Neutral Citation Number: **[2025] EWHC 258 (Admin)**

Case No: AC-2024-LON-004195

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7/02/2025

Before:

PRESIDENT OF THE KING'S BENCH DIVISION
and
MR JUSTICE JAY

- -

Between:

THE KING (FARAH DAMJI)

Claimant

- and –

THE CROWN COURT AT WOOD GREEN

Defendant

- and –

CROWN PROSECUTION SERVICE

Interested Party

- -
- -

Christopher Jeyes (instructed by **ITN Solicitors**) for the **Claimant**
Christiaan Moll (instructed by **Crown Prosecution Service**) for the **Interested Party**
The **Defendant** was neither present nor represented

Hearing date: 28 January 2025

- -

Approved Judgment

DAME VICTORIA SHARP, P. :

1. This is the judgment of the court.

2. In these "rolled up" judicial review proceedings, Ms Farah Damji (the claimant) challenges the decision of HHJ Greenberg KC (the judge) sitting at Wood Green Crown court (the Crown Court) on 14 November 2024 to extend the custody time limits (the CTLs) in the claimant's case to 14 February 2025. As is standard practice, the Crown Court takes no active role in these proceedings, leaving the defence of its decision to the Crown Prosecution Service (the prosecution).

3. The issue in these proceedings is whether the judge's decision that there was good and sufficient reason for an extension and that the prosecution had acted with due diligence and expedition is flawed on the application of standard judicial review principles. The claimant does not enjoy a right of appeal on the merits to this court.

4. For the reasons that follow, we consider it is not arguable that the judge's decision is flawed, and the application to apply for judicial review is refused.

The Factual Background

5. The claimant is charged on an indictment that:

   (i) she stalked Nigel Gould-Davies (NGD) after 1 November 2023, contrary to sections 4A(1)(a)(b)(ii) and 5 of the Protection from Harassment Act 1997 (Count 1);

   (ii) between 19 November and 11 December 2023 she stole a passport belonging to NGD, contrary to section 1 of the Theft Act 1968 (Count 2);

   (iii) between 1 December and 30 December 2023 she fraudulently used NGD's credit card, contrary to section 1 of the Fraud Act 2006 (Count 3).

6. The claimant originally faced a fourth Count, conspiracy to burgle, but that was not proceeded with after an application to dismiss was brought but not determined.

7. Given the nature of the issues raised by these proceedings, we can focus principally on Count 1. The Particulars of the Offence are that the claimant:

> "… pursued a course of conduct, which amounted to stalking causing NGD serious harm or distress, namely, continuously emailed and texted him using false identities, organised people to check his home address to check if he was there, and created a website in his name which had a substantial adverse effect on his usual day-to-day activities when she knew or ought to have known that [her] course of conduct would cause alarm or distress."

8. The prosecution's draft opening note dated 11 November 2024, said that the claimant and NGD began their relationship in the summer of 2023 after meeting online. The claimant used a pseudonym, Noor Higham, of which NGD was unaware. Early in the

relationship the claimant was diagnosed with breast cancer, and she insisted that he attend medical appointments with her. After 1 November 2023, the claimant allegedly used the different pseudonyms of Holly Bright, Clare Simms and John Halligan to send abusive and defamatory messages and emails to NGD and his employer. These contained amongst other things attacks on NGD for his alleged poor treatment of the claimant and other women. The alleged pseudonymous accounts also communicated with one another, discussing the allegations and copying in NGD.

9. In November 2023 it is alleged that the claimant stole a sensitive legally privileged document relating to expert witness work being undertaken by NGD. The latter attempted to retrieve this document via John Halligan but received abuse in response.

10. In January 2024 NGD started to receive emails purportedly from a former girlfriend, Amalia Bianchi. These were similarly abusive.

11. Following the final breakdown of their relationship in February 2024, it is alleged that the claimant continued to harass NGD both directly and via family members.

12. The claimant was arrested at Heathrow airport on 11 March 2024, waiting to board a flight to Berlin, which was where NGD had travelled following the breakdown of their relationship. As well as NGD's passport, two mobile phones were recovered.

13. As for the claimant's use of NGD's credit card in December 2023, the prosecution allege that the overall sum defrauded was £13,000. The claimant has not so far advanced a positive case in relation to this allegation (Count 3) save to deny that her use of the card was unauthorised.

14. The prosecution's case is (and was from the outset) that the claimant used these various false identities to harass NGD. Messages were sent and calls made from the following numbers, ending 5151, 3250, 1236 and 3658 (this last number being registered in Spain); and that the claimant sent NGD emails from a number of accounts including holly.bright1972@gmail.com and halliganjohn@gmail.com.

15. The claimant was interviewed by the police on two occasions on 12 March 2024. The case against her as outlined above (including, and individually, the various emails and messages) was put to her in terms. She replied "no comment" to all questions asked. In two prepared statements both dated the 12 March, she admitted the relationship with NGD, claimed that he was aware of her true identity, and asserted that he was violent and abusive towards her, and not the other way round.

16. The claimant's first prepared statement contained this general and unparticularised denial of the allegations in Count 1:

> "I have never threatened Nigel. I have not harassed him nor have I asked others to do so. I did create a website for him because he asked me to do so but I have not posted any malicious or defamatory comments on it or asked anyone else to do so. I do not accept that I have caused Nigel distress or anxiety at any point."

As we have said, the claimant was aware by then of the specific messages and emails on which the prosecution were relying. It follows that her prepared statement avoided dealing specifically with any of them.

17. The claimant was charged and subsequently appeared before Highbury Corner Magistrates' court on 13 March 2024. She was sent to the Crown Court for trial and remanded in custody.

18. Mr Christopher Jeyes, who now appears for the claimant, but did not appear below, drew to our attention two "CPS action plans" dated, respectively, 12 March and 9 April 2024. These requested the Officer in Charge of the case (the OIC) to undertake a series of investigations including downloading messages from the claimant's and NGD's phone and seeking to attribute various email addresses and the websites Nigelgoulddavies.co.uk and Nigelgd.com. On 9 April, the OIC confirmed that phone data including subscriber details had been requested in relation to the four mobile phone numbers referred to under para 14 above. Call data and GPRS data was also requested.

19. The claimant entered not guilty pleas at her PTPH on 10 April. She was further remanded in custody after a bail application was refused. The claimant has previous convictions which include: (1) in October 2005, two offences of perverting the course of justice by posing as a member of the CPS (in the context of an ongoing criminal prosecution against her); (2) in 2016, three offences of stalking, at least one involving a former partner; and (3) in March 2020, two offences of breaching a restraining order. Her applications for bail were refused on the grounds, amongst other reasons, that the court had substantial grounds for believing she would commit further offences whilst on bail, interfere with witnesses or otherwise obstruct the course of justice and fail to surrender.

20. The BCM timetable was set as follows: Stage 1 (service of prosecution case and initial disclosure): 2 May 2024; Stage 2 (defence statement): 30 May 2024; Stage 3: 20 June 2024 and Stage 4: 4 July 2024.

21. The trial date was fixed for 4 November 2024, a date outside the initial CTLs of 11 September 2024. We understand that the date was fixed at the defence request, to accommodate the availability of the claimant's counsel.

22. On 22 April 2024, the claimant was admitted to hospital for surgery for her breast cancer. The CPS was informed of the position in May. She was discharged from hospital on 25 July 2024.

23. Stage 1 disclosure was completed by the prosecution on 28 May. Given the subsequent history, it is unnecessary for us to resolve the reasons for the delay in the timetable. What is to be noted however, is that no telephonic or similar data was disclosed; and that the defence made no complaint to the court or the prosecution that Stage 1 disclosure was deficient (as would be required if they were of that view, under rule 1.2(1)(c) of the Criminal Procedure Rules).

24. Further bail applications were made but adjourned on 18 and 26 June. On 3 July there was a mention hearing when a *Goodyear* indication was sought but declined. On 13 August, the adjourned bail application was refused.

25. On 4 September, the initial CTLs were extended without opposition from the claimant. There was no complaint from the defence that prosecution had failed to act with due diligence, or about disclosure. The timetable was amended. Stage 2 was extended to 18 September 2024 and Stage 3 to 2 October.

26. On 17 September, the defence served the claimant's defence statement dated the previous day. No explanation was given for its lateness. In submissions, we were told this was because of the claimant's period of hospitalisation (presumably, on the basis that she was then unable to give instructions); but the defence statement was produced nearly 8 weeks after she had left hospital (on 25 July).

27. The defence statement expanded on and particularised the claimant's response (as it had originally been set out in her prepared statements) to the prosecution case. We do not accept therefore Mr Jeyes' assertion that it simply maintained the claimant's position in the prepared statements. The claimant's expanded and particularised case appears to have given rise to the detailed request for disclosure that accompanied it.

28. Thus,

    i) The defence statement said for example:

> "During the course of the relationship, the [claimant] spoke to a number of friends and colleagues about [NGD's] behaviour towards her. These included Clare Simms and Holly Bright who worked with her at the View, and John Halligan, a close friend from Ireland. The [claimant] was aware that others had contacted [NGD] on her behalf because they were concerned about her vulnerability, particularly in light of her cancer diagnosis. The [claimant] was not responsible for sending any emails or messages to [NGD] in the names of these individuals.
>
> The [claimant] asked the Defendant to set up a website in order that he could promote himself. The [claimant] did so using her own GoDaddy account. She was not responsible for the material on the website that is captured on exhibit YJR/12."

    ii) the defence statement also specifically denied (in paragraph 27) for the first time that the claimant had sent the emails and messages using the various pseudonyms attributed to her by the prosecution; that she had stolen NGD's passport and that she had used his credit card without his authorisation. The claimant also denied that she had withheld her true identity from NGD;

    iii) The defence statement set out (at paragraph 31) a series of detailed requests for disclosure including that NGD to provide his mobile phone to the prosecution for interrogation and analysis, and under sub-paragraph (xv) for "metadata in respect of all emails or messages on which the Crown rely" and "details of the devices from which they were sent".

29. At the time the defence statement was served, the OIC was on leave. She was not in a position to consider it until her return on 23 September.

30. On 2 October 2024, the prosecution sought a one-week extension for Stage 3 disclosure. This was because they awaited a response from the police in relation to NGD's mobile phone. On 15 October NGD agreed to permit his phone to be examined forensically. On 16 October, a further bail application was made and refused. On that occasion the prosecution was ordered to complete disclosure aside from NGD's phone by the end of the day, and to serve disclosure from his phone by 4pm on 18 October.

31. On 17 October, the prosecution sent a disclosure letter which indicated that answers could not be given to many of the DS paragraph 31 requests until NGD's phone had been examined. Further, the prosecution disclosed:

    i) A statement dated 5 October 2024 from the OIC (trainee Detective Constable Rinsler), dealing with the telephony evidence including subscriber details and call data for a number of phones and email addresses. This statement did not include IP addresses. The subscriber details in relation to some of the mobile phones appear to be linked to the claimant. It is clear from the OIC's second witness statement dated 31 October that work in relation to obtaining subscriber details had begun before the DS was served;

    ii) An earlier statement from the OIC dated 24 June 2024 dealing with a phone download from one of the claimant's alleged associates, Jonathan Bourke;

    iii) A CRIS report which revealed that in late February 2024 the police were undertaking intelligence checks on emails and identities associated with the investigation, including the 1236 number.

32. The prosecution's evidence is that the OIC did not make any inquiries into IP addresses before she had received the defence statement. The OIC acknowledged that she had submitted OPTICA requests which did involve obtaining IP addresses, but she "had never properly looked into them" before preparing her 5 October statement.

33. On 22 October, the claimant's solicitors wrote to the prosecution making a series of criticisms of the latter's disclosure. In particular, it was said that Stage 3 remained incomplete, that underlying data had not been disclosed for any of the telephonic evidence relied on by the prosecution notwithstanding that it had been in the possession of the police since April, and the claimant would now need to instruct an expert to review the telephony material that was yet to be provided. The claimant also sought disclosure of NGD's medical records.

34. On 26 October, the prosecution sought a further extension of time in which to provide the material from NGD's phone. This material was provided by the prosecution three days later, as well as the exhibits to the OIC's witness statement dated 5 October. The disclosed material included IP data in relation to the four mobile phones.

35. A PTR took place on 29 October. On that occasion the prosecution stated that they would be trial ready. The claimant disputed this, and the PTR was adjourned to 4 November for the issue to be determined by the trial judge.

36. On 31 October, the claimant's solicitors wrote to the prosecution making representations as to disclosure and commenting as follows on the OIC's evidence:

> "Used Material
>
> The telecommunications material referred to in the statement of T/DC Rinsler dated 5 October was finally served on Tuesday. It includes a significant quantity of phone data which will need to be carefully considered and on which we will need to take instructions. The evidence of IP logins gives rise to technical issues which will necessitate the instruction of a telecoms expert (as will a proper analysis of the phone data). It is inconceivable that we will be in a position to do any of this by Monday. Indeed, these tasks which are likely to take several weeks to complete, if not longer.
>
> Could the Crown please confirm the following:
>
> (i) when the various exhibits were requested and when they were obtained by the police;
>
> (ii) when they were reviewed by the CPS;
>
> (iii) whether an IMD was ever prepared;
>
> (iv) whether a DMD was completed;
>
> …
>
> (vii) why the telecoms was not served on the [claimant] until the Tuesday before trial."

37. The claimant's application to adjourn the trial was made on the basis that the telecoms data served on 29 October "ought to be examined by an expert in order to establish the nuanced data of static and dynamic IP addresses."

38. On 1 November, the prosecution confirmed that they had no more disclosable material from NGD's phone.

39. The claimant's application to break the fixture was refused on 5 November, and the matter was put back to 11 November 2024.

40. On 6 November, the prosecution supplied the claimant's solicitors with CSV files containing the raw data for the four telephone numbers we have referred to. The claimant repeated the questions first asked on 31 October. No response has been provided.

41. On 8 November, the prosecution filed a further application to extend the CTLs. The prosecution's updated chronology addressed the position in relation to NGD's phone

and stated that further evidence had been required to address the claimant's assertion that she had not withheld her true identity from NGD.

42. On 11 November (the day of the hearing itself), the claimant filed a number of applications: an application to exclude the telephony evidence under section 78 of PACE, an application under section 8 of the Criminal Procedure and Investigations Act 1996 for disclosure of NGD's medical records, and objections to the prosecution's application to extend the CTLs. The basis of the section 78 application was that the OIC was impermissibly seeking to adduce expert evidence. As for the claimant's objections to extending the CTLs, at para 26 of the claimant's written submissions, the following argument was advanced:

> "The Crown have been aware since [the claimant's] interview that her case is that her friends, Clare Simms, Holly Bright and John Halligan, sent the complainant various emails during the indictment period. …
>
> Therefore, the subscriber and telecoms evidence is, and always has been, a central issue to the Crown's case which they failed to disclose in time in accordance with their duties. The evidence served on 29 October should have been served by Stage 1. The Crown were making these relevant checks six months prior to the trial date and their service of this evidence on 29 October is in no way diligent and expeditious." (emphasis added)

43. The assertion that the claimant's prepared statements advanced the case that her friends sent the relevant emails is simply incorrect.

44. At the hearing on 11 November, the prosecution conceded that the OIC could not give expert evidence about cell-site data and the like. The prosecution indicated that it proposed to proceed by relying on screenshots of messages and the inferences the jury could draw from them. No doubt the point that the prosecution was making was that it was clear from the context that the messages could only have emanated from the claimant. Further, the prosecution was not conceding that the subscriber information in relation to the four phones should be excluded: there was no basis for doing so. The judge reserved her ruling but indicated that it was likely that the claimant's application to adjourn in order to instruct a telecommunications expert would succeed, that she did not consider that there had been any failings on the part of the prosecution, because the issues in relation to telecommunications evidence had been caused by the late service of the defence statement (although in her view there was good reason for this), that the CTLs were likely to be extended, and that the provisional new trial date was 7 April.

45. The hearing was adjourned to 14 November. On that day and just before the judge handed down her ruling on the section 78 application, the claimant filed an addendum defence statement. In that addendum the claimant accepted attribution of two of the mobile phone numbers although claimed that she was not the only person with access to them. She denied that she was the proprietor or user of the 1236 number. She said she recognised the Spanish phone number and asserted that she may have called NGD for a legitimate reason from that number. The claimant denied attribution of the email

addresses holly.bright1972@gmail.com and halliganjohn806@gmail.com, and asserted that "the IP logins are likely linked to [her] because [she] spent a good deal of time with John Halligan and Holly Bright". The claimant said that it was her belief that they may have logged into their respective email addresses whilst at the View Café.

46. The judge gave her ruling on the section 78 application on 14 November. On that issue she said:

> "It is unnecessary to address all the arguments raised by the [claimant] in the written submissions and oral argument as the prosecution have not sought to argue against most of the objections raised by the [claimant]. The outstanding issue remains whether the defence should have time to obtain their own expert evidence. If allowed, this would have an effect on the trial date."

47. The judge acceded to the claimant's application for the matter to be adjourned so that a positive case on the telephonic evidence might be advanced via expert evidence. Her reasons for coming to that conclusion are not in issue before us. During the course of her ruling, the judge added this:

> "The trial was originally due to commence on 4th November (late in the day it was moved to the 11th November). The defence statement was served only on the 17th September 2024, months after it was originally required to be served. This had left no option but to allow just 14 days for the prosecution to comply with its Stage 3 obligations, despite the very extensive list of requests for disclosure made in the defence statement. I accept that the delay in the service of the defence statement was as a result of the [claimant's] health issues, but the fact remains that it was only on the 11th November, the morning the trial was due to start, the defence made this section 78 application to exclude evidence and to have the opportunity to instruct an expert.
>
> During submissions made on the 11th November, I made it clear that I would consider further arguments on the 13th but that I might conclude that what the [claimant] is seeking from an expert was a fishing expedition to see if there was anything that might help the [claimant]. I was not told of any positive case for the [the claimant] that it would or could, beyond her case is that she and others used the same phone numbers, that she asserts that she was in an abusive relationship with [NGD] and that her friends and colleagues intervened to challenge his behaviour. She denies that she impersonated anyone. It is, of course, always open to the [claimant] to embark on such inquiries as they consider appropriate, but that does not place the burden on the prosecution to make an inquiry just because the [claimant] want it made. The prison failed to produce the [claimant] at court on the 13th of November and the [claimant] did not have the

> opportunity to have a conference before completing their submissions. The case was adjourned to the 14th.
>
> In what the defendant said in her police interviews in March 2024 there was nothing at that stage which required the prosecution to disclose the data the [claimant] has requested in the defence statement and since and, therefore, was not something the prosecution had any obligation to address under its Stage 1 obligations. In fairness, it does not appear that the defence is seeking to argue otherwise**.** The [claimant] does complain that the prosecution failed to serve all the material until the 29th October and was in breach of its Stage 3 duty, the full data only being served on the 29th October.
>
> In the normal course of events, the prosecution would have 28 days from service of the defence statement to respond to it. Clearly they failed to do so within the 14 day period allowed following the receipt of the defence statement, but given the very extensive list of requests in the defence statement, that is hardly surprising.
>
> If I were to conclude that the [claimant] should have the opportunity to instruct an expert for the reasons given by the [claimant], I have no doubt that the issues about which the [claimant] seek expert evidence arise from the matters raised by the [claimant] only in and since service of the defence statement. Not only could they not have been foreseen by the prosecution, also they are not matters which the prosecution was or is under a duty to explore further." (emphasis supplied)

48. We have highlighted a sentence in the judge's ruling. The claimant made no concession that the late-disclosed material should not have been disclosed much earlier; this point was made on her behalf to the judge, and corrected at the hearing.

49. The judge was informed that the prosecution had obtained NGD's medical records and were reviewing these for relevance. Our understanding is that the judge directed that the prosecution disclose those records that were relevant.

50. The judge proceeded to hear submissions on the application to adjourn the trial and the extension of the CTLs. No transcript has been provided. We know that the application to adjourn was acceded to and the trial was then listed for 7 April 2025. The CTLs were extended to 14 February with a further case management hearing listed on 7 February.

51. Counsels' note records the judge's reasons in relation to the extension of the CTLs, as follows:

> "This is an application to extend the CTL. The basis upon which the prosecution invite an extension is that they have acted with due diligence and there is good and sufficient cause. Both of

> these tests have been met. Until such time the defence statement was served and [the claimant], having had an opportunity to examine it [words missing] in brief, sought to adjourn the trial, there was no obligation on the prosecution to serve the material requested in the defence statement. The long list of requests. 15: metadata in respect of all emails and messages upon which Crown rely. I can't see anything else in those requests that specifically addresses this issue to the telecommunications material.
>
> There's lots of requests for messages, passport etc. In my view I do not see anything the follow-up from the defence statement that this is an issue.
>
> In my view, the prosecution was under no obligation to provide this material before the defence statement. I appreciate that having received it they did not comply within a 14 day time limit but frankly that was wholly unrealistic given the amount of info requested by the defence, it was never likely to be met. I am quite firm in my conclusion that they have acted with all due diligence and expedition.
>
> This trial is not taking place within the CTL for one reason alone which is that the [claimant] seek an expert and they bear the consequences."

52. The judge also placed a widely shared comment on the digital case system:

> "Re the extension of the CTLs made yesterday: there was good and sufficient reason for the CTLs extension following the [the claimant] successfully arguing for the trial to be stood out to allow the [claimant] to obtain expert evidence which would not be available until mid-January 2025. The prosecution was ready for trial within the then CTLs. I found that the prosecution had acted with due diligence and expedition. I draw attention to my Ruling at X6 in which I concluded that the prosecution had no obligation to provide the material the [claimant] wished explored by an expert before receipt of the defence statement."

53. The judge's focus was on the material that the claimant wished to have explored by an expert. That material, as we have said, was not provided until 29 October. The judge did not address the subscriber information which was disclosed on 17 October in circumstances where at least some of it appears to have been in the possession of the OIC before the defence statement was served. However, nothing turns on this point. The subscriber information did not assist the claimant's case and spoke for itself. It did not require analysis by an expert or anyone else. Even if it is arguable that it should

have been disclosed earlier, that had nothing to do with the claimant's application to break the fixture and the consequent impact on the CTLs.

The Legal Framework

54. Section 22 of the Prosecution of Offences Act 1985 provides:

> "**22 Power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings.**
>
> (1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for an offence, as to the maximum period—
>
> (a) to be allowed to the prosecution to complete that stage;
>
> (b) during which the accused may, while awaiting completion of that stage, be—
>
> (i) in the custody of a magistrates' court; or
>
> (ii) in the custody of the Crown court;
>
> in relation to that offence.
>
> (2) The regulations may, in particular—
>
> **…**
>
> (c) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of the regulations;
>
> (d) provide for … the Bail Act 1976 to apply in relation to cases to which custody or overall time limits apply subject to such modifications as may be specified (being modifications which the Secretary of State considers necessary in consequence of any provision made by the regulations); …
>
> (3)The appropriate court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit; but the court shall not do so unless it is satisfied—
>
> (a) that the need for the extension is due to—
>
> (i) the illness or absence of the accused, a necessary witness, a judge or a magistrate;
>
> (ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or

> (iii) some other good and sufficient cause; and
>
> (b) that the prosecution has acted with all due diligence and expedition.
>
> …
>
> (11) In this section –
>
> "custody time limit " means a time limit imposed by regulations made under subsection (1)(b) above or, where any such limit has been extended by a court under subsection (3) above, the limit as so extended;
>
> …
>
> (13) For the purposes of section 29(3) of the Senior courts Act 1981 (High court to have power to make prerogative orders in relation to jurisdiction of Crown court in matters which do not relate to trial on indictment) the jurisdiction conferred on the Crown court by this section shall be taken to be part of its jurisdiction in matters other than those relating to trial on indictment."

55. By regulation 5 of the Prosecution of Offences (Custody Time Limits) Regulations 1987 (S.I. 1987 No 299), the applicable CTL in this case was 182 days.

56. The CTL regime has been considered by this court on a number of occasions. In *R (DPP) v Bristol Crown court and others* [2022] EWHC 2415 (Admin) this court (Dame Victoria Sharp P. and Chamberlain J) reviewed the jurisprudence beginning in the early 1990s. We can confine ourselves to a consideration of two authorities.

57. In *R v Manchester Crown court, ex parte McDonald* [1999] 1 WLR 841, the Divisional Court (Lord Bingham CJ and Collins J) emphasised that a judge considering these provisions must be careful to give full weight to their three overriding purposes, viz.: (1) the need to ensure that defendants are held in custody pending trial for periods which are as short as reasonably and practically possible; (2) the obligation on the prosecution to prepare for trial with all due diligence and expedition; and (3) to invest the court with the power and the duty to control any extension of the CTL. It is for the prosecution to satisfy the court on the balance of probabilities that the section 22(3) conditions are met. A court making a section 22(3) decision must always be adequately and fully informed.

58. As for the meaning of "due diligence and expedition":

> "The condition in section 22(3)(b) that the prosecution should have acted with all due expedition poses little difficulty of interpretation. The condition looks to the conduct of the prosecuting authority (police, solicitors, counsel). To satisfy the court that this condition is met the prosecution need not show

> that every stage of preparation of the case has been accomplished as quickly and efficiently as humanly possible. That would be an impossible standard to meet, particularly when the court which reviews the history of the case enjoys the immeasurable benefit of hindsight. Nor should the history be approached on the unreal assumption that all involved on the prosecution side have been able to give the case in question their undivided attention. What the court must require is such diligence and expedition as would be shown by a competent prosecutor conscious of his duty to bring the case to trial as quickly as reasonably and fairly possible. In considering whether that standard is met, the court will of course have regard to the nature and complexity of the case, the extent of preparation necessary, the conduct (whether co-operative or obstructive) of the defence, the extent to which the prosecutor is dependent on the co-operation of others outside his control and other matters directly and genuinely bearing on the preparation of the case for trial. It would be undesirable and unhelpful to attempt to compile a list of matters which it may be relevant to consider in deciding whether this condition is met. In deciding whether the condition is met, however, the court must bear in mind that the period of 112 days specified in the regulations is a maximum, not a target; and that it is a period applicable in all cases. As Lloyd LJ pointed out in *R v Governor of Winchester Prison ex parte Roddie* [1991] 1 WLR 303 at 306, 93 Cr. App. R. 190 at 193, the court will not, in considering whether this condition is satisfied, pay attention to pretexts such as chronic staff shortages or, we would add, over-work, sickness, absenteeism or matters of that kind." (at 847A-F)

59. There are almost an "infinite variety" of matters capable of amounting to "good and sufficient cause". The court must have regard to the particular facts and circumstances of the case under consideration, "always having regard to the overriding purposes" which had been identified.

60. Finally:

> "Any application for the extension of custody time limits will call for careful consideration, and many will call for rigorous scrutiny. When ruling on such an application the court should not only state its decision, but also its reasons for reaching that decision and, if an extension is granted, for holding the conditions in section 22(3) to be fulfilled: see *R v Leeds Crown court ex parte Briggs*, (The Times, 19 February 1998, Kennedy LJ and Maurice Kay J). In a case where an extension is granted, it is particularly important that the defendant should know why; but even when an extension is refused, the prosecution is entitled to know the reasons for the refusal. We would, however, emphasise that where a court has heard full argument and given its ruling, whether for or against an extension, this court will be

> most reluctant to disturb that decision. This court has no role whatever in deciding whether, in any case, an extension should be granted or not. Its only role, as in any other application for judicial review, is to see whether the decision in question is open to successful challenge on any of the familiar grounds which support an application for judicial review. It is almost inevitable in cases of this kind that one or other party will disagree, often strongly, with the decision of the trial court, whatever it is. Such disagreement, however strong, is not a ground for seeking judicial review of the decision. Those who make applications of this kind must take care to ensure that there are proper grounds for making application and that they are not inviting this court to trespass into a field of judgment which is reserved to the court of trial." (at 850F-H)

61. In *R (Gibson) v Crown court at Winchester* [2004] EWHC 361 (Admin); [2004] 1 WLR 1623, this court (Lord Woolf CJ, Rose LJ and Royce J) considered whether the two limbs of section 22(3) were separate or linked. It was held that a failure by the prosecution to show that they had acted with due diligence and expedition was not fatal to an application to extend the CTL if the lack of due diligence and expedition had not had any impact on the need for an extension. Section 22(3) was not in the nature of a disciplinary provision. Although it was incumbent on the Crown court to examine the matter with "particular care", and this court should scrutinise the matter "rigorously", ordinary judicial principles continue to apply. We would add that this level of examination, doubtless important to comply with the court's obligations under Article 5 of the ECHR, does not require a microanalysis of the underlying material. A common sense approach is appropriate.

The claimant's Grounds

62. The claimant advances three grounds of challenge, viz.:

(1) the failure to examine rigorously the chronology of the investigation and case preparation led to an incorrect understanding of how the telephone evidence came to be an issue in this case, and the true cause of the situation.

(2) the failure to take into account a relevant consideration, namely that the prosecution had attempted to rely on telephonic evidence as set out in the witness statements of the OIC, but had to withdraw reliance after the section 78 application.

(3) the failure to take into account a relevant consideration, namely that disclosure was still not complete at the date of the CTL application.

We note that the claimant's written submissions to the judge did not raise the arguments that have now been advanced in Grounds 2 and 3.

The claimant's Grounds developed

63. Mr Jeyes submits that in her police interviews the claimant had put in issue whether she had threatened NGD or asked others to do so, and that she had given a detailed account of what she alleged he had done. She subsequently pleaded not guilty to the indictment. It followed he submits that there was no basis on which a reasonably competent prosecutor could assume that the fact of harassment and/or the identity of the alleged offender was admitted or otherwise not in issue. Indeed, any reasonably competent prosecutor would or should know that they would likely have to prove what communications were made and their content, when they were made, how they were made, and by whom.

64. Mr Jeyes submit that the lateness of the defence statement was caused by the claimant's illness. That did not stop the CTLs running nor did it exonerate the prosecution from continuing to progress the case. Although the issues may not have been fully crystallised before the defence statement was served, it was incumbent on a reasonably competent prosecutor to prepare the case for trial on the basis that all matters not known to be admitted were in issue. With an incapacitated defendant the obligation on the prosecutor was arguably higher. In short:

> "Arguably the defence did not so much trigger a disclosure process, as notify the prosecution that the investigation and case preparation had been insufficient in spite of the fact that it was already well beyond the CTL expiry."

65. Mr Jeyes submits that it is clear that there were deficiencies in the prosecution's disclosure in this case. There was no DMD; the schedule of unused material was plainly inadequate; and the OIC gave no explanation of why no inquiries were made into IP addresses before the defence statement was served. It is clear, submits Mr Jeyes, that the prosecution wrongly assumed that there might be no issue as to attribution or usage of telephone numbers and email accounts.

66. Further, Mr Jeyes submits that the judge was wrong to limit her scrutiny of the prosecution's disclosure in this case to the period after September 2024 given that the CTLs had previously been extended to then. What the judge should have done was "to rigorously question" whether investigations into telephony and data could have should have commenced earlier than they did.

67. In oral argument Mr Jeyes appeared to modify his case somewhat in relation to the timing of disclosure of the IP addresses. He appeared to accept that these data were not necessarily disclosable at Stage 1. However, they should have been disclosed by the end of September at the very least, which would have given time for the claimant to instruct an expert without imperilling the trial date. On this analysis, it was the prosecution's dilatoriness which occasioned the need for an adjournment and not the claimant's entirely justified decision to seek expert evidence.

68. In relation to the claimant's second ground, Mr Jeyes submits that had the section 78 application not been conceded by the prosecution, the judge would have been faced with a situation of the claimant having been served evidence that required expert consideration before trial. In other words, had the evidence been found to be admissible, and therefore part of the used material, the inevitable adjournment would have followed

from the prosecution serving evidence on which they intended to rely "at an excessively late stage". Mr Jeyes submits that the claimant cannot now be in a worse forensic position in consequence of her section 78 application effectively succeeding.

69. As regards the claimant's third ground, Mr Jeyes submits that the case was not trial ready in any event because by the time of the CTL application the prosecution still had not completed its review of NGD's medical records. Accordingly, what the judge ought to have done was examine why the review of these records had not been completed earlier, why they had not been reviewed, why any necessary disclosure had not been made, and whether the prosecution would have been obliged to apply for an adjournment in order to satisfy themselves that disclosure was complete.

The Submissions of the Prosecution

70. Mr Christiaan Moll supported the decision of the judge. He accepts that there was no DMD but submits that, given the claimant's "no comment" interview and the lack of particularisation in the prepared statements, it was not possible to compile a DMD without some understanding of what was in dispute. As for Ground 2, Mr Moll submitted that this court could not properly examine the position on the hypothetical premise that the section 78 application had failed. As for the claimant's medical records, their disclosure was triggered by the defence statement. The claimant's prepared statements had not put NGD's mental health in issue.

Discussion

71. The overriding objective in criminal proceedings is not one-sided. Gone are the days where criminal defendants are permitted to await all the prosecution's disclosure and then respond to it. Criminal defendants are expected to co-operate with the Crown and raise objections as soon as possible after a relevant deficiency has come to light. Although many of the claimant's present difficulties have been created by the strategy she adopted at police interview, we consider that her solicitors did not get fully to grips with this case until September; with the defence statement and the claimant's late disclosure requests then being used *inter alia* to lay the groundwork for opposing any extension of the CTLs.

72. We have not been assisted as to precisely what happened, or did not happen, during the period when no defence statement was served. It was incumbent on the claimant to apply for an extension. We know that an application was made in July 2024, but we are unaware of the position before then. In the absence of a defence statement, the prosecution's disclosure obligations were limited, but they were not entitled to assume that the case could effectively be placed on hold. In the absence of an application from the claimant, the prosecution was obliged to press the claimant for her defence statement and to ensure that the case remained on track for trial. However, these issues were not explored before us. Further, the judge proceeded on the basis, which has not been contested by the prosecution in these proceedings, that there was good reason for the absence of a defence statement. We think that conclusion was somewhat generous to the claimant, in particular in relation to the eight-week period we have identified, but we do not go behind the judge's finding.

73. The claimant advances three grounds of challenge but in reality there is only one. The sole question for our determination is whether it is arguable that the judge reached a

perverse conclusion in deciding to extend the CTLs in this case. On analysis, the claimant's second and third grounds are both facets of her first and primary ground.

74. The judge's reasons for concluding that there was some other good and sufficient cause and that the prosecution had acted with all due diligence and expedition were that in her judgment the prosecution had been under no obligation to give disclosure of the telecoms data, in particular the IP addresses relating to the various mobile phones and email addresses, before the defence statement was served; that it was the disclosure requests in the defence statement coupled with the claimant's wish to instruct an expert that derailed the trial; and, that but for these matters the prosecution would have been trial ready in November last year.

75. It seems to us that the key issue for resolution, and the one which determines the issue under all three grounds, is whether the judge was entitled to conclude that until the defence statement was filed the prosecution had been under no obligation to disclose the data we are referring to in connection with the numerous messages on which it relies.

76. This telephonic and other digital data were not included in the prosecution's disclosure schedule (MG6c) listing the unused material on 28 May 2024. At that stage, it was incumbent on the prosecution to disclose material that might reasonably be considered capable of undermining the prosecution case or assisting that of the claimant.

77. In our judgment, the judge was not required to give a lengthy and detailed judgment on this issue. The point was in any event a relatively short one. The judge's reasons on this issue fall to be read in conjunction with her fuller reasons on the section 78 application, because it was in the context of that application that she addressed the trial date and the claimant's application for an adjournment on the footing that expert evidence was required. In our opinion, it is clear that, taking this decision-making process as a whole, the judge gave careful consideration to the issues and that she did not merely rubber-stamp the prosecution's application.

78. The claimant was given a full opportunity at police interview to set out her case. The messages on which the stalking allegation were based were put to the claimant and she answered "no comment". That was of course her right, but the forensic stance she adopted is not without its consequences. For present purposes we focus on the consequences for the police investigation and subsequent disclosure obligations of the prosecution. Our reading of the claimant's prepared statements, and it is the same as the judge's, is that the claimant advanced no specific positive case in relation to the messages and emails at all. She did so in respect of the website, but there was a deafening silence as regards the principal evidential matters founding Count 1. We conclude, particularly in light of what is now accepted in the addendum defence statement, that the prepared statements were very carefully worded and not designed to illuminate. Moreover, and as a separate point, no explanation has been given for the claimant's change of stance in the addendum defence statement. One inference may well be that this change of stance was prompted by the OIC's disclosure of the subscriber information.

79. The judge accepted that the delay in filing a defence statement was caused by the claimant's illness. We consider that in reaching that conclusion the judge was somewhat generous to the claimant inasmuch as no explanation has been given for the

considerable delay between her discharge from hospital and 17 September. Furthermore, the claimant appears to have been able to instruct her legal team to make bail applications and to seek a *Goodyear* indication during the period she was in hospital and after her release. Be that as it may, and whatever the reasons for its lateness, until the defence statement was filed the prosecution was in the dark as to the real issues in the case. Mr Jeyes accepts that the issues may not have been fully crystallised before then, although he intimates that the prosecution should have speculated as to what these might turn out to be. But we cannot accept his headline submission that it was somehow incumbent on the prosecution to anticipate arguments that the claimant might advance in due course and/or pursue lines of inquiry out of an abundance of caution. The prosecution was entitled to proceed on the basis of what had been put in issue by the claimant.

80. The defence statement served on 17 September 2024 did condescend to a greater level of particularity, at least to the extent that it contained a clear denial that the claimant had sent the messages relied on by the prosecution. The lengthy and demanding request for disclosure which accompanied the defence statement, not limited to digital material on NGD's phone but including a request for the metadata relating to the messages relied on by the prosecution, triggered a fresh disclosure exercise on the part of the OIC. It is true that the disclosure provided was not within the requisite 14 days, but we consider that the judge was entitled to conclude that the nature and volume of the disclosure sought rendered strict compliance with the timetable unrealistic. It is also true that as part of the disclosure provided the OIC sought to give opinion evidence on cell site data beyond the bounds of her expertise. However, that impermissible approach, conceded by the prosecution once the point was taken by the claimant in the context of her section 78 application, was not causative of any delay or the need to adjourn the trial. We agree with Mr Moll that the analysis in connection with the application to extend the CTLs cannot be undertaken for these purposes on the hypothetical basis that the section 78 application might have been successfully resisted: that is not what happened on 11 November. Accordingly, as the judge correctly identified, the need for an adjournment, and the consequent need to extend the CTLs, was wholly caused by the claimant's late particularisation of her case in the defence statement, her request that NGD's phone be interrogated, and her related forensic decision to seek to undermine the prosecution's telephonic evidence by obtaining expert evidence of her own.

81. As we have already said, it was not the prosecution's disclosure of the subscriber information relating to these four mobile phones that created any difficulty. The judge was entirely correct in our judgment to tether her analysis to the wide-ranging request for metadata which brought within the disclosure envelope the IP addresses relating to the disputed communications. The judge was also entirely correct to conclude that, given the stance adopted in the prepared statements, there was no obligation to obtain and disclose the IP addresses etc. before the defence statement was served. Further, it was not the prosecution which was seeking to make anything of the IP addresses and metadata. In reality, it was the claimant's forensic decision to apply to adjourn the trial because an expert apparently needed to be instructed to avail her defence which forced the judge's hand.

82. We also cannot accept the claimant's invitation to conduct a wide-ranging inquiry into the disclosure exercise between March and November 2024. The CTL was extended in September 2024 without opposition, and we consider it is not open to the claimant to

seek to raise matters in November which could and should have been raised previously. We accept that it *was* open to the claimant in November 2024 to raise the rather different argument that the prosecution should have disclosed the relevant telephonic data in May 2024, and it was that argument that the judge fully considered. Had the judge concluded that the claimant's prepared statements ought to have triggered the processes that were not in fact conducted until after 17 September 2024, the prosecution's application for an extension may have failed. In truth, however, the converse is the case. Given the correctness of the judge's conclusion on the main issue, it inevitably follows that the operative cause of the need to adjourn lay with the claimant, and that – insofar as was material to the issue to be determined – that the prosecution had acted with all due diligence and expedition.

83. We note that what we are calling the claimant's modified submission – that the IP addresses etc. should have been provided by late September – somewhat cuts across Mr Jeyes' main argument on Ground 1. Unfortunately for the claimant, it was not the way the case was advanced to the judge, and we therefore say no more about it.

84. We consider that the claimant's third ground is somewhat of a makeweight. The judge did not deal with it expressly in the context of the application to extend the CTLs, and it is far from clear that the point advanced before us was ever raised with the judge in oral argument. In any event, we agree with the prosecution that it was not until service of the defence statement that the claimant put NGD's mental health in issue. An examination of NGD's medical records could not assist the jury in determining whether he had suffered significant distress as a result of the claimant's alleged harassment of him. It would be surprising had he not. Moreover, there was nothing in the prepared statements, save for a vague and second-hand reference to bipolar disorder, which should have led the prosecution down a line of inquiry as to NGD's mental stability and likely propensity to harass the claimant.

85. Further, and as we have already said, the real reason for the need to adjourn the trial was not any delay in providing disclosure of the medical records, but the claimant's application to adduce expert evidence.

Disposal

86. We have concluded that none of the claimant's grounds is arguable. The application for permission to apply for judicial review of the judge's decision to extend the CTLs to February 2025 is, therefore, refused.