

Bhatt Murphy Solicitors

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BRIEFING NOTE ON R(DEMETRIO)

In the linked cases of *R(Demetrio) v IPCC and R(Commissioner of Police for the Metropolis) v IPCC FULL CITATION*, the High Court allowed Mr Demetrio's claim, finding that the IPCC's conclusion in relation to one of his complaints was irrational and therefore unlawful, and dismissed the Commissioner's claim, holding that the IPCC was lawfully entitled to reopen its investigation into that complaint.

The claims arise out of an investigation by the IPCC into the circumstances surrounding the arrest of Mr Demetrio on 11 August 2011. Mr Demetrio complained, amongst other things, that while he was detained in handcuffs in the back of a police van he was assaulted, including by being strangled, and racially abused. He managed to record some of his interaction with police officers on his mobile phone. That recording showed that a police officer said to him 'the problem with you is you'll always be a nigger', and that another, when challenged by Mr Demetrio saying 'you tried to strangle me', replied 'No, I did strangle you.'

The IPCC investigation concluded in respect of these allegations that a police officer, PC Alex MacFarlane, had a case to answer for the racist abuse, but that there was no case to answer in respect of the allegation that Mr Demetrio had been strangled by another officer. At the misconduct hearing of PC MacFarlane, where he was dismissed without notice, a new IPCC Commissioner heard the evidence in relation to the allegation of strangling by another officer and became concerned about the IPCC's conclusions in that regard. In due course, the IPCC decided to reopen the investigation into the alleged strangling.

The Metropolitan Police Commissioner brought judicial review proceedings arguing that the IPCC had no power to reopen the investigation because it was *functus officio*, essentially that the IPCC had performed its function and had no power to revoke or modify its previous decisions. Mr Demetrio brought his own judicial review proceedings arguing that the IPCC conclusions in respect of the strangling allegation were irrational and should be quashed.

The High Court allowed Mr Demetrio's claim and dismissed the Commissioner's. The Court held that the IPCC was not *functus officio*. The IPCC was therefore lawfully entitled to reopen the investigation into the complaint and its earlier decisions not to recommend or direct disciplinary action were not irrevocable. The Court also held that the IPCC's original conclusion in respect of the strangling allegation was irrational and should be quashed.

This judgment provides welcome clarification of the IPCC's power to reopen investigations and to revisit previous decisions with regard to disciplinary action. It also provides clarification of the approach that a court should take when analysing an IPCC report for public law error. Rejecting the Commissioner's submission that a decision will only be irrational if it is one no reasonable investigator could have reached, the Court made clear the relevant test is whether there is a logical connection on an objective analysis between the available evidence and the conclusions reached; where there is not the conclusions may be found to be irrational. The Commissioner has sought permission to appeal the decision in his own case.

Michael Oswald of Bhatt Murphy Solicitors, who acted for Mr Demetrio said: "*The decision is welcome as it means that this very serious aspect of Mr Demetrio's complaint may finally receive the proper scrutiny it so plainly demands. However, it is worrying that the Metropolitan Police Commissioner was so determined to avoid that scrutiny that he tried to persuade the High Court to prevent the IPCC from reconsidering the matter. It is telling that the Court noted that: "the arguments advanced by the [Metropolitan Police] Commissioner take little or no account of the public interest in the effective investigation of alleged police misconduct [and that] the Commissioner's approach could have the effect of protecting officers from criminal sanction"*

Notes to Editor

- The full judgment is here: <http://www.bailii.org/ew/cases/EWHC/Admin/2015/593.html>

- Mr Demetrio was represented by Michael Oswald of Bhatt Murphy Solicitors and Ms Alison MacDonald of Matrix Chambers