LAW REPORT

June 27 2017, 12:01am, The Times

Decision to suspend chief constable was perverse

Queen's Bench Division

Regina (Crompton) v Police and Crime Commissioner for South Yorkshire

Before Lord Justice Sharp and Mr Justice Garnham

[2017] EWHC 1349 (Admin)

Judgment June 9, 2017

The proper test to be applied by a police and crime commissioner, when considering whether to suspend a chief constable or ask him to resign, was to ask whether the chief constable had acted outside the range of reasonable responses available to a chief constable.

The divisional court of the Queen's Bench Division so held when allowing a claim for judicial review by the claimant, David Crompton, who had been chief constable of South Yorkshire, of the decision of the defendant, Alan Billings, police and crime commissioner for South Yorkshire, to suspend the claimant and subsequently to require him to resign, pursuant to section 38 of the Police and Social Responsibility Act 2011, after a statement the chief constable made after the inquest verdicts into the deaths of 96 people killed in the Hillsborough Stadium disaster had been returned.

Mr Hugh Davies, QC, and **Ms Jessica Boyd** for the chief constable; **Mr Jonathan Swift, QC,** and **Ms Joanne Clement** for the commissioner; **Mr Clive Sheldon, QC,** and **Mr Christopher Knight** for the Chief Inspector of Constabulary, as first interested party; **Mr Adrian Phillips**, solicitor, for the South Yorkshire Police and Crime Panel, as second interested party.

Mr Justice Garnham, giving the judgment of the court, said that the 2011 act sought to achieve two, sometimes conflicting, objectives: (i) proper operational independence for chief constables; and (ii) proper democratic oversight of the conduct of chief constables, for which purpose the electoral mandate of police and crime commissioners to hold the police to account was given statutory expression.

There would inevitably be tension between those two imperatives in practice, but the Policing Protocol, as scheduled to the Policing Protocol Order 2011 (SI 2011 No 2744), provided a mechanism by which those tensions were to be managed.

The commissioner and the chief constable were obliged to conduct their relationship with each other in accordance with the principles of goodwill, professionalism, openness and trust. Accordingly, it was necessary to test the actions of the parties against those requirements.

The terms of the protocol served to qualify the powers of the commissioner, and it was necessary always for a commissioner to accord a chief constable a margin of appreciation. The fact that the commissioner's powers to call the chief constable to account extended to operational matters did not mean that operational independence was of no significance. There was an important difference between scrutiny of the chief constable's action and control of his actions.

That analysis applied whatever the nature of the decision taken by the chief constable. Relations with the media was an important part of modern police leadership and the need for a chief constable to be permitted a margin of discretion there was as real as in areas more commonly regarded as subject to operational independence.

The chief constable was not the commissioner's employee. He occupied an office of considerable constitutional significance. The stability or fragility of a police force depended to a significant degree on the way in which a chief constable was treated. If chief constables could too readily be removed, there was a serious risk of the stability of the force being undermined. It could not be reasonable for a commissioner to suspend a chief constable for taking a decision that was itself reasonable.

The proper test to be applied by the commissioner to the actions of a chief constable was to ask whether those actions were outside the range of reasonable responses available to a chief constable. The test for the court to apply to the commissioner's decision-making was to ask whether that decision-making met

the requirements of public law, namely whether it was lawful, procedurally proper and rational.

The commissioner asserted that the decision to suspend the chief constable and then to require his resignation was justified because the "decision to issue the . . . statement was a very serious misjudgment that seriously damaged public confidence in the claimant and consequently South Yorkshire Police".

The evidence of any significant public reaction to the chief constable's statement between the time it was made and the time when the commissioner made the section 38 decision to suspend, two and a half hours later, was very limited.

It was suggested during the course of argument that the commissioner had made the decision to suspend by the time that the statement was read out. Even if that was not the case, there was nothing in the statement, or in the reaction to it, that justified a decision to suspend. Given that the commissioner asserted that it was the reaction to the statement that led him to make the decision to suspend, that decision was perverse.

Solicitors: **Kingsley Napley LLP**; **Bevan Brittan LLP**; **Her Majesty's Inspectorate of Constabulary**; **Rotherham Metropolitan Borough Council**.