



COURTS AND
TRIBUNALS JUDICIARY

The Queen on the Application of David Crompton

Claimant

-v-

Police Crime Commissioner for South Yorkshire

Defendant

And

(1) Her Majesty's Chief Inspector of Constabulary

(2) South Yorkshire Police and Crime Panel

Interested Parties

PRESS SUMMARY

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

BACKGROUND TO THE CASE

Between January 2012 and September 2016, the applicant, David Crompton, was the Chief Constable of the South Yorkshire Constabulary. The Defendant, Dr Alan Billings, was, and remains, the Police and Crime Commissioner (the Commissioner) for South Yorkshire [12-13].

At about 11 am on 26 April 2016 the jury in the Inquest into the deaths of 96 football supporters at the Hillsborough stadium in Sheffield in 1989 returned their verdicts (or more accurately their determination) [17]. At about noon, the shadow Home Secretary, Andy Burnham MP, released a statement saying that the current leadership of South Yorkshire Police needed to explain why, during the inquests, it went back on an apology made in 2012 [24]. At about 2pm the applicant made a statement to the press "unequivocally" accepting "the verdict of unlawful killing" and apologising "unreservedly" to the families [25]. There followed discussion between the Chief Constable and the Commissioner as to whether a second statement should be made by the Chief Constable responding to the remarks of Mr Burnham [27-31]. The Chief Constable considered a second statement should be made. The Commissioner did not agree [28-31].

At 12.20 on 27 April 2017, the Chief Constable released a second statement to the press [32]. In it he referred to the 2012 apology and repeated the apology given the previous day. He referred to a ruling by the Coroner that the 2012 apology was not admissible in evidence at the inquests. He went on:

"It is important to remember that Inquests are not about guilt, liability or blame, but about establishing the facts. The intention throughout these proceedings has been to assist the jury understand the facts. We

have never sought, at any stage, to defend the failures of SYP or its officers. Nevertheless, these failures had to be put into the context of other contributory factors. In other words, where do the failings of SYP stand in the overall picture?”

Fifteen minutes later, the then Home Secretary, Mrs Theresa May, made a statement about the inquests in the House of Commons. A number of Members of Parliament also spoke, including Mr Burnham [33-37]. At about 2pm the Commissioner spoke to the Chief Constable suggesting he should resign and giving him one hour to consider his position [40]. Shortly before 3pm the Chief Constable returned to the Commissioner’s office to say he thought the 3pm deadline was unreasonable. The Commissioner then suspended him pursuant to the provisions of section 38 of the Police Reform and Social Responsibility Act 2011 [41]. That suspension was reported widely in the press the following day [42].

Over the following 5 months, the Commissioner followed the procedure laid down in the 2011 Act by which a Police and Crime Commissioner can require a Chief Constable’s retirement or resignation [44-56]. That procedure included the Commissioner providing Her Majesty’s Chief Inspector of Constabulary (HMCIC) with a detailed explanation of his reasons for invoking the section 38 procedure [46]. On 15 June 2016 HMCIC (Sir Tom Winsor) provided the Commissioner with a detailed response, setting out his view on the proposal to require the Chief Constable to resign or retire [47]. HMCIC made it clear he thought that the proposal was unjustified [143].

By letter dated 29 September 2016, the Commissioner informed the Chief Constable that he was calling on him to resign from his post. The Chief Constable did so later that day [56].

By these proceedings the Chief Constable challenges the lawfulness of the decision to suspend him (the first decision); the decision to continue with the section 38 process despite the views of HMCIC (the second decision); the decision to continue despite the observations of the Chief Constable himself (the third decision); and his final decision of 29 September to require the Chief Constable’s resignation (the fourth decision) [6-9].

JUDGMENT

The Divisional Court (Sharp LJ and Garnham J) found that the application for judicial review must succeed. All four decisions will be quashed [178].

REASONS FOR THE JUDGMENT

Generally

The Policing Protocol is guidance to which those involved in policing are required to have regard. It seeks to achieve two, sometimes conflicting, objectives. It seeks to maintain proper operational independence for Chief Constables. It also seeks to achieve proper democratic oversight of the conduct of Chief Constables [66]. The Protocol requires the establishment and maintenance of effective working relationships by, amongst others, Chief Constables and Police and Crime Commissioners. It says that the principles of goodwill, professionalism, openness

and trust will underpin the relationship between them. It requires the parties to work together [73].

Nothing in the Act limits the wide obligations of Police and Crime Commissioners to hold the Chief Constable to account for the exercise of any of the latter's functions [76], including those which are regarded as characteristic of operational independence [78].

However, the terms of the Protocol serve to qualify the powers of Police and Crime Commissioners. "Goodwill, professionalism, openness and trust" between Chief Constable and the Police and Crime Commissioner mean it is necessary for a Police and Crime Commissioner to accord a Chief Constable a margin of appreciation in the decisions he takes.

The obligation on the Police and Crime Commissioner and Chief Constable to "work together to safeguard the principle of operational independence" requires the Police and Crime Commissioner to recognise and respect the professional judgment of the Chief Constable and to work with him to maintain that independence [90].

It follows that a decision by the Police and Crime Commissioner to invoke the section 38 procedure based on a simple disagreement with a decision of the Chief Constable would be inconsistent with those obligations [90]. The proper test to be applied by the Police and Crime Commissioner to the actions of a Chief Constable when considering whether to suspend or require the resignation of a Chief Constable is whether those actions are outside the range of reasonable responses available to a Chief Constable [94].

Preliminary matters

The Chief Constable's suspension on 27 April 2016 engaged his article 8 rights because the suspension, and the consequent publicity, amounted to an interference with his private life and severely damaged his reputation [95-97].

There are good reasons to extend time to challenge the first two decisions: each of the decisions was a step along the path required by statute when a direction under section 38 is being contemplated by a Police and Crime Commissioner, and the argument of the Chief Constable was that a flawed approach by the Police and Crime Commissioner underpinned all the decisions that were made. In any event, had the first two decisions been challenged earlier, this may well have resulted in a claim they were made prematurely. Time is therefore extended for the challenge to the first two decisions [107-109].

The first decision

The conclusion that it was appropriate to issue a second statement was one that was properly open to the Chief Constable on the facts, in the light of the criticism of South Yorkshire Police (adopted by the Commissioner in one of his letters to HMCIC) that "no-one at the top ever took responsibility for anything and their reaction to any issue was to hide themselves away and hope everything would blow over" [117-118].

The Commissioner's failure to advise the Chief Constable on the contents of the second statement, when he contended it would cause the force real damage, was a serious error and was inconsistent with the collaborative approach required by the Protocol [120-121].

The Commissioner was entitled to have regard to the state of public confidence and the extent of public feeling in South Yorkshire in making his decisions. However, these matters were only relevant if the second statement could fairly be said to have caused further damage to public confidence [127-128].

In the second statement the Chief Constable repeated his apology and unequivocally accepted the jury's conclusion that the Liverpool supporters were blameless. No fair-minded observer could have concluded that the Chief Constable was implicitly criticising Liverpool supporters, or that "other contributory factors" referred to the conduct of Liverpool football supporters. The contrary interpretation could only be based on a pre-existing assumption about the attitude of the Chief Constable, or a failure to distinguish between the position at the inquests of the South Yorkshire Police and the retired officers [134-135].

None of the evidence justified a conclusion that there had been a significant adverse public reaction to the second statement from the Chief Constable in the period of two and half hours between the making of that statement and the starting of the section 38 procedure [139-140].

The Chief Constable's statement was within the range of reasonable responses to the jury's verdict and to the call by the Shadow Home Secretary for a further statement from South Yorkshire Police. Given the margin of appreciation which the Commissioner should have allowed the Chief Constable, the Commissioner's decision to exercise his section 38 powers was irrational [144].

The second decision

HMCIC's independence, statutory function and experience make him especially well equipped to provide a view on a proposal to call on a Chief Constable to retire or resign.

It would be irrational of a Police and Crime Commissioner to fail to give real weight to the views of HMCIC, particularly where the expression of those views is as detailed, thorough and closely reasoned as they were in this case [154].

The observations provided by HMCIC were therefore much more than mere advice which the Commissioner was free to follow or not. It was guidance which any Police and Crime Commissioner should have considered with care, and from which he should have departed only if he had cogent reasons for doing so [156].

Legitimate criticisms of the Commissioner's decision to suspend were set out in the letter from HMCIC of 15 June 2016 [157]. The Commissioner's response failed to engage with the substance of those legitimate criticisms and failed to provide cogent reasons for taking a different view [159].

The third decision

In the light of the conclusions on the first decision, the third decision cannot stand [161-164].

The fourth decision

The PCC's first decision was irrational and he failed to recognise its flawed nature in his final decision despite the powerful criticisms made of it by both the Chief Constable and HMCIC [165-169].

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