

# JUDICIAL REVIEW NOTE

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V

THE COMMISSIONER OF POLICE OF THE METROPOLIS

*Venue:* Administrative Court  
*Claim No:* C0/1492/2007  
*Date:* 3 April 2008  
*Mode of Trial:* Lord Justice Laws  
*Counsel for the Commissioner:* Matthew Holdcroft, 5 Essex Court  
*Counsel for the Claimant:* Aisling Byrnes, 25 Bedford Row  
*Solicitor for the Claimant:* Saunders Solicitors

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## **MATTERS IN ISSUE**

This claim concerns the Defendant's decision to disclose to the Claimant's proposed employer information pursuant to Part V Police Act 1997, s113B. The Claimant is a teacher; the prospective employer a school.

The Commissioner made an enhanced disclosure (ED) to the Criminal Records Bureau that relates primarily to the Claimant's long-term partner, Mr I. While living with the Claimant, Mr I was convicted of fraud and admitted possession of an indecent photograph of a child (he has been found in possession of such material on more than one occasion). The ED reveals that the Claimant is in a relationship with Mr I, was suspected of dishonesty (but not charged) and had suffered depression and anxiety at the time of the police investigation requiring the attendance of an appropriate adult.

The Claimant does not challenge the accuracy of the disclosures. He maintains that the ED is outside the statutory criteria of relevance in that it could not assist a prospective employer in determining his suitability for a teaching post. In referring to his sexuality and mental health, he claims it was in breach of his Article 8 right to a private life.

The Defendant maintains that he complied with his statutory duty, and Home Office and judicial guidance on EDs. All the matters disclosed might be relevant to a responsible employer in considering the Claimant's suitability for a teaching post.

## **POST-JR NOTE**

Laws LJ made no adverse findings against the Commissioner.

The Commissioner had acted within his powers in making the disclosure.

He was right to consider the Claimant's relationship with a third party. It was reasonable to consider that Mr I could have access to children through his partner. The Claimant's private life could not be hermetically sealed from his professional life. His mental vulnerability was part and parcel of his relationship with Mr I.

However, His Lordship was concerned at the wording of the ED. An ED must be meticulous and accurate, and go no further than is justified. Therefore, His Lordship quashed the (now historic) disclosure. If the Claimant were to make a further CRB application, the Defendant would, necessarily, reconsider the wording of the disclosure itself.

The Claimant's pecuniary damages claim was rejected; he could not show that the defect in the ED caused any loss (in that even a better worded ED may have resulted in the same decision by the employer not to employ the Claimant). The claim for non-pecuniary loss also failed, because the Court had not found the Defendant to be in breach of the Claimant's Article 8 rights.

*Director*