PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2025-001400**

The King (on the application of Watson) –v– The Chief Constable of Greater Manchester Police

ORDER made by the Rt. Hon. Lord Justice Zacaroli

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal the Order of Hill J dated 16 April 2025.

Decision:

Permission to appeal is refused.

The application to adduce fresh evidence is refused.

The application for a non-disclosure order is refused.

The application to restrain publication is refused.

The application for referral to the Attorney General and directions is refused.

Reasons

Permission to appeal

The appellant seeks to appeal the Order of Hill J dated 16 April 2025 by which she dismissed the appellant's judicial review claim. The claim concerned the decision of the respondent, dated 25 November 2023, not to take further action in response to a complaint made by the appellant on or around 18 February 2023.

The appeal has no real prospects of success and there are no other compelling reasons for the appeal to be heard. Permission to appeal is therefore refused. I set out my reasons below, taking each ground of appeal in turn.

First, however, it is important to appreciate that the judge's decision was in the context of an application for judicial review – in respect of which permission had been given to proceed on one ground only, namely whether the respondent had incorrectly applied the law in reaching its decision not to take further action in respect of the complaint. It is also important to appreciate that an appeal to this court can only succeed if there was an error of law in the judge's decision. The critical question, therefore, on this application for permission to appeal is whether there is an arguable error of law (with a real prospect of success) in the judge's decision that the respondent did not err in law in reaching its decision.

Ground 1 is that the Judge erred by mischaracterising the Interested Party's conduct and importing an inappropriate *Miller*-based tolerance threshold (deriving from *R (Miller) v College of Policing and another* [2020] EWHC 225 (Admin), [2020] 4 All ER 31), failing to give proper weight to the heightened vulnerability of the targeted group, given the timing of the comments in the aftermath of the tragic death of Briannna Ghey, and the foreseeability of harm.

This ground has no real prospect of success. There is no error of law in the judge's characterisation of the nature of the Interested Party's electronic communications. At most this ground of appeal amounts to a disagreement with the judge's characterisation. That falls short of identifying any error of law. Use of language that is offensive, even highly offensive, to the appellant is not the same as the statutory test of grossly offensive, as explained in the authorities cited by the judge. It cannot be said that the judge was wrong or irrational in not finding such language to be grossly offensive according to that statutory definition which (as the judge rightly held) must itself be seen in the context of the fundamental value of freedom of speech – including the freedom to express opinions that others find offensive and upsetting. The contextual comparison raised by the appellant at sub-ground 1(e) is not apt to the present case.

Ground 2 is that the Judge wrongly relied on *Miller* which, it is said, is unsafe precedent in light of new evidence as to the factual foundations underpinning that decision.

This ground has no real prospect of success. *Miller* has not been overturned on appeal or by any subsequent decision. It remains therefore authority for the legal propositions stated in it. Those legal propositions were based

on the facts found in that case. Even if it was the case that new evidence would have shown that those facts were wrong, that would not undermine the force of the legal propositions stated in the case.

Ground 3 is that the Judge was wrong to criticise the appellant for not notifying the Interested Party of the judicial review claim. It is said that this is procedurally unfair and discriminatory and fails to consider the safety of the appellant as a transgender woman and litigant in person.

This ground has no real prospect of success. The judge criticised both parties for the Interested Party's late notification of the claim: at [58], she explicitly says this was also a responsibility of the respondent. She was entitled to do so. In any event, this would have been relevant, if at all, to the application to strike out the claim, which the judge did not, and did not need to, resolve in view of her decision on its merits.

Ground 4 is that the Judge failed to consider what is said to be the systematic discrimination by the respondent in operating a blanket policy not to investigate online hate crimes against transgender individuals. The appellant raises this ground and applies by application dated 14 August 2025 to adduce a Second Supplemental Witness Statement dated 13 August 2025 as fresh evidence.

This ground has no real prospect of success. Even if the new evidence related to the judicial review claim for which permission had been given to proceed (which as I have noted was limited to the challenge to the application of the law by the respondent's officers), the evidence put forward by the appellant does not, as the appellant suggests, suggest that the police operate a policy of not investigating such remarks where they *could* amount to a criminal offence. The Times article exhibited by the appellant in her application for fresh evidence is only in relation to "non-crime hate incidents" (that is, not criminal offences). It is therefore not arguable that the new evidence raised by the appellant show an unlawful fettering of discretion, a breach of the Equality Act 2010 or that it alters the proportionality analysis undertaken as to the ECHR. Insofar as there is no real prospect of a successful appeal on this ground, I also refuse the appellant's application to admit this fresh evidence.

The appellant has made three further applications which I address in turn.

Application for a non-disclosure order

The second application, dated 21 September 2025, is for a non-disclosure order by which the appellant seeks to prohibit any individual from publishing or disseminating any documents served by the appellant in these proceedings to any individual who is not involved in the proceedings.

The application is refused. CPR 31.22(1) and 32.12 prohibit parties from publishing or disseminating any documents that have not been read in open court without the court's permission or the appellant's approval. The protection does not extend to documents that *have* been read in open court or referred to at a hearing held in public. Insofar as the application relates to the appeal bundles, I address it under the third application (see below). Insofar as it relates to documents in the bundles before the court below, then the blanket prohibition on the disclosure of all documents served is not justified either because (1) to the extent documents have been referred to at a hearing held in open court there is no basis for such an order, or (2) the appellant is otherwise protected by the terms of the CPR referred to above.

Application to restrain publication

The third application, dated 14 October 2025, is for an order to restrain the publishing of the appeal bundle in these proceedings. It is said that the Interested Party has published the bundle. This originally contained the appellant's personal details, including phone number and address. It is said that the Interested Party has now taken out the pages of the appellant's notice which contained the personal information, but that the remainder of the appeal bundle remains on his blog.

The application is refused.

The relevant provision to this application is CPR 31.22. Sub-para (1) provides that "*[a] party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where – (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public…*". Sub-para (2) provides that "*[t]he court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public*".

The Interested Party denies publishing the appeal bundle, and says that publication was of the bundle below. The document annexed to the application notice is from the application notice below, not from an appeal document. There is no other evidence sufficient to persuade me that the appeal bundle itself has been published. As noted above, the prohibition on making use of documents, filed with the court, otherwise than for the purpose of the proceedings does not extend to documents referred to at a hearing held in public.

I do not accept that the alleged harm caused by the publication of these documents is sufficient to override the principle of open justice, nor am I persuaded that publication of the bundles undermines the administration of justice or the appellant's ability to properly participate in these proceedings such as to interfere with her Article 6 ECHR rights. The appellant is also not assisted by *Attorney General v Times Newspapers* [1974] AC 273. This case concerned the publication of material which discussed the facts of the ongoing dispute in that litigation and was found to amount to contempt of court because it prejudged or was likely to cause public prejudgment of the question of liability. Publication of the present bundles, without more, is not analogous to that case. In any event, the point is moot in light of the refusal of permission to appeal.

Application for referral to the Attorney General and directions

The fourth application, dated 11 November 2025, seeks (i) referral of the conduct of the Interested Party and his legal representative, Mr Elliot Hammer (acting through Austin McCormick LLP), to the Attorney General under CPR 81 for consideration of contempt of court and interference with the administration of justice; (ii) reaffirmation of the order of Hill J dated 18 February 2025, protecting the appellant's personal data; (iii) directions requiring that all correspondence and pleadings refer to the appellant by female pronouns or by neutral terminology; and (iv) consequential relief and costs.

As to (i), I am not persuaded that the conduct of the Interested Party or Mr Hammer amounts to interference with the due administration of justice sufficient to warrant a referral to the Attorney General to consider contempt proceedings. As permission to appeal on the underlying claim is refused, I do not need to address the remaining elements of this application. The application as a whole, therefore, is accordingly refused.

Information for or directions to the parties

Court of Appeal Mediation Scheme (CAMS)

Where permission has been granted or the application adjourned:

a) Does the case fall within the Automatic Referral Scheme (see below)? Yes/No (delete as appropriate)

Automatic Referral Scheme categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

b) If yes, is there any reason not to refer to CAMS mediation under the Automatic Referral Scheme? Yes/No (delete as appropriate)

c) If yes, please give reason:

d) Cases outside the Automatic Referral Scheme: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

a) time estimate (excluding judgment)
b) any expedition

Signed: BY THE COURT
Date: 31 March 2026

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).