



25 March 2019

## PRESS SUMMARY

### **Jamaicans for Justice (Appellant) v Police Service Commission and another (Respondents) (Jamaica) [2019] UKPC 12**

*On appeal from the Court of Appeal of Jamaica*

**JUSTICES:** Lady Hale, Lord Kerr, Lady Black, Lord Lloyd-Jones, Lord Briggs

### **BACKGROUND TO THE APPEAL**

The issue arising on this appeal is what steps the Police Service Commission (PSC), the body charged with deciding on the appointment and promotion of police officers, should take to inform itself about officers recommended for promotion. In particular, is there a duty to ensure that allegations of extra-judicial killings against such an officer are fully and independently investigated before accepting a recommendation that he be promoted?

The issue arises in the context of the promotion of a particular officer, Superintendent (Supt) Hewitt, to the rank of Senior Superintendent. Jamaicans for Justice (JFJ), a non-governmental, non-partisan human rights organisation, raised complaints about fatal shootings by officers under Supt Hewitt's command with the PSC in July 2009 and asked what investigations there had been. The PSC sought a review of the allegations from the Commissioner of Police, who forwarded a brief report prepared by the Bureau of Special Investigations (BSI) of the Jamaican Constabulary Force (JCF). The PSC did not send the report to JFJ. JFJ raised further concerns about Supt Hewitt with the PSC in July and November 2010.

Shortly afterwards, the Commissioner advised the PSC that Supt Hewitt was being recommended for promotion, as an officer who had commanded challenging divisions and succeeded in reducing crime. The PSC requested a fatal incident report from the BSI. This contained particulars of 37 incidents involving Supt Hewitt, most of which were still under investigation. The PSC allowed extra time for its interview of Supt Hewitt, following which he was appointed acting Senior Superintendent while the PSC sought further information. JFJ expressed concern and sent the PSC a list of 28 complaints involving Supt Hewitt. In April 2011 the Director of Public Prosecutions reported that no charges would be brought in relation to the fatal incidents and the PSC recommended that Supt Hewitt be appointed a Senior Superintendent.

JFJ issued a claim for judicial review, seeking to quash the PSC's decision to recommend Supt Hewitt for promotion and to require it to conduct an effective and impartial investigation into the allegations of misconduct against him. Before the Court of Appeal the focus had shifted to requiring the PSC to cause such an investigation to be undertaken by INDECOM, the independent complaints commission set up under the Commission of Investigations Act 2010. The claims failed in the courts below.

## **JUDGMENT**

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeal should be allowed. Mr Hewitt has now retired so the quashing of the PSC's decision and requirement for reconsideration has become academic. Lady Hale gives the advice of the Board.

## **REASONS FOR THE JUDGMENT**

The purpose of setting up the PSC under s 129 of the Constitution of Jamaica is to insulate the JCF from political influence. When recommending officers for promotion, the PSC is governed by the Police Service Regulations 1961, which allow the PSC to consult with any public officer it considers proper and desirable and require the attendance of witnesses or production of documents. It has the power to call for a report from INDECOM. The issue is whether there is any duty, either at common law or under the Constitution, to make that inquiry before making a decision [17-20].

The PSC, like the JCF and INDECOM, must exercise its functions in a manner which is compatible with the fundamental rights of all persons, including the right to life, the right to equality before the law and the right to due process of law, guaranteed by section 13 of the Constitution [23]. The Board is disposed to accept that the right to equality before the law affords every person protection against irrationality, unreasonableness, fundamental unfairness or the arbitrary exercise of power. These are in any event fundamental common law principles governing the exercise of public functions, and applicable in this case irrespective of whether they have the status of a constitutional right [24].

The common law provides a straightforward answer to the question of whether the PSC gave proper consideration to the recommendation to promote Supt Hewitt, without exercising its powers to call for further inquiries, when it knew that serious allegations had been made against the officer and that no independent investigation had taken place. There was no statutory duty to do so, but a proper discharge of the PSC's functions did require it. While the level of serious violent crime in some parts of Jamaica was a grave concern, there was also a grave concern, both nationally and internationally, that some members of the JCF were overly inclined to take the law into their own hands in dealing with it, risking violations of the right to life, to due process of the law and to equality before the law of the people involved. Supt Hewitt was involved in a large number of fatal incidents and no independent investigation had taken place. The PSC had the power to ask INDECOM to investigate, and such an investigation might reveal a different picture from the brief information with which the PSC had been provided. The final decision would still be that of the PSC, but there was a reasonable prospect that a properly informed PSC might have made a different decision [27-28].

## **NOTE**

**This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: [www.jcpc.uk/decided-cases/index.html](http://www.jcpc.uk/decided-cases/index.html).**