



JUDICIARY OF
ENGLAND AND WALES

Friday 11th March 2022

PRESS SUMMARY

Leigh v The Commissioner of Police of the Metropolis

[2022] EWHC 527 (Admin)

Lord Justice Warby & Mr Justice Holgate

1. The court gives judgment on a claim alleging that decisions made by the Metropolitan Police Service (“MPS”) in March 2021 infringed the claimants’ rights to freedom of expression and freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights. The main judgment is given by Lord Justice Warby. Mr Justice Holgate gives a concurring judgment.
2. At around 9pm on 3 March 2021, Sarah Everard, aged 33, went missing while walking home from Clapham to Brixton Hill, in South London. On 9 March, Wayne Couzens, a serving MPS officer, was arrested on suspicion of her kidnap. On 10 March, Ms Everard’s remains were found. On 12 March, Couzens was charged with her kidnap and murder. In June and July 2021, Couzens pleaded guilty to kidnap, rape, and murder. In September 2021, he was sentenced to a whole life order ([1]).
3. This case is about events on and between Wednesday 10 March and Saturday 13 March 2021. This was a week after Ms Everard’s disappearance, at a time when Couzens had been charged but not convicted. Covid-19 Regulations in force at the time restricted the holding of a gathering of more than 30 persons in a public outdoor place in a Tier 4 area, such as London. The Regulations made it a crime to contravene these restrictions “without a reasonable excuse” and gave the police power to arrest and/or serve a fixed penalty notice (“FPN”) imposing a fine of £10,000 on someone they reasonably suspected of committing such an offence ([2]).
4. The claimants were members of a collective called *#ReclaimTheseStreets* which planned to hold a vigil on Clapham Common on 13 March 2021, in memory of Sarah Everard. The claimants advertised the event, and large numbers showed an interest in attending. In this judicial review claim the claimants say that their plans were unlawfully thwarted by decisions of MPS officers, for which the defendant Commissioner is legally responsible, which led the claimants to abandon their plans and cancel the planned vigil ([3]).

5. The claimants argued that the officers' interpretation of the Regulations was legally wrong as it categorised the proposed vigil as "unlawful", meaning criminal, merely because it contravened the restrictions on gatherings. The police were said to have (1) ignored the possibility that the rights to freedom of expression and freedom of assembly under Articles 10 and 11 ECHR might have supplied a "reasonable excuse" for contravening those restrictions on this occasion and (2) failed to conduct the fact-specific proportionality assessment which they were duty-bound to conduct in order to reach a decision on that point. The claimants argued that the MPS unlawfully interfered with their Article 10 and 11 rights by statements that prevented or at least discouraged the claimants from organising the vigil, based on grounds that were not "prescribed by law" ([4]).
6. The defendant maintained that all her officers did was to point to the legal restrictions and the possibility that there might be enforcement action, depending on how things turned out. The defendant argued that the real nub of the claimants' case was a complaint that officers declined to provide them with an assurance that they would not face enforcement action if the vigil went ahead. It was said that the police had no duty to provide such an assurance, and it therefore could not be said that this was an unlawful interference with the claimants' human rights (at [6] and [66]).
7. The court upholds the claim.
8. The judgment analyses the legal and policy context ([8]-[13]), the Covid-19 Emergency legislation ([14]-[40]), and the relevant history ([41]-[63]), and summarises the evidence ([64]-[65]) and the rival arguments ([66-70]). The court's reasons for upholding the claimant's challenge are explained in detail at [71]-[102].
9. The relevant decisions of the MPS were to make statements at meetings, in letters, and in a press statement, to the effect that the Covid-19 Regulations in force at the time meant that holding the vigil would be unlawful ([71]-[73]). Those statements interfered with the claimants' rights because each had a "chilling effect" and made at least some causal contribution to the decision to cancel the vigil ([74-76]). None of the MPS decisions was in accordance with the law; the evidence showed that the MPS failed to perform its legal duty to consider whether the claimants might have a reasonable excuse for holding the gathering, or to conduct the fact-specific proportionality assessment required in order to perform that duty ([77-102]).
10. The court decides to grant appropriate declarations. It does not accept the defendant's case that relief must be refused because it is "highly likely that the outcome for the applicant would not have been substantially different" if the decision-making had been lawful ([105]-[106]). No award of damages is made because the court considers the judgment and appropriate declarations provide "just satisfaction" [108].

11. In his concurring judgment, Mr Justice Holgate observes that the three key guidance documents on policing the pandemic relied upon by the MPS had insufficient regard to the principles on “reasonable excuse” and proportionality established in authoritative case-law. The decisions by the police in this case were all of a piece with the thrust of that guidance: [109-116]. Certain of the court’s conclusions mirrored views previously expressed in the report of HM Inspectorate of Constabulary and Fire Services on the Sarah Everard Vigil (dated 30 March 2021): [117-118]. An urgent hearing took place in the High Court in the afternoon of 12 March 2021. During that hearing key legal principles were clarified. Afterwards the MPS failed to engage properly with the claimants on measures which could have enabled a vigil to go ahead in some appropriate form, to assess the residual risk to public health and to carry out a case-specific proportionality exercise [119-122].

NOTE: This summary is provided to help 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: <https://www.judiciary.uk> and <https://www.bailii.org/>.

Paragraph numbers in bold are those assigned in the judgment.