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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Tsang's Application [2008] NIQB 135

AN APPLICATION BY JOSEPH TSANG
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

WEATHERUP J

[1] This is an application for leave to apply for judicial review, first of all of the decision of the deputy District Judge (Magistrates' Court) of 21 August 2008, dismissing an application for abuse of process in that the Public Prosecution Service (PPS) summonsed the applicant after having previously sent him a letter advising that there would be no prosecution; and secondly, against the decision of the PPS to apply the Code for Prosecutors to permit a review of the earlier decision not to prosecute the applicant. Mr Shields appeared for the applicant, Mr Scoffield for the deputy District Judge and Mr McAllister for the PPS.

[2] The background set out in the affidavit of the applicant is that on 16 April 2008 a summons was issued against the applicant based on two counts of assault occasioning actual bodily harm on 25th May 2007, contrary to section 47 of the Offences against the Person Act 1861. However on 21st November 2007 the PPS had sent the applicant a letter stating -

> "I am writing to notify you that the prosecution service has decided, having considered the evidence currently available, **not to prosecute** you in relation to an incident on ***25th day of May 2007,*** for which papers were submitted to our offices by the police."

[3] After receipt of the summons the applicant's solicitors wrote to the PPS on 13 May 2008 seeking an explanation and the response of 13 June 2008 stated -

> "I can confirm that a formal review of the decisions in this case was carried out in early April on foot of a letter of complaint from one of the alleged victims, namely ……...
> The formal review was carried out by a Senior Public Prosecutor. Having done so, it was decided to prosecute Joseph Tsang summarily, if he consents, for offences of assault occasioning actual bodily harm upon both (complainants). A decision to that effect issued on 15 April 2008.
>
> The decision was taken having regard to all the available evidence and information."

[4] A hearing took place on 21 August 2008 at Belfast Magistrates' Court where an application was made on behalf of the applicant to stay the prosecution on the basis of abuse of process. The deputy District Judge gave a decision on 21 August 2008 not to stay the proceedings.

[5] The Code for Prosecutors provides for the manner in which prosecution decisions may be reconsidered. The Introduction states that the Code is issued pursuant to the statutory duty placed on the PPS by section 37 of the Justice (Northern Ireland) Act 2002 and that the guidelines and general principles detailed in the document apply from the date of publication of the Code.

Paragraph 4 sets out the test for prosecution -

> "The Test for Prosecution is met if:
>
> i. the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
>
> ii. prosecution is required in the public interest – the Public Interest Test".

Paragraph 4.11 provides for the review of prosecution decisions –

> "4.11.1 People should be able to rely on decisions taken by the Prosecution Service. Normally, if the Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again.
>
> 4.11.2 However, there may be reasons why the Prosecution Service will review a prosecution decision, for example, where new evidence or information becomes available or a specific request is made by a person, typically a victim, involved in the

case. It is impossible to be prescriptive of the cases in which a review will be undertaken and a flexible approach is required.

4.11.3 Where a review is to be conducted the following approach is to be taken:

1. If no additional evidence or information is provided in or connected with the request to review the original decision, the case will be considered by a Public Prosecutor other than the Public Prosecutor who initially took the decision now under review.

   That Public Prosecutor conducting this review will consider the evidence and information reported in the investigation file, together with the decision which has been reached. There are two potential outcomes of such a review:

   i. If the Public Prosecutor who considers these matters concludes that the decision was within the range of decisions that a reasonable prosecutor could take in the circumstances, then the initial decision will stand and the request for review dealt with on that basis.

      As a general rule, a decision will fall within the range of decisions that a reasonable prosecutor could take if there has been:

      - no error of law;
      - no failure to take into account relevant circumstances;
      - no evidence of taking into account irrelevant factors; and
      - no indication of bad faith or other improper motive.

   ii. If the Public Prosecutor who considers these materials concludes that the original decision was not within the range of decisions that could reasonably be taken in the circumstances, then that prosecutor will apply the Test for Prosecution and reach a fresh decision in the case. This may require further enquiries being made by police in pursuance of section 35(5) of the Justice (Northern

> Ireland) Act 2002 or the obtaining and considering the advice of counsel or, in appropriate cases, arranging to consult with witnesses."

Paragraph 4.11 continues by dealing with those cases that do involve additional evidence or information being available.

[6] In response to the application for leave to apply for judicial review an affidavit was filed by Mr Mateer QC, deputy District Judge (Magistrates' Courts), who made the decision in question. He set out in the affidavit that he took into account the circumstances in which a stay of proceedings may arise being, in the first place, that a fair trial was not possible or secondly, that it would be unfair to try the defendant; he referred to his notes and stated that the prosecution had faithfully applied the terms of its Code for Prosecutors, which he described as a publicly available document which the defendant and his representatives would have been free to consult, which outlines a number of circumstances in which a decision not to prosecute can be reversed; he stated that other than reversal of the applicant's expectations as to what might happen, he was not given any indication of any additional detriment to the applicant; he indicated that he had been informed that a senior prosecutor had reconsidered the available evidence and concluded that the original decision not to prosecute was not within the range of decisions which a reasonable prosecutor could have taken; he then referred to the fact that the prosecution informed him that they were relying on paragraph 4.11.3.1 and he felt it proper to satisfy himself that the senior prosecutor's conclusion that the earlier decision was not within the reasonable range of decisions was one that was open to the senior prosecutor; for that reason he considered the tendered evidence and considered that there was a prima facie case against the applicant, that any prosecutor considering the material could reasonably conclude that the test for prosecution was met and that it was within the prosecutors discretion to determine, as he had done, that the earlier decision not to prosecute was not within the reasonable range of decisions. The deputy District Judge looked at the issue of prejudice. He was told that the application was made solely on the grounds that it would be unfair to try the applicant due to the reversal of the prosecution's earlier decision not to prosecute the applicant. He stated his conclusion to have been that no unfairness had been made out such as to require a stay of proceedings notwithstanding the decision of the PPS to reverse the earlier decision that had been communicated to the defendant.

[7] Extensive grounds for judicial review are set out in the Order 53 statement. The grounds relating to the District Judge (Magistrates Court) are:

> (a) The District Judge erred in law in failing to stay the prosecution against the applicant and the said decision was unlawful in that:
>
> > (1) The District Judge failed to vindicate the Applicant's substantive legitimate expectation that he would not be prosecuted, said legitimate

expectation based upon and induced by correspondence directed to him by the PPS on 21st November 2007;

(2) The District Judge acted contrary to the common law fundamental rights standards, in particular the public interest in upholding a promise made by an officer of the State in the context of criminal proceedings.

(3) The District Judge wrongfully acted in reliance upon the PPS Code for Prosecutors and the contention that following the Code thereby entitled the prosecution to proceed notwithstanding an earlier promise not to prosecute.

(4) The District Judge wrongfully acted in reliance upon the said Code for Prosecutors without establishing that the said Code was rational, objective, and non-arbitrary.

(5) The District Judge wrongly acted in reliance upon the Public Prosecution Service's assertion that it had followed its Code for Prosecutors, when there was no or insufficient material placed before the District Judge by the PPS demonstrating it had so followed the said Code.

(6) The District Judge wrongfully considered that lack of specific and identifiable prejudice to the Applicant entitled the prosecution to proceed notwithstanding an earlier promise not to prosecute.

(7) The District Judge in considering whether the PPS had followed the aforesaid Code wrongfully considered the evidence and made his own assessment of whether or not the original decision not to prosecute the Applicant was the correct decision, and furthermore made such assessment in the absence of any materials from the PPS showing how that decision had been made or the subsequent review carried out.

(b) The District Judge in failing to require that the PPS produce material demonstrating that the Code for Prosecutors had in fact been correctly followed, failed to discharge is duty of inquiry and failed to take into account a relevant consideration, namely that there was no evidence that the PPS had correctly followed the Code for Prosecutors.

(c) The District Judge failed to take into account relevant considerations (or gave manifestly insufficient weight to certain considerations) and, in particular, improperly failed to take into account:

i The fact that there had been no new evidence, or no material change of circumstances, in the period between the PPS advising the

applicant that he was not to be prosecuted, and the PPS causing the summons to be issued against the applicant.

ii The fact that the correspondence from the PPS to the applicant advising that he was not to be prosecuted, advised the applicant that the decision was made on the "evidence currently available" and was not otherwise qualified or conditional.

iii The passage of time and delay between the date of the alleged offences, the date of the applicant being informed he would not be prosecuted, and the date of issue of the summons against the applicant.

iv The fact that the PPS did not provide to the Court any or adequate detail of the reasoning of the decision not to prosecute the applicant, nor any or adequate detail of the basis on which it was determined that the decision not to prosecute the applicant should be overturned.

v The fact that the PPS did not provide to the court a copy of the letter ….. that led to the decision to initiate a prosecution against the Applicant.

vi The fact that there was, in respect of the decision *not* to prosecute:

(1) No error law

(2) No failure to take into account relevant considerations

(3) No evidence of taking into account irrelevant considerations

(4) No indication of bad faith or other improper motive

and that it is not apparent therefore that the PPS followed its Code for Prosecutors.

(d) The District Judge took into account irrelevant considerations (or gave manifestly excessive weight to certain considerations) and, in particular, improperly took into account:

i The issue of whether or not the PPS followed its "Code for Prosecutors" in respect of the initiation of proceedings against the Applicant notwithstanding the earlier decision not to prosecute.

ii The submission by the PPS that the original decision not to prosecute the applicant was not within the range of decisions which a reasonable prosecutor could have taken.

iii The submission by the PPS that lack of specific prejudice to the applicant meant that a stay of prosecution should not be granted.

iv The evidence tendered against the applicant, and the applicant's interview, in determining that the PPS were entitled to prosecute the applicant notwithstanding the original decision not to prosecute.

(e) The District Judge failed to strike the correct balance between all the relevant considerations.

(f) The District Judge has acted in breach of the applicant's rights under the European Convention, contrary to his obligation under section 6 of the Human Rights Act 1998, and, in particular, has acted in breach of the applicant's rights under Article 6 of the Convention by refusing the applicant's application for a stay:

1. Notwithstanding the absence of any fresh evidence against the applicant since the decision not to prosecute.

2. Notwithstanding the unambiguous nature of the decision not to prosecute communicated to the applicant.

3. Notwithstanding the failure by the PPS to disclose the actual reasoning of the decision not to prosecute and the subsequent decision to prosecute.

4. Notwithstanding that the PPS did not disclose a copy of the letter …. that led to the decision to prosecute the applicant.

5. Notwithstanding the delay between the alleged offences, and the decision to prosecute, and the delay between the decision not to prosecute and the decision to prosecute.

(g) The District Judge's decision was unreasonable in the *Wednesbury* sense.

The grounds relating to the Director of Public Prosecutions are:

(a) The Code for Prosecutors introduced by the Director pursuant to Section 37 of the Justice (Northern Ireland) Act 2002 is necessarily inconsistent with, and in violation of, the rights of the applicant under Article 6 of the European Convention by virtue of representing infringement of those rights

which are neither proportionate nor necessary in democratic society and are accordingly in breach of the Office's obligation under Section 6 of the Human Rights Act 1998.

(b) The said Code for Prosecutors provides for a decision-making process in respect of Review of Prosecution Decisions (at paragraph 4.11) which is irrational, lacks transparency and objectivity and has the potential for arbitrariness and thereby is contrary to the common law fundamental rights standards and the Applicant's fair trial rights under Article 6 of the European Convention.

(c) The said Code for Prosecutors (at paragraph 4.11) fails to accord sufficient weight to the public interest in upholding a promise made by an officer of the State in the context of criminal proceedings and is thereby contrary to the, common law fundamental rights standards and the Applicant's fair trial rights under Article 6 of the European Convention.

(d) The said Code for Prosecutors (at paragraph 4.11) fails to accord sufficient weight to the Applicant's substantive legitimate expectation that he would not be prosecuted in respect of certain offences.

[8] The applicant relied on the principle of legitimate expectation based on the PPS letter of 21st November 2007 informing the applicant of no prosecution. That letter was qualified by reference to the "evidence currently available". It was not a guarantee of no prosecution because of the qualification. The Code itself, upon which the review was undertaken, is in the public arena as the District Judge noted and it contains statements in relation to the circumstances in which review decisions will be made.

[9] This issue has been considered in judicial review proceedings in Northern Ireland. In McFadden's Application [2002] NI 183 a prosecution was reconstituted against the applicant after new evidence emerged and an application was made to stay proceedings for abuse of process. The applicant had received an initial letter informing him that "On the basis of the facts and information available the Director has directed no prosecution." Kerr J considered the issue of legitimate expectation and stated that it was clear from a careful reading of the letter that the applicant had not been given an unconditional undertaking that he would not be prosecuted. It had been made clear to the applicant that the direction of no prosecution was on the basis on the facts and information available. Had the applicant taken advice on the effect of the letter he would undoubtedly have been told that the letter did not amount to a guarantee that the prosecution would never be revived. The application for judicial review was dismissed. It will be noted that the review was based on the existence of new evidence against the applicant, a matter that does not apply in the present case.

[10] R(Burke) v The Director of Public Prosecutions (12 December 1996) was an application for judicial review of a decision of the Crown Prosecution Service to

reinstate criminal proceedings against the applicant following the issue of a notice of discontinuance. The Code of Guidance for Crown Prosecutors issued in June 1994 in England dealt with "Restarting a Prosecution" for special reasons, which were stated to include "…. rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand." The affidavit explaining the decision to reinstitute the prosecution stated that, having considered the evidence in the case and examined the reasons given by the original decision maker for her decision to discontinue and having discussed the case with the Law Officers, it was concluded that the original decision was not justified and that there was a realistic prospect of conviction and the public interest test was satisfied.

[11] Phillips LJ considered the challenge on the Wednesbury ground and on the legitimate expectation ground. In relation to the former it was stated that the decision of the respondent could not be said to have been unreasonable. In relation to the issue of legitimate expectation, a standard form letter had been sent which had stated that "…. exceptionally, if further significant evidence were to become available at a later date this decision may be reconsidered." Phillips LJ was of the view that this suggested by implication that only if significant further evidence came to light would the decision to discontinue be reconsidered. No mention was made of the possibility of reconsidering a decision which was clearly wrong. The letter was, to that extent, in conflict with the policy in the Code. However, in rejecting the applicant's claim to a legitimate expectation, the judgment concluded-

> "The letter makes it plain that the respondent is not discontinuing the prosecution because she has concluded that the applicant is innocent, but because there is insufficient evidence to provide a realistic prospect of conviction. The possibility of re-opening the prosecution is referred to in the event of further evidence becoming available. Thus the letter dispels, at least in part, the reassurance which might otherwise be drawn from the discontinuance…..
> I do not believe that the letter should, or could, have had any effect on the decision of the respondent to reinstitute the prosecution in the case.
> Notwithstanding this conclusion, I would recommend the respondent to reconsider the terms of the standard letter of discontinuance. I am inclined to think that it would be more satisfactory if this simply annexed (the relevant portion) of the Code by way of explanation of the circumstances in which a prosecution might be reinstituted."

It will be noted that the original decision letter referred to review in the event of new evidence and the decision to prosecute was not based on new evidence but on the ground permitted under the Code that the original decision was clearly wrong. The terms of the original decision letter did not prevent the review decision being upheld.

[12] R v Bloomfield [1997] 1 Cr App. Rep 135 was relied on by the applicant to support the absence of a need for prejudice to a defendant. The Court of Appeal had been offered no explanation for a change of decision in relation to prosecution and upheld the application for abuse of process on the basis that no reason had been given for new decision. In referring to the review provisions of the Code Staughton LJ at page 142C-D stated -

> "We do not know whether this case comes within any of these categories. Nobody has shown us that the original decision was clearly wrong. Nobody has attempted to show to us that the original decision was clearly wrong. All that we have been told is that it was unauthorised.
> Before we regard ourselves as required to approve and follow the Code of Crown Prosecutors, we should at least be told something more than that the decision was unauthorised. In the absence of any information, we are faced with the fact that the decision was taken and then revoked without any reason being given as to why the earlier was wrong."

The conclusion at page 143B-C stated -

> "It seems to us that whether or not there was prejudice it would bring the administration of justice into disrepute if the Crown Prosecution Service were able to treat the court as if it were at its beck and call, free to tell it one day that it was not going to prosecute and another day that it was.
> Of course the circumstances of each case have to be looked at carefully, and many other factors considered….. we are not seeking to establish any precedent or any general principle in regard to abuse of process. We simply find that in the exceptional circumstances of this case an injustice was done to this appellant. "

It will be noted that the Court decided the matter on the basis that there was no explanation for the reversal of the decision not to prosecute and disavowed the setting of any general principle in relation to abuse of process.

[13] The Court of Appeal in England revisited the issue in R v Abu Hamza [2006] EWCA (Crim) 2918. Lord Phillips considered the issues concerning the reversal of decisions in relation to prosecution and abuse of process applications and legitimate expectation. It was stated to be by no means easy to define the test for the circumstances in which a reversal of a decision not to prosecute will amount to an abuse of process. The trial judge had expressed reservations as to the extent to which one could apply the common law principles of legitimate expectation in this field and Lord Phillips stated that "we share those reservations" and continued –

> "That principle usually applies to the expectation generated in respect of the exercise of an administrative discretion by or on behalf of a person whose duty it is to exercise that discretion. The duty to prosecute offenders cannot be treated as an administrative discretion, for it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Only in rare circumstances will it be offensive to justice to give effect to this public interest.
>
> Such circumstances can arise if police, who are carrying out a criminal investigation, give unequivocal assurance that a suspect will not be prosecuted and the suspect in reliance upon that undertaking, acts to his detriment".

[14] Lord Phillips then referred to Croydon Justices ex parte Dean [1994] 98 Cr App Rep 76, R v Townsend & Others [1997] 2 Cr App Rep 540, R v Horsferry Road Magistrates Court, ex parte Bennett [1994] AC 42 and R v Bloomfield [1997] 1 Cr App. Rep 135 and concluded -

> "These authorities suggest that it is not likely to constitute an abuse of process to proceed with the prosecution unless (i) there has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (ii) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which are not known when the representation was made, these may justify proceeding with the prosecution, despite the representation".

It will be noted that this most recent authoritative statement of the position, being one that I propose to adopt, indicates the unlikelihood of a successful abuse of process application in the absence of an unequivocal representation of no prosecution and detriment to the defendant in reliance on the representation.

[15] H v The Guildford Youth Court [2008] EWHC 506 (Admin.) involved a police decision to prosecute after police had stated that there would be no prosecution. Before interview by the police, the applicant was told that he would not be prosecuted and he then made admissions. It was then determined that he would be prosecuted. The Justices found that there was no prejudice and having regard to the seriousness of the offence and the public interest in maintaining a prosecution they had declined to stay the proceedings. The Crown Prosecution Service did not contest the application to quash the conviction. The case did not involve consideration of the Code for Prosecutors. Silber J referred to R v Bloomfield [1997] 1 Cr App Rep 135 where the Court of Appeal allowed the appeal on the basis that, whether or not there was prejudice to the defendant, it would bring the administration of justice into disrepute to allow the Crown to revoke the original decision not to prosecute without

any reason being given as to what was wrong with that decision. Silber J found that the fact that a promise had been made by an officer of the State, namely the police officer who was in charge, whether or not to prosecute, was something that there was a clear public interest in upholding. It will be noted that the case satisfied the requirements outlined by Lord Phillips in R v Abu Hamza for those rare circumstances where an application for a stay for abuse of process was likely to be successful, namely there was an unequivocal promise by police that there would be no prosecution and the accused acted in reliance on the promise to his detriment, in that when he was told there would be no prosecution he made admissions.

[16] I am satisfied that the applicant cannot establish any legitimate expectation that he would not be prosecuted based on the PPS decision letter of 21 November 2007.

[17] Turning to the terms of the Code for Prosecutors the applicant challenges the operation of the review provisions in the present case. It is clear that there is no new or additional evidence or information. In such circumstances the Code provides that a decision will be taken by a new public prosecutor and the Code sets out the public prosecutor's role as being to determine whether the decision which was originally made was within the range of decisions that a reasonable prosecutor could take. The Code then sets out, in the bullet points in paragraph 4.11.3, examples of the circumstances within the range of decisions a reasonable prosecutor could take, namely where there has been no error of law, no failure to take into account relevant circumstances, no evidence of taking into account irrelevant factors and no indication of bad faith or other improper motive.

[18] The applicant objects that this decision to prosecute was made even though the original decision was not affected by any of the circumstances set out in the bullet points. Further the applicant points out that the bullet points do not include reference to a decision which is outside the range that a reasonable prosecutor could take. However, it is obvious that the Code intends that the requirement that the decision be outwith the range of reasonable decisions is the overarching basis for review. The overall criterion relates to the range of decisions that a reasonable prosecutor could take, that approach is provided for in the text, it is the governing approach and what follows under the bullets points are stated as examples. The essential question is whether or not the initial decision is one that no reasonable prosecutor could have taken. That essential question is the test that was applied by the reviewing decision-maker in the PPS in the present case and it is the approach that was examined by the District Judge. Accordingly I am satisfied that the terms of the Code are capable of applying to the circumstances of the present case where the matters referred to in the bullet points do not arise.

[19] The second stage to be undertaken by the new decision-maker was to determine, having satisfied himself that the first decision was outside the range of reasonable decisions, whether or not the test for prosecution was satisfied. It was established before the District Judge that this was the approach that was taken by the

PPS and the decision-maker was satisfied on the test for prosecution. The applicant contends that in considering the second limb of the test for prosecution, the public interest test, there should be included as a factor against prosecution the public interest in maintaining earlier decisions not to prosecute. It is certainly the case that the grounds that are specified, in paragraph 4.3 of the Code, as public interest considerations against prosecution, do not include a decision having already been taken not to prosecute. It is hardly surprising that that is so because, in the section outlining public interest considerations against prosecutions, the Code is not dealing with reviews of prosecution decisions. However, when it comes to the section dealing with reviews of prosecution decisions, the general interest in maintaining decisions that have already been made is stated at the beginning. This is expressed in paragraph 4.11 in terms that people should be able to rely on decisions taken by the Prosecution Service; that normally, if the Prosecution Service tells a subject or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. However, there are stated to be exceptions where the PPS will review a prosecution decision and a specific request by a victim is given as an example of the circumstances where a review will be undertaken. The applicant's contention on the wording of the Code in relation to the public interest test is not well founded.

[20] The context of the District Judge's decision was an abuse of process application. There are two grounds for such an application. The first is that there would be an unfair trial in the circumstances and the second is that it would be unfair to proceed to trial in the circumstances. The District Judge was satisfied that in respect of both grounds there was no unfairness and he rejected a stay for abuse of process. The applicant contends that the provisions of the Code relating to the review of prosecution decisions involve unfairness to an accused, both at common law and under the right to a fair trial under Article 6 of the European Convention. I am satisfied that the common law rights and the Article 6 rights coincide in these circumstances. There is no breach of either right in principle in having a power of review of prosecution decisions in the circumstances set out in the Code. The power to review prosecutions is circumscribed in the manner set out in the Code, which is published and thus accessible. Whether there is such unfairness in a particular case will be determined in the criminal proceedings. The District Judge decided that there was no such unfairness in the particular circumstances of this case.

[21] The applicant contends that the District Judge did not have sufficient evidence to reach the conclusion he did but I am satisfied that there was sufficient evidence. Further it is contended that he took into account irrelevant considerations or accorded excessive weight. It was accepted that the District Judge had taken into account the matters specified and I reject the contention that they were irrelevant matters or that they were accorded excessive weight. In addition the applicant contended that the District Judge failed to take account of relevant considerations or accorded insufficient weight. I am satisfied that the District Judge took into account the matters specified, save in one instance, and that he did not accord insufficient

weight. The one instance relates to the failure to produce the complaint letter, which I do not accept can form any basis for challenging the decision.

[22] The District Judge undertook the task of deciding for himself whether or not the decision to prosecute was well founded and concluded that it was. The applicant objects to the District Judge undertaking that task. There is no basis for contending that the task undertaken by the District Judge should be set aside either as improper or as corrupting his overall conclusion. Further the applicant contends that there was not sufficient evidence on which the District Judge could have been satisfied as to the approach of the PPS. However I am satisfied from the affidavit of the District Judge that there was an evidential basis for his conclusions as to the actions taken by PPS. The applicant also raises a challenge to the rationality of the decision. I am satisfied that there is no basis on which the decision could be set aside on the ground of rationality. The District Judge has, it seems to me, carried out his decision-making process impeccably.

[23] Decision letters indicating no prosecution might usefully make reference to the power of review and a second decision letter reversing a no prosecution decision might offer an explanation. An accused who is put in the position that the decision not to prosecute is overturned by the PPS is entitled to have some information about the circumstances in which the change has been brought about. I am conscious of the decisions about the nature of the duty on prosecutors to give reasons, but in the circumstances where an accused receives a decision letter indicating no prosecution and then a further letter indicating that there will be a prosecution, some explanation is required. That did not happen in this case but it has now happened through the process of judicial review, which has made clear the circumstances in which the revised decision was made.

[24] There are no arguable judicial review grounds for setting aside the decision of the deputy District Judge or the decisions of the PPS. In the circumstances, therefore, I refuse leave to apply for judicial review.