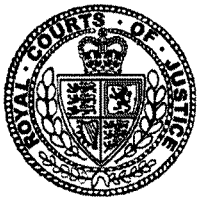

Neutral Citation Number: [2022] EWHC 1936 (Admin)

Case No: CO/3224/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 July 2022

Before

MR JUSTICE SWIFT

Between

The Queen

on the application of

The Duke of Sussex — **Claimant**

- and -

Secretary of State for the Home Department — **Defendant**

Shaheed Fatima QC, Jason Pobjoy, Gayatri Sarathy and Marlena Valles (instructed by **Schillings International LLP**) for the **Claimant**
Sir James Eadie QC, Robert Palmer QC and Christopher Knight (instructed by **GLD**) for the **Defendant**

Hearing date: 7 July 2022

APPROVED JUDGMENT

NOTE. THIS JUDGMENT CONTAINS REDACTIONS. THE PARTS REDACTED ARE OR RELATE TO INFORMATION THAT MUST REMAIN CONFIDENTIAL FOR THE REASONS EXPLAINED IN THE JUDGMENT HANDED DOWN ON 24 MARCH 2022

MR JUSTICE SWIFT

A. Introduction

1. The Duke of Sussex ("the Claimant") seeks permission to apply for judicial review of decisions concerning the arrangements to be made for police-provided, publicly funded, personal protective security ("protective security") for him when he is in Great Britain. The decisions that are challenged were made by the Executive Committee for the Protection of Royalty and Public Figures. The Committee is commonly referred to as "RAVEC". The Home Secretary, the Defendant to these proceedings, is the government minister responsible for protective security provided to members of the Royal Family and other public figures. She has delegated her responsibility for the protective security arrangements to RAVEC and is responsible in law for RAVEC's decisions. Membership of RAVEC comprises Home Office officials, the Metropolitan Police Service, and persons who work in the Royal Household. At the material time, the chairman of RAVEC was Sir Richard Mottram, a former Permanent Secretary in the Cabinet Office.

2. Until April 2020 the Claimant was a "working member" of the Royal Family, in that role undertaking a range of duties on behalf of Her Majesty The Queen. It is well-known that he then stepped back from this work. He moved with his family to Canada and then to the United States. He reached an agreement with HM The Queen to change his role from that of a full-time working member of the Royal Family to what has been described as a privately-funded member of the Royal Family with permission to earn his own income and pursue his own private charitable interests. One aspect of these new arrangements is that the Claimant no longer undertakes representative duties on behalf of HM The Queen.

3. In these proceedings it has been explained that RAVEC's approach to provision of protective security is as follows. (1) Protective security is provided to some persons as a matter of course and regardless of threat and risk because of the positions they hold. [redacted]. (2) Protective security is provided to other persons if RAVEC determines it to be a proportionate response to a risk assessment of the likelihood of an attack and the impact of a successful attack. [redacted] (3) Others are provided with protective security on a case-by-case basis. [redacted] (4) [redacted]

4. Before April 2020 the Claimant, as a full-time working member of the Royal Family, was treated as falling within the second category above.

5. The first decision challenged is in a letter dated 28 February 2020 from Sir Richard Mottram, chairman of the RAVEC, to Sir Edward Young, Private Secretary to HM The Queen. The Claimant accepts that a copy of this letter was provided to him contemporaneously. The material part of this letter is as follows:

> "As you know RAVEC essentially focuses on [redacted] and who are considered to be at sufficient risk to justify publicly funded measures to mitigate that risk. RAVEC is responsible for risks arising within Great Britain as they affect principals who are in almost every case resident within Great Britain. The future arrangements for the Duke and Duchess of Sussex do not fit readily within this framework.
>
> As further context we have commissioned up-to-date threat assessments. [redacted]. RAVEC will continue to monitor the security of the Sussex family including through periodic threat assessments. Should anything change in terms of specific threat this will be communicated to the Home Office through established channels with the police and intelligence partners and actioned as necessary.
>
> With the change in the roles of the Duke and Duchess the existing provision [redacted] by the Metropolitan Police Service (MPS) will no longer be appropriate and will be withdrawn by no later than 31 March 2020.
>
> Against the background set out above there is no basis for publicly-funded security support for the Duke and Duchess within Great Britain in relation to [redacted].
>
> [redacted].
>
> It is difficult, however, to judge what might be appropriate without knowing the Duke of Sussex's forward programme or what private arrangements if any are being made for his security in Great Britain to link with and complement those which are being put in place in Canada. It may be sensible to put in place arrangements between HM The Queen's Private Office, the MPS and the Home Office to look periodically at any forward

> engagements that may potentially warrant additional security attention. Could I suggest there should be a tripartite meeting to follow up these detailed points which the Home Office might convene. In the light of that meeting, I would then intend to look at what guidance should be issued about the support to be provided and the mechanisms for liaison and the approval of support in individual cases."

In summary, RAVEC concluded that, by reason of his changed role the Claimant did not "fit readily" into any of the categories for provision of protective security when he was in Great Britain; that the protective security provided to date would cease from 31 March 2020; [redacted] RAVEC also accepted that periodic risk assessments should be undertaken.

6. The second decision challenged concerned the way in which these arrangements were applied to the Claimant on a visit to London in June and July 2021 ("the June 2021 decision"). This was the first occasion on which the approach set out in the February 2020 decision was applied. The Claimant had visited Great Britain in April 2021 to attend the funeral of HRH The Duke of Edinburgh but on that occasion protective security was provided under different arrangements outside RAVEC's purview.

B. Decision

7. The issue at this stage is only whether any or all the grounds of challenge give rise to an arguable case, one that requires consideration at a final hearing. This is not an onerous standard. The claim as originally pleaded (filed in September 2021) raised four grounds of challenge. On 29 April 2022 the Claimant filed an application to amend the Statement of Facts and Grounds. One part of the amendment seeks to add a fifth ground of challenge. The Defendant contests permission on all five grounds, on their merits. In addition, the Defendant opposes the Claimant's application to amend and, so far as concerns any challenge in any of the grounds to the February 2020 decision, further contends that the claim was commenced outside the period permitted under CPR 54.5. I will consider each ground of challenge on its merits and for that purpose and simply for convenience, I will consider the grounds as pleaded in the Claimant's proposed Amended Statement of Facts and Grounds, taking together whether there is an arguable case and, so far as it concerns the proposed amendments, whether permission to amend should be granted. I will then consider the Defendant's submission on delay.

(1) Ground 1 (Amended Statements of Facts and Grounds, §§44 to 50)

8. This complaint is that the "RAVEC policy" was applied in an "overly rigid and inflexible manner". The Claimant's submission is that this ground of challenge is directed both to the February 2020 decision and to the June 2021 decision. For this purpose, the "RAVEC policy" means the approach to provision of protective security described at paragraphs 12-16 of the Defendant's Summary Grounds of Resistance, which I have summarised in the four categories listed at paragraph 3 above. The submission made is that it is wrong in law for RAVEC, for the purpose of what I have

described as category (1), to limit those who are provided with protective security as a matter of course [redacted] The Claimant's submission rests on section 3 of the Succession to the Crown Act 2013 ("the 2013 Act") which provides "a person who... is one of the six persons next in line of succession to the Crown must obtain the consent of Her Majesty before marrying". The Claimant is sixth in the line of succession. The submission is that it is unlawful for RAVEC not to provide protective security as a matter of course to all persons within the scope of section 3 of the 2013 Act.

9. This ground of challenge is not arguable. The Defendant submits, and I accept, that when deciding when and to whom to provide protective security RAVEC is acting in exercise of the Defendant's common law powers – specifically her power to maintain the peace. The Claimant's submission was that decisions were taken in exercise of powers under section 36(1) and 48(1) of the Police Act 1996. I do not accept that submission: those provisions are inapt to cover either the function that is being performed or the purpose being pursued. Be that as it may, there is no arguable connection between the provision of protective security and the consent to marriage provision at section 3 of the 2013 Act. The 2013 Act, self-evidently, contains no provision that, whether expressly or by necessary implication, impinges on RAVEC's activities. In approaching its own task of deciding which persons in what circumstances can be provided with protective security, RAVEC was, subject to the usual public law standards, entitled to decide for itself which persons within the line of succession to the Crown should fall within (what I have termed) Category (1). There is no arguable case that RAVEC was required to regard the class of persons described at section 3 of the 2013 Act as a relevant consideration; [redacted]. Permission to apply for judicial review on this ground of challenge is refused.

(2) Ground 2 (Amended Statement of Facts and Ground, §§51 to 55A)

10. The targets here are both (a) the decision in February 2020 that it would not from April 2020 continue to provide protective security for the Claimant on the same basis as previously; and (b) the decision in June 2021 not to provide protective security equivalent to that provided for the Claimant prior to April 2020. The matters said to be relevant are pleaded at paragraph 53 of the Amended Statement of Facts and Grounds. Seven matters are relied on, one of which (at paragraph 53.7) is a matter the Claimant seeks to add by amendment.

11. Subject to the Defendant's delay submission, considered below, I consider this ground of challenge to be arguable save in respect of the point at paragraph 53.7 of the Amended Statement of Facts and Grounds, which is not arguable.

12. Thus far, RAVEC has not had the opportunity to explain the reasons for its decision. A defendant is not required to file evidence at the permission stage. Evidence is usually filed only if permission to apply for judicial review is granted. The Defendant has pleaded to this ground of challenge at paragraph 57 of the Summary Grounds of Resistance. However, the court will not be able fully to appraise the merits of this ground of challenge until the Defendant's evidence is available. That evidence is likely to explain what matters RAVEC did consider; if those matters included any of those

identified at paragraph 53 of the Claimant's pleading how they were considered and assessed against other matters; if any of the matters at paragraph 53 were not considered, the evidence will explain why not. Ultimately, the issue to be decided is whether in taking account of some matters and disregarding others the Defendant acted rationally. The decisions now under consideration were not subject to any prescribed set of relevant or irrelevant matters and since that is so the court will consider only the rationality of the approach to the decisions.

13. As all who are familiar with judicial review claims will know, a conclusion at the permission stage that a case is arguable is some distance from a conclusion that the case will succeed at final hearing. For sake of completeness I add that the obligation on all claimants in all judicial review claims to reconsider the merits of their case on receipt of the defendant's evidence is as important in this case as in any other.

14. I do not grant permission so far as concerns the point at paragraph 53.7 of the Amended Statement of Facts and Grounds. By this paragraph the Claimant contends that the Defendant was required to consider:

> "53.7 The fact that the Claimant sought to remain a working member of the Royal Family undertaking part-time duties on behalf of Her Majesty The Queen. The Claimant conveyed that preference to members of The Royal Household at the Sandringham meeting on 13 January 2020, which reflected the "*occasional representation*" model proposed in the draft table sent to the Claimant on 11 January ... The Claimant was told that this hybrid model was an "*unrealistic option*" ..."

15. There is no plausible basis for contending this could be a relevant consideration. What role the Claimant should play within the Royal Family was a decision entirely apart from any matter that RAVEC could address. RAVEC had to decide what protective security arrangements should be made for the Claimant taking as its premise the Claimant's post-April 2020 role. It would not have been relevant for RAVEC to look behind that decision to the substance of the discussions that had preceded it.

(3) Ground 3 (Amended Statement of Facts and Grounds, §§56 to 62)

16. A range of points are made in support of this ground. The headline submission is that RAVEC's decisions in February 2020 and June 2021 were unreasonable in the *Wednesbury* sense of that word. I will consider each point in turn. One task that can be sensibly undertaken at the permission stage is to determine whether, when the same matters are advanced under different headings, the case that goes to the final hearing can be rationalised to ensure that while arguable matters get to be considered, they are put only once, not in a series of different ways that ultimately come to the same thing.

17. The point pleaded at paragraph 60 of the Amended Statement of Facts and Grounds, that the conclusions reached by RAVEC were outside the range reasonably open to it, is an arguable point, save for the point at paragraph 60.3 which is by way of repetition of Ground 1 and is not arguable for the reasons already given. Subject to the Defendant's submission on delay, considered below, permission to apply for judicial

review will be granted on this point. There is a significant overlap between this submission and Ground 2 of the challenge. I also accept that the point raised at paragraph 62 of the Amended Statement of Facts and Grounds, which concerns the decision that provision of protective security should be approached ad hoc, visit by visit, is one that, arguably, goes to the *Wednesbury* reasonableness of the decisions taken. On this point too, subject to the delay submission, permission will be granted.

18. Paragraph 62 of the Amended Statement of Facts and Grounds raises a further discrete point as to whether, before RAVEC took the decisions, it had taken appropriate steps to acquaint itself with relevant information – i.e., had it failed to comply with the *Tameside* obligation of reasonable enquiry. However, the substance of this point is largely the same as Ground 2 – that relevant matters had not been considered.

19. The point at paragraph 61(a) repeats matters pleaded at paragraph 53. The matters referred to in the February 2010 email are covered by paragraph 53 of the pleading. Re-packaging this point as a *Tameside* issue adds nothing of substance. The same goes for the point at paragraph 61(b). The matter raised as paragraph 61(c), that no updated threat assessment was undertaken in anticipation of the June/July 2021 visit is a variation of the point pleaded at paragraph 60.1. It can be considered in that context without altering the substance of the matter, namely that the decision taken in June 2021 was unreasonable.

20. In the premises, the arguable matters pleaded under this ground comprise paragraph 60 save for paragraph 60.3; paragraph 62; and the point at paragraph 61(c), which is better regarded as an aspect of paragraph 60.1.

(4) Ground 4 (Amended Statement of Facts and Grounds, §§63 to 66)

21. This ground is headed "Lack of Adequate Transparency" but in substance comes to a submission that the decision-making process was unfair because the Claimant was not told the contents of the "RAVEC policy" (as referred to in these proceedings – see above at paragraph 3, and at paragraphs 12 – 16 of the Summary Grounds of Resistance). The Claimant submits, among other matters, that the effect of the decision in *R(Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245 (specifically, per Lord Dyson at paragraph 35) is that before any decision was taken, RAVEC's approach to provision of protective security (when and to whom) should have been explained to him.

22. The context of the present case is a long way distant from the situation considered by the Supreme Court in *Lumba*. Moreover, it may in practice be an exaggeration to describe what has come to be referred to in these proceedings as "RAVEC's policy" as a policy rather than being simply descriptive of arrangements RAVEC had in fact put in place for particular individuals, over a number of years. Notwithstanding these reservations, and subject to the Defendant's submission on delay considered below, I am satisfied that this ground of challenge should be considered at a final hearing.

(5) Ground 5 (Amended Statement of Facts and Grounds, §§66A to 66J)

23. This ground, which the Claimant, seeks to add by amendment, is under the heading "Procedural Fairness". It is pleaded at significant length, and repeats several matters already relied on in support of other grounds. Excluding points obviously repetitive of points made elsewhere, the matters that arise are these: (1) that the Claimant should have been told who the members of RAVEC were; (2) that the Claimant should have had the opportunity to make representations to RAVEC – i.e. RAVEC's chairman Sir Richard Mottram, and to comment on any information RAVEC took into account; and (3) that the Claimant did not have the opportunity to comment on "the appropriateness of RAVEC's process/the involvement of certain individuals in the RAVEC process" (see Claimant's Skeleton Argument, at paragraph 3).

24. I do not consider there is any substance to either (1) or (3). In the course of submissions, it became apparent that while the Claimant may have had disagreements with persons who were RAVEC committee members, there was no evidence at all to support a claim that any committee member had approached decisions with a closed mind, or that either decision was affected by bias. Notwithstanding the lack of any such evidence, the Claimant's Skeleton Argument hinted that such a claim might be put, and Ms Fatima QC's submissions in open court did the same. But ultimately it was accepted for the Claimant that no such case was (or could be) advanced. That being so, it would have been better had these proceedings not been the occasion to raise matters that are not part of the Claimant's legal challenge.

25. The point at (2) has some connection to the point I have extracted from Ground 4 of the challenge. This point is particularised at paragraphs 66G.1, 66G.2 and 66J. The process by which RAVEC took its decision is also a matter that the Defendant is yet to have the chance to address in evidence. That being so, this point is arguable and subject to the Defendant's delay submission, should be considered at a final hearing. I emphasise that, notwithstanding Ground 5 is pleaded at length, the only arguable matter that arises is whether the Claimant should have had the opportunity to make representations direct to RAVEC, including the opportunity to comment on other matters RAVEC considered.

(6) Delay

26. The Claim Form is dated 20 September 2021 and, I assume, was filed on that day. The Defendant submits that so far as any challenge is made to the February 2020 decision: (a) the proceedings were commenced well outside the 3 month-long-stop period prescribed in CPR 54.5; and (b) there is no merit in the Claimant's application to extend time for filing the proceedings, and that any decision to extend time would run counter to the public interest, embodied in CPR 54.5, that public law challenges should be commenced promptly.

27. The Claimant's response is to the effect that either: (a) he was not directly affected by the February 2020 decision until his June/July visit to Great Britain so that it was not until then that grounds to challenge the February 2020 decision first arose; and/or (b) in any event the application to extend time is good on its merits and should be granted.

28. The Defendant's submission on delay could prove fatal to the Claimant's case so far as it is directed to the February 2020 decision. This would affect the arguable points I have identified within Ground 4 and Ground 5 which largely if not entirely concern

what happened prior to the February 2020 decision. However, considering the case in the round my conclusion is that the delay submission should be held over, to be decided at the final hearing when the court will have the benefit of evidence about the decision-making process, about the matters considered, and on the extent of any practical connection between the February 2020 decision and the June 2021 decision. This could be significant so far as concerns the delay argument as it might affect Ground 2 and Ground 3; it may also affect the conclusion on Ground 4 or Ground 5.

C. Conclusion

29. Permission to apply for judicial review is granted:

(1) on Ground 2, save for the matter at paragraph 53.7 of the draft Amended Statement of Facts and Grounds;

(2) on Ground 3 in respect of: (a) the matters in paragraph 60 of the draft Amended Statement of Facts and Grounds (save for the point at 60.3); (b) paragraph 62; and (c) paragraph 61(c);

(3) on Ground 4 to the extent the Claimant contends that as a matter of fairness he should have been told the contents of RAVEC's "policy" before the February 2020 decision was made (see above at paragraph 21); and

(4) on Ground 5 but only to the extent that the Claimant contends that prior to the February 2020 decision, he should have had the opportunity to make representations to RAVEC including the opportunity to comment on other information RAVEC considered (see above at paragraph 25).

Save as aforesaid, permission to apply for judicial review is refused.

30. The Defendant's application to amend her Summary Grounds of Resistance is allowed. This application was not opposed by the Claimant.

31. The Claimant's application for permission to amend the Statement of Facts and Grounds is allowed so far as concerns: (a) paragraphs 7.8, 13A and 72A; (b) paragraphs 66A and 66B, and 66G.1, 66G.2 and 66J to the extent I have granted permission to apply for judicial review on Ground 5; and (c) the typographical and other minor amendments at paragraphs 45 and 54. The application is refused so far as concerns the remaining proposed amendments at paragraphs 55A, 53.7, 66C to 66H, 66G.3 - 66G.7, and 66H – 66I.

32. The interlocutory judgment handed down on 25 March explained the extent to which it was necessary to redact the parties' pleaded cases to preserve confidentiality of details touching on personal protection arrangements (both generally, and for the Claimant). The parties have sought to apply the same approach to pleadings and draft amended pleadings that have been filed since that judgment. The parties are agreed on the approach to be taken for those documents, save on two points: one concerns paragraph 66G.3 of the Claimant's proposed Amended Statement of Facts and Grounds; the other, paragraph 9 of the Claimant's Reply pleading. I accept the submissions made by the Defendant on each of these points (see letter Government Legal Department to Schillings, dated 6 May 2022).

33. So far as concerns directions for the future conduct of these proceedings the following directions shall apply (and shall be included in the order granting permission to apply for judicial review) subject to submissions raised following provision of the draft of this judgment.

> 1. The Defendant shall, within 56 days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on. For the avoidance of doubt, the Defendant, being a party who has filed and served Summary Grounds pursuant to CPR 54.8, may comply with (a) above by filing and serving a document which states that those Summary Grounds shall stand as the Detailed Grounds required by CPR 54.14.
>
> 2. Any application by the Claimant to serve evidence in reply shall be filed and served within 21 days of the date on which the Defendant serves evidence pursuant to 1(b) above.
>
> 3. The parties shall agree the contents of the hearing bundle and must file it with the Court not less than **4** weeks before the date of the hearing of the judicial review. An electronic version of the bundle shall be prepared and lodged in accordance with the Guidance on the Administrative Court website. The parties shall, if requested by the Court lodge 2 hard-copy versions of the hearing bundle.
>
> 4. The Claimant must file and serve a Skeleton Argument not less than **21** days before the date of the hearing of the judicial review.
>
> 5. The Defendant must file and serve a Skeleton Argument not less than **14** days before the date of the hearing of the judicial review
>
> 6. The parties shall agree the contents of a bundle containing the authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared in accordance with the Guidance on the Administrative Court website. The parties shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic version of the bundle and if requested, the hard copy version of the bundle, shall be lodged with the Court not less than **7** days before the date of the hearing of the judicial review."

34. In addition: (a) the Defendant shall, when her Detailed Grounds and evidence is filed, indicate any passages in any document filed that she submits should be redacted for reasons of confidentiality, and shall in each case state why ("the redaction submission); (b) the Claimant shall file and serve any submission in response to the redaction

submission 14 days from the date of service of the Detailed Grounds and evidence; and (c) and 14 days thereafter, the parties shall file and serve a submission setting out their respective positions on any further directions needed for the purposes of the hearing of this claim.

END OF JUDGMENT