mind without thinking at all about your feelings and all the things you told me before. It was selfish, inconsiderate and totally stupid. And I am so sorry I made you pass through that bad moment.

I noticed too late, that is why I stopped, but I should have not even tried from the beginning. I am so deeply sorry."

8. Following this exchange, the Claimant immediately telephoned the police, and reported the rape. A full statement was taken from the Claimant five days later (by way of written statement, rather than the usual "Achieving Best Evidence" interview, due to advice received from a police officer). The Claimant has set out in detail a number of concerns in respect of this process in a letter of 29 May 2018 (discussed further at para 14 below, and reproduced in full at [Tab 12]).
9. The Accused was not interviewed until July 2017 (almost 18 months after the rape was alleged to have taken place). The Claimant understands the reason for at least some of this delay to have been because the Accused is a Peruvian citizen living in Japan.¹ The Claimant also understands that when the Accused was interviewed, this was undertaken by the Japanese police based on questions provided by the City of London police (and as far as the Claimant is aware, there is no audio or video of that interview) (see emails of 5 December 2016 and 20 April 2017 at [Tab 6] and [Tab 7]).

¹ Although the Claimant understood him to be residing in Peru for at least some of the period following the rape, she was advised by the police to "unfriend" the Accused on the Facebook platform, such that she was not aware of his whereabouts to assist the police investigation.

10. On 11 January 2018, the CPS wrote to the Claimant to state that there was "*insufficient evidence to proceed*" with prosecuting the case (the "**Original Decision**", [Tab 8]). In particular, the CPS letter stated that "*I must be satisfied that a jury hearing all the evidence, would be more likely than not to convict*" and that, having examined the evidence, "*it was clear that some of the prosecution evidence including the witness evidence was contradictory to other evidence for the Crown*", which would have been "*adverse to any reasonable prospect of success at trial*".

B. The VRR procedure

11. Following the Original Decision, the Claimant met with DC Caroline Fisk and DC Philip Corcoran on 22 January 2018, in which the police sought to explain why the CPS had decided not to prosecute the Accused. The Claimant recalls that at that meeting she was given to understand that her case was not being taken forward because the CPS were under pressure to take fewer cases forward, due to a recent case that had collapsed.
12. On 29 January 2018, the Claimant sought a review under the VRR Scheme to the Original Decision [Tab 9].
13. Following some confusion regarding whether those representing her had the authority to seek such a review, on 5 February 2018, the Claimant received a response from the CPS, in which the relevant Legal Manager confirmed that the decision not to charge the accused "*was the correct decision*" [Tab 10]. The letter explained that the Accused accepted that sexual intercourse took place, but that he thought the Claimant was awake and consenting to sex, and stopped when the Claimant did not respond. The CPS letter indicates that there was "*no independent evidence*" such as "*witnesses or other evidence such as CCTV*", such that "*the jury could not be satisfied so they are sure that [the Accused] held an unreasonable belief that [the Claimant was] consenting to sexual intercourse*". In particular, the Legal Manager confirmed that "*I agree with the reviewing lawyer that we cannot disprove his defence of reasonable belief*".
14. The Claimant had a meeting with the CPS on Friday 9 March 2018, at which the CPS explained their reasons for not charging the Accused. On 12 March 2018 the Claimant indicated that she wished to appeal the Original Decision, and articulated a number of concerns she had about the handling of her case [Tab 11]. She further articulated her concerns with this decision, and with the general conduct of the CPS and the police in this case. in a letter on 29 May 2018 [Tab 12].

C. The Decision

15. On 11 July 2018, the Decision was communicated to the Claimant [Tab 1]. The Decision confirmed that the reviewer “agree[d] with the original decision and this means that the suspect will not be charged”. The Decision contained further information regarding the interview with the Accused, which was summarised as being:

“[i]n short, the suspect told the police...all sexual activity with you was consensual, and that on the night in question he believed you were consenting”. The Decision goes on to state that the specialist prosecutor in question:

- a. “did not believe that the prosecution could prove that you were asleep or unconscious at the time”;
- b. “concluded that the prosecution would be unable to establish the third important element of the offence, namely that the suspect did not reasonably believe you were consenting to the sexual activity”;
- c. noted that the Claimant “continued to have a sexual relationship with the suspect”, which “would be used by the defence to suggest that you were unsure about precisely what had happened”;
- d. stated that the Accused’s Facebook Messenger comments, set out above at para 7, “are not unequivocal admissions to rape” but were “capable of being interpreted as an apology for the fact that the suspect believed you were awake and consenting”; and
- e. “[t]he fact that you had been having consensual sex for a number of days prior to the incident is another factor capable of supporting the suspect’s reasonable belief that you were also consenting on this occasion”, as was the fact that both the Claimant and the Accused were “sober and naked in the bed”.

16. The Decision concluded that the specialist prosecutor “cannot conclude that a jury would be more likely than not to convict, and there is accordingly no realistic prospect of conviction for the offence of rape”.

D. The Secret Policy

17. The Code provides that prosecutors should decide whether or not to prosecute based on the “Full Code Test”. That has two stages:

- a. The evidential stage: prosecutors must be satisfied that *“there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge”* (Code, para 4.4) based on all the evidence, such that an *“objective, impartial and reasonable jury...properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge-alleged”* (Code, para 4.5). This is explicitly said to be a *“different test from the one that criminal courts themselves must apply”* (Code, para 4.5).
 - b. The public interest stage: prosecutors must determine that a prosecution is required in the public interest (Code, para 4.7).
18. The Article of 24 September 2018 makes the following allegations regarding the dissemination of the Secret Policy:
- a. That senior figures in the CPS addressed staff at all 14 of the specialist rape and serious sexual offences (“RASSO”) units in the CPS from the start of 2017 until the end of the year.
 - b. That in doing so they urged prosecutors to take weak cases out of the system to improve conviction rates. In particular, it was claimed that the CPS should be winning more trials than they were losing.
 - c. That while this was characterised as a *“minor adjustment”*, insiders said it was *“interpreted as a dramatic shift in CPS policy”*. In particular, it was said by CPS insiders to be a move from a *“merits-based approach”* to a *“bookmakers’ approach”* – i.e. an approach on which the outcome is not based on the merits of the case, but an approach by which prosecutors would predict the result based on past experience.
19. According to the Article, the CPS *“confirmed the workshops had taken place”* and *“did not challenge the language used by the senior officials”*, but stated that this was not a change of approach.
20. However, this is undermined by the official statistics released by the CPS. The CPS’s *Violence against Women and Girls Report 2017-2018* (the **“CPS Report”**) states that the volume of suspects charged by the CPS fell from 3,671 in 2016-2017 to 2,822 (a fall of 849 suspects) (CPS Report, [Tab 13], p9). This is consistent with the Secret Policy being implemented across the CPS.

III. GROUNDS OF REVIEW

21. The Claimant, pending disclosure, does not at this stage know the extent to which the Secret Policy was applied to her case. However, there are a number of reasons why the Claimant must assume that the Decision was taken pursuant to the Secret Policy:
- a. That Secret Policy was reported to have been rolled out across all RASSO units, and the CPS has not denied that the workshops took place.
 - b. One would not necessarily expect the Secret Policy to be directly referred to in the Decision – the application of a Secret Policy would be undermined by being spelled out in specific guidance or decision letters. Indeed, it is pernicious precisely because it is not so spelled out.
 - c. However, while the Decision recites the test in the Code (that there was no realistic prospect of conviction in this case) on close inspection it appears that a higher test may have been being applied. For example, the Defendant makes reference to the fact that a jury has to be sure of a defendant's guilt before conviction (Decision, p6), which is the test that the criminal courts themselves must apply and not the test to be applied by the CPS when deciding whether to prosecute (see paragraph 17(a), above).
 - d. Indeed, the police in their meeting with the Claimant on 22 January 2018, when discussing the Claimant's case and the reasons that it was not pursued by the CPS, indicated specifically that the CPS was under pressure to take fewer cases and that this was the reason that the Accused was not charged in this case.
22. The Claimant challenges both (i) the lawfulness of the Secret Policy; and (ii) its application to her case.

A. Legal framework

23. In line with the important constitutional function of the CPS, it has been made clear that the Courts will only overturn the CPS's decision on a VRR procedure in rare cases (see e.g. Sir Brian Leveson P in *R (S) v CPS* [2015] EWHC 2868; [2016] 1 WLR 804, para 16).
24. A passage from the judgment of Kennedy LJ in the Divisional Court in *R v DPP, ex parte Chaudhury* (1995) 1 Cr App R 136, at 141, from before the VRR procedure came

into existence, is often referred to as providing guidelines (albeit non-exclusive) for circumstances in which the court will intervene:²

“From all of those decisions it seems to me that in the context of the present case this court can be persuaded to act if and only if it is demonstrated to us that the... CPS arrived at the decision not prosecute:

- (1) because of some unlawful policy...*
- (2) because the Director of Public Prosecutions failed to act in accordance with her own settled policy as set out in the Code, or*
- (3) because the decision was perverse. It was a decision at which no reasonable prosecutor could have arrived.”*

25. As such, where either: (i) there is an unlawful policy; or (ii) the Defendant (through the CPS) has failed to act in accordance with the Code, the Courts have made clear that they will examine the lawfulness of the CPS’s decision.

B. Grounds of Review

26. As will be apparent from the above, the Claimant requires further information from the Defendant to permit her to particularise her claim in detail. However, pending the disclosure sought in Section IV below, the Claimant challenges the Secret Policy, and the Decision applying that Secret Policy, on two broad grounds.
27. First, that the Defendant (through the CPS), acted unlawfully by promulgating and applying the Secret Policy, undermining the test set out in the statutory Code.
28. The following principles relating to the adherence to guidance by decision-makers are well-established:
- a. A decision maker should act in accordance with its general policy or guidance, unless there is a good reason to depart from that policy or guidance (see *R (Lumba) v Secretary of State for the Home Department*, “*Lumba*”, [2011] UKSC 12, [2012] 1 AC 245, Lord Dyson, para 26).
 - b. This obligation will take account of the context in which the guidance is promulgated (see further *R (Ali) v Newham LBC* [2012] EWHC 2970 (Admin) para 39 per Kenneth Parker J), and particular regard will be had to it if it is statutory guidance (see *R (Brown) v SSWP* [2008] EWHC 3158 (Admin), [2008] PTSR 1506, para 116).

² See further, following the introduction of the VRR procedure, *L v DPP* [2013] EWHC 1752 (Admin); [2013] ACD 108.

N462

Judicial Review Acknowledgment of Service

In the High Court of Justice Administrative Court	
Claim No.	CO/4164/2018
Claimant(s) <i>(including ref.)</i>	Bonnie Turner
Defendant(s)	Director of Public Prosecutions
Interested Parties	

Name and address of person to be served

name
Ms Bonnie Turner

address
c/o The Centre for Women's Justice
National Pro Bono Centre
48 Chancery Lane
London WC2A 1 JF
DX 115 London, Chancery Lane

SECTION A

Tick the appropriate box

- 1. I intend to contest all of the claim } complete sections B, C, D and F
- 2. I intend to contest part of the claim }
- 3. I do not intend to contest the claim complete section F
- 4. The defendant (interested party) is a court or tribunal and **intends** to make a submission. complete sections B, C and F
- 5. The defendant (interested party) is a court or tribunal and **does not intend** to make a submission. complete sections B and F
- 6. The applicant has indicated that this is a claim to which the Aarhus Convention applies. complete sections E and F
- 7. The Defendant asks the Court to consider whether the outcome for the claimant would have been **substantially different** if the conduct complained of had not occurred [see s.31(3C) of the Senior Courts Act 1981] A summary of the grounds for that request must be set out in accompany this Acknowledgment of Service

Note: If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

SECTION B

Insert the name and address of any person you consider should be added as an interested party.

name

address

Telephone no. **Fax no.**

E-mail address

name

address

Telephone no. **Fax no.**

E-mail address

SECTION F

**delete as appropriate*

~~I believe~~ (The defendant believes) that the facts stated in this form are true.

*I am duly authorised by the defendant to sign this statement.

(if signing on behalf of firm or company, court or tribunal)


Position or office held
Specialist Prosecutor


(To be signed by you or by your solicitor or litigation friend)



Signed 


Date
3 December 2018

Give an address to which notices about this case can be sent to you


name 


address 



Telephone no.  Fax no. 


E-mail address 

If you have instructed counsel, please give their name address and contact details below.

name 

address 

Telephone no.  Fax no. 

E-mail address 

Completed forms, together with a copy, should be lodged with the Administrative Court Office (court address, listed below), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of lodgement with the Court.

Administrative Court addresses

- Administrative Court in **London**
Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.
- Administrative Court in **Birmingham**
Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.
- Administrative Court in **Wales**
Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.
- Administrative Court in **Leeds**
Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.
- Administrative Court in **Manchester**
Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

Please see attached documents

[Empty rectangular box for providing grounds for contesting the claim]

SECTION D

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties Form N464 with this acknowledgment of service.

SECTION E

Response to the claimant's contention that the claim is an Aarhus claim

Do you deny that the claim is an Aarhus Convention claim? Yes No

If Yes, please set out your grounds for denial in the box below.

Do you wish to vary the costs limits under CPR 45.43(2)? Yes No

If Yes, state the reason why you want to vary the limits on costs recoverable from a party.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4164/2018

BETWEEN

BONNIE TURNER

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

**SUMMARY GROUNDS OF THE DEFENDANT
IN OPPOSITION TO THE CLAIM**

Overview

1. The Court is asked to refuse permission to the Claimant to bring this judicial review claim which, it is submitted, is misconceived and not properly arguable.

2. The Court is also asked to refuse the Claimant's application for disclosure which, when properly analysed, is a fishing expedition based on inaccurate anonymous multiple hearsay. Further the Court is invited to order the Claimant to pay the Defendant's costs of having to respond to this unmeritorious claim.

The Defendant

3. The Defendant is the head of the Crown Prosecution Service [“CPS”]. He acts independently of the Police and of any Government Departments.
4. Section 3 of the Prosecution of Offences Act 1985 [“POA”] sets out the statutory functions of the Defendant. Every Crown Prosecutor, in accordance with section 1(6) of POA, shall have all the powers of the Defendant as to the institution and conduct of proceedings but they exercise those powers under the direction of the Director.
5. The Code for Crown Prosecutors [“the Code”] is issued by the Defendant under section 10 of POA. It sets out the well-established two stage test [“the Code test”]. The first stage being the evidential stage and whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.

Facts

6. This case was reviewed originally on 11th January 2018 by Gemma Burns. She is a Senior Crown Prosecutor. She concluded that there was not a realistic prospect of conviction. Her decision was sent in a letter of that same date [TAB 8 of the Claimant’s Bundle].
7. The Claimant asked for a review of that decision. On 5th February 2018 the case was considered by a District Crown Prosecutor, John Gardner. He agreed with the earlier decision and wrote to the Claimant in a letter dated that same date [TAB 10 of the Claimant’s Bundle]. This completed the local resolution stage of the Victim’s Right to Review [“VRR”] process.
8. A meeting was held with the Claimant and both previous reviewing lawyers, referred to at paragraphs 6 and 7, on 9th March 2018.
9. On 12th March 2018 the Claimant requested a full review by the Appeals and Review Unit [“ARU”] under the VRR scheme. That was conducted by David Hurlstone. He is a Specialist Prosecutor in ARU. His decision, and which is the subject matter of this judicial review claim, was conveyed to the Claimant in a detailed letter dated 11th July 2018 [“the ultimate decision”] [TAB 1 of the Claimant’s Bundle]. The letter makes clear that a prosecutor “*must apply the Code*” and David Hurlstone correctly defined the evidential

stage of the Code in that letter. He thereafter analysed the evidence based on his experience and expertise. He did so in a way that, it is submitted, cannot be criticised in public law terms:

- 10. In the Pre-Action Protocol Response letter dated 4th October 2018 David Hurlstone again made clear that he had applied the Code and that he had applied the published Guidance namely the “CPS Guidance on Rape and Sexual Offences” [TAB 4 of the Claimant’s Bundle].
- 11. Whilst the Claimant has attempted to ‘cherry pick’ individual sentences from the earlier decisions it is submitted that they are (a) irrelevant as the decision that matters is the ultimate decision made by David Hurlstone and (b) they do not fairly reflect the clear evidence that those prosecutors applied the Code in their decision making.
- 12. For the avoidance of any doubt at no stage has the Defendant operated a secret policy in relation to charging decisions for offences of rape or other serious sexual offences. It follows that a secret policy was not applied in this case. It also follows that the assumptions on which this claim is based, as set out in paragraph 3 of the Claimant’s ‘Statement of Facts and Grounds’, are utterly misconceived.

Challenges to decisions of prosecutors

- 13. There are only three ways in which a successful public law challenge can be made to a prosecutorial decision. They are set out at paragraph 5 of the judgment of Kennedy, LJ in *R. v Director of Public Prosecutions* [1995] 1 Cr. App. R. 136 and are:
 - (1) The application of an unlawful policy
 - or
 - (2) A failure to act in accordance with settled policy in the Code for Crown Prosecutors or associated guidance
 - or
 - (3) Where the decision was perverse in that it was a decision which no reasonable prosecutor could have arrived.

14. Whilst the Claimant attempts to argue that all three of those apply in this claim it is clear from the ultimate decision that the Code was applied. Indeed it is notable that the Grounds make no direct criticism of the reasoning in the ultimate decision but simply speculates at paragraph 21(c) “*while the Decision recites the test in the Code ... on close inspection it appears a higher test may have been applied*” (Emphasis added).
15. Accompanying these Summary Grounds in Opposition is a witness statement from David Hurlstone. This makes clear that (a) he applied the Code and the relevant published legal guidance (b) he did not apply a higher test (c) he did not apply any secret policy or secret guidance (d) he is unaware of the existence of any secret policy or secret guidance and (e) all internal CPS guidance is consistent the Code and the relevant published legal guidance.
16. It is well-established that the Administrative Court will only very rarely intervene in relation to the prosecutorial decision making process. This has been expressed in a number of different, but consistent, ways by the Court:
- “*sparingly exercised*” (*R v. DPP ex parte C* [1995] 1 Cr App R 136, 140)
 - “*very rare indeed*” (*R (Pepushi) v Crown Prosecution Service* [2004] Imm AR 549, para 49)
 - “*highly exceptional remedy*” (*Sharma v. Browne-Antoine* [2007] 1 WLR 780, para 14(5))
 - “*very rarely*” (*R (Birmingham) v. Director of the Serious Fraud Office* [2007] 2 WLR 635, para 63)
 - “*only in very rare cases*” (*S v Crown Prosecution Service* [2015] EWHC 2868 (Admin) [2016], 1 WLR 804)
17. The rationale that underpins the reluctance to intervene in the prosecutorial decision making process is a combination of the constitutional independence of the prosecutor and

also their professional expertise and experience. The latter point was summarised by Laws, LJ in *R (Birmingham)* [63]:

“ in any event there will have been expert assessments of weight and balance which are so conspicuously within the professional judgment of the statutory decision-maker that there will very rarely be legal space for a reviewing court to interfere.”

18. It is submitted that the margin for a review of a decision made in accordance with the VRR Scheme is even narrower. One of the reasons for that can be, as in this Claim, that a number of professional prosecutors have reached the same conclusion. However, most significantly it is because the procedure followed during the VRR is scrupulously fair. The experienced ARU lawyer will have had issues raised and potential criticisms of the earlier decisions highlighted. This leaves them conspicuously well placed to conduct their review. In *L v DPP* [2013] EWHC 1752 (Admin) Sir John Thomas (as he then was) considered the VRR Scheme which was about to be introduced and stated [10 – 12]:

“It is, I think, important in the light of this new procedure also to point out the following.

First, no judicial review should be brought until the CPS has had an opportunity of conducting a further review under their Victim right of review procedure. In the ordinary case, if a challenge is to be brought before that right of review has been taken up, a court should not entertain it.

Second, if there has been a review in accordance with this procedure, then, it seems to me, that the prospect of success will, as I have said, be very small.”

19. Further support for the proposition that public law challenges to VRR decisions have very limited prospects of success can be found in a number of subsequent judgments including *S v Crown Prosecution Service* [2015] EWHC 2868 (Admin) [2016]; 1 WLR 804 and *R (Ram) v the Director of Public Prosecutions* [2016] EWHC 1426 (Admin). The former of those two judgments being given by Sir Brian Leveson P which endorses his predecessor's dicta in *L*.

Duty of candour

20. The Defendant is aware of its duty of candour in this claim and has complied with it.
21. The law in relation to the duty of candour is well established. So too the position in relation to disclosure and requests for further information in judicial review claims. The following general principles apply:
- (a) Disclosure is not required in a judicial review claim unless the Court orders otherwise (CPR PD 54 para 12.1). Disclosure of documents will not be required in most cases providing sufficient information is provided as to the basis for the decision (see paragraph 22 below)
 - (b) The Court will only order disclosure if it is necessary for the fair and just disposal of the case (see *Tweed v Parades Commission of Northern Ireland* [2006] UKHL 53; [2007] 1 AC 650, *R (Bredenkamp) v Secretary of State for Foreign and Commonwealth Affairs* [2013] Lloyds Rep FC 690)
 - (c) The Court will not order disclosure that amounts to a fishing expedition (see *R v Secretary of State for the Environment Ex p Islington LBC and London Lesbian and Gay Centre* [1992] C.O.D 67 and *Tweed*)
22. The position in relation to disclosure of information/documentation in challenges of decisions not to prosecute following a VRR is also well-established. All that it is necessary for the Defendant to disclose is the reasoning of the VRR lawyer. That is because the ultimate decision is the one that is being challenged. In *S* the Claimant sought disclosure of the detail of the earlier reviews as well as additional documents (just as the Claimant seeks here in the instant claim). The disclosure sought in *S* was rejected by the Divisional Court. The following paragraphs from Sir Brian Leveson's judgment in *S* are relevant (with emphasis added):

"The first concerned his request for disclosure of all documents relating to the original decision not to prosecute and to communications between A and the CPS

.....

Mr Raggatt cited Tweed v Parades Commission for Northern Ireland [2007] 1 AC 650 in support of his request. The Tweed case primarily concerned the proper extent of disclosure in judicial review proceedings where proportionality was in issue in relation to a Convention right under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In such proceedings this court may be required to assess the balance which the decision-maker has struck and not simply whether the decision is within the range of rational decisions. Even in those cases orders for disclosure will be the exception rather than the rule: see per Lord Brown of Eaton-under-Heywood, at para 56 in the Tweed case. Where (as here) the issue is whether the decision of the CPS was one open to a reasonable prosecutor and the decision-maker has provided evidence of the basis for her decision, the interests of justice do not require further disclosure in order to assess the reasonableness of the decision."

Submissions on the merits of the claim and the application for disclosure

23. It is submitted that:
- (a) The ultimate decision was made by an independent and highly experienced prosecutor in accordance with the VRR scheme by applying the Code and the relevant published CPS Legal Guidance.
 - (b) No specific criticism is made of the reasoning in the letter setting out the ultimate decision. Nor can it be, as it applied the correct test. It therefore cannot begin to be regarded as being unreasonable in the *Wednesbury* sense. The highest that the Claimant puts it is that a higher standard may have been applied. However, as the witness statement of David Hurlstone reveals - it was not.
 - (c) There is no secret policy and therefore there is no secret policy that applied or could have been applied to the decision not to prosecute and there is also therefore no secret policy to disclose.

(d) The high-point of the Claimant's suggestion that there is a secret policy is based on a newspaper article. It is submitted that on any view the content of that article is inaccurate anonymous multiple hearsay. That is no proper basis to bring such a claim nor to mount a disclosure application in advance of a permission determination. The letter of David Hurlstone dated 11th July 2018 as well as his response to the Pre-Action Protocol Letter and his witness statement represent sufficient disclosure in this claim. They also, when read in conjunction with these Summary Grounds, are a total answer to this claim.

Conclusion

24. The Court is asked to refuse permission to the Claimant (a) to bring this claim and (b) for the disclosure she seeks. Further the Court is asked to order that the Claimant pay the Defendant's costs of having to respond to this claim. The Defendant's position was made clear in the Pre-Action Protocol response letter. Despite that the Claimant has issued these proceedings which it is submitted are misconceived and amount to a fishing expedition.

TOM LITTLE QC
9 Gough Square
3rd December 2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4164/2018

BETWEEN

BONNIE TURNER

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

WITNESS STATEMENT OF [REDACTED] E

I, [REDACTED], c/o [REDACTED]
[REDACTED], will say as follows:

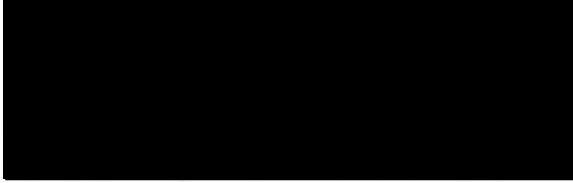
1. I am a specialist prosecutor employed by the Crown Prosecution Service (CPS). I am based at the Appeals and Review Unit (ARU), which is part of the Special Crime and Counter Terrorism Division of the CPS.

2. I was admitted as a solicitor in March 2003, and since October 2004 I have been employed by the CPS. The Appeals Unit (as it then was) was formed in June 2010, and is part of the Special Crime and Counter-Terrorism Division of the CPS. It has latterly become known as the Appeals and Review Unit (ARU), following the introduction of the Victims' Right to Review scheme. I joined the Special Crime and Counter-Terrorism division in 2010, initially working in the Counter Terrorism department before joining the Appeals Unit in October 2012. Since joining the division I have reviewed and prosecuted cases involving terrorism and homicide, as well cases of rape and serious sexual offences.
3. As a specialist prosecutor within the ARU, I am responsible for analysing, reviewing and preparing appellate court cases in the Administrative Court, the Court of Appeal and the Supreme Court. From May 2013, the remit of the ARU expanded to include responsibility for implementing a centralised Victim's Right to Review (VRR) process. This process gives victims of crime and bereaved families a mechanism through which they can obtain a full reconsideration of decisions not to proceed with their case, and VRR reviews now form a significant proportion of my caseload.
4. The claimant Bonnie Turner indicated that she wished to exercise her right to a further review on 12th March 2018, and on 1st June 2018 she submitted further detailed representations in respect of why she believed her allegations should result in a prosecution.

5. The case was allocated me to perform a final-tier review under the VRR scheme. In completing my review, I considered all of the material myself and I formed my opinions and conclusions based on my own analysis of the evidence. I took account of the claimant's representations in addition to my consideration of all of the available evidence obtained in the police investigation.
6. I reminded myself of the published VRR guidance (revised July 2016). I also had regard to, and applied, the guidance in the Code for Crown Prosecutors ('the Code') and the published CPS Guidance on Rape and Sexual Offences.
7. In completing my review, I did not apply a higher test than that which is set out in the Code. I did not apply any secret policy or secret guidance, nor am I aware of the existence of any such secret policy or secret guidance. All of the internal CPS guidance is consistent with the Code and the relevant published legal guidance.
8. I concluded that there was no realistic prospect of conviction for any offence arising out of the claimant's allegations, and I set out the reasons for my decision in a detailed letter to the claimant dated 11th July 2018.
9. Upon receipt of the claimant's subsequent Pre-Action Protocol letter, I responded by way of a letter dated 4th October 2018 again making clear that I had applied the Code and the relevant published guidance in the course of my review.

Statement of Truth

I believe that the facts stated in this Witness Statement are true.



29th November 2018

N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>



Name of court Administrative Court RCJ	Claim no. CO/4164/2018
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable) H W F - [] [] - [] []
Warrant no. (if applicable)	
Claimant's name (including ref.) The Queen on the application of Bonny Turner	
Defendant's name (including ref.) The Director of Public Prosecutions	
Date	19 December 2018

1. What is your name or, if you are a legal representative, the name of your firm?

Centre for Women's Justice

2. Are you a Claimant Defendant Legal Representative

Other (please specify) [] [] [] [] [] [] [] [] [] []

If you are a legal representative whom do you represent?

Claimant

3. What order are you asking the court to make and why?

Order to stay proceedings until 31st January 2019 to allow the Claimant to submit evidence rebutting the Defendant's denial of the existence of a secret policy applied at the time of the present decision under challenge. Please see the letter enclosed at page 1 of the supplementary bundle for further information.

4. Have you attached a draft of the order you are applying for? Yes No

How do you want to have this application dealt with? at a hearing without a hearing

at a telephone hearing

6. How long do you think the hearing will last? [] Hours [] Minutes

Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period [] [] [] [] [] [] [] [] [] []

8. What level of Judge does your hearing need? [] [] [] [] [] [] [] [] [] []

9. Who should be served with this application? Defendant

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9. [] [] [] [] [] [] [] [] [] []

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

For the information we rely on in support of our application for stay, please refer to page 1 of the supplementary bundle to the letter from the Centre for Women's Justice to the Administrative Court Office dated 13th December 2018.

Please note that this information was provided by the Centre for Women's Justice to the Defendant on 18th December 2018, at pages 6-9 of the bundle, to agree this short stay by consent.

The Defendant refused to agree to this stay, providing reasons, in an email dated 19th December 2018, enclosed at page 14 of the bundle, with the Administrative Court Case Progression Office copied in to this communication.

Therefore, although this is an application on notice, the Defendant has been informed of the reasons why the Claimant has sought this stay and has communicated its opposition with reasons to both the Claimant and the Administrative Court Office.

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed [Redacted Signature] Dated 19 December 2018
Applicant's legal representative's (~~litigation friend~~)

Full name [Redacted Name]

Name of applicant's legal representative's firm Centre for Women's Justice

Position or office held Solicitor
(if signing on behalf of firm or company)

11. Signature and address details

Signed [Handwritten Signature] Dated 19 November 2018
Applicant's legal representative's (~~litigation friend~~)

Position or office held Solicitor
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Centre for Women's Justice
 National Pro Bono Centre
 48 Chancery Lane
 London

Postcode

W	C	2	A		1	J	F	
---	---	---	---	--	---	---	---	--

If applicable	
Phone no.	020 7092 1807
Fax no.	
DX no.	115 London/Chancery Lane
Ref no.	KE/Turner

E-mail address info@centreforwomensjustice.org.uk

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4164/2018

BETWEEN:

THE QUEEN
on the application of
BONNY TURNER

Claimant

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONSDefendant

[Draft] ORDER

UPON consideration of the Defendant's Summary Grounds of Opposition

It is hereby ORDERED:

1. The claim be stayed until 31st January 2019;
2. There is no order for costs.

Dated the 19th day of December 2018

M. C. W. J.
.....
Centre for Women's Justice
Solicitors for the Claimant



✉ info@centreforwomensjustice.org.uk
 📍 National Pro Bono Centre, 48 Chancery Lane,
 London WC2A 1JF
 📠 DX 115 London/Chancery Ln
 ☎ 07903 912 641
 🌐 centreforwomensjustice.org.uk
 Charity No: 1189213

Claim no.: CO/4164/2018
Our Ref: KE/Turner
Date: 13th December 2018

Administrative Court Office
 DX 44450
 Strand

BY DX

To the clerk of the Administrative Court,

Re: R (on the application of BT) v DPP CO/4164/2018

We write in connection with the claim made by our client¹ for permission to judicially review the decision of the defendant not to prosecute the person she alleged has raped her. In particular, the claimant has referred to the existence of a policy applied by the Defendant at the relevant time, termed the "Secret Policy" in the Claimant's Statement of Facts and Grounds.

We received on [11 December 2018] the Defendant's Summary Grounds of opposition. In the Defendant's Summary Grounds it is alleged that there "*is no secret policy and therefore there is no secret policy that applied or could have been applied to the decision not to prosecute and there is also therefore no secret policy to disclose.*"

This is a surprising assertion, given that public reports indicate that the CPS accepts that the training sessions to which the Claimant refers took place, and also accepts that the language which has been reported was in fact used (see the Guardian Article of 24 September 2018 at Annex 2 to the Claimant's claim). In light of the Defendant's duty of candour, and the pernicious position in which the Claimant is placed (not having any of the relevant information herself), the Claimant had expected that the Defendant would place his cards on the table and provide details of the secret policy – whether or not that was contained in any written documentation at the time (and indeed any failure to include the policy in written documentation might be considered to be material in and of itself).

In light of the fact that the Defendant has made this assertion in its grounds and has asked the Court to dismiss the Claimant's claim on this basis, the Claimant seeks a short stay of these proceedings, until 31 January 2018 (to account for the intervening Christmas period). Such a stay would allow the Claimant to put in evidence rebutting the Defendant's assertion that there is no such policy – allowing the Court to take a view on the merits of the claim with the benefit of a fuller exposition of the relevant facts.

It is not envisioned that this would in any way affect the proper conduct of these proceedings, given that this case is not urgent and only a short stay is sought in light of the Defendant's position in his Summary Grounds.

Yours sincerely,

¹ Whom we note has made an application for anonymity.



Kate Ellis

Solicitor



From: [REDACTED]
 Sent: Monday, 17 December 2018 2:45 PM
 To: [REDACTED]
 Subject: Fwd: CO/4164/2018 TB - your ref: KE/Turner

Sent from my iPhone

Begin forwarded message:

From: "Administrative Court Office, Case Progression"
 <administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk>
Date: 17 December 2018 at 14:36:27 GMT
To: "'info@centreforwomensjustice.org.uk'" <info@centreforwomensjustice.org.uk>
Subject: CO/4164/2018 TB - your ref: KE/Turner

Dear Sirs

The above matter is ready to be considered by a Judge. I understand that you have asked for a short stay. Please note that there are no provisions in the CPR for a reply to the AOS. The matter will be sent to the Judge unless an application for stay is made.

Kind regards,

Ms [REDACTED]

Case Progression Officer

Administrative Court office | HMCTS | Royal Courts of Justice | Strand, London | WC2A 2LL

Phone: 020 7947 6655

Web: www.gov.uk/hmcts

 HM Courts & Tribunals Service

Daily Cause List: <http://www.justice.gov.uk/courts/court-lists/list-rcj>

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Criminal & Extradition Enquiries:

Administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk

Skeleton Arguments:

Administrativecourtoffice.skeletonarguments@hmcts.x.gsi.gov.uk

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=====

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 18 December 2018 11:31 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Your ref: 48C60902516/IW/RH - [REDACTED]
Attachments: 18.12.18 Letter to [REDACTED].pdf; 18.12.18 Draft consent order.pdf; Enclosures.pdf
Importance: High

FAO Mr [REDACTED]

Dear Sir

Please see attached letter of today's date along with a draft Consent Order and enclosures. We await your response to the same **before 5:30pm tomorrow the 19th December.**

Many thanks.

Yours faithfully

Sohini Mehta
Paralegal
Centre for Women's Justice

www.centreforwomensjustice.org.uk

Registered Charity number: 1169213

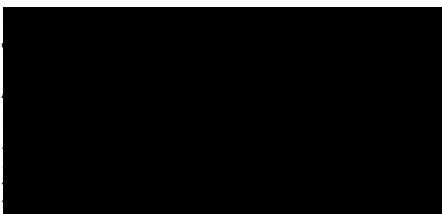
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 ☎ 07903 912 641
 🌐 centreforwomensjustice.org.uk
 Charity No: 169215

Our Ref: KE/Turner
Your Ref: 48C60902516/IW/RH
Date: 18th December 2018



BY EMAIL ONLY

Dear Sir

Judicial Review Proceedings: *R (on the application of BT) v DPP* [CO/4164/2018]

We write in connection with the claim made by our client for permission to judicially review the decision by the Crown Prosecution Service not to prosecute the person she alleged raped her.

In light of your client's position in his Summary Grounds of Opposition, in which it is alleged that there "*is no secret policy and therefore there is no secret policy that applied or could have been applied to the decision not to prosecute and there is also therefore no secret policy to disclose.*" [para 23(c)], we are seeking a short stay in these proceedings until 31st January 2019. Please see further the enclosed recent correspondence with the Administrative Court Office.

We invite you to agree to the attached Consent Order for proceedings to be stayed until the latter date, with no order for costs.

We are conscious of the need to act quickly given the matter is now ready for consideration by a Judge. We would therefore be grateful for your response by 5:30pm on Wednesday 19th December.

Yours faithfully

A handwritten signature in black ink, appearing to read 'KE' or similar initials.

Kate Ellis
Solicitor
CENTRE FOR WOMEN'S JUSTICE

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4164/2018

BETWEEN:

THE QUEEN
on the application of
BONNY TURNER

Claimant

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

[Draft] ORDER BY CONSENT

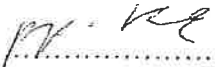
UPON consideration of the Defendant's Summary Grounds of Opposition

AND UPON agreement between the parties

It is hereby ORDERED:

1. The claim be stayed until 31st January 2019;
2. There is no order for costs.

Dated the day of 2018


.....
Centre for Women's Justice
Solicitors for the Claimant

.....
Crown Prosecution Service
Solicitors for the Defendant



✉ info@centreforwomensjustice.org.uk
 📍 National Pro Bono Centre, 48 Chancery Lane,
 London WC2A 1JF
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Claim no.: CO/4164/2018
Our Ref: KE/Turner
Date: 13th December 2018

Administrative Court Office
 DX 44450
 Strand

BY DX

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Re: R (on the application of BT) v DPP CO/4164/2018

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Yours sincerely,

¹ Whom we note has made an application for anonymity.



Kate Ellis

Solicitor



Sohini Mehta

From: [REDACTED]
Sent: Monday, 17 December 2018 2:45 PM
To: [REDACTED]
Subject: Fwd: CO/4164/2018 TB - your ref: KE/Turner

Sent from my iPhone

Begin forwarded message:

From: "Administrative Court Office, Case Progression"
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Dear Sirs

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Kind regards,

Ms [REDACTED]
Case Progression Officer

Administrative Court office | HMCTS | Royal Courts of Justice | Strand, London |
 WC2A 2LL

Phone: 020 7947 6655

Web: www.gov.uk/hmcts

 HM Courts & Tribunals Service

Daily Cause List: <http://www.justice.gov.uk/courts/court-lists/list-rcj>

Listing Enquiries: Administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk

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Criminal & Extradition Enquiries:

Administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk

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Administrativecourtoffice.skeletonarguments@hmcts.x.gsi.gov.uk

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For information on how HMCTS uses personal data about you please see:
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Sohini Mehta

From: [Redacted]
Sent: Wednesday, 19 December 2018 11:04 AM
To: [Redacted]
Cc: [Redacted]
Subject: RE: Your ref: 48C60902516/IW/RH - FAO Mr Ian Wicks
Attachments: R (Turner) v DPP CO-4164-2018 (CPS response re app to stay 19-12-2018).pdf

Dear Ms Mehta,

Further to your email and attachments received yesterday, please find attached herewith our response. Please note that the administrative court case progression inbox is also party to this communication, and that our response to you is therefore also duly lodged with the court.

Yours sincerely,

[Redacted signature block]

Specialist Prosecutor

Crown Prosecution Service | Appeals & Review Unit |
7th Floor, 102 Petty France, London SW1H 9EA

DX 161330 Westminster 11
Tel: 0203 357 0145
cps.gov.uk | @cpsuk

From: SCD Appeals
Sent: 18 December 2018 15:50
To: [Redacted]
Subject: FW: Your ref: 48C60902516/IW/RH - FAO [Redacted]
Importance: High

Dear Both,

Please see the email below and attachments received for your attention, which I have uploaded to CMS.
Regards,

[Redacted]

[Redacted signature block]

F: 0203 357 0056

From: Sohini Mehta [redacted]
Sent: 18 December 2018 11:31
To: SCD Appeals
Cc: Harriet Wistrich; Kate Ellis
Subject: Your ref: 48C60902516/IW/RH - FAO [redacted]
Importance: High

FAO [redacted]

Dear Sir

Please see attached letter of today's date along with a draft Consent Order and enclosures. We await your response to the same **before 5:30pm tomorrow the 19th December.**

Many thanks.

Yours faithfully

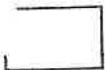
Sohini Mehta
Paralegal
Centre for Women's Justice

www.centreforwomensjustice.org.uk

Registered Charity number: 1169213

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Kate Ellis
 Centre for Women's Justice,
 National Pro Bono Centre,
 48 Chancery Lane,
 London WC2A 1JF

DX 115 London/Chancery Lane

19th December 2018

48C60902516/IW

Dear Ms Ellis,

Judicial Review Proceedings: R (BT) v DPP [CO/4164/2018]

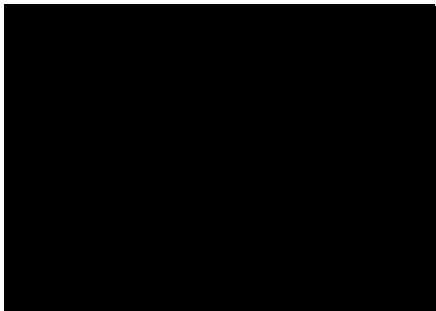
I write in reply to your letter dated 18 December 2018, received by email yesterday and forwarded to me. You refer to the Summary Grounds of Opposition lodged on behalf of the Director of Public Prosecutions who, contrary to the terms of your letter, is not my "client". The Summary Grounds of Opposition are lodged in the name of the DPP as head of the Crown Prosecution Service, under the statutory authority conferred on me as a prosecutor by the Prosecution of Offences Act 1985.

I note your request for a stay of proceedings until 31 January 2019 by consent, with no order for costs. In your letter to the Court (but not in your letter to me) you elaborate upon your application, on the basis that "such a stay would allow the Claimant to put in evidence rebutting the Defendant's assertion that there is no such policy - allowing the Court to take a view on the merits of the claim with the benefit of a fuller exposition of the relevant facts".

I regret to inform you that we do not agree to the proposed stay of proceedings, for the following reasons:

- 1) You are effectively seeking to achieve a right of reply to the Acknowledgment of Service which is not provided for under the Civil Procedure Rules.
- 2) There has been ample time to gather evidence: the claim should have been supported by evidence, not by a mere reference to a newspaper article. The lack of evidence and the alleged lack of disclosure is not a consequence of the defendant failing to comply with his duty of candour, it is merely consistent with the fact that there is no "secret policy" and therefore nothing to disclose.
- 3) The additional time sought cannot therefore result in the production of credible evidence or anything of substance supporting the claim
- 4) By choosing to launch these proceedings the claimant, with the benefit of legal advice, has placed herself in jeopardy as to costs in a way which was informed, voluntary and unequivocal. It is therefore not appropriate to seek to invite a stay of proceedings by consent as a mechanism to attempt to mitigate the financial consequences of launching a hopeless and misconceived claim.

Yours sincerely,



Specialist Prosecutor

KE/TURNER



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

CO Ref:
CO/4164/2018

In the matter of an application for Judicial Review

The Queen, on the application of T

versus Director of Public Prosecutions

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by the Honourable Mr Justice Dingemans

- 1. **The Claimant be known as T;**
- 2. **The application for a stay until 31 January 2019 and for disclosure is refused;**
- 3. **Permission is hereby refused.**

Reasons:

- 1. Given the subject matter the Claimant is entitled to anonymity.
- 2. I have refused a stay because there has been sufficient time to discover and adduce evidence since the proceedings commenced.
- 3. I have refused the application for disclosure because there is nothing to show that a secret policy was applied and there has been sufficient time to identify any material to suggest that there was such a policy. The court is entitled to rely on the defendant's compliance with the duty of candour.
- 4. I have refused permission to apply because this is a prosecutorial decision. There is no evidence that the wrong test was applied by the decision maker. The decision was not irrational because it was properly reasoned on the material.

The costs of preparing the acknowledgment of service are to be paid by the claimant to the defendant, in the sum of £2,000 (representing a broad brush summary assessment of the claim for £3,051). This is a final order as to costs unless within 14 days the claimant notifies the court and the defendant, in writing, that she objects to paying costs, or objects to the amount now ordered to be paid, in either case giving reasons. If she does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right to reply within a further 7 days, after which the defendant's claim for costs and any submissions in relation to it will be put before a judge to be determined on the papers, or at a hearing to reconsider the application for permission.

Where the claimant seeks a reconsideration of the application for permission the above order now made as to costs will be final unless the Claimant files the written representations referred to above or further order is made by the Court either at a permission hearing or as a consequence of the parties settling the claim and reaching agreement as to costs.

Signed  Mr Justice Dingemans 18 January 2019

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

party's solicitors on (date): 21 JAN 2019

Solicitors:

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM (86B) within 7 days of the service of this order. A fee is payable on submission of Form 86B. 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>



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

CO Ref no: CO/4164/2018

In the matter of a claim for Judicial Review

The Queen on the application of

T

versus DIRECTOR OF PUBLIC PROSECUTIONS

Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)

1. *This notice must be lodged in the Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 86B. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>*
3. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
4. *Set out below the grounds for seeking reconsideration:*

5. *Please supply*

COUNSEL'S NAME:

COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL

