Neutral Citation Number: [2012] EWHC 1947 (Admin)

Case Nos: CO/7109/2011, CO/7183/2011,
CO/7219/2011, CO/7241/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2012

Before :

LORD JUSTICE RICHARDS
and
MR JUSTICE OPENSHAW

- -

Between :

CO/7241/2011		
	The Queen (on the application of Brian Hicks and Others)	**Claimants**
	- and -	
	Commissioner of Police of the Metropolis	**Defendant**
CO/7219/2011		
	The Queen (on the application of M (a child by his litigation friend N))	**Claimants**
	- and -	
	Commissioner of Police of the Metropolis	**Defendant**
CO/7183/2011		
	The Queen (on the application of Hannah Pearce and Another)	**Claimants**
	- and -	
	Commissioner of Police of the Metropolis	**Defendant**
	-and -	
	Vanina Chiarello and Others	**Interested Parties**
CO/7109/2011		
	The Queen (on the application of Theodora Middleton and Another)	**Claimants**
	- and -	
	(1) Bromley Magistrates Court	
	(2) Commissioner of Police of the Metropolis	**Defendants**

- -
- -

Karon Monaghan QC and **Ruth Brander** (instructed by **Bhatt Murphy**) for the **Hicks claimants**
Alex Bailin QC and **Ruth Brander** (instructed by **Bindmans LLP**) for **M and the Pearce claimants**
Stephen Cragg (instructed by **Tuckers**) for the **Middleton claimants**
Sam Grodzinski QC and **Mark Summers** (instructed by **Metropolitan Police Legal Services**) for the **Commissioner** in the **Hicks, M and Pearce claims**
Russell Fortt for the **Commissioner** in the **Middleton claim**

Hearing dates: 28 May – 2 June 2012

- -

Approved Judgment

LORD JUSTICE RICHARDS :

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INTRODUCTION

1. This is the judgment of the court on four linked claims for judicial review concerning the lawfulness of the policing of events at the time of and immediately prior to the Royal Wedding on 29 April 2011. All four claims are brought against the Commissioner of Police of the Metropolis, to whom we will refer simply as "the defendant" even though one of the claims also names Bromley Magistrates' Court (which issued a relevant search warrant) as a defendant. A central issue is whether the defendant operated a policy, or practice on the ground, of equating intention to protest with intention to cause unlawful disruption and adopted an impermissibly low threshold of tolerance for public protest, resulting in the unlawful arrest of persons who were viewed by his officers as being likely to express anti-monarchist views. The individual claims raise numerous further issues concerning the lawfulness of the actions taken by the defendant's officers. Those issues engage the law relating to breach of the peace, general principles of public law, specific statutory powers and several articles of the European Convention on Human Rights.

2. This judgment is far longer than we would have wished. Its length is explained both by the number of issues raised and also, and very importantly, by the fact that an assessment of the lawfulness of the numerous individual arrests and searches in issue requires detailed consideration of the particular factual circumstances of each.

3. We will refer to the four claims as "the Hicks claim", "the M claim", "the Pearce claim" and "the Middleton claim" respectively and, save to the extent necessary for consideration of common issues, will deal with them in that order. It is helpful to summarise them at the outset, in order to indicate the overall shape of the case.

4. *The Hicks claim* relates to fifteen named claimants who were arrested at various locations in central London on the day of the Royal Wedding. They break down into four distinct groups by reference to the circumstances of the arrests: Mr Hicks himself (claimant 1), "the Starbucks claimants" (claimants 2-5), "the second zombie claimant" (claimant 6) and "the Charing Cross claimants" (claimants 7-15). They contend that their arrests were unlawful on the following grounds:

   (1) (a) the defendant operated an unlawful policy or practice on the ground of pre-emptively arresting those (including the claimants) who were viewed by his officers as being likely to express anti-monarchist views, without proper regard for the lawful preconditions for such arrests; (b) the defendant operated an impermissibly low threshold of tolerance for public protest in central London on the day of the Royal Wedding;

   (2) the arresting officers did not (at the material time or at all) apprehend an imminent breach of the peace and/or there were no reasonable grounds for apprehending an imminent breach of the peace;

   (3) the decisions to arrest the claimants were a wholly disproportionate response to any perceived threat;

   (4) the defendant unlawfully fettered the discretion of his officers on the ground by instructing them (via commanding officers) to pre-emptively arrest the claimants;

(5) the defendant's actions in arresting and detaining the claimants breached their rights under arts. 5, 8, 10, 11 and 14 ECHR.

5. *The M claim* relates to a youth, aged 16 at the material time, who was stopped, searched and arrested in central London and was detained for nine hours before being released without charge. He complains about the stop and search and the arrest, and also about the taking of his DNA, fingerprints and photographs at the police station and the subsequent refusal to destroy that material. The grounds of claim are:

(1) (a) the defendant operated an unlawful policy or practice on the ground and/or exercised his powers for an ulterior motive, in pre-emptively stopping and searching and arresting those (including the claimant) whom he suspected of seeking to express anti-monarchist views, without proper regard to the lawful preconditions for such searches and arrests; (b) the defendant operated an impermissibly low threshold of tolerance for the public expression of anti-monarchist views;

(2) the stop and search of the claimant was unlawful in that (a) it was conducted pursuant to an unlawful policy or practice on the ground and/or it was an exercise of police powers for an ulterior purpose, namely the suppression of embarrassing, unpopular or unwelcome (but not unlawful) protest, (b) there were no reasonable grounds for suspecting the claimant to be in possession of items to be used for destroying or damaging property; (c) it was contrary to his rights under arts. 5, 8, 10, 11 and 14 ECHR;

(3) the claimant's arrest was unlawful in that (a) it was conducted pursuant to an unlawful policy etc., (b) there were no reasonable grounds for suspecting the claimant to be committing or to be about to commit a criminal offence, (c) there were no reasonable grounds for believing that it was necessary to arrest the claimant for any of the reasons set out in s.24(5) of the Police and Criminal Evidence Act 1984 ("PACE"), (d) the decision to arrest the claimant was disproportionate, (e) it was contrary to his rights under arts. 5, 8, 10, 11 and 14 ECHR;

(4) the taking of the claimant's DNA, fingerprints and photographs was unlawful in that (a) the power to take such material is contingent on there having been a lawful arrest but the claimant's arrest was unlawful for the reasons given above, (b) the defendant operated a blanket policy in respect of the decision to take the claimant's material and failed to exercise any discretion, (c) if, contrary to the claimant's primary submission, the defendant exercised discretion in deciding to take the claimant's material, the exercise of that discretion was *Wednesbury* unreasonable and contrary to the claimant's rights under art. 8 ECHR;

(5) the refusal to destroy the claimant's DNA, fingerprints and photographs is unlawful in that (a) the power to retain such material is contingent on there having been a lawful arrest, (b) the defendant has failed to give any or any proper consideration to the claimant's request that his material be destroyed, (c) if, contrary to the claimant's primary submission, the defendant exercised discretion in deciding to retain the claimant's material, he did so in accordance with unlawful guidance.

6. *The Pearce claim* relates to two claimants, Hannah Pearce and Shirin Golsirat, who were living at the material time at "squats" in Camberwell Road, London. The claim concerns the lawfulness of searches made at those squats pursuant to search warrants executed on the day before the Royal Wedding. The warrants authorised a search for stolen bicycles, bike parts and computers, but the claimants contend that the purpose for which they were executed was the prevention of disruption of the Royal Wedding. The main grounds of claim are:

   (1) the searches were unlawful and contrary to ss.15 and 16 of PACE because the police (a) had an ulterior motive when executing each warrant, and/or (b) were looking for material outside the terms of each warrant;

   (2) the searches violated art. 8 ECHR;

   (3) the searches violated art.14 ECHR.

7. *The Middleton claim* relates to two claimants, Theodora Middleton and Dafydd Lewis, who were living at the material time at a site near Heathrow, in west London, known as Sipson Camp and occupied by a number of individuals involved in environmental campaigns. The camp was searched by the police on the day before the Royal Wedding, pursuant to a warrant obtained from Bromley Magistrates' Court. The claim concerns the lawfulness of the warrant and of the search carried out pursuant to it. The main grounds of claim may be summarised as follows:

   (1) the search warrant was obtained on the basis of misleading, inaccurate or insufficient information, and/or the defendant had an ulterior purpose in applying for it;

   (2) the magistrates did not have reasonable cause for the grant of the warrant, and the warrant was drawn too widely;

   (3) the search was in breach of ss.15 and 16 of PACE;

   (4) the search was in breach of arts. 8 and 14 ECHR.

8. The various claimants seek declarations that the actions of the police were unlawful, together with damages, including aggravated and exemplary damages.

9. The claimants chose deliberately to proceed by way of judicial review because a central theme of their claims is that the defendant pursued an unlawful policy or practice. One consequence is that the issues fall to be determined almost entirely on the basis of written evidence alone. The only oral evidence came from two police constables, pursuant to a pre-trial order allowing cross-examination on a narrow issue in M's claim. Through sensible co-operation, all issues of disclosure were resolved before the hearing.

10. We should also say that it was only through sensible co-operation, the provision of very detailed skeleton arguments and the exercise of economy and moderation in oral argument, that it was possible to get through the hearing of all these cases within the five days allowed for them. We are very grateful to all concerned for their conduct of the cases before us.

THE POLICING CONTEXT

General background

11. As appears from the defendant's evidence and will be obvious to anyone who watched or read about the event, the policing of the Royal Wedding was a huge operation, involving thousands of officers across London. A large number of members of the Royal Family, foreign royalty and other heads of state would be moving around London on the day of the wedding, and a very large number of citizens, including families and children, were expected to converge on the centre to participate in the day's celebrations. The defendant was called on to provide security commensurate to the threat level without significantly impacting on the joyous and public nature of the occasion. The policing operation was, moreover, mounted in the violent aftermath of the student demonstrations that had taken place in November and December 2010 and the TUC Day of Action on 26 March 2011. Whilst those protests had been conducted mainly by peaceful groups, there were significant numbers of others who had used the protest marches or demonstrations to commit widespread criminal offences, including acts of criminal damage, violent disorder, affray, threatening behaviour, arson and aggravated trespass. One incident had been a direct attack on the Prince of Wales's car in central London.

12. The level of threat from international terrorism at the time was "severe", meaning that an attack was thought to be highly likely. It was directed that the same level of threat be set for the Royal Wedding. Lesser potential criminality that the police had to be prepared to deal with included orchestrated disorder, individual or collective criminal acts, individual or collective breaches of the peace, and physical disruption of the event itself. Those categories plainly overlap. For example, attempts to disrupt the event might constitute a breach of the peace and also, in this context, the common law offence of causing a public nuisance. Examples of the kind of conduct thought possible were rolling marbles in front of the horses, letting off gas canisters, blocking the ceremonial route, throwing paint across the route, and throwing maggots at those celebrating or participating in the Royal Wedding.

The command structure

13. The Gold commander with overall responsibility for the safe policing of the event and responsibility for setting the strategic objectives of the operation was Commander Robert Broadhurst ("Gold"). He was appointed to the role in November 2010. He developed an overall "Strategic Intention" document to which we will refer in a moment.

14. The Silver commander responsible for overseeing the formation of a cohesive operational plan pursuant to Gold's strategic plan was Chief Superintendent Peter Terry ("Silver"). He completed a "Tactical Plan Development Form" to which we will also refer.

15. There were 24 Bronze commanders with responsibility for individual areas in London. They were supported by 60 sub-Bronze commanders. The events with which these claims are concerned occurred in the "outer footprint" under the command of Commander Michael Johnson ("Bronze 14"). A relevant document completed by him was a "Tactical Planning Template".

16. One of the sub-Bronze commanders within the Bronze 14 area was Superintendent Colin Morgan ("sub-Bronze 14.1"). Relevant documents prepared by him were a "Concept of Operations Overview Document" (prepared jointly with the other sub-Bronze responsible for the outer footprint), a "Sector 14.1 Tactical Plan" and a "Pre-Event Decision Log".

The police strategy and briefing documents

17. The Strategic Intention document prepared by Commander Broadhurst (Gold) included the following aims:

> "**Provide a lawful and proportionate policing response to protest, balancing the needs and rights of protesters with those impacted by the protest**
>
> - Freedoms of assembly and expression are key elements to protest and are fundamental elements to our democracy. We must be careful that our actions do not dissuade people from feeling they can assemble or express their views;
>
> - The use of police powers, both from legislation and from common law, will be considered in accordance with the Human Rights Act 1998 …;
>
> - …
>
> - We accept that protest may, at times, cause a level of obstruction and disruption to everyday activity ….
>
> - Any force used will be proportionate and only to the extent reasonably necessary ….
>
> **Minimise opportunities to commit crime and take proportionate steps to deal appropriately with offenders if crime is committed**
>
> - …
>
> - If offences are committed, our response will be proportionate. Arrests will only be made at the time if the necessity criteria are met and the offence is so serious that the disposal by summons, FPN or warning is not appropriate ….
>
> **Maintain public order**
>
> - This is a core responsibility of police. It is our duty to minimise disruption from unlawful actions;
>
> - …

> - Where there is a breach of the peace or the risk of an imminent breach of the peace, we will take proportionate action or apply conditions to individuals, or groups as necessary ….”

18. A briefing given by Gold on 21 April underlined those strategic intentions and dealt specifically with the issue of potential disruption by demonstration or protest, stating *inter alia*:

> “The MPS of course recognises that freedoms to protest and to demonstrate are key parts of our democratic tradition, and now enshrined within the Human Rights Act. Our policing of such spontaneous events will ensure that they are contained in a manner appropriate to the demeanour of the protesters and at the [same] time ensuring the security of the processional route.”

19. The Tactical Plan Development Form completed by Chief Superintendent Terry (Silver) included key points from Gold’s Strategic Intention document and stated *inter alia*:

> “**Policing Style**
>
> …
>
> Police interventions will at all times be lawful and proportionate and for a legitimate purpose. As stated above this event is one of celebration and solemnity. The tipping point for harassment alarm or distress may be lower in this environment than it would be in other [*sic*], for example outside a football match or in a town centre at closing time. Officers will be briefed to consider this when judging the behaviour of … people ….
>
> **Interventions**
>
> Nothing in this plan is designed to interfere with the discretion of individual officers to exercise their powers where it is lawful, proportionate and necessary to do so. However, Bronzes must satisfy themselves that, through proper briefing, officers understand the intention of the whole operation and the impact the actions of individual officers can have on the delivery of the event.
>
> …
>
> Before arresting any individual the principles of legality, necessity and proportionality will be key considerations. An officer must be satisfied that there is a clear, legal basis to exercise that power and to consider if his or her actions is fair and balanced given the circumstances. This includes satisfying the necessary criteria under Section 24(5) of PACE.”

20. Silver's briefing note stated that any demonstrations would be dealt with in accordance with Gold's strategy to provide a lawful and proportionate policing response to protest. It referred to the need to facilitate protest, but also to the fact that the vast majority of people would be in the area to celebrate the Royal Wedding and that they might react to people who wanted to undermine that enjoyment. It said that early dialogue with protestors would be the first approach, and that if facilitation should prove impracticable the sector Bronze would work out a proportionate tactical intervention. It went on:

> "I also have a substantial number of public order trained officers around the periphery of this ceremonial area under the command of Commander Mick Johnson. They are looking for potential demonstrators coming towards this event or dealing with any potential disorder should it occur outside of the ceremonial footprint."

21. The Tactical Planning Template completed by Commander Johnson (Bronze 14) stated that his tactical plan was aimed at the following general concerns: "protest - pre-planned or spontaneous; direct criminal actions or activity under the banner of anarchists or black bloc". It carried through the key points from Silver's Tactical Plan Development Form. His briefing material made clear what was intended in relation to lawful protest: "Police peaceful/lawful protest – either pre-planned or spontaneous". One of those who attended the briefing on 21 April was Superintendent Woolford, the senior officer at the searches of the Camberwell squats involved in the Pearce claim. He records Bronze 14 as having stated that "our role was to disrupt people attempting to commit criminal offences but we are also there to police peaceful protest" and that the intention was "to prevent or detect crime, to protect life and property and to keep the Queen's peace".

22. The Concept of Operations Document prepared by Superintendent Morgan (sub-Bronze 14.1) included the following understanding of the role of the forces under his command:

> "The role of the outer footprint Reserves … will be to intercept and deal with autonomous groups making their way to the main event foot-print … who have the intention of disrupting the event and/or committing criminal acts.
>
> The ethos of the policing activity will be about proportionate policing with a view to preventing those intent on disruption of the event/criminality from getting in to the ceremonial area and, if need be, lawfully detaining individuals and groups in order to prevent such disruption/criminality."

23. In his Pre-Event Decision Log, Superintendent Morgan set out the contents of an email he sent to all his sub-Bronzes following a meeting on 26 April. That email included reference to the fact that it was known from recent experience (student protests and autonomous action on the day of the TUC demonstration) that groups intent on crime and disorder did not engage with the police pre-event and would look for opportunities to engage in criminality away from the main event and/or where they felt that police resources were low or not present. In some circumstances, such

autonomous groups engaged in bloc-type tactics, "will often dress in all black clothing and will utilise face coverings prior to engaging in criminality". The email also expressed the view that groups or individuals making their way to the event footprint intent on crime, disorder or disruption would be likely to provoke a breach of the peace by members of the public who wished to see the Royal couple and to avail themselves of the right to associate lawfully to view the wedding.

24. In his Sector 14.1 Tactical Plan, sub-Bronze 14.1 included details that are of general relevance to the policy issue as well as being of specific relevance to the arrest of the Starbucks claimants. A chart of tactical options referred first to high visibility policing and other forms of policing to deter and disrupt crime and disorder, before listing two contingency options: "containment (to be used as a last resort)" to prevent a breach of the peace, crime and disorder and/or to facilitate arrest, and "mass arrest tactics" to prevent a breach of the peace or for substantive criminal offences. One of the geographic areas referred to was Soho Square, in relation to which the following was added on 28 April, the day before the Royal Wedding:

> "It has come to light that intelligence currently exists that some protest groups, intent on disruption of the Royal Wedding …, intend to meet in Soho Square at around 1000hrs …, engage in protest and then march to the ceremonial area via Piccadilly.
>
> Police will facilitate peaceful protest in Soho Square and will work with organisers and participants to ensure that this occurs. However, given the events of the day and in accordance with Gold's strategy, such groups intent upon disorder will not be allowed to process into/towards the ceremonial area for the following reasons:
>
> - Any procession which may take place will have failed to comply with Section 11 Public Order Act 1986
>
> - Without pre-judging the intelligence available at the prevailing time, the MPS is fully aware (from recent significant disorder) that the groups advertising this location as a convergence/meeting site are likely to engage in disorder/commit offences
>
> - The likely conduct of such a group, coupled with the huge numbers of people and event taking place is likely to lead to a breach of the peace if they are allowed to process/engage in disruption, disorder, public nuisance or other criminality.
>
> As such, every effort will be made to ensure any such individuals or groups intent on such disruption, disorder, public nuisance or other criminality remain in Soho Square where, as stated above, peaceful protest will be facilitated.
>
> …

> Where uniformed police officers are deployed to police the demonstrators in Soho Square, BX 14.1.2 will implement proportionate tactics to ensure peaceful protest is facilitated in the square and to ensure any use of powers (i.e. use of Section 14, arrest tactics) is lawfully achieved …."

The immediate background to the arrests and searches

25. The intelligence picture is described in some detail in the defendant's evidence. Commander Broadhurst (Gold) says in his witness statement that intelligence indicating potential disruption of the Royal Wedding began to come in much earlier than in his previous experience. He related much of it directly to the violent protests in late 2010 and early 2011. Whilst at first the intelligence build-up was at a greater volume than normally expected, none of it was sufficiently serious to cause him to change his strategic objectives or his direction as to tactical parameters. The TUC march on 26 March 2011 marked a turning-point. It attracted a relatively small but significant number of activists intent on using it to further their own cause, which led to violence and serious damage. Following this it became clear that the policing operation would need to be substantially increased. The intelligence requirement was strengthened. By 25 April the intelligence and threat update listed 18 potential demonstrations, protests or events directed towards the Royal Wedding, with the apparent intention of disrupting it.

26. Commander Johnson (Bronze 14) refers to the intelligence build-up as follows:

> "My understanding of the intelligence I received was that there was a small number of planned and organised events, together with a number of spontaneous demonstrations that were being planned via social websites. At this time there were numerous non-specific (in terms of locations/times) events being mooted mainly over the internet, with a couple of events, 'Right Royal Orgy or Zombie Wedding' and an anti-wedding event in Red Lion Square. As the actual aims and intentions of these were unknown, with no recognisable organiser, it was impossible to interpret whether they were going to be peaceful. However, some of the phraseology used seemed to suggest that there would be activity aimed at disrupting the events such as sit down in roads, occupations of buildings, climbing onto the roofs or exterior of public buildings or, outside the immediate ceremonial area, the smashing of shop windows in, for example, the West End. One of the leaflets referred to throwing maggots at the Royal Procession."

27. The reference to the "Right Royal Orgy or Zombie Wedding" links up with the amendment made to Superintendent Morgan's tactical plan on 28 April, referred to at para [24] above, in that it was understood that the event in question would take place in Soho Square. Superintendent Morgan says in his witness statement that he had intelligence information that a website was advertising the event and that it urged people to bring costumes and claimed there would be a working guillotine present. He considered that if a march or procession was attempted from Soho Square it could be linked with orchestrated disorder and/or an intention to disrupt the Royal Wedding.

There is separate evidence of the existence of intelligence that anarchists and protest groups intended to meet in Trafalgar Square to engage in disruptive action.

28. Commander Broadhurst states that intelligence had also identified a number of premises being used as squats, and that he was concerned that one or more of these squats could be housing individuals with intent to commit criminal acts against the Royal Wedding. This is dealt with further in the statement of Commander Johnson, who explains that where the police had specific intelligence relating to suspected crime or the planning of crime they initiated action such as observations or search warrants. He continues:

> "The aim of this activity was to bring forward police investigative activity in relation to investigations which were already underway (for example, the search for Operation Brontide suspects – suspects wanted for disorder offences on the day of the TUC March on 26 March 2011) and especially where it related to individuals who were believed, or where it was reasonable to believe, that they could also be planning similar criminal activity at the Royal Wedding. The outcome of this activity was therefore designed to be twofold: (i) to accelerate investigations into matters already under investigation or suspected (e.g. in relation to 'Brontide' offences) and (ii) to prevent those same individuals from carrying out the plans which we suspected they did have to try to disrupt or commit offences on the day of the royal wedding. The reason why the squats in Camberwell and elsewhere and their occupants were of concern to us was that intelligence showed that Brontide suspects might be living at these squats and a squat on Curzon Street had been used as a 'convergence centre' or gathering point for disorder offences on 26 March 2011."

29. As a final background point we should mention that at 8.00 a.m. on 29 April, Bronze 14 issued a statutory stop and search authorisation pursuant to s.60 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"), and an authority under s.60AA giving power to require the removal of disguises. By virtue of the s.60 authorisation, any constable in uniform had power to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments, and that power was exercisable whether or not the constable had any grounds for suspecting that the person was carrying weapons or articles of that kind (s.60(4) and (5)).

THE FACTS OF THE INDIVIDUAL CASES

The Hicks claim

Mr Hicks

30. The first claimant, Brian Hicks, is a 44 year old man with a long-standing involvement in republican politics. He has some previous convictions for minor offences committed when he was much younger but has had no convictions for over 20 years.

31. His evidence is that on 29 April 2011 he was intending to go via Trafalgar Square (where he was aware that a demonstration was planned to take place) and Soho Square (where other events were planned) to Red Lion Square, to attend the "Not the Royal Wedding" street party organised by the campaign group Republic. At about 9.00 a.m. he was walking down Charing Cross Road when he was stopped by a plain clothes police officer in an unmarked car. That officer was Police Inspector Paul Wakeford: Mr Hicks had seen him in uniform at a number of demonstrations but did not know his name. Inspector Wakeford said "Hello Brian", and he and his colleague escorted Mr Hicks to the side of the road, where he conducted a search under s.1 of PACE on the ground of suspicion of possession of items for use in criminal damage. Nothing of significance was found. Mr Hicks was, however, arrested. About 15 minutes later two other officers arrived and transported him to Albany Street Police Station. They informed the custody sergeant that he had been arrested to prevent a breach of the peace but were unable to provide any further explanation for the arrest. The custody sergeant then made a phone call, after which he appeared to be satisfied in relation to Mr Hicks's detention. Mr Hicks was then processed at the custody desk. Thereafter he was subjected to a strip search, during which he overheard someone outside the cell say "They want him here until 3.00 p.m., when the celebrations finish".

32. The police account of the arrest and the reasons for it is set out in the witness statement of the arresting officer, Inspector Wakeford. He states that at about 9.00 a.m. he was on mobile patrol in an unmarked vehicle with Police Sergeant Mason, travelling north along Charing Cross Road, when he caught sight of a male whom he recognised as Mr Hicks and who appeared to be paying attention to the shops along the street. He had previous knowledge of Mr Hicks and knew that he was an anarchist and had been a fervent agitator at major events over the last ten years. He was therefore suspicious about his actions. The statement continues:

> "6. He wore a bulky jacket and I noticed that his left hand jacket pocket appeared to protrude or bulge. He also kept putting his hands into the pockets of his trousers and jacket for no apparent reason. I have worked in the public order field of policing for more than ten years and I have knowledge and experience of anarchists taking spontaneous action against property or persons and on this occasion I suspected Mr Hicks might be in the process of planning an individual direct action of criminal damage against the shops on Charing Cross Road. In particular, I believed that he might have articles concealed on him to cause criminal damage. Such articles could either be tools to smash or damage shop windows or paint bombs (i.e. thin skinned containers of paint which break on impact) and which cause extensive paint damage when thrown. I was concerned at what might be bulging beneath his jacket and what would be in his pockets."

33. Inspector Wakeford then describes getting out of the car and detaining Mr Hicks for a search. He continues:

> "8. I then conducted a search of Mr Hicks and found he had a large packet of biscuits in his jacket pocket. He had a large

comb protruding from his jeans pocket and had two mobile phones. The search began at about 9.05am and whilst I conducted it, he confirmed he was making his way to Trafalgar Square.

9. I was aware that there was some intelligence that anarchists and other protest groups had advertised their intention to meet up at this location (Trafalgar Square) not to protest but to actively disrupt the Royal Wedding and to make clear their objections to the wedding in the form of direct, disruptive action. This could take the form of items being thrown. I was also aware that none of the anarchist groups had co-operated with Scotland Yard to discuss or seek permission for any gathering or assembly or march or protests and that the intelligence background included that other pro-Royal Family groups (which might include the English Defence League) would counteract and challenge any actions taken by any anti monarchy or anarchist group. This would mean almost immediate violence as soon as the groups met which could quickly spread to involve large numbers given the crowds expected in Trafalgar Square. Police had a duty to prevent such violence breaking out if they could.

10. I requested Mr Hicks to sit in a nearby police carrier so I could look through his pockets more thoroughly ….

11. Mr Hicks co-operated and was calm, causing me no issues. The search concluded in the carrier and I found no articles for use in causing criminal damage.

12. I then had reason to consider my instructions concerning known activists and the balance of probabilities that they were present at the wedding not to celebrate but to objectively try to disrupt the wedding which would have serious consequences for the safety of the event as a whole and which was to be attended by thousands. Also, a simple 'direct action' taken by him (a smashed window or daubed slogan) would have an enormous ripple effect causing serious harm to those in large groups nearby or cause others present to react against it. I spoke to Chief Inspector Dale and to Commander Johnson over my mobile phone. We assessed that it was necessary to arrest him now because if he got into Trafalgar Square and met up with others who were equipped to cause damage or harm a breach of the peace would break out and this needed to be prevented.

13. I assessed the facts known to me at the time and, in company with my long history of knowledge of Mr Hicks and his involvement in all major protest which elapsed into serious disorder because of anarchist actions, I considered how best I could prevent this incident from happening and from Mr Hicks

> becoming involved, orchestrating direct actions and encouraging anarchist direct actions. By 'direct action' I mean damage to property or an invasion of premises.
>
> 14. I considered all the relevant intelligence, Mr Hicks' own admission he was going to Trafalgar Square to meet up with others but his failure to expand on this and I knew this was a gathering spot for those wishing to disrupt the event. This was not an issue of peaceful protest but of dealing with an individual who would involve himself with any disruption that was happening. As at recent events I had policed, the TUC March and Student Protests had both resulted in violence, damage to property and injuries to police and to other persons. I realised and decided that Mr Hicks had to be arrested to prevent a breach of the peace as I now reasonably anticipated that his presence anywhere closer to Trafalgar Square would cause harm. This harm would be to those persons involved in the Royal Wedding itself, those persons present as Royal Wedding supporters, police officers dealing with security issues and any opposing factions or groups looking to respond to anarchist groups attempting to disrupt the events.
>
> 15. Therefore as no breach of the peace had yet taken place, I formed the honest and reasonable grounds that I had to arrest Mr Hicks because in view of all my intelligence and knowledge of him, a breach of the peace involving Mr Hicks would be committed in the immediate future by him and that harm either to persons or property in their presence was a real likelihood. The fact that his intended destination was Trafalgar Square and his intention was to meet with others confirmed to me that he would associate with others intent on disrupting the event and that this would be a catalyst for harm (i.e. injury or damage)."

The Starbucks claimants

34. The Starbucks arrests concern claimants 2-5, namely Hannah Eiseman-Renyard, Ludmila Demtchenko, Erich Schultz and Deborah Scordo-Mackie. They are all of good character, with no previous convictions or cautions and with no previous adverse interaction with the police. None describes himself or herself as particularly anti-monarchist, and their evidence is that none was intending to participate in any form of anti-Royal Wedding demonstration on 29 April.

35. The Starbucks claimants' account is that they arrived in Soho Square between 10.00 and 11.00 a.m. It was their intention to take part in the "zombie picnic" organised by the campaign group Queer Resistance, which publicises the impact of Government spending cuts on lesbian, gay, bisexual, transgender and queer people. All four claimants were dressed and made up accordingly, in some element of zombie fancy dress. Ms Demtchenko and Mr Schultz are friends and arrived together. They met up at Soho Square with Ms Eiseman-Renyard and Ms Scordo-Mackie, whom they did not previously know. A fifth person, also dressed as a zombie, joined their group. Shortly after meeting up, the group observed a scuffle between some plain clothes

police officers and a protester who had been singing protest songs. They then noticed a large number of police officers blocking three of the four routes out of Soho Square. They decided to leave by the unblocked exit as they did not want to encounter any trouble, and to go for a drink together at Starbucks in Oxford Street before going their separate ways.

36. They had been in Starbucks for a few minutes when police officers entered and asked the claimants to accompany them outside. The claimants were then lined up outside the window of Starbucks and were searched under s.60 of the 1994 Act. Nothing of significance was found. The claimants were co-operative and peaceful throughout. Ms Demtchenko was initially informed that she was free to go, but she decided to wait until the other claimants were also free to leave. A short while later a female officer who had been dealing with them took a call on her radio and stepped away to have a conversation. She returned and informed the claimants that they were going to be arrested. She apologised for this and explained that it had been ordered by someone higher up. The officers told the claimants that it was thought that their costumes suggested that they might cause trouble later in the day. The claimants were told to wait while other officers arrived to arrest them.

37. After a few minutes a new group of police officers arrived and arrested the claimants, who where placed in handcuffs and, after a short delay, were taken to Belgravia police station. It took about 1 hour 15 minutes to reach the police station. The claimants remained handcuffed throughout the journey. At the police station they were detained until about 3.45 p.m., when they were told that they were being released because the Royal Wedding had ended. No further action was taken against them.

38. Turning to the police evidence concerning these arrests, we have referred already, at paras [24]-[27] above, to the intelligence background to the event in Soho Square. The officer in charge of the Police Support Unit ("PSU") which carried out the actual arrests was Police Inspector Dixon. In his witness statement he describes that he was instructed first to go to Soho Street to stop a number of people dressed as zombies. On the journey there he was updated that there were four or five people and that they had gone into Starbucks on Oxford Street at the junction with Soho Street. On arrival his officers detained five people and spoke to them outside Starbucks. He instructed two officers to carry out searches under s.60 of the 1994 Act and to take and verify details. The persons stopped were dressed in costumes and some had their identities concealed with make-up and the outfits they were wearing. He observed from the other side of the road and took a telephone call from Commander Johnson's assistant. His statement continues:

> "9. To get away from traffic noise, observe the stop and avoid being overheard, I walked up and down on the pavement opposite describing the scene over the telephone. The people stopped were passive and appeared co-operative. I was instructed to arrest those stopped for breach of the peace. These instructions were given on behalf of Commander Johnson who was aware of the incident. I asked for grounds and was told the following: The group were part of an anti-monarchy demonstration who had turned up to the royal wedding with the intention of causing disruption. They were in an area near to where senior members of the royal family

> would be in 20 minutes time and some had their identities concealed. They were to be arrested to prevent a breach of the peace by acting in a manner that would provoke others into violence. It was my understanding at that time that they had not yet committed a breach of the peace but that as their behaviour had been monitored, it was reasonably believed that they would commit or cause one in the immediate future if not detained.
>
> 10. I have now seen that the Control Room had some information (the zombie wedding leaflet) that those dressed as zombies would attempt to gather at Westminster Abbey at 11am, if they could, to throw maggots as confetti at the royal wedding procession. If I had been given this detail it would have been clearer to me what the anticipated breach of the peace was and I could have briefed my serial and Insp Antoine accordingly. I had been told at a briefing by Chief Insp Woolford at Islington Police Station in the very early morning of 29 April 2011 that some groups were believed to have the intent to throw stuff at the royal wedding and police might be instructed to intervene to prevent this.
>
> 11. In the earlier briefing given by Chief Inspector Woolford I was told that, where possible, arrests were to be made by Level 3 (foot duty) officers so that Level 2 public order trained officers would be available for redeployment. Nearby was Inspector Antoine, from Enfield Borough, who was in charge of a Level 3 serial number 1446 and I spoke to him, asking him to wait.
>
> 12. I contacted Superintendent Morgan … by telephone and then went to speak to him nearby. I was instructed to use serial 1446 to make the arrests. I relayed this to Inspector Antoine, telling him the grounds for arresting all 5 persons under common law for breach of the peace and he went on to brief and deploy serial 1446."

39. Inspector Antoine, in turn, describes the information communicated to him and then passed on by him to the arresting officers. The relevant part of his witness statement reads:

> "6. I then spoke to Inspector Dixon in person and was informed that he had spoken to Commander Johnson and my serial were to carry out the arrest of the persons identified as Zombies so as not to tie up the Level 2 serial. Inspector Dixon stated that the persons stopped had been observed by plain clothes TSG units committing a breach of the peace in Soho Square. I was not told what the breach of the peace was. Information had also been received that the group were intending to go within the processional route within the next 20 minutes with the intention of disrupting the Royal Wedding.

> The persons identified as Zombies were to be arrested for Breach of the Peace and under no circumstances were to be released at that time. My understanding was that if the group known as the zombies were released, they would go on to disrupt the Royal Wedding in front of the world's media.
>
> 7. I then relayed this information in person to the arresting officers who then arrested the persons concerned."

40. The second claimant was arrested by Police Constable Portlock. He recorded in his Evidence and Actions Book ("notebook"):

> "On Friday 29th April 2011 I was on duty in full uniform posted to serial 1446B designated foot patrols in Oxford Street W1 to detect & prevent Anti-Demonstrations against the Royal Wedding. At about 1205 our serial have made our way to Oxford Street J/W Soho St, W1 re a group of people who had been stopped by Serial 1412 as the group were dressed as zombies & who were suspected of about to cause a demonstration against the Royal family. Myself and the other officers were informed that the group dressed as zombies had already attended a demonstration in Soho Square W1 and the group were on their way to another demonstration where the Royal family would be present and they would be causing a breach of the peace. On the authority of Commander Johnson to prevent a breach of the peace the group were to be arrested."

The information given by PC Portlock to the custody officer was that the claimant was "stopped as part of an ongoing demonstration against the Royal Wedding. Believed [person detained] was intending to disrupt the celebrations by Buckingham Palace".

41. The third claimant was arrested by Police Constable Babbage, who recorded in his notebook:

> "It was believed suspected the group were to attend a later location to disrupt the Royal Wedding celebration, whereby likely anticipated to apprehend cause a breach of the peace. The authorisation to arrest came from Insp Dixon via Commander ops via GT."

The information given by PC Babbage to the custody officer was that the claimant was "believed to be a member of a demonstration gathering against the Royal Wedding, believed to be on her way to the Royal Wedding to demonstrate, it was feared by the Police Officers that a disturbance would result with injury or damage".

42. The fourth claimant was arrested by Police Constable Hemmings, who recorded in his notebook:

> "On Friday 29th April 2011 I was on duty in full uniform posted to serial 1446B re foot patrols in Oxford Street W1 as part of

> Anti Demonstration patrols re the Royal Wedding. At about 1205 I along with other officers from my serial attended Oxford St J/W Soho St W1 re a group of people stopped who were suspected of about to cause a breach of the peace involving some sort of demonstration. It was explained to myself and other officers that the group dressed as zombies who already attended a large gathering in Soho Square and that this group were suspected of gathering to cause trouble / BOP. On the authority of Commander Johnson to prevent a BOP the group were to be arrested."

PC Hemmings wrote that he informed the claimant of the grounds of arrest in these terms: "It is suspected that you are likely to cause a breach of the peace due to a gathering you attended and the way you are dressed …". The information he gave to the custody officer was that the claimant was "seen to be a member of a group demonstrating against the Royal Wedding, believed to be on route to another demonstration against the Royal Wedding where serious disturbance or injuries could be caused".

43. The fifth claimant was arrested by Police Constable Edgar, who recorded in her notebook:

> "At approx 1155 hours we received a call on our personal radios to attend o/s Starbucks Oxford Street/Soho St W1 to assist serial S1412 who had 5 zombies stopped that needed to be arrested on authority of Commander Johnson. Upon our arrival we were met by Insp Antoine who briefed us. He said the group of zombies had been in Soho Sq where a protest was taking place, they then left, went to Starbucks and were believed to be heading to a further location along the royal route in approx 20 mins time – believed to protest."

PC Edgar wrote that she informed the claimant of the grounds of arrest in these terms: "I'm arresting you to prevent a further [breach of the peace] as I have received information that you have already been seen at a protest in Soho Square and we believe you are moving onto another location on the royal route and may cause a breach of the peace". The information she gave to the custody officer was that the claimant was "part of a group seen earlier and fear that [she] and others would cause breach of the peace by attending Royal Wedding route".

44. These arrests were also the subject of an entry in Commander Johnson's log. In commenting on it in his witness statement, he suggests that prior to the arrests he spoke to a "supervisor from serial 1446", who would be Inspector Antoine. That must be an error. If he spoke to anyone it was to Inspector Dixon; but Inspector Dixon's evidence is that his conversation was not with Commander Johnson personally but with an assistant of Commander Johnson. Despite those discrepancies, there is no reason to reject what Commander Johnson says about the substance of the information conveyed from him to those on the ground:

> "… I gave him an overview of the events that were occurring and reminded him of the intelligence that groups, possibly

> dressed as zombies, had advertised their intention to undertake action to disrupt the Royal Wedding. I cannot remember if this was specific around the throwing of maggots. The nature of these acts were likely to result in a breach of the peace, or would in themselves be an attack on those engaged on the wedding or engaged in protecting the Royal Wedding party. This conversation was specifically that these people had gathered as a group at or near Soho Square which was a known assembly point for anti monarchy groups. This group had now left that location and were making their way towards the processional route and inner cordons. This suggested they did have the intention to try to get to the processional route. I asked the supervisor to consider if arrest was necessary to prevent an imminent breach of the peace."

45. We were shown a DVD of the search of the claimants outside Starbucks which in our view adds nothing material to the factual picture. It confirms both that the claimants were co-operative throughout and that the police officers dealt with them in a polite and good-natured manner; but neither point is in issue.

The second zombie claimant

46. The second zombie claimant (claimant 6, anonymised as JMC) identifies as "genderqueer" in that she falls outside the generally recognised gender distinctions of male and female: whilst born male, for legal purposes she is female. She has no criminal convictions or cautions and no previous adverse interaction with the police.

47. JMC's account is that on 29 April 2011 she attended the Queer Resistance zombie picnic in Soho Square with a friend who also identifies as genderqueer. The purpose of their attendance was to demonstrate against the public spending cuts in a social setting. They arrived at about 10.00 a.m., wearing white face paint and fake blood. On arrival they discovered that the planned events did not appear to be taking place and they were confronted instead with a large police presence and a number of journalists with cameras. They decided to leave, as they anticipated that arrests might take place and they did not wish to be involved.

48. They left Soho Square and walked towards Piccadilly with the intention of travelling home. As they were walking down Frith Street they passed a number of cameramen who took photographs of them. Because they did not want photographs of themselves to be published, JMC and her friend covered their faces with a scarf and a bandana respectively. As soon as they had passed the photographers they uncovered their faces. Moments later they were approached by a group of officers from the defendant's Territorial Support Group ("TSG") who asked them why they had "masked" their faces. JMC explained why. The officers then said that they would be searched pursuant to s.60 of the 1994 Act. They were asked their names, which they provided, and were then searched.

49. The officers found on JMC a leaflet for the zombie picnic that she had intended to attend, and also some make-up. She and her friend were told that they were going to be arrested because they were in possession of the leaflet and they had no reason to be in that location at that time. They were detained on the street for about 20 minutes

and then in a police van for about 30 minutes. They were told that the officers were waiting for an officer to come from a local police station to arrest them.

50. After the wait, two police officers attended and arrested them. They were then taken to West End Central police station, where they arrived at about 11.00 a.m. The custody sergeant said to them words along the lines of "You'll be kept in until the kiss on the balcony, then we will let you go". JMC and her friend were both searched in the custody suite. JMC alleges that during the search an assault was committed on her by a female officer cupping her genital area, possibly to ascertain her gender. She and her friend were detained until about 3.00 p.m., when they were released. No further action was taken against them.

51. The arresting officer was Police Constable Morris. In his witness statement he refers to the briefings he received. They included the following (which we mention here because it is relied on by the claimants in support of their argument as to the existence of an unlawful policy or practice):

> "… we were also told to … look out for potential breaches of the peace for which the police response would be pre-emptive, if necessary, and zero tolerance of potential disorder. While acknowledging the right to peaceful protest, the vast majority of the crowds that day would be supportive of the wedding and therefore there was a concern that, potentially, any public display of anti-wedding sentiment in the faces of that supportive crowd could lead to breaches of the peace. (By this I mean fights breaking out.) Moreover, on the basis of recent events, those displaying anti-wedding views might well be intending to disrupt the wedding itself, if they could."

52. He then describes how he was deployed on the day as a Level 3 public order officer. At around 11.00 a.m. he and colleagues were instructed to relocate to Soho Square where, according to information received, some anti-wedding protestors had gathered. On their arrival at about 11.15 a.m., members of the TSG explained that they had detained two females with partially-covered faces. The statement continues:

> "7. I was informed that the TSG officers had asked the two females why they had come here to which the Applicant had replied *'To have a glass of Coke'*. PC 5754U had noticed a flyer in one of the females' hands which he had asked to see. It was shown to me and I recall it was like a large postcard, about 9"x 9", with red wording against a black background. I cannot recall exactly what the words said but it was clearly anti-wedding in content and mentioned some sort of 'Zombie' gathering in Soho Square before moving on towards the Royal Wedding itself, although I cannot recall whether the flyer said what might happen thereafter. With the TSG officers unable to devote the time to making arrests and taking prisoners into custody, I arrested the Applicant in order to prevent a breach of the peace. The time of the arrest was 11.30 ….

> 8. Mindful of the occasion and our earlier briefing, I believed the arrest was justified and explained the reasons for the arrest to the Applicant, thus: the intentional, partial concealment of her face; the possession of the anti-wedding literature within the vicinity of the wedding itself; and the need to prevent her from being harmed, should people supportive of the wedding believe that she intended to disrupt the occasion and spoil their day.
>
> 9. The latter reason seemed to me to be a real concern and the arrest was, therefore, also in the Applicant's best interests. If she, and those with whom she was meeting up in Soho Square, were intent on making an overt public protest regarding the wedding, there was, I believed, a real potential for conflict with pro-wedding supporters leading to breaches of the peace, affray and public order offences.
>
> 10. I have been asked whether the Applicant was arrested simply because she held views that were unpopular on that particular day to which my answer is no. To do so would clearly be wrong and I would not do it. Given that the crowds that day were overwhelmingly supportive of the wedding and intent on enjoying the day, while those opposed to it were in a minority, I believed that by protesting in a manner likely to antagonise those who had come to see the wedding, the Applicant and her associates would be endangering themselves."

53. The flyer referred to by JMC herself and by PC Morris cannot be identified with certainty. One candidate is a flyer that refers to a "Royal Zombie Wedding Celebration" hosted by an anti-cuts collective, giving these timings: "Soho Sq 10am Zombie Frolics, 1pm Royal Zombie Flash Mob" (presumably a reference to a spontaneous gathering of people dressed as zombies). That document does have red wording against a darkish background (including a picture of Buckingham Palace) but does not look like a large postcard. Another flyer, which looks more like a large postcard but is in black and white (at least, in the material we have seen), refers to a "Zombie Wedding in the shadow of the working guillotine" and includes these timings: "9.30 for 10.00 am Wedding Breakfast, Soho Square, with Fortnum and Mason's maggot relish! …", and "11.00 am Westminster Abbey: Heads will roll". It ends: "And don't forget your maggot confetti!". Whether or not the particular flyer was one of those two documents, they serve as illustrations of the kind of document the claimant must have been carrying.

The Charing Cross claimants

54. The Charing Cross arrests concern claimants 7-15, namely Wanda Canton, CXH (a 17 year old youth, anonymised accordingly), Edward Maltby, Patrick McCabe, Kieran Miles, James Moulding, Daniel Randall, Daniel Rawnsley and Hannah Thompson. Mr McCabe has one caution for possession of cannabis. All the other claimants are of good character, with no previous convictions, cautions or interaction with the police.

55. The claimants, together with another man, arrived at Charing Cross station at about 10.30 a.m. on 29 April 2011. Their evidence is that it was initially their intention to attend a republican protest in Trafalgar Square but it became clear that that would not be possible, so they decided instead to attend the "Not the Royal Wedding" street party in Red Lion Square. However, before they left the station forecourt they were approached by officers of British Transport Police ("BTP"), one of whom informed them that "The Met have been going round rounding up people before the wedding to make sure that there's no problems". The officer went on to say that provided the claimants did not cause any trouble they would be alright. Thereafter the claimants were subjected to searches under s.60 of the 1994 Act by BTP officers. They were found to be in possession of placards which read "Democracy now: it is right and fitting to die for one's country" and "Right to protest/precrime/dawn raids". They were also found to be in possession of a megaphone, a cycling scarf and a helmet which was described by the claimants as a cycling helmet but by the police as a climbing helmet. BTP officers voiced concerns to the claimants that if they were to protest in Trafalgar Square they might be physically assaulted by revellers celebrating the Royal Wedding.

56. The claimants' evidence is that on conclusion of the search some of them were told that they were free to leave, whilst others were told that they had to wait for an officer from the defendant's force who was coming to speak to them. Shortly thereafter a large number of officers from the TSG surrounded them and held them in containment. They were told that they were being held in order to prevent a breach of the peace. They were then handcuffed and arrested.

57. Following their arrests they were taken to Sutton police station, where they were held until about 3.30 p.m. Only three of them were formally booked into custody; the rest were detained in the police yard. They remained in handcuffs throughout. One of them (the seventh claimant, Miss Canton) complains that she was not permitted to use the toilet, drink any water or make any phone call to a solicitor or to her mother to let her know where she was. She also complains that she had to stand in the sun handcuffed. On release, the claimants were not given any paperwork. No further action was taken in respect of any of them.

58. Turning to the police evidence, it is convenient to start with the overview given in Commander Johnson's witness statement. With reference to log entries at 11.01 a.m. concerning "three males in Covent Garden with rucksacks and climbing hats", and at 11.15 a.m. concerning "Info from BTP re: 12 males Charing Cross BR; in possession of placards and loud hailers …", he states:

> "Bronze 14.1 (Superintendent Morgan) was asked to assign units to identify these persons of interest and find out their intentions and if any criminal offences had been or were suspected of being committed ….
>
> Bx14.1 assigned a TSG unit to go to the location and investigate. The issue here was the intentions of those at Charing Cross Station. The area was heavily populated with supporters of the Royal Wedding. The group were suspected of being anti-royal wedding and their reasons for going to the location were apparently to cause conflict with those already

> there. Their actions and intentions had not been previously communicated to the police. They had not engaged with us beforehand. Therefore the only information that we could go on was that their actions could be direct (i.e. confrontation or causing damage) and this could involve an attack on the royal party or those close by. I believe that had they been allowed to continue, they would have come into conflict with others, engaged in public order offences (such as affray or threatening behaviour) or thrown articles at the royal party. One of my reasons for believing this is that I was aware that leaflets had circulated on the internet and elsewhere encouraging anti-monarchy groups to throw maggots at the royal procession."

59. Referring to corresponding entries in his own log, Superintendent Morgan stresses that he did not attend the scene and that all his communications were via Bronze 14.1.1 (Chief Inspector Woolford) but sets out as follows his recollection of conversations regarding the group at Charing Cross and the risk they presented:

> "… this incident/incidents took place at a time when a) the Royal Wedding had commenced (i.e. the procession to the Abbey had taken place and the procession back to the Palace was imminent), b) the ceremonial/viewing areas were full with thousands of royal supporters, c) the group in question were anti-royal and had anti-royal placards and were boisterous and, as a result, their presence was likely to provoke some form of reaction from the crowd, d) there was previous (very recent) experience of small autonomous groups causing disorder/ criminality in similar circumstances, e) the fact that organisers had not contacted police in advance for any march as required by the Public Order Act and f) this was the last opportunity to act to prevent a imminent breach of the peace prior to this group entering an area heavily congested with royal supporters (i.e. Trafalgar Square which was full owing to a large TV screen in the square) …."

60. The officer in charge of the PSU which effected the actual arrests was Police Inspector Bethel. In his witness statement he states that at 11.18 a.m. his team was directed to go to Charing Cross Station to assist BTP as soon as possible; and that at 11.20 he received information from Chief Inspector Woolford that there was a group of protesters to be contained currently in order to prevent a breach of the peace. He continues:

> "9. At 11.25hrs I have recorded in my log information from Chief Inspector Woolford which was as follows: 'CONTAIN. 10 persons present. They identify themselves as anti-royalist. One has climbing helmet. Placards in support of this. Other persons in vicinity with climbing equipment.'
>
> 10. I recall there had been recent radio traffic which had referred to a group of about three persons who had been seen

> with climbing equipment in the Covent Garden area. It was believed that there might be a link between these two groups.
>
> 11. At 11.30hrs I have recorded that I briefed my sergeants on the information I had received so that they could brief their teams, 'PREP FOR ARRESTS'. It had been decided that this group should be arrested because of the threat of a breach of the peace which they posed. The breach of the peace which I foresaw would occur if this group continued into Trafalgar Square (which was very close by and was already very busy with people who had come to see and celebrate the Royal Wedding) was that fights would break out between this group and the far larger group of Royal Wedding supporters. In my view, fights were very likely if we did nothing. This group had placards and I think their presence in Trafalgar Square if they had got there would have drawn a hostile reaction from the very large pro-royalist crowds in Trafalgar Square which would have led to violence very quickly. I was satisfied that there was a reasonable and proper basis to make these arrests in order to prevent a breach of the peace which I foresaw developing in Trafalgar Square if this group went there."

61. One can see from the notebook of Police Sergeant Bowman, one of the sergeants under Inspector Bethel, how this understanding was conveyed via the sergeants in the unit to the arresting officers:

> "… I was told by my unit inspector Mr Bethel that our unit was to put in a cordon around this group as it was believed they were going to cause a breach of the peace and by putting in the cordon this would be prevented. The cordon was put in without incident. I then was informed by Mr Bethel that [the] ten people in the cordon would be getting arrested in order to prevent a breach of the peace. Mr Bethel added that one of the group had on him a climbing hat and it was strongly believed that there was about to be an attempt to … mount a climbing protest at the scene of the celebrations surrounding the Royal Wedding and equally they had stated they were anti Royalists and were bearing a placard saying 'RAIDERS fight for DEMOCRACY'. It was believed that for [their] own safety they would need to be arrested as a very Royalist crowd would be likely to turn on this group who had openly said they were going into the celebrating crowd to deliver their anti-Royalist message. I also felt it was highly likely other climbing gear had been concealed nearby to aid a climbing protest. I relayed this information to officers on my team and @ 1138am the arrests were made by officers in my unit."

62. The arrest of the seventh claimant was carried out by Police Constable MacSweeney, who recorded in his notebook:

> "At about 1120 hours we were asked to assist BTP officers at Charing Cross station as they had a group of protesters stopped, believing they were in London to disrupt the royal wedding. I was with the rest of the police serial when Inspector Bethel told us we were to form a containment around the protesters to prevent a breach of the peace. I and my colleagues formed the containment. I was then advised by PS Tame that each of the protesters was to be arrested for breach of the peace as they had admitted to be anti royalists and believed to be in London to disrupt the royal wedding."

PC MacSweeney informed the claimant that she was being arrested "for breach of the peace as it believed that you have come to London to disrupt the royal wedding and cause a disturbance. This is necessary to prevent a breach of the peace occurring and to keep the safety of other members of the public and yourself."

63. The eighth claimant was arrested by Police Constable Mills, who recorded in his notebook:

> "We were informed BTP had called for urgent assistance. Upon arrival on the concourse at the front of the train station I could see approximately ten youths both males and females surrounded by BTP … There were also quite a few members of the public milling around. We were advised by our supervisors to surround the group who had been identified as a risk group and to bubble them. I and the rest of the PSU did this and took over from BTP in order to prevent a breach of the peace and so more information as to what had happened could be ascertained. Whilst stood by the group they were going on about democracy and generally talking between themselves. After some time maybe five minutes I was informed by a supervisor that the group were to be arrested to prevent a breach of the peace as apparently the group had admitted to being anti-royalist had come with placards to protest and had climbing equipment with them. This was circulated amongst officers and as a group they were then arrested."

PC Mills informed the claimant that the grounds of the arrest were "to prevent a breach of the peace as you have been identified as part of a group who admitted to being anti-royalist and who have placards and banners to protest in your possession as a group and have climbing equipment with you …. Your arrest is necessary to prevent harm to yourself as it is feared other people will take offence to your protest due to the nature of the day and to prevent damage to property".

64. The ninth claimant was arrested by Police Constable Meerabux, who recorded in his notebook:

> "On arrival we were given instructions to contain a group of approximately ten persons. I was then informed that the group had been using a loud hailer making anti royal comments carrying placards. Due to the nature of the day (royal wedding)

> and the number of royal supporters in the area, I believed that if allowed there would be a reaction from the pro royalists and possibly cause injury to those detained. I therefore approached [the ninth claimant] and said to him … it has been alleged that you have been in possession of climbing gear and that you have been shouting anti royalist statements. Due to the numbers of pro royal persons here I believe that there may be trouble and in order to prevent a breach of the peace I am arresting you for that …."

65. The tenth claimant was arrested by Police Constable Dowden, who recorded in his notebook:

> "On arrival we were updated that a group of males and females had been detained for purposes of search and believed to be Anti-Royalist protesters. On instruction by Insp Bethel I along with the rest of the serial … contained the group …. At approximately 1138 hours I was informed that the group had been identified as being anti-royalists and in possession of climbing equipment and were all to be arrested to prevent a breach of the peace At 1138 I took [the tenth claimant] to one side and said 'You have been positively identified as anti-royalist demonstrators and some of your group are in possession of climbing equipment. Because of this I suspect you may be planning a visible protest to the Royal Wedding and to prevent this and damage to property I am arresting you to prevent a breach of the peace'."

66. The eleventh claimant was arrested by Police Constable Chilmaid, who recorded in his notebook:

> "Upon arrival I saw a group of people (10-12) both males and females standing around them were police officers. We were told to contain this group to prevent a breach of the peace as it had been identified that this group were anti royalists and were here to protest against the wedding. I was also told that they had a climbing helmet between them. I was also made aware that they had banners and placards. At this time I believed that if this group were allowed to go and protest against the royal family then a breach of the peace would occur due to the thousands of people in central London celebrating the royal wedding. I was then informed that this group were to be arrested to prevent a breach of the peace. At 1138 hours I took hold of [the eleventh claimant] and said 'I am arresting you to prevent a breach of the peace as I believe you are here to disrupt the royal wedding which would cause a breach of the peace …."

67. The twelfth claimant was arrested by Police Constable Mehan, who recorded in his notebook:

> "At approximately 1110 hours I was made aware of British Transport Police requiring urgent assistance as they had contained a group identified as verbal Anti Royalists seen to be in possession of signs of protesting nature and to make verbal comments against the royal family. The group were also identified as being in possession of a megaphone and climbing equipment on arrival … Implemented a cordon to prevent a breach of the peace and took over British Transport Police officers. I was informed that the group were to be arrested for breach of the peace. At approximately 1138 hrs I approached [the twelfth claimant]. I said 'I am arresting you for a breach of the peace as you have been identified as making verbal comments against the royal family and in possession of signs of a protesting nature and in possession of rope climbing equipment'. [The claimant] immediately began to resist arrest …."

68. The thirteenth claimant was arrested by Police Constable Sharp, who recorded in her notebook:

> "At 11.25 we arrived as a serial at Charing Cross …. I was informed by PS Bowman that the group had expressed their anti-royalist beliefs and their intention to walk through London carrying placards with anti-royalist slogans and shouting anti-royalist messages. The placards said 'Dawn raiders right for democracy'. I was also instructed by PS Bowman that the group were to be arrested for Breach of the Peace. As soon as my colleague stepped forward some members of the group which was approximately 10 in number began to surge towards the outside of the line of police officers. I saw [the thirteenth claimant] move towards one of the group …. I took hold of his left arm and said 'I am arresting you to prevent a breach of the peace under the common law act. This is because the placards the group have in their possession as well as the loud hailer and the intentions expressed by the group. This is necessary to not only prevent any harm coming to the group or members of the public in the immediate circumstances that are in a fervently royal area and so I fear that you could be at immediate risk of physical injury as could other members of the public. Also the group you are in have in their possession climbing equipment. You are also heading in the direction of Buckingham Palace and that your intention is to cause problems there'."

69. The fourteenth claimant was arrested by Police Constable Gilbey, who recorded in his notebook:

> "On our arrival at about 1125 hrs we debussed and moved as a serial to the train station. At the location I could see a group of ten people mostly young males IC1s being held at the location by another police serial … My front line supervisors were briefed by Insp Bethel …. On conclusion of this briefing my

> carrier was briefed by PS Bowman …. We were instructed to emplace a Breach of the Peace cordon around the group. The briefing I received was that this group had come from the concourse in possession of anti-royalist placards and shouting anti royalist comments. Some were in possession of climbing helmets and bags (believed climbing equipment). This reiterated earlier radio traffic stating males (IC1) had been seen in the Covent Gdn area with helmets and blv'd climbing equipment. (Earlier protests leading up to the wedding had resulted in protest at height. Being notoriously difficult to police.) The briefing also stated that it was believed other potential climbing eqpt may be secreted in the locality. At 1138 I approached [the fourteenth claimant]. I said to him 'Can I have a word please mate'. The male replied 'am I getting arrested?' I said 'you will be soon to prevent a breach of the peace (BOP)'. With that the male dropped to the floor in a controlled manner. This mirrored the actions of others within the group …."

70. The fifteenth claimant was arrested by PC Daniels, who recorded in his notebook:

> "At about 1125 we attended to Charing Cross Rail Station due to British Transport Police requesting urgent assistance. Information received was that there were a group of males and females at the location acting in a disorderly fashion. Upon arrival at the location I could see a group of nine individuals standing within a group …. A number of the individuals within the group admitted that they were anti-Royalist and told police they were going onto meet further people. Owing to the fact that they were shouting 'this is what democracy looks like' we contained the group to prevent them from leaving the location. It was a possibility that the group would try to join a larger group. I had an honest held belief that the group would cause a breach of the peace and that they may have discarded or concealed items used to demonstrate. In addition to this, the group had specifically attended to London on the day of the Royal Wedding and admitted they were collectively anti-Royalist/Monarchy. On direction and instruction of PS Bowman … we remained at the location. At 1138 hours we as a unit began to arrest individuals from the group for the offence of breach of the peace …. At 1138 hours I fully arrested and cautioned [the fifteenth claimant] for the offence of breach of the peace …."

71. We were shown two DVDs relating first to the search of the claimants by BTP officers and then to their containment by the PSU under Inspector Bethel. Save for showing that the atmosphere was generally good natured on the part of all concerned, they do not add materially to the factual picture.

The M claim

72. M is 16 years old and of good character. His evidence is that in the run-up to the Royal Wedding he heard about an alternative gathering that had been organised to take place the same day in Soho Square. He decided to go along to manifest his adverse views about the monarchy. He thought it would be a fun event and a very interesting experience. He decided to take a portable speaker so that he could play some music, and a megaphone so that he could chant some anti-royal slogans, depending on the mood. Between 9.00 and 10.00 a.m. on 29 April he was walking down Soho Street by himself on the way to the gathering. He had his bag on his back and a megaphone over his shoulder. A policeman crossed the road with another officer, stopped him and said he wanted to search him. M said he would agree but wanted to be anonymous. The officer said "fine". According to M, the officer said he had stopped M because of the megaphone but told him he wanted to see the contents of the bag. M emptied the bag onto the pavement and showed the police everything inside it, which included a digital camera and two felt tip marker pens. M told them he had used the pens to make a placard which he had left behind because it was too large to fit in the bag and too cumbersome to carry separately.

73. While he was explaining this, one of the officers turned away and called someone on his radio. What happened next was that one of the officers handcuffed him and told him he was being arrested on suspicion of going equipped to cause criminal damage. The officers added that he had been arrested because of the felt pens. He offered to give the pens to them so that he could go, but he was told that this was not possible. He had not been asked to identify himself since the time of the search. He was taken to a van, then moved to another van and taken to Harrow Road police station. His handcuffs were taken off only on arrival at the police station.

74. At the police station the police took his photograph and fingerprints and a sample of his DNA. He was taken to a cell until interviewed, in the presence of a solicitor, at around 5.00 p.m. He answered "no comment" to all questions. He was taken back to his cell but was released very soon afterwards and told that no further action was to be taken against him. He had found the whole experience of arrest and detention upsetting and deeply humiliating.

75. The two officers who were involved in M's stop and search and arrest were Police Constable Whitwell and Police Constable Robbins. An application to cross-examine them had been granted at a pre-trial hearing, as a result of which they gave brief oral evidence before us.

76. PC Whitwell says in his witness statement that he was standing with PC Robbins at the junction of Oxford Street and Soho Street when he saw M "walking with purpose" across Oxford Street and into Soho Street, carrying a black shoulder bag and a large megaphone. He continues:

> "5. … Due to the recent student protests in London in the previous months and the disorder and criminality which had taken place in and around those protests and the fact that the royal wedding was due to take place that day, I stopped this male and spoke to him. I asked him 'Why have you got a megaphone?' He said 'I want to express my opinion and Chief

> Justice Holland has ruled that I can do this' [this has been identified as a reference to an observation of Holland J in *Huntingdon Life Sciences Group v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 (QB)]. The Claimant became very serious and his voice was trembling. His behaviour also seemed very defensive as if he had something to hide and this raised my suspicions. He instantly justified his actions which seemed defensive. He seemed older to me than 16 years old. It was his megaphone that first drew my eye to him but it was what was in the bag that was of concern to me. There was also a TV cameraman on the opposite side of the road filming us.
>
> 6. I therefore searched the Claimant under Section 1 Police and Criminal Evidence Act 1984 ('PACE') for items to be used in criminal damage owing to his manner, his nervousness with police and what we knew from recent events, especially the student protests which had spilled into the West End as well as the fact that he was carrying a megaphone. The megaphone indicated that he intended to protest but I was concerned that he might be planning more than this and his shoulder bag or rucksack which appeared to be full was of concern to me. I wanted to know what was in it. I feared that it could contain rocks or spray paint or other items which have been used for causing criminal damage at, or around, recent protests.
>
> 7. I was aware that there was a Section 60 Criminal Justice and Public Order Act 1994 authority for searches in place but because I was looking for items connected with criminal damage I thought it was more appropriate to use the power of search under Section 1 PACE."

77. He goes on to describe the search. He states that the pens were not ordinary writing pens and there was only one type of use for them: posters or placards or artwork or possibly graffiti. He explains that on the camera was an image of what appeared to be a war memorial with graffiti (the words "viva la revolucion") scrawled on it: we should note, however, that subsequent inspection of the printed image shows it to be an image of a set of bye-laws of the kind commonly found on display in public parks, but defaced with graffiti. PC Whitwell states that he tried to obtain M's details from him to complete the stop record but that M refused. At this point PC Robbins arrested him and he was conveyed to the police station. According to PC Whitwell, there was no radio instruction to make the arrest.

78. PC Whitwell was cross-examined, by reference to the contents of his notebook and the written stop record, on the basis that a concern about the bag and its contents played no part in the decision to stop and search. He adhered to the way the matter was expressed in his witness statement. We accept his evidence on the point.

79. The witness statement of PC Robbins, the arresting officer, gives a similar account of the stop and search to that given by PC Whitwell. He states that the officers' attention was drawn to M as he was carrying a megaphone and walking with purpose. M was also carrying a rucksack which was bulging on his back. He continues:

> "4. … It was the megaphone which first caught my attention but it was the rucksack that was of concern to me and which we needed to search. I suspected that we could find items to cause criminal damage in it such as paint sprays or rocks to be thrown."

As to the search itself, he refers to the camera and pens among other items. He describes the pens as large marker pens, 8 inches long, one black and the other red, which could only be for signs or artwork or, as he thought, graffiti. He also recalls that in the bag were a black woolly hat and a black scarf. The statement continues:

> "8. I explained to the youth that because of what we had found, he was being placed under arrest on suspicion of going equipped to commit criminal damage (i.e. the offence under Section 3 Criminal Damage Act 1971). The time was 0950 hours. My reasons for suspecting this offence and making this arrest were the size of the pens, the image of graffiti on his camera and his demeanour which appeared unduly nervous and defensive which suggested to me he had something to hide. I thought that unless he was arrested he would use the marker pens for graffiti and this was supported by the fact that he even had a photograph of such graffiti on his camera. Although there is power to seize relevant items under Section 1(6) PACE, this is as evidence of an offence. It would be rare to seize relevant evidence and not make an arrest for the offence to which the items related. Therefore it was not appropriate to confiscate the pens. This was especially so in this case. Without the arrest, the offence would not be prevented because the Claimant 'M' could simply purchase new marker pens and carry out what I thought was his intention to scrawl graffiti slogans. The shops were open for him to buy new pens.
>
> 9. The arrest of the youth … met the necessity criteria under Section 24(5) PACE. He had failed to provide his name and address. This is itself one of the necessity grounds for an arrest under Section 24(5)(a) PACE. It is impossible to serve a summons on someone whose identity you don't know. The arrest was also necessary to prevent any damage to property (which was the very nature of the offence itself for which he had been arrested i.e. S.24(5)(c)(iii) PACE) and to allow a prompt and effective investigation of this offence (s.24(5)(e) PACE) by questioning him in a tape recorded interview. Therefore his arrest met 3 of the necessity grounds in Section 24(5) PACE."

80. PC Robbins was cross-examined along similar lines to PC Whitwell. It was put to him, by reference to his notebook, that the reason for the stop and search was that M was carrying a megaphone. He answered "yes" to this, but when referred in re-examination to para 4 of his witness statement he confirmed that the rucksack was of concern at the time. Here, too, we accept the officer's evidence on the point.

81. There is a DVD showing M after his arrest but its timing makes it of no real evidential value as regards his demeanour at the time of the stop and search or the time of the arrest, as to which there is no basis for rejecting the police evidence.

82. It is accepted that the claimant's photograph, fingerprints and DNA were taken at the police station. The detention log records that Police Sergeant Young gave the following explanation to him:

> "I have informed the detainee that, as they had been arrested for a recordable offence, their fingerprints and a DNA sample will be taken to:
>
> (I) Check to make sure whether or not their fingerprints and DNA profile are already held on any relevant database; and
>
> (II) If their fingerprints and/or DNA profile are not on any relevant database, to ensure that they are added; and
>
> (III) Prove their identity as the person arrested and detained at the police station on a particular occasion;
>
> And that these will be retained and subject to a speculative search to confirm or disprove the person's suspected involvement in a recordable offence by comparison with crime fingerprints and/or DNA.
>
> Also that their photograph will be taken and retained for use in the prevention and detection of crime and offences."

83. At his "no comment" interview, the claimant produced a prepared statement in which he said simply that he "completely, wholly and utterly" denied having any intention to commit any criminal activity whatsoever.

84. The detention log records that the evidence review officer, Police Sergeant Elder, subsequently gave authority to proceed by way of no further action, for these reasons:

> "Insufficient evidence to prove criminal intent to cause damage. DP arrested as two marker pens were recovered from a bag he was carrying. [N]o fresh graffiti in the area. DP interviewed he gave a prepared statement stating he did not plan to use them for criminal damage. The pens were not easily accessible and there is no evidence to suggest they would be used for criminal damage. DP is no trace PNC [Police National Computer] …."

The Pearce claim

85. The Pearce claimants lived at the material time at squats in Camberwell Road, London: Hannah Pearce at no. 298 (in fact, a unit comprising nos. 294-298), Shirin Golsirat at no. 274. Their complaints relate to searches of those premises on 28 April 2011, in circumstances described below.

The intelligence operation

86. As explained above, part of the background to the policing of the Royal Wedding was the violent aftermath of the earlier student demonstrations and TUC Day of Action. The police investigation into the criminal events arising out of the former was named Operation Malone, and the police investigation into the criminal events arising out of the latter was named Operation Brontide. The two investigations were linked.

87. Ongoing review of CCTV and intelligence in Operation Brontide had revealed approximately 200 outstanding criminal suspects. There was concern, but no direct evidence, within Operation Brontide that anarchist groups intent on creating disorder of the type recently experienced would attempt to disrupt central London on the day of the Royal Wedding with acts of criminality and serious disorder. As a result there was a perceived need to accelerate the identification and arrest of the outstanding Operation Brontide (and Operation Malone) suspects. Operation Brontide was asked to work with the Royal Wedding Intelligence Co-ordinating Committee, chaired by Commander Johnson (Bronze 14), to consider what preventive action and enquiries could be taken prior to the Royal Wedding.

88. During the previous disorders, squats had been used as convergence centres for organised disorder. One of the people arrested at the TUC Day of Action was associated with one of four known squats in Camberwell Road (at nos. 274, 300, 302 and 304), and through that link there was intelligence suggesting that outstanding Operation Brontide suspects might be living at the Camberwell squats. There was, moreover, a concern that individuals in the squats might be gathering to disrupt the Royal Wedding. Accordingly, authorisation was obtained on 14 April for a covert surveillance operation on the four known squats, which was carried out by the TSG under the command of Chief Inspector (now Superintendent) Woolford. The operation, conducted over a number of days between 22 and 27 April, revealed no direct evidence of Operation Brontide suspects. It did, however, reveal a pattern of behaviour indicating that the squats were being used as an exchange or dealing point for stolen goods, in particular computer equipment but also bicycles and bike parts.

89. By 27 April the decision had been taken to seek search warrants in respect of the four known squats. The essential rationale behind the decision can be seen from this passage in the witness statement of Commander Broadhurst (Gold):

> "26. By now, the intelligence cell had identified a number of premises being used as squats, and I was genuinely concerned that one or more of these squats could be housing individuals with intent to commit criminal acts against the Royal Wedding. However, I was not minded to take action against them without a sound legal basis and Bronze Crime, Detective Chief Superintendent Matthew Horne, was able to satisfy me that substantive criminal offences had been identified at each of the squats and that warrants could legitimately by applied for to enter those premises. The intention was not to stop any individuals or groups from engaging in protest, but to prevent any criminal activity or unlawful disruption of the Royal Wedding."

In similar vein, when commenting on an entry in his log for the previous day, 26 April, Commander Broadhurst stresses (at para 44 of his statement) that "I made it quite clear that I did not want speculative action, but would only endorse police activity where there was a good chance of a Brontide subject being present or where we had a clear legal basis for entering such as at Camberwell …".

The obtaining and execution of the search warrants

90. The application for the four warrants was made on 27 April at Bromley Magistrates' Court because of a concern that the proximity of Camberwell Green Magistrates' Court to the squats could potentially compromise the operation. The informations were sworn by Police Constable Anderson in materially identical form, referring to the surveillance operation and the matters giving rise to suspicion as to the handling of stolen goods on the premises. In his witness statement, PC Anderson says that at the hearing, in response to a request by the magistrate to be told more about the background, he spent about four or five minutes giving a verbal account of how the request for search warrants had arisen out of the surveillance operation.

91. The magistrate then issued the warrants. No copy of the warrant relating to no. 274 is available but there is no reason to believe that it differed in substance from those relating to nos. 300 and 302, copies of which are in our bundles and which authorised the police to enter the premises to search for bicycles, bicycle equipment, electrical goods and computer equipment pursuant to s.26 of the Theft Act 1968.

92. At the time when the warrants were applied for, no decision had been taken as to whether or when they would be executed. Commenting on a log entry at 8.30 a.m. on 27 April, Commander Broadhurst says in his witness statement:

> "46. … I had a genuine fear that there were people in the premises we had identified who would attempt to disrupt the wedding if they could. However, I know that it is extremely difficult to prove a person's intent and that we would not necessarily find material evidence in any of the premises that would give us sufficient to charge them immediately. The likelihood was that most individuals would have to be bailed which, if we entered the premises too early, would mean many of them being released to be free to cause problems on the day of the wedding if that was indeed their intention. It was important, therefore, to time any entries or arrests on these premises so that, as far as possible, individuals could be lawfully detained during the time of the wedding ceremony."

93. Commenting on a log entry at 3.00 p.m. on the same day which recorded his agreement that the Camberwell warrants, among others, could be executed, he states:

> "48. … Bronze Crime had fully briefed me on all the squats and informed me that Magistrates had issued warrants for all those premises. From his observations and the research that had been done, there was no evidence linking them to disruption of the wedding, but the only way to find out would be to enter the premises and speak to the individuals inside.

> Given that criminal offences had been identified at all premises and that we had a lawful basis supported by warrants to enter, I gave authority for the warrants to be executed."

94. Commander Johnson then decided that the warrants should be executed on the morning of 28 April. In relation to a log entry recording this decision, he says in his witness statement:

> "26. … I made the decision to instigate the action against the various premises. This was based on the facts presented to me by the investigating officers, i.e. that they suspected criminal activity at the various premises, and the fact that the premises were being used by people who were likely to be planning or involved in criminal activity on the day of the royal wedding. I made the decision to take the action before the royal wedding, (to bring forward police action), which I believed would have the added benefit of making the royal wedding day less likely to be subject to criminal activity. This I believed was a proportionate step in preventing crime whilst undertaking our other primary responsibility of investigating crime and arresting offenders if crime was committed."

95. Superintendent Woolford makes a similar point at para 23 of his witness statement: "[i]t obviously makes sense for police to choose the time to execute the search warrant in order to derive maximum investigative and crime prevention advantage from that timing".

96. When TSG officers entered the four squats in execution of the warrants, at 7.05 a.m. on 28 April, many of the occupants were seen to run to a fifth set of premises, at nos. 294-298 Camberwell Road, about which the police had previously been unaware. This led to an emergency application for a search warrant in respect of those premises too. The additional information was sworn by Police Constable Sharp. It referred to the observations, to the goods seen going in and out, and to the people seen to run into nos. 294-298 when the warrants were executed at the other premises; and it expressed the belief that the occupants and stolen items were now at nos. 294-298. The warrant issued pursuant to that information authorised a search for stolen bicycles, bike parts and computers.

97. During the search of the squats, a large quantity of computer equipment believed to be stolen was seized. Ms Pearce says in a witness statement that there were numerous bicycles and bike parts on the premises, and PC Anderson refers in his statement to having seen a mountain bike frame that to his mind was very likely to have been stolen, but there is no record of any of those items being seized. Several toothbrushes were seized, presumably for purposes of DNA analysis.

98. Over 100 flyers for the "Zombie Wedding" at Soho Square and referring *inter alia* to "maggot confetti" (see para [53] above) were observed, and four samples were seized.

99. Police observed evidence of electricity being abstracted illegally, and the persons present, including the two claimants, were arrested for abstracting electricity.

100. Commander Broadhurst was given updates in the course of the day. Commenting on the first update, at 8.30 a.m., he says in his witness statement:

> "49. … At all premises, the lengthy task of thoroughly searching, investigating and interviewing those present was only now beginning. My initial reaction was that no conspiracy had been uncovered inasmuch as at none of the premises had we found plans, weapons or other paraphernalia that was obviously intended to be used on the day of the wedding to cause disruption or damage. This was an obvious relief to me, but did not mean that some of those present did not have that intent. I now awaited a thorough investigation from Bronze Crime and his team as to what offences had been committed and what the intentions of those individuals present were."

101. A log entry at noon on the same day, on which Commander Broadhurst comments in the following paragraph of his witness statement, included this:

> "Flyers for the anti monarchy Soho Square event were found at Camberwell but no conspiracy has been uncovered. I have issued a press release that says the raids were intelligence led, crime operations that were brought forward because of fears about the wedding".

We were referred to an article on the Daily Telegraph website, timed at 5.20 p.m. on 28 April, for the way the matter was presented to the media. The article states: "The Metropolitan Police admitted they had brought the raids forward because they feared those arrested may plan to disrupt the wedding".

102. Returning to the position of the claimants, following their arrest they were taken to Harrow Road police station (the designated station for Operation Brontide), arriving at about 11.45 a.m. Their detention was authorised. They were interviewed at 5.55 p.m. by officers from Operation Malone and Operation Brontide. At 8.25 p.m. and 8.45 p.m. respectively they were further arrested on suspicion of conspiracy to cause a public nuisance, the basis of the suspicion being the flyers found at the premises. They were then bailed on conditions that prevented them from entering Westminster (and therefore precluded their presence in the area of the Royal Wedding). The electricity provider later decided to make no formal complaint concerning the alleged abstraction of electricity at the premises, and the CPS decided that there was insufficient evidence of a conspiracy to cause a public nuisance. The claimants' bail was therefore cancelled on 2 June.

The Middleton claim

103. The claimants, Theodora Middleton and Dafydd Lewis, lived at the material time on a site known as Sipson Camp, near Heathrow. Ms Middleton states that the camp had been set up in March 2010 on what was then a derelict site, with the aim of returning the area into a market garden for the local community and as a centre to highlight the environmental damage that would be caused as a result of the proposed extensions to the airport. She had had previous visits to the site but moved onto it permanently in March 2011. Mr Lewis had been living there since September 2010. They both

complain about a search of the site carried out by the police on 28 April 2011, the day before the Royal Wedding.

104. The search was carried out pursuant to a warrant issued by Bromley Magistrates' Court. The information for the warrant was sworn by Police Constable Sharp. It was laid under s.6 of the Criminal Damage Act 1971, seeking authorisation for a search for articles intended to be used to commit criminal damage, on the following grounds:

> "On Saturday 26th March 2011, the TUC staged a demonstration through Central London on a pre-planned route in agreement with the Metropolitan Police. Hundreds of thousands of people attended the protest and the vast majority participated peacefully. However, as with the recent student demonstrations in November 2010 and December 2010, there were others who attended the demonstration and caused disorder. The disorder that took place was initially against private business venues and banks. Later in the day, police and state monuments were targeted. Offences that arose were typically criminal damage, aggravated trespass, offences against the public order act and assaults on police. On the day itself, 201 people were arrested. In the following days, the Metropolitan Police formed a post-event investigation called Operation BRONTIDE.
>
> Intelligence provides that Sipson Camp, located at Sipson Village, West Drayton, Middlesex is occupied by activists affiliated to environmental and extreme left wing groups.
>
> Intelligence further provides that paint bombs may have been moved to the Sipson Camp for storage which may be utilized for criminal damage.
>
> Intelligence also provides that individuals who may wish to disrupt the Royal wedding are also resident at the camp."

105. The application was heard on 27 April by two lay justices in closed session. Although the magistrates' court has, in the usual way, played no active part in the proceedings, it filed an acknowledgment of service which sets out in some detail what happened at the hearing. After referring to the passages in the written information dealing with intelligence about paint bombs and about the presence of individuals who might wish to disrupt the Royal Wedding, the acknowledgment of service continues:

> "11. … Accordingly, the justices found that Police Constable Sharp had identified in the written information specific items which may be used and a specific event at which they may be used. The justices decided that it was implicit within the written information that the two matters, namely the items to be used and the event at which they were to be used at, were linked.

> 12. In her oral information, PC Sharp gave further particulars concerning how the intelligence had been gathered, the reliability of such intelligence and the intended use of the paint bombs. A handwritten note was taken by the legal advisor of the officer's evidence ….
>
> 13. It is not accepted that the information, taken as a whole (including the oral and written information), only suggested that paint bombs 'may' have been moved to the camp and 'may' be utilised for criminal damage. The justices, taking both the oral evidence and the written information together decided that they had reasonable cause, and not mere suspicion, to believe that at the address which was the subject of the application, namely Sipson's Camp, there were articles intended to be used to commit criminal damage, specifically, paint bombs. The justices would not have granted the search warrant on the basis of the written information alone. It was the written information combined with the additional oral information which meant that the court was satisfied that the test set out section 6 Criminal Damage Act 1971 was satisfied."

106. The legal adviser's note to which the acknowledgment of service refers is available only in redacted form but records that the following information was given to the justices by PC Sharp:

> "Paint bombs being made and stored, will be used in the run up to the Royal Wedding. Officers obtained this information …. Will be used to disrupt and cause criminal damage to buildings …. Seek single entry to portacabins or premises, therefore warrant needed."

107. The warrant itself records that it was issued under s.6 of the Criminal Damage Act 1971, identifies the Sipson Camp, authorises a search for "articles intended to be used to commit the offence of criminal damage", and continues:

> "Authority is hereby given for any constable, accompanied by such person or persons as are necessary for the purposes of the search, on one occasion only within one month from the date of this warrant to enter, if need be by force, the premises herein and to search them and any persons found therein and if there is reasonable ground for suspecting that an offence under the Criminal Damage Act 1971 has been committed in relation to any articles found on the premises or in the possession of such persons, to seize and detain those articles."

108. The search was carried out on the morning of 28 April. The two claimants give detailed accounts of it, from their individual perspectives, in their witness statements. We will not repeat the full detail but will refer to some salient points.

109. Ms Middleton states that she was asleep in her tent, to the back of the site, when she was woken up at about 7.00 a.m. by another resident who told her the police were

trying to get onto the site. She got up, dressed and went towards the front of the site, expecting to find the police at the main gates, but they were already on the site: there were about 40 officers, searching through the greenhouses and other areas. As she walked towards the greenhouses she encountered a female officer and asked where her warrant was. Ms Middleton refused to give her name and asked again whether the police had a warrant. She was told she would be allowed to see it "in a bit", was not told what the warrant was for, but was taken to the front and searched. While she was being searched (during which time she also saw Mr Lewis being searched) she asked again about the warrant and whether there was one. The female officer pointed to a male officer and told her that if she had any questions she should ask him. When asked, the male officer said they were looking for articles to cause criminal damage. Another officer said they were looking for paint or articles to deliver paint. An officer came over with her identification card and asked if it was hers. She replied "no comment". The officer used the radio to call in her name; she did not know what the result of that check was. A senior officer came over and asked Mr Lewis whether he was the one in charge. Mr Lewis said "no" but the officer handed him a copy of the warrant. Mr Lewis looked at the warrant and then handed it to Ms Middleton to look at. By this time the police had been on site for about 30 minutes. The officers started to leave the site after about an hour from the time when they first arrived.

110. Mr Lewis states that he was staying in a cabin near the front gate. At about 7.00 a.m. he heard one of the residents shouting that they were being raided by the police. He quickly put on some clothes and went outside. There were a large number of officers pouring through the front gate, and others coming onto the site from the other side: about 30 officers in total. He approached a male officer and asked whether there was a warrant. The officer pointed to another male officer, who was walking towards one of the greenhouses, and said that he had it. Mr Lewis followed that officer but was grabbed by two officers (to whom he referred as officer 1 and officer 2) as he entered the greenhouse. He said he just wanted to see the warrant and was told he could see it "in a bit". His statement continues:

> "The officer then asked for my name and other details and I told him that I did not want to give my name. On hearing this Officer 1 started to search my person. He went through my pockets and patted down my clothing. He told me to raise my arms which I did. I was made to stay like this, with my arms raised to my sides throughout the search. At one point I put my arms down as they were getting tired and the officer told me to raise them again. He then took my wallet and started searching through it. He took one of my bank cards out and looked at it. He then said to me 'You know it is illegal to have someone else's bank card on you'. I did not say anything in response to this. I did not have anyone else's bank card in my wallet and I thought the officer was just seeing if he could get me to confirm my name.
>
> The search lasted approximately ten minutes and was pretty thorough ….."

111. He states that he again asked Officer 1 to see the warrant. When the officer said he did not have a copy, Mr Lewis asked to see his superior officer. Officer 1 asked

Officer 2 to get the sergeant. About 5 minutes later a senior officer came over and told him the warrant would be along in a while. Mr Lewis asked what they were looking for and was told it was items that could be used for criminal damage, specifically paint and ways of delivering paint. Mr Lewis pointed him to the workshop where all the site paint was kept. The police searched the workshop as well as the greenhouses and areas around. After about 30 minutes the senior officer came back and gave him a copy of the warrant, which Mr Lewis read before passing it over to another resident who was standing nearby. They were not shown a copy of the warrant until about 40 minutes after the police entered the site. A few minutes later the police started to leave the site.

112. Turning to the police evidence, we note first that some of the general passages in Commander Broadhurst's statement that we have quoted at paras [89]-[93] above in the context of the Pearce claim are also applicable to this claim. At para 48 of his statement Commander Broadhurst states that there was no evidence linking the squats to disruption of the Royal Wedding. In a supplementary statement, however, he says that this passage was poorly worded and ought to have mentioned that the Sipson Camp was an exception. In para 44 of his main statement he had already stated that those in the Sipson Camp had come to attention: "there was intelligence that they were filling light bulbs with paint to be used on the day of the wedding". The existence of such intelligence is confirmed in a statement of Detective Chief Inspector Flood. The details of the intelligence are subject to a public interest immunity claim.

113. There is no witness statement from PC Sharp, the officer who applied for the warrant in respect of the Sipson Camp.

114. Detective Sergeant Yusuf says in a witness statement that he attended the site to supervise and assist in relation to the completion of the premises search record book. He states:

> "I had in my possession an intelligence folder that contained the imagery of outstanding suspects. I took the folder in case we came across wanted individuals. I did not have any intelligence that indicated that any wanted suspects were at the site. I took the folder to all three sites where the warrants were executed with the intention that if we came across individuals that were wanted that they would have been detained."

115. Detective Constable Wedger states that his role was to complete the premises search register and assist in that regard. He says that he did not have any intelligence that indicated that any wanted suspects were at the site.

116. Police Sergeant Croucher deals in his witness statement with the production of the search warrant at the site. He states that he attended Sipson Camp as part of the police team tasked with searching the grounds for articles for use in criminal damage. He continues:

> "I gave the 'occupier' part of the warrant to a black male with unkempt hair who stated he resided. In respect of the exact timing following our arrival onto the site, I would estimate it was no more than 5-7 minutes. The reason it took that long

> was that I was rebuffed by several other persons on the site who stated to my request as to whether they were the occupier 'no, we are just visiting'. The male I have described in this statement … was the first person to actually say that they resided on the camp."

117. The officer who carried out the search of Mr Lewis was Police Constable Browne, who describes the search as follows in his witness statement:

> "4. My recollection is that as I entered the camp other officers ran past me. My recollection is that I spoke to a male. When the male was asked his name, he refused to provide it to me.
>
> 5. It was necessary for him to be searched and I have a recollection that he may have shown me his wallet. As far as my standard procedure, I looked through the wallet to make sure that there were no items that he could use to harm himself or others.
>
> 6. Whilst looking through the wallet, I recall looking at a bank card in order to obtain a name for the male. A very brief conversation took place in regards to the name detailed in the card and my recollection is that it was along the lines of me saying that it is an offence to possess this card if he was not the person named on it.
>
> 7. My understanding is that I had power under the terms of the warrant to execute such a search from a person.
>
> 8. My recollection is that the search was unremarkable. It lasted for two to three minutes and then another officer came over to speak to the male I had searched …."

118. There is some discussion in the police statements about who had responsibility for returning the executed warrant to the magistrates' court. Whoever had that responsibility, the fact is that the warrant was not returned.

119. We should note finally that nothing was seized and no-one was arrested during the search of the Sipson Camp.

THE LEGAL FRAMEWORK

Freedom of expression and assembly

120. The claimants put their rights to freedom of expression and freedom of assembly, under arts. 10 and 11 respectively, at the forefront of their case. They stress the importance of free speech; submit that there is a duty to tolerate a certain degree of disruption arising from peaceful protest; point to the existence of positive obligations to protect and facilitate freedom of expression and assembly, as well as negative obligations not to place disproportionate or unnecessary restrictions on them; and emphasise that prior restraint on the exercise of the rights must be scrutinised with

particular care. It is acknowledged that the rights under arts. 10 and 11 are qualified rights but is submitted that permitted constraints on the "dissenting voice" are narrowly prescribed.

121. In relation to most of the Hicks claimants, in particular, the case concerns a prior restraint in the form of arrests and detention to prevent an imminent breach of the peace. Since one of the leading authorities on breach of the peace, namely *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [2007] 2 AC 105, is recent and takes full account of the case-law on arts. 10 and 11, it is unnecessary to go into that case-law in great detail. But it may be helpful for us to make some observations on certain of the cases to which our attention was drawn.

122. *Plattform 'Ärzte für das Leben' v Austria* (1988) 13 EHRR 204 arose out of a series of anti-abortion demonstrations held by the applicant association and the allegedly insufficient police protection against attempts at disruption by pro-abortionist groups. The applicant's complaint was that the state had breached its positive obligations by failing to take practical steps to ensure that the demonstrations passed off without trouble. The court's judgment included the following:

> "32. A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.
>
> Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.
>
> …
>
> 34. While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area the obligation entered into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved."

123. The claimants appeared to rely on the *Plattform* judgment as supporting the proposition that if anti-monarchist protests were thought likely to give rise to a violent reaction on the part of those celebrating the Royal Wedding, the duty of the police in

those circumstances would be to protect the anti-monarchist protesters from such violence if it occurred, rather than to prevent them from engaging in the protest liable to prompt the violence. We do not accept that the case has that effect. The likelihood that protest may lead to violence against the protesters themselves can be an entirely legitimate ground for police intervention against the protesters under the domestic law of breach of the peace which is discussed below and which, as is clearly established, is capable of operating compatibly with the Convention.

124. For example, *Steel v United Kingdom* (1999) 28 EHRR 603 involved a number of separate applications by protesters who alleged that measures taken against them violated their art. 10 rights. The factual circumstances relating to the first and second applicants, and the reasons why the court considered that the interference with their art. 10 rights was justified, appear from the following paragraphs of the judgment:

> "102. The Court recalls that, as part of a protest against a grouse shoot, the first applicant walked in front of an armed member of the shoot, thus physically preventing him from firing. She was arrested and detained for approximately 44 hours prior to being brought before a magistrates' court and then released ….
>
> 103. The Court has no doubt that the measures taken against Ms Steel, particularly the long periods of detention, amounted to serious interferences with the exercise of her right to freedom of expression. However, it must also have regard to the dangers inherent in the applicant's particular form of protest activity and the risk of disorder arising from the persistent obstruction by the demonstrators of the members of the grouse shoot as they attempted to carry out their lawful pastime.
>
> 104. In these circumstances, the Court does not find that the actions of the police in arresting Ms Steel and removing her from the scene of the demonstration were disproportionate.
>
> 105. She was then held for approximately 44 hours. From the custody record it would appear that the police considered this necessary to prevent any further breach of the peace and to ensure that she attended before the magistrates.
>
> 106. Forty-four hours is undoubtedly a long period of detention in such a case. However, the Court recalls that Ms Steel's behaviour prior to her arrest had created a danger of serious physical injury to herself and others and had formed part of a protest against grouse shooting which risked culminating in disorder and violence. Particularly given the risk of an early resumption by her, if released, of her protest activities against field sports, and the possible consequences of this eventuality, both of which the police were best placed to assess, the Court does not consider that this detention was disproportionate.

> …
>
> 108. The second applicant had taken part in a protest against the building of a motorway extension, placing herself in front of machinery in order to impede the engineering works. She was arrested and detained for approximately 17 hours prior to being brought before a magistrates' court, and was subsequently imprisoned for seven days after refusing to agree to be bound over.
>
> 109. The Court refers to its reasoning and findings in relation to the first applicant. Although the risk of disorder created by Ms Lush's conduct was, arguably, less serious than that caused by the first applicant, the magistrates nonetheless found that she had acted in a way likely to cause a breach of the peace and the Court sees no reason to doubt this conclusion. Taking into account the interest in maintaining public order and protecting the rights of others, and also the need to maintain the authority of the judiciary, the measures taken against the second applicant were not disproportionate."

125. It was therefore the risk of disorder and violence stemming from the applicants' protests, including the risk of physical injury to the first applicant herself, which justified their arrest and detention for breach of the peace and which also lay at the heart of the reasons why the action taken was not in breach of art. 10. Whilst in *Steel* there were findings of an actual breach of the peace, it is clear that action taken to prevent an imminent breach of the peace is capable in principle of being justified in the same way.

126. Another case involving competing rights was *Öllinger v Austria* (2008) 46 EHRR 38. It related to the prohibition of a small meeting at the municipal cemetery to commemorate the Salzburg Jews killed by the SS during the Second World War, a meeting timed to coincide with the gathering, at the same location, of a group whose members were mainly former members of the SS. The Strasbourg court found that the prohibition had violated art. 11. Passages in the judgment of particular relevance are these:

> "35. As regards the right to freedom of peaceful assembly as guaranteed by Art. 11, the Court reiterates that it comprises negative and positive obligations on the part of the Contracting State.
>
> 36. On the one hand, the State is compelled to abstain from interfering with that right, which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. If every probability of tension and heated exchange between opposing groups during a demonstration was to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views.

> 37. On the other hand, states may be required under Art. 11 to take positive measures in order to protect a lawful demonstration against counter-demonstrations.
>
> …
>
> 46. Therefore, it remains to be examined whether the prohibition was justified to protect the cemetery-goers' right to manifest their religion [under art. 9] ….
>
> 47. However, the Court notes a number of factors which indicate that the prohibition at issue was disproportionate to the aim pursued. First and foremost, the assembly was in no way directed against the cemetery-goers' beliefs or the manifestation of them. Moreover, the applicant expected only a small number of participants. They envisaged peaceful and silent means of expressing their opinion, namely the carrying of commemorative messages, and had explicitly ruled out the use of chanting or banners. Thus, the intended assembly in itself could not have hurt the feelings of cemetery-goers. Moreover, while the authorities feared that, as in previous years, heated debates might arise, it was not alleged that any incidents of violence had occurred on previous occasions."

127. Thus, a line was drawn between, on the one hand, tension and heated exchanges and, on the other hand, actual violence; and the absence of any reason to fear actual violence was an important part of the court's reasoning in finding a violation of art. 11. Similarly, in *Aldemir v Turkey* (judgment of 18 December 2007) the court stated at para [46] that in its view "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance". Again, however, it is clear that account must be taken not only of violence or the risk of violence *by the demonstrators* but also of the risk of their actions provoking violence *by others*, including violence against the demonstrators themselves. As Sedley LJ put it in *Redmond-Bate v Director of Public Prosecutions* [2000] HRLR 249 at para (20): "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative *provided it does not tend to provoke violence*" (emphasis added).

Breach of the peace

128. The law relating to breach of the peace was the subject of detailed consideration by the House of Lords in *Laporte* (cited above). Counsel for the claimants and for the defendant took us through the case at some length. We set out a number of points of particular importance for the cases before us.

129. First, Lord Bingham referred at para [27] to the conclusion of the Court of Appeal in *R v Howell* [1982] QB 416 that the essence of the concept of a breach of the peace was to be found in violence or threatened violence. He quoted this passage from page 427 of that judgment:

> "We are emboldened to say that there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance. It is for this breach of the peace when done in his presence or the reasonable apprehension of it taking place that a constable, or anyone else, may arrest an offender without a warrant."

130. He said at para [28] that in *Steel v United Kingdom* (cited above) the European Commission of Human Rights considered that the concept had been defined by the passage in *R v Howell*, and the Strasbourg court, also citing that passage, considered that the concept had been clarified by the English courts over the past two decades and now had a meaning which was sufficiently established. He added: "The accuracy of this definition has been generally accepted, and was not in issue before the House".

131. Secondly, various formulations have been used to describe the test for intervention to prevent a future breach of the peace. Lord Rodger pulled them together as follows:

> "62. For the most part, the common law is concerned to punish those who have committed an offence and to deter them and others from doing so in the future. It does not step in beforehand to prevent people from committing offences. The duty to prevent a breach of the peace is therefore exceptional. And, if not kept within proper bounds, it could be a recipe for officious and unjustified intervention in other people's affairs. The common law guards against this danger by insisting that the duty arises only when the police officer apprehends that a breach of the peace is 'imminent' … or is 'about to take place' or is 'about to be committed' … or will take place 'in the immediate future' …. His apprehension 'must relate to the near future' …. If he reasonably apprehends that a breach of the peace is likely to occur in the near future, the officer's duty is to take reasonable steps to prevent it."

132. A little later he said this in relation to the decision to be taken by the individual officer:

> "67. … If he merely thinks that, while a breach of the peace may happen, the chances are that it won't, then he will not regard it as imminent. He will only regard it as imminent if he thinks that it is *likely* to happen … [original emphasis].
>
> …
>
> 69. This does not mean that the officer must be able to say that the breach is going to happen in the next few seconds or next few minutes. That would be an impossible standard to meet, since a police officer will rarely be able to predict just when violence will break out …. [In relation to the first two

> applicants in *Steel v United Kingdom*:] In neither case could the police officers have predicted exactly when the violent reaction provoked by the protests would occur. But I have no doubt that the police officers were entitled to take preventive action on the view that it was likely that a breach of the peace would occur some time in the near future, if the protesters persisted …."

133. Similarly, Lord Carswell observed at para [102] that the test could properly be applied with a degree of flexibility which recognised the circumstances of the case, and in particular "where events are building up inexorably to a breach of the peace it may be possible to regard it as imminent at an earlier stage temporally than in the case of other more spontaneous breaches". And Lord Mance at para [141] disavowed the suggestion that imminence fell to be judged in absolute and purely temporal terms, according to some measure of minutes: "What is imminent has to be judged in the context under consideration, and the absence of any further opportunity to take preventive action may thus have relevance".

134. A further relevant point to be drawn from the speeches concerns the information on which the officers may draw when assessing imminence. As Lord Rodger expressed it:

> "67. … The police officers' view of the matter will depend on the information he has and on his assessment of that information …. But, today, officers on the ground can be supplied by radio with information about what lies round the corner or what people are doing a few miles down the road. Armed with such information, they may have good reason to anticipate that people in front of them are intending to take part in a breach of the peace, or are likely to become involved in one, a short time later or a short car ride away. Intervention to prevent that breach of the peace may therefore be justified. A fortiori, a senior officer at the centre of a police operation, receiving reports from his officers on the ground, plus intelligence and advice on how to interpret the data, may have good reason to appreciate that a breach of the peace is 'imminent' or 'about to happen', even though that would not be apparent to officers lacking these advantages …."

In saying that, Lord Rodger no doubt also had in mind *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, where the entitlement of officers to rely on information from other officers is made clear.

135. A further point to note from *Laporte* is the division of the cases in which breaches of the peace may occur into three broad categories or classes, albeit neither clear-cut nor comprehensive. They emerge most clearly in the speech of Lord Carswell:

> "95. In the first class, which one might regard as the most direct and into which the respondents claim the present case falls, the person who is arrested, detained or otherwise prevented from continuing with his proposed course of action is

> himself committing or about to commit a breach of the peace ….
>
> 96. The second category can pose difficult problems of judgment for police officers in balancing the need to prevent breaches of the peace and not to obstruct the actions of people acting lawfully. This class concerns people whose acts are lawful and peaceful in themselves but are likely to provoke others into committing a breach of the peace. It may be represented in modern law by *Albert v Lavin* [1982] AC 546 …. The actions of the appellant, Mr Albert, who insisted on jumping a bus queue, gave rise to a hostile reaction from other travellers. The magistrates found that the respondent police officer had reasonable grounds for believing a breach of the peace to be imminent unless he obstructed him from boarding the bus out of turn. This justified him in attempting to restrain the appellant.
>
> …
>
> 98. In the third class of case the actions are not necessarily provocative per se, but a counter-demonstration is arranged, of such a nature that the confluence of demonstrations is likely to lead to a breach of the peace. This situation not infrequently arises in the context of parades in Northern Ireland. The authorities may find themselves with an invidious choice to make in order to prevent a breach of the peace, whether their preventive efforts should be directed to those taking part in the original demonstration or to the counter-demonstrators ….
>
> 99. There are undoubtedly many variants of the facts of different cases which would make them difficult to fit into any of these categories, if such classification were required ….
>
> 100. It is fortunately not necessary to attempt to reconcile these and other examples to be found in the reports, though they serve to indicate the richness of the tapestry of life and the infinite variety of the modes in which people will attempt to exercise freedom of expression. What is common to all is the necessity of finding that a breach of the peace was either taking place or was about to happen or, to use the convenient term adopted throughout this appeal, was imminent ….”

136. Lord Brown said at para [121] that the Strasbourg court in *Steel v United Kingdom* had sanctioned the concept of breach of the peace in English law on the express basis that it was now confined to persons “who cause or appear to be likely to cause harm to others or who have acted in a manner ‘the natural consequence of which would be to provoke others to violence’. The court had cited from his own judgment in *Nicol and Selvanayagam v Director of Public Prosecutions* (1995) 160 JP 155, in which he had referred to the “natural consequence” test and had also said that “the court would surely not find a [breach of the peace] proved if any violence likely to have been

provoked on the part of others would be not merely unlawful but wholly unreasonable". This plainly applies to cases falling within the second category.

137. One of the matters of contention between counsel before us was whether the various situations in which the Hicks claimants were arrested to prevent a breach of the peace fell within the second category or the third category. The ultimate question, of course, is not one of categorisation but whether, on the facts of the individual cases and the principles set out in *Laporte*, the arresting officers reasonably apprehended an imminent breach of the peace. To the extent that it matters, however, and as will be apparent from our discussion of the individual grounds of claim, we take the view that the cases fall within the second category.

138. A final point we take from *Laporte*, and one that links back directly to the rights in play under art. 10 and 11, is that the exercise of the power to arrest for an imminent breach of the peace must be scrutinised with particular care. Lord Brown referred at para [114] to the principle that, even when the threshold requirement for preventive action is met, "the police must still take no more intrusive action than appears necessary to prevent it". He concluded the paragraph: "Civil rights must be jealously guarded and … prior restraint (pre-emptive action) needs the fullest justification".

139. We have concentrated above on *Laporte*. Subsequent cases on breach of the peace, in particular *Austin v Commissioner of Police of the Metropolis* [2007] EWCA Civ 989, [2008] QB 660, and *R (McClure and Moos) v Commissioner of Police of the Metropolis* [2012] EWCA Civ 12, summarise the principles in *Laporte* to the extent relevant to the particular facts of those cases, and apply the principles to those facts, but we do not think that they add anything important for present purposes.

Other matters

140. Other aspects of the law relating to stop and search and to arrest are most conveniently considered below when examining the grounds of the Hicks claim and the M claim; the law relating to the taking and retention of DNA, fingerprints and photographs, when examining grounds 4 and 5 of the M claim; and the law relating to search warrants, when examining the grounds of the Pearce claim and the Middleton claim.

141. As to the Convention rights relied on, we have already considered arts. 10 and 11 under the heading of freedom of expression and assembly. Art. 5, to the extent that it arises, is considered when examining ground 5 of the Hicks claim. Points arising under art. 8 are considered when examining ground 5 of the Hicks claim and grounds 4 and 5 of the M claim. Beyond those matters, the claimants' reliance on Convention rights gives rise to no issue of substance.

THE ALLEGATION OF AN UNLAWFUL POLICY OR PRACTICE

142. The allegation of an unlawful policy or practice was developed primarily by Ms Monaghan QC on behalf of the Hicks claimants, in submissions adopted by Mr Bailin QC on behalf of M (and also relied on to some extent by Mr Bailin on behalf of the Pearce claimants and by Mr Cragg on behalf of the Middleton claimants in relation to the searches of their premises). The case for the defendant was presented primarily by Mr Grodzinski QC, who appeared for the defendant in the Hicks, M and Pearce

claims, but relevant points were also made by Mr Fortt, who appeared for the defendant in the Middleton claim.

143. Although the grounds of claim raising the allegation directly have two elements to them, they run together. The contention is that the defendant operated an unlawful policy or practice of pre-emptively arresting those who were viewed by his officers as being likely to express anti-monarchist views, without proper regard for the lawful preconditions for such arrests, and that in consequence he operated an impermissibly low threshold of tolerance for public protest in central London on the day of the Royal Wedding. The approach adopted is submitted to have been contrary to the defendant's obligation to protect and promote freedom of expression and assembly under arts. 10 and 11, and contrary to his powers and duties to prevent breaches of the peace under the common law.

144. The claimants conceded that the defendant's formal policy documentation developed by the Gold, Silver and Bronze commanders discloses no illegality. That point can of course be turned round against the claimants. The policy documents, extracts from which are set out at paras [17]-[24] above, display a proper understanding of the distinction between lawful protest and unlawful disruption, of the need to facilitate the former whilst preventing and protecting against the latter, and of the need to ensure that action taken was proportionate. The documents thereby run counter to the claimants' case.

145. It was suggested that the distinction between lawful protest and unlawful disruption was not maintained in some of the briefing notes and lower level material, and that the wrong message was being sent out in practice to those on the ground. Thus, Silver's briefing note referred to officers "looking for potential demonstrators coming towards this event or dealing with any potential disorder". This suggested that action would be taken against potential demonstrators even in the absence of potential disorder, and it failed to recognise that some disorder has to be tolerated. The Concept of Operations Overview Document prepared by sub-Bronze 14.1 referred to autonomous groups "who have the intention of disrupting the event and/or committing criminal acts". This failed to recognise that disruption without criminality, in the exercise of rights under arts. 10 and 11, is not sufficient to justify arrest, and/or it equated disruption with criminality. In his notebook PC Portlock, who arrested the second Hicks claimant, described his role as being part of "designated footpatrols in Oxford Street W1 to detect & prevent Anti-Demonstrations against the Royal Wedding" (para [40] above). PC Hemmings, who arrested the fourth Hicks claimant, used similar language (para [42] above). PC Morris, who arrested the sixth Hicks claimant, was briefed to be on the look out for potential breaches of the peace "for which the police response would be pre-emptive, if necessary, and zero tolerance of potential disorder", and was told that "potentially, any public display of anti-wedding sentiment in the faces of [the] supportive crowd could lead to breaches of the peace" (para [51] above). This set the threshold too low and created presumptions that led to an unlawful practice on the ground: an approach that equates the expression of anti-wedding views with an intention to disrupt displays no consideration for the facilitation of lawful protest and automatically directs the focus of coercive preventative action against those expressing such views, rather than encouraging a neutral assessment of the cause of any disruption.

146. We do not accept that the passages from Silver's briefing note and sub-Bronze 14.1's Concept of Operations Overview Document are to be read in the way suggested. We are satisfied that, looked at as a whole and in the context of the other strategy and briefing documents to which we have referred, they betray no misunderstanding of the distinction between lawful protest and unlawful disruption. The statements by PCs Portlock and Hemmings do not bear the weight that the claimants seek to give them. Set against the direct evidence of the briefings given at various levels, they provide far too tenuous a basis for an inference that officers on the ground were led to believe that action was to be taken against anti-monarchist protest without more. Nor does PC Morris's statement support the view that officers on the ground were led so to believe: on a fair reading of the statement, it is evident that the policy of zero tolerance was to be in relation to breaches of the peace, not mere protest.

147. The claimants rely next on statements made to the media on behalf of the defendant. For example, on BBC Radio 4's World at One the interviewer asked the police media spokesperson, Commander Christine Jones, whether people did not have a democratic right to protest if they wanted to, to which Commander Jones replied: "Absolutely they do and we will always ensure that we do everything we can to permit peaceful protest but to be perfectly honest there are 364 other days of the year when people can come to London and demonstrate and frankly it's not appropriate on the day of the Royal Wedding for people to come with that intent". This is said to give a steer that protest was not likely to be accommodated on the day of the Royal Wedding. But again the remark has to be read in context, and it is to be noted that Commander Jones had just stated that "we will respond appropriately to deal with anybody who comes to London with the intent of causing criminality". We do not think that, taking the interview as a whole, she was equating protest with criminality or stating that peaceful protest would be prevented on the day of the Royal Wedding. Nor do we think that this was the true effect of the other media statements relied on by the claimants, which we will not set out. In any event we would place little weight on media statements of this kind. As Commander Broadhurst points out in his witness statement, he appointed Commander Jones as the police media spokesperson but she was not in any way involved in, or responsible for, devising police strategy or policy or tactics or command of the operation, and press reporting and press interviews should not be treated as if they were policy or strategy documents.

148. The claimants rely further on what they contend to be the absence of any lawful basis for their own arrests, and also on the arrest of a man called Adam Moniz which was accepted by the defendant to have been unlawful. Mr Moniz identifies as a republican and had travelled to London on the day of the Royal Wedding with the intention of attending the Republic event in Red Lion Square. He had with him a banner stating "Democracy not Monarchy" and "Equality not Monarchy". He was stopped, searched and arrested at Victoria Station at around 9.00 a.m., purportedly to prevent a breach of the peace, and was released at about 3.30 p.m. without any further action being taken against him. The defendant settled a proposed challenge to the lawfulness of the stop, search and arrest, paying the sum of £5,000 and legal expenses and providing Mr Moniz with a written apology.

149. For the reasons given later in this judgment, we take the view that all the arrests of the claimants were justified on their facts. But even if some individual arrests were unlawful, it would not support the existence of an unlawful policy or practice. By the

very nature of these cases, they have to be assessed on an individual basis in the light of their particular circumstances. Widespread unlawful arrests with common features might evidence a systematic problem, but the fact that a small number of arrests were found to have been unlawful on their own facts would tell one nothing about policy or practice. For the same reason, the claimants can derive no assistance from the fact that the arrest of Mr Moniz was conceded to have been unlawful.

150. A further point relied on by the claimants in relation to the arrests is that many of these arrests are said to have been made in response to specific instructions from senior officers, and those instructions are relied on as evidencing the filtering down to the ground of a policy that set the threshold too low. The significance of instructions from senior officers is dealt with later when considering the argument that the defendant unlawfully fettered the discretion of his officers on the ground. It suffices to say here that if the arrests were justified, as we consider them to have been, we do not consider that the involvement of senior officers assists the claimants' case as to an unlawful policy or practice.

151. Likewise, as again will be apparent from our detailed consideration of the relevant grounds, the circumstances of the searches under challenge in the Pearce and Middleton claims do not in our view support the allegation of an unlawful policy or practice.

152. For those reasons we find nothing in the various strands of the claimants' case, whether taken individually or cumulatively, to make good the contention that the policing of the Royal Wedding involved an unlawful policy or practice, with an impermissibly low threshold of tolerance for public protest.

153. We conclude this section by referring to a few passages from the defendant's evidence on this issue. In his witness statement Commander Broadhurst (Gold) expresses his own understanding and approach as follows:

> "16. The key distinction is between peaceful protest and peaceful assembly, conducted with respect for the rights of others on the one hand and on the other hand activities intended to deliberately disrupt, frustrate and damage the enjoyment and activities of others by offences of criminal damage, assault, threatening or abusive words or behaviour, obstruction of the highway or other offences and designed to seize public and media attention by the damage and disorder caused and regardless as to whether this is in support of a protest cause or not. This was the distinction between peaceful protest and criminality (whether cloaked as a form of protest or not) which AC Owens and Commander Jones referred to in the press interviews they gave and which I had in my mind as Gold Commander.
>
> …
>
> 53. Following the disorder in November and December 2010 and at the TUC March in 2011, there was a huge amount of pressure on me as the Gold Commander to ensure that the

> Royal Wedding was not disrupted by violent behaviour or disorder. Despite that pressure, there was no policy to prevent protest on the day of the Royal Wedding. Indeed, we worked with a number of individuals and groups such as MAC, EDL and Mr Gulamhussein, who all wanted to protest at the time of the ceremony outside Westminster Abbey. MAC and EDL withdrew their applications, having spoken to us at length, and Mr Gulamhussein moved his protest outside the security footprint. Other protests were allowed to go ahead in Central London, such as the ones organised at Red Lion Square and Soho Square. The timing of the raids on the various premises described herein were not intended to stop protest, but were taken as a result of my very real fears that some people within those premises were intent on criminally disrupting the wedding."

154. The same approach is reflected in the witness statement of Commander Johnson (Bronze 14):

> "There was no policy to prevent protest on the day of the Royal Wedding. Our objectives in the police command team – the Gold Strategy, the Silver Plan, my own Bronze 14 area of responsibility – were principally to prevent crime and disorder breaking out which had disfigured protest events in the autumn of 2010 and the spring of 2011. Where peaceful and lawful protest occurred then we did not intervene, but monitored the situation and facilitated this where possible."

155. That evidence is clear and categoric. The claimants' case falls well short of rebutting it.

THE HICKS CLAIM

Ground 1: unlawful policy or practice

156. For reasons given above, we take the view that there was no unlawful policy or practice. That disposes of this ground.

157. In reliance on the decision of the Supreme Court in *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, [2012] 1 AC 245, the claimants contended that if there had been an unlawful policy it would have rendered the arrests unlawful even if there were otherwise a lawful basis for them. We doubt the correctness of the contention, though it is unnecessary to decide the point. The mere existence of an unlawful policy would not be sufficient to render an individual arrest unlawful. It would have to be shown that the policy had been applied or at least taken into account in reaching the decision to arrest, so as to be material to that decision: see *Lumba* at paras [63], [207], [219] and [240]. Thus if, for example, an officer arrested a claimant to prevent a breach of the peace in the reasonable belief that a breach of the peace was imminent, there is no obvious reason why that decision should be vitiated by the existence of an unlawful policy on the part of the defendant.

Ground 2: no imminent breach of the peace

158. For the relevant law on breach of the peace, we refer generally to our discussion of *Laporte* at paras [128]-[138] above. This ground involves two contentions: (a) that the arresting officers did not at the material time apprehend an imminent breach of the peace (i.e. absence of subjective belief), and (b) that there were no reasonable grounds for apprehending an imminent breach of the peace.

159. The burden is on the defendant to establish the lawfulness of the arrests. It was submitted on behalf of the claimants that this is an important constitutional safeguard, particularly in the context of interference with art. 10 and art. 11 rights, and that the requisite subjective belief should not be inferred in the absence of evidence that the arresting officer did himself or herself apprehend that a breach of the peace was imminent. This point arises out of the fact that the defendant has served witness statements from only two of the arresting officers (Inspector Wakeford, who arrested Mr Hicks, and PC Morris, who arrested the second zombie claimant) and has otherwise relied on witness statements from more senior officers and on the notebook entries made by the arresting officers themselves shortly after the arrests. For our part, we see no reason in principle why inferences of subjective belief should not be drawn from evidence of that kind. Whether they should actually be drawn must depend on the circumstances of the particular case looked at as a whole.

160. In considering the existence of reasonable grounds, the role of the court is "to decide not whether the view taken by [the arresting officer] fell within the broad band of rational decisions but whether in the light of what he knew and perceived at the time the court is satisfied that it was reasonable to fear an imminent breach of the peace": per Sedley LJ in *Redmond-Bate v Director of Public Prosecutions* (1999) 163 JP 789, as approved by the Court of Appeal in *R (McClure and Moos) v Commissioner of Police of the Metropolis* [2012] EWCA Civ 12 at para [68]. It is common ground that an arresting officer is entitled to rely for this purpose on information from other officers (and see para [134] above and paras [176]-[177] below).

161. With that introduction, we turn to consider the individual arrests.

Mr Hicks

162. For the circumstances of the arrest of Mr Hicks, see paras [30]-[33] above. It was accepted on his behalf that the arresting officer, Inspector Wakeford, had a subjective belief as to an imminent breach of the peace but it was submitted that there were objectively insufficient grounds to justify pre-emptive arrest. Mr Hicks had nothing on him that could cause criminal damage. The mere perception of him as an anarchist and agitator and his proximity to Trafalgar Square could not be a lawful basis for arrest. If it were, Mr Hicks or anyone in a like position could not go near any major public event without risk of arrest.

163. In our view, Inspector Wakeford's witness statement discloses reasonable grounds for his belief that a breach of the peace was imminent. Mr Hicks was a known anarchist. There was intelligence that anarchists and other protest groups had advertised their intention to meet up at Trafalgar Square to take direct, disruptive action. Mr Hicks had confirmed that he was on his way to Trafalgar Square. The likelihood of violence was obvious, all the more so because there was also intelligence that pro-monarchist

groups would counteract and challenge any actions taken by any anti-monarchy or anarchist group. The decision was soundly based on consideration of the particular circumstances. It does not have the wider implications suggested.

The Starbucks claimants

164. For the circumstances of the arrests of the Starbuck claimants, see paras [34]-[45] above. The case for the claimants is that the notebooks of the arresting officers disclose neither a subjective belief nor objective grounds to justify the arrest of the claimants for breach of the peace. There is no evidence that the officers applied their minds to whether there was an *imminent* breach of the peace or to whether arrest was *necessary* in order to avoid such a breach. The repeated references to the arrests being made on the authority of senior officers strongly suggest that the arresting officers did not exercise any independent judgment in this regard. There is nothing in the notebooks to indicate that the claimants were acting in any way likely to cause a breach of the peace, and it is apparent that they were in fact calm and co-operative throughout. When first intercepted by the police they were inside Starbucks, Oxford Street, over a mile away from Westminster Abbey and Buckingham Palace. There were ample further opportunities to intercept them if they tried to get closer to the ceremonial route. They had been searched but nothing untoward had been found. The evidence of the second claimant is that she explained to officers that the claimants had changes of clothing and make-up remover with them. There was nothing in the context to suggest unlawful or disruptive intent. Even if thought had been given to the matter, it could not be assumed that any responsive violence from those celebrating the Royal Wedding would be a natural consequence of any protest by the claimants or that it would be reasonable.

165. The arresting officers' notebooks, as working documents, have understandable limitations to them but they fit well with the evidence of more senior officers as to the information that was relayed down the line. We do not accept that the notebooks, read in that wider context, disclose an absence of subjective belief that a breach of the peace was imminent. Whilst the word "imminent" was not used, it seems clear to us that all the officers believed, on the basis of the information given to them, that a breach of the peace was likely to occur if the claimants were allowed to proceed, and that such breach of the peace would be in the near future. PC Edgar, echoing the information described in Inspector Antoine's witness statement, said that the claimants were believed to be heading to a further location along the ceremonial route "in approx 20 mins", and he evidently feared a breach of the peace at that point. That was sufficient for the requirement of imminence. Although the other officers did not put a time on it, the same information had been relayed to them by Inspector Antoine and must have been in their minds at the time of arrest. Further, although only PC Edgar referred to information that the claimants "needed" to be arrested, there is a strong inference that all the officers believed that the arrest of the claimants was necessary in order to prevent the feared breach of the peace. The fact that the officers recorded that the arrests were on the authority of senior officers did not mean that they themselves lacked the requisite subjective belief.

166. We also consider that the objective test was satisfied. There was intelligence about a zombie event in Soho Square associated with possible disruptive activity, the claimants were dressed as zombies, they had come from Soho Square, they had not engaged with the police in advance to explain their intentions, they appeared to be on

their way towards the ceremonial route (albeit they had stopped for coffee at Starbucks), the route was not a great distance away, and there was no further police cordon or control for them to pass through before reaching it. There was an obvious likelihood of their provoking a breach of the peace if they got to the ceremonial route. The fact that they were calm and co-operative when stopped by the police did not negative that risk. Nor did the fact that nothing untoward had been found on them. There were reasonable grounds both for believing that a breach of the peace was imminent and for believing that the arrest of the claimants was necessary to prevent it. The question of necessity is considered further under ground 3 below (the issue of proportionality).

The second zombie claimant

167. For the circumstances of the arrest of the second zombie claimant, see paras [46]-[53] above. It was submitted on her behalf that there is nothing in PC Morris's statement to indicate that he considered a breach of the peace to be imminent. His reference to a "real potential for conflict with pro-wedding supporters" does not equate with a belief in the imminence of a breach of the peace and is not enough. Similarly, as regards the objective test, the factors relied on as giving rise to concerns about a breach of the peace do not support a reasonable apprehension of an imminent breach of the peace. At the time of arrest the claimant was over a mile from the site of the wedding, she had not expressed any intention to travel towards the wedding, and there was no evidence of any hostility having been shown towards her by pro-wedding supporters.

168. We disagree. It seems to us that on a fair reading of his statement as a whole PC Morris believed there to be a likelihood of a breach of the peace in the near future if the claimant was allowed to continue on her way. The fact that she had partially covered her face and was in possession of anti-wedding literature provided a reasonable basis for apprehension of conflict with pro-wedding supporters, and the timing and relative proximity to the area where supporters were gathered made it reasonable to consider that a breach of the peace was imminent.

The Charing Cross claimants

169. For the circumstances of the arrests of the Charing Cross claimants, see paras [54]-[71] above. For the claimants, reliance was placed on the notebook entries of the various arresting officers as evidencing an absence of subjective belief in an *imminent* breach of the peace or any *necessity* to arrest to prevent a breach of the peace. None of the officers referred to imminence, with the exception of PC Sharp who, in arresting the thirteenth claimant, said that she feared he could be "at immediate risk of physical injury". To the extent that they referred to any apprehension, it was of a general nature and fell far short of the degree of imminence required. As with the Starbucks claimants, the majority of officers recorded that the arrests were made on instructions from more senior officers, and this again suggests that they did not exercise any independent judgment in the matter. Further, the evidence does not disclose any reasonable grounds for believing that a breach of the peace was imminent, rather than a mere possibility at some point, or that it was necessary to arrest the claimants to prevent a breach of the peace. The principal basis for suspicion, as it appears in the officers' notebooks, was the expression of anti-royalist sentiment and the possession of placards, all of which fell below the threshold for permissible intervention: the lawful exercise of art. 10 or art. 11 rights cannot be a

reason for taking action against a protester. There was some reference to climbing equipment, but the only relevant item found on the claimants was a climbing helmet, as it was described by the police. Reliance on the possibility of a violent reaction by those celebrating the Royal Wedding was not good enough unless such violence could be said to be the natural consequence of protest by the claimants and to be reasonable, and unless there was no other way of addressing it.

170. As in the case of the arrests of the Starbucks claimants, the notebooks of the arresting officers are plainly not comprehensive and must be read together with the evidence of more senior officers as to the information that was relayed down the line. In our view the evidence as a whole justifies the inference that each arresting officer subjectively believed that a breach of the peace was imminent and that the claimant's arrest was necessary to prevent it. Equally, the evidence establishes the existence of reasonable grounds for that belief. The breach of the peace foreseen by Inspector Bethel, the officer in charge of the PSU which effected the arrests, was that "if this group continued into Trafalgar Square … fights would break out between this group and the far larger group of Royal Wedding supporters", and this was reflected in the notebook entries of the arresting officers. There was an ample basis for that concern, given the close proximity of Trafalgar Square, the group's openly expressed anti-royalist views and their possession of placards and a loudhailer. To that may be added the risk of a climbing protest, as PS Bowman described it in his notebook, in circumstances where one of the group was in possession of a climbing helmet, other people had been seen in the Covent Garden area with climbing equipment and it was believed that climbing equipment might be concealed in the vicinity. Again, the issue of necessity is considered further under ground 3 below.

Ground 3: arrest was disproportionate

171. The claimants' contention is that the decisions to arrest them were a wholly disproportionate response to any perceived threat. It was submitted that even if a breach of the peace was reasonably apprehended to be imminent, the police were required to take no more intrusive action than was necessary to prevent such breach, and that the onus is on the party taking coercive action to show that what was done was no more than was necessary (see *Laporte* at paras [85], [106] and [114]). In all of the authorities considered in *Laporte* in which coercive action for breach of the peace was upheld as lawful as against those who were not at the time engaging in unlawful activity, less coercive measures were attempted first and it was only when such measures failed that a greater level of coercion was justified. In this case, even on the information known to the officers at the time, there were clearly alternatives to arrest. The claimants could have been asked to go back or to remain where they were, or could have been accompanied to locations where the expression of republican views was not deemed by the police to be likely to cause a breach of the peace (e.g. at the event in Red Lion Square), or could have been monitored. If their appearance was considered to be a source of potential provocation, they could have been asked to change their appearance, for example by removing zombie make-up (and the evidence was that the Starbucks claimants had a change of clothing and make-up remover with them). If the flyer in the possession of the second zombie claimant was considered provocative, she could have been asked to hand it over. These were claimants of generally good character and it cannot be right for the police to have assumed against them that they would not accept a warning, instruction or request.

172. The claimants' submissions on this issue appear to us to be wholly unrealistic. If, as we have held, there were reasonable grounds for believing in each case that a breach of the peace was imminent, it would have been plainly inappropriate in the particular circumstances for the officers simply to issue a warning or to request or instruct the claimants to go back or to stay where they were or to move to another location. Without constant police supervision it would have been all too easy for the claimants to carry on with their intended actions. Nor was constant police supervision a realistic option, given the many demands on police resources on the day in question. Similarly, to have asked the Starbucks claimants to change their clothing or remove their make-up would not have dealt with the underlying concern about their intended actions (nor would it have precluded their reverting to their zombie appearance once the police had left); and the same applies to the suggestion that the second zombie claimant should have been asked to hand over the flyer in her possession. In the case of none of these claimants, on the basis of the information that the officers had at the time of the arrests, could there be any reasonable confidence that they would comply with a mere request to desist from conduct likely to give rise to a breach of the peace.

Ground 4: fettering of discretion

173. The submission for the Hicks claimants is that the discretion of officers on the ground as to whether to make the arrests was unlawfully fettered by instructions given by senior officers. One facet of the argument is that the discretion of arresting officers was tainted by the alleged policy or practice which encouraged them to adopt an impermissibly low threshold of tolerance; but we have already rejected that point and we need say no more about it here. The other facet of the argument, which we do need to address, is that individual arrests were made on the specific instructions of senior officers and that in the light of those instructions the officers on the ground did not approach the arrests with an unfettered discretion and did not apply their own minds to whether a breach of the peace was imminent or whether the arrests were necessary to prevent it.

174. Factually it is true that there was close supervision by, and co-ordination with, senior officers and that a number of the arrests were described in terms by the arresting officers as being made on the instructions or authority of senior officers. Thus, it is clear from their notebook entries that the understanding of the officers who arrested the Starbucks claimants was that the arrests were being made "on the authority" of Commander Johnson; and the notebook entries of the officers who arrested the Charing Cross claimants make various references to advice, information or instruction from senior officers that the arrests were to be made. On the other hand, no question of an instruction by superior officers can sensibly be said to arise in the case of Mr Hicks or the second zombie claimant.

175. We see no reason in principle, however, why even a direct instruction by a senior officer to make an arrest should operate as a fetter on the discretion of the arresting officer so as to render the arrest unlawful. What matters is whether the arresting officer has the requisite subjective belief and reasonable grounds for that belief. The giving of an instruction does not of itself negative the existence of either. Equally, of course, an instruction does not of itself provide a basis for a lawful arrest. But information provided with an instruction or in a separate briefing may properly inform the arresting officer's decision to arrest since, as is common ground and is clearly

established by the authorities, an officer is entitled to rely on information provided by other officers in deciding whether the preconditions for a lawful arrest are met.

176. All this is supported by *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286. As appears from the report (see, in particular, pages 289H-290A and 295C-H), the arresting constable in that case said in evidence that his reasonable grounds for suspecting the plaintiff were based on a briefing by a superior officer who had ordered him to arrest the plaintiff. The judge at first instance inferred that the briefing afforded reasonable grounds for the necessary suspicion and held that the arrest was lawful. The House of Lords held that, although the evidence was sparse, the judge was entitled to reach that conclusion. It is clear from the speeches that the fact of an instruction to arrest, although not a sufficient basis for an arrest, was not considered to render the arrest unlawful. As Lord Steyn put it at page 293B-E, "the only relevant matters are those present in the mind of the arresting officer"; hearsay information may afford a constable reasonable grounds to arrest and such information may come from other officers; but "the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion". Lord Hope observed at page 296B-C that "it is important to observe that the position of the arresting officer was not simply that he had been told to arrest the plaintiff", nor that he had simply been told that the plaintiff had been concerned in acts of terrorism, but "that he suspected the plaintiff of having been concerned in such acts, and that his suspicion was based on the briefing which had been given to him by his superior officer". Having reviewed the authorities, Lord Hope concluded at pages 301H-302A:

> "Many other examples may be cited of cases where the action of the constable who exercises a statutory power of arrest or of search is a member of a team of police officers, or where his action is the culmination of various steps taken by other police officers, perhaps over a long period and perhaps also involving officers from other police forces. For obvious practical reasons police officers must be able to rely upon each other in taking decisions as to whom to arrest or where to search and in what circumstances. The statutory power does not require that the constable who exercises the power must be in possession of all the information which has led to a decision, perhaps taken by others, that the time has come for it to be exercised. What it does require is that the constable who exercises the power must first have equipped himself with sufficient information so that he has reasonable cause to suspect before the power is exercised."

The same point is made in *Hayes v Chief Constable of Merseyside Police* [2011] EWCA Civ 911, [2012] 1 WLR 517, at para [41].

177. Applying that approach, the findings we have made when considering grounds 2 and 3 are determinative against the claimants under ground 4. The arrests were not rendered unlawful by the fact that the arresting officers were in some cases instructed by superior officers to make them.

Ground 5: breach of Convention rights

Article 5

178. Art. 5(1) provides, so far as material:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> …
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; …."

179. The submission for the Hicks claimants is that their arrest and detention amounted to a deprivation of liberty within art. 5(1), as was plainly the case, and did not meet the conditions for justification under any of the sub-paragraphs of art. 5(1). They contend in particular that art. 5(1)(b) and (c), upon which the defendant specifically relies, did not apply.

180. On the face of it, art. 5(1)(c) would appear to have an obvious application to this case. Breach of the peace amounts to a "criminal offence" for the purposes of the Convention (see e.g. *Steel v United Kingdom* (1999) 28 EHRR 603 at para [46]); and in the light of our previous findings, the arrest and detention of the claimants to prevent a breach of the peace can properly be said to have been effected in each case because it was "reasonably considered necessary to prevent his committing an offence".

181. The claimants contend, however, that this is not enough, on the ground that the words "for the purpose of bringing him before the competent legal authority" qualify both limbs of art. 5(1)(c) and that the evidence shows that the claimants were not arrested and detained for the purpose of bringing them before the court: they refer, for example, to Mr Hicks overhearing someone say "They want him here until 3.00 p.m., when the celebrations finish" (para [31] above) and to the evidence of various of the Starbucks claimants that they were told that they were being released because the Royal Wedding had ended (see para [37] above).

182. The contention that the words "for the purpose of bringing him before the competent legal authority" qualify both limbs of art. 5(1)(c) derives direct support from the judgment of the Strasbourg court in *Lawless v Ireland (No.3)* (1961) 1 EHRR 15 at paras [13]-[15]. A different analysis is to be found, however, in the more recent decision of that court in *Nicol and Selvanayagam v United Kingdom* (Application no. 32213/96, admissibility decision of 11 January 2001), in the specific context of the

law on breach of the peace. The applicants in that case were participants in an anti-fishing protest at a fishing competition. They were arrested for breach of the peace and taken to the police station, where detention was authorised "to allow a period of calming, and to determine method of processing". Some three to four hours later they were charged with breach of the peace, were then refused bail and were detained for a further period "to prevent the prisoner from disrupting the fishing event tomorrow, also one scheduled for June" and "to appear at the next available court".

183. In holding that both periods of detention were compatible with art. 5(1)(c), the court referred to the analysis in *Steel v United Kingdom* (cited above) and the decision that the detention of each of the applicants in that case for breach of the peace had been "for the purpose of bringing him or her before the competent legal authority on suspicion of having committed an 'offence' or because it was considered necessary to prevent the commission of an 'offence'". The court continued (at pages 8-9):

> "The position is the same in the present case. Applying the same numbered points as above, (i) the applicants were accused of breaching the peace, which is to be classified as a criminal offence for Convention purposes. (ii) Breach of the peace is sufficiently well defined to comply with Convention requirements of lawfulness. The judgment in the present case confirmed the pre-existing law that provocative disorderly behaviour likely to have the natural consequence of causing violence constituted a breach of the peace, even if the violence would be to the person concerned …. (iii) The police could reasonably fear that the applicants' behaviour might provoke others to violence, and there was no evidence to suggest that the deprivations of liberty were arbitrary …. The initial detention was to prevent the applicants from committing an offence; as regards the period of detention after the fishing match on the following day – or throughout the period subsequent to the initial fishing competition if there was none on the second day – the applicants were clearly being detained for the purpose of bringing them before the competent legal authority on suspicion of having committed an 'offence'.
>
> It follows that the applicants' initial arrest and detention were compatible with Article 5§1(c) of the Convention …."

184. That analysis seems to us to make it tolerably clear that detention "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence" is distinct from detention "reasonably considered necessary to prevent his committing an offence": they are separate bases for detention under art. 5(1)(c), and the latter basis is *not* qualified by the words "for the purpose of bringing them before the competent legal authority". We think it right to follow that more recent, and more natural, reading of art. 5(1)(c) than the interpretation given to it in *Lawless v Ireland (No.3)*. On that basis, the arrest and detention of each of the Hicks claimants fell within art. 5(1)(c) and was therefore compatible with art. 5(1).

185. A further point taken on behalf of the defendant is that, even if it were the case that the arrest and detention of a person to prevent a breach of the peace had also to be

effected "for the purpose of bringing him before the competent legal authority", it would be sufficient if the arrest and detention were carried out in good faith and with the *possibility* of bringing the person before a court for a bind-over. A later decision, on review of the case, to take no further action and not to seek a bind-over would not invalidate the initial arrest or detention. Reliance is placed on *Brogan v United Kingdom* (1988) 11 EHRR 117 at paras [53]-[54], where a distinction is drawn between the *purpose* of detention and the *achievement* of that purpose; and the custody records of the Hicks claimants are relied on as showing that the decision to take no further action against them was taken at that stage because the likelihood of a breach of the peace had now gone. We see some force in that line of argument but do not need to decide the point in view of our conclusion that, in a case of lawful arrest and detention to prevent the commission of an offence (including for this purpose a breach of the peace), there is no additional requirement that the purpose be to bring the person before a court.

186. As to the defendant's reliance on art. 5(1)(b), the argument is that in each case there was a lawful arrest and detention "in order to secure the fulfilment of [an] obligation prescribed by law": it is said that the relevant obligation is the obligation not to engage in conduct that constitutes a breach of the peace, and that arrest and detention in order to prevent an imminent breach of the peace are done to secure the fulfilment of that obligation. Whilst the Commission's opinion in *Lawless v Ireland (No.3)*, as referred to at para [9] of the judgment of the court in that case (cited above), was that art. 5(1)(b) "does not contemplate arrest or detention for the prevention of offences against public peace and public order …", the court did not pronounce upon the point and it is submitted that the Commission's opinion was not directed towards the kind situation that exists in this case, namely short-term detention to prevent a breach of the peace. It has been held in subsequent cases that the words "in order to secure the fulfilment of any obligation prescribed by law" only permit detention of a person to compel him to fulfil a "specific and concrete obligation" which he has until then failed to satisfy: *Engel v The Netherlands (No.1)* (1976) 1 EHRR 647 at para [69], *McVeigh and Others v United Kingdom* (1981) 5 EHRR 71 at paras [171]-[172]. The submission made, however, is that the obligation to keep the peace is a sufficiently specific and concrete obligation for this purpose. Reliance is placed on the fact that the Government's submission to that effect in *Steel v United Kingdom* (cited above) at para [46] was not commented on adversely by the court, though there was no decision on the point since the court found that art. 5(1)(c) applied.

187. The defendant's argument along those lines was developed very attractively, but we have to say that the wording of art. 5(1)(b) seems ill suited on its face to cover arrest and detention for the purpose of preventing a *future*, albeit imminent, breach of the peace. Art. 5(1)(c) appears far better suited to cover that situation; and if, contrary to our view, it does not cover it, it would be a little surprising if art. 5(1)(b) could be relied on instead. But the view we have expressed on art. 5(1)(c) makes it unnecessary for us to decide this point and in the circumstances we think it better to take the matter no further.

Article 8

188. The main point advanced in relation to art. 8 concerns *handcuffing*. In *Raninen v Finland* (1997) 26 EHRR 563 the court did not exclude the possibility that the handcuffing of a person unlawfully arrested or detained might amount to an

interference with his right to respect for private life within the meaning of art. 8, but it rejected the claim on the facts, stating at para [64]:

> "… In particular, it had not been shown that the handcuffing had affected the applicant physically or mentally or had been aimed at humiliating him. In these circumstances, the Court does not consider that there are sufficient elements enabling it to find that the treatment complained of entailed such adverse effects on his physical or moral integrity as to constitute an interference with the applicant's right to respect for private life as guaranteed by Article 8 of the Convention."

Certain of the Hicks claimants contend that the circumstances in which they were handcuffed were particularly humiliating and degrading or that they suffered physical pain and suffering which rendered their cases distinguishable from that of the applicant in *Raninen*. The point is advanced in particular in relation to three of the Starbucks claimants (claimants 2, 3 and 5) and one of the Charing Cross claimants (claimant 7), who complain variously of pain and marks caused by tight handcuffs, of the humiliation of having to use a toilet while handcuffed and in the presence of a police officer, of the humiliation resulting from the wearing of handcuffs in the presence of journalists, and of having to stand in the sun for a lengthy period while handcuffed.

189. In our view, the case on handcuffing does not get off the ground. There was no evidence that the use of handcuffs was aimed at humiliating any of the claimants. Their use was a proper response to the situation with which the police were faced. The effects of being handcuffed did not get near the threshold at which, on the reasoning in *Raninen*, a breach of art. 8 might have been capable of arising.

190. Apart from that point, there is a submission that the strip search of Mr Hicks was in breach of art. 8 on the ground that it was carried out pursuant to an unlawful arrest (which we have already rejected) and/or was unnecessary and disproportionate (which we also reject). In addition, the second zombie claimant alleges that she was sexually assaulted at the police station, but it is accepted on her behalf that that allegation cannot be pursued in the present proceedings for judicial review.

Articles 10 and 11

191. Arts. 10 and 11 have been taken sufficiently into account in our consideration of earlier grounds, especially when examining the allegation of an unlawful policy or practice, where the Convention rights of freedom of expression and freedom of assembly are central to the arguments.

Article 14

192. Although art. 14 is relied on by the claimants, it adds nothing of substance to the matters we have already considered.

THE M CLAIM

193. The circumstances of the stop, search, arrest and detention of the claimant M are described at paras [72]-[84] above.

Ground 1: unlawful policy or practice

194. We have already found that there was no unlawful policy or practice as alleged. That disposes of this ground.

Ground 2: unlawful stop and search

195. Ground 2(a) is that the stop and search of M was unlawful in that it was conducted pursuant to an unlawful policy or practice on the ground and/or it was an exercise of police powers for an ulterior purpose, namely the suppression of embarrassing, unpopular or unwelcome (but not unlawful) protest. As to that, we repeat that there was no unlawful policy or practice. We are equally satisfied that the reason for the stop and search was as stated by PC Whitwell (supported by what was said by PC Robbins), namely a suspicion as to the claimant's possession of articles for use in criminal damage. M's megaphone may have drawn the officers' attention to him, but once it is found that the stop and search was triggered not by the megaphone but by a concern as to what he was carrying in his bag, coupled with behaviour suggesting that he had something to hide, the suggestion that the stop and search was for the ulterior purpose of suppressing lawful protest is unsustainable.

196. Ground 2(b) is that there were no reasonable grounds for suspecting the claimant to be in possession of items intended to be used for destroying or damaging property. The point is made that, by s.1(3) of PACE, the power of search under that section depends on the constable having "reasonable grounds for suspecting that he will find … prohibited articles" (including, by s.1(7) and (8), articles intended for use in the course of or in connection with an offence under s.1 of the Criminal Damage Act 1971); and it is submitted that there were no reasonable grounds for suspecting that articles for use in criminal damage *would* be found on M. We disagree. In our view, the evidence of the officers demonstrates the existence of a suspicion, and of reasonable grounds for the suspicion, that articles for use in criminal damage would be found on the claimant. We attach no weight to the fact that the officers' witness statements refer to a fear or suspicion that the claimant's bag "could" (rather than "would") contain such articles: it seems to us that on a fair reading of their evidence as a whole they had a suspicion that they *would* find such articles. The threshold for the existence of reasonable grounds for suspicion is low: *Raissi v Commissioner of Police of the Metropolis* [2009] QB 564, *Howarth v Commissioner of Police of the Metropolis* [2011] EWHC 2818 (Admin) at para [31]. It is striking that PC Whitwell considered it more appropriate to use the power of stop and search under s.1 of PACE, for which there had to be reasonable grounds for suspicion, rather than the power under s.60 of the 1994 Act, for which no such grounds needed to exist. He was evidently confident as to the existence of a proper basis for the exercise of the s.1 power. In our judgment that confidence had a solid foundation to it.

197. Ground 2(c) is that the stop and search was contrary to the claimant's rights under arts. 5, 8 , 10, 11 and 14. The claimant's arguments on those articles all depend on establishing that the stop and search was unlawful as a matter of domestic law, so that

it was not "lawful" or "in accordance with the law" for Convention purposes. Our rejection of the case under domestic law means that the Convention arguments fall away. This makes it unnecessary to deal *inter alia* with the impact of the judgment of the Strasbourg court in *Gillan v United Kingdom* (2010) 50 EHRR 45, at para [57], on the decision of the House of Lords in *R (Gillan) v Commissioner of Police of the Metropolis* [2006] 2 AC 307 to the effect that a stop and search does not constitute a deprivation of liberty for the purposes of art. 5(1).

Ground 3: unlawful arrest

198. Ground 3(a) is that M's arrest was unlawful in that it was conducted pursuant to an unlawful policy etc. The contention fails for the same reasons as in relation to ground 2(a).

199. Ground 3(b) is that there were no reasonable grounds for suspecting the claimant to be committing or to be about to commit an offence: the offence in question, as appears from the witness statement of the arresting officer, PC Robbins, was the offence under s.3 of the Criminal Damage Act 1971 of possession of an item with intent to destroy or damage property. It is said that the most compelling support for the contention derives from the reasons subsequently given by the evidence review officer, PS Young, for the decision to take no further action against the claimant, including that the pens were inaccessible and there was "no evidence to suggest" that the pens would be used for criminal damage. Again we disagree. The evidence of PC Robbins demonstrates the existence of reasonable grounds for his suspicion at the time of arrest: the nature and size of the pens, the image of graffiti on the claimant's camera, and the claimant's demeanour, combined to provide an amply sufficient basis for the action taken. PC Robbins plainly did not consider the pens to be inaccessible, and on the evidence we have seen and heard (including sight of the bag itself) we consider that he was justified in taking that view. The fact that PS Young took a different view is neither here nor there. In any event PS Young was considering the different question of sufficiency of evidence to prove an offence and was taking his decision in different circumstances, after M had produced a prepared statement denying any criminal intention and had given a "no comment" interview; and the fact that at that point he considered there to be no evidence to suggest that the pens would be used for criminal damage does not begin to show that there were no reasonable grounds for the suspicion that PC Robbins had at the time of arrest.

200. Grounds 3(c) and (d), which can conveniently be considered together, are that there were no reasonable grounds for believing that it was necessary to arrest the claimant for any of the reasons set out in s.24(5) of PACE, and that the decision to arrest him was disproportionate.

201. The starting point is s.24(4), which provides that the power of summary arrest conferred by that section is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in s.24(5) it is necessary to arrest the person in question. The reasons in s.24(5) relied on by the defendant are "(a) to enable the name of the person in question to be ascertained …", "(c) to prevent the person in question … (iii) causing loss of or damage to property …", and "(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question". PC Robbins makes express reference to each of those matters in para 9 of his witness statement and evidently considered them to apply at the time of arrest.

202. Various points are made on the claimant's behalf in relation to those matters. It is said that the officers could have asked again for his name between the time of his initial indication he wished to remain anonymous and the time of his arrest, and have warned him that failure or refusal to give his name was likely to make his arrest necessary (this being a course suggested in para 2.9 of the May 2012 edition of Code G of the PACE Codes of Practice, though there was no such provision in the code in force at the material time); they could have asked him about the image on his camera; they could have confiscated his pens; and they could have offered him a voluntary interview instead of arresting him.

203. We do not accept those submissions. In our view, each of the necessity criteria referred to by PC Robbins was valid (and any one of them would be sufficient to meet the requirement in s.25(4)).

204. First, there were reasonable grounds for believing that arrest was necessary to enable the claimant's name to be ascertained. He had declined to give his name when stopped and had not subsequently proffered it. PC Whitwell states that he tried to obtain the claimant's details from him to complete the stop record but that the claimant refused: this appears to have taken place after the search and just before the arrest. In any event, however, it was not incumbent on the police to ask him again or to warn him of the consequences of not giving his name: the May 2012 version of Code G does not lay down any such requirement and there was nothing on the subject in the version of Code G in force at the material time.

205. Secondly, the existence of reasonable grounds for suspicion of an offence under s.3 of the Criminal Damage Act 1971 also gave rise to reasonable grounds for believing that it was necessary to arrest the claimant to prevent damage to property. Confiscation of his pens, even if permissible in the circumstances, would not have met the police's legitimate concern about the risk of criminal damage since it would have been open to the claimant to buy new pens.

206. Thirdly, there were reasonable grounds for believing that arrest was necessary to allow prompt and effective investigation of the claimant's conduct. There was no requirement for the officers themselves to ask the claimant further questions, for example about the image on his camera, before arresting him. Nor was there any requirement to consider the possibility of a voluntary interview as an alternative to arrest: see *Hayes v Chief Constable of Merseyside Police* (cited above) at paras [30]-[42]. As explained in *Hayes*, failure to consider alternatives does not of itself invalidate the arrest but does expose an officer to the risk of being found to have had, objectively, no reasonable grounds for his belief that arrest was necessary. In this case, however, we are satisfied that a voluntary interview was not a realistic option and, more generally, that the officer did have reasonable grounds for his belief that arrest was necessary.

207. If the arrest met the necessity requirement in s.24(5), we do not think that any separate point of substance arises by reference to proportionality. Although the claimant was young, there was nothing in the circumstances of the case that made it disproportionate to arrest him.

208. Ground 3(e) is that the arrest was contrary to the claimant's rights under arts. 5, 8, 10, 11 and 14. The position here is the same as under ground 2(c): the claimant's

arguments on the various articles of the Convention all depend on establishing that the arrest was unlawful as a matter of domestic law, so that it was not "lawful" or "in accordance with the law" for Convention purposes. Here, too, our rejection of the case under domestic law means that the Convention arguments fall away.

Ground 4: unlawful taking of DNA, fingerprints and photographs

209. Grounds 4 and 5 advance a number of arguments in respect of the taking and retention of the claimant's DNA, fingerprints and photographs at the police station. The powers to take and retain such material are conferred by ss.61-64A of PACE, which we do not need to set out since nothing turns on the detail of the relevant provisions.

210. Ground 4(a) contends that the taking of the material was unlawful in that the power to take it is contingent on there having been a lawful arrest. Our finding that there was a lawful arrest disposes of this ground.

211. Ground 4(b) is that the defendant operated a blanket policy always to take such material and failed to exercise any discretion, contrary to the principle in *British Oxygen Co. Ltd. v Board of Trade* [1971] AC 610. It is submitted that the reasons given by the relevant officer, PC Young, for taking the material (see para [82] above) are formulaic and appear to rely simply on the claimant having been "arrested for a recordable offence", in which circumstances fingerprints and a DNA sample "will be taken" and a photograph "will be taken"; there is also an inapposite statement that the fingerprints and DNA have been taken "to confirm or disprove the person's suspected involvement in a recordable offence", and an inapposite reference to a "crime scene". It is said that there was a failure to take into account individual circumstances relevant to the exercise of a discretion and that no consideration was given to whether the taking of such material was warranted in the circumstances of the claimant's case.

212. The defendant's response to this is that it is perfectly permissible, pursuant to the discretion granted by the relevant provisions of PACE, for there to be a general practice of taking such material following an arrest for recordable offences, provided that the officer in question does not shut his ears if the arrested person contends that there are exceptional circumstances justifying departure from the general practice in his particular case. The claimant's witness statement does not suggest that he identified any such exceptional circumstances, nor did his father (who was present at the time) do so. The mere fact that the reasons given may be in a standard form does not mean that there has been an unlawful fettering of discretion or failure to consider whether to exercise it in the particular case.

213. In our judgment, the evidence does not establish the existence of any blanket or inflexible policy as alleged by the claimant. It is certainly the normal practice to take photographs, fingerprints and DNA samples following an arrest for a recordable offence, but there is nothing to show that officers are precluded from departing from that practice or from taking into account individual circumstances when deciding whether to follow the practice. The mere fact that the practice was followed in the claimant's case and that standard form reasons were given is not sufficient to establish a failure to exercise the discretion conferred by the statute. No reasons for departing from the practice were put forward by or on behalf of the claimant; and as explained below in relation to ground 4(c), there was nothing in the individual circumstances of his case that ought to have caused the officer to depart from the practice.

214. Ground 4(c) is that if the defendant exercised a discretion in deciding to take the material, the exercise of the discretion was *Wednesbury* unreasonable and contrary to the claimant's rights under art. 8. As to irrationality, reliance is placed on the trivial nature of the alleged offence, the claimant's age and the obligation to have regard to his welfare, and the contention that the taking of his material could have no possible bearing on the investigation of the offence for which he had been arrested. As to art. 8, particular reliance is placed on a passage of the judgment of the Strasbourg court in *S v United Kingdom* (2009) 48 EHRR 50, at para [124], in which the court endorsed the views of the Nuffield Council as to the disproportionate impact on young persons of the indefinite retention of their DNA.

215. None of those matters gets near establishing that the decision was *Wednesbury* unreasonable. The offence in respect of which the claimant was arrested cannot be dismissed as trivial: it is a recordable offence, and the drawing of graffiti in public places is a matter of genuine concern. It was legitimate to take his DNA and fingerprints to check whether they matched those relating to any previous offence of criminal damage (which had an obvious bearing on the investigation of his conduct on the day), as well as for the purpose of future criminal investigations. His relative youth did not make it inappropriate to subject him to the normal procedures (and he was evidently mature enough to be in London on his own and intending, on his own account, to participate in the gathering in Soho Square).

216. As to art. 8, it suffices to say that in our view any interference with the claimant's art. 8(1) rights involved in the *taking* of his DNA, fingerprints and photographs at the time of his detention met the conditions for justification under art. 8(2). *S v United Kingdom* relates to the subsequent *retention* of material, which should be the main focus of concern in this case and is addressed under ground 5 below.

Ground 5: unlawful retention of DNA, fingerprints and photographs

217. Ground 5 concerns the *retention* of the claimant's DNA, fingerprints and photographs subsequent to his release from detention following the decision to take no further action against him.

218. Ground 5(a) contends that the power to retain such material is contingent on there having been a lawful arrest. Again, our finding that there was a lawful arrest disposes of this ground.

219. Grounds 5(b) and (c) are that the defendant has failed to give any or any proper consideration to the claimant's request that his material be destroyed, and/or that if he exercised a discretion in deciding to retain the claimant's material, he did so in accordance with unlawful guidance. The two grounds can be considered together since the only issue effectively remaining in relation to them is one of relief.

220. In *R (GC) v Commissioner of Police of the Metropolis* [2011] UKSC 21, [2011] 1 WLR 1230 the Supreme Court, applying the decision of the Strasbourg court in *S v United Kingdom*, held that the indefinite retention of the claimants' fingerprints and DNA samples pursuant to s.64 of PACE and guidelines issued by the Association of Chief Police Officers ("ACPO") was an unjustified interference with their rights under art. 8. The court granted a declaration that the ACPO guidelines were unlawful. It adopted that course, instead of making an order that would have required the

immediate destruction of the relevant material, because it considered that it should give Parliament the opportunity to rectify the position. At para [45] of his judgment Lord Dyson referred to the Protection of Freedoms Bill then before Parliament and said that in shaping the appropriate relief it was right to proceed on the basis that the legislation was likely to come into force later that year (2011). He continued:

> "46. In these circumstances, in my view it is appropriate to grant a declaration that the present ACPO guidelines (amended as they have been to exclude children under the age of 10) are unlawful because … they are incompatible with the ECHR. It is important that, in such an important and sensitive area as the retention of biometric data by the police, the court reflects its decision by making a formal order to declare what it considers to be the true legal position. But it is not necessary to go further. Section 8(1) of the HRA gives the court a wide discretion to grant such relief or remedy within its powers as it considers just and appropriate. Since Parliament is already seised of the matter, it is neither just nor appropriate to make an order requiring a change in the legislative scheme within a specific period.
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> 47. … The legislature must be allowed a reasonable time in which to produce a lawful solution to a difficult problem.
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> 48. Nor would it be just or appropriate to make an order for the destruction of data which it is possible (to put it no higher) it will be lawful to retain under the scheme which Parliament produces.
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> 49. In these circumstances, the only order that should be made is to grant a declaration that the present ACPO guidelines (as amended) are unlawful. If Parliament does not produce revised guidelines within a reasonable time, then the claimants will be able to seek judicial review of the continuing retention of their data under the unlawful ACPO guidelines and their claims will be likely to succeed."

221. The legislation contemplated by the Supreme Court has since been enacted. The Protection of Freedoms Act 2012 received Royal Assent on 1 May 2012. It contains detailed provisions concerning the destruction, retention and use of fingerprints and DNA profiles. The relevant provisions are not yet in force; and when they come into force it will be for the Secretary of State to make an order under s.25 of the Act to regulate the position concerning material taken before commencement.

222. In broad terms M is in a like position to the claimants in *GC*, though stress is rightly placed on the particular concerns that arise in relation to the indefinite retention of material relating to young persons, as illustrated by para [124] of the judgment in *S v United Kingdom* to which reference has already been made. But the argument advanced is that the reasonable time allowed for by the Supreme Court has now expired, particularly as there is nothing to prevent the defendant from revising his existing policy in advance of the 2012 Act coming into force. It is therefore

submitted that we should declare in terms that the defendant's continued retention of M's fingerprints and DNA is unlawful.

223. The position in relation to the retention of photographs is much the same. In *R (RMC and FJ) v Commissioner of Police of the Metropolis* [2012] EWHC 1681 (Admin), judgment in which was handed down on 22 June 2012, after the hearing in the present cases, the Divisional Court found that the indefinite retention of the claimants' photographs pursuant to s.64A of PACE, the Code of Practice on the Management of Police Information and related guidance (which it was the defendant's policy to apply) was also an unjustified interference with the claimants' rights under art. 8. As regards relief, the court observed that the reasoning in *GC* could not be applied across directly, since in relation to photographs there was no question of waiting for the legislature to put in place a lawful solution: in particular, the 2012 Act did not apply to photographs and, whilst the defendant intended to revise his policy concerning photographs in the light of the Act, it was open to him to do so without waiting for the Act to be brought into force. Nevertheless the court decided to allow the defendant a reasonable further period within which to revise the existing policy, rather than to grant relief that might have the effect of requiring the immediate destruction of the claimants' photographs without the possibility of re-assessment under a revised policy. Relief was therefore limited to a declaration as to the unlawfulness of the defendant's existing policy, though it was made clear that a "reasonable further period" for revising the policy was to be measured in months, not years. These matters are covered in para [58] of Richards LJ's judgment in that case, with which Kenneth Parker J agreed.

224. The reasoning in *RMC and FJ* (where the issues were argued very much more fully than they were in the present case) is plainly applicable to M. The indefinite retention of his photographs pursuant to the existing policy is in breach of art. 8 but it is right to allow the defendant the reasonable further period referred to in *RMC and FJ* to revise his policy and to re-assess the retention of M's photographs in the light of the revised policy.

225. The observation in *RMC and FJ* that a reasonable further period for revising the policy was to be measured in months, not years, is relied on as adding weight to the claimant's submission that the defendant should not be allowed any further period of grace in relation to fingerprints and DNA: over a year has already elapsed since the judgment in *GC* was handed down in May 2011. We accept that the legislative process has taken somewhat longer than was envisaged by the Supreme Court, and that the defendant could revise his existing policy by reference to the 2012 Act without waiting for the statute and any order made under it to come into force. In our judgment, however, the reasonable further period referred to in *RMC and FJ* should be allowed across the board and not just in relation to photographs. A uniformity of approach is desirable.

226. Accordingly, we take the view that it is neither just nor appropriate to grant any specific relief in relation to the retention of M's DNA, fingerprints and photographs. The position is dealt with sufficiently by the declarations granted by the Supreme Court in *GC* and the Divisional Court in *RMC and FJ*.

THE PEARCE CLAIM

227. The circumstances relating to the searches of the Camberwell squats at which the Pearce claimants resided are described at paras [85] to [102] above. The claim relates to the lawfulness of the *execution* of the search warrants. It is not alleged that the warrants themselves were unlawful, though there is some grumbling about the adequacy of the evidence relating to the issue of the warrants, and the circumstances surrounding the applications for the warrants are relied on as evidence of the defendant's motivation in executing the warrants. Nor is it alleged that the arrests and detention of the two claimants were unlawful.

Ground 1(a): ulterior motive

228. Ground 1(a) is that the searches were unlawful because the police had an ulterior motive when executing each warrant. The argument breaks down into three elements: (i) the dominant purpose was the prevention of disruption of the Royal Wedding, which was not the purpose for which the statutory power of search was conferred, and the existence of a dominant ulterior purpose renders the searches unlawful even if that ulterior purpose was "benign" in the sense of being directed at the prevention of genuinely criminal activity; (ii) the ulterior purpose was not "benign", since the defendant was applying an unlawfully broad definition of criminal activity and was equating protest with criminality; and (iii) in any event, s.16(8) of PACE admits of no concept of dominant purpose, since it allows a search to be conducted only for the purpose for which the warrant was granted, so that the existence of any ulterior motive rendered the searches unlawful.

229. It is convenient to deal first with the argument as to the effect of s.16(8) of PACE, since if that argument is correct it will be unnecessary to consider the issue of dominant purpose at all. The subsection reads:

> "16.(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued."

By s.15(1), an entry on or search of premises under a warrant is unlawful unless it complies with s.15 and s.16. Compliance with s.16(8) is therefore a necessary condition of a valid search.

230. The submission for the claimants is that the use of the definite article in the expression "*the* purpose for which the warrant was issued" (emphasis added) in s.16(8) admits of only one purpose and excludes any question of collateral or subsidiary purposes in the execution of the warrant. We consider the submission to be untenable. The effect of the subsection is to confine the permitted extent of the *search* under the warrant to that which is required for the purpose for which the warrant was issued. That purpose will be apparent from the terms of the warrant itself: in this case it authorised a search for certain descriptions of goods pursuant to the Theft Act 1968. The search cannot go wider (though, as discussed further in the context of ground 1(b), s.19 confers wider powers of seizure of things discovered on the premises while police are in attendance there). But s.16(8) is not concerned with purpose in the sense of the motivation of the police in exercising the power of search conferred by the warrant. It does not, for example, prevent the police from timing an

otherwise lawful search to achieve some collateral policing advantage. It does not displace the general law relating to the purposes for which statutory powers may be exercised.

231. As to the general law, we were referred to various authorities on the exercise of powers for ulterior purposes, including *R v Governor of Brixton Prison, ex p. Soblen* [1963] 2 QB 243 at 302, and *R v Inland Revenue Commissioners, ex p. Preston* [1985] 1 AC 835 at 865B. The most pertinent, however, is *R v Southwark Crown Court, ex p. Bowles* [1998] AC 641, from which the parties derived the "dominant purpose" test around which the major part of the argument revolved. In that case, as part of an investigation into complaints that the owners of a business had misappropriated clients' money for personal use, the police wished to ascertain whether information supplied to an accountant for the preparation of the business's accounts had been false or misleading. When the accountant refused to produce the relevant documentation on the grounds of confidentiality, the police sought and obtained an order for their production under s.93H of the Criminal Justice Act 1988, which fell within a part of the Act concerned with the confiscation of proceeds of crime and which provided in subs.(1) that a constable might apply for an order "for the purposes of an investigation into whether any person has benefited from any criminal conduct …". The Divisional Court quashed the order on the ground that the predominant reason for the application had been to further the investigation into the alleged criminality of the business's owners and that such purpose fell outside the ambit of s.93H. The House of Lords upheld that decision.

232. The only reasoned speech in the House of Lords was given by Lord Hutton, with whom the others agreed. On the subject of dominant purpose he said this, at page 651B-G:

> "My Lords, I would make two observations in respect of these submissions. The first is that if the true construction of section 93H be the one which I have suggested, then I consider that in the great majority of cases the circuit judge will not be faced with a situation where it appears that the police are actuated both by the purpose of investigating the proceeds of criminal conduct and by the purpose of investigating the commission of an offence, and that the judge will only have to consider whether he is satisfied … that the purpose of the application is to investigate the proceeds of criminal conduct. Secondly, in my opinion the nature of the dominant purpose test is well stated in *Wade & Forsyth on Administrative Law*, 7th ed. (1994), p.436:
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> > 'Sometimes an act may serve two or more purposes, some authorised and some not, and it may be a question whether the public authority may kill two birds with one stone. The general rule is that its action will be lawful provided that the permitted purpose is the true and dominant purpose behind the act, even though some secondary or incidental advantage may be gained for some purpose which is outside the authority's powers. There is a clear distinction between this

> situation and its opposite, where the permitted purpose is a mere pretext and a dominant purpose is ultra vires.'
>
> In those cases where consideration may have to be given to the distinction between the two purposes, or where it may appear that the two purposes may coexist (an example being where the police wish to investigate a case of living on the earnings of a prostitute), I think that there will be little practical difference between applying the test adopted by Simon Brown LJ [in the Divisional Court] and the test propounded by Mr Temple [counsel for the Crown], but if a difference were to result, I consider it to be clear that the dominant purpose test is the appropriate one to apply.
>
> Accordingly I consider that if the true and dominant purpose of an application under section 93H is to enable an investigation to be made into the proceeds of criminal conduct, the application should be granted even if an incidental consequence may be that the police will obtain evidence relating to the commission of an offence. But if the true and dominant purpose of the application is to carry out an investigation whether a criminal offence has been committed and to obtain evidence to bring a prosecution, the application should be refused."

233. The submission for the Pearce claimants is that the dominant purpose of the police in executing the warrants was to prevent disruption of the Royal Wedding, which was not the purpose for which the power of search was conferred. Reliance is placed generally on the involvement of the Royal Wedding senior command team in the entire process and in the making of all key decisions; the timing of the applications for, and execution of, the warrants and what was said on the subject by Commander Broadhurst and Commander Johnson; the fact that the search was conducted by TSG officers assigned to carry out the tasking of the Royal Wedding Intelligence Co-ordinating Committee, together with Operation Brontide officers; what was and was not seized during the searches, including the seizure of leaflets relating to the Royal Wedding; the fact that information from the search was being fed back to the Royal Wedding senior command team, and Commander Broadhurst's reaction to that information; and the fact that the claimants and others who were arrested in the course of the searches were taken not to the local police station but to Harrow Road police station and were bailed on conditions that prevented their attendance at the Royal Wedding. Particular emphasis is placed on what was said by Commander Broadhurst: for example, that "there was no evidence linking [the squats] to disruption of the wedding, but the only way to find out would be to enter the premises and speak to the individuals inside", that "[i]t was important … to time any entries or arrests on these premises so that, as far as possible, individuals could be lawfully detained during the time of the wedding ceremony", that it "was an obvious relief to me" that no items obviously intended to be used to cause disruption or damage on the day of the wedding were found during the searches, and that he had issued a press release saying that "the raids were intelligence led crime operations that were brought forward

because of fears about the wedding" (see the fuller extracts quoted at paras [92] and [100]-[101] above).

234. There can be no doubt that the attention given to the Camberwell squats in the first place and the subsequent decisions to apply for and execute search warrants at the premises, including the timing of the searches, were heavily influenced by a concern to prevent disruption of the Royal Wedding. But it does not follow that the prevention of disruption of the Royal Wedding, rather than a search for stolen goods, was the dominant purpose of the police in executing the warrants, i.e. in exercising the powers of search conferred by the warrant. Commander Broadhurst's evidence makes clear that he was not prepared to take action against the squats without a sound legal basis, and he authorised action only when satisfied that there existed a sound legal basis in the form of a search for stolen goods. The surveillance operation, the lawfulness of which is not in issue, provided the evidence that the premises were being used for the handling of stolen goods. Search warrants, the lawfulness of which is likewise not in issue, were applied for and obtained on that basis; and whatever the claimants may say about the circumstances surrounding the obtaining of the warrants, the absence of a challenge to the warrants themselves means that they cannot contend that the dominant purpose in obtaining them was to prevent disruption of the Royal Wedding, not to search for stolen goods. So there were lawful warrants, granted on 27 and 28 April, authorising searches of the premises. It is very difficult to see how the execution of those warrants on 28 April by carrying out the searches authorised by the warrants can have been vitiated by the existence of an ulterior dominant purpose that did not impinge on the validity of the warrants themselves.

235. Neither the conduct of the searches themselves nor the reporting back of information to the Royal Wedding senior command team warrants an inference that the dominant purpose of exercising the powers of search was not to search for stolen goods in accordance with the authorisation in the warrants but to prevent disruption of the Royal Wedding. The police seized substantial quantities of computer equipment falling within the description of goods for which the search was authorised (and it cannot be said on the available evidence that they refrained deliberately from seizing bicycles and bike parts falling within the scope of the authorisation). As discussed further when considering ground 1(b) below, we are satisfied that the searches did not exceed the scope of the warrants, but at the same time the officers were not required to adopt "tunnel vision" when carrying out the searches (see *R v Chesterfield Justices, ex p. Bramley* [2000] QB 576 at page 584F). The fact that flyers for the Soho Square event were "found" and that no conspiracy relating to disruption of the Royal Wedding had been "uncovered" does not mean that the searches were conducted for the ulterior purpose of finding such material or evidence. Nor does the relief felt by Commander Broadhurst when the absence of evidence of a conspiracy was reported back to him. We come back to these points when considering ground 1(b).

236. No doubt Commander Broadhurst and his team were relieved in the first place that a sound legal basis for entering and searching the premises had been identified. On the evidence, however, the police would not have taken action in relation to the Camberwell squats in the absence of such a basis, and we do not think that the underlying motivation of avoiding disruption to the Royal Wedding operated to vitiate the otherwise sound legal basis they had for the action they did take. The search for stolen goods pursuant to the warrants can properly be said to have been not a mere

pretext but the dominant purpose of the exercise of the powers conferred by the warrants. This was very different from the inappropriate application made for an ulterior purpose and held to be unlawful in *ex p. Bowles*. That the searches had the advantage of furthering the aim of preventing disruption of the Royal Wedding, and were timed to maximise that advantage, did not invalidate the exercise of the powers.

237. If and in so far as the claimants submit that the defendant acted unlawfully even by taking into account the prevention of disruption of the Royal Wedding, in that he was applying in that connection an unlawfully broad definition of criminal activity and was equating protest with criminality, we reject the submission for the reasons already given when considering the allegation of an unlawful policy or practice.

238. We therefore find against the claimants on each element of the argument advanced under ground 1(a).

Ground 1(b): search for material outside warrants

239. Ground 1(b) is that the searches were unlawful because in conducting them the police were looking for material outside the terms of the warrants.

240. The warrants were obtained under s.26 of the Theft Act 1968, subs. (3) of which provides that where under the section a person is authorised to search premises for stolen goods, "he may enter and search the premises accordingly, and may seize any goods he believes to be stolen". But the execution of warrants is subject also to the general provisions of PACE. We have already referred to the provision of s.15(1) that an entry on or search of premises under a warrant is unlawful unless it complies with s.15 and s.16. By s.15(6)(b) a warrant must identify, so far as is practicable, the articles to be sought; and we have already set out the articles in respect of which a search was authorised by each of the warrants in this case. By s.16(8), as also mentioned already, "[a] search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued". A search going beyond the extent required for the purpose for which the warrant was issued would therefore be contrary to s.16(8) and unlawful. The claimants lay stress on the important safeguards that ss.15 and 16 represent for the affected citizen.

241. The only additional provision needed for the discussion of this ground is s.19, which reads in material part:

> "19.(1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.
>
> (2) The constable may seize anything which is on the premises if he has reasonable grounds for believing -
>
> (a) that it has been obtained in consequence of the commission of an offence; and
>
> (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

> (3) The constable may seize anything which is on the premises if he has reasonable grounds for believing –
>
> (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
>
> (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
>
> …
>
> (5) The powers conferred by this section are in addition to any power otherwise conferred."

242. The claimants' case is that, contrary to s.16(8), the searches of the Camberwell squats were not, and were not intended to be, limited to the extent required for the purpose for which the warrants were issued, namely (to take the terms of the warrant in respect of nos. 294-298) a search for stolen bicycles, bike parts and computers, and were therefore unlawful. There is submitted to be an overwhelming inference that officers were looking for material related to the Royal Wedding. Commander Broadhurst's statements to the effect that no conspiracy was "uncovered" and no plans, weapons or other paraphernalia obviously intended to be used to cause disruption or damage on the day of the Royal Wedding were "found" are said to give rise to a clear inference that the object of the searches was to *seek* such material; and the suggestion that he felt "relief" that the police had not found such material even though they were not looking for it is said to be untenable. The various background factors relied on in support of the case under ground 1(a) of an ulterior dominant purpose are relied on here too, as showing that the search went wider than was authorised. Reliance is also placed on the fact that articles outside the scope of the warrants were seized, specifically the Zombie Wedding flyers and also the toothbrushes (which it is submitted can only have been seized on the speculative basis that they might provide some forensic link with Operation Brontide suspects).

243. We are not persuaded by any of those points. The claimants' case under ground 1(b) loses much of its force with our rejection of the case under ground 1(a). No general inference can be drawn that the purpose was to carry out a search going beyond the extent required for the purpose authorised by the warrants. None of the witnesses say that the officers searched for material outside the scope of the warrants. Most of the articles seized, namely the computer equipment, fell clearly within their scope. The seizure of the Zombie Wedding flyers is entirely consistent with the exercise of the powers conferred by s.19 and does not begin to show that the *search* extended to material outside the scope of the warrants: an officer was entitled to seize the flyers pursuant to s.19 if he came across them on the premises while searching for articles within the scope of the warrants. The same applies to the seizure of the toothbrushes, which (through their potential for DNA analysis) could reasonably be regarded as evidence in relation to the suspected Theft Act offences in respect of which the warrants were issued. As we have said in the context of ground 1(a), references to what was or was not "found" do not justify an inference that the *searches* extended to such material. Items could lawfully be "found" (and seized under s.19) without being searched for. We repeat the point made above by reference to *ex p. Bramley* that officers are not required to adopt "tunnel vision" when carrying out searches.

244. We turn finally in this section to a point that was not taken in the grounds of the Pearce claim as a separate ground of challenge to the validity of the searches but was raised in submissions on both sides. It is a short point relating to the failure of the defendant to return the warrants (with the exception of the warrant in respect of no. 302 Camberwell Road) to the magistrates' court once they had been executed. This is as convenient a place as any in which to consider the point.

245. The requirement to return a completed warrant to the issuing court is laid down by s.16(10) of PACE:

> "16.(10) A warrant shall be returned to the appropriate person mentioned in subsection (10A) below –
>
> (a) when it has been executed;
>
> ….
>
> (10A) The appropriate person is –
>
> (a) if the warrant was issued by a justice of the peace, the designated officer for the local justice area in which the justice was acting when he issued the warrant;
>
> (b) if it was issued by a judge, the appropriate officer of the court from which he issued it."

246. It is submitted that, by reason of s.15(1), the failure to return an executed warrant in accordance with s.16(10) has the effect of invalidating the search carried out pursuant to the warrant.

247. The point is not one on which there appears to be any direct authority. In our view, however, it cannot be right to give s.16(10) the effect contended for by the claimants, at least in the circumstances of this case. Whilst return of the executed warrant to the issuing court is important, especially because of the potential materiality of the warrant for litigation (see *R v Chief Constable of Lancashire, ex p. Parker* [1993] QB 577 at page 584E), it would be surprising if a search that met all the statutory conditions applicable at the time it was carried out were to be invalidated retrospectively by a later failure to return the executed warrant to the court. On the face of it, s.15(1) requires the *entry and search* to comply with s.15 and s.16 in order to be lawful, and does not apply to events that occur after the entry and search have been completed. But even if that is an unduly restrictive reading of the provision, a breach of s.16 will not lead necessarily to the grant of relief. In *R (Glenn & Co (Essex) Ltd) v HM Commissioners for Revenue and Customs* [2011] EWHC 2998 (Admin), [2012] 1 Cr App R 22, the Divisional Court underlined the discretionary nature of relief in judicial review proceedings, even in relation to a breach of s.16(5) of PACE. In the present case we are not satisfied that the breach of s.16(10) has caused the claimants any real injustice, let alone that it should lead to the invalidation of what were, in our judgment, otherwise lawful searches. We would therefore decline to grant the claimants any relief in respect of this issue even if the point taken is technically well founded.

Grounds 2 and 3: breach of Convention rights

248. Ground 2 is that the searches violated art. 8. It depends, however, on establishing under ground 1 that the searches were unlawful as a matter of domestic law and were therefore not "in accordance with the law" for the purposes of their justification under art. 8(2). Our findings in relation to ground 1 mean that no separate point arises under ground 2.

249. Ground 3 is that the searches violated art. 14, but the argument is linked to grounds 1 and 2 and our findings in relation to ground 1 again mean that no separate point arises.

THE MIDDLETON CLAIM

250. The circumstances relating to the search of the Sipson Camp are described at paras [103]-[119] above. The amended grounds of claim and skeleton argument for the Middleton claimants adopt a narrative form which does not divide the issues up as neatly as is done in the other claims. For convenience, however, we have broken the issues down into a number of grounds as set out below. There are challenges both to the lawfulness of the warrant and to the lawfulness of the search executed pursuant to it; and in relation to the former the challenge is brought not only against the defendant but also against the issuing magistrates' court.

Ground 1: warrant obtained on basis of misleading information etc.

251. Ground 1 is a challenge to the validity of the warrant itself, based on the contention that the defendant provided misleading, inaccurate or insufficient information to the magistrates' court and/or had an ulterior purpose in applying for the warrant. The principles relied on in relation to the information provided to the magistrates are as summarised by Laws LJ in *R (G) v Commissioner of Police for the Metropolis* [2011] EWHC 3331 (Admin) at para [17], namely that (1) the issue of a search warrant is a very serious interference with the liberty of the subject, (2) the officer applying for such a warrant must give full, complete and frank disclosure to the magistrate so as to enable the latter to base his decision on the fullest possible information, and (3) the court itself must give the most mature and careful consideration to all the facts of the case.

252. The submission made is that the information provided to the magistrates was misleading in suggesting a link between the Sipson Camp and Operation Brontide suspects or persons who it was suspected might wish to disrupt the Royal Wedding. The police did not have any information that there was anyone on the site who was suspected of involvement in previous demonstrations or had any links to potential Royal Wedding protests. There was simply a fear or concern that such people might be there, but that was not a sufficient basis on which to apply for a warrant. The real or dominant purpose in applying for and executing the warrant was to "go in and see" whether any such people were there, which was not a proper basis for the obtaining of a search warrant. The log entries and witness statement of Commander Broadhurst are relied on as showing that the purpose was the same as in relation to the Camberwell squats. Reliance is also placed on the timing of the search, in that it is said that it was timed so that any suspects could be detained over the period of the

Royal Wedding itself, and on the fact that officers sought to establish the identifies of the claimants.

253. It is necessary to disentangle the various strands of that argument. First, in so far as it is alleged that the magistrates were led to believe that there was information that Operation Brontide suspects were on the site, the allegation is without foundation. The information sworn by PC Sharp contains no such suggestion. It refers by way of background to the disorder associated with the TUC Day of Action and to the ensuing Operation Brontide, but it does not suggest that Operation Brontide suspects were at Sipson Camp. Nor does the evidence of what was said orally by PC Sharp to the magistrates refer to any suggestion of that kind. The evidence of DS Yusuf and DC Wedger that they did not have any intelligence that wanted suspects were at the site is consistent with the evidence of what the magistrates were told; it provides no basis for the contention that the magistrates were misled.

254. On the other hand, the magistrates were told in the written information that there was intelligence that persons who might wish to disrupt the Royal Wedding were resident at the camp; and, as the magistrates themselves found (see para [105] above), there was an implicit link between that and what they were told about the intelligence relating to the presence of paint bombs on the site. The point seems in fact to have been made explicit in what PC Sharp told the magistrates at the hearing. But there was nothing misleading about any of that. Commander Broadhurst says in terms in his supplementary statement that there was intelligence that persons at Sipson Camp were filling light bulbs with paint to be used on the day of the Royal Wedding. Although Mr Cragg appeared to contend that we should infer that no such intelligence existed, there is no possible justification for such an inference.

255. Mr Cragg did not and could not dispute the existence of intelligence concerning the presence of paint bombs on the site. That intelligence provided a solid basis for the application as made under s.6 of the Criminal Damage Act 1971, seeking authorisation to search for articles intended to be used to commit criminal damage. Nothing turns on the fact that in the event no paint bombs or other articles intended for use to commit criminal damage were found or seized in the subsequent search.

256. In those circumstances we are satisfied that the real or dominant purpose of the application was the stated purpose of searching for articles intended to be used to commit criminal damage. This was bound up directly with the prevention of disruption of the Royal Wedding, since there was a concern that the paint bombs would be used to disrupt the event; and the prevention of such disruption cannot be described as an improper ulterior purpose. The fact that DS Yusuf took with him to the site an intelligence folder containing imagery of outstanding Operation Brontide suspects, in case they came across individuals who were wanted, cannot justify an inference that the purpose of applying for and executing the warrant was to search for such suspects. Nor can the fact that the search was timed for the day before the Royal Wedding, or that officers carrying out the search sought to establish the identities of the claimants.

257. The comparison with the search warrants in relation to the Camberwell squats gets the Middleton claimants nowhere. The purpose for which the Sipson Camp warrant was obtained and executed (a search for items for use in criminal damage) was different from the purpose of the Camberwell warrants (a search for stolen goods). In any

event, the validity of the Camberwell warrants is not challenged and we have rejected the contention that the execution of those warrants was rendered unlawful by the existence of the underlying motivation of preventing disruption of the Royal Wedding. The contention that the exercise was flawed by an improper ulterior purpose is even weaker in relation to the Sipson Camp warrant than in relation to the Camberwell warrants.

Ground 2: magistrates erred in issuing warrant

258. Ground 2 is a challenge to the decision of the magistrates' court to issue the warrant. It covers two main arguments: first, that the magistrates did not have reasonable cause for the grant of the warrant, and secondly, that the warrant was drawn too widely.

259. As to the first argument, the warrant was sought and granted under s.6 of the Criminal Damage Act 1971, which provides:

> "6.(1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been or is intended for use without lawful excuse –
>
> (a) to destroy or damage property belonging to another …
>
> the justice may grant a warrant authorising any constable to search for and seize the thing."

260. It is submitted that insufficient information was provided to the magistrates to give them "reasonable cause to believe" that persons on the site had under their control articles intended for use in committing criminal damage. All that the magistrates were told in the information was that there was intelligence that paint bombs "may" have been moved to the site and that individuals who "may" wish to disrupt the Royal Wedding were resident at the site. The answer to that submission is given in the acknowledgment of service of the magistrates' court, quoted at para [105] above: the justices, taking both the oral evidence and the written information together, decided that they had reasonable cause, and not mere suspicion, that at Sipson Camp there were articles intended to be used to commit criminal damage. We are not persuaded, on the evidence before us, that the magistrates were wrong to find the existence of reasonable cause.

261. The second argument, that the warrant was too widely drawn, is based on s.15(6)(b) of PACE, which provides that a warrant "shall identify, so far as is practicable, the articles or persons to be sought". It is submitted that the warrant could and should have been more specific, referring to paint bombs rather than to "articles intended to be used to commit the offence of criminal damage". Reliance is placed on the judgment of the Divisional Court in *Power-Hynes v Norwich Magistrates' Court* [2009] EWHC 1512 (Admin), in which a warrant was held to be too vague and uncertain. In the course of his judgment in that case, Stanley Burnton LJ referred at para [22] to the reason behind s.15(6)(b):

> "It is necessary that the persons who are in the premises searched can ascertain from the warrant itself, when it is presented to them, to what material it relates. It is as necessary that they can see, so far as practicable, what is the scope of the warrant as can the police officers effecting the search. Both the statute and principle require the warrant to be a self-contained statement of the articles for which the search is authorised …."

262. That reasoning is of general application but the circumstances of the case were very different indeed from those of the present case. Mr Power-Hynes was an accountant and the company secretary of a company one of whose directors was under investigation on suspicion that he was using the company for serious fraud. The warrant authorised a search of Mr Power-Hynes's premises for "documents and records (electronic or otherwise) relating to high value financial transaction". Officers carrying out the search seized his computers and client files, including files relating to many clients of his accountancy practice who were totally unconnected with the director or the company, and including special procedure material. It is not in the least surprising that the terms of the warrant were found to be too wide.

263. No equivalent problem exists here. The basic concern was that articles intended for use to commit criminal damage were on the site. Whilst the intelligence related specifically to paint bombs, and it might have been better to include a specific reference to paint bombs within the terms of the authorisation, we do not accept that s.15(6)(b) required the scope of the warrant to be confined to paint bombs. In our view, the more general reference to articles intended for use to commit criminal damage was appropriate and permissible. It gave a sufficiently clear indication, both to those on the site and to the officers carrying out the search, of the ambit of the permitted search. That view is consistent with the approach taken by the courts in a number of cases where challenges to the width of warrants have been dismissed: *R (Da Costa & Co) v Thames Magistrates' Court* [2002] EWHC 40 (Admin) at paras [7] and [16]-[18]; *R (Glenn & Co (Essex) Ltd) v HM Commissioners for Revenue and Customs* [2011] EWHC 2998 (Admin), [2012] 1 Cr App R 291, at paras [22] and [58]-[66]; and *R (Horne) v Central Criminal Court* [2012] EWHC 1350 (Admin) at para [33].

Ground 3: breach of ss.15 and 16 of PACE

264. In addition to the challenge to the warrant itself by reference to s.15(6)(b) of PACE, which we have just considered, the claimants contend that the search was unlawful under s.15(1) for failure to comply with certain provisions of s.16. The matters pursued are as follows.

265. First, it is said that there was a breach of s.16(5)(b), which provides.

> "Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the constable –
>
> …
>
> (b) shall produce the warrant to him …."

Attention is also drawn to para 6.8 of Code B of the PACE Codes of Practice, which provides that if the occupier is present, copies of the warrant shall if practicable be given to him before the search begins, unless the officer in charge of the search reasonably believes that this would frustrate the object of the search or endanger officers or other people.

266. The argument was advanced on the basis of the evidence of the claimants themselves, that their requests to be shown the warrants during the first 30-40 minutes of the search were thwarted. The argument is disposed of, however, by the evidence of PS Croucher quoted at para [116] above. On that unchallenged evidence, he produced the warrant to the first person he found on the site who admitted to being an occupier, and this was no more than 5-7 minutes after the police had arrived onto the site. There was no breach of s.16(5)(b).

267. Secondly, it is said that the search of Mr Lewis's wallet by PC Browne (see paras [110] and [117] above) was in breach of s.16(8) which, as already discussed in the context of the Pearce claim, provides that a search under a warrant "may only be a search to the extent required for the purpose for which the warrant was issued". In meeting this argument the defendant relies on an implied power to do what was reasonably necessary for the effective exercise of the express power of search, and contends that this covered PC Browne's action in looking through the wallet to make sure that there were no items that Mr Lewis could use to harm himself or others. The existence of the implied power is supported by *Connor v Chief Constable of Merseyside Police* [2006] EWCA Civ 1549, in particular at paras [66]-[69], but it provides only a thin basis for going through the wallet in the way that PC Browne did and provides no basis at all for taking out Mr Lewis's bank card and using it as a means of trying to ascertain Mr Lewis's identity. To this limited extent we think that PC Browne overstepped the mark, but the error was *de minimis*. It does not provide a sufficient basis for holding that the search of the Sipson Camp as a whole was unlawful, nor does it justify any relief in its own right.

268. The final argument pursued under this ground is that the search was rendered unlawful by the failure to return the executed warrant to the magistrates' court as required by s.16(10). For the reasons we have given when dealing with the corresponding issue in the context of the Pearce claim, we reject the argument.

Ground 4: breach of Convention rights

269. The claimants rely on arts 8 and 14 but do not suggest (and are right not to suggest) that those articles add materially to their case. In so far as it is contended under art. 8 that the search was a disproportionate interference with the claimants' right to respect for their private life, we reject the contention. The suggestion under art. 14 that the search involved unlawful discrimination against the claimants by reason of their political views or their views about the environment and/or membership of groups of people who shared those views is manifestly unfounded. Nothing further need be said on this part of the case.

CONCLUSION

270. For the reasons given above, all the claims are dismissed.