



Neutral Citation Number: [2023] EWHC 723 (KB)

Case No: KB 2023-000075

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 March 2023

Before:

ADAM VAITILINGAM KC
(Sitting as a Deputy Judge of the High Court)

Between:

CATHERINE GEDMAN	<u>Claimant</u>
- and -	
CHIEF CONSTABLE OF CHESHIRE	<u>Respondents</u>
CONSTABULARY & CARLISLE MAGISTRATES	
COURT	

The Claimant appeared in person
Peter Laverack (instructed by the Chief Constable of Cheshire (Cheshire Constabulary))
for the Respondent
Carlisle Magistrates Court was not represented

Hearing dates: 24 March 2023

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to the National Archives. The date for hand-down is deemed to be on 30 March 2023.

Adam Vaitilingam KC:

1. There are two applications by the Claimant Catherine Gedman. They arise out of the execution of a warrant at an address in Chester on December 12th 2022. Mrs Gedman was arrested and some of her property was seized. She has not been charged with any offence but remains on police bail.
2. No civil proceedings have yet been issued by her against either of the current Respondents. However, by an application dated January 12th 2023 she sought injunctions against the First Respondent Chief Constable to return her property, to preserve body worn camera footage of her arrest and to remove her bail conditions. A further application made on March 20th 2023 against both Respondents – the Chief Constable and Carlisle Magistrates Court – seeks disclosure of the warrant and of the evidence that led to it being issued.
3. Although it has little direct relevance to these applications, I note that the Claimant issued almost identical proceedings in the Bristol District Registry. They were struck out as an abuse of process given the existence of these proceedings.

Law and procedure

4. I set out below the law as it applies to the respective applications, under the following headings: A Interim injunctions; B Presumed legality of warrants; C Seizure and retention of property by the police; D Disclosure pre-action; and E Request for information from Magistrates Court.

A. Interim injunctions

5. The power to grant an injunction is given by s.37(1) of the Senior Courts Act 1981: “*The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so*”.
6. The Court has the power to grant interim injunctions: see CPR 25(1).

“Interim remedies are of two broad varieties (but some are a mixture). First there are those which are temporary versions of final remedies. In the interests of fairness and justice they are granted pending trial; e.g. a claimant issues a claim for an injunction and is granted a temporary injunction to the same or similar effect. Secondly, there are those which are purely interlocutory; e.g. an order permitting one party to inspect relevant property in the possession of another party. ...” (see note 25.1.8 of the White Book)
7. An order for an interim injunction may be made before proceedings have started: “(2)(b) *the court may grant an interim remedy before a claim has been made only if (i)*

the matter is urgent; or (ii) it is otherwise desirable to do so in the interests of justice”
(see CPR 25).

8. The four stage legal test for granting an interim injunction was set out in *American Cyanamid v Ethicon* [1975] 1 All E.R. 504:

- a) Is there a serious question to be tried?

“... The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.

It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. ...” Lord Diplock, p.407H

- b) Are damages an adequate remedy for the Claimant?

“... If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage. ...” Lord Diplock, p.408C

- c) In the alternative, would damages be an adequate remedy for Defendant?

“... If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff’s undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.” Lord Diplock, p.408C-E

- d) Should an injunction be granted on the balance of convenience?

“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience rises. It would be unwise

to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.” Lord Diplock, p.408E-F

B. Presumed legality of warrant

9. On behalf of the Chief Constable it is submitted that where – as here – civil proceedings are brought on the basis that a warrant was unlawful, the quashing of that warrant in a judicial review is a pre-condition.

10. The Constables Protection Act 1750 provides that:

“6. Action not to be brought against constable till demand made of copy of warrant, &c. No action shall be brought against any constable... or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, ... , [and] that on producing and proving such warrant at the trial of such action the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices...”.

11. This was considered in *Moucher v the Chief Constable of South Wales Police* [2016] EWHC 1367:

“452. Mr Johnson QC accepts that the searches of the homes of Mrs Coliandris and Mr Morgan constituted interference with the right to respect for the private and family rights. He contends, however, that the infringement was justified in accordance with Article 8.2. Further, he submits that there is an additional bar to a claim under the Human Rights Act 1988. The search warrants in question were issued by a magistrate. Mr Johnson accepts that such a decision is susceptible to a challenge by way of judicial review. He submits, however, that no civil action can lie against the defendant in respect of the searches because the warrants issued by the magistrate in respect of the homes of Mrs Coliandris and Mr Morgan have never been quashed. The quashing of the warrant, in the submission of Mr Johnson QC is a necessary pre- requisite to the bringing of a civil action by virtue of Section 6 Constables' Protection Act 1750. That Section

is in arcane language and I do not propose to set it out in this judgment.

453. In the absence of any oral or written submissions to suggest that the analysis of Mr Johnson QC is incorrect I am disposed to accept it. Accordingly the Human Rights claim made by Mrs Coliandris in respect of the search of her home must fail.”

12. In *R (Chaudhary) v Bristol Crown Court* [2014] EWHC 4096 (Admin), it was said at paragraph 61:

“In my view the jurisprudence on this issue is clear: the only route to challenge whether a warrant is lawful is by way of judicial review. In particular, in Goode at [51] Pitchford LJ, having highlighted that it is a judicial act to issue a warrant, disavowed the notion that a court of equal jurisdiction has the power to invalidate the judicial act of another and he expressly approved the obiter dicta observation by Stanley Burnton LJ in Dulai that the Crown Court did not have jurisdiction to examine the circumstances of the issue of a warrant by a magistrates’ court (“... in cases in which there is a challenge to a relevant warrant, the claimant must bring proceedings for judicial review in the Administrative Court to quash the warrant ...” at [37]). In unequivocal terms, Pitchford LJ determined that a challenge to seizure under s.59(3)(a) “does not enable the applicant to challenge the validity of the warrant in the Crown Court”.

C. Seizure and retention of property by the police

13. A police officer’s principal powers of general seizure are set out at s.19 and s.32 of the Police and Criminal Evidence Act 1984:

19.— General power of seizure etc. (1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises. (2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

14. The police power and duty in relation to the retention of seized property is set out at s.22 of the Police and Criminal Evidence Act 1984.

22 (1) Retention. Subject to subsection (4) below, anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of section 19 or 20 above may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1) above—

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) below—

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) above if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this section affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.

D. Disclosure pre-action

15. If proceedings have not been commenced, a prospective claimant may make an application for disclosure under s.33(2) of the Senior Courts Act 1981 and CPR 31.16:

“33.— Powers of High Court exercisable before commencement of action. ...

“(2) On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court [...] the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise

out of that claim—

3. (a) to disclose whether those documents are in his possession, custody or power;

4. (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order— (i) to the applicant's legal advisers; or (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.”

16. CPR 31.16(1) to (3) provide:

“31.16 (1) This rule applies where an application is made to the court under any

Act for disclosure before proceedings have started.

(2) The application must be supported by evidence. (3) The court may make an

order under this rule only where—

(a) the respondent is likely to be a party to subsequent proceedings;

(b) the applicant is also likely to be a party to those proceedings;

(c) if proceedings had started, the respondent's duty by way of standard disclosure,

set out in rule 31.6, would extend to the documents or classes of documents of which

the applicant seeks disclosure; and

(d) disclosure before proceedings have started is desirable in order to— (i) dispose

fairly of the anticipated proceedings; (ii) assist the dispute to be resolved without

proceedings; or (iii) save costs.”

E. Request for information from magistrates court

17. Criminal Procedure Rule 5.9 provides:

Request for information by a party or person directly affected by a case

(1) This rule applies where a party, or a person directly affected by a direction or order made or warrant issued by the court, wants information about their case.

(2) Such a party or person must—

(a) ask the court officer;

(b) specify the information requested; and

(c) pay any fee prescribed.

(3) The request—

(a) may be made orally or in writing, and need not explain why the information is requested, if this rule requires the court officer to supply that information; but

(b) must be in writing, unless the court otherwise permits, and must explain why the information is requested, if this rule does not so require.

(4) Subject to paragraph (5), the court officer must supply to the party or person making the request—

(a) information about the terms of any direction or order made, or warrant issued, which was—

(i) served on, or addressed or directed to, that party or person, or

(ii) made on an application by that party or person; and

(b) information received from that party or person (which might be, for example, to establish what information the court holds, or in case of a loss of that information by the party or person making the request).

(5) The court officer must not supply the information requested if that information—

(a) concerns the grounds on which a direction or order was made, or a warrant issued, in the absence of the party or person making the request...;

(7) Where this rule does not require the court officer to supply the information requested—

(a) the court officer must refer the request to the court; and

(b) rule 5.10 applies.

Rule 5.10

Request for information determined by the court

(1) This rule applies where the court officer refers to the court a request for information under...rule 5.9.

(2) The court officer must—

(a) serve the request on—

(i) the applicant for any direction, order or warrant that the request concerns which was made or issued in the absence of the party or person making the request, and

(ii) anyone else, and to such extent, as the court directs; and

(b) notify the party or person making the request of—

(i) the date of its service under this rule, and

(ii) the identity of each person served with it, if the court so directs.

(3) If a party or person served with the request objects to the supply of information requested the objector must—

- (a) *give notice of the objection not more than 20 business days after service of the request, or within any longer period allowed by the court;*
 - (b) *serve that notice on the court officer and on the party or person making the request; and*
 - (c) *if the objector wants a hearing, explain why one is needed.*
- (4) *A notice of objection must explain—*
 - (a) *whether the objection is to the supply of the whole of the information requested, or only to the supply of a specified part or specified parts;*
 - (b) *whether the objection applies without limit of time, or only for a specified period (for example, until a date or event specified by the objector); and*
 - (c) *the grounds of the objection.*
- (5) *Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request, the objector must—*
 - (a) *omit that material from the notice served on that party or person;*
 - (b) *mark the material to show that it is only for the court; and*
 - (c) *with that material include an explanation of why it has been withheld.*
- (6) *The court must not determine the request, and information requested must not be supplied, until—*
 - (a) *each party or person served with the request has had at least 20 business days, or any longer period allowed by the court, in which to object or make other representations; and*
 - (b) *the court is satisfied that in all the circumstances every such party or person has had a reasonable opportunity to do so.*
- (7) *The court may determine the request—*
 - (a) *without a hearing; or*
 - (b) *at a hearing, which—*
 - (i) *may be in public or private, but*

(ii) must be in private, unless the court otherwise directs, where the request concerns a direction, order or warrant made or issued in the absence of the party or person making the request.

(8) Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request—

(a) any hearing of the request may take place, wholly or in part, in the absence of the party or person making it; and

(b) at any such hearing the general rule is that the court must consider, in the following sequence—

(i) representations first by the party or person making the request and then by the objector, in the presence of both, and then

(ii) further representations by the objector, in the absence of the party or person making the request but the court may direct other arrangements for the hearing.

(9) In deciding whether to order the supply of the information requested the court must have regard to—

(a) the open justice principle;

(b) any reporting restriction;

(c) rights and obligations under other legislation;

(d) the importance of any public interest in the withholding of that information, or in its supply only in part or subject to conditions (which public interest might be, for example, in preventing injustice, protecting others' rights, protecting the confidentiality of a criminal investigation or protecting national security); and

(e) the extent to which that information is otherwise available to the party or person making the request.

The Claimant's applications

The mandatory injunction for the return of seized items

18. It is common ground that a large number of the Claimant's personal items were seized by the police. They have offered to return some to her, such as her passport and bank cards, although she has not yet collected them. Others are retained by the police pending the current criminal investigation into her and others arrested that day. They include computers and files. Her application for their return is based on their having been seized under an unlawful warrant, alternatively that I should consider whether they should be returned in any event.

19. The Respondent submits, on the basis of the authorities cited above, that the officers' entry into the premises on December 12th was – and must be taken by this Court to have been – lawful. Where civil proceedings are predicated on a warrant's unlawfulness, the quashing of that warrant in judicial review is a pre-condition to any finding or order of this Court. In other words, there is no basis on which the Court could find that this was an unlawful seizure unless and until the warrant was quashed by judicial review. I accept that this submission is correct as a matter of law.
20. Further, given the police power to retain seized property pursuant to s.22 PACE, as set out above, there is nothing before me to demonstrate that this power is not being followed lawfully. While I would of course very much encourage the investigating police to deal expeditiously with the return of such of the Claimant's property as can properly be returned, the test for granting this injunction is not met. None of the four questions set out in *American Cyanamid* are answered in the Claimant's favour.

The prohibitory injunction for the preservation of body worn video footage

21. Officers carrying out the arrest and search wore body worn cameras. The Claimant wishes the footage from those cameras to be preserved to assist her in forthcoming civil proceedings.
22. I understand that some of the footage is normally destroyed 30 days after it has been filmed, unless it is marked as evidential. However, given the intimated civil proceedings here, the Chief Constable has a duty under CPR PD 31B to retain the material.
23. In those circumstances, and given that I have no reason to believe that any of the retained footage will be destroyed, there is no basis upon which I consider I should make a mandatory injunction requiring the Chief Constable to preserve it. Such an order is not necessary to compel what has already been done and what the Chief Constable is already obliged to do under the CPR. Indeed the Claimant has told me today that she no longer pursues this aspect of the January application.

The mandatory injunction for the removal of bail conditions

24. The Claimant also does not today pursue this application, recognizing that she has the right to make an application to vary her bail conditions to the magistrates court.

The application for pre-action disclosure

25. Any prospective claimant may make an application for disclosure under s.33(2) of the Senior Courts Act 1981 and CPR 31.16. On that basis the Claimant applies for disclosure from the Chief Constable and from the Carlisle Magistrates Court of the warrant and the information provided to the court in order to obtain that warrant.
26. I note that, since the application was made, the Claimant was – on March 20th 2023 – sent an email by the legal team manager at Tameside magistrates court, attaching what is described as “the warrant paperwork”. It appears to simply be a copy of the warrant.

- The Claimant tells me that she believes that this is not the original warrant and in any event she still wishes to see the material on which the issue of the warrant was based.
27. (I have no information as to why it is Tameside MC that is dealing with the matter, but since it appears that the procedure under which the application for disclosure should be made is being followed I do not consider that this is an issue that I need to investigate further).
 28. I note that the Claimant has not applied under s.33(2) of the Senior Courts Act 1981. Further, the application for an injunction is not supported by evidence, as required by CPR 31.16(2).
 29. But in any event, this application cannot succeed. The Magistrates' Court is the correct forum for an application to disclose a s.8 warrant and related documents, pursuant to the Criminal Procedure Rules as set out above. That procedure is already in hand.
 30. On February 20th 2023 Ms. Libby Esposito, a legal adviser at Tameside Magistrates Court emailed Cheshire police as follows: "Catherine Gedman...was the subject of a s.8 PACE search warrant application by PC Lee-Waters of Cheshire Police and granted by the court on 9/12/22...she has contacted the court and requested to view the warrant application. Under CPR 5.10 Cheshire Police have 20 business days in which to respond. Could you please let me know who I should send this request to?".
 31. Subsequently, the email to the Claimant from Tameside Magistrates Court of March 20th 2023 (referred to above) states that "I confirm in accordance with the Rules a hearing is currently being arranged before a District Judge in Cheshire to deal with the objection of the disclosure of the s.8 warrant application".
 32. That this is the correct approach for an applicant to follow was confirmed by the Administrative Court in *Commissioner of Police of the Metropolis v Bangs* [2014] EWHC 546 (Admin), an authority the Claimant will find helpful to read as she prepares for the hearing in the magistrates court.
 33. Accordingly, the Claimant's application to this Court for disclosure has been brought in the wrong forum and in my view amounts to an abuse of process.
 34. The application of January 12th 2023 is therefore dismissed and the application of March 20th 2023, as against both respondents, is struck out.
 35. Written submissions on the Second Respondent's applications (a) for costs and (b) for the Claimant's applications to be declared as totally without merit to be filed by April 6th, the Claimant's response to be filed by April 13th 2023.

March 24th 2023

Adam Vaitilingam KC

Judgment Approved by the court for handing down
(subject to editorial corrections)

Gedman and Chief Constable of Cheshire & Carlisle
Magistrates Court

Sitting as a deputy judge of the High Court