Neutral Citation Number: [2023] EWCA Civ 32

Case No: CA/2021/003336

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE KING'S BENCH DIVISION
Mr Justice Kerr
[2021] EWHC 2672 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 January 2023

Before:

LORD JUSTICE BEAN
LADY JUSTICE KING
and
LADY JUSTICE SIMLER

- -

Between:

RICHARD PRIOR AND OTHERS	**Appellants**
- and -	
COMMISSIONER OF POLICE OF THE METROPOLIS	**Respondent**

- -
- -

Elliot Gold and Jonathan Davies (instructed by **Simons Muirhead Burton LLP**) for the **Appellants**
Jason Beer KC and Jonathan Dixey (instructed by **Weightmans LLP**) for the **Respondent**

Hearing dates: 13 and 14 December 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Simler:

Introduction

1. This is an appeal against part of an order dismissing the appellants' claims for certain allowances payable to police officers who are "held in reserve" within the meaning of a determination (Annex U) made by the Secretary of State for the Home Department ("the Secretary of State") under regulation 34 of the Police Regulations 2003. After an 11 day trial, Kerr J held that the appellants were not "held in reserve" and so were not entitled to Away from Home allowance ("AFH allowance") and Hardship allowance. Claims for overtime were also dismissed but there is no challenge to the decision in relation to unpaid overtime. The appeal concerns the payment of AFH and Hardship allowances. Since Hardship Allowance is only payable where AFH allowance is itself payable, no separate issue of principle arises as to the payment of that benefit on this appeal.

2. The appellants (some 397 in total) are specialist police officers, known as Royalty and Specialist Protection ("RASP") officers, who serve with the Metropolitan Police Service. They serve as RASP officers on terms and conditions that have a statutory underpinning and hold the office of police constable at common law. They are trained and qualified in the use of weapons, including firearms. At trial there were two claimant groups: the "Prior" claimants composed mainly of Static Protection Officers, with one Close Protection Officer and one Aztec officer; and the "Fielding" claimants, all Close Protection Officers.

3. The respondent is the Chief Officer of Police responsible for the Metropolitan Police District ("the MPD"). In addition, since 3 July 2000 when section 96A was introduced into the Police Act 1996, the respondent has duties to provide certain national or international functions. Those national or international functions include the protection of prominent people of rank and importance, and their families and residences; individuals who could be vulnerable to unwelcome attention from those with malign intent, whether inside the MPD or not. Those protection functions were and are discharged, on a national and international basis, by the RASP officers.

4. The RASP command was created in July 2015 following a merger of two teams, "SO1" and "SO14". The RASP officers all serve in the Metropolitan Police Service and do not have special terms and conditions of service. They have their own specific duties and are authorised to carry weapons. They take great pride in their work. Their earnings are among the highest received by officers in the Metropolitan Police Service and other forces. They are highly respected for their important work. The various differing roles and duties of the RASP officers whose appeals are pursued here, can be summarised shortly as follows:

   a) Static Protection Officers ("SPO"): these officers are responsible for protection of the Royal Palaces and specified government buildings.

   b) Close Protection Officers ("CPO"): these are mobile officers, who are responsible for the close protection of a principal.

c) Aztec officers: these officers support Static and/or Close Protection Officers in an intelligence gathering role.

5. Some of the evidence heard by the judge was confidential and heard in private for obvious reasons. In his publicly available judgment (cited as [2021] EWHC 2672 (QB), [2022] ICR 398) he addressed the parts of the evidence suitable for publication and the corresponding publishable parts of his reasoning and conclusions, as well as the submissions of the parties informing them. The material not suitable for publication is dealt with in a confidential annex. It is unnecessary to refer to the closed material or the confidential annex on this appeal.

6. I shall return to the detail of Kerr J's findings and conclusions when I address the grounds of appeal below. But in summary, so far as AFH allowance is concerned, this is provided for by paragraph 11 of Annex U. There are two relevant versions of paragraph 11, the second said by the Secretary of State (and accepted by the judge) to be doing no more than clarifying the earlier version. The first version was effective from 1 April 2012; the second was effective from 1 March 2015.

7. The 2012 version of Annex U, paragraph 11(b) (which is subject to an exception in paragraph 11(c)) provided that a member is "held in reserve" for these purposes if "serving away from his normal place of duty" and "required to stay in a particular specified place rather than be allowed to return home". Kerr J held first, that whereas for ordinary officers based at a police station, the station is likely to be the normal place of duty, for *all* RASP officers, they have a normal place of duty which changes rapidly and frequently as they move around with their principals or in advance of them, or otherwise in the performance of their duties, with or without the principals. Secondly, the requirement to stay in a particular, specified place is fulfilled by a requirement to stay in close proximity to the next day's duty so that, for example, the specified place could be expressed as "any suitable accommodation within easy reach of the Tyne Bridge where next day's demonstration is due to take place". On this analysis, the judge concluded that RASP officers are not "held in reserve" because they are not serving away from their normal place of duty even if they are accompanying a principal from one place to another, within this country or overseas. (There was an exception identified by the judge as a group of officers on "HRLI deployment" who are treated, pragmatically, as working away from the officer's normal place of duty because HRLI deployments are treated as optional and not compulsory. The judge was not asked to decide whether such deployments give rise to an entitlement to AFH allowance and did not therefore say any more about them).

8. The judge's conclusions for RASP officers meant that the exception in paragraph 11(c) for those otherwise qualifying as entitled to AFH allowance (because they are "held in reserve" but only by reason of carrying out "routine enquiries") did not arise for decision in relation to the RASP officers in this case. However, he expressed the view that "routine enquiries" for these purposes means activity which forms part of the officer's role or normal duties.

9. There are four grounds of appeal for which permission was granted, as follows:

a) Ground one: the judge erred in construing the meaning of "normal place of duty" in paragraph 11 of Annex U as being a place of work in which the appellants worked, thereby conflating a normal place of duty with a temporary place of duty.

b) Ground two: if the judge was correct in holding that officers' "normal place of duty" could change rapidly and frequently, he was nevertheless wrong to find that the meaning of "normal place of duty" changed immediately rather than after a specified period by reference to whether the deployment to a location was genuinely temporary in nature and/or by reference to the officer's base.

c) Ground three: the judge erred in failing to hold that the appellants' duties fell outside the meaning of "routine enquiries" before 1 March 2015 and misconstrued the term to include routine duties.

d) Ground four: The judge erred in failing to hold that the appellants' duties fell outside the meaning of "routine enquiries" on or after 1 March 2015.

10. There is a Respondent's Notice that only arises if the appellants succeed on both limbs of their appeal, concerning normal place of duty and routine enquiries. There is no challenge to the judge's conclusion about the meaning of staying in a specified place. The Respondent's Notice concerns the meaning of a phrase introduced by amendment to Annex U paragraph 11(b) in the March 2015 version, namely "the need to be ready for immediate deployment".

11. The parties have been represented before us, as they were before Kerr J, by Elliot Gold and Jonathan Davies for the appellants; and Jason Beer KC and Jonathan Dixey for the respondent. We are grateful to all counsel for the assistance they provided, both written and by way of oral submissions on this appeal.

Factual and Procedural Background

12. Kerr J dealt with the facts, including some of the developments in the law that formed an important part of the factual context at [25] to [99] of his judgment. I gratefully adopt his summary so far as relevant to the issues on this appeal.

13. The office of constable, now called police officer, is an historic blend of common law and statute. The office has developed over the centuries and has always been seen as distinct from the traditional employment relationship.

14. Police officers may not join a trade union or take industrial action (Police Act 1919, sections 2 and 3). Instead, they are represented by the Police Federation, created by section 1 (now known, in England and Wales, as the Police Federation for England and Wales) ("the Federation").

15. Under section 4 Police Act 1919, pay and conditions of service were set by regulations made by the Secretary of State. To assist the collective bargaining process, section 1 Police Negotiating Board Act 1980 created the Police Negotiating Board (the "PNB"). The present position is that the pay and conditions of service of police officers are governed by regulations made under section 50 Police Act 1996, which consolidated earlier provisions. Numerous sets of Police Regulations have been made over the years, reflecting negotiations. As the judge observed, the documents that were available to

him (30,000 pages or more) are full of correspondence about pay and allowances, frequently interpreted differently by the respondent and the Federation.

16. The Police Regulations 2003 introduced "determinations" by the Secretary of State of what terms and conditions would be, rather than the regulations themselves making those determinations. The Secretary of State was required to make determinations (Regulation 46) of matters relating to duty (Regulation 22); pay (Regulation 24); overtime (Regulation 25); and allowances (Regulation 34). The Police Regulations 2003 and the determinations apply across the board, to police officers of all forces.

17. The first determination relating to duty was made on 28 March 2003 and had effect from 1 April 2003. It comprised a Home Office circular, numbered 023/2003 and numerous annexes including "Annex E". It dealt with (among other things) hours of duty, variable shift arrangements, duty rosters, public holidays, rest days and monthly leave days, and treating travelling time as duty.

18. The judge heard and saw a great deal of evidence from senior officers involved in the performance of RASP duties in varying ways, much of it confidential, and by way of documents. It is unnecessary to address it in detail. The vast majority of documents were regarded by the judge as useful background but many simply expressed views or "guidance" as to the subjective meaning of the provisions in issue and were of limited assistance accordingly. The judge regarded the job advertisements and job descriptions as being of greater assistance. He said:

> "49. … These were relied on by the Commissioner to support her proposition that the role of protection officer, in many cases, necessarily and frequently requires the officer to stay overnight away from home, to be with the principal when the principal is on travels. This obvious proposition was not, in any case, seriously disputed by the protection officers who gave evidence."

19. The judge recognised that some protection officers travel more than others. In particular, SPOs tend to travel less than CPOs and other personal protection officers since the former tend, as a matter of practice, to be based at a particular location. As in any occupation requiring travel for some, travel and time away from home was popular with some and less so with others; but only up to a point could it be a matter of choice whether to travel and spend time away from home. Although protection officers, including SPOs, could be required to go to locations in Scotland during the summer months, this was a popular destination and it was generally unnecessary for the respondent to use compulsion in this regard.

20. On 1 October 2010, the then Home Secretary appointed Sir Thomas Winsor to review the remuneration and conditions of service of police officers and staff in England and Wales and to make appropriate recommendations. The first of two "Winsor reports" (referred to as "Winsor Part 1") was presented to Parliament in March 2011. In section 2.7 of Winsor Part 1, the concept of "mutual aid" was discussed: the report explained that this is the term applied to the provision of resources from one police force to another. Usually it takes the form of officers temporarily working for or in another police force, under that police force's command. It is a consequence of having 43

different territorial police forces. The arrangements that predated Winsor Part 1 were known as the "Hertfordshire Agreement". They were negotiated in the Police Negotiating Board and published in PNB Circulars 86/15, 88/9 and 95/8. Prior to the Winsor review, this regime had remained unchanged since 1995. It provided for payment for 16 hours of the day, irrespective of the number of hours actually worked, where (a) an officer was required to work in another force and stay away overnight; (b) sleeping accommodation was provided; and (c) officers were stood down from immediate operational availability and allowed reasonable freedom of movement while remaining contactable in case an emergency requiring their recall should arise. In the absence of proper sleeping accommodation and being stood down on the terms indicated, the officer was entitled to be paid for 24 hours, again irrespective of actual hours worked.

21. Winsor Part 1, paragraph 2.7.8 explained that "Officers can also be 'held in reserve' which means that they are serving away from their normal place of duty and obliged to stay in a specified place. Such a requirement does not receive any specific payment at present, other than reimbursement of expenses incurred": see PNB Circular 88/9.

22. Winsor Part 1 recommended the removal of the minimum payment for mutual aid altogether, so that officers were to be paid for the hours that they were required to work, plus travelling time to and from the place of work. Winsor made three recommendations that are the forerunners of what became the AFH allowance, Hardship allowance and an on-call allowance. They were:

> "Recommendation 11 – Police officers on mutual aid service should be paid for the hours they are required to work each day, plus travelling time to and from the place of duty. Where those hours coincide with the unsocial hours period, or the duty has been required at short notice and they are eligible for the new overtime rates, the officer should be paid at the applicable premium rates.
>
> Recommendation 12 - The definition of 'proper accommodation' should be revised to describe a single occupancy room with use of en suite bathroom facilities. Where such accommodation is not provided, the officer should receive a payment of £30 per night. The current definition of 'higher standard accommodation' should be removed and not replaced.
>
> Recommendation 13 – Officers held in reserve on a day and who have not been paid for any mutual aid tour of duty that day, should receive the on-call allowance of £15 for that day."

23. The respondent's case was and remains that these recommendations concerned "mutual aid", a statutory concept underpinned by section 24 Police Act 1996, whereby the resources of one police force are made available to another force. The appellants contend that these recommendations were aimed not just at mutual aid requiring out-of-area public order policing; they also embraced situations in which policing outside an officer's area was needed for other reasons requiring an officer to be "held in reserve". They rely on Winsor Part 1 paragraph 2.7.18 which stated:

> "The Metropolitan Police Authority identified four sets of circumstances in which mutual aid or officers 'held in reserve' may be required with varying levels of notice given, namely:
>
> - spontaneous/emergency deployment
> - serious/major incident
> - major planned development/event; and
> - specialist deployment."

They contend that officers are held in reserve on specialist deployment when, for example, they are policing national events such as the Olympics, or an ad hoc response to a major incident such as a terrorist attack.

24. In April 2011, the Secretary of State asked the Police Negotiating Board to explore reaching agreement on the recommendations in Winsor Part 1. No agreement was reached in relation to recommendations 11, 12, and 13 set out above. These were then referred to the Police Arbitration Tribunal, which issued its award (albeit not binding on the Secretary of State) in January 2012. The tribunal accepted recommendation 12 without modification. In relation to recommendations 11 and 13, it decided:

> "Recommendation 11
>
> Accepted by PAT but modified. Both sentences of recommendation 11 are accepted as worded. In addition, officers on mutual aid who are unable to return home are to receive a new 'Away from Home Overnight Allowance' of £50 per night. …
>
> Recommendation 13
>
> Accepted by PAT but modified. Officers held in reserve who are unable to return home are to receive the new 'Away from Home Overnight Allowance' of £50."

25. The tribunal explained its reasoning for modifying recommendations 11 and 13 at paragraph 64 of its decision, as follows:

> "**Recommendations 11 and 13 – Mutual Aid and Held in reserve**
>
> 64. ….. The Tribunal's understanding of the Winsor Report Part 1 proposal is that if officers are held in reserve and are unable to return home they would receive essentially the same reward as if they were fulfilling their duties at their normal place of work – plus traveling time and a payment of £15, equivalent to the proposed on-call payment. The Tribunal accepts the Winsor Report Part 1's proposal that officers on mutual aid or held in reserve should be paid for the actual hours worked, but it also

> recognises that disruption is caused to officers' lives, especially their family lives, and the fact that officers are/can be directed to be on mutual aid or held in reserve. The compensation measures proposed in the Winsor Report Part 1 are a major change from the existing arrangements. In the Tribunal's view, there should be an element of additional compensation for officers who are held in reserve and unable to return home (whether this is in their own force or on mutual aid operations). Therefore, the Tribunal has calculated, by approximate reference to the hourly rate for constables (at the 8th point on their scale), that an amount of £50 should be paid as an 'Away from Home Overnight Allowance'. The existing 16-hour payment would cease. However, the new allowance will be some recompense particularly for officers who are held in reserve for protracted periods. …"

26. On 30 January 2012, the Secretary of State announced that she intended to accept and implement the tribunal's recommendations. Two days later, the Home Office issued circular 006/2012, to the same effect, on a "minded to introduce" basis as recommended; and these were then summarised. There were further negotiations following the second part of the Winsor review (Winsor Part 2) which was presented to Parliament in March 2012, dealing with on-call allowances.

27. Ultimately, Home Office circular 010/2012 was published on 16 April 2012, in the name of the Secretary of State, making retrospective amendments from 1 April 2012 to certain determinations of 2003. These included amendments to Annex U introducing AFH allowance and the Hardship allowance, as follows:

> "**11) AWAY FROM HOME OVERNIGHT ALLOWANCE**
>
> a) A member of a police force in the rank of constable, sergeant, inspector or chief inspector shall be paid an allowance of £50, to be known as the away from home overnight allowance, in respect of every night on which the member is held in reserve.
>
> b) Subject to sub-paragraph (c), a member is held in reserve for the purposes of this paragraph if the member is serving away from his normal place of duty (whether because the member has been provided for the assistance of another police force under section 24 of the Police Act 1996 or otherwise) and is required to stay in a particular, specified place rather than being allowed to return home.
>
> c) A member is not held in reserve if the member is serving away from his normal place of duty only by reason of being on a training course or carrying out routine enquiries.
>
> **12) HARDSHIP ALLOWANCE**

> a) A member of a police force shall be paid an allowance of £30, to be known as the hardship allowance, in the circumstances set out in sub-paragraph (b).
>
> b) The allowance shall be paid in respect of every night when the member:
>
> i) is held in reserve, within the meaning of paragraph (11), and
>
> ii) is not provided with proper accommodation.
>
> c) For the purposes of sub-paragraph (b)(ii) "proper accommodation" means a room for the sole occupation of the member, with an en suite bathroom."

28. In the months that followed, discussions took place over what the new text of Annex U should be taken to mean and how the new provisions should be applied. During those discussions, as it later turned out, 18 July 2012 became the commencement date for a "standstill" agreement reached by the parties to this litigation, and in consequence, 18 July 2012 became the start date for the period of the claims made by the Prior and Fielding claimants.

29. That there was a lack of consensus at the time over the new allowances was reflected in numerous exchanges and expressions of opinion by each side. On 10 August 2012 there was a meeting of the Metropolitan Police Service joint negotiating committee, which was the governance structure set up to oversee the implementation of the Winsor changes. The minutes recorded:

> "**Away from Home Allowance**:
>
> • Some officers outside the MPS are receiving it
>
> • Within the MPS, SO are holding claims back whilst awaiting clarification over claims
>
> NC explained that there are 2 main issues from the federation perspective ('Routine Enquiries' and 'Training'). Having spoken to Ian Rennie's office (National Federation) a meeting had been arranged between the Home Office and the Federation in August to discuss these. The Home Office position is that the determinations are 'clear enough'.
>
> **Special Escort Allowance**:
>
> Some claimants of the above 'Away from Home' allowance are already in receipt of SEA - which would seem illogical and 'paying twice for the same thing'."

30. The Metropolitan Police Service's position, set out in a position paper tabled at the meeting, was:

> "• Officers for whom it is a regular, foreseeable part of their duty to be away from home overnight will be excluded from claiming; examples are protection officers, undercover, surveillance, witness protection and those posted overseas (this list is not exhaustive). In most of these cases, the normal place of duty is away from home.
>
> • The existing framework of allowances and payments in respect of Royalty Protection recognise to some extent the long hours and away from home nature of the role. So 'Away from Home' cannot apply to any officer in receipt of Special Escort Allowance.
>
> • Protection officers' 'normal place of duty' is with the principal (and this argument has been used in relation to favourable tax treatment by HMRC). In addition, after 28 days a temporary place becomes a normal place and this may apply in some Royalty deployments."

Unsurprisingly, the Federation did not agree with the position reflected in the paper.

31. With the new on call allowance shortly to come into effect, the Metropolitan Police Service circulated a document dated 26 March 2013, entitled "Joint Agreement with the Federated Ranks", i.e. those represented by the Federation (which included the appellants). There was a "clear distinction" between being "recalled to duty" and being "on call". The former can happen to any officer any time but is expected to be used only in cases of urgent and unforeseen events. The latter (then attracting a £15 per day allowance) was described as "a predetermined requirement ... to be available … outside working hours." The document reminded officers of their obligations when on call: to be contactable by telephone or pager, available for duty within a reasonable time, with access to appropriate transport, and fit for duty, including being sober.

32. From 1 April 2013, the necessary further determination was made by Home Office circular 007/13, to introduce the new on call allowance. This took the form of an amendment to "Annex U" as follows:

> "**13) On Call Allowance**
>
> (1) A member of the rank of Constable, Sergeant, Inspector or Chief Inspector shall receive an allowance of £15 in respect of each day on which he spends any time on-call.
>
> (2) In paragraph (1) 'day' means a period of 24 hours commencing at such time or times as the chief officer shall fix after consultation with the joint branch board, and the chief officer may fix different times in relation to different groups of members."

33. Over the following year, there was further debate about when the allowances were payable to RASP officers serving in the Metropolitan Police Service. This took place against a background of negotiations, meetings and even litigation between the

Federation and the Metropolitan Police Service, which is not uncommon. After the determination of April 2012 creating the AFH allowance, the discussion focussed on, among other things, the meaning of "routine enquiries", the phrase at the end of paragraph 11(c) of Annex U: an officer is "not held in reserve if the member is serving away from his normal place of duty only by reason of being on a training course or carrying out routine enquiries".

34. As a result of the difficulties, a notice was published on the Metropolitan Police Service intranet on a Force-wide basis on 12 April 2013 entitled "'Away from home' and hardship allowances for police officers". It recognised the considerable discussion and negotiation at the Police Negotiating Board (thus involving the Federation) regarding the interpretation of paragraph 11, and recorded that discussions "regarding an agreed final position are ongoing with the Home Office" but that the delay was having a detrimental impact and creating financial uncertainty, therefore "as an interim position", payments would follow criteria identified in the notice as follows:

> "'Away from home' allowance"
>
> 1. only payable up to and including chief inspector rank
>
> 2. deployment away from home under PNICC arrangements whether within MPD or not
>
> 3. deployment away from home that is not a routine enquiry
>
> It is accepted that criteria 3 is difficult to determine in an organisation as large as the MPS as roles/ responsibilities in this area will vary... The MPS has reached an interim agreement with the Police Federation that a routine enquiry should be defined as:
>
> *... a deployment away from home for a reason or purpose which routinely occurs as part of the role and responsibilities, for example, a regular meeting or conference*.
>
> An example of a non-routine enquiry is:
>
> *... deployment away from home in connection with an investigation or arrest for example, in the case of a detective who has to conduct criminal enquiries which during the investigation then require them to stay away from home. This is not part of a routine and therefore the claim is payable. …*
>
> <u>Non-eligibility</u>
>
> Officers performing the following duties are not eligible to claim away from home allowance as no agreement can be reached at this time until further direction from the Home Office:
>
> 1. protection duties …"

35. The Metropolitan Police Service issued a "Guidance Note" on payment of the AFH allowance and Hardship allowance, approved by the Deputy Commissioner, Sir Craig Mackey, on 8 July 2014. It referred to the "interim" agreement between the Metropolitan Police Service and the Federation published on 12 April 2013, and set out the agreement as reflected in that publication (see above), including that a routine enquiry should mean "a deployment away from home for a reason or purpose which routinely occurs as part of the role and responsibilities, for example, a regular meeting or conference". The guidance explained that according to the Metropolitan Police Service, this meant RASP officers (including SPOs) were among those *not* entitled to AFH allowance; they were performing routine enquiries when staying away from home because it was part and parcel of their role to do so. The exception was SEG (special escort group) officers who were not regarded as protection officers and not routinely deployed away from home.

36. A later guidance note dating from October 2014 gave a different example, this time of a non-routine enquiry, in the following terms: "*deployment away from home in connection with an investigation or arrest for example, in the case of a detective who has to conduct criminal enquiries which during the investigation then require them to stay away from home. This is not part of a routine and therefore the claim is payable*."

37. The period from 1 November 2014 to 31 March 2015 was the period that later became the first of two agreed sample periods for the purpose of determining the entitlement of the Prior and Fielding claimants to the backdated allowances claimed in these proceedings. Those of the claimants who had, as at 1 November 2014, already joined the cohort of RASP officers, have therefore produced tables in their witness statements explaining the dates and duties they undertook during that period and the rationale for claiming their entitlement.

38. In the middle of that period, from 26 January 2015, Neil Basu, Deputy Assistant Commissioner, representing the Metropolitan Police Service, and Paul Deller, representing the Federation, were engaged in a discussion and consultation process on conditions of service of officers in the then SO1 and SO14 OCUs, pending their forthcoming merger due to take place in July 2015. This followed on from a review of protection arrangements by Deputy Assistant Commissioner Patricia Gallan, the details of which it was unnecessary for the judge to rehearse.

39. Also in the middle of what became the first agreed sample period, with effect from 1 March 2015, the Secretary of State made a further determination by Home Office circular 004/15, resulting in changes to paragraph 11 of Annex U. As amended, paragraph 11 referred to readiness for "immediate deployment" and expanded the concept of "routine enquiries" as set out below. The circular stated that its purpose was to "clarify the intention" of the allowance; "to remove any scope for misinterpretation"; and to "provide further clarification". It also said that the amendments "do not alter the intention of the original determination". The judge inferred that the "original determination" must have been that heralded in circular 010/2012, introducing AFH allowance, rather than any earlier determination.

40. The revised wording of Annex U effective from 1 March 2015, was as follows, with the additional words indicated in italics:

> "**11) AWAY FROM HOME OVERNIGHT ALLOWANCE**
>
> a) A member of a police force in the rank of constable, sergeant, inspector or chief inspector shall be paid an allowance of £50, to be known as the away from home overnight allowance, in respect of every night on which the member is held in reserve.
>
> b) Subject to sub-paragraph (c), a member is "held in reserve" for the purposes of this paragraph if the member is serving away from his normal place of duty (whether because the member has been provided for the assistance of another police force under section 24 of the Police Act 1996 or otherwise) and is required to stay in a particular, specified place *overnight* rather than being allowed to return home *by reason of the need to be ready for immediate deployment*.
>
> c) A member is not "held in reserve" if the member is serving away from his normal place of duty only by reason of being on a training course or carrying out routine enquiries. *For the purposes of this paragraph "routine enquiries" means activity which forms part of the member's role or normal duties where due to the nature of that role or duty, or due to the distance from the home station, the member is unable to return home. It is for the chief officer to determine a member's role or normal duties, including whether there is an expectation within that role or those duties that the member is to travel or to work away from home*."

41. The discussions between Mr Basu and Mr Deller continued until June 2015, when they culminated in a "formal offer" set out in a letter from Mr Basu dated 3 June, with terms annexed to it to take effect from 1 July 2015, and referred to in some of the documents (and below) as the "Interim Agreement". It was regarded as interim because the Metropolitan Police Service was discussing with the Home Office the more durable long term solution of introducing a new protection allowance.

42. The letter said that the respondent remained "*bound by the provisions of the Police Regulations and Determinations … and is not at liberty to remunerate officers outside the scope of this*." The proposal was that constables and sergeants in personal protection roles would be remunerated as set out in the annex "*and subject to the interpretation of those Regulations and Determinations detailed therein*".

43. As to the AFH allowance, the Metropolitan Police Service position remained that "*the role or normal duties of Protection Officers involve travel and the need to stay overnight and away from their normal place of duty and that, therefore, these allowances will not apply*". The on-call allowance would, however, be payable, as well as a "'*fixed notional number of hours of overtime' to compensate for the requirement to be on an 'Enhanced level' on call*".

44. Further, deployment "*in HRLI environments is … not considered routine, and … the [AFH and overnight] allowance may be claimed in respect of such deployments in future*".

45. The detail of the Interim Agreement was fleshed out in the annex to the letter. It included withdrawal of the Special Escort Allowance for constables and sergeants. The "*fixed notional number of hours of overtime to reflect the time spent on standby*" had yet to be decided, but the annex stated that "*if the officer is required to recommence duty at any point this would amount to a recall to duty*". The changes were communicated in an email (forwarded to officers concerned on 4 June 2015) from Commander Alistair Sutherland, then the officer in charge of the protection function within the Metropolitan Police Service.

46. In a further letter from Mr Basu to Mr Deller of 17 June 2015, the notional fixed number of hours of overtime to reflect time spent "on standby" was effectively fixed at 16 hours, unless longer hours were actually worked. This was in addition to entitlement to (subject to meeting the criteria relating to readiness for duty) the then £15 per night on call allowance. Mr Basu explained:

> "in line with current operating protocols at SO1, where protection officers who are assigned to a Principal are required to be continuously available to undertake an activity directly related to that protection deployment, and the criteria detailed below are met, then the basis for their remuneration will be payment between commencement of protection duties and … or the end of protection duties, whichever is later."

47. The merger of SO1 and SO14 then took place in July 2015, to form the RASP unit. The new regime then began to operate, after a slight delay, from 1 August 2015, as set out in the Interim Agreement. Not all RASP officers claimed the £15 a night on call allowance. They feared it could undermine their position of disagreement with the Metropolitan Police Service's view that they were not entitled (other than in HRLI deployment cases) to the AFH or Hardship allowances.

48. Matters rested there to the dissatisfaction of the Federation and the RASP officers, who continued with their duties while the Federation attempted, unsuccessfully, to change the mind of the Metropolitan Police Service. No long term solution in the form of a protection allowance materialised. Chief Superintendent Zander Gibson, by then in charge of the RASP unit, explained in a detailed email to CPOs of 25 July 2017 that the position would remain the same, apart from some procedural changes with regard to claiming the on-call allowance.

49. By May 2018, the disagreement had become potentially litigious. Solicitors acting for some of the current appellants wrote a letter before claim. In the following month, what later became the second agreed "sample period" for testing these claims began. The period ran from 1 June to 31 December 2018. The judge had tabulated accounts from the relevant appellants setting out their evidence of what their deployments and duties were during that period. Claims were brought, in both actions, on 15 May 2019 and the cases proceeded to trial.

50. There were a few further developments recorded by the judge including the fact that on 7 September 2020, the new protection allowance was introduced by a further determination (amending Annex U by adding a new paragraph 13A); but with effect from 1 December 2020. It is unnecessary to set out the wording of the protection allowance determination of 7 September 2020. It came into effect after 30 November 2020, the last date of claims for AFH and Hardship allowances.

The judgment below in relation to AFH allowance and the question of being "held in reserve"

51. Having summarised the respective submissions made on both sides, the judge addressed the question of AFH allowance at [156] to [196]. In summary his reasoning was as follows.

52. He concluded that, objectively construed, the amendment made to Annex U with effect from 1 March 2015 did not substantially alter the meaning of paragraph 11. The two concepts of "normal place of duty" and "routine enquiries" were regarded as ambiguous, making it difficult to agree when an officer was held in reserve. The purpose of the amendment was to resolve that ambiguity.

53. In construing the relevant provisions, Kerr J said that he bore in mind the fact that they are not specific to RASP officers but apply to officers generally so that the wording is generic.

54. As for the detailed wording, he said that paragraph 11(a) states when AFH allowance is payable: namely for nights when the officer is "held in reserve". Paragraph 11(b) provides the factual circumstances in which an officer is "held in reserve". If those circumstances are met, the officer is entitled under 11(a) to AFH allowance, subject to an exception. The exception is defined in paragraph 11(c). The exception in 11(c) covers cases where an officer would (under (b)) be "held in reserve" but is not because the factual circumstances in (c), delineating the exception, exist. Sub-paragraphs (b) and (c) must be read together and in sequence; if an officer would be entitled to AFH allowance under (b), they are entitled to it unless they are disentitled by the application of (c).

55. The judge accepted the appellants' submission that cases where an officer is "serving away from his normal place of duty" in paragraph 11(b) are not confined to mutual aid cases where one force lends an officer to another force. The words "or otherwise" following on from the reference to "assistance of another police force" made that clear. However, he concluded that the large majority of cases where paragraph 11(b) applies would be mutual aid cases. Commonplace examples would be a Yorkshire based officer having to stay at a London hotel to help police the Olympics, or a Metropolitan Police Service officer going up to Newcastle to help police an event there. In such cases, AFH allowance is likely to be payable, and there is unlikely to be any reason for the exception in paragraph 11(c) to apply in such a case. It is unlikely that the relevant chief officer will have made any decision determining that the officer's role or normal duties entail out-of-area policing of that kind; the officer's forays out of their area are likely to be ad hoc and outside the normal run of duties.

56. Kerr J said it may be otherwise, however, if the officer is what might be termed a "specialist peripatetic"; for example, a senior and experienced co-ordinator of public order policing with a regular role travelling to coordinate public order policing of demonstrations or sporting events up and down the country as and when the need arises. If that were the position, the exception in (c) might well apply. The judge suggested that the words "or otherwise" in the bracketed phrase might include a HRLI deployment of a RASP officer.

57. As for the meaning in both (b) and (c) of "normal place of duty" within the phrase "serving away from his normal place of duty", the phrase must bear the same meaning in (b) as in (c). For an ordinary police officer based at a police station, the station is likely to be the normal place of duty. In the case of a RASP officer, the judge regarded the issue as more difficult. He rejected Mr Gold's submission based on a tax law approach that a RASP officer has only one "permanent" or "normal" place of duty and that other places to which they accompany their principals are "temporary" or not "normal" places of duty.

58. He accepted that the RASP roles are by their nature at least potentially peripatetic and not tied to any particular location as the normal place of duty: the job descriptions, advertisements and other documents about specific postings supported the proposition that "*RASP officers are or can be required to deploy away from home not just by way of exception to a normal role performed from a home base, but as part of their normal duties. Indeed, in my judgment mobility and selfless accompaniment of the principal is part of the very raison d'être of a RASP officer*": [175]. He therefore concluded:

> "177. First, the position is not that the RASP officers have no normal place of duty. That would be a difficult interpretation to justify given that (b) and (c) both point strongly towards every officer having a normal place of duty. Second, they do not have more than one normal place of duty at a time. That would be difficult to square, again, with the use of the singular noun "place" rather than "place or places" of duty."
>
> 178. In my judgment, the RASP officers have one normal place of duty, which changes rapidly and frequently as they move around with their principals or in advance of them, or otherwise in the performance of their duties, with or without the principals. The claimants' normal place of duty is, broadly, usually the place shown in the left hand column of the tabulated records of deployments in their witness statements.
>
> 179. If they travel from London to Cairo, their normal place of duty is, first, London for a time and then, Cairo for a time, until they move on. I think that interpretation most faithfully respects both the language of sub-paragraphs (b) and (c) and the reality of a RASP officer's role.
>
> 180. In deciding to adopt that interpretation, I have not overlooked the point that some RASP officers travel a lot, some may travel only occasionally and others perhaps not at all. I have

> had to consider carefully whether the analysis may be different for different types of RASP officer. I appreciate that SPOs, in particular (as their name suggests) tend to be more static than CPOs and PPOs.
>
> 181. In the end, I reject an analysis which would treat the normal place of duty differently in the case of different kinds of RASP officer. I think the analysis is the same for all kinds, including Aztecs such as Mr Exell. I return to the point that mobility is inherent in the role and that this is clearly understood and overwhelmingly demonstrated by the job advertisements and descriptions.
>
> 182. Where SPOs normally work at a single location, for example a palace in the London area, the normal place of duty is that palace. But, the normal place of duty would change to another location for the duration of a posting to, say, Portsmouth if the SPO were sent there to provide protection to royalty during a naval ceremony or the return of a task force from overseas. For the duration of the posting, it would be normal for the SPO to be working in Portsmouth."

59. In relation to the words at the end of (b) added from March 2015: "by reason of the need to be ready for immediate deployment", he said they read better if treated as following on after the other added word "overnight"; and the sense is that the officer is held in reserve if they are serving away from the normal place of duty and are required to stay at "a particular, specified place overnight"; "by reason of the need to be ready for immediate deployment"; "rather than being allowed to return home". That meant it was the need to be ready for immediate deployment from the specified overnight accommodation that would prevent the officer from returning to a distant home. He concluded that "immediate deployment" would normally refer to the start of the next day's shift, to be performed away from the normal place of duty.

60. Kerr J's analysis meant RASP officers are not "held in reserve" within the meaning of paragraph 11(b) because they are not serving away from their normal place of duty even if they are accompanying a principal from one place to another, within this country or overseas. He said the exception is HRLI deployments, treated pragmatically as working away from the officer's normal place of duty. The rationale appeared to be that HRLI deployments are treated as optional and not compulsory, but it was not a point he had to decide.

61. Since the RASP officers were not held in reserve within paragraph 11 (b) when protecting their principals or at the various locations concerned, the issue whether they are then disentitled from receiving the AFH allowance by reason of the exception in (c) did not arise. However, Kerr J expressed the view that while the training exception was straightforward to understand and apply, the application of "routine enquiries" was not. He relied on the clarification made in March 2015 to interpret the 2012 version in light of his earlier decision that no amendment was made, as follows:

> "191. … The second exception requires me to return to "routine enquiries", to which a definition was added as clarification from 1 March 2015. The first part of the definition is that routine enquiries means "activity which forms part of the member's role or normal duties".
>
> 192. It is for the chief officer to determine the "role or normal duties" and whether there is an expectation that they be done away from home (see the concluding words of (c)). As already noted, routine enquiries is not a phrase with any specific RASP association; to the contrary.
>
> 193. Thus, a London based MPS officer going to Yorkshire (or, for that matter, Barbados) to interview a witness in a murder investigation would appear (subject to any chief officer determination to the contrary) to be disentitled from the AFH allowance because interviewing witnesses is a routine enquiry which is expected to be done away from home. Relevant witnesses are often likely to be out of the officer's area.
>
> 194. In such a case, there may be two different reasons why the officer is unable to return home each night. The first is "the nature of that role or duty". That would appear to include duties that by their nature need to be carried out in the dead of night. The second is "the distance from the home station". That is likely to be the most common: where the "home station" is too far away to travel back to each night."

62. Applying that reasoning, Kerr J considered the tabulated record of deployments relied upon by the lead claimants in both claims and concluded that in none of the cases relied on during the agreed sample periods is the claimant concerned entitled to the AFH allowance (or, it followed, the Hardship allowance). Kerr J also rejected a submission that Annex U paragraph 11 was amended from 1 March 2015 in order to disentitle officers from receiving the AFH allowance, in breach of their legitimate expectations.

The appeal

63. Grounds one and two together concern the judge's conclusions about the meaning of the phrase "normal place of duty" and its application to the facts. Grounds three and four concern the meaning of "routine enquiries" first in 2012, and after amendment in 2015.

64. The appellants made very detailed written submissions. I do not set out the detail of their arguments. In short summary, Mr Gold contended that Kerr J erred in finding that the appellants had one normal place of duty that moved with their duties:

    i) First, this interpretation failed to give effect to the clear meaning, purpose and effect of paragraph 11 which defined a work base the absence from which entitled the officer to compensation. It stripped any meaning from the use of the word "normal" and extended the meaning of "normal place of duty" to include

temporary places of duty, thereby nullifying its effect. This construction failed to have regard by analogy to the deeming provision in section 339 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and/or the respondent's own policies on expenses and travelling time (Annex E and Annex V) which distinguished between these two concepts (allowing for travel to a "temporary place of duty" to be performed during duty time, rather than in personal time; and providing for a temporary place of duty only to become a normal place of duty after 28 days). Kerr J relied on statements by the respondent confirming that a location will become an officer's normal place of duty after 28 days; and the respondent permitted SPOs to travel during duty time and/or paid them the equivalent of their hours of duty even after they had remained in a location for more than 28 days.

ii) Secondly, Mr Gold complained that the respondent had not provided sufficient statistical evidence on the number of officers required to travel. In the absence of such evidence, Kerr J was wrong to make the findings he did about the responsibilities of RASP officers. In any event, he failed to distinguish between CPOs and SPOs whose role and duties are different.

iii) Thirdly, the judge's conclusion at [177] had the same effect as a conclusion that RASP officers have no normal place of duty, which he had rejected. The judge failed to refer to the respondent's own distinction between normal and temporary places of duty. He was wrong to treat RASP officers as *sui generis*, since the 2003 Regulations applied equally to all officers, and the Secretary of State could have excluded RASP officers from Annex U altogether but did not do so.

iv) Fourthly, the judge wrongly held that the normal place of duty changed immediately with each deployment. For CPOs their base was at Location 7 or London generally. The judge was required to determine whether each officer's normal place of duty was somewhere that they regularly rather than temporarily attended. Otherwise, they could be required to travel other than in duty time, in other words in their personal time and without pay. The same is true of SPOs who worked in locations for fixed periods of time; their normal place of duty could only have been Windsor or London. The findings contradicted the respondent's policy which treated deployment to a temporary place of work as temporary for the first 28 days before becoming permanent or normal.

65. As for the question of "routine enquiries", Mr Gold submitted that the judge ought to have determined the objective meaning of the phrase as used in Annex U in 2012 without reference to the amended 2015 version. The phrase was not ambiguous; and in any event, it was illegitimate for the Secretary of State to seek to clarify the meaning in 2015 on a retrospective basis. Moreover, "routine enquiries" is not synonymous with routine duties. The word "duties" is a term used in the Police Regulations 2003, and could have been used in Annex U. The choice made must reflect a different meaning, and the judge was wrong to redefine it. In 2012 at least, it meant ordinary, every-day activities concerned with "the investigation of crime and the prevention of crime". It was not intended to encompass specialist functions, and Mr Gold relied on the four categories of activity listed at paragraph 2.7.18 of Winsor Part 1 which were intended to be excluded. He submitted that the use of this phrase was intended to ensure

compensation for officers deployed on specialist duties like "mutual aid" who are not involved merely in detecting or preventing crime.

66. If the phrase could be read as meaning "routine duties", the judge was wrong not to hold that this could only refer to generic duties of a member of the officer's force, not those of an individual officer. The appellants rely on contentions that AFH allowance was intended for officers on mutual aid, suggesting that such officers would also be caught by the exclusion of "routine enquiries". Further, the appellants submit that it was wrong to differentiate HRLI deployments as non-routine. Further, even if "routine enquiries" could be read to mean "routine duties", the respondent did not provide evidence that sufficient numbers of officers performed deployments away from home, such as to Scotland, to deem them "routine". Finally, in relation to the position as at 2015, Mr Gold submitted that Sir Craig Mackey accepted in evidence that he made no decision to define RASP roles following the amendment to Annex U, and the respondent presented no evidence of any such determination. Therefore, the appellants' duties continued to fall outside the meaning of "routine enquiries" and the judge erred in failing to make this finding.

67. The respondent resists the appeal and seeks to uphold the judge's findings. Again, in summary, Mr Beer KC contends as follows:

i) The appellants wrongly conflate (as they did below) the words "normal place of duty" with "usual place of duty". The former is used as a criterion for payment of AFH allowance in Annex U, while the latter is concerned with expenses in Annex V. The references to "temporary places of duty" and a period of 28 days must be understood in the context of Annex V where the relevant test is materially different to Annex U. They also conflate "normal place of duty" with the deeming provisions of section 339 of ITEPA. Neither is relevant to this analysis and the judge correctly rejected what he fairly characterised as the appellants' submissions which sought to elide those different concepts.

ii) The judge was entitled to rely on material available to him that overwhelmingly showed that RASP officers are or can be required to deploy away from home as part of their role and responsibilities as protection officers. On this basis, their normal place of duty is wherever the officer's principal is or wherever the officer may be required to perform protection duties, as the judge held. There is no reason why, either as a matter of construction, of principle, or on the evidence, the appellants' normal place of duty cannot change "rapidly and frequently as they [the RASP officers] move around with their principals or in advance of them, or otherwise in the performance of their duties, with or without the principals", as the judge held. The RASP role is *sui generis* within the police service.

68. In relation to "routine enquiries" Mr Beer submitted that the judge was correct to find that the March 2015 version of Annex U was clarificatory. He relied on *Inland Revenue Commissioners v Joiner* [1975] 1 WLR 1701 at 1715-1716 (per Lord Diplock), to the effect that it is legitimate for Parliament to clarify the law by making clear in a later statute how ambiguous language in an earlier statute should be understood. He submitted that the same principle applies here. In any event, there is every reason to construe "routine enquiry" as "routine duty" and no policy reason to do otherwise. The focus is on what is normal or routine in the officer's role, and to construe the phrase in

the narrow way contended for by the appellants is artificial and would lead to absurd results.

69. Mr Beer submitted that the respondent has always had the power to determine an officer's role or normal duties. This power was made express in March 2015 in Annex U so far as AFH allowance is concerned. The respondent exercised this power in a series of documents (in agreement with the Federation) identifying the classes of officer considered to be conducting routine enquiries and therefore ineligible to qualify for the AFH allowance. As section 96A of the Police Act 1996 makes clear, the respondent's duty to provide protection is a national and international one, and is discharged by the special cadre of RASP officers. The comparison the appellants seek to draw between RASP officers required to travel as part of their normal role and duties, and officers performing public order and other duties provided on mutual aid, is therefore erroneous.

Discussion and conclusions on the appeal

70. In broad terms I prefer the respondent's submissions on the appeal and have concluded that the judge made no error of law or fact in interpreting and applying the provisions of Annex U, paragraph 11 to the RASP officers in this case.

71. The appeal concerns the proper construction of paragraph 11 in Annex U as it was in force with effect from 1 April 2012; and the later version of Annex U, after further amendment, in March 2015. The two concepts, "normal place of duty" and "routine enquiries" form part of the definition of what it means to be "held in reserve" within the meaning of Annex U. Only officers "held in reserve" and not disqualified by paragraph 11(c) qualify for AFH allowance. The judge's task was first to determine the meaning of these definitional concepts used in Annex U (first in 2012 and then in 2015) and then to apply them to the unusual group of specialist RASP officers who perform specialist duties.

72. As the judge observed, it is for the court to determine the correct interpretation of a document setting out terms and conditions, including a statutory determination made by the Secretary of State, and not for the latter to seek to determine the meaning of the words used, whether by way of guidance or otherwise. The subjective intention of the Secretary of State as to the meaning of the definitional concepts used, or whether the intention was merely to clarify and not to amend, is not conclusive in any sense.

73. Each version of Annex U must be construed objectively on its own terms. To the extent that Mr Beer relied on the Secretary of State's subjective intention that the March 2015 version was clarificatory as meaning that the later version could be used to inform the meaning of the earlier version, I reject the contention. The intended purpose of the March 2015 version may have been clarificatory, but so what? The fact that the 2015 version is construed as meaning one thing does not mean that the 2012 version must have meant the same thing merely because the Secretary of State's intention was to clarify the definitional concepts used. Accordingly, to the extent that he construed the 2012 version of Annex U in the light of the amendments made in 2015, the judge was wrong to do so.

74. The starting point is the words used in Annex U in 2012, understood in their relevant context. In construing paragraph 11 and the definitional concepts used, the judge had

well in mind that Annex U is not specific to RASP officers. It applies to officers generally, both within and outside the RASP command and the Metropolitan Police Service. The wording has not been chosen with specialist protection duties, or any other type of policing duty, at the forefront of the drafter's mind.

75. The judge made extensive findings of fact about the relevant background and context and, although at times Mr Gold's argument appeared to mount a challenge to those findings, in my judgment there is no basis for going behind them. At best the exercise conducted by Mr Gold amounted to highly selective island hopping in a case where the evidence was heard over two weeks and the judge was presented with 30,000 pages of documents. Kerr J himself expressed the view that many of the vast number of documents shown to him merely reflected the opinions of Metropolitan Police Service managers or the Federation and were of little assistance in interpreting the critical provisions. The same is true of many documents relied on by Mr Gold on this appeal.

76. The first question is the meaning of "normal place of duty" and its application to RASP officers. "Normal place of duty" is not a defined term. It is used in both paragraph 11(b) and (c) and must mean the same thing in both sub-paragraphs.

77. "Normal" is an ordinary English word and needs no further elaboration. It does not mean permanent. Nor is it used in Annex U in contradistinction to "temporary" as in "temporary place of work/duty" as used in Annex E or V (neither of which were made under regulation 34), where a distinction is made between permanent and temporary places of work or duty, but for entirely different purposes. The latter concept does not appear in Annex U at all, and the concept of temporary places of work/duty has nothing to do with AFH allowance which is, instead, directed at officers who are "held in reserve". I do not consider that any assistance is to be derived from the distinction Mr Gold seeks to draw, between permanent and temporary places of work/duty used in other determinations for the purposes of identifying normal periods of duty, duty time or entitlement to travel expenses. Nor is the tax regime (whether by reference to section 339 ITEPA or otherwise) relevant for this purpose.

78. In my judgment, the phrase "normal place of duty" in Annex U simply means where the officer normally works to discharge the duties of his or her role or remit. In the case of ordinary police officers based at a police station and discharging their duties from there, the station is likely to be the normal place of duty. In the case of RASP officers it is less straightforward to apply.

79. The RASP command (made up of SO1 and SO14 officers) has always had a national and international remit, extending beyond the MPD. Section 96A Police Act 1996 makes this clear: the respondent's duty is to provide protection on a national and international basis, and the RASP command are recruited on this basis. Mobility is inherent in their role. In that sense at least, it is a *sui generis* role and outside the normal run of policing. Deployment for RASP officers is on this basis, and it is part of the performance of their normal protection duties.

80. Consistently with that, as the judge explained, the job descriptions (and similar documents) for the different RASP roles showed in general, that protection officers (particularly CPOs and Aztecs) necessarily and frequently have to serve away from home as part of their role and normal duties, to be with the principal when the principal

is on travels. This was not seriously disputed by the protection officers who gave evidence. Furthermore, as the judge expressly recognised, while SPOs tend to travel less than other protection officers, SPOs are not in any different position. The descriptions or specifications for their role include likely service at five or more national locations, palaces and other royal residences, as part of their normal duties, and they may also have to serve overseas, again as part of their normal duties. This too is an inherently mobile role. Moreover, on the evidence before the judge, deployment to Scotland or elsewhere is plainly not deployment to fulfil short notice or urgent duties, nor is it providing mutual aid to other forces. On the contrary, it is deployment in the ordinary (or normal) performance of the protection duty remit, and when deployed in this way, these officers are not being "held in reserve".

81. Paragraph 2.7.18 of Winsor Part 1 affords no basis for any different conclusion: there is nothing to suggest that the Secretary of State was intending to give effect to that paragraph in making the Annex U determination. Indeed, section 2.7 of Winsor Part 1 recommended the abolition of a minimum payment for 16 hours (irrespective of hours worked) for officers on mutual aid; and an on-call allowance in its place. No recommendation for AFH allowance was made in Winsor Part 1. In any event, RASP officers are not providing mutual aid, nor are they held in reserve, when discharging the normal duties of their mobile or peripatetic roles.

82. Nor am I persuaded by Mr Gold's reliance on extracts from a small number of documents that the intention was to define a single location or base, the absence from which when working entitled RASP officers to AFH allowance. First, as Mr Gold accepted, the task is one of ascertaining the objective meaning of Annex U; the subjective intention of the parties carries little weight. Secondly, at least one of the documents relied on pre-dated the introduction of the AFH allowance (see for example the letter from Kevin Courtney to the Federation dated 24 February 2009) by some years. Thirdly and in any event, the documents Mr Gold relied on do not support his contention. Two examples are sufficient to make this point: the Kevin Courtney letter concerned the question whether protection officers were held in reserve when deployed to Scotland and made the point that they were merely performing the remit of SO14 and their protection duties, albeit outside the MPD when doing so. In other words, these officers were not held in reserve when travelling. Similarly, Mr Gold highlighted the annex to a letter dated 3 June 2015 (concerning Protection Officer remuneration, from Neil Basu to Paul Deller of the Federation) which states that the "*default place of work should ideally be police premises, i.e. NSY or BG*". However, it is clear from the rest of the document that, in the view of Mr Basu on behalf of the Metropolitan Police Service, the AFH allowance simply did not apply to this group of officers when performing their "*role or normal duties of Protection Officers*" because of the travel requirement inherent in the role. Mr Basu recognised that it would or might be different when these officers were deployed on non-routine duties, such as an HRLI deployment, but otherwise, the allowance did not apply. In other words, the context for the reference to a "default place of work" in the annex to the letter was not the AFH allowance because it did not ordinarily apply to these officers.

83. Thus, to the extent that Mr Gold sought to argue otherwise, I reject his submissions. I accept as the judge found, that even the static SPOs whose job it is to protect the royal palaces, are required to travel as part of their normal role and duties when the need arises. Whether they do or not does not alter that position (and statistical evidence about

travel was neither necessary nor relevant). Although deployment is and has generally been determined on a voluntary basis because of the popularity of travelling to Scotland over the summer months, if circumstances change, the respondent has the right to require SPOs to travel in accordance with their terms and conditions of their role remit, as disclosed by the job descriptions or specifications. In other words, as Kerr J held, all of the RASP roles without distinction, are by their nature at least potentially, if not actually, peripatetic and not tied to any particular location.

84. Accordingly, for the so-called static officers, the SPOs, their normal place of duty is determined by reference to the buildings they are required to guard as part of their role or remit; in other words, the royal palaces and residences throughout the country, and overseas where relevant. They do not have more than one normal place of duty at a time. Rather, as the judge found, they have one normal place of duty which changes as they move from one residence to another. For the CPOs and other protection officers, their normal place of duty is determined by reference to the location of their principal or principals. It is possible that for the most peripatetic protection officers who move around constantly, the concept of a normal place of duty is simply not appropriate to apply in their case. But otherwise, I agree with the judge's conclusions on this question.

85. I recognise that this conclusion has the effect that RASP officers cannot qualify for AFH allowance when performing the normal duties of their role. It may be that this result could have been achieved by an express carve out or exclusion for this group of protection officers as Mr Gold submitted, but this was not done. Equally, it may be, as Mr Beer suggested, that this is because there are other groups of officers who are or might be excluded in the same way; for example, counter terrorism officers can also expect to be mobile as part of their normal duties and would also be excluded from entitlement to AFH allowance on the same basis. However, it is also possible to imagine an emergency situation that requires the urgent or short notice deployment of RASP officers outside their normal role and remit, on mutual aid or otherwise, (HRLI deployments may be an example) and in these circumstances I would not exclude the possibility that protection officers might be "held in reserve" (for other urgent, non-protection duties) and qualify for AFH allowance on that basis. The structure adopted by the Secretary of State in making the Annex U determination was not to identify those excluded from its terms, but rather to identify definitional conditions of entitlement, and that was a rational basis on which to provide for these allowances in the circumstances.

86. Nor do I accept Mr Gold's submission that there is a contradiction between the judge's finding as to SPOs' normal place of duty and other determinations, such as Annex E or V, which treat a deployment as temporary for its duration, even when longer than 28 days. Those determinations are different and separate, and targeted at different conditions and entitlements.

87. Accordingly, I am satisfied that for RASP officers with no single, fixed normal place of duty, this is the result intended to be achieved by Annex U. The obscurity of the application of "routine enquiries" to these officers in the 2012 version of Annex U, supports a conclusion that paragraph 11 does not generally apply in their case when serving as protection officers. Moreover, I am comforted in reaching my conclusion by the terms of the interim agreement reached between the Metropolitan Police Service and the Federation in April 2013, and reflected in the Guidance Note of 8 July 2014,

which made clear that protection officers are not eligible for AFH allowance when deployed on protection duties away from home (either by reference to a principal's location or working at any of the royal residences whether inside or outside the MPD) because these deployments are part and parcel of their roles.

88. The result is that RASP officers are not held in reserve within the meaning of Annex U, paragraph 11(b) when performing the duties of their protection officer role or remit, whether as CPOs, Aztec officers or SPOs, and wherever that might be in England or Scotland, or even sometimes, on an international basis. Therefore, the exclusion in paragraph 11(c) for "routine enquiries" does not ordinarily apply in their case.

89. The concept of "routine enquiries" as it appeared in the 2012 version of Annex U, paragraph 11(c), is thoroughly obscure, particularly insofar as it might be applied to this particular group of atypical officers.

90. On the one hand, I see the force of the argument advanced by Mr Gold that "enquiries" must mean something different from "duties" (a word used throughout the Police Regulations 2003, and one that was well-understood); otherwise why not use that latter word; and that routine simply qualifies the word enquiries, in the sense of regular, for these purposes. Accordingly, he submitted that it was restricted (in 2012 at least) to investigations or enquiries in the detection and prevention of crime and the enforcement of criminal law. A specialist function is not a routine enquiry. On the other hand, no policy reason has been identified to support a conclusion that the criminal justice functions of those involved in investigations (or enquiries) were the sole target of this exception. Moreover, it appears that the Federation itself was prepared to agree as an interim position in 2013 (and onwards) that a routine enquiry should be defined as "*a deployment away from home for a reason or purpose which routinely occurs as part of the role and responsibilities, for example, a regular meeting or conference"*. This position was maintained by agreement through to the March 2015 version of Annex U. Further, the exclusion for being away on a training course supports a conclusion that the underlying rationale for the exclusion is that the officer is required to be away from home (and otherwise "held in reserve") only to perform an activity that forms part of his or her regular role and responsibilities. If it were necessary to do so, I would suggest that "routine enquiries" means the regular activities of the officer's role. Nevertheless, given the conclusion I have reached about paragraph 11(b), and since the concept of "routine enquiries" was explained more expansively in 2015, I prefer to express no final conclusion as to its meaning in 2012.

91. The amendment in 2015 clarified the position for rank and file officers, and provided a more expansive definition of "routine enquiries". If an officer were otherwise entitled under paragraph 11(b), the disentitlement in paragraph 11(c) arose in any case where the officer was required to serve away from his normal place of duty, only by reason of having to carry out activities which form part of the officer's role or normal duties, where either because of the nature of that role or those duties, or because of the distance from the home station, the officer is unable to return home.

92. The amendment made clear that it was for the chief officer to determine the role or normal duties and whether there is an expectation that those duties be conducted away from home. There is no basis for thinking that the respondent did not have this power even before 1 March 2015, as quasi employer, to determine these questions in relation

to officers under the respondent's command. The amendment simply made this express in the context of the AFH allowance. It is clear from the contemporaneous documents issued by the respondent, that a series of communications, many agreed by the Federation, was issued, explaining which officers were or were not eligible for the AFH allowance by reference to their roles and duties.

93. Given the revised terms of paragraph 11(c), and the determinations made by the respondent, I can see no error in the judge's approach. He applied the terms of paragraph 11(c) to the deployments relied on by the appellants and concluded that none of the cases relied on during the agreed sample periods gave rise to an entitlement to the AFH allowance. There is no error in his conclusion.

94. Accordingly, with effect from 1 March 2015, the RASP officers were plainly on routine enquiries when deployed to perform their protection role, wherever that might be. Contrary to Mr Gold's submission, this conclusion is not inconsistent with the intended purpose of AFH allowance for the reasons already given. The remaining criticisms advanced by him are without foundation.

95. For all these reasons, I would uphold the judge's findings and conclusions, and dismiss the appeal. My conclusion makes it unnecessary to address the issues raised by the Respondent's Notice and in particular, the meaning of the words "ready for immediate deployment". In the circumstances, I prefer not to do so.

King LJ:

96. I agree.

Bean LJ:

97. I also agree.