



Neutral Citation Number: [2021] UKIPTrib IPT_167_01_H

IN THE INVESTIGATORY POWERS TRIBUNAL

No. IPT/11/167/H

13 January 2021

Before:

LORD BOYD (VICE-PRESIDENT)

MRS JUSTICE LIEVEN

PROF. GRAHAM ZELICK QC

BETWEEN :

Claimant

KATE WILSON

- and -

COMMISSIONER OF POLICE FOR THE METROPOLIS

NATIONAL POLICE CHIEF'S COUNCIL

Respondents

THE CLAIMANT APPEARED IN PERSON.

MR. D. PERRY QC and MR. P. Hill (instructed by the Metropolitan Police Directorate of Legal Services) appeared on behalf of the Respondents.

MS. S. HANNETT and MS. J. THELEN appeared as Counsel the Tribunal.

Hearing date: 13 October 2020

OPEN JUDGMENT

1. On 13 October 2020, the Tribunal held a directions hearing, dealing chiefly with ongoing disclosure issues in this long-running case. The Respondents invoked the well-established and well-known policy of Neither Confirm Nor Deny (“NCND”) in relation to two matters: first, whether there was a practice or policy of “false romantic attachments” and secondly, whether two individuals were police officers. The Respondents argue that the public interest makes it imperative not to disclose the tactics used in undercover policing. This, they say, demands a consistent application of the NCND principle even where disclosure in a particular case would not appear to be damaging to the public interest. We reserved our decision on these issues and this open judgment gives our decision on the two submissions and, so far as possible, our reasons.
2. The first issue concerns “false romantic attachments”. The Claimant wishes to know whether the Respondents had a practice or policy of providing undercover police officers with a spurious relationship which would explain why an undercover officer would resist entering into any close personal relationship with anyone subject to the surveillance. The Claimant’s argument is that this is relevant in her case because the undercover officer, Mark Kennedy, who entered into an intimate relationship with her, was not given any false romantic attachment; if he had been, it is unlikely that the improper relationship would have developed. This, therefore, goes to the gravity of the breach of the Claimant’s Article 3 rights (the Respondents having conceded that Article 3 has been violated).
3. The Tribunal upholds the Respondents’ wish to rely on NCND for the reasons set out in our Closed judgment. However, we wish to assure the Claimant that this will not inhibit our ability to assess the gravity of the Article 3 breach by enquiring into the extent to which the Respondents took steps, or should have taken steps, to ensure lawful conduct on the part of Kennedy in the course of his duties as an undercover officer.
4. The second issue concerns two individuals known as Ed and Vinny who have walk-on parts in the long-running undercover operation which forms the context for this

dispute. Ed and Vinny were briefly introduced by Kennedy into the Claimant's circle.

5. Ms Wilson has no doubt in her own mind that these two individuals were also undercover police officers, colleagues of Kennedy, brought in as his friends to lend support and credence to his story. However, she wishes the Respondents to confirm that this is indeed the case because she believes it has a bearing on her Article 3 claim. Her argument is that Ed and Vinny would have seen for themselves the intimate nature of her relationship with Kennedy and it therefore supports her case that this must have been known up the chain of command, especially if they were superior officers to Kennedy. If so, this would exacerbate the Article 3 infringement. She is not asking for the disclosure of their actual identities, only whether they were police officers.
6. The Respondents have (as noted above) already admitted a breach of Article 3 and have also admitted that the intimate nature of the relationship was known by Kennedy's principal cover officer, or at any rate on the evidence that he should have realised it. The Claimant's case is that the breach of Article 3 is aggravated if other senior officers knew or ought to have known, and if Ed and Vinny were police officers it is more likely that they did know.
7. The Tribunal is mindful both of the Claimant's right under Article 6(1) to a fair trial as well as the need, in the interests of justice, to establish as accurately as it can the severity of the Respondents' breach of Article 3. We are therefore far from unsympathetic to her request. We must also have regard to the general duty in regard to the disclosure of information placed on the Tribunal by rule 7(1) of the Investigatory Powers Tribunal Rules 2018.
8. The Tribunal would not hesitate to reject the Respondents' application if it were in the interests of justice to do so. The case law would, in our view, on these facts, permit us to order the disclosure, but only if the interests of justice required it. We do not think we need to review the authorities here, but conclude that justice can be done without denying the Respondents' application to maintain NCND.

9. Furthermore, having regard to rule 7(7) of the Rules, we judge that the interests of both justice and the Claimant are better served by reaching the conclusion described below.

10. We have heard full argument from the Respondents in Closed and conducted further enquiries through Counsel to the Tribunal. As a result, we are satisfied that nothing flows from Ed and Vinny that aggravates or sheds light on the Article 3 breach, as the Claimant supposes and contends.

11. This is *either* because Ed and Vinny were not police officers, but merely friends or acquaintances of Kennedy whom he introduced to the Claimant and her group for his own purposes; *or* it is because, although they were police officers, there is nothing in the evidence to suggest or support the view that any knowledge they acquired or suspicions they formed about Ms Wilson and Kennedy were passed up the chain of command.

12. We thus grant the Respondents' application neither to confirm nor deny whether Ed and Vinny were police officers.
