Neutral Citation Number: [2010] EWHC 1319 (Admin)

Case No: CO/9786/2009

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/06/2010

Before :

LORD JUSTICE PILL
And
MRS JUSTICE RAFFERTY

- -

Between :

R (Harper) and R (Johncox)	**Claimants**
- and -	
Aldershot Magistrates Court	**Defendants**
- and -	
The Press Association	
Surrey and Berkshire Media	**Interested Parties**
CPS Hampshire	

- -

Michael Egan QC and Stuart Biggs (instructed by **Lewis Hymanson & Small**) for the Claimants
Guy Vassall-Adams (instructed by **the Press Association)** for the **Press Association**
Anthony Hudson (instructed by CPS) for the **CPS Hampshire**

Hearing date: 28 April 2010

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Judgment

Lord Justice Pill :

1. This is an application for judicial review by Mr Adrian Harper and Mr Jonathan Johncox ("the claimants") challenging a ruling of the Aldershot Magistrates on 29 August 2009 when the claimants attended a hearing at Aldershot Magistrates Court on charges of misconduct in a public office. Mr Harper is a Chief Superintendent and Mr Johncox a Superintendent in the Surrey Constabulary. Both officers were under suspension at the material time. The charges alleged improper interference with prosecutions for speeding. The purpose of the hearing was to make a decision on sending the case to the Crown Court pursuant to section 51 of the Crime & Disorder Act 1998.

The facts

2. At the hearing, an application was made by Miss Scott on behalf of both claimants that their home addresses should not be published. The application was made on the basis that the claimants were high ranking police officers well known in the area.

They had been responsible for the investigation and prosecution of serious crimes for over 25 years and there was a real danger that publication of their addresses would put them and their families at risk. Both officers had been involved in covert operations. In 1995, when a detective constable, Mr Harper and his family were placed in witness protection for a period of 18 months following his involvement in the investigation and prosecution of a serious crime.

3. The CPS were represented but did not address the court. A member of the press present opposed the application, referring to the decision of the Divisional Court in the *R v Evesham Justices, Ex parte McDonagh* [1988] 1 QB 553 (reported with *R v Malvern Justices, Ex parte Evans* at [1988] 1 All ER 371).

4. The legal adviser to the Magistrates advised them that the circumstances where details should be withheld are rare. He referred the Magistrates to section 11 of the Contempt of Court Act 1981 ("the 1981 Act") and to the footnote at 1 – 2440 of Stone's Justices Manual which stated:

> "The circumstances in which it is appropriate to allow a name or other names to be withheld are rare; see *R v Malvern Justices Ex parte Evans* . . . it is a misuse of this section to prohibit publication of the address of the defendant if the court is motivated solely by its sympathy for the defendants' well being and not for reasons to do with the administration of justice."

The Magistrates retired and on their return refused the application. They declined to reconsider their decision.

5. An emergency application was made to the High Court and, late in the evening of the same day, Jack J ordered that "pending the determination of the applicants' application for judicial review of the . . . decision not to order that the addresses of the applicants should be disclosed in court and should not be published, or further ordered, their addresses shall not be published". The Magistrates subsequently declined to alter their decision and the order of Jack J has remained in force.

Submissions

6. Mr Egan QC, for the claimants, does not challenge the Magistrates' account of events which appears in their acknowledgement of service, and is consistent with that in Miss Scott's careful note. He has sought to refer to additional material contained in a subsequent statement of Mr Harper. This referred to a "real and genuine fear of reprisal" and that one of the police officers he had investigated "was present around Aldershot Magistrates Court" during the hearing there.

7. Mr Egan submitted, that while no special plea was made for the claimants on the ground that they were senior police officers, the evidence showed that there was a genuine concern for their safety and that of their families. It would not be in the interests of justice and would prejudice its administration to reveal the home addresses. The application had been limited to the home addresses and was a proportionate application which was the least derogation possible from the principle of open justice. Obligations under the European Convention on Human Rights, and in particular under article 2, arose.

8. It was further submitted that publication of the names, ranks and work addresses of the officers sufficiently met the need for open justice. Moreover, given the information available, this was not a case in which there was any possibility of the claimants being confused with persons of the same or similar names, such that wrongful identification could occur in the absence of an address. It was submitted that if officers in this position have their addresses published, it might deter them and other officers from doing challenging and difficult work in the course of their duties. The information available to the public was sufficient and, upon the establishment of a real risk to their safety, the application should have been granted. There was concern that, upon seeing the addresses, a spontaneous approach might be made by a person of ill-will, which would not have been made in the absence of knowledge of the addresses. The Magistrates should have asked themselves what interest there was in publishing in the face of such a risk.

9. It was further submitted that the Magistrates should have been given more help by their legal adviser. They should have followed the structured approach advised in the Adult Court Bench Book. That poses a series of questions including "Is action by the court necessary in the interests of justice?" and "If restrictions are necessary how far should they go?" Always consider, it is added in the Book, whether there are less restrictive alternatives available.

10. For the Press Association, Mr Vassall-Adams submitted that the burden in any particular case is upon those seeking to defeat or limit the application of the principle of open justice. A limitation is necessary only if failure to grant it would frustrate the administration of justice. A person's address is an integral part of his identity.

11. It was accepted that there could be cases where the threat was so great that the entire identity of a witness or even a defendant would be withheld but this was far from such a case. The material relied on to establish risk was highly speculative, whether or not the material subsequently provided by the claimants was taken into consideration, it was submitted. The identity of the claimants was already known, and other information about them. To withhold their addresses would serve no practical purpose, it was submitted. It had been possible to find their addresses on the internet within 5 minutes (at a cost of £4.95). They were on the electoral register. Legitimate press reporting, with photographs, included in the appeal bundle, demonstrated the extent of information about the claimants which was in the public domain.

12. If there is concern, and given the information already in the public domain, it would not be caused or increased by revelation of addresses in the media. No threat to the administration of justice had been established, it was submitted. Submissions in writing were also made by the Surrey and Berkshire media.

13. The CPS did not make submissions to the Magistrates, which is surprising, having regard to the firm stance now taken by Mr Hudson on their behalf. Supporting Mr Vassall-Adams, he submitted that no practical purpose would be achieved by granting the application and the relief would in the circumstances be sterile. An adverse impact on the administration of justice was not even argued before the Magistrates. On the evidence, there could be no justification for singling out these claimants for the privilege of having their addresses withheld. The risk of an opportunistic attack, the main concern expressed by Mr Egan, had not been established and could not reasonably be inferred.

14. In reply, Mr Egan stressed the limited nature of the derogation sought. It was a sensible application in the circumstances and the public interest would not be prejudiced by an order withholding disclosure of the addresses.

15. In the absence of reasons, he submitted, and on the basis of the limited advice given to the Magistrates, it was impossible to know on what basis the claimants' application had been refused. For the interested parties, it was submitted that the Magistrates must have appreciated the limited extent of the derogation sought and were well aware of the basis on which the application was made.

16. Counsel agree that the appropriate course, if the court is in the claimants' favour, is to prolong the injunction made by Jack J or to make a fresh injunction and not to remit the issue to the Magistrates.

The Authorities

17. The parties were substantially agreed on the law to be applied and reference to authority need not be lengthy. It was accepted that the Magistrates had power to prohibit the publication of the addresses. In that event, section 11 of the 1981 Act provides:

> "In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld."

18. In *Attorney General v Leveller Magazine Ltd* [1979] AC 440, Lord Diplock, at page 449-450, laid down general principles to be applied. He cited the principle stated by Viscount Haldane LC in *Scott v Scott* [1913] AC 417:

> "As a general rule the English system of administering justice does require that it be done in public."

Lord Diplock identified the principles on which departure from the general rule is required:

> "However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule."

19. As was underlined by the Court of Appeal of Northern Ireland in *Belfast Telegraph Newspaper Limited's Application* [1997] NI QBD 309, at page 314F:

> "The use of the words 'some other public interest' indicates that Lord Diplock had in mind the protection of the public

> interest in the administration of justice rather than the private welfare of those caught up in that administration."

20. The *Leveller* principle was applied in this court in the *Evesham Justices* case. Watkins LJ, with whom Mann J agreed, stated, at page 561H:

> "However, I am bound to say that I am impressed with the argument that the action taken by the justices in the present case had nothing to do with the administration of justice. It seems to me that the concern shown by the justices for not giving publicity to Mr. Hocking's home address was solely motivated by their sympathy for his well-being if his former wife should learn of his home address and harass him yet again. That kind of predicament is not, unfortunately, unique. There are undoubtedly many people who find themselves defending criminal charges who for all manner of reasons would like to keep unrevealed their identity, their home address in particular. Indeed, I go so far as to say that in the vast majority of cases, in magistrates' courts anyway, defendants would like their identity to be unrevealed and would be capable of advancing seemingly plausible reasons why that should be so. But, section 11 was not enacted for the benefit of the comfort and feelings of defendants. The general rule enunciated in the passage I have quoted from *Attorney-General v Leveller Magazine Ltd.* [1979] A.C. 440, 450, may not, as is there stated, be departed from save where the nature or the circumstances of proceedings are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice. I fail to see how the revelation of Mr Hocking's home address could in the circumstances in any sense warrant a departure from observance of the general rule of ensuring open justice."

21. It should, however, be noted that Mr Hocking's claim was based on his having been harassed by his ex wife at his previous address so that the public aspect claimed to exist in this case, the claimants' participation in investigation of criminal offences, was not present. I would express a reservation about advising Magistrates only on the basis of the footnote in Stone in some cases. The concern of the claimant in that case was solely of harassment by his former wife so that, on those facts, refusal of the application could have no possible impact on the administration of justice. There could be cases in which the claimants' "well being" would overlap with the interests of the "administration of justice". It is alleged to do so in this case.

22. The basic principle was more recently re-stated in *R v Trinity Mirror Plc & Ors* [2008] EWCA Crim 50. Giving the judgment of the court, Sir Igor Judge P stated, at paragraph 32:

> "In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important

> aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offices should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime. Moreover the principle protects his interests too, by helping to secure the fair trial which, in Lord Bingham of Cornhill's memorable epithet, is the defendant's "birthright". From time to time occasions will arise where restrictions on this principle are considered appropriate, but they depend on express legislation, and, where the Court is vested with a discretion to exercise such powers, on the absolute necessity for doing so in the individual case."

Conclusions

23. A consequence of the submissions made by the parties in this case is that the point at issue, that is whether the addresses should be disclosed, is left with only limited practical importance. The claimants submit that because of other information available about them, there is no damage to the administration of justice if their addresses are withheld. The Press Association and CPS submit that because of the other information available, and the ease with which the addresses could be discovered, there is nothing to be gained by withholding the addresses. When making the application to the Magistrates, Miss Scott probably did not appreciate what was likely to be provoked. In entirely proper submissions to the Magistrates, the press representative present sought to establish the principle that addresses should not normally be withheld and should not be withheld in this case, propositions with which the CPS belatedly agree.

24. There is, in my judgment, a burden on the claimants to establish not only that the derogation they seek is in the circumstances a very limited one but also that there is a justification in the particular case for interfering at all with the principle of open justice. In my judgment, they have failed to do so, whether or not the additional material supplied by Mr Harper is taken into account. If there is a risk, it would not in the circumstances be enhanced by publication of addresses. On the information the claimants give, any approach to them is likely to be a targeted one which would not be deterred by the need to discover a home address. While the charges against the claimants are serious, they are unlikely to provoke that response by vigilantes which occasionally occurs in some categories of offence, for example, charges involving abuse of young children.

25. Moreover, it is inconceivable that these or other police officers would be deterred from performing their duties if it is known that their addresses would be disclosed in circumstances such as the present. I would accept that the proper performance of police duties is, for present purposes, an integral part of the administration of justice but I can see no adverse impact in this case.

26. Resort to the Convention does not in my view enhance the claimants' prospects on the present facts. Article 2 is not engaged.

27. Nor can I find a procedural defect. The advice to the Magistrates could have been fuller but the issues were clear and detailed reasons for the decision were not required.

On analysis, I would have found it very surprising if they had reached a different decision. I do not doubt the genuineness of the concern felt by the claimants for the safety of themselves and their families. For the reasons given, however, the Magistrates were right to refuse the application to withhold the claimants' addresses.

28. I would refuse the present application and order the discharge of the injunction made by Jack J.

Mrs Justice Rafferty :

29. I agree.