



Case Nos: AC-2023-LON-002651

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 2832 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 31 October 2024

BEFORE:
MRS JUSTICE LANG

BETWEEN:

THE KING
(on the application of MICHAEL JOHN HARVEY)

Claimant

- and -

LUTON AND SOUTH BEDFORDSHIRE MAGISTRATES' COURT

Defendant

- and -

EASTERN REGION SPECIAL OPERATIONS UNIT (ERSOU)
BEDFORDSHIRE POLICE

Interested Party

THE CLAIMANT appeared in Person.

MR T DYKE (instructed by Bedfordshire Police Legal Services) appeared on behalf of the Interested Party.

THE DEFENDANT did not appear and was not represented.

JUDGMENT
(Approved)

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk

(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

1. MRS JUSTICE LANG: The claimant seeks judicial review of the defendant's ("the Magistrate's Court") failure to produce a copy of its order made on 20 January 2023 dismissing the interested party's ("IP") application for a further freezing order. This claim was filed on 4 September 2023 and issued on 8 September 2023.
2. The National Crime Agency was initially named as the IP, but it informed the claimant and the court that this case was the responsibility of the Regional Organised Crime Unit, which should be substituted as the IP in place of the National Crime Agency. The correct title for the Regional Unit is the Eastern Region Special Operations Unit ("ERSOU") Bedfordshire Police, which is a combined police unit serving Bedfordshire Police and other police forces in the region. Bedfordshire Police legal department has responsibility for conducting these proceedings.
3. The claimant made an application to substitute the IP and amend the claim form on 20 October 2023, but it appears that no order has been made on the application. Accordingly, I now make the order to substitute the IP and I grant permission to the claimant to amend the claim form accordingly.
4. Ritchie J granted permission to proceed with the claim for judicial review on the papers on 30 August 2024.

History

5. The claimant is an unregulated solicitor providing services which do not need to be undertaken by a solicitor on the Solicitors' Roll. As part of his work, he accepts a preliminary deposit of client moneys into his business account with Santander (UK) PLC ("the Bank") prior to onward transmission.
6. On 4 July 2022, a client payment of £50,029.61 from Dubai was made into the Santander account. In October 2022, five client payments from Indonesia totalling £369,941.15 were made into the account. The July payment triggered an alert in the bank's monitoring system. Following investigations, including discussions with the claimant, the bank froze the account on 8 November 2022 and made a suspicious activity report to the National Crime Agency.

7. In December 2022, the IP applied to the Magistrates' Court for a freezing order on the Santander account, with a return date of 13 December 2022. The application recorded that there was a balance of £489,730.19 in the account.
8. The application was made pursuant to section 303Z1 of the Proceeds of Crime Act 2002. The claimant's request for an adjournment to enable him to discuss matters with the IP's investigator, Ms Claire Howard, was refused by the Magistrates' Court. The Court then made a six-week freezing order (not the six-months originally requested by the IP) in respect of the Santander account.
9. A draft order was submitted by the IP and the Magistrates' Court made a formal order and served it on the parties.
10. On 12 January 2023, the IP made a further application for a six-week freezing order in similar terms, as the six-week order made on 13 December 2022 was due to expire on 24 January 2023. The claimant consented to a short extension of the freezing order but not a six-week period.
11. The claimant was unable to attend court between 17 and 24 January 2023 as he had booked to be away, some time previously, on a family holiday. However, Ms Howard stated in her email to the claimant on 12 January 2023 that the hearing was listed for 20 January 2023 and it would have to take place during the period when the claimant was unavailable because of the expiry date of the December order. She added in the email:

“Please advise me if you are able to attend the hearing so that I can advise the court on the day. If not, I will send you a copy of any order should one be granted by the court”.

12. The hearing on 30 January 2023 proceeded in the absence of the claimant. Ms Howard subsequently sent the claimant an email describing what happened, in the following terms:

“Mr Harvey, just to make you aware regarding the outcome from the application I made last Friday for the account freezing order, due to a legal technicality, the court could not make the order even though they wished to. The notice I served on you was for notice of an account freezing order under section 303Z1 rather than a variation under 303Z4

which would be for a variation to the original order. I have not myself obtained an extension before so was unaware of this. Although you had agreed to an extension and had been aware of the application and the court hearing, we agreed that legally you must have been served with the correct notice seven days prior to the application. I am sure you will be very happy to hear this but I also hope that this experience has made you review your own practices and I hope that you have learnt that you should consider what money-laundering precautions you take before allowing large sums of money to be transferred into your account. This, along with having a proper audit trail for your transactions, would perhaps stop this kind of thing happening in the future.

I also hope it has restored your faith in the court system, that they do not simply love the police and grant anything we ask, as you have stated at various times! But they do, in fact, only wish to grant orders which are legal and proper”.

13. Mr Dyke, in his skeleton argument at paragraph 7, confirms the position as follows:

“By an application dated 12 January 2023, ERSOU sought a six-week extension to the AFO. This application came before the Defendant court on 20 January 2023. Unfortunately, the extension application was made under section 303Z1 instead of section 303Z4. Because the Claimant was deemed to have not been given proper notice under rule 4, the defendant court determined that it was unable to extend the AFO. The Claimant was notified of the result of this hearing by an email sent from ERSOU on 25 January 2023”.

14. On my reading of Ms Howard’s email, it is apparent that the IP decided not to pursue the application for a freezing order any further, even though this application had been dismissed on the grounds of procedural irregularity, rather than on the merits. It was open to the IP to make a further application but it is significant that it has not done so in the lengthy period of time that has elapsed since January 2023.
15. Despite the fact that the freezing order had expired and no further order had been made, the Bank refused to unfreeze the claimant’s account or release any funds. The claimant sought legal advice and, amongst other things, was advised to obtain a copy of the court order of 20 January 2023.
16. On 8 February 2023, the claimant sent an email to Ms Howard asking for a copy of the order made on 20 January 2023. Ms Howard replied on 8 February 2023 stating,

“There was no order made by the court on 20 January. The court did not make the order for reasons previously laid out so the previous order would have just expired”.

17. As Ms Howard was unwilling to draft an order, the claimant sent a draft order that he had prepared to the Magistrates’ Court on 14 March 2023. He asked the Magistrates’ Court to approve and seal it. He delivered it by hand. The Magistrates’ Court did not respond and so the claimant applied again in similar terms on 25 April 2023, delivering his letter by hand. Once again, the Magistrates’ Court did not respond. The claimant then lodged a formal complaint on the HM Courts website.
18. On 26 May 2023, Jas Bhogal, from the Magistrates’ Court, sent an email to the claimant stating that his letters could not be located. The claimant then provided further copies of his correspondence.
19. On 20 June 2023, Jas Bhogal emailed the claimant again stating that the Magistrates’ Court would not accept an order drafted by the claimant as a record of the outcome of the hearing and said “the usual procedure is for the police to serve any copies”. The claimant was advised that, if he was unhappy with the outcome of the complaint, he could raise it with the operations manager, Linda O’Connor.
20. On 21 June 2023, the claimant sent a letter delivered by hand to the operations manager, Linda O’Connor, setting out his complaint in detail, and the difficulties in which he was placed as a result of the ongoing freezing of his account. He indicated his intention to file a claim for judicial review. He never received any response.
21. The Magistrates’ Court has not filed an acknowledgement of service in these proceedings, nor made any other response to the claim.
22. In July 2023, the claimant filed a civil claim in the High Court against the bank, alleging breach of contract, breach of fiduciary duty and statutory duty and negligence.
23. On 21 November 2023, HHJ Blair, sitting as a judge of the High Court, refused the claimant’s application for an interim mandatory order against the bank to require them to unfreeze his bank account, on the grounds that he did not have sufficient knowledge

of the bank's contractual rights, or the transactions on the account, to make a mandatory order and the matter ought to proceed to trial.

24. The claim has been transferred from the King's Bench Division to the Chancery Division and is ongoing.
25. Mr Dyke asserts in his skeleton argument that Ritchie J erred in stating in his order granting permission that "Santander will not release his account funds to him without a copy of the order made on 20.1.2023" as the claimant has never suggested that this was the case. In my view, Mr Dyke has missed the point. HHJ Blair recorded at paragraphs 15 and 16 of his judgment that the claimant hoped that the bank would lift the freeze on his account once the freezing order expired and no further order was made, but that hope was misplaced as the bank continued to freeze his account and that remains the case to this day.
26. The Bank was represented before HHJ Blair and explained that the police have not provided it with any documentation concerning the Magistrates' freezing order proceedings (paragraph 19) and so it had to make its own investigations which were ongoing.
27. The claimant explained in his letter of 21 June 2023 to the Magistrates' Court that:

"Counsel advising me in the context of civil proceedings has advised that a copy of the order made on 20 January 2023 is essential even if it merely confirms that no order was made on the second application by the police".
28. The claimant confirmed the position in paragraph 10 of the statement of facts and grounds in the judicial review claim when he stated,

"Although the order of 13 December 2022 has long since expired and there has been no further order since 20 January 2023, the bank has refused to release any funds or allow me to regain control of the account. I have, therefore, prepared to issue civil proceedings against the bank seeking various remedies and, in that context, have sought counsel's opinion. Counsel has advised me to produce a copy of the application made by ROCA in January 2023 and a copy of the resulting order of 20 January 2023".

29. In my view, it is obvious that before lifting its freeze on the account, the Bank will require confirmation that there is no court freezing order currently in place, and that there is no pending application for a further freezing order on the account. It would also further the administration of justice if the IP told the bank why it considered that no further freezing order was needed. The bank will then have to consider its position.
30. I consider that the claimant's counsel was correct to advise that an order confirming the outcome of the hearing on 20 January ought to be produced to the court in the civil proceedings. The court in the civil proceedings will expect to see documentary proof of the order made and not simply rely on an email from the IP. I find the lack of co-operation in this matter by the Magistrates' Court to be obstructive.

Grounds

31. The claimant submitted that the Magistrates' Court is in breach of its duty under section 115 of the Magistrates' Courts Rules 1981 (as amended) which make general provision for the service of orders. Paragraph 1 provides:

“Subject to paragraph (6), in proceedings commenced by complaint, unless any enactment otherwise provides for service of an order, the designated officer for the court shall serve a copy of that order on the defendant as soon as reasonably practicable after an order or interim order has been made”.

32. There are also relevant procedural rules in the Magistrates' Court (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017. Rule 3 applies to an application for an account freezing order under section 303Z1 of the Proceeds of Crime Act 2002, which is the provision applicable in this case. Subparagraph (7) provides:

“The court must give –

- (a) notice of the order; and
- (b) a copy of the order

to any person by or for whom the account which is the subject of the application is operated and to any other person known to be affected by the order, including the relevant financial institution”.

33. The claimant further submits that under Article 6 ECHR the right to a fair trial includes a requirement that a judgment shall be pronounced publicly. Applying general public law principles, the claimant submits that the Magistrates’ Court’s refusal to make an order in the circumstances of this case is a neglect of duty which is irrational and disproportionate. He also submits that the Magistrates’ Court has acted *ultra vires*.

Conclusions

34. As Mr Dyke has advised the court, the Magistrates’ Courts Rules 1981 do not apply to civil proceedings such as these. However, there is a specific duty to serve a copy of the order on a person whose account is the subject of an application for an account freezing order, under section 303Z1 of the Proceeds of Crime Act 2002, and upon the relevant financial institution: see rule 3(7) of the Magistrates’ Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017.
35. I do not accept Mr Dyke’s submissions that this provision only takes effect where a substantive freezing order is made and/or extended. The court’s decision on any application made to it has to be recorded by the court and made available to those affected, even if it is a brief record stating “no order on the application” or “the application is dismissed”. As Mr Harvey correctly points out, it would also be of assistance, and appropriate, to indicate briefly the reason why no order was made or why the application is dismissed, as there is a difference between an application being dismissed for procedural reasons in contrast to dismissal after a substantive hearing.
36. The claimant correctly submits that Article 6 ECHR provides that “Judgment shall be pronounced publicly”. The “**Human Rights’ Practice: Patrick and Others**”, states at paragraph 6.154:

“There is no express limitation in article 6(1) on the duty to deliver judgment in public comparable to the specified circumstances in which a hearing may take place in the absence of the press and the public.

Nevertheless, the court has held that the requirement may be satisfied by the judgment being deposited in the court registry where it is available to the public or otherwise published in writing without being pronounced orally in open court. The court has also stated that the purpose of article 6(1) is achieved by public delivery of an appellate court judgment in a case where the first instance judge had not publicly delivered its decisions”.

37. In *Pretto v Italy* (1983) 6 EHRR 182 at paragraph 26, the court explained that:

“Many Member States of the Council of Europe have a longstanding tradition of recourse to other means besides reading out aloud for making public the decisions of all or some of their courts and especially their Courts of Cassation: for example, deposit in a registry accessible to the public. The authors of the Convention cannot have overlooked that fact. The court, therefore, does not feel bound to adopt a literal interpretation. It considers that in each case the form of publicity to be given to the ‘judgment’ under the domestic law of the Respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of the Convention”.

38. I do not know whether the decision of the Magistrates’ Court was stated in open court in this case, but, even if a public pronouncement was made, I consider that, in the determination of a person’s rights under section 303Z1 of the Proceeds of Crime Act 2002, it is a requirement of a “fair and public hearing” by an “independent tribunal” that the Magistrates’ Court formally notifies that person of the outcome of the application. This is of particular importance when the person concerned is unable to be present at the hearing.

39. An order was made and served on the claimant, and presumably the Bank, in regard to the initial application for a freezing order which was heard on 13 December 2022. On that occasion, the IP submitted a draft to the Magistrates’ Court which the court then approved, sealed and issued. The same procedure could and should have been followed in regard to the second application for a freezing order. Although no freezing order was made, an order was required to record the outcome of the application (ie “the application is dismissed” or “no order on the application”). The order should have identified the application. If the Magistrates’ Court required the IP to provide them with a draft order, it should have asked the IP to provide one.

40. Even if, contrary to my view, the Magistrates' Court had a discretion as to whether or not to draw up an order, I consider it was irrational and disproportionate to refuse to do so in circumstances where (1) the Bank had not lifted the account freeze, despite the expiry of the freezing order and the absence of any pending application for a further freezing order; and (2) the claimant had been advised by his counsel that an order was required in order to pursue his civil claim against the Bank.
41. I consider that the way in which court staff ignored the claimant's letters and the complaint to the operations manager to be a flagrant breach of the standards of good administration.
42. For these reasons, I allow the claim for judicial review.
43. Subject to any submissions that the parties may wish to make to me, I propose to make an order requiring the Magistrates' Court to produce an order in respect of the hearing on 20 January 2023 and to copy it to the appropriate parties, including the claimant. In case the Magistrates' Court does not comply with my order, I also propose to make a declaration which can be copied to the Bank. I have prepared a possible draft which I would like to show to both of you for your comments. (Handed)

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Email: civil@epiqglobal.co.uk