

Summary of Decision of the Court of Appeal

The King (on the application of the National Council for Civil Liberties) v Secretary of State for the Home Department (1) Secretary of State for Foreign, Commonwealth and Development Affairs (2) National Union of Journalists (Intervenor)

Dame Victoria Sharp, President of the King's Bench Division, Lord Justice Lewis, Lord Justice Stuart-Smith:

1. In this appeal, the appellant, the National Council for Civil Liberties, challenged the compatibility of certain Parts of the Investigatory Powers Act 2016 with Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 8 guarantees the right to respect for private and family life. Article 10 guarantees the right to freedom of expression. The appellant also contended that certain provisions of the 2016 Act were incompatible with retained European Union Law.
2. The 2016 Act is concerned with the grant of warrants authorising the interception of communications, the interference with equipment in order to obtain communications, the acquisition of communications data and the retention and examination of bulk personal datasets. The ability to carry out such activities is seen as a significant means of addressing the threats to national security from terrorism and supporting the investigation of serious organised crime including offences against children.
3. The 2016 Act consolidates and replaces earlier statutory powers. It contains a series of safeguards applicable to the grant of different types of warrants. These include the need for certain warrants to be the subject of prior independent authorisation by a Judicial Commissioner. There are also restrictions governing the purpose for which data obtained can be used or examined.
4. The appellant contended that the 2016 Act did not provide adequate safeguards against the risk of abuse or for the protection of journalistic material and sources. In particular, the appellant contended that the 2016 Act did not, in a number of respects, meet the requirements outlined by the Grand Chamber of the European Court of Human Rights in its judgment in *Big Brother Watch v United Kingdom* which concerned the compatibility of provisions of a predecessor statute with Articles 8 and 10 of the Convention.
5. The Court of Appeal considered in detail the legal regimes governing each type of warrant. The Court concluded that, save in one respect, the provisions contained in the 2016 Act do provide adequate safeguards against the risk of abuse and protect confidential journalistic material and journalistic sources. The Court held that there are adequate safeguards providing for the sharing of information with authorities overseas but, in respect of one category of material (that is data obtained from bulk personal datasets) those safeguards are not in accordance with law, and so not compatible with Article 8 of the Convention, because the safeguards governing such transfers are not contained in any legislation, code or publicly available policy or other document. The Court of Appeal also remitted one issue to the Divisional Court for it to determine, namely whether the provisions contained in Part 6 Chapter 3 of the Act governing the grant of bulk equipment interference warrants authorising

the interference with equipment for the purposes of obtaining communications and other data and information are sufficient to provide adequate safeguards for the protection of a journalist's sources or confidential journalistic material. The Court also held that the provisions of the Act were compatible with retained EU law.

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. Judgments are public documents and are publicly available. A copy of the judgment as handed down can be obtained after 14.30 on 4 August 2023 from the following website <https://www.judiciary.uk/judgments/>