

APPEAL NOTE

'L'

Appellant

v

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Respondent

and

THE SECRETARY OF STATE OF THE HOME DEPARTMENT

Interested Party

Venue: Court of Appeal

Claim No: C0/1734/2005

Date: 13 February 2007

Bench: Lord Justice Longmore, Lord Justice Moore-Bick, Lady Justice Smith

Counsel for the Commissioner: Fiona Barton, 5 Essex Court

Solicitor for the Commissioner: Mark Davis
Tel No: 67254

Counsel for the Claimant: Beverley Lang QC, Blackstone Chambers

Solicitor for the Claimant: John Ford Solicitors

Counsel for the Interested Party: Rabinder Singh QC, Matrix Chambers

Solicitor for the Interested Party: Treasury Solicitors

MATTER IN ISSUE

This claim concerns the Commissioner's decision to disclose to the L's employer (an agency providing staff to schools) information pursuant to Section 113B(4) - formerly s115(7) - Police Act 1997 (the Act). This section states that on the Enhanced Criminal Record Certificate (ECRC) police shall provide any information which might be relevant and ought to be disclosed. Although L had no criminal past, CO4 made an enhanced disclosure to the Criminal Records Bureau that L's 13 year old son 'A' had been placed on the Child Protection Register (CPR) under the category of neglect, only being removed from the CPR following his conviction for robbery.

In the High Court, L argued that the Commissioner, in performing his statutory duty, misdirected himself in applying the law. Information on 'A' was not relevant and should not have been included on L's ECRC. The phrase "any information" means any information regarding criminal conduct (the narrow interpretation). The disclosure interfered with her right to a private life as it was not in accordance with the law and therefore in breach of her human rights.

The Commissioner argued that the MPS complied with the Act and the leading case of '*X*' v *The Chief Constable of West Midlands* (2005) 1 WLR 65, which emphasises the discretion of the deciding officer. The MPS distinguished allegations and rumour from verifiable fact, relying only on the latter. However, the officer's discretion is not restricted to disclosure of criminal conduct – "any information" means exactly that (the wide interpretation). In making the disclosure, L's human rights were considered and the disclosure was both lawful and proportionate.

In the High Court, Mr Justice Munby found for the Commissioner. Officers "were doing precisely what the statute required of them. I can see no flaw or error either in their approach or in their decision, a decision which...was quite manifestly compliant with both the statutory regime and with the Convention (*European Convention on Human Rights*)".

L's claim for judicial review failed and was dismissed. Munby J refused permission to appeal, but the Court of Appeal allowed the appeal on the ground that there is some doubt as to the ambit of s113B(4) – i.e. is the narrow or wide interpretation the correct one? The Secretary of State has intervened.

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Their Lordships upheld Munby J, and supported the Commissioner's wide interpretation of the phrase "any information".

Longmore LJ said that "if Parliament had intended to limit relevant information to information of a criminal or potentially criminal activity, it would be likely to have said so. In other words "any" means any... It is self evident that Parliament intended to alter the common law opposition because the common law presumption against disclosure of relevant information has been turned on its head. If the information is, in the opinion of the Chief officer of Police, relevant and ought to be disclosed then the police are bound to disclose it".

He further noted that "the question whether any particular piece of information disclosed a potential crime or a criminal propensity is not an easy question to answer and it might be frequently asserted that police had simply got it wrong. The police would then be inhibited from disclosing information that might be very relevant".

*Mark Davis
for director*

cc: Edward Solomons – Director, DLS
Naz Saleh - Assistant Director, DLS
Colette Neville - Team Leader, DLS
Franca Oliffe – Practice Manager, DLS
Det. Supt Campbell – DPS
Graham Morris – CO4
Bob Cox – DPA
Anna De Vries – DPA