

Supreme Court invokes EU Equality Directive to disapply common law judicial immunity from suit in disability discrimination claim by police officer

10/11/2017 (Public Law)

P, a police officer, was dismissed from the force for gross misconduct following a hearing before a police misconduct panel constituted under the Police (Conduct) Regulations 2008. P brought an unsuccessful appeal against that finding to the Police Appeals Tribunal. She then brought a disability discrimination claim before the Employment Tribunal but the claim was dismissed because the misconduct hearing had been conducted by a tribunal which enjoyed the common law judicial immunity from suit. The Employment Appeal Tribunal, then the Court of Appeal, upheld that decision applying the decision of the Court of Appeal in *Heath v. Commissioner of Police for the Metropolis* [2004] EWCA Civ 943, [2005] ICR 329. On appeal the Supreme Court overturned the decision, remitting the case to the Employment Tribunal for determination of P's discrimination claim on the merits. The common law judicial immunity from suit was incompatible with P's rights under EU law, in particular the right to equality of treatment in the Equality Framework Directive which confers on all persons, including police officers, a directly effective right to be treated in accordance with the principle of equal treatment in relation to employment and working conditions, including dismissals: article 3(1)(c). While the Equality Act 2010 conferred on police officers the same right to bring discrimination claims as other employees and by s 42 they are deemed to be the employees of the chief officer, the Act does not expressly disapply the judicial immunity from suit enjoyed by a police misconduct panel. The Court of Appeal, applying *Heath*, had held that in the absence of express words the common law immunity from suit barred P's claim. The Supreme Court, overturning the Court of Appeal's

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decision, accepted the argument run by the Equality and Human Rights Commission, who intervened on the appeal, that s 42 must be read and given effect consistently with the Equality Directive under the *Marleasing* principle so that a police officer is deemed to be the employee of the persons conducting a misconduct hearing for the purposes of bringing a discrimination claim. The judicial immunity from suit was thus expressly disapplied by operation of the revised s 42.

A copy of the judgment is [here](#).

A copy of the Equality and Human Rights Commission's press statement is [here](#).

Press coverage of the case by The Guardian can be found [here](#).

Paul Bowen QC acted for the Equality and Human Rights Commission which intervened on the appeal to the Supreme Court.

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