Neutral Citation No: [2023] NIKB 66	*Ref:* **HUM12178**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **30/05/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

IN THE MATTER OF AN APPLICATION BY KATHLEEN GRAHAM FOR JUDICIAL REVIEW

_____

Dessie Hutton KC and Aidan McGowan (instructed by Harte Coyle Collins) for the Applicant
Tony McGleenan KC and Laura Curran (instructed by the Crown Solicitor's Office) for the Respondent

_____

HUMPHREYS J

Introduction

[1] I delivered a judgment on the leave application in these judicial review proceedings in November 2022, neutral citation [2022] NIKB 25. I was satisfied that the applicant had established an arguable case that the respondent, the PSNI, had breached the duties which it owed, in statute and at common law, to investigate the murder of the applicant's sister, Rosaleen O'Kane, which occurred on 17 September 1976. Leave to apply for judicial review was granted on this single ground.

[2] Ms O'Kane's body was found in her flat in Cliftonpark Avenue in Belfast by members of the fire brigade. It was evident that there were multiple seats of fire in the flat and the evidence strongly indicated that she had died before the fires were started.

Background

[3] At para [8] of my judgment in the leave application, I summarised the applicant's evidence and chronology of events as follows:

(i) Initial reports were that the police believed the fire to have been accidental;

(ii) Just after the funeral, the family was visited by two police officers who indicated that Rosaleen had been murdered and, bizarrely, that 'black magic' may have been involved;

(iii) At the inquest in October 1977 an open verdict was delivered but it was made clear that the police were treating the case as one of murder;

(iv) On 20 January 2002 the applicant, her family and legal advisers met with police who informed them that the investigation was still open, that one man had been interviewed after caution and a statement had been provided to the police from a man stating that he and others had started a fire in the area on that date. A re-investigation was being conducted and DCI Armstrong and Superintendent Brannigan would be in touch within four weeks;

(v) Three items of correspondence followed from DCI Armstrong in 2002 pursuing certain lines of inquiry but these appear to have been unanswered;

(vi) In August 2003 the applicant's solicitor wrote to the Chief Constable, the Coroner, the DPP and the Secretary of State complaining of the lack of any article 2 compliant investigation into the death. The NIO replied, stating that the procedural obligations imposed by article 2 do not apply to deaths predating the coming into force of the Human Rights Act 1998 on 2 October 2000;

(vii) In July 2004 further correspondence issued to the Chief Constable seeking certain information and documentation. On 12 October 2004 the PSNI informed the applicant's solicitor that the Serious Crime Review Team ("SCRT") had been established earlier that year and was carrying out a preliminary case assessment into the death;

(viii) On 20 June 2005 the PSNI provided documentation including inquest depositions, photographs and medical reports;

(ix) In October 2006 Detective Inspector Nicholl was appointed to further investigate the death;

(x) However, by July 2007, the matter had fallen into the workload of the Historical Enquiries Team ("HET"). A meeting took place between HET investigators and the family on 16 July 2008;

(xi) In November 2010 the investigation was passed back by HET to SCRT as a result of the need for 'further clarification' regarding forensic issues;

(xii) A meeting took place on 15 March 2011 with DCI Agnew of the SCRT. He explained that HET deemed the death not to be Troubles related;

(xiii) At a further meeting on 13 September 2011 PSNI stated that a report was being written which would make a number of recommendations and this would be forwarded to the Retrospective Murder Investigation Team ("REMIT") to consider arrest or voluntary attendance of the person who had made the previous statement;

(xiv) Despite this, it would appear that the family were not informed of any progress until 2016 at which time an application was made to the Attorney General for the holding of a fresh inquest;

(xv) Eventually, by letter dated 11 August 2016, the family were told that a number of recommendations had been made by SCRT in 2011 and the case transferred to REMIT. By that time, responsibility for legacy cases, including the death of Rosaleen O'Kane, had passed to the Legacy Investigation Branch ("LIB") of the PSNI. They were informed that the LIB caseload extended to over 1000 cases and they would be advised when work was to commence on this particular death;

(xvi) On 31 August 2017 the Attorney General declined the request for a fresh inquest;

(xvii) On 16 October 2017 the applicant's solicitors wrote a pre-action protocol letter to the LIB, asserting that the failure to investigate and pursue reasonable lines of inquiry was unlawful, in reliance on article 2 and section 32 of the Police (Northern Ireland) Act 2000 ("the 2000 Act");

(xviii) By a response dated 1 November 2017 the PSNI stated that the SCRT review "did not identify any credible investigative opportunities but did make recommendations … these recommendations have not yet been carried out." It also rejected the claimed basis for judicial review on the grounds that article 2 was not in play and that the application was out of time;

(xix) A second pre-action letter was sent on 6 December 2017, again rejecting the police claim that there were no credible investigative opportunities;

(xx) A complaint was made to the Police Ombudsman on 11 January 2018 but was rejected as being outside the 12 month time limit for such complaints;

(xxi) The Attorney General refused a further request for a fresh inquest on 25 May 2018;

(xxii) A further pre-action protocol letter was sent to the PSNI on 15 September 2021 and, ultimately, these proceedings were commenced on 1 March 2022.

The Respondent's Evidence

[4] An affidavit has been sworn by Detective Superintendent Nicola Marshall, deputy head of the LIB. She deposes to the detail of the steps taken by the RUC and PSNI following her review of the case papers.

[5] The steps taken by the police have included:

(i) Research into a potential suspect named by the applicant's brother;

(ii) Obtaining records from the coroner's and public records offices;

(iii) Making enquiries of police officers involved in the original investigation;

(iv) Considering claims that the death may have been associated with the Shankill Butchers; and

(v) Seeking advice on the merits of an exhumation of the body.

[6] Exhibited to the affidavit is a report compiled by DCI Armstrong in August 2002. It outlines a number of enquiries made by him, including the identification of a handwritten caution statement made on 11 November 1976 by an individual ciphered as "KW1." This says that another individual, KP1, told him that he and two others, KP2 and KP3, broke into a house on Cliftonpark Avenue some four to five weeks earlier and set it on fire. The officer who took the statement was spoken to but could not recall what action was taken in respect of it, although he did remember that KP2 had been the leader of a gang thought to be responsible for a number of murders in the area. There was no evidence that any of these individuals were ever arrested or interviewed in relation to the death of Rosaleen O'Kane, although they were convicted of other unrelated offences.

[7] The report concludes "enquiries need to be made to either connect or eliminate KP1, KP3 and KP2 in the incident resulting in the death of Rosaleen O'Kane" and this is accompanied by a request that further investigations be carried out by local CID.

[8] There is no evidence that any action was taken on foot of this report, whether by local CID or anyone else.

[9] The SCRT carried out its Preliminary Case Assessment in September 2004. It names KP1, KP2 and KP3 as suspects, and gives their ages and addresses. DS Desmond Brown of the SCRT compiled a report dated 17 September 2004 which notes "it does not appear that a murder investigation was ever instigated."

[10] There is no evidence of any further investigative steps being taken. Most notably, despite having the names and addresses of three suspects, no action is taken in relation to them.

[11] A further report emanated from SCRT, this time from Detective Inspector McErlane, dated 6 April 2005, recommending that "further research" be carried out into locating the three suspects.

[12] On 16 December 2005 DCI Armstrong sets out the further steps which had by then been taken. All four ciphered individuals had been convicted of serious crimes and released from prison on licence. It had been identified that KP1 was living in Northern Ireland and was in receipt of benefits whilst KW1 was thought to be living in England.

[13] By February 2006 the matter had reached DS Stewart who was of the opinion that the case "would require further enquiry." Specifically, he recommended that the matter be allocated to a Senior Investigative Officer within C2 for further investigation.

[14] Eight months later, on 23 October 2006, DI Gareth Nicholl was appointed to investigate. His superiors directed him to attempt to locate KW1 and speak to him to clarify the statement made by him and the circumstances surrounding it. Consideration would then require to be given to interviewing the three or four suspects.

[15] In June 2007, nothing further having been communicated, the applicant's solicitor made a formal request that the matter be transferred to the HET. It would seem that by March 2008 HET had agreed to review the matter. However, by January 2010, responsibility passed back to SCRT.

[16] On 4 March 2010 DCI Agnew of SCRT produced a 'Case Assessment.' Some 7½ years after the report of DCI Armstrong, this report recommends, inter alia:

(i) KW1 should be interviewed about the circumstances behind the making of the statement in 1976;

(ii) This may lead to the interviewing of KP1, KP2 and KP3 after caution.

[17] A year later, on 15 March 2011, DCI Agnew met with the applicant and her solicitor. By September 2011, DI Miskimmin had taken over responsibility from DCI Agnew and a further meeting took place. At that time, it was stressed that there were still potential lines of enquiry and that a report would follow, within two days, to REMIT with recommendations to be carried out. The minutes of that meeting state:

> "Mrs Graham then asked why, if police had been in possession of this statement in 1976 and had also discussed it in 2002, something hadn't been done then or in the past nine years. DI Miskimmin apologised and stated he did not know why."

[18] DI Miskimmin's report was produced on 14 September 2011. In effect, this simply adopts the recommendations in the Case Assessment dated March 2010 and comments that the individuals "should have been considered worthy of investigation."

[19] The case and these recommendations then passed to REMIT. It was not allocated for almost three years. A memo dated 12 August 2014 states that the case should be allocated to a Detective Sergeant for investigation. On 21 August 2014 papers were sent to DC Nugent, with a request for a family meeting and weekly updates on the recommendations were to be provided by email.

[20] Three months later, on 21 November 2014, inexplicably, a direction was made to archive the papers relating to the murder of Rosaleen O'Kane.

[21] The case passed into the LIB workload in January 2015. In a response to a pre-action protocol letter on 1 October 2021 the respondent asserted:

> "No current credible investigative opportunities exist to progress the investigation."

[22] No further police action was taken until leave was granted in these judicial review proceedings. Just a month later, on 22 December 2022, DS Marshall directed an officer to trace KW1, over 20 years after the same recommendation was made by DCI Armstrong. It transpired, on enquiry from the Department for Work and Pensions ('DWP') in England, that he had passed away on 11 September 2011. It appears clear that information relating to KW1, including his last address, was readily available to PSNI on request from DWP.

[23] In her affidavit DS Marshall asserts:

(i) All possible lines of enquiry were identified and many pursued to exhaustion;

(ii) Three recommendations were made to see if any further information could come to light which could provide the basis for further investigation;

(iii) Unfortunately, due to the structuring of legacy investigations and the strains on police resources, these recommendations could not be pursued "immediately";

(iv) In light of the death of KW1, she does not consider that there are any further steps which could be taken by police to further lines of enquiry.

[24] At para [9] of the leave judgment, I expressed a provisional view, in the absence of any evidence from the respondent that:

> "… the applicant and her family have been treated appallingly by those charged with the investigation of the death of their loved one. At every step they have been pushed from pillar to post and met with inactivity, delay and a want of basic communication."

[25] Having now had the opportunity to consider the evidence of DS Marshall, and the relevant documentation exhibited, I have reached a concluded view. The manner in which this investigation was conducted was considerably worse than I had initially found. For a period of almost 50 years to elapse without obvious suspects being arrested, interviewed or even spoken to is frankly both shocking and disgraceful.

[26] The analysis postulated by DS Marshall simply does not accord with reality. The investigation has been characterised by egregious and unexplained failures and delays. These have included:

(i) The failure from the very outset to treat this death as a murder investigation;

(ii) The lack of any action between 1976 and 2002 concerning the identified suspects;

(iii) The failure to act on foot of DCI Armstrong's report in August 2002 despite there being a statement that the enquiries needed to be made;

(iv) The fact that even when the suspects' addresses are identified in September 2004, nothing is done;

(v) Even when it is acknowledged in 2005 that each of the four individuals was on licence, and therefore their whereabouts ought to be readily known, no one took the basic step to find them;

(vi) The specific recommendation made in February 2006 was not actioned for eight months;

(vii) When DI Nicholl was finally tasked to investigate, he apparently did nothing;

(viii) By March 2010, the same recommendations were being repeated with no consequent action ensuing;

(ix) The same recommendations having been adopted in 2011, three more years pass during which time KW1 dies;

(x) The sole action taken by REMIT appears to have been archiving the case papers;

(xi) The case has sat untouched in the LIB for the last seven years;

(xii) When a judicial review court grants leave, the simplest of policing steps is taken which generates the information in relation to KW1, including his date of death and last known address;

(xiii) Despite all of this, the respondent states that there are "no credible investigative opportunities."

The Legal Principles

[27] Section 32 of the Police (Northern Ireland) Act 2000 provides:

> "(1) It shall be the general duty of police officers—
>
> (a) to protect life and property;
>
> (b) to preserve order;
>
> (c) to prevent the commission of offences;
>
> (d) where an offence has been committed, to take measures to bring the offender to justice."

[28] There is no statutory equivalent of section 32 in England & Wales, but it is recognised that the police in that jurisdiction operate under identical duties at common law. Given that such duties, rather than mere powers, are imposed there must be circumstances in which the courts should identify a breach of duty and act accordingly.

[29] Constitutional and administrative lawyers have much to thank Raymond Blackburn for. A moral and political crusader, he brought a series of challenges before the courts long before judicial review became the fashionable battleground of the 21st century.

[30] Mr Blackburn had particular antipathy towards a triumvirate of moral evils – gambling, pornography and the European Economic Community. In *R v Commissioner of Police of the Metropolis ex p. Blackburn* (1968) 2 QB 118, challenged a decision of the Commissioner not to enforce certain of the gaming laws in London. He sought an order of mandamus requiring the Metropolitan Police to reverse this decision and enforce the law as it then stood. The respondent contended that it owed no duty to the public to enforce the law, an argument emphatically rejected by the Court of Appeal. Lord Denning MR stated:

> "I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may

> go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought."

[31] However, the court also recognised that the police enjoy a broad discretion:

> "For instance, it is for the Commissioner of Police of the Metropolis, or the chief constable, as the case may be, to decide in any particular case whether inquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide. But there are some policy decisions with which, I think, the courts in a case can, if necessary, interfere. Suppose a chief constable were to issue a directive to his men that no person should be prosecuted for stealing any goods less than £100 in value. I should have thought that the court could countermand it. He would be failing in his duty to enforce the law."

[32] Five years later, Mr Blackburn turned his attention to pornography and the claim that the Metropolitan Police were failing to enforce the Obscene Publications Act 1959. In *R v Commissioner of Police of the Metropolis ex p. Blackburn (no. 3)* (1973) QB 241 Roskill LJ commented on the previous case:

> "This court held that the respondent owed a duty to the public to enforce the law which he could be compelled to perform and that while he had a discretion not to prosecute in particular cases, his discretion was not an absolute discretion"

[33] The learned Lord Justice also stated:

> "It is no part of the duty of this court to presume to tell the respondent how to conduct the affairs of the Metropolitan Police, nor how to deploy his all too limited resources at a time of ever-increasing crime, especially of crimes of violence in London."

[34] By the time Mr Blackburn returned to the courts "the river of pornography" had "flooded over" and the law was, he claimed, still not being enforced. Again,

however, in *R -v- Commissioner of Police of the Metropolis ex p. Blackburn (no. 4)* (The Times, 7.3.80) the courts declined to intervene. In the words of Lawton LJ:

> "This court may be able to make an order of mandamus if the Commissioner, or any Chief Constable, makes no attempt to enforce the law; but in my judgment this court has no jurisdiction to tell the Commissioner how he is to perform his duties."

[35] In each of the *Blackburn* cases relief was refused, for different reasons, but they do reveal that the courts have a role to play, in the exercise of their supervisory jurisdiction, in relation to the police's obligation to enforce the law and investigate crime. However, the role is a demonstrably limited one which recognises the wide operational discretion enjoyed by the police.

[36] This is illustrated by the House of Lords decision in *R v Chief Constable of Sussex ex p. International Trader's Ferry* [1999] 2 AC 418 in which the applicant sought to impugn a decision to reduce the level of policing cover available to address animal rights protests at a ferry port. Lord Slynn commented:

> "In a situation where there are conflicting rights and the police have a duty to uphold the law the police may, in deciding what to do, have to balance a number of factors, not the least of which is the likelihood of a serious breach of the peace being committed. That balancing involves the exercise of judgment and discretion.
>
> The courts have long made it clear that, though they will readily review the way in which decisions are reached, they will respect the margin of appreciation or discretion which a chief constable has. He knows through his officers the local situation, the availability of officers and his financial resources, the other demands on the police in the area at different times: *Chief Constable of the North Wales Police v. Evans [1982] 1 W.L.R. 1155* , 1174. Where the use of limited resources has to be decided the undesirability of the court stepping in too quickly was made very clear by Sir Thomas Bingham M.R. in *Reg. v. Cambridge Health Authority, Ex parte B. [1995] 1 W.L.R. 898* , 906 and underlined by Kennedy L.J. in the present case. In the former the Master of the Rolls said in relation to the decisions which have to be taken by health authorities "difficult and agonising judgments have to be made as to how a limited budget is best allocated to the maximum advantage of the maximum number of patients. That is not a judgment which the court can make." The facts here are

> different and the statutory obligations are different but mutatis mutandis the principle is relevant to the present case."

[37] In *Michael v- Chief Constable of South Wales* [2015] UKSC 2, the Supreme Court confirmed that the duty owed by the police for the preservation of peace was owed to the public at large and did not normally give rise to a private law duty of care. Lord Reed picked up this theme in *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4:

> "Lord Toulson explained in the case of *Michael* at paras 29-35 that the police owe a duty to the public at large for the prevention of violence and disorder. That public law duty has a number of legal consequences. For example, the police cannot lawfully charge members of the public for performing their duty (*Glasbrook Bros Ltd v Glamorgan County Council [1925] AC 270*), and a police officer who wilfully fails to perform his duty may be guilty of a criminal offence (*R v Dytham [1979] QB 722*). Some members of the public may have standing to enforce the duty, for example in proceedings for judicial review (*R v Commissioner of Police of the Metropolis, Ex p Blackburn [1968] 2 QB 118*), but in doing so they are not enforcing a duty owed to them as individuals." [para 43]

[38] In *Re B (Children: Police Investigation)* [2022] EWCA Civ 982, a case concerning an injunction to prevent police from conducting interviews with children in the context of ongoing family proceedings, Macur LJ stated:

> "There is no exhaustive definition of police powers and obligations. Arguably, the core duty is to protect the public, including by detecting and preventing crime, although there is no duty to investigate every crime. Decisions in this regard may be subject to judicial review but the Administrative Court and Divisional Court has almost always refused to interfere in operational decisions made by individual Chief Constables as to which criminal offences will be investigated and how that investigation will be conducted." [para 51]

[39] There are, in particular, two high profile cases from this jurisdiction in which citizens have sought to challenge police actions and omissions in public law proceedings. The first of these is *Re E's Application* [2008] UKHL 66 which concerned the policing of the Holy Cross protests. On the facts, Kerr LCJ found that breach of section 32 of the 2000 Act had not been made out but clearly contemplated that this duty could be invoked by a member of the public (subject to the question of standing)

in judicial review proceedings. The House of Lords regarded the claim of breach of section 32 as ancillary to the question of whether there had been a breach of the obligation owed pursuant to article 3 ECHR.

[40] The second case, *Re DB's Application* [2017] UKSC 7, arose out of the policing of the flag protests and the alleged failure to prevent un-notified parades. Lord Kerr observed:

> "Under the general law the police have a duty to prevent the commission of offences. That fundamental duty of the police, inherent at common law, is expressly confirmed by section 32 of the 2000 Act. There was power, therefore, to prevent a parade from taking place on the grounds that it was likely to result in public order offences." [para 10]

[41] At first instance [2014] NIQB 55, Treacy J held, inter alia, that the PSNI had breached its section 32 duties by facilitating illegal parades. The Court of Appeal disagreed in [2014] NICA 56, holding that section 32 does not impose a duty on the police to intervene in every case where a crime is being committed. The law recognised a wide area of discretionary judgement in this field. The court said:

> "We consider that the decision to manage disruption and pursue a subsequent criminal justice charging policy was well within the area of discretionary policing judgement which such situations require in light of the challenges posed by the circumstances set out above." [para 53]

[42] By the time the challenge reached the Supreme Court, the focus was firmly on the police's understanding of the extent of their powers in relation to parades. However, Lord Kerr did comment on the issue of operational discretion:

> "71. It is universally agreed that PSNI must have operational discretion to make policing decisions…It is also generally accepted, however, that operational discretion does not equate to immunity from judicial scrutiny of policing decisions.
>
> 76. A definite area of discretionary judgment must be allowed the police. And a judgment on what is proportionate should not be informed by hindsight. Difficulties in making policing decisions should not be underestimated, especially since these frequently require to be made in fraught circumstances. Beyond these generalities, I do not consider it useful to go."

[43] More recently, in *Re Frizzell's Application* [2022] NICA 14, the Court of Appeal held that the standard for judicial review in a challenge to the operational workings of a police force was a "formidable one" but disagreed with the trial judge's view that such matters were effectively immune from suit. The court concluded:

> "… every case of this genre will be factually and contextually sensitive and the scope of judicial superintendence will, as a general rule, be restricted." [para 26]

[44] The following principles can therefore be distilled from the jurisprudence:

(i) Section 32 represents a statutory codification of the common law duties of a police constable;

(ii) The duties contained in section 32, and those which arise at common law, are owed to the public as a whole and do not generally give rise to a private law duty of care;

(iii) Decisions taken by the police are amenable to judicial review;

(iv) There is no general immunity from judicial review simply because a policing decision falls within operational discretion;

(v) However, the courts recognise that this discretion is wide and they will therefore be slow to intervene.

[45] What, then, are the parameters within which a court exercising supervisory jurisdiction should operate? Firstly, the courts may compel the police to take action in a case where there had been a complete failure to enforce the law – see *Blackburn (no. 4)*. Secondly, the courts may take action where the police have misdirected themselves in law as to the nature or scope of their powers – see *Re DB*. Thirdly, providing a chief constable acts rationally within the scope of his or her discretion, the courts will not intervene. It will be noted that many of the cases involve the instigation of a specific policy by a police force or the decisions surrounding the policing of public order situations. There are few examples of challenges in the public law arena brought to the manner in which investigations are conducted.

Consideration

[46] Section 32(1)(d) of the 2000 Act imposes a general duty on the police to take measures to bring offenders to justice. Adopting a hypothetical example, if the police declined to take any action whatsoever to investigate a serious crime, then, prima facie

at least, a person with sufficient interest could seek relief from a judicial review court on the basis of a breach of section 32(1)(d).

[47] At the other end of the spectrum, however, the courts will not intervene in an active investigation to direct that certain investigative steps be taken or strategic approach be adopted. To do so would entail the micro-management of police investigations, an activity to which the courts are ill-suited, and would represent a failure to respect the broad operational discretion afforded to police officers.

[48] The question for this court to determine is whether, in light of the criticisms of the police investigation which derive from the evidence, this is one of the rare cases in which an adverse finding should be made in respect of a police investigation and relief granted.

[49] One of the reasons which recurs in the caselaw for the margin of appreciation afforded to the police concerns the allocation of resources. Managing ongoing public order situations will often give rise to resource issues, as will the taking of certain investigative steps. However, in the instant case, bar the bare assertion made by DS Marshall, there is no evidence that the steps which were repeatedly recommended as being required into the roles of KW1, KP1, KP2 and KP3, entailed any significant use of resources. Indeed, the opposite is true. The evidence reveals that the police had their names, ages and addresses and that each of them had been released on licence which would inevitably mean their whereabouts ought to be known to agencies within the criminal justice system. Furthermore, when efforts were finally made to locate KW1, it would seem that information was readily available from DWP. It could not therefore be said that these steps were not taken as a result of the allocation of resources elsewhere.

[50] DS Marshall also refers to the structural issues around historical and legacy investigations as a reason for the failure to comply with the recommendations. However, this provides no basis to explain or excuse the failure to take straightforward investigatory steps between 1976 and 2002, nor for the inactivity following the DCI Armstrong report in 2002. It also says nothing about the inertia in the SCRT investigation from 2005 to 2008 or, indeed, the want of any initiative on the part of REMIT between 2011 and 2014. Put simply, the fact that the investigation was passed from pillar to post only served to exacerbate the problem rather than provide an explanation for the lack of action.

[51] The respondent says that, despite these obvious shortcomings, the court should nonetheless decline to intervene on the basis of the well-established broad discretion afforded to the police in the making of operational decisions. However, this is not a case where the court is being invited to direct a particular investigative step or otherwise micro-manage an operation. Rather, the investigative steps in issue here have already been identified by the police themselves as necessary. Since at least 2002 a number of senior detectives have either recommended or directed that the identified

suspects be spoken to. Lord Denning's prohibition in *Blackburn (no. 1)* on the courts directing police inquiries is not therefore in play.

[52] For the reasons which I have set out in detail above, the repeated failures to act in this case by taking steps which were deemed by senior officers to be necessary are both egregious and inexplicable. I am satisfied that there has been a failure to comply with section 32(1)(d) of the 2000 Act in the failure to take measures to bring offenders to justice.

Conclusion

[53] This application for judicial review therefore succeeds. In terms of remedy, the procedural and substantive problems of issuing mandatory orders against the police are well established in the caselaw. I am minded to make declaratory relief only but I will hear the parties on this issue as well as on the terms of any declaration and on the question of costs.