



Neutral Citation Number: [2010] EWHC 1228 (Admin)

Case No: CO/3556/2010

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**AT BIRMINGHAM**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/05/2010

**Before:**

**MR JUSTICE WYN WILLIAMS**

**Between:**

<b>R (on the application of)</b>	<b><u>Claimant</u></b>
<b>ASO MOHAMMED</b>	
<b>- and -</b>	
<b>THE CHIEF CONSTABLE OF WEST</b>	<b><u>Defendant</u></b>
<b>MIDLANDS POLICE</b>	

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**Mr James Dixon** (instructed by **Tyndallwoods**) for the **Claimant**  
**Mr James Quirke** (instructed by **The Force Solicitor**) for the **Defendant**

Hearing date: 19 May 2010  
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**Approved Judgment**

**Mr Justice Wyn Williams:**

1. The Claimant is a young man aged 24. On 27 September 2009 he visited Longford Park in Coventry together with his girl friend (hereinafter referred to as E) a male friend and E's son M. M was then 5 years old. During the course of the visit M removed his clothing. The Claimant was observed by a member of the public taking photographs of M while he was naked. The member of the public was concerned about this activity and accordingly summoned the police.
2. Later that same day the Claimant, his friend and E were arrested upon suspicion of having been involved in the offence of making indecent photographs of a child. Each was taken to a police station.
3. After some hours at the police station the Claimant was interviewed under caution. He was accompanied by an accredited police station representative employed by a firm of solicitors known as Penmans. An interpreter was present because the Claimant's English is comparatively poor.
4. Some hours after the interview under caution had been completed the Claimant was released on bail subject to three conditions. He was required to report daily to a named police station; he was required to reside at a particular address and he was prohibited from having any unsupervised contact with any child under the age of sixteen years of age. E and the Claimant's friend were also released. However, by the time of the release of the Claimant and E, M had been taken into the care of the local authority.
5. Between the date of his release and 15 December 2009 the Claimant remained on bail. He was first bailed to return to the police station on 3 November 2009; on that date he was bailed again to return to the police station on 15 December 2009.
6. During this comparatively lengthy period the Claimant and E enjoyed regular contact to M. As I understand it these contact sessions were facilitated and supervised by the local authority into whose care M had been entrusted.
7. As I have said, the Claimant was assisted during his interview under caution by an accredited police station representative employed by Penmans. The Claimant must have continued to instruct that firm because on 14 December 2009 a legal secretary employed by the firm Mrs. Sarah Pritchard, telephoned the police to ascertain what action, if any, was likely to be taken against the Claimant when he answered to his bail on 15 December 2009. It is common ground that Mrs. Pritchard spoke to DC Stokes who informed her that the Claimant would be offered a caution when he attended at the police station on the following day. The officer also informed her that a consequence accepting a caution would be that the Claimant would be required to register as a sex offender.
8. The evidence served on behalf of the Claimant asserts that Mrs Pritchard asked DC Stokes if an interpreter would be present and that DC Stokes inquired what language the Claimant spoke and was told it was Kurdish. I have no reason to doubt that this exchange took place.

9. Almost immediately after her conversation with DC Stokes, Mrs Pritchard telephoned the Claimant on his mobile phone. He did not answer; she left a message on his mobile telephone which repeated the substance of her conversation with DC Stokes and informed the Claimant that she had mentioned to the police that he would likely need an interpreter.
10. On 15 December 2009 the Claimant answered to his bail. A caution was administered to him. No interpreter was present; the Claimant was not accompanied by a legal representative.
11. In his claim form in these proceedings (lodged on 15 March 2010) the Claimant seeks the following substantive relief:-
  - (1) An order quashing the caution together with all records/information relating to that caution and all orders/conditions which had been imposed following the caution.
  - (2) A declaration that his Article 6 and/or Article 8 rights were breached, and
  - (3) Damages pursuant to section 8 of the Human Rights Act 1998.

In his grounds the Claimant advances a number of bases upon which he claims to be entitled to the relief sought.

12. In due course the Defendant served summary grounds of opposition. His stance was that permission to apply for judicial review should be refused or, if granted, that the claim should be dismissed.
13. I considered the application for permission on the papers. I directed that there should be a "rolled up" hearing. I made my order on 19 April 2010.
14. On 5 May 2010 the Claimant purported to amend the grounds for judicial review. I say purported because he did not seek permission for the amendment. He added this paragraph to the grounds upon which he relies:-

"Fourthly, the Caution administered to the Claimant is fundamentally flawed as there was insufficient evidence to afford a realistic prospect of conviction. As regards simple cautions, paragraphs 9 and 10 of Home Office Circular 016/2008 make clear that there must be sufficient evidence to found a realistic prospect of conviction before a caution can be administered....."

15. In the light of this proposed amendment the Defendant took the decision to concede that the Claimant was entitled to an order quashing the caution. As I understand it, that decision was communicated to the Claimant's solicitors on 13 May 2010. On that date the Defendant offered to consent to an order quashing the caution and directing that any claim for damages be remitted to the County Court. The Defendant proposed that there should be no order for costs between the parties.

16. The Claimant's advisers declined to accept this proposal. Their stance was that the Claimant was entitled to costs and that this court should determine the issue of damages.
17. When I first read these papers I was minded to direct that the issue of damages be remitted to the District Judge. That would have accorded with the practice normally adopted when an issue arises as to whether or not damages should be awarded under the Human Rights Act 1998 following the quashing of some unlawful decision by the Administrative Court— see Anufrijeva v Southwark LBC [2004] QB 1124 at page 1162D. Further, I was concerned that the information relevant to the issue of damages under the Act might be incomplete and that, accordingly, an injustice might occur if I determined the issue of damages. At an early stage of the hearing I expressed these views to the parties.
18. Notwithstanding my indications, Mr Dixon, for the Claimant, urged me to determine the issue of damages. He submitted that damages under the Act would be modest and, in those circumstances, the costs associated with a further hearing would be disproportionate. Mr Dixon also made various submissions to me about the difficulty which the Claimant might face in relation to public funding in the future given that the caution was being quashed.
19. Mr Quirke maintained the stance which he had adopted in his skeleton argument that the appropriate course was for me to consider whether or not it was appropriate to dismiss the damages claim but, if not, remit the same to be heard in the County Court.
20. I decided that I should hear and determine the claim for damages. The case had been listed before me for a day and court time was available for me to determine all the issues between the parties. I concluded that there would be a disproportionate escalation of costs if I were to remit the case for a hearing in another court. Another factor which influenced my decision to hear and determine the claim for damages was that the Claimant agreed to limit his claim for damages to £500. I should explain how this came about. During the course of Mr Dixon's submissions he emphasised that any award under the 1998 Act would be modest. I pointed out to him that while, in absolute terms, the award to his client, if made, would properly be categorised as modest there was still a substantial range open to the court. If, however, he was prepared to limit the claim to a figure which was, on any view, modest, my doubts about proceeding on the basis of information which might be incomplete would be assuaged.
21. After taking the Claimant's instruction, Mr Dixon limited the claim for damages for £500.
22. With this rather lengthy introduction I turn to the issues which fall for my determination.

#### Damages under the Human Rights Act 1998

23. Section 8 of the Human Rights Act 1998 is in the following terms:-

“8(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful it may

grant such relief or remedy, make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including – a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and b) the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining – a) whether to award damages or b) the amount of an award, the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) ....

(6) In this section - .... ‘damages’ means damages for an unlawful act of a public authority; and ‘unlawful’ means unlawful under section 6(1).”

Section 6(1) is the central provision by which the 1990 Act makes Convention rights enforceable.

24. In his skeleton argument on behalf of the Defendant, Mr Quirke advances a number of propositions about the proper approach to be adopted by a court when considering whether or not damages are to be awarded. He submits, first, that an award of damages is a discretionary remedy; the remedy does not follow automatically upon a breach of a Convention right being established. Second, he argues that no award of damages should be made unless the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made taking into account any other relief or remedy granted in relation to the Act in question. In relation to this proposition he relies, in particular, in the following passage of the speech of Lord Bingham of Cornhill in Anufrijeva.

“53. Where an infringement of an individual’s human rights has occurred, the concern will usually be to bring the infringement to an end and any question of compensation will be of secondary, if any, importance. This is reflected in the fact that, when it is necessary to resort to the courts to uphold and protect human rights, the remedies that are most frequently sought are the orders which are the descendants of the historic prerogative orders or declaratory judgments. The orders enable the court to order a public body to refrain from or to take action, or to quash an offending administrative decision of a

public body. Declaratory judgments usually resolve disputes as to what is the correct answer in law to a dispute. This means that it is often procedurally convenient for actions concerning human rights to be heard on an application for judicial review in the Administrative Court. The court does not normally concern itself with issues of disputed facts or with issues as to damages. However, it is well placed to take action expeditiously when this is appropriate.”

Third, Mr. Quirke submits that in considering whether to award compensation there is a balance to be drawn between the interests of the victim and those of the public as a whole. Striking a correct balance will be dependant on the facts of each particular case. See Anufrijeva page 1154 at paragraphs D to G. Fourth, damages are a remedy of last resort (Anufrijeva page 1155 paragraph B).

25. Mr Quirke also submits that the primary object of these proceedings was to bring the adverse treatment to an end. That is achieved by the making of a quashing order. Nonetheless, he acknowledges, correctly in light of Anufrijeva page 1156 A to B, that the Strasbourg jurisprudence fails to give a consistent answer as to when the primary relief sought is by itself “just satisfaction”.
26. Mr Dixon did not dissent from any of these principles. That is not surprising since, of course, they are derived essentially from section 8 of the Human Rights Act itself and from the speech of Lord Bingham of Cornhill in Anufrijeva. Accordingly, my task is to apply those principles to the circumstances of this case.
27. The first issue to determine is whether there has been an unlawful interference with any of the Claimant’s Convention rights. In his written skeleton argument Mr Dixon identified two such alleged interferences. First, he submitted that the administering of the caution interfered with the Claimant’s right under Article 6 of the Convention. Second, he submitted that it had interfered with the Claimant’s rights under Article 8.
28. During the course of his oral submissions Mr Dixon indicated that he was content to focus his attention upon the alleged interference with Article 8. He accepted that nothing would be achieved, practically, by his pursuit of a submission that Article 6 had been infringed particularly given that the claim for damages was limited to £500. Accordingly I propose to say nothing, one way or the other, about the assertion that the Defendant interfered with the Claimant’s rights under Article 6.
29. Article 8 provides that everyone has the right to respect for his private and family life. The Article also provides that there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law.
30. As is acknowledged, the administering of the caution was not in accordance with the law. Did it constitute an interference with the Claimant’s right to respect for his private and/or family life?
31. Mr Quirke submits that the Defendant must know that an individual’s private or family life was at risk before a finding of interference with the right is justified. He derives that proposition from Anufrijeva: it is sufficient to cite from the headnote which is to the following effect:-

“...the failure by a public body, in breach of duty, to provide an individual with a benefit or advantage to which he was entitled under public law could amount to a lack of respect for private and family life if there was an element of culpability involved or, at the very least, knowledge that the individual’s private and family life were at risk.”

I am content to proceed on this basis.

32. It seems to me to be clear that the Defendant knew that the Claimant's private life was at risk when the caution was administered. A caution can be administered lawfully only if a person makes an unequivocal admission of guilt. Accordingly, to the world at large the caution administered to the Claimant would indicate that he had admitted a sexual offence in relation to a child. The acceptance of the caution by the Claimant made it mandatory for him to register as a sex offender. In my judgment, those factors taken together clearly interfere with the Claimant's private life and, of course, there can be no suggestion that the Defendant would be unaware of those consequences.
33. Mr Dixon also submits that the administering of the caution caused or at least made a substantial contribution to an adverse and substantial impact upon the Claimant's relationship with E and M. He submits that the impact upon that relationship constituted an interference with the Claimant's private or family life. I remind myself that I must be careful to make an assessment about what, reasonably, can be said to be caused by the administering of the caution; it is clear that many of the impacts upon the Claimant’s private life were unconnected with the caution.
34. The evidence relating to the precise nature of the Claimant's relationship with E and M is sketchy. For example, he does not say in his statements when the relationship began although it is true that he suggests that there was at least a prospect of marriage between them. I have pondered about whether it is permissible for me to conclude that there has been interference with the Claimant's family life giving the paucity of the evidence. In the end, however, I have concluded that it matters not whether there was interference with the Claimant's family life since the facts upon which he relies would, if causally linked to the caution, constitute an interference with his private life.
35. Between September 29 and December 15 2009 there was a very significant interference with the Claimant's private life in that his bail conditions prevented him from living with E and having contact to M in the absence of supervision. That interference, of course, was not attributable to the administering of the caution.
36. There is very little evidence as to the circumstances which existed between 15 December 2009 and 18 January 2010. In my judgment the proper inference is that in this period the Claimant was free to live where he wished but his contact with M was restricted by virtue of the fact that M was still in the care of the local authority. In my judgment there is no real basis for concluding that the caution played any part in interfering with the Claimant's contact with M during this period.
37. On 18 January 2010 the local authority convened a case conference so that a decision could be made about M’s long term future. The case conference was attended by social workers, police officers, E and the Claimant. In summary it was decided that

M should be returned to his mother. However, conditions were suggested by the local authority with which E voluntarily agreed. On 28 January 2010 they were reduced to writing and signed by E. They are to the following effect:-

- “[E] not to allow the [Claimant] into the house of the family.
- [E] has no contact with the [Claimant] whilst M is present including phone contact.
- [E] is to seek advice should she wish to have a relationship with [the Claimant].”

38. On behalf of the Defendant, Mr Quirke submits that the arrangements between the local authority and E were unrelated to the caution. He accepts that the probability is that they were imposed upon E in the sense that M might not have been returned to her care in their absence. However, he submits that they came about as a consequence of the local authority’s own perception of the risk posed to M by the Claimant.
39. Mr Dixon disagrees. He submits that the administering of the caution to the Claimant must have had a very significant impact upon the assessment made by the local authority. To repeat, the Claimant was to be taken as admitting a sexual offence against M; he was required to register as a sexual offender. Those factors were bound to have played their part in forming the local authority’s decision. I agree with Mr Dixon’s submission. I have little doubt that the caution administered to the Claimant played a significant part in persuading the local authority that the restrictions imposed upon E were necessary and proportionate. Inevitably, those restrictions would impact upon or interfere with the Claimant’s right to respect for his private life.
40. In this context the basis upon which the Defendant accepts that the caution administered to the Claimant was unlawful has some importance. The basis is that there was insufficient evidence to justify charging the Claimant. That means that the evidence that he had committed any kind of criminal offence was too weak to justify a prosecution. If that had been the state of affairs being discussed at the case conference on 18 January 2010 there is a real prospect, at the very least, that the restrictions imposed by the local authority upon E would not have been imposed or, would have been much less intrusive.
41. In summary, in my judgment, the caution played a significant part in the process which led to the interference with respect for the Claimant’s private life; they are causally linked and there is no basis for saying that the interference would have been the same if there had been no caution.
42. I am also satisfied that the Defendant knew of the risk of this type of interference when it administered the caution. The Defendant knew that M was in care. He also knew that following the caution there would be a decision about M’s future. The caution would, inevitably, be taken into account in making that decision and there was a risk that the decision taken would interfere with the Claimant’s private life.



43. I conclude, therefore, that the Defendant's unlawful act in administering a caution to the Claimant interfered with the Claimant's right to respect for his private life under Article 8 of the European Convention.
44. In the exercise of my discretion and applying the principles set out above it is appropriate to award the Claimant damages? In my judgment it is. I say that for these reasons. First, the Defendant admits that a caution was administered in circumstances when that simply should not have happened. A prerequisite for the administering of a caution is that there is sufficient evidence to justify charging the person in question with a criminal offence. Such evidence did not exist. On the basis of the information put before me no such evidence could have existed. The Claimant had been on bail for approximately 3 months during which time, presumably, a thorough investigation of whether there was evidence to support a charge had been undertaken. Second, the fact of a caution for a sexual offence and the obligation to register as a sexual offender are obviously very serious matters for the person concerned. Third, the interference with the Claimant's private life has continued, at least in certain respects between 15 December 2009 and 18 January 2010 and in all the respects which I have identified above since about 18 January 2010. That is a significant period of time. I acknowledge that the Claimant might well have instituted these proceedings much more quickly so that to some extent the passage of time can be attributed to his own conduct but I bear in mind that his first language is Kurdish that his English is comparatively poor and that legal procedures in this country are likely to be alien to him. More importantly, the interference has not just subsisted over a substantial period of time; on any view the interference has been substantial. I do not consider that right minded people would conclude that the Claimant had obtained just satisfaction in all the circumstances of this case if I declined to make an award of damages and confined myself to an order quashing the caution. I take that view balancing the private interests of the Claimant against the wider public interest as I am enjoined to do.
45. It follows that I propose to award the Claimant damages under section 8 of the European Human Rights Act 1998. The sum I award is £500.

#### Costs

46. In the light of my conclusion in relation to damages the issue of costs is, in my judgment, easy to determine. The Claimant has been wholly successful in his claim. While it is true that the Defendant was prepared to concede the primary remedy sought before the commencement of the substantive hearing he was never prepared to concede that damages should be paid. I can see no proper basis for departing from the usual starting point under CPR which is that the successful party should recover his costs. No useful purpose would be served, in my judgment, in a discussion of the cases produced by the parties in relation to costs. They do not touch upon a case such as the present where, effectively, the case has been pursued to a fully contested hearing on an important issue in the case and resolved wholly in favour of the Claimant.
47. I propose to quash the caution. The Claimant's obligation to register as a sex offender will cease automatically. I award the Claimant damages of £500 for breach of his right to respect for his private life under Article 8 of the European Convention. An order to this effect will be made when I hand down this judgment on 28 May 2010.

