



Neutral Citation Number: [2022] EWHC 2774 (Admin)

Case No: CO/1658/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

2nd November 2022

Before :

MR JUSTICE FORDHAM

Between :

**THE KING on the application of KATHLEEN
UNSWORTH (by her litigation friend PETER
SCOTT-JONES)**

Claimant

- and -

**(1) CARLISLE MAGISTRATES COURT
(2) CHIEF CONSTABLE OF MERSEYSIDE
POLICE**

Defendants

George Murray (instructed by Satchell Moran Solicitors Ltd) for the **Claimant**

The **First Defendant** did not appear and was not represented

Oliver Williamson (instructed by Force Solicitor, Merseyside Police) for the **Second Defendant**

Hearing date: 2/11/22

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge.

MR JUSTICE FORDHAM :

1. I am granting permission for judicial review in this case. Permission was refused on the papers, but I am required to consider it afresh, on the arguments and materials before me. In my judgment, this is a case which raises points meriting investigation at a full hearing with all relevant evidence and arguments on the law. The grounds cross the threshold of arguability with a realistic prospect of success.
2. Among the many features of the case are these. A drugs-related search warrant was applied for, obtained, maintained and then executed. The police suspected that the Claimant – a vulnerable householder aged 99 – had fallen under the control of drug dealers and the upstairs or loft of her house was being used to cultivate cannabis. Ultimately, there was entry into the Claimant’s house, using an external keypad password, and the Claimant was encountered in an upstairs bedroom, apparently by a police officer accompanied by a social worker or social workers. The police officer was in uniform. The social workers were unknown to the Claimant. The Claimant was home alone. Various things had happened beforehand – and the Claimant says had not happened beforehand – to arrive at that position. At one stage it had been “decided” to explore an “option”. That involved contacting the care company whose care workers – known to the Claimant – were attending at her house to give her care assistance for four hours a day. It would have involved a known carer with a plain clothes police officer attending, to establish if there was in fact a cannabis crop in the house. As to whether that ‘decision’ preceded the without notice hearing before the magistrate or was the product of a discussion with the magistrate, that is not clear on the evidence currently before the Court. In the event, that “option” could not be pursued. The police went ahead, using “fewer police officers than normal” and accompanied by the social workers. By this time the police had established that the Claimant had dementia. They also knew that the keypad code had been changed. They did not revert to the magistrate. It is unclear what was asked of the regular carers’ agency by the police: for example, whether the carers had identified anything of suspicion, such as the pungent smell of cannabis (as it is pleaded). It is said by the police that consideration was given to contacting the Claimant’s relatives, but that this was ruled out for fear of tipping off criminals. There are issues about what preceded the application to the magistrate, about the obtaining and granting of the warrant, about what was done after the warrant was obtained, and about how it was executed. The arguments on both sides are well developed in writing. The relevant law includes at least three statutes (including the Human Rights Act 1998), a Code of Practice, the common law and lines of authority. It is sufficient to say that questions arise for consideration at a substantive hearing. I do not think there are ‘clean knock-out blows’.
3. The only view I have arrived at is that the claim is arguable. The evidence will need to be gathered and adduced and the legal submissions marshalled. There may also be material which the magistrate (whose identity is currently unknown) can provide. Given that the “intelligence” evidence relied on has been redacted, I accede to the request made by the Defendant, if I were granting permission as I am, to direct a public interest immunity hearing (see Admin Court JR Guide 2022 §19.4.2). With Counsel’s assistance and cooperation, I made an Order, in substance in the following agreed terms: (1) Permission to apply for judicial review granted. (2) The further hearings are reserved to Fordham J. (3) Detailed grounds of resistance by 28.12.22. (4) Witness statements to be exchanged by 18.1.23. (5) PII hearing (time estimate 3 hours) on the first available date

after 1.2.23 (skeleton arguments by 7 days beforehand). (6) Subject to variation at or after the PII hearing, the following directions shall apply as to the substantive hearing: (a) substantive hearing (time estimate 1 day); (b) bundle 28 days beforehand; (c) skeleton arguments 21 and 14 days beforehand; (d) authorities bundle 10 days beforehand; (e) CPR PD54A §14.7 documents 7 days beforehand. (7) Liberty to all parties to apply in writing on notice to vary this Order or for any further direction. (8) Costs in the case.

2.11.22