Neutral Citation Number: [2024] EWHC 2826 (Admin)

Case No: AC-2023-LON-000109

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Friday, 8th November 2024

Before:
FORDHAM J

- -

Between:
THE KING (on the application of JOSEPH QUIRKE) — **Claimant**
- and -
CHIEF CONSTABLE OF AVON & SOMERSET CONSTABULARY — **Defendant**

- -
- -

Kevin Baumber (instructed by Straw & Pearce) for the **Claimant**
Mark Ley-Morgan (instructed by Avon & Somerset Police Legal) for the **Defendant**

- -

Hearing date: 29.10.24
Draft judgment: 1.11.24

- -

Approved Judgment

- -

FORDHAM J

FORDHAM J:

Introduction

1. This case is about the reasonableness of a decision of a Police Vetting Appeal Panel, not to overturn a vetting revocation decision in respect of a probationer police constable. The impugned decision of the Appeal Panel was made by Panel Chair Assistant Chief Constable Joanne Hall (ACC Hall) on 26 June 2023. It was made for contemporaneously recorded reasons. The Panel had four other members who contributed their views, but it was in this case for ACC Hall to make the decision. Permission for judicial review was granted by Steyn J at on oral hearing in March 2024. Steyn J directed the continuation of an interim injunction granted by Bright J on 29 August 2023, restraining any action pursuant to regulation 13 of the Police Regulations 2003 (SI 2003/527) to discharge (dispense with) the Claimant as a probationer.

2. The Claimant is aged 28 and joined as a probationary police constable in March 2020 aged 23. Recruitment vetting was originally refused, but that was overturned on appeal. No record of that decision was retained, as it should have been. But it is known to have concerned the same matters which became the subject of ACC Hall's decision. That came about in this way. In 2022 the Claimant made an application for management vetting, which he withdrew because the location of his third year placement had changed. His recruitment vetting came to be reviewed. It was revoked by a decision on 31 January 2023. The Claimant appealed to the Appeal Panel, making detailed written representations dated 29 May 2023.

3. Parliament has, by section 39A of the Police Act 1996, empowered the College of Policing – with the Secretary of State's approval – to issue and revise codes of practice; and has required chief officers of police to "have regard" to those codes of practice when discharging relevant functions. The Vetting Code of Practice identifies vetting as an integral part of a police force's framework of ethics and professional standards, which assists with identifying individuals who are unsuitable to work within the police service, or to have access to police assets; which includes unsuitability through criminal activity or as posing a risk to the public; all of which helps ensure public trust and confidence in those working in policing. The Code states that it is supported by the Authorised Professional Practice on Vetting (APP) and identifies, as a principle, that vetting decision-making should comply with the standards laid out in the APP. As a matter of public law, a decision maker would need "good reason" not to follow the APP: see R (J) v Chief Constable of West Mercia Police [2022] EWHC 26 (Admin) §86.

A Two-Stage Test

4. The APP provides as follows at §8.37.4 (the numbers in square brackets are bullet points). I will be referring to "Stage (i)" and "Stage (ii)".

> ***In assessing information and intelligence revealed as part of the vetting process, forces should apply a two-stage test:***
>
> ***(1) Are there reasonable grounds for suspecting that the applicant, a family member or other relevant associate: [i] is or has been involved in criminal activity; [ii] has financial vulnerabilities (applicant only); [iii] is, or has been, subjected to any adverse information.***

(2) If so, is it appropriate, in all the circumstances, to refuse vetting clearance?

This Two-Stage Test was helpfully traced back by Mr Baumber to the judgment of Coulson J (as he then was) in a case about security clearance for private contractors: see R (A) v Chief Constable of C Police [2014] EWHC 216 (Admin) at §42. It is common ground that where there is a concern about involvement in criminal activity, the absence at Stage (i) of reasonable grounds for suspicion means this concern cannot be a basis of refusing vetting clearance.

5. APP §§8.37.5 and 8.37.6 add this:

> ***The existence of a criminal record would clearly indicate reasonable grounds for concluding that the individual is, or has been, involved in criminal activity. Intelligence and other non-conviction information may also lead to reasonable grounds for suspecting involvement in criminal activity.***
>
> ***Forces should assess such information on a case-by-case basis, taking into account the exact circumstances of the case and nature of the information revealed.***

Six Factors

6. APP §8.8.1 says:

> ***Where the subject has previously come to adverse police attention – for example, been arrested, subject of a criminal allegation, or subject of investigation – but these matters have not resulted in a criminal conviction, a case-by-case assessment will be made.***

The following list of factors for consideration is then given at §8.8.2 (the letters in square brackets are bullet points). I will refer to Factor [a], Factor [b] and so on.

> ***The assessment will include consideration of the:***
>
> ***[a] number of allegations;***
>
> ***[b] severity of the allegation(s);***
>
> ***[c] credibility of the allegation(s), including whether there is irrefutable evidence to show these are false or malicious;***
>
> ***[d] reasons for the matters not being progressed;***
>
> ***[e] amount of time that has passed since the matters being considered;***
>
> ***[f] age of the subject at the material time.***

7. The following things are common ground between Mr Baumber and Mr Ley-Morgan. First, that some of the Six Factors can inform Stage (i). Secondly, that irrefutable evidence to show that an allegation is false (part of Factor [c]) would be a conclusive basis for deciding at Stage (i) that there are no reasonable grounds for suspicion. Thirdly, that – where Stage (i) reasonable grounds for suspicion are found – the Six Factors are considerations informing Stage (ii) appropriateness. Fourthly, that the Six Factors are a non-exhaustive list and other relevant considerations can be taken into account. As to that point, Stage (ii) expressly refers to "all the circumstances" and A said at §45 that appropriateness was intended to "achieve proportionality" and "allow the police to take into account all the circumstances".

The Reasons

8. ACC Hall's reasons were contemporaneously recorded as follows. The numbers in square brackets are mine. For ease of cross-referencing I will be referring to these as Reason [1], Reason [2] etc.

> ***[1] I have reviewed the material supplied to me, including character references and written submissions.***
>
> ***[2] In my decision making, the burden of proof required is far less than that of a criminal court. As chair of the panel, the test I am required to apply is the two-stage test:***
>
> > ***[i] Are there reasonable grounds for suspecting that the applicant, a family member or other relevant associate: [A] is or has been involved in criminal activity; [B] has financial vulnerabilities; [C] is or has been subjected to any adverse information. (ii) If so, is it appropriate, in all the circumstances, to decline vetting clearance?***
>
> ***[3] I am satisfied that point [i] is made out as JQ was arrested on suspicion of criminal offences, namely being in possession of indecent images of a child.***
>
> ***[4] My conclusion is that the original vetting revocation decision was appropriate and justified. This was based on non-conviction data, the risk posed by Joseph Quirke (JQ) and the inability to appropriately mitigate that risk. This risk was identified in 2018 and at JQ's next vetting review in 2022.***
>
> ***[5] I note that previous clearance or decline does not set a precedent for my decision now. I have considered all the information put before me and the associated risks as I see them.***
>
> ***[6] My decision to this appeal is that vetting should be revoked. This is based on the non-conviction data available to us, the potential risk this poses to members of the public and the risk to public confidence.***
>
> ***[7] There was one allegation which was of a very serious nature, linked to sex offences against children. The matter was not progressed due to a lack of evidence. I note that the investigation appears to be of a poor standard.***
>
> ***[8] There is no irrefutable evidence to show the allegation(s) may be false or malicious.***
>
> ***[9] At the time of the offence it appears the victim would have been 14 and JQ under 18, being arrested 3 days after his 18th birthday.***
>
> ***[10] Eight years have passed since this allegation. Vetting has been discussed in between that time with the same concerns being raised.***
>
> ***[11] I have considered if there are any mitigating actions we can put in place in order to retain JQ's vetting but the nature of the offending alleged is not offending that is likely to be identified through mitigating actions. The type of offending alleged tends to be conducted secretively and in a grooming fashion. Supervision or regular vetting checks are unlikely to identify this, therefore, the risk can not be managed in this way and therefore I do not feel this is acceptable.***
>
> ***[12] This is not an easy decision and I recognise the impact this will have on JQ. I have considered this carefully.***
>
> ***[13] I am concerned about the known risks, our challenges in mitigating them and I believe the public would expect us to remove individuals who are subject to allegations of this nature and this poses a risk to public confidence.***

9. This was ACC Hall's evaluative assessment of this individual case. There was no material misstatement of the Two-Stage Test at Reason [2]. The Six Factors were addressed at Reasons [7] to [10]. Mr Baumber and Mr Ley-Morgan agree that nothing turns on the fact that in Reason [4] said "2018" when in fact it had been 2019; nor that Reason [9] said "3 days" when in fact it was 6 weeks.

Unreasonableness

10. I have to decide whether the decision is vitiated in public law on grounds of unreasonableness. I remind myself of three things. First, that the term "unreasonableness" is a more accurate description than "irrationality". Second, that unreasonableness has two aspects: (a) that the decision is outside the range of reasonable decisions open to the decision-maker; and (b) that there was a demonstrable flaw in the reasoning process by which the decision was reached. Third, that in the application of unreasonableness, the intensity of the court's review will vary according to the context. The first and second points are explained in R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §98 (Leggatt LJ and Carr J, as they then were). The third point is explained in R (SC) v Secretary of State for Work and Pensions [2019] EWCA Civ 615 [2019] 1 WLR 5687 at §90 (Leggatt LJ, as he then was). A cardinal rule in all this is that judicial review for unreasonableness must always recognise the latitude of the public authority, as primary decision-maker as to questions of judgment, evaluation and appreciation. A principal virtue of unreasonableness is its ever-present reminder of that cardinal rule, and so unreasonableness is regularly and repeatedly identified as an overarching test, when consideration is being given to sub-species of substantive review.

11. Neither Counsel attempted to support a modified intensity of review. This case has been treated on all sides as involving a conventional standard of scrutiny; neither lowered because of the aspects of risk-evaluation and public protection; nor heightened because of the impact and implications for the officer. Mr Baumber reminds me of the impact and implications of the target decision for the Claimant and the chosen career which the Claimant commenced in 2019. He invites my attention to Coulson J's description in A of cases where the impact of a decision can affect "an entire career" (§50). That, he accepts, was a description of unfair or inaccurate information in cases about enhanced criminal record certificates, which could mean that an individual would be "routinely refused employment" across a range of jobs. Here, the practical impact is on being able to pursue the chosen career of a police officer. This was what was being referenced at Reason [12]. Mr Baumber has not advocated for a strict intensity of review. Nor does he say that the hard-edged review of reasonable grounds for suspicion seen in control order cases (see A at 26) reads across to this judicial review.

The 2014 Arrest and Investigation

12. This case is about "non-conviction information" (APP §8.37.5) about whether the Claimant "has been involved in criminal activity" (Stage (i)), in circumstances where he was "arrested" (APP §8.8.1). It is important to understand the context for ACC Hall's application of the Two-Stage Test and of the Six Factors, as reflected in the Reasons. The following summary is documented as having happened in November and December 2014. The Claimant turned 18 in mid-October of that year. It features Avon and Somerset Police (ASP) and Devon and Cornwall Police (DCP). It was documented before ACC Hall; as disclosed to the Claimant's representatives and addressed in his

appeal submissions to ACC Hall. The records use "A/P" (shorthand for "aggrieved person") to mean the person who was reporting an allegation. So will I.

13. A student welfare officer (SWO) made a referral to DCP, because on 21.11.14 the following was disclosed to the SWO by the A/P, a 14 year old girl living in Devon: A/P had sent photos via Snapchat to the Claimant (who she named); the photos were of A/P in her in bra and pants and "not fully nude"; A/P had been encouraged to make contact with the Claimant by a "school friend" who said he was "a good laugh"; A/P had gone to the SWO because A/P felt very silly and stupid and felt worried at what she had done.

14. Research by DCP on Facebook led to the identification of the Claimant and his address (in Somerset) and DCP alerted ASP. On 24.11.14 the Claimant was arrested by ASP, on suspicion of possessing an indecent photograph of a child. He was interviewed under caution. He was 18. He was accompanied by a solicitor and had taken legal advice. A number of items were seized by ASP from him. They were mobile phones, computers and memory sticks. The Claimant gave passwords so these could be examined. He assisted ASP in identifying the most relevant areas for analysis. He answered questions not related to A/P and her school friend. He answered "no comment" to all questions relating to the girls, to Snapchat and to his mobile phone. He was released on police bail.

15. On 25.11.24 there was further contact with A/P and her mother. They were spoken to at the police station by DCP. On this occasion, A/P asked if she could speak to the officer on her own, which her mother agreed to. A/P told the officer that she had sent a photo to the Claimant of the top part of her vagina after being persuaded by him, who she did not want to stop talking to as he said nice things to her. DCP passed this information to ASP.

16. DCP recorded that A/P "has stated that other females were doing the same", naming three girls at the same school (ages 14, 15/16 and 14). DCP followed this up by trying to speak with the other females to determine whether they had also done the same. Two girls were interviewed who said they had not sent any nude or sexual images to the Claimant. One was interviewed by DCP on 8.12.24 at the police station, with and without her mother present. This girl stated that she had never been in contact with the Claimant but did follow him on Facebook; she had, emphatically, not engaged in conversation with him; and he had never made contact with her directly one to one. DCP noted that this was a very articulate and intelligent young girl who gave the impression of being quite mature and not at all interested in the Claimant. On 9.12.14 DCP spoke to another girl. She made no disclosure regarding any indecent images sent to the Claimant or grooming type behaviour by the Claimant. A police log for 15.12.14 records that there were believed to be no offences in relation to the other girls.

17. After interviewing the Claimant, ASP had on 25.11.14 asked DCP to provide details of A/P's ABE (Achieving Best Evidence) interview or the date for which it had been arranged; and asked DCP to seize and produce A/P's mobile phone; or alternatively to provide information as to any delay. In response, DCP had told ASP (26.11.14) that initial contact with the girls would be early account/witness interview and seizure and examination of mobile phones would be delayed until further updates had been received from ASP regarding what ASP had of evidential value. DCP told ASP that seizure and analysis of the phone "is not done at this early stage". By 15.12.14 the log

at ASP records the writer as "most concerned what is happening with the side of the investigation at [DCP]"; the incident had "already become most frustrating"; the writer was "not confident" in DCP's "current investigation plan" and wrote that A/P "does not appear to be getting the service required".

18. DCP planned further interviews with A/P. DCP asked (16.12.14) that her mother find out how A/P felt about the ABE interview process and potentially going to court and whether she told the Claimant her age or told him that she was older than she actually was as this would have to be disclosed. On 16.12.14 information was received from the mother, that A/P had told the Claimant she was 14 and the Claimant had responded saying he "didn't mind". On 18.12.14 DCP were told that A/P was happy to proceed with the ABE interview. In a conversation later that day (18.12.14) A/P's mother expressed some concern about A/P being without a phone for an extended period. In response, DCP stressed the importance of having the phone to progress the enquiry. The police having subsequently requested that A/P attend the police station with or without her mother so that her phone could be seized, an email was received from the mother (22.12.14) which said that A/P "no longer has the phone she used to send the pictures. It got wet and she threw it away. Sorry I didn't get back to you before." The DCP log recorded this as "concerning". DCP told ASP (16.1.15) that it left A/P "open to allegations by a defence solicitor, if indeed we were ever to get that far, of being less than honest as this sudden loss of the phone will appear rather convenient I would suggest". DCP told ASP that the only evidence of indecent images could now come from the equipment ASP had seized from the Claimant.

19. ASP took technical advice (9.1.15) and advice from the CID unit (21.1.15) which came to this: that the only way of determining whether an image had been sent by Snapchat would be to interrogate the phone of the sender; the sender's phone would have a thumbnail left on the phone which would also show the time/date and sent information including the intended recipient; the recipient's phone does not store the image but deletes it after viewing. ASP's log (21.1.15) records that ASP was therefore unable to get any potential image from the Claimant's phone and says:

> ***Even if an ABE was forthcoming, and the suspect's phone shown communication between the 2, without the images sent by [A/P] we do not, I feel, have a case that would pass the threshold for a charge. The suspect has stated No Comment to all questions specifically relating to [A/P], Snapchat and his Mobile Phone, answering all other questions. So I believe there may well have been sexual communication via Snapchat, but proving this now is very unlikely, unless [A/P]'s phone is located.***

20. On 26.1.15 ASP closed the enquiry as NFA ("no further action"). ASP informed DCP that the job had been filed due to the lack of evidence to support any prosecution. DCP recorded that ABE was not now required, informed A/P's mother, and recorded that she was quite satisfied that the police had done everything they reasonably could and had thanked the police.

The Claimant's Case

21. Mr Baumber says that ACC Hall's decision was unreasonable. Refreshingly, he accepts head-on that this is a "merits" challenge. He did not fall into the trap of trying to dress it up otherwise. These, in essence as I saw it, were Mr Baumber's key points:

22. In relation to Stage (i) there was a demonstrable flaw in the reasoning process by which the decision was reached. ACC Hall addressed this at Reason [3] and said she was satisfied on the basis that the Claimant was arrested. But Stage (i) says "are there reasonable grounds". It does not say "were there reasonable grounds". APP §8.8.1 records that being previously "arrested" calls for the "case-by-case assessment", being arrested does not of itself answer Stage (i). By focusing solely on the fact of the arrest, ACC Hall has taken an impermissible short-cut. She has failed to take into account the obviously relevant considerations as to what subsequently happened in the investigation, and the light shed by them. She has failed to consider the exact circumstances of the case and the nature of all the information (APP §8.37.6).

23. In relation to Factor (c) – the credibility of the allegation(s), "including" whether there is "irrefutable evidence to show these are false or malicious" – there was a similar demonstrable flaw in the reasoning process by which the decision was reached. ACC Hall addressed this at Reason [8] and simply said: "There is no irrefutable evidence to show the allegation(s) may be false or malicious". That addresses the aspect which is "includ[ed]" within Factor [c]. But it does not address the credibility of the allegation; still less by reference to the exact circumstances of the case and the nature of all the information (APP §8.37.6).

24. These are each material flaws which vitiate the reasonableness of the decision. Further and in any event, any adverse conclusion as to Stage (i) was outside the range of reasonable decisions open to the decision-maker. Reason [7] rightly recorded that the matter was not progressed due to a "lack of evidence". Reason [7] rightly recorded that there was "one allegation" and not multiple allegations. It is necessary to follow through as to the logic of these points, and put them alongside other features of the case.

    i) The "lack of evidence" included the suppression by A/P of the key evidence in the case – having been informed by the police as to its importance – by withholding her mobile phone. The story about the phone becoming wet and throwing it away lacks plausibility. That is why it was contemporaneously described by the police as concerning, convenient and undermining honesty. As the independent member of the public on the Appeal Panel put it in the record of discussion, this was "very convenient for her if nothing on the Snapchat" and this was "very suspicious". This event seriously undermines the strength – and credibility – of the allegation.

    ii) The strength – and credibility – of the allegation is also seriously undermined by the clear evidence of the other girls. Accepting that there is "one allegation" – and not multiple allegations – that is because the police were satisfied and believed there were no offences in relation to the other girls. However, A/P had clearly alleged that other girls had been doing the same. This was investigated and exposed as a "false" claim. That seriously damaged A/P's credibility and the strength (or in Factor [c] "credibility") of the allegation she was making about what happened between herself and the Claimant.

    iii) Then there is the "conflict" between A/P first describing photos in bra and pants and not fully nude; and then a later reference to a photo showing the top part of her vagina.

iv) Added to all of this, there is the fact that nothing was found on the Claimant's phone or other devices – which he provided cooperatively to the police – and there is the fact that he is a person of good character. All of which points operate in combination. They mean the flaws in the approach were each material. They mean there are no "reasonable grounds for suspicion" (Stage [i]). They mean there is strong evidence of false allegations and that the credibility of the allegation is extremely weak (Factor [c]). They mean any decision to the contrary was outside the range of reasonable decisions open to the decision-maker.

25. Added to this, there are various mistakes which were made in the vetting revocation decision.

i) The original decision letter (31.1.23) said that the case did not proceed because "the images were not retained because of the social media platform that was used". That was wrong. Snapchat would have retained the thumbnail on A/P's phone, which she did not hand over in the concerning circumstances recorded.

ii) The decision also records (12.12.22) said the police report "clearly shows the 14 year-old victim and suspect communicating" and the police log records that "the suspect's phone shown communication between the 2". That was wrong. It was a grievous misreading of an entry which said there would not be sufficient evidence to charge the Claimant, "even if … the suspects phone shown communication between the 2" (§19 above).

iii) The decision record also refers to the no comment interview as something which "signals guilt to the offence in question" – or indicates an unsuitability to now conduct interviews as a police officer – when the exercise of the right to silence does neither of these things; and in any event this was an 18 year old acting on legal advice of an experienced solicitor.

iv) There is also an unfair and unjustified speculation in an observation that the 2019 reversal on appeal of the previous refusal of recruitment vetting may have been attributable to being unsighted as to relevant documents.

v) It is true that none of these mistakes are expressly repeated in ACC Hall's reasons. But, unlike another mistake about there having been "multiple victims", none of these further mistakes are addressed and corrected in the Reasons. In fact, Reason [4] refers to "the original vetting revocation decision" and says of it that it "was appropriate and justified". That means the past mistakes – all of which were pointed out in the Claimant's appeal submissions – stood uncorrected and stood adopted in ACC Hall's decision.

26. The conclusion that the decision to uphold the revocation was outside the range of reasonable decisions open to the decision-maker is reinforced when consideration is given to the other Factors.

i) The number of allegations (Factor [a]) is that there was one (Reason [7]). The number is identified as one of the Six Factors because it makes a difference. One is the lowest possible number. This is not a case involving any alleged pattern of behaviour. This is a highly material feature of the case.

ii) As to the severity of the allegation (Factor [b]), there are two key points. The first is that "very serious" (Reason [7]) is an overstatement. It is fair to call it "serious", but it should be remembered that this was a photo sent between two children whose ages (17 and 14) were 3 years apart, which was not retained on the Claimant's mobile phone and appeared only fleetingly. The second is that, even if that is wrong, there is an established principle – recognised in the present context in A at §31 – that in assessing the credibility of the allegation, "the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence". So this point would feed back into the question of credibility and further weaken it. The credibility of the allegation is extremely weak (see §24 above) which links to the reasons for the matter not being progressed (Factor [d]), namely the absence of evidence.

iii) The amount of time that has passed since the matters being considered (Factor [e]) is another weighty factor: this was more than 8 years (Reasons [10]). That is nearly a third of the Claimant's life; it is the entirety of his adult life. It is highly relevant to risk, because of the absence of any further incident or concern during all that time, when the Claimant has made exemplary progress in his career. Far from recognising that weighty factor, ACC Hall saw fit to reference the period "in between" with "the same concerns being raised" (Reason [10]). Therein, is another demonstrable flaw in the reasoning process. The only relevance of "the same concerns raised" during the period "in between" would be if there had been some further and additional incident or concern. There is none. The only matter raised is this very same matter, which was originally held against the Claimant in 2018 but overturned on an appeal. Not only is that reversal undocumented, in breach of the Chief Constable's obligations; but there is the unfair and unjustified speculation in the appealed decision, which has been adopted and uncorrected (§25 above).

iv) Finally, there is another weighty factor as to the age at the material time, which everyone agrees is to be taken as having been 17 (Factor [f]). Again, this is spelled out in the APP because it has obvious importance. A young person will have been forming their moral bearings and is a powerful matter in combination with the passage of time, because "the potential impact of youth matters on suitability for vetting clearance will diminish with the passage of time", both of which are points made in the APP (at §8.4.5).

27. In light of these flaws and features, and in the light of the serious impact for the Claimant and his career, this is a decision which cannot withstand scrutiny. There were demonstrable flaws in the reasoning process by which the decision was reached; and in any event the decision is outside the range of reasonable decisions open to the decision-maker. The claim should be allowed.

28. Those are the submissions on behalf of the Claimant.

Discussion

29. I have been unable to accept these submissions. I will explain why. In doing so, I keep well in mind – but without setting them out – the facts relating to the arrest and investigation, set out at §§13-20 above.

30. I start with the strength of the allegation. I accept that the question of "credibility" of the allegation in Factor [c] is not confined to asking whether there is "irrefutable evidence to show that the allegation was false or malicious". That is one part of it. Nevertheless, that is the question specifically referenced. It is a question which was posed and answered in the negative by ACC Hall (Reason [8]). Her answer is unassailable.

31. In the same way, Stage (i) is framed by express reference to a threshold of reasonable grounds for suspicion. Reasonable grounds for suspicion has been described in the case-law as "facts or information which would satisfy an objective observer that the individual may have committed the offence": see A at §26. Counsel agree, in the context of judicial review of this target decision, that the primary decision-maker is ACC Hall and that mine is a secondary supervisory review; not a substitutionary one. Here, the information is the disclosure by A/P; the repetition in front of her mother; the further disclosure in private to the officer; the description of why she was worried and went to the SWO in the first place. There is the absence of any explanation as to why she would do that, naming the Claimant, someone with an online presence living in a different vicinity. I cannot accept that there is a "conflict" between A/P having said not fully nude and in her bra and pants; and then explaining that she had showed the top of her vagina. She is recorded as being willing to give an ABE interview. The episode with the phone came, not after being asked to show her phone to police, but after being told through her mother that she was going to be without her phone for an "extended period". I do not accept that the interviews with the other girls demonstrate A/P's untruthfulness, or show her to have made a "false" allegation. That is not a safe conclusion. There is more to "credibility" than irrefutable evidence to show that allegations are false or malicious, and there is more to credibility than reasonable grounds for suspicion. But these are the two thresholds expressly identified and it was not unreasonable for a decision-maker to have focused on them. The reason is this. A decision-maker may legitimately be concerned about appropriateness, risk, protection of the public and public confidence where there is a suspicion on reasonable grounds; and where there is no irrefutable evidence to show that the allegation was false or malicious.

32. Mr Baumber is right that ACC Hall linked reasonable grounds for suspicion to the fact of the arrest (Reason [3]). The question is whether she may have lost sight of later events in the investigation which undermined there being reasonable grounds. The decision needs to be read fairly and as a whole. These events were plainly considered. Indeed, as Mr Baumber emphasises, the circumstances of the withheld mobile phone were emphasised in the discussion, by one of the Panel members. ACC Hall specifically thought about the investigation. She knew it was of an apparently "poor standard"; she knew about the "lack of evidence"; she knew about the circumstances of the investigation that led to that conclusion; and she knew that there was "one allegation" not several. She recorded all of these points at Reason [7]. She considered the "non-conviction data" at Reason [4]. She considered "all the information before me" at Reason [5]. On a fair reading of the decision and reasons, there was reasonable suspicion at the time of the arrest, and what happened in the investigation did not undermine or expose that as being the position. I cannot accept that there is any demonstrable flaw in the reasoning process, that obviously relevant matters have been overlooked, nor in any event that there is any error of materiality. The events during the investigation do not expose an absence of reasonable grounds for suspicion. Indeed, the

proof of the pudding is contemporaneously recorded. When the case was closed, it was not because the A/P was being disbelieved, or because there was no longer a basis for being satisfied that the Claimant may have committed the offence. It was, notwithstanding a recorded belief that there "may well have been" sexual communication, the concern about evidence to meet "the threshold for a charge" (see §19 above).

33. I am unable to accept the submission that earlier mistakes in the vetting revocation decision, which were pointed out in the appeal submissions on behalf of the Claimant, were then being repeated and adopted in CC Hall's decision. None of the matters relied on as errors was repeated in the decision. The mistake about multiple victims was specifically corrected, because it was the subject of an express Factor being addressed (Factor [a]). ACC Hall was satisfied as to the outcome (Reason [4]). The outcome – the decision – was the vetting revocation decision. That outcome – that decision – was found by her to be appropriate and justified. The basis for "this" conclusion was not her adoption of the reasons of the decision-maker. That is not what is said (Reasons [4] and [6]). ACC Hall's decision was "based" on non-conviction data, the risk posed by the Claimant and the inability appropriately to mitigate that risk. ACC Hall gave her own reasons, faithfully addressing each of the Six Factors.

34. I cannot accept that the references, at Reasons [4] and [10], to what was raised earlier was a reference to some unspecified further matters. Instead, ACC Hall was referring to "this" risk (Reason [4]) and to "the same" concerns (Reason [10]). This was all in a context in which ACC Hall was saying past decisions set no precedent, and that she needed to take responsibility and evaluate the information for herself, and the risks "as I see them" (Reason [5]). She was not alluding to some other incident. She was referring to earlier decisions which had considered this same incident. And she was in no way joining in any speculation about past decisions or their basis.

35. At the heart of ACC Hall's reasons was her characterisation that this was an allegation "of a very serious nature, linked to sex offences against children" (Reason [7]); and her view about the difficulty in addressing offending of this nature by mitigating actions (Reason [11]). That characterisation, and that view, were both reasonably open to her. And so were her concerns about risk, protection of the public and public confidence. I cannot accept that, having identified the severity of the allegation as being "of a very serious nature", ACC Hall was legally obliged then to adopt a modified approach to "credibility". The point made in A at §31, on which reliance is placed, is about a court "assessing the probabilities" and whether "the event occurred" so that "its occurrence will be established". That was not ACC Hall's function under the APP, and she was not obliged – acting reasonably – to undertake it. She was well able to think about whether there was a seriousness in this case which weakened the credibility of the allegation. The evaluative function was hers. How she considered it, what was taken into account or not taken into account, and how features were weighed and then balanced involved judgments and choices which were hers to make. Nothing omitted, or done, constituted public law unreasonableness.

36. This was not an easy decision for ACC Hall to take. It had a big impact on the Claimant. And it called for careful consideration. All of which is what ACC Hall expressly recorded (Reason [12]). The listed Features were all considered. So was the overall balance of proportionality, including the unlisted feature of "impact". As this case and Mr Baumber's submissions illustrate, there is room for legitimate

disagreement as to weight given to different features. But this is, in the end, a classic evaluation entrusted to a primary decision-making authority, with specialist experience and insight about the police force with its framework of ethics and professional standards, about individuals who are unsuitable to work within the police service, or to have access to police assets; about unsuitability by reference to criminal activity or as posing a risk to the public; and about helping ensure public trust and confidence in those working in policing. Whenever the judicial review court is considering the limits of the powers of public authorities, it is at the same time necessarily tuning in to the limits of the powers of the judicial review court itself.

37. For the reasons and in the circumstances that I have described, and agreeing with the submissions of Mr Ley-Morgan, I have not been persuaded that there are in ACC Hall's reasoned decision demonstrable flaws – still less material demonstrable flaws – in the reasoning process by which the decision was reached; nor that the decision is outside the range of reasonable decisions open to the decision-maker. I will therefore refuse the claim for judicial review. Having circulated this judgment in draft, I am able to deal here with consequential matters. The parties were agreed that the appropriate Order, in light of what I have decided, should be as follows. (1) The claim for judicial review is refused. (2) The interim injunction granted on 29 August 2023 shall be set aside. (3) The Claimant shall pay the Defendant's costs of the claim summarily assessed in the sum of £19,038 by 4pm on 29 November 2024. That is the Order which I will make.