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Case No: CO/692/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/01/2021

Before:

MR JUSTICE SWIFT

Between:

Commissioner of Police of the Metropolis

Appellant

- and -

Paul Meekey

Respondent

Paul Stagg (instructed by Legal Services Directorate at the Metropolitan Police)
for the **Appellant**

Emma Kutner (instructed by Bankside Commercial) for the **Respondent**

Hearing date: 3rd November 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.

The date and time for hand-down is deemed to be 10:00 am 12 January 2021.

MR JUSTICE SWIFT:

A. Introduction

1. On 30 June 2003 Metropolitan Police officers searched Paul Meekey's home. The search was part of Operation Kilvaxter, a major investigation into the supply and manufacture of firearms. A large quantity of firearms was seized from Mr Meekey's address ("the seized firearms"). I have been told that the value of these firearms is somewhere between £250,000 and £500,000. The seized firearms are described as being "obsolete and/or antique", meaning that they are either chambered for obsolete calibre ammunition or are both so chambered and were made before 1939. Even though for those reasons the firearms can be described as obsolete or antique, it is not uncommon for such firearms to be used. In a statement made in these proceedings, dated 28 February 2018, Mr Anthony Miller, a senior forensic scientist with the Metropolitan Police Service Forensic Firearms Service explained that in the period 2011 to 2017 there were some 70 shooting incidents in London involving the use of firearms described as either obsolete or antique, including 7 murders.
2. On 28 July 2006 Mr Meekey was convicted of possession of prohibited weapons and ammunition contrary to the Firearms Act 1968 ("the 1968 Act") he was sentenced to seven years imprisonment. He was released from prison on 21 January 2010.
3. In proceedings at Westminster Magistrates' Court Mr Meekey sought the return of the seized firearms. It was common ground that when Mr Meekey was convicted in 2006 the trial judge made no order that the firearms be forfeited or destroyed. It was also common ground that since 13 July 2014 it has been unlawful for Mr Meekey to have possession of any of the seized firearms. On that date section 21(1) of the 1968 Act was amended with the consequence that the prohibition against possession of firearms which applies to any person who has been sentenced to a term of imprisonment of 3 years or more was extended to antique firearms. Nevertheless, Mr Meekey applied for the return of the firearms made pursuant to section 1(1) of the Police (Property) Act 1897 ("the 1897 Act"). This provides as follows

"Where any property has come into the possession of the police in connection with their investigation of a suspected offence a court of summary jurisdiction may, on application, either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet."

Mr Meekey's case was that even though he could not possess any of the seized firearms, they could at his request be delivered to a registered firearms dealer (a Mr Harry Gordon) as his agent. The case put for Mr Meekey was that he would then instruct Mr Gordon to arrange for the firearms to be sold.

4. Mr Meekey's application under the 1897 Act was heard by Deputy Senior District Judge Ikram. Also before Judge Ikram was an earlier application by the Commissioner

made under section 52(4) of the 1968 Act for an order that the seized firearms be destroyed. Section 52(4) of the 1968 Act is as follows

“(4) A court of summary jurisdiction or, in Scotland, the Sheriff may, on the application of the chief officer of police, order any firearm or ammunition seized and detained by a constable under this Act to be destroyed or otherwise disposed of.”

5. Following a hearing on 1 March 2019, Judge Ikram allowed Mr Meekey’s application, and refused the Commissioner’s application. His reasons were set out in a judgment provided to the parties on 30 July 2019. Judge Ikram rejected the Commissioner’s submission that Mr Meekey’s application under section 1 of the 1897 Act should be refused by reason of section 3 of the Limitation Act 1980. That section is as follows

“3. — Time limit in case of successive conversions and extinction of title of owner of converted goods.

(1) Where any cause of action in respect of the conversion of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion takes place, no action shall be brought in respect of the further conversion after the expiration of six years from the accrual of the cause of action in respect of the original conversion.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.”

The Commissioner argued that section 3(2) of the 1980 Act applied, with the consequence that well before Mr. Meekey made his application under the 1897 Act, his title to own the seized firearms had been extinguished. Judge Ikram concluded (a) that section 3 of the 1980 Act had no application in the context of an application under the 1897 Act because such an application was not a claim founded in tort (see his judgment at paragraphs 17-20); and in the alternative (b) that there had been no effective conversion of the seized firearms (judgment at paragraph 21-28). On the Commissioner’s application that the seized firearms be destroyed, Judge Ikram concluded that as a matter of discretion no such order should be made (see judgment at paragraphs 32 -45). Judge Ikram concluded in the alternative that the power under section 52(4) of the 1968 Act to order destruction did not arise in this case because there was no sufficient evidence to show that the seized firearms had been seized in exercise of powers under the 1968 Act (judgment at paragraphs 47- 48).

6. On 7 August 2019 the Commissioner requested Judge Ikram to state a case comprising four questions of law. The judge provided the draft Case Stated on 29 October 2019. That draft was finalised at the beginning of February 2020. The Commissioner filed

her Appellant's Notice on 12 February 2020. The questions posed in the Case Stated are as follows

- “1. Was I entitled at paragraphs 21 to 28 of my written judgment, to decide that the limitation period under Section 3 of the Limitation Act 1980 had not expired?
2. If in fact the limitation period had expired, was I right to decide at paragraphs 10 to 20 of my written judgment, that the Limitation Act 1980, in any event, did not affect the respondent's right to make his application under the Police Property Act 1897?
3. Was I right to decide, at paragraphs 29 to 31 of my written judgment, that the respondent remained the owner of the seized items within the meaning of Section 1(1) of the 1897 Act?
4. Was I right to decide at paragraphs 47 to 48 of my written judgment that there was no evidence that the seized items have been seized under the 1968 Act and that therefore I could make no order as sought by the applicant?”

Questions 1 to 3 all go to the decision on Mr Meekey's application under the 1897 Act; Question 4 is relevant to Judge Ikram's alternative conclusion on the Commissioner's application under section 52(4) of the 1968 Act.

B. Decision

(1) Mr Meekey's application under the 1897 Act.

7. The first matter to address is Question 2: was the Judge correct to conclude that whatever effect section 3(2) of the 1980 Act might have for the purposes of a claim in tort, it was a provision that had nothing to say at all when it came to an application under section 1 of the 1897 Act? On this point the Judge concluded that the effect of the 1980 Act was limited to actions founded on tort, and that because Mr Meekey's claim to recover the seized firearms did not depend on any tortious cause of action, but only the right of application under section 1 of the 1897 Act, the outcome of that application could not be affected by anything contained by in the 1980 Act.
8. My conclusion is that this is wrong in law. Section 3(2) of the 1980 Act is, at least in the context of that Act, a somewhat unusual provision. Rather than simply providing a defendant with a defence to a claim (see and compare for example, the effect of sections 2 and 5 of the 1980 Act), section 3(2) goes further: where goods have been converted, and the period of limitation has expired, the owner's title to the goods is removed. In this way, section 3(2) of the 1980 Act has an effect going beyond the law of tort, and beyond affecting only the parties to a claim for conversion.

9. Mr Meekey's application under the 1897 Act rested on the premise that he continued to be the owner of the seized firearms. No doubt the case was put in this way because of the way that section 1 of the 1897 Act is formulated. That section allows magistrates (among other matters) to make orders "for the delivery of the property to the person appearing to [them] ... be the owner thereof ...". Although Mr Meekey's claim that the seized firearms be returned to him rested only on the provisions of the 1897 Act, as stated above, where the conditions for the operation of section 3(2) of the 1980 Act are met, the section operates as part of the general law. Thus section 3(2) was relevant to Mr Meekey's application because it identified circumstances in which his title to the seized firearms would be extinguished. If that happened in this case, one key premise of Mr. Meekey's application under the 1897 Act and, as it turned out, the key premise of the Judge's conclusion that that application should be allowed, would fall away. For these reasons, the Judge's conclusion that section 3(2) of the 1980 Act had no relevance to Mr Meekey's application under the 1897 Act was wrong.
10. The answers to Questions 1 and 3 turn on whether there was a conversion of the seized firearms, and if so whether the period to bring a claim in respect of the conversion had expired such that section 3(2) of the 1980 Act operated to extinguish Mr Meekey's ownership of the seized firearms. This was Judge Ikram's reasoning:

"22. The MPS says they converted the seized items on the 23 June 2009. The Respondent wrote to the MPS seeking return. The letter is date stamped as received by the MPS on 10 July 2009. No reply to that letter can be found.

There could, therefore, not have been a refusal to return communicated before 10 July 2009. I do not accept, on any reading of the evidence, that the date conversion could have been 23 June 2009.

No response to the letter can be found. There is no evidence of what the position the police took but it is clear that the seized items were not actually returned.

23. The first definitive refusal to return the items can be found in the letter of DC Wayne Keirle on 22 February 2010 in response to a new firm of solicitors that were the instructed.

The MPS say that the claimant had six years of the date of conversion to bring proceedings. They say the time limit began from the date of conversion (i.e. that date) and not the date of any act of conversion.

Whilst the MPS argue they made a clear decision to refuse return of the seized items in June 2009, it is quite evident that that was NOT their settled position.

24. On 10 October 2014, an email from Emma Harraway to a third and new law firm instructed, stated, “*significant work has already taken place to identify the items still in our possession and whether, these can be returned to your client. This work is continuing...*” On 20 May 2015, Richard Barnes wrote to the Respondent stating that the MPS were “*still considering the safest and most cost-effect option in this case. I hope to have these instructions shortly*”.

25. I am quite satisfied that the MPS had NOT taken a final and settled position as regards return of the seized items as evidenced in their 2014 and 2015 emails. It is clear they had NOT decided that he was not getting them back. In the alternative, they misled him as to their true position.

26. There appears to be silence as of the 20 May 2015 on the part of both parties, till August 2016 when solicitors for the Claimant wrote by email. It suggests an action under the Police (Property) Act and an action in the High Court for conversion. It secured a response dated 12 September from the MPS. The response stated the MPS position that the limitation period for a civil claim had expired. It seemed, however, to leave open a potential claim for items not specified in previous communication from the claimant.

27. The MPS argue that the Claimant ought to have brought proceedings before 23 June 2015. I have to say, I find that as wholly unattractive. Litigation must always be a last resort and he was entitled to rely on the fact that the issue of return and/or compensation was clearly the subject of an ongoing negotiation in the MPS letter of 20 May 2015, a matter of 3.5 weeks before their suggested deadline. It seems to be conceded that the MPS did not follow up their letter with their own suggestion of the *most cost-effective option* as they state they will.

I remind myself, that had action been in tort in a civil court, equitable remedies would be open to the court.

28. I do not find that there was an unequivocal and settled act of conversion 23 June 2009. I do not find that the letter of 22 February 2010 represented the final position of the MPS either.”

11. The letter dated 23 June 2009 was sent by Mr Meekey’s then solicitors. It was as follows:

“I represent Mr Meekey who is currently serving a term of imprisonment at HMP Stanford Hill. He was convicted of

Possession of Fire Arms in breach of Section 5 of the Fire Arms Act.

On arrest Mr Meekey's home address was searched. A substantial number of firearms and associated ammunition, casings, cartridges etc. were seized by officers from the Trident Operational Command Unit.

A very large number of the items seized fell within the extension of Section 58 of the Fire Arms Act since they were antiques. Whilst there was a dispute between the expert called by the Crown and the expert called by the defence as to whether some items fell within this category there were a very large number of items in respect of which there was no such dispute.

The Trial Judge made no order for forfeiture or destruction of any of the items. Mr Meekey is entitled to have them returned to him or in the alternative delivered to a registered Fire Arms dealer who has offered to store the items on his behalf.

The collection of antiques are of significant value.

Mr Meekey was convicted at the Central Criminal Court Old Bailey on 27 July 2006 and sentenced on 28 July 2006. The registered fire arms dealer in question is Mr Harry Gordon.

I enclose for your reference a schedule of items of property in respect of which there was agreement as to the fact that there was no restriction together with a list in respect of which there was agreement as to restriction and a further list in respect of which there was partial agreement between the experts instructed.

In the first instances would you please confirm that all the items listed in the attached schedules remain in the possession of the Metropolitan Police and have been stored in suitable conditions to avoid any deterioration in their original state and diminution in value.

Please be advised that we have been instructed by Mr Meekey to seek the return of all items that are not in breach of the Fire Arms Act. There can be no reason not to restore these items to Mr Meekey.

We trust these matters may be dealt without the need for an application to the court under the Police Property Act"

The Commissioner's response to that letter is not available. The Commissioner relies on a letter dated 22 February 2010 to the solicitors representing Mr Meekey at that

time (not the firm who acted for him in June 2009). This letter was in response to a letter dated 27 January 2010, another document that is not available. It says this:

“I am writing to you in response to your recent letter dated the 27 January 210 relating to the return of property to your client Mr Paul Meekey.

The items of property in question are fire arms. I note your term “antique” in relation to items held by police. In relation to the Fire Arms Act 1968 and the term antique there is no clear definition of an antique, age alone is not sufficient as you are no doubt aware.

Your client, Paul Meekey, was convicted at the Criminal Court of Firearms offences in July 2006 and sentenced to a term of imprisonment. As part of the police investigation and prosecution a large quantity of fire arms and ammunition production material were seized and produced before the court.

It is not the intention of the investigating team to restore these items to Mr Meekey or a named fire arms dealer. Mr Paul MEEKEY is in effect prohibited from holding firearms by virtue of his conviction and sentence. Furthermore, ammunition construction material was removed from his property therefore any fire arms held could be matched by manufactured ammunition. This would therefore mean they are not classed as antiques.

If you have any further requests for the return of the mentioned property can I please refer you to your recourse under the Police Property Act.”

12. The parties agree that for conversion to have occurred there must have been: (a) an unequivocal demand for return of the property; and (b) an unequivocal refusal to return it. As I read his judgment, Judge Ikram accepted that the letter dated 22 February 2010 was an unequivocal refusal. At paragraph 23 of his judgment he described it as “a definitive refusal to return the items”. However, he then relied on subsequent events, the emails in 2014 and 2015, to reach the conclusion that the 22 February 2010 letter was not the Commissioner’s “final position”. Since the Commissioner did not rely on any event after February 2010 as being an act of conversion, what follows from Judge Ikram’s conclusions is that there was no act of conversion at all.
13. Two submissions were made to me. The first, on behalf of Mr Meekey, was that there was no conversion because the 23 June 2009 letter was not an unequivocal demand. The second submission, on behalf of the Commissioner, was that the 22 February 2010 was an unequivocal refusal, and therefore an act of conversion that set the limitation clock running, and that nothing that happened thereafter (including the 2014 and 2015 emails) stopped that clock.

14. The first submission was not a matter addressed by Judge Ikram. Indeed, his judgment as formulated does not suggest that the issue was raised before him at all. Nor for that matter is it a question identified in the Case Stated. Nevertheless, I will deal with this submission on its merits. Mr Meekey relies on the judgment of Eady J in *Schwarzchild v Harrods Limited* [2008] EWHC 521 (QB). That case concerned a claim for conversion of jewellery stored in a safe deposit box. On the facts, Eady J concluded that the letter relied on as the relevant demand was not a demand at all, both because it was not an unequivocal request for return of the property and because the request was not "... specific as to the property being sought. It was not, for example, possible at that stage even to define the items compendiously, by reference to the 'the contents of the box', since they had been removed and mixed with other property more than three years before": see judgment at paragraph 30. The submission made for Mr Meekey in this appeal is that the same logic applies because there was no definitive list of the firearms that the Commissioner had seized during the search in 2003.
15. I do not consider that the judgment in *Schwarzchild* establishes any point of principle or otherwise that reads-over to the present case. Eady J's conclusion rested on the evidence in that case; see his judgment at paragraph 30 read with paragraphs 4 to 5. For example, in that case it was insufficient to frame the demand by reference to the contents of the safe deposit box because that box had been opened by the defendant who had then mixed the contents with the contents of other boxes.
16. In each case it must be considered whether a demand has been made, and if so whether that demand is clear in terms of the property that is to be returned. In this case the property requested was identified in the schedule enclosed with the letter dated 23 June 2009. The pre-penultimate paragraph of that letter goes no further than ask the Commissioner to confirm her possession of the material. However, on a fair reading of the last two paragraphs of the letter ("there can be no reason not to restore these items to Mr Meekey"; and the statement that "these matters" can be addressed "without the need for an application to the court under the Police Property Act"), this is a demand for the return of the seized firearms.
17. It is, of course less than ideal that the neither the response to the letter dated 23 June 2009 from Mr Meekey's solicitors nor the letter from his solicitors which prompted the 22 February 2010 is available. Nevertheless, the effect of the 22 February letter is clear: it refers to the seized firearms (third paragraph) and then says "it is not the intention of the investigating team to restore these items to Mr Meekey or a named firearms dealer" (fourth paragraph). On a fair reading this is, as Judge Ikram concluded, an unequivocal refusal to return the seized firearms. One point to add is that the response (dated 25 May 2010) from Mr Meekey's solicitors to the 22 February 2010 letter lends support to the conclusion that there had been an unequivocal refusal to return the seized firearms. That letter opens by confirming Mr Meekey has given instructions to commence proceedings under the 1897 Act.
18. I now turn to the Commissioner's submission as to the lack of significance of the later emails and correspondence in 2014 and 2015. During 2014 and 2015 there appears to have been sporadic correspondence from Mr Meekey's solicitors seeking return of the seized firearms. From time to time the Commissioner responded. The contents of those responses were not entirely consistent. Looking at the responses in the round it can be said that on occasion the responses did countenance the possibility that some of the seized firearms might be returned to Mr Meekey. On other occasions the possibility

that Mr Meekey might have a claim in damages in respect of (at least some) of the seized firearms was considered. Judge Ikram relied on these matters to reach the conclusion that no act of conversion had taken place, with the consequence that the period of limitation did not start to run, and section 3(2) of the 1980 Act did not operate (see his judgment at paragraphs 21 to 28).

19. I do not consider this was a conclusion the Judge was entitled to reach. The 22 February 2010 letter was a relevant unequivocal refusal to return the property. As I have already noted, the Judge described this as “a definitive refusal to return the items” (see judgment at paragraph 23). I agree. The legal significance of that conclusion is that the limitation period started to run from that date. What happened next did not affect that: the consequences, for the purposes of the 1980 Act, of that act of conversion could not be undone. The proper legal analysis of the dealings that followed in 2014 and 2015 is that they show attempts by the parties to broker a compromise, not that they prove that the conversion cause of action had not arisen.
20. The only legally relevant issue that arises from the events of 2014 and 2015 is whether they are sufficient either to spell out an agreement between the parties to extend time for issuing proceedings or make good the argument that the Commissioner represented that she would agree to extend time such that she is now estopped from seeking to rely on section 3(2) of the 1980 Act.
21. I do not consider that any relevant agreement or representation emerges from the correspondence (which is the only evidence of the dealings between the parties during this time). On occasions, Mr Meekey’s solicitors made it clear that they had his instructions to commence proceedings. Sometimes the point was put specifically by reference to proceedings under the 1897 Act, on other occasions the proceedings anticipated were not specified. It is also true that throughout the correspondence Mr Meekey’s solicitors had to chase the Commissioner for replies. However, there was no express request from the Commissioner that proceedings be delayed. Nor can such request (or equivalent representation) be inferred from the parts of the correspondence from the Commissioner that suggest that some of the seized firearms might be returned.
22. Drawing these matters together, and by reference to the questions posed in the Case Stated that relate to the Judge’s decision on Mr Meekey’s application under the 1897 Act, the answer to Question 1 is no; the answer to Question 2 is no; and the answer to Question 3 is no. The particular consequence of these answers is that the Judge allowed Mr Meekey’s application under the 1897 Act on a false premise, that Mr Meekey was the owner of these seized firearms. By the time of his application under the 1897 Act, by reason of operation of section 3(2) of the 1980 Act, Mr Meekey had ceased to own the seized firearms. For these reasons, Judge Ikram’s decision on Mr Meekey’s application under the 1897 Act must be set aside.

(2) A further point on the application under the 1897 Act.

23. Following the hearing of the appeal I raised a further point with counsel. Regardless of whether section 3(2) of the 1980 Act had been correctly applied by the Judge in this case, ought Mr Meekey’s application under the 1897 Act to have been refused because any return of the seized firearms, even to Mr Gordon as Mr Meekey’s agent would

offend the prohibition at section 21(1) of the 1968 Act against Mr Meekey being in possession of firearms? Counsel have provided written submissions on this point. All submissions were made on the premise (also the premise at the hearing before Judge Ikram) that the seized firearms are “firearms” for the purposes of the prohibition at section 21(1) of the 1968 Act.

24. Section 21(1) of the 1968 Act is as follows:

“21. — Possession of firearms by persons previously convicted of crime.

(1) A person who has been sentenced to custody for life or to preventive detention, or to imprisonment or to corrective training for a term of three years or more or to youth custody or detention in a young offenders’ institution for such a term, or who has been sentenced to be detained for such a term in a young offenders institution in Scotland, shall not at any time have a firearm or ammunition in his possession.”

25. In *Sullivan v Earl of Caithness* [1976] QB 966 a Divisional Court considered whether the defendant who lived in Oxfordshire was in possession of a gun kept at his mother’s flat in Surrey. The court rejected the notion that “possession” as used in section 1(1) of the 1968 Act (the offence of being in possession of a firearm without a relevant firearm certificate) was limited to situations in which the defendant had physical possession of the firearm. May J stated as follows at page 970F – H.

“In my opinion the purpose of section 1 of the Act of 1968 and its ancillary provisions is to regulate and license not merely those who have physical custody of firearms, or who keep them in the place in which they live, but also those who have firearms under their control at their behest, even though for one reason or another they may be kept at their country cottage, at the local shooting range or indeed at Bisley.

As a matter of construction therefore, which must to some extent also be a matter of first impression, and looking at the context and what I believe to have been the intent of section 1 of the Act of 1968, it may well be, I think, that the owner of a firearm who does not at the relevant time have physical possession of it can nevertheless truly be said still to be in possession of it.

In the present case the defendant was at all material times the owner of the firearms. He could no doubt obtain them from his mother's flat at any time when he wanted them. She had the barest of custody of them, not because she had any interest in them, but because her flat was safer than the defendant's home in Oxford.”

26. In *R v North* [2001] EWCA Crim 544, the Court of Appeal Criminal Division considered the meaning of “in possession” in the context of the offence under section

17(2) of the 1968 Act of being in possession of a firearm when either committing or being arrested for an offence specified in Schedule 1 to the 1968 Act. The court applied the conclusion stated in *Sullivan*, stating that the notion of what amounted to possession ought to be consistent across all provisions in the 1968 Act formulated in such terms.

27. The order sought by Mr Meekey in his application under the 1897 Act would not have given him physical possession of the seized firearms. The order Mr Meekey sought required the firearms to be transferred into the physical possession of Mr Gordon. However, such an order would not affect any of Mr Meekey's rights as owner of the seized firearms. As owner he could, for instance, instruct Mr Gordon to transfer possession of the firearms to any person including himself. In other words, Mr Gordon would hold the seized firearms at Mr Meekey's direction. There was no evidence before me (or so far as I can see before Judge Ikram) to the effect that Mr Meekey's rights as owner would be limited in any relevant way. Rather, the premise of the application under the 1897 Act appears to have been that so long as Mr Meekey did not have physical possession of the seized firearms there would be no contravention of section 21(1) of the 1968 Act. In these circumstances, I can see no relevant distinction between Mr Meekey's position vis-à-vis the seized firearms if the order under the 1897 Act is made, and the situation considered by the Divisional Court in *Sullivan*.
28. For these reasons even if my conclusion on any of Questions 1, 2, or 3 is wrong, it would still be the case that no order under the 1897 Act in favour of Mr Meekey should be made; such an order would offend the prohibition at section 21(1) of the 1968 Act.

(3) *The Commissioner's application under section 52(4) of the 1968 Act.*

29. Judge Ikram dismissed the Commissioner's application under section 52(4) of the 1968 Act on its merits: see his judgment at paragraphs 32 to 46. The Case Stated poses no question in respect to that conclusion. However, since the Judge's reasoning relied on the premise that Mr Meekey owned the seized firearms, his conclusion that the public interest in removing the seized firearms from circulation was outweighed by Mr Meekey's rights of ownership cannot now stand. For this reason alone, the Commissioner's application under section 52(4) of the 1968 Act will need to be reconsidered.
30. However, Judge Ikram also dismissed the Commissioner's application on the alternative basis that there was no evidence that the seized firearms had been seized in exercise of powers under the 1968 Act, and for reason the power to order destruction under section 52(4) of the 1968 Act did not arise: see the judgment at paragraphs 47 to 48.
31. Question 4 in the Case Stated is formulated in terms of whether the Judge was "right" to reach this conclusion. I do not consider this is the correct question. As the matter arises in this case, the correct question is whether on the evidence available to him the Judge was entitled to conclude that the firearms had not been seized in exercise of powers under the 1968 Act. This appeal is only on point of law; the only point of law is whether there was an appropriate evidential basis for this finding of fact.

32. I consider the Judge was entitled to reach the conclusion he did on his alternative conclusion. There was no evidence about the search before him other than the evidence of DC Holt that the search had been undertaken by officers of the Trident Proactive South Team (SC08) as part of the Operation Kilvaxter investigation. DC Holt's statement does not identify the power pursuant to which the search was undertaken. The Commissioner advanced no evidence, documentary or otherwise, to explain for example, the legal powers used in the course of Operation Kilvaxter or the circumstances that had led to the search of Mr Meekey's premises. To this extent the evidential basis of the Commissioner's case was flawed; she had not adduced evidence on a matter critical to the existence to the power at section 52(4) of the 1968 Act. The Judge's conclusion at paragraph 47 of the judgment involved no error of law. The answer to Question 4 is therefore, yes.

C. Conclusion and disposal

33. For the reasons given above, Questions 1, 2 and 3 should all be answered no; the answer to Question 4 is yes.
34. The consequence for the Judge's decision on Mr Meekey's application under the 1897 Act is that his decision must be set aside. The premise for the decision was that Mr Meekey remained the owner of the seized firearms. That premise was incorrect. Even if I am wrong on this, for the alternative reasons above, at paragraphs 29 – 32, the order in favour of Mr Meekey on his application under the 1897 Act was wrongly made. Further, the Judge's primary conclusion on the Commissioner's application under section 52(4) of the 1968 Act cannot stand. The Judge's decision, as a matter of discretion, not to order destruction of the seized firearms also relied on the premise that they belonged to Mr Meekey. Lastly, the Judge's alternative conclusion on the section 52(4) application that the Commissioner had not shown that the condition for exercise of the power was met (i.e., that the seized firearms had been seized in exercise of powers under the 1968 Act) was a conclusion properly open to him. It will however, remain open to the Commissioner to make a new application if this evidential fault can be remedied.
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