Neutral Citation Number: [2020] EWHC 2408 (Admin)

Case No: CO/3962/2019

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: 07/09/2020

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

THE QUEEN
on the application of
PAUL JORDAN **Claimant**

- and –

(1) CHIEF CONSTABLE OF MERSEYSIDE POLICE

(2) SEFTON MAGISTRATES' COURT **Defendants**

- -
- -

Henry Gow (instructed by **James Murray Solicitors**) for the **Claimant**
Graham Wells (instructed by **Merseyside Police**) for the **Defendant**

Hearing date: 2 September 2020

- -

Approved Judgment 2

Mr Justice Chamberlain:

Introduction

1. The Claimant seeks judicial review of a decision of 5 July 2019 to issue a warrant to search his home. The warrant was issued by a justice of the peace at Sefton Magistrates' Court under s. 23 of the Misuse of Drugs Act 1971 ("the 1971 Act") on the application of an officer of Merseyside Police. The Defendants are the Chief Constable and Sefton Magistrates' Court. The latter has played no part in the proceedings. Permission to apply for judicial review was granted by HHJ Eyre QC, sitting as a Judge of the High Court, on 22 March 2020.

2. The factual basis for the application was set out in an application form, which has been disclosed in redacted form to the Claimant. The redacted portions of the application form were the subject of a claim by the Chief Constable for public interest immunity ("PII"), which I upheld (save in one minor respect) for reasons contained in a judgment handed down on 21 August 2020: see [2020] EWHC 2274 (Admin).

3. The substantive hearing of the claim for judicial review has therefore proceeded in two parts: the first, an open hearing involving the Claimant and Chief Constable to consider the documents in redacted form; the second, a closed hearing to consider the unredacted material with the assistance of counsel for the Chief Constable only, as permitted by the Supreme Court's decision in *R (Haralambous) v St Albans Crown Court* [2018] UKSC 1, [2018] AC 236. Both the open and the closed parts of the hearing were conducted remotely, using video-conferencing.

4. As at the PII hearing, the Claimant was represented by Henry Gow and the Chief Constable by Graham Wells. As I said in my previous judgment, counsel for a defendant permitted to attend a closed hearing has a special obligation to assist the court by identifying any points arising from the closed material which would arguably support the claim or undermine the defence. Mr Wells properly discharged that obligation.

5. In accordance with the procedure I described at [35] of my previous judgment, I have included here as many as possible of the reasons for my decision. Those parts of my analysis of the closed evidence which cannot be included here are set out in a separate closed judgment. Where I have reached a conclusion by reference to evidence described in the closed judgment, I have made that clear in this open judgment.

The law

6. Section 23 of the 1971 Act empowers a justice of the peace to issue a warrant to search premises if "satisfied by information on oath that there is reasonable ground for suspecting (a) that any controlled drugs are, in contravention of this Act or of any regulations or orders made thereunder, in the possession of a person on any premises".

7. The requirement to show "reasonable ground for suspecting" something is not an exacting one. In *Hussein v Chong Fook Kam* [1970] AC 942, Lord Devlin (giving the opinion of the Privy Council) said this at 948:

> "Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end…
>
> Their Lordships have not found any English authority in which reasonable suspicion has been equated with *prima facie* proof."

8. Thus, for example, in *Cumming v Chief Constable of Northumbria Police* [2003] EWCA Civ 1844, evidence showing that six people had the opportunity to commit an offence was enough to provide a reasonable ground for suspecting them all, even though the likelihood was that only one or two of them had committed the offence.

9. As with any other *ex parte* application, an applicant for a search warrant has a duty of full and frank disclosure. The applicant must "put on his defence hat and ask himself what, if he were representing the defendant or a third-party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge": *In re Stanford International Bank Ltd* [2010] Ch 33, [191] (Hughes LJ). This means that the applicant should disclose anything of which he is aware that is relevant, given the statutory test for granting the warrant.

10. But, as Hughes LJ made clear in the same paragraph, "it can be all too easy for an objector… to fall into the belief that almost any failure of disclosure is a passport to setting aside". That is not so: only *material* non-disclosures will vitiate the grant of a warrant. There are a number of cases dealing with what is meant by "material" in this context.

11. In *R (Dulai) v Chelmsford Magistrates' Court* [2013] 1 WLR 220, at [46]-[48], Stanley Burnton J (with whom Treacy J agreed) accepted that the applicant should have disclosed certain information to the magistrate. Had the information stood alone, it might have led to the refusal of the warrant. But if the information had been disclosed, it would have been proper for the applicant to comment on it. If both the information and the comment had been disclosed, the magistrate could not reasonably have refused the warrant, so the non-disclosure was not material. At [45], it was said that the question for the court in judicial review proceedings was "whether the information that it is alleged should have been given to the magistrate might reasonably have led him to refuse to issue the warrant".

12. This formulation was approved in *R (Mills) v Sussex Police* [2014] 2 Cr App R 34, [55]. There, Elias LJ (with whom Ouseley J agreed) went on to disapprove the approach of declining to set aside a warrant unless it can be shown that the court below would have refused to issue it if acquainted with all material facts. This latter approach, he said, "diminishes a principle which has been the bedrock of English law since the seminal case of *Entick v Carrington* (1765) 19 St Tr 1029, (1765) 2 Wilson, KB 275, namely that the common law does not recognise interests of state as a justification for allowing what would otherwise be an unlawful search". It would also make the applicant better off by failing to make full disclosure and would lead to difficulties in cases where it is unclear what the issuing authority would have done if proper disclosure had been given.

13. At [60], Elias LJ summarised the ratio of *Dulai* as follows:

> "Sometimes the court hearing the judicial review application will be given the information which should have been given to the court below. This may involve not merely the material of potential benefit to the defendant which had not been disclosed, but also the police response to that material. In *Dulai* the court accepted (at [46]) that this evidence is admissible and that if it is plain that once all the evidence is taken into account the judge below would still have issued the warrant, then it should not be quashed. In effect, the court is concluding that taken in the round, and having regard to the police response, non-disclosure did not materially affect the outcome. On that strict test the court is reviewing the lawfulness of the issue of the warrant but is not undertaking its own assessment."

14. This, Elias LJ held at [61], was to be distinguished from the "different but related question… whether the court should decline to quash the warrant if satisfied that in the light of all the fresh information it would itself have issued the warrant". This, it was pointed out, would be inconsistent with the approach of the Divisional Court in *R (Rawlinson) v Central Criminal Court* [2013] 1 WLR 1634, at [177] (Sir John Thomas PQBD). Elias LJ went on to say this at [63]:

> "*Dulai* is plainly right in permitting the court to assess the significance of the information which was not disclosed but ought to have been. Whether it was also right to have regard to the response which the police wish to make with respect to the now disclosed information, I would leave for another day when the issue directly arises. I would simply observe that there are in my view considerable problems, as recognised in *Rawlinson*, in allowing the Divisional Court to make its own assessment of the evidence. The reviewing court is then standing in the shoes of the judge below and performing a function which by statute belongs to that judge. It is also stepping outside its reviewing function and allowing itself to become a merits court. But as I have said, the issue does not directly arise here."

15. At [64], Elias LJ indicated that the warrant would be set aside "because there was material non-disclosure which may well have led the judge to issue a warrant which, had there been full candour, he would have refused to issue".

16. Since these decisions, s. 31 of the Senior Courts Act 1981 ("the 1981 Act") has been amended to insert a new provision, s. 31(2A), in these terms:

> "The High Court—
>
> (a) must refuse to grant relief on an application for judicial review…
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

The basis for the warrant application

17. The redacted version of the application form makes clear the basis on which the application for the warrant was made. Reference was made to a "Drugs Graft in the Sefton area" involving the supply of heroin and crack cocaine. It was said that the Claimant's home was "being used to store drugs". Reliance was placed on 14 intelligence reports. Most have been redacted to some degree:

> "Report 1 - **/07/2019…
>
> *** is storing cash/drugs at [the Claimant's address] and an address on ***
>
> Drugs are collected from the *** address and cash collected from the drugs graft is stored at [the Claimant's address].
>
> Report 2 - **/07/2019…
>
> *** the vehicle was parked up outside [the Claimant's address]. *** exited the vehicle and went into the address. *** back out of the address and drove off in the vehicle.
>
> *** dealing drugs for ***
>
> Report 3 - **/06/2019…
>
> *** the following vehicle *** dealing drugs to a male outside *** Bootle *** driver *** identified as ***
>
> Report 4 - **/06/2019
>
> *** vehicle *** outside [the Claimant's address] ***
>
> The occupant who *** enter the address and return to his address a short time later.
>
> *** involved in the supply of class A drugs.
>
> Report 5 - **/06/2019…
>
> ***
>
> Report 6 - **/12/2018…
>
> ***

Report 7 - **/12/2018…

Intelligence indicates that *** stores drugs on behalf of ***

RESEARCH: ***

Report 8 - **/07/2019 ***

*** vehicle *** parked outside [the Claimant's address].

The vehicle is registered to *** and insured to Paul JORDAN 12/01/1982 ***s a known to deal in drugs for *** and the vehicle is used by *** drug dealers

Report 9 - **/06/2019 ***

***

Report 10 - **/06/2019…

***

Report 11 - ***

***

Report 12 - **/07/2019 ***

There is a strong smell of cannabis coming from [the Claimant's address].

Report 13 – 20/02/2019…

On 20/02/2019 offices executed a MDA warrant at [the Claimant's address]. During the search of the address a large quantity of cash was located along with cannabis. Paul JORDAN was arrested at the address.

Report 14 - **/02/2019…

The *** graft has a separate day and night graft.

***

*** answered by Paul MICHAEL JORDAN, 12/01/1982.

***"

18. Detective Sergeant Hunter has explained in his open witness statement that each of the intelligence reports was graded using an evaluation system. With two exceptions, all of the reports had a "high confidence rating". The grade of each report was made known to the magistrate. As a result of disclosure I ordered at the PII hearing, the Claimant now knows that the date of the last report is before 23 February 2019.

19. The issuing justice endorsed the application form indicating that he had received no further information. However, in his witness statement for these proceedings, PC Potter, who made the application, says that he did provide one further piece of information to the magistrate verbally: the exact amount of cash referred to in report 13, namely £2,130.

The grounds of challenge and submissions for the Claimant

20. I described the pleaded issues at [18]-[20] of my previous judgment as follows:

> "18. As I have said, the grounds of challenge are: first, that the warrant was granted on the basis of a deliberately false and exaggerated account of the execution of a previous warrant on 20 February 2019; and, second, that there were material non-disclosures about that search and about subsequent occasions on which police officers attended but found nothing of interest and took no further action.
>
> 19. Under the first ground, particulars are given of the falsity and exaggeration alleged in paragraph 4 of the Grounds. Whereas the application form said that on 20 February 2019 'a large quantity of cash' had been found at the Claimant's home, in fact it was only £2,130 and the Claimant gave a full explanation of why it was there. And whereas the application says that 'cannabis' was found, it was cannabidiol or 'CBD', which is not a controlled drug. (The First Defendant says that the magistrate was informed orally of the exact amount of cash found.)
>
> 20. The second ground for the most part mirrors the first. The material non-disclosures pleaded in paragraph 6 of the Grounds are failures to mention that no charges were ever brought, that the amount of cash found was £2,130, that the Claimant explained the presence of that amount of cash and that the substance found was cannabidiol (a legal substance). In paragraph 7 of the Grounds, it is further pleaded that the First Defendant should have told the magistrate that officers had visited the Claimant's home on a further three occasions between 20 February and 5 July 2020 after receiving allegations from his former partner Stacey Rae; that on two of these occasions they had 'looked around' and on one they had carried out a search; but on no occasion were any drugs found or charges preferred. Complaint is also made of the failure to mention vehicle stops, which also did not result in criminal proceedings. (The First Defendant says these took place after 5 July.)"

21. For the Claimant, Mr Gow amplified these points in oral submissions. Report 13 stated, without qualification, that "a large quantity of cash was located along with cannabis". That set up a false narrative that the search of the Claimant's property on 20 February 2019 had been "a successful drugs search". The narrative carried the implication that the intelligence on the basis of which the previous warrant had been granted was reliable.

22. As to the "cannabis", Mr Gow relied in particular on an "occurrence enquiry log report" completed after the search indicating that a small bag of what the searching officer believed to be cannabis had been seized, but forensic examination had not been authorised due to its "low value". An analysis of mobile phones seized on the same occasion was also not authorised as "we have only found small amount of drugs in property and no other PWITS [sc. possession with intent to supply] evidence such as tick lists/bags/scales etc." The same log report showed that the Claimant had denied being in possession of a controlled drug. In those circumstances, it was misleading to state simply that cannabis had been found, without noting for context that: (i) the Claimant had denied that the substance found was cannabis; (ii) the amount found was so small that it did not justify forensic examination; and (iii) no other drugs paraphernalia had been found.

23. As to the cash found, Mr Gow initially submitted that, given the magistrate's endorsement that he had received no further information, I should reject PC Potter's evidence that he had told the magistrate how much cash had been found. But the magistrate's endorsement is not inconsistent with PC Potter's evidence. The magistrate may not have regarded the precise amount of cash found as further information, but rather as a further detail about the information already included in the application form. In any event, PC Potter has given clear evidence that he told the magistrate the amount. There was no application to cross-examine PC Potter. In those circumstances, there was and is no basis for rejecting his evidence and I must proceed on the basis that it is accurate: see e.g. Auburn, Moffett and Sharland, *Judicial Review: Principles and Procedure* (Oxford, 2013) §27.98. In the light of all this, Mr Gow did not press the submission that the magistrate had not been told the amount of cash found.

24. He did, however, submit that the application form was misleading in not recording that the Claimant had given an explanation: part of the cash was a loan from the Claimant's brother, part the proceeds of sale of a vehicle and part savings for the payment of bills. The occurrence enquiry report log confirms that an explanation was given, but also makes clear that it had not been accepted, as forfeiture proceedings were ongoing. Those proceedings were successful, but not until after the execution of the warrant on 5 July 2019.

25. Finally, Mr Gow complained about the omission of the three visits between the execution of the first warrant on 20 February 2019 and the warrant challenged here on 5 July 2019. The visits and the "nil return" they generated tended to undermine the narrative that the intelligence relied upon was reliable.

26. Taken together, these non-disclosures were material in the sense that, had the full information been given, the magistrate might reasonably have refused the warrant. On the authority of *Mills*, the question whether I would have granted the warrant is

irrelevant. Noting Elias LJ's observations in Mills, Mr Gow urged me to leave out of account any response which the police might have given to the information which should have been disclosed. To take that into account would transgress the boundary between reviewing the lawfulness of the decision taken by the magistrate (which is permissible) and substituting my judgment on the basis of evidence not considered below (which is not).

27. In light of the Chief Constable's evidence that the vehicle stops complained of all occurred after 5 July 2019, Mr Gow sensibly abandoned the pleaded complaint that the application was deficient in failing to mention these.

Submissions for the Defendant

28. For the Defendant, Mr Wells submitted in open that the redacted application form showed that the main trigger for the warrant application was intelligence received in June and July 2019 to the effect that drugs and/or cash was being stored at the Claimant's home.

29. As to report 13, what was said was true and fair. £2,130 was on any view a "large quantity" of cash. It is true that the magistrate was not told that the Claimant had given an explanation for its presence, but if he had been told about the explanation, he would no doubt also have been told that the explanation was not accepted and that forfeiture proceedings were underway. That would have conveyed to the magistrate that a judgment had been made by the prosecuting authority, the Merseyside Police Force Solicitor's Department, that there was a realistic prospect of convincing a court to the civil standard that the cash represented the proceeds of crime.". Applying the approach in Dulai, it was necessary to bear all this in mind when assessing the materiality of any non-disclosure. It can therefore be said that the non-disclosure of the Claimant's explanation for the cash did not affect the decision to grant the warrant.

30. As to the cannabis, what was said was accurate. The substance had been identified as cannabis at the scene by experienced officers. The magistrate was not told that a large quantity had been found and, in context, it was not necessary to say that the quantity was small. The contemporaneous documents did not bear out the Claimant's case that he had told officers that the substance was cannabidiol. In any event, in the circumstances, it was not misleading to say simply that cannabis had been found.

31. As to the three visits post-dating the search on 20 February 2019, these were to investigate allegations which had nothing to do with drugs. Whilst officers entered the premises on each occasion – and no doubt observed what they saw inside – they had no power to search for class A drugs or money derived from their sale and did not do so. In any event, as is plain from the redacted application form, most of the intelligence relied upon post-dated these three meetings.

32. Taking all of this in the round, there was no failure to disclose anything that should have been disclosed. Alternatively, any non-disclosure was not material because it could not reasonably have affected the outcome of the application and/or because it is highly likely that the outcome would have been the same even if full disclosure had been given (so the test in s. 31(2A) of the 1981 Act is satisfied).

Discussion

The proper approach

33. In light of the authorities, the correct approach when considering a challenge to a search warrant on the ground of non-disclosure is to begin by asking two questions:

    (a) Did the applicant fail to disclose something which he was legally obliged to disclose?

    (b) If so, was the non-disclosure material?

34. In answering question (a), it is important to bear in mind the applicant's duty to disclose to the magistrate anything which is relevant to the satisfaction of the statutory test for grant of the warrant. If there is a point that could properly be made against the grant of the warrant, but the applicant thinks there is an answer to it, he or she will generally be well advised, and may be legally obliged, to disclose both the point and the answer. In general, it is for the issuing authority, not the applicant, to decide whether the answer is a good one.

35. In answering question (b), it has been said that the test is "whether the information that it is alleged should have been given to the magistrate might reasonably have led him to refuse to issue the warrant": *Dulai* [45]; *Mills* [55]. I would reformulate that slightly to ask: "might the information that should have been given to the magistrate reasonably have led him or her to refuse to issue the warrant?" I would focus on the information that should have been given to the magistrate, not merely the information that *it is alleged* should have been given. What should be before the magistrate is a fair and accurate summary of what is known by the applicant. That includes any points that can properly be made against the grant of the warrant, but also any answers to those points which could properly have been deployed at the time. All this must be considered in the context of the whole of the information before the magistrate so that the salience of the omitted matters can be assessed. This seems to me to be consistent with Stanley Burnton J's reasoning in *Dulai* at [46]. If, having considered both the point and the answer, the judicial review court concludes that these could not reasonably have led the magistrate to refuse to grant the warrant, the non-disclosure will not be material. Provided that the focus remains on what the magistrate would, or could reasonably, have done, rather than on what the judicial review court would itself have done, I do not consider that this approach involves the vice identified in *Rawlinson* and *Mills* of usurping the function of the primary decision-maker.

36. If questions (a) and (b) are both answered in the affirmative, then there was a material non-disclosure in the sense that proper disclosure could reasonably have led the magistrate to refuse to grant the warrant. In those circumstances, it is still necessary, in principle, to consider s. 31(2A) of the 1981 Act. The test mandated by the statute uses different language, posing the question whether it is "highly likely that the outcome for the applicant would not have been substantially different", but the test is still a high one. Once it is established that a non-disclosure was material in the sense I have described, it is a real possibility that with proper disclosure the warrant would have been refused. In those circumstances, it is difficult to see on what basis a court could

nonetheless conclude that it is "highly likely" that the warrant would have been granted so that s. 31(2A) applied.

37. I note that a different approach may be required where the non-disclosure is part of a deliberate attempt to mislead the issuing authority. It may be that, in that case, the warrant should be quashed even if the non-disclosure was not material. But there is no need to consider this point further here. Although Mr Gow characterised the non-disclosure in this case as "deliberate", that was so only in the sense that PC Potter honestly considered the omitted information to be irrelevant. An honest error as to relevance could not be a ground for quashing a warrant unless the non-disclosure was material.

Did the police fail to disclose something which they were legally obliged to disclose?

38. In my judgment the police did not comply with their disclosure obligation in respect of the outcome of the search on 20 February 2019. The fact that the information relied upon to justify the warrant included report 13 indicates that they considered the outcome of the search to be material. The discovery of £2,130 in cash was relevant if and only if there was no proper explanation for it. To say simply that a large quantity of cash had been found might have conveyed the impression that the presence of the cash was unexplained. Fairness required the police to disclose that the Claimant had given an explanation, although they could certainly have added that the explanation was not accepted and there were forfeiture proceedings on foot.

39. Similarly, referring to the fact that "cannabis" had been found in a previous search of the premises had the potential to convey the impression that there was a substantial quantity of that drug. This was, after all, an application for a warrant under the 1971 Act to search for class A drugs. The discovery of cannabis on the premises might have been material if it had been in a quantity suggestive of dealing, because those who deal in one type of drug often deal in other types too. In these circumstances, it was not fair to refer to "cannabis" without pointing out – as the police knew by the time the warrant application was made – that the Claimant had denied possession of a controlled drug, that the quantity was so small that forensic examination had not been authorised and that no further action had been taken. In the light of these latter facts, the discovery of a substance the police believe to be cannabis added nothing to the case for the warrant.

40. I have not lost sight of the fact (adverted to in *Haralambous* at [27]) that warrant applications of this kind are intended to be made by police officers speedily and simply, without legal support. It is important that the law should not impose impractical obstacles on applicants. But search warrants authorise substantial interferences with property and privacy rights protected by the common law and by the European Convention on Human Rights. In any event, the disclosure obligations which I have held were breached are not onerous. There was no need to use technical language. It would have been sufficient to say something along these lines: "£2,130 in cash was found. Jordan said that this was in part a loan from his brother, in part the proceeds of sale of a vehicle and in part savings. The explanation is not accepted and forfeiture proceedings have been brought." It would have been better not to mention the cannabis at all, but if it had to be mentioned, that could have been done fairly along these lines: "A substance believed to be cannabis was also found. Jordan denied possession of a

controlled drug. The amount was too small to justify forensic analysis and no further action was taken."

41. The three visits made by police after 20 February 2019 are closer to the borderline. There is force in Mr Wells' submission that drugs and money are unlikely to be left in a place where they would be visible by those attending the house; and officers attending someone's home to investigate an allegation of domestic violence, or of sexual contact with a child, would not be entitled to conduct the kind of search likely to locate drugs or money. Nonetheless, the fact that officers attended the Claimant's home (presumably unannounced) to investigate complaints unrelated to drugs, and saw nothing untoward, seems to me to meet the low test of being relevant. It should therefore have been disclosed. It would have been perfectly proper to add that the police did not conduct the kind of search that would have been authorised by a warrant under the 1971 Act. I would not accept the suggestion, made by Mr Wells as part of his submissions, that it would have been prejudicial to mention visits prompted by allegations unconnected to drugs. There would have been no need to mention the detail of the allegations made (save to say that they were unconnected with drugs) and, in any event, the magistrate would have been perfectly capable of focussing on the points relevant to the application before him.

Might the information that should have been given to the magistrate reasonably have led him to refuse to issue the warrant?

42. To assess the materiality of the non-disclosure, it is necessary to look at what would have been before the magistrate if the police had complied with their disclosure obligation and then to put that in the context of the other information on which the application was based.

43. I have set out at [40]-[41] above what the magistrate would have been told if the police had complied with their disclosure obligation. The message would have been that the police considered the cash to be the proceeds of crime, though that was disputed; that the substance believed to be cannabis was irrelevant; and that nothing was seen on any of the three occasions after 20 February 2019 when officers visited (without conducting a search) for reasons unconnected to drugs. That would have given a somewhat, though not starkly, different picture.

44. Whether that different picture might reasonably have led the magistrate to refuse the warrant depends on the salience of report 13 in the context of the information before the magistrate as a whole. Two points can be made on the basis of the open material.

45. First, even the redacted versions of reports 1-5, 8-10 and 12 indicate that these reports all post-date both the search on 20 February 2019 and the three subsequent visits by police. This means that a substantial part of the information on which the application was based was independent of the outcome of the search on 20 February 2019. The cogency of these reports can only be considered in closed, but the dates themselves are a powerful indicator that the information in report 13 was far from crucial.

46. Second, the thrust of the information contained in these reports was intelligence that the Claimant's home was being used to store cash and/or drugs for a "drugs graft" and that individual(s) and vehicle(s) which the police believed or suspected were involved in the

supply of class A drugs were associated with the Claimant and/or his home. If this information provided a proper basis for suspicion, the fact that the search on 20 February 2019 had not yielded anything that proved the Claimant's involvement in the supply of drugs would not undermine that suspicion.

47. I have considered the unredacted version of the application form in detail, with the assistance of submissions from Mr Wells. For reasons which can only be given in closed, I have concluded that, even leaving the outcome of the search entirely out of account, the information contained in the application form was such that the magistrate could not reasonably have refused the warrant. On the basis of that information, there was, clearly and obviously, a reasonable ground for suspecting that the Claimant's home was being used to store cash and/or class A drugs as part of an operation to supply those drugs. To have reached a contrary conclusion would have been unreasonable. The information which should have been disclosed about the search on 20 February 2019 could not reasonably have affected the conclusion.

48. The non-disclosure was therefore not material.

Conclusion

49. For these reasons, and those contained in my closed judgment, I conclude that:

    (a) In applying on 5 July 2019 for a warrant to search the Claimant's home, the police breached its duty to disclose to the magistrate all relevant matters.

    (b) However, the non-disclosure was not material, because the information that should have been given to the magistrate could not reasonably have led him to refuse to issue the warrant.

50. The claim will therefore be dismissed.