Neutral Citation Number: [2018] EWCA Civ 2837

Case No: C1/2017/2655

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
IN THE HIGH COURT OF JUSTICE ADMINISTRATIVE COURT
MRS JUSTICE MCGOWAN
[2017] EWHC 1878 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2018

Before :

LADY ARDEN
LADY JUSTICE SHARP
and
LORD JUSTICE COULSON

- -

Between :

The Queen on the Application of the Centre for Advice on Individual Rights in Europe	**Appellant**
- and -	
(1) The Secretary of State for the Home Department **(2) Commissioner of Police for the Metropolis**	**Respondents**

- -
- -

Dan Squires QC and Anita Davies (instructed by **Deighton Pierce Glynn**) for the **Appellant**
Jonathan Swift QC and Christopher Knight (instructed by **Government Legal Department)** for the **First Respondent**
Julian Milford (instructed by **MPS Directorate of Legal Services**) for **the Second Respondent**

Hearing date : 10 July 2018

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Approved Judgment

Lady Arden:

1. This is the judgment of the Court, to which all members have contributed.

A. OPERATION NEXUS

(1) Overview of Operation Nexus

2. This appeal, from the order dated 21 July 2017 of McGowan J, dismissing the application for judicial review of the Centre for Advice on Individual Rights in Europe (known as The Aire Centre), concerns Operation Nexus. The respondents are the Secretary of State for the Home Department and the Commissioner of Police for the Metropolis ("the MPS"). Operation Nexus is an operational and intelligence partnership for immigration enforcement set up between the Home Office and the MPS. The aim of this partnership is said to be to improve the management of, and responsiveness to, foreign national offending in London. It applies in London and certain other parts of England and Wales.

3. Operation Nexus is designed to establish whether or not a foreign national who is detained is lawfully in the UK. Foreign nationals may be from countries all over the world and be entitled to reside here under visas and so on.

(2) EU nationals' right to reside

4. Nationals of other member states of the EU may be here because they are exercising "Treaty rights", that is, their right as EU citizens as conferred by EU law to take up work in the United Kingdom and reside. But Treaty rights are not unqualified. For instance, under Article 7 of Directive 2004/38/EC ("the Citizenship Directive") all EU citizens shall have the right of residence on the territory of another member state for a period of longer than three months if they: (a) are workers or self-employed persons in the host member state; or (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host member state during their period of residence and have comprehensive sickness insurance cover in the host member state; or (c) are students, with comprehensive sickness insurance and sufficient resources. So Article 7 lays down conditions which EU citizens must satisfy in order to be able to reside in the UK. These restrictions apply also to EEA nationals who are not EU citizens, and references below to EU nationals therefore include EEA nationals.

(3) Checking whether an EU national is entitled to reside in the UK

5. Operation Nexus is designed to check that foreign national offenders are entitled to be here.

6. However, the Citizenship Directive does not allow EU nationals to be needlessly pursued for information about their entitlement to reside in the UK. The steps which a member state may take to check an EU citizen's right to reside here are governed by Article 14(2) of the Citizenship Directive, which provides:

> (2) Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.
>
> In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.

7. Article 27(2) of the Citizenship Directive can be contrasted with Article 14(2). It provides for administrative removal where it would be contrary to public policy for an EU citizen from one member state to reside in another member state. Again, there is a prohibition in that Article on asking questions routinely, for example, of the member state of origin but there is no mention of having to show "reasonable doubt" first. This provides a measure of support for the view that Article 14(2) is designed to protect individuals from being harassed by requirements to produce information about their right to reside. Neither Article 14(2) nor Article 27(2) applies to persons who are not EU nationals.

8. The UK implemented Article 14(2) of the Citizenship Directive by Regulation 20B of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") (now re-enacted so far as material in Regulations enacted in 2016), which provides:

> **20B.— Verification of a right of residence**
>
> (1) This regulation applies when the Secretary of State—
>
> > (a) has reasonable doubt as to whether a person ("A") has a right to reside under regulation 14(1) or (2); or
> >
> > (b) wants to verify the eligibility of a person ("A") to apply for documentation issued under Part 3.
>
> (2) The Secretary of State may invite A to—
>
> > (a) provide evidence to support the existence of a right to reside, or to support an application for documentation under Part 3; or
> >
> > (b) attend an interview with the Secretary of State.
>
> (3) If A purports to be entitled to a right to reside on the basis of a relationship with another person ("B"), the Secretary of State may invite B to—

> (a) provide information about their relationship with A; or
>
> (b) attend an interview with the Secretary of State.
>
> (4) If, without good reason, A or B fail to provide the additional information requested or, on at least two occasions, fail to attend an interview if so invited, the Secretary of State may draw any factual inferences about A's entitlement to a right to reside as appear appropriate in the circumstances.
>
> (5) The Secretary of State may decide following an inference under paragraph (4) that A does not have or ceases to have a right to reside.
>
> (6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.
>
> (7) This regulation may not be invoked systematically.
>
> (8) In this regulation, "a right to reside" means a right to reside under these Regulations.

9. Regulation 14(1) (referred to in Regulation 20B) states that a "qualified person" is entitled to reside in the United Kingdom for so long as he remains a qualified person. Under Regulation 6, a "qualified person" means (with certain exceptions) an EEA national who is in the UK as a jobseeker, a worker, a self-employed person, a self-sufficient person or a student.

(4) Interaction between Article 14(2) and Operation Nexus

10. So Operation Nexus has had to take into account the requirements of the Citizenship Directive. The part of Operation Nexus which needs to be examined on this appeal is "the custody strand." The custody strand deals with the identification of the immigration status of foreign nationals who have been arrested and are in custody. The custody strand has nothing to do with the decision to detain a person in the first place, save in the case of some offences with which this appeal is not concerned.

11. Under Operation Nexus, foreign nationals who have been arrested will routinely be asked questions, either by immigration officials or, if those officials are not available, by the police, about their nationality and about the basis on which they are exercising their Treaty rights. Immigration officers have provided the MPS with a list of questions which it might be useful for police officers to ask in this situation. The law does not require the detained individual to answer these questions, but at the same time it appears that no such person is routinely advised that he need not answer or that there is no sanction if he does not answer.

12. Any information which a detained person provides is checked against other information in the Secretary of State's control in order, in particular, to ascertain whether the person is subject to immigration control or is liable to enforcement action.

It may turn out that there is no relevant information held by the Secretary of State, especially if the individual is exercising Treaty rights.

13. Michelle Louden, Assistant Director for Operations Nexus Custody Team, explains in her witness statement that questions may be put to an EEA national relevant to the reasons why that person is present in the UK. She further explains that, if the immigration officials are not satisfied about a foreign national's entitlement to reside, they may cause to be issued by the Home Office a "minded to remove" letter. This will indicate that the detained person is not considered to be entitled to reside in the UK, and invite him to attend an interview under Regulation 20B. If the immigration officer decides that the individual is not entitled to reside in the UK, he will seek approval for the issue of papers informing the individual of their liability to removal. There are a number of safeguards in that process, including a right of appeal.

B. THE ISSUES TO BE DETERMINED

14. The first issue we have to decide is whether the Judge was right to hold that the prohibition on systematic verification in Article 14(2) of the Citizenship Directive was not infringed by Operation Nexus.

15. That leads to the second issue, which is whether it is outside the police functions to ask those questions.

C. ISSUE 1: DOES OPERATION NEXUS INFRINGE ARTICLE 14(2) OF THE CITIZENSHIP DIRECTIVE?

(1) Submissions on the first issue

16. Mr Dan Squires QC, for the appellant, submits that Article 14(2) in terms permits questioning of an EU national only if there is some pre-existing reasonable doubt about an EEA national's entitlement to reside in the UK. Otherwise the questioning is systematic verification for the purposes of that Article and unlawful. Mr Squires gives the example of the case of a particular group of people selected for questioning, as in *R (Gureckis) v Secretary of State for the Home Department* [2018] 4 WLR 9, [119] to [123], where Lang J held that for the Home Office routinely to seek proof of entitlement to reside from people sleeping rough was systematic verification and therefore unlawful. The judge held that foreign nationals who were sleeping rough were presumed to be abusing their EEA rights of residence by sleeping rough.

17. Mr Squires submits that the word "systematic" in Article 14(2) means according to a plan or system, and that it is not in dispute that Operation Nexus was such a plan. He submits that Operation Nexus is being used to establish that there is reasonable doubt. Under it, questions are asked by the police officer when there is no reasonable doubt about the person's entitlement to reside. (This may be so in most, but not necessarily all, cases.) Mr Squires further submits that "verification" in Article 14(2) means checking or finding out whether a person (in the case of an EEA national) is exercising Treaty rights. Regulation 20B presupposes the existence of a prior reasonable doubt and any questioning in advance of that is unlawful.

18. Mr Squires accepts that there is no need for authority in the Citizenship Directive to gather certain information. Simply asking questions about a person's name and their

reasons for being in the United Kingdom are in order, provided that they are not a part of a process of verification of entitlement to reside. Mr Squires' challenge is to the checking of the right to reside, which he submits amounts to verification. He accepts that his interpretation means that a state is unable to check whether a person is properly exercising Treaty rights even though the Citizenship Directive contains a conditional right of residence only on that person. The member state has to wait until it has reasonable doubt in some other way before checking the material.

19. In C-308/14 *Commission v UK* [2016] 1 WLR 5049, the Court of Justice of the European Union ("CJEU") held that it was lawful to restrict certain benefits to those who have a right to reside. It then had to decide whether it was lawful for the UK to require claimants for the relevant benefits who were foreign nationals routinely to provide information about the basis of their residence, or whether such a requirement breached the prohibition on systematic verification in Article 14(2) of the Citizenship Directive. The CJEU held that it was not unlawful to require claimants in that case to provide information in their application.

20. Mr Squires seeks to distinguish this case on the ground that Advocate General Cruz Villallon there equated checks with verification. He cites paragraph [93] of his Opinion:

> 93. It is apparent from the statements made by the United Kingdom during the hearing that checks on whether claimants satisfy the conditions laid down in Directive 2004/38 to be granted the right of residence are not carried out in every single case, something which, in my view, is prohibited by Article 14(2) of that directive: although all persons claiming the social benefits at issue) must provide, in the appropriate form, information which may be used to determine whether they have a right of residence in that Member State, it is only in cases of doubt, as the United Kingdom stated in paragraph 21 of its rejoinder and which it confirmed during the hearing, that the UK authorities will carry out the necessary checks to ascertain whether or not the claimant fulfils the requirements of Directive 2004/38 (in particular Article 7 thereof), that is to say, whether he has a right of residence under that directive.

21. Mr Squires submits that the CJEU accepted this distinction.

22. In short, Mr Squires submits that that his interpretation fits with the language and that it is linguistically correct. He also submits that his interpretation fits with the overall purpose which is not to subject any person to a process of verification without justification. Simply asking questions would not amount to a breach of the prohibition on systematic verification. If the Court is in any doubt about the appellant's interpretation of Article 14(2) then, submits Mr Squires, it should make a reference to the CJEU for a preliminary ruling.

23. Mr Jonathan Swift QC, for the Secretary of State, submits that, viewed in context, Article 14(2) is concerned with the requirement on the person to provide proof of compliance with any conditions of residence, such as the Article 7 conditions. He submits that this is established by the judgment of the CJEU in *Commission v UK*. The CJEU clearly distinguished simple information gathering from verification. The CJEU held:

> 83. It is apparent from the observations made by the United Kingdom at the hearing before the Court that, for each of the social benefits at issue, the claimant must provide, on the claim form, a set of data which reveal whether or not there is a right to reside in the United Kingdom, those data being checked subsequently by the authorities responsible for granting the benefit concerned. It is only in specific cases that claimants are required to prove that they in fact enjoy a right to reside lawfully in United Kingdom territory, as declared by them in the claim form.
>
> 84 It is thus evident from the information available to the Court that, contrary to the Commission's submissions, the checking of compliance with the conditions laid down by Directive 2004/38 for existence of a right of residence is not carried out systematically and consequently is not contrary to the requirements of Article 14(2) of the directive. It is only in the event of doubt that the United Kingdom authorities effect the verification necessary to determine whether the claimant satisfies the conditions laid down by Directive 2004/38, in particular those set out in Article 7, and, therefore, whether he has a right to reside lawfully in United Kingdom territory, for the purposes of the directive.

24. Mr Swift submits that Advocate General Cruz Villalon, came to the same conclusion at [93] (see paragraph 20 above). Only that part of the procedure whereby foreign national claimants were put to proof was verification for Article 14 purposes.

25. Additionally, submits Mr Swift, the appellant takes no account of Regulation 20B. However, Mr Swift's reason why this Regulation is significant is that is that there has been no suggestion from the Commission that this Regulation is defective, and he rightly accepts that this is a "bootstraps" argument. We agree. This argument is not positive external evidence of support for the UK government's position.

26. Mr Swift submits that *Gureckis* is distinguishable because in that case the policy was targeted at a particular group. It was concerned with more than the anterior questioning stage. Lang J was entirely right to focus on the blanket nature of the policy. That case he submits does not detract from what was decided in *Commission v UK.*

27. Mr Swift submits that this Court has to adopt a purposive approach to interpreting Article 14(2). It makes "entire sense" to be able to ask questions of a person about the basis of his residence in the UK. This is intrusive but it is distinct from the gathering of data by the Secretary of State. The bar on systematic verification is to prevent harassment of people exercising Treaty rights.

28. In reply, Mr Squires submits *Commission v UK* is distinguishable because the group applying for a benefit was self-selecting. He submits that "verification" does not require limitation to a stage where a party is put to proof. That is not its ordinary meaning. The meaning which he urges is he submits both contextual and linguistic. Moreover, he submits, it is entirely artificial to require people to prove their case if

they have failed to give rise to a reasonable doubt. He accepts that some inquiries are lawful but his case is that checking information is not. He accepts that that means that member states cannot use the information they obtain.

(2) Our conclusions on Ground 1

29. The judge's view was that the process of verification for the purposes of the Citizenship Directive began once the initial questioning had thrown up reasonable doubt as to the EU citizen's right to reside in the UK (judgment, [23]). She rejected the argument that the initial or anterior questioning was unlawful verification under Article 14(2) of the Citizenship Directive.

30. We agree. In our judgment, this conclusion follows from the decision of the CJEU in *Commission v UK*. We accept Mr Swift's submission that the CJEU concluded that merely asking for information was not unlawful systematic verification. The process of gathering information is therefore separate from the process of verification which, if systematic, is prohibited by Article 14(2). We do not accept Mr Squires' submission that the Advocate General had come to any different conclusion on this point.

31. Moreover, the appellant's argument has to be rejected because the consequences are absurd. As the Secretary of State submits, Mr Squires' interpretation makes Article 14(2) unworkable, and there is no logic in prohibiting the state from not being able to use information which it has obtained. If the appellant were right, the member state would be able to check whether an EU citizen is entitled to reside here only when evidence has already become available to raise doubts about this. In those circumstances it is inappropriate to apply simply a linguistic approach as the appellant seeks to do.

32. We would accordingly dismiss the appeal on Issue 1.

D. ISSUE 2: CAN THE POLICE LAWFULLY ASK ARRESTED PERSONS ABOUT THEIR IMMIGRATION STATUS?

33. The judge decided it was not unlawful for police officers (rather than Immigration Officers) to pose the questions drafted by the Secretary of State, of detainees, under the custody element of Operation Nexus. She accepted there was no statutory power to ask such questions, but held that the police had a common law power to question those in detention. The judge gave two succinct reasons for this conclusion, at paragraphs 31 and 32 of her judgment:

> "31. It is axiomatic that police powers under common law or otherwise only subsist where exercised lawfully. It follows that a police officer can ask questions which a member of the public or an IEO [Immigration and Enforcement Officer] could lawfully ask. In this case an IEO can and often does ask the questions listed of an arrested person…The questions need not be asked by a police officer qua police officer in order to be asked lawfully.
>
> 32. In any event, the ambit of policing purposes is not confined to the investigation of crime or maintenance of public order and must encompass the power of a police officer to ask questions in order to

> provide the answers to the SSHD whose functions include the proper enforcement of immigration law. Even if the lawfulness of the posing of a question is determined by the status of the questioner, it cannot be the case that the question is not lawful because the posing of the question is not for a policing purpose."

(3) Submissions on Ground 2

34. Mr Squires accepts that a member of the public can lawfully approach and question anyone they want to on any topic for any purpose, subject to the laws governing harassment or public order. But, he submits, it is a *non sequitur* to hold that a police officer can do likewise. Instead, he argues it is clear from the authorities, in particular *Steel v Goacher* [1983] RTR 98 and *Collins v Wilcock* [1984] WLR 1172, that a police officer's common law powers must be used to fulfil their duties and obligations as a police officer, and this is not what occurs in relation to the questioning undertaken here. Operation Nexus involves police officers interviewing individuals in police custody, when the purpose of doing so is not to discharge a police function, or to fulfil a police duty (such as keeping the peace, preventing crime, or bringing offenders to justice). He accepts it may be lawful for the police to question members of the public for non-police purposes, provided the police do not purport to exercise police powers or appear to be exercising some formal policing function when they do so.

35. In the latter context, Mr Squires submits there is an obvious risk that those in detention will perceive the questioning to be coercive, because of the identity of those asking the questions. The questioning occurs without any of the protections set out in the Codes to the Police and Criminal Evidence Act 1984 (PACE). Further, the detained person might not be told that the questioning is not part of a criminal investigation, or that there is no obligation to answer the questions, or that their answers may be used to facilitate their removal from the United Kingdom.

36. Mr Squires submits there is no authority to support the further proposition apparently accepted by the judge (at paragraph 32 of her judgment) that it is part of the "duties and obligations" of the police to provide general assistance in the enforcement of non-criminal immigration law; and he says it is an error to conclude that the police can question those in detention in order to gather information to assist the Secretary of State because it is part of the Secretary of State's function to enforce immigration law.

37. Mr Milford on behalf of the MPS, supported by Mr Swift, submits the judge's conclusions below are correct and there is nothing in the case law on which the appellant relies that puts this in doubt. Police officers have the same powers and rights as any other natural person, including the power of non-coercive questioning. Such questioning need not be for "police purposes" to be lawful. In any event, assisting Home Office Immigration Enforcement (HOIE) officers in the enforcement of immigration law is, properly viewed, a "police purpose".

(4) Our conclusions on Ground 2

38. In our judgment, the judge's conclusions on Ground 2 were correct. Put simply, the judge was correct to hold that police officers do have power at common law to ask questions of individuals and provide the answers to the Secretary of State in order to

assist him in the exercise of his governmental function of enforcing immigration law. There are, as the judge found, two reasons for this. First, as a matter of capacity, a police office has the power to do anything an ordinary citizen can do, including non-coercive questioning of a person in custody; secondly, and in any event, the questioning is for a police purpose.

39. On the first point, a police force is no more nor less than a number of police officers each of whom has the same powers and rights as an ordinary citizen, so they may, as a matter of *vires*, do anything that a natural person could do without the use of coercive powers, including asking questions that a member of the public could lawfully ask. It is true that police officers have particular duties and obligations, and have powers *additional* to those of members of the public and specific to their office that "authorise" the police to do things that would otherwise be unlawful. However, in our judgment, these duties and powers do not constrain or restrict the powers and rights police officers have as ordinary citizens.

40. We do not accept, as Mr Squires submits to be the case, that it follows from this line of reasoning, that the police are effectively given free rein to ask whatever questions they like, in any circumstance, for any purpose they choose, subject only to the general constraints of the criminal law, on matters such as harassment. The police, like any other public body, are subject to the constraints of public law; they must therefore act reasonably, and in good faith and in accordance with any other public law duties. What they do not have to do however is to find some specific police power to enable them to do something ordinary citizens can do. Nor do we accept that the principle that public bodies must exercise their powers for the purposes for which they are conferred is engaged on the facts. Mr Milford submits, and we agree, that this case does not concern any specific statutory power conferred upon the police. The issue is a different and anterior one, namely whether the police can exercise the same non-coercive rights and powers as any other natural person.

41. If authority is needed for the principle adumbrated at para 39 above, and for the further point that the additional authority given to an officer by his or her uniform does not alter the position,[1] it can be derived from the decision in *Collins v Wilcock.* In that case, the Divisional Court (Robert Goff LJ and Mann J) allowed an appeal by way of case stated by the defendant against her conviction for assaulting a police constable in the execution of her duty, contrary to section 51(1) of the Police Act 1964. The defendant appeared to the officers observing her to be soliciting men in the street; she refused to get into the police car or to answer questions, and when the woman police officer took hold of her arm, scratched the woman police officer with her fingernails. It was held that where a police officer without exercising his power of arrest, reinforced his request to detain a person with the actual use of force or with the threat, actual or implicit, to use force, the act of detention was unlawful.

42. At p.1178D-H Robert Goff LJ said:

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[1]It is to be noted that a power is not coercive because a member of the public feels obliged to comply with it, but because a penalty can be imposed for a refusal to comply: see *R (Rutherford)* v *IPCC* [2010] EWHC 2881 (Admin) at [16].

> "…Of course, a police officer may subject another to restraint when he lawfully exercises his power of arrest; and he has other statutory powers…But, putting such cases aside, police officers have for present purposes, no greater rights than ordinary citizens. It follows that, subject to such cases, physical contact with another person may be unlawful as a battery, just as it might be if he was an ordinary member of the public. But a police officer has his rights as a citizen, as well as his duties as a policeman. A police officer may wish to engage a man's attention, for example if he wishes to question him. If he lays his hand on the man's sleeve or taps him on the shoulder for that purpose, he commits no wrong…A police officer has no power to require a man to answer him, though he has the advantage of authority, enhanced as it is by the uniform which the state provides and requires him to wear, in seeking a response to his inquiry. What is not permitted, however, is the unlawful use of force or the unlawful threat, actual or implicit, to use force; and, excepting the lawful exercise of his power of arrest, the lawfulness of a police officer's conduct is judged by the same criteria as are applied to the conduct of any ordinary citizen of this country."

43. Goff LJ went on to say at p.1180F-H:

> "…[I]t is a commonplace of ordinary life that one person may request another to stop and speak to him; if the latter complies with the request, he may be said to do so willingly or unwillingly, and in either event the first person may be said to be "stopping and detaining" the latter. There is nothing unlawful in such an act. If a police officer so "stops and detains" another person, he in our opinion commits no unlawful act, despite the fact that his uniform may give his request a certain authority, and so render it more likely to be complied with. But if a police officer, not exercising his power of arrest, nevertheless reinforces his request with the actual use of force, or with the threat, actual or implicit, to use force if the other person does not comply, then his act in thereby detaining the other person will be unlawful."

44. A useful example having regard to the facts of this case, of the (implicit) operation of the principle, can be found in the approach taken to the sharing of information by the police with other public bodies. In the case of *Woolgar v Chief Constable of Sussex Police* [2000] 1 WLR 25 for example, the Court of Appeal dismissed the appeal of a matron, who sought to restrain the police on grounds of confidence from providing the transcript of her interview under caution in relation to the death of a patient in her care, to her regulatory body, who had contacted the police for relevant information. The focus of the court's analysis was not on the scope of police powers to make the disclosure or whether this was or was not a police function. It was on whether the disclosure was in the public interest, and on the function of the other public body to which information was to be disclosed. Kennedy LJ, with whom Otton and Waller LJJ agreed, said this at para 9:

> "in my judgment, where a regulatory body such as U.K.C.C., operating in the field of public health and safety, seeks access to confidential material in the possession of the police, being material which the police are reasonably persuaded is of some relevance to the subject matter of an

> enquiry being conducted by the regulatory body, then a countervailing public interest is shown to exist which, as in this case, entitles the police to release the material to the regulatory body on the basis that save in so far as it may be used by the regulatory body for the purposes of its own enquiry, the confidentiality which already attaches to the material will be maintained…
>
> Even if there is no request from the regulatory body, it seems to me that if the police come into possession of confidential information which, in their reasonable view, in the interests of public health or safety, should be considered by a professional or regulatory body, then the police are free to pass that information to the relevant regulatory body for its consideration."

45. In our view, the decision in *Steel v Goacher*, to which Mr Squires attaches some significance, takes the appellant's case no further. The defendant in that case was convicted of driving a motor vehicle whilst over the prescribed limit for alcohol, and appealed *inter alia* on the ground that, in requiring him to stop as part of a random crime check, the police officers were not acting in execution of their duty. The Divisional Court (Griffiths LJ and Forbes J) dismissed the appeal. It held that when the police officer required the defendant to stop, he acted under his duty to detect and prevent crime at common law. The duty necessarily entailed the power to make reasonable enquiries of members of the public. The point at issue was thus whether police powers to stop a driver and require him to take a breath test were used lawfully in the course of police duties. The case was not about, nor did it address, the point which arises here, that is whether police officers have the powers of ordinary citizens to carry out "non-policing" functions (as Mr Milford puts it, the case cannot be used to establish a proposition that did not arise and it did not address).

46. We turn next to whether the questioning undertaken here is for a police purpose.

47. There has never been any exhaustive definition of "police purposes" (see for example, the observations of Lord Parker CJ in *Rice v Connolly* [1966] 2 QB 414 at p 419 B-C and *R v Waterfield* [1964] 1 QB 164); and the breadth and flexible nature of such purposes can be seen in ACPO's Statement of Common Purpose and Values for the Police Service (adopted by the Service in 1990):

> "The purpose of the police service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; and to keep the Queen's Peace; to protect, help and reassure the community; and to be seen to do all this with integrity, common sense and sound judgment."

48. Two points about the particular factual context of this case should be noted. First, when a person is taken into custody at a police station, the custody officer will, as a matter of course, seek to ascertain their nationality. This is necessary, not least because a detainee who is foreign national is entitled to be informed as soon as possible about their rights of communication with their High Commission or Consulate: see para 3.12A of PACE, Code C.

49. Secondly, as Mr Milford points out, immigration enforcement and police action in relation to illegal immigrants do not exist in hermetically sealed compartments.

50. There is nothing surprising about this. The Immigration Act 1971 (the 1971 Act) gives the police an important role in immigration enforcement: and the police and HOIE officers have extensive powers of arrest, entry and search under Schedules 2 and 3 of the 1971 Act to support the administration of immigration control. Under Operation Nexus, a person in custody identified as a possible foreign national will be referred to HOIE to assess their immigration status. If it appears that they may have committed an immigration offence, HOIE may pass the matter back to the police for further action, or deal with the matter itself using its immigration powers. Further, parallel systems of criminal and administrative sanctions exist for certain persons subject to immigration control, and a case might give rise to immigration enforcement by the HOIE and/or to action by the police: see section 28 of the 1971 Act.

51. As already indicated, for the purposes of the custody strand of Operation Nexus, the task of questioning suspects on their immigration status is normally undertaken by an HOIE official; but occasionally, where no such official is available, the HOIE Command and Control Unit (the CCU) will ask that a police officer carries out that task.

52. Against that legal and factual background, we are content to adopt the reasons given by the respondents for concluding that questioning of detainees on their immigration status is a police purpose. First, ensuring immigration rules are applied to foreign national offenders upholds the law and protects the community. Secondly, ensuring HOIE is able to carry out its functions and duties is an important facet of "joined up government". As Blake J said in his permission decision in this case: "there is a public interest in joined up government, mutual exchange of relevant data and speed in information gathering for informed decisions to be made." That function may therefore be seen as a police function, in circumstances where HOIE itself has important duties in the enforcement of immigration law. Thirdly, the police are obliged to ask questions about a detainee's nationality to ensure they have the assistance and information that they need (see para 48 above); it would be artificial to separate out the legitimacy of questions about such matters in those circumstances. Fourthly, the police have an important role to play in immigration enforcement in any event (see para 50 above). Assisting in immigration enforcement is therefore an important aspect of the duties that the police already undertake. Fifthly, the police have an obvious interest in knowing whether immigration enforcement action may follow in respect of a person in custody; it may, for example, be relevant to a decision to prosecute in circumstances where an overstayer is liable to immediate removal. Finally, there is no dispute that immigration officers may ask such questions; it would indeed be odd and artificial if the police were unable to engage in the same (non-coercive) questioning that HOIE officers, who attend in uniform, could, undertake if they were there.

53. It follows that we would also dismiss the appeal on Ground 2, and that this appeal must be dismissed.