Neutral Citation Number: [2025] EWHC 184 (Admin)

Case No: AC-2024-LON-003165

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2025

Before :

MRS JUSTICE YIP

- -

Between :

The King (on the application of Antony Bates)	**Claimant**
- and -	
Highbury Corner Magistrates' Court	**Defendant**
(District Judge Brennan)	
- and-	
James Westhead	**Interested Party**

- -
- -

Adrian Darbishire KC and Stuart Biggs (instructed by **Herbert Smith Freehills LLP**) for the **Claimant**
The Defendant was not represented and did not attend
The Interested Party attended in person

Hearing date: 23 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE YIP

Mrs Justice Yip :

1. This is an application for permission to apply for judicial review in relation to the issue of a summons against the Claimant, Antony Bates, and the sending of the matter to the Crown Court for trial. The summons was issued by District Judge Brennan, sitting at Highbury Corner Magistrates' Court on the application of the Interested Party, James Westhead. The Interested Party now agrees that the summons should not have been issued and cannot stand. I grant permission to apply for judicial review. I have heard submissions on behalf of the Claimant and from Mr Westhead in person and so will now deal with the substantive claim.

Background

2. Mr Westhead was a shareholder in hibu PLC ("Hibu"). Formerly known as Yell Group PLC, the company was best known for production of the Yellow Pages directory. Mr Bates was the company's Chief Financial Officer from November 2010 to May 2014. In 2013, Hibu went into administration. Proceedings before the Chancery Division in 2014 resulted in the approval of schemes of arrangement for the group. As a result of Hibu's insolvency, shareholders lost their investments.

3. A group of shareholders who are extremely angry about what happened have formed a company called the Hibu Shareholders Grouping Limited ("HSG"). Mr Westhead is a director of HSG. Mr Westhead told me that he had been fighting for justice for many years. He had been unable to secure funding for civil proceedings in this country. A group action in the United States failed, being struck out on jurisdictional grounds. He applied for a summons to commence a private prosecution as he had no other options left.

4. Mr Westhead firmly believes that Mr Bates, and other Hibu directors, are guilty of a complex fraud. This belief is unfounded. Mr Westhead has advanced no proper basis for making criminal allegations against Mr Bates.

The application for the summons

5. Mr Westhead submitted his application in May 2023 but, for an unknown reason, it was not processed by the court until much later. The application stated that the alleged offences were "fraud and embezzlement". There were a total of ten charges, all offences of dishonesty. Under the heading "Details of the alleged offences", it was stated that during Mr Bates' tenure at Hibu, "a significant number of financial irregularities occurred which all point to fraud." Details of the alleged "irregularities" followed. The detail is too lengthy to repeat here but, in summary, it is a narrative account which simply does not set out any particulars of criminal offending. Extracts from publicly available financial reports had been pasted into the application form and were relied upon as demonstrating that £1billion of assets had gone missing. Looking at the extracts in isolation, it is impossible to make sense of what they are. They could not, and did not, support the proposition that money had been dishonestly removed from the company.

6. The application form required Mr Westhead to concisely outline the grounds for asserting that the proposed defendant committed the alleged offences (Criminal Procedure Rules r.7.2.6). Mr Westhead alleged that Mr Bates had breached "each one

of the duties described in the [Companies Act] 2006." The relevant sections of the Act were referenced. The application then stated:

> "One must then consider the actions of Tony Bates against the Fraud Act 2006. I put it to the Courts that Tony Bates is guilty of fraud on all counts."

After referencing parts of the Fraud Act, the application continued:

> "I have placed before the courts serious allegations of fraud involving Tony Bates in his role as Chief Financial Officer of Yell.com/Hibu. All the allegations made in this submission can be supported by hard copies of the evidence and the evidence will be available at trial."

7. Mr Westhead stated that, before making the application, he had consulted a "fraud specialist" who had worked for the Serious Fraud Office, and a US lawyer called Cliff Haines, who had successfully sued Hibu in the US. He then said:

> "I respectfully ask the Courts to carefully deliberate whether Tony Bates, in his role as Chief Financial Officer, indulged in fraudulent activities …"

8. Mr Westhead signed the standard declarations to confirm that, "to the best of his knowledge, information and belief" the allegations were true, that the evidence on which he relied would be available at trial, that the details he had given were true and that the application disclosed all the information that was material to what the court must decide.

The issuing of the summons

9. It was not until May 2024, that the application was referred to DJ Brennan. The judge raised some queries, which a member of the court staff conveyed to Mr Westhead. The questions referred to the delay since the application was issued and asked whether Mr Westhead intended to abandon it. The judge also enquired as to whether there had been any further approach to the SFO and whether there had been any civil proceedings. Mr Westhead replied that he had approached the SFO in 2016 but they stood by their original decision (not to prosecute). A letter from the SFO dated 13 July 2015 addressed to Chris Belcher (a member of HSG who has assisted Mr Westhead in these proceedings) was provided to the judge. It said:

> "We have fully explored and reviewed this case to establish whether or not it is a matter that should be recommended to the Director SFO for a formal investigation and we have concluded that there is insufficient evidence to mount an investigation, which could be capable of resulting in a successful prosecution."

10. Mr Westhead also said that he could not get litigation funding for a civil claim in the UK but partnered with a US shareholder to bring proceedings against Mr Bates and others in the US. He said "The Judge decided that the UK courts were the most appropriate place for a case to be heard which is where I am now."

11. Mr Westhead was invited to send any further information for consideration by the District Judge. He produced a document headed "Basis for Making this application for Private Prosecution". In that document, he explained that shareholders had attempted to issue legal proceedings to recover their losses but had been unable to secure litigation funding. Mr Westhead concluded:

> "Which now brings me to the reason why this application is being submitted? If, based on the significant amounts of evidence placed before US lawyers and the US Courts, Antony Bates is convicted of breaching certain Acts of Parliament then I, as an ex-Yell.com/Hibu shareholder, will be able to satisfy the requirements and obtain litigation funding for all ex-shareholders."

12. Having considered the application and the additional material supplied by Mr Westhead, DJ Brennan decided to issue the summons. The judge's reasons noted that, in essence, the allegation was that there had been a billion pound fraud against shareholders. He noted the view of the SFO. He stated that an attempt to launch criminal proceedings in the USA had been declined on a "forum" basis, that is, that this country was the appropriate place to prosecute. The judge then said that he had considered that a motive in wanting to bring the prosecution was, if successful, to then be able to get litigation funding to bring civil proceedings but found that was not so dominant as to render the criminal proceedings an abuse of process. The judge considered that the application complied with CrimPR 7. Referring to *R(McGill) v Newcastle Magistrates' Court* [2024] EWHC 1207 (Admin), the judge said that there were no compelling reasons not to issue the summons.

Application to set the summons aside

13. On 29 August 2024, Mr Bates attended the court in response to the summons. He was represented by Counsel, Mr Biggs. Representatives of his solicitors were also in attendance. Mr Westhead was accompanied by a large number of supporters. Members of the press were also present. Mr Bates was required to enter the secure dock and was identified. The judge indicated that he intended to deal with the matter in the usual way. Mr Biggs asked to be heard on an application to set the summons aside. The judge agreed to hear submissions.

14. In the course of those submissions, Mr Biggs referred to:

    i) The High Court proceedings approving the restructuring schemes;

    ii) The fact that the US proceedings were dismissed in 2021 and that Mr Westhead had not issued his application for a summons properly;

    iii) That the SFO, Financial Conduct Authority and the Insolvency Service had all considered the allegations but decided not to investigate;

    iv) The complexity of the matter and the need to be satisfied that Mr Westhead would be able to produce the evidence required in order to successfully prosecute it;

v) The unlikelihood of the allegation that £1 billion had been moved to mislead Hibu's administrators;

vi) The apparent lack of any evidence from Hibu's auditors or administrators;

vii) The fact that the application consisted of a series of allegations and assertions with no substantive evidence.

Mr Biggs invited the judge to either dismiss the summons then or to list for a further hearing to consider full argument on both sides.

15. In reply, Mr Westhead denied that he had misled the court. He said that the fraudulent activity had not been known when the Chancery Division judgments were given.

16. Having heard the representations, the judge said that the arguments put forward by Counsel were valid arguments but were properly to be dealt with at the Crown Court. The charges were put and Mr Bates indicated not guilty pleas. The matter was sent to the Crown Court at Reading for trial.

The proceedings in this court

17. The claim for judicial review was issued on 20 September 2024.

18. On 27 September 2024, Ritchie J granted interim relief, staying the criminal proceedings until further order. He observed that there was "a strong prima facie case that the summonses were issued unlawfully".

19. The defendant court filed an Acknowledgment of Service on 7 October 2024, indicating that (as a court) it did not intend to make a submission. The court provided DJ Brennan's reasons for issuing the summons. It was also confirmed that the attendance note of the hearing on 29 August 2024 broadly met with the judge's recollection, although said that it was not the case that he had refused to hear the application. Having heard the prosecutor's submissions, he decided not to set the summons aside as there was no good reason to do so.

20. Mr Westhead filed his Acknowledgment of Service as Interested Party on 16 October 2024. He indicated that he intended to contest the claim. He sought additional time to file and serve his grounds for defending the claim, which the Claimant consented to.

21. On 28 October 2024, Lang J directed a "rolled-up hearing" to consider the application for permission to apply, with the substantive hearing to follow immediately if permission was granted.

22. In the interim, but apparently unknown to Lang J when she made her order, Counsel then acting for the Interested Party had written to this court confirming that he would not contest the claim. She had also purported to file a Notice of Discontinuance under section 23A of the Prosecution of Offences Act 1985 to discontinue the criminal charges. The notice indicated that:

> "The decision to discontinue these charges has been taken because after further review in line with the continuing duty of the prosecution, there is not a realistic prospect of conviction.

> This decision has been taken on the evidence, information and material provided as at the date of this letter. If more significant evidence, information or material is provided or discovered at a later date the decision to discontinue may be reconsidered."

Section 23A applies only where the Director of Public Prosecutions or a public authority has the conduct of the proceedings. The notice was accordingly not valid but provided a clear indication that Mr Westhead did not wish to continue with the criminal proceedings.

23. Given the Interested Party's stance, the Claimant's legal representatives prepared a draft consent order, providing for the quashing of the decisions to issue the summons and to send the case to the Crown Court. The draft order also provided for the Interested Party to pay the Claimant's costs. It was accompanied by a Statement of Reasons which, if agreed, the court would have been invited to endorse.

24. The Interested Party did consent to the quashing order but did not consent to any order for costs. The Statement of Reasons was not agreed. The Claimant's draft was robust in tone and sought to record that the Interested Party had misled the judge and had advanced allegations that were not supported by evidence. The Interested Party does not accept this. His proposed amendments to the Statement of Reasons suggest that he had acted mistakenly but in good faith, without understanding the rules of evidence. He acknowledged that "at this time" the allegations were not supported by admissible evidence.

The hearing before me

25. Mr Bates was represented by Mr Darbishire KC and Mr Biggs. Mr Westhead appeared in person. Mr Westhead unequivocally accepted that the criminal proceedings which had been initiated by the summons issued on his application should be brought to an end. He continued to consent to the quashing order sought. However, it was necessary to hear full submissions for two reasons.

26. First, a reasoned judgment was required so that all parties could understand the basis on which the summons was being quashed. The reasoning may have implications beyond the criminal proceedings which are the subject of this claim. During his submissions, Mr Westhead confirmed that it remains his intention to put his case in order and then to apply again for a summons against Mr Bates. It is also apparent that he and other members of HSG wish to bring prosecutions against other former Hibu directors and possibly others connected with Hibu. An application had been made by Mr Brian Corrin to the Wigan and Leigh Magistrates' Court for a summons to be issued against Mr Christian Wells, formerly Hibu's Secretary and General Counsel. It had been listed for a hearing. On 1 November 2024, Mr Westhead wrote to the court on Mr Corrin's behalf requesting that the application be removed from the list. Mr Westhead referred to what had happened in relation to the proceedings against Mr Bates and suggested that, rather than abandoning his prosecution altogether, Mr Corrin intended to "amend his application and simplify the number of charges".

27. Secondly, the Claimant wishes to pursue applications for costs against the Interested Party. Those applications and the legal basis for them were only set out the afternoon before the hearing. A sum approaching £200,000 (plus VAT) is sought in relation to

the criminal proceedings alone. The costs of the judicial review proceedings have not yet been quantified but are also likely to be significant. Mr Darbishire acknowledged that Mr Westhead may not have had adequate time to consider and respond to the costs applications and that it may be reasonable to defer consideration of costs until a later date. In any event, the costs applications raise issues of law that call for proper consideration. There would not have been sufficient time to deal with those applications on the day. The reasoning contained in this judgment may be relevant to issues on the costs applications.

The parties' positions

28. The Claimant's position is that the application for a summons against him was misconceived, not supported by evidence and made in circumstances where the Interested Party could never have seen the criminal proceedings through. As such, the application was an abuse of process.

29. The Interested Party agrees that his application was deficient but maintains that the deficiency resulted from his lack of understanding of evidential and procedural matters. He asserts that he does have evidence to support the allegations but that his evidence "needs to be in a format suitable for the Crown Court". He told me that he thought that the Magistrates' Court would ask for evidence if it was required and that the opportunity to present his evidence would be in the Crown Court. He asked that the judgment of this court did not find his application to have been vexatious since he wished to maintain a route for future action when he had taken the time to get the case watertight.

30. The Claimant filed and served a core bundle and two supplementary bundles of documents for the hearing. The bundles contained a substantial amount of evidence, including extracts from company accounts, financial reports, documents from the US litigation and judgments and transcripts from the Chancery Division proceedings.

31. Mr Westhead produced no evidence at all. He told me that this was because he understood that the judicial review would just consider DJ Brennan's decision and that he did not realise that evidence would be considered. As I observed to Mr Westhead during the hearing, it was rather hard to understand why he would think that he could not refer to any evidence when the Claimant had produced several bundles of documents. He was asking the court to deal with the judicial review on the basis that, although the summons had been unlawfully issued at the time, there was in fact evidence to support his allegations. He insisted he had 198 pages of evidence but accepted that he had not yet engaged in any analysis or pulling together of the evidence to address whether it could support a criminal prosecution.

32. Mr Westhead began his submissions by outlining how he saw the case against Mr Bates. None of what he said had been placed in evidence. Mr Westhead understood that a court could only proceed on the basis of the evidence presented to it. He referred to a High Court Judge saying the same thing in the Chancery Division proceedings. He began to tell me about an opinion from Mark Cawson QC (as he then was). I explained to Mr Westhead that legal advice was privileged but that if he continued to refer to the contents of the opinion, he may be taken to waive privilege and the Claimant might then seek disclosure of it. Mr Westhead said he had no objection to providing it although he did not have it with him.

33. Mr Westhead's firm stance was that the problem with his application for a summons was procedural rather than substantive. He said that he intended to put his case in order and then issue a further application. I therefore considered it sensible to explore what evidence was available to Mr Westhead. I did not want him to be left with the impression that my reasoning might have been different if he had placed his evidence before the court, if that was not in fact the case. Sensibly, the Claimant did not object to me taking this course. It was plainly in all parties' interests to know whether the summons was being quashed on a procedural basis or for a more fundamental reason.

34. Mr Westhead had very little evidence with him at court but did produce one document obtained through a credit reference agency in the Netherlands containing information about Yell Finance BV. A central plank of Mr Westhead's belief that Mr Bates has committed fraud is an allegation that Mr Bates participated in the removal of £1billion from Hibu, transferring it to the Netherlands. Mr Westhead relied upon this single page document as showing that Mr Bates was the sole director of Yell Finance BV and that "serious amounts of cash were going into and out of the company". He suggested that there could be no reason for that other than that Mr Bates was trying to hide something. He said that there were no accounts for Hibu for the period 2013 to 2015 which is when "lots of fraud was taking place."

35. This evidence is so far from being evidence of fraud that it is hard to know where to start. Mr Westhead's belief that it establishes what he says it does demonstrates just how misconceived his allegations are. Over the short adjournment for lunch, the Claimant was able to obtain the accounts for Yell Finance BV for the year ended 31 March 2012. Those accounts were audited by PwC. The information contained in the document on which Mr Westhead relies comes from the accounts. The balance sheet showing the company's financial position at 31 March 2012 supports what Mr Bates has consistently said, namely that there was no transfer of cash but rather that this was an accounting process whereby debt was swapped for equity. Nothing was hidden or concealed. Further, Yell Finance BV was not created by Mr Bates and he was not the sole director. It had been incorporated in 2001, well before Mr Bates joined the group.

36. Mr Darbishire was also able to demonstrate that the extracts from accounts which Mr Westhead had pasted into his application for the summons involved inappropriate comparison of the company's balance sheet with that for the group. He pointed to the annual report for the year ended 31 March 2012 which contained a table showing the group and company balance sheets side by side. It was apparent that nothing had disappeared or been concealed.

37. Quite simply, Mr Westhead was unable to produce any evidence of fraud or to advance any credible basis for maintaining the allegations against Mr Bates. Mr Darbishire described the prosecution case as a dogged insistence on the allegations without any evidence. He contended that the proposed charges were based on assertions, conspiracy theories, supposition and a complete refusal to engage with the reality of the situation. I think that is a fair characterisation.

38. Even after Mr Darbishire had patiently gone through the relevant materials pointing out the obvious answers to Mr Westhead's interpretations, Mr Westhead simply could not, or would not, accept that he may be wrong. He needs to understand that the prosecution he sought to bring has not failed merely because he has not yet pulled all the evidence together. The two pieces of evidence that he has so far managed to produce do not

show what he claims they show. His analysis of that evidence is wholly wrong. That is not going to be improved by further time to put the evidence into an appropriate form for the criminal courts.

Analysis of the application for a summons

39. The duties of a private prosecutor are clearly articulated in *R (Kay) v Leeds Magistrates' Court* [2018] EWHC 2018 (Admin); [2018] 4 W.L.R. 91 at paragraph 23. While the Code for Crown Prosecutors does not apply to private prosecutions, a private prosecutor is subject to the same obligations as a Minister for Justice as are the public prosecuting authorities – including the duty to ensure that all relevant material is made available for the court and the defence.

40. The duty of candour is important. It requires the prosecutor making an ex parte application to "put on his defence hat" and ask himself what the defendant would be saying to the judge and to then put that before the judge. The declaration which Mr Westhead was required to sign, and did sign, contained a statement that his application disclosed all the information that was material to the court's decision.

41. In this case, there was plainly material which should have been placed before the judge but which was not. Some of the information provided was frankly misleading. It appears that Mr Westhead did inform the court (whether initially or later but before the summons was issued) that the SFO had concluded that there was insufficient evidence to mount an investigation which could lead to a successful prosecution. He did not tell the court about the High Court Chancery Division proceedings which had approved the restructuring which was closely linked to the allegations of fraud. As far as the US proceedings were concerned, Mr Westhead gave the impression that supportive evidence had been placed before the US court and that the US court had decided that the case should be dealt with in the UK. He did not inform the Magistrates' Court that Mr Bates and the other defendants to the US proceedings had given full explanations in their defence nor that they had obtained and relied upon the expert opinion of the former President of the UK Supreme Court which undermined his claims. In particular, Lord Neuberger highlighted the lack of any proper particularisation of alleged dishonesty.

42. Mr Westhead accepted that he had not engaged in any proper analysis or pulling together of the evidence before making his application. It is apparent that the allegations were not in fact based on any evidential analysis but rather were unsubstantiated assertions.

43. Mr Westhead has been assisted in these proceedings by Dr Chris Belcher, who describes himself as "a Director of Hibu Shareholders Grouping Ltd, and the founder of Hibu Shareholders Group". Dr Belcher prepared the skeleton argument for the hearing which was adopted by Mr Westhead. In an email from Dr Belcher dated 17 January 2024, representations were made that no costs order should be made against Mr Westhead. In that context, it was stated:

> "He was not able to afford legal advice, and such was his mental health at the time of filing he did not disclose to any of his fellow Directors that he was making the application as he did not want to be discouraged from submitting a private prosecution."

44. This provides evidence that Mr Westhead initiated a private prosecution without any proper reflection on whether that was appropriate. He had apparently given no thought to how he could conduct the proceedings without legal assistance or indeed how he would be able to put his case in order, given he had not done so to that point.

45. In short, Mr Westhead did not comply with any of the duties required of a prosecutor. He failed to comply with the duty of candour. He did not conduct any proper analysis of what needed to be established to prove the charges he sought to advance. He did not analyse whether there was any evidence to support those charges. He did not comply with the requirements of rule 7 of the Criminal Procedure Rules.

46. Having reached those conclusions, it is unnecessary to consider Mr Westhead's motivations in seeking to bring criminal proceedings. He had expressly said that the underlying purpose was to obtain litigation funding for a civil claim. I note in passing that the limitation period for a civil claim had expired by then. There is also evidence, in the form of reports on a website with which Mr Westhead and other members of HSG are associated, that satisfaction was derived from seeing Mr Bates in the dock in the Magistrates' Court in front of a full public gallery. However, a desire to seek financial restitution and so see justice publicly done does not automatically mean that criminal proceedings are inappropriate. The essential problem in this case was not that Mr Westhead may have had additional motives for prosecuting but that there was simply no proper basis for the prosecution to be brought. The proposed charges were misconceived and not supported by evidence.

47. In all the circumstances, the application for a summons was vexatious and an abuse of the process of the court.

The decision to issue the summons

48. With respect to the District Judge, the summons should not have been issued. Notwithstanding the failure of the prosecutor to comply with the duty of candour, the application was itself sufficiently flawed that it should not have been granted. The judge was wrong to conclude that the application complied with CrimPR 7. It did not give sufficiently coherent particulars of the alleged offences (r.7.3(1)(b)) nor did it provide any proper outline of the grounds for asserting Mr Bates had committed the alleged offences (r.7.2(6)).

49. The additional information provided by the prosecutor in May 2024 ought to have alerted the judge to the fact that there was more to this application than he had been told. He was aware that the SFO had concluded that there was insufficient evidence to mount an investigation that could lead to successful prosecution. There was nothing to suggest that those evidential difficulties had been overcome. Apart from the very limited material extracted from financial reports (which in truth demonstrated nothing), the application was silent as to any evidence to support the allegations. Issuing a summons in relation to an alleged £1billion fraud was a serious step. It was not a step that could rationally be taken on the basis of the material before the judge. At the very least, he should not have proceeded to issue the summons on an ex parte basis. There was no good reason why Mr Bates could not have been given notice and allowed to make representations before the application was decided.

The refusal of the application to set the summons aside

50. The right of an individual to apply to the Magistrates' Court to set aside or stay a summons is an important safeguard. Having issued the summons, the District Judge ought to have exercised his power to set aside on 29 August 2024.

51. I well understand the pressures on a busy Magistrates' Court. In his helpful response to the claim, DJ Brennan indicated that he recognised the need to hear and consider submissions and relied upon the fact that the hearing lasted approximately 20 minutes. This is perhaps an indication of the limited time available to him, no doubt in the course of a busy list. It is fair to say that the hearing before this court occupied significantly more time. The judge appears to have accepted that Counsel had raised valid arguments on Mr Bates' behalf but thought such arguments were more properly resolved in the Crown Court. That was not a proper approach. Mr Bates was entitled to have his arguments fully considered in the Magistrates' Court. Sending him to the Crown Court would only have wasted the valuable and limited resources there. For the reasons already given, the summons should not have been issued in the first place. The further information provided during the hearing and the submissions made clearly demonstrated that the criminal proceedings were misconceived, vexatious and abusive. The only rational response was to set the summons aside.

Conclusion

52. Mr Westhead's application for a summons was misconceived, vexatious and abusive. The summons should never have been issued and the matter should not have been sent to the Crown Court for trial.

53. The claim for judicial review succeeds. Mr Bates is entitled to an order quashing both the issue of the summons and the decision to send him to Reading Crown Court for trial.