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R. (on the Application of Duke of Sussex) v Secretary of State for the Home Department [2025] EWCA Civ 548, [2025] 4 W.L.R. 66 ("*Duke of Sussex*") adds to a growing body of judicial review decisions that concretises and normalises the principle of consistent application of policy, most commonly associated with *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 W.L.R. 4546 ("*Mandalia*"). Its key contribution is to clarify what counts as a "good reason" not to apply a policy, while setting out a deeply context-sensitive approach to the judicial enforcement of policies.

The case concerned the revised security arrangements for Prince Harry, Duke of Sussex, following his withdrawal from Royal duties and relocation to North America. In particular, he had been removed from the cohort of individuals enjoying routine personal protection at public expense under the authority of the Executive Committee for the Protection of Royalty and Public Figures ("RAVEC"). He brought a claim for judicial review of this decision on various grounds, all of which were rejected by Lane J. in *R. (on the Application of Duke of Sussex) v Secretary of State for the Home Department* [2024] EWHC 418 (Admin), [2024] A.C.D. 45 – a meticulous, though heavily redacted, decision in the Administrative Court.

Prince Harry's appeal to the Court of Appeal focused on RAVEC's failure to apply a 2017 policy requiring it to "[e]valuate the risk analysis conducted by the Risk Management Board ["RMB"] in order to determine which individuals [. . .] should receive vulnerability mitigation and/or protection measures". The parties accepted that the policy (though not a more detailed 2021 version) was relevant and that it had not been applied. Hence, the argument in the Court of Appeal centred on whether RAVEC had shown a good reason for departing from the policy, as required by *Mandalia* and previous cases such as *R. (on the Application of Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 ("*Nadarajah*"). In the alternative, Prince Harry argued that he should have remained within the RAVEC cohort by analogy with individuals described as "Other VIPs".

The essence of the case for the respondents was that RAVEC had good reason to depart from the 2017 policy. This was because RAVEC had designed a bespoke arrangement for Prince Harry, under which he would be brought into the protected cohort during his visits to the UK, each visit being assessed on a case-by-case basis. This arrangement had been reached by individuals with deep security expertise as well as democratic

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accountability. The procedural step required by the 2017 policy would not have assisted this decision and was therefore unnecessary. The respondent also argued, contrary to Lane J.'s judgment in the Administrative Court, that departures from policy should only be capable of challenge if unreasonable on *Wednesbury* grounds.

The Court of Appeal's decision was delivered in a sole reasoned judgment of Sir Geoffrey Vos M.R., with which Edis and Bean L.J.J. agreed. On the main ground of appeal, Vos M.R. agreed with Lane J. that RAVEC had breached the 2017 policy but had shown good reasons for doing so. On the alternative ground, Lane J. had decided correctly that Prince Harry was not analogous to individuals protected by RAVEC as "Other VIPs", it being pointed out wryly that "there was no other senior Royal who had stepped back from Royal duties and gone to live abroad in recent times" (at [61]). The respondents' argument in favour of a *Wednesbury* standard of review for departures from policy was also rejected, though on the curiously lukewarm basis that "[t]here is no bright line rule [. . .] that good reasons can only be reviewed if they are irrational or unreasonable" (at [67]).

The most striking aspect of this case is not its outcome but rather the conceptualisation of the principle of consistent application of policy. In the words of Lane J. in the Administrative Court, the principle is "protean" (at [158]). This means that a claimant cannot simply identify a policy and seek to enforce it like a statute. Policies come in many shapes and sizes, and the willingness of judges to enforce them may depend on the nature of the policy at issue. This pointed to a key misstep by Prince Harry, who had taken too mechanistic and literal an approach to the 2017 policy (at [178]).

In Vos M.R.'s presentation, the principle involves two factual spectrums. First, the nature of the policy itself might point in favour of or against enforcement. This was illustrated by his previous decision (with Dingemans and Elisabeth Laing L.JJ.), in *R. (on the Application of Good Law Project) v Prime Minister* [2022] EWCA Civ 1580, [2023] 1 W.L.R. 785 ("*Good Law Project*"), that the Government's inward-facing policies on the use of WhatsApp were unsuited to judicial enforcement. At the other end of the spectrum from *Good Law Project* might be a formal policy promulgated to and consulted with the public. The policy in the present case sat between these extremes, being formal (at [65]) but unpublished and inward-facing (at [70]).

A second spectrum concerns the level of deference to be afforded to decision-makers. In particular, a departure from policy is likely to be more difficult to challenge if it involves expert judgment in support of an individualised decision and correspondingly easier to challenge if it involves a routine decision where expertise plays no prominent role. In the present case, the deep expertise of the Chair of RAVEC and his

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colleagues was very much in play (at [68]–[71]). Taken together, these two spectrums pointed towards a low intensity of review of RAVEC's decision not to follow the 2017 policy.

The decision in *Duke of Sussex* is noteworthy on several grounds. The most immediately obvious is the absence of introspection around the existence and theoretical basis of the principle of consistent application of policy. The decision in *Mandalia* was acknowledged but treated as but one authority in a line stretching back to *Nadarajah*, with no emphasis on the shift away from the language of "legitimate expectation" and no indication that this would make any difference on the facts. The impression, also apparent from *Good Law Project* and other recent cases, is that the principle is now an accepted feature of the law and that earlier fundamental disagreements are being rested if not forgotten entirely.

Vos M.R.'s emphasis on context sensitivity is intuitively sensible and shows how the principle of consistent application of policy might apply in a wide range of factual scenarios. It may also help to explain the apparent discrepancy between *Mandalia* and *R. (on the Application of Gallaher Group Ltd.) v Competition and Markets Authority* [2018] UKSC 25, [2019] A.C. 96 ("*Gallaher*") in which the Supreme Court refused to force the Competition and Markets Authority ("CMA") to extend to the claimant an unusually generous treatment previously granted to another regulated entity. Neither of the spectrums outlined in *Duke of Sussex* points to an intrusive standard of review on the facts of *Gallaher*. The supposed policy was far from formal and the CMA's decisions were deeply dependent on expertise. On this view, *Gallaher* may be more an instantiation than a contradiction of *Mandalia.*

Nevertheless, some questions remain. Most striking is the lack of clarity in response to the respondent's advocacy of a *Wednesbury* standard of review of good reasons to depart from policies. Vos M.R.'s response that there is no bright line rule in favour of *Wednesbury* review is deeply confusing. Does this mean that *Wednesbury* review is the starting point but that the two spectrums might point towards a stricter standard, without committing to any precise position on what that standard is or when it applies? More promising is the reference (at [42]) to Laws L.J.'s language of proportionality in *Nadarajah* when discussing the departure of an authority from a promise or practice. Indeed, Vos M.R.'s approach in *Duke of Sussex* might best be described as a loosely structured proportionality review, which may nevertheless resemble *Wednesbury* unreasonableness in cases where the spectrums point away from close judicial intervention.

This leads to the next point – that contextualism and deference could combine to make the principle of consistent application of policy trivially easy to disapply. Even accepting that not all policies should be treated alike, too flexible an approach risks being overly sympathetic to the

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excuses of authorities for not following their own policy. In turn, this could undermine the contribution of the principle to good administration, transparency and the protection of those subject to regulation. Indeed, it is precisely where policies are informal, inward-facing, vague, unpublished or dependent on expert judgment that judicial insistence on consistency might have the strongest positive impact, even if the arguments of the present claimant were not especially compelling.

This can be illustrated by returning to *Gallaher*. On the one hand, it seems unattractive to force authorities to generalise the consequences of one marginal, or even mistaken, decision. On the other hand, providing special treatment to certain regulated entities and refusing to extend this to others seems an obvious target for judicial oversight. The Court of Appeal in *Duke of Sussex* provides helpful conceptual apparatus by which a decision in either direction could be explained, but provides alarmingly little guidance on which direction a court ought to prefer or even what standard of review should be adopted in the process.

Dominic de Cogan

Address for Correspondence: Fitzwilliam College, Storey's Way, Cambridge, CB3 0DG, UK. Email: dad34@cam.ac.uk

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