

BHATT MURPHY SOLICITORS
PRESS RELEASE
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(FOR IMMEDIATE RELEASE)

COURT OF APPEAL FINDS POLICE DEGRADED DISABLED CHILD

In a landmark judgment handed down in the Court of Appeal today, the Master of the Rolls, Lord Dyson has rejected an attempt by the Met Police Commissioner, Sir Bernard Hogan-Howe to justify the conduct of his officers in an incident where “ *matters escalated to the point where a wholly inappropriate restraint of an epileptic autistic boy took place.*”

The 16 year old boy was on a school trip to a swimming pool in Acton, West London where he was shackled by Met police officers and put in caged area of a police van, simply because he became transfixed by the water due to his autism. The Commissioner was unsuccessful in defending the actions of his officers at a trial in the High Court in March 2012 and appealed to the Court of Appeal in January 2013. The Court of Appeal has today rejected every aspect of the Commissioner’s appeal and upheld in its entirety the High Court judgment in which the officers’ actions were found to be “*hasty and ill-informed*” and “*wholly inappropriate*”, such as to amount to inhuman and degrading treatment and disability discrimination.

The appeal was heard by Lord Dyson, Lady Justice Black and Lord Justice Richards in the Court of Appeal on 21 and 22 January 2013, with interventions on behalf *Equalities and Human Rights Commission* and the *National Council for Civil Liberties*, both critical of the Commissioner’s appeal.

In their unanimous judgment, the Court of Appeal made several key findings including the following:

- “...the police officers. . . made serious errors which led them to treat this vulnerable young man in a way which caused him great distress and anguish” (§77);
- “The agreed medical evidence was that he experienced an acute level of psychological suffering and as a result of the incident suffered from post traumatic stress syndrome and an exacerbation of his epilepsy” (§3)
- “They knew (or ought to have known) that autistic persons are vulnerable and have limited understanding”. (§67)
- “...there was no emergency; and PC [601 XB Emma] Colley and PC [252 XB Hayley] McKelvie did **not** in fact believe there was an emergency...” (§82);
- “... what was called for when the officers first arrived on the scene was for one of them to take charge and inform herself of the situation. This did not happen. The officers’ responses were “over-hasty and ill-informed...” (§81)
- “...the officers did not act in the best interests of ZH because... they failed to take into account the views of [ZH’s carer] when it was practicable and appropriate to consult him.....and...they did not reasonably believe that it was in ZH’s best interests to touch ZH and take hold of his jacket before he jumped in the pool. (§50

- “The police should also have consulted the carers before lifting ZH from the pool. Had they done that, it is likely that with their help, the need to restrain him would have been avoided” (§82);
- “I reject the [Commissioner’s] submission that [Sir Robert Nelson’s] decision makes practical policing unduly difficult or impossible” (§67).
- “...operational discretion is not sacrosanct. It cannot be invoked by the police in order to give them immunity from liability for everything that they do...” (§82);
- “....matters escalated to the point where “a wholly inappropriate restraint of an epileptic autistic boy took place” (§82);
- **“Finally and most seriously of all, nothing could justify the manner in which they restrained ZH” (§82)**

The young man, who is now 20 years old, cannot be identified for legal reasons connected to his disabilities. His father (who similarly cannot be identified) said as follows:

“Sir Bernard Hogan-Howe has refused to apologise to my son and refused to agree that officers should not shackle children with disabilities in similar circumstances. This makes me afraid for my son and for others with disabilities.

My family would much rather that the hundreds of thousands of pounds of public money used by the Commissioner to fight this case had been used to train his police officers to humanely treat people with disabilities”.

The young man’s solicitor is **Mr Tony Murphy** a partner at **Bhatt Murphy** who said as follows:

“The ongoing refusal by the Commissioner to learn from this terrible incident can only be understood as a failure of leadership. It provides yet another example of a vulnerable person being let down by the criminal justice system, on this occasion at the very highest level. If the approach of the Met’s Chief Officer is to blame the victim, what hope is there for policing at the front line?”

Notes to Editor

- An approved copy of the Court of Appeal’s Judgment dated 14 February 2013 is **attached**. The key findings are set out from page 21 onwards and in particular at page 46 of the judgment.
- The Master of the Rolls is the second most senior judge in England and Wales. The Lord Chief Justice is the most senior.
- The name of this case for court purposes is The Commissioner of the Police for the Metropolis v ZH (GH).
- There is a court order in place prohibiting the publication or broadcast of the young man’s identity, or that of his family, in view of his disabilities. He can be referred to for the purpose of media coverage as “Josh” and his father as “John”.

- Josh's barrister is Heather Williams QC of Doughty Street Chambers.
- Any requests for interviews to take place after the judgment is handed down should be emailed to t.murphy@bhattmurphy.co.uk
- The Equalities and Human Rights Commission who intervened in this case have recently published two reports expressing concern regarding the treatment of people with disabilities by the criminal justice system in the UK: *The Human Rights Review* and *The Disability Harassment Inquiry* (following the death of Fiona Pilkington and her daughter Francesca)
www.equalityhumanrights.com
- Concern has been raised more recently regarding the treatment of victims following the tragic death of Ms Frances Andrade and the IPCC's investigation into the repeated use of police restraint (including leg restraints) by Sussex Police on an 11 year old girl with an intellectual disability (Smith-Magenis syndrome)
- Josh's legal representation is supported by the Legal Services Commission.
- Josh and his family are also grateful to the National Autistic Society for its support.

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