Neutral Citation Number: [2019] EWHC 2953 (Admin)

Case No: CO/4106/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/11/2019

Before:

LORD JUSTICE MALES
MRS JUSTICE JEFFORD

- -

Between:

CHESTERFIELD POULTRY LIMITED	**Claimant**
- and -	
SHEFFIELD MAGISTRATES COURT	**Defendant**
-and –	
CROWN PROSECUTION SERVICE	
	Interested Party

- -
- -

Stephen Hockman QC and **Stuart Jessop** (instructed by **SAS Daniels LLP**) for the **Claimant**
Richard Wright QC and **Howard Shaw** (instructed by the **Crown Prosecution Service**) for the **Interested Party**

Hearing date: 17th October 2019

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Approved Judgment

Lord Justice Males:

1. The issue on this application for judicial review is whether criminal proceedings against the claimant in the Sheffield Magistrates' Court were commenced out of time so that the court has no jurisdiction; or alternatively whether they should be stayed as an abuse of process.

The background

2. The claimant, Chesterfield Poultry Ltd, is the operator of a slaughterhouse in Doncaster. The slaughterhouse is approved by the Food Standards Agency ("the FSA") for the slaughter and/or dressing of domestic fowl. The claimant began operating from these premises on 27th June 2016 under conditional approval from the FSA. The FSA granted full approval on 14th December 2016.

3. On 5th January 2018 the Crown Prosecution Service ("the CPS") commenced proceedings against the claimant by the issue of a requisition in the Sheffield Magistrates' Court for breaches of Regulations 30(1)(c) and 30(1)(g) of the Welfare of Animals at the Time of Killing (England) Regulations 2015 (SI 2015 No. 1782) ("the Regulations"). There were four charges, each of which arose out of the fact that 5,644 chickens were found dead in the lairage (an area where animals or birds may await slaughter) on 13th September 2016 as a result of what was alleged to be a failure to provide adequate ventilation which had caused the chickens to suffer avoidable pain, distress or suffering.

4. The matter was initially investigated by the FSA which referred it to the CPS on 13th March 2017. A lawyer (Ms Gurminder Sanghera) was allocated to the case on 23rd March. On 24th May 2017 further material was received from the FSA and the case was reviewed on 24th July by Ms Sanghera. It appears that this was the first substantive review, so that there was a period of four months and 11 days between the initial receipt of the case by the CPS and the first review of the file. During part of that time Ms Sanghera was away on annual leave and attending training courses.

5. As a result of this review an action plan was sent to the FSA and further information was requested. After further exchanges including the receipt and review of a further witness statement, Ms Sanghera reviewed the file on 5th January 2018 and was satisfied that proceedings could be authorised.

The Regulations

6. The issue is whether proceedings were commenced within the period allowed by section 41 of the Regulations, which provides for an exception to the general rule in section 127(1) of the Magistrates' Courts Act 1980 that summary criminal proceedings must be commenced "within six months from the time when the offence was committed, or the matter of complaint arose".

7. Section 41 of the Regulations provides:

> "Time limit for prosecutions
>
> (1) Notwithstanding section 127(1) of the Magistrates' Courts Act 1980, a magistrates' court may try an information relating to an offence under these Regulations if the information is laid—

> (a) before the end of the period of three years in England the date of the commission of the offence; and
>
> (b) before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge.
>
> (2) For the purposes of paragraph (1)(b)—
>
> (a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and
>
> (b) a certificate stating that matter and purporting to be so signed is treated as so signed unless the contrary is proved."

8. These provisions are materially identical to a variety of statutory provisions concerned with the time limit for prosecutions, including section 6 of the Road Traffic Act 1988, section 11 of the Computer Misuse Act 1990, section 116 of the Social Security Administration Act 1992 and section 31 of the Animal Welfare Act 2006. These provisions have given rise to a considerable volume of litigation. The Regulations gave effect to Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing, but neither party before us has suggested that the European origin of the Regulations requires section 41 to be given a different interpretation from that which has been given to identical provisions in other legislation.

9. Proceedings must be commenced not only within the three-year period referred to in paragraph 1(a) of section 41, but also within the six-month period referred to in paragraph 1(b). Provision is made, however, for the issue of a certificate by the prosecutor which is conclusive as to the date from which that six-month period begins to run. I shall refer to this as "the relevant date".

10. The prosecution may prove that proceedings were brought in time so far as the six-month period is concerned in either of two ways. The first is to issue a certificate which, if valid, is conclusive evidence. The second, if there is no certificate or if the certificate which has been issued is defective in some way, is to prove as a matter of fact "the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings" came to the prosecutor's knowledge. In the present case the CPS relies on a certificate. It has not sought to prove in the alternative the underlying facts. I do not find that surprising. If the CPS were to seek to prove those facts whenever the validity of a certificate was challenged, the utility of the provision for a conclusive certificate would be undermined. The consequence, however, as was not disputed before us, is that if the certificate relied on is invalid, the prosecution will have failed to discharge the burden upon it of proving that the proceedings were brought in time.

The prosecutor's certificate

11. In this case two prosecutor's certificates have been issued but the first can be ignored as it is accepted that it did not comply with the requirements of paragraph 1(b). It is accepted also that a defective certificate is a nullity, and that the issue of a defective certificate

does not prevent the prosecutor from subsequently issuing a certificate which, if it complies with the requirements of paragraph 1(b), will be valid and effective. It was so held in R *v Woodward* [2017] EWHC 1008 (Admin).

12. The second certificate, on which reliance is placed, is signed by Ms Sanghera in her capacity as a Specialist Prosecutor of the Specialist Fraud Division of the CPS. It reads as follows:

> "On 8th November 2017 evidence came to my knowledge, which I thought was sufficient to justify proceedings against:
>
> Chesterfield Poultry Ltd
>
> for offences contrary to:
>
> (1) Regulation 30(1)(g) of the Welfare of Animals at the Time of Killing (England) Regulations 2015, in respect of contravening article 3 of Regulation (EC) 1099/2009;
>
> (2) Regulation 30(1)(c) of the Welfare of Animals at the Time of Killing (England) Regulations 2015, in respect of contravening the requirement set out in Schedule 1, Part 3, paragraph 10(a) of the said Regulations;
>
> (3) Regulation 30(1)(c) of the Welfare of Animals at the Time of Killing (England) Regulations 2015, in respect of contravening the requirement set out in Schedule 1, Part 3, paragraph 10(b) of the said Regulations;
>
> (4) Regulation 30(1)(c) of the Welfare of Animals at the Time of Killing (England) Regulations 2015, in respect of contravening the requirement set out in Schedule 1, Part 2, paragraph 5(b)(i) of the said Regulations."

13. The certified date of 8th November 2017 was less than six months before the commencement of proceedings.

The application to the District Judge

14. The claimant contended that in fact the date on which evidence sufficient to justify the proceedings had come to the prosecutor's knowledge was more than six months before the date on which proceedings were commenced. Its case was and is that there was sufficient evidence, in the form of a witness statement by the official veterinary officer, in the material initially provided to the CPS on 13th March 2017. Accordingly the claimant applied to the Magistrates' Court for a ruling that the court had no jurisdiction to hear the case. As already indicated, the CPS relied on the certificate set out above as conclusive evidence of the relevant date.

15. There is a dispute between the parties as to whether the ruling given by DJ(MC) Naomi Redhouse who dealt with the claimant's application was concerned with the question of compliance with the time limit set out in section 41 of the Regulations or with the separate question whether the proceedings amounted to an abuse of process, although Mr Stephen Hockman QC for the claimant did not pursue this point in his oral submissions to

us. To my mind, however, and as I shall explain, the District Judge's ruling is clear. She held first that the prosecutor's certificate complied with the requirements of section 41 and was neither defective on its face nor fraudulent (which matters were not in dispute before her) and, therefore, that it was conclusive evidence of the relevant date. She then went on to consider the distinct issue of abuse of process and held that, despite the disappointing lack of progress for four months after receipt of the papers by the CPS, the delay would not prevent the claimant from receiving a fair trial. Her decision, therefore, was that the court had jurisdiction to try the case and that the proceedings should not be stayed.

The grounds of challenge

16. It is common ground between the parties that as the proceedings in the Magistrates' Court have not concluded, the appropriate route to challenge the District Judge's conclusion is by way of an application for judicial review. Permission to bring the claim was granted by HHJ Belcher. Her order granted permission on all grounds "and on the issue of whether the claim can also be put on the basis of abuse of process".

17. Mr Stephen Hockman QC and Mr Stuart Jessop for the claimant challenge the lawfulness of the District Judge's decision on four grounds, namely that:

    (1) the District Judge was wrong to deal with the matter as if it were an application to stay the proceedings for abuse of process;

    (2) the District Judge was wrong to rule that the six-month period should run from the date of 8th November 2017 stated in the prosecutor's certificate;

    (3) the District Judge should have held that time began to run from the date when the file was received by the CPS; and

    (4) the proceedings should have been stayed as an abuse of process.

Grounds (2) and (3): is the certificate conclusive evidence?

18. Mr Hockman's main focus was on grounds (2) and (3), which he dealt with together and which involve a challenge to the conclusive nature of the prosecutor's certificate. He submitted, in summary, that:

    (1) As a matter of policy the conclusive evidence provisions should be narrowly construed because (a) they constitute an exception to the general rule in section 127(1) of the Magistrates' Courts Act 1980, (b) they constitute an ouster of the jurisdiction of the court to determine the true facts (cf. *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22); and (c) they put the question whether proceedings have been commenced in time entirely in the hands of the prosecution, subject only to the three-year long stop provision.

    (2) As a matter of language, (a) the "fact" which has to be certified is the date on which evidence came to the prosecutor's knowledge; (b) the relevant date is the date on which the evidence was received by the CPS; and (c) while a valid certificate is conclusive as to the date on which a piece of evidence came to the prosecutor's knowledge, it is not conclusive of the issue whether or when the evidence was sufficient to justify the proceedings.

    (3) A certificate is open to challenge on the ground that it is plainly wrong, that being an objective question to be determined in the light of all the available evidence.

(4) The certificate in this case was plainly wrong as there was already sufficient evidence to justify proceedings in the material initially provided to the CPS in March 2017.

19. Mr Hockman pointed to passages in the authorities which deal with materially identical statutory provisions which, he said, support these submissions.

20. Mr Richard Wright QC for the CPS submitted that the purpose of a certificate is to record the date on which the prosecutor reached a decision to prosecute and that this was the proper subject of a certificate; that this is established by the authorities and to hold otherwise would be a recipe for satellite litigation about prosecutorial decision-making; and that the certificate in this case is valid and conclusive as to the relevant date.

21. In one sense the only question which matters in this case is whether the certificate relied on is conclusive evidence of the relevant date. However, it is convenient to begin by considering what the fact is of which a valid certificate is conclusive evidence. That will at least inform discussion of the issue as to the status of the certificate in the present case. I propose to consider these questions by reference to policy considerations, the language of the Regulations and the authorities.

Policy

22. I recognise that section 41 of the Regulations and other equivalent statutory provisions are an exception to the general rule in section 127(1) of the Magistrates' Courts Act 1980 that summary proceedings must be commenced within six months from the date of the offence. It has been said that, as such, they must be strictly construed: *Morgans v DPP* [1999] 1 WLR 968 at 983D-E in a passage considered further below. However, I do not see that this in itself requires the court to do anything other than to give the provisions their natural meaning as to the point at which the six-month period begins to run.

23. The provision for a prosecutor's certificate to be conclusive evidence does, however, require a strict approach. A conclusive evidence provision prevents the court, subject to very limited exceptions, from enquiring whether the fact certified is or is not correct. Accordingly, if it is to be given conclusive effect, the certificate must comply strictly with the statutory requirements for such a certificate. It must certify the fact referred to in section 41 of the regulations and not some other fact, and it must be signed by or on behalf of the correct person or body ("the prosecutor"). This has been held to be the position in a number of cases to which I refer below and is a principle applicable to conclusive evidence provisions generally. The rationale is that Parliament has provided that a certificate which fulfils certain requirements shall be conclusive, but has not so provided in the case of a certificate which does not fulfil those requirements.

24. Reliance on cases dealing with a very different context, such as *Privacy International*, does not in my judgment take matters further. While in one sense it can be said that allowing the prosecution to issue a conclusive certificate may be to place undue power in the hands of the state, it is well established that a certificate will not be conclusive if it is issued in bad faith (not suggested here). Moreover, the context is merely as to the time for commencing summary proceedings which is in any event subject to the three-year long stop, while there is no comparable time limit in the case of much more serious offences triable on indictment in the Crown Court. The time limit in the Regulations does not involve the same considerations as apply when fundamental human rights are in play. The consequence of certifying that proceedings are in time is not particularly startling. It is merely that the defendant faces summary proceedings in the magistrates' court to which the common law and Article 6 guarantee of a fair trial applies.

25. Accordingly, while I accept that a certificate must comply strictly with the statutory requirements if it is to constitute conclusive evidence, that is to say it must be signed by or on behalf of the appropriate prosecutor and must state what it is required to state, and that a certificate which fails to do so is a nullity, there is in my judgment no greater scope for a defendant to invoke policy considerations to challenge a certificate which is valid on its face.

26. On the contrary, as the cases discussed below explain, there are powerful policy considerations in favour of upholding the conclusive nature of such a certificate. To do so promotes certainty which is in the interests of all parties, avoids the court having to second-guess prosecutorial judgments which are properly the province of the CPS, and avoids satellite litigation about whether proceedings have been commenced in time which causes additional expense while determination of the real issue, whether an offence has been committed, is delayed well beyond the time within which it ought to be determined.

Language

27. The date on which the six-month period begins is that stated in paragraph (1)(b) of section 41, namely "the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge". It is evident that this calls for an exercise of judgment on the part of the prosecutor ("sufficient to justify"); that the question is at least primarily subjective ("which the prosecutor thinks"), so that on any given facts there may be room for different prosecutors to take different views; and that the date is determined by "the prosecutor's knowledge" as distinct from some other event. Moreover, the background against which such a provision has to be interpreted is that whether proceedings are justified always depends on two factors, namely whether the evidence amounts to a *prima facie* case and whether proceedings are in the public interest or (which is the same thing) the interests of justice.

28. What the prosecutor is entitled to certify under paragraph (2) is the date on which "such evidence" (that is to say evidence which the prosecutor thinks is sufficient to justify the proceedings), came to his or her knowledge. The date on which this occurred is the "fact" of which a valid certificate is to be conclusive evidence. This will usually, but need not necessarily, be the same as the date on which the prosecutor formed the opinion that proceedings were justified.

29. These considerations suggest to me that as a straightforward matter of language: (1) the "fact" which has to be certified is the date on which something happens; (2) the thing which has to happen is that certain evidence comes to the prosecutor's knowledge; (3) the evidence must be that which the prosecutor thinks is sufficient to justify proceedings, so that what matters is the individual prosecutor's subjective assessment; and (4) the assessment which the prosecutor has to make concerns both limbs of the test, that is to say whether there is a *prima facie* case and whether proceedings are in the public interest.

The authorities

30. I turn next to the authorities to see to what extent they support or negate these conclusions, and what they have to say in particular about the grounds on which a certificate can be challenged. It may be noted that the authorities to which I shall refer address (among other things) five distinct questions, namely:

    (1) Whose knowledge counts as the knowledge of the prosecutor ("the prosecutor issue")?

(2) What has to happen to cause the six-month period to begin to run ("the relevant date issue")?

(3) On what grounds can a certificate be challenged ("the grounds issue")?

(4) What is the correct procedure for challenging a certificate ("the procedural issue")?

(5) What is the relationship between such a challenge and an application to stay for abuse of process ("the abuse issue")?

31. It is convenient to start with *Woodward*, an appeal to this court by way of case stated in which the issue was whether proceedings had been commenced in time in accordance with section 31 of the Animal Welfare Act 2006. After referring to a number of authorities Hickinbottom LJ set out at [23] a series of propositions which he regarded as clear. For present purposes the following summary will suffice:

(1) The decision which the prosecutor has to make is not merely whether the evidence amounts to a *prima facie* case, but also whether it is in the interests of justice to bring proceedings: *RSPCA v Johnson* [2009] EWHC 2702 (Admin) at [33]; *Letherbarrow v Warwickshire County Council* [2014] EWHC 4820 (Admin) at [17]; *Riley v DPP* [2016] EWHC 2531 (Admin) at [17]; *Woodward* at [23(ii)].

(2) This requires careful consideration, so that a prosecutor is entitled to a reasonable time to make the decision even after evidence amounting to a *prima facie* case has been obtained (*Woodward* at [23(iii)]). As Hickinbottom put it, citing *Letherbarrow* at [17]:

> "the relevant date is the date upon which the prosecutor considers that, upon the available evidence, it is in the public interest to prosecute the particular individual or individuals."

(3) There is a well established distinction between an investigator and a prosecutor. In the context of animal welfare, the FSA is the investigator and the CPS is the prosecutor, but evidence coming to the prosecutor's knowledge refers to the knowledge of the individual prosecutor to whom the case is allocated (*Letherbarrow* at [19]; *Riley* at [15]; *Woodward* at [23(iv)]).

(4) The burden is on the prosecution to show that the proceedings have been commenced in time. This may be done in either of two ways, namely (a) by relying on a prosecutor's certificate or alternatively (b) by adducing evidence of fact as to the knowledge of the relevant prosecutor (*Letherbarrow* at [20]; *Woodward* at [23(vi)]).

(5) When the prosecution relies on a certificate, it must comply strictly with the statutory requirements and must do so on its face, in the sense that deficiencies cannot be remedied by reference to extrinsic evidence (*Burwell v DPP* [2009] EWHC 1069 (Admin) at [22] and [23]; *Azam v Epping Forest District Council* [2009] EWHC 3177 (Admin) at [25(3)]; *RSPCA v King* [2010] EWHC 637 (Admin) at [9]; *Woodward* at [23(vii)(a)]).

(6) A certificate which does comply with those requirements "is determinative of the matter unless the certificate is inaccurate on its face (i.e. plainly wrong on its face and patently misleading), or can be shown to be fraudulent" (*R v Haringey Magistrates' Court, ex parte Amvrosiou* (13th June 1996); *Burwell* at [18] and [19]; *Azam* at [25(4) and (5)]; *Woodward* at [23(vii)(b)]).

(7) A defective certificate is a nullity. However, where a defective certificate is issued, there is nothing to prevent the prosecutor from subsequently issuing a further certificate which will be conclusive evidence of the relevant date if it complies with the statutory requirements (*Woodward* at [23(viii) and (ix)]).

(8) Where there is no valid certificate, the court must determine on all the available evidence whether the prosecution was brought in time (*Azam* at [25(1)]; *Woodward* at [23(x)]).

32. In view of the issues in the present case, it is necessary to examine some of these cases further, in particular those which support the sixth of these propositions. I shall take them chronologically, beginning with *Amvrosiou*, a road traffic case. Having set out the provisions of section 6 of the Road Traffic Act 1988, Auld LJ continued:

> "17. Ms Gumbel, who appears on behalf of the Applicant, submitted that the Magistrates were wrong to rule that they could not hear evidence going behind the certificate as to the date on which there was evidence sufficient for the prosecutor to mount these proceedings. She frankly conceded that there are no reported authorities giving guidance on the interpretation of section 6(3). However, she drew our attention to decisions in other contexts on the meaning of "conclusive evidence". She referred us to a number of cases of contract and of public record where the courts have had to consider how conclusive the evidence is wherever a dispute arises as to underlying matters. They show in the main a resolve by the court to give the predictable effect to those words. A good indication of the general approach is to be found in the judgment of Simonds J in *Kerr v Mottram Limited* [1940] Ch 657 where the term 'conclusive evidence' was considered in the context of the articles of association of a company. Simonds J said at page 660:
>
> 'I have no doubt that the words "conclusive evidence" mean what they say; that they are to be a bar to any evidence being tendered to show that the statements in the minutes are not correct.'
>
> 18. Ms Gumbel sought to distinguish that and the other authorities, to which she helpfully referred us, by reference to the fact that in the contract cases the conclusiveness of evidence was clearly the mutual intention of the parties, and in the cases of public record there was a public interest or an interest of a third party to be considered for whom certainty in such matters is important. She submitted that in the context of a prosecution of an individual there are different consideration. She maintained that the original six-month period for issuing proceedings should be given certainty, and that an extension of that time limit however achieved, in this instance by certification, on a basis that is not justified on the facts should be open to investigation by Magistrates.

> 19. Mr McGuinness, adopting the words of Simonds J in *Kerr v Mottram*, submitted that the subsection means what it says, that the certificate is conclusive evidence and that if a court, whether a magistrates court or this court, were to look at evidence put forward as capable of unseating the certificate the word 'conclusive' would have no meaning. He submitted that there were only two possible exceptions: (i) where it is plain that there has been fraud, and (ii) where the certificate is wrong or arguably wrong on its face.
>
> 20. He referred to a helpful summary of the law which is set out in volume 17 of the current edition of *Halsbury's Laws*, at paragraph 28, which has the side heading: "*Prima facie*, sufficient and conclusive evidence". As to 'conclusive evidence' it reads:
>
> 'Conclusive evidence means that no contrary evidence will be effective to displace it, unless the so-called conclusive evidence is inaccurate on its face, or fraud can be shown.'
>
> 21. It is not suggested here that the certificate can be said to be inaccurate on its face, and no fraud is alleged.
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> 22. The clear purpose of section 6(3) is to achieve certainty, both for the prosecutor and for the defendant, and to prevent what would otherwise be an exercise in discovery of the prosecuting process as to when a particular information came to hand and as to when decisions as to its sufficiency could or should have been made. Clearly any such possibility in the context of this sort of provision would be an intolerable burden to the prosecution and a cog on the wheels of justice at summary level.
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> 23. It has to be remembered, too, that the test in section 6(1) is whether the date on which evidence 'sufficient in the opinion of the prosecutor to warrant the proceedings has come to his knowledge'. As in many other matters concerning the prosecution of offences there is a margin of judgment given to the prosecutor. In my view, there is no way of going behind section 6(3) as suggested by Ms Gumbel so as to negate its clear provision that a certificate for this purpose is conclusive, save possibly in the two exceptional cases to which I have referred."

33. As the certificate in *Amvrosiou* was not inaccurate on its face and there was no suggestion of fraud, evidence which was said to show that the certificate was wrong was immaterial.

34. Accordingly *Amvrosiou* explains the policy justification for giving effect to a certificate which is valid on its face, emphasises that what matters is the "sufficiency" of evidence including consideration of the public interest in prosecuting, and allows for the possibility of only two exceptions to the validity of a certificate which is valid on its face.

35. The next case is *Morgans*, which contains at 983D-E the passage referred to above to the effect that the provisions must be strictly construed. The case decided that the words "sufficient in the opinion of the prosecutor to warrant the proceedings" in section 11(2) of the Computer Misuse Act 1990 were merely descriptive of the evidence and did not require the prosecutor to form his opinion before time began to run; accordingly time began to run once the prosecutor had all the material on which the prosecution was eventually brought. Kennedy LJ said:

> "Mr Blackman contends that the words 'sufficient in the opinion of the prosecutor to warrant the proceedings' are merely descriptive of the evidence, and that the prosecutor would not have to form his opinion before time begins to run. I accept that submission because otherwise the prosecutor, in full possession of all relevant information, can prevent time from running simply by not applying his mind to the case.
>
> Section 11 is an exception to the normal rule that summary offences should be prosecuted within six months. As an exception in favour of the prosecution it should be strictly construed. The draftsman could have provided that proceedings for an offence under subsection (1) 'may be brought within a period of six months from the date on which the prosecution forms the opinion that there is sufficient evidence to warrant proceedings' but he did not do so."

36. Thus the relevant date is the date on which the prosecutor has evidence which is sufficient in his opinion to warrant the proceedings, even if he or she has not yet formed that opinion. However, *Morgans* says nothing about what matters need to be taken into account as being relevant to the question whether there is sufficient evidence to warrant the proceedings. In particular, there is nothing to suggest that the question whether a prosecution is in the interests of justice does not need to be considered.

37. More fundamentally, it appears that *Amvrosiou* was not cited to the court in *Morgans* and there was no explanation of why the certificate in that case was not conclusive. The point was dealt with very shortly. Accordingly, the case deals with what I have called "the relevant date issue" but does not address at all "the grounds issue".

38. In *Burwell*, a case under the Computer Misuse Act 1990, the defendant sought to go behind a prosecutor's certificate in order to show that the police had acquired sufficient evidence to prosecute more than six months before the date stated in the certificate. This court rejected a submission that to allow the prosecution to issue a certificate which would effectively exclude enquiry as to the true facts was contrary to principle and to the rule of law. Keene LJ cited *Amvrosiou* with approval, pointing out at [15] that it had not been cited in *Morgans* and commenting at [19] that he preferred the reasoning in *Amvrosiou* to that in *Morgans* and that the absence of any consideration of the conclusive evidence provisions weakened the authority of *Morgans*. He added:

> "20. I would emphasise, however that that does not mean that a prosecutor can simply stall the start of proceedings, or use a certificate to present a date which is patently misleading. The first exception referred to by Auld LJ would seem to encompass the situation where the certificate is plainly (even if

> honestly) inaccurate, so that the decision of the prosecutor to certify would itself be amenable to challenge by way of judicial review on the usual grounds, or challengeable before the magistrates' court as an abuse of their process. But the certificate would have to be plainly wrong. The prosecutor is entitled to a degree of judgment as to when there is sufficient evidence available to warrant a prosecution. That, after all, is the purpose on the face of it of section 11(2)."

39. However, the certificate in *Burwell* was defective and therefore not conclusive.

40. The passage cited introduces the concept of a certificate being "plainly wrong", so that it could be challenged by a judicial review "on the usual grounds". It is fair to say that until the decision in *Lamont-Perkins v RSPCA* [2012] EWHC 1002 (Admin) discussed below, there was some uncertainty as to the correct procedure for challenging a certificate. However, it is important to keep in mind the distinction between the grounds on which a challenge can be made to a certificate (what I have called "the grounds issue") and the procedure for making a challenge (the "procedural issue"). The passage also contemplates an application to stay proceedings as an abuse of process, which raises separate considerations, for example if a prosecutor has deliberately stalled the start of proceedings. However, I cannot read this passage, which is premised on approval of *Amvrosiou*, as permitting a challenge to a certificate on the basis that a certificate is shown to be "plainly wrong" by reference to extraneous evidence. That would be directly contrary to what *Amvrosiou* decided. To read the passage as support for such a wider ground of challenge would be to place far too much weight on the (with respect) somewhat vague reference to "the usual grounds" for judicial review.

41. It is significant, however, that the court in *Burwell* saw no objection on policy grounds to the conclusive nature of a certificate which was valid on its face, and that as well as approving *Amvrosiou*, it recognised that the prosecutor is entitled to a degree of judgment in deciding when the evidence is sufficient to justify the commencement of proceedings.

42. *Johnson* was mainly concerned with the identity of the prosecutor ("the prosecutor issue"), but Pill LJ cited the passage from *Amvrosiou* as a correct statement of the law at [18] and [25]. The prosecuting body in *Johnson* was the RSPCA, but the individual who had signed the certificate was a Prosecution Case Manager who had signed in that capacity. Pill LJ held that the certificate was valid and conclusive, subject to arguments about abuse of process. What mattered for the purpose of commencement of the six-month time limit was not when the relevant knowledge could be said to have reached the RSPCA, but when it had reached the individual who was responsible for exercising a judgment whether it was sufficient to justify a prosecution:

> "33. There is no principle of law that knowledge in a prosecutor begins immediately any employee of the prosecutor has the relevant knowledge, and *Donnachie* [2007] EWHC 1846 (Admin) is not establish one. It is right that prosecutors are not entitled to shuffle papers between officers or sit on information so as to extend a time limit. There is, however, a degree of judgment involved in bringing a prosecution, and knowledge, in my judgment, involves an opportunity for those with appropriate skills to consider whether there is sufficient information to justify a prosecution."

43. The case recognises that shuffling papers or sitting on information may constitute an abuse of process, although it was held that this was not what had happened. Accordingly there was no abuse of process and the certificate, which was valid on its face, was conclusive.

44. The reasoning and decision in *Amvrosiou* were followed in *Azam*, where it was described by Cranston J as "the seminal case". Cranston J set out a series of principles derived from the authorities which included:

> "(4) A valid certificate is determinative of the matter unless the certificate is inaccurate on its face, or can be shown to be fraudulent.
>
> (5) The exception for a certificate inaccurate on its face applies only when the certificate is plainly, even if honestly, wrong. It must be patently misleading."

45. This is further support for the limited basis on which a certificate can be challenged. It shows that Cranston J read the reference in *Burwell* to a certificate being "plainly wrong" in the same way as I would read it, that is to say to a certificate which is wrong on its face.

46. In *King*, Toulson LJ referred at [9] to the "limited qualifications recognised in the case law" to the conclusive nature of the certificate, which in context is a clear reference to the qualifications (or exceptions) recognised in *Amvrosiou*.

47. In *Lamont-Perkins* Wyn Williams J cited the passage from *Amvrosiou* set out above and acknowledged at [32] that it had been followed in *Burwell, Azam* and *Johnson*. He continued:

> "35. On the basis of the decisions in *Amvrosiou, Burwell* and *Azam* it seems to me to be clear that a certificate issued under section 31(2) of the 2006 Act which conforms to the criteria specified in section 31(2) can be challenged on two bases alone. First, it can be challenged on the basis that it constitutes a fraud; second, it can be challenged on the basis that it is plainly wrong. The phrase 'patently misleading' is not, in my judgment, an additional basis upon which a certificate can be challenged; it is simply a phrase used in the judgment of Keene LJ and Cranston J in *Burwell* and *Azam* respectively to reinforce the notion that the certificates must be plainly wrong before it can be challenged."

48. I would respectfully agree that the phrase "patently misleading" is not an additional ground of challenge. Rather it sheds light on what is meant by saying that a certificate must be "plainly wrong". The significance of the word "patently" is that the certificate must be inaccurate on its face (the inaccuracy must be "patent") if it is to be successfully challenged.

49. This too is explicit support for the limited nature of the grounds on which a certificate can be challenged.

50. Mr Hockman suggested that some doubt is cast on this by some later comments of Wyn Williams J in *Lamont-Perkins*, where he said:

> "42. The decision in *Azam* appears to be authority for the proposition that a challenge to a certificate may be made only by way of judicial review or by application for a stay on the grounds of abuse of process – see paragraph 25(6) of the judgment as set out in paragraph 32 above. Further, it appears to decide that abuse of process can be made out only where the prosecutor has manipulated or misused the process so that a person is deprived of the time bar. Some form of misconduct is involved – see paragraph 25(7).
>
> 43. I find it difficult to see how [sc. to reconcile the fact that] a certificate issued under section 31(2) is susceptible to challenge on the grounds that it is plainly wrong (albeit that the mistake can be innocent) with the suggestion that if it is challenged on the basis that an abuse of process has occurred in which some form of misconduct is involved. No real difficulty arises if it is challenged by way of judicial review. In such a challenge it would be possible to argue unreasonableness or irrationality, which, in context, would be likely to be very similar to if not identical with the notion that the certificate was plainly wrong. However, to repeat, if the approach in *Azam* is followed a challenge before the magistrates' court would appear to require proof of some kind of misconduct.
>
> 44. The divergence in approach depending upon whether the challenge is brought by way of judicial review or by way of an allegation of abuse of process may, at first sight, appear interesting but unlikely to have much practical consequence. That is not the case, however, if the Appellant and Respondent are correct that the Respondent (or any other private prosecutor) is not susceptible to a challenge by way of judicial review and that the only mechanism for challenging a certificate issued by a private prosecutor is before the magistrates' court.
>
> 45. The difficulty identified in the preceding paragraph arises only if a challenge before the magistrates is permitted only on the grounds that an abuse of process has occurred. As is clear, however, in cases such as *Atkinson*, in particular, the challenge before the court has been a challenge to its jurisdiction.
>
> 46. In my judgment a magistrates' court has no jurisdiction to hear a summons alleging offences under the 2006 Act if the information upon which the summons is based was laid outside the time limit permitted by section 31(1). If no certificate under section 31(2) is issued by the prosecutor there can be no possible objection to an accused person challenging the

> jurisdiction of the court by asserting that the prosecutor has not laid an information within the time specified in section 31(1).
>
> 47. I can discern no principled basis for concluding that such a procedure is not open to an accused person if the prosecutor has issued a certificate under section 31(2) of the Act. A certificate under section 31(2) is conclusive evidence of the facts stated therein unless it is demonstrated that the certificate is plainly wrong. If the certificate is plainly wrong it has no effect and the magistrates must disregard it. They will then be left to determine whether or not the prosecutor has initiated proceedings within the time limit permitted by section 31(1) and if he has not the magistrates will have no jurisdiction to hear the summons in question.
>
> 48. I acknowledge that this approach is not the one which was suggested as appropriate in *Burwell* and *Azam* and endorsed in *RSPCA v Johnson*. However, the procedural issues raised in this case were not raised in any of those cases. Further, so far as I am aware, *Atkinson* was not cited in any of those cases. For my part, I consider the reasoning in the judgment of Auld LJ in *Atkinson* to be compelling."

51. These comments were solely concerned with the procedure for challenging a certificate and with the question of abuse of process, not with the grounds on which such a challenge might succeed. The potential grounds of challenge had already been addressed by Wyn Williams J at [35] (set out above) and were limited in accordance with *Amvrosiou* and the cases which had followed it. The point of these later comments, as the reference to *Atkinson v DPP* [2004] EWHC 1457 (Admin) makes clear, was that the challenge could be made in the magistrates' court itself and that a successful application would mean that the magistrates' court had no jurisdiction to continue. In saying that a certificate was conclusive unless it was "plainly wrong" it is reasonably clear, in my judgment, that what Wyn Williams J had in mind was a certificate which was plainly wrong on its face. That was what the cases which he cited had held. If (which I doubt) he intended to hold that a certificate could be challenged in judicial review proceedings as "plainly wrong" by reference to extraneous evidence, that was contrary in my judgment to the cases which he had previously cited as authoritative.

52. I can see no justification here for widening the scope of the concept of "plainly wrong" to permit an enquiry into extraneous facts. To do so would be to lose all the benefits of certainty which were held in *Amvrosiou* to be the clear purpose of such provisions and would introduce the "intolerable burden to the prosecution and a cog on the wheels of justice at summary level" to which Auld LJ referred.

53. *Letherbarrow* was another case concerned with the prosecutor issue, which followed and applied *Johnson*. The prosecutor was the council, but the person whose knowledge was relevant for the purpose of the time bar provision was the individual who had responsibility for "making the important decision whether to prosecute", a decision which was not merely "whether there is a *prima facie* case but whether the evidence is sufficient to justify a prosecution", a question which involved "a consideration of what is in the interests of justice":

> "although the prosecutor in the case as a whole is the collective body (here, the County Council), it is the individual with responsibility for deciding whether a prosecution should go forward whose thoughts and beliefs are relevant."

54. Mr Hockman relied also on what was said about delay by Gross LJ in *Riley*:

> "19. … this separation of the roles between investigators and prosecutors is not a charter for paper-shuffling, as Pill LJ observed in *Johnson's* case. In a case such as this, time starts running under section 31(1)(b) of the Act once a suitably qualified Crown Prosecution Service employee has knowledge of 'evidence which the prosecutor thinks is sufficient to justify the proceedings …' Internal Crown Prosecution Service delays or transfers of the file will not serve to extend time under that subsection – and the three year 'long stop' provision under section 31(1)(a) will not avail a prosecutor where relevant delay has exceeded the six-month period specified in section 31(1)(b)."

55. However, as Gross LJ had already pointed out at [12], the short point on which the case turned was whether the FSA or the CPS was to be regarded as "the prosecutor" for the purpose of the relevant provisions. Moreover, he went on to observe at [20] that on the facts of the case, there was nothing to undermine the CPS certificate. Accordingly the nature of the grounds on which such a certificate could be challenged was not an issue in the case and there is nothing in the judgment to call in question, or even comment on, the principles set out above.

56. Finally, in *Woodward* the first certificate was defective, but the prosecutor had issued a second certificate which was valid on its face. This court held that the District Judge was wrong to consider the validity of this second certificate by reference to extraneous evidence. Hickinbottom LJ said at [29]:

> "In considering the later certificates, he erred in taking into account extraneous evidence, namely what had been said in the March certificate. He ought to have considered the July 2016 certificates on their face, and asked himself whether there was anything patently wrong with them or whether they were fraudulent. There was, and is, no suggestion of fraud. Nor, in my judgment, was there anything clearly wrong on their face."

57. This is, therefore, a clear decision confirming that, in the absence of fraud, extraneous evidence is not admissible to challenge a certificate which is valid on its face. In my judgment the cases which I have cited make good the proposition that a valid certificate (i.e. signed by the right person and saying the right thing) is determinative of the relevant date unless the certificate is inaccurate on its face (i.e. plainly wrong on its face), or can be shown to be fraudulent.

Conclusions

58. In my judgment policy, language and authority lead firmly to the following conclusions which are decisive of this case.

59. First, although the prosecutor is the CPS, the relevant individual with responsibility for deciding whether to commence proceedings was Ms Sanghera. It is therefore her knowledge which counts for the purpose of section 41 of the Regulations. Mr Hockman's submission that time began to run from the date when the file was received by the CPS is untenable in view of the authorities which address the prosecutor issue.

60. Second, the decision whether the evidence was sufficient to justify proceedings which Ms Sanghera had to make required an exercise of judgment on her part, both as to whether the evidence amounted to a *prima facie* case and whether proceedings were in the public interest. However, the statutory question was when evidence which in her opinion satisfied those criteria came to her knowledge, and not (if different) when she formed the opinion that proceedings were justified. The date on which the relevant evidence came to her knowledge is not, however, to be equated with the date on which the relevant evidence was placed on her desk or delivered to her inbox. Rather it is the date on or by which it has been considered so that knowledge of the content has been imparted. In most cases, no doubt, and there is no reason to suppose that this case is different, that imparting of knowledge and the forming of opinion will happen together. The responsible individual will review the file and make a decision about prosecution. Hypothetically, however, if he or she were to review the file so as to have knowledge of all the relevant evidence, but only made a decision about prosecution at a later date, it seems to me that the date when the file was reviewed would be the date when the evidence came to the prosecutor's knowledge. To that limited extent, therefore, I respectfully disagree with Hickinbottom LJ's statement in *Woodward* at [23(iii)] that the relevant date is the date on which the prosecutor decides that it is in the public interest to prosecute.

61. Third, a prosecutor's certificate is not merely conclusive evidence of the date when particular pieces of evidence came to the prosecutor's knowledge. A certificate in proper form is conclusive evidence of the relevant date from which the six-month period begins to run.

62. Fourth, in the absence of fraud, a certificate in proper form which contains no error on its face is conclusive evidence of that date and is not open to challenge by reference to extraneous evidence showing that it is wrong or even plainly wrong. To hold otherwise would depart from a clear and consistent line of authority which rests on sound principles. It would lead to endless arguments as to whether the date stated on a certificate was "plainly wrong" or just "wrong" and what was meant to be added by the word "plainly". The facts of this case demonstrate all too clearly the good sense of this conclusion. Proceedings which were commenced in January 2018 have become bogged down in a dispute whether the proceedings are time barred and the court has jurisdiction. The delay of which the claimant complains, four months and 11 days between the initial receipt of the case by the CPS and the first review of the file, pales into insignificance when compared with the time which has been taken to resolve the time bar issue.

63. Accordingly the prosecutor's certificate in this case contains no error on its face and is therefore conclusive evidence that the relevant date was 8th November 2017. The proceedings were therefore in time. Evidence to the contrary suggesting that the relevant knowledge was acquired on some earlier date (the claimant says March 2017) is inadmissible. Equally, although there was some suggestion that the actual date on which the evidence justifying proceedings came to Ms Sanghera's knowledge may have been in early January 2018 rather than 8th November 2017, that too is inadmissible.

Ground 1: the District Judge was wrong to deal with the matter as if it were an application to stay the proceedings for abuse of process

64. Mr Hockman submitted that the District Judge was wrong to deal with the matter as if it were an application to stay for abuse of process on the basis that the claimant could not have a fair trial. In fact the challenge was to the jurisdiction of the court on the ground that the prosecution was time-barred. The difference in some cases could be important because the burden of proof is different. In the latter case, the burden is on the prosecution to show that the prosecution is not time-barred, although in practice the burden of proof is not significant where there is a valid prosecutor's certificate stating conclusively that the relevant date was a date less than six months before the commencement of proceedings.

65. As already indicated, I do not accept that the District Judge did deal with the matter as if it were an abuse application. She began by noting that the prosecution relied on a certificate and that there was no issue as to the validity of the second certificate which Ms Sanghera had issued. She referred to the claimant's argument that the court was entitled to examine the chronology of events notwithstanding the certificate and to the case law, including in particular *Woodward*. She observed that the certificate relied on was not "defective on its face or fraudulent", either of which would mean that it was not conclusive and concluded:

> "I regard the certificate of 5th April as conclusive evidence of the matters stated in it in accordance with r 41(2)."

66. This reasoning was all directed to the issue of time bar, addressed the questions discussed in the case law, and reached a clear conclusion.

67. The District Judge then continued:

> "I have, however, gone on to consider the chronology and the arguments put forward as to the history of the case prior to the date of the certificate to examine whether a fair trial can take place."

68. It may be that it was unnecessary for the District Judge to go on to consider abuse of process if there was no application before her to stay the proceedings on this ground, but it is understandable that she should have done so and in any event it is clear that this was an additional and distinct issue.

Ground 4: the proceedings should have been stayed as an abuse of process

69. I can deal with the question of abuse of process shortly. The District Judge concluded that despite the "disappointing" and "regrettable" delay between receipt of the file on 13th March 2017 and the first case review on 24th July 2017 a fair trial remained possible. That was a conclusion which she was entitled to reach and with which I agree. There is, moreover, no reason to suppose that there was anything approaching deliberate manipulation of the time limit or that it is in any way unfair for the case to proceed.

70. Mr Hockman submitted that if, on the evidence available, it is clear that the prosecutor's certificate mis-states the date when sufficient evidence came to the prosecutor's knowledge, that would mean that the certificate was "plainly wrong" and that it would be an abuse of process for the proceedings to continue. I would reject that submission. As the cases make clear, whether a certificate is "plainly wrong" must be determined, in the

absence of fraud, by reference to the face of the certificate and without regard to extraneous evidence. Absent fraud, a certificate which is valid on its face is conclusive evidence of the relevant date. If it were possible to circumvent this principle by dressing up a challenge to the certificate as an abuse of process argument, the purpose of the time bar provisions would be frustrated.

71. Abuse of process may have a role to play in an appropriate case. That may be so, even in a case where there is a conclusive certificate, for example if a prosecutor's failure to apply his or her mind to the sufficiency of evidence led to a delay which impacted on the fairness of the proceedings. That, no doubt, is the kind of consideration which courts have had in mind in emphasising that the conclusive evidence provisions must not be manipulated to deprive a defendant of the benefit of a time-bar defence and are "not a charter for paper-shuffling" (e.g. *Johnson* at [25] and *Riley* at [19]). But abuse of process is and should remain a separate question concerned with the fairness of the procedure and of the trial.

Disposal

72. For these reasons I would dismiss the claim for judicial review.

Mrs Justice Jefford:

73. I agree.

ORDER

UPON HEARING COUNSEL FOR THE CLAIMANT AND COUNSEL FOR THE INTERESTED PARTY AT A HEARING OF THE CLAIM FOR JUDICIAL REVIEW ON 17 OCTOBER 2019

IT IS ORDERED THAT:

1. The claim for judicial review is dismissed.

2. The Claimant is to pay the Interested Party's costs of the claim for judicial review in the sum of £12,202.

3. Payment of costs to be made within 28 days of this Order.

Dated this day 6th day of November 2019