



Neutral Citation Number: [2022] EWHC 472 (Admin)

Case No: CO/2409/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

3rd March 2022

Before:

MR JUSTICE FORDHAM

Between:

THE QUEEN (on the application of ENITANWYA OREKOYA)

Claimant

and

LEEDS MAGISTRATES COURT

Defendant

and

WEST YORKSHIRE PROBATION SERVICE

Interested Party

The **Claimant** did not appear and was not represented

The **Defendant and Interested Party** did not appear and were not represented

Hearing date: 3/3/22

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Introduction

1.

This is the oral hearing of a renewed application for permission for judicial review. The hearing was scheduled for 2pm today by BT Meet Me. The details of the hearing and dial-in details were sent to the Claimant who acts in person in this case. They were sent on a number of occasions, including on 25 February 2022 and this morning at 11:22 and again at 13:35. At 14:02 the Claimant was emailed by my clerk to inform her that the hearing had started and that she should dial in immediately if she wished to participate in it. The dial-in details were sent again at 14:04. I announced in open court that if the Claimant joined this hearing at any time, she would have the facility to alert me, by reason of the ‘prompt’ that BT conference calls provide for those who join them. I have decided to commence the giving of an ex tempore judgment to explain the position and to explain what, absent any interruption and further submissions from the Claimant, I will be doing in this case. Should there be any such interruption and any further submissions I will pause and consider what I am told and what I should do about it. It is now 14:10.

Adjournment

2.

The first question which I have to consider is whether to proceed today to deal with the renewed application for permission for judicial review. The alternative would be to adjourn this case. One of the features which I need to have clearly in mind is that I would be proceeding in the Claimant’s absence, and she was not therefore have the ability to seek to persuade me today as to the appropriateness of permission for judicial review. It is very clear from the communications to the Court from the Claimant that she strongly submits that the appropriate course is to grant an adjournment. I have read the papers including the various applications and supporting statements and documents and including the email communications with the Court. I approach the case on the basis that the requests for an adjournment are maintained. In particular: by an application dated 28 February 2022 the Claimant sought an adjournment until after 14 April 2022; and by an email today at 11:40 she has specifically maintained the bases of that adjournment application, to which she has added a new basis.

3.

By an Order which I made on 1 March 2022, I directed that the application dated 28 February 2022 – an application (i) to set aside my earlier Order on 15 February 2022 making directions for today’s hearing and (ii) to adjourn today’s hearing – should be heard at the start of today’s hearing. The Court would then decide whether to adjourn, as requested, this hearing of the renewed application for permission for judicial review, or whether to proceed to deal with that matter. In that Order I explained that the application of 28 February 2022 had itself sought a “hearing” of “one hour” of the application to adjourn. I also explained that I had understood from previous papers that the Claimant had selected the option of a “telephone hearing”: there is certainly an application dated 13 July 2021 which does expressly select that option. I explained that the mode of telephone hearing had been identified by the Court, in previous Orders, to help the Claimant attend a hearing. The Order

explained that, having regard to the interests of justice and the overriding objective, and being satisfied that the Order was just and appropriate in all the circumstances, the question of adjournment would be considered at this telephone hearing. Following the Claimant's email today at 11:40, identifying the further basis for an adjournment, the Claimant was informed (by the 13:35 email) that the further request would also be considered at the start of this hearing.

4.

I turn first to the reasons given in the application of 28 February 2022 for seeking an adjournment until after 14 April 2022. That application was on the basis of the Claimant's ill-health. She has provided documents to the Court, including witness statement evidence. The documents include a 'Statement of Unfitness' provided by a GP at the Leeds City Medical Practice dated 28 January 2022. That statement records that on 28 January 2022 the GP assessed the Claimant and found, because of the following conditions "severe stress and anxiety", that the Claimant "is currently NOT fit to attend court proceedings". The Claimant can therefore point to documentary evidence, from an independent GP, which tells the Court that she is not fit to attend court proceedings. The statement from the GP goes on, moreover, to record that "this will be the case for three months from 14 January 2022 to 13 April 2022". The relevance of the start date of 14 January 2022 can be traced back to a previous "Statement of Unfitness" from the GP medical practice dated 14 January 2022. It had stated that the Claimant's was "not fit for work" because of a condition of "chest pain awaiting further investigation". It had given the period of one month, to 13 February 2022.

5.

It is obviously appropriate that the Courts should approach with considerable care and concern a health-related application for an adjournment supported by evidence in documentary form from a GP which specifically addresses the question of fitness to attend court proceedings.

6.

To these points, the following can be added in the Claimant's favour and in support of an adjournment.

i)

First, that on 14 February 2022, in the Claimant's judicial review proceedings CO/3389/2020 in Birmingham, Dove J adjourned a "substantive hearing" which was due to take place on 17 February 2022, to a date after 13 April 2022. That adjournment was clearly given on the strength of the 28 January 2022 Statement of Unfitness from the GP: the date "after 13 April 2022" is referable to the timeframe which the GP has identified.

ii)

Secondly, today's hearing is a significant one, of real importance to the Claimant. It concerns extant judicial review proceedings by which she is challenging a conviction in the Leeds magistrates' court on 9 July 2021 which was accompanied by the issuing by that court of a warrant of arrest without bail. This hearing - of permission for judicial review - will determine in the High Court whether the judicial review proceedings proceed further or whether they are at an end. If permission for judicial review were refused, the Claimant would have to seek to obtain permission for judicial review from the Court of Appeal. That outcome, moreover, would have been arrived at on the basis that she had made her submissions in writing but in the circumstances had not been present to assist the Court orally. The right of oral renewal of permission for judicial review to the High Court is an important safeguard which the rules and practice directions recognise is needed in the interests of justice. It allows for a further charge to evaluate afresh whether there is a viable judicial review challenge. It allows the Claimant or their representative to assist the Court with oral submissions.

iii)

Thirdly, the Claimant is acting as a litigant in person.

iv)

Fourthly, these are not judicial review proceedings which have been identified as urgent or calling for special expedition; nor is there before the Court any communication from the other parties which urges the Court to proceed.

7.

In the email at 11:40 this morning the Claimant has raised a further basis for adjourning today, which it is important for the Court carefully to consider. That basis is that the Claimant has a number of extant judicial review claims including a judicial review claim CO/575/2022 against the Leeds County Court with the Leeds City Council as Interested Party, which case is currently being dealt with by the Administrative Court Office in Birmingham. In that case there is a "minded to transfer order" dated 25 February 2022. The Claimant's email at 11:40 records being told by the Administrative Court lawyer that "all of her judicial review matters should be handled by the same Court". She records that she is opposing transfer of that case from Birmingham to Leeds. Her further basis for an adjournment is that this hearing should be adjourned "pending the decision in that matter on whether this and any outstanding matters under judicial review will be dealt with in Birmingham".

8.

In my judgment, that new basis for an adjournment today is without foundation. This Court needs to deal with the renewed application which the Claimant made on 14 October 2021 following the refusal by Eady J of permission for judicial review on the papers on 1 October 2021. This Court has made a series of orders relating to this hearing: 17 January 2022; 19 January 2022; 25 January 2022; 15 February 2022; and 1 March 2022. There is no reason at all why this hearing should now be derailed by reference to a question about other proceedings and a single court dealing with all proceedings. This point has, moreover, been raised far too late in the day. Moreover, I have visibility on what Dove J ordered in the Claimant's proceedings CO/3389/2020 on 14 February 2022 and have indicated that I am able to - and do - take that into account in the Claimant's favour so far as the requested health-related adjournment is concerned. If there is a basis for an adjournment it is, in my judgment, squarely the question of health.

9.

I have decided not to adjourn this hearing but to proceed today. My reasons are as follows.

i)

This is not a "substantive hearing" but a short hearing at which the court reconsiders the question of permission for judicial review. Permission for judicial review has a relatively low threshold involving the question of whether the claim is arguable with a realistic prospect of success.

ii)

I have weighed in the balance the GP's 28 January 2022 Statement of Unfitness which refers specifically to "attendance of court proceedings". I have had in the forefront of my mind the reference to "stress and anxiety", described by the GP as "severe". I also have well in mind that what, to a lawyer, may present as a relatively brief telephone hearing at which they are able to assist the Court and express their client's points, is likely to feature very differently from the perspective of a litigant in person who has a condition of "severe stress and anxiety".

iii)

On the other hand, the mode of telephone hearing does render accessible and immediate the option of addressing the court. In these proceedings the question of accommodating this hearing by a more accessible mode was raised in the Order which I made on 19 January 2022. I identified in that Order that this hearing could proceed: “(a) in person at the Leeds Combined Court Centre; or (b) by remote hearing accessible by Microsoft Teams; or (c) by a telephone hearing”. The Order went on to require the Claimant to provide to the Court any “preference as to those different modes of hearing”. In the event a telephone hearing was the course which was identified in the Order of 15 February 2022.

iv)

There is nothing before the Court from the GP which addresses the question of mode of hearing or which explains the question of fitness to attend even a brief telephone hearing. The phrase “fit to attend court proceedings” is one most conventionally associated with attendance in court in person.

v)

I have previously taken steps to allow opportunities for the Claimant to elicit for the Court a specific response from the GP which addresses the nature and mode envisaged for this hearing.

vi)

In the Order of 25 January 2022 I required the Claimant by 4pm on Wednesday 26 January 2021 to provide a copy of that Order by email to a named individual at the GP’s surgery, asking that the named individual use her reasonable endeavours to assist the Court by making arrangements so that by 4pm on Tuesday 1 February 2022 there were emailed to the Claimant, so that she could provide them to the Court: (i) medical notes for the period 14 January 2022 to 31 January 2022; (ii) a letter giving an opinion of a GP as to whether, when and by what mode of hearing (in person, by MS Teams or by telephone) it is assessed that she would be able to participate in this hearing (60 to 90 minutes) of her case; or (iii) a brief explanation as to when these could be made available.

vii)

There is no evidence before this Court that the Claimant complied with that Court Order.

viii)

The named individual in the Order was the very same individual from whom the Claimant had received medical notes for an earlier period. On 14 January 2022, that named individual had emailed Claimant with her medical records for the period 1 November 2021 to 14 January 2022 “as per your request”. The Court was therefore in the secure position of knowing that what was being asked of the Claimant was communication with the person with whom she had successfully communicated in the recent past. The same Order required the Claimant by 4pm on Wednesday 2 February 2022 to provide the court with an update.

ix)

The subsequent Order of 15 February 2022 contained a fresh and equivalent direction that by 4pm on Friday 18 February 2020 to the Claimant provide a copy of that order to the same named individual for the equivalent (updated) stated purposes.

x)

There is no evidence before the Court that that Court Order was complied with either.

xi)

The purpose of those Orders, as was obvious, was to facilitate the Claimant being able to provide the Court with specific information from the GP and with the medical notes.

xii)

The Court's subsequent Orders have recorded that there had been apparent non-compliance with those earlier orders. The most recent Order which I made on 1 March 2022 said this:

"it does not appear that the court orders had been complied with... The Claimant can, if she wishes, send an email ahead of the hearing... to explain her position as to compliance with those paragraphs of those orders"

xiii)

No email addressing that question of compliance has been received. What the Court has instead been told still rests with a description on 31 January 2021 in a statement filed by the Claimant, referring to the Statement of Fitness document dated 28 January 2022 and saying this:

"I request more time so that the GP can provide a more accurate and detailed opinion as requested in the order of 25 January 2022".

xiv)

It is obviously concerning that Orders which were designed to be provided to the GPs surgery to elicit information and records on the face of it were not provided to the specified individual, notwithstanding that the Orders required that they were.

xv)

These circumstances need to be weighed alongside the continued reliance that is placed on the 28 January 2022 Statement of Fitness document.

xvi)

The next point which is relevant to the question of whether to adjourn is this. In her own application dated 31 January 2022, seeking to set aside the Order of 25 January 2022 (in which I had made directions for further information from the GP and the medical notes), the Claimant herself on the face of the application form. In answer to the question:

"How do you want to have this application dealt with?"

She answered that she wanted it dealt with:

"At a hearing".

In answer to the question:

"How long do you think the hearing will last?"

She indicated:

"One hour".

That means that the Claimant was herself asking the Court for a one-hour hearing to deal with the 'satellite' question as to whether directions relating to the sending of an Order to the GP and the provision of an update and medical notes from the GP should be set aside. Plainly any such hearing would need to be held in the near future.

xvii)

Again, on 28 February 2022 the Claimant herself issued an application: to set aside the Order of 15 February 2022 and to adjourn the case until after 14 April 2022. That application related to the

question of whether to adjourn today's hearing. On the face of the application notice. Again, in answer to the question:

"How do you want to have this application dealt with?"

She answered that she wanted it dealt with:

"At a hearing".

In answer to the question:

"How long do you think the hearing will last?"

She indicated:

"One hour".

What this means is that, in her own position on 'satellite' matters, which plainly would need to be dealt with promptly, the Claimant was herself asking the Court to schedule a one hour oral hearing for her to attend and assist the Court.

xviii)

Finally, it is relevant in this context to have in mind that, a month after the Statement of Fitness of 28 January 2022, the Claimant filed a witness statement on 28 February 2022. In it she referred to her breathing being affected after taking prescription medication for anxiety stress and chest pain. She referred to feeling very dizzy and sometimes confused, finding it difficult to concentrate, to having vision which is blurry at times so that she is not able to read big amounts of document, to feeling nauseous, to having been slowed down and feeling shaky and unable to sleep. As she then put it "the medication" had "rendered me unable to attend the hearing", which she described as being tomorrow".

10.

In the light of this picture and all of these circumstances I am satisfied of the following.

i)

The Claimant has had the opportunity to attend, by means of the most accessible mode, a short hearing in this Court, having herself requested a hearing in this Court in her own applications of 31 January and 28 February 2022.

ii)

In light of her default in complying with clear obligations in Court Orders, to send those Court Orders to the GP, for the purpose of eliciting clear and concrete information addressing matters such as mode of hearing and providing underlying medical notes for the most relevant later periods of time, I am satisfied that - by the Claimant's own actions - the Court has been denied the sort of concrete information that it would need in order, in all the circumstances, to further adjourn.

11.

I have in mind that these judicial review proceedings constitute an interference with criminal proceedings in the magistrates' court. They also carry with them a stay of execution on the warrant of arrest issued in the magistrates' court on 9 July 2021. Such a stay was refused on the papers on 12 July 2021 but subsequently granted on 23 August 2021. It was discharged on 1 October 2021 when permission for judicial review was refused on the papers, but it was restored on 17 November 2021 in the light of the Claimant's right to seek renewal of permission at an oral hearing.

12.

Having regard to the interests of justice and the overriding objective, in all the circumstances, I am entirely satisfied that the appropriate course is to proceed today, to deal with the application which the Claimant has made for reconsideration of the question of permission for judicial review. I turn therefore to deal with the viability of the claim that is being put forward.

Permission for judicial review

13.

The Court has the advantage of a number of documents in which the nature of the claim for judicial review is explained by the Claimant. In particular, the Court has: the grounds in section 3 of the N461 claim form filed on 12 July 2021; the accompanying grounds document dated that same day; a statement dated 17 September 2021; and the grounds of renewal dated 14 October 2021.

14.

The background is as follows. The Claimant had been convicted in her absence on 29 July 2019 at Leeds magistrates court of a criminal offence pursuant to [section 444](#) (1A) of the [Education Act 1996](#) relating to her daughter's absence from school. On 28 August 2019 she applied to the magistrates' court to set aside that conviction and the magistrates' court directed a rehearing. The case was prosecuted by Leeds City Council. At the rehearing on 21 October 2019 the Claimant was again convicted, again in her absence. Having been arrested (11 November 2019) on a second warrant of arrest issued on the date of the conviction (an earlier warrant of arrest having been issued on the date of the original conviction on which she was arrested the following day) the Claimant's application to reopen or set aside the second conviction was refused and on 12 November 2019 the Claimant was sentenced by the magistrates' court for the offence and resented for breach of a conditional discharge. The sentence imposed on 12 November 2019 was a community order with a 10 day rehabilitation activity requirements, 120 hours of unpaid work and a six week curfew. She subsequently filed on 25 November 2019 a notice of appeal against conviction and sentence.

15.

What happened next was that probation assessed her to have been in breach of the terms of her community sentence. The probation service prosecuted her for that breach. There was a first hearing in the magistrates' court in relation to breach on 21 January 2020 which was adjourned when she told the magistrates that she needed to attend A&E. A subsequent hearing was also adjourned, and the Claimant was told that she would need to produce medical evidence in support of any further adjournment requests. On 9 July 2021 the trial of the question of breach came before the magistrates. The Claimant had been bailed at a directions hearing on 7 April 2021, a hearing which she attended, to attend the trial on 9 July 2021. Materials before the Court explain a sequence of earlier adjournments for various reasons, and also record that the Crown Court appeal against conviction and sentence had also been adjourned on a number of occasions. At the hearing on 9 July 2021 the Claimant's legal representative appeared in front of the magistrates. The same firm had appeared on her behalf at earlier hearings. The magistrates decided to proceed, rejecting a request made by the legal representative for an adjournment. That request was based on the fact that there was the extant appeal to the Crown Court against conviction and sentence and the magistrates court was invited to await the outcome of the appeal before proceeding on the question of breach. The magistrates declined that adjournment and decided to proceed in the Claimant's absence. The documents before this court record that the legal representative was not able to assist the magistrates court as to the reasons for the Claimant's absence. Evidence was led by the probation service and the magistrates

were satisfied of the breach. The Claimant was convicted. The magistrates court did not proceed to sentence. Instead, they issued at 1106 the warrant of arrest without bail.

16.

Judicial review is sought of the magistrates' decisions on 9 July 2021. The grounds on which judicial review is sought are twofold. Each ground contends that the magistrates breached the Claimants fair trial rights under Article 6 ECHR, as scheduled to the [Human Rights Act 1998](#).

i)

The first ground for judicial review is this. The Claimant was denied a fair trial because information obtained through family court proceedings involving an "admission" by Leeds City Council in relation to the "housing" position, "exonerated" the Claimant so far as the Education Act offence was concerned. In the light of that exonerating new evidence the magistrates should not have convicted the Claimant. The documents put before the Court by the Claimant describe that exonerating fresh evidence as having come to light on 8 July 2021, and as having been discussed by the Claimant with her legal representative on that date.

ii)

The second ground for judicial review is this. The Claimant was denied a fair trial because she had notified the magistrates' court that she was ill and unable to attend court, that she had requested an adjournment on the basis of ill-health through her solicitor, with whom she had had a conversation at 09:44. In support of that description of incapacity through ill health the Claimant has pointed to attendance later in the day at a GP's clinic at which she was prescribed medication.

17.

Eady J concluded that this claim for judicial review involves no arguable ground with any realistic prospect of success. I have considered all of the materials provided to the Court, including materials which postdate that refusal of permission on the papers, and which seek to address points which were made in Eady J's order and reasons. I have borne in mind that the Claimant is absent from today's hearing, and I have therefore not been able to be assisted by her with what she would have said to me orally, nor what I might have asked her. In that respect, I have also revisited the question of - and decided against - adjourning today in light of the position regarding the shape and nature of the grounds for judicial review.

18.

In my judgment, this is a clear case in which there is plainly no viable ground on which the magistrates' action to proceed to hear evidence and decide the question of breach, can be impugned by reference to fair trial rights, on either of the grounds put forward, or by reference to a combination of them both.

19.

The position, very clearly, is as follows.

i)

The Claimant knew that the hearing before the magistrates on 9 July 2021 was listed to commence at 09:45. That timing is expressly stated on the face of page 5 of a Form N463 which she filed in the Administrative Court (at 09:43) on that day.

ii)

The Claimant had, moreover, been bailed - to appear before the magistrates at that hearing on 9 July 2021 - by the magistrates' court at the earlier hearing on 7 April 2021, a hearing which she and her solicitor both attended, and at which that trial was fixed.

iii)

What the Claimant did at 09:43 on the day of that trial is recorded and reflected in contemporaneous documents. She sent an email at that time (09:43) to the Administrative Court in Leeds. She copied that email to the email address which she had for 'administration' at Leeds magistrates' court. As Leeds magistrates court have explained, that email to the administration email address was "uploaded" to the court's system only at 12:24 that day.

iv)

Attached to that email (at 09:43) were three documents which the Claimant had drafted. They were: (a) an N463 seeking "urgent" consideration of an order for interim relief directed at the magistrates (within "2 hours"); (b) an N461 judicial review claim form; and (c) a draft order.

v)

Those three documents had been drafted by the Claimant that same morning. The Form N461 bears the date 9 July 2021. The Form N463 says: I am applying for a stay of proceedings for a trial that is to take place this morning". The Form N463 is also the document which records the magistrates' court hearing start-time: it says "the trial is today at 09:45".

vi)

The Claimant had evidently been working on those documents since 7am on 9 July 2021, because the Form N463 gave "7am" on "9 July 2021" as the time when she had "first appreciated that an urgent application might be necessary". Those three documents clearly related to a new claim for judicial review in the Administrative Court

vii)

The Claimant's covering email, sent at 09:43 to the Administrative Court in Leeds and cc'd to the administration email at the Leeds Magistrates' Court read as follows:

"Dear Sir, I refer to the above matter in relation to today's trial. I have applied for a stay of proceedings in the admin court as new evidence has come to light which exonerates me from the related Education Act matter. Thank you. Sorry for the very short notice".

20.

The first point that follows from these documents is this. The Claimant was referencing the very same new "exonerating" evidence, of which she has told the Court she was aware the previous day (8 July 2021), and which she had discussed the previous day with the legal representative who attended the hearing at the magistrates' court on 9 July 2021 scheduled for 09:45. It was that legal representative who, at that hearing, requested the adjournment pending the outcome of the crown court appeal against conviction and sentence.

21.

The second point that follows from these documents is this. The Claimant was communicating - two minutes before the hearing start time, and in an email cc'd to the admin email at the magistrates' court - that she was seeking to have the magistrates' court proceedings urgently 'stayed', and that the basis for the 'stay' was that 'exonerating new evidence'. There was no reference anywhere, in the email or in the three attached documents, to any illness, still less any incapacitating illness.

22.

The Claimant was well aware of the administration email address for the magistrates' court. She was well aware of contact details for her solicitor. She was also well aware, from at least 7am, of her wish to seek to secure that the magistrates' court should not be able to go ahead. Furthermore, rather than taking steps to travel to the Leeds Magistrates' Court (in LS1) from her home address (evidently in LS11, some 2½ miles away), she was drafting documents to file in the Administrative Court to try and have the magistrates' court proceedings urgently 'stayed'. Her actions, in the preparation of those materials, and in the way in which the basis for an urgent 'stay' was being communicated, are flatly inconsistent with her assertion that the magistrates should not go ahead because she was suffering an incapacitating illness, involving vomiting and diarrhoea, which precluded her from attending in the magistrates' court. It is perfectly obvious, from the contemporaneous documents, that what she sought to do was - acting in person - to mount an urgent collateral attack on the magistrates' court proceedings rather than attending them. Her attendance at the GP's clinic was not until 15:05, later in the day.

23.

The Claimant asserts that 09:44 on 9 July 2021 she had a phone conversation with her legal representative to communicate that she could not attend the magistrates' court because she was incapacitated by illness. Even that would involve the choices on her part: the choice not to communicate by email with the magistrates' court that she had a reason for an adjournment based on ill-health; and the choice to wait until one minute before the scheduled hearing start-time before seeking to alert her solicitor. It is inconsistent the explanation which this Court and the Claimant had both seen on 2 September 2021 from the legal team manager at the magistrates' court, which confirms that at the trial on 9 July 2021:

"Claimant not in attendance, no representations or explanation from Claimant's solicitor as to Claimant's whereabouts. Probation apply to proceed and absence, Claimant's solicitors applied to adjourn as appeal ongoing".

This description of what happened at the hearing has been given by the magistrates' court, seen by the Claimant, and she has been unable to adduce anything which begins to answer it.

24.

The question for the Court on a substantive hearing of this judicial review challenge would be whether the magistrates acted unfairly and in breach of the Claimant's right to a fair trial. That was in circumstances where the legal representative was present and had had a conversation with the Claimant about the supposedly exonerating material, the previous day. It was in circumstances where the legal representative was able to put forward a basis for an adjournment linked to the challenge being made to the underlying conviction, which is what the legal representative did. It was in circumstances where, entirely understandably, the cc'd judicial review papers emailed to the Administrative Court and copied to the magistrates' court administration email address, two minutes before the scheduled hearing, had not been uploaded until 12:24, after the magistrates had dealt with the matter and had issued the warrant of arrest, having convicted the Claimant of the breach. It was in circumstances where the Claimant's legal representative was plainly not in a position to explain her absence to the magistrates or to make any application for an adjournment based on her ill-health. It is in circumstances where her subsequent assertions about incapacitating ill-health clash with contemporaneous documents which show what the Claimant was in fact doing in the period right up to the scheduled magistrates' court hearing start-time. It is in circumstances where the Claimant has not, even now, put before this Court any material which shows that the underlying conviction is

unsound. It is in circumstances in which the question of the soundness of the underlying conviction is one for the crown court on the appeal. It is in circumstances where the issue at the breach trial hearing was whether the Claimant had breached the terms of a court order (the community sentence) imposed on her. It was in circumstances where the magistrates' court was not proceeding to sentence the Claimant, and still has not sentenced her (as to which she would be able to provide any relevant explanation in mitigation).

25.

It is very clear in this case, in my judgment, that the Claimant has no prospect at all of successfully impugning the decision of the magistrates on 9 July 2021 to proceed in her absence, to hear evidence relating to her breach of the terms of the community sentence, and to deal with the question of breach in light of that evidence. Decisions as to whether to proceed in absence, and as to whether to adjourn proceedings, are case-management decisions for the magistrates. They are arrived at in the circumstances faced by that court. There is plainly no viable basis in this case, with any realistic prospect of success, for this Court to conclude that the decision to proceed in the Claimant's absence, and to determine breach - and not to adjourn - was incompatible with human rights fair trial standards or breached any other public law obligation.

Order

26.

In the circumstances, and for these reasons, the renewed application for permission for judicial review is refused. In circumstances where permission has again been refused, as it was originally by Eady J on the papers, it is in my judgment clearly appropriate that the stay of execution on the arrest warrant of 9 July 2021 be discharged, and I will so order.

3.3.22