



25 October 2017

## PRESS SUMMARY

**P (Appellant) v Commissioner of Police of the Metropolis (Respondent) [2017] UKSC 65**  
*On appeal from: [2016] EWCA Civ 2*

**JUSTICES:** Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes

### BACKGROUND TO THE APPEAL

The appellant was assaulted in 2010, while serving as a police officer, and subsequently suffered post-traumatic stress disorder (“PTSD”). In 2011, she was involved in an incident which led to her arrest. She asserted that her behaviour on that occasion was related to her PTSD. After investigation, she was made the subject of a disciplinary charge before a police misconduct panel (“the panel”). She accepted that she had been guilty of the alleged misconduct. In mitigation, she relied on her good record as a police officer and her PTSD. On 12 November 2012, the panel conducting the hearing decided that she should be dismissed without notice.

The appellant appealed against her dismissal to the Employment Tribunal, where she claimed that the dismissal decision constituted disability discrimination and disability-related harassment, and was consequent on a failure to make reasonable adjustments. She brought a separate appeal against her dismissal to the Police Appeals Tribunal under the separate statutory scheme. In June 2013, the Employment Tribunal struck out her claim and, in March 2014, the Employment Appeal Tribunal dismissed her appeal. The basis of both decisions was that the panel was a judicial body, and so the claim was barred by the principle of judicial immunity. The Court of Appeal dismissed the further appeal. The appellant appealed to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously allows the appeal, finding that EU law requires police officers to be able to bring claims in the Employment Tribunal in respect of dismissals following proceedings before a police misconduct panel. Such claims cannot be barred by judicial immunity. Lord Reed, with whom the other Justices agree, gives the lead judgment. Lord Hughes gives a concurring judgment.

### REASONS FOR THE JUDGMENT

Directly effective EU rights: where directly effective EU rights are in issue, EU law must be both the starting point and the finishing point of the analysis, since EU law takes priority over domestic law. EU Council Directive 2000/78/EC (“the directive”) confers on all persons, including police officers, a directly effective right to be treated in accordance with the principle of equal treatment in relation to employment and working conditions, including dismissals. The UK is obliged to ensure that appropriate judicial and/or administrative procedures are available, and that effective, proportionate and dissuasive sanctions are applied. The procedures under national law must comply with the general principles of effectiveness and equivalence, and with the right to an effective remedy under article 47 of the Charter of Fundamental Rights of the European Union [27-28].

Principles of equivalence and effectiveness:

- The principle of equivalence requires that police officers must have the right to bring claims of treatment contrary to the directive before Employment Tribunals. This is because comparable

discrimination claims can be brought before those tribunals in domestic law. On that basis, leaving police officers with a claim only to the Police Appeals Tribunal would not comply with the principle of equivalence [29].

- Allowing police officers to bring claims to Employment Tribunals also fulfils the principle of effectiveness, because Employment Tribunals have the power to award a range of remedies, including compensation. The remedies available before the Police Appeal Tribunal are more limited than those available before the Employment Tribunals [29].
- The UK is not entitled to deny police officers an effective and equivalent remedy. The right not to be discriminated against is a fundamental right in EU law. The creation of a statutory process, which entrusts disciplinary functions to persons who might benefit from judicial immunity, cannot bar complaints to an Employment Tribunal by police officers who claim that they have been treated contrary to the directive. National rules in relation to judicial immunity can be applied in accordance with EU law only in so far as they are consistent with EU law [30].

#### Interpretation of the legislation:

- The Equality Act 2010 plainly confers on police constables the right to bring proceedings before Employment Tribunals in order to challenge discrimination by chief officers and responsible officers. This is plain from section 42(1), which provides that a police constable is deemed to be the employee of the chief officer or of the responsible authority in relation to acts done by those persons in relation to the constable. It was presumably envisaged by Parliament that the exercise of disciplinary functions in relation to police officers would fall under those provisions [31].
- Read literally, however, the Act does not cover the exercise of disciplinary functions in relation to police officers who have completed their period of probation, other than senior officers, when those disciplinary functions are entrusted to a misconduct panel. This is because the exercise of disciplinary functions by a panel is not an act done by either the chief officer or the responsible authority within the meaning of section 42(1). This reading fails to fully implement the directive [32].
- The problem can be resolved by interpreting section 42(1) of the 2010 Act as applying to the exercise of disciplinary functions by misconduct panels in relation to police constables, by reading words into section 42(1)(a) to that effect. Such an interpretation runs with the grain of the legislation and is warranted under the EU principle of conforming interpretation. This does not mean the court is amending the legislation and is merely a way of interpreting the legislation to conform with EU law in a case such as the present [33-34].

Conclusion: The appeal is allowed. The reasoning of the Court of Appeal in the case of *Heath v Commissioner of Police of the Metropolis* [2004] EWCA Civ 943 (which held that EU law could not displace the common law rule of judicial immunity), was unsound. The present case should be remitted to the Employment Tribunal [35].

Lord Hughes gives a judgment, agreeing with the judgment of Lord Reed, and adding that the principle of judicial immunity generally serves a legitimate, proportionate and useful role. He considers that the scope for parallel or collateral proceedings in both the Employment Tribunals and the Police Appeals Tribunal, which exists under the present legislation, might be considered in any future review of the legislation [37-39].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**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. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>