



JUDICIARY OF
ENGLAND AND WALES

AKJ, KAW and SUR -v- Commissioner of the Metropolis & ACPO

AJA, ARB and Thomas Fowler -v- Commissioner of the Metropolis and Others

High Court (Queen's Bench Division)

17 January 2013

SUMMARY TO ASSIST THE MEDIA

The High Court (Mr Justice Tugendhat) has granted a temporary stay in proceedings in the case of claims for damages by individuals who say they were tricked by undercover police officers. The stay is pending a determination of proceedings by the Investigatory Powers Tribunal. The High Court dismissed applications by the defendants for the claims to be struck out.

Introduction

The background to the claims is set out in paragraphs 1 – 14.

“In these two actions the Claimants advance claims under the Human Rights Act 1998 (“HRA”) ss. 6 and 7 (“the HRA claims”), together with a number of common law claims in tort (“non-HRA claims” or “the common law claims”). The Defendants in these two actions apply to this court for orders that the claims be struck out; alternatively stayed, on the grounds that this court (the High Court),

- (1) Has no jurisdiction to hear the Claimants’ HRA claims because those claims are exclusively the province of the Investigatory Powers Tribunal (“the IPT”); and/or
- (2) Should decline to exercise its jurisdiction over, or should strike out, the Claimants’ common law claims, because they can be heard in the IPT and it would be abusive and/or inappropriate for them to be heard in the High Court when the HRA claims arising out of the same facts must be brought in the IPT, alternatively, that it would be unfair to permit the common law claims to be heard in the High Court because, by reason of their “Neither Confirm Nor Deny” (“NCND”) policy, the Defendants cannot defend the claims.” (para 1)

The Issues

The issues before the Court are set out in paragraphs 15 – 19.

Summaries of the claims by the Birnberg Claimants

The nature of these claims is set out in paragraphs 20 – 42.

Summaries of the claims by the Tuckers Claimants

The nature of these claims is set out in paragraphs 43 – 53.

The principle of legality

Although there was no issue between the parties on this principle, the Court explains the principles of legality at common law and under the Human Rights in paragraphs 54 – 84.

Overview of RIPA

An overview of RIPA is set out in paragraphs 85 – 97.

Overview of the Investigatory Powers Tribunal

An overview of the IPT is set out in paragraphs 98 – 103.

First Issue: Does the IPT have jurisdiction over the HRA claims?

The Court considers the first issue in detail in paragraphs 104 – 183.

“There is no dispute that in the circumstances specified in RIPA, the IPT is the only appropriate tribunal for the purposes of the HRA s.7(1)(a) (para 82 above) in relation to proceedings and complaints against the police. ... The issue is as to whether those circumstances apply in the two cases before the court.” (para 104)

On this issue, Mr Justice Tugendhat concludes:

“The answer to the first question is that the IPT does have jurisdiction over the Claimants’ claims under HRA against the [Commissioner of Police of the Metropolis] and the [Chief Constable of South Wales Police].” (para 183)

Second Issue: Can the IPT hear the common law claims?

The Court considers this issue in detail in paragraphs 184 – 197.

On this issue, Mr Justice Tugendhat concludes:

“The answer to the second question is that the IPT does not have jurisdiction over the Claimants’ claims for damages at common law or for any statutory tort.” (para 197)

Third Issue: Should the Court strike out or stay the non-HRA law claims?

The Court considers this issue in detail in paragraphs 198 – 223.

“The Defendants submit that the pursuit of the Claimants’ claims both in the IPT (the HRA claims) and in the High Court (the claims at common law and under statute) is an abuse of process. They relied on two grounds: (1) that it would be an abuse to pursue proceedings in two different venues (the IPT and this court) on the same alleged facts and (2) that the Defendants cannot receive a fair trial in this court. In the alternative, the Defendants ask that the proceedings in this court be stayed pending resolution of the HRA claims in the IPT.” (para 198)

Mr Justice Tugendhat concluded:

“In my judgment the interests of justice would best be served by the IPT proceedings being heard first. If there is a defence under s.27, then there will be no obstacle to the CPM and the CCSWP advancing their cases to that effect in the IPT. It is not for this court to speculate as to how the IPT would make known to the parties, and so to the High Court, what decision it had reached on the HRA claims in a manner which would assist the parties and the High Court in the subsequent advancement of the non-HRA claims. But the IPT must be given the opportunity to do what it considers to be just and appropriate. I decline to assume that the IPT will be unable to overcome perceived difficulties in circumstances where it has not been asked to do it. There seems to me that there is at least a possibility that a decision of the IPT will be of assistance in resolving the difficult procedural issues that arise in cases such as *Al Rawi* and the present cases. As to s.67(7), that corresponds to HRA s.8, under which no damages may be awarded by the High Court unless the court is satisfied that the award is necessary to afford just satisfaction.

“Accordingly, I shall stay the High Court proceedings pending the determination of proceedings in the IPT.” (paras 222 – 223)

Claims against ACPO:

“ACPO was a joint applicant with the CPM in the Application Notice dated 8 June 2012. But it does not rely on any ground which is not also relied on by the CPM.” (para 224)

Summary conclusions:

“The answer to the first question is that the [Investigatory Powers Tribunal] does have jurisdiction over the Claimants’ claims under [the Human Rights Act] against the [Commissioner of Police for the Metropolis] and the [Chief Constable of South Wales Police] (para 183).

“The answer to the second question is that the IPT does not have jurisdiction over the Claimants’ claims for damages at common law or for any non-HRA statutory tort (para 196 above).

“The answer to the third question is that the pursuit of the non-HRA claims in the High Court has not been shown to be an abuse of process at this stage, and the applications to strike them out will be dismissed (para Error! Reference source not found. above). The proceedings in the High Court will be stayed pending the determination of proceedings in the IPT, or for so long as the Claimants are pursuing the HRA claims in the IPT. This stay is temporary, and should not be long if the Claimants pursue their claims in the IPT expeditiously.” (paras 225 – 227)

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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.