

ENGLAND AND WALES / JUDGMENT

Allard & Ors v Devon & Cornwall Constabulary

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2015] EWCA Civ 42 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT His Honour Judge Simon Carr
1UD01686 Case No: B2/2013/3158 Royal Courts of Justice Strand, London, WC2A 2LL Date:
Tuesday 3 rd February 2015 Before : LORD JUSTICE LONGMORE LORD JUSTICE PATTEN and
LADY JUSTICE GLOSTER

- ----- Between :

(1) CLIVE ALLARD

(2) STUART VINCENT

(3) NORMAN CRAIG BUCKLEY

- and - THE CHIEF CONSTABLE OF DEVON & CORNWALL CONSTABULARY

- ----- (Transcript of the Handed Down Judgment of WordWave
International Limited A Merrill Communications Company 165 Fleet Street, London EC4A
2DY Tel No: 020 7404 1400, Fax No: 020 7831 8838 Official Shorthand Writers to the Court)

- ----- Claimants/ Respondents Defendant/ Appellant Jeremy Johnson QC
and Dijen Basu (instructed by the Devon & Cornwall Constabulary) for the Appellant Martin
Westgate QC and Sadie Crapper (instructed by Pattinson & Brewer) for the Respondents
Hearing date : 10 December 2014

- -----

Judgment

Lord Justice Patten : 1. 2. 3. 4. 5. 6. The claimants in these proceedings are retired police officers who were assigned to be the handlers of what are referred to as covert human intelligence sources (“CHISs”). The CHISs were individuals (often criminals themselves) who acted as police informants. In order to manage this information they were assigned an officer of the rank of sergeant or constable who acted as their handler and to whom they would refer as their first point of contact. 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. Officers who served as handlers of the CHISs were required to work relatively standard tours of duty lasting from 8am to 4pm each day from Monday to Friday but excluding public holidays. There were not rostered for duty at weekends. But although the CHISs were encouraged to confine any contact with their handlers to normal working hours within their regular tours of duty, there were frequent occasions where, either of necessity or simply due to their chaotic lifestyle or lack of organisation, a CHIS would try to make contact outside those hours. Sometimes the message from the CHIS would be trivial such as a simple request to change the time of a pre-arranged meeting. But on other occasions the information would be much more important such as a tip-off about an imminent crime or disturbance which would lead to an immediate response by the police. Many of the contacts ranged in terms of importance and urgency between these two extremes. For most of the period to which this claim relates the Devon and Cornwall Constabulary operated an automated telephone system known as InvisiLink. It was purchased to enable the Force to route calls from CHISs to other handlers when required. Each of the CHISs was given a separate designated number to ring when they wished to contact their handlers. When this number was dialled the InvisiLink recognised the CHISs contact details and sent a text message to the handler's mobile telephone advising that the CHIS was attempting to make contact. If the handler decided to contact the CHIS he would dial a telephone number which would connect him to the CHIS via the InvisiLink system which would register that contact was being made. If, however, the handler did not respond to the text message within 15 minutes the system would send a text to another handler and so on until action was eventually taken to make contact with the CHIS. Officers who acted as handlers were not subject to restrictions when not on duty. They were not required to stay at home or to be available to take a call at any time. They were free, for example, to go to the cinema or theatre and to attend other social engagements. It would not therefore always be possible for a CHIS to make contact with his handler outside normal working hours and the InvisiLink system was designed to compensate for this by calling on other handlers to respond in the absence of the designated handler. The system did, however, depend upon handlers who were available to take calls and receive a text taking action to respond. The judge found 7. 8. 9. 10. that officers in this position were required to deal with the calls as and when they came in and were not at liberty simply to ignore a text which they received. The interposition of the InvisiLink system between the CHISs and their handlers meant that no handler received a direct call from the CHIS. But the information provided by the system to the handler was no more than that the CHIS wished to make contact. The reasons for the call and therefore its importance and urgency remained unknown until contact was actually made. Each of the handlers was supervised by a CHIS controller (usually a police inspector) and his deputy. The evidence is that handlers were originally required to obtain authorisation from the controller before responding to the text by telephoning the CHIS. But, in order to manage the volume of calls, a system was later put in place under which handlers had authority to contact the CHIS briefly in order to discover the reason for the call. They were then required to contact the controller for authorisation to speak to the CHIS further. If the conversation between the CHIS and the handler contained information which necessitated further action, this was directed by the controller who decided what kind of response was necessary. The claim in which this appeal

arises is one to recover overtime pay which the claimants say is due to them in respect of the time which they spent dealing with CHISs outside their normal tours of duty. Although the details of each claim differ in relation to the time spent, the seriousness of the calls and their frequency, certain legal issues are common to all of the claims. Regulations have been made under s.50(1) of the Police Act 1996 governing conditions of service involving pay and allowances. For the periods in question, these are the Police Regulations 2003 (“the 2003 Regulations”). Regulation 25 of the 2003 Regulations provides: “25.— Overtime

- (1) Subject to the provisions of this regulation, the Secretary of State shall determine the circumstances and manner in which a member of a police force shall be compensated in respect of time—
 - (a) for which he remains on duty after his tour of duty ends, or
 - (b) for which he is recalled between two tours of duty, or
 - (c) which forms part of a tour of duty which he is required to begin earlier than the rostered time without due notice and on a day when he has already completed his normal daily period of duty; and such time is referred to in these Regulations as “overtime”.
- (2) For the purposes of this regulation— “due notice” means notice given at least 8 hours before the revised starting time of the rostered tour of duty in question; “normal daily period of duty” shall be construed in accordance with regulation 22; “recall” does not include a warning to be in readiness for duty if required; and ...” 11. The Secretary of State’s determination under regulation 25 in respect of overtime (which had effect from 1 April 2007) states (so far as material): “ANNEX G OVERTIME Regulation 25
 - 1) a) Subject to the provisions of Regulation 25 and this Determination, a member of a police force of the rank of constable or sergeant shall be compensated in respect of time: i) ii) for which he remains on duty after his tour of duty (or in the case of a member working in accordance with variable shift arrangements, a rostered shift) ends; or for which he is recalled between two tours of duty (or in the case of a member working variable shift arrangements, rostered shifts); or iii) which forms part of a tour (or in the case of a member working variable shift arrangements, a rostered shift) which he is required to begin earlier than the rostered time without due notice and on a day when he has already completed his normal daily period of duty (or in the case of a member working variable shift arrangements, a rostered shift); and such time is referred to in this determination as “overtime”. ... d) Subject to paragraphs (e) and (g), a full-time member of a police force of the rank of constable or sergeant shall be granted an allowance in respect of each week at the rate of a twenty-fourth of a day’s pay for each completed period of 15 minutes of overtime worked by him on any occasion during that week, except that on each of the first four occasions on which overtime in respect of which the member was not informed as mentioned in paragraph (g) is worked during a week 30 minutes of the overtime worked is to be disregarded. ... g) For the purposes of paragraphs (d) and (f), no account shall be taken of any period of less than 30 minutes of overtime worked on any occasion other than a period

of 15 minutes of overtime in respect of which the member was informed at the commencement of his tour of duty that he would be required to remain on duty after his tour of duty ended. h) In computing any period of overtime for the purpose of this determination:

- i) where the member of a police force of the rank of constable or sergeant is engaged in casual escort duty, account shall be taken only of: (1) (2) (3) time during which he is in charge of the person under escort; such other time as is necessarily spent in travelling to or from the place where the member is to take charge of, or hand over, the person under escort, as the case may be; and any other time that may be allowed by the chief officer, so however, that, if the member is so engaged overnight and has proper sleeping accommodation, whether in a train or otherwise, the chief officer may exclude such period not exceeding eight hours, during which the member is not in charge of the person under escort as he considers appropriate in the circumstances; ii) subject to sub-paragraph (iv), where the tour or tours of duty does not or do not amount in the aggregate to more than the normal daily period of duty, no account shall be taken of any overtime except so much as together with the tour or tours of duty exceeds the normal daily period of duty. This sub-paragraph does not apply to members working in accordance with variable shift arrangements; iii) where a member is recalled to duty between two rostered tours of duty (or in the case of a member working variable shift arrangements, shifts) and is entitled to reckon less than 4 hours of overtime in respect of any period for which he is recalled, disregarding any overtime reckonable under regulation 22(e) and the determination made under that regulation, he shall be deemed to have worked for such period 4 hours of overtime in addition to any overtime reckonable by virtue of regulation 22(e). ...” 12. Duty on public holidays and rest days is the subject of a separate determination made under regulation 26 of the 2003 Regulations. Again, so far as material, it states: “ANNEX H Regulation 24 Regulation 26 PUBLIC HOLIDAYS AND REST DAYS
- (1) ROSTERED REST DAYS and PUBLIC HOLIDAYS
 - (a) A member of a police force of the rank of constable or sergeant shall, if required to do duty on a day which is a rostered rest day, be granted:
 - (i) where he receives less than 15 days’ notice of the requirement, an allowance at the appropriate rest-day rate... ..
 - (b) Subject to paragraph (2)(a) the appropriate rest-day rate is, for each completed 15 minutes of duty on a rostered rest day, the fraction of a day’s pay specified in sub-paragraph (c).
 - (c) The fraction is:
 - (i) where the member received less than 5 days’ notice of the requirement, one sixteenth... ..
 - (d) A member of a police force of the rank of constable or sergeant shall, if required to do duty on a day which is a public holiday, be granted:

- (i) where he receives less than 8 days' notice of the requirement: (1) (2) an allowance at the appropriate rate and, in addition, another day off in lieu thereof... which shall be treated for the purpose of this determination as a public holiday; ...
- (3) FOR THE PURPOSES OF THIS DETERMINATION: ... (c) ... "the appropriate rate"... means a sixteenth of a day's pay for each completed 15 minutes of duty done on a public holiday;
- (h) where a member is required to do duty, or is recalled to duty, for a period of less than 4 hours on a public holiday or a rostered rest day or, for a part-time member, a free day, such period or each such period, shall be treated as though it were a period of 4 completed hours. The only exception to this is where a period of not more than one hour of duty on a rostered rest day... immediately follows a normal daily period of duty... In this instance the period of not more than one hour of duty counts as the number of period of 15 minutes actually completed." 13. 14. The claimants' case is that when they dealt with a call from a CHIS between their normal tours of duty they were recalled to duty within the meaning of regulation 25(1) and therefore became entitled to overtime under paragraph 1a(ii) of Annex G. The relevant provision for computing the amount of overtime pay is paragraph 1(h) which means that for the time they were recalled to duty between each two rostered tours of duty they became entitled to be paid for a minimum of 4 hours' overtime. This would apply even if, for example, they received only one call on a particular evening and spent a total of no more than 10 to 15 minutes dealing with it. The Chief Constable disputes this on two grounds. First he contends that in order to be recalled to duty, the officer must be directed to return to duty. Being put on notice that he may be liable to be recalled is not enough: see regulation 25(2). It follows from this that a handler who is alerted by a text that the CHIS wishes to contact him and then does telephone the CHIS to discover the reason for the call is not recalled to duty unless the call necessitates some kind of follow-up and the handler is directed by his controller to take the matter further either by re-contacting the CHIS or by taking some other kind of action. 15. The distinction for which the Chief Constable contends is best illustrated by the hypothetical scenarios which were provided to HH Judge Carr for the purpose of deciding the preliminary issue of liability in this case: "I. Contact from a CHIS where the information given indicated that there was a risk to the welfare of a CHIS or to members of the public which meant that it was necessary for the handler to meet with the CHIS. II. Contact from a CHIS where the information provided was immediately actionable but there was no necessity for the handler to meet the CHIS. III. Contact from a CHIS where the information provided was not immediately actionable. IV. Contact from a CHIS where no information was given e.g. the CHIS made a request to meet at another time or to ask about a result or a payment. V. A CHIS requests contact but the request for contact is declined by the Controller. VI. During a rostered tour of duty, a handler arranges a meeting or discussion with a CHIS which is to take place between two tours of duty, on a rostered rest day or a public holiday. VII. Handler telephones a CHIS between two tours of duty, on a rostered rest day or on a public holiday using an authority which had been obtained from the CHIS Controller whilst the handler was on duty during a rostered tour of duty. VIII. Handler attempts to contact a CHIS between two tours of duty, on a rostered rest day or on a

public holiday but where the attempts at contact have not been successful, e.g. because a telephone call made by the Handler is not answered. IX. Handler receives and deals with a call from a CHIS on a rostered rest day or public holiday because he uses his work mobile (as permitted) as a personal mobile telephone.” 16. The judge held that the claimants were undertaking duty and therefore were recalled or required to do duty in each of the nine scenarios. In relation to scenarios I. – V. which deal with contacts which occur between rostered tours of duty but not on a rest day or public holiday, the judge said: “30. The defendant’s position, laid out fully in their skeleton argument, is that that is simply not an appropriate use of language, to say somebody is recalled to duty when they deal with a phone call or series of phone calls, possibly over a short period of time, rather graphically indicated in the skeleton argument as possibly standing in the front room in their pyjamas. The difficulty that they have is if it is not a recall to duty what is it. ...

34. I cannot see how that can be anything other than a recall to duty. To describe it in any other way would be simply artificial. These officers, who are in a specialist unit, are required, it seems to me, to deal with those calls as and when they come in, in the manner I have described. I do not think it sits well with the defendant’s case to suggest in some way they could ignore the call or fail to call the controller to gain authority until they were back on one of their rostered shifts. One only has to think for a moment to conclude that is not a tenable position.
35. The police officers are provided with the mobile phone by the Defendant. Acting as they are is, in my judgment, a recall to duty as defined. Under the regulations they are entitled, subject to the terms of the regulations, to overtime payments as then calculated.” 17. Annex H which deals with overtime on rest days and public holidays depends upon the officer being “required to do duty” on those days. The judge said: “On the particular facts of this case the alternative wording makes no difference at all. Whether it is described as being recalled to duty or required to do a duty, the actions performed by the officers in dealing with the calls in the way I have described would clearly fall under both definitions. To say that the definition is less favourable on a public holiday or a rest day it seems to me is unsustainable.”
18. Mr Johnson QC for the Chief Constable accepts that there is no difference in substance between being recalled to duty and being required to do duty. They both, he says, connote a state of affairs in which the requirement to do duty is imposed between two rostered periods of duty. For the regulations to apply there must therefore be a direct order given to the officer to undertake the duty in question. It is not therefore enough for the officer merely to take it upon himself to perform the additional period of duty. Nor does the receipt of a work-related communication without more constitute a recall to duty. Transposed to the scenarios applicable to the handling of a CHIS, an officer is not recalled to duty when he makes the initial telephone call to the CHIS or to the controller. It is only when the controller directs him to make further contact with the CHIS or to make arrangements to protect the CHIS from harm that a period of duty begins. 19. 20. On this basis, scenario I. does involve a recall

to duty; scenarios II., VI. and IX. may do so depending on whether the handler is required to do anything further by the controller; but scenarios III. – IV. and VII. – VIII. do not involve duty. It is important to bear in mind that the 2003 Regulations and the determinations made under them are of general application to all officers of the rank of constable or sergeant. They make no separate provision for officers in specialist units with an unusual work pattern but have nonetheless to be applied to those officers having regard to the instructions or orders under which they operate. 21. 22. The question therefore in every particular case is whether the officer was required to carry out the duty which he performed. A police officer who outside a rostered period of duty is put on notice by his commanding officer that he may be required to return to duty is not recalled to duty unless and until he is specifically ordered to return: see regulation 25(2). But an officer may be recalled to duty or be required to do duty for the purposes of regulations 25 and 26 without receiving an express summons of that kind if an occasion arises during what would otherwise be a rest or holiday period which, as a result of his current orders, requires the officer to carry out a particular task. An example of this can be found in the decision of this Court in *Crosby v Sandford*

- (1979) 78 LGR 85, CA which concerned the entitlement of a police dog handler to claim an overtime allowance in respect of the time spent each day outside rostered hours of duty grooming and exercising his dog. The issue for the court was whether the hours in question constituted duty within the meaning of regulations 25 and 26. Megaw LJ said: “It is said that when the dog handler went home, taking the dog with him, at the end of his eight hours mobile patrol, he did not “remain on duty”. He went off duty: unless, indeed, as no one has asserted, he is to be deemed to have remained on duty for every minute of the time that he had the dog in his care, from the end of the mobile patrol duty until he reported back to the police station on the next following duty day. So; it is said, he did not “remain on duty”, because he went off duty. Nor, it is said, was he “recalled to duty”, when, after arriving at his home, he carried out, in his own good time, his tasks in caring for the dog. So, as this was neither “remaining on duty” nor being “recalled to duty”, regulation 25 paragraph (1) had no application: therefore regulation 25 paragraph (2) had no application: and therefore Constable Crosby was not doing any relevant duty in the time that he spent looking after the dog at his home; and therefore he is not entitled to any allowance in respect thereof. This is an instance where, in my view, on common sense interpretation of the words, the general instructions to Constable Crosby that on each day he was to spend an hour, between two “tours of duty”, in doing this work involved, on each occasion, a recall to duty, even though he was not specifically given an order each day “You are now recalled to duty to carry out the task of caring for the dog”. That, to my mind, is the common sense of the matter; and to read “recalled to duty” and “remaining on duty” in the literal way, as submitted, is not only wholly inconsistent with everything that the defendant authority thought over the years, but would also (as it would seem that the Home Office from time to time thought) be contrary to common sense.” 23. I do not therefore accept Mr Johnson’s submission that a recall to duty depends upon the handler receiving some specific instruction from the controller to contact the CHIS or to take some

other kind of positive action. On the judge's findings which are not challenged on this appeal, the handlers were required to respond to requests for contact by the CHIS if they were available to make the call. There was therefore a recall to duty when they did so. For these purposes, I can see no reason for distinguishing between scenario III. where useful information is passed during the conversation with the CHIS and scenario IV. where the reason for the call is a request for payment or some non-urgent welfare issue. But scenario V. is obviously not a recall to duty because, on the evidence, it relates to a CHIS who is de-registered and classed as dangerous so that any request for contact is referred to and refused by the controller. I think that in this case the contact between the handler and the controller is a pre-requisite to any contact with the CHIS and has to be regarded as preliminary to any recall to duty. For the same reasons, the handlers in scenarios VI. – IX. were required to do duty. This brings me to the second part of the Chief Constable's appeal and also to the cross-appeal of the claimants. Mr Johnson submits that even if the short periods of time spent by the handler contacting the CHIS between two tours of duty constitute a recall to duty, they are excluded from being treated as overtime by the computation provisions contained in paragraphs 1(d), (g) and (h) of Annex G. This issue turns on whether paragraphs 1(d) and (g) have any application to recalls to duty between rostered tours of duty and, if so, whether paragraph 1(h)(iii), which confers the right to a minimum of 4 hours' overtime for any period of recall to duty, is effectively excluded unless an entitlement to overtime remains after the application of the disregards which paragraphs 1(d) and 1(g) contain. Mr Johnson accepts that this argument has no application to Annex H dealing with public holidays and rest days which contains a minimum of 4 hours' overtime provision in paragraph 3(h) but has no equivalent to paragraphs 1(d) and 1(g). 24. 25. 26.

27. Mr Johnson contends that paragraph 1(h) is a separate and self-contained computation provision ("in computing any period of overtime for the purpose of this determination") and can therefore only apply if, on the application of the other relevant provisions of Annex G, there is an entitlement to overtime. Paragraph 1(a) establishes that an officer has a right to be compensated for the time for which he is recalled between two tours of duty but the scope and conditions of that entitlement depend ("subject to") on the other provisions of the determination. 28. 29. The rate of compensation for overtime is prescribed by paragraph 1(d). The officer is entitled to 1/24 of a day's pay for each completed period of 15 minutes worked during the week subject to a proviso which, if applicable, discounts as paid overtime 30 minutes of the overtime worked in a week "on each of the first four occasions on which overtime in respect of which the member was not informed as mentioned in paragraph (g)". Paragraph 1(d) takes effect subject to paragraph 1(g) which, for the purposes of paragraphs 1(d), disregards: "any period of less than 30 minutes of overtime worked on any occasion other than a period of 15 minutes of overtime in respect of which the member was informed at the commencement of his tour of duty that he would be required to remain on duty after his tour of duty ended". 30. Although these provisions are somewhat convoluted, the first part of paragraph 1(g) appears to contain an unqualified disregard of any period of overtime

of less than 30 minutes regardless of when it is worked save for 15 minutes of overtime at the end of a rostered tour of duty which the officer was told in advance (and no later than the commencement of that tour of duty) that he would be required to work. These units of 15 minutes are excluded from both the disregard in paragraph 1(g) and the proviso to paragraph 1(d). The overall effect therefore of paragraphs 1(d) and 1(g) is that the only periods of overtime of less than 30 minutes which count are 15 minutes of pre- advised overtime worked at the end of a tour of duty. Unplanned overtime of 30 minutes or more is subject to the disregard of the first 30 minutes under paragraph 1(d).

31. Mr Johnson therefore submits that as the proviso to paragraph 1(g) has no application to the police handlers in this case because the contacts with the CHISs were never pre-planned, no period of overtime of less than 30 minutes qualifies for payment. The disregard is absolute. Paragraph 1(g) has no application if the officer works for at least 30 minutes between tours of duty but in that case paragraph 1(d) itself disregards the first 30 minutes of overtime worked on the first four occasions in each week. On this basis, paragraph 1(h) and, in particular, the minimum 4 hour provision in paragraph 1(h)(iii) have no application to any claim for overtime between tours of duty unless enough overtime is served so as to leave a period of chargeable overtime after the application (so far as relevant) of the paragraph 1(d) and 1(g) disregards. In such cases the officer is then entitled to be paid for a minimum of 4 hours of overtime. 32. 33. Although the judge considered the governing provision for overtime served between tours of duty was paragraph 1(h) so that even for a period of less than 15 minutes the minimum 4 hours of overtime becomes payable, he held that the 4 hours attracted the disregard in the proviso to paragraph 1(d) thereby reducing the allowable overtime to 3.5 hours. Neither party on this appeal supported this part of the judge's reasoning. Mr Johnson's case, as already summarised, was that paragraph 1(h) only became applicable once the disregards in paragraphs 1(d) and 1(g) had been applied. Mr Westgate QC for the claimant takes a more fundamental approach and argues that paragraph 1(g) and the proviso to paragraph 1(d) simply have no application at all to overtime which is payable when an officer is recalled to duty between rostered tours. On this basis, the 4 hour minimum provision in paragraph 1(h)(iii) applies to determine whether overtime is payable and for how long and paragraph 1(d) provides the amount of the relevant allowance. It is perhaps worth mentioning at this stage that the dispute about the operation of paragraph 1(h)(iii) is now entirely historic because the provision was revoked with effect from 1st April 2012. But the claimants' case is that Mr Johnson's argument ignores the history and purpose of paragraph 1(g) and the proviso to paragraph 1(d) which were only ever intended to apply to casual overtime at the end of an existing shift. The 2003 Regulations and the determinations made under them draw, they say, a distinction between short periods of casual overtime needed to complete matters arising during a rostered shift (which, in general, was not intended to qualify for overtime payments) and planned overtime which did so qualify. Cases of recall to duty between tours have always, they contend, been regarded as qualifying for overtime payments and were, before 2012, dealt with under separate rules. 34. 35. 36. To make this good Mr Westgate began by referring us to regulation

46 of the 2003 Regulations which requires the Secretary of State, before making a determination under the regulations, to take into account the recommendations of the Police Negotiating Board. Regulation 25(1)(a) and (b) requires any determination in respect of overtime to compensate officers for time spent remaining on duty after a tour of duty ends and for the time for which they are recalled between two tours of duty. The Annex G determination which emerged from this process reflects this in its definition of overtime in paragraph 1(a) and the provisions which follow are therefore designed to deal with the two different situations. Mr Westgate submits that paragraph 1(h) applies (as it says) in computing any period of overtime. It therefore contains provisions (in sub-paragraphs (ii) and (iv)) which relate to overtime in the form of extensions to rostered tours of duty and (in sub-paragraph 1(h)(iii)) separate provisions which are exclusive to a recall to duty between rostered tours. Paragraph 1(d) is concerned with a different issue: the calculation of the overtime allowance for the periods for which it is payable. It therefore specifies the rate of payment referred to earlier. It is, in this respect, of general application to all forms of qualifying overtime but the proviso is limited to cases which are covered by paragraph 1(g). The claimants' case is that paragraph 1(g) (and therefore parasitically the proviso to paragraph 1(d)) has no application to a paragraph 1(a)(ii) case of recall to duty. The minimum 4 hour provision in paragraph 1(h)(iii) means that the less than 30 minutes disregard has no effect and the proviso is concerned with overtime served at the end of a rostered period of duty which is a paragraph 1(a)(i) rather than a paragraph 1(a) (ii) situation. The paragraph 1(g) disregard is therefore limited to cases under paragraphs 1(a)(i) and (iii). In that context the proviso draws a distinction between unplanned extensions to existing tours of duty and pre-planned overtime served at the end of a rostered tour. The proviso to paragraph 1(d) reflects the same distinction but, for that reason, has no application to a paragraph 1(a)(ii) recall to duty covered by paragraph 1(h)(iii). The judge was therefore wrong to reduce the 4 hours allowed under paragraph 1(h)(iii) by the 30 minutes referred to in the proviso to paragraph 1(d).

37. Much of this argument proceeds upon an examination of the structure and language of the 2003 Regulations and the determinations made under them but the limited application of paragraph 1(g) of the current determination can be traced back to earlier versions of the regulations. 38. Regulation 1(c) of the 1962 Police Regulations amended the Police Regulations 1952 by inserting a definition of 'casual overtime' as meaning: "a period of overtime of less than four units during which a member remains on duty after his tour of duty ends, other than a period in respect of which the member was informed at the commencement of his tour that he would be required to remain on duty after his tour ended." 39. Regulation 25(1) of the 1971 Police Regulations provided for overtime if an officer either remained on duty after his tour ended or was recalled to duty between tours. Regulation 25(3)(e) and (f) provided that: "(e) where a member has completed a full tour of night duty which ends at any time after 2 a.m. and before 10 a.m. and is recalled to duty before 9½ hours have elapsed from the time when such tour of duty ended, he shall be deemed, if the period of overtime worked on that occasion amounts to less than 16 units of

overtime to have worked in respect of that period a period of overtime equal to 16 units of overtime, and

- (f) no account shall be taken of any casual overtime except as authorised by paragraph (4).” 40. These were the forerunners to what are now paragraphs 1(h)(iii) and 1(g) of Annex G. Casual overtime (at the end of a shift) and overtime by a recall to duty were given separate treatment. The 1973 Regulations contained a new regulation 25 which in regulation 25(7) provided that no account was to be taken of any casual overtime unless it exceeded certain minimum amounts of time. Again, recall to duty with a minimum allowance of 16 units of overtime was dealt with separately by regulation 25(8)(c). Similar provisions can be found in the 1979 Police Regulations but in the 1985 Police (Amendment) (No. 2) Regulations different wording was introduced which can be traced through to the current regulations. Regulation 26 provided: “Overtime 26.-(1) Subject to, and in accordance with, the provisions of this Regulation a member of a police force shall be compensated in respect of time for which he remains on duty after his tour of duty ends or is recalled between two tours of duty (hereafter in these Regulations referred to as "overtime"). ...
- (3) A member of a police force to whom Regulation 25 applies shall, subject to paragraph (6), be granted an allowance in respect of each week at the rate of a twenty-fourth of a day's pay for each completed period of 15 minutes of overtime worked by him on any occasion during that week. ...
- (6) For the purposes of paragraphs (3) and (5), no account shall be taken of any period of less than 30 minutes of overtime worked on any occasion other than a period of 15 minutes of overtime in respect of which the member was informed at the commencement of his tour that he would be required to remain on duty after his tour ended.
- (7) In computing any period of overtime for the purposes of this Regulation- ...
- (c) where a member is recalled to duty between two rostered tours of duty and is entitled to reckon less than 4 hours of overtime, disregarding any overtime reckonable by virtue of Regulation 29 (travelling time treated as duty), he shall be deemed on that occasion to have worked for such period that he is entitled to reckon 4 hours of overtime in addition to any overtime reckonable by virtue of Regulation 29.” 41. The express reference to casual overtime has disappeared and the provisions governing entitlement to payment for overtime at the end of a tour of duty have been combined in regulation 26(6). The PNB Circular (84/9) published as a commentary on the new regulation makes no reference to the 4 hours' minimum allowance under regulation 26(7)(c) taking effect subject to a disregard of any period of recall of less than 30 minutes and the explanatory note to the 1985 Regulations states: “All periods of casual overtime of 30 minutes or more will henceforth be compensated at the rate of time and a third (substituted Regulation 26(3)). An officer will be entitled to a minimum of four hours' compensation at overtime rates when he is recalled to duty between two rostered tours of duty (substituted Regulation 26(7)(e)).” 42. The statutory wording remained in this form until the Police (Amendment) (No. 2) Regulations 1994 which

introduced the reference to disregarding the first 30 minutes of the first four occasions on which unplanned overtime was worked. It is obvious that the Police Negotiating Board considered that these amendments related to casual overtime at the end of a rostered tour because they said as much in PNB 94/1: “5.2.1 On each occasion on which casual overtime is worked, thirty minutes will be discounted from the overtime payment that arises subject to a maximum of half an hour on four occasions in seven days being discounted.”

43. Mr Westgate relies on these materials as supporting his case that paragraph 1(g) and the proviso to paragraph 1(d) of Annex G are simply the latest version of a well- established scheme of overtime which distinguished between overtime at the end of a tour of duty (whether casual or planned) and overtime comprised in a recall to duty between tours. This, he says, provides confirmation, so far as it is needed, that paragraph 1(g) has no application to a recall to duty and that the phrase “worked on any occasion” has to be interpreted in the context of 1(g) read as a whole. 44. I think that this is right. It is highly relevant to the construction of paragraph 1(g) that it operates “for the purposes of paragraphs (d) and (f)” and not for paragraph 1(h). This supports the view that paragraph 1(h) has an independent existence and field of operation which is general in its application in terms of computing qualifying overtime. The focus of paragraph 1(g) on paragraphs 1(d) and (f) makes sense in the context of overtime at the end of a tour of duty because paragraph 1(d) itself disallows any payment for casual (“was not informed”) overtime up to the limits set in the proviso. But it makes no reference in the proviso or otherwise to any form of overtime other than what is mentioned in paragraph 1(g). The reference to overtime “worked on any occasion” has to be read as limited to these circumstances. In any event, the minimum 4 hours of overtime which the officer who is recalled to duty “is entitled to reckon” under paragraph 1(h)(iii) is sufficient to displace the disregard in paragraph 1(g). 45. 46. It is therefore possible to arrive at the conclusion for which Mr Westgate contends without undertaking an exploration of the archaeology of these provisions. But that exercise puts the matter really beyond doubt. I would therefore dismiss the Chief Constable’s appeal and allow the cross-appeal against the judge’s determination that paragraph 1(d) applies to reduce by thirty minutes the amount of overtime allowable under paragraph 1(h)(iii). Lady Justice Gloster : 47. I agree. Lord Justice Longmore : 48. I agree also. Crown copyright©

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewca/civ/2015/42>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/allard-and-ors-v-devon-and-cornwall-constabulary-2015>

Prepared on 29 October 2026 · Esheria