Neutral Citation Number: [2016] EWHC 655 (Admin)

Case No: CO/3903/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 April 2016

Before :

HIS HONOUR JUDGE BLAIR QC
(Sitting as a Judge of the High Court)

- -

Between :

THE QUEEN (on the application of MS)	**Claimant**
- and -	
THE INDEPENDENT MONITOR OF THE HOME OFFICE	**Defendant**
- and -	
THE METROPOLITAN POLICE SERVICE	**Interested Party**

- -

Joseph Markus (instructed by **Lester Morrill Solicitors**) for the **Claimant**
Robin Hopkins (instructed by **The Government Legal Service**) for the **Defendant**

Hearing date: 1st March 2016

- -

Approved Judgment

His Honour Judge Blair QC :

Background

1. The Claimant wants to apply to recommence work as a licensed hackney carriage taxi driver, a job he last did in 2001 when his licence was revoked. In order to do so he needs to obtain and submit an Enhanced Criminal Record Bureau Certificate ('a Certificate', also known as an ECRC) to the body which regulates hackney carriage licences. These are administered by the Disclosure and Barring Service ('DBS').

2. Following his application for a Certificate in August 2013, the DBS sought the input of the Metropolitan Police Service ('MPS') to see if the police had any information to disclose which ought to be included in the Certificate. (The MPS is the Interested Party in these proceedings, although they have not submitted a skeleton argument and have not been represented.)

3. The MPS drafted its intended response to the DBS with the 'information' it considered relevant and which they considered ought to be disclosed in the Certificate to be issued for the Claimant. The Claimant strongly disagreed with that proposed disclosure because it related to old allegations of criminal behaviour which have never been substantiated against him in any forum. The effect of disclosing it will almost certainly put an end to his chance of being granted a hackney carriage licence.

4. He challenged the inclusion of that information in his Certificate but this only resulted in a very minor amendment by the police. Therefore, because he remained dissatisfied with the outcome, his case was referred to the Defendant – the Independent Monitor of the Home Office ('IM'). The outcome of the process which followed resulted in further modest changes being made to the information which was considered ought to be disclosed in his Certificate, but not so as to satisfy the Claimant.

5. It is a particularly sensitive and difficult exercise to balance the risk of non-disclosure of old criminal allegations which have never been substantiated and are strongly denied (because of the right of an individual licence applicant to respect for his private life) against the rights of vulnerable people using taxis to be protected from risks from their drivers by those who have the duty to consider the suitability of persons to obtain taxi licences. The Claimant, being dissatisfied with the outcome of the IM's review, brings these proceedings for a Judicial Review of the IM's review of the MPS's review of the information which they considered was relevant and ought to be included in his Certificate.

6. Permission to bring this case (allowing an extension of time to do so) was granted by HHJ Gosnell sitting as a Deputy High Court Judge on 2 October 2015. He also granted anonymity to the Claimant because otherwise the objectives of bringing this case could be defeated. I agree with that and will refer to the Claimant as 'MS'. There is a history of earlier applications by MS for a taxi licence, unsuccessful appeals, a past judicial review application, etc., but in my view there is no need to relate any of that since I must look at this case afresh.

The legal framework

7. By section 113B(4) of the Police Act 1997:

> "Before issuing an enhanced criminal record certificate, the Secretary of State must request any relevant chief officer to provide any information which –
>
> (a) the chief officer reasonably believes to be relevant for the purpose described in the statement under sub-section (2), and
>
> (b) in the chief officer's opinion, ought to be included in the certificate."

8. The leading decision on section 113B(4) is that of the Supreme Court in *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3, reported at [2010] 1 AC 410 ("*L*'s case"). Whether any information which "might be relevant" "ought" to be included requires a balance to be struck between the need to protect vulnerable groups from the risk of harm and the applicant's right under Article 8 of the ECHR to respect for his private life – Lord Hope at [42].

9. Lord Neuberger (at [81]) gave guidance about the balancing process and examples of the different and sometimes competing factors which have to be weighed up by the decision-maker. He stated:

> "Examples of factors which could often be relevant are the gravity of the material involved, the reliability of the information on which it is based, whether the applicant has had a chance to rebut the information, the relevance of the material to the particular job application, the period that has elapsed since the relevant events occurred, and the impact on the applicant of including the material in the [Certificate], both in terms of her prospects of obtaining the post in question and more generally."

10. In July 2012 the Home Office issued Statutory Disclosure Guidance under section 113B(4A) of the 1997 Act to assist chief officers of police in making consistent and proportionate decisions when providing information for inclusion in Certificates. The statutory guidance contained a number of principles. Those material to the present case are principles 2, 3, 4 and 7. I shall quote from them:-

> "Principle 2 - Information must only be provided if the chief officer reasonably believes it to be relevant for the prescribed purpose…
> 13… The word "relevant" should be given its natural meaning, expressed as pertinent to, connected with or bearing upon the subject in question… Forming a reasonable belief that information is relevant is a higher hurdle than merely considering that it might be or could possibly be relevant…"

11. There is then a non-exhaustive list of important factors which should be taken into account which includes that: the information should be viewed as sufficiently serious, sufficiently current and sufficiently credible. Paragraph 18 deals in more detail with credibility:

> "This will always be a matter of judgment, but the starting point will be to consider whether the information is from a credible source. Chief officers should consider whether there are any specific circumstances that lead them to consider the information is unlikely to be true or whether the information is so without substance that it is unlikely to be true. In particular, allegations should not be included without taking reasonable steps to ascertain whether they are more likely than not to be true." (My emphasis.)

The parties accepted before me that this guidance must obviously also extend to taking reasonable steps to ascertain whether the allegations are more likely than not to involve the correct identification of the applicant as their perpetrator.

12. **Principle 3 - information should only be provided if, in the chief officer's opinion it ought to be included in the certificate**. This includes the consideration of the impact of disclosure on the private life of the applicant or a third party so as to address Article 8 of the ECHR:

> "…22. If there is a legitimate aim pursued, the next step is to consider whether the disclosure of the information is necessary to pursue that aim… If [so] then the question becomes one of proportionality. In practice, this will involve weighing factors underpinning relevancy, such as seriousness, currency and credibility, against any potential interference with privacy. All decisions must be proportionate. This means that the decision is no more than necessary to achieve the legitimate aim and that it strikes a fair balance between the rights of the applicant and the rights of those the disclosure is intended to protect. It is therefore essential that the reasoning in reaching a decision is fully and accurately recorded in each case." (My emphasis.)

13. The last sentence of paragraph 22 is also embodied in "**Principle 7 - Information for inclusion should be provided in a meaningful and consistent manner, with the reasons for disclosure clearly set out**." This is spelt out in paragraph 31:

> "Neither the applicant nor the … other body to whom they may wish to show the certificate should be left to speculate as to the reasons why information has been included. Both these reasons and the information itself should be set out in a clear and meaningful way and in a consistent format."

14. Under "**Principle 4 - The chief officer should consider whether the applicant should be afforded the opportunity to make representations**", some factors relevant to this consideration are set out in bullet points which includes:

> "is there any doubt as to whether factual information is correct or remains valid?"

15. My attention was drawn to a number of authorities. In *C v Chief Constable of Greater Manchester and Secretary of State for the Home Department* [2010] EWHC 1601 (Admin) Langstaff, J. observed, at [12], that the decision-maker must be careful in weighing the risk, on the one hand, of non-disclosure, against the risks of disclosure, thereby necessitating a close attention to detail so as to ensure a balance which complies with the duty of proportionality. At [13] he said the force of the accusations is relevant to striking that balance - "Weaker allegations must carry less weight in the balancing process than ones with stronger reason to believe them."

16. In *R (on the application of RK) v Chief Constable of South Yorkshire Police and the DBS* [2013] EWHC 1555 (Admin) Coulson, J. quashed a decision of the police to disclose information in a Certificate for a whole host of reasons. Amongst them was the failure of the police to have proper regard to the reliability and weakness of the information they disclosed. In that case the Claimant (a teacher) had been acquitted by a jury of six allegations of indecent assault made by four 15-year-old complainants at his school. At [37] - [40] Coulson, J. concluded that, on one reading of the police documentation, they had grudgingly noted the acquittal and then gone on to address the allegations as if they had been proved. He also referred to the Claimant having pointed to a number of inconsistencies and inadequacies in the prosecution case, clear and concise explanations having been given, some of the Claimant's account being supported by other witnesses and the inherent unlikeliness of some parts of the allegations.

17. The most comprehensive and elegant analysis of the law since the House of Lords considered the case of *L* can be found in the judgement of Beatson, L.J. in *R (on the application of A) v Chief Constable of Kent Constabulary* [2013] EWCA Civ 1706 (CA). He explained how a 'high-intensity review' of the decision must be undertaken by a court where the question concerns whether a decision interferes with a right under the ECHR and, if so, whether it is proportionate and therefore justified. "The need to do this involves considering the appropriate weight to give [the factors considered by the decision-maker] and thus the relative weight accorded to the interests and considerations by the decision-maker" [36]. The evaluative exercise of the court does not involve:

> "determining a 'hard-edged question of fact'. That is one of the reasons that the starting point of the court will generally be to give appropriate weight to the conclusions of the person who has, because of or as a result of access to special sources of information been given responsibility for a topic… What the court has to do in assessing the proportionality of the disclosure of disputed material is to consider the state of the available material. As its task is not to determine the truth or falsity of the allegations, but whether the allegations or some of them are reliable enough to justify disclosure, in the vast majority of cases there will be no need to make findings of fact when assessing their reliability." [61]

18. Mr Markus, for MS, has argued that I should be undertaking that 'high-intensity review'. On the other hand Mr Hopkins, for the IM, argued that because MS is no longer asking me to assess the proportionality of the disclosure, but is now only pursuing his challenge for: (i) the IM failing properly to deal with the Claimant's detailed representations, (ii) failing to make the requisite enquiries to resolve disputed issues of fact and (iii) failing to give sufficient reasons for his decision, then I do not have to embark on my own 'high-intensity review'. I agree with Mr Hopkins on this point, but I reassured Mr Markus that my review would not be one of 'low-intensity'.

19. The other important point expressed in *A*'s case, at [66], which I should mention, is that the reliability of the allegations does not have to reach a particular 'tipping point' or threshold before it can feature in the evaluative assessment of proportionality. All of Lord Neuberger's factors, and any other relevant ones (see paragraph 9, above), will feature in the proportionality test. For examples, allegations of a very grave nature but with a low level of reliability are to be addressed in the proportionality evaluation and may result in decision that they ought to be disclosed. On the other hand, it is less likely that trivial allegations, or very ancient allegations, with a low level of reliability, ought to be disclosed. However, in order to feature in the assessment of proportionality the decision-maker must come to a conclusion about their reliability so as to afford them the correct weight when balancing the conflicting interests. This is important when considering the IM's decision letter in this case, as will become apparent below.

20. Almost all of the reported cases in this field have involved challenges to the decisions of chief officers of police when they have carried out their functions under section 113B(4). However, after the opinions of the House of Lords in *R (L) v Commissioner of Police of the Metropolis* (above) the law was amended so as to give an applicant a right of review by the IM.

21. The IM was established by section 119B of the 1997 Act to review a sample of cases of the decisions made by chief officers of police each year and to provide an annual report to the Secretary of State with any recommendations for improvements. However, the jurisdiction was then extended by the insertion of section 117A to provide a review function of particular complaints brought to him for his consideration.

22. Under these additional powers, if a person applies in writing to him for a decision that the information in a Certificate is not 'relevant' or 'ought not to be included', then he must ask the chief officer of police (section 117A(3)):

> '…to review whether the information concerned is information which –
>
> (a) the chief officer reasonably believes to be relevant … and
>
> (b) in the chief officer's opinion, ought to be included in the certificate.'

23. If, following that police review pursuant to section 117A(3), the IM considers that any of the information in the Certificate is not 'relevant' or 'ought not to be included' he must inform the DBS, who must issue a new certificate (section 117A(5)). It is

important to observe that it is expressly stated that the IM must himself have regard to the published statutory guidance (section 117A(7)). Furthermore, in my view, it is also important to note that section 119B(9) expressly states:

> "the chief officer of a police force must provide to the independent monitor such information as the monitor reasonably requires in connection with the exercise of his functions under this section or section 117A." (My emphasis).

24. In this way, the Defendant himself exercises an independent monitoring review under section 117A(5), applying the same guidance which governs the chief officer of police.

25. The Claimant's counsel referred me to the obligation upon someone exercising a statutory function to make such enquiries as are necessary for the purpose of discharging that function: *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, 1065B (Lord Diplock).

26. During the course of argument before me the role of the IM under these provisions was debated. As far as counsel has been able to ascertain there is only one available reported decision concerning his role – *R (on the application of PM) v The Independent Monitor and the Chief Constable of the Staffordshire Police* CO/5601/2014. In his judgment in the Administrative Court His Honour Judge Simon Barker QC said:

> "18. It is also important to bear in mind that Parliament has seen fit to create the office of the IM for the purpose of overseeing, by way of review in response to written complaint and representations, the content of [Certificates] and by so doing Parliament may be taken to have considered that to be a task requiring specialist expertise…
>
> "21… The IM's function is not to investigate the veracity of and approve or edit a text for disclosure but to review the content of a text in the light of written challenge to that content, any written response to the challenge, and the statutory criteria as to permitted content."

The judge stated at [25]: "it is not for the IM to research the accuracy of the underlying facts". Having rejected various submissions on behalf of the Claimant as to the accuracy of the information in that Certificate, and having declined to interfere in respect of others, he stated at [32] that the question for him was whether the IM's decision was one which the IM could not reasonably have made. He concluded that it was unimpeachable and, in respect of the balancing exercise required to be undertaken so as to address the Claimant's rights against the countervailing interests, observed that Parliament had entrusted it to a specialist officeholder and it "would not be legitimate for me to substitute my view, if different, unless my conclusion was that the IMs decision was *Wednesbury* unreasonable."

27. Mr Markus, for MS, expressed some difficulties with the above dicta where a Claimant's challenge is founded on disputing the credibility/reliability of the

information concerned and where paragraph 18 of the Statutory Guidance says "allegations should not be included without taking reasonable steps to ascertain whether they are more likely than not to be true" - statutory guidance to which the IM is obliged to have regard in making his decisions (section 117A(7)). I agree with Mr Markus and in this context make reference back to what was said by Coulson, J. in the case of *RK* (see above) where he plainly reviewed the adequacy of a chief constable's evaluation of the reliability of material, the existence of which was being disclosed in the information provided in a Certificate.

28. Mr Hopkins was quite prepared to accept that the IM is required to assess the credibility of the information in his review. He said that the IM does not automatically defer to the views of the police, however, since the police are given the duty by Parliament to undertake the exercise in the first instance and as it is the police who have access to the primary source material, he is entitled to give them considerable weight. He referred me to the case of *A* where Beatson, L.J. made such a point at [36] and [39]. In the same way, he suggests I should give some weight to the IM's conclusions because Parliament has entrusted him with the duty to review the conclusions of the police.

29. Whilst I acknowledge the relevance of those points in the context of the assessment of 'proportionality', I was not persuaded that they are a complete answer when one is considering a complaint about the failure properly to deal with a Claimant's submissions concerning the reliability of the material behind the intended disclosures, or complaints about the failure to give sufficient reasons.

30. Further, in this context I made the observation that when the IM reviews a case (section 117A(5)), having first requested the police to review their conclusions (section 117A(3)), he does have the ability to assess the merits of the police's conclusions on the facts. Indeed, he has the statutory authority to demand from the police information which he may reasonably require in connection with exercising his review function (section 119B(9)). That is not something I have power to do when judicially reviewing his decision and if the IM were not to exercise that power in an appropriate instance it would rather undermine the proposition that I should give some weight to his conclusions.

31. Nonetheless Mr Hopkins made the point that whilst the IM undertook an independent review he cannot approach everything *ab initio*. It is a review of the first instance decision of the police, carried out by a person with considerable expertise in this field. He nevertheless properly conceded that the IM can examine the merits and quality of the evidence relied upon.

The relevant facts of this case

32. Having made his application for a Certificate in August 2013, the MPS wrote to MS on 19 November 2013 offering him an opportunity to make written representations before a decision was taken whether or not to disclose to the DBS the fact that he had come to their notice on five occasions between December 1997 and June 2001 for alleged indecent assaults on female passengers of his London taxi cab.

33. Only one of those five alleged matters ever resulted in a charge and the one which did was discontinued in the magistrates' court before it was even committed to the Crown

Court for trial. MS took up the opportunity afforded to him to make written representations (albeit outside the 14 days given him), sending in a detailed 25 page document dated 21 January 2014. During the course of the hearing it was suggested by Mr Hopkins (although not pushed too strongly) that this document was prolix. I disagreed. MS was a man with a grievance. This was his line-by-line challenge to the limited documentation which he had in his possession concerning the allegations behind the planned disclosure. Had he not addressed all his detailed complaints in this submission it is highly likely that he would have been criticised later on if he were then to raise something which he had not previously mentioned.

34. It would appear from the MPS case record that they made a disclosure to the DBS on 17 December 2013 of the 'approved information' set out in their November letter, but for various reasons decided that MS's subsequently received representations should nevertheless be considered and the disclosure of the 'information concerned' reviewed. This appears to have been done by Mr Graham Morris on 5 March 2014, but the MPS decision remained unchanged save for the replacement of 'indecent assaults on females' with 'indecency towards females'.

35. This led to the issue of a Certificate by the DBS containing that information dated 12 March 2014.

36. MS made further challenges through his solicitors in May 2014. These were reviewed by a different officer (Michael Froggatt) on 28 July 2014, (although quite possibly he only considered its alternate pages as a result of an error in the photocopying process - see below), but he came to the same conclusion, stating:

> "… I conclude that the material is of sufficient quality to pass the required tests. The chief officer's rationale is sound, cogent and sufficiently comprehensive to demonstrate a reasonably held belief that the information is pertinent to an employer's assessment of the applicant's suitability to work within the sector of Other Workforce Taxi Driver. The decision to disclose approved information is a logical conclusion. The information is relevant because it indicates several allegations connected by similar fact evidence of indecency towards women in a position of trust… The approved information does not go any further than is necessary and I am satisfied it is accurate, balanced and fair…"

37. MS was not satisfied with the position and so his complaint was referred to the IM. The IM gave him 28 days from 17 September 2014 to provide any representations. His solicitors replied on his behalf to say that they did not intend to make further representations. It was during the course of the Defendant's review of all the papers which had been submitted to the MPS that he became concerned that MS's solicitor's submissions of May 2014 may not have all been taken into account (see the above paragraph).

38. Accordingly, at the invitation of the Defendant, Michael Froggatt of the MPS carried out a further review in the light of a complete set of the written representations made by MS and his solicitors. This is dated 2 February 2015 in the internal police running log (called a 'CEC') but the outcome of this further review was not recorded formally

in the document called an 'AT12 Dispute Result Form' until 12 February 2015. It is this latter document which is supplied to the IM and the applicant and comprises the conclusions of the statutory exercise undertaken pursuant to section 117A(3). The police review did in fact result in some further amendments to the 'approved information' so as to read:-

> "Mr S came to the notice of police on four occasions between December 1997 and June 2001, for alleged indecency towards female passengers in his London Taxi. In each instance Mr S was traced through descriptions of his taxi, registration or plate number. Mr S was arrested in connection with the alleged offences, and in interview denied the allegations. Mr S stood on three identification parades when none of the alleged victims identified him. In June 2001, Mr S was charged with indecent assault. The prosecution was later withdrawn by the Crown Prosecution Service."

39. It is this text which was considered by the IM under section 117B(5) and he supplied a decision letter just one week later, dated 19 February 2015. He upheld the disclosure of that proposed information in the Certificate, as amended by Mr Froggatt. In summary his conclusion in respect of the 'relevance' of the information was that:

> the disclosure was relevant to a role in which the Claimant would be working (as a taxi driver);
>
> the amended disclosure accurately reflected the allegations made and the information held by police;
>
> the allegations were sufficiently serious to justify consideration for disclosure;
>
> despite their age it was justifiable for them to be considered current for disclosure purposes; and,
>
> he could see no reason to doubt the credibility of the information.

As to the question of whether the information 'ought not to be included' in the certificate he decided that the disclosure had a legitimate aim, for which disclosure was necessary and proportionate, pursuant to Article 8 of the European Convention on Human Rights. Moreover, he stated that he had had regard to the Statutory Disclosure Guidance issued by the Home Office and was of the opinion that the MPS had provided sufficient detail as to their rationale for disclosure.

40. That is my concise summary of the decision letter. However, it does not reflect how he expressed himself. This is how he expressed himself in important paragraphs of his decision letter dated 19 February 2015:

> "The information shown on the certificate relates to the fact that whilst working as a taxi driver you came to police notice on 5 occasions between

> 1997 and 2001 for offences involving indecency with female passengers in your taxi."

This appears to reveal a conclusion of the IM that 5 offences involving indecency with female passengers had occurred in the Claimant's taxi. Mr Hopkins asks me to read that as recording only that the Claimant had come to the police's notice for such allegations.

41. The letter goes on to provide a paragraph of between 4 and 7 lines for each of those 5 alleged offences. In every single one of them the IM says that the Claimant was 'identified'. When I raised this with Mr Hopkins he asked me to read each of those references to 'identified' as meaning only that the Claimant came to police attention through the various methods explained. I am asked to accept this as the IM's meaning even though in most instances the information leading to the Claimant being asked to help the police with their enquiries was inaccurate in its description of the Claimant, or his licence plate, or his registration number, in various particulars. That this was the way the IM set out a summary of the strength of the evidence of the Claimant's participation in indecent offences, when the correctness of the Claimant's identification was plainly the central feature of this dispute, is surprising to say the least.

42. Am I being unfair in my reading of this decision letter? I think not. Later in the letter, when he reverts to saying that the Claimant is alleged to have indecently assaulted 3 passengers and raped another, he says:-

> "I note that the index number provided by the alleged victims is not totally accurate in every case but that there was a marked similarity to your vehicle at the time and this led to your identification on each occasion… In the 2001 allegation…your taxi is identified through CCTV and the registration number given by the alleged victim…"

This appears to overlook many of the points made by the Claimant about the marked dissimilarities between his vehicle and what had apparently been described by complainants. There is a very significant challenge to the CCTV stills from outside Charing Cross station being his vehicle at all because it is a different shape and in some instances the very surprising absence of description by complainants of the distinctive livery painted all over his taxi.

43. The IM went on to say:-

> "Having considered that the matters are sufficiently current and serious I also need to assess the credibility of the information. You deny involvement in any of the offences. That there are 4 definitive allegations against the same person as a result of your role as a taxi driver and linked through your cab is a concern."

Mr Hopkins was unable to give me an explanation of the use of the word 'definitive' in the latter sentence. It is an extraordinary sentence - describing as 'a concern' the IM's apparent conclusion that all 4 offences were committed by the same person and that they were committed by the Claimant in his role as a taxi driver and linked

through his cab. The IM then goes on to explain a similarity that could link two of the allegations together and the presence of DNA in another, before making an observation about the Claimant's lack of credibility in an answer he gave in connection with an alibi. He links the latter point as a particular example of the Claimant's "suggestion…of mistaken identity" and then concludes:-

> "On balance therefore having reviewed the information I can see no reason to doubt the credibility of the information. I am satisfied that the information is of sufficient gravity to be disclosed, it is sufficiently credible and current and that reference to it the disclosure is relevant to a role in which you would be working within the other workforce."

These proceedings

44. A letter before action was sent to the Defendant by the Claimant's solicitors on 29 May 2015. The Defendant responded on 11 June 2015. The claim form, with detailed grounds attached, was filed on 18 August 2015. An Acknowledgment of Service was served by the Defendant on 14 September 2015. The Defendant's Detailed Grounds of Resistance were served on 17 November 2015.

45. An application notice dated 13 January 2016 on behalf of MS sought permission to rely upon further evidence in the form of a witness statement and exhibits. It argued that this information would demonstrate that the alleged failures of reasoning by the Defendant or failures of enquiry were not immaterial. This application was opposed by the Defendant, arguing that it is quite wrong for the court to consider material which was not available to the primary decision maker at the time of the decision which is being challenged. They referred to the case of *R(A) v Chief Constable of Kent* [2013] EWCA Civ 1706 at paragraphs 69 and 91. Mr Markus sensibly did not press on with his application on behalf of the Claimant before me and therefore I do not need to rule upon it. I have not read the further evidence. It was correctly observed that it may become relevant material hereafter if MS is successful in his challenge of the Defendant's decision.

46. The Claimant's case has been put before me under the following heads:

    (1) the Defendant failed to deal with each of the Claimant's submissions in his detailed letter of 21 January 2015;

    (2) he failed to give sufficient reasons for his conclusions;

    (3) he failed to make the enquiries necessary so as to resolve disputed issues of fact which had been raised.

47. The Defendant's response to those submissions included:

    (1) that he did engage with all of the points of significance, basing his conclusions on the review undertaken by Mr Froggatt of the MPS; that the IM doesn't have to deal with every single little point where they are weak and inconsequential, but only those which are potentially significant.

(2) he gave perfectly sufficient reasons for his conclusions; the Claimant could have been left in no doubt as to why his objections had not been upheld; an adequate decision was provided and, although the Claimant was not provided with the analysis of the underlying material undertaken by Mr Froggatt of the MPS, the crucial points were distilled by the IM and conveyed to him.

(3) the requisite level of enquiries to resolve the disputed matters of fact raised by the Claimant had been undertaken by a detailed, impressive and diligent response from the MPS. Whilst it was open to the IM to ask the police for copies of the complainants' original witness statements or CCTV (for example), he was under no obligation to do that when he had a careful police review to read and had only to apply 'a balance of probabilities' in assessing the weight of the evidence behind the allegations.

My conclusions

48. Whilst I acknowledge that the IM was not required to investigate *ab initio* the Claimant's grievances about the credibility/reliability of the allegations giving rise to the proposed disclosure of the information concerned, nevertheless I do not accept that his decision letter reveals that he has undertaken what was required of him in reviewing the MPS's disclosure decision, given the extent of the Claimant's detailed objections.

49. In expressing himself in the way he did, only a week after the MPS formally expressed its review on Form AF12, I cannot avoid reaching the conclusion that he did not undertake the independent review required of him in accordance with his statutory obligations and applying the statutory guidance.

50. In my view there is fair criticism to be made based upon his apparent misunderstanding of the MPS' own review of the disputed material when one sees how he pitched his analysis of it even more forcefully against the Claimant than even Mr Froggatt. That is something which I consider to be an analysis which cannot withstand the application of the *Wednesbury* test of reasonableness.

51. Further, where there are apparent non-sequiturs in Mr Froggatt's review of the material (when addressing the Claimant's written submissions) the IM accepts that he took no steps pursuant to section 119(B)(9) to query them and/or to ask to view such critical primary sources of evidence as remain in existence (for example the various complainants' witness statements and CCTV recordings). That is a significant concern. I do not for one moment suggest that the IM was required to investigate possible alibis put forward by the Claimant, or ask the police to do so all this time later. However, where every experienced participant in the criminal justice system knows of the dangers that can arise around the mistaken identification of assailants, the IM was obliged himself to scrutinise with a high degree of forensic care the material which is said to incriminate the Claimant. He must then assess its weight with care. Only once he has reached a considered conclusion as to its weight can he then undertake the balancing exercise necessary to justify an interference with the Claimant's Article 8 rights. I do not consider that the IM's decision letter evidences that he has undertaken that assessment with the care demanded when one considers its content and how it relates to the police review.

52. I have absolutely no intention of seeking to express any opinion of my own as to the merits of MS's challenges to the reliability of the information allegedly linking him to incident(s) of indecency towards taxi cab passengers 15 or more years ago, but I do consider that the IM's decision letter reveals that MS has not had the benefit of what he is entitled to, namely a reasonable, statutorily compliant, independent review by the IM of the reliability of the material which is the foundation of the information which has hitherto been said to be relevant and ought to be disclosed.

53. I make this observation - given that the detailed review by the MPS has now been disclosed during the course of these proceedings, it would be advisable for the Defendant to invite the Claimant to make any further representations which he wishes to put forward concerning the underlying 'identification' material, before undertaking his review.

54. Once that exercise has been conducted properly by the IM it may well be that the outcome still results in some information being disclosed on the Claimant's Certificate which will interfere with his prospects of realistically being able to secure a hackney carriage licence. However, the Claimant is entitled to that exercise being undertaken independently, in accordance with the statutory guidelines, with proportionate enquiry made and explanations given.