



Case No: CA-2024-000667

**Neutral Citation No [2024] EWCA Civ 994**  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**The Hon Mrs Justice Lang**  
**[2024] EWHC 556 (Admin)**

The Royal Courts of Justice  
Strand, London, WC2A 2LL

Thursday, 11 July 2024

**Before:**

**LADY JUSTICE ANDREWS**

**Between:**

**MCCMAHON**

**Claimant/  
Applicant**

**- and -**

**INDEPENDENT OFFICE FOR POLICE CONDUCT**

**Respondent**

Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE  
Tel No: 020 7404 1400 Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk) (Official Shorthand Writers to the Court)

*This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

THE APPLICANT APPEARED IN PERSON

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED

**Approved Judgment**  
Crown Copyright©

**LADY JUSTICE ANDREWS:**

1. This is an application for permission to appeal against the order of Mrs Justice Lang dated 14 March 2024, in which she refused the claimant, Ms McMahon's, application for permission to apply for judicial review. The judge also refused an application for specific disclosure. The judgment, neutral citation number [2024] EWHC 556 (Admin), followed an oral hearing, and unusually for a permission application it runs to 43 pages and 104 paragraphs of very closely detailed reasoning.
2. The question which this court has to decide is whether any of the proposed grounds of appeal would have a real prospect of success or whether there is some other compelling reason for an appeal to be heard. The other compelling reason category usually relates to a situation where there is a point of law of wider public importance involved in the case, which notwithstanding the merits deserves to be aired before the Court of Appeal. I should say straight away that this is not that type of case. So the real issue is whether the grounds would have a real prospect of success.
3. The decision which was the subject of the application for permission to apply for judicial review was a decision by the Independent Office for Police Conduct ("IOPC") on 22 September 2023 to refuse a review of a reinvestigation by Greater Manchester Police ("GMP") into a complaint made by Ms McMahon. The IOPC is a public body responsible for overseeing the police complaints system in England and Wales.
4. As the judge explained, the IOPC does not have control over the police handling of a criminal matter. It cannot review the results of a criminal investigation and it cannot instruct the police to reinvestigate a criminal allegation. The IOPC's remit is very narrow.
5. The judge decided for the reasons that she gave in her very detailed judgment that none of the proposed grounds for judicial review was arguable with a real prospect of success. She went to great lengths to explain to Ms McMahon why there was no public law error in the IOPC'S decision, and she also found that there was no arguable breach of the Human Rights Act.

6. When a judge refuses permission to proceed with an application for judicial review, the judge is exercising a value judgment about the prospects of a successful challenge to the decision on public law grounds. Judicial review is concerned with the process by which a decision is taken by a public body. It is not a means of challenging whether that decision was right or wrong. It is not the same as a full appeal. So if the judge properly assesses the merits of the grounds and reaches a conclusion that he or she is entitled to reach after taking into account all the relevant evidence and applying the correct legal principles, this court cannot and will not interfere with that assessment.
7. Accordingly, the task for me is to determine whether Mrs Justice Lang approached the matter from a correct legal point of view and whether she reached a decision that took into account all the relevant evidence and which was reasonably open to her on the papers and after listening to all the relevant arguments.
8. The background is set out in detail in the judgment. There is no need to repeat it here, but suffice it to say that Ms McMahon is extremely dissatisfied with the conduct of GMP both prior to and after the tragic and untimely death of her niece, Theresa McMahon, who was found dead at her home on 3 August 2021. Without intending any disrespect, I will refer to the deceased as Theresa if I may, to avoid any confusion between her and Ms McMahon.
9. I should say at the outset that the loss of a loved one in such distressing circumstances must have been almost unbearable. It is entirely understandable why Theresa's close family would wish to ascertain how and why this tragedy occurred, whether it could have been prevented and to ensure that it was properly investigated by the relevant authorities. Ms McMahon has told me today that her concern is to make sure that the police are held accountable for errors in the way in which they investigated. She does not want to bring proceedings against the police, but she wants to ensure that lessons are learned not just for Theresa, but for other young women who may be in a position where they are subjected to domestic violence and under threat. That is a very laudable aspiration and an understandable one, which this court entirely understands.

10. That said, just as there are restrictions on the powers of the IOPC, there are restrictions on the powers of the court to interfere with the decision taken by the IOPC that the investigation of a complaint made about the police was reasonable and proportionate. It is no part of this court's remit to decide whether the police officers whose conduct is complained of did or did not tell the truth to an investigating officer, for example.
11. An inquest into Theresa's death has been opened. I am told that that is held in abeyance at the moment pending resolution of Ms McMahon's various complaints against GMP and I am told that it is the family's wish that that be a full inquest, an article 2 inquest, at which there will be a proper opportunity to ask questions of the pathologist and also of the police officers who undertook the investigation, and hopefully to put to them some of the material that Ms McMahon has diligently unearthed over the last three years in trying to get to the truth about what happened to Theresa.
12. A special procedure investigation into Theresa's death was initiated by GMP on 4 August 2021. The senior investigating officer was a Detective Inspector Humphries. That investigation concluded that there was no positive evidence, information or intelligence to indicate that there was any third-party involvement in a criminal act, and no unresolved suspicious circumstances. The working hypothesis was that Theresa had taken her own life by hanging herself.
13. The background was that Theresa had been in a relationship with a man named Robert Chalmers, which had ended prior to her death. He was present when her body was discovered. Theresa told her friends and family that he had been violent towards her throughout their relationship. On 12 July 2021, she made an online application at around 4.30 am to GMP for disclosure under what has become known as "Clare's Law". That is the domestic violence disclosure scheme, which allows the police to share information with a victim or potential victim of domestic abuse about their partner's or ex-partner's past abusive or violent behaviour.
14. Whilst that application was being processed by the police, a male police officer, PC Sharrocks, rang Theresa the following morning to follow up on the matters that she

had reported, and he made an appointment for her to attend the police station the next day for an interview. For the reasons that she explained in paragraphs 138 and 139 of her judgment, Mrs Justice Lang ordered the disclosure of the audio recording of that conversation and she listened to it, as have I.

15. Mrs Justice Lang addressed that recording and the way in which it was dealt with by the IOPC in paragraph 74 of the judgment. In the course of that conversation, Theresa described how her ex-partner had, in her words "battered" her, and that he had broken her fingers and her ribs. She also told the police officer that a woman who had been in a previous relationship with Mr Chalmers had told Theresa that he had strangled her. Theresa told the officer that she was no longer in a relationship with Mr Chalmers. She described him as her ex-partner, although she did indicate that he was still having some contact with her. She did not say that he had made any threats towards her since the relationship ended.
16. It appears that the appointment made during that conversation was cancelled by the police and that because of what has been described as an "administrative failure" on the part of PC Sharrocks, there was avoidable delay in the police rescheduling it. Thus, it was not until 21 July that a female officer, Police Constable Keen, visited Theresa at her home to discuss the complaint of domestic violence. PC Keen compiled a domestic abuse record which indicated that Theresa did not wish the crime to be progressed and did not support a prosecution of Mr Chalmers.
17. However, there is something of a mystery regarding the body worn video ("BWV") footage of PC Keen's interview with Theresa. It is said that that footage is no longer available, but that is a matter about which Ms McMahon is very suspicious because she has been given different explanations at different times for why it is not available. She criticises the IOPC for not following up on apparent attempts to recover it.
18. Ms McMahon is very critical of DI Humphries and of the standard of the initial investigation into Theresa's death, but her complaints about that investigation were not the subject of the underlying claim for judicial review. As the judge recorded in

paragraphs 16 to 21, Ms McMahon had made two earlier and separate complaints about that investigation. There has since been what is called a PIP4 review into Theresa's death, which was commissioned at a meeting chaired by the Assistant Chief Constable, and which included an investigation of 28 issues raised by Ms McMahon. That investigation reached a similar conclusion to the special procedure investigation, around a month after the decision with which this case is concerned. The judge recorded those matters in her judgment at paragraphs 33, 34, 57, and 58.

19. The decision taken by the IOPC which Ms McMahon seeks to challenge was taken on a review of a second investigation by the GMP of a *further* complaint made by Ms McMahon, which was given the internal number CO000234/22. That complaint specifically concerned GMP's failure to investigate Theresa's allegations of assault and domestic violence, both prior to and subsequent to her untimely death. In substance, it was alleged that Theresa's death could have been avoided if the police had investigated those allegations properly, identified Theresa as vulnerable, and provided her with Clare's Law disclosure.
20. It transpired (and there appears to be no debate about this anymore) that PC Keen had wrongly informed Theresa on 21 July that she did not meet the criteria for such disclosure because she was no longer in a relationship with Mr Chalmers. That decision was not for PC Keen to make, and it appears that no decision had in fact been made on her request for disclosure at the time of Theresa's death, but Theresa did not know this.
21. The police say they made attempts to telephone Theresa, but they did so from a telephone number which would be unknown to her. Ms McMahon has pointed out this morning that it would have been easy enough for them to have emailed her and got in touch that way to try and arrange for the further information to be given to them, which they considered to be necessary before they made a final decision on the disclosure.
22. An initial investigation of this particular complaint had been reviewed by the IOPC on an earlier occasion. The investigating officer on that occasion was a Ms Avril. She held that the investigation was inadequate in a number of respects, and she directed

GMP to reinvestigate and recommended some lines of enquiry. Ms Avril gave Ms McMahon to understand that any concerns that Ms McMahon had about the fact that the matter was going back to the GMP for reinvestigation could be assuaged by the fact that any further report that the GMP produced would be dealt with by Ms Avril herself. In the event, that did not happen.

23. The reinvestigation was finalised by the investigating officer ("IO") DS Hannah Greetham in June 2023. It identified some errors and failings, but it concluded that overall the service was acceptable. On review by the IOPC, a *different* decision-maker became involved, a Ms Rachel Waters, and she concluded that the outcome of the GMP reinvestigation was reasonable and proportionate. That is the decision that Ms McMahon sought to challenge in the judicial review proceedings.
24. The judge summarised the grounds of challenge to that decision in paragraphs 36 to 38 of her judgment. She then systematically addressed each of the grounds she had identified, set out the arguments that were relied upon to support it, considered how the IOPC had dealt with the reinvestigation and gave clear and cogent reasons for reaching the conclusion that none of the grounds had any real prospects of success. In paragraph 43, the judge correctly identified this as the legal test that she had to apply at the permission stage, and that is the test which she went on to apply when she went through each of the grounds.
25. Ground 1 of the grounds of appeal challenges the judge's refusal of the application for disclosure. The subject of that request was the BWV footage of the police's attendance at Theresa's home following her death on 3 August 2021. It is convenient to deal with the proposed appeal against that decision first, because one of Ms McMahon's complaints is that the refusal of that application led to the exclusion of relevant evidence, and she submits that that adversely affected the fairness of the proceedings before Mrs Justice Lang.
26. Now, the decision to refuse the application for disclosure was a decision taken in the exercise of the judge's case management powers and was a matter of judicial discretion

with which this court will not likely interfere. As the judge rightly pointed out, disclosure is rarely ordered in proceedings for judicial review. That is because of the limited nature of proceedings for judicial review which I have already explained.

27. The position in the judicial review case is that the defendant, in this case the IOPC, has an obligation of candour, which requires it to disclose material which is relevant to the issues raised in the grounds of challenge, or the summary grounds of defence. It is very rare for a court dealing with a judicial review to have to resolve contentious factual issues. In this case, there was an additional complication (although it was not insurmountable) that the footage was subject to a non-disclosure order made by the coroner's court. It could only be disclosed pursuant to an order requiring the coroner to release it.
  
28. The judge's reasoning appears at paragraph 125 to 137 of her judgment. At paragraph 134, she applied the correct legal test: namely whether the disclosure was necessary to deal fairly and justly with a particular issue. That is a high hurdle to surmount. It means that the issue cannot be fairly resolved without that evidence. The first problem which the judge identified, was that the complaint which was reinvestigated and the reinvestigation with which the IOPC was asked to review, were not concerned with GMP's investigation into Theresa's death. Whilst it is entirely understandable that the BWV footage on 3 August 2021 might well have been relevant to *that* investigation, it is difficult to see how it could have any bearing on GMP's earlier or subsequent failings to investigate allegations of domestic violence, let alone that it would be necessary to enable the court to decide whether the IOPC decision in September 2023 was tainted by public law error.
  
29. The second problem is that it is generally a matter for the decision-maker to decide what evidence or other material is relevant for them to take into account. One would not necessarily expect the IO conducting the reinvestigation into this particular complaint about a failure to investigate the allegations of domestic violence, or indeed the IOPC decision-maker considering the request for a review of the reinvestigation, to have looked at the BVW footage of 3 August. If they decided that they did not need to



look at it, that decision could not be described as an irrational decision such as to give rise to a viable claim for judicial review of it.

30. The judge recorded at paragraph 135 that the IO, DS Greetham, had confirmed that the footage was not considered as part of her investigation nor provided to the IOPC. She also accepted evidence from an IOPC caseworker who had checked the database and confirmed that the IOPC has never had possession of nor viewed the BWV footage as part of its investigation into this particular complaint. The judge made a fact-finding based on that evidence that the IOPC has never had possession of or viewed the BWV footage, and that it played no part in its decision.
31. As the judge explained, it is not the court's role to assess evidence which was not considered by the decision maker, save in exceptional circumstances which did not arise in the present case. Having made an unimpeachable fact finding, the judge then reached a rational conclusion, applying the correct legal test, that disclosure of the footage was not necessary to deal fairly and justly with the question whether there was an arguable public law error in the decision under challenge.
32. In her skeleton argument, as helpfully expanded upon this morning in her oral submissions to the court, Ms McMahon contends that because she proposed and believed that the court should consider the evidence on the BWV footage and because it would have been easy to produce it and watch it, the court failed to consider all of the relevant credible evidence. However, relevance is a matter of objective assessment. The court cannot be dictated to by one of the parties to litigation.
33. I have asked her some questions about it, and I understand why Ms McMahon contends that the footage would show that a subsequent review by the police which was concluded a month after the decision under challenge was not properly conducted. This is because she says that the footage will show, for example, that a neighbour made certain statements to the police about the relationship between Theresa and her ex-partner, and the senior investigating officer who carried out that further review said that the neighbours did not make a complaint. I understand completely why that footage

might be relevant in any further complaints about that further review, but I cannot at the moment understand why it has any relevance or could have any relevance to the matters that the judge had to consider, which related to a decision that was taken a whole month before that further review.

34. Now, in her grounds of appeal, Ms McMahon says that the judge accepted that the evidence produced by GMP, namely that further review, the PIP4 review, was credible evidence. I looked very carefully at the judgment, and in fact the judge made no finding about the credibility or otherwise of the findings in the PIP4 review. All she did was to accurately state how that review came about and what it concluded. That was in the context of dealing with the question whether there were any matters that had been left unconsidered by the police or the IOPC as a result of the various reviews that had taken place thus far.
35. It is not surprising that the judge did not make any findings about that review because it was not within her remit to consider whether that review was or was not properly conducted. She stated that the body worn footage was viewed by the officer who conducted that review. One simply does not know whether he did or he did not, but he said that he did. Even if he did not, the results of the PIP4 review post-dated the decision under challenge, and they could have no bearing on the question whether that decision was affected by a public law error. So it was mentioned in passing, but it formed no part of the relevant information on which the judge made a decision. For that reason, it is not surprising that the judge decided to exclude the footage.
36. Ms McMahon also says that the judge asked her in open court why she believed that the judge should view the footage. Again, the answer she says she gave, which is the answer she gave to me to a similar question this morning, was that the evidence disclosed to the court refers to the body-worn footage, and it gives an incorrect account of events. That means the footage would prove that the GMP had deliberately attempted to mislead the court. But as I say, the judge was not concerned with whether events were accurately or inaccurately set out in the PIP4 report. Her concern was whether there were arguable grounds for a public law challenge to the IOPC's

conclusion on the complaints relating to GMP's failure to investigate allegations of domestic violence.

37. Ms McMahon also says that she told the judge that GMP had verbally confirmed to her that the IOPC had viewed the body-worn footage before considering her request for a second review. That, she told me, prompted the judge to ask for a further statement from Ms Waters. Ms McMahon understandably complains that even though the judge was expecting a statement from Ms Waters to be forthcoming, somebody else at the IOPC rather than Ms Waters who was the decision-maker made that statement. That person said that they had looked at the database and could confirm that the footage was not on it. I can understand why that looks suspicious. As Ms McMahon points out even if Ms Waters had gone away on holiday for a short period, it would have been possible to get her to sign the statement afterwards when she came back. It seems looking against the background a little strange that somebody else should be required to carry out the task. But the judge was really concerned to get to the bottom of whether the footage was on the IOPC database or not, and somebody did conduct a search of that database.
38. The judge was entitled to accept evidence from that person, whether it was Ms Waters or not, and the fact that it was not Ms Waters does not mean that their evidence was not credible. If it is not on the database, then Ms Waters could not have viewed it because the IOPC would not have had the footage. Evidence that the footage is not on the database and could not have been viewed was plainly relevant and a relevant consideration for the judge to take into account. So she did not need a further statement from Ms Waters in order to decide whether the footage was or was not considered by the IOPC. She was entitled to accept that evidence and make the fact-finding that she did.
39. It was also suggested that the judge could not have decided if the footage had any bearing on the allegations in the complaint unless she had seen it for herself, but that is not logical. There was no reason, as I say, to suppose it had any relevance, and if somebody wants material to be disclosed, then they have to establish that it is relevant. Unfortunately, for perfectly good reasons, I am satisfied that it was not relevant and in

any event that the judge was entitled to conclude that it was not relevant, which is the test that I have to apply when deciding whether or not to give permission to appeal against that aspect of the judge's ruling.

40. So for those reasons I consider that there is no real prospect of successfully challenging the judge's refusal of the application for disclosure.
41. Although it is not numbered as a separate ground of appeal, the next complaint within the grounds of appeal relates to the alleged deletion of the body worn footage of PC Keen's interview with Theresa on 21 July 2021. I have read the grounds of appeal very carefully, and I have listened very carefully to everything that Ms McMahon has said to me this morning about that. The real nub of the complaint as I understand it is this. Ms McMahon had provided information to the investigating officer that suggested that this body worn footage had not been deleted, but that it existed in a corrupted form, and that efforts were being made to retrieve it. That information had been provided to Ms McMahon by a senior police officer, a Mr Allan, and that was the first piece of information that she had.
42. Next, although it was said to the investigating officer (or the investigating officer found) that PC Keen (the lady officer who spoke to Theresa on the 21<sup>st</sup>) had tried to retrieve the body-worn footage from 21<sup>st</sup> July at a much later date when the officer became aware that Theresa had died, Ms McMahon said it could be demonstrated that PC Keen knew that Theresa was dead much, much earlier, because she had been deputed to go on house to house enquiries at the time of Theresa's death. That was at a time when according to the police, the body-worn footage would still have been available, even if it did self-delete after 28 days. Ms McMahon said that that information was also made available to the IOPC before the challenged decision was taken.
43. Ms McMahon says that it is unacceptable that the IOPC should have taken the view or taken at face value the explanation that was given to them which is at odds with that information, which is that PC Keen was at fault because she failed to flag up the

footage in a way which would have led to it being retained instead of being destroyed after 28 days. That explanation did not add up for the reasons that I have already given. It was contradicted by what a senior officer had said, and it was impossible to say that PC Keen did not find out about Theresa's death until much later because she had been involved in door-to-door enquiries at the time.

44. Those points are perfectly good forensic points that are validly made, but the question for the judge and the question for this court is whether there was an arguable public law error in Ms Water's decision. So the question is whether Ms Waters took into account something she should not have taken into account, failed to take into account something that she should, or reached a decision which was irrational.
45. The judge dealt with the issue in paragraphs 82 to 85 of her judgment, and she quotes extensively from Ms Water's decision. Her conclusion at paragraph 85 was that in the light of what she described as Ms Water's detailed and convincing explanation of the reasons why the footage had gone missing, she did not consider the ground of challenge to be arguable or that it had any reasonable prospect of success. The IO had concluded that the deletion of the footage was not the result of the cover-up, but due to an administrative error and Ms Waters gave compelling reasons for supporting that conclusion, not least that it was not possible for the footage to have been manually deleted from the system.
46. The judge's task was to decide whether there was any real prospect of disturbing those findings, and the conclusion that she reached was one which was open to her on the evidence that was before her. It was within the remit of the investigating officer to decide if there was a conflict between the two lots of evidence. While there is a curiosity about the point made about PC Keen trying to retrieve the footage at a later date, I am not sure that resolution of that point would actually get Ms McMahan any further in being able to show that the decision fell within any of the grounds for judicial review. As I have said, this is not an appeal on the merits, which is a very different type of appeal.

47. So the question for me really is whether there is any basis for criticising the way that the judge dealt with it. I am afraid I do not see that there is within the confines of the permission to appeal jurisdiction. I cannot see an arguable basis for saying that the judge approached the matter in the wrong way or that she reached a decision that was not open to her. So on that basis, the body worn footage of 21 July point, I am afraid I will have to refuse permission to appeal on that aspect of ground 1.
48. I can deal a little more swiftly with ground 2. That is a complaint about the conduct of counsel for the other parties at the hearing. As the judge recorded at paragraph 129, case management directions were given by Mr Justice Swift and they included an order for the IOPC and GMP to file and serve their responses to the grounds of challenge by 13 February. Ms McMahon's understanding, rightly or wrongly, was that she had the right to put in a witness statement after that, and she told the other parties and the court that she was going to do so and I have no reason to disbelieve her about that. She indicated that she was going to do that, and she told them on 15 February that (for reasons I need not go into but which were perfectly valid) she would be unable to do so as early as she originally anticipated. The hearing was on 20 February, and the witness statement was served on the 19th. I entirely appreciate that the timing was unavoidable and no criticism at all is intended of Ms McMahon.
49. What then happened was that Ms McMahon says that the judge asked counsel for the IOPC if she was aware that there was a witness statement, and she said, "No, we were not aware". Ms McMahon feels that counsel was not telling the truth because as far as Ms McMahon was concerned, everybody was aware that she had served the witness statement the night before. Now, I can see that there may be all kinds of explanations for why counsel said what she did, not all of them being quite as bad as Ms McMahon suspects. I also understand that the experience of this matter has led to deep distrust and I can understand why that is the case. But ultimately the judge was there to see fair play at the hearing, and the judge did not disallow that witness statement. As I understand it, no objection was actually taken to it. In fact, Ms McMahon says that the other parties were not interested in what the context of her witness statement were. They did not ask for an adjournment to deal with it or anything of that nature. So as the judge states in her judgment, she did take into account the contents of that witness

statement. On that basis there is no substance in any complaint of procedural unfairness or an unfair hearing because Ms McMahon was allowed to rely on the document that she wanted to rely on. If anyone was potentially disadvantaged by the timing, it would have been the other parties had they wanted to respond to it, but since they did not, nobody was disadvantaged.

50. The second complaint that is made is that counsel for the GMP interrupted Ms McMahon when she was presenting her case. I have no doubt that that was rude and that should not be done. Unfortunately, counsel sometimes do that to other counsel in court and it is not an appropriate thing to do unless there is a very good reason to interrupt. So I can understand why as a litigant in person in this courtroom with two barristers on the other side, Ms McMahon felt she was being disadvantaged and being effectively bullied by these constant interruptions.
51. Once again the judge stepped in and Ms McMahon very fairly accepts that the judge told counsel that she could not interrupt her and that she should let her finish her submissions which then happened. So whilst I accept that the interruptions were unacceptable, that that may have broken Ms McMahon's train of thought and obviously caused her some distress and that is something which is deeply regrettable, it does not mean that the conduct of the proceedings fell short of a fair hearing, or that there was anything that could be described as anywhere near a breach of article 6 of the European Convention on Human Rights. On the contrary, it seems to me that the judge did all that she could to make sure that Ms McMahon was not disadvantaged by representing herself.
52. Therefore there is nothing in ground 2 of the grounds of appeal to cast any doubt on the fairness of the proceedings or to give rise to any arguable grounds for interfering with the judge's decision.
53. Turning finally to ground 3, that includes a complaint that Ms McMahon was not permitted to play the recording of the conversation between PC Sharrocks and Theresa in court, but since the judge did listen to it for herself and she addresses it in her

judgment the evidence was plainly taken into consideration. But the main thrust of the complaint under this ground, as I understand it, appears to be that the judge was wrong to find that Ms McMahon had no arguable grounds for judicial review of a decision taken by the IOPC to uphold the GMP's decision, on the investigation after Theresa's death, that the ex-partner's previous convictions should not have been disclosed to her under Clare's Law.

54. The nub of the complaint became clearer in the course of this morning's oral argument and answers to some of the questions that I put to Ms McMahon. Ms McMahon says she felt that PC Keen was being made a scapegoat for this matter and that the senior investigating officer, that is DI Humphries, really should have been held to account. The police did not make enough effort to get in touch with Theresa. PC Keen had misinformed Theresa on any view, and it has been found that she misinformed her, that as an ex-partner, she would not have the right to disclosure. The fact that they were continuing to consider her request for disclosure was not something that Theresa was told. It was effectively kept secret from her. The fact that consideration was still ongoing at the time of her untimely death is not really an answer. Nor is the fact that after the event it was found that the police said that they would have needed much further information in order to be able to reach a decision as to the proportionality of disclosing that information to Theresa.
55. The judge deals with the Clare's Law point in paragraphs 86 through to 88. Her conclusion was at paragraph 89, which was that the submissions were unarguable and had no real prospect of success. There is no doubt that the judge took into account all the relevant information that was before her and considered whether Ms Waters' findings and conclusions were available to her on the information that she had. Ms McMahon has said to the court this morning, the problem is that the IOPC have taken at face value everything they have been told by the police, when she has evidence, she says, that the police were not telling the truth to the IOPC investigating officer.
56. I then put to Ms McMahon, "Well, what do you expect the IOPC to do in those circumstances?" Because the IOPC'S remit is not to carry out its own investigation, it



simply has to decide whether the investigation that has been carried out by GMP was reasonable and proportionate.

57. It seems to me that the problem lies here in the limited remit of judicial review and that it is difficult for this court to say that there was anything wrong with the way in which the judge approached the matter in determining whether or not the IOPC decision was open to a public law challenge. She considered the decision maker's reasoning very carefully, she also considered very carefully how Ms Waters explained her decision. She came to the conclusion that the findings that Ms Waters reached were open to her on the evidence that was before her. It is not an answer to that to say, "Well, that evidence was unreliable, and I can show that it was unreliable", because unless there was clear evidence before the decision-maker that the evidence was unreliable, showing that it was unreliable after the event is not going to help.
58. I have huge sympathy with Ms McMahon and with the family in this matter, but I have to apply the appropriate legal principles, and sympathy alone will not enable me to give permission to appeal in circumstances where there is no real chance of getting any further on the appeal. In fact, it would be unfair to the family to raise their hopes by giving them permission to appeal, only to find those hopes dashed if the appeal does not succeed.
59. I am afraid that try as I may to find that there is a route through to arguing with a real prospect of success that this decision was affected by public law error, I have not been able to find that route. So for those reasons I am afraid I am going to refuse permission on ground 3 as well.
60. That means unfortunately that this application for permission to appeal is refused on all grounds.

**Order:** Application refused.



**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE  
Tel No: 020 7404 1400  
Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)