



Neutral Citation Number: [2022] EWHC 1852 (Admin)

Case No: CO/3137/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2022

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN

Claimant

on the application of

RONALD PHILPOT

- and -

**COMMISSIONER OF POLICE
FOR THE METROPOLIS**

Defendant

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

Hearing date: 22 June 2022

Approved Judgment

Mrs Justice Lang :

1. The Claimant, who is a serving police officer in the Metropolitan Police Service, challenges the lawfulness of a restriction on contact with his wife which has been imposed upon him by the Defendant, following allegations of domestic violence and abuse against his wife and children.
2. The restriction (known as “Restriction 3” in these proceedings) currently requires that the Claimant is to have “no direct or indirect contact with Kim Philpot, unless it is required by the family court, or for child care matters which are to be via a third party”.
3. Restriction 3 was first imposed on 20 October 2020, when the Claimant was subject to both a criminal investigation and a police misconduct investigation in regard to his treatment of his wife and children. Restriction 3 was reviewed and maintained most recently on 4 July 2021, by which time the Crown Prosecution Service had decided not to take any further action in respect of the criminal allegations, but the police misconduct investigation was still ongoing. As at the date of this hearing, the investigation remained extant.

Issues

4. The issues in the claim may be summarised as follows.
5. **Ground 1**
 - i) Whether Restriction 3 was purportedly imposed under regulation 11 of the Police (Conduct) Regulations 2020;
 - ii) Whether regulation 11 provides such a power;
 - iii) Whether it is material that regulation 11 was purportedly used (whether or not power existed elsewhere).
6. **Ground 2**
 - i) Whether regulation 6 of the Police Regulations 2003 (“the 2003 Regulations”) is determinative as to the question of private life restrictions that may be imposed upon police officers;
 - ii) Whether Restriction 3 is unlawful within regulation 6(1);
 - iii) Whether Restriction 3 is unlawful within regulation 6(2).
7. **Ground 3**
 - i) Whether Restriction 3 is ultra vires section 4(3) of the Police Reform and Social Responsibility Act 2011 (“PRSRA 2011”);
 - ii) Whether such a power can be read into section 4(3) PRSRA 2011, bearing in mind the principle of legality.

8. **Ground 4**

- i) Whether Restriction 3 is an unlawful interference with the Claimant's rights under Article 8 of the European Convention on Human Rights ("ECHR").

Facts

9. The parties have agreed the facts, as follows.
10. On 27 July 2016 the Claimant's wife, Kim Philpot, called '999' to report an incident of domestic violence and the Claimant was arrested. Ultimately Mrs Philpot did not support further action, so no further action was taken.
11. On or about 5 July 2017, Mrs Philpot reported that both she and her young son had been assaulted by the Claimant. The matter was investigated by Cambridgeshire Police, but no further action taken.
12. On 22 September 2020, Mrs Philpot, telephoned '101' and reported years of domestic abuse by the Claimant to Bedfordshire Police. Mrs Philpot provided a statement on the same day, in which she described abusive behaviour in June and July 2016; an assault in July 2017; an assault on 31 March 2018 and abusive behaviour on 16 August 2020 and 21 September 2020.
13. On 23 September 2020, the Claimant was arrested at his mother's house by officers from Hertfordshire Police, on suspicion of committing coercive and controlling behaviour in relation to his wife; sending malicious communications to his wife; and common assault on his wife and son. The Claimant denied all the allegations in interview.
14. The Claimant was granted bail on 24 September 2020, and an extension was granted on 12 October 2020, until 23 December 2020. He was subject to the following bail conditions:
- i) "Not to contact directly or indirectly or via 3rd party or any social media Kim PHILPOT";
- ii) "Not to contact [Kim PHILPOT] to make arrangements for child contact of Children Save through Social Services or a responsible 3rd party";
- iii) "Not to go to [address of family home]".
15. On 30 November 2020, Mrs Philpot provided a further statement in which she gave further information about alleged abusive behaviour by the Claimant in 2018 and 2020.
16. On 13 January 2021, an application to extend bail was granted only until 23 March 2021.
17. On 19 March 2021, the Crown Prosecution Service advised there should be no further action in relation to the criminal allegations, whereupon the bail conditions expired.

Misconduct investigation

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

"Options of alternatives to suspension considered

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

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

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

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

N/A

Conditions to be imposed on the officer and rationale

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

I have reviewed the circumstances of the allegations against PC Philpot. In my assessment of the risks, PC Philpot has demonstrated alleged criminal and unprofessional behaviour. I

am of the opinion that these risks require management to ensure public and stakeholder confidence, and organisational confidence of officers and staff within the MPS. I consider placing PC Philpot on restricted duties ensures appropriate management of these risks.

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

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

...

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

21. The third bullet point above was the first iteration of Restriction 3.
22. The restrictions on duties meant that the Claimant only worked in the control room, and had no contact with members of the public. Therefore he would not have contact with his wife in the course of his duties.
23. The decision was accompanied by an Explanatory Note titled "Restricted Duty" which read as follows:

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

....

Restricted duty is not defined within the Police (Conduct) Regulations 2020, but is consistent with a 'temporary redeployment to alternative duties or an alternative location as an alternative to suspension' (see Regulations 11(4)(a) of the Police (Conduct) Regulations 2020). Restricted duty does not therefore amount to suspension. It is important to note therefore that an officer subject to restricted duties will retain both their

warrant cards and the powers and duties of a constable. The restriction from certain duties will be bespoke to the situation, reflecting the MPS' concerns regarding the conduct being investigated and the need to ensure that public confidence is maintained.

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

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

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

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

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

24. On 20 November 2020, the Claimant asked for Restriction 3 to be varied because he was due to attend the family court on 1 December 2020 and would be in court with his wife. On 26 November 2020 Restriction 3 was amended by Commander Betts so as to provide that the Claimant was "to have no direct or indirect contact with Kim Philpot unless it is required by the family court".
25. Following a query from DC Deans, on 25 March 2021, Mrs Philpot advised DC Deans that there was no need for the Claimant to contact her, that his mother was assisting with childcare arrangements, and she would like Restriction 3 to remain in place (there no longer being any bail conditions in place).
26. On 1 April 2021, a review of the restrictions was conducted by Detective Chief Superintendent Holdcroft, who determined that the restrictions should remain in force pending any further update regarding the misconduct investigation.

27. On 29 April 2021, Mrs Philpot notified DC Deans that the Claimant had breached Restriction 3 by sending her an email. As this was the first breach of Restriction 3 the Claimant was reminded of the restrictions and no further action taken.
28. On 4 June 2021 a further review of the restrictions was conducted by Detective Chief Superintendent Holdcroft. On 7 June 2021, the Claimant was notified that Restriction 3 had been amended to:

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

“Reasons for continued restriction.

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

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

Representations were received from PC Philpot’s Federation Representative in regard to the restriction applied to the officer concerning the officer’s contact with his partner. They have referenced the impact the restriction has upon PC Philpot’s private life and that of his children.

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

This is a serious allegation of domestic abuse and if proven could justify dismissal. I have discussed the case with the IO and her supervisor and am sighted on some of the evidence in the case. The matter is still under investigation for alleged gross

misconduct so I do not make any judgement in relation to this but it is my view that we have a duty of care to protect the victim from any further contact whilst this investigation continues, despite criminal allegations being NFA'd. If the AA in this matter does decide that there is a case to answer, the victim may be required to give evidence at any future proceedings and any contact from PC Philpott (*sic*) may jeopardise this.

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

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

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

31. In the reply to the letter before claim, the Defendant stated that the request to amend Restriction 3 was refused, in particular because:

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

32. The misconduct investigation is ongoing and as yet there has not been a decision as to whether the Claimant has a case to answer.

Misconduct: the statutory regime

33. The statutory regime for the handling of police misconduct matters is governed by the Police Reform Act 2002; the Police (Complaints and Misconduct) Regulations 2020; and the Police (Conduct) Regulations 2020.

34. Chief Constables, Local Policing Bodies and the Independent Office for Police Conduct ("IOPC") are responsible for operating the statutory scheme and statutory guidance has been issued by the Home Office ('Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing') and the IOPC ('Statutory Guidance on the Police Complaints System').

35. Precisely how an investigation is dealt with within the statutory framework depends upon how the matter was first reported and how serious it is. There are four key categories:
- i) **Complaints** – These are defined within section 12 of the Police Reform Act 2002 as any expression of dissatisfaction with a police force expressed by or on behalf of a member of the public. How complaints should be handled is specified by Part 2 and Schedule 3 of the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020;
 - ii) **Conduct Matters** – These are defined within section 12 of the Police Reform Act 2002 as any matter, not the subject of a complaint, where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings. Conduct matters are investigated pursuant to the Police (Conduct) Regulations 2020;
 - iii) **Recordable Conduct Matter** – These are conduct matters that fall within particular categories defined within paragraphs 10, 11 and 13A of Schedule 3 to the Police Reform Act 2002, supplemented by Regulation 7 of the Police (Complaints and Misconduct) Regulations 2020. How a conduct matter comes to be defined as a recordable conduct matter is complex, but is essentially concerned with seriousness. Recordable conduct matters are investigated pursuant to Schedule 3 of the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020; and
 - iv) **Death or Serious Injury** (known as ‘DSI’ matters) – These are defined within section 12 of the Police Reform Act 2002 as any matter (other than those which are or have been the subject of a complaint or which amount to a conduct matter) where death or serious injury has been suffered following arrest or contact with the police. DSI matters are investigated pursuant to Schedule 3 of the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020.
36. The allegations made against the Claimant by his wife were dealt with as a recordable conduct matter by the Defendant because a member of the public was ‘adversely affected’ by the Claimant’s conduct (pursuant to paragraph 11(2) of Schedule 3 the Police Reform Act 2002).
37. Accordingly the investigation being conducted by the Defendant is pursuant to Schedule 3 of the Police Reform Act 2002, supplemented by the Police (Complaints and Misconduct) Regulations 2020.
38. Paragraph 19A(5) of Schedule 3 to the Police Reform Act 2002 provides that investigations into recordable conduct matters are conducted in accordance with the relevant regulations, which are the Police (Complaints and Misconduct) Regulations 2020. Paragraph 16 of Schedule 3 to the Police Reform Act 2002 provides for the appointment of an investigator, whose identity must be notified to the officer under regulation 17 of the Police (Complaints and Misconduct) Regulations 2020. Upon completion of the investigator’s report, the appropriate authority must determine whether or not there is a case to answer, and if so, the form that any misconduct

proceedings should take. In the present case, it has not yet been determined whether the Claimant has any case to answer.

39. Whichever investigatory regime is being followed parts of the Police (Conduct) Regulations 2020 remain relevant because some parts of these regulations contain matters of general application. For example, Part 2 of the Police (Conduct) Regulations 2020 contains various general matters and Part 4 sets out the procedures to be followed for misconduct meetings and hearings generally, whichever investigative route has been taken.
40. The matters of general application set out in Part 2 of the Police (Conduct) Regulations 2020 include:
 - i) The Standards of Professional Behaviour for police officers (Regulation 5 and Schedule 2);
 - ii) The provision of legal representation (Regulation 8); and
 - iii) The suspension of police officers (Regulation 11).
41. Regulation 11 of the Police (Conduct) Regulations 2020 is entitled “Suspension” and provides, so far as is material:

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

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

.....

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

 - (a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case, and
 - (b) it appears to the appropriate authority that either –
 - (i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended, or
 - (ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be so suspended.”

42. There is no express or implied power in the Police (Conduct) Regulations 2020 or the Police (Complaints and Misconduct) Regulations 2020 to restrict an officer's contact with witnesses during the course of an investigation or during misconduct proceedings.

Grounds of challenge

Ground 1

Submissions

43. The Claimant submitted that Restriction 3 was purportedly imposed under regulation 11 of the Police (Conduct) Regulations 2020. However, the Defendant submitted that there was no specific reference to the power used, and no evidence as to whether the decision maker/s turned their mind to the power that they were exercising.
44. The Claimant submitted, and the Defendant conceded, that regulation 11 did not confer power on the Defendant to impose a restriction in the terms of Restriction 3.
45. The Defendant submitted, even if regulation 11 was purportedly used (which was not admitted), it was immaterial to this claim. In response, the Claimant submitted that the error was material as it vitiated the decision.

Conclusions

46. Regulation 11 of the Police (Conduct) Regulations 2020 is concerned with suspension. Sub-paragraph (4) requires a decision maker to consider redeployment as an alternative to suspension. Under this provision officers subject to disciplinary investigation may be redeployed on restricted duties. However, regulation 11 does not include any power to restrict an officer's private life, by imposing a restriction such as Restriction 3.
47. There is statutory guidance on regulation 11 of the Police (Conduct) Regulations 2020 in the "Home Office Guidance – Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards Performance and Integrity in Policing" ("the Home Office Guidance"), published in accordance with sections 87 and 87A of the Police Act 1996. It does not suggest that the powers in regulation 11 can be used to restrict an officer's private life.
48. On a fair reading, the decision by Commander Betts, made on 20 October 2020, to redeploy the Claimant and place restrictions upon him, including Restriction 3, plainly was made under regulation 11 of the Police (Conduct) Regulations 2020.
49. First, the explanatory notes attached to the decision, headed "Restricted Duty", specifically cite regulation 11 of the Police (Conduct) Regulations 2020 as the authority for the restriction of duties. The explanatory notes cross refer to the "Suspension of Police Officers Toolkit - Questions and Answers (Q&As)" which identifies Regulation 11's predecessor in the Police (Conduct) Regulations 2012 as the relevant legal power. The Toolkit describes "restricted duties" as a "temporary move to other duties" and gives examples which relate to duties at work, not an officer's private life.

50. Second, the wording and structure of the decision notice reflect regulation 11 of the Police (Conduct) Regulations 2020, in particular the titles:
- i) “Options of alternatives to suspension considered....”;
 - ii) “It is necessary and in the public interest to remove from normal duty because”;
 - iii) “It is not appropriate to remove the officer from normal duty because”;
 - iv) “Conditions to be imposed on the officer and rationale”

In my view, it is quite likely that this document was drawn up from a template for a regulation 11 decision.

51. The final sentence of the decision states that the “decision to restrict PC Philpot’s duties will be reviewed on receipt of any further significant update”.
52. Reviews were duly carried out on 26 November 2020, 1 April 2021, 7 June 2021 and 4 July 2021. On each occasion, the title of the decision was “Review of Restricted Officer” and the sub-title was “Notification to officer concerned of reasons for continued restriction”. It is clear from the titles and the content of these decisions that these were not decisions made *de novo*; they were reviews of the decision made on 20 October 2020. In the absence of any reference to any other legal power, I conclude that the officers were purporting to exercise the same powers as the original decision-maker, namely, regulation 11 of the Police (Conduct) Regulations 2020.
53. The officers were purporting to exercise a power under regulation 11 of the Police (Conduct) Regulations 2020 which did not exist. That was a material error of law, which vitiated the decisions made. The Defendant submitted that the error of law was not material, as the same decision could properly have been made under other powers. I do not consider that the case of *R v Hull University Visitor ex parte Page* [1993] AC 682 assists the Defendant, as it was made in a different context. Therefore, Ground 1 succeeds.
54. However, as I have found that the Defendant could lawfully impose Restriction 3 under regulation 6 of the 2003 Regulations, read together with section 4(3) of the PRSRA 2011, I conclude that this is a case in which relief should be refused under section 31(2A) of the Senior Courts Act 1981 because it is “highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”.

Ground 2

Submissions

55. The Defendant submitted that regulation 6(2) of the 2003 Regulations conferred a power to impose restrictions upon an officer’s private life if they were “designed to secure the proper exercise of the functions of a constable”.

56. Preventing the Claimant from having contact with his wife is a restriction “designed to secure the proper exercise of the functions of a constable” because:
- i) The Claimant could not properly discharge his functions as a constable were he to be called upon to attend any matter involving his wife given the ongoing misconduct investigation into serious claims made against the Claimant by his wife;
 - ii) There is a risk that the Claimant could misuse or abuse his police powers were he to come into contact with his wife;
 - iii) The community would not be reassured that police misconduct proceedings were being properly conducted if the Claimant were to have contact with his wife whilst she was the main witness and might have to give evidence against the Claimant at a misconduct hearing;
 - iv) The primary purpose of the police misconduct process was to secure and promote public confidence in the police service. The Defendant was obliged to take reasonable steps to ensure this occurs and the Claimant too, as a police constable, had obligations to ensure the public had the utmost faith in policing and the police misconduct process;
 - v) The Claimant’s wife did not want to have contact with him and contact between the Claimant and his wife could lead to further misconduct or harm;
 - vi) Were the Claimant to make contact with his wife during the ongoing investigation there was a real risk of harm being caused to the investigation, any further misconduct proceedings and/or the Claimant’s wife.
57. The Defendant also submitted that, given the nature of the allegations, there was a real risk that such contact could also interfere with the Claimant’s impartial discharge of his duties and role as a police officer, as prohibited by Schedule 1 to the 2003 Regulations.
58. In response, the Claimant submitted that it was unarguable that contact between the Claimant and his wife would affect the impartial discharge of his duties, as he had no duties to discharge in respect of his wife. He was not required to be impartial when defending himself in the disciplinary proceedings against him. Furthermore, the other restrictions placed on the Claimant prevented him from having contact with any members of the public in the course of his duties, including his wife.
59. The Claimant submitted that regulation 6 of the 2003 Regulations did not confer power to impose Restriction 3. Paragraph (1) imposed the restrictions in Schedule 1, which did not include Restriction 3. Paragraph (2) expressly prohibited the imposition of private life restrictions, subject to exceptions, which did not apply to Restriction 3.

Police Regulations 2003

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

61. In *Allard & Anor v Chief Constable of Devon and Cornwall Constabulary* [2015] EWCA Civ 42, Patten LJ considered the 2003 Regulations and held:

“2. Police officers are not employees but office holders whose terms and conditions are prescribed by statute. Their deployment and hours of duty are a matter ultimately for the Chief Constable to determine but their terms and conditions of service are set out in determinations made by the Home Secretary pursuant to regulations made under s.50(1) of the Police Act 1996.”

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

“6. Restrictions on the private life of members

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

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

(a) such as may temporarily be necessary, or

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

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

63. Schedule 1 to the 2003 Regulations is entitled “Restrictions on the private lives of police officers” and sets out the specific private life restrictions placed upon police officers upon taking office. Paragraph 1 provides:

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

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

(a) not take any active part in politics;

(b) not belong to any organisations specified or described in a determination of the Secretary of State.”

64. Pursuant to paragraph 1(2), the Secretary of State has made a determination prohibiting membership of the British National Party, Combat 18 and the National Front.

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

Conclusions

66. Regulation 6, read together with Schedule 1, sets out the general restrictions on the private lives of police officers which form part of their terms and conditions of service. They are of universal application to all police officers, or classes of police officers, and are permanent (unless formally amended), not temporary.
67. It was common ground between the parties that paragraph (1) of regulation 6 of the 2003 Regulations gives effect to the restrictions in Schedule 1. It does not confer a power on the Defendant to impose any other restrictions.
68. Paragraph (2) of regulation 6 of the 2003 Regulations does permit the imposition of some further restrictions on the private life of officers. The structure of paragraph (2) is convoluted, and the language lacks clarity. However, I was assisted by seeing how the same paragraph had been drafted in earlier versions of the Police Regulations. I accept the Defendant's interpretation of paragraph (2), namely, that it permits the local policing body or chief officer to impose three categories of restrictions on private life, not just two, as the Claimant submitted. The three categories are as follows:
- i) those "designed to secure the proper exercise of the functions of a constable";
 - ii) those "such as may temporarily be necessary" under sub-paragraph (a), which must be reported forthwith to the Secretary of State under paragraph (3);
 - iii) those "such as may be approved by the Secretary of State after consultation with the Police Advisory Board for England and Wales" under sub-paragraph (b).
69. Generally, the 2003 Regulations set out terms and conditions applicable to all police officers, or classes of police officers. In my view, any restrictions imposed pursuant to sub-paragraphs (a) or (b) of paragraph (2) are likely to be applicable to all police officers, or classes of police officers, as they have to be reported and/or approved by the Secretary of State. As both parties submitted, it seems highly unlikely that the Regulations would require a temporary restriction on contacting witnesses, imposed on an individual officer, to be reported to, or approved by, the Secretary of State.
70. However, the description of restrictions "designed to secure the proper exercise of the functions of a constable" does not expressly or impliedly exclude the possibility of restrictions being imposed upon an individual police officer. In my view, it confirms that the broad powers which the Defendant has to direct and control police officers in the Metropolitan Police Service (currently set out in the PRSRA 2011), may include imposition of restrictions on an officer's private life, provided that those restrictions are "designed to secure the proper exercise of the functions of a constable".
71. The Claimant submitted that Restriction 3 was not "designed to secure the proper exercise of the functions of a constable". The Defendant referred to the judgment of

the Divisional Court in *DPP v Ahmed* [2021] EWHC 2122 (Admin) where Dame Victoria Sharp P. held, at [25(iv)]:

“When considering the broad functions of a constable, and although arising in a different context, some assistance can be obtained from the discussion of “police purposes” in *R (Centre for Advice on Individual Rights in Europe) v Secretary of State for the Home Department* [2019] 1 WLR 3002, paras, 46-48. As explained in that case, the purpose of the police service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; to keep the Queen’s Peace; to protect help and reassure the community; and to be seen to do all this with integrity, common sense and sound judgment.”

72. In the decision of 20 October 2020, the reasons given for the imposition of Restriction 3 were as follows:

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

.....

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

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

73. In the review decision of 4 July 2021, by which time criminal proceedings were no longer being pursued, the reasons given for maintaining Restriction 3 were as follows:

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

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

74. The Home Office Guidance confirms, at paragraph 2.18:

“As a result of the nature of the office of constable, a police officer is always subject to the Standards of Professional Behaviour even when off-duty. As such police officers should not behave in a manner that discredits the police service or undermines public confidence at any time.....”

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

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

Ground 3

Submissions

77. It was common ground between the parties that the Defendant has statutory responsibility for the direction and control of the Metropolitan Police Service, pursuant to section 4(3) of the PRSRA 2011, which states:

“The metropolitan police force, and the civilian staff of the metropolitan police force, are under the direction and control of the Commissioner of Police of the Metropolis.”

78. The Policing Protocol, issued pursuant to section 79 PRSRA 2011, assists with the interpretation of ‘direction and control’, providing, *inter alia*, that:
- “21. The Chief Constable ... has direction and control over the force’s officers and staff....
22. The Chief Constable is accountable...to the PCC for the delivery of efficient and effective policing, management of resources and expenditure by the police force...”
79. The Defendant submitted that the imposition of restrictions on officers during misconduct proceedings falls within the Defendant’s responsibility for the direction and control of the Metropolitan Police Service, and should be read together with regulation 6 of the 2003 Regulations, insofar as the restrictions affect the private life of officers.
80. The Claimant submitted that the provisions of the PRSRA 2011 and the Policing Protocol were general and “high level”, and could not be construed so as to confer power to impose restrictions on the private life of an individual police officer.

Conclusions

81. I accept the Defendant’s submission that the imposition of restrictions on officers during misconduct proceedings falls within the Defendant’s responsibility for the direction and control of the Metropolitan Police Service, as set out in section 4(3) PRSRA 2011, and should be read together with the specific provision for the chief officer to impose restrictions on the private life of police officers, in paragraph 2 of regulation 6 of the 2003 Regulations.
82. I do not accept the Claimant’s submission that this analysis offends against the principle of legality, as explained by Lord Hoffmann in *R v Secretary of State for the Home Department, ex p. Simms* [2000] 2 AC 115, at 131:
- “Fundamental rights cannot be overridden by general or ambiguous words. In the absence of express language or necessary implication to the contrary, the courts presume that even the most general words were intended to be subject to the basic rights of the individual.”
83. It is common ground that Restriction 3 engages Article 8 ECHR. However, Article 8 is a qualified right, which can be overridden (see Ground 4 below). In my view, regulation 6 of the 2003 Regulations permits the Defendant to impose restrictions on private life, including Restriction 3, in the exercise of his general power to direct and control police officers under section 4(3) PRSRA 2011.

Ground 4

Submissions

84. The Claimant submitted that Restriction 3 was in breach of Article 8 ECHR because it was not in accordance with the law, as there was no power to impose Restriction 3.
85. Alternatively, the Claimant submitted that Restriction 3 was disproportionate for the following reasons:
- i) It prohibits contact with the Claimant's wife "unless it is required by the family court" (emphasis added). That is not a circumstance that is ever likely to occur.
 - ii) The Claimant is prevented from contacting his wife respectfully and politely, even indirectly and when off duty, even if his wife consents to or desires such contact.
 - iii) It has no limit of time.
 - iv) It dictates to the Claimant how he must approach childcare issues, by requiring arrangements to be made via a third party.
86. The Claimant submitted that there were a number of other ways in which the complainant could be protected from unwanted contact with the Claimant, which would be less invasive and would have the benefit of independent oversight. Any interference with the complainant during the course of the disciplinary proceedings would be contrary to the Standards of Professional Behaviour, and could result in further allegations of misconduct. The Claimant's wife could apply for a non-molestation order and injunction under section 42 of the Family Law Act 1996. There were also a range of criminal offences that might apply, such as harassment, contrary to section 1(1) Protection from Harassment Act 1997; and stalking contrary to sections 2A and 4A of the Protection from Harassment Act 1997.
87. In response, the Defendant accepted that Article 8 was engaged, but submitted that the interference with the Claimant's private and family life was in accordance with the law, and proportionate.

Conclusions

88. Article 8 ECHR provides:
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the

protection of health or morals, or for the protection of the rights and freedoms of others.”

89. The Metropolitan Police Service is bound by section 6 of the Human Rights Act 1998 in its capacity as a public authority.
90. The Home Office Guidance advises, at paragraph 2.17, that Article 8 ECHR is relevant to determining restrictions on officers’ private lives:

“Police officers have some restrictions on their private life. Some of these restrictions are set out in the Police Regulations 2003. These restrictions have to be balanced against the right to privacy in common law and right to a private life, as set out in Article 8 of the Human Rights Act 1998.”
91. Although the decisions made no reference to Article 8 ECHR, the decision of 4 July 2021 did undertake a balancing exercise which was consistent with a proportionality assessment. Unfortunately, that was lacking in the decision of 20 October 2020.
92. Article 8 is a qualified right. An individual’s right to respect for their private and family life may be interfered with if done in accordance with the law, in furtherance of one or more of the legitimate aims in Article 8(2), and where the interference is proportionate to the right pursued.
93. For the reasons I have set out above under Ground 1, the Defendant’s decisions to impose and maintain Restriction 3, were not in accordance with the law, as they were erroneously made under regulation 11 of the Police (Conduct) Regulations 2020. Therefore there was a breach of Article 8 ECHR, and Ground 4 succeeds.
94. I go on to consider proportionality as this affects the question of relief. I accept that the Defendant could impose Restriction 3 in pursuant of the legitimate aims of the prevention of disorder or crime, and the protection of the rights and freedoms of others.
95. The Claimant’s wife is the complainant and main witness and may have to give evidence against the Claimant. If the Claimant put pressure on his wife to withdraw the allegations, that could jeopardise the disciplinary proceedings.
96. Non-molestation orders, disciplinary proceedings and criminal proceedings are not preventative in nature. The police cannot apply for a non-molestation order; only the Claimant’s wife can do so. Furthermore, the Claimant’s conduct may not amount to molestation or a criminal offence, but still jeopardise the integrity of the disciplinary proceedings.
97. Restriction 3 does not prevent the Claimant from seeing his children. Arrangements for contact with the children are to be made via a third party. In the review decision of 4 July 2021, Detective Chief Superintendent Smith said:

“I have considered the impact of the restriction on PC Philpott’s (*sic*) private life and I am of the view that this is minimal because the victim does not want him to have contact with her. The restriction does not prevent the officer from seeing his children

as he is allowed to contact her about the children via a third party (his mother). The email from the Fed rep in this case states that he has not seen his children in person since his arrest but it is my view that this is not due to the restriction we have put in place. Family court proceedings will consider the contact he can have with his children and the restrictions should not affect this.”

98. For all these reasons, I conclude that Restriction 3 was proportionate.
99. As I have found that the Defendant could lawfully impose Restriction 3 under regulation 6 of the 2003 Regulations, read together with section 4(3) of the PRSRA 2011, I conclude that this is a case in which relief should be refused under section 31(2A) of the Senior Courts Act 1981 because it is “highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”.

Final conclusions

100. The claim for judicial review is allowed on Grounds 1 and 4. However, relief is refused pursuant to section 31(2A) of the Senior Courts Act 1981.