NCN: [2023] UKFTT 00441 (GRC) **Case Reference: EA/2021/0376**

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Heard: by determination on the papers
Heard on: 19 May 2023
Decision given on: 25 May 2023

Before:
Judge Alison McKenna
Tribunal Member Pieter De Waal
Tribunal Member David Cook

GABRIEL KANTER-WEBBER	**Appellant**
- and -	
THE INFORMATION COMMISSIONER	**First Respondent**
-and-	
THE CHIEF CONSTABLE, CAMBRIDGESHIRE CONSTABULARY	**Second Respondent**

DECISION

1. The Chief Constable, Cambridgeshire Constabulary is hereby joined as the Second Respondent to this appeal.

2. The appeal is allowed. Decision Notice IC-86525-W2N9 dated 16 December 2021 contains an error of law. The Tribunal now makes a Substituted Decision Notice, as follows:

SUBSTITUTED DECISION NOTICE

The Second Respondent must, within 35 days of this Decision being sent to him, provide the Appellant with the information requested.

REASONS

Mode of Hearing

3. The Appellant, the First Respondent and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of this Chamber's Procedure Rules[1].

4. The Second Respondent was aware of these proceedings but chose not to apply to be joined as a party or to make any submissions. However, following our determination of the appeal, we have now joined the public authority as a party in order: (i) to be able to direct it to comply with our substituted decision notice and (ii) so that it may apply for permission to appeal to the Upper Tribunal and a stay of the requirement to disclose the requested information pending determination of that appeal. We have concluded that it is fair and just to make this direction pursuant to rules 9 and 2 of this Chamber's Procedure Rules.

5. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 94. We also considered a closed bundle comprising an audio recording (the requested but withheld information).

[1] https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules

Background to Appeal

6. This matter concerns the audio recording of a Police Misconduct Panel hearing held in November 2020. The police officer was found by the Panel to have committed an act of gross misconduct which discredited his office, and he was dismissed from his position with immediate effect. The background facts were that he had used the self-service check out at a supermarket whilst on duty and in uniform, deliberately placing the barcode for some loose carrots onto a box of Krispy Kreme doughnuts, so that he obtained the doughnuts for a fraction of their retail price.

7. The Appellant made an information request to the public authority, the Chief Constable of Cambridgeshire Constabulary, on 2 December 2020, as follows:

> *"Hi, please can you provide a PDF of the outcome of this hearing https://www.cambs.police.uk/assets/PDFs/About/Misconduct/AboutUs/Misconduct-PC2683. pdf and also of the transcript (if no transcript is available then the audio recording)"*

8.The public authority responded that the outcome of the hearing and the rationale for the decision would shortly be published on its website and that it could not release the audio recording or transcript. The Appellant queried that response and on 6 January 2021 the public authority confirmed that it did not hold a transcript and was refusing to disclose the audio recording in reliance upon s. 40 of the Freedom of Information Act 2000 ('FOIA')[2]. On 3 February 2021, the public authority informed the Appellant of the outcome of its internal review, which was that no transcript was held and that whilst the hearing was held in public, the audio recording was now the personal information of the individuals involved and exempt under section 40 FOIA.

9. The Appellant complained to the Information Commissioner on 5 February 2021. The Information Commissioner issued Decision Notice IC-86525-W2N9 on 16 December 2021, upholding the public authority's refusal to disclose the requested information in reliance upon s. 40 (2) FOIA and finding that the public authority had breached s. 17 FOA in its delayed response to the request, but requiring no steps to be taken.

10.The Appellant appealed to the Tribunal. On 6 June 2022, the Tribunal issued a Decision dismissing the appeal. However, that Decision was subsequently set aside by a Judge on 30 June 2022, due to a procedural irregularity. Directions were issued for additional submissions to be made and for the matter to be determined by a fresh panel.

The Decision Notice

11.The Decision Notice describes the relevant law as follows:

> *"Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.*

[2] Freedom of Information Act 2000 (legislation.gov.uk)

19. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the UK General Data Protection Regulation ("GDPR")."

11. The Decision Notice concluded that the requested audio files constitute the personal data of the persons involved in the hearing. It went on to conclude that the most likely lawful basis for processing that personal data was Article 6(1)(f) UKGDPR which provides:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."

12. In applying Article 6 (1) (f) UKGDPR, the Decision Notice proceeds to apply a three-part test, as follows:

i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

13. The Decision Notice concludes that there was a legitimate interest in transparency about police misconduct hearings and that there was no less intrusive means of achieving that aim than by disclosing the audio recording. However, in conducting the balancing test it concluded that the legitimate interest identified was insufficient to outweigh the data subjects' rights. The public authority was therefore entitled to refuse to disclose the requested information under s. 40 (2) FOIA.

Submissions and Evidence

14. The Appellant's Notice of Appeal dated 17 December 2021 relied on two grounds of appeal. The first is that the Decision Notice is inconsistent with the Supreme Court's Judgment in *Khuja v Times Newspapers and Others* [2017] UKSC 49[3], which it ought to have followed, and that there could be no expectation of privacy by a data subject in relation to proceedings which had been held in open court. The second ground is that the Decision Notice failed to consider whether some of the requested information could be disclosed by redacting it and disclosing the parts which did not constitute personal data.

15. The First Respondent's Response dated 17 January 2022 maintained the analysis as set out in the Decision Notice. In response to the first ground of appeal, it is submitted that the Supreme Court's judgment in *Khuja* could be distinguished because it was concerned with the ability of the press to report on on-going proceedings, in relation to

[3] PNM (Appellant) v Times Newspapers Limited and others (Respondents) (supremecourt.uk)

which the data subjects could not have an expectation of privacy, but that that situation was to be contrasted with a FOIA request made sometime after the hearing for information which had been heard in open court. The question then was to what extent the information heard in open court was realistically accessible to the general public at the time of the response to the request. It was submitted that the audio recording is not realistically accessible to a member of the public and was not so accessible at the date of the request. Further, that whilst the information within the audio recording may have been known to the limited number of people who attended the hearing itself, the information had not been widely disseminated or publicised to the general public. It followed that, whilst the withheld information may have briefly been in the public domain at the time of the hearing (on the basis that a member of the public could have attended the open hearing), the withheld information was nonetheless not accessible to the public as a whole at the time of the response to the request. This being the case, the data subjects referred to in the audio recording would have a reasonable expectation that the recording would not be disclosed in response to a FOIA request.

16. In relation to the second ground, it is submitted that the entire audio file relates to the misconduct hearing of one individual and therefore the entire audio recording constitutes his personal data (in addition to that of other people identified in the recording). Accordingly, no redaction is possible.

17. In a later submission dated 15 July 2022, the First Respondent submitted that *"the identified purpose of the legitimate interest would be met by the fact that the proceedings were held in public, that the press reported on the hearing and the fact that the outcome of the hearing was published on the Constabulary's website. As such, the Commissioner now accepts that, contrary to the position adopted in the DN, it is not necessary for the above purpose to also disclose the entire audio recording to the world via FOIA."*

18. The Appellant's Reply dated 17 January 2022 submitted that the First Respondent's basis for distinguishing *Khuja* was unsupported by legal authority and as such was untenable. He submitted that the misconduct hearing was reported by The Times, The Metro, The Mirror, The Daily Mail, The Independent, Sky News and BBC News and that it was fanciful to suggest that, had a reporter attended and taken notes, that he could have reported on the case at the time but could not refer to them eighteen months later. In relation to his second ground of appeal, he refers to parts of the proceedings reported in the press and submits that they do not constitute personal data.

19. In further submissions dated 14 February 2022, the Appellant refers to page C83 of the hearing bundle, in which a member of the First Respondent's staff states in correspondence with the public authority that she had been unable to listen to the audio files but was content to rely upon written submissions. The Appellant submits that the First Respondent should have listened to the audio recording and that paragraph 27 of the Decision Notice, which refers to the Commissioner's consideration of the withheld information, is misleading. He also draws the Tribunal's attention to the Police (Conduct) Regulations 2020, which permit applications for reporting restrictions to be made. He submits that as no such restrictions were imposed, those present at the hearing could have had no expectation of privacy in relation to the proceedings.

20. In his final submissions dated 18 July 2022, the Appellant submitted that "*Absent a time machine, at the date of the request I had no opportunity to attend the hearing, which had taken place sometime previously. Therefore, at the time of the request, the*

only way to fulfil the legitimate objects of scrutiny and accountability in relation to the hearing was the release of the transcript…. Fundamentally, the argument that the public interest in understanding what took place before the police misconduct panel can be adequately met by reading press reports and a one-line outcome of the hearing is specious. If that argument were applied to the courts, it would mean that nobody could ever order a transcript (because they "could have attended"), nor seek to read a copy of a judgment (because they could be told the bare result of the case, ie whether the an appeal was allowed or dismissed, without being given any further details). But it is trite law that the principle of open justice goes far wider than that. While a police misconduct panel is not a court, the principles of open justice nonetheless apply to it: that is why it is under a statutory duty to hold hearings in public."

21. The parties submitted no open evidence. The Tribunal received the requested audio file, which was 'closed' by a direction under rule 14 of this Chamber's Procedure Rules on 3 March 2022. This means it was not made available to the Appellant. The Tribunal has listened to the audio file, which lasts for some four hours in total.

22. By way of a 'gist' of the closed material for the Appellant's benefit, we can confirm that the audio file is a complete recording of the requested Police Misconduct Panel hearing which took place in November 2020, including the Appropriate Authority's counsel's opening legal submissions, the presentation of video and written evidence to the panel, the officer's own oral evidence in chief and in cross examination, and closing submissions made by both counsel. The audio file also includes the announcement of the panel's findings, submissions made by both counsel as to the appropriate sanction, and the panel's announcement of the sanction imposed.

The Law

23. S. 40 FOIA provides as follows:

40 Personal information.

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a)it constitutes personal data which does not fall within subsection (1), and

(b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles, or

(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

(a)on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in

reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or

(b)on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a)giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i)would (apart from this Act) contravene any of the data protection principles, or

(ii)would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;

(b)giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);

(c)on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

(d)on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(6). . . . . .

(7) In this section—

> *"the data protection principles" means the principles set out in—*
>
> *(a) Article 5(1) of the GDPR, and*
>
> *(b) section 34(1) of the Data Protection Act 2018;*
>
> *"data subject" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);*
>
> *"the GDPR", "personal data", "processing" and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).*

(8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.

24. Articles 5 and 6 of UK GDPR provide (where relevant) as follows:

Article 5 Principles relating to processing of personal data:
1.Personal data shall be:

(a)processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

Article 6 Lawfulness of processing:
1.Processing shall be lawful only if and to the extent that at least one of the following applies:

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

25. The Appellant relies on the Judgment of the Supreme Court in *Khuja.* This case is concerned with whether the press could identify by name a man who had been arrested and bailed, but was not ultimately prosecuted, in relation to sexual offences against a minor. He had been arrested in 2012, the trial of the other men involved in the case took place in 2013, and the Supreme Court considered his renewed application for anonymity in 2017. Sumption J., in delivering the majority judgment, stated at [16] that *"It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would absolutely be entitled to attend but for purely practical reasons cannot do so".*

26. Lord Sumption commented at [34(1) and (2)] that matters discussed at a public trial were not matters in respect of which [Mr Khuja] "*…can have had any reasonable expectation of privacy…"* and that *"…the collateral impact that this process has on those affected is part of the price to be paid for open justice…".*

27. In *Khuja*, the Supreme Court therefore refused the application for anonymity of a man who had not been charged tried or convicted of a criminal offence, although he had originally been arrested and was mentioned at the subsequent trial of others. The Court acknowledged that there are limits to the concept of open justice and that the courts have powers to restrict the reporting of matters referred to in in open court in order to protect the sound administration of justice and safeguard vulnerable persons. However, it also found that the principle of open justice was recognised both at common law and in the jurisprudence of the European Court of Human Rights, engaging article 6 (right to a fair trial), article 8 (privacy rights) and article 10 (freedom of expression).

28. None of the parties has referred us to the Supreme Court's judgment in *Cape Intermediate Holdings v Dring* [2019] UKSC 38,[4] but it provides some helpful analysis of the open justice principle as it applies in civil proceedings. In this case, the Supreme Court confirmed the right of a non-party to obtain access to the written documents which were referred to in open court, provided that person could explain why he seeks access to the bundle and how granting him access would advance the open justice principle. Lady Hale commented at [45] that the media may be better placed to make such an application than others, but that people other than journalists may nevertheless be able to demonstrate a legitimate interest in the documents. We note that the Supreme Court commented at [37] that *"The purpose of open justice …is to enable the public to*

[4] Cape Intermediate Holdings Ltd (Appellant/Cross-Respondent) v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) (Respondent/Cross-Appellant) (supremecourt.uk)

understand and scrutinise the justice system…" and at [43] that *"…to enable the public to understand how the justice system works and why decisions are taken…they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases".*

29. At [41], Lady Hale confirmed that the constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state.

30. The First Respondent's submissions referred us to a number of decisions of the First-tier Tribunal, by which we are not bound.

31. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

> *If on an appeal under section 57 the Tribunal considers -*
>
> *(a) that the notice against which the appeal is brought is not in accordance with the law, or*
> *(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
>
> *the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*
>
> *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

32. The burden of proof in satisfying the Tribunal that the Commissioner's Decision Notice was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant. If facts are in dispute, the relevant standard of proof is the balance of probabilities.

Conclusion

33. We do not understand the parties in this case to suggest that the principles of open justice apply any differently to a Police Misconduct Panel hearing than they would in a criminal or civil trial. Indeed, the proceedings with which we are concerned would appear to fall squarely within Lady Hale's description of the ambit of the open justice principle, referred to at [29] above.

34. We note that, as in court and tribunal proceedings, the relevant procedure rules would have permitted the officer's representative to have made an application for reporting restrictions to be applied to his hearing, but that no restrictions were imposed. We do not know how many people attended the hearing with which we are concerned, but we note that it was reported in the local and national news media at the time it took place.

35. We also note that the Appellant's information request was made within a month of the hearing taking place, and that his complaint to the Information Commissioner and appeal to the Tribunal were made extremely promptly. The public authority delayed in providing him with a response and, unfortunately, the Tribunal process has

also been extended. It is no fault of the Appellant that we are considering his information request over two years after the misconduct hearing in question.

36. The Appellant in this case made his information request on his own behalf, and not on behalf of a journalistic outlet. We regard the Appellant as one of the people described by Lord Sumption in *Khuja*: a member of the public who would have been absolutely entitled to attend the hearing in respect of which he seeks the audio recording, but for purely practical reasons could not do so. We bear in mind that the important constitutional principal of open justice has been described by the Supreme Court as concerning the ability of the public to understand and scrutinise legal proceedings. In much of the case law, it is presumed that this understanding and scrutiny will be undertaken through the medium of the reporting of the proceedings by journalists (although we wonder whether the discussion of proceedings by individuals on social media might now be a more frequent forum for such scrutiny). However, as the ultimate aim of the press reporting is to inform the public, we do not see that the relevant principles should be applied differently in a case such as this where an individual seeks to access the information directly for himself.

37. The Appellant has informed the Tribunal that he is a Rabbi, but we do not know whether his interest in this case has any connection to his religious writing and teaching. In any event, it matters not because FOIA is famously "applicant blind". We approach our decision on the basis that disclosure of the requested information to the Appellant is also "disclosure to the world". We agree with the Decision Notice that there is a legitimate interest in the transparency of police misconduct proceedings, but we also identify a legitimate interest in the application of the principles of open justice to the Appellant's information request. Furthermore, as the panel's finding was that the officer's conduct was a discredit to the police force, we also find that the legitimate interest in this case goes wider than the transparency of this particular officer's proceedings and includes issues of transparency about how the system deals with discreditable police conduct more generally. We note that this is currently a subject of much public concern.

38. We have considered carefully the rationale given by the First Respondent for distinguishing the *Khuja* judgment. We find it unpersuasive and note that it is not supported by any binding judicial authority. It seems to us that the Supreme Court in *Khuja* would have been well-placed to have drawn a distinction between Mr Khuja's privacy rights at the time of the relevant trial as opposed to his position when the case came before them some four years later, but at no point did the Supreme Court state that the principles of open justice were stronger at the time of the trial than they were after the passage of time. Neither did it refer to the extent of information in the public domain at either time as being relevant. Furthermore, we note that in *Khuja,* the Supreme Court confirms the engagement of articles 6, 8 and 10 ECHR by the principles of open justice but does not hold that that the engagement of these rights is time-limited, as the Decision Notice would seem to suggest. With reference to the judgment in *Dring,* it would be absurd if the Appellant were able to obtain a copy of the bundle submitted to the Panel but not to obtain the audio record of the proceedings.

39. In *Khuja,* the principles of open justice were found to prevail over privacy rights for important reasons of public policy. In circumstances where Mr Khuja had not even been tried or convicted of any offence, it was nevertheless held that the collateral impact of his being identified in such circumstances was part of the price to be paid for such an important constitutional principle. By contrast, in this case the officer concerned

was found to have committed an act constituting gross misconduct after a public hearing. It seems to us that if the principle of open justice should prevail in Mr Khuja's case, then the argument for transparency is even stronger in the case of this police officer.

40. The principle of open justice is described as a constitutional principle because it serves to protect the integrity of the legal system as a whole. This is why it cannot generally be overridden by data subjects' rights. As an example, it may be (we do not know) that persons convicted of offences on the evidence of this police officer might wish to appeal against their convictions on the basis that he has been found to be dishonest. We are concerned that the limitation of access to information about a public hearing on the basis of privacy rights would militate against this possibility and be contrary to the interests of justice.

41. We understand the force of *Khuja* to be that the principle of open justice takes precedence over privacy rights in all cases where proceedings take place in open court. This is, of course, subject to any reporting restrictions, but none were imposed in this case. We agree with the Appellant that the police officer concerned and others participating in the public hearing with which we are concerned can have had no reasonable expectation of privacy.

42. We note that the outcome of the hearing and the sanction imposed is stated to have been published on the public authority's website. We also note that there was some press reporting at the time of the hearing. However, whilst these factors go some way to meeting the principles of transparency in police misconduct proceedings, we conclude (having listened to it) that the audio recording provides granular detail of the proceedings as a whole which can contribute much more to public understanding and scrutiny of the case. As would be the case if a member of the public had attended the hearing, the audio tape makes clear that the officer put forward a detailed defence which was rejected by the Panel.

43. It seems to us that the principle of open justice requires that a person who would have been entitled to attend the hearing should also be entitled to listen to a recording of it. The Appellant made his request for the audio recording only a month after the hearing, and in circumstances where the media reporting was recent. It seems to us that the Decision Notice's focus on the passage of time since the hearing is erroneous in these circumstances. We consider that the subsummation of the principle of open justice to the question of what information was available to the public at the time of the public authority's response to the Appellant's request is misconceived and represents a fundamental misunderstanding of the constitutional principles involved.

44. We conclude that:

(a) the audio recording contains the personal data of the officer concerned and the other people present at the hearing;

(b) there is a legitimate interest in the principle of open justice and in transparency in police misconduct proceedings, both generally and in relation to this particular case;

(c) there is no less intrusive measure available than to disclose the audio recording requested so it is necessary;

(d) applying the balancing test, the data protection rights of those involved in the hearing do not outweigh the legitimate interests identified because there can be no expectation of privacy by them in respect of proceedings conducted in open court.

42. It follows that we find the Decision Notice reached an erroneous conclusion in its stage 3 balancing exercise. We agree with the Appellant that the principles expounded by the Supreme Court in *Khuja* should have been applied in this case and that the Decision Notice's rationale for distinguishing that authority is erroneous. We conclude that we are ourselves bound as a matter of precedent to follow the principles in *Khuja*, which means that, in the absence of a reasonable expectation of privacy, the processing of the personal data by disclosure of the requested information is lawful under Articles 5 and 6 UKGDPR and s. 40 (2) FOIA is not engaged.

43. In view of this conclusion, we do not need to go on to consider the Appellant's second ground of appeal. However, for the sake of completeness, it may be helpful if we explain that, whilst we are persuaded that it would be possible to redact the audio recording so that the officer's personal data (such as his own oral evidence) was excluded, the remaining information (for example, the legal submissions) would nevertheless be so closely associated with this hearing for this officer that a jigsaw identification of him would be elementary. For this reason, we agree with the conclusion reached in the Decision Notice on this point, although we observe that it could have been much more clearly explained.

44. For all these reasons, we now allow the appeal and make the substituted decision notice above.

(Signed)

Judge Alison McKenna **Date: 24 May 2023**

© CROWN COPYRIGHT 2023