



JUDICIARY OF
ENGLAND AND WALES

IN THE CITY OF WESTMINSTER MAGISTRATES' COURT
NO: 011503187270

IN THE MATTER OF AN APPLICATION UNDER SECTION 1 OF
THE POLICE PROPERTY ACT 1897

LAURIE LOVE

CLAIMANT

AND

NATIONAL CRIME AGENCY

RESPONDENT

1. An application by the National Crime Agency (NCA) was heard on 12th April 2016 in which it asked the court to make a direction that the Claimant, Mr Love, provide the encryption key or password to the three encrypted items of hardware which are the subject of his application under the Police Property Act 1897 (PPA). The substantive hearing is listed on 28th July 2016.
2. The brief history of the case is as follows: On 24th October 2013 the Respondent, the NCA, was granted a search warrant to seize computers from Mr Love's home. The warrant relied upon to seize the computers was under section 1(1) and (3) of the Computer Misuse Act 1990. Mr Love was arrested, interviewed under caution and invited to provide the key or password and declined to do so. Mr Love was released on

bail. This ended in July 2014 when he was not charged with any offence. A number of items seized were returned; six items of hardware were not which are the subject of Mr Love's current application.

3. In February 2014 Mr Love was given notice that a disclosure requirement had been imposed on him pursuant to section 49 of Part III of the Regulation of Investigatory Powers Act 2000 (RIPA). The Central Criminal Court ordered him to provide the key or password. He did not comply and through his solicitors (on 7th February 2014) said he had "no information to give". The NCA did not enforce the notice.
4. In 2015 Mr Love applied to the Bury St Edmund's Magistrates' Court under section 1 PPA for the return of the property. That court made a direction that he provide the decrypted information. Mr Love failed to comply and withdrew his application.
5. In the current proceedings, on 2nd March 2016, the court directed Mr Love to submit a witness statement giving particulars of the contents of the files as part of the evidence in the statement in support of his PPA application. He provided an unsigned witness statement on 22nd March 2016 and has not provided the information directed. The NCA now applies for a direction that he supplies them with the encryption key or passwords in the interests of good case management. Mr Keith represented the Respondent and Mr Cragg QC and Mr Cooper represented the Claimant.
6. Both the NCA and Mr Love have provided skeleton arguments and I heard oral argument on 12th April which reflected that which is contained in the skeleton arguments.
7. Mr Love objects to the application under the court's case management powers on the basis that the correct application should be under RIPA and the direction sought circumvents that legislation, it is an improper use of the court's case management powers and breaches Mr Love's Article 1, Article 8, Article 1 Protocol 1 rights and section 3 of the Human Rights Act 1998 (HRA).
8. The court's case management powers for civil proceedings are set out in Rule 3A of the Magistrates' Court Rules 1981 SI 552 (as amended). The

NCA further relied on the amended Criminal Procedure (Amendment) Rules 2016 SI 120 which came into force on 4th April 2016. By Schedule 1 the Criminal Procedure Rules 2015 are amended to incorporate sub-rules relating to applications under the PPA. In its supplementary skeleton argument the NCA argues that the new provisions of the Criminal Procedure Rules (CPR) do not expressly purport to exclude those Rules in relation to applications under the 1897 Act and do not state that such applications are now considered to be a “criminal case” for the purpose of the rules but insofar as they are implied in that (a) the equivalent case management powers are to be found in rule 3.5 of the Crim PR 2015, the Crim PR 2015 which also includes an “overriding objective” in Rule 1 that cases should be dealt with justly and this includes dealing with the case “efficiently and expeditiously” and it is a feature of a fair trial that disclosure should, so far as it does not infringe other legislation or fundamental rights, permit a level playing field, so that each party can make informed submissions.

9. Mr Love’s submission is this adds nothing to the NCA’s submission. Section 3(a) is a procedural requirement and it is the attempted use of case management powers per se in order to gain access to seized encrypted data to which Mr Love objects and it is not necessary for the court to determine which set of rules apply to applications under section 1 PPA.
10. After reading the papers and hearing from the parties, I am not granting the application because in order to obtain the information sought the correct procedure to be used, as the NCA did 2 ½ years ago, is under section 49 RIPA, with the inherent HRA safeguards incorporated therein. Case management rules are necessary to fulfil their objectives which include the early identification of the real issues in the case and, as per the new CPR relating to applications under the PPA, the applicant to explain his interest in the property. The NCA submits this “lends some support to its submission that Mr Love should in this case be required to provide the encryption key or password as only thus will the court be able to adjudicate fairly upon the complete

contents of the devices” (paragraph 3 of supplementary skeleton argument dated 5th April 2016). I am not persuaded by this argument. The case management powers of the court are not to be used to circumvent specific legislation that has been passed in order to deal with the disclosure sought.

11. Finally, I would also add that this court has already directed Mr Love to give particulars of the contents of his files as part of the evidence as to ownership in a witness statement. The NCA accepts the case can be heard in July and they will invite the court to draw inferences (paragraph 24 of its skeleton argument dated 28th March 2016). .

District Judge (Magistrate’s Court) N Tempia
10th May 2016.

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