

Between:

J A Panayiotou

Claimant

-and-

Respondents

Chief Constable of Hampshire Constabulary

-and-

Police and Crime Commissioner for Hampshire

Claimant's Skeleton Argument

Introduction

1. I accept in hindsight and understand that the length of my affidavit was excessive and unhelpful to those learned judges who initially dealt with and commented on the initial notice of appeals. It would have been better if I submitted a shorter affidavit and exhibited the transcript however; this may also have been excessive for the initial notice of appeal.
2. As a litigant in person and one with a disability which affects my memory and concentration I would ask the EAT in the interests of justice to make allowances for this, I do not seek sympathy, I seek justice on appeal with a fair hearing. I had asked the EAT for permission to complete my affidavit which has been refused and again perhaps an exhibited transcript where the relevant sections could be identified may be preferable.
3. This is a case where apparently I have been the only police officer ever to be dismissed without being afforded the protection of a police disciplinary hearing. Police Officers have limited employment rights which; is one of the reasons that there is a procedure for dismissing an officer which is covered by the Police (Conduct) Regulations 2004.

4. Whilst I accept that it is rare that there are more than a few good points in an appeal and it is best to limit those points to the strongest, there are exceptions and this is one of those exceptions. This is a case where there have been so many things wrong that have resulted in my not being able to have a fair hearing and I would respectfully be asking for the case to be heard again with a differently constituted panel.
5. I will attempt to assist the EAT by this introduction including the conduct of the hearing and highlight the potential grounds of appeal with reference to authorities. I apologise in advance if I am unable to keep the document as concise as I would like.
6. I would refer the EAT to paragraph 66 of the Judgment, the finding of fact and the Tribunals decision was that the force was determined to get rid of me and did so unfairly. The now well known expression has then been used that this was not in any sense whatsoever connected with my public interest disclosures.
7. That finding is perverse when presented with the facts of the case including unchallenged witness statements and where the Respondent's decision makers were not independent and either directly connected to or the subject of the actual disclosures.
8. In the same paragraph; the Judge makes a totally incorrect statement which the audio recording will prove regarding the judges "lone ranger" comment. The previous paragraph is also factually incorrect in that the report was sent to the IPCC not the HMIC and was prepared at the request of the IPCC.
9. The Judge I believe adopted a mindset from the outset and has attempted to persuade the reader that I was on some sort of crusade when the documents and evidence of my witnesses (which were not challenged) demonstrated the opposite. I raised my disclosures in the correct manner and as required to do so as serving police officer in line with my duty and obligations. These matters were never raised outside the appropriate organisations for example with the press.
10. A further example although there are many similar comments throughout the Judgment appear at paragraph 191 of page 61 where EJ Housego lists those who have apparently took against me. He mentions the IPCC and the HMIC, there is no evidence of this and I have not complained of those departments victimising me.

11. This is a slightly unusual case in that the proceedings were recorded with permission and that the recording is crucial to support my grounds of appeal. I would respectfully ask that should this case proceed to a full hearing that a full transcript is permitted as the audio recording is the best evidence in this case to assist the EAT.
12. The Judgment is riddled with significant factual errors and conclusions contrary to the evidence. The Judge has not considered the obligations of a police officer in reporting wrongdoing or the failure of the Respondent's witnesses to act in accordance with laid down police law concerning the conduct of police officers.
13. The Judgment makes no mention of the serious misconduct of officers in this case nor the deliberate suppression of relevant documents which I have had to pursue following the conclusion of the Tribunal which; has resulted in my allegations being substantiated and which I put forward as new evidence.
14. I have explained I think the relevance of the missing policy files; the importance of the files was such as they would be kept in a safe. If I could refer the EAT to paragraph 57 at page 23 of the Judgment, this was another file that I claim was deliberately withheld from the Tribunal and has since been found, the disclosure officer Mr Love who has provided comments to this appeal had lied and had made no attempt to locate the file which is now held in the offices of the Professional Standards Department in Hampshire. This was perhaps the most serious disclosure concerning corruption involving a paedophilia case and would show two things, that I was correct and that the force had attempted to victimise me for raising the matter.
15. EJ Housego has for whatever reason attempted to protect the Chief Constable and the Respondent by omitting any reference to the conduct of the officers in this case and on the rare occasion that he has such as when the most important documents in this case have allegedly gone missing (policy files) describes this as "odd" and serious misconduct/crime as "errors".
16. The Chief Constable had in fact been guilty of misconduct in public office and despite my oral and written representations there is no mention of this anywhere in the Judgment. This is one of the motivating factors of the Chief Constable to have treated me in the way that he did.
17. I have tried to point out these areas in my appeal and affidavit with reference to the grounds of

appeal but ultimately I feel it is necessary to cross reference areas of the Judgment with the evidence which was before the Employment Tribunal and this would not be suitable for a skeleton argument at this stage but for a full hearing.

18. Whilst EJ Housego has exaggerated the amount of documents in this case as “enormous”; the bundle was in fact limited to 2 lever arch files as directed. There was no reading time given, and there was not sufficient time for the panel to try and assimilate the documents or statements in the afternoons as EJ Housego had envisaged.

Conduct of the Hearing

19. The Judge made it clear that this case was not going to go part heard and would be concluded on time. No allowance had been made for the additional witnesses introduced by the Respondent or my disability. My time which was in any event only 4 days compared to the Respondent’s 5 was reduced even further and the Judge’s excessive involvement in either cross examining witnesses or asking questions when the witnesses were giving evidence in chief resulted in my being unable to present my case properly or fully.
20. There was a failure to ensure reasonable adjustments were adhered to which resulted in an extended working day. The effect of this was that reasonable adjustments were non-existent and my condition deteriorated as the hearing progressed. The Judgment fails to mention significant parts of the hearing where I broke down and had to leave the hearing, being unable to continue on another day due to additional medication affecting me and my wife also walking out in tears on one occasion. On one occasion I was unable to drive my vehicle away from the Employment Tribunal.
21. There were inadequate breaks and the assertion about the time and frequency of breaks by EJ Housego is strongly disputed, again the audio recording and transcript would be the best evidence in this regard.
22. The Tribunal Judge excessively involved himself in cross examining witnesses before I had an opportunity to do so. This commenced with the very first witness who was Chief Constable Paul Kernaghan and resulted in distraction, my line of questioning being interfered with and

being unable to cross examine Mr Kernaghan on relevant documents.

23. The Respondent who had the least number of witnesses had the lion's share of the time and resulted in my being unable to call the majority of my witnesses. Had the Respondent decided to cross examine my witnesses, there would have been no time to do so.
24. The lack of documents were a continuing issue and there was an unusual situation where the Judge permitted the Respondent to include additional documents having earlier refused to order the same documents following my application. The Judge failed to comment on the failure of the Respondent to have provided such documents as part of the standard disclosure. Even then the documents had been cherry picked and the Judge failed to order the Respondent to supply the remainder of the documents.
25. The Tribunal permitted the Respondent's representative to act unprofessionally in interrupting my cross examination and inconvenience my witnesses who were travelling long distances including from abroad. He would wait for them to arrive before deciding not to cross examine them or they would be cancelled when it was too late and they had commenced their journeys from either Hungary or North of the Country.
26. The CMD conducted by EJ Housego prior to the final hearing was also recorded and that transcript is also important to highlight consistency in that I raised concerns and made applications concerning matters which would place me at a significant disadvantage specifically with regards to disclosure and witnesses.
27. Although on initial inspection by an EAT Judge this would seem a classic case where a Claimant loses a case and then makes various allegations and challenging various factual conclusions on the grounds of perversity; this is not the case. An important difference in my case is that there is tangible evidence to support my grounds for appeal in the form of a recording and witness statements of my witnesses of which there is a noticeable absence of comment from EJ Housego because their evidence would make it impossible for him to say that my disclosures were in no way whatsoever connected with my disclosures.

28. The only realistic way of highlighting my concerns in this regard is to append a copy of the statements of my witnesses to this skeleton argument.
29. If the EAT takes the view that this is in fact a classic case similar to the case of *Dr H Horsefall v Calderdale and Huddersfield NHS Foundation Trust UKEAT/0292/11/CA*, I would respectfully ask that the view of His Honour Judge McMullen QC be taken into consideration in that cases of this kind a preliminary hearing should be heard by an EAT of three members.
30. Up to now, there has been little equality of arms where I have been faced with dealing with high profile figures up to and including a Chief Constable whilst being denied permission to introduce evidence which would go some way to ensuring that I was on an equal footing. An example of this relates to being refused permission to introduce the evidence of the only senior ranking police officer on the Claimant's side (Det Supt Thomas now retired) who had been the author of 3 documents in the document bundle.
31. The evidence of the Deputy Head of Hampshire CID would have cast doubt on the credibility and integrity supported by documentation of the Respondent's 2 main witnesses being the Chief Constable and the Deputy Chief Constable. Put simply, he would provide evidence that he had knowledge that I was to be victimised by Deputy Chief Constable Readhead for whistleblowing and he had attempted to prevent this happening by communicating his concerns to the Chief Constable.
32. This is another example of where the Tribunal would have had difficulty in putting forward their assertion that my dismissal was in no way whatsoever connected with my dismissal where in reality this was in fact the real reason for my dismissal.
33. I believe I was effectively written off as a person with mental health difficulties. The Judgement indicates as much in that EJ Housego believes that I was treated the way that I was because of my disability but then does not find in my favour with regards to any of the disability aspects of my claim.
34. By contrast, EJ Housego in his later comments to the EAT attempts to cast doubt on my mental illness and I believe that this may have also been a factor in the failure to ensure that reasonable adjustments were adhered to in the final hearing.

35. Comments contained within both the Judgment and the subsequent comments of EJ Housego are demonstrably incorrect evidenced by the audio recording. These are not minor mistakes and relevant to the grounds of appeal.

36. **Errors of Law**

Wrong legal test / Human Rights

Article 8 EHCR not considered regarding dismissal

37. The Tribunal failed to consider the band of reasonable responses test or to consider or modify the test in circumstances where my rights under Article 8 of the European Convention on Human Rights had been unlawfully infringed. I would refer the EAT to Court of appeal case *Turner and East Midlands Trains Neutral Citation Number [2012] EWCA Civ 1470*.

38. This case was one where it was necessary for the Tribunal to familiarise itself with the Police (Conduct) Regulations 2004. Had it done so it would have seen the range of discipline sanctions available and that any reasonable employer would not have dismissed in these circumstances where I had an unblemished disciplinary record, was ill and in the system for being retired on ill health.

39. Paragraph (m) of the fourth page of the Judgment is an indication that the Judge did not understand police law relating to the case, he has mentioned the wrong act and section and it was a strong aspect of this case that the Respondent failed to use the appropriate legislation.

40. The Respondent despite maintaining that I had breached a lawful order had failed to use the statutory police conduct regulations, conduct a reasonable investigation or allow me an opportunity to respond before seeking authority from the now defunct police authority to dismiss me. The Respondent could have conducted more detailed investigations and chose not to.

41. Counsel Mr Boardman's written representations highlight from a Barrister's perspective similar concerns in relation to the police authority hearing and my efforts to seek a fair hearing. This

included requesting necessary disclosure which had also been highlighted by Mr Boardman and which I also requested and was refused by EJ Housego at the CMD prior to the final hearing.

42. The refusal to allow my application for disclosure was of even more concern when EJ Housego went beyond the list of issues and took it upon himself to adjudicate or making findings of fact on for matters for which I had not been given disclosure and were to be heard at the High Court. An example being at paragraph 125 of page 42 of the Judgment “suppliers and staff were questioned in a way that could not be other than damaging to the businesses”; this is one of the claims to be heard at the High Court and EJ Housego knew he should not have commented on as the date of this matter was 6 October 2006 and was not an issue to be decided upon in this employment tribunal.
43. I would respectfully ask the Tribunal to look at the written representations of Mr Boardman which although were prepared for the police authority hearing, were included in the employment tribunal document bundle and referred to by me. He explains more concisely than I of the relevance of the documents I had requested and the breach of natural justice which had now also extended to the employment tribunal hearing [Documents 1 and 2].

Refusing to allow the evidence of Det Supt Thomas

44. The Tribunal refused without good reason to allow the evidence of a new witness Mr Thomas and failed to consider the test set out in *Ladd v Marshall*.
45. An important aspect of this issue is that EJ Housego had previously questioned Deputy Chief Constable Readhead regarding the same witness and had been made aware by the Claimant that Mr Thomas would provide evidence indicating that DCC Readhead had been less than truthful with the Judge. I would refer the EAT to EJ Housego’s comments in italics in paragraph 88 at page 30 of the Judgment. Whilst the comment is factually incorrect; the relevance of Det Supt Thomas’s evidence is clear and EJ Housego had been informed at the hearing orally and in writing what that evidence was which contradicts those comments.

New evidence after tribunal

46. Complaints against two of the Respondent's witnesses have been substantiated with regards to the missing policy files and the paedophilia file. Those officers were DCI Adrian Kingswell and Graham Love (Disclosure Officer).
47. The importance of these documents cannot be overstated. Policy files are the documents which would contain the reasons for any actions taken against me and the rational for doing or not doing something.
48. The Paedophilia file contains evidence corroborating my disclosure where EJ Housego has questioned whether the matter took place or not because the document was suppressed by the force.

Human Rights – Unable to have a fair hearing

49. Whilst some of these matters may seem insignificant; taken as a whole I believe the EAT will conclude that I could not have a fair hearing.
50. A video was provided which was not seen by the lay members. This was an important video for a number of reasons and was only approx 30 mins in length. At the time the video was taken I had to be cared for approximately 90% of the time by my wife and was under the care of a Mental Health Team. The video shows that I was no way capable of running or working on my wife's market stall at Winchester Market. I am acting bizarrely and seen to take medication.
51. The video does not support the evidence of an officer who the Respondent failed to call and was disciplined for the manner in which he took and believed suppressed the witness statement of a Mr Baggott. The statement did not assist the Respondent's case but did support my case. The document case was withheld from the police authority when the bundle was prepared to assist in my dismissal and the suppression of documents has been a common theme throughout these proceedings which no Judge has so far got to grips with.
52. I was not able cross examine a number of witnesses from the Respondent's side due to my applications for witness orders being refused. I had previously been given (apparently) wrong directions from EJ Kolanko, I say apparently because I am still not sure as to the correct

procedure.

53. Witness orders had previously been refused and EJ Kolanko informed me that I should write to the Respondent giving the names of the potential witnesses and the evidence they could give. If the Respondent's did not call those witnesses I could comment on this during final submissions and the Tribunal could draw an inference.
54. EJ Housego was aware of this during the CMD and the start of the final hearing and waited until the end of the case and final submissions before informing me that I had been directed wrongly by EJ Kolanko and the Tribunal would not take into account the failure of the Respondent to call relevant witnesses.
55. There was concern in any event that the Tribunal had been moved to Havant from Southampton as it was less accessible to the public. At the hearing there was drilling in progress in the building and a member of the public subsequently wrote to the Tribunal Judge as he was unable to hear Chief Constable Kernaghan who was also softly spoken when giving evidence.
56. The layout of the Tribunal was not in the usual format having been converted from a Magistrates Court where I was effectively sitting adjacent to the witnesses giving evidence. The Chief Constable attempted to intimidate me by asking rather than responding to questions on occasion and DC Readhead was a senior officer who had previously threatened me at my home address. I raised this at the time with the usher but no efforts were made to rearrange the seating arrangements.
57. The time available for presenting my case was considerably reduced resulting in my being unable to call witnesses.
58. A large amount of my time was taken up by EJ Housego's involvement in talking to witnesses either in evidence in chief or cross examining my witnesses before I had an opportunity to do so resulting in my being distracted and unable to follow my prepared line of questioning.
59. Whilst it was apparent that my mental health condition was deteriorating, I was fatigued and had to work extended hours with minimal breaks to get through the evidence to try and finish the case on time. The Judge made it clear he was not prepared to allow the case to go part heard under any circumstances. The Respondent introduced additional witnesses which meant that

the presentation of my case was seriously curtailed.

60. The Judge had been made aware of my daily routine including the necessity for medication. The hearing should have been between 9am and 2pm each day, in reality the time period was extended considerably and the length of time for breaks were reduced, I can recall on one day not having any additional breaks with only 30 min for lunch.
61. What was required were regimented timings to ensure I had a break which was not agreed to and this resulted in my condition deteriorating and being unable to function properly.
62. The Judge from an early stage did not have an appreciation of my mental health issues and it was clear from the CMD and the Judgment that he did not believe my mental health issues affected my performance because I was able to write a report.
63. There was a lack of understanding and an unwillingness to understand my mental health condition which placed me at a disadvantage as an unrepresented Claimant.

Appearance of Bias

64. The appearance of bias or actual bias was evident in a number of ways. This began with the CMD in relation to the refusal to consider my application for disclosure as a fresh application and a refusal to review the decision.
65. I now had to appeal EJ Housego's decision before the final hearing which was not a good start and he mentioned this during the hearing. During the second week whilst presenting my case I also informed the Judge that I wished to appeal his decision to refuse to allow the evidence of Det Supt Thomas.
66. The usher named Lyndsey approached my wife and I on the instructions of EJ Housego to ask whether we had called the press. A reporter from the press appeared on one occasion. No such questions were asked of the Respondents.
67. No members of the public attended throughout the whole hearing save for one member of the public who raised concerns with the Judge that he did not feel this was an open and public hearing and that it felt as though the hearing was in camera.

68. The Judge would in the main address the Respondent's representative and explained this initially by inferring that there was often banter between legally qualified persons.
69. However; this continued throughout the trial including when we returned following the break where EJ Housego had attended a course with Chief Constable Kernaghan. Whilst this is not a strong point; what makes it stronger is that contrary to the Judges subsequent comments he did not immediately raise the matter with me and dealt with Respondent's representative first.
70. When applications were made to introduce documents by the Respondent they were generally approved however; in my case it was a case of if they were considered relevant as the case went on he would reconsider his refusal but did not do so despite my raising the matter on a regular basis as the case progressed and I needed relevant documents.
71. The Judge appears to have assisted the Respondent by dealing with matters which were not in the list of issues and which he knew were to be dealt with at the Royal courts of Justice.

No evidence

72. There are areas throughout the Judgment where assertions and findings of fact have been made without evidence.
73. A classic one is my competence where I have had difficulty in rebutting because the force had suppressed my Performance Development reviews "PDRs". This was another issue where the Judge simply accepted that the force could not locate them without exploring further. These documents are all held on computer.

Perversity

74. The Tribunal has reached a decision that no reasonable tribunal, on a proper appreciation of the evidence and the law, could have reached.
75. This is a case where an "overwhelming case" is made out.
76. There was no challenge to any of the disclosures being qualified or protected.
77. There was no challenge to the Claimant's witness evidence from experienced police officers who confirm and provide evidence that supports my claim that I was dismissed for whistleblowing.

78. The Tribunal have made a finding of fact that I had been dismissed for a reason which was unfair.

79. The Chief Constable on at least 3 occasions confirmed that despite being aware of my disability had failed to consider the Disability Rights Codes.

Comments EJ Housego and lay members

80. I make only general comments as again the transcript of the recording is necessary to identify factual errors. In relation to EJ Housego an important discrepancy is the fact that he said initially that he did not say that he would give a decision on the final day of the hearing. The audio recording and written notes contradict this.

81. Mr Love from the force is the disclosure officer who withheld documents and has since been disciplined.

82. The lay members including EJ Housego have also failed to comment on relevant areas within the appeal documents.

Conclusion

83. This is a case where I believe there are substantial grounds for appeal and whilst I may not have been formulated them in the correct fashion, the only real independent witness in this case is the audio recording which I would ask the EAT to allow me to introduce a transcript of in addition to a copy of the DVD which the lay members did not have an opportunity to view.

Julian Panayiotou