**Briefing: Court of Appeal grants permission to appeal landmark ruling on police data sharing obligations**

On 25 March 2020 Nicola Davies LJ granted the Claimant permission to appeal the orders in *M v Chief Constable of Sussex Police* [2019] EWHC 975 (Admin) and [2019] EWHC 2721 (Admin).

**About the case**

The Claimant, a vulnerable minor, was excluded from attending the premises of local businesses who were members of the BCRP, a local Crime Reduction Partnership.

The BCRP and Sussex Police had an agreement to share information about suspected offenders and the Claimant was included in that list.

Pursuant to the agreement, Sussex Police disclosed to the BCRP the fact that the Claimant was at risk of child exploitation and her court bail conditions.

MG&Co acted for the Claimant in a judicial review challenging this disclosure as well as the legality of the information sharing agreement, particularly in so far as they relate to data belonging to minors and vulnerable groups.

After proceedings were issued, the Defendant introduced a new information sharing agreement and days before the final hearing served a number of underlying documents and policies which had not been previously disclosed.

**High Court ruling [2019] EWHC 975 (Admin)**

At first instance Mrs Justice Lieven ruled that Sussex Police had unlawfully shared the Claimant’s vulnerability to child exploitation to the BCRP thereby breaching her rights under the data protection legislation and the Human Rights Act.

Despite the fact that Sussex Police had “strongly disputed” sharing such data with the BCRP, Mrs Justice Lieven ruled that this was difficult to accept in light of numerous emails between the Defendant and BCRP which made it clear that the information about her vulnerability had been disclosed.

Mrs Justice Lieven furthermore held that it was “virtually beyond doubt that there is further relevant material which [Sussex Police] still has not been disclosed” and was critical of the Defendant’s general lack of candour, including the late disclosure of materials which were pertinent to the Information Sharing Agreements.

However, Mrs Justice Lieven rejected the challenge against the Information Sharing Agreements, finding that they contained sufficient safeguards for vulnerable groups and minors.

Mrs Justice Lieven also ruled that the disclosure of the Claimant’s court bail conditions did not constitute the identification of the Claimant’s involvement in criminal proceedings to “the public” which would have been prohibited by section 49 of the Children and Young Persons Act 1933 and section 45 of the Youth Justice and Criminal Evidence Act 1999.

Although it was accepted that the bail conditions had been disclosed to the BCRP and its members, Mrs Justice Lieven ruled that the statutory definition of “the public” did not extend to those persons acting in their capacity as BCRP private business members or the members’ employees or contractors.

In a subsequent ruling [2019] EWHC 2721 (Admin), the Claimant was awarded nominal damages in respect of the unlawful disclosure of the Claimant’s vulnerability to exploitation.

The Claimant’s claim for damages for distress was refused on the grounds that no direct evidence of distress had been provided by the Claimant directly but moreover that her own conduct contributed to her vulnerabilities being more widely known.

**The Appeal**

On 25 March 2020, the Claimant was granted permission to appeal the rulings on the compatibility 2017 and 2018 Information Sharing Agreements with relevant data protection legislation, on the disclosure of her bail conditions and that only nominal damages were awarded.\*

**Commentary**

This case raises significant issues in relation to how the police processes sensitive data belonging to minors and other vulnerable persons within the youth justice and wider criminal justice contexts.

This case is one of the first concerning the requirements of Part 3 of the Data Protection Act 2018 and the Law Enforcement Directive.

In granting permission, the Rt Hon Lady Justice Davies observed that the issues in the judgment were “finely balanced” and that clarifying the extent to which law enforcement agencies in the UK are required to adopt “specific safeguards in respect of the treatment of personal data of vulnerable natural persons, such as children” would be of “benefit to the parties and others”. \*\*

Questions about the case can be directed to Rachel Etheridge of MG&Co who acts for the Claimant. Eric Metcalfe of Monckton Chambers acts as Counsel.

Notes:

\*NB The Claimant has not appealed the ruling that her police station photograph was lawfully disclosed.

\*\* The Defendant has lodged an application for permission to launch a cross appeal against the High Court’s ruling that the Claimant’s exploitation risk was unlawfully disclosed. A decision on that application is awaited.