

Woods v. Chief Constable Merseyside Police
7th August 2014

Challenges to Service Confidence Policies

Note

1. Stewart J. gave judgment this morning in this case which challenged the use by Merseyside Police (MP) of its service confidence policy (SCP). He found that decisions under the SCP were amenable to judicial review (distinguishing this case from R (Tucker) v. National Crime Squad) but held that given the sensitivity of the issues involved the court should not intervene. This decision has important implications for all forces in the operation of service confidence policies.

Facts

2. Two officers were made subject to the SCP in circumstances where MP was unable/unwilling to tell them the reasons for its loss of confidence in them. This meant that misconduct proceedings were not a realistic option. The officers successfully completed action plans designed to address the loss of confidence but were told that they would remain subject to the SCP. They sought judicial review of this decision.

R (Tucker) v. National Crime Squad [2003] EWCA Civ. 57

3. In this case the Court of Appeal held that the decision of the Deputy Director General of the National Crime Squad to end an officer's secondment to the NCS was an operational matter and not amenable to judicial review. This case has been relied upon by police forces resisting judicial review challenges in respect of decisions relating to deployment, promotion etc.

Procedural history

4. In Woods permission to apply for judicial review was granted by Michael Fordham QC sitting as a Deputy High Court Judge. Faced with the argument from MP that it was unable to disclose the reasons for its loss of confidence he ordered a PII hearing which took place before Blair J. MP produced a statement from the head of its anti-corruption unit in two parts. Part A set out that part of the reasoning which could be made public. Part B contained the sensitive reasoning which could not be disclosed. Blair J. approved the withholding of part B on PII grounds.

Decision of Stewart J

5. MP argued that Tucker applied and this was an operational decision which was not amenable to judicial review. Stewart J. disagreed holding that this was a question of fact and that on balance there was a sufficient public law element to make the decision susceptible to judicial review. He accepted that there was no disciplinary element to the decision but found that the ongoing effect of the SCP made it different from the sort of one off decision seen in Tucker. This together with the ongoing detrimental impact on an officer's career was enough to permit a JR challenge.

6. Importantly Stewart J. went on to accept that the court should adopt a 'light touch'. Following a successful PII hearing it was not appropriate for the court to scrutinise MP's reasoning and as a result the challenge failed:

"The circumstances which lead to a decision to invoke the SCP, namely the sensitivity of the relevant intelligence, rather than for example to institute misconduct proceedings, are those which require that the court not intervene in the absence of very exceptional circumstances. There would be no need to invoke the SCP if there were no prejudice to the organisation or any other party from public scrutiny of the reasoning which underpins the decisions the subject of Cs' challenge."

7. He concluded that for a challenge to succeed there would have to be evidence of dishonesty or bias or caprice on the part of the police.

Analysis

8. Tucker remains the high water mark for police forces resisting judicial review challenges. It remains good law but with the courts less willing to accept the existence of judicial 'no go areas' the prospects for claimants of successfully distinguishing it, as in this case, are increasing.
9. Forces should nevertheless be reassured by the court's willingness to tread carefully where sensitive intelligence material is relied upon. The approach in this case of a PII hearing where the reasons for invoking the SCP were set out in a closed witness statement is recommended for future cases. This approach strikes a convenient balance between judicial scrutiny on the one hand and the difficulty/ impossibility for police forces of disclosing genuinely sensitive material on the other.
10. The Police Team at Serjeants' Inn would be happy to advise further in respect of similar cases.

JOHN DE BONO QC
7th August 2014