IN THE INVESTIGATORY POWERS TRIBUNAL

B E T W E E N : -

CHRISTINE LEE (1)
DANIEL WILKES (2)

Claimants

-and-

SECURITY SERVICE

Respondent

PRESS SUMMARY

NOTE: This summary is provided to assist in understanding the Investigatory Powers Tribunal's decision in this case. It does not form part of the reasons for the decision. The full judgment is the only authoritative reasons for the decision. The judgment is available at Judgments - The Investigatory Powers Tribunal.

References in square brackets are to paragraphs in the judgment.

Tribunal Panel: Lord Justice Singh (President), Lord Boyd of Duncansby (Vice-President), Judge Rupert Jones

1. The Tribunal has today handed down its judgment in which it unanimously dismisses the claims brought by Ms Christine Lee (the First Claimant) and her son Mr Daniel Wilkes (the Second Claimant). There is also a CLOSED judgment.

Background to the claims

2. This case concerns whether the Respondent's decision to issue an Interference Alert ("IA") in relation to the First Claimant, and related actions which were taken in connection with the Second Claimant's employment in Parliament, were lawful on public law grounds and were compatible with the Claimants' human rights. **[1]**

3. The First Claimant founded Christine Lee Immigration Consultancy Company Limited, in 1994, which primarily provided immigration consultancy services to Chinese migrants. In 2002 the First Claimant became a solicitor and transformed the company into a solicitors' firm called Christine Lee & Co (Solicitors) Limited ("CLCo"), providing a range of legal services mainly to people in the British Chinese community.

From 2004 the firm set up consultation offices in Hong Kong, Guangzhou, and Beijing to provide immigration and investment advice to clients in Hong Kong and mainland China. **[4]**

4. From the early 2000s until January 2022, the First Claimant created and supported a number of community groups which have aimed to promote political participation and combat discrimination facing the British Chinese Community. **[5]** She founded the British Chinese Project ("BCP"). **[7]** She also helped set up the All-Party Parliamentary Chinese in Britain Group ("APPCBG"), which from 2011 until 2019 was chaired by the Rt Hon Barry Gardiner MP. **[8]**

5. The Second Claimant is the First Claimant's youngest son. He briefly volunteered in Barry Gardiner MP's office in 2010, from September 2015 to August 2016 he was employed by Mr Gardiner MP on a part-time basis, and from January 2017 to 13 January 2022 the Second Claimant worked full-time as Mr Gardiner MP's Diary Manager. **[3], [9], [11]**

6. On 13 January 2022 the Respondent issued an IA to the Parliamentary Security Director for onward dissemination to Parliamentarians, displaying the First Claimant's full name and photo. The IA stated that it was "… to draw attention to an individual knowingly engaged in political interference and activities on behalf of the United Front Work Department ('UFWD') of the Chinese Communist Party (CCP)". The IA contained a number of statements about the First Claimant (see **[15]**), including that: she "has acted covertly in coordination with the UFWD and is judged to be involved in political interference activities in the UK."; "… is working in coordination with the United Front Work Department (UFWD) of the Chinese Communist Party (CCP). We judge that the UFWD is seeking to covertly interfere with UK politics through establishing links with established and aspiring Parliamentarians across the political spectrum. The UFWD seeks to cultivate relationships with influential figures in order to ensure the UK political landscape is favourable to the CCP's agenda and to challenge those that raise concerns about CCP activity, such as human rights."; and "… has been engaged in the facilitation of financial donations to political parties, Parliamentarians, aspiring Parliamentarians and individuals seeking political office in the UK, including facilitating donations to political entities on behalf of foreign nationals."

7. The IA was emailed to all Parliamentarians by the Speaker of the House of Commons, the Rt Hon Sir Lindsay Hoyle MP. **[17]**

8. The First Claimant provided evidence on the impact of the IA on her, including mentally, physically, reputationally and professionally. **[28]-[32]**

9. On the morning of 13 January 2022, the Second Claimant received a letter from the Deputy Director of the Parliamentary Security Department that his Counter Terrorist Check ("CTC") Parliamentary Security Clearance was being suspended. The letter emphasised that "... a final decision has not yet been made" and invited any representations that the Second Claimant would wish to make. **[19]**

10. The Second Claimant alleges that on 13 January 2022, the Respondent's officials had a meeting with Barry Gardiner MP, where they disclosed information about the First Claimant to those present at the meeting. The Second Claimant alleges that he was

given an ultimatum by Mr Gardiner MP either to resign or be dismissed, which Mr Gardiner MP denies. Subsequently the Second Claimant instituted proceedings against Mr Gardiner MP in the Employment Tribunal for constructive unfair dismissal, which were settled. **[18], [20], [22]**

11. The Second Claimant provided evidence of the impact alleged to have arisen from the IA: he had to change careers, he has lost contact with friends, and he fears that future employers will be hesitant to hire him due to his association with the First Claimant. **[33]**

12. The Claimants lodged claims with the Tribunal on 21 March 2022 **[34]**, challenging the Respondent's decision to issue the IA on public law grounds, and on the basis that the decision to issue the IA was incompatible with the Claimants' human rights.

Reasons for the Judgment

Public law grounds

13. The Claimants contended that the Respondent does not have *vires* (that is, the legal power) to issue an IA. The Tribunal rejects that argument, concluding that there is an implied power to issue an IA, under section 1(2) of the Security Service Act 1989 ("SSA"). **[94]** Read as a whole, the Respondent's general function of protecting national security undoubtedly includes the particular functions of protection from the activities of agents of foreign powers and the protection of Parliamentary democracy: see section 1(2) of the SSA. **[96]** The Respondent's national security functions in section 1(2) of the SSA are each additional to the others: protection (i) against threat from espionage, terrorism and sabotage, (ii) from the activities of agents of foreign powers and (iii) from actions intended to overthrow or undermine Parliamentary democracy by political, industrial or violent means. **[97]** The implied powers of the Respondent are not confined to meeting only actions intended to undermine Parliamentary democracy by unlawful, perhaps criminal, means; the Respondent is able to take steps to protect Parliamentary democracy in advance and not only after criminal acts have occurred. **[98]**

14. The Claimants submitted that the Respondent made a material error of fact as the IA contains a number of inaccuracies. The Claimants invited the Tribunal to correct those inaccuracies, making findings of fact for itself on the balance of probabilities. **[102]** The Tribunal rejects that submission. First, there is no reason to depart from the conventional principle that judicial review is not available where there is an alleged error of fact, so long as there was a rational basis for the Respondent's view of the facts. **[103]** Second, the context in which the IA was issued was the performance of one of the Respondent's functions to protect Parliamentary democracy by way of preventive action. In that context, a decision-maker may well have to act on the basis of an assessment of risk. That exercise is not confined to the establishment of facts. **[104]** Third, the Data Protection Act 2018 ("DPA") does not empower the Tribunal to determine for itself whether there have been mistakes of fact in the Respondent's processing of personal data in the IA, including because the fourth data protection principle relied on by the Claimant was exempted on national security grounds. **[105-112]**

15. The Claimants contended that the Respondent breached the *Tameside* duty of reasonable inquiry, in particular because the Respondent failed to conduct reasonable enquiries as to whether the First Claimant would act, or would be recruited to act, as an agent of the Chinese State given that she is a devout Christian. **[113]** The Tribunal concludes that it was not irrational for the Respondent to make the inquiries which it did. **[115]**

16. The Claimants submitted that the decision of the Respondent to issue the IA was procedurally unfair. In particular, it was submitted that the First Claimant should have been notified prior to any publication of the IA, stating that it was believed that she was involved in working with the UFWD; her representations should have been invited; and she should have been offered the right to challenge the prospective decision before the Tribunal. **[116]** In the context of this case, there is no right to prior notice or the right to make representations before an IA is issued. **[132]** This is because of (i) the particular statutory context (which includes the opportunity to challenge an IA in this Tribunal, affording fairness after the decision has been taken, and the absence of an express duty to act fairly), and (ii) because of the needs of national security (as the act of seeking representations is likely to be contrary to the national security of the UK). **[133-139]** Further, the principle in *Simplex GE (Holdings) & Anr v Secretary of State for the Environment, & Anr* (1989) 57 P & CR 306 applies. For the reasons set out in CLOSED, the outcome – the Respondent proceeding to issue an IA – would inevitably have been the same even if the Respondent had given the First Claimant prior notice of the IA and the opportunity to make representations in advance of its issue. **[140]**

17. The Claimants contended that the Respondent's assessments of the facts and national security evaluations contained in the IA were irrational. **[141]** The Respondent's assessments contained in the IA, both of the facts and of the national security evaluation relating to the First Claimant based on those facts, had a rational basis. **[142]**

Human rights

18. The Tribunal set out the framework of principle to be applied by the Tribunal when considering claims that there has been a breach of a claimant's Convention rights under the HRA **[168]**:
    a) If the Convention right is an absolute right, notably Article 3, the interests of national security cannot justify a violation of that right.
    b) If, as is more often the case, the Convention right is a qualified right, such as the right to respect for private life in Article 8, in principle the interests of national security can justify an interference with that right, provided the interference is in accordance with law and satisfies the principle of proportionality.
    c) The Tribunal itself must decide whether the principle of proportionality is satisfied. It is not confined to asking whether the Respondent's assessment of proportionality is rational.
    d) However, when the Tribunal is conducting the fair balance exercise under the fourth part of the proportionality test, and weighs the interests of national security on one side of the balance, it cannot substitute its own findings of fact for those of the Respondent. Its role is to consider whether the factual basis on which the Respondent acted had a rational basis.

e) Further, the Tribunal cannot go behind the Respondent's assessment of national security unless that had no rational basis.
f) Although the Tribunal must form its own judgement on the question of proportionality, it must give due respect and weight to the assessment of the Respondent.

19. The Claimants have not suffered a breach of Article 3. **[179]** The consequential impact of the IA on the Claimants, distressing though it was, does not reach the minimum threshold required for a breach of Article 3. **[172]** There is no breach of the Article 3 positive obligations on the state to take action to prevent treatment by others, here in particular the media and private individuals who sent abusive messages to the First Claimant. The Respondent had no particular control over the actions of the media or other third parties; the Respondent was entitled to issue the IA, and indeed had an obligation to do in order to fulfil its statutory function of protecting Parliamentary democracy; and there is no evidence that the abusive messages and social media commentary directed to or received by the First Claimant in January 2022 represented a genuine and ongoing threat to her safety and, even if they did, there is no evidence that the police or other state authorities are unable or unwilling to provide the First Claimant with reasonable protection. **[173-178]**

20. The decision to issue the IA did interfere with the First Claimant's Article 8 right to respect for her private life **[182]**: the IA was issued prior to an authoritative determination by an independent body that the First Claimant acted in a manner prejudicial to national security **[184]**, there had not yet been an authoritative finding that the First Claimant had been engaged in criminal or other misconduct **[185]**, and the IA had serious consequences not only for the personal reputation of the First Claimant but also for her professional and business activities **[186]**. This interference with the First Claimant's Article 8 rights was in accordance with the law. **[188]** There are adequate safeguards in place against the risk of arbitrary conduct by the state, including the opportunity to challenge an IA before the Tribunal. **[189]** Prior independent consideration was not required by law before the issue of the IA in this case, including because there exists the post-decision opportunity to challenge it before the Tribunal, and the IA was made open to all Parliamentarians and was 'above the waterline', such that its subject has the opportunity to challenge it before the Tribunal in a human rights claim. **[190]** The IA was issued in accordance with domestic law; all the Claimants' public law challenges have failed so this part of the Convention requirement is satisfied. **[192]** The interference with the First Claimant's Article 8 rights was "necessary in a democratic society" to achieve one or more of the legitimate aims set out in Article 8(2). **[193]** The IA was also a proportionate response to the threat posed by the First Claimant. **[197-204]**

21. Any interference with the Claimants' rights under Articles 10 and 11 of the ECHR (the rights to freedom of expression and freedom of association) would be justified for the same reasons as for interference with the Article 8 rights. **[206]**

22. There is no breach of the First Claimant's rights under Article 14 ECHR: the First Claimant was not discriminated against on grounds of nationality **[209]**; the Respondent issued the IA for legitimate reasons which had nothing to do with the First Claimant's nationality **[209]**; the individuals identified by the Claimants as in an analogous position to the First Claimant for the purposes of Article 14 are not in such an analogous position

[212]; and the OPEN material relied upon is not capable of establishing that there is no objective basis for any difference in treatment **[212]**. A person in analogous situation to the First Claimant, who posed the same threat to national security but of a different nationality or race, would have been treated in the same way irrespective of nationality or race. **[213]**

23. In respect of the Second Claimant, there has been no breach of his Article 8 rights because the Respondent did not interfere with the Second Claimant's Article 8 rights: the Respondent made no attack on the Second Claimant's reputation and the IA did not even mention him; the Respondent did not terminate the Second Claimant's employment; responsibility for making decisions whether to issue or withdraw CTC clearances does not lie with the Respondent; the Second Claimant was informed in writing that the decision-maker was "minded to" revoke his CTC clearance, he was invited to submit representations, he was informed that his clearance had been suspended pending a final decision, and of his right to appeal any subsequent decision to revoke his clearance, but he resigned later the same day; and there is no evidence that Parliament publicised its decision to suspend the Second Claimant's security clearance, so it follows he suffered no damage to his reputation capable of engaging Article 8. **[215-216]**

24. The Second Claimant suffered no breach of his rights under Article 14 because the Respondent's acts do not fall within the ambit of Article 8 and even if they had, there has been no breach of Article 14 for the reasons given in relation to the First Claimant. **[217]**

Background information

The Investigatory Powers Tribunal, which was established by Parliament in 2000, is an independent judicial body that provides the right of redress to anyone who believes they have been the victim of unlawful action by a public authority using covert investigative techniques. The Tribunal has a UK-wide jurisdiction.

Further information about the Tribunal is available at About the Tribunal - The Investigatory Powers Tribunal. All judgments of the Tribunal are available at: Judgments - The Investigatory Powers Tribunal.