

IN THE INVESTIGATORY POWERS TRIBUNAL

Lord Boyd of Duncansby, Mrs Justice Lieven, Professor Graham Zellick QC,

B E T W E E N :

KATE WILSON

Claimant

-and-

(1) COMMISSIONER OF POLICE OF THE METROPOLIS

(2) NATIONAL POLICE CHIEFS' COUNCIL

Respondents

ORDER

UPON considering the Claimant's pleaded claim and evidence and the Respondents' grounds of defence and evidence;

AND UPON hearing Leading Counsel for the Claimant, Leading Counsel for the Respondents and Leading Counsel to the Tribunal at a hearing held from 19-23 and 26-27 April 2021;

AND UPON hand down of judgment of the Tribunal on 30 September 2021 (the "**Judgment**");

AND UPON the Respondents agreeing to pay the Claimant £225,971.96 (£217,944.86 + £8,027.10 in interest) by way of just satisfaction for the breaches of her human rights found in the Judgment, and conceding that the sum sought by the Claimant for her legal costs could be reflected in an award for just satisfaction;¹

AND UPON the Tribunal recognising the agreement reached by the parties, but considering that the appropriate figure in all the circumstances of the case is £229,471.96.

¹ The claim for just satisfaction encompassed both pecuniary (£182,944.86) and non-pecuniary (£35,000) loss, including £87,809.45 in legal costs. This sum does not compensate the Claimant for the actions of Mark Kennedy, for which she was compensated in her civil claim.

IT IS ORDERED THAT:

1. The Respondents do pay the Claimant the sum of £229,471.96 by way of just satisfaction for the breaches identified in the Judgment of the Claimant's rights under Articles 3, 8, 10, 11 and 14 of the European Convention on Human Rights arising out of and in connection with the deployment of Mark Kennedy by the Respondents as an Undercover Officer.
2. The Tribunal makes the declarations set out in Annex A.
3. The hearing listed for 2 days between 19-21 January 2022 is vacated.

Dated 24th January 2022

Annex A

IT IS DECLARED THAT:

1. The Respondents subjected the Claimant to inhuman and degrading treatment and violated her rights under Article 3 of the European Convention on Human Rights (“ECHR”) as a result of the following:
 - (i) Undercover police officer (“UCO”) Mark Kennedy (“MK”) deceived the Claimant into a long-term intimate and sexual relationship between November 2003 and February 2005 while deployed to gather intelligence on protest movements in which she participated, and thereby grossly debased, degraded and humiliated her and interfered with her bodily integrity;
 - (ii) MK’s sexual relationship with the Claimant was conducted with the knowledge of his principal “cover officer”;²
 - (iii) MK’s deployment manager,³ who had the rank of Detective Chief Inspector, knew or turned a blind eye to the sexual relationship;
 - (iv) Other senior officers of the rank of Detective Chief Inspector or above who had operational and managerial responsibility within the National Public Order Intelligence Unit (“NPOIU”) for MK’s deployment either knew of the relationship, chose not to know of its existence, or were incompetent and negligent in not following up on the clear and obvious signs that MK had formed a close personal relationship with the Claimant which might be sexual in nature;
 - (v) There is no evidence to support a finding that UCOs having sexual relationships was a deliberate tactic of the NPOIU. The true position is closer to being one of *“don’t ask, don’t tell”*.

² Referred to as officer “EN-31”.

³ Referred to as officer “O-24”.

2. The Respondents also breached their positive obligation to protect the Claimant from the risk she faced of interferences with her Article 3 ECHR rights:
 - (i) They failed to put in place sufficient systems, safeguards or protections to contain the risk that UCOs placed long-term in protest movements would enter into intimate sexual relationships with those directly or indirectly subject to surveillance;
 - (ii) The training of UCOs in relation to sexual relationships was grossly inadequate;
 - (iii) They failed to think about, plan, or take any steps to mitigate the obvious risk of MK entering into sexual relationships while deployed;
 - (iv) There was a widespread failure of supervision of MK in his undercover role, both by his principal cover officer and more senior officers.

3. The Respondents violated the Claimant's right to private life and failed to comply with their positive obligations under Article 8 ECHR:
 - (i) The acts and omissions at §1 and 2 of this Annex also amounted to a breach of Article 8 ECHR;
 - (ii) The deployment of MK (apart from the sexual relationship) and the presence in the Claimant's life of other UCOs:
 - (a) Did not meet a pressing social need and was not necessary in a democratic society and not proportionate based on either the need for intelligence on the protest movement or on the Claimant's own activities;
 - (b) By its length and the level of intrusion amounted to disproportionate interference with her private life;
 - (c) Did not comply with the provisions of the Regulation of Investigatory Powers Act 2000 ("RIPA") and was not in accordance with the law.

- (iii) The Respondents failed to give any proper consideration or put any structures in place to limit collateral intrusion into the private lives of persons not named as subjects of surveillance.
- 4. The provisions of the RIPA regime under which the relevant UCOs were deployed were in accordance with the law and necessary and thereby satisfied Article 8(2) ECHR.
- 5. The Respondents violated the Claimant's right under Article 14 ECHR to freedom from discrimination in the enjoyment of her rights under Articles 3 and 8 ECHR:
 - (i) The Respondents' failure to establish a system which protected against the risk that UCOs would enter into sexual relationships with women had an incontrovertible disproportionately adverse impact on women by reason of (a) the numbers of women affected and (b) the greater adverse impact on women's lives through either risk of pregnancy or interference with their child-bearing years;
 - (ii) The Respondents had advanced no justification for the difference of treatment and there was very little concern about the impact on women of introducing UCOs into their lives on a long-term basis.
- 6. The Respondents violated the Claimant's rights under Article 10 ECHR to freedom of expression:
 - (i) The monitoring and surveillance of the Claimant by MK and other UCOs interfered with the Claimant's rights to hold opinions and receive and impart information and ideas without interference by public authority;
 - (ii) MK took steps to influence the Claimant's exercise of her right to freedom of expression;
 - (iii) These acts were not in accordance with the law, necessary in a democratic society or proportionate.
- 7. The Respondents violated the Claimant's rights under Article 11 ECHR to freedom of peaceful assembly and freedom of association:

- (i) MK directly influenced the Claimant's political opinions and her movements;
- (ii) These acts were not in accordance with the law, necessary in a democratic society or proportionate.