Case No: CO/3810/2017

Neutral Citation Number: [2018] EWHC 1182 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 May 2018

Before:

LORD JUSTICE IRWIN
MR JUSTICE JEREMY BAKER

- -

Between:

R (on the application of Antony Crispin Mason)	**Claimant**
- and -	
The Crown Court at Winchester	**Defendant**
Chief Constable of Hampshire	**Interested Party**

- -
- -

Richard Onslow (instructed by **Knights Solicitors**) for the **Claimant**
The **Defendant** and the **Interested Party** were not represented

Hearing date: 9 May 2018

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Judgment

Mr Justice Jeremy Baker:

1. This case concerns an application for judicial review of the decision of His Honour Douglas Field sitting as a Deputy Circuit Judge with two Magistrates at Winchester Crown Court on 19 May 2017, whereby Antony Mason's appeal against the revocation of his Firearm and Shotgun Certificates by the Chief Constable of Hampshire was dismissed.

Background

2. Antony Mason (the claimant) is 49 years of age (DoB 14 October 1968), and has held both a firearm and a shotgun certificate for many years. On 18 December 1999 he married Aundria Mason, and they have two daughters.

3. On 2 October 2007 the police were called to the matrimonial home by Mrs Mason who complained that the claimant had struck her to the face and then grabbed her around the throat. The claimant was arrested and made no comment in interview. Photographs were taken of a swelling to Mrs Mason's right cheek, and she provided a witness statement which detailed the alleged assault, together with details of two previous alleged assaults, the first being an incident when the claimant dragged Mrs Mason from a motor car and threw her into some nettles, and the second when he threw her down the stairs and struck her in the face.

4. However, Mrs Mason expressed her unwillingness to support a prosecution, and the Crown Prosecution Service took no further action against the claimant. Moreover, the Chief Constable of Hampshire (the interested party) acting through one of his deputies reviewed the claimant's suitability to continue to hold a firearm and a shotgun certificate and decided not to revoke them but to issue the claimant with a written warning which he did on 2 November 2007.

5. In the period between 2 November 2012 and 8 July 2015 the police received four complaints concerning a dispute over dog walking which had arisen between the claimant and one of his neighbours, Judy Venables. Initially this had involved two complaints by Mrs Venables that the claimant had been verbally aggressive towards her, whilst latterly there were counter allegations that they had barged into one another. In the absence of independent evidence, the police took no further action against either of them.

6. In February 2016 divorce proceedings were commenced between the claimant and his wife, and a decree absolute was granted on 28 March 2017.

7. However, in the meantime, on 7 December 2016 the police were called to the matrimonial home by Mrs Mason who complained that the claimant, who she said was residing elsewhere, had turned up without notice at the matrimonial home and was verbally aggressive towards her, as a result of which she had locked herself in one of the bedrooms. She stated that she had previously requested the claimant to give her 24 hours' notice if he intended to visit the matrimonial home, and she also complained that over the course of the previous year, the claimant had deliberately barged into her on about four occasions when he visited the matrimonial home. She also told PC Wardell that, although she had not previously disclosed this matter to the

police, in about 2003 the claimant had pinned her down and rubbed his boot in her face.

8. PC Wardell requested that the claimant voluntarily surrender his firearm and shotgun certificates, which he declined to do, stating that he had received advice from the National Gamekeepers Organisation.

9. On 8 December 2016 the interested party, acting through her Firearms and Explosives Licensing Officer, Anthony Hill, decided to revoke the claimant's firearm and shotgun certificates and sent a letter to this effect to the claimant in which he stated that,

> *"I have reviewed the circumstances of a domestic related incident where Police were called to your matrimonial home on 7 December 2016, and I also take note of the letter of warning sent to you following the investigation of an allegation of domestic violence in 2007.*
>
> *After careful consideration of all of the information available to me, including your alleged violent behaviour, I am satisfied that you can no longer be permitted to possess the firearms, shotguns and ammunition to which your firearm and shotgun certificates relate, without danger to public safety and the peace and I am therefore revoking both of these certificates."*

10. On 13 December 2016 the claimant served a notice to appeal against the revocation of his certificates and subsequently provided a bundle of documentation in support. This included a witness statement from the claimant dated 16 May 2017, in which he denied having previously assaulted his ex-wife, and provided innocent explanations in relation to the incidents on both 2 October 2007 and 7 December 2016. He also explained that on 22 November 2016 he had removed two of his weapons from the matrimonial home and secured them with a registered firearms dealer but acknowledged that it would have been prudent to have notified the respondent that he had done so. In addition, various individuals had provided character references for the claimant attesting to his safe handling of firearms, and there was correspondence and witness statements from his family in support of the claimant's version of events concerning his interaction with Mrs Venables.

The hearing of the Appeal

11. At the hearing of the appeal the claimant was represented by Mr Onslow of counsel, who had prepared written submissions dated 18 May 2017. These submissions reiterated much of what was contained in the previously served bundle of documentation in support of the appeal, and laid emphasis on the fact that the claimant had held both a firearm and a shotgun certificate for many years. It averred that the claimant was a respected member of the shooting community and had always sought to act responsibly, sensibly and securely in relation to his firearms and shotguns. Moreover, it was pointed out that save for a drink driving conviction when he was aged 18, the claimant had no other criminal convictions.

12. At the outset of the hearing, HH Douglas Field explained to the parties how the court was intending to conduct the proceedings,

> *"Let me tell you how I intend to run this hearing this morning. We are not here to conduct a case concerning assault in a domestic context; we are not here to determine as a separate matter the dispute with Mrs Venables. We are here to take a general view of the history of the matter and to find whether or not the appeal should be allowed and the order of revocation should be set aside. So, I want to take matters as shortly as I can, bearing in mind what I see as our role today, otherwise we would be here two or three days, and of course the Chief Constable in not calling the former wife, is not calling Mrs Venables. So we have got to get the flavour from the papers and from such evidence as we are going to hear today. I suggest the respondent goes first, a statement is put to the witness and then he is open to cross-examination, keeping it as short as you can. Any objections to that?"*

13. Neither Mr Onslow nor Mr Moores of counsel, who appeared for the interested party, objected to this approach and the latter proceeded to call the witnesses whose evidence was relied upon by the interested party, namely James Laws, PC Wardell, and Anthony Hill.

14. The first of these witnesses was a firearms enquiry officer who had reviewed the suitability of the claimant continuing to hold firearm and shotgun certificates following the previous allegations made by Mrs Venables. He stated that a decision had been made in January 2016 that the claimant's certificates would not be revoked. PC Wardell gave evidence as to his attendance at the former matrimonial home on 7 December 2016. Mr Onslow informed the court that in view of the court's earlier observations, he did not intend to put the factual disputes about the incident to the officer in cross-examination. Finally, the Firearms Licensing Officer Anthony Hill gave evidence concerning the decision to revoke the claimant's firearms and shotgun certificates, in accordance with his letter dated 8 December 2016.

15. At the conclusion of the evidence called on behalf of the interested party, the claimant gave evidence in accordance with his witness statement. In relation to the most recent incident on 7 December 2016, the claimant said he was living at the matrimonial home at that time and had returned to collect some items he needed, only to find that his wife had sought to prevent him gaining entry by locking the door. However, he had been able to gain entrance and told her that he was entitled to be there, as a result of which his wife had locked herself into her bedroom and called the police. In the course of his examination in chief, Mr Onslow stated that he was going to ask the claimant about the history of events with Mrs Venables, to which HH Douglas Field told him that he needn't do so, and that he should instead conclude by asking the claimant a,

> *"compendium question summing up what his case is."*

16. As a result of this invitation Mr Onslow asked a short series of leading questions, which included the following exchange,

"Q: ……Had you ever struck Aundrea Mason?

A: Definitely not.

Q: All right. Or deliberately barged into any other person?

A: Definitely not."

17. In cross-examination, the claimant explained that he was now divorced from his wife and was living elsewhere. He stated that he continued to see his two daughters on alternate weekends but had agreed with his ex-wife that he would not visit the matrimonial home where his ex-wife and children continued to live and instead he would collect and return his daughters at their school. Therefore, he had ceased to have contact with his ex-wife, and there was no need for this to be resumed at any time in the future.

18. After the claimant had finished giving evidence, HH Douglas Field stated,

> *"Now, Mr Onslow, we had read all the other written material. We are not going to be assisted by the makers of the statements being cross-examined, in particular about Mrs Venables. So there is no need to call them. Their evidence is going to be considered by us, it is evidence in the case, and I indicated earlier that we have read the character references. I think we can conclude by asking Mr Moores if he wants to make any submissions. We fully understand your case."*

19. Mr Moores took the opportunity of making submissions to the court, in which he acknowledged that the situation on the ground had altered since the revocation decision had been made but stressed that the claimant had been warned about his conduct in 2007, and that there was evidence of violence having occurred since then. In particular, the most recent incident where the claimant turned up at the former matrimonial home without warning showed that he acted imprudently, and there was a risk of further conflict with his ex-wife due to continuing contact with their children.

20. After retiring to consider their decision HH Douglas Field and the two Magistrates returned to court, whereupon HH Douglas Field provided their reasons for dismissing the appeal. After stating that a number of criticisms made of the claimant would be put to one side, including the claimant's interaction with Mrs Venables, he stated,

> *"So that remains the evidence concerning alleged domestic violence directed towards his former wife. I say at once that the appellant denies these allegations……"*

However, HH Douglas Field went on to describe the evidence relating to the incident on 2 October 2007 as "*compelling*", as was the evidence of the previous alleged violence related by Mrs Mason to PC Wardell on 7 December 2016. In this regard he noted that Mrs Mason's witness statement dated 2 October 2007 mentioned previous incidents of violence by the claimant, and her most recent account to PC Wardell

included mention of a previous act of violence relating to the use of one of the claimant's boots.

21. HH Douglas Field concluded by stating that,

> *"In our judgment, rather than receiving a warning letter in 2007 his certificates should have been revoked then. Since that incident, we have the incident that happened on 7 December, in itself a matter we do not take into account, but the allegations, the extra allegations, albeit historical, we do take into account. At present, the former wife resides in the matrimonial home, the appellant rents separate premises in Kings Somborne. He has contact with his children, but clearly there are still difficulties over contact. Everybody knows that in this day and age these sorts of allegations and background are taken extremely seriously when deciding whether someone is a fit and proper person to have a shotgun licence or a firearms certificate.*
>
> *Notwithstanding the references, notwithstanding the evidence that he gave, my colleagues and I have concluded that he is a danger to the public safety and the peace, and it is for that reason that this appeal is dismissed."*

Grounds of judicial review

22. Permission to apply for judicial review was granted on renewal by Stuart-Smith J on the following grounds:

> "i. The judge, having expressed at the outset of the hearing the aim of taking a general view of whether revocation should be set aside, curtailed and encouraged the curtailment of the evidence in such a way that evidence which would have been relevant (as it transpired) to the decision-making process was not given, leaving Mr Mason to complain afterwards that he had not been able to give his account of matters upon which the court determined the appeal;
>
> ii. The judge did not invite any submissions on behalf of the appellant at the close of the evidence saying simply that 'We fully understand your case'. He did invite, and heard, submissions on behalf of the respondent. It had clearly been stated in the written outline submissions for the appellant, submitted to the court in advance of the hearing, that it was intended to develop the outline submissions made, orally, and to add others.
>
> iii. On returning to court to give reasons and the decision, and before doing so, the judge did not invite any submissions on behalf of the appellant about matters which, as it transpired, were crucial to the decision against him."

The statutory framework

23. The relevant law relating to the granting of firearm and shotgun certificates is to be found in section 27 and 28 of the Firearms Act 1968 respectively. In relation to firearm certificated section 27 provides that,

> "(1) A firearm certificate shall be granted where the chief officer of police is satisfied—
>
> (a) that the applicant is fit to be entrusted with a firearm to which section 1 of this Act applies and is not a person prohibited by this Act from possessing such a firearm;
> (b) that he has a good reason for having in his possession, or for purchasing or acquiring, the firearm or ammunition in respect of which the application is made; and
> (c) that in all the circumstances the applicant can be permitted to have the firearm or ammunition in his possession without danger to the public safety or to the peace."

In relation to shotgun certificates section 28 provides that,

> "(1) Subject to subsection (1A) below, a shot gun certificate shall be granted or, as the case may be, renewed by the chief officer of police if he is satisfied that the applicant can be permitted to possess a shot gun without danger to the public safety or to the peace.
>
> (1A) No such certificate shall be granted or renewed if the chief officer of police—
>
> (a) has reason to believe that the applicant is prohibited by this Act from possessing a shot gun; or
> (b) satisfied that the applicant does not have a good reason for possessing, purchasing or acquiring one."

24. The relevant law relating to the revocation of firearm and shotgun certificates is to be found in section 30A(2) and 30C of the Firearms Act 1968 respectively. In relation to firearm certificates section 30A provides that,

> "(2) The certificate may be revoked if the chief officer of police has reason to believe –
>
> (a) that the holder is of intemperate habits or unsound mind or is otherwise unfitted to be entrusted with a firearm; or
>
> (b) that the holder can no longer be permitted to have the firearm or ammunition to which the certificate relates in his possession without danger to the public safety or to the peace."

In relation to shotgun certificates section 30C provides that,

> "(1) A shot gun certificate may be revoked by the chief officer of police for the area in which the holder resides if he is satisfied that the holder is prohibited by this Act from possessing a shot gun or cannot be permitted to possess a shot gun without danger to the public safety or to the peace."

25. Both of these latter sections, (together with section 28A(5) in relation to grants and renewals), provide for appeals from decisions of chief officers of police to revoke certificates, and section 44 of the Firearms Act 1968 further provides that,

> "(1) An appeal against a decision of a chief officer of police under section 28A … 30A … 30C … of this Act lies –
>
> (a) in England and Wales, to the Crown Court …
>
> (2) An appeal shall be determined on the merits (and not by way of review).
>
> (3) The court … hearing an appeal may consider any evidence or other matter, whether or not it was available when the decision of the chief officer was taken."

Furthermore, Schedule 5 to the Firearms Act 1968 makes provision for the conduct of the appeal, including the giving of notice.

Judicial Consideration

26. These provisions have been the subject of consideration by the courts, in relation to the ambit of the test to be applied, the nature of the evidence which may be taken into account by the chief officer and the court, and the procedure to be adopted by the court on appeal from a decision of the chief officer.

27. In relation to the ambit of the test to be applied, in *Ackers & others v Taylor* [1974] 1WLR 405, the Divisional Court was concerned with the decision of a chief officer to revoke shotgun licences due to the holders having been found to be involved in unlawful poaching.

28. The court held that the term "danger … to the peace" in section 30A(2)(b) of the Firearms Act 1968 was not limited to a risk of violence emanating from the possession of the firearm being established against the holder of the certificate but was of much wider scope. Ashworth J giving the main judgment explained,

> *"For my part I attach importance to the wording of section 30 (2) dealing with this particular branch set out there, namely, " cannot be permitted to possess a shot gun without danger ... to the peace." It seems to me that those words make it quite plain that the possession of the shot gun and matters affecting it are not only material but essential for consideration when the matter of revocation comes up to be decided. It must be danger to the peace arising out of the possession, or use, or misuse of*

the shot gun which the chief officer of police must consider. It is the nature of the danger to the peace which is contemplated.

Secondly I would say, although it is repetition, that it would be wrong to limit section 30 (2), as the judge limited it, to the possibility of the misuse of the shot gun in circumstances of violence. Thirdly, I believe, for my part, that the best approach to the understanding of this subsection is to regard it as forming part of the equipment given' to police officers for the preservation of good order in public. I refer again to the words from the Irish case—just as it was justices there, so it is police officers here—and what the judge referred to was

> *'a branch of preventive justice, in the exercise of which magistrates are invested with large judicial discretionary powers over the maintenance of order and the preservation of the public peace.'*

Translating that and altering those words as appropriate to a chief officer of police when considering revocation of a certificate, I think that they may afford him valuable assistance.

Therefore he should consider, when he is deciding whether a certificate should be revoked on the ground of danger to the public peace, whether there is a danger that the gun may be misused in such a way that good order is disturbed or that there is a risk of that happening. But I would go much further in endeavouring to assist. To my mind poaching such as was taking place on the occasion when these men were caught is in every sense of the word a disturbance of the public peace. It might indeed be said to be a possible source of violence, but I would put it on a much broader ground, that the carrying of a gun on a poaching expedition does involve a breach of good order and a danger to the peace in that sense of the word, and while each case must depend on its own principles, I would suggest that chief officers of police should have in mind that this preventive remedy entrusted to them is intended to be used partly to prevent danger to the public safety and partly to prevent danger to the public peace which may perhaps be expressed as involving disturbance to good order.

All of us know to our cost to what extent good order and the principles of good order are today subject to disturbance, and I would for my part be prepared to entrust a very wide discretion, so long as the discretion is exercised in connection with the use or possession of a gun."

29. This case was considered by the Divisional Court in *Spencer-Stewart v Chief Constable of Kent* [1989] 89 Cr App R 307, in which the court was concerned with the decision of a chief officer to revoke a shotgun certificate because of the holder's recent conviction for handling stolen goods. The court stated that this did not justify

revocation because it was insufficient to establish a risk that the holder would commit offences which risked the use of a shotgun. Bingham LJ giving the judgment of the court stated,

> *"The discretion to be exercised or the judgment to be made is, I think, quite plainly laid down in section 30(2) of the Act, and it is: is the chief officer satisfied or is on an appeal, the Crown Court satisfied that the holder of the licence cannot be permitted to possess a shotgun without danger to the peace? That is a question to be considered and decided with reference to all the facts. That means with reference to facts occurring before the licence is first granted, as well as after it. There is no artificial or chronological restriction to be read into the subsection as to the facts which are properly to be considered. But, and in this I think the learned judge was right, the danger to the peace which must be considered must be a danger to the peace involving the use of a shotgun.*
>
> *If therefore an applicant or holder of a licence is given to the commission of offences which, however serious, do not involve the slightest risk or likelihood of use of a shotgun, then that, in my judgment, as in that of the learned judge, is not a ground for refusing or revoking a licence.*
>
> *Our attention has been drawn to a Scottish decision which was not before the learned judge. It is the case of Luke v. Little [19801 S.L.T. 138. In that case the appellant had a string of convictions for drunken driving, following the last of which the chief constable revoked his shotgun licence. There was an appeal to the Sheriff who dismissed it, and in the course of dismissing it he said;*
>
> > *"In 'preventive justice' (see Ackers v. Taylor [19741 W.L.R. 405) surely the correct course is not to wait until the applicant actually does the wrong thing but to gauge the likelihood that he may do the wrong thing and to act accordingly. This estimation will, in all probability, not be linked to his behaviour with a gun but to his behaviour elsewhere, and the respondent's equation of irresponsibility with a car with irresponsibility with a gun seems quite sound. It also follows from this approach that a licence-holder's behaviour should be monitored to see if the original estimate of his likely behaviour should be modified in the light of the latest information available."*
>
> *If I understand the Sheriff correctly, I find nothing with which to disagree in those observations. It seems to me plain that if there were evidence of a man who was given to gross bouts of drunkenness, there might very well be room for the conclusion that he was not a safe man to be entrusted with a shotgun for fear that, in the course of one of his bouts of drunkenness, the*

shotgun might be misused for an unlawful purpose. Quite plainly a drunken man with a gun is capable of being very dangerous.

What however the case does not, in my view, support at all is the suggestion that any form of criminal behaviour, irrespective of whether it is likely to lead to the commission of any crime involving the use of a shotgun, is sufficient ground for revocation of a licence."

30. Examples of the application of this guidance can be found in Dabek *v Chief Constable of Devon and Cornwall* [1991] 155 JP 55 and *Chief Constable of Essex v Germain* [1991] 156 JP 109. In the former, a decision to revoke a shotgun certificate due to the holder's husband having been convicted of 2 offences of unlawful possession of drugs, and his association with others with similar previous convictions was upheld, whilst in the latter case, a decision to revoke a shotgun certificate due to the holder having been convicted of two drink driving offences was also upheld.

31. In *Germain*, Stuart-Smith LJ explained that,

"What is necessary is that the conduct of the holder of the shotgun certificate should be such that the chief constable has grounds for believing that when the holder is using or in possession of his shotgun he may behave in such a way as to present a danger to the public or a danger to the peace. It is quite plain, in my judgment, that that conduct can be judged in relation to irresponsible and uncontrolled behaviour in a number of different ways.

In this particular case there were two convictions for drink driving within 5 years and in my judgment the chief constable, who plainly has made some investigation into the circumstances of the offence because his letter indicates that, was entitled to take the view that the applicant was a person who was irresponsible, lacking in self-control in relation to a motor car which was a lethal weapon in the hands of a frustrated, intemperate and irresponsible person just in the same way as a shotgun would be. The essential feature in the proper handling of a shotgun is that the owner or possessor of it exercises proper self-control and proper discipline and restraint. In my judgment, there was ample material here upon which the chief constable was entitled to take that view.

...

The extent to which a chief constable is required to make an investigation as to the facts of any particular case are, in my judgment, not for this court to lay down. It is a matter for the chief constable to exercise his discretion upon the material which is before him, but plainly it may be that the mere fact of a conviction, or two convictions, may not of itself suffice."

32. More recently in *The Chief Constable of the Essex Police v Donald Campbell* [2012] EWHC 2331(Admin), a case in which the decision to revoke a firearms certificate due, *inter alia*, to allegations of domestic violence, was upheld, The President of the Queen's Bench Division stated that,

> *"36. It is in the overwhelming public interest that the tightest control is exercised over those who possess firearms. The danger to the public is too well-known to require any further observations by this court. It is therefore of the greatest importance that when a Chief Officer of Police decides that a Firearm Certificate should be revoked on the basis that the person is not fit to hold that licence, or for any other reason, any appeal requires the most careful and detailed consideration. Such appeals must, in the view of this court, be heard by full-time circuit judges. It is simply not fair to ask a part-time judge, without the experience of a full-time judge, to decide such issues.*
>
> *37. It should therefore follow that it is only with the consent of the Presiding Judges of the Circuit that a Recorder should be permitted to hear any such appeal, given the overwhelming importance and strictness of control over those who have the privilege of holding firearms."*

33. In relation to the nature of the evidence which may be taken into account by the chief officer and the court, and the procedure to be adopted by the court on appeal from a decision of the chief officer, in *Kavanagh v Chief Constable of Devon and Cornwall* [1974] 2 WLR 762, the Court of Appeal held that neither the chief officer nor the court was bound by the strict rules of evidence but was able to take into account hearsay and other relevant material. Denning MR explained that,

> *"It seems to me that the Crown Court is in the same position as the court of quarter sessions. The Crown Court is to try cases according to the same rules as the court of quarter sessions used to do. The court of quarter sessions, when trying criminal cases, applied the rules of evidence applicable to criminal cases. But from time immemorial the court of quarter sessions exercised administrative jurisdiction. When so doing, the justices never held themselves bound by the strict rules of evidence. They acted on any material that appeared to be useful in coming to a decision, including their own knowledge. No doubt they admitted hearsay, though there is nothing to be found in the books about it. To bring the procedure up to modern requirements, I think they should act on the same lines as any administrative body which is charged with an inquiry. They may receive any material which is logically probative even though it is not evidence in a court of law. Hearsay can be permitted where it can fairly be regarded as reliable. No doubt they must act fairly. They should give the party concerned an opportunity of correcting or contradicting what is put against him. But it does not mean that he has to be given a chance to*

cross-examine. It is enough if they hear what he has to say. This was all made clear by the decision of this court in T. A. Miller Ltd. v. Minister of Housing and Local Government [1968] 1 W.L.R. 992. In an appeal under the Firearms Act 1968 it seems to me essential that the Crown Court should have before it all the material which was before the chief officer of police. After all, the chief officer is the person to give the decision in the first instance. Under section 27 it is he who is to be " satisfied." Under section 34 he may refuse if he is " satisfied " of what is said there. It is plain that he can take into account any information that he thinks fit. He need not hold any hearing. He can decide on paper. If he refuses and the applicant appeals to the Crown Court, then the Crown Court must see whether or not the chief officer was right in refusing. For that purpose the Crown Court ought to know the material that was before him and what were the reasons which operated on his mind. It can also consider any other material which may be placed before it. In the end it must come to its own decision as to whether a firearm certificate should be granted or refused, or whether a person should be registered as a firearms dealer. It will then dismiss or allow the appeal accordingly."

Home Office Guidance

34. The Home Office has also issued a *Guide on Firearms Licensing Law*, which was last updated on 1 April 2016. This includes guidance to chief officers as to the suitability of individuals to hold firearms and shotgun certificates. Although it is focused upon the decision to grant or renew firearm and shotgun certificates, it is clearly relevant to the chief officer's decision to revoke such certificates. Moreover, it provides particular guidance on the potential relevance of violence within the domestic context in the following terms,

"v) Domestic violence and abuse

12.33 When considering applications for the grant or renewal of firearm/shotgun certificates particular attention should be paid to domestic incidents, specifically violence and patterns of behaviour by the applicant which give cause for concern (see below for the definition of domestic violence and abuse). An incident of domestic violence taking place should trigger a need for police to review whether the certificate holder can be permitted to possess the firearm or shotgun without causing a danger to public safety or to the peace.

12.34 In general evidence (including a history) of domestic violence and abuse will indicate that an individual should not be permitted to possess a firearm or shotgun. Each case must be assessed by the police on its merits, on the basis of the strength of the evidence available and all the circumstances of the case.

Applications

12.35 Background checks will always be carried out on applicants to assess their fitness to possess a firearm. These checks should encompass local information as well as checks on national databases. Where there is information indicating domestic violence and abuse, wider interviews or enquiries should be considered with a range of family, friends or associates of the applicant prior to issue or renewal of a firearm/shotgun certificate. Those interviewed need not be confined to those persons put forward by the applicant. The police response should be proportionate to the risk involved and care must be taken to consider every case on its merits.

12.36 Interviews with partners who may be victims of domestic violence may be judged essential to making a complete assessment of an application. Such interviews need to be conducted with sensitivity, and officers must take into account that a victim of domestic violence may be unwilling to speak openly with the police for fear of further violence or reprisals. Information provided during interview must be treated as confidential. Officers must have received adequate training so that they are aware of the indicators of domestic abuse, and how to support victims and keep them safe. They should be aware that there may be a need to take active steps to protect an applicant's partner from reprisals. This is particularly important in the event that the partner is interviewed in connection with the application and provides information which leads to a refusal or revocation since the applicant might blame their partner and resort to violence.

12.37 An applicant's partner is not required to give approval for the issue of the firearm or shotgun certificate and this should be made clear to them. The responsibility lies with the police to make the decision based on all the evidence available. Similarly, the police will assess evidence provided by other family members, friends or associates of the applicant where this is considered to be necessary.

12.38 Police domestic violence/public protection units should be consulted and multi-agency liaison may be necessary to properly assess whether the applicant can hold a firearm or shotgun without danger to public safety or the peace.

12.39 Chief officers need not rely only on convictions when considering the suitability of applicants to possess firearms without danger to the safety of the public or the peace. In particular chief officers should be aware that they can take hearsay evidence into account and not have to rely directly on spouses/partners when considering domestic related incidents. Hearsay evidence could include the evidence of police officers

attending scenes of domestic incidents. Chief officers must also consider whether the applicant or certificate holder has been the subject of a Domestic Violence Protection Notice (DVPN) or a Domestic Violence Protection Order (DVPO) issued under the Crime and Security Act 2010 and whether the applicant or certificate holder has breached the terms of that notice/order.

12.40 Conduct which has not resulted in a conviction can be considered. For example, a bind over may be relevant, particularly if in relation to a partner or a former partner. Evidence falling short of a conviction (e.g. police intelligence, which has not been tested in the criminal court and proved beyond reasonable doubt) should be treated with caution and an assessment made by chief officers of police as to what weight should be attached to it. In each case the police must ensure a fair process by analysing how recent the incident was and whether it should be viewed as an isolated incident or part of an ongoing pattern. They should conduct an assessment of future risk based on all of the evidence.

12.41 Information from GPs, especially an indication of alcohol or drug abuse, or mental health issues may indicate that an applicant is not fit to possess a firearm. Consideration may be given to requesting the medical records of spouses, partners or family members (with their consent) if there is concern over previous domestic violence or abuse.

12.42 It should be noted, however, that in the event of challenge a court is likely to attribute less weight to hearsay evidence than to direct evidence, and less weight to evidence falling short of a conviction (which has not been tested under cross-examination) than to actual convictions. The chief officer must therefore make a judgement about the reliability and credibility of hearsay evidence before relying upon it to refuse or revoke a certificate."

Submissions

35. In accordance with normal practice the respondent has taken no part in these proceedings. Moreover, although the interested party indicated that it would continue to oppose an appeal against the revocation decision at any future hearing, the court was notified that she did not intend to take any further part in the judicial review. In these circumstances, the only submissions we have received have been those made by Mr Onslow on behalf of the claimant.

36. He points out that unlike appeals to the Crown Court against conviction and the like, for which specific provision is made under Part 34 of the Criminal Procedure Rules, there are no such rules governing the procedure to be adopted in relation to appeals against the refusal to grant or renew firearm and shotgun certificates, nor against their revocation. He suggests that the procedure adopted by Crown Courts in England and Wales varies, but that the normal procedure at the appeal is for the evidence of the

chief officer to be heard first, and the evidence on behalf of the appellant to be heard thereafter. However, there is no express provision for the giving of notice of the evidence to be relied upon by either party, nor as to the time likely to be taken to hear the appeal.

37. Mr Onslow points out that pursuant to section 44(2) of the Firearms Act 1968 the appeal will be determined on the merits, rather than by way of a review. Therefore, the court effectively stands in the place of the Chief Constable in order to decide for itself, using the same statutory criteria, whether a firearm or shotgun certificate should be granted, renewed or revoked.

38. Mr Onslow submits that because of the understandably restrictive nature of the Chief Constable's discretion to permit individuals to hold firearm and shotgun certificates, and in view of the fact that the decision will be made administratively, this makes the hearing of any appeal all the more important, as it will usually be the first time that an individual will have an opportunity to be heard in person.

39. Mr Onslow acknowledges that the type of evidence and other material which the Chief Constable and the court is entitled to take into account is not circumscribed by the strict rules of evidence. Provided the evidence and material is relevant and logically probative of the issues which fall to be considered, he accepts that both hearsay evidence and other material may be taken into account, albeit he submits that direct evidence ought to be given greater weight over hearsay and other material.

40. However, he submits that the rules of natural justice apply, and that at the appeal hearing this includes the appellant knowing the evidence he must meet and being given the opportunity to do so. Moreover, the appellant should be given the opportunity of addressing the issues which the court considers are particularly germane to its determination.

41. In this regard, although Mr Onslow acknowledges that in the present case the court may well have read much of the material which had been submitted in writing by the parties prior to the hearing, and was entitled to regulate its own proceedings, he submits that the conduct of the hearing was unfair.

42. He points out that at the beginning of the case HH Douglas Field stated in terms that the court was not there to conduct a case concerning assault in a domestic context, but then at the conclusion of the appeal the reasons which he provided for the court's determination were based upon the allegations of domestic violence. He points out that in the meantime, the court had indicated to him that all that was required was a compendious question to be put to the claimant summarising his case, and that at the conclusion of the claimant's evidence, and in contrast to what was said to Mr Moores, he was told that no submissions would be required from him.

43. Mr Onslow informs us that the clear impression which he gained from the procedure adopted by the court during the hearing, was that the court had determined the appeal in the claimant's favour, hence a remark which he made after the result had been announced that he would have appreciated the opportunity of being able to address the court on the issues which lay at the heart of the court's determination.

Discussion

44. As the President of the Queen's Bench Division stated in *Campbell* it is of the utmost importance that the tightest control is exercised over those who possess firearms. Hence the need for the chief constable to scrutinise applications for the grant and renewal of firearm and shotgun certificates, and also the possible revocation of such certificates, with particular care, and the need for the Crown Court to give careful and detailed consideration to any appeals arising from those decisions.

45. However, whether it be the chief constable acting in an administrative capacity or the Crown Court in its appellate capacity, the rules of natural justice will apply, such that adherence to these is an essential pre-requisite to the lawfulness of any such decision. Albeit, the extent of the procedural requirements which will be necessary for fairness to be achieved will depend upon the nature of the decision and the context in which it is being considered. Moreover, the nature of the decision being taken by the Crown Court may well engage the requirements of Article 6(1) ECHR.

46. In the present case there is nothing to suggest that the interested party did otherwise than to adhere to the rules of natural justice in reaching her decision to revoke the claimant's firearm and shotgun certificates. Indeed, even if there had been any infringement, although normally in cases involving administrative decisions the appropriate remedy would be an application for permission for judicial review, as the Firearms Act 1968 specifically provides for a merits-based appeal, the statutory appeal will be the appropriate avenue of redress for an individual seeking to challenge such a decision.

47. In the Crown Court the rules of natural justice are likely to require that an individual is given reasonable notice both of the reasons for the decision sought to be impugned, and the material upon which the chief constable reached the decision, together with any other material which the chief constable may seek to provide to support the decision on appeal. This material will not be circumscribed by strict rules of evidence. Provided the chief constable, and likewise the court, gives due allowance to the fact that hearsay evidence and other material may attract less weight, it may be taken into account if it is logically probative and relevant to the decision under consideration.

48. Thereafter, as was pointed out by Denning MR in *Kavanagh*, at the hearing of the appeal the individual must be given the opportunity of correcting or contradicting this material. Although this does not mean that the individual has to be given the chance to cross-examine the witnesses providing the underlying evidence, it does require that the individual is given the opportunity of providing contradictory or explanatory evidence. In this regard, I accept Mr Onslow's submission that this is a particularly important aspect of the appellate procedure, as it may be the first time that the individual will have had the opportunity of being heard in person by the decision maker, initially the chief constable, (albeit usually on the recommendation of the chief officer based on the reports of others), and certainly by the court.

49. In so far as the hearing of the appeal is concerned, no doubt the composition of the court will follow the stricture mentioned by the President of the Queen's Bench Division in *Campbell*. Moreover, in the absence of any statutory or other procedural rules, the procedure will be determined by the court hearing the appeal. In this regard, it is clearly appropriate for the evidence on behalf of the chief constable to be provided first, followed by the evidence on behalf of the appellant, with submissions to follow in the same order. In relation to this latter aspect of the hearing, if the court,

having heard all the relevant evidence, has reached a provisional view in favour of one party, it may be appropriate only to call upon the opposing party to make submissions, if necessary out of order. However, at the very least an objectively fair hearing is unlikely to be achieved, if a party against whom an appeal is determined has not been given the prior opportunity of making submissions to the court.

50. Turning to the application of these principles in the present case, there is no complaint that the claimant had not been given reasonable notice of the reasons for the decision by the interested party to revoke his firearm and shotgun certificates, the material upon which she had reached the decision, and any other material which she sought to rely upon at the appeal hearing. Nor is there any complaint that the court was not entitled to adopt its own procedures, provided they enabled a fair hearing of the appeal. However, it is submitted by the claimant that the procedure which was adopted by the court in the present case did not enable a fair hearing of the appeal, in that it effectively precluded the claimant from correcting or contradicting the case against him, either by way of evidence or by way of submissions.

51. Undoubtedly the court in this case was properly concerned from the outset that valuable time and resources were not unnecessarily wasted upon matters which it considered were likely to be extraneous to the central issues in the appeal. In that regard the court may well have been entitled to have limited the exploration of the full circumstances surrounding the claimant's interaction with Mrs Venables. However, the difficulty is that this limitation was also sought to be applied to the allegations of domestic abuse which not only appear to have been of central importance to the interested party's decision to revoke the claimant's certificates, but as it transpired were central to the court's own determination of the appeal.

52. Although it is to be appreciated that the court had before it the claimant's witness statement, in which he had provided details of both the incident on 2 October 2007 and that on 7 December 2016, the court's further intervention during the course of his evidence in chief, effectively precluded the claimant from providing details both of the former of these two incidents, and of the other allegations of domestic violence which had been made by his ex-wife, beyond a bare denial in reply to the "*compendious question*" which had been recommended by the court.

53. In this regard it is understandable that, after the court announced its decision to dismiss the appeal, the claimant may have felt aggrieved by the fact that the court considered these allegations to be of central importance to its determination; a matter which was compounded by the fact that his counsel had not been called upon to make submissions at the conclusion of the evidence, which in itself may have led those in court to believe that the court had reached a provisional view in the claimant's favour.

54. In my judgment these feelings and beliefs were justified by the procedure adopted by the court in this case, in that I consider that the procedure did have the effect of preventing the claimant from having the opportunity of correcting and contradicting the issues which were central both to the original decision made by the interested party and the subsequent determination of the appeal. In my judgment this resulted in insufficient adherence being given to the requirements of a fair hearing of the appeal and will require the Crown Court's determination to be quashed and for a further hearing of the appeal to take place before a differently constituted court.

Post-script

55. I would add two matters. This court has not of course considered the underlying merits of the claimant's appeal, beyond the fair trial issues raised before us. Therefore the claimant should be under no illusion that on the re-hearing of the appeal the Crown Court will necessarily determine the appeal in his favour. After providing the claimant with a proper opportunity of correcting or contradicting the case against him, it will be a matter for the Crown Court to determine afresh the merits of the appeal, which it may allow or dismiss having duly considered the evidence and submissions.

56. Secondly, in the absence of any other procedural rules governing these appeals, it seems to me that to enable the fair and efficient determination of these type of appeals in the Crown Court it would be helpful if a procedure based upon the following requirements was adopted:

    i. Service by the respondent upon the appellant and the Crown Court of a bundle containing the evidence and material which is relied upon to support the original decision within 28 days of the service of the appellant's notice of appeal;

    ii. Service by the appellant upon the respondent and the Crown Court of a bundle containing the evidence and material which is relied upon to support the appeal within 21 days of the service of the respondent's bundle;

    iii. The parties to serve upon the Crown Court a joint time estimate to be agreed between the parties, or in the absence of agreement, individual time estimates together with an explanation for the same, within 7 days of service of the appellant's bundle;

    iv. Skeleton arguments together with copies of any authorities relied upon to be exchanged and served upon the Crown Court at least 7 days before the hearing of the appeal;

    v. The Crown Court to provide copies of the parties' bundles, skeleton arguments and authorities to the members of the court at least 24 hours prior to the hearing of the appeal.

    vi. At the hearing of the appeal, unless for good reason the court directs otherwise, the evidence for the respondent is to be followed by the evidence for the appellant, and thereafter submissions made in the same order.

57. In the event that a procedure in line with the above requirements is adopted, then not only will this lead to these appeals being efficiently dealt with at the Crown Court but will also provide a structure that assists in complying with the court's duties to provide a fair and carefully scrutinised hearing of these appeals.

Lord Justice Irwin:

I agree.