



Neutral Citation Number: [2013] EWHC 2830 (Admin)

Case No: CO/10017/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Birmingham Civil Justice Centre
Priory Courts, 33 Bull Street, Birmingham

Date: 18/09/2013

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR JUSTICE HICKINBOTTOM

Between :

R (on the Application of Christopher Prothero)
- and -
Secretary of State for the Home Department

Claimant

Defendant

Mr Matthew Stanbury (instructed by **Quality Solicitors Jordans**) for the **Claimant**
Mr Martin Chamberlain QC (instructed by **Treasury Solicitor**) for the **Defendant**

Hearing date: 25 June 2013

Approved Judgment

President of the Queen's Bench Division:

This is the judgment of the court

The issue

1. Regulation 12 of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (the Regulations) requires a person on the Sex Offenders Register to provide details of bank, debit or credit card accounts held by him. In these proceedings the claimant seeks a declaration that this Regulation is incompatible with Article 8 of the European Convention on Human Rights.

Factual background

2. In February 2007 the claimant was convicted of nine counts of indecent assault and indecency with a child. He was subsequently sentenced to 4½ years imprisonment. He was released from custody in February 2010. After having difficulties finding employment he became self employed. He had two bank accounts - a current account and a saver account. His evidence is that he complied with all of his licence conditions and the notification requirements as they were on his release (to which we refer at paragraph 7 below); that he also had notified the necessary parties of his address and dates when he would be working away from home. His case is that the requirements of the Regulations under which, as we shall explain in more detail, he had to provide details of his bank accounts were an invasion of his privacy as he was concerned that the information might get into the wrong hands or be used by the authorities for some purpose other than that for which it was intended.

Anonymity

3. When the claim was initially brought he applied for anonymity. An order was provisionally made granting anonymity on the basis it would be considered by the court that heard the case.
4. Anonymity was sought on two bases. First that it might lead to the identification of the victim and secondly it would identify the claimant as being on the Sexual Offenders Register, adversely affect his chances of rehabilitation and employment and deter others on the Sex Offenders Register from bringing claims challenging the legality of matters affecting them.
5. We are satisfied that nothing set out in this judgment will identify the victim of the claimant's crime. If we had considered that that was a real risk, we would not have made an order for anonymity but made an order restricting the reporting of the claimant's name. As to the contention that the claimant should be anonymised on the basis that he would be identified as a person on the Sexual Offenders Register and his rehabilitation impeded, there is nothing in the evidence before us which suggests that there are any special risks to him or to public order by him being identified. If an order for anonymity is sought, on the basis advanced by the claimant, then there must be evidence so that the court can assess the competing considerations between public justice and the particular position of a claimant and his rights under Article 8.

6. As to the contention that claimants might be deterred from bringing such claims as this if they were to be identified as bringing such claims, we have had regard to the guidance given in *Re Guardian News and Media Limited* [2010] UKSC 1, [2010] 2 AC 697. We cannot see any basis for according the claimant anonymity; those seeking a remedy in a court do so in public for the reasons given in *Scott v Scott* [1913] AC 417 and the many cases that have followed it. The right of the press is protected under Article 10. There is nothing in the evidence before us that raises any special counterbalancing considerations under Article 8. We therefore revoke the order for anonymity.

The background to the making of the Regulations

7. The obligation to notify certain required matters by those convicted of sexual offences is set out in s.80-s.88 of Part 2 of the Sexual Offences Act 2003 (the 2003 Act), as amended. Until the changes made by the Regulations in 2012 an offender, such as the claimant who has been placed indefinitely upon the Register, is to notify the details set out under s.83(5), including his date of birth, National Insurance number, his home address and the address of any other premises in the United Kingdom at which he regularly stays. He is obliged under s.84 to notify changes of name and changes of address.
8. In addition to these express provisions, power was also given to the Secretary of State to make regulations. The 2003 Act was amended by the Criminal Justice and Immigration Act 2008 to add further sections, some of which conferred further regulation making powers.
9. On 21 April 2010 the Supreme Court held in *R (F)(a Child) v The Secretary of State for the Home Department* [2010] UKSC 17, [2011] 1 AC 331 that the notification requirements under the 2003 Act were capable of causing significant interference with the Article 8 rights of an offender on the register. For those subject to lifetime notification able to demonstrate they no longer pose a risk, it was held that there was no justification for continued interference with their Article 8 rights by insisting on future compliance with reporting requirements. Consequently, the court affirmed a declaration of incompatibility to the effect that the absence of any mechanism for review of the requirements under the 2003 Act was a disproportionate interference with the rights under Article 8.
10. As a consequence of that decision the Secretary of State effected two changes to the legal regime.
 - i) Using powers under the Human Rights Act, she made the Sexual Offences Act 2003 (Remedial) Order 2012 amending the 2003 Act to provide for a review of the indefinite notification requirements under the Act; under s.91B inserted into the 2003 Act by that Order, an offender in the position of the claimant became entitled to seek a review of the notification requirements 15 years after the date on which he was first required to notify. That amendment is not currently relevant for the Claimant, who will be unable to apply for a review for a considerable time yet.
 - ii) The second step taken by the Secretary of State was to consult on modifications to the notification requirements by seeking the views of the

public on notification in relation to foreign travel, place of residence, residence with a minor and, importantly for this case, the notification of details of any bank account or credit or debit card held with a bank or similar institution.

11. It appears from the consultation paper that the view of the Secretary of State was that making this last change would achieve consistency with the position in Scotland where, under the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007, offenders were required to notify bank account, debit and credit card details. The justification set out in the consultation paper was that the provision of such details, together with details of passports, would strengthen the ability of the police to detect sex offenders who failed to comply with the requirements to notify and thus protect the public.
12. The response to the consultation published by the Home Office disclosed that 60 responses had been made. The response indicated that the additional requirement to notify details of credit cards, bank accounts and passports would:

“.. significantly enhance the ability of the police to promptly trace an individual who failed to comply with notification requirements, without the delays associated with current processes for tracking down the information through existing powers under the Police and Criminal Evidence Act 1984 and other legislation.”
13. After that consultation the Secretary of State laid the Regulations before Parliament under the regulation making power under the 2003 Act which we have described. Regulation 12(1) of the Regulations set out the details of the relevant bank accounts and debit and credit cards in respect of which information had to be supplied:

“2.—(1) The information set out in paragraphs (2) to (7) is prescribed for the purposes of section 83(5)(h) of the 2003 Act in a case where a relevant offender (R) holds—

 - (a) an account with a banking institution in R’s name, or in R’s name and the name of another person, and in relation to each such account, the information specified in paragraph (2);
 - (b) an account with a banking institution in the name of an unincorporated business which is run by R, or run by R and another person, and in relation to each such account, the information specified in paragraph (3);
 - (c) a debit card in relation to any account of which notification is given in accordance with sub-paragraph (a) or (b), and in relation to each such debit card, the information specified in paragraph (4);
 - (d) an account with a credit card provider in R’s name, or in R’s name and the name of another person, and in

relation to each such account, the information specified in paragraph (5);

- (e) an account with a credit card provider in the name of an unincorporated business which is run by R, or run by R and another person, and in relation to each such account, the information specified in paragraph (6); or
- (f) a credit card in relation to any account of which notification is given in accordance with sub-paragraph (d) or (e), and in relation to each such credit card, the information specified in paragraph (7).”

14. In respect of bank accounts, the information required under Regulation 12(2)–(3) was specified as the name of the institution, its address, the number of the account and the sort code. In respect of debit and credit cards what had to be provided under Regulation 12 (4)–(7) was the card number, the validation date, the expiry date and the name of the person or business if the card was held jointly with another person or in the name of a business. Regulation 13 provided for provision of information where circumstances changed.

The applicable legal regime

(a) *The duties under Article 8*

15. It is clear that the State owes two duties under Article 8 in respect of sexual offenders. First, it owes a duty to victims. As the Strasbourg court observed at paragraph 62 of its judgment in *Stubbings v UK* (1997) 23 EHRR 213:

“Sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives.”

Second, the State owes a duty to ensure that, if a scheme for protecting potential victims interferes with the private or family life of another individual, the scheme must be capable of justification in the sense that it can be shown that such interference will achieve the policy aim that it aspires to achieve and will not simply act as a penalty on the offender (see the pithy summary by Kerr J (as he then was) in *Re an Application for Judicial Review by Gallagher* [2003] NIQB 26).

16. The questions which a court must consider were conveniently summarised by Lord Phillips in *R (F) v the Secretary of State for Justice* at paragraph 41. They were:

“(i) What is the extent of the interference with article 8 rights?
(ii) How valuable are the notification requirements in achieving the legitimate aims? and (iii) to what extent would that value be eroded if the notification requirements were made subject to review? The issue is a narrow one.”

17. We turn to consider the first two questions in turn; the third is of no relevance in this case.

(b) *What is the extent of the interference with Article 8 rights?*

18. It was common ground that there was an interference with the Article 8 rights of the claimant. It is therefore necessary to identify the extent of the interference brought about by Regulation 12 of the Regulations. The Secretary of State accepted that the summary by Lord Phillips at paragraph 42 of his judgment in *R(F)* was apposite:

“Giving information to the local police in relation to one’s address and one’s movements coupled with the explanation that this is necessary because one is on the sexual offences register will necessarily carry the risk that the information may be conveyed to third parties in circumstances where this is not appropriate.”

The question that arises, therefore, is how great is that interference?

19. There is no doubt that the principal risk faced by the claimant is that which flows from the fact that he is on the register. It is the risk of the dissemination of that knowledge that would bring about the greatest interference with his private life.

20. There is a further risk to the security of the claimant’s financial assets from the provision of bank and debit and credit cards details, as they might be misused by persons who obtained access to them. However, as is apparent from the evidence that is before us, the details are recorded on the ViSOR system and although that system is accessible to persons other than the police under the scheme for supervision of offenders known as the MAPPA scheme, it is information that is securely recorded. Furthermore it is common ground that the possession by the police and other authorities of this information does not entitle them to examine the details of the bank account or credit card transactions. These are generally confidential as between the bank and its customer: see *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461, subject to a public duty of disclosure (cf *W v Egdell* [1990] Ch 359). The police would ordinarily have to obtain an order from a judge under one of the numerous statutory provisions. Moreover, the details given do not, for example, include details which would enable a person to use a credit card for they do not include the security code contained on the back of the credit card.

21. It follows, therefore, in our view, that interference with Article 8, although material, is not nearly as significant as the interference already brought about by the other notification requirements. However, although the interference is material, it is of importance to note that access to bank accounts and debit and credit card transactions is not ordinarily permitted without the intervention of a court order.

(c) *How valuable are the notification requirements in achieving the legitimate aims?*

22. The essence of the dispute between the claimant and the Secretary of State turned upon this issue. Mr Stanbury, on behalf of the claimant, accepted that the provision of bank account or debit and credit card details would enable the police to trace a sexual offender who had moved and failed to notify his new address; this would protect

potential victims. But, he contended, it was not necessary for an offender to provide bank account and debit and credit card details because the police would be able to trace that information in sufficient time through the use of their statutory powers to obtain information from banks and debit and credit card institutions. He submitted that the Secretary of State had not set out sufficient evidence to show that the provision of these details would enable the whereabouts to be traced more quickly, or at least, materially more quickly than the police could have obtained the information by other means. In consequence, the interference was not proportionate, as it was not necessary for the purpose claimed. The Secretary of State had failed, in short, to provide the requisite evidence.

23. As is clear from the judgment of the House of Lords in *R (SB) v Governors of Denbigh High School* [2006] UKHL 15, [2007] 1 AC 100, it is for the court to determine the issue under Article 8, according a due margin of appreciation to the Secretary of State. The court must therefore consider for itself the evidence and other circumstances evident to it following the approach set out in paragraphs 62 and 63 of the judgment of Lord Nicholls of Birkenhead in *Wilson v First County Trust Limited No. 2* [2003] UKHL 40, [2004] 1 AC 816.

“62 The legislation must not only have a legitimate policy objective. It must also satisfy a "proportionality" test. The court must decide whether the means employed by the statute to achieve the policy objective is appropriate and not disproportionate in its adverse effect. This involves a "value judgment" by the court, made by reference to the circumstances prevailing when the issue has to be decided. It is the current effect and impact of the legislation which matter, not the position when the legislation was enacted or came into force. (I interpose that in the present case no suggestion was made that there has been any relevant change of circumstances since the Consumer Credit Act 1974 was enacted.)

63 When a court makes this value judgment the facts will often speak for themselves. But sometimes the court may need additional background information tending to show, for instance, the likely practical impact of the statutory measure and why the course adopted by the legislature is or is not appropriate. Moreover, as when interpreting a statute, so when identifying the policy objective of a statutory provision or assessing the "proportionality" of a statutory provision, the court may need enlightenment on the nature and extent of the social problem (the "mischief") at which the legislation is aimed. This may throw light on the rationale underlying the legislation.”

24. There can be no doubt about the legitimate policy objective of the Regulations – the ability to trace an offender quickly, to guard against the risk of an offender using another identity or to have a means of obtaining quick access to a credit card account to investigate offences in relation to indecent images.

25. The evidence of the use of similar powers in Scotland shows that aim can be achieved. In the light of the position taken by Mr Stanbury on behalf of the claimant, further details were supplied to us identified as cases A – H. It is clear in respect of cases A, B, C, D and H that the provision of bank details under the law of Scotland enabled the offender to be traced quickly.
26. We do not consider that the means employed are in any way inappropriate or disproportionate. They are plainly a practical and proportionate means of providing further protection to prevent other persons becoming potential victims of those on the Sexual Offenders Register. In reaching that judgment we have taken into account the fact that no power is given to access the accounts and that the information provided by an offender will be securely held.
27. The materials before the court and other matters well within the knowledge of any court provide sufficient evidence that the means are both appropriate and proportionate. Apart from the specific evidence from Scotland it is, in our view, self-evident that if such details are not provided by an offender, then the only course open to the police to identify the bank or institution at which the offender has a bank or credit card account would be to use their statutory powers to make applications in respect of the many banks and other institutions operating in England and Wales to see which bank or institution held an account in the name of the offender as that name was set out on the Sexual Offenders Register or otherwise known. The process of making such applications would be time consuming and expensive. Moreover, if the offender had changed the name under which he operated the account, the difficulties facing the police would be more considerable. By having details of the bank or other institution at which the offender held an account, the police would quickly be able to trace, by seeking appropriate orders. Any subsequent change of identity could be discovered by the well tested route of “following the money”.
28. There is thus, in our judgment, little doubt but that the requirements are very valuable in achieving the legitimate aims and are both necessary and proportionate for the achievement of those aims.

Conclusion

29. For the reasons we have set out, we are satisfied that the Regulations are not incompatible with the European Convention on Human Rights and decline to make a declaration of incompatibility.