

On appeal from [2025] EWHC 275 (Admin)

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

BACKGROUND TO THE APPEAL

1. This appeal concerns the proper approach to unproven allegations and findings of no case to answer when reviewing police officers' Force Vetting clearance.
2. The Respondent is a serving police officer in the Metropolitan Police Service. He had several allegations made against him over a period of 15 years, including three allegations of rape made by two different complainants. Following investigations, it was found in misconduct proceedings that there was no case to answer or that the allegation had not been proved. In a vetting review, however, a decision was made to terminate the Respondent's vetting clearance, which would inevitably result in his dismissal. It was said that the allegations had cumulative force and were unlikely to be entirely devoid of truth.
3. In judicial review proceedings in the Administrative Court, the Respondent succeeded on four grounds of challenge. The decision to remove his clearance was quashed. The Police (Vetting) Regulations 2025 ("the 2025 Regulations") were subsequently introduced to address the Court's criticisms of the previous legislative regime, including by introducing more stringent procedural safeguards in vetting reviews.
4. The Appellant in these proceedings was the Commissioner of Police for the Metropolis. He appealed on one ground. When reviewing police officers' Force Vetting clearance, a reviewer must ask whether there are "reasonable grounds for suspecting" the officer is or has been involved in criminal activity or subjected to adverse information. The Administrative Court held that, in applying this test, unproven allegations or allegations resulting in a finding of no case to answer could only be taken into account in exceptional circumstances. The Appellant argued that because vetting reviews involve a multifactorial assessment of future risk, a broader approach is required. The appeal was supported by two interested parties, the College of Policing and the Secretary of State for the Home Department.

JUDGMENT

5. The Court of Appeal unanimously allowed the appeal on this ground. This does not affect the fact that the decision to remove the Respondent's vetting clearance has been quashed on the other successful grounds in the Administrative Court.

Jurisdiction and discretion

6. Hearing the appeal would not offend against the general principle that an appeal should be against an order and not merely against a Judge's reasons, as the Appellant sought to reverse part of the Judge's order [51]. Although it might be said that the appeal had become academic because the Respondent's vetting was now up for review because of the passage of time, the Court exercised its discretion to hear the appeal as it was in the public interest to decide the issue [56]. The point had been fully argued before the court and was likely to affect other cases. It was important for the maintenance of public confidence in police forces in the context of concerns about sexual harassment, abuse and violence by police officers against women and girls [56]. The correct approach to the vetting test was still relevant following the enactment of the 2025 Regulations [57].

The correct approach to the vetting test

7. The Court of Appeal held that, in applying the vetting test, the reviewer may take into account allegations that were investigated in misconduct proceedings but were found unproven or in relation to which a finding of no case to answer has been made.
8. Misconduct proceedings and vetting reviews are exercises of a different nature. Misconduct proceedings involve determining whether an event occurred in the past, on the balance of probabilities [73]. On the other hand, the vetting decision requires an evaluation of what may happen in the future [88]. It is well-established in the case law that the test of "reasonable grounds of suspicion" can take into account circumstances that have not been proven on the balance of probabilities [75]. No particular event need be proved to have happened at all [88]. 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 [88]. This does not mean that the vetting decision can be taken on the basis of mere speculation or irrational findings [88]. The "reasonable grounds for suspicion" test still requires a basis in objective evidence [88].
9. As vetting reviews and misconduct proceedings are different processes, if a new matter arises in the course of a vetting review, it is unnecessary to "pause" the review to allow findings of fact to be made in misconduct proceedings [91]. The new matter may be something the vetting reviewer can properly take into account as part of the assessment of risk [91].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>

