USE OF WHATSAPP MESSAGES TO BRING DISCIPLINARY PROCEEDINGS AGAINST POLICE OFFICERS WAS NOT A BREACH OF PRIVACY RIGHTS

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USE OF WHATSAPP MESSAGES TO BRING DISCIPLINARY PROCEEDINGS AGAINST POLICE OFFICERS WAS NOT A BREACH OF PRIVACY RIGHTS

The Court considered that there was a legal basis for the

Police Service in Scotland to bring misconduct proceedings against individual police officers based on messages they had sent to each other on a WhatsApp group. This would not have applied had they not been under professional obligations to maintain standards.

An investigation took place into sexual offences within the Police Service of Scotland. During this investigation, messages sent via WhatsApp on a phone belonging to a suspect, who was a police officer, were found and reviewed. The messages formed part of two group chats between officers.

The messages were deemed “sexist and degrading, racist, anti-Semetic, homophobic, mocking of disability” and having a “flagrant disregard for police procedures by posting crime scene photos of current investigations.”

Misconduct charges were, therefore, brought against a number of officers who then brought a claim complaining that using their Whatsapp messages to bring non-criminal misconduct proceedings against them was unlawful and a breach of their rights to privacy under the European Convention on Human Rights.

The Court found that an ordinary member of the public using WhatsApp could have a reasonable expectation of privacy. However, unlike members of the general public, officers are subject to certain police Standards and Regulations. By becoming an officer, they have accepted that their right to privacy is limited to the extent set out in those regulations. If, in their private life, an officer were to act in such a way that it “is likely to interfere with the impartial discharge of his duties or is likely to give rise to the impression among members of the public” then they can have no reasonable expectation of privacy.

One purpose of the Standards is to maintain public confidence in the police. Here, the officers were exchanging messages

within a group of people whom they knew were under a positive obligation under the Standards to report the type of messages that were being sent. This fact alone increased the risk of disclosure by a member of the group.

It was deemed to be justified to interfere with the right to private life in this way as it was necessary for public safety. An officer who fails to meet the Standards is likely to lose the confidence of the public. Since maintaining public confidence is essential for successful policing, anything which exposes a mind-set where the public's right to be treated fairly is called into question and would put public safety at risk.

The Court was clear that for the average individual, who does not work in a regulated environment, messages such as these will remain private regardless of how unpalatable their content is. Nevertheless, for those subject to professional standards or working in regulated industries, there will be limits on the right to keep such messages private. This will include solicitors, barristers, doctors and financial services workers etc.

BC and others v Chief Constable Police Service of Scotland and others [2019] CSOH 48

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