

## **CCTV and ASB: Do Perpetrators have a Right to Privacy?**

The Court of Appeal has recently heard a case where the defendant argued that a breach of his injunction, proved by his neighbour's CCTV, breached his right to privacy. The Court of Appeal has dismissed this argument and decided that the right of the victim's respect for their private and family life, overwhelmingly outweighed the defendant's right to privacy.

### **Background of the Case**

In the case of *Molloy v BPHA Limited*, BPHA obtained a without notice injunction against Mr Molloy, following complaints of racist harassment against his neighbour. The victim installs CCTV and captures evidence of Mr Molloy's racist abuse. After receiving evidence that the injunction had been breached, BPHA began committal proceedings against Mr Molloy for breaching the injunction. The judge in the committal proceedings finds that a breach of the injunction did occur and imposed a suspended sentence.

Mr Molloy appealed that decision on a number of grounds, including that the injunction order disproportionately breaches his right to respect for his private life. In making the appeal, Mr Molloy's barrister referred to the GDPR, the Protection of Freedoms Act 2012, the Surveillance Camera Code of Practice, and guidance issued by the Information Commissioner about the use of CCTV in public spaces. However, the Court of Appeal dismissed this argument.

In dismissing the argument, the judge stated "...if there had been no history of anti-social behaviour, there would be no justification for this use of CCTV. But that is not the situation here and [Mr Molloy] has to take account of the effect of his behaviour on his neighbour, in the everyday and legal meanings of that word. His rights are not the only ones to be considered. I would accept that the entrance to one's home is an important area for most people and that the fact that it is a small area is not a complete answer...The Article 8 right of [the victim] and her family to respect for their family life overwhelmingly outweighs any considerations of privacy which [Mr Molloy] and his wife would normally be entitled to expect. It is not normal to be recorded by one's neighbour whenever one leaves or returns to one's home, but the circumstances here undoubtedly justified a departure from the norm."

### **Key Takeaways**

This case should give RPs some comfort from the position the Court of Appeal has taken in relation to the use of CCTV and anti-social behaviour. The court

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has been clear that there are circumstances where privacy intrusive CCTV will be justifiable such as for the prevention or detection of crime and anti-social behaviour and that there are circumstances where a victim's right to respect for their private and family life will outweigh a perpetrator's right to privacy.

For more information contact Bethany Paliga in our Housing & Regeneration department via email or phone on 01254 222347. Alternatively send any question through to Forbes Solicitors via our online Contact Form.

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