



Neutral Citation Number: [2023] EWCA Civ 66

Case No: CA-2022-001565

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)
ADMINISTRATIVE COURT
THE HON. MRS JUSTICE LANG
[2022] EWHC 1852 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2023

Before :

LORD JUSTICE BEAN
LADY JUSTICE THIRLWALL
and
LADY JUSTICE NICOLA DAVIES

Between :

**R (on the application of
RONALD PHILPOT)**

Appellant

- and -

**THE COMMISSIONER OF POLICE OF THE
METROPOLIS**

Respondent

Kevin Baumber (instructed by **Hempsons**) for the **Appellant (Claimant)**
Stephen Morley (instructed by **Metropolitan Police Service Directorate of Legal Services**)
for the **Respondent (Defendant)**

Hearing date: 19 January 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Bean :

1. The Appellant PC Ronald Philpot, a serving police officer in the Metropolitan Police Service, challenges the lawfulness of a restriction on contact with his wife Kim Philpot, which has been imposed upon him by the Respondent following allegations of domestic violence and abuse which are currently the subject of police misconduct proceedings. In its present form the restriction requires the Appellant to have "no direct or indirect contact with Kim Philpot, unless it is required by the family court, or for child care matters which are to be via a third party", until the conclusion of the misconduct case.
2. PC Philpot applied for judicial review of the restriction. Permission was granted on the papers by Calver J. By a reserved judgment handed down on 19 July 2022, Lang J ("the judge") found that the restriction had been imposed unlawfully in one respect but refused relief on the basis that the same restriction could have been imposed lawfully. PC Philpot appeals pursuant to permission granted by the judge herself.

The facts

3. Lang J set out at paragraphs 10 to 31 of her judgment a statement of agreed facts which was placed before her and which I reproduce here with only minor amendments.
4. On 27 July 2016 Mrs Philpot called '999' to report an incident of domestic violence and the Appellant was arrested. Ultimately Mrs Philpot did not support further action, so none was taken.
5. On or about 5 July 2017, Mrs Philpot reported that both she and her young son had been assaulted by the Appellant. The matter was investigated by Cambridgeshire Police, but no further action taken.
6. On 22 September 2020, Mrs Philpot telephoned '101' and reported years of domestic abuse by the Appellant to Bedfordshire Police. Mrs Philpot provided a statement on the same day, in which she described abusive behaviour in June and July 2016; an assault in July 2017; an assault on 31 March 2018 and abusive behaviour on 16 August 2020 and 21 September 2020.
7. On 23 September 2020, the Appellant was arrested at his mother's house by officers from Hertfordshire Police, on suspicion of committing coercive and controlling behaviour in relation to his wife; sending malicious communications to his wife; and common assault on his wife and son. He denied all the allegations in interview.
8. The Appellant was granted bail on 24 September 2020, and an extension was granted on 12 October 2020, until 23 December 2020. He was subject to the following bail conditions:
 - i) "Not to contact directly or indirectly or via 3rd party or any social media Kim PHILPOT";
 - ii) "Not to contact [Kim PHILPOT] to make arrangements for child contact of Children save through Social Services or a responsible 3rd party";

iii) "Not to go to [the address of the family home]".

9. On 30 November 2020, Mrs Philpot provided a further statement in which she gave further information about alleged abusive behaviour by the Appellant in 2018 and 2020.
10. On 13 January 2021, an application to extend bail was granted only until 23 March 2021.
11. On 19 March 2021, the Crown Prosecution Service advised there should be no further action in relation to the criminal allegations, at which point the bail conditions expired.

Misconduct Investigation

12. On 2 October 2020, DC Deans was allocated as the investigating officer for the professional misconduct investigation.
13. On 4 October 2020, the Claimant was given statutory notice under the Police (Complaints and Misconduct) Regulations 2020 that an allegation had been made that his conduct may have amounted to a breach of the Standards of Professional Behaviour, sufficiently serious as to justify disciplinary action, and that he would be subject to an investigation. The terms of reference for the investigation were Mrs Philpot's allegations of coercive and controlling behaviour; malicious communications and common assault. He was notified that the misconduct investigation would be suspended pending the outcome of the criminal investigation.
14. In a National Police Chiefs' Council ("NPCC") Officer's Decision dated 20 October 2020, Commander Betts decided that:

"Options of alternatives to suspension considered

It is not considered appropriate or proportionate to suspend PC Philpot at this time. The officer can be effectively managed by their SLT by restricting their duty.

It is necessary and in the public interest to remove from normal duty because

The MPS and public expect that police officers conduct themselves with professionalism whether on or off duty. It is alleged that the behaviour of this officer has fallen below the standards expected of a serving officer.

It is not appropriate to remove the officer from normal duty because

N/A

Conditions to be imposed on the officer and rationale

PC Philpot is subject to criminal allegations of Coercive & Controlling Behaviour, Malicious Communications, and Common Assault and breaches of the Standards of Professional Behaviour in respect of Discreditable Conduct. Since 2016, PC Philpot is alleged to have subjected his partner and children to hostile and violent behaviour. This is alleged to have been in the form of threatening and abusive outbursts/insults towards family members, phone messages to his partner, psychological abuse concerning domestic matters, and physical assaults.

I have reviewed the circumstances of the allegations against PC Philpot. In my assessment of the risks, PC Philpot has demonstrated alleged criminal and unprofessional behaviour. I am of the opinion that these risks require management to ensure public and stakeholder confidence, and organisational confidence of officers and staff within the MPS. I consider placing PC Philpot on restricted duties ensures appropriate management of these risks.

It is directed that PC Philpot be placed on restricted duty subject to the following conditions:

- To work within the confines of a police building under supervision.
- To have no involvement in any matters concerning domestic matters or domestic violence.
- **To have no direct or indirect contact with Kim Philpot.** [emphasis added]
- To work in despatch only, only communicating with officers and staff via the P/R.
- No working in first contact.

...

The decision to restrict PC Philpot's duties will be reviewed on receipt of any further significant update."

15. The third bullet point above, described in argument before the judge as "Restriction 3", was the first iteration of the prohibition which is the subject of this litigation. The first, second, fourth and fifth bullet points were restrictions on PC Philpot's duties which are not challenged. They had the effect that he only worked in the control room, and had no contact with members of the public, including his wife, in the course of his duties.
16. The decision was accompanied by an Explanatory Note titled "Restricted Duty" which read as follows:

"This form is to be served upon any officer where authority has been granted by the Director of Professional Standards to restrict their duties while they are subject to a misconduct investigation. Further details regarding Restricted Duty in this context can be found in the "Suspension of Police Officers Toolkit - Q&As" on the MPS Intranet.

....

Restricted duty is not defined within the Police (Conduct) Regulations 2020, but is consistent with a 'temporary redeployment to alternative duties or an alternative location as an alternative to suspension' (see Regulations 11(4)(a) of the Police (Conduct) Regulations 2020). Restricted duty does not therefore amount to suspension. It is important to note therefore that an officer subject to restricted duties will retain both their warrant cards and the powers and duties of a constable. The restriction from certain duties will be bespoke to the situation, reflecting the MPS' concerns regarding the conduct being investigated and the need to ensure that public confidence is maintained.

Being placed on restricted duties is not a misconduct outcome nor is it a presumption of guilt or a predetermination of the outcome of an investigation.

The officer's welfare will be a consideration in the decision to restrict and the boundaries to impose. Subject to the integrity of the investigation a restricted officer will be provided with details of the restriction and its rationale, in writing (see below). A restriction may, for example, specify that the officer will be employed in some other Operational Command Unit, or branch, other than their home BCU/OCU.

The circumstances of officers placed on such restricted duties will be reviewed should there be any significant change in circumstances or where a request is made by the officer concerned or their representative. Officers will be informed of the outcomes of such reviews in writing.

The term 'Restricted Police Duty' can have a number of separate meanings within MPS databases; this guidance relates only to those officers whose duties are restricted following service on them of a Notice of Investigation under the Regulation 15 Police (Conduct) Regulations 2020 or Regulation 16 Police (Complaints and Misconduct) Regulations 2020 (or superseded versions of those regulations as the case may be).

Whilst on such restricted duties officers will receive pay at the rate which applied at the time of restriction...."

17. On 20 November 2020, the Appellant asked for Restriction 3 to be varied because he was due to attend the family court on 1 December 2020 and would thus be in contact with his wife. On 26 November 2020 Restriction 3 was amended by Commander Betts so as to provide that the Appellant was "to have no direct or indirect contact with Kim Philpot unless it is required by the family court".
18. Following a query from DC Deans, on 25 March 2021, Mrs Philpot told DC Deans that there was no need for the Appellant to contact her, that his mother was assisting with childcare arrangements, and that she would like Restriction 3 to remain in force (there no longer being any bail conditions in place).
19. On 1 April 2021, a review of the restrictions was conducted by Detective Chief Superintendent Holdcroft, who determined that the restrictions should remain in force pending any further update regarding the misconduct investigation.
20. On 29 April 2021, Mrs Philpot notified DC Deans that the Appellant had breached Restriction 3 by sending her an email. As this was the first breach of Restriction 3 the Appellant was reminded of the restrictions and no further action taken.
21. On 4 June 2021 a further review of the restrictions was conducted by DCS Holdcroft. On 7 June 2021, the Appellant was notified that Restriction 3 had been amended to require him:

"To have no direct or indirect contact with Kim Philpot, unless it is required by the family court, or for child care matters which are to be via a third party."
22. On 22 June 2021, the Appellant requested an amendment to Restriction 3 because he had not seen his children for some time. On 4 July 2021, DCS Donna Smith decided to maintain Restriction 3, for the following reasons:

“Reasons for continued restriction.

PC Philpot was subject to criminal allegations of Coercive & Controlling Behaviour, Malicious Communications, and Common Assault and remains subject to allegations of breaches of the Standards of Professional Behaviour in respect of Discreditable Conduct.

Since 2016, PC Philpot is alleged to have subjected his partner and children to hostile and violent behaviour. This is alleged to have been in the form of threatening and abusive outbursts/insults towards family members, phone messages to his partner, psychological abuse concerning domestic matters, and physical assaults. The criminal investigation into the allegations was conducted and referred to the CPS. Their decision has been no further being taken (*sic*). The misconduct investigation is being conducted.

Representations were received from PC Philpot's Federation Representative in regard to the restriction applied to the officer

concerning the officer's contact with his partner. They have referenced the impact the restriction has upon PC Philpot's private life and that of his children.

I have carefully considered the restriction and the current circumstances and am satisfied that the restriction should remain until the conclusion of the misconduct case. This restriction should apply both on and off duty.

This is a serious allegation of domestic abuse and if proven could justify dismissal. I have discussed the case with the IO and her supervisor and am sighted on some of the evidence in the case. The matter is still under investigation for alleged gross misconduct so I do not make any judgement in relation to this but it is my view that we have a duty of care to protect the victim from any further contact whilst this investigation continues, despite criminal allegations being NFA'd. If the AA in this matter does decide that there is a case to answer, the victim may be required to give evidence at any future proceedings and any contact from PC Philpott (*sic*) may jeopardise this.

I have considered the impact of the restriction on PC Philpott's (*sic*) private life and I am of the view that this is minimal because the victim does not want him to have contact with her. The restriction does not prevent the officer from seeing his children as he is allowed to contact her about the children via a third party (his mother). The email from the Fed rep in this case states that he has not seen his children in person since his arrest but it is my view that this is not due to the restriction we have put in place. Family court proceedings will consider the contact he can have with his children and the restrictions should not affect this.

I have also considered the previous restrictions that have recently been removed. I am satisfied that the role in which is the officer is currently posted is suitable and that risks to public confidence can be managed.

The restrictions should remain until the next significant update which I suspect will be when the IO submits the report to the AA."

23. In the reply to the letter before claim, the Respondent stated that the request to amend Restriction 3 had been refused, in particular because:

"...Mrs Philpot was the main witness in the ongoing misconduct investigation and if that investigation ended in a misconduct hearing Mrs Philpot would be required to give evidence at the hearing against PC Philpot."

24. At the time of Lang J's judgment no decision had been taken as to whether the Appellant had a case to answer in the disciplinary proceedings. It has subsequently been decided that he has. So far as we are aware no date has been set for the hearing.
25. We have been given very little information about the family court proceedings except that Mrs Philpot has at no time applied for a non-molestation order or other injunction against the Appellant; and that, at least for the time being, the issue of the Appellant's contact with his children has been resolved.

The statutory regime for handling police misconduct

26. The statutory regime for the handling of police misconduct matters is governed by the Police Reform Act 2002; the Police (Complaints and Misconduct) Regulations 2020; and the Police (Conduct) Regulations 2020.
27. Chief officers, local policing bodies and the Independent Office for Police Conduct ("IOPC") are responsible for operating the statutory scheme. Statutory guidance has been issued by the Home Office ('Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing') and by the IOPC ('Statutory Guidance on the Police Complaints System').
28. Precisely how an investigation is dealt with within the statutory framework depends upon how the matter was first reported and how serious it is. There are four key categories:
 - i) Complaints – These are defined within section 12 of the Police Reform Act 2002 as any expression of dissatisfaction with a police force expressed by or on behalf of a member of the public. How complaints should be handled is specified by Part 2 and Schedule 3 of the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020;
 - ii) Conduct Matters – These are defined within section 12 of the Police Reform Act 2002 as any matter, not the subject of a complaint, where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings. Conduct matters are investigated pursuant to the Police (Conduct) Regulations 2020;
 - iii) Recordable Conduct Matter – These are conduct matters that fall within particular categories defined within paragraphs 10, 11 and 13A of Schedule 3 to the Police Reform Act 2002, supplemented by Regulation 7 of the Police (Complaints and Misconduct) Regulations 2020. How a conduct matter comes to be defined as a recordable conduct matter is complex, but is essentially concerned with seriousness. Recordable conduct matters are investigated pursuant to Schedule 3 to the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020; and
 - iv) Death or Serious Injury (known as 'DSI' matters): it is not necessary to give the details of this category.

29. The allegations made against the Appellant by his wife were dealt with as a recordable conduct matter by the Commissioner because a member of the public was 'adversely affected' by the Appellant's conduct (pursuant to paragraph 11(2) of Schedule 3 to the Police Reform Act 2002). Accordingly the investigation being conducted by the Respondent was pursuant to Schedule 3 to the 2002 Act, supplemented by the Police (Complaints and Misconduct) Regulations 2020.
30. Paragraph 19A(5) of Schedule 3 to the 2002 Act provides that investigations into recordable conduct matters are conducted in accordance with the relevant regulations, which are the Police (Complaints and Misconduct) Regulations 2020. Paragraph 16 of Schedule 3 provides for the appointment of an investigator, whose identity must be notified to the officer. Upon completion of the investigator's report, the appropriate authority must determine whether or not there is a case to answer, and if so, the form that any misconduct proceedings should take.
31. Whichever investigatory regime is being followed parts of the Police (Conduct) Regulations 2020 remain relevant because they contain matters of general application. For example, Part 4 sets out the procedures to be followed for misconduct meetings and hearings generally, whichever investigative route has been taken.
32. Matters of general application set out in Part 2 of the Police (Conduct) Regulations 2020 include:
 - i) The Standards of Professional Behaviour for police officers (Regulation 5 and Schedule 2); these include requirements to act with integrity and to "behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty";
 - ii) The provision of legal representation (Regulation 8); and
 - iii) The suspension of police officers (Regulation 11).
33. Regulation 11 of the Police (Conduct) Regulations 2020 is entitled "Suspension" and provides, so far as is material:

"(1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned from the office of constable and membership of the force.

(2) An officer who is suspended under this regulation remains a police officer for the purpose of these Regulations.

.....

(4) The appropriate authority may not suspend a police officer under this regulation unless the following conditions ("the suspension conditions") are satisfied –

 - (a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such

redeployment is not appropriate in all the circumstances of the case, and

(b) it appears to the appropriate authority that either –

(i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended, or

(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be so suspended."

Restrictions on the private life of police officers: the Police Regulations 2003

34. The Police Regulations 2003 were made by the Home Secretary pursuant to section 50 of the Police Act 1996, under which the Secretary of State may make regulations as to the government, administration, and conditions of service of police forces.

35. The 2003 Regulations impose specific restrictions on the private lives of officers. Regulation 6 provides:

"6. Restrictions on the private life of members

(1) The restrictions on private life contained in Schedule 1 shall apply to all members of a police force.

(2) No restrictions other than those designed to secure the proper exercise of the functions of a constable shall be imposed by the local policing body or the chief officer on the private life of members of a police force except—

(a) such as may temporarily be necessary, or

(b) such as may be approved by the Secretary of State after consultation with the Police Advisory Board for England and Wales.

(3) Any restriction temporarily imposed under paragraph (2) shall be reported forthwith to the Secretary of State."

36. Schedule 1 to the 2003 Regulations, entitled "Restrictions on the private life of members of police forces" sets out a number of private life restrictions placed upon all police officers throughout England and Wales. Paragraph 1 provides:

"(1). A member of a police force shall at all times abstain from any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression among members of the public that it may so interfere.

(2). A member of a police force shall in particular –

- (a) not take any active part in politics;
- (b) not belong to any organisations specified or described in a determination of the Secretary of State."

37. Paragraphs 2 to 4 of Schedule 1 require officers not to reside at premises which are not for the time being approved by the chief officer; not to receive lodgers or sublet parts of their homes without consent, save in particular circumstances; and not to wilfully refuse or neglect to discharge any lawful debt.

The decision of Lang J

38. The first ground of challenge before the judge was that the prohibition on Mr Philpot contacting his wife was purportedly imposed under regulation 11 of the Police (Conduct) Regulation 2020; and that, while regulation 11 allows officers subject to disciplinary investigation to be redeployed on restricted duties, it does not permit a prohibition on contacting witnesses. Lang J upheld this ground of challenge. She found that the prohibition had indeed been purportedly made under regulation 11, which did not confer such a power, and that this was a material error of law which vitiated the decisions made, as well as rendering them “not in accordance with the law” for the purposes of ECHR Article 8. This was, however, a Pyrrhic victory for the Appellant since the judge held that the prohibition could lawfully have been imposed “under regulation 6 of the 2003 Regulations, read together with section 4(3) of the PRSRA [the Police Reform and Social Responsibility Act] 2011”. She therefore refused relief under section 31(2A) of the Senior Courts Act 1981 because in her view it was “highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”.
39. The Commissioner does not challenge Lang J’s finding that regulation 11 of the Conduct Regulations 2020 cannot be the correct basis for the prohibition on contact with witnesses. The judge held that this was because it does not include any power to restrict an officer’s private life. I would add that it is impossible to describe a prohibition on contacting a complainant (whether the officer’s wife or anyone else) as a temporary deployment to alternative or restricted duties.

Discussion

40. Although it does not appear that this was made clear to the judge, it is not suggested by the Appellant, who brings this claim with the support of the Police Federation, that a chief officer has no power in any circumstances to impose a prohibition on contact with witnesses in the course of a disciplinary investigation. We were told that it is relatively commonplace for police officers who are the subject of a disciplinary investigation or disciplinary proceedings, whether in London or elsewhere, to be given such an instruction. Mr Morley for the Commissioner told us that in the Metropolitan Police Service (“MPS”) alone there are 272 officers currently subject to such conditions. There is no suggestion that all such restrictions are *ultra vires*.
41. We asked what the source of the general power is. As the judge pointed out at paragraph 42 of her judgment there is no express or implied power in either the Police (Conduct) Regulations 2020 or the Police (Complaints and Misconduct) Regulations 2020 to restrict an officer’s contact with witnesses during the course of a disciplinary

investigation or during misconduct proceedings. Mr Morley submitted that the source of the general power is the Commissioner's power of direction and control of his force under section 4(3) of the 2011 Act (and the identical power of other chief constables in England and Wales under section 2(3) of the same Act). Mr Baumber, for the Appellant, submits that the general power derives from the obligation of police officers to observe the Standards of Professional Behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2020, and the right and duty of chief officers to enforce such standards.

42. I am inclined to think that Mr Baumber is right. Perhaps the source of the general power is a combination of the two, that is to say the power of direction and control and the right and duty to enforce the Standards of Professional Behaviour. But it is unnecessary to resolve this interesting question since both sides accepted before us, as they appear to have done before the judge, that where the restriction on contacting witnesses has no impact on the officer's private life, the power exists. The principal issue before us is therefore whether a prohibition on contacting witnesses may be imposed where that restriction *does* impinge on the officer's private life. The argument focussed on regulation 6 of the 2003 Regulations. Mr Morley accepted that he can only succeed in resisting the appeal if the prohibition was one "designed to secure the proper exercise of the functions of a constable" within the terms of regulation 6(2).

The judge's conclusions on the regulation 6 issue

43. The judge said:-

"66. Regulation 6, read together with Schedule 1, sets out the general restrictions on the private lives of police officers which form part of their terms and conditions of service. They are of universal application to all police officers, or classes of police officers, and are permanent (unless formally amended), not temporary.

67. It was common ground between the parties that paragraph (1) of regulation 6 of the 2003 Regulations gives effect to the restrictions in Schedule 1. It does not confer a power on the Defendant to impose any other restrictions.

68. Paragraph (2) of regulation 6 of the 2003 Regulations does permit the imposition of some further restrictions on the private life of officers. The structure of paragraph (2) is convoluted, and the language lacks clarity. However, I was assisted by seeing how the same paragraph had been drafted in earlier versions of the Police Regulations. I accept the Defendant's interpretation of paragraph (2), namely, that it permits the local policing body or chief officer to impose three categories of restrictions on private life, not just two, as the Claimant submitted. The three categories are as follows:

- i) those "designed to secure the proper exercise of the functions of a constable";

ii) those "such as may temporarily be necessary" under sub-paragraph (a), which must be reported forthwith to the Secretary of State under paragraph (3);

iii) those "such as may be approved by the Secretary of State after consultation with the Police Advisory Board for England and Wales" under sub-paragraph (b).

69. Generally, the 2003 Regulations set out terms and conditions applicable to all police officers, or classes of police officers. In my view, any restrictions imposed pursuant to sub-paragraphs (a) or (b) of paragraph (2) are likely to be applicable to all police officers, or classes of police officers, as they have to be reported and/or approved by the Secretary of State. As both parties submitted, it seems highly unlikely that the Regulations would require a temporary restriction on contacting witnesses, imposed on an individual officer, to be reported to, or approved by, the Secretary of State.

70. However, the description of restrictions "designed to secure the proper exercise of the functions of a constable" does not expressly or impliedly exclude the possibility of restrictions being imposed upon an individual police officer. In my view, it confirms that the broad powers which the Defendant has to direct and control police officers in the Metropolitan Police Service (currently set out in the PRSRA 2011), may include imposition of restrictions on an officer's private life, provided that those restrictions are "designed to secure the proper exercise of the functions of a constable".

...

75. It is clear that the decision makers concluded that the Claimant represented a risk, both of harm to the complainant, and to the integrity of the misconduct proceedings, which needed to be managed by imposing Restriction 3. Restriction 3 was designed to ensure that the Claimant complied with the Standards of Professional Behaviour, in Schedule 2 to the Police (Conduct) Regulations 2020 by acting with integrity, and behaving in a manner which did not discredit the police service or undermine public confidence in it, whether on or off duty. In my view, compliance with these standards was an essential element of the Claimant's proper exercise of his functions as a constable. Furthermore, the statutory disciplinary procedures in the Police (Conduct) Regulations 2020 and the Police (Complaints and Misconduct) Regulations 2020 are part of police functions, in which the Claimant was participating. Restriction 3 was designed to ensure that the Claimant exercised his functions properly within the disciplinary proceedings, and did not jeopardise them by interfering with the complainant.

76. For these reasons, I consider that the imposition of Restriction 3 was "designed to secure the proper exercise of the functions of a constable" within the meaning of paragraph (2) of Regulation 6 of the 2003 Regulations."

The structure of regulation 6

44. Mr Baumber's first point is that regulation 6(2) cannot be the basis of restricting the private life of an individual officer since by the terms of regulation 6(3) any restriction temporarily imposed under paragraph (2) (not just under paragraph 2(a)) must be reported forthwith to the Home Secretary. The restriction on the Appellant contacting his wife was not so reported; and it would be very peculiar if such individual prohibitions did have to be reported. It makes sense, he submits, that all restrictions on the private life of officers other than those imposed universally by regulation 6(1) and Schedule 1, or those approved by the Secretary of State after consultation with the Police Advisory Board, should be subject to the scrutiny of the Home Secretary. Such an interpretation would, he submits, be consistent with the observation of Patten LJ in *Allard v Chief Constable of Devon and Cornwall Constabulary* [2015] EWCA Civ 42 that while the deployment and hours of duty of police officers are a matter, ultimately, for the relevant chief officer to determine, their terms and conditions of service are set out in determinations made by the Home Secretary pursuant to regulations made under the Police Act 1996.
45. I do not think that the distinction between terms and conditions of service and decisions on deployment and hours of duty is of any assistance here. Although, as Lang J pointed out, the structure of regulation 6(2) is convoluted, I agree with her that it envisages three categories of restrictions on the private life of officers:
- (i) those designed to secure the proper exercise of the functions of a constable;
 - (ii) those which "may temporarily be necessary" under subparagraph (a) which must be reported forthwith the Secretary of State; and
 - (iii) those approved by the Secretary of State after consultation;
- and that the first category, when applied in an individual case, need not be reported to the Secretary of State.
46. Mr Baumber's next point is a more substantial one. He argues that regulation 6(2) of the 2003 Regulations only permits general restrictions on the private lives of officers of the relevant force, not restrictions directed at a single individual. He submits that this is reinforced by the use of the plural "members" in the heading of the regulation and in paragraph (2). If the drafter of the Regulations had intended to permit restrictions on the private life of individuals, paragraph (2) would have said that "no restrictions ... shall be imposed ... on the private life of *any member* of a police force..."
47. I would reject this submission. There would be something in it if there were a category of instruction called "a restriction on private life" distinguishable from other types of instruction, and if the only source of the power to issue such an instruction was regulation 6 of the 2003 Regulations. But this is plainly not the case. Police

officers, like employees under a contract of employment, are subject to all manner of instructions and directions from management. Some (such as a requirement for police officers to work night shifts) affect the individual's private life very considerably, some to a slight extent and some not at all. There is no bright line distinction between those that do and those that do not.

48. Turning from generalities to the restriction under challenge here, in some cases a prohibition on contacting witnesses will not affect the officer's private life at all. If the complainant is a stranger the officer's private life is likely to be entirely unaffected by a prohibition on contacting him or her. In the present case the complainant is the officer's wife and his private life is clearly engaged. There will be cases in between where (say) the witness who the officer is prohibited from contacting is a distant relative or a casual acquaintance of the officer under investigation; a prohibition on contacting that witness may be said to engage the officer's private life but only to a very limited extent. It does not seem to me to make any sense to say that where the prohibition is on contacting a stranger the chief officer is acting pursuant to the general power of direction and control and/or the powers and duties arising from the Standards of Professional Behaviour, whereas in a case affecting the officer's private life the chief officer is acting pursuant to regulation 6(2).
49. Rather, as I see it, the purpose of regulation 6(2) is not to *confer* a power to restrict police officers' private lives, but to limit the scope of that power. To the extent that an instruction given by a chief officer, whether generally or to an individual, restricts an officer's private life, it is only lawful if it falls into one of the three categories identified by the judge, the relevant one in this case being where the restriction is designed to secure the proper exercise of the functions of a constable. I therefore consider that the objection to the use of the power in an individual case is not well founded.

“Designed to secure the proper exercise of the functions of a constable”

50. Mr Baumber submits that imposing a prohibition on contacting witnesses during a disciplinary investigation cannot be anything to do with the officer's exercise of his functions as a constable. Good behaviour, as he puts it, is a responsibility of an individual officer, but it is not a police function. Mr Baumber adds that an officer does not have “functions” to exercise in the disciplinary proceedings that he faces as an accused. Moreover, he submits, one of the obligations imposed on the officer is that of impartiality. No one can or should be expected to be impartial in his own disciplinary case.
51. On this issue I agree entirely with the clear and succinct conclusion of the judge. A police officer facing disciplinary proceedings, though not expected to be impartial in his own case, remains under a duty to act with integrity and to behave in a manner which does not discredit the police service or undermine public confidence in it. As the judge said, compliance with those standards of professional behaviour is an essential element of the Appellant's proper exercise of his functions as a constable. The prohibition on contacting witnesses was designed to ensure that he exercised his functions properly within the disciplinary proceedings.

Article 8

52. As already noted, the Appellant succeeded before the judge to the limited extent that it was held that because the restriction had purportedly been imposed under regulation 11 of the Police (Conduct) Regulations 2020 it was not “in accordance with the law”. I have already given my reasons for agreeing with the judge that it could lawfully have been imposed under other powers. In those circumstances the “in accordance with the law” point under Article 8 of the ECHR does not arise.

53. Proportionality, however, does arise. As to this, the judge said:-

88. Article 8 ECHR provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

89. The Metropolitan Police Service is bound by section 6 of the Human Rights Act 1998 in its capacity as a public authority.

90. The Home Office Guidance advises, at paragraph 2.17, that Article 8 ECHR is relevant to determining restrictions on officers' private lives:

"Police officers have some restrictions on their private life. Some of these restrictions are set out in the Police Regulations 2003. These restrictions have to be balanced against the right to privacy in common law and right to a private life, as set out in Article 8 of the Human Rights Act 1998."

91. Although the decisions made no reference to Article 8 ECHR, the decision of 4 July 2021 did undertake a balancing exercise which was consistent with a proportionality assessment. Unfortunately, that was lacking in the decision of 20 October 2020.

92. Article 8 is a qualified right. An individual's right to respect for their private and family life may be interfered with if done in accordance with the law, in furtherance of one or more of the legitimate aims in Article 8(2), and where the interference is proportionate to the right pursued.

93. For the reasons I have set out above under Ground 1, the Defendant's decisions to impose and maintain Restriction 3, were not in accordance with the law, as they were erroneously made under regulation 11 of the Police (Conduct) Regulations 2020. Therefore there was a breach of Article 8 ECHR, and Ground 4 succeeds.

94. I go on to consider proportionality as this affects the question of relief. I accept that the Defendant could impose Restriction 3 in pursuant of the legitimate aims of the prevention of disorder or crime, and the protection of the rights and freedoms of others.

95. The Claimant's wife is the complainant and main witness and may have to give evidence against the Claimant. If the Claimant put pressure on his wife to withdraw the allegations, that could jeopardise the disciplinary proceedings.

96. Non-molestation orders, disciplinary proceedings and criminal proceedings are not preventative in nature. The police cannot apply for a non-molestation order; only the Claimant's wife can do so. Furthermore, the Claimant's conduct may not amount to molestation or a criminal offence, but still jeopardise the integrity of the disciplinary proceedings.

97. Restriction 3 does not prevent the Claimant from seeing his children. Arrangements for contact with the children are to be made via a third party. In the review decision of 4 July 2021, Detective Chief Superintendent Smith said:

"I have considered the impact of the restriction on PC Philpott's (*sic*) private life and I am of the view that this is minimal because the victim does not want him to have contact with her. The restriction does not prevent the officer from seeing his children as he is allowed to contact her about the children via a third party (his mother). The email from the Fed rep in this case states that he has not seen his children in person since his arrest but it is my view that this is not due to the restriction we have put in place. Family court proceedings will consider the contact he can have with his children and the restrictions should not affect this."

98. For all these reasons, I conclude that Restriction 3 was proportionate."

(There seems to be a minor error at the start of the judge's paragraph 96 as handed down: the word "unlike" appears to have been omitted. Non-molestation orders are indeed preventative in nature, but the important point is that disciplinary proceedings are not.)

54. I agree with the judge that the restriction was proportional on the facts of this case. Whether or not it falls within the heading of “the prevention of disorder or crime” is a matter of debate, but it was properly imposed for the “protection of the rights and freedoms of others”, namely the complainant.
55. Like the judge, I agree with the reasons given by DCS Smith in the review decision of 4 July 2021. The impact of the restriction on the Appellant’s private life is minimal because the complainant does not want him to have contact with her. The restriction as modified does not prevent him from seeing his children (and we were told that the difficulties in that regard have been resolved in any event).
56. It is not for us in this court to make any findings as to the strength or otherwise of the allegations against the Appellant. But it is now generally recognised that complainants alleging domestic abuse are often subjected to pressure to withdraw the complaint. Such pressure comes in many forms: sometimes overt, sometimes more subtle. In the court system the precautions which may be taken to protect complainants from this pressure include conditions of bail in criminal cases (as in the present case until March 2021), or the terms of injunctions against harassment or non-molestation orders in the family court. It is entirely appropriate that in a case such as the present the power of a chief officer to prohibit contact with a witness in police disciplinary proceeding should be used for the same protective purpose.
57. I would therefore dismiss the appeal.

Lady Justice Thirlwall

58. I agree.

Lady Justice Nicola Davies

59. I also agree.