

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 30 September 2021

Before :

LORD BOYD OF DUNSCANBY (VICE-PRESIDENT)

MRS JUSTICE LIEVEN

- and -

PROFESSOR GRAHAM ZELICK QC

Between :

KATE WILSON

Claimant

-and-

(1) THE COMMISSIONER OF POLICE OF THE METROPOLIS

(2) NATIONAL POLICE CHIEFS' COUNCIL

Respondents

PRESS SUMMARY

Judgment to be handed down on **Thursday 30 September 2021 at 10 am**

NOTES:

This summary is provided to assist in understanding the Investigatory Powers Tribunal's decision in this case. It does not cover every aspect of the judgment. It does not form part of the reasons for the decision. The full judgment, dated 30 September 2021, is the only authoritative reasons for the decision and is available at: <https://www.ipt-uk.com> /and <http://www.bailii.org>

The UK Investigatory Powers Tribunal was established by statute (Regulation of Investigatory Powers Act 2000) and hears cases concerning the exercise of covert investigatory powers by public bodies (including the police) as well as conduct by the security and intelligence agencies.

The decision in this case follows a seven-day hearing in the Royal Courts of Justice. All but one day of the trial was public and heard in open court. One day was private (or "closed") in order to protect certain sensitive aspects of

undercover policing which the Tribunal agreed would damage the public interest if made public. At a closed hearing the interests of the Claimant are represented by Counsel to the Tribunal.

This case was heard and decided by a panel of three members of the Tribunal: The Rt Hon Lord Boyd of Duncansby (Vice-President of the Tribunal), a judge of the Court of Session in Scotland; The Hon Mrs Justice Lieven, DBE, a judge of the High Court of England & Wales; and Professor Graham Zellick CBE, QC. The panel's decision was unanimous.

Any appeal, which is possible only in respect of points of law and with permission of either the Tribunal or the appellate court, would be to the Court of Appeal in England & Wales.

1. From 2003 to 2009, a police operation was in place to collect intelligence about public disorder by political activists. The focus was on public disorder that amounted to or involved criminal acts but inevitably also collected intelligence concerning legitimate and lawful public protest. It was decided that a police officer should infiltrate the Sumac Centre in Nottingham which was a known meeting place for a number of campaigning and activist groups.
2. The officer deployed undercover for this purpose was Mark Kennedy, who served in this capacity throughout this period. His immediate superior, the principal cover officer, to whom he reported regularly also served in that capacity throughout the period.
3. Any interference by a public authority with a person's private and family life and home must be "in accordance with the law" if it is to avoid a breach of the right to respect for private and family life which is guaranteed by Article 8 of the European Convention on Human Rights (ECHR). The relevant law for this purpose is the Regulation of Investigatory Powers Act 2000 (RIPA) under which an undercover police officer is a "covert human intelligence source" (CHIS) who must act under and in accordance with lawful authorisations issued under RIPA, such authorisations to be reviewed and renewed on a regular basis.
4. Within months of starting his deployment, Kennedy (a married man with children) had entered into an intimate sexual relationship with Kate Wilson, the Claimant, which lasted until 2005. During that time he insinuated himself

into every aspect of her private and family life. Thereafter Kennedy entered into sexual relationships with other women under surveillance, as did a number of other undercover police officers engaged in similar work.

5. Ms Wilson was active in campaigning circles and attended the Sumac Centre. Kennedy realised early on that Ms Wilson would be of help to him in successfully infiltrating the activities of those in the Centre so as to facilitate his gathering of the intelligence he was deployed to collect.
6. When, many years later, Kennedy's true role became public, Ms Wilson claimed that a number of her rights under the ECHR (incorporated into domestic law by the Human Rights Act 1998) had been violated.
7. Ms Wilson claimed that her treatment by Kennedy violated Article 3 (freedom from inhuman or degrading treatment); that her right to respect for private and family life under Article 8 had been infringed; and that she was also the victim of infringements of Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) as well as Article 14 (Convention rights to be secured without discrimination on the ground, *inter alia*, of sex).
8. The Respondents admitted that her rights under Articles 3, 8 and 10 had indeed been infringed, but denied violations of Articles 11 and 14. This case has thus been about the nature, extent and severity of the infringements of those Convention rights which the Respondents conceded and whether there had also been violations of Articles 11 and 14.
9. The police admitted that Kennedy's deception of the Claimant to enter into a long-term intimate and sexual relationship amounted to inhuman and degrading treatment contrary to Article 3; and this breach of Article 3 was aggravated by the knowledge of his principal cover officer. The sexual relationship also constituted a gross violation of her right to respect for private and family life under Article 8; and his use of the sexual relationship as a means of obtaining intelligence constituted interference with her right to freedom of expression under Article 10.
10. One of the Claimant's arguments was that the entire RIPA regime in place at the time relating to undercover police activities failed to comply with the requirements of Article 8(2) of the ECHR and accordingly any action authorised under it would not be lawful. However, the Tribunal – though not

uncritical of various features of the law – has concluded that the statutory regime did comply with the Convention.

11. On all other points the Tribunal has found in favour of the Claimant.
12. Article 3 not only prohibits degrading treatment; it imposes positive obligations to ensure that such treatment does not arise. The same principle of positive obligations arises in connection with Article 8. The Tribunal concluded that a number of factors established a breach of those positive obligations: the inadequacy of Kennedy's training with regard to sexual relationships; the inadequate supervision and oversight; allowing the same principal cover officer to remain in place throughout the operation; the failure of senior officers, who either knew of the sexual relationship, chose not to know or were incompetent and negligent in not following up on clear signs; and the failure to take steps to prevent a sexual relationship from developing.
13. The Tribunal also concluded that the infringement of the Claimant's right to privacy under Article 8 went beyond what the Respondents had conceded. Article 8(2) requires that any interference must be "necessary in a democratic society", which has been held to mean that there must be "a pressing social need". It must also be proportionate. The Tribunal has concluded that it failed to meet these requirements.
14. Moreover, the Authorisations granted under RIPA were not in accordance with the law: their breadth and open-ended quality rendered them meaningless as a limit on the undercover officer's activities and as a protection and the reviews and renewals were perfunctory. Accordingly, the invasion of the Claimant's private and family life could not be justified under Article 8(2) and therefore amounted to a clear breach of Article 8.
15. The impact on women of the failure to guard against the risk of undercover officers entering into sexual relationships with them also gave rise to a breach of Article 14.
16. The Tribunal also found that Ms Wilson's rights to freedom of expression (Article 10) and freedom of assembly and association (Article 11) had also been violated. Details of her political activities over seven years were gathered, recorded, stored and transmitted amounting to a clear interference with her freedom "to hold opinions and to receive and impart

information and ideas without interference by public authority” in the words of Article 8(1). As to Article 11, there was evidence that Kennedy had directly influenced both her political opinions and her movements and as such a breach of Article 11 was established.

17. In its concluding remarks, the Tribunal notes the significance of the case. Five Articles of the ECHR had been violated: “This is a formidable list of Convention violations, the severity of which is underscored in particular by the violations of Arts 3 and 14. This is not just a case about a renegade police officer who took advantage of his undercover deployment to indulge his sexual proclivities . . . Our findings that the authorisations under RIPA were fatally flawed and the undercover operation could not be justified as ‘necessary in a democratic society’ . . . reveal disturbing and lamentable failings at the most fundamental levels.”

18. The Tribunal will now hold a remedies hearing in light of its findings.