JUDICIARY OF
ENGLAND AND WALES

14 February 2020

PRESS SUMMARY

The Queen on the application of Harry Miller (Claimant) v *(1) The College of Policing and (2) The Chief Constable of Humberside* (Defendants)

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. References in square brackets in this summary are to paragraphs of the judgment.

Judgments are public documents and are available at: https://www.judiciary.uk/judgments

Court: Mr Justice Julian Knowles

Background to the case

1. Between November 2018 and January 2019 the Claimant, Harry Miller, posted a number of tweets on Twitter about transgender issues. He holds gender critical views. The Claimant strongly denies being prejudiced against transgender people. He regards himself as taking part in the ongoing debate about reform of the Gender Recognition Act 2004 on which the Government consulted in 2018.

2. The College of Policing is the professional body whose purpose is to provide those working in policing with the skills and knowledge necessary for effective policing. The College publishes operational guidance for police forces in relation to hate incidents. This is called the Hate Crime Operational Guidance (HCOG). It requires police forces to record hate incidents whether or not they are criminal. The recording is done primarily for intelligence purposes. A non-criminal hate incident in relation to transgender is defined as

> "Any non-crime incident which is perceived, by the victim or any other person, to be motivated by a hostility or

prejudice against a person who is transgender or perceived to be transgender."

3. The Claimant's tweets were reported to Humberside Police by a transgender woman called Mrs B. Mrs B read the tweets when a friend told her about them. She regarded them as 'transphobic'. They were recorded by the police as a non-crime hate incident. Of all the people who read the tweets, Mrs B was the only person to complain.

4. A police officer visited the Claimant's place of work to speak to him about his tweets. They subsequently spoke on the telephone. What was said is disputed, but in his judgment Mr Justice Julian Knowles finds that the officer left the Claimant with the impression that he might be prosecuted if he continued to tweet ([100]). A press statement issued by an Assistant Chief Constable and a response to a complaint by the police also referred to the possibility of criminal proceedings if matters 'escalated', a term which was never further defined.

The judgment

5. In this application for judicial review the Claimant challenged the lawfulness of HCOG. He argued that, as a policy, it violates domestic law and also Article 10 of the European Convention on Human Rights, which protects freedom of expression. Alternatively, he argued that even if the policy is lawful, his treatment by the police was disproportionate and unlawfully interfered with his right of free speech under Article 10(1).

6. In his judgment handed down today, Mr Justice Julian Knowles concludes that HCOG is lawful as a policy both under domestic law and under Article 10 ([156], [237]). The policy draws upon many years of work on hate crime and hate incidents which began with the 1999 Macpherson Report into the murder of Stephen Lawrence in 1993. The Court concludes that HCOG serves legitimate purposes and is not disproportionate.

7. However, Mr Justice Julian Knowles also finds that the police's actions towards the Claimant disproportionately interfered with his right of freedom of expression on the particular facts of this case ([289]). The judgment emphasises the vital importance of free speech in a democracy and provides a reminder that free speech includes not only the inoffensive, but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, and that the freedom only to speak inoffensively is not worth having ([3]).

8. Mr Justice Julian Knowles concludes that the Claimant's tweets were lawful and that there was not the slightest risk that he would commit a criminal offence by continuing to tweet ([271]). He finds the combination of the police visiting the Claimant's place of work, and their subsequent statements in relation to the possibility of prosecution, were a disproportionate interference with the Claimant's right to freedom of expression because of their potential chilling effect. In response to the Defendants' submissions that any interference with the Claimant's rights was trivial and justifiable, at [259] of his judgment the judge concludes that these arguments impermissibly

minimise what occurred and do not properly reflect the value of free speech in a democracy. He writes:

> "The effect of the police turning up at [the Claimant's] place of work because of his political opinions must not be underestimated. To do so would be to undervalue a cardinal democratic freedom. In this country we have never had a Cheka, a Gestapo or a Stasi. We have never lived in an Orwellian society."

9. To that extent, Mr Justice Julian Knowles upholds the Claimant's claim.

ENDS