

Judgments

QBD, ADMINISTRATIVE COURT

Neutral Citation Number: [2010] EWHC 1690 (Admin)

Case No: CO/14381/2009

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT AT LEEDS

Leeds Combined Court Centre

1 Oxford Row

Leeds LS1 3BG

Date: 8 July 2010

Before :

HIS HONOUR JUDGE LANGAN QC

Between :

THE QUEEN (on the application of NORTH YORKSHIRE  
POLICE AUTHORITY)

Claimant

- and -

THE INDEPENDENT POLICE COMPLAINTS  
COMMISSION

Defendant

and

(1) THE CHIEF CONSTABLE OF NORTH YORKSHIRE  
POLICE

Interested Parties

(2) ANTHONY JORDAN

(Transcript of the Handed Down Judgment of

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Mr John Beggs QC and Mr Sam Green (instructed by the claimant's in-house solicitor) for the claimant

Ms Beverley Lang QC (instructed by the defendant's in-house solicitor) for the defendant

The first interested party did not participate in the hearing

The second interested party in person

Hearing date: 15 June 2010

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**JUDGE LANGAN QC:**

**Introduction**

1. Anthony Jordan ('Mr Jordan') is the second interested party in these proceedings. He asked the North Yorkshire Police to investigate the treatment of his mother Mrs Winifred Jordan ('Mrs Jordan') in a care home prior to her death and the manner in which his complaints about that treatment had been dealt with by other agencies. The officer in charge of the investigation concluded that there was nothing to justify the institution of criminal proceedings against any party. Mr Jordan then asked the Chief Constable of North Yorkshire Police ('the Chief Constable'), who is the first interested party,

to carry out an investigation of these matters, but the Chief Constable declined to do so. Under statutory provisions to which I shall refer, Mr Jordan subsequently made a complaint to the North Yorkshire Police Authority ('the Police Authority'), which is the claimant, about the Chief Constable's response.

2. The Police Authority is under an obligation to record complaints about the 'conduct' of the Chief Constable, but the obligation does not extend to 'so much of any complaint as relates to the direction and control of a police force.' The Police Authority refused to record Mr Jordan's complaint on the ground that it related to direction and control. Mr Jordan exercised his right to appeal against this refusal to the Independent Police Complaints Commission ('the Commission'), which is the defendant. The Commission upheld the appeal, determined that the complaint did not relate to direction and control and that it did relate to conduct, and required the Police Authority to record the complaint.

3. The Police Authority then issued a claim for judicial review of the decision of the Commission, and permission to proceed with the claim was granted on the papers by His Honour Judge Behrens. This is my judgment on the substantive hearing. I should record my gratitude to counsel for the Police Authority and the Commission, Mr John Beggs QC (who was leading Mr Sam Green) and Ms Beverley Lang QC respectively, and to Mr Jordan, for their extremely helpful written and oral submissions.

### General approach

4. I begin with a few general observations.

5. First, the case was presented both by Mr Beggs and by Ms Lang as one of considerable importance both to the Commission and to police authorities. They were, I think, right to do so. There is a sense in which the proper characterisation of any complaint must be fact-sensitive. This case, however, appears to raise a broad question which must be answered one way or the other. I would formulate the question in this way: is a complaint as to the refusal of the chief officer of a police force personally to investigate an alleged offence, when the complaint is not accompanied by any specific assertion of personal misconduct or dereliction of duty by the chief officer, a complaint which relates to the direction and control of the force?

6. Secondly, Ms Lang in the course of her submissions referred in passing to the 'discretion' of the Commission in determining the appeal. I doubt very much whether any question of discretion arises in this case. The determination of the Commission must, in my judgment, have been either right or wrong as a matter of law.

7. Thirdly, Mr Beggs made quite extensive reference to decided cases on the authority of chief officers of police; the limited extent to which as a matter of public law the courts will interfere with the exercise of the discretion of chief constables as to enforcement of the law; and the non-existence of any private law duty of care owed to the victims of crime by police who are investigating crime. The leading cases are all well-known: *R v Commissioner of Police of the Metropolis, ex parte Blackburn* [1968] 2 QB 118; *R v Chief Constable of Sussex, ex parte International Trader's Ferry Limited* [1999] 2 AC 418; *Hill v Chief Constable of West Yorkshire* [1989] AC 53. I agree with Ms Lang that these authorities are of very limited value in the context of this case which has to turn essentially on the interpretation of a few statutory phrases.

8. Fourthly, it would be possible to burden this judgment with a lengthy chronology and with manifold references to correspondence which has passed between the parties. It does, however, seem to me on a review of the material which is before the court that such an exercise is unnecessary and would actually obscure, rather than place in focus, the issue for decision. This explains what may appear to the advocates to be, in the narrative section of this judgment, a surprisingly brief encapsulation of the history leading up to the claim.

### Statutory provisions and other relevant material

9. The Commission was established by section 9 of the Police Reform Act 2002 ('PRA'). Section 9 is contained in Part 2 of the PRA, the subject of which is complaints and misconduct. The functions of the Commission include securing the maintenance by the Commission itself, and by police authorities and chief officers, of

- (a) the handling of complaints made about the conduct of persons serving with the police;
- (b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;

(ba) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police.

(PRA, section 10(1) (2), as amended). It is the duty of the Commission "to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the Commission has functions": PRA, section 10(4). However, nothing in Part 2 of the Act is to confer any function of the Commission

in relation to so much of any complaint or conduct matter as relates to the direction and control of a police force by -

- (a) the chief officer of police of that force; or
- (b) a person carrying out the functions for the time being of the chief officer of police of that force.

(PRA, section 10(8)).

10. Section 12 of the PRA deals with complaints, matters and persons to which Part 2 applies.

11. Section 12 (1) provides that, subject to other provisions of the section, references to a complaint are references to any complaint about the conduct of a person serving with the police which is made (whether in writing or otherwise) by -

- (a) a member of the public who claims to be the person in relation to whom the conduct took place;
- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the conduct;
- (c) a member of the public who claims to have witnessed the conduct;
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).

12. Section 12(2) provides that, subject to other provisions, "conduct matter" means

any matter which has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have -

- (a) committed a criminal offence; or
- (b) behaved in a manner which would justify the bring of disciplinary proceedings.

13. Section 13 of the PRA provides that Schedule 3, which makes provision for the handling of complaints and conduct matters and for the carrying out of investigations, is to have effect subject to section 14(1). Section 14(1), which lies at the heart of this litigation, is in the following terms:

Nothing in Schedule 3 shall have effect with respect to so much of any complaint or conduct matter as relates to the direction and control of a police force by

- (a) the chief officer of police of that force; or
- (b) a person for the time being carrying out the functions of the chief officer of police of that force.

Section 14(2) empowers the Secretary of State to issue guidance to chief officers and to police authorities "about the handling of so much of any complaint as relates to the direction and control of a police force" by a chief officer or a person for the time being carrying out his functions. By section 14(3) it is the duty of a chief officer and of a police authority "when handling any complaint relating to such a matter to have regard to any guidance issued under subsection (2)."

14. Section 29(1) of the PRA is the interpretation section for Part 2. It includes this provision:

"conduct" includes acts, omissions and statements (whether actual, alleged or inferred).

Section 29(1) also defines 'the appropriate authority' as being, in the case of a senior officer (that is, one above the rank of chief superintendent), the police authority for the area of the force of which he is a member.

15. Schedule 3 to the PRA deals with the handling of complaints and conduct matters in considerable detail. It is necessary to refer to just a few paragraphs of Schedule 3. Where a complaint is made to a police authority, it must first determine whether or not it is the appropriate authority: paragraph 2(2). Then, by paragraph 2(6)

Where -

(a) a police authority determines, in the case of any complaint made to the authority, that it is itself the appropriate authority...

the authority... shall record the complaint.

Paragraph 3(2) of Schedule 3 requires a police authority which decides not to record "the whole or any part of what has been received" to notify the complainant of the decision, the grounds on which it was made, and his right of appeal. Paragraph 3(3) gives the complainant a right of appeal to the Commission against such a decision; and paragraph 3(4) deals with the powers of the Commission on appeal and the duty of a police authority and a chief officer to comply with any directions given by the Commission on determining the appeal. None of the detail of this is material to what I have to decide.

16. Reference was made at the hearing to a number of sections of the Police Act 1996, which deals in Part I with the organisation of police forces in England and Wales. In particular, section 10 provides that a police force "shall be under the direction and control of the chief constable."

17. In March 2005 the Secretary of State issued "Guidance on the Handling of Complaints relating to the Direction and Control of a Police Force by a Chief Officer" pursuant to section 14 of the PRA. Paragraph 5 explains that each police force has to develop its own procedure for the handling of complaints on direction and control and to write its own local guidance. The purpose of the Secretary of State's Guidance is to provide forces with a structure and minimum requirements for their own local procedure. Paragraph 8 attempts a "Definition of Direction and Control":

Direction and control of a police force is taken to be the legitimate independent operational responsibility and discretion that is held by a chief officer. For the purpose of this guidance, a complaint that relates to the direction and control of a force by a chief officer is one that relates to:-

- o operational policies (where there is no issue of conduct)
  - o organisational decisions
  - o general policing standards in the force
  - o operational management decisions (where there is no issue of conduct).

18. Finally, there is the Force Procedure Document issued by the North Yorkshire Police. In the section dealing with Complaints relating to Direction and Control Issues Procedure, reference is made to the definition set out in the last paragraph. The document continues:

The following are **examples** of matters relating to direction and control:

- o The formulation of guidelines and the making of general decisions on the deployment and posting of officers or groups of officers;

- o The allocation of personnel, financial and material resources in certain sectors or geographical areas;
- o A policy decision to (or not to) arrest and charge for certain offences - for example the simple possession of cannabis for personal use;
- o The decision on how - generally - to perform certain functions - for example licensing, use of firearms and stop and search;
- o The formulation of principles and protocols governing the appointment, recruitment, promotion, discipline and dismissal etc of officers and other staff.

However, the following would **not** normally be considered to involve direction and control (but should be regarded as matters of conduct):

- o The making of a specific decision on the deployment of officers for a particular investigation or operation - for example, a decision to take a very large number of officers to search a small house despite no expectation of violent resistance;
- o The decision to (or not to) arrest and prosecute a particular suspect for a certain crime;
- o The application of policies on certain functions (for example licensing, use of firearms and stop and search) in particular cases; and
- o The appointment, recruitment, promotion, discipline and dismissal etc of particular officers and police staff.

#### **Narrative**

19. Mrs Jordan died in hospital on 11 September 2005. She had previously been resident in a care home, which was operated by a limited company under contract with York City Council. Mrs Jordan's death was certified in the ordinary way and there was no coroner's inquest.

20. Mr Jordan formed the opinion, to which he has tenaciously adhered, that Mrs Jordan's death was caused or accelerated by abusive treatment and/or neglect at the care home. After her death, he raised his concerns with a number of public authorities and other bodies: the limited company; York City Council; the then Commission for Social Care Inspection ('CSCI'); the Local Government Ombudsman; and the Parliamentary and Health Service Ombudsman. Mr Jordan also pursued his concerns through his Member of Parliament and through several firms of solicitors. None of this produced anything which was remotely satisfactory from Mr Jordan's point of view.

21. Mr Jordan then decided to involve the police. A meeting between him and two detective sergeants in the York Criminal Investigation Department was held on 17 July 2008. Mr Jordan had, in summary, a twofold complaint: as to the treatment of Mrs Jordan in the care home; and as to what Mr Jordan in later correspondence described as the "falsified, inflammatory and downright untrue" report which had been prepared by the CSCI. The officers took detailed information from Mr Jordan and commenced an investigation under the supervision of Detective Inspector Stephen Maud ('DI Maud').

22. The investigation was concluded and the result was communicated by DI Maud to Mr Jordan in a letter of 4 September 2008:

I understand that you have pursued this matter with every available organisation involved in care standards issues. There are no grounds to suggest that a criminal offence has been committed and on that basis no further action will be taken by the Police.

I enclosed [*sic*] all the documentation you originally supplied.

23. On 7 October 2008 Mr Jordan sent to the North Yorkshire Police a letter of complaint relating to what he perceived to be the serious deficiencies in DI Maud's investigation, and he followed this on 4 November 2008 by a formal complaint to the Commission. This complaint had a lengthy and complex procedural history which I do not think it necessary to set out. It is sufficient to say that the complaint eventually ran into the ground because DI Maud retired and was unwilling, after his retirement, to cooperate in an investigation. In such circumstances the Commission has power to direct that an

investigation be discontinued, and on 9 June 2009 it did so in respect of the complaint against DI Maud. By this time Mr Jordan had already begun his efforts to secure the involvement of the Chief Constable and for some months he had been pursuing the two avenues, the formal complaint as regards DI Maud and correspondence with the Chief Constable's office, concurrently.

24. On 3 December 2008 Mr Jordan had written to the Chief Constable. The letter started in this way:

I formally request you initiate and have a direct input to an investigation into the circumstances that resulted in the death of Mrs Winifred Smith Jordan my mother.

It is clear from the letter that the investigation sought is one both into those who were responsible for the care of Mrs Jordan and into the "fraudulent fabrication" which, on Mr Jordan's view, had been perpetrated by the CSCI. The letter concluded:

My aim is that where systems are in place to ensure the safety and welfare of residential and respite care service users, they must be seen to be implemented currently for the benefit of future service users.

25. The reply to this letter was written by Mr Leonard Miller, a solicitor employed by the North Yorkshire Police, on 15 December 2009. There is a wealth of correspondence before the court, some prior to and much more after the letters of 3 and 15 December. But, as I observed at the hearing, the respective positions of the Commission and of the Police Authority were crystallised in these two letters, although the first was, of course, one in which the Commission had no hand. In the letter of 15 December, Mr Leonard said this:

Pursuant to section 10 Police Act 1996 North Yorkshire Police is under the direction and control of the Chief Constable. Accordingly, the decision whether to investigate allegations of criminal conduct is at his sole discretion.

Furthermore there is a long and consistent line of legal authorities the latest being a Court of Appeal decision reported as recently as 21 December 2007, reaffirming the proposition that the police owe no general duty of care to victims of crime. There are also many authorities which have decided that the Chief Constable has a wide discretion about alleged criminal conduct which officers under his direction and control investigate.

In exercising this discretion my client takes into account the public interest in pursuing a criminal investigation, whether an alternative remedy is available, whether the matter has already been investigated by another body, whether civil as opposed to criminal proceedings would lead to a more appropriate solution, whether the matters have become stale, the extent to which criminal proceedings may amount to an abuse of the legal process, the proportionally [*sic*] of instigating a police investigation having regard to the stigma which attaches to a criminal conviction, and whether public funds entrusted to him by the Police Authority for delivering policing services to the public of North Yorkshire should be spent in this way. This is not an exhaustive list.

My client also has due regard to the Crown Prosecution Service Code of Conduct for Prosecutors when considering whether the allegations are ultimately likely to result in a criminal conviction.

My client also notes that your stated purpose in reporting this matter as a criminal offence is to ensure the correct implementation of systems in place to ensure the safety and welfare of residential and respite care services users. This is not the purpose of a criminal investigation and prosecution.

In all the circumstances my client has declined to authorise any further criminal investigation into the conduct you allege.

26. In further correspondence, the Police Authority maintained the position which had been advanced in the letter of 15 December 2008. Then, on 18 May 2009, Mr Jordan wrote to the chair of the Police Authority. His letter was headed:

FORMAL COMPLAINT AGAINST THE CHIEF CONSTABLE OF NORTH YORKSHIRE GRAHAME MAXWELL IN HIS FAILURE TO INVESTIGATE THE DEATH OF MRS W S JORDAN

It is not necessary to set out the substance of the letter. The reply from the Police Authority was dated 22 May 2009, and was simply to the effect that the complaint related to a matter of direction and control, so that the Police Authority was unable to assist Mr Jordan. This was, in effect, a decision not to record Mr Jordan's complaint, and he should have been told that it was such a decision and have been provided with information, in particular as to his right of appeal to the Commission, pursuant to paragraph 3(2) of Schedule 3 to the PRA. It appears that subsequently Mr Jordan spoke to

someone at the Commission and learnt from that person that he had a right of appeal.

27. Mr Jordan's formal notice of appeal against the decision of the Police Authority not to record his complaint was received by the Commission on 26 June 2009. The appeal was dealt with by Mr Jack Harvey, Casework Manager, on the basis of the documents submitted by Mr Jordan and the Police Authority.

28. The appeal was decided on 28 August 2009. Mr Jordan was successful and the Police Authority was directed to record his complaint. The Commission set out its findings on the failure to record in the following terms:

North Yorkshire Police Authority has outlined two reasons for not recording Mr Jordan's complaint against the Chief Constable. Firstly, it is stated that the complaint relates to Direction and Control matters. Secondly, because the Chief Constable has not been personally involved in the handling of Mr Jordan's case.

We do not consider the complaint to constitute one of Direction and Control. Consonant with the decision made by North Yorkshire Police regarding Mr Jordan's complaint against Detective Inspector Maud, the decision not to investigate Mr Jordan's conduct is not one which is made in line with policy, and does relate to the conduct of a police officer, as a result it should be recorded as a public complaint.

Secondly, the issue of whether or not the Chief Constable has been personally involved in making the determination is not of importance to the recording decision. This would be a matter for any subsequent enquiries to determine. We note that preliminary enquiries have already been undertaken by the appropriate authority, which might be sufficient for the purposes of this complaint.

29. The limited practical value of Mr Jordan's success was underlined in the final paragraph of the findings of the Commission:

We note that a reason Mr Jordan has provided for pursuing this complaint is for the Police to complete investigations into the death of his mother. Such considerations of whether the police should investigate this matter do not constitute a part of the appeal assessment. Further, the findings in the assessment do not compel the Appropriate Authority to investigate the matter, or review their previous decision not to investigate.

30. The Commission has a 'Comeback to Appeals' procedure under which it can explain its decision further. In the course of a Comeback in this case, Mr Harvey said this in an e-mail of 11 September 2009 to Mr Stuart Pudney, the deputy chief executive of the Police Authority:

In this instance, Mr Jordan has made a complaint that the Chief Constable has failed to institute a criminal investigation into the circumstances surrounding the death of his mother. Although the CC may not have been personally involved in making this decision, this would be for any subsequent enquiries to determine. Consequently, it is a matter to be recorded - a decision has been made, which there is no evidence to suggest is in line with policy. I accept that this might appear to be illogical, but we do instruct forces to record complaints in situations where there has been a refusal/failure to record or investigate a criminal allegation. It is the same situation as that which North Yorkshire Police faced when Mr Jordan made his initial complaint. The obvious exception would be where there is a specific policy which instructs to arrest (or not) and charge for certain offences.

31. The claim form in these proceedings was issued on 26 November 2009, and permission to apply for judicial review was granted on the papers on 6 January 2010. The substantive hearing took place on 15 June 2010.

## Discussion

32. I do not think that a case of this kind can usefully be approached through anything which resembles a detailed analysis of the caseworker's reasoning. What was required of Mr Harvey was a characterisation of Mr Jordan's complaint, and a short statement of his grounds for saying 'direction and control' or 'not direction or control.' As I have observed earlier in this judgment, his answer to the relevant question must be either right or wrong, and that is so, however adequately or inadequately he expressed himself. (I should say that I respectfully agree with what has been said by Blair J about the adequacy of brief appeal findings by the Commission's caseworkers: *The Queen on the application of Herd v Independent Police Complaints Commission* [2009] EWHC 3134 (Admin), paragraph 37).

33. Consideration of the issue which I have to resolve seems to me to break down into two distinct questions. The first is whether Mr Jordan's complaint related to the 'conduct' of the Chief Constable. If it did not so relate, there was no basis on which the Police Authority could be required to record it. The second question is whether, if the complaint did relate to



conduct, it was excluded from the obligation to record because it related wholly to the 'direction and control' of the North Yorkshire Police. This is, fortunately, not one of those cases in which a complaint may be of a hybrid kind, relating in part to pure direction and control matters and in part to other, recordable matters.

34. On the first question, the thrust of the Police Authority's case as expressed in the Grounds for Judicial Review and in Mr Beggs' written submissions is that the complaint cannot relate to 'conduct' because it does not allege 'personal misconduct' by the Chief Constable. For the purposes of section 12 the PRA, it is said, "conduct plainly refers to misconduct" (Grounds, paragraph 16). All that Mr Jordan's complaint is about is that the Chief Constable did not "personally [institute] a criminal investigation upon demand, in circumstances where there is no realistic suggestion of impropriety going beyond Mr Jordan's strident expression of unhappiness with a decision he disagreed with, and in circumstances in which the Chief Constable has had no personal involvement in the case" (written submissions, paragraph 39). What the Chief Constable did could be regarded as personal misconduct only if "one characterises failure to accede to a request (or obey an instruction) made by a member of the public to investigate alleged crime as wrongdoing *per se*" (written submissions, paragraph 46(ii)).

35. In my judgment, this view of the legislation is not correct. The word 'conduct' in its ordinary or natural meaning, which is that of behaviour, does not carry with it the notion that the behaviour must be of a particular quality, whether good or bad. The definition of 'conduct' in section 29(1) of the PRA does not assist. If the meaning of the word is to be extended or modified so as to be restricted to bad behaviour, or misconduct, or personal misconduct, one must find something in the context in which the word is used to justify the extension or modification. I cannot find anything of the kind. On the contrary, as Ms Lang pointed out, there is an indication in Schedule 3 to the PRA that conduct and misconduct are for the purposes of the legislation overlapping, and not mutually exclusive, concepts. The signpost is in paragraph 19B(4) which deals with a 'severity assessment', which is directed to determining "whether the conduct, if proved, would amount to misconduct or serious misconduct."

36. I therefore conclude that the Commission was right to treat Mr Jordan's complaint as one which related to the conduct of the Chief Constable.

37. What is, as it seems to me, the more difficult question is whether the complaint related to a matter of direction and control of the force. One curious feature of the case is that the North Yorkshire local guidance on complaints about direction and control classifies a decision not to prosecute a particular individual for a particular crime as not being a decision as to direction and control. That situation is very close to the one with which I am concerned, that of a decision not to have a reinvestigation under the supervision of the Chief Constable of circumstances which have already been the subject of an investigation: yet that is said to be a direction and control matter.

38. Mr Beggs, in his submissions in reply, reduced the Police Authority's case to these three propositions. First, the Commission had to make what was essentially a factual assessment. Secondly, Mr Harvey, as the decision-maker, was either right or wrong in his conclusion: there was no room for the exercise of discretion. I agree thus far. Thirdly, and controversially, according to my note of what Mr Beggs said:

*In this case, on these facts, this was a direction and control matter because it related to the deployment of the Chief Constable's resources - to his decision not to deploy men [sic] to investigate a complaint that had already been investigated by other agencies.*

39. I would not accept this analysis. It is not easy to produce a comprehensive, yet accurate, definition of the concept of direction and control. I think, however, that it is essentially concerned with matters which are of a general nature. On this basis, a decision by a chief officer which is confined to a particular subject falls outside the scope of direction and control. The national and local guidance from which I have quoted at some length earlier in this judgment appears to me to be fully supportive of a general/particular dividing-line. If this is the right approach, then the decision of the Commission cannot be faulted.

40. Mr Beggs accepted that a complaint about a decision not to investigate or prosecute in a particular case *might* relate to conduct falling outside the scope of direction and control, for example, if it were alleged that the decision had been made for some improper motive. It seems to me that the legislation should be interpreted, if possible, in the manner least burdensome to those who have to work with it. The general/particular distinction to which I have referred is relatively easy for the Commission and others who have to characterise complaints to understand and apply without delving too deeply into the nature of a complaint at the initial stages of the complaints procedure. A distinction under which some complaints about decisions not to investigate or prosecute in a particular case would be regarded as relating to conduct only, and others as relating to direction and control, would be far more difficult to operate.

41. Mr Beggs also raised what might be called (although he was innocent of using the expression) a flood-gates

argument: if the impugned characterisation is to stand, it "will inevitably bring a whole new category of complaint under the Schedule 3 umbrella" (written submissions, paragraph 11). Persons dissatisfied with a decision not to commence an investigation, or with a decision after investigation that there should be no prosecution, could overload the system by making pointless requests to chief officers have the matter reconsidered. In my judgment, Ms Lang fairly answered the point when she said that I was concerned with the recording of a complaint which is, in essence, a matter of registration. If the complaint is repetitious or an abuse of the complaints procedure, it can be disposed of on an application for dispensation to the Commission, and the availability of the dispensation procedure mitigates any fear that the system may become clogged up in the manner suggested.

42. Accordingly, I have concluded that the Commission was right to reject the argument that Mr Jordan's complaint related to a matter of direction and control.

### **Disposal**

43. It follows from what I have said that the claim for judicial review must be dismissed.