



24 January 2018

PRESS SUMMARY

R (on the application of Haralambous) (Appellant) v Crown Court at St Albans and another (Respondents) [2018] UKSC 1
On appeal from [2016] EWHC 916 (Admin)

JUSTICES: Lord Mance (Deputy President), Lord Kerr, Lord Hughes, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

This appeal concerns the extent to which courts can rely on information which, in the public interest, cannot be disclosed to a person affected by a search and seizure warrant. In this case, search and seizure warrants were issued under s.8 of the Police and Criminal Evidence Act 1984 (“**PACE**”) by the St. Albans Magistrates’ Court in the absence of the Appellant (“**ex parte**”) on 16 June 2014, and executed on 26 June 2014. The Appellant was provided with a redacted version of the written application for the warrants on 16 September 2014. He applied for disclosure of the unredacted materials which was refused on grounds of public interest immunity (“**PII**”) on 25 September 2014. On 26 September 2014 the Appellant sought return of the material seized by a judicial review claim on the basis that the warrants, entries, searches and seizures were unlawful. By a consent order signed on 27 March and sealed on 6 May 2015 the Second Respondent agreed that the warrants should be quashed. Prior to consenting, on 23 March 2015, the Second Respondent made a protective application under s.59 of the Criminal Justice and Police Act 2001 (“**CJPA**”) for continued retention of the seized materials. That application was granted on 11 June 2015. The Appellant sought a further judicial review of that decision. This was dismissed by the Divisional Court which held that it was open to a magistrate issuing a search and seizure warrant and a court deciding an application under s.59 of CJPA to consider material which was withheld from disclosure on PII grounds.

The Supreme Court addressed five issues on appeal: (i) how far a Magistrates’ Court, on an *ex parte* application for a search and seizure warrant under ss.8 and 15(3) of PACE, can rely on information which in the public interest cannot be disclosed to the subject of the warrant; (ii) whether in proceedings for judicial review of the legality of a search warrant, issued *ex parte* under ss. 8 and 15(3) of PACE (a) it is permissible for the High Court to have regard to evidence upon which the warrant was issued which is not disclosed to the subject of the warrant and (b) whether, where a Magistrates’ Court is permitted to consider evidence not disclosable to the subject of the warrant, but the High Court is not, it follows that the warrant must be quashed if the disclosable material is insufficient on its own to justify the warrant; (iii) whether there is jurisdiction in a Crown Court to rely on evidence not disclosable to the subject of the warrant in an application made in the presence of both parties (“**inter partes**”) to retain unlawfully seized material under s.59 of CJPA; (iv) whether in proceedings for judicial review of an order made *inter partes* for retention of unlawfully seized material under s.59 of CJPA it is permissible for the High Court to have regard to evidence (upon which the warrant was issued) which is not disclosed to the subject of the warrant; and (v) whether the principles concerning irreducible minimum disclosure apply to proceedings concerning search warrants.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Mance writes the judgment of the court.

REASONS FOR THE JUDGMENT

The background to the appeal is that no express Parliamentary authorisation exists for the operation of a closed material procedure in any of the contexts outlined in the issues [11]. Under ss.8 and 15 of PACE premises, not a person, is the subject of a warrant [12]. Any analysis should start from the initial application for a warrant, rather than the end position of the application for judicial review but any conclusions reached about earlier stages will be reviewed in light of the analysis of later stages [14].

Issue (i)

The statutory scheme of ss.8 and 15 of PACE permits a Magistrates' Court in an ex parte application for a search and seizure warrant to have regard to material which cannot on public interest grounds be disclosed to a person affected by the warrant or order, even where this material is decisive for the legitimacy of the warrant [22, 37]. The statutory scheme of ss.8 and 15 of PACE is intended to be ex parte. It is a process designed to be operated speedily and simply on the basis of information provided by a constable satisfying a magistrate that there are reasonable grounds for believing the matters set out in s.8(1) of PACE. There is nothing in the statutory scheme which expressly restricts the information on which the magistrate may act [27]. The statutory procedure under s.8 and the Criminal Procedure Rules also provide protections to persons affected by a warrant and the Rules themselves contemplate that the magistrate or Crown Court will see and rely on information not disclosable for PII reasons [25-27, 34]. Requiring the police in these cases to refrain from seeking a warrant would limit important sources of information and the efficacy of police investigations [27]. A statutory ex parte procedure of this nature to secure evidence on premises is not within the general prohibition on closed procedures without express statutory authorisation recognised in *Al Rami v Security Service* [2012] 1 AC 531.

Issue (iii)

The Crown Court can on an inter partes application under s.59(7) of CJPA operate a closed material procedure on PII grounds [43]. The Crown Court is required to put itself in the shoes of a hypothetical Magistrates' Court being asked, immediately after the return of the property, to issue a fresh warrant with a view to seizure of that property [40]. In view of the answer to issue (i), that Magistrates' Court is entitled in an ex parte application to have regard to information which cannot be disclosed for PII reasons [40]. Parliament must have intended PACE and CJPA to operate coherently and contemplated the Crown Court being able to operate a closed material procedure under s.59 [41]. An analogy is drawn with *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 where there was no express provision enabling the Supreme Court to operate a closed material procedure on appeal, but without such a power an appeal to it against a wholly or partially closed judgment could not be effective [42].

Issues (ii) and (iv) are considered together as they raise essentially the same point

The High Court can conduct a closed material procedure on judicial review of a magistrate's order for a warrant under s.8 of PACE or a magistrate's order for disclosure or a Crown Court's order under s.59 of CJPA [59]. The reference to judicial review in *Al Rami*, was not directed to this situation [59]. An alternative analysis whereby, in the absence of a closed material procedure, a court must presume that a public authority has acted properly, depriving judicial review of any real teeth, is unacceptable [46-52]. Although judicial review and an appeal are not precisely equivalent, many of the considerations identified in *Bank Mellat* as favouring a closed material procedure in the context of an appeal also militate in favour of a similar result in the context of judicial review [54-57]. It would be unjust and potentially absurd if the High Court on judicial review had to address a case on a different basis from the magistrate or Crown Court or quashed the order and remitted it to the lower court on a basis different from that which the lower court originally adopted. The High Court would also be unable to give effect to the decision which the lower court or tribunal should have reached or to consider an outcome on the same basis as the lower court as may be required under s.31 of the Senior Courts Act 1981 unless it can operate a closed material procedure when necessary [57-58].

Issue (v)

Open justice should prevail to the maximum extent possible [61]. However, it cannot be axiomatic that even the gist of the relevant information must be supplied to any person claiming to be affected and seeking to object to the warrant, search or seizure. Each case must be considered in the light of the particular circumstances. In general terms, issue (v) should be answered in the negative [65].

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>