



Neutral Citation Number: [2017] EWHC 1008 (Admin)

Case No CO/6391/2016

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

Leeds Combined Court,
1 Oxford Row, Leeds LS1 3BG

Date: 27/04/17

Before :

LORD JUSTICE HICKINBOTTOM
and
MR JUSTICE KERR

Between :

R

Appellant

- and -

(1) ROBERT WOODWARD
(2) WILLIAM WOODWARD
(3) KABEER HUSSEIN
(4) KAZAM HUSSEIN
(5) ARTUR LEWANDOWSKI

Respondents

Howard Shaw (instructed by **Crown Prosecution Service**) for the **Appellant**
Peter Glenser (instructed by **Clive Rees & Associates**) for the **First and Second Respondents**
Peter Glenser (instructed by **Yasmin & Shahid**) for the **Third Respondent**
The Fourth Respondent neither appeared nor was represented
Peter Glenser (instructed by **Clark Willis Lawfirm LLP**) for the **Fifth Respondent**

Hearing date: 27 April 2017

Approved Judgment

Lord Justice Hickinbottom :

Introduction

1. This is an appeal by the Crown by way of case stated against a decision of District Judge Lower sitting at Wakefield Magistrates' Court on 9 September 2016 to dismiss the prosecution of the five Respondents for offences under section 4 of the Animal Welfare Act 2006 ("the 2006 Act") on the basis that the proceedings were brought out of time.
2. Before us, Howard Shaw of Counsel appears for the Crown, and Peter Glenser of Counsel for the Respondents save for the Fourth Respondent who has neither appeared nor been represented. We are grateful to both Counsel for their submissions.

The Statutory Background

3. So far as the relevant statutory provisions are concerned, under section 4(1) of the 2006 Act, it is an offence knowingly to cause an animal unnecessary suffering; and, under section 4(2), it is an offence to permit such unnecessary suffering to be caused to an animal.
4. Section 127(1) of the Magistrates' Courts Act 1980 provides that, except where otherwise expressly provided by another enactment, a magistrates' court is proscribed from trying an information unless that information was laid within six months from the time the offence was committed. However, in relation to offences under section 4 of the 2006 Act, there is such express alternative provision. Section 31 of that Act, under the heading, "Time limits for prosecutions", provides as follows:

“(1) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, a magistrates' court may try an information relating to an offence under this Act if the information is laid –

(a) before the end of the period of three years beginning with the date of the commission of the offence, and

(b) before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge.

(2) For the purposes of subsection (1)(b) –

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to his knowledge shall be conclusive evidence of that fact, and

(b) a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.”

In this judgment, references to simply “section 31” are to this section, which lies at the heart of this appeal.

The Factual Background

5. Bowood Farms Limited, trading as Bowood Yorkshire Lamb, operated an abattoir at Busby Stoop, Thirsk, North Yorkshire. The First and Second Respondents were directors of the company. The Third, Fourth and Fifth Respondents were employed by the company as licensed slaughtermen.
6. Thomas Frampton is a freelance investigator, who was commissioned by an animal rights organisation called Animal Aid to enter the abattoir and install a digital video recorder to record the slaughtering practices there. He did so on 30 November, and again, in a different location within the premises, on 6 December 2014, going back to recover the equipment and footage on 2 December and 13 December 2014 respectively. Mr Frampton did all of that covertly.
7. The footage obtained was given to Animal Aid, which sent both the relevant hard drives (which contained the entirety of the recorded footage, about 27 hours’ worth) and four DVDs (containing edited footage) to an Alan Stead at the Food Standards Agency (“the FSA”), which is an organisation responsible for the investigation of alleged breaches of the 2006 Act in relation to abattoirs.
8. In January 2015, all the footage was sent by the FSA to a qualified veterinary surgeon, who viewed it, and, in a statement dated 9 July 2015, said that, in his opinion, over three days of filming, the Third, Fourth and Fifth Respondents had potentially committed offences under section 4(1) of the 2006 Act. Mr Glenser criticised the length of time that review by the vet, and later steps, took – but, as he readily accepted, any delays are scope of this appeal.
9. On 15 September 2015, the matter was referred by the FSA to the Crown Prosecution Service (“the CPS”). On 14 December 2015, additional evidence having been received by the CPS, the matter was allocated to Ben Reid, a CPS Reviewing Lawyer. Between December 2015 and February 2016, Mr Reid conducted several reviews of the case, sequentially seeking further video evidence that seems to have been missing, taking advice on the admissibility of the video evidence obtained, and making enquiries of various suspects and also about the company. The company went into administration on 17 August 2015, a fact which, as a result of his enquiries, Mr Reid discovered on 9 February 2016.
10. In the period 10 to 19 February 2016, Mr Reid held discussions with the investigators and the head of his unit, and concluded that the company should not be prosecuted – but the directors should be targeted. At his sixth and final review on 3 March 2016, Mr Reid decided that the five Respondents should be prosecuted. Charges were drafted, and authorised by his unit head on 7 March 2016.
11. That same day, Mr Reid also prepared a certificate under section 31(2), headed “Prosecutor’s Certificate pursuant to Section 31 of the Animal Welfare Act 2006”, in the following terms:

“To my knowledge on 15 September 2015 there was sufficient evidence in my opinion to warrant proceedings against:

William Woodward, Robert Woodward, Kabeer Hussain, Kazam Hussain, Artur Lewandowski

For offences contrary to:

- Sections 4(1) and 4(2) of the Animal Welfare Act 2006.”

It was dated, and signed by Mr Reid as “Specialist Prosecutor, Specialist Fraud Division”. I shall refer to that certificate as “the March 2016 certificate”.

12. Requisitions were drafted and served the following day, 8 March 2016, and the Third, Fourth and Fifth Respondents were charged with offences under section 4(1), and the First and Second Respondents with an offence under section 4(2), of the 2006 Act.
13. In the criminal proceedings that were now under way, on 11 June 2016, solicitors for the First and Second Respondents filed and served a request that a preliminary legal point be determined by the magistrates’ court, together with a skeleton argument in support. It was contended that the March 2016 certificate was bad because (i) the certificate “does not provide the date on which evidence sufficient in the opinion of the prosecutor to basis [sic] a prosecution came to his knowledge. It merely states that to his knowledge there was sufficient evidence to warrant proceedings on 07/03/16” (paragraph 29 of the skeleton argument); and (ii) in any event, there was sufficient information in the prosecutor’s hands to justify prosecution by 15 July 2015, such that the time for the requisition expired on 15 January 2016.
14. Mr Reid, upon reflection, accepted that the March 2016 certificate was defective, and thus invalid; and he prepared and signed a separate revised section 31 certificate in respect of each of the five Respondents. Each had the same heading as the March 2016 certificate, and each was signed by Mr Reid in the same capacity. The certificates in respect of the First and Second Respondents read as follows:

“On 3rd March 2016 evidence came to my knowledge, which I thought was sufficient to justify proceedings against [name of individual Respondent] for an offence of failing to take reasonable steps to prevent unnecessary suffering to sheep, contrary to section 4(2) of the Animal Welfare Act 2006.”

The certificates in respect of the remaining Respondents read as follows:

“On 3rd March 2016 evidence came to my knowledge, which I thought was sufficient to justify proceedings against [name of individual Respondent] for offences of causing unnecessary suffering to sheep, contrary to section 4(1) of the Animal Welfare Act 2006.”

I shall refer to those five certificates as “the July 2016 certificates”.

15. That day, 12 July 2016, Mr Reid sent a chronology and a screen print of the case history from the CPS Case Management System, with a covering letter, to both the

Respondents and the Court. The chronology set out the history of Mr Reid's several reviews, and the action he took on each; including his enquiries in February 2016 as to the company – which was clearly a possible defendant in criminal proceedings, and potentially the sole defendant – and his decision on 3 March 2016 that the five Respondents be prosecuted for the charges eventually brought against them. Mr Reid considered that those documents, taken together, set out the relevant history particularly as regards the key dates in respect of the decision to prosecute the five Respondents which he took on 3 March 2016. He did not, however, prepare or provide a statement exhibiting or formally proving those documents or confirming their contents.

16. The issue of whether, in the light of the various section 31 certificates, the prosecution had been commenced in time, i.e. in accordance with the time limits set out in section 31(1), came before District Judge Lower on 9 September 2016. Following legal argument, he dismissed the prosecution, on the basis that it was out of time and thus a nullity. On 8 December 2016, following a request, the judge set out his reasons more particularly in a stated case.
17. The judge found that, as the Crown accepted, the March 2016 certificate was defective (paragraph 43 and following of the case stated). Having noted that, by 25 August 2015 (the date of Mr Stead's statement), the FSA investigators were in possession of all the papers that the CPS later relied upon, the judge continued:

“54. ... I concluded that given the role in leading the investigation and providing papers to the [CPS], they were on a footing with the police in terms of a more commonly encountered criminal prosecution, to the RSPCA inspectors in terms of other Animal Welfare prosecutions, so that they formed part of the prosecution team as per [Morgans v Director of Public Prosecutions [1999] 1 WLR 968 and Burwell v Director of Public Prosecutions [2010] EWHC 1953 (Admin)].

55. On that basis, I was satisfied that sufficient evidence came to the knowledge of the prosecutor to justify proceedings by 25 August 2015, so that the six month time limit provided for by section 31(1) of the [2006] Act would have expired by 24 February 2016 and therefore that proceedings would have been out of time.

56. In my judgment, the [July 2016] certificates could not cure the defects on the first. In the first certificate, Mr Reid stated that there was sufficient evidence to warrant proceedings to his knowledge on 15 September 2015. There was no admissible explanation as to how the date of 3 March 2016, as set out in the second certificates, was arrived at.... [T]he court could not hear extrinsic evidence and no admissible evidence was offered by the Appellant.

57. The difficulty with the [Crown's] submission was that it contended, without explanation, for the argument that it can issue as many certificates as it wishes pursuant to section 31 of

the Act until the certificates comply exactly with the wording of the Statute. Mr Reid may well have only formed a view on 3 March 2016 that there was sufficient evidence to justify proceedings against the Respondents in respect of alleged offences pursuant to the Act, but this begged the question of why he had stipulated that there was, to his knowledge, sufficient evidence in his opinion to warrant proceedings against the Respondents on 15 September 2015, as he did in his first certificate. There was no reason why I should have accepted the date in the second certificate (11 days after the expiry of 6 months from when the CPS had received the papers).

58. The authorities are clear that the exceptions to a strict 6 month time limit beyond which a prosecution for summary offences cannot be brought must be strictly construed. Appreciating that the court cannot take into account extrinsic evidence beyond the face of the certificate (which causes difficulties as to how the court is to resolve the issue), I concluded that I could not be satisfied that the second certificates were valid and that the prosecution could not seek to rectify a defect in proceedings by the issue of any additional certificate without any admissible explanation as to its factual basis, given the case law as to how strictly the 6 month time limit should be construed.”

He thus held that the time limit in section 31(1)(b) expired on 24 February 2016, and the prosecution against each Respondent which commenced on 8 March 2016 was therefore out of time, and a nullity.

18. It is against that decision which the Crown now appeals.

The Issues

19. The specific questions which the District Judge identified for this court to consider are as follows:

“Question 1: Was I correct to decide that the first certificate [i.e. the March 2016 certificate] was defective?

Question 2: If I was correct in that regard, was I correct in determining that I could not be satisfied that the proceedings (ignoring the second certificates [i.e. the July 2016 certificates]) were brought within the time limit stipulated by section [31(1)] of the [2006] Act, so that proceedings were a nullity?

Question 3: Was I correct not to consider any extrinsic evidence (whether properly admissible in statement form or otherwise) that the [Crown] wished to rely upon in establishing when evidence, in fact, came to Mr Reid’s knowledge so as to justify proceedings in his opinion?

Question 4: Was I correct that the second certificates could not cure the defects of the first?

Question 5: If I was correct in that regard, was I correct in determining that I could not be satisfied that the proceedings were brought within the time limit stipulated by section [31(1)] of the Act, so that proceedings were a nullity?

Question 6: Was I correct to view the investigators and/or lawyers within the [FSA] as part of the ‘Prosecutor’ for the purposes of section 31 of the Act?

Question 7: Is it permissible, the statute being silent on the point, for the Prosecution to be able to issue further certificates, pursuant to section 31(2) of the Act, to correct any admitted or perceived defect in any original certification, at least until the court tries any information brought pursuant to sections in the Act to which those certificates relate, is *functus officio*?”

20. I shall return to those questions in due course. However, I should also identify the grounds of appeal upon which the Crown rely. It contends that the District Judge erred in four respects, namely:

Ground 1: The District Judge was wrong in law to conclude that FSA investigators and lawyers were “part of the prosecution” for the purposes of section 31, “the prosecutor” being, in this case, the CPS.

Ground 2: Having found the March 2016 certificate to be defective, the District Judge was wrong in law to conclude that the Crown could not rely on the July 2016 certificates.

Ground 3: Having found that the Crown could not rely on the July 2016 certificate, the District Judge was wrong in law to decline to consider evidence, in the form of the written chronology, computer system screenprint and covering letter from Mr Reid, to determine when evidence sufficient to justify proceedings came to Mr Reid’s knowledge.

Ground 4: In the circumstances, the District Judge was wrong to conclude that the prosecutor had knowledge of evidence sufficient to justify proceedings against the Respondents on 25 August 2015, and that the proceedings had therefore been commenced out of time.

The Section 31 Time Limits: Discussion

21. Before I turn to those grounds, it would be helpful to look in more detail at section 31.
22. This section, and similarly (although not identically) worded provisions in other statutes, have been considered in a number of authorities to which we have been referred, notably R v Haringey Magistrates’ Court ex parte Amvrosiou (1996) (Unreported, 13 June 1996), Azam v Epping Forest District Council [2009] EWHC 3177 (Admin), The Royal Society for the Protection of Cruelty to Animals

(“RSPCA”) v Johnson [2009] EWHC 2702 (Admin), RSPCA v King & King [2010] EWHC 637 (Admin), Lamont-Perkins v RSPCA [2012] EWHC 1002 (Admin), Letherbarrow v Warwickshire County Council [2015] EWHC 4820 (Admin), and Riley & Others v Crown Prosecution Service [2016] EWHC 2531 (Admin), each heard by differently constituted divisions of this court. On the issue with which we have to deal, the judgment of Bean LJ (with which I agreed) in Letherbarrow, and the principles set out in the judgment of Cranston J in Azam at [25] (with which Scott Baker LJ agreed) are, in my respectful opinion, particularly useful and pertinent to the issues in this appeal.

23. I need not quote extensively from those cases, as the following propositions relating to section 31, drawn from the cases, are, in my view, clear.

- i) The time limit for a prosecution under section 4 of the 2006 Act is fixed by section 31(1). The information must be laid within six months of, not commission of the offence, but “the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge” (i.e. section 31(1)(b)); with a longstop date of three years from the commission of the offence (i.e. section 31(1)(a)). The longstop date is not relevant in this appeal, and I need say nothing further about it.
- ii) Section 31(1)(b) was considered in Letherbarrow. At [17], Bean LJ said that this required the prosecution to make a “careful decision”. He then turned to consider the nature of that decision, as follows:

“... The decision which the prosecutor has to make under this subsection is not whether there is a *prima facie* case but whether the evidence is sufficient to justify a prosecution. That will involve... a consideration of what is in the interests of justice. It will usually involve (and certainly in the present case was rightly regarded as involving) the opportunity for the defendant to make a statement either at interview or, as Mr Letherbarrow did, in writing by way of mitigation. Such further material may show that the defendant’s animal husbandry practices are now improving; or, conversely, that matters are so bad that the authority ought to press on with an application for a ban to prevent him keeping livestock altogether.”

See also [23], to similar effect.

- iii) For the purposes of this appeal, an understanding of the nature of the decision which the prosecutor is required to make under section 31(1)(b), as set out by Bean LJ in that passage, is crucial: the relevant date is the date upon which the prosecutor considers that, upon the available evidence, it is in the public interest to prosecute the particular individual or individuals. That decision needs to be made with especial care; and it cannot be avoided or delayed by – to use the phrase of Pill LJ in Johnson at [33]) – the mere “shuffling of papers”, or by information being sat on so as to extend the time limit. So far as substance is concerned, it demands, not merely consideration of whether

there is a *prima facie* case, but whether it is in the public interest for such a prosecution to be brought. That requires consideration of, and often investigation into, factors which bear upon that issue, for which a prosecutor is entitled to reasonable time, even after the primary evidence has been gathered in, and even after the prosecutor has decided that there is or may be a *prima facie* criminal case against someone or even identified individuals. That remains good law, the relevant passages from both Johnson and Letherbarrow being recently endorsed by Gross LJ (with whom Andrews J agreed) in Riley at [17].

- iv) In Lamont-Perkins at [26], it was said by Wyn Williams J (with whom Sir John Thomas PQBD, as he then was, agreed) that the phrase “the prosecutor” “applies to anyone who initiates a prosecution under the [2006] Act, and not merely those who prosecute under some statutory power to prosecute”. However, in Letherbarrow at [19], Bean LJ considered more particularly who is, for these purposes, “the prosecutor”. His conclusion on that issue was, of course, informed by what he had said in [17] about the nature of the decision that “the prosecutor” is required to make under section 31(1)(b); and he drew the well-established distinction between investigators and prosecutors in criminal proceedings. He said this:

“... [T]he prosecutor is the Council, but the Council does not decide collectively whether evidence is sufficient to justify proceedings. Section 31(1)(b) involves the exercise of a judgment by an individual, namely... the individual who is given responsibility for making the important decision whether to prosecute. Prosecutors are entitled to have a system which lays down at what level of seniority this decision is made...”.

This was endorsed by Gross LJ in Riley, at [15], where, in a case indistinguishable from the one before us, he held that those working for the FSA were investigators, the prosecutor being the CPS. Mr Glenser conceded that Riley was binding upon this court; and he conceded that the District Judge erred in proceeding on the basis that, for the purposes of section 31, he should consider the date when the evidence was in the hands of the FSA. That concession was well made.

- v) In cases where there is a time issue, it is for the prosecutor to show, to the relevant standard of proof, that there has been compliance with section 31(1)(b). If there has been non-compliance, the prosecution is invalid.
- vi) As Letherbarrow emphasises, at [20]:

“... [T]he prosecution may surmount the time bar hurdle by either of two means. The first is the issue of a certificate [under section 31(2)]. The second is the adducing of evidence of fact showing who made the decision that a prosecution was justified and when.”

Thus, as Bean LJ said (again, at [20]), “a certificate is not essential”.

- vii) Where reliance is placed upon a certificate, then:
 - a) The certificate must strictly comply with the statutory requirements; and it must comply on its face, in the sense that deficiencies cannot be remedied by reference to extrinsic evidence (see, e.g., Azam at [25(3)]; and King & King at [9]).
 - b) A valid certificate is determinative of the matter unless the certificate is inaccurate on its face (i.e. plainly wrong on its face and patently misleading), or can be shown to be fraudulent (see Amvrosiou at page 5 of the transcript with which we were supplied, per Auld LJ (with whom Ebsworth J agreed); and Azam at [25(4) and (5)]).
 - viii) By the certification process, the 2006 Act provides a prosecutor with an evidential short-cut. A certificate does not have to be issued before proceedings are commenced (see Letherbarrow at [20], and the cases there referred to). It can be issued at any time, at least until the close of the prosecution case. Where a certificate is defective, it is a nullity; and, although the cases do not appear to deal with point specifically, as a matter of principle, I see no reason why, a certificate having been found to be deficient, the prosecutor cannot issue a new certificate – and, if that complies with the requirements of section 31(2), such a certificate will be evidentially conclusive of its contents subject, of course, to the limitations on all certificates that they cannot be relied upon if inaccurate on its face or fraudulent.
 - ix) Mr Glenser submitted that for a prosecutor to issue a second certificate after a first certificate has been found to be defective would always (or, at least, generally) be an abuse of process. I do not agree. I accept that, conceptually, the repeated issue of certificates might amount to an abuse of process; but it seems to me that, in practice, it is unlikely to do so, absent fraud. Where, after a first certificate valid on its face, a second certificate is issued with a different date of knowledge, then that may well require some form of explanation from the prosecutor; but where it is clear why the first certificate is bad – for example, it is clear from the face of the certificate that the prosecutor focused on the wrong question – then I see no reason why, in principle and in practice, a new certificate addressing the right question cannot be issued.
 - x) Where there is no certificate to be relied upon – because either none was issued, or any certificate issued was defective – then the court must still go on to consider and determine whether the prosecution was brought within the time required by section 31(1)(b) (Azam at [25(1)]). It must do so by considering all the available evidence, including documents such as reports even if not supported by a statement (Letherbarrow at [20]-[23]), although the weight to be given to that evidence, without being the subject of any supporting statement or cross-examination, is of course a matter for the court.
24. Having set out those propositions, I can deal quite shortly with both the grounds of appeal and the questions asked of this court in the case stated.

The Grounds of Appeal

25. It does seem to me that, regrettably, in his analysis, the District Judge erred in several respects.
26. First, as Mr Glenser properly conceded before us, the District Judge erred in concluding that the FSA investigators and lawyers were “part of the prosecutor” for the purposes of section 31. The FSA has an investigatory role and has no power to prosecute, and cannot be responsible for the decision to prosecute; and, in any event, as said in Letherbarrow, it is the individual with responsibility for deciding whether a prosecution should go forward whose thoughts and beliefs are relevant. In this case, that was Mr Reid of the CPS.
27. Second, in the stated case the District Judge referred to 25 August 2015 as the date “that sufficient evidence came to the knowledge of the prosecutor to justify proceedings”. When seen in context, he clearly meant that that was the date upon which the FSA had in its possession the evidence upon which the decision to prosecute was later made. However, leaving aside the point that the reference to the FSA was in error – and the CPS did not come into possession of this material until 15 September 2015, and Mr Reid personally not until 14 December 2015 – this exclusive focus on the date when material eventually relied upon was available was in error. As Letherbarrow emphasises, under section 31(1)(b), the decision which the prosecutor must make is not whether there is sufficient evidence for a *prima facie* case; but whether the evidence is sufficient to justify a prosecution, which (as I have explained) requires an evaluative assessment of whether, on the basis of the available evidence, it is in the public interest to prosecute a particular individual or individuals. That might itself require some investigation. In this case, Mr Reid did not only have to consider whether the available evidence was sufficient to found a *prima facie* case against someone, but he had to decide whether, for example, given the administration of the company, it was in the public interest to prosecute the company and/or its directors and/or its licensed slaughtermen. Having received the available evidence, he was entitled to some time to investigate, consider and determine (amongst others) that question, which, in the event, required some investigation into the company position and then some thought as to who the appropriate target(s) for prosecution might be. There was, here, no mere “paper shuffling”; but regular reviews by Mr Reid who, after he came into possession of the case in December 2015, made appropriate enquiries relevant to the decision to prosecute before deciding that the five Respondents should be charged as they were, that decision being made on 3 March 2016.
28. The judge therefore appears to have adopted the wrong test for section 31(1)(b). In the March 2016 certificate, Mr Reid (who was responsible for making any decision whether to prosecute, and, if so, whom and for what) appears to have made the same error. That certificate did not accurately reflect the wording of section 31(2), and appears to focus upon the date upon which the evidence, upon which his eventual decision to prosecute the five Respondents was made, had been collected. Indeed, by issuing that certificate, Mr Reid could not have meant that, by 15 September 2015, he considered that it was in the public interest to prosecute the five Respondents for the charges eventually brought against them; because he did not even receive the file until three months later. In issuing the March 2016 certificate in the form that he did, he thus appears to have erred in the same way as the District Judge, namely to consider the date by when the evidence had been collected by the FSA upon which the

eventual decision was made on 3 March 2016, by him, to prosecute the Respondents. That error, which is clear from the face of the certificate, is why that certificate was bad. The July 2016 certificates applied the correct test, i.e. the date by which Mr Reid thought that, in the public interest, there was sufficient evidence to justify prosecuting each of the five Respondents.

29. Third, the judge also erred in concluding that, the March 2016 certificate being invalid, the July certificates “could not cure the defects” in the earlier certificate; or, at least, that, having concluded that the March certificate was defective, he could not consider the validity of the July certificates. In considering the later certificates, he erred in taking into account extraneous evidence, namely what had been said in the March certificate. He ought to have considered the July 2016 certificates on their face, and asked himself whether there was anything patently wrong with them or whether they were fraudulent. There was, and is, no suggestion of fraud. Nor, in my judgment, was there anything clearly wrong on their face. The change in date is explicable, and clearly explained, by the different (and correct) focus in the July certificates, namely upon the date by when he (Mr Reid) thought there was sufficient evidence that had come to his knowledge to justify proceedings. As I have explained, the issue of a second certificate in these circumstances, in my view, falls very far short of an abuse of process. Importantly, the Respondent defendants were not prejudiced by the Crown relying upon the later, July 2016 certificates.
30. In short, the judge erred in concluding that, having decided that the March certificate was defective, the prosecution could not issue and rely upon the July certificates.
31. However, fourth, even if that were wrong – and the prosecution could not rely upon the later certificates – that would not have been the end of the story. The judge would still have had to consider whether the test for time in section 31(1)(b) had been satisfied, by considering the evidence as to the date when evidence, sufficient to justify proceedings, came to Mr Reid’s knowledge. This, of course, is not the subject of the bar on “extrinsic” evidence, which is a bar on evidence that is extraneous to a section 31(2) certificate when considering whether such a certificate is valid or deficient. As, again, Letherbarrow indicates, all evidence can, and must, be considered, including documentary evidence, whether or not it is formally attached to a statement formally “proving” the documents to be as they purport to be. Before us, Mr Glenser (again, in my view, properly) conceded that, having concluded that the Crown could not rely upon any section 31 certificate in this case, the District Judge erred in not proceeding to consider the question of whether the prosecution had in any event shown on the evidence that the criminal proceedings had been brought in time; and, in considering that question, he ought to have taken into account the documents upon which the prosecution relied, such as the chronology and computer system print out.
32. Mr Glenser submitted that, had he done so, the District Judge could not have been satisfied that the prosecutor had shown that it was not until 3 March 2016 that Mr Reid thought that, on the evidence he had, proceedings should be commenced against the five Respondents; and, as there is no evidence as to any earlier date, he (the judge) could not have been satisfied that the prosecution was in time. However, again, I do not agree. In my view, the evidence of the case history to which I have referred was more than adequate to show that it was not until 3 March 2016 that, upon the evidence he had, Mr Reid considered and decided that, in the public interest, the five

Respondents ought to be prosecuted. Had the District Judge correctly addressed his mind to the issue, I am confident that he would have drawn the same conclusion.

33. For those reasons, I consider each of the four grounds of appeal to have been made good. Had the District Judge approached the question posed by section 31(1)(b) as he ought, he would have been bound to have concluded that the date on which evidence sufficient to justify proceedings came to Mr Reid's knowledge was 3 March 2016; and, thus, the prosecution, commenced a few days later, was brought in time.

The Specific Questions posed by the Case Stated

34. Dealing with the specific questions posed by the case stated to this court, I consider the answers to be as follows:

Question 1: Yes. The District Judge was correct to decide that the March 2016 certificate was defective.

Question 2: No. Ignoring the July 2016 certificates, the District Judge was not correct in determining that he could not be satisfied that the proceedings were brought within the time stipulated by section 32(1) so that the proceedings were a nullity.

Question 3: No. Again ignoring the July 2016 certificates, the District Judge was not correct in his refusal to consider "extraneous" evidence that the Crown wished to rely upon in establishing when evidence in fact came to Mr Reid's knowledge so as to justify proceedings in his opinion.

Question 4: No. Whilst the July 2016 certificates did not, and could not, "cure" deficiencies in the March certificate, the District Judge was not correct in considering that, having found that the March certificate was deficient, he could not go on to consider whether the July certificates were valid.

Question 5: In the light of the response to Question 4, Question 5 does not arise.

Question 6: No. The District Judge was not correct to view the FSA investigators and lawyers as part of "the prosecutor" for the purposes of section 31.

Question 7: Yes. Where a section 31(2) certificate has been found to be defective, the prosecution may issue a new certificate upon which it can rely, subject to that new certificate complying with the statutory requirements and not being patently incorrect or fraudulent or, possibly, an abuse of court.

Conclusion

35. In any event, for the reasons I have given, I would allow this appeal. Subject to any submissions on the form of the order, and of course the views of my Lord, Kerr J, I would quash the determination of District Judge Lower to dismiss the proceedings; and remit the matter to the magistrates' court with a direction that it refuses the application to dismiss the proceedings.

Mr Justice Kerr :

36. I agree that this appeal should be allowed for the reasons given by my Lord, and that the case should be remitted to the magistrates' court with the direction that he proposes.