JUDICIAL CONDUCT COMPLAINT
JUDICIAL CONDUCT INVESTIGATIONS OFFICE

Concerning:
Lady Justice Rafferty
Mr Justice Supperstone

Royal Courts of Justice
High Court
Queen's Bench Division
Administrative Court
Strand, Holborn
London WC2A 2LL

CC:
Judicial Conduct Investigations Office

Complaint made by:
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Private Prosecutor
Stop Lying In Politics Ltd.
130 Old Street, London, England,
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(No post or personnel to/at this address)

Dear Mr Justice Michael Supperstone and Lady Justice Anne Rafferty,

1. I am writing to you concerning your conduct sitting on our private prosecution case against Mr Boris Johnson which was initiated earlier this year. I refer in particular to the hearing you presided over dated 7 June 2019 and your subsequent written ruling published 3 July 2019[1]. As well as all other proceedings up to and including the order for costs of £103,130 on an indemnity basis that you issued against me on 20 September 2019[2]. Meaning that this JCIO complaint is submitted prior to the JCIO three-month deadline for complaints is due to expire on December 20th, 2019.

2. Having reviewed your conduct, decision making and written rulings throughout this process I have had significant concerns, which have eventually led to suspicions, that something was majorly amiss. I have now had to spend several months working more than full time hours to investigate these concerns, this letter is a summary of what I have managed to uncover thus far.

3. In short, Mr Supperstone after you chose to shut down our prosecution case against Boris Johnson in hurried and questionable circumstances, I discovered that you used to be Boris Johnson's lawyer and didn't tell anyone. I have identified a prior payment of public funds from Mayor of London Boris Johnson's accounts to your own at a value of £35,500. Lady Justice Rafferty, I have found that through your husband your household received a significant financial benefit of £848 a day from a Government Minister who has carried out very similar activity to the accused by endorsing the same financial claim whilst campaigning with the accused. I also make accusations of apparent and actual bias on this case concerning your written ruling on the basis of intellectual dishonesty and predetermination. Not a single one of these issues was disclosed to the court or the public at any point in these proceedings by either of you.

4. It is important to note that, as of Wednesday 6th November 2019, I have had the vast majority of the information I reference in this letter in my possession. During proceeding on this case, I have received multiple accusations from Mr Johnson's lawyers that my work on this case is politically motivated and Mr Supperstone you have yourself ruled that my action was vexatious within your costs order against me. These accusations

[1] Johnson v Westminster Magistrates' Court 2019 https://www.bailii.org/ew/cases/EWHC/Admin/2019/1709.html
[2] Order for costs against Marcus Ball 2019 https://www.qebholliswhiteman.co.uk/cms/documents/20.09.19___Order.PDF

appear to be focussed upon the idea that my action has been brought due to some kind of political animosity against Boris Johnson and not for legal purposes. I hope that these legally baseless allegations will cease to be made given that I could have released all of the information within this letter prior to the general election of December 12th 2019 and I would have been well within my rights to do so. Instead, I have deliberately chosen to wait until after the election has been concluded before I went public with this information so as to make it clear that my motivations are purely legal and not political. It should be beyond clear that I am motivated to achieve a legal precedent and not a political point.

5. Given the severe public interest considerations of this matter and the global coverage[3] of the case I have now published this letter online and released it to the international press in the spirit of open justice. Everything I have given out was embargoed until after the election.

6. This letter serves as a formal request for both of you to retrospectively recuse yourselves from this case. I have also submitted it as an official complaint to the Judicial Conduct Investigations Office (JCIO) on the basis that both of you have failed to disclose any of your apparent or actual conflicts of interest on this case. Whereas recusal is a decision for yourselves and the courts, the Guide to Judicial Conduct makes it clear that non-disclosure of potential conflicts of interest is a matter that the JCIO would investigate:

> *'Whilst the Judicial Conduct Investigations Office (JCIO) would not consider a complaint about recusal as it relates to a judicial decision, the JCIO would investigate an allegation that a judicial officeholder had not disclosed a potential conflict of interest'*[4]

7. This letter includes the following contents:

A. The nature of the prosecution case against Mr Johnson and its focus upon the honesty of public office holders

8. This prosecution case has accused Mr Boris Johnson of having committed the serious criminal offence of misconduct in public office by repeatedly and recklessly lying to the public about public spending figures. In 2014 another public office holder, a police constable, called PC Keith Wallis was prosecuted for this same offence after he lied to his Member of Parliament about having witnessed offensive language used by Andrew Mitchell MP during the Plebgate scandal. According to the sentencing remarks of Mr Justice Sweeney, PC Wallis was given a 1-year sentence because his dishonest claims *'had a significant negative impact on public trust and confidence in the integrity of police officers'*[5]. Our case argued that when elected Members of Parliament and Mayors of London repeatedly lie to the public about the spending of the public purse, in abuse

[3] As far as I can see the only major international news platform in the world that hasn't covered this case is USA Today. It is a case of enormous national and international public interest, for good reason.
[4] Guide to Judicial Conduct March 2018 revision https://www.judiciary.uk/publications/guide-to-judicial-conduct/
[5] Keith Wallis, 2014, Misconduct in Public Office ruling from Mr Justice Sweeney https://www.thelawpages.com/court-cases/Keith-Wallis-12790-1.law

of several of their duties, they significantly negatively impact the public trust and confidence in the integrity of their public offices and our democratic systems.

9. The duties of Members of Parliament include, but are not limited to, the duty to honestly scrutinise and criticise the decision making and spending decisions of the executive. This duty is considered by leading legal, historical and Parliamentarian authorities to be one of the three core functions of the elected parliamentarian[6]. Repeatedly lying to the public about public spending decisions is therefore, we argue, an abuse of that duty and an abuse of the public's trust.

10. At its heart this prosecution case seeks to address the duties requiring elected public office holders to be honest with the public. It is particularly focussed upon honesty, accuracy and transparency. This work, and investigations into other leading figures from both sides of the referendum divide, has been carefully built over a period of more than three years in order to address the national crisis of powerful public office holders repeatedly lying to the public. It has been voluntarily crowdfunded by well over 10,000 members of the public who want to see an end to the abusively dishonest behaviour of their elected representatives[7].

B. The need for judicial office holders assigned to this case to adhere to the highest standards of honesty

11. It rightly follows that any judicial office holders, who are also holders of public office[8], tasked with considering this case would be required to proceed with great care to ensure that their own conduct was completely and unquestionably honest, transparent and beyond reproach. For the purposes of the public interest no judge sitting on such a case could ever be seen to have any actual or apparent bias toward it. It would also be immensely damaging to public trust for there to be any appearance of dishonesty in their conduct. Such is the sensitivity of the circumstances of this particular case and the importance of the public's faith in the systems of justice.

C. The law concerning public confidence in the integrity of the judiciary

12. These principles are well established in law. Judges on Trial: The Independence and Accountability of the English Judiciary (2013) explains that '*Judicial impartiality is said to be the "the fundamental principal of justice* (AWG Group v Morrison Ltd. [2006]"'. Further guidance can be found within the leading case of R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2) (1999):

> *"…there is an overriding public interest that there should be confidence in the integrity of the administration of justice, which is always associated with the statement of Lord Hewart C.J. in Rex v. Sussex Justices, Ex parte McCarthy [1924] 1 KB 256, 259, that it is 'of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."*
>
> *'Public confidence in the integrity of the administration of justice is just as important, perhaps even more so, in criminal cases.'*

13. It's clear that Mr Justice Supperstone is aware of several such authorities because he references them at points 2.52 and 2.53 within his book titled Administrative Court Practice, Oxford University Press, edited by Michael Supperstone QC and published in 2008. I also note that within his same book it is written that the principle of natural justice comprises two basic rules, the first being '*the right to an unbiased decision maker'*. Given that Mr Supperstone is clearly aware of this and celebrates the importance of it the points I raise throughout this letter are all the more alarming.

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[6] Have a look at Michael Rush, The Role of the Members of Parliament Since 1868: From Gentlemen to Players: Parliamentary Government and the Role of the Member of Parliament. As well as the misconduct in public office case against an elected parliamentarian in R v Obeid (2017). As for domestic authority, the recent Miller and Cherry (2019) prorogation cases made clear that the duty of a Member of Parliament to scrutinise the executive is still as firmly established and required as it always has been.

[7] A total of over 15,000 financial backers have supported this case over four different crowdfunds so far. Over 80% of them are UK based.

[8] See Misconduct in Public Office CPS Guidance 'Judicial or quasi-judicial' https://www.cps.gov.uk/legal-guidance/misconduct-public-office

D. The problem with expediting, rolling up and rushing through such a complex, lengthy and sensitive case

14. District Judge (DJ) Margot Coleman of Westminster Magistrates' Court considered our application for a summons between 25th February to 29th May 2019. A period of just over 3 months. During this time the DJ considered three written submissions from each side, as well presiding over not one but two oral hearings in court. She also received various further emails as she carefully reviewed all of the material presented to her prior to coming to a decision. Her written ruling of May 29th ruled in our favour[9]. She stated that evidence of an offence was prima facie present and that because the offence was indictable only the case should be moved up to the Crown Court for trial. The summons was due to be issued, however Mr Johnson's legal team requested that the High Court judicially review (JR) the decision of the DJ before the matter could proceed.

15. Mr Justice Supperstone you then took on the case at the High Court and agreed to dramatically expedite and roll up the JR process of the DJ's ruling as Mr Johnson's lawyers had requested. It was to be heard by both yourself and Lady Justice Rafferty, sitting within the divisional court of the Royal Palace of Justice on 7th June 2019.

16. However, you had first received our written submission bundle only three days earlier on 4th June 2019 and our written argument for the JR on the evening prior to the hearing, the 6th of June. Meaning you only spent a matter of hours with our JR written argument. In total our written submissions arguments amounted to more than 100,000 words, along with accompanying authorities on top of that. Meaning that you had made the decision to allocate only three days to carefully reviewing a complex and highly sensitive case that the Magistrates' Court had seen fit to spend over three months on. This is on top of your other responsibilities on other cases.

17. At the close of the single High Court hearing on 7th June, which lasted approximately 3 hours, you announced your decision to quash the DJ's original ruling after having privately deliberated with each other for only, according to the transcript, three minutes. No reasons for your decision were provided at the hearing. You eventually published the reasons for your quashing with a written ruling dated 3rd July 2019, three weeks later. Realising how many errors in law and contradictions your ruling contained we applied for permission to appeal against it, which was to be decided by you. Following our application against your ruling you responded with an email saying nothing more than 'no', 'no', 'no' in response to each of our requests. There was no effort made to provide a written reasoning for your decision to deny us permission to appeal.

18. Your written ruling will be examined later. For now, I argue that your decision to rush through such a sensitive case was a major error which may go some way toward explaining why so many issues of great concern have arisen from it. I feel that if you had taken the time to carefully and fully consider this case you would not have made so many errors and bad decisions. If you had been less hasty you may also have had the judgement needed to disclose the conflicts I identify in this letter. I ask myself why you agreed to rush such a sensitive case through so quickly? Did you allow political pressure from the Conservative Party leadership contest, which was initiated months after we took our case to court, to influence this decision?

E. The requirement for a judge to be forthcoming when disclosing matters of bias or apparent bias

19. I have uncovered several disturbing issues concerning Mr Justice Supperstone and Lady Justice Rafferty's conduct on our case. None of which were at any point in any of the proceedings on our case disclosed to my legal representatives or to myself. On this matter the Guide to Judicial Conduct is very clear:

> *'If there are circumstances which may give rise to a suggestion of bias, or appearance of bias, if possible, they should be disclosed to the parties well before the hearing.'*

20. The matter of disclosure is so vital to the public trust in the administration of justice that even borderline issues must be disclosed to the court, as explained in Laurence v Thomas (2003):

[9] DJ Margot Coleman Westminster Magistrates' Court ruling in our favour https://www.bailii.org/ew/cases/Misc/2019/B15.html

'If the situation is one where a fair-minded and informed person might regard the judge as biased, it is important that disclosure should be made. If the position is borderline, disclosure should be made because then the judge can consider, having heard the submissions of the parties, whether or not he should withdraw'.

21. On the issue of impartiality, the authors of Judges on Trial (2013) note the use of language in Davidson v Scottish Ministers (No 2) (2005) when they write that *'…the very fact of disclosure can be a "badge of impartiality", showing that the judge has "nothing to hide" and [was] fully conscious of the factors which might be apprehended to influence….her judgement'.* The same authors also state the following in circumstances with time constraints on short notice, as happened in our own case:

    'Practical difficulties may arise where the arguable conflict of interest becomes apparent at short notice upon the opening of the case. Although the judge may not consider the facts sufficient to require recusal, disclose should still be made so that the judge can consider, having heard he submissions of the parties, whether he should withdraw'.

    The authors of Judges on Trial (2013) are also very clear on how proactive the judge must be concerning possible matters of actual or apparent bias:

    'In this area, the judge needs to be seen to be proactive from the start; he should not be waiting for the parties to raise the issue. If a judge realises, before the hearing, that a case in his list is one in which he should not sit for any (sufficient) reason…he must recuse himself'.

22. Mr Justice Supperstone and Lady Justice Rafferty, neither of you have recused yourselves or disclosed any potential conflicts of interest at any point in our case's proceedings. As of the current date neither of you have shown any indication of intending to do so.

23. This is concerning given that other members of the judiciary have clearly been sensitive to possible appearance of bias regarding this case. I may be mistaken, but I believe Senior District Judge Emma Arbuthnot was originally assigned to hear the case at Westminster Magistrates, she then apparently recused herself from hearing it. She Is married to The Lord Arbuthnot of Edrom, a Conservative peer and ex Conservative Member of Parliament and I presume she recused herself to avoid any possible appearance of bias.

24. At the High Court originally Mrs Justice Justine Thornton was assigned to our case, but she also apparently recused herself from sitting on it[10]. This was apparently because she is the wife of a Labour party Member of Parliament, Mr Edward Miliband, and she wanted to avoid any possible appearance of bias. It is important to note then that two other judges have clearly been very aware and sensitive to the need to prevent any possible appearance of bias on this case.

F. <u>Conflict 1:</u> Mr Justice Supperstone's undisclosed payment of public funds totalling £35,500 from Mayor of London Boris Johnson's GLA accounts after working for him as his lawyer.

25. I will firstly draw your attention to a matter of appearance of possible bias concerning Mr Justice Supperstone's relationship with the accused. Mr Justice Supperstone, you appear to have shut down our case against Mr Boris Johnson in rushed and unsettling circumstances and you have never told anyone at any point in the proceedings that you used to be Mr Boris Johnson's lawyer. You and Mr Johnson have instead chosen to conceal this information from the court and from the public. Even in normal circumstances on a case not so focussed upon the public's trust in public office holders this behaviour would still be enormously alarming.

26. After carrying out an intensive online investigation and speaking to several lawyers I was alerted to the following information. In 2008, shortly after Mr Johnson became Mayor of London, a Mr Michael Supperstone QC provided Mayor Johnson of the Greater London Authority with legal services described as *'Consultancy,*

[10] Mrs Justice Justine Thornton recuses herself from case https://www.legalcheek.com/2019/06/boris-johnsons-court-summons-challenge-initially-assigned-to-judge-justine-thornton-wife-of-former-labour-leader-ed-miliband/

Advising, Drafting Letters, Advice on Contracts, Instructing Solicitors'[11]*.* This is most concerning because our case against Mr Boris Johnson includes three counts, one of which is against the accused whilst he was acting as Mayor of London Boris Johnson. In other words, Mr Justice Supperstone QC your decision to sit on this case as an impartial judge appears to have put you at odds with your previous professional responsibility to act in the interests of the accused. It has not so far been possible for me to uncover how well Mr Johnson and yourself are known to each other or how many other times, if any, you have worked together. I wouldn't know Mr Supperstone, because you and Mr Johnson have deliberately chosen to conceal this instance for months and so in my view cannot be trusted to reveal any others that may or may not exist. My trust in your impartiality and independence on this case is completely non existent as a result of this one issue.

27. We have uncovered proof of a payment of public funds totalling £35,500[12] to a Mr Michael Supperstone QC from Mayor of London Boris Johnson's GLA accounts. This is a very large amount of money for a payment to one person. For context it is significantly more money than the average UK household receives post tax in a single year according to the ONS[13]. We've also identified evidence of Mr Johnson using Mr Supperstone's name and quoting from some of the written legal advice that he had been provided by Mr Supperstone QC[14]. Ironically, this particular advice concerned a conflict of interest query Mr Johnson had received challenges and criticism about from members of the Greater London Assembly.

The Guide to Judicial Conduct and the appearance of bias

28. The Guide to Judicial Conduct is very clear on this issue Mr Justice Supperstone. It is itself guided by the leading cases on judicial conduct, bias and recusal which differentiate between the automatic disqualification of an actual bias and the appearance of bias or 'apparent bias'. The guide explains that *'Past professional association with a party as a client need not of itself be a reason for disqualification but the officeholder must assess whether the particular circumstances could create an appearance of bias.'* It is clear that you did not assess the danger that these circumstances could create an appearance of bias, possibly because you didn't give yourself time to. If you had I am sure you would have disclosed this information to the court in the interests of honest, open and transparent justice. The alarming alternative is that you, Mr Justice Supperstone, and Mr Boris Johnson intentionally concealed this information from the courts and the public.

29. Again, this case is focussed on an accusation that a public office holder has repeatedly lied to the public about the spending of the public purse. It is most alarming to consider that our case has now been shut down by another public office holder, a leading High Court judge, who himself has received public money from the accused in the past and not been honest enough to disclose it to the court. I presume that you believed you would be successful in your concealment, and you may well have been if it hadn't been for the decency of some lawyers who were concerned enough about this information to leak it to me. In my view, this isn't just an appearance of possible bias, it is a damning display of arrogance from you, Mr Supperstone, and Mr Johnson that gives our judicial system a bad name and greatly damages public trust in the systems of justice. My trust in the court process, and the trust of over 10,000 members of the public that I represent, has been shattered.

The precise nature of the allegation I am making against Mr Supperstone

30. I would like to make it clear that on this particular matter, separately from the other issues I raise, I make no allegation of actual bias against you, Mr Supperstone. Instead, as in keeping with the Pinochet ruling, I make an allegation of apparent bias. I also make an allegation of attempt to conceal an apparent bias. The Pinochet

[11] Description of work carried out: https://www.london.gov.uk/moderngovlldc/Data/Budget%20Monitoring%20Sub-Committee/20081105/Agenda/5c%20Appendix%203%20PDF%20only.pdf
[12] Proof of payment of £35,500: https://www.london.gov.uk/moderngovlldc/Data/Budget%20Monitoring%20Sub-Committee/20081105/Agenda/5c%20Appendix%203%20PDF%20only.pdf
[13] ONS 2019 Average household income, UK: Financial year ending 2019 (provisional) states that median household disposable income (meaning after income and council tax) is predicted to be £29,400 this financial year.
https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/householddisposableincomeandinequality/financialyearending2019provisional
[14] London Assembly (Mayor's Question Time), 18 June 2008, Transcript – Question and Answer Session
https://www.london.gov.uk/moderngov/Data/London%20Assembly%20(Mayor's%20Question%20Time)/20080618/Minutes/Appendix%203_18%20June%2008_edited%20transcript.pdf

ruling concerned another judge who had not disclosed his relationship with Amnesty International who were an interested party in the case:

> *'The sole ground relied upon was that Lord Hoffmann's links with AI were such as to give the appearance of possible bias. It is important to stress that Senator Pinochet makes no allegation of actual bias against Lord Hoffmann; his claim is based on the requirement that justice should be seen to be done as well as actually being done.'*
>
> *'The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased, that is to say, it is alleged that there is an appearance of bias not actual bias.'*
>
> *Lord Nolan: 'In any case where the impartiality of a judge is in question, the appearance of the matter is just as important as the reality'.*[15]

31. No member of the public would be happy for a judge to hear a criminal case between themselves and an alleged wrongdoer when that same judge had themselves previously worked for the alleged wrongdoer as their lawyer. Especially not when the judge and the accused had not disclosed this information at any point and had instead chosen to conceal it as well as payment of £35,500.

32. Put differently. Why, when there are so many other High Court judges, did our case have to be heard by the one judge that used to work for the person this case is against? Why couldn't any of the others who hadn't already recused themselves have done it instead? This decision was most unwise.

The Locabail (2000) case and Mr Supperstone's ability to defend himself with reference to it

33. Mr Supperstone, you may be tempted to refer to the Locabail (2000) case in your defence on this matter but you would not be able to rely upon it. The court accepted that the Locabail judge had absolutely no knowledge of the adversarial relationship between the firm of which he was a Partner, Herbert Smith, and the party in front of him in court which he was deciding upon. In this and several other points the circumstances of the Locabail case were entirely different to those of the prosecution against Mr Johnson. Mr Justice Supperstone, you had complete knowledge that you had previously worked for Mayor of London Boris Johnson and you have chosen to conceal this knowledge rather than disclose it.

34. Additionally, as the Locabail ruling rightly states *'It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, <u>which may include the nature of the issue to be decided</u>.'* The case then lists circumstances that *'ordinarily'* they could not conceive would result in the danger of an appearance of bias. However, it will be clear to anyone that there is absolutely nothing ordinary about this case or the circumstances surrounding it. Also, presumably in the interests of cautiously preserving the public's trust in the systems of justice the Locabail case itself concludes that *'…if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal*[16]*'.* As previously noted, this ruling is reflected within the Guide to Judicial Conduct which makes it clear that any judge must assess the danger that an undisclosed relationship of this kind could give an appearance of bias.

35. It is because you chose to conceal this information instead of honestly disclosing it that has made your situation all the worse, Mr Justice Supperstone. The suspicion this encourages naturally leads one to consider what else you might be concealing. If there is nothing else, why did you not disclose it and explain in full to the court or, better yet, recuse yourself as Mrs Justice Thornton did?

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[15] R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2) (1999)https://www.bailii.org/uk/cases/UKHL/1999/52.html

[16] LOCABAIL (UK) LTD, REGINA V BAYFIELD PROPERTIES LTD: CA 17 NOV 1999 https://www.bailii.org/ew/cases/EWCA/Civ/1999/3004.html

G. <u>Conflict 2:</u> The undisclosed connection between Mr Johnson and Mr Justice Supperstone via Middle Temple and the question of reputation

36. According to the Middle Temple website Mr Justice Supperstone is a Master Bencher of the Inn[28]. He has been a bencher since 21st June 1999. His career credentials and a short biography are included. According to this same official website of Middle Temple *'The Right Hon Boris Johnson MP'* is also a Master Bencher, in an honorary capacity, of the same Inn. He has been an Honorary Bencher since 3rd November 2011. This matter was never disclosed at any point by Mr Supperstone or Mr Johnson.

37. According to Middle Temple's Magazine, the Middle Templar, Master Johnson gave a speech to his fellow masters and members of Middle Temple on the same date as his call to the bench:

> *'Master Johnson arrived for his Call on 3 November, naturally, on his bicycle. He addressed us on the theme of the importance of the legal professions and the courts to the economy and international reputation of London.'*[29]

38. The issue at question on this point is one of reputation. The Middle Temple has not only made Mr Boris Johnson an honorary Master Bencher of their Inn of Court, they have publicly celebrated Mr Johnson's rise to the position of Prime Minister via their official Twitter account. On 24th July 2019 the Middle Bencher Twitter account posted the following:

> *'Congratulations to our Honorary Bencher Master Boris Johnson on being sworn in as the new #PrimeMinister'*[30]

39. It is sensible to assume that Middle Temple has made the Rt Hon Mr Boris Johnson, who has never been a lawyer, an 'honorary' member as part of their organisation for reputational/public relations purposes. The willingness of Middle Temple to proudly display Mr Johnson's Honorary Bencher status via their website and celebrate it via Twitter would suggest that they are proud of and consider themselves to benefit from the reputational relationship they share with Mr Johnson who has now become the Prime Minister. If this is correct, then the opposite must be also.

40. In that it is quite sensible to assume that Middle Temple's reputation could be damaged by their relationship with this same man if he was ruled against in a high-profile criminal case. Especially when one considers that Middle Temple prides itself on its position as an in institution and champion of the law. If therefore, one Master of the Bench of Middle Temple were to rule against another Master of the Bench of Middle Temple within a case of a serious criminal offence it is safe to assume that the reputation of Middle Temple would therefore be damaged by their relationship with the accused. It is hard to imagine for example that Middle Temple would maintain Mr Johnson as an honorary Master of their bench if the case was successfully completed and he were to face criminal sentencing.

The precise allegation I wish to make against Mr Supperstone on the matter of potential reputational damage to Middle Temple

41. Mr Supperstone, as member and then a Master of Middle Temple for twenty years I think it safe for one to assume that Middle Temple is an important and valued organisation for you. As barristers do, you will have advanced and matured professionally via membership of this organisation. It is safe to assume that you have some form of emotional connection to the institution. As a Master of Middle Temple, you may also have some leadership roles to play in its management. You have good reason to care about the good reputation of Middle Temple of which you are a Master.

42. It follows that If you had ruled against your fellow Bencher, Mr Johnson, in court it may have achieved the opposite. How positively would Middle Temple, an organisation which prides itself on its legal acumen, be

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[28] Michael Supperstone QC, Master of the Bench of Middle Temple https://www.middletemple.org.uk/bencher-persons-view?cid=35856
[29] Middle Temple Magazine 'Middle Templar' statement on Boris Johnson's speech to fellow Masters of the Bench https://www.middletemple.org.uk/download/file/fid/638
[30] Middle Temple Twitter account celebrates their honorary bencher Mr Johnson becoming Prime Minister https://twitter.com/middletemple/status/1154042320326520833

perceived by the public if one of its most high-profile honorary benchers was being sent back for a criminal trial by a fellow bencher for having allegedly broken the criminal law? Such a situation would make your position complicated and it could cause you some embarrassment. According to the Locabail case this is a relevant factor:

> *'In any case giving rise to automatic disqualification on the authority of Dimes and Pinochet (No. 2), the judge should recuse himself from the case before any objection is raised. The same course should be followed if, for solid reasons, the judge feels personally embarrassed in hearing the case.'*[31]

43. In short if you, Mr Justice Supperstone, had ruled against Mr Johnson you would be ruling against a fellow Bencher and an honorary and celebrated representative of your own Inn of Court. Did you meet Mr Johnson at Middle Temple when he came to deliver his speech in November 2011? Did you eat and drink together at the Masters' bench? Did you connect again following your time working together in 2008? I do not know because you have not taken any of the dozens of opportunities you have had to disclose any of this information.

44. I make an allegation of attempt to conceal an apparent bias based within the Locabail case's ruling regarding personal embarrassment. Again, you chose not to disclose this information at any point. If you had the situation could have been very different. Either way, it would seem sensible and straightforward that a judge from a different Inn of court could be tasked with hearing the case. There are many other High Court judges, why did you have to be chosen for this case Mr Justice Supperstone? And why did you not disclose this issue? Lastly, can you name a single other case in the history of the English common law in which a criminal prosecution against a Master Bencher of an Inn of Court was decided by another Master Bencher of that same Inn of Court, who had previously worked for the accused as their lawyer?

H. Conflict 3: Mr Justice Supperstone's undisclosed connection with the accused's family, colleagues and political allies via secretive and exclusive private social clubs

45. After researching you, Mr Justice Supperstone, I have discovered that, according to your Who's Who profile and your Middle Temple page, you are a member of the Garrick club[32]. As far as I understand it the Garrick is a secretive, exclusive, members only, private social club which does not allow women to be members. It is a short walk from the Royal Palace of Justice where you work. I have tracked down and interviewed another member of the Garrick Club who was sympathetic to my situation and believes in the importance of open justice. From him I hoped to find out more about the organisation. He showed me his private copy of the Garrick Club List of Members 2019 booklet and allowed me to take photographs of it confidentially. This booklet is not available to the public under usual circumstances and it was not easy to obtain.

46. From this booklet I have uncovered that you have a been a member of the Garrick since 1987. Stanley Johnson, father to Mr Boris Johnson, has been a member of the Garrick since 2007. Jacob Rees-Mogg, a Conservative Party MP and key friend and ally to Mr Johnson, has been a member of the Garrick since 2004. Michael Gove, a Conservative Party MP, has been a member of the Garrick since 2002. It is worthy to note that both Mr Rees-Mogg MP and Mr Gove MP both worked with Mr Boris Johnson to promote, endorse and advertise the same dishonest claim that our prosecution is based upon. As have other members of the Garrick. Meaning that a judge tasked with deciding on an alleged criminal case was apparently often socialising within the same private club as other people who had carried out the same activity as Mr Johnson, as well as Mr Johnson's father. I also note that Lady Justice Rafferty's husband, Brian Barker, is also a member of this same club.

47. The point of Locabail (2000) embarrassment is relevant here as it was within the Middle Temple issue. Membership of the Garrick is doubtless considered a privilege and honour by its members, who have paid for their membership at significant expense after being accepted to join. Mr Supperstone you have apparently paid for your membership since 1987, meaning you have seemingly been a paying member for 32 years, longer than I've been alive. A financial investment of many thousand pounds and an emotional one too presumably, given your long-standing place there. The question is, would you, Mr Justice Supperstone, have

[31] The Locabail (2000) case https://www.bailii.org/ew/cases/EWCA/Civ/1999/3004.html
[32] Information available via Who's Who and https://www.middletemple.org.uk/bencher-persons-view?cid=35856

felt as comfortable attending this social club after you had ruled against the specific activities that several of you fellow members had also carried out? If you had decided to rule in my favour, sending the case back for a full criminal trial, would this have impacted the ease and comfort of your personal visits to the Garrick? I believe that it is safe to say that it would have had a conscious or sub conscious influence on your decision making as it would on anyone else. You would doubtless immediately have made several very powerful and influential enemies within a place that you clearly value a great deal.

48. Relevant to this issue the Guide to Judicial Conduct states that:

> *'Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants, in their personal impartiality and that of the judiciary.'*
>
> *'It follows that judges should, so far as is reasonable, avoid extra-judicial activities that are likely to cause them to have to refrain from sitting because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity[33].'*
>
> *Integrity*
> *Judges are expected to put the obligations of judicial office above their own personal interests.*
> *In practical terms, this means that judges are expected to display:*
>
> - *Discretion in personal relationships, social contacts and activities*
>
> *'Social activities need to be assessed in the light of the judicial officeholder's duty to maintain the dignity of the office and not to permit associations which may affect adversely the officeholder's ability to discharge his or her duties.'*

49. Given the high public office of the accused and yourself, Mr Supperstone, as well as the regular concerns of the public regarding 'old boy's networks', it would seem sensible to have disclosed this matter to the court prior to the hearing. On the one hand, if there was no connection between yourself or those mentioned, in that you had no actual relationship and you not met or spoken to each other. Then, it may be, depending upon the circumstances, that it was a simple matter to disclose and explain to the court. However, because you have chosen not to disclose any of this information at all it brings into question what form of relationship you may have with the accused's father and his allies. You have not obtained the *'badge of impartiality'* in this circumstance either, Mr Supperstone.

The specific nature of my concern on this matter

50. I would argue that based upon the information I currently have this is not a matter of actual bias or automatic recusal, I think that would be unfair and an overreaction. Further to this, because I have no proof of an actual relationship between yourself and the people I have noted, I cannot make an allegation of apparent bias.

51. However, in combination with the other points present this is not a good look and it does concern me. I do not feel comfortable with the image of the judge on my case regularly having drinks in the same rooms as the accused's father and allies. It is an unsettling image and I would have appreciated it, in in the interests of honesty and transparency, if you had disclosed the information in full prior to the trial. This would appear an obvious and sensible decision to me, given the highly sensitive circumstances of the case and the great public interest invested in it. I feel that withholding it, in combination with the other points raised, is demonstrative of the disregard you have had for my case.

[33] Guide to Judicial Conduct March 2018 revision https://www.judiciary.uk/publications/guide-to-judicial-conduct/

I. Conflict 4: Lady Justice Rafferty's household has received a financial benefit from a government Minister who has carried out similar activities to those of the accused of this case

52. Lady Justice Rafferty, during the referendum campaign period on 1st May 2016 your husband, Brian Barker, was given a government job paying £848 a day by Conservative Party MP and Secretary of State for Northern Ireland, Theresa Villiers[34]. It was a dual role position as Chair of the Northern Ireland Committee on Protection (NICOP) and Independent Reviewer of National Security Arrangements in Northern Ireland. Theresa Villiers MP is a high-profile, key ally of Boris Johnson. She was given a position in his cabinet part of the way through our case going through the courts. Mrs Villiers MP has also campaigned with Vote Leave and Boris Johnson. I have identified video evidence that Theresa Villiers MP actively endorsed the same claim that Mr Johnson is being prosecuted[35] for and actively campaigned with Mr Johnson on this issue during the referendum[36].

53. In my view Lady Justice Rafferty this issue is significant because it is clear that your household has financially benefited, by £848 a day, from Theresa Villiers's decision to employ your husband. Meaning that, in short, if you had ruled against Mr Johnson's activities in this criminal case, you would also have been ruling against activities that Theresa Villiers MP had also carried out. As a result, you would be ruling against the actions and interests of a powerful professional ally of your husband who has significantly financially benefitted your own household. Lady Justice Anne Rafferty you did not disclose any of this information at any point during the proceedings on our case.

54. It is likely that an informed and rational member of the public would feel that your household, having benefitted by £848 a day, may feel indebted and grateful to Theresa Villiers MP. By ruling against Mr Johnson's activities, you would be ruling against the same activities that Mrs Villiers MP had also carried out. This may expose her, who appears to be one of your husband's key professional allies, to future criminal allegations and at the very least enormously embarrass her. There is another point to raise when one considers that Theresa Villiers would also be less likely to award your husband with other well-paid government positions in future if his wife were to cause her such difficulty.

55. Lady Justice Rafferty you are also a member of the Privy Council[37], as is Theresa Villiers. Yet, you did not disclose any relationships with her or other Privy Council members you may have which could cause conscious or unconscious bias. If you had ruled against the activities of Johnson, who is also a member of the Privy Council with you, you would also be ruling against the activities of many other Privy Council members. I imagine that this would be unlikely to make you very popular at Privy Council meetings with those colleagues whose activities you had ruled against in a criminal case. Again, this case does not concern a civil or public law disagreement which are fairly common. It is a criminal allegation which will impact a great many people who have carried out similar activities as Mr Johnson. Its implications are far further reaching than I suspect you considered them to be.

The specific allegation against Lady Justice Rafferty concerning the financial benefit to her household

56. I would consider this to be a matter of possible apparent bias as well as an attempt to conceal apparent bias. It is not possible for justice to be 'seen to be done' when a judge deciding on a case has had her household significantly financially benefit due to the actions of someone who has done the same thing as the accused in the case before them.

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[34] Brian Barker given job under Theresa Villiers https://www.gov.uk/government/news/appointment-of-his-honour-judge-brian-barker-cbe-qc

[35] Theresa Villiers endorsing the big red £350 million bus on camera for public television https://www.gettyimages.co.uk/detail/video/referendum-campaign-theresa-villiers-and-penny-mordaunt-news-footage/668725518

[36] Video footage of Theresa Villiers MP campaigning with Boris Johnson and endorsing the big red £350 million bus on camera https://www.gettyimages.co.uk/detail/video/shows-exterior-shots-conservative-mp-and-out-campaigner-news-footage/537565288

[37] Dame Anne Rafferty has been a member of the Privy Council since 2011 and Theresa Villiers since 2010 https://privycouncil.independent.gov.uk/privy-council/privy-council-members/#r

J. Conflict 5: Mr Justice Supperstone and Lady Justice Rafferty's written ruling is intellectually dishonest, contradicts Court of Appeal precedent and demonstrates predetermination

57. This issue concerns both Mr Justice Supperstone and Lady Justice Rafferty. My legal representatives and I were shocked after having read your written ruling on our case. It contradicted itself, it contradicted several authorities we had given to you and it also contradicted court of appeal precedent. But worse than this, I believe it was intellectually dishonest. We have highlighted these points to you in detail within our application for permission to appeal, but you showed no interest in engaging with any of them or explaining yourself in any way.

58. In our application we had requested permission to appeal, permission for a hearing and a certification of public importance for our case. Your reply via email was as unprofessional as it was revealing of your contempt for our case. All that you wrote in response to each request was 'no', 'no', 'no'. There was no reasoning for your decisions provided in writing or orally at the subsequent hearing, despite Supreme Court guidance that a reasoned ruling should be provided.

59. Lady Justice Rafferty, your decision to wink at me as I bowed out to leave the court room was also unsettling. A wink is a gesture of intrigue and humour and it is often mocking in nature. It is not something befitting a court room or a judge and given the circumstances it was most disconcerting. I do not understand what you meant by it.

60. I am not going to re raise all of the problems with your written ruling within this letter, this piece is already very lengthy. I will instead highlight a select few key examples which I feel represents the quality of the ruling overall. Within your written ruling of 3rd July 2019 you wrote the following:

> *'No authority was shown to us suggesting that the offence can be or has been equated to bringing an office into disrepute…'*[38]

61. There is a great deal of significance riding upon this statement as it concerns the question of 'acting as such' which is the matter of greatest importance to our case. If the court had ruled that Mr Johnson was capable of committing the offence of misconduct in public office by way of bringing is office into disrepute then I think you would agree that this would majorly change the outcome of your ruling. It is also very important because your statement is false and it is demonstratable that both of you, Mr Justice Supperstone and Lady Justice Rafferty, are aware of this because you have quoted from authorities that *do* equate the offence with disrepute within your own ruling.

62. For example, both the Law Commission's research on the offence and the Quach case were quoted from at length within your own ruling. Meaning that both of you considered them to be authorities on the offence. The following sections of these same authorities do not sit well with your claim that *'No authority was shown to us suggesting that the offence can be or has been equated to bringing an office into disrepute…'.* This authority is included within the Law Commission's research on this case:

> *'…wilful misconduct which has a relevant relationship with the defendant's public office is enough. Thus, misconduct otherwise than in the performance of the defendant's public duties may nevertheless have such a relationship with his public office as to bring that office into **disrepute**, in circumstances where the misconduct is both culpable and serious and not trivial.'*
>
> -Sin Kam Wah Lam Chuen Ip And Another v. HKSAR (2005)

63. And the Law Commission itself also opined on the matter in the following way, specifically dealing with a Member of Parliament bringing the House of Commons into disrepute:

> *'To perform a function properly a public office holder may be required to comply with professional standards of honesty and competence in doing so. Certain public office holders may also be subject to a duty not to act in a way that brings his or her position into **disrepute**. For example:*

[38] Quoted from High Court ruling https://www.bailii.org/ew/cases/EWHC/Admin/2019/1709.html

Example 3 A Member of Parliament, D, is under a duty to carry out functions in respect of the representation of D's constituents and the business of Parliament. In performing this function D must abide by the requirements of the code of conduct for MPs, to act with honesty and integrity and ***to not bring the House of Commons into disrepute****.'*[39]

64. This section comes from the Quach case which was shown to the court and was quoted from at length within their ruling:

> *'Accordingly, use of knowledge or information acquired by the office holder in the course of his or her duties for a private or other impermissible purpose may be inconsistent with the responsibilities of the office and calculated to injure the public interest. If the misuse of the information is of a serious nature and is likely to be viewed as a breach of the trust reposed in the office so as to* ***bring the office into disrepute****, the conduct will fall within the ambit of the offence whether or not it occurs in the course of public office.'*
>
> -The Queen V Huy Vinh Quach[40]

65. We also raised the case involving Andrew Mitchel MP, which I refer to as being the Wallis case after PC Keith Wallis. This is particular important case because it concerns a successful prosecution for misconduct in public office based upon a public office holder abusing public trust by lying about a matter of public importance. Lady Justice Rafferty and Mr Justice Supperstone, you were both present when we raised this case to your attention and it was referenced in our written argument. Yet you have chosen to totally ignore it within your ruling and have instead criticised us for our *'contention that demonstrable untruths were sufficient to bring the teller of them within the ambit of the offence'*. It was bizarre to ignore the Wallis case, which was specifically concerned with demonstrable untruths, as it states the following:

> *'This was thus sustained, and in significant measure, devious misconduct which fell far below the standards expected of a police officer. Indeed it was a betrayal of those standards, and was misconduct which as well as having had an impact on Mr Mitchell himself, has had a significant negative impact on public trust and confidence in the integrity of police officers.*
>
> *Whilst the gravity of this type of offence can vary greatly, the correct broad approach to sentence is clear – police officers must be deterred from misconduct, and the public must be able to see that condign punishment will be visited upon police officers who betray the trust reposed in them.'*[41]

The specifics of my allegation of actual bias in the form of intellectual dishonesty and refusal to reference our case arguments

66. The Guide to Judicial Conduct is very clear on the issue of integrity:

> *'Integrity*
> *Judges are expected to put the obligations of judicial office above their own personal interests.*
> *In practical terms, this means that judges are expected to display:*
> - *Intellectual honesty*
> - *Respect for the law and observance of the law'*

67. If Mr Justice Supperstone and Lady Justice Rafferty I allege that you have both been intellectually dishonest and have also demonstrated disrespect for the law by lying about the issue of 'disrepute' not being equated with the offence. This is an allegation of actual bias.

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[39] The Law Commission's research paper on misconduct in public office https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/01/misconduct_in_public_office_issues-1.pdf

[40] The Quach case is the only case in the world to have fully examined the meaning of 'acting as such' in UK, Hong Kong and Australian jurisdictions. https://jade.io/article/147354?at.hl=R+V+Quach+%2522misconduct+in+public+office%2522

[41] The Wallis case does not use the word 'disrepute' but its meaning is identical. https://www.thelawpages.com/court-cases/Keith-Wallis-12790-1.law

68. It is not possible for justice to be seen to be done, or done at all, when the arbiters of justice themselves are willing to lie about cases and authorities presented before them. The specific nature of this case and its interest in the honesty of public office holders makes the situation all the more damaging to the public's trust in the systems of justice.

69. Further to this problem. You have both also ruled that Mr Johnson wasn't 'acting as such' when you stated that *'If, as here, he simply held the office and whilst holding it expressed a view contentious and widely challenged, the ingredient of "acting as such" is not made out'*. This contradicts a Court of Appeal ruling, which DJ Margot Coleman clearly abided by, from the Cosford case that *'acting as such'* is a matter for evidence at trial:

> *'The issues for the jury were whether the appellants or any of them held a public office; whether each, in turn, wilfully misconducted herself in the performance of her public duties; and whether the conduct of each, in turn was such as to be deserving of criminal condemnation and sanction. The latter two questions were issues of fact for the jury…'*[42]

70. The following statement within your ruling is most concerning in this context:

> *'We do not agree with the DJ that the ingredient of the offence, "acting as such", is a matter for evidence at trial.'*

Primarily because it doesn't matter if you agree with it or not, a superior court has already ruled on this issue. Secondarily, because we've shown this authority to you twice and you've chosen to ignore its existence twice.

We have not released our full evidence yet, but an example that we have released includes a video of Mr Johnson clearly stating that he believed himself to be carrying out a duty of his public office whilst he was campaigning[43]. Your ruling that he was not carrying out the duties of his office is therefore in direct contradiction with what the accused himself has said. This is exactly the kind of evidence that a jury must be asked to carefully examine, as DJ Coleman ruled should occur.

71. Lastly, perhaps the most concerning and bizarre comment from your ruling was the following:

> *'The DJ received written and oral submissions from the Claimant. She was given by the IP an explanatory note signed by Lewis Power QC setting out details of the alleged offences and background circumstances. It included the author's approbation of the stance of the IP, his analysis and interpretation of how the law applied to the Claimant and the attribution of blame to him.* ***We felt confident in our ability to <u>decide</u> the case without reference to it****.'*

72. Your decision that you didn't need to reference Lewis Power QC's note, which formed the core of our case's argument and was of vital importance to our application for summons, clearly put us at an enormous disadvantage. It is most troubling and bizarre to state you were so confident in your view of this case that you didn't need to reference the primary written submissions of one the parties. Put differently, within this judicial review you were tasked with assessing the decision-making process of DJ Margot Coleman. Yet, you were apparently so confident in your own abilities that you didn't need to reference the same materials that she had been making her decision on. I allege a clear instance of actual bias on this matter. Justice cannot be seen to be done if judges are openly stating their confidence to decide cases without reference to the main argument of the parties that they disagree with. What is also very troubling is that within your written ruling you make absolutely no mention of my own research document on this case, a 44,000-word summary covering my case argument in depth. According to the court transcript it appears that you hadn't even seen it, despite it being presented to DJ Coleman who made it clear that she had read it. Further demonstration that you rushed into your ruling.

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[42] R v Cosford http://www.bailii.org/ew/cases/EWCA/Crim/2013/466.html

[43] When questioned on camera about his campaigning activities Mr Johnson stated that '…I believe in a Burkean duty…', clearly referencing Edmund Burke's speech to the electors of Bristol which is a key text in determining the duties of a Member of Parliament and elected representatives in general.

73. The authorities are especially clear on matters such as this. In my view, this an example of predetermination and the closing of your own minds to the core of my prosecution case's argument. This is mentioned by the authors of Judges on Trial who quote from R (Persimmon Homes) v. Vale of Glamorgan Council (2010):

> *'Predetermination is the surrender by a decision maker of its judgement by having a closed mind and failing to apply it to the task. In a case of apparent bias, the decision maker may have in fact applied its mind quite properly to the matter but a reasonable observer would consider that there was a real danger of bias on its part. Bias is concerned with appearances whereas predetermination is concerned with what has in fact happened'*[44]

74. Your decision not to reference Lewis Power QC's note perhaps explains the biggest flaw in your ruling. After having spent a significant amount of your word count explaining that the 'bite' of the offence falls upon the duties of the office holder accused. You then make absolutely no mention of the different duties that Members of Parliament and Mayors of London have that Lewis Power QC's argument and my own research summary of the case explains. The duty to honestly criticise and scrutinise the decision making and public spending of the executive being one key example. As well as a Burkean duty to always act in the best interests of the nation as a whole. A duty that the accused believed himself to be carrying out when campaigning, according to the video evidence that I reference within my research document that you again chose not to reference.

K. Conclusion

75. Clearly, this situation might have been averted if you had taken more time to consider the sensitivity of the case and your own positions in relation to it. However, you appear to have rushed into this work without the due care and consideration required.

76. I argue that there are clear and obvious apparent biases present in your decision to hear this case and within your written ruling, examples of actual bias. Neither one of you should have been anywhere near this case. I also argue that you have concealed a great deal of highly relevant information that is now more damaging to the public's trust than it would have been if you had simply decided to disclose it at the beginning as the authorities on this matter make clear you are required to do.

77. I consider your conduct to be thoughtless, insensitive, rushed, dishonest and incredibly arrogant. I think the way in which you conducted yourself on this case is a valuable, if unsightly, insight into what happens when a profession, in this case judges, are rarely ever professionally scrutinised or held to account by a member of the public. Your actions would suggest that you seem to think yourself to be above the law and completely beyond scrutiny. I hope this letter will enable you and the public to understand that you are not.

78. I've spent over three years of my life working hard to ensure that elected public office holders are legally required to be honest with the public. I am astounded that I have had to work so hard for several months to ensure that judicial public office holders are forced to do the same. I request that you retrospectively recuse yourselves immediately and cooperate fully with the JCIO for the purposes of this complaint.

79. For the time being my faith in the judiciary has been reduced to almost nothing. This has been one of the most disappointing and disheartening experiences of my life.

Sincerely,

Marcus J Ball
Private Prosecutor
Stop Lying In Politics Ltd.
130 Old Street, London, England,
EC1V 9BD
(No post or visits via this address)
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[44] Judges on Trial page 194