Neutral Citation Number: [2026] EWCA Civ 28

Case No: CA-2025-000487

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mrs Justice Lang
[2025] EWHC 275 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 January 2026

Before :

THE LADY CARR OF WALTON-ON-THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE SINGH
and
LADY JUSTICE WHIPPLE

- -

Between :

THE KING (on the application of LINO DI MARIA)	**Claimant/ Respondent**
-and-	
COMMISSIONER OF POLICE FOR THE METROPOLIS	**Defendant/ Appellant**
-and-	
(1) THE COLLEGE OF POLICING **(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT**	**Interested Parties**

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- -

John Beggs KC, James Berry KC and Katherine Hampshire (instructed by the **Metropolitan Police Service**) for the **Appellant**
Kevin Baumber and Rosa Bennathan (instructed by **JMW Solicitors LLP**) for the **Respondent**
Aaron Rathmell (instructed by the **Treasury Solicitor**) for the **First Interested Party**
The **Second Interested Party** did not appear and was not represented

Hearing date : 9 December 2025

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 27 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh:

Introduction

1. This appeal concerns the correct approach to the "vetting test" in the College of Policing's Vetting Code of Practice ("the Vetting Code"). In particular, it concerns whether Lang J ("the Judge") was correct to hold in her judgment of 11 February 2025, at para 170, that, where a police officer has been investigated pursuant to the Police (Conduct) Regulations 2020 (SI 2020 No 4) ("the Conduct Regulations"), and has been found to have "no case to answer" or the allegation has not been proved, a subsequent vetting review is not permitted to find that there are reasonable grounds to suspect that the same conduct did occur, in the absence of exceptional circumstances.

2. The Respondent, Lino Di Maria, is a serving police officer in the Metropolitan Police Service ("MPS"). He was the claimant in the Administrative Court, where he successfully brought judicial review proceedings. The Appellant is the Commissioner of Police for the Metropolis. He was the defendant to the proceedings in the Administrative Court. The First Interested Party is the College of Policing, which promulgated the Vetting Code whose interpretation is in issue in this appeal. The Second Interested Party is the Secretary of State for the Home Department, who supports the submissions made by the Appellant and the College of Policing but has not taken an active part in these proceedings.

3. Permission to appeal to this Court was granted by Bean LJ on 17 April 2025. Permission to appeal was granted on all three grounds for which it was sought but two of those grounds have been dismissed by consent, in an order made by Master Meacher on 6 June 2025, so that the only live issue is the one I have outlined at para 1 above. The other two grounds were withdrawn in the light of the fact that legislation which post-dates the judgment below has rendered it unnecessary to pursue them: the Police (Vetting) Regulations 2025 (SI 2025 No 502) ("the 2025 Regulations"). That development, together with the fact that the Respondent's vetting status has now expired by reason of the passage of time and would therefore, in any event, have to be reviewed, has required this Court to consider (1) whether this Court has jurisdiction to entertain this appeal and (2) if it does have jurisdiction, whether it should exercise its discretion to do so.

4. I should say at the outset that the Judge gave a thorough and commendable judgment, which has had the salutary consequence of leading to legislation (the 2025 Regulations) to address the many faults that she identified in the regime which was in force at the time of this case. As a result, I can set out the factual and regulatory background relatively briefly, as the details can be found in the judgment of the Administrative Court. I should also stress that most of what the Judge held is not the subject of appeal to this Court.

5. For the reasons which are set out in in this judgment, I have reached the conclusion that:

   (1) This Court does have jurisdiction to entertain this appeal.

(2) In the exercise of its discretion, it should do so because it would be in the public interest to give an authoritative judgment on the meaning of the relevant part of the Vetting Code.

(3) The Judge did, with respect, err in her interpretation of the Vetting Code, as submitted by the Appellant and the College of Policing.

Factual background

6. The Respondent has had several allegations made against him, relating to events occurring between 2007 and 2022. The allegations included three allegations of rape made by two different complainants. Two of the instances of alleged rape occurred in the complainant's car in a public car park. None of the allegations resulted in criminal convictions, or findings of misconduct or gross misconduct under the Conduct Regulations. Following investigations, it was found in each case that there was no case to answer or that the allegation had not been proved.

7. The Respondent's "Management Vetting" and "Recruitment Vetting" status was withdrawn on 15 September 2023, with the consequence that the Respondent ceased to hold the minimum level of vetting required for a police officer.

8. The Respondent submitted an internal appeal against the removal of his vetting status. That appeal was dismissed on 13 February 2024. The internal appeal decision-maker concluded that, although there were no misconduct or criminal findings against the Respondent, it was not uncommon for allegations of this nature to be difficult to prove. The allegations and complaints had arisen over a significant period of time from a number of complainants and there was a "consistency and cumulative force" in them. They were unlikely to be "entirely devoid of truth".

9. On 20 February 2024, the Respondent was referred to the appropriate authority to make a determination as to gross incompetence under regulation 32 of the Police (Performance) Regulations 2020 (SI 2020 No 3) ("the Performance Regulations"). On the basis that the Respondent was unable to perform his role as an officer without any vetting clearance, the Respondent was referred to a "third stage" meeting under the Performance Regulations on 1 March 2024.

10. The Respondent brought a claim for judicial review of those decisions by the Appellant. On 11 February 2025, the Judge allowed the Respondent's claim for judicial review on Grounds 1-4. She considered that it was therefore unnecessary to decide the issue raised by Ground 5. The Commissioner now appeals to this Court.

Police vetting regimes

11. There are two vetting regimes applied across the police service: "Force Vetting" (to protect police assets) and "National Security Vetting" (to protect government assets). These were described by the Judge at paras 49-53 of her judgment. I should stress that, although there were faint suggestions in some of the written arguments before this Court that the Judge's reasoning in this case would also be applicable to National

Security Vetting, we did not hear submissions about this potentially important issue. Accordingly, I take the view that this case is about Force Vetting and not about National Security Vetting. Nothing in this judgment should be read as if it were concerned with the latter.

12. At the material time, there were two key guidance documents on vetting in the police: the Vetting Code and the Authorised Professional Practice on Vetting 2021 ("the APP"). The Vetting Code sets out the actions that a chief officer of police must ensure are taken for effective vetting and is supported by the APP, which describes the vetting procedures, technical processes and detail needed to implement vetting. I turn to the Vetting Code in more detail.

The Vetting Code

13. The College of Policing issued the Vetting Code under section 39A of the Police Act 1996, as amended by the Anti-social Behaviour, Crime and Policing Act 2014. This was presented to Parliament and is a statutory code of practice, setting out guidance on the principles and ethical standards relating to vetting.

14. Para 5.6 ('Vetting Decision Making') states that, having gathered the necessary information and intelligence, each case must be decided on its own merits, taking all relevant information into account. It goes on to advise:

> "Assess the risks posed by the individual to the public and the police service, giving consideration to threats, vulnerability and impact. … In making vetting decisions where adverse information has been considered, the decision-maker must apply the vetting test."

15. The "vetting test", which lies at the heart of this appeal is then set out, also in para 5.6:

> "1. Are there reasonable grounds for suspecting that the applicant, a family member or other relevant associate:
>
> - is, or has been, involved in *criminal activity*
> - has financial vulnerabilities (applicant only)
> - is, or has been, subjected to any *adverse information*
>
> 2. If so, is it appropriate, in all the circumstances, to refuse vetting clearance?" (Emphasis added)

It will be apparent from that wording that the vetting test requires reasonable grounds for suspicion. It will also be apparent that there does not necessarily have to be reasonable suspicion of criminal activity. The vetting test also refers to "adverse

information", something to which the Judge referred at para 169 of her judgment and to which I shall have to return.

16. Para 5.7 provides the following guidance on what is to happen if there is "adverse information":

> "Forces may review or renew any clearance before the review or renewal date. They must do so if *adverse information* comes to light relating to the individual, or if there is a material change in an individual's personal circumstances.
>
> If a person working in policing is unable to hold the required vetting clearance to perform their role, the force will consider an alternative suitable role with a lower level of vetting clearance. If such a role is not available or clearance cannot be granted at the lowest level, the individual will be subject to dismissal proceedings, as vetting clearance is a requirement of their role." (Emphasis added)

17. Para 5.9 makes it clear that vetting status will be kept under continuing review. It states:

> "In line with corruption prevention policies and associated compliance measures, ongoing integrity checks will be undertaken on all those working in policing. This will include the opportunity to identify whether there is any change in an individual's circumstances that may have an impact on their vetting clearance and, if so, to take appropriate action.
>
> There will be a clear process for timely reporting of changes in circumstances that may have an impact on a vetting clearance, coupled with regular communication to remind individuals of their responsibility in this regard, along with the types of change of which they should be aware."

18. Para 5.10 addresses the situation where there have been misconduct proceedings which do not result in the dismissal of a police officer and applies even where there has been no sanction imposed as a result of such proceedings. Even in such cases there may be a review of vetting and this may lead to vetting being downgraded or declined. Para 5.10 provides:

> "Following the conclusion of misconduct proceedings that result in a sanction other than dismissal, an individual's vetting clearance will be reviewed. This does not preclude a decision to review a vetting clearance, even where no sanction is given (see the section above on 'Adverse or other information'). This review can result in the clearance being:

- granted
- granted with conditions
- downgraded (with or without conditions)
- declined

> If a person working in policing is unable to hold the required vetting clearance to perform their role, the force will consider an alternative suitable role with a lower level of vetting clearance. If such a role is not available or clearance cannot be granted at the lowest level, the individual will be subject to dismissal proceedings, as vetting clearance is a requirement of their role.
>
> ..."

19. We were also shown the College of Policing's Vetting Authorised Professional Practice dated May 2025, which followed after the judgment of the Court below; and the Home Office guidance 'Withdrawal of Police Vetting Clearance: Statutory Guidance on the Police Vetting Withdrawal and Dismissal Process', published on 22 July 2025, which of course again post-dates the judgment of the Court below.

20. These documents, which came after the judgment of the Court below, cannot, in my view, provide a proper foundation for criticism of the Judge's reasoning. Moreover, it would be inappropriate for this Court to pronounce in detail about the meaning and effect of these documents, as those may be in issue in future cases and may require fuller argument as the occasion demands.

Material regulations

The Conduct Regulations

21. On behalf of the Respondent we were taken in detail through the Conduct Regulations. These provide for a detailed process for the investigation of conduct issues, including the appointment of an investigator under regulation 15, written notices to be provided under regulation 17, representations to the investigator to be made under regulation 18, interviews to take place under regulation 20 and a report of the investigation to be made under regulation 21. In particular, regulation 21(2)(c) requires the written report to indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

22. Schedule 2 to the Conduct Regulations sets out standards of professional behaviour and includes "authority, respect and courtesy" and "equality and diversity".

The Performance Regulations

23. Under the Performance Regulations (in the version in force at the relevant time), matters are generally handled in three stages. However, a third stage meeting may be required without a prior first or second stage meeting by regulation 32(1)(a) where the appropriate authority decides that the performance of a police officer constitutes "gross incompetence". At a third stage meeting, the panel does not have the power to open or review the vetting decision. Gross incompetence is a ground for dismissal.

24. Dismissal also results in inclusion on the Police Barred List, with the consequence that the barred person cannot obtain service or employment within any police force for a specified period of at least three years.

The 2025 Regulations

25. The 2025 Regulations were brought into force on 14 May 2025, after the judgment of the Administrative Court and, in part at least, in response to the criticisms which had been made by the Judge of the previous legislative regime.

26. Regulation 24(3) now makes it clear that "an officer who has had their vetting clearance withdrawn must be dismissed without notice".

27. On the question whether a vetting review can consider matters which have already been considered under the Conduct Regulations, regulation 4 of the 2025 Regulations provides:

> "(1) Parts 3 and 4 of these Regulations apply where information which indicates that a police officer may no longer be suitable to hold vetting clearance ('a matter') comes to the attention of a vetting authority.
>
> (2) A *vetting authority is not prevented* from considering a matter under Part 3 or 4 of these Regulations by virtue of the fact that the matter has been considered or determined under the Conduct Regulations, the Performance Regulations or Part 2 of the 2002 Act.
>
> …" (Emphasis added)

28. The 2025 Regulations now provide for additional procedural safeguards where an officer is being assessed with the potential of having their vetting clearance withdrawn (a "withdrawal assessment" under those Regulations). An officer may nominate a "police friend" and they have the right to legal representation at an interview or appeal meeting. There are provisions for the officer to be given notice of a withdrawal assessment and the matters being considered, and for making representations to the assessor. Provision is also made for an internal appeal and an appeal to the Police Appeals Tribunal.

The judgment of the Administrative Court

29. The background to this appeal is set out fully in a comprehensive judgment by the Judge and so it is unnecessary for me to repeat what she said: see in particular the introduction at paras 4-6; the history of the case at paras 9-10; the detailed description of the various allegations made against the Claimant (now Respondent): allegation A: 25 July 2011, at para 11; allegation B: 12 August 2019, at paras 12-17; allegation C: 25 November 2019, at para 18; allegation D: 6 June 2021, at paras 19-21; allegation E: 26 October 2021, at para 22; allegation F: 2 November 2021, at para 23; allegation G: 10 August 2022, at paras 24-25; and complaints by the public, at paras 26-27.

30. The Judge described the review which took place on 10 June 2022 at para 28 and the vetting review in 2023 at paras 29-33; the decision to withdraw the vetting clearance dated 15 September 2023 at paras 34-35; the appeal against the removal of vetting dated 13 February 2024 at paras 36-42; and the referral under regulation 32 of the Performance Regulations at para 43.

31. The Judge set out the various codes, regulations and guidance relating to vetting in the police force at paras 44-61; the Conduct Regulations at paras 65-79; the Performance Regulations at paras 80-87; and the Police Appeals Tribunal process at paras 88-90.

32. The Judge also described "Operation Assure" and "Operation Onyx" at paras 62-64. In particular she noted that, in his witness statement for the Appellant, Commander Harman had set out in detail concerns about the lack of effective vetting reviews in the MPS, combined with allegations of misogyny and discrimination, which had led to the introduction of Operation Assure and Operation Onyx. It goes without saying that these are obviously matters of real public concern. The public need to have confidence in the police who serve them, particularly in the light of recent and well-known examples of sexual abuse and violence by police officers against women and girls.

33. In the Administrative Court there were five grounds of judicial review. The only ground that remains live in this appeal was Ground 3 in the Administrative Court. However, the Judge's approach to Ground 3 was influenced by her conclusions under the other grounds in relation to the procedural safeguards in misconduct proceedings and vetting reviews. It is therefore necessary to summarise all the grounds of challenge before the Judge, and the conclusion she reached on each ground:

    (1) Ground 1 was that withdrawal of vetting is not a lawful basis for dismissal. This ground was allowed. The Judge said that the anomalous situation by which officers who do not have basic vetting clearance could not be dismissed by the MPS should be resolved by regulations: see para 101 of her judgment. This change has now been made by regulation 24(3) of the 2025 Regulations (see above).

    (2) Ground 2 was that "the vetting regime is a statutorily unregulated process that does not comply with Article 6 ECHR [European Convention on Human Rights], with the implication that the Code of Practice and the APP are unlawful". Ground 2 succeeded. The Judge held that Article 6 was engaged in the Respondent's case, and that his Article 6 rights had been breached by

the failure to consider and determine whether he should be afforded the opportunity to call witnesses or cross-examine complainants, and by not giving him the opportunity to be legally represented: see para 146 of her judgment. The 2025 Regulations now provide for procedures to meet these concerns (see above).

(3) Ground 3 was that "Vetting dismissal for misconduct, to the exclusion and frustration of the statutory scheme under the Conduct Regulations, is unlawful". This ground was allowed for reasons set out in more detail below and, as I have said, gives rise to the only live issue on this appeal.

(4) Ground 4 was that:

a) withdrawal of vetting is outside the scope of the Performance Regulations;

b) referral of vetting withdrawals to a third stage meeting under the Performance Regulations frustrates the operation of the Performance Regulations by stripping them of their content and efficacy, including procedural safeguards, and depriving the officer of any meaningful opportunity to challenge the allegation of gross incompetence.

Ground 4 was allowed: see para 196 of the judgment. The procedure for withdrawal of vetting has now been clarified by the 2025 Regulations.

34. Ground 5 was that the decision to withdraw the Respondent's vetting was irrational. In light of her findings on Grounds 1-4, the Judge did not consider it necessary to determine this ground: see para 197 of her judgment.

The Judge's Reasoning on Ground 3

35. The discussion of Ground 3 can be found at paras 148-175 of the judgment.

36. It was argued on behalf of the Respondent that it would frustrate the statutory scheme of the Conduct Regulations, if, after a matter has been investigated under the Conduct Regulations and it is concluded that an officer need not be dismissed, it is decided that they must be dismissed under the vetting regime.

37. At paras 160-162, the Judge distinguished earlier cases on the basis that:

(1) Here, there was no specific statutory basis for dismissal/discharge.

(2) In this case, the allegations of rape were strongly disputed.

(3) After detailed investigations, there were findings of "no case to answer".

(4) There were no findings of misconduct and no sanctions were imposed.

38. The Judge then said that:

(1) The statutory misconduct procedures are the intended and proper legal route for the consideration and determination of allegations of misconduct against police officers.

(2) The statutory misconduct procedures provide important procedural safeguards for officers, which should not be circumvented, and are intended to comply with the fair hearing requirements of Article 6 ECHR.

39. At para 169, the Judge said the following:

> "Unfortunately, on a literal reading of the test in the Code of Practice, the reviewer only has to have reasonable grounds for suspecting that the applicant is or has been subject to any adverse information. As Mr Beggs KC rightly accepted, the reviewer should be considering, not merely whether there is adverse information against the officer, but *whether facts or information exist which would satisfy an objective observer that the officer may have committed the acts alleged in the adverse information*." (Emphasis added)

Mr Beggs repeated that concession, which is obviously correct, before this Court. I have set out the text of para 5.6 of the Vetting Code at paras 14-15 above. I confirm that the relevant part of the test, where it refers to "adverse information", must be interpreted as the Judge said at para 169 of her judgment.

40. I turn to the passage in the judgment which lies at the heart of the present appeal. The two key paragraphs of the Judge's reasoning are paras 170-171:

> "170. In my judgment, where an allegation has been considered and finally determined in misconduct proceedings, by a finding of 'no case to answer' or a finding that no misconduct has been proved, usually there will not be any reasonable grounds for suspecting that the officer may have committed the act alleged, save in exceptional cases, for example, where significant new evidence has come to light. The determination in the misconduct proceedings should be respected and accorded primacy. So, in this case, the vetting officers should have made their assessment on the basis that, in the light of the findings of no case to answer, there were *no reasonable grounds for suspecting* that the Claimant committed the rapes as alleged in allegation B (Judgment/[12]) and allegation D (Judgment/[19]), and therefore those allegations should be *disregarded*. That was not the approach adopted by the vetting officers in this case.
>
> 171. In a case where a vetting officer alights upon evidence of misconduct which was not considered or determined in the misconduct proceedings, I consider that the appropriate course will usually be to *pause* the vetting process and refer the new allegation for consideration by the appropriate authority, to

> determine whether misconduct proceedings should be instigated. …" (Emphasis added)

41. Further, the Judge considered that the Respondent's admitted sexual activity in a public car park had been treated separately as discreditable conduct under the Standards of Professional Behaviour. She found that this should have been referred through the misconduct procedures by the vetting decision makers. At paras 172-174, the Judge said:

> "172. This situation arose in this case, and provides a useful illustration. In allegation B, the complainant and the Claimant referred to sexual activity in the complainant's car whilst parked in the Tesco car park. The Conduct Matter Investigation Report did not treat this as evidence of misconduct, nor did the Integrity Assurance Unit in its review on 10 June 2022. However, the Vetting Review Decision concluded, at paragraph 5.4.3, that the Claimant's conduct engaging in sexual activities in public places on more than one occasion could bring the police service into disrepute and damage the trust and confidence between the police and public. This wording echoes the description of 'Discreditable Conduct' in the Standards of Professional Behaviour in Schedule 2 to the Conduct Regulations, which are referred to in section 1.3 of the APP, and relied upon in paragraph 5.4.2 of the Vetting Review Decision.
>
> 173. In the appeal decision, Commander Russell referred to this finding at paragraph 16. It was then taken into account in paragraph 17 as part of a significant body of information over a period of time which justified removal of vetting. Mr Beggs KC explained to me that sexual activity in the Tesco car park was the basis (at least in part) for the reference in paragraph 17 to 'self-acknowledged risky behaviour that … could damage the public's trust and confidence in policing'. Commander Russell placed particular weight on this in the penultimate sentence of paragraph 17:
>
> > 'On this basis, I believe the threshold has clearly been met – there is significant adverse information within the allegations which is unlikely to be entirely devoid of truth, plus LDM's admitted risk taking behaviour, plus his lack of respect to colleagues.' …
>
> 174. This was a new allegation, of which the Claimant was not given advance notice, and which the vetting officers apparently treated as Discreditable Conduct under the Standards of Professional Behaviour. Mr Beggs KC submitted it could amount to the criminal offence of offending public decency, and accepted that, if it was to be relied upon, it ought

> to have been referred as a potential conduct matter by the vetting decision makers. In my view, that would have safeguarded the Claimant against circumvention of the misconduct procedures."

The order made by the Judge

42. The Judge concluded that the decision to withdraw the Respondent's vetting, which had been upheld on appeal, and to refer him to a third stage meeting should be quashed: see para 198 of the judgment.

43. The order which the Judge made to give effect to her judgment included, at para 1: "The claim for judicial review is allowed on Grounds 1 – 4. No order is made on Ground 5."

44. Para 2 of the order stated: "The Defendant's decisions to remove the Claimant's minimum vetting clearance and to refer him to a third stage meeting under the Police (Performance) Regulations 2020 are quashed."

45. Since the present appeal is against only one aspect of the Judge's reasoning, the quashing order made under para 2 will be unaffected even if this Court allows the appeal on the only ground now before it.

46. What the Appellant and the College of Policing are really concerned about, as supported by the Secretary of State, is the reasoning of the Judge on Ground 3 before her, in particular at para 170 of the judgment, and it could be said that the judgment of this Court will not have any material impact on the actual order made by the Judge. Nevertheless, it is right to observe that the Appellant also appeals against para 1 of the order.

47. Furthermore, at the hearing before this Court it became clear that the issue of the Respondent's continued vetting approval has to be reviewed by the Appellant in any event, because of the passage of time. In that sense it could be said that this appeal has become academic.

48. Before I address the merits of the present appeal, I must therefore first consider whether this Court has jurisdiction to entertain it and, if it does have jurisdiction, whether it should exercise its discretion to do so.

Jurisdiction and discretion

49. *Lake v Lake* [1955] P 336 is commonly cited for the proposition that an appeal lies only against an order and not the reasons for it. Section 27 of the Judicature Act 1925 (the statute governing the Court of Appeal's jurisdiction at that time) only conferred a right of appeal against a "judgment or order", which the Court understood to mean the formal judgment or order that is drawn up and disposes of the proceedings and that the successful party is in appropriate cases entitled to enforce or execute: see page 150 (Lord Evershed MR). The corresponding provision is now section 16(1) of the

Senior Courts Act 1981, which still uses the phrase "judgment or order". Lord Evershed MR considered that there was "no warrant for the view" that a party could appeal against other findings or statements, and suggested that this would include expressions of a view about the law (pages 149-150).

50. The issue has been considered by this Court in more recent cases, including *Re B (A Child) (Split Hearings: Jurisdiction)* [2000] 1 WLR 790 and *Cie Noga d'Importation et d'Exportation SA v Australia and New Zealand Banking Group Ltd and others* ("*Noga 3*") [2002] EWCA Civ 1142; [2003] 1 WLR 307. The position was recently summarised by the Court in *Braceurself Ltd v NHS England* [2023] EWCA Civ 837; [2024] 1 WLR 669. In giving the judgment of the Court, Coulson LJ summarised the principles that can be drawn from the authorities as follows, at para 30:

> "(a) Generally, an appeal lies against a judgment or order, not against a finding of fact or some element of the court's reasoning (*Lake v Lake).*
>
> (b) An order is not always required: what matters is whether the court's findings would or could have a significant effect on the subsequent rights and obligations of the parties (*In Re B*).
>
> (c) If the decision was or could have been recorded in a formal order in such a way that the would-be appellant could not or would not seek to challenge or vary it, there was no jurisdiction to entertain an appeal (*Noga 3*)."

51. Applying those principles to the present case, it is clear, in my view, that the Appellant does not merely seek to question part of the Judge's reasoning. It is true that, even if this appeal succeeds, para 2 of the Judge's order (the quashing order) will be unaffected because the Judge would still have quashed the decisions under challenge on other grounds and those parts of her judgment are not the subject of this appeal. However, the Appellant does seek to have part of the Judge's order reversed, that is the part of para 1 of the order which allowed the claim for judicial review on the basis of what was then Ground 3. Accordingly, I am satisfied that this case does not offend against the principle in *Lake v Lake* and this Court does have jurisdiction to consider this appeal.

52. I turn next to the question whether this Court should nevertheless decline to exercise that jurisdiction because the case has become academic, in particular because, whether or not the Judge was right to quash the Appellant's decisions, the Respondent's vetting status has expired because of the passage of time and would have to be reviewed now in any event.

53. In *Sun Life Assurance Co of Canada v Jervis* [1944] AC 111, the House of Lords declined to hear an appeal where there was no issue to decide between the parties: see in particular, the speech of Viscount Simon LC at pages 113-114. Similarly, the House of Lords refused to hear an appeal in *Ainsbury v Millington* [1987] 1 WLR 379 where the matter had become academic.

54. In contrast, in *R v Secretary of State for the Home Department*, *ex p. Salem* [1999] 1 AC 450, the House of Lords accepted that, in cases involving a question of public law, it had a discretion to hear an appeal even if the matter raised would not directly affect the rights and obligations of the parties themselves, if there was a good reason in the public interest for doing so: see Lord Slynn of Hadley's speech at pages 456H-457A. This was agreed by counsel in the case (page 456G). The earlier authorities were distinguished on the basis that they involved private law rights (page 456H). The Appellate Committee nevertheless refused to exercise its discretion in that case (page 457B). Lord Slynn said:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

55. In judicial review proceedings, the Court of Appeal has more recently referred to *Salem* and exercised its discretion to hear an appeal on a point that has become academic. By way of example, the case of *R (Dolan and others) v Secretary of State for Health and Social Care and another* [2020] EWCA Civ 1605; [2021] 1 WLR 2326 concerned the lawfulness of coronavirus lockdown restrictions. The Court held that the claim was academic because the regulations under challenge had been repealed (at para 39 in the judgment of the Court given by Lord Burnett of Maldon CJ). The Court decided that the case was one in which the Court should, nevertheless, exercise its discretion to hear the appeal, because it was in the public interest to do so, at paras 41-42:

> " In our view, the present is such a case but only in relation to ground 1, that is the vires issue. We have come to the conclusion that it would serve the public interest if this court itself were to decide that issue now rather than leave it, for example, to be raised potentially by way of defence in criminal proceedings in the magistrates' court and no doubt on appeal from there to the higher courts. […] Furthermore, the question whether the Secretary of State had the vires to make regulations of this type continues to be a live issue even though the particular regulations under challenge have been repealed. New regulations continue to be made under the same enabling power."

56. In the present case I consider that this Court should exercise its discretion to decide the issue raised by the Appellant, as to the correctness of the Judge's reasoning, in particular at para 170, because it would be in the public interest to do so. The point has been fully argued before this Court. It is likely to affect other cases and not only

this Respondent's case. Resolution of the issue is also important for the maintenance of public confidence in police forces, particularly in the context of public concerns about sexual harassment, abuse and violence by police officers against women and girls.

57. I also see some force in the Appellant's submission that the enactment of the 2025 Regulations has not entirely removed the need to determine the issue. The Appellant submits that regulation 4(2) of the 2025 Regulations does not entirely answer the concerns raised in this appeal. Regulation 4(2) means that a vetting authority may "consider" a matter that has been considered or determined under the Conduct Regulations. However, in light of the Judge's reasoning at para 170, it might still be argued that, where there has been no finding of misconduct, usually there will not be any reasonable grounds for suspecting that the police officer may have committed the act alleged, save in exceptional cases.

58. I therefore turn to consider the merits of this appeal.

The Appellant's submissions

59. The only live ground of appeal was numbered Ground 2 in the application for permission to appeal and was formulated as follows (using the paragraph numbering in the Grounds of Appeal):

> "3. The Judge erred in finding that, where a police officer has been investigated pursuant to the Police (Conduct) Regulations 2020 and found to have 'no case to answer' or the allegation has not been proved in formal misconduct proceedings under those Regulations, a subsequent vetting review may not find that there are reasonable grounds to suspect that the same conduct occurred, save in exceptional circumstances.
>
> 4. The Judge erred in failing to have sufficient regard to the fundamental differences in the purpose and substance of the police misconduct and vetting regimes. Unlike the former, the latter involves (i) a multifactorial assessment of the risk posed by the officer arising from matters potentially much broader than a single incident of alleged misconduct; (ii) to the standard of reasonable grounds for suspicion rather than the civil standard of proof; (iii) against a wide range evidence, information and intelligence that may not be admissible in police misconduct proceedings."

60. As will become apparent later in this judgment, in my view, that ground is carefully but relatively narrowly formulated and constitutes in essence a criticism of the Judge' reasoning at paras 170-171 of her judgment. It does not, in my view, include a complaint about the specific decision taken by the Judge at paras 172-174.

61. On behalf of the Appellant Mr John Beggs KC accepts that, where an officer has been found under the misconduct regime to have no case to answer or the allegation has not been proved in misconduct proceedings, those findings will need to be given careful scrutiny in a vetting review, with reasons for giving a different conclusion being articulated. He also accepts that misconduct proceedings should take place before vetting reviews based on the same facts. But, importantly, he submits, the misconduct proceedings can only have a "temporal" priority. He does not accept, as the Judge held, that the outcome of misconduct proceedings will mean that, in the absence of exceptional circumstances, the review panel must proceed on the footing that there is no reasonable ground for suspicion.

62. In summary, the Appellant submits:

    (1) The Judge's conclusions render nugatory vetting reviews mandated by "adverse information" about an officer's conduct coming to light, save in exceptional circumstances. If the matter is investigated, it will have to be disregarded if either the officer was found to have no case to answer or the allegation of misconduct was not proved (save in exceptional circumstances). The misconduct could only be relied on if it is proved, leaving no room for the "adverse information" to be considered.

    (2) The Judge's approach failed to take account of the fundamental differences in the purpose and substance of the separate misconduct and vetting regimes. Police misconduct proceedings involve proving allegations on the civil standard of the balance of probabilities, with more stringent rules on admissible evidence. In contrast, the vetting review process involves a multifactorial assessment of the risk posed by the officer, on the standard of reasonable grounds for suspicion, and on the basis of evidence that may not be admissible in misconduct proceedings.

    (3) On the Judge's approach, serious concerns about the risk posed to the public by an officer's conduct must be disregarded in the vetting process.

63. Mr Beggs then makes a specific criticism of the Judge's conclusion, at paras 172-174 of her judgment, that the concern that the Respondent had engaged in sexual activity in a public place on two occasions should have been referred back into the misconduct regime rather than considered as part of the vetting review. Mr Beggs submits that this specific concern could be considered under the vetting regime because the *overall* allegation had already been investigated under the Conduct Regulations and the particular behaviour was admitted by the officer and so required no further investigation in conduct proceedings.

The First Interested Party's Submissions

64. The First Interested Party, the College of Policing, supports the Appellant's appeal, in submissions that were ably advanced by Mr Aaron Rathmell at the hearing before us. He emphasises, in particular, that vetting decisions and determinations pursuant to the Conduct Regulations are taken by different decision makers, with different expertise,

applying different tests, and for different purposes. Vetting decisions are concerned with the assessment of trust and risk in connection with police service.

The Second Interested Party's Position

65. The Secretary of State for the Home Department was named as a second Interested Party in the Administrative Court proceedings. The Secretary of State did not take an active part in those proceedings and has confirmed that her active participation in the appeal is unnecessary, although she agrees with the submissions advanced by the Appellant and the First Interested Party. However, in a letter sent to the Court on behalf of the Secretary of State, our attention has been drawn to a further analogy, which, it is submitted, is relevant to the current appeal: the Supreme Court's decision in *R (R) v Chief Constable of Greater Manchester Police* [2018] UKSC 47; [2018] 1 WLR 4079, that it can be a lawful and a proportionate interference with an applicant's Article 8 ECHR rights to disclose as part of an enhanced criminal record certificate, issued under section 113B(4) of the Police Act 1997, information constituting allegations of which the applicant has been *acquitted* in a criminal trial.

The Respondent's Submissions

66. On behalf of the Respondent Mr Kevin Baumber first submits that the only live ground of appeal, as formulated, is limited to paras 170-171 of the Judge's judgment and does not include what she said about one specific allegation about the Respondent's conduct at paras 172-174.

67. As to the merits of that ground of appeal, Mr Baumber submits:

(1) The statutory misconduct procedures are the intended and proper legal route for the consideration and determination of allegations of misconduct against police officers.

(2) As correctly identified by the Judge, a finding of no case to answer under the Conduct Regulations means that there is insufficient evidence such that there is *no* legitimate construction of the facts upon which a reasonable panel could make any finding of misconduct.

(3) Where it has been determined that there is no case to answer, it must therefore follow that the reasonable suspicion test is not met.

(4) It will usually be the case that a positive "not proven" finding is consistent with no reasonable suspicion remaining. The Judge's reasoning caters for the possibility that there may be exceptional cases where that usual position will not apply.

(5) If it has been determined in proceedings under the Conduct Regulations that a matter does not require dismissal, a different decision could only reasonably be reached in a vetting review where there is an aggregation of different

matters which the disciplinary panel did not pronounce upon, or a separate vetting-specific rationale.

(6) Stages 1 and 2 of the vetting test must not be conflated. Stage 1 is a qualifying evidential test and does not involve consideration of risk. It is only if the "reasonable suspicion" test is met that information or an allegation can be considered at stage 2.

(7) The Judge's approach does not shut off a multifactorial assessment; it allows significant new evidence to be taken into account.

Analysis

68. The Judge gave a thorough and careful judgment, which dealt with a wide range of issues, most of which are not the subject of appeal. Her judgment has also proved valuable in prompting the Secretary of State to introduce regulations in 2025 for the first time expressly dealing with the important question of what is to happen to a police officer where vetting has been withdrawn. This now expressly provides a ground for mandatory dismissal.

69. The issue which arises on this appeal is therefore a narrow one and, in particular, concerns para 170 of the judgment of Lang J. In my respectful judgement, the Judge did fall into error in that paragraph. The vetting test requires there to be reasonable grounds for suspicion. The Judge in effect equated that with (i) a finding of "no case to answer" or (ii) a finding that no misconduct has been proved. I will take each of those in turn.

70. As to (i), although a finding of "no case to answer" may at first sight appear to create a relatively low threshold, on reflection what it amounts to is a conclusion that no reasonable tribunal of fact, having considered all the evidence, could find the charge to be *proved*, i.e. having applied the standard of proof of a balance of probabilities.

71. As to (ii), it is even more clear that a finding that no misconduct has been proved will be arrived at after considering all the evidence and applying that standard of proof, i.e. the balance of probabilities.

72. Neither of those is the same thing as having reasonable grounds for suspicion that an act may have occurred.

73. More fundamentally, it seems to me that the nature of the exercise which is required in vetting is different from the exercise in disciplinary proceedings. In disciplinary proceedings, in common with many situations in which a decision-maker has to decide whether an event occurred in the past, the balance of probabilities is a sensible way to decide that question of fact. Either an event happened or it did not. The law takes the view, when applying the civil standard of proof, that, if it is more likely than not that the event did happen, then it is taken definitely to have happened. Conversely, if it is not more likely than not to have happened, it is taken definitely as not having happened.

74. In *Mallett v McMonagle* [1970] AC 166, Lord Diplock set out the courts' approach in civil proceedings when determining whether a past event occurred (at page 176F):

> "In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. "

75. In contrast, it is well established that the test of reasonable grounds for suspicion, which can arise, for example, in the context of whether there is a power to arrest someone who is suspected of an offence or to search their property without warrant, does not require anything as high as a balance of probabilities. It does not require even "*prima facie* proof".

76. *Shaaban bin Hussein and Others v Chong Fook Kam and another* [1970] AC 942 was a decision of the Privy Council in an action for false imprisonment. The applicable Malaysian Criminal Procedure Code empowered the police to make an arrest upon having a "reasonable suspicion" that an individual had been concerned in an offence. Lord Devlin noted that "reasonable suspicion" is not to be equated with *prima facie* proof, at pages 948-949:

> "Their Lordships have not found any English authority in which reasonable suspicion has been equated with *prima facie* proof …
>
> There is another distinction between reasonable suspicion and *prima facie* proof. *Prima facie* proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. … Suspicion can take into account also matters which, though admissible, could not form part of a *prima facie* case."

77. In *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140; [2007] QB 415, the Court of Appeal (in a decision later affirmed by the House of Lords) noted that, when assessing reasonable grounds for suspicion in the context of imposing a control order under the Prevention of Terrorism Act 2005, the Secretary of State could take into account circumstances giving rise to suspicion, that had not been proved on the balance of probabilities. Lord Phillips of Worth Matravers CJ said, at para 67:

> "… The issue that has to be scrutinised by the court is whether there are reasonable grounds for suspicion. That exercise may involve considering a matrix of alleged facts, some of which are clear beyond reasonable doubt, some of which can be established on balance of probability and some of which are based on no more than circumstances giving rise to suspicion. The court has to consider whether this matrix amounts to reasonable grounds for suspicion and this exercise differs from

> that of deciding whether a fact has been established according to a specified standard of proof."

78. The Secretary of State has invited our attention to the judgment of the Supreme Court in *R (R) v Chief Constable of Greater Manchester Police*, in which the judgment was given by Lord Carnwath JSC (with whom the other members of the Court agreed). In particular, I would note what was said by Lord Carnwath at para 74:

> "Given that Parliament has clearly authorised the inclusion in ECRCs of 'soft' information, including disputed allegations, there may be no logical reason to exclude information about serious allegations of criminal conduct, merely because a prosecution has not been pursued *or has failed*. In principle, even *acquittal* by a criminal court following a full trial can be said to imply no more than that the charge has not been proved beyond reasonable doubt. In principle, it leaves open the possibility that the allegation was true, and the risks associated with that." (Emphasis added)

It is right to note that that passage was not addressing a directly analogous situation, as it concerned an acquittal in criminal proceedings (where the standard of proof is higher than the balance of probabilities) but there is some force in the point advanced for the Secretary of State.

79. Both the Appellant and the Respondent drew our attention to the judgment of Eyre J in *R (Victor) v Chief Constable of West Mercia Police* [2023] EWHC 2119 (Admin); [2024] ICR 109, which was distinguished by the Judge. In that case Eyre J held that, although misconduct proceedings had not resulted in dismissal, it was possible for that to happen lawfully after a vetting review. It is unnecessary to dwell at length on that judgment because it is not binding on this Court and, in any event, concerned issues that are not the same as the ones in the present appeal.

80. On behalf of the Appellant, Mr Beggs emphasises what was said by Eyre J at para 91. As Eyre J pointed out in that passage, what the APP requires is a review of vetting to be undertaken whenever misconduct proceedings result in a written warning or a final written warning, in other words in circumstances where the misconduct proceedings themselves have not resulted in dismissal but it may well be that dismissal will be the consequence of properly conducted vetting proceedings.

81. All parties before us drew our attention to the judgment of the Supreme Court in *R (Pearce) v Parole Board* [2023] UKSC 13; [2023] AC 807, in which the judgment was given by Lord Hodge DPSC and Lord Hughes (with whom the other members of the Court agreed). That case concerned the approach that the Parole Board may properly take to allegations made about a prisoner that have not been proved on the balance of probabilities when deciding whether or not to direct the release of a prisoner on licence.

82. The issue in that case was summarised as follows, at para 1:

> "The issue in this appeal is what approach the Parole Board (the 'Board') may properly take, when deciding whether or not to direct the release of a prisoner on licence, to potentially relevant assertions or allegations made about the prisoner which have not been determined, either by the Board or some other body, to be either proved or disproved on the balance of probabilities. …"

83. At para 44, the Court said that earlier decisions of the House of Lords and Supreme Court (in the context of national security):

> "… support the view that a decision-maker, whether a member of the executive branch of government or a judicial body, when assessing future risk, is not as a matter of law compelled to have regard only to those facts which individually have been established on the balance of probabilities; the decision-maker, from the assessment of the evidence as a whole, can take into account, alongside the facts which have been so established, the possibility that allegations, which have not been so established, may be true."

84. A helpful summary of the correct approach was then provided at para 65, in particular sub-paras (iii) and (iv):

> "(iii) Further, evidence which is not sufficiently cogent to establish a fact on the balance of probabilities may still be relevant when the court assesses the weight of other evidence in deciding whether a fact in issue is established …
>
> (iv) In the assessment of risk of future behaviour – an inherently imprecise exercise – it is not necessary to consider each allegation of past behaviour individually and decide whether it is established on the balance of probabilities. Depending upon the legal context, the court can assess risk by weighing up the possibility that an allegation or several allegations may be true having regard to the whole material before it …"

85. Finally, at para 87, the Court summarised its conclusions. Our attention was particularly invited to what it said at sub-para (i):

> "There is no general legal rule that in making a risk assessment the Board must adopt a two-stage process of making findings of fact on the balance of probabilities and then treating only those

> matters on which it has made findings of fact as relevant to the assessment of risks."

86. I do not accept Mr Baumber's submission that *Pearce* should be distinguished because it did not concern a two-stage process like the one required by para 5.6 of the Vetting Code. The first stage of that process requires the decision-maker to consider whether there are reasonable grounds for suspicion of specified matters. It does not require those matters to have been proved. Furthermore, the opening words of para 5.6 of the Vetting Code make it clear that the vetting test is to be used in the context of an assessment of *risk*. Accordingly, the approach to be found in cases such as *Pearce* is, in my view, relevant in this context although, of course, this case is not exactly on all fours with it.

87. In the more recent decision of the Supreme Court in *U3 v Secretary of State for the Home Department* [2025] UKSC 19; [2025] AC 1510, the judgment in *Pearce* was cited at para 60 by Lord Reed PSC, in giving the main judgment (with which the other members of the Court agreed). At paras 61-62, Lord Reed said the following:

> "61. In practice, the assessment of risk, in the context of national security, will often be based on a number of items of information or intelligence, individually disputable or inconclusive, but cumulatively giving rise to reasonable grounds for an apprehension that, for example, the person in question has been in contact with terrorists and has aligned with their objectives. *Those possibilities do not have to be proved to have occurred on a balance of probabilities in order for it to be reasonable to conclude that the person would present a risk* to public safety if he or she returned to the UK, or that the risk is sufficiently serious to justify a deprivation decision. Seen in the context of the attacks that have taken place in the UK and elsewhere in Europe in recent years, such as the Bataclan attack in Paris and the Manchester Arena bombing, a precautionary approach is necessary in the interests of public safety. An error in judgement could have catastrophic consequences.
>
> 62. *That is not by any means to say that an assessment of risk need have no basis in objective evidence*, or that the question whether the risk can justify such a serious measure as the deprivation of citizenship is beyond judicial consideration. But it does mean that the task of SIAC in addressing those questions is not the usual judicial function of applying the law to facts found on a balance of probabilities." (Emphasis added)

88. In my judgement, with appropriate adaptation given the different context of national security cases, that provides a sound approach in the present context also. As I have explained at para 11 above, the present appeal concerns Force Vetting and not National Security Vetting. The decision in *U3* was not about vetting at all but did concern the correct approach to be taken to the evaluation of a risk, albeit in the context of deprivation of citizenship. Although *U3* was in that sense a national

security case, it did not concern National Security Vetting and therefore does, in my view, provide some assistance in the context of Force Vetting. In the present context too, the vetting decision requires an evaluation of risk as to what may happen in the future. No particular event need be proved to have happened at all. All the information available to the decision-maker needs to be taken into account and then an evaluative assessment of future risk needs to be made. This does not mean that the vetting decision can be taken on the basis of mere speculation or irrational findings: there has to be, to use Lord Reed's phrase, a "basis in objective evidence" for the assessment of risk but this is readily accommodated by the requirement of reasonable grounds for suspicion in the vetting test.

Ancillary matters

89. I should mention two other matters.

90. The first is what the Judge said at para 171 of her judgment, relating to the need usually to "pause" the vetting process and refer any new allegation for consideration in the context of misconduct proceedings. The Appellant appeared to accept this but only giving misconduct proceedings a "temporal priority". The Appellant, and even more forcefully the College of Policing, do not accept that the misconduct proceedings have any substantive primacy over the vetting process. I respectfully endorse that position but I would go further.

91. Given the conclusion that I have reached on the main issue in this appeal, it seems to me to be wrong in principle that there should have to be a "pause" every time a new allegation arises in the context of a vetting review. I do not think it is necessary then to pause the vetting review process to allow findings of fact to be made in misconduct proceedings. This is because, as I have explained above, the two types of proceedings are different in nature and purpose. In a vetting review, findings of fact do not, as such, need to be made, because the test is whether there are reasonable grounds for suspicion. It follows, in my view, that, if a new matter arises during the course of a vetting review, it may well be something that the decision-maker can properly take into account as part of the multifactorial assessment of risk that is required. This will also help in cases where there may be an urgent need to review an officer's vetting status and there is insufficient time for there to be misconduct proceedings. As I have mentioned already, the issue of vetting arises in a context in which there is a pressing public interest in maintaining confidence in the police. For the avoidance of doubt, I repeat that this appeal concerns the law as it was at the time of the judgment of the Administrative Court, before the 2025 Regulations were enacted. Nothing in this judgment should be taken to concern the meaning and effect of the 2025 Regulations.

92. Finally, I should address what the Judge said at paras 172-174 of her judgment and the complaint that Mr Beggs makes about it. In my view, this does not fall directly within the scope of the only ground of appeal which is before this Court. In any event, it does not raise a point of general application, such that the Court should exercise its discretion in accordance with *Salem* to pronounce on it. Finally, the vetting review process will now have to take place in any event, because the Respondent's vetting status has expired by reason of the passage of time. In those circumstances, it would be inappropriate for this Court to pronounce in advance on

what may (or may not) be in dispute in that process. What is important is that this Court has now decided the issue of principle as to the correct approach which must be adopted in vetting reviews and that will inform the issue of fact that was considered at paras 172-174 of the judgment below as it will other factual issues.

Conclusion

93. For the reasons I have given, I would allow this appeal.

Lady Justice Whipple:

94. I agree.

The Lady Carr of Walton-on-the-Hill CJ:

95. I also agree.