



Neutral Citation Number: [2019] EWHC 1593 (QB)

Case No: HQ17P00870

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 June 2019

**Before :**

**MR JUSTICE DINGEMANS**

-----  
**Between :**

(1) Ohoud Al-Najar (a protected party by her  
litigation friend Khadia Al-Mulla)

**Claimants**

(2) Khaloud Al-Najar

(3) Fatima Al-Najar

(4) Dhabia Al-Muhairi

(5) Saif Saeed Al-Muhairi

(6) Shaikha Saeed Al-Muhairi

(7) Nora Al-Mazroui (a child by her litigation  
friend Khaloud Al-Najar)

(8) Saeed Khafalan Al-Mazrouia (a child by her  
litigation friend Khaloud Al-Najar)

(9) Fatima Al-Mazroui (a child by her litigation  
friend Khaloud Al-Najar)

- and -

**The Cumberland Hotel (London) Limited**

**Defendant**

-----  
-----  
**Susan Rodway QC and David Sanderson** (instructed by **Hodge Jones & Allen LLP**) for the  
**Claimants**

**Neil Block QC and Camilla Church** (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: 7, 9, 10, 13, 14, 15, 16, 17, 21 and 22 May 2019

-----  
**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE DINGEMANS

**Mr Justice Dingemans:**

**Introduction**

1. This case raises issues about whether a hotel proprietor owes a duty to guests to take reasonable care to protect against injury caused by the criminal actions of third parties, and if so whether the duty was breached in this case.
2. The Claimants (Ohoud Al-Najar (“Ohoud”), Khaloud Al-Najar (“Khaloud”) and Fatima Al-Najar (“Fatima”), the parties have agreed that I should refer to the Claimants and their family by their first names) are from the United Arab Emirates (“UAE”) and were, with Khaloud’s three children and other family members staying at the Cumberland Hotel situated at the Marble Arch end of Oxford Street in London (“the hotel”) in April 2014. In the early hours of Sunday 6 April 2014 Ohoud, Khaloud, Fatima and Khaloud’s three children were sleeping in rooms 7007 and 7008, which had an interconnecting door.
3. CCTV cameras show that at 0113 hours on Sunday 6 April 2014 Philip Spence walked into the hotel. He was wearing a jacket and trousers and it was common ground that in his appearance there was nothing to distinguish him from any other guest or visitor to the hotel. He walked across the lobby and passed within 8 metres of Wasif Zafar, the lobby security officer, going directly to the lift lobby. He took a lift to the 5<sup>th</sup> floor where he was shown on CCTV to be exiting the lift lobby on that floor at 0114 hours. He then made his way to the 7<sup>th</sup> floor and it is apparent that he probably used the fire escape stairs because he was not shown on any other CCTV from the lift lobby. On the 7<sup>th</sup> floor he saw that the front door to room 7008 had been left open, with the deadlock used to prevent it locking. The door to room 7008 had originally been left open because one of the family members staying in the room had left it on the latch so that a hair dryer could be returned without waking the others. In the room Ohoud, Khaloud, Fatima and Khaloud’s three children aged 12, 10 and 7 years were asleep.
4. Mr Spence went into room 7008 and started to steal money, jewellery and other items from rooms 7008 and 7007. He started putting the items into Fatima’s suitcase which was in the room. Khaloud woke up and Mr Spence attacked her by hitting her on the head with a hammer which he had in his jacket pocket. Fatima woke up and came to Khaloud’s rescue but she was also hit on the head with the hammer. At some time when he was in the rooms Mr Spence also attacked Ohoud by hitting her on the head with the hammer. Khaloud, Fatima and Ohoud all suffered very serious injuries. The

attack on Ohoud destroyed the left side of her skull and caused catastrophic brain damage. Ohoud now lacks capacity to conduct her own affairs. The attack has had devastating consequences for the Claimants. The bravery and courage of all of the Claimants at the time of, and after, the attack was apparent from the evidence.

5. After the attack Mr Spence left the hammer on one of the fire escape staircases. He took the lift down to the lobby. He then left the hotel with the suitcase to return to Thomas Efremi, who had supplied the hammer used by Mr Spence in the attacks. Mr Efremi used the credit cards stolen by Mr Spence to obtain £5,000 in cash.
6. Mr Spence, who had 37 previous convictions for 62 offences including past acts of violence, was tried in the Crown Court at Southwark in October 2014. Mr Spence was convicted of 3 counts of attempted murder. Mr Spence and Mr Efremi were also convicted of conspiracy to commit aggravated burglary. Mr Spence was sentenced to life imprisonment with a minimum term of 18 years. Mr Efremi was sentenced to 14 years imprisonment. The Attorney General obtained leave to refer Mr Spence's sentence to the Court of Appeal, Criminal Division on the basis that it was unduly lenient. The sentence was increased to life imprisonment with a minimum term of 27 years, see *Attorney General's Reference (No.123 of 2014)* [2015] EWCA Crim 111; [2015] 1 Cr App R (S) 67.
7. Ohoud, Khaloud and Fatima as direct victims of the attack, and other members of the family as secondary parties who suffered psychiatric injuries, bring a claim for damages against the Defendant the Cumberland Hotel (London) Limited ("the Cumberland hotel"). This is the hearing of a preliminary issue as to liability and contributory negligence in respect of the claims made by Ohoud, Khaloud and Fatima. The claims made by other family members have been stayed pending the hearing of the preliminary issue.

### **Issues**

8. The Claimants contend that the Cumberland Hotel breached a duty "to take such care as in all the circumstances of the case was reasonable to see that their person and property were kept reasonably safe, whilst they were staying at the hotel", and that breach created the circumstances in which Mr Spence could attack them and cause the injuries which they had suffered.
9. The Defendant admits that it owed the duty to its guests but contends that the duty did not include a responsibility to protect guests from the criminal acts of a third party such as Mr Spence, denies that the attack by Mr Spence was reasonably foreseeable, denies that it has acted in breach of any duty, and denies that any breach of duty caused the injuries suffered by Ohoud, Khaloud or Fatima.
10. The issues were refined in the course of the trial and during excellent closing submissions from Ms Susan Rodway QC on behalf of the Claimants and Mr Neil Block QC on behalf of the Defendant and their respective legal teams.

By the end of the trial many of the factual disputes had been resolved, and I should record my particular thanks to Mr David Sanderson and Ms Camilla Church for their hard work in reviewing hours of CCTV footage to resolve some of the disputes about the timings of the patrols by security officers. This case was a proper example of the parties co-operating with each other pursuant to CPR Part 1.4(2)(a) to enable the Court to deal with the case, while at the same time ensuring that every proper point on behalf of their respective clients was pursued.

11. In the final event the legal and factual issues for me to determine are: (1) whether the duty owed by the Cumberland hotel extended to a duty to take reasonable steps to prevent the attack by Mr Spence; and if there was any such duty: (2) whether the attack by Mr Spence was a new intervening act which broke any chain of causation; (3) whether the attack by Mr Spence was reasonably foreseeable; (4) whether the hotel acted in breach of any duty owed to Ohoud, Khaloud and Fatima by failing to act as a reasonable, prudent and competent operator of a London hotel of this standard; (5) whether any breach of duty on the part of the Cumberland hotel caused the injuries suffered by Ohoud, Khaloud and Fatima; (6) whether there was any contributory negligence on the part of Ohoud.

#### **The evidence**

12. On behalf of the Claimants I heard oral evidence from: Khaloud, who was injured in the attack; Fatima, who was also injured in the attack; Shaikha Saeed Al-Muhairi (“Shaikha”), sister of Khaloud, Fatima and Ohoud; Elizabeth Cole a guest of the hotel on 4 August 2013 when a man came into her locked room which she was sharing with her son; Sandra Coleman another guest of the hotel on 6 April 2014; Sami Ullah, assistant night manager at the time of the attack; and John Rafferty, who stayed at the hotel in 2012 or 2013 and who raised issues about the security at the hotel.
13. There was a hearsay notice served in respect of an attendance note made by the Claimants’ solicitors recording statements made by Mr Spence when he was visited in prison and a transcript of the evidence given by him at his trial. I also read a statement from Saif Saeed Al-Muhairi (“Saif”), brother of Khaloud, Ohoud, and Shaikha, whose statement was not challenged subject to a modification to remove opinion evidence in paragraph 31. There was a statement from James Swift, Director of a Security Engineering and Risk Management firm who had visited the hotel on 8 July 2015 on behalf of the Claimants’ solicitors which was not challenged. Reliance was also placed on transcripts of part of the evidence of Mr Efreimi from the trial.
14. On behalf of the Defendants I heard oral evidence from: MD Robiuzzaman Marshall, night shift Back Door Officer or Back of House officer of the hotel on 5 and 6 April 2014; Robert Stanbridge, head of security for GLH Hotels Limited (“GLH Group”) which is the Group in which the Cumberland hotel is a subsidiary; Ian Peck, general manager of the hotel at the time of the attack; Mark Loughrey, security manager at the hotel; Mr Zafar, the night shift lobby security officer of the hotel on 5 and 6 April 2014; Mark Blackie, chief engineer of the hotel at the time of the attacks; Bela Kovacs, night shift

conciierge of the hotel on 5 and 6 April 2014; and Leslie Austria, a member of the room service team at the hotel.

15. A hearsay notice was served in respect of a statement of Margie Merricks, executive head housekeeper at the hotel in April 2014 who was unable to attend the trial because of illness. There were statements which were not challenged from Carly Gray, a senior associate at Clyde & Co who had communications with Mr Ullah; Angharad Clare Reynolds, a legal director at Clyde & Co who had communications with Mr Ullah; and Laura Iveson a social media investigator who analysed accounts linked to Mr Spence. The statement from Wayne Hunter, a health and safety consultant for the GLH Group was also not challenged once a further passage about how theft reports were compiled was added by agreement.
16. The Claimants submit that the Defendant should have called other witnesses being: Mike De Noma, James Berry and Timothy Corden in relation to the rejection of a proposal in 2012 to put key card readers on lift lobby doors; and Stan Stoyanov who was the Duty Security Officer (“DSO”) on the night of the incident. The Defendant adduced a note from its solicitors to the effect that Mr De Noma had relocated, Mr Berry and Mr Corden did not make the decision not to put in the card reader, and that although contact had been made with Mr Stoyanov he appeared to have avoided further contact. The Claimants adduced a note from their solicitors that their attempts to contact Mr Stoyanov had been successful but he did not want to get involved.
17. The Claimants invited me to draw inferences from the failure to call these witnesses namely that there was no good reason not to install the lift lobby key card readers and that Mr Stoyanov was not doing his job properly. The Defendant submitted that there was no proper basis for drawing any adverse inferences noting that the evidence showed that a decision had been made not to install a key card reader and that why that was made did not matter, and that Mr Stoyanov had provided a witness statement to the police about his activities that night, which had been part proved to be correct by the analysis of the CCTV evidence showing his patrols in the hotel on the evening.
18. Both parties were agreed that the law on drawing inferences in civil proceedings was set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 and *Manzi v King’s College Hospital NHS Foundation Trust* [2018] EWCA Civ 1882. If there is no good reason for not calling a relevant witness I may draw an adverse inference, but I am not obliged to do so. I will address the issue of inferences when dealing with my findings on the evidence.
19. There was also expert evidence on behalf of the Claimants from Frank Andrew Davis, managing director of Trident Manor Limited who was an expert in security operations and security risk management with experience of hotels. There was expert evidence on behalf of the Defendant from Garry Langham, Safety and Security manager at another hotel who was an expert in the hotel security sector.

20. There was, on the face of the witness statements and in the oral evidence given at trial, a serious dispute raised by the evidence given by Mr Sami Ullah, an assistant night manager who had acted as night manager. He prepared a witness statement in which he was very critical about a number of matters relating to the security at the hotel, and alleged that solicitors acting on behalf of the hotel had refused to let him include these criticisms in his witness statement, which is why he had then supplied a witness statement to the Claimants' solicitors. If true and reliable this would have been very important evidence in the Claimants' favour. The Defendant's solicitors put in witness statements strongly contesting that they had refused to let Mr Ullah put in criticisms about the hotel, and various attendance notes and emails were exhibited.
21. When he came to give evidence Mr Ullah did not support his written witness statement to the effect that the Defendant's solicitors had not let him include criticisms of the hotel. Instead he said that the hotel staff had been briefed after the attack not to criticise the hotel when the insurers and the solicitors came. This evidence was not supported by any other witness including Mr Loughrey, Mr Marshall and Mr Zafar who said that there had been no such briefing.
22. Mr Ullah accepted that his evidence criticising the Defendant's solicitors was untrue, and he also said that he had given untrue evidence supporting the hotel's case to the Defendant's solicitors. Mr Ullah was also asked about the fact that he had been made redundant before the witness statement had been served and that he had demanded payment for his signature, and it was suggested that he had become upset when he was told he could only be paid for his expenses, which would not exceed £300. He was asked about the fact that he was willing to sign his draft statement to the Defendant's solicitors if he was paid damages.
23. Having heard Mr Ullah I have no doubt that he felt aggrieved at the fact that he lost his job at the hotel, the rights and wrongs of which are not before me, but I was unable to place any weight on his evidence and I reject his evidence. This is because he accepted he lied in his witness statement to the Claimants' solicitors when he said that the Defendant's solicitors had refused to let him put in criticisms of the hotel. On his own account he said he produced false evidence to the Defendant's solicitors, and although Mr Ullah said he had been asked to do this by the hotel staff I reject this account because it featured for the first time in his oral evidence and none of the other witnesses supported his evidence about that. Mr Ullah did give some oral evidence supporting the hotel about the fact that their training was much better than a rival hotel at which he had subsequently worked, but I have no confidence in anything that Mr Ullah told me for the reasons given above and I have not relied on any of his evidence. It is only fair to note that, once Mr Ullah had given his evidence and the unreliability of his evidence had been shown, the Claimants did not require the Defendant's solicitors to give evidence in accordance with their witness statements denying his allegations.

24. By the conclusion of the evidence there was much common ground about the relevant facts. The matters set out below represent my findings of fact unless otherwise stated.

### **The hotel**

25. The Cumberland hotel is part of the GLH Group. The hotel is a purpose built hotel building bordering Oxford Street (starting at 6 o'clock on the clockface and then going clockwise to), Great Cumberland Place, Bryanston Street and Old Quebec Street. There is an annexe at 20 Great Cumberland Place where there are further bedrooms.
26. The main hotel is roughly square shaped with 4 courtyards or lightwells in the hotel. The guest bedrooms are set out on the first to eighth floor of the main hotel. There are about 1,100 guest bedrooms, including the bedrooms in the annexe. The guest floors have corridors on the outside of the square with rooms looking out over the respective streets, and rooms looking into the lightwells. There are corridors running from the middle of each of the 4 outside corridors forming the square to the corridor on the other side of the building, so that the linking corridors make a form of cross and have rooms looking out into the four lightwells on each side of the corridor. There are fire escape stairs situated approximately at each corner of the outside square. These go down to the street level but the door from the street is alarmed. There are lifts in the bottom right hand corner of the interconnecting corridor running from Oxford Street up to Bryanston Street. There are fire risers cupboards on each floor. There are housekeeping cupboards including linen cupboards.
27. Rooms 7007 and 7008 were rooms with an interconnecting door on the seventh floor. After turning left out of the lift lobby to walk along the interconnecting corridor from Oxford Street to Bryanston Street there was a service cupboard and then rooms 7007 and 7008.
28. Rooms 7007 and 7008, and all the guest bedrooms, had guest bedroom doors opening on to the corridor. Each guest bedroom door was a 30 minute fire-resistant door. Each door had a self-closing mechanism, and would lock automatically when the door closed. There are security viewing lenses on each door. Each door had an Onity lock which was opened with a key card, which kept an automatic record of each time the door was opened and closed. There was an internal deadlock, which if turned when the door was open would prevent the door closing and which was described in the evidence as being "on the latch". It was apparent that someone would need to look reasonably carefully at the door to see if it was on the latch because the open gap was small.
29. There is a very large ground floor lobby (with about 1,000 square feet of space) with a restaurant called the Brasserie, and a bar called Momentus to the left of the lobby (entering from Great Cumberland Place), a reception desk ahead with a lift lobby to the front and right of the reception, with a concierge desk on the right side of the lobby set looking towards the wall bordering the lift lobby. There is a concierge on 24 hour duty with at least

one assistant at all times. Mr Stanbridge said the lobby was remodelled in 2004 to create a very large open space and one set of guest lifts. There was no physical barrier between the entrances to the hotel and the lifts.

30. There were three entrances to the lobby. One was from Oxford Street. The main entrance to the hotel and lobby was from Great Cumberland Place. The main entrance had two doors. On entering from Great Cumberland Place there was a left hand entrance (confusingly called the “front entrance right”, because it appears that left and right had been taken from the position of the reception desk) and a right hand entrance (called the “front entrance left”). There are reception staff on 24 hour duty at the reception desk, with at least 3 receptionists on duty at all times. The evidence showed that there would sometimes be very substantial numbers of people checking in at night.
31. It appears that during the day there was a doorman in front of the front entrances left and right who assisted with luggage. After 11 pm the entrance off Oxford Street was closed, and the front entrance right was also closed. This left the front entrance left for persons to enter and leave the lobby. There is one lobby security officer on duty at all times, working in 12 hour shifts. When the lobby security officer is on breaks during the 12 hours shift the lobby officer’s role is meant to be covered by another security officer.
32. Below the ground floor were seven further floors including meeting and events, a nightclub called the Carbon Bar, and various hotel services. There was an entrance to the Carbon Bar from Old Quebec Street. There was also a staircase from the Carbon Bar to the lobby, but there was a person on duty stopping persons coming from the bar to the lobby on Fridays to Sundays from 9 pm until the closing at 3 am. One of the floors below the lobby had a corridor which led under Great Cumberland Place to the annexe. Further details are set out on the floor plans in bundle 14 at pages 4428 to 4442.

### **CCTV cameras**

33. In the hotel there were CCTV cameras. There was a CCTV camera capturing the lift lobbies on each guest floor. These were motion activated and did not always activate. The CCTV cameras were maintained pursuant to a maintenance contract. There were 29 CCTV cameras in the lobby. The most useful camera for the purposes of the trial turned out to be a “fish-eye” camera capturing almost the whole of the floor of the lobby, and the digital footage from that camera was identified and reviewed in the course of the trial. There was also CCTV above the concierge’s desk looking to the lift wall, CCTV adjacent to the concierge’s wall looking to and from the front entrance left, and a CCTV camera looking across the lobby to the side wall of the concierge desk. The police produced a compilation of CCTV images showing relevant events for the purposes of the criminal trial which I have seen, and the parties showed me other CCTV footage and obtained stills from relevant CCTV cameras. The evidence showed that there was no constant monitoring of the CCTV by the Back of House security officer.
34. Mr Loughrey was asked why there were no CCTV cameras on the fire escape stairs. He said a lot of guests used the fire escape stairs and it would not be



practical to have CCTV in the fire escape stairs, saying that there were 130 CCTV cameras at the time and this would require an additional 40 cameras for a low level risk. He noted that the final exit for the fire escape stairs was alarmed.

### **The area around the hotel**

35. There is evidence showing criminal incidents occurring within 500 metres of the hotel between March 2013 and March 2014 in the report from Mr Davis. There were 4328 crimes including: 146 burglaries; 97 drugs offences; 1288 thefts; 144 robberies; 669 shoplifting offences; 455 thefts from persons; and 9 offences for possession of weapons.
36. The terrorist threat level from international terrorism at the time was assessed at substantial (there being higher levels which were severe and critical, and a lower level being moderate)

### **Guests in the hotel**

37. The evidence showed that many guests were attracted to stay at the hotel's central location and its location next to the well-known shopping street which is Oxford Street. Mr Peck described lots of different types of guests coming to the hotel. The evidence showed that guests from the Middle East North Africa region (referred to in hotel documents as "MENA" guests) represented about a third of the guests at the hotel. Just before and after Ramadan, which Mr Marshall referred to as Arabic season for the hotel, the number of MENA guests could represent about half of the guests at the hotel. Mr Peck noted that the lobby area of the hotel would be even more crowded than usual during these periods.
38. The evidence showed that the hotel knew that Middle Eastern guests would often travel in large groups, and would try to arrange to stay on the same floor of the hotel so that visiting each other's rooms would be easier. The hotel also knew that some Middle Eastern guests would leave guest bedroom doors "on the latch", and this issue was picked up in training to housekeeping and security staff who would be directed to shut the door and advise guests to keep the door shut. Security staff kept reports showing when doors had been closed. Mr Peck noted that there were over 1,000 bedrooms of strangers in the hotel.
39. The evidence showed that Mr Stanbridge was head of security for the GLH Group. The Group operated 15 hotels in London and 3 regional hotels. He had served as a guardsman in HM Armed Forces. His job included duties to be aware of criminal trends and ensure that effective measures were in place, and to protect and safeguard the property of guests. After leaving the army he had worked in the Forte group, and he had had continuous training.
40. Mr Stanbridge knew that Middle Eastern guests were used to lower rates of crime together with very severe penalties for theft in their own countries. They were also used to very high security arrangements in hotels in their own countries, some of whose entrances would have scanners. Mr Stanbridge

noted that guests were particularly vulnerable when asleep in their beds. Mr Stanbridge said that there was a system to funnel entrants to the hotel through one door only after 11 pm, and he said that doors left open by Middle Eastern guests would be dealt with by the patrolling officer. He did not accept that the problem of open doors was ignored.

41. Mr Loughrey said that he was aware that Middle Eastern guests would leave doors on the latch, which should not happen and might create vulnerability. Mr Loughrey said there was a process to keep doors shut. Mr Loughrey did say that the hotel would try and do its best to ensure that doors were shut but he was sorry to say that it was the responsibility of guests to shut their doors.

#### **The security personnel**

42. The hotel had a security manager who was Mr Loughrey. At the material time there were three security officers reporting to Mr Loughrey who were on duty. These were: the lobby security officer; the DSO; and the Back of House security officer.

#### **The brand standards and training documents**

43. Mr Peck, as general manager of the hotel, noted that the aim of the hotel was to create an atmosphere of safety and comfort, and that protection of guests and their property was of paramount importance. The Group and hotel produced Brand Standards which emphasised these points. The “Security Brand Standards” had an introductory philosophy statement which was that “we offer a very high level of service which creates an atmosphere of safety and comfort, the protection of our internal and external guests and their property is of paramount importance”. The evidence shows that this brand standard was used for the purposes of training, although it was not a statement advertised to guests or which formed part of any contract to stay at the hotel.
44. Mr Stanbridge was a member of the Institute of Hotel Security Management from 1989, which was set up with the Metropolitan police as a professional association. He is a board member. There is a monthly meeting, which is minuted, at which information between hotels is exchanged. Membership was for managers of security in hotels, and he thought the membership was about 60, although there were other estimates of numbers of members.
45. Mr Stanbridge said a properly designed security system must be pro-active and that to design a proper security system you have to think about what has happened but that an important tool was a risk assessment.
46. Security Guidance produced for the training of housekeeping staff emphasised that thieves may wander corridors for a long time to chance upon the opportunity to enter a room, and would be dressed in a suit or shirt and trousers and would not look out of place in a hotel. In the evidence and at the criminal trial there was reference to these persons as being “hotel creepers”. For this reason housekeeping staff were directed not to let guests into their rooms and make them return to reception.

47. Mr Stanbridge said Mr Loughrey was already at the hotel when he joined the GLH Group in 2006 and he had had a long and close relationship with him. Mr Stanbridge said that they worked together on implementing things as a joint effort. Mr Stanbridge would have departmental meetings minutes of which showed that incidents were reviewed. He would also have had weekly meetings in 2012/2013 which were not minuted. Mr Stanbridge was interested to know what was happening in the hotel.
48. Mr Stanbridge also referred to a document produced in about March 2008 which was headed "Counter Terrorism Protective Security Advice for hotels and restaurants" and was produced by the National Counter Terrorism Security Office ("the NaCTSO document"). This was given out as part of the training provided to hotels in an operation known as Project Argus. The document highlighted the importance of carrying out risk assessments and using suitable measures to manage identified risks, even where the risks were not of the hotel's making. The NaCTSO document identified that "measures you may consider for countering terrorism will also work against other threats, such as theft and burglary".
49. There was one part of the NaCTSO document which occupied some time at the trial. This related to part of the document headed "access control". It was apparent that Mr Davis, the Claimants' security expert, had misread the document and considered that the suggestion that there should be "magnetic swipe or contact proximity cards supported by PIN verification" applied to the divide between public areas of the hotel, such as the lobby, and private areas of the hotel, such as the guest corridors. It became apparent from the whole of the NaCTSO document that this recommendation was referring to the divide between "staff areas" and "all other guest areas" of the hotel, and so could not provide assistance with the specific issue of lift lobby access cards.
50. Mr Stanbridge was asked about the note in the NaCTSO document to the effect that "CCTV is only effective if it is properly monitored and maintained". Mr Stanbridge said that this was not a practicality in hotel business. Mr Stanbridge noted that criminals did not know whether the CCTV was being monitored or not. In this case the evidence showed that the CCTV was maintained pursuant to a contract, although some cameras which were motion activated did not always activate, a point which was apparent during the trial. Mr Loughrey said he had attended a NaCTSO training programme. He had part completed good practice checklists, which he said he also addressed with relevant line managers.
51. Mr Stanbridge had arranged for a security assessment to be carried out in 2009 by a former Major in the Intelligence Corps. Mr Stanbridge said that this was to provide a temperature gauge of the property. He was asked about the fact that the report noted that none of the security management team had received formal training in relation to hotel security operations, although all security staff are Security Industry Authority ("SIA") qualified. This was identified as a red matter, showing it needed to be addressed. Mr Stanbridge said that the report was wrong because the security management team did have training processes, including table top exercises.

52. Mr Stanbridge was asked about a Safety Audit report carried out at the GLH group of hotels on 1 October 2013 by a safety advisor. This covered, among other matters, food safety, health and safety and fire safety. This noted a number of critical matters including defective self-closer to a fire door and unlocked doors to disused storage space areas. Mr Stanbridge was asked about risk assessment and the absence of any formal risk assessment in relation to access to the guest floors. Mr Stanbridge said that there were procedures to deal with those who did not need to be on the property and it is apparent that the training document identified risks. He accepted that the hotel was a flagship hotel located in a very central part of London which was an attraction for tourists and shopping in the area. He accepted that any security measures would need to take account of the type of guests expected to stay at the hotel.
53. Mr Mark Loughrey said that as a security manager his job was to ensure that the hotel was a safe place for staff and guests. He got general instructions from Mr Stanbridge which Mr Loughrey would tailor to the specific needs of the hotel. He said that a problem was that thefts would occur. This was not a regular occurrence, but the thefts were of generally small and valuable items. Mr Loughrey was aware of the risks that hotel guests would go out and shop and bring the purchased items back to the hotel. Mr Loughrey said that he was aware of the high crime rate all around London. He said he worked closely with police to ensure safety and security of guests. Mr Loughrey would try and prevent incidents happening and considered it his duty to set up systems to protect guests, and this included from criminals. Mr Loughrey accepted the need for a system to recognise trespassers and deal with them.
54. Mr Loughrey said he would put his views to his line manager who had been Mr Steve Cane. Mr Loughrey would design systems and would put them in place. He would see what other hotels were doing. He said costs of any system would be an issue and it was necessary to consider whether a low level of threat justified the system. Part of his duties was "To carry out security checks as necessary" and he said he would evaluate what was required and organised patrols of the building. He had a lobby officer and a separate DSO to deal with security calls. There would also be a separate back of house security officer, responsible for signing out keys, and master keys, monitoring alarms and reacting to any situation. The back of house security officer would not monitor CCTV all the time, and Mr Loughrey thought that a licence was required to monitor all the time. His view was that CCTV was there to deter and catch any criminals after the event.
55. Mr Loughrey said he prepared security awareness training documents. This included the guidance to "suspect thieves" who it was noted "can be anyone". Pointers to watch for were "people who sit close to a stranger", "not engaging eye contact with you", and "people tail gating/standing close to someone at reception". The training for housekeeping identified that they should "never leave a room on the latch or wedged open" and "never give access to anyone in to a room, however persistent and even if you know them or they are the guest". There was also a "Security Training Summary" which

referred, among other matters, to “internal and external patrols (morse watchman)”.

56. Mr Loughrey said he would also provide security induction, using documents prepared by a previous manager at the GLH Group. Mr Loughrey gave training about how to carry out investigations.

#### **The lobby security officer**

57. The specific duties of the lobby security officer were set out in writing as part of the “lobby duties training record” which was signed by a person after training and re-training on their duties. For example Mr Zafar had signed on 3 August 2013 and then again on 10 August 2014. The listed duties included “Lobby must be covered 24 hours; Never leave your shift before on coming officer relieves you; ... Must patrol Momentus, Brasserie and outside main entrance (smoking area); ... Assist with other departments if lobby is quiet; Host, greet, smile and introduce to all persons entering hotel; security check of persons entering lifts via main entrance max 20 per hour; ... lobby officer is fully responsible for the protection of staff, customers & property; ... Be vigilant for undesirables: thieves, prostitutes, homeless; ....”.
58. Mr Stanbridge said the lobby security officer was one part of the security system. The lobby officer could not talk to and greet everyone and part of their duties was to stop “huggermuggers” who persons who would befriend customers, hug them and steal items such as a watch. Mr Stanbridge and Mr Loughrey agreed that the area between entrance and lift was highly vulnerable. Mr Stanbridge said that the lobby security officer had a difficult balance to maintain with his duties.
59. There was some discussion about the lobby security officer duties at the trial. It was apparent that the Claimants contended that the lobby security officer must greet and introduce himself to every person entering the hotel pursuant to the direction to “Host, greet, smile and introduce to all persons entering hotel”. Schedules were produced to show that Mr Zafar, in the early hours of the morning of 6 April 2014, was not positioned to intercept every person coming into the lobby through the front entrance left. Mr Loughrey contended that the duties were not intended to mean that every single guest had to be greeted, and that duties included patrolling the bar and restaurant area, meaning that not every guest could be hosted and greeted. Mr Loughrey said that by moving around the lobby security officer acted as a deterrent. Although a possible reading of the duties of the lobby security officer was to greet and introduce himself to every person entering the hotel (because of the words “... introduce to all persons entering hotel”) Mr Loughrey said that was not the proper interpretation of the duties of the lobby officer. This is because it would have been impossible to patrol the bar and restaurant areas, and to introduce himself to every guest, which were also part of the duties. I accept that the evidence showed that the lobby officers and the hotel understood that there was no requirement to greet every single guest. This does not answer the point about whether the hotel, in order to discharge its duty of care, should have ensured that every guest was met by the lobby security officer.

60. Mr Peck said he was satisfied with one lobby security officer, noting that there would be 10 members of staff in the lobby including the lobby officer, receptionists and concierge staff. Mr Stanbridge said the only way to greet every single guest would be to get another security officer, which would be the ideal solution, but the provision of one security officer was on a par with all other hotels of their type. In hindsight he said that it was not ideal. Mr Stanbridge thought that a trained security officer should be able to identify whether a person was drunk or high on drugs and he would like to think that if Mr Spence was high on drugs inquiries would have been made and it would have shown that he was not a guest. Mr Stanbridge noted that a well-positioned lobby officer is a deterrent to criminals.
61. Mr Loughrey said there were no physical barriers to prevent persons coming in from outside, but there were facilities for members of the public including the Momentum bar, which is why there was a lobby security officer and sufficient numbers of staff. Mr Loughrey noted that thieves could get into the lobby, and there were thefts from bags in the lobby. Mr Loughrey said that the concierge was also relevant because although he could not see the lifts he could see persons going to access the lifts, and there were receptionists some 35 metres from the entrance. Mr Loughrey accepted that hosting 45 persons over 30 minutes was not an onerous requirement.
62. Mr Loughrey said that there was at the material time only a low level risk to guests on the guest floors. There were some alleged thefts but there was no concrete evidence that it was from non-residents. He said that the thefts averaged 4.46 a month, which was about one a week in circumstances where there would be 6,000-7,000 rooms sold each week (1,100 rooms for 7 nights at about 85 per cent occupancy). Mr Loughrey said that Mr Zafar, the lobby security officer on duty at the time, had been fully trained in lobby duties, but he had not yet been trained in other duties and he was the least experienced security officer on duty that night.
63. Mr Zafar was asked about his training, and he accepted that criminals will not always look obviously criminal. He thought he would be able to spot if someone was high on drugs. He had been trained, as shown by the documents provided by the security agency who employed him and who supplied him to the hotel. Mr Zafar had had security officer training before and received on the job training. Mr Loughrey had trained him, but he only worked as a Lobby Security Officer at the hotel. He had signed the document containing his job description on 10 August 2013 which included a duty to "follow any laid down hotel policies and procedures". He remembered Mr Loughrey gave him training in his office and on patrols, but did not recall signing certain documents. Mr Zafar said he did not have to introduce himself to each guest who came in and he was not required to verify all guests at night.
64. Mr MD Robuizzaman Marshall, who was working back of house on the evening of the incident said, he was checked by the Security Industry Association and was given a licence which lasted for 3 years. Mr Marshall said he had worked at the hotel since 2011 and he was formally employed by Assist Security who supplied him to the hotel. He had received induction

training on 17 July 2011 following an interview with Mark Loughrey. He was given training to work on the lobby and then started his shift. He was also trained on the job. Mr Marshall had DSO training on 16 August 2011, 5 August 2012, 21 August 2013 and 24 July 2014. His job description required him to ensure that unauthorised persons did not enter company premises and that he removed all trespassers.

65. Mr Marshall said he had received lobby training on 18 July 2011. The lobby was to be covered for 24 hours. He said duties including introducing himself to guests which was easier after 11 pm because there was only one entrance, and the lobby security officer tried his best. Mr Marshall recollected that training would be carried out during extra shifts. Mr Marshall was asked about the duties of the lobby security officer and suggested that the lobby officer was not a crucial role. It was apparent from the whole of Mr Marshall's evidence that he considered the roles of DSO and Back of House officer to be more important than the lobby officer.

### **The Duty Security Officer and patrols**

66. The DSO's duties can be ascertained from the DSO Training programme. These duties included the patrols. The patrols were described as "tours" and there were 4 tours. Tour 1 was a tour of the annexe at 20 Great Cumberland Place. Tour 2 was a tour of the guest bedrooms in the main hotel building from floors 8 to 1, starting on floor 8. Tour 3 was a tour of the ground floor and lower ground floors including Meetings & Events. Tour 4 was a patrol around the outside of the building. Much of the analysis of the morse watchman reports was directed to tour 2 because one of the duties of the patrolling officer, which was carried out by the DSO was to shut any guest bedroom doors which were left open or on the latch.
67. The tours were recorded using Morse watchman devices. The DSO would use a Morse gun on the touchpoint, which would record the contact. On the guest floors the Morse touchpoints were located in the fire escape staircases roughly at each corner of the square, and there was also a touchpoint in the middle where the interconnecting corridors crossed. Mr Marshall and Mr Loughrey marked on plans (exhibits 1 and 3) the routes which would be taken to touch the gun on the touchpoints. It was apparent that Mr Marshall's route would leave out parts of the corridor, which he said he could see, whereas Mr Loughrey's route would involve retracing steps to cover all the corridors.
68. Mr Loughrey said the DSO training programme was delivered as 1:1 training. The training included verifying guests and, on the guest floors, acknowledging guests and offering assistance. Under Guest safety issues to be noted included "armed robbery ... burglary, rape, sexual assault, physical assault etc". Other matters included "natural disasters, kidnappings, bombs ...";
69. Mr Loughrey agreed that each corridor was about 428 metres giving 3,424 metres over 8 floors, which is just over 2 miles. Mr Loughrey's route was 423 metres for each floor. It was apparent that the tours were carried out at

time quicker than the average allowed for each touch in. It was apparent that on some tours not every part of every corridor would be covered. Mr Loughrey said that there was a proper patrolling system. He had been round the hotel with a morse watchman device, and did not need to race round to beat the estimated times.

70. Mr Loughrey commented on the Morse watchman tour reports showing some tours were completed with errors or incomplete. Mr Loughrey said complete with errors was where the watchman was touched out of sequence or the timing was not met.
71. Print-outs of the patrols undertaken between 1 March and 30 April 2014 were analysed and put into the bundles. Some patrols would be marked as incomplete if the touchpoints had been touched in the wrong order or touchpoints had been missed out. It was common ground (following an analysis of CCTV pictures showing when Mr Stoyanov was on tour 3 and comparing that with the recorded readings from the touchpoints) that on the night of 5 April and early morning of 6 April 2014 the readings from the touchpoints were slow by 5 hours and 40 minutes. The parties did not agree on when the system had started to malfunction. The Claimants suggested that it was on 31 March 2014 and the Defendant said it could not be properly worked out, and that it might have been 18 March 2014. It was said that one difficulty in working out when the timing had gone wrong was the fact that there were two Morse guns, one of which might have been reliable and one of which might not have been reliable, but it appears that only one gun was used between 1 March 2014 up to the date of the incident on 6 April 2014.
72. Mr Marshall said that on 5 April 2014 at 0047 hours Mr Loughrey had sent an email reminding everyone of various duties, including the key audit. This included a reminder that “Patrols, all patrols and morse stations must be completed day/nightly, if ... you can’t do a patrol, you must email Bah and myself why”. Mr Marshall said he could not remember which tours he had undertaken.
73. Mr Marshall thought that the training was carried out by Mr Loughrey and that his DSO training was for more than one day. Mr Marshall said he found homeless persons a couple of times on the guest corridors. He would also clear trays which were left out.
74. Mr Marshall was asked about the patrol as recorded on the Morseman reports from 1 March to 30 April 2014. He said he took his patrols seriously, and that he was concerned about his patrols. Mr Marshall said if he saw a door open he would close it. Mr Marshall said on occasions he would only manage to do one tour a day or none.
75. Mr Marshall was shown an analysis of the tour reports showing that on 3 occasions in 5 weeks up to the incident bedroom floors patrolled twice in a 24 hour period, but on 4 occasions, including 5 April 2014 they were not patrolled at all. On other occasions they were patrolled only once. Mr Marshall said that he did not check the reports, and he could not remember how many tours he had done in the period leading up to the assault. After



some confusion in the evidence between witnesses it was clarified by Mr Loughrey that patrols were meant to be performed at least once every 24 hours and I accept that evidence which appears to accord broadly with the timings from the print outs.

### **The Back of House Security officer**

76. There was a photograph showing the security officer's desk with the CCTV monitors behind. Mr Marshall said he kept a logbook. Mr Marshall said if anything happened he would write it down, but if nothing happened he would not write it down. Mr Marshall said he averaged 5 shifts per week and he had no other job at the time.

### **Other hotel staff**

77. Mr Bela Kovacs gave evidence that he worked at the hotel as the concierge. His duties were not to do with security, but he was given security awareness training. He said if he had any security concerns he would raise them with the lobby security officer.

### **Food in the guest corridors**

78. Mr Leslie Austria worked on room service. He gave evidence to the effect that he thought it unlikely that anyone could eat food from room service trays. He said he would get orders, and some guests would leave trays outside the room, but these would be checked and they would not be there for the whole night.
79. Mr Austria accepted that some guests would purchase and then leave some left over take away food and rubbish in the corridor outside the room. It is apparent from the emails that guests did leave trays and rubbish outside rooms. For example on 13 February 2014 housekeeping asked for trays to be removed by the night service after trays from dinner were reported to be still on floors 1 and 4. On 1 March 2014 rubbish was reported to have been left outside a room on the sixth floor.

### **Some relevant previous incidents at the hotel**

80. There was a detailed analysis of previous incidents of theft and room intrusions at the hotel from February 2012 to March 2014 at the trial. This was relevant to issues of the reasonable foreseeability of a criminal assault on guests, and to the risks of such an assault and the appropriate standard of care if a duty existed.
81. The reports included a report from a guest that a man had knocked on his door and tried to assault him, and security attended, arrested the man, and police were called and removed the suspect from the hotel. Mr Stanbridge said that the level of security was good enough to ensure his arrest, and that all doors had viewing glass and that the door was fitted with various items including locks to be used.

82. There were reports of some problems with guests in the bar which Mr Stanbridge said would be dealt with as quickly as possible. One guest reported finding a lady in his bed but Mr Stanbridge said that there was insufficient information to comment.
83. Mr Loughrey was asked in detail about reports of thefts, and noted that some of the reports related to items lost or misplaced outside the hotel, or thefts from Housekeeping staff. Some reports had generated emails and statements and others were simply appended to GLH group "Monthly health and safety report" which noted for example a report of a missing jacket from a room, that CCTV had been checked and the guest had not been seen wearing a jacket on arrival, and a letter had been sent.
84. He considered that there was no strong evidence that non-residents accessed guest floors and stole items, considering it to be more likely to be other residents or staff. He said that it was very rare that there was any suggestion of a non-guest gaining access to guest bedrooms or onto guest floors.
85. John Rafferty, a retired corporate finance solicitor who still acted as director, gave evidence that he had stayed in the hotel on 6 February 2013. He thought he had stayed in the main part of the hotel, although the hotel records suggested he had stayed in the annexe. He reported concerns about access to the lifts. He said that there may have been a security man at the entrance or in the lobby but did not recall.
86. On 27 March 2013 there was a report of a homeless lady who was very drunk on the fourth floor of the hotel at 0645 hours. She was reported to have said "I am waiting for a so-called Therry". She refused to move and the police were called. She was finally persuaded to leave by being given cigarettes and an offer of help to find Therry. Mr Loughrey said that he did not know how she had got in, but security would have looked at the CCTV at the time.
87. On 13 April 2013 there was a report that a handbag, earrings, perfume and a carton of cigarettes to the reported total value of £1040, had gone missing from a room. The guests had left the room and noted the items missing on their return. The door locks were interrogated and showed that the report by the guests was accurate. Mr Mamuda, the DSO, investigated the Housekeeping staff member who reported that she had been cleaning the room and asked to leave by a man she took to be the guest. CCTV was viewed. Mr Loughrey noted that Housekeeping staff had been trained not to let people in and was unable to say whether the person who entered the room was a fellow guest or a non-resident.
88. Mr Stanbridge said in May 2013 there was a report of a man being found on the roof of the hotel. He was detained and handed over to the police. It appeared that the man had broken a hatch cover to get on to the roof and he had been arrested for burglary and criminal damage. Mr Loughrey said the man was not a guest but might have been a friend of a guest.
89. There was also a report of a man offering massage services to guests on floors in May 2013, about which Mr Loughrey had a vague recollection.

90. On 26 July 2013 there was a theft which occurred when a man entered a guest's room using a key card given to that person by the guest. It seems that some pairs of shoes had been stolen. It appears that the man was challenged by security guards and the key card and a passport was taken from him. He escaped but was caught and in the nearby Pret a manger showed the security staff what he had taken. When the police were called the man resisted being held and assaulted the security staff. This was relied on to show that thieves could be violent even though this assault happened off the premises.
91. Mr Loughrey said that on 9 August 2013 a guest was sleeping and heard someone closing the door. The guest woke to find that there had been a substantial theft from the room including £3,000 and an iPad. The guest had slept with the room door unlocked. Mr Loughrey could not say whether this was a theft by another guest or non-resident.
92. Elizabeth Cole, who worked for Her Majesty's Inspector of Schools, stayed in the hotel in 2013. She said that a man had walked in and accessed her room and she had locked the door. She was given different explanations about how this happened and said that she was not given any care by the hotel when she reported it. It appears that Ms Cole was told that it was a member of staff, and then told that she had left her door unlocked. Mr Stanbridge said that it did not appear that the lock reading could be obtained and that it was possibly a member of staff.
93. Mr Loughrey said that an investigation showed that a housekeeper had got a call and gone into the wrong room, but the duty manager was not aware of the investigation. There were no other documents relating to this apart from the emails dated 15 August 2013.
94. Mr Stanbridge said there was a report from a guest of 2 men knocking at the door on 20 August 2013. Mr Stanbridge could not help about whether this was an attempted intrusion into a room or guests knocking on the wrong door. The CCTV was inspected and showed that 2 men fitting the description were seen but the men were not found. Mr Loughrey said that the guest had been given advice to keep his door shut.
95. Mr Loughrey said in April 2013 a guest in room 5027 reported missing iPhone and watches and an investigation concluded that items went missing whilst guest was in room asleep. A letter was sent to the guest.
96. Mr Loughrey said that when monies were lost from a room there would be inevitable suspicion on housekeeping staff. On 23 January 2014 a loss from a room was reported and the email dated 4 February 2014 showed that 2 members of staff had been interviewed. Lock readings would be taken. If a member of staff was interviewed on 2 occasions further action would be taken. For this loss it was impossible to know whether it was mislaid, or children had left a door open, or someone else from inside or outside the hotel had taken the monies.
97. Mr Loughrey said that on 22 February 2014 a man had been seen sleeping in the ice machine room.

98. On the same day Mr Peck sent out an email complaining about a list of issues including panels being open, room service trollies being left in the corridor with last night's dinner on it, service trays left outside rooms and housekeeping stores open. Mr Peck made it clear that these were issues for various department heads and that he did not "have the energy to continually police this".
99. Mr Stanbridge said that on 8 March 2014 there was a report of £1,500 which went missing after a man and his friend were followed by 3 men. Mr Loughrey emailed asking the man to report the matter to the police so that Mr Loughrey could follow up with the local police. On 9 March 2014 Mr Loughrey emailed asking Mr Mamadu to ensure that everyone was on the ball because of 2 thefts from the bar, 1 from the restaurant, £1500 missing, a report of harassment when someone was followed to their room and a report of someone knocking on a door for 25 minutes.
100. Mr Stanbridge said that on 29 March 2014 there was a report of an Arab man who was reported to be a regular troublemaker following a guest. He had met guests in Knightsbridge and followed them back to the hotel. Mr Loughrey had offered to report the man to the police but the guests had not wanted any action taken. Mr Loughrey noted in an email that he would report the man to the police so that a "banning order" could be made. The details of the man would be circulated to the Hotels Institute. Mr Loughrey had a vague recollection of this but could add little to the documents. Mr Marshall recalled this incident when 2 lady guests entered hotel and were followed by a male who put a card under their door. He was alerted and went up to room 1103. Mr Marshall said he was the first one there. He talked to the man, brought him to the back office and called another security officer to provide assistance. The man was searched, his details were taken and photographs were taken. The guests declined to report the matter to the police. The man was then let go.
101. Mr Peck said some of the reported thefts were resolved when guests found items. They would check key cards to get a history of entries into each room.

#### **The proposal for lift access and other proposals**

102. Mr Loughrey said that in his email dated 12 July 2012 he proposed further security measures. This was because of the forthcoming Olympics and the high risk of terrorism. Mr Stanbridge said that he took this opportunity to propose another layer of security. He noted that the lifts were vulnerable and proposed a key card system to access the lifts. This would have worked by having fire doors for each lift lobby which was secured by a key card reader. This was estimated to take 10 per cent of the proposed budget at a cost of £27,128. Other proposals were an additional lobby officer and patrolling officer.
103. Mr Loughrey understood that his request went to James Berry, who was then his line manager, and it was proposed to the General Manager Timothy Corden. Mr Loughrey did not know whether it had been proposed further or stopped at that level. He assumed that cost was a factor, and said that any

security manager would like a lot of things. The proposal for key card lift access was turned down. Mr Stanbridge guessed that the hotel's turnover was about £50 million per annum on bedrooms alone, but could not comment because he did not know why the proposal was turned down. Mr Peck said that the turnover was about £55 million with bedrooms and other sales.

104. The proposal to have an additional lobby officer did happen during the Olympics, but once the threat levels returned to normal the extra officer was removed.
105. There was also a proposal to enhance CCTV and Mr Stanbridge confirmed that some CCTV was enhanced but he did not know if it was all enhanced. Mr Peck confirmed that in 2013 the cameras were analogue and that he had put in for digital recording, and that the CCTV was upgraded over a period of time. Mr Peck said that he was not aware of the proposal to upgrade the key card system in 2013 when he joined the hotel but said it was capital expenditure and would go to the managing director.
106. Mr Stanbridge said there had not been a massive problem with persons getting on to guest floors. Nothing bad had happened before but he accepted it could happen. Mr Stanbridge said that there was nothing to suggest persons would be violent or do something terrible.
107. This evidence therefore shows that the proposal for a key card reader to enable access to the lifts was made in 2012. This was made in the context of the Olympics, together with proposals for an additional lobby officer and another patrolling officer. The proposal for the key card reader was rejected but no reason for this was given in the evidence. It does not seem to me that this is a case where I should draw any relevant adverse inference about the reason to turn down the proposal from the failure to call Mr De Noma, Mr Berry or Mr Corden. This is because I have not been given a reason, and therefore I will not be finding that there was any good reason for rejecting the proposal. If a duty of care exists, the issue will be whether the hotel ought, in order to take reasonable care to protect guests, to have installed key card access to the lifts.

#### **Reported problems with the Onity lock**

108. Mr Stanbridge said that in 2012 or 2013 there was a well-known problem with Onity locks, and that GLH had undertaken remedial action with Onity. Mr Stanbridge recollected that remedial action was taken very quickly, and thought that it involved a cap replacement on part of the lock. The maintenance team helped carry out the necessary works on the locks. Mr Stanbridge did not have any reports of the lock having been overridden.
109. Mr Peck said he joined the hotel in January 2013 and thought that the problem had occurred in 2012. He thought that the problem was that thieves could drill into the locks. Mr Peck considered that the risk to guests was minimal and did not justify any sign telling guests to deadlock their doors.

110. Mr Loughrey recalled hearing about a problem with the Onity locks. The hotel went back to Onity and got something done. Mr Loughrey thought it had been quite a simple process to remedy it.
111. Mr Loughrey was asked about a report of a room theft on 13 January 2013 involving an iPad and phone from a room on the sixth floor. The items had been in luggage in the room. Readings from the Onity lock showed that no one else had accessed the room. Mr Loughrey did not know whether this was a problem caused by Onity locks.
112. On 22 June 2013 there was a report of 2 watches and 2 iPhone missing when guests were sleeping between 0300 hours and 1145 hours. Mr Loughrey emailed the guests saying that the locks had shown that no one had entered the room and asking them to report the matter and give the hotel the crime reference number. Mr Loughrey did not know whether this issue was connected to the Onity locks problem.
113. Mr Blackie who was the Chief Engineer for GLH was able to take apart and reassemble locks. He was not aware of issues about the Onity locks, but he had heard rumours that it could be hacked. He remembered some programme of repair which involved fitting plugs which were missing from the bottom of the locks.
114. In *Anande v Firoke (King's Cross) Limited* [2018] EWHC 3679 (QB) there was reference to problems with Onity locks being overridden in October 2015, but there was no evidence before me of a similar problem at this hotel. It may be that the problem had been resolved for the Onity locks in this hotel by the works carried out in 2012 or 2013 but it is not possible to make a finding about that. In any event the evidence shows that hacking of the Onity lock was not the way in which Mr Spence accessed this room. However this is all evidence relevant to the issues about reasonable foreseeability and appropriate standards of care.

#### **Work on fire riser doors in February 2014**

115. Mr Blackie said in February 2014 he checked all cupboard doors because some locks were not working efficiently or correctly. These were on riser cupboards and housekeeping cupboards. These included linen cupboards. He did not think that there would be space to sleep in a housekeeping cupboard, but it might be possible if there was no trolley in the cupboard.

#### **Mr Spence, previous visits to the hotel and his evening**

116. Both Mr Spence and Mr Efremi gave evidence at their criminal trial in the Crown Court at Southwark. I have the transcripts of their evidence before me and am invited to make various findings of fact on the basis of the transcripts, the attendance note of the Claimants' solicitor's attendance note on Mr Spence, and letters written by Mr Spence to the Claimants' solicitors about his evidence and his desire to obtain a letter confirming that he was helping the Claimants.

117. In the transcripts and attendance notes there was evidence given by Mr Spence about previous visits that he had made to the hotel. Mr Spence was recorded as saying he used to go to the hotel in about 1992 – 1993 to smoke drugs when he was about 13, but later the roof was alarmed because someone threw a sandbag from the roof. He said he went along a corridor and ended up in rooms which were being refurbished, and thought that was in 2002. He said he used to go down stairwells, and was concerned about getting caught by staff as opposed to by security. He said he had smoked on the staircases until a person, who he thought was security, told him not to stay on the stairs. Mr Spence said he had slept in rooms which had been left open after changing and in housekeeping cupboards, and he had defecated after being caught short because of his drug use. He said he wasn't bothered by the CCTV cameras and if he had been challenged he would have tried to blag it or pretended to call someone and leave. Mr Spence said he would eat food which was left outside rooms in take away boxes. He said he had stolen toiletries and towels from the hotel.
118. Ms Merricks in her written statement said that the housekeeping cupboards would be locked and that she did not consider that Mr Spence would have defecated in housekeeping cupboards because staff would have been paid extra for clearing up such a mess and she had not received reports and made extra payments. As Ms Merricks was unwell and her evidence was given as hearsay I did not see her give evidence and her evidence was not given on oath.
119. The only evidence about what Mr Spence was doing during the day and the evening on 5 April 2014 comes from Mr Spence and Mr Efremi. At his trial Mr Spence gave evidence in which he said he had been staying with Mr Efremi. Mr Spence said he would use drugs with Mr Efremi. He said that Mr Efremi had given him a hammer, but not to use in any burglary at the hotel but to protect him from persons to whom he owed a drugs debt. Mr Spence said he had been taking crack and heroin that day and was high on drugs. Mr Spence used this evidence in support of his case that he had not formed a specific intention to kill and had only been using the hammer to quieten Khaloud, Fatima and Ohoud. In his evidence Mr Efremi said that Mr Spence had been taking drugs.
120. When giving evidence to the Claimants' solicitors Mr Spence drew a plan which showed the outside corridors and interconnecting corridors. The Claimants relied on this plan to show that Mr Spence must have had familiarity with the hotel to draw such a plan.
121. It is common ground that the evidence from both Mr Spence and Mr Efremi is hearsay evidence and that I should assess it and give it such weight as I think fit. There is the obvious limitation that I have not heard or seen Mr Spence and Mr Efremi give evidence. Some of the evidence relied on from Mr Spence was not on oath, namely the evidence set out in the attendance note. The evidence in the transcripts from the criminal trial was on oath but part of the evidence must have been disbelieved by the jury who convicted both Mr Spence and Mr Efremi. Mr Spence has numerous convictions, including convictions for dishonesty. It was apparent from his letters to the

Claimants' solicitors asking for them to write and confirm that he was providing assistance to them that Mr Spence was concentrating on what might be of use to him in the future when he comes up for parole in 22 years' time.

122. In these circumstances I find it very difficult to place any weight on what Mr Spence or Mr Efremi have said in evidence, unless there is some other support for it. This is because the jury who heard their evidence did not believe them, because Mr Spence had a particular interest to appear to be helpful to the Claimants, and because Mr Spence has numerous convictions for dishonesty.
123. In my judgment the evidence shows that Mr Spence must have been in the hotel on previous occasions. This is because he knew exactly where the lifts were in the lobby, and because he appears to have found his way from the fifth floor to the seventh floor using the fire escape stairs in a reasonably short period of time. I also take into account that he appears to have given a description consistent with finding his way from the main hotel building to the annexe. I also note that he appeared to have posted a review of the hotel on 14 July 2013 using his social media name "Phil Dafunk". I was less persuaded by the fact that he could draw a rough layout of the floor because the drawing post-dated his criminal trial at which the police plans would have been available to him.
124. I am unable to say how many times he had been to the hotel before. There is no reliable evidence to show that he had ever previously stolen from the hotel and in his own evidence he suggested that he had stolen only towels and toiletries from housekeeping. I do not find that he had defecated in housekeeping cupboards before because the evidence from Ms Merricks, albeit not given on oath and hearsay, about the fact that housekeeping staff would have reported such behaviour because they would get extra pay for cleaning up any such mess seemed credible.
125. I find that on the basis of all the evidence there would have been food left out in the corridors on occasions by guests on service trays or boxes from food take-aways left outside the room before it was collected. I consider it more likely than not that Mr Spence would have eaten on occasions from there, because he said it and he had nothing to gain from saying it, and because it seemed to me to be the likely behaviour of a drug addict who did not have money to spend on food.
126. I am able to say from Mr Spence's history that he has abused drugs in the past. I can also find that his actions on the night are consistent with acquisitive crime to feed a continuing drug habit. Given the dreadful and senseless nature of the attack which he carried out on the Claimants and the evidence at Mr Spence's criminal trial, it is probable that Mr Spence was at least in part under the influence of drugs at the time of the attack, and so this is another evidence based example of the destruction caused by drugs in society. However I am unable to make any finding about the extent of his drug use on the night or whether his drug use would have been apparent to third parties if they spoke to him. I make this finding even though the lay



witnesses including Mr Loughrey, Mr Marshall and Mr Zafar said that they would expect to be able to spot if a person was high on drugs if they had a conversation with that person. This is because it is not possible to state from the evidence when Mr Spence had last taken drugs, and whether he was high and if so how high, at the relevant time that he came into the hotel.

### **The arrival of Ohoud, Khaloud and Fatima and the family**

127. The Claimants travelled from Abu Dhabi in the UAE to London. The first group of the party arrived on 3 April 2014 but Fatima and Ali Al-Najar (“Ali”, who is the brother of Fatima, Ohoud and Khaloud) were delayed by a visa issue which Ali had. Khaloud, now aged 42 years, was an accounting manager before the attack. She had travelled once to London before staying in Chelsea. Fatima, now aged 38 years, had obtained a master’s in project management and was a support engineer in an IT company before the attack. She had also stayed once before in London in Chelsea. Fatima had seen website photographs of the hotel before it was booked and Fatima expected to have a hotel with the standard of a 4 star hotel in London.
128. The first group arrived at the hotel at about 4 pm on 3 April 2014. They were booked in for 8 nights. Khaloud was given room 7007 and was given 2 key cards. She was going to share that room with her two daughters Nora and Fatima (called “baby” Fatima by the family to distinguish her from Fatima) and, when she had arrived, her sister Fatima. Her sister Ohoud was given room 7008 with 2 key cards. Ohoud was going to share that room with Khaloud’s son Saeed, and Shaikha.

### **Events on 3 and 4 April 2014**

129. After arriving on 3 April 2014 the party went to Oxford Street. The Claimants’ party carried out some shopping and it is apparent that some of the items which had been purchased from the shops were in rooms 7007 and 7008. On 4 April 2014 the Claimants’ party went to Madame Tussauds and London Zoo.
130. Mr Zafar said that he was on duty on the night of 4<sup>th</sup> April morning of 5 April. His shifts were from 7 pm to 7 am.
131. Mr Zafar could not remember why there were occasions when he had left the lobby in the early hours of the morning of 5 April 2014 and agreed that when he was not in the lobby someone else should have been there.
132. Mr Loughrey said that someone should have stepped in to cover the absence and confirmed that the lobby was unmanned for a period of 83 minutes on 4 April 2019.

### **The arrival of Fatima and Ali and events on 5 and 6 April 2014 leading up to the attack**

133. On Saturday 5 April the Claimants’ party went to Buckingham Palace and the London Aquarium.

134. Sandra Coleman was a guest who had checked into the hotel for the weekend, arriving on Saturday 5 April 2014. She stayed on the seventh floor. Ms Coleman said she expected the hotel to meet the standards of a 4 star hotel in London. Ms Coleman remembered seeing a member of staff and the lobby was busy. Ms Coleman remembered remarking to her partner that it was easy to go up in the lifts. Ms Coleman considered that budget hotels had better lift security, but did not know whether 4 star hotels had more staff. Ms Coleman said that there were no security staff on at night-time. It was not possible to relate Ms Coleman's experience on 5 April 2014 with the CCTV so there is a possibility that the security officer was in in another part of the lobby and Ms Coleman did not notice him. At the material time of the attack it is apparent that there was a lobby officer on duty in the lobby.
135. The security officers for the night shift for the hotel comprised Mr Marshall as the Back of House officer, Mr Zafar as the lobby officer, and Mr Stoyanov as the DSO. They started their shift at 1900 hours. Mr Loughrey was also working. Although he finished his formal shift before the attack he was still at the hotel and working.
136. Ohoud and Khaloud and Khaloud's children went to rooms 7007 and 7008 at about 2030 hours. Khaloud and her 2 daughters went to sleep in room 7007. Ohoud and Saeed were in room 7008. After arriving back from the outing Shaikha had gone with other family members to Harrods, and to Starbucks and went to drop bags off at reception before going on a Tuk Tuk ride.
137. Fatima and Ali arrived at London Heathrow airport on 5 April 2014, landing at about 2100 hours, and they arrived at the hotel at about 2200 hours. Shaikha then got a message saying Ali and Fatima had landed and asking her to bring back some water. Fatima and Ali were met in the lobby of the hotel by Saif, another brother. They were taken straight up to the seventh floor by Saif. In evidence Fatima noted that they were not stopped by anyone from going up in the lift.
138. Fatima was going to share room 7007 with Khaloud and her two daughters. When she arrived she went into room 7008 in which Saeed was sleeping. Ohoud was awake and talking to Shaikha. Fatima was tired and went to bed in room 7007. Shaikha then left Ohoud and helped move Ali's clothes, some of which were in Fatima's suitcase, to his room. Shaikha was then asked by Ali and Saif to get a hairdryer so she went to room 7008 and borrowed the hairdryer. Ohoud asked Shaikha to bring the hairdryer back, so when Shaikha left room 7008 she left the door to the room on the latch. The best estimate of time is that this took place about midnight, and I accept that evidence as it accords with the timings from the CCTV.
139. Shaikha was asked about leaving the door on the latch. She said that she knew that if a guest was a bad person they could come into an unlocked room, and that locks were there for privacy and security. Shaikha had left the doors locked earlier that afternoon because she left the room and didn't remember why she locked it but assumed that it was to make people and property in it secure. Shaikha said that she had left the door on the latch because Ohoud asked her to, and because Ohoud had searched for a key and

could not find one. Shaikha said that if she had had a key card she would have closed the door.

140. After Saif and Ali had got ready, Saif, Ali and Shaikha went downstairs to the lobby. They spoke with other members of Khaloud's husband's family who were also staying in the hotel including Alnood and Mubarakah, who had a room on the 1<sup>st</sup> floor. The lobby was busy at this time. Shaikha felt hungry so she and the others went out to a convenience shop which was open in Great Cumberland Place.
141. Shaikha and the others returned to the hotel. They returned to the lobby using the front entrance left. They walked across the lobby to the lift. There were others waiting for the lifts including some persons described by Shaikha as drunk people laughing and joking, including some Kuwaiti nationals. One of them looked to the group Shaikha was in and said "don't go with them".
142. Shaikha and the others went to a different lift but one of the Kuwaiti nationals followed them. Shaikha said that she and the others must have looked scared because the Kuwaiti asked them "what are you looking at, why are you looking at me like that?". He then said "don't worry, I'm not going to kill you – my uncles are from the Emirates".
143. Shaikha, Alnood and Mubarakah got a lift but the Kuwaiti national got in with them. As a result Alnood and Mubarakah stayed with Shaikha in the lift up to the seventh floor and they waited for the Kuwaiti national to walk down the corridor. Shaikha went back to room 7008 and Alnood and Mubarakah went back down to their room on the first floor.
144. Shaikha got back to room 7008 at 0112 hours. When Shaikha went into room 7008 the door was still on the latch. This meant that it had been on the latch for just over an hour. Shaikha found everyone asleep and texted her brother Saif to see if he was still awake. He replied that he was so Shaikha went along to Saif's room, which was along the corridor and was room number 7089. Shaikha passed one of the corridors and saw the Kuwaiti national standing in the corridor, looking at her. She ran to Saif's room. The door to room 7008 remained on the latch.
145. Mr Loughrey said that it was apparent from the CCTV cameras that Mr Marshall stayed in the room as Back of House officer throughout the evening. Mr Stoyanov was the DSO and it was apparent that he spent considerable parts of the evening in the back room. The patrols that he took were written up on the occurrence book but the best evidence as to timing of the patrols came from the CCTV evidence because of the error recording times from the Morse watchman and because it was not clear from the occurrence book whether entries were made before or after patrols had taken place.
146. It appears that at 0020 a guest on the fourth floor complained about the noise and that was dealt with by Mr Stoyanov.

147. The CCTV evidence and an analysis of the Morse watchman tour reports when adjusted for time, show that after dealing with the noise complaint Mr Stoyanov carried out Tour 3 and then, after a brief return to the Back of House office, carried out Tour 1. I therefore find, that although Mr Stoyanov was carrying out other patrols, he had not yet carried out Tour 2 being the patrol of the guest bedrooms in the main building of the hotel before the attack was carried out. This meant that there was no issue of Mr Stoyanov missing the fact that the door to 7008 was on the latch when he carried out his patrol. I can confirm that it does not seem to me to be right to draw any particular adverse inferences from Mr Stoyanov's failure to give evidence on behalf of the hotel in circumstances where the dispute about the timing of his patrol has been resolved by CCTV evidence and where he did not co-operate with either Claimants' or Defendant's solicitors. However this does not determine the point made by the Claimants that Mr Stoyanov should have spent less time in the Back of House office and would therefore have been patrolling on tour 2 at the time when Shaikha had left the door on the latch.
148. Mr Kovacs was the concierge on duty. He was shown CCTV footage which showed that he had had a brief discussion with Mr Zafar but he could not remember what that was about. It was apparent that Mr Zafar had rested his head on the front of the concierge desk for about 5 seconds at about 0105 hours, but Mr Kovacs did not remember that. Mr Zafar said he was not tired or bored but might have been looking down. At about 0105 hours some 5-11 persons came into the hotel, and some went past Mr Zafar. At 0107 hours 2 persons came in, followed by a group of 6 persons which included Shaikha who had returned from getting some food.

### **The attack**

149. Whatever the reason for Mr Zafar looking down at 0105 hours, it was apparent that after speaking with the concierge Mr Zafar was carrying out his duties and was walking around the lobby in an anti-clockwise direction walking in the direction of the concierge desk at the time that Mr Spence entered. Mr Zafar said that he did interact with the guests sometimes. It is apparent from the CCTV camera footage that Mr Zafar was not shown introducing himself to guests coming into the hotel, but it is apparent that he was walking around the lobby and was on occasions positioned on the route from the entrance door to the lift lobby area.
150. Mr Spence walked into the hotel using the front entrance left at 0113 hours. Mr Spence passed about 8 metres in front of Mr Zafar and continued to the lift lobby area.
151. It appears that Mr Spence arrived in the lift lobby area some 50 seconds after the person who had last gone up in the lifts, and that the next person to get to the lift lobby was about 1 minutes 39 seconds after Mr Spence had arrived at the lift lobby. This is relevant to issues of causation and tailgating if there was a duty to provide a lift lobby access.

152. Mr Spence took the lift from the lobby to the 5<sup>th</sup> floor and exited the lift lobby area at 0114 hours. He must have used the fire escape stairs to access the seventh floor.
153. Mr Spence entered the room 7008 and also went through the interconnecting door to room 7007. It is apparent, from the fact that Mr Spence carried away Fatima's suitcase with goods, jewellery, bank cards and cash that his motive for entering the room must have been to steal.
154. Khaloud woke up at some point. The lights were off in her room (7007) but were on next door (7008) meaning that the interconnecting door must have been open. Khaloud said "my sister" in Arabic but there was no reply. She noticed a man at the table in her room, who must have been Mr Spence. He was searching Khaloud's handbag and taking cash out of it. Mr Spence went to the interconnecting door, and then came back and said "give me the fucking money". He then started to attack Khaloud hitting her. Khaloud felt that she must have been hit about 30 times and she lost consciousness.
155. Fatima woke to hear Khaloud screaming in agony and saw that she was being hit by Mr Spence. Fatima rushed to help Khaloud but was herself struck all over her body. Fatima collapsed and lost consciousness. At some stage Mr Spence must also have attacked Ohoud.
156. Mr Spence carried out his attack on Khaloud, Fatima and Ohoud using the hammer. He struck them all on the head and caused very serious injuries. Mr Spence placed the hammer on the fire escape staircase E. He got back into the lifts and travelled down in the lifts to the lobby. Mr Spence left the lifts in the lobby at 0136 hours carrying the suitcase. At this time Mr Zafar was leaving the lobby by the Momentum bar.
157. As to the timing of the attack Mr Spence must have entered rooms 7007 and 7008 at some time after 0114 hours and he must have left the rooms at some time before 0136 hours. It is very likely that Mr Spence would have left quickly after the attacks, suggesting that he entered the rooms at around 0125 or 0130 hours.

### **The aftermath**

158. Khaloud recovered consciousness as her daughter was screaming. Everyone was shouting for security. Khaloud could see Fatima on the floor looking at her. Khaloud lost consciousness again until she was in hospital.
159. Shaikha stayed chatting with Saif for about 10 or 15 minutes in room 7089. She decided to go back to her room and Saif watched her as she went down the corridor to rooms 7007 and 7008. Just as he was about to close his door Saif heard screaming from Shaikha. He ran down the corridor. Both Shaikha and Saif saw the utter devastation which Mr Spence had caused. Persons started shouting for security.
160. At 0138 hours Mr Stoyanov had just completed tour 1 of the annexe and returned to the basement of the main building of the hotel. He took the lift

from Meetings and Events in the basement to the lobby and arrived in the lobby. At 0141 hours Mr Stoyanov received a call about the attack. Mr Stoyanov called Mr Zafar to leave his break and go to the seventh floor. At 0144 hours Mr Stoyanov arrived on the seventh floor and he was followed by Mr Zafar.

161. Ms Coleman said that she was woken up by loud screaming and running. Ms Coleman emailed the hotel after the attack saying “We stayed in room 7002. How the hell was a person allowed to get into the hotel to commit this horrific attack ... Maybe you need better security ... You should have a better security on every floor so no one can enter without a key/card.” Ms Coleman said her weekend had been ruined.

#### **Further incidents after the attack**

162. On 22 July 2014, just over 3 months after the attack, Mr Peck emailed Mr Loughrey and others pointing out that the HR Director of BT who reported that every time she had stayed over the last 5 weeks, some 2 to 3 nights each week, she had seen prostitutes in the lifts. Mr Peck noted that with 24 hour security “we must do better in terms of preventing these people getting to our bedroom floors”. Mr Peck talked about the limitations of key card readers for lift access. There were reports in the evidence that other guests could be tail gated or would even press floor buttons for other persons in the lifts.

#### **Further security after the attack**

163. Mr Loughrey said that after the attack he increased number of tours after the incident which was a joint decision by him and Mr Peck because of the incident.
164. On 7 April 2014 the chairman of GLH Group, who had been kept up to date about the police reports, emailed Mike De Noma asking “don’t we have cards to go up and CCTV on each floor. I feel we should tighten up”. Mr De Noma replied saying “we don’t have any card access lifts in the estate; we will be looking at them for all properties as they refurbish”. In the email it was noted that there would be a review of CCTV coverage, including for the stairwells where the hammer was found. It was reported that all guest room doors had security viewing lenses as well as latch guards.
165. Mr Stanbridge noted that after the attack a written risk assessment was carried out for burglary albeit that it was done using a general health and safety risk assessment form. It was not apparent that any new risks to guests were identified.
166. Mr Marshall said after the incident the number of patrols went up. By 9<sup>th</sup> April there were 4 patrols a day, as opposed to one, and by 12<sup>th</sup> April 8 tours of the bedrooms were being done, 4 per shift. The hotel employed extra security officers. However it appears that, in very general terms, reports of thefts continued at much the same level as they had before the incident and the further measures had been taken. Mr Zafar did not recall any specific extra training after the event.

167. At some time after the attack on the Claimants a key card reader showing whether a key card was valid was installed. On 12 September 2014 Mr Stanbridge said that the UK's terrorist threat had gone from substantial to severe. On that date Mr Loughrey sent an email with updated lobby security officer duties saying "as of now ... the wall reader must be used". The updated duties included patrols of Meeting and Events as well as the bar and restaurant together with a continuing duty to "host, greet, smile and introduce to all persons entering hotel". There was an amended duty "Security check of persons entering lifts via main entrance max 20 per hour between 0700 and 2300 use wall reader. From 2300 to 0700 guests must swipe their key card into card wall reader situated next to lifts. If valid card, light will shine. If light doesn't shine, take them to reception desk to verify ID if bona fide guest. If person is trying to access and not a guest, call police and inform them that person is trespassing".
168. Mr Stanbridge said that on 30 June 2015 a proposal to use key card lift lobby access was accepted by Mr De Noma. The proposal was set out in an email from Mr Peck. Mr Stanbridge said that it followed the events in Tunisia where guests had been attacked at hotels and the email referred to "recent international events and the heightened security level in Britain". Mr Peck thought that the recent international events were the attacks in hotels in Mumbai. In the email Mr Peck had said "despite my reservations about the effectiveness of lift key card readers, the recent feedback from our MENA guest is that they would feel more secure if key card readers were installed". Mr Peck explained that the primary security measure restricting non-guest access to guest floors would remain the lobby security officer. Mr Peck noted that only one competitor (the Churchill) used that measure. The costs of the upgrade including installation were £16,000.

### **The expert evidence**

169. Mr Davis had worked closely with hotels when assessing their security all over the world for the Diplomatic service, although he had never been directly employed by any hotel. He had had particular experience of threats in East Africa and Columbia. Mr Langham worked as safety and security manager employed by InterContinental Hotels Group in London. He had been director of safety and security at a number of London hotels from 2004.
170. Some points were made on both sides about whether Mr Davis had relevant experience and about whether Mr Langham was too close to London hotels to provide an objective view because he was a fellow member of the Institute of Hotel Security Managers, although the evidence did not show that Mr Stanbridge and Mr Loughrey on one hand and Mr Langham on the other knew each other. As noted above Mr Davis did not have the experience of what security was being provided by comparable London hotels. Mr Davis' evidence was more directed to showing why risk assessments were important to identifying the risks, so that the owner of the hotel could decide what level of risk was acceptable. I should record that it was apparent that Mr Davis had misunderstood the effect of the NaCTSO guidance about the delineation between public and private areas of the hotel, suggesting that it applied to the difference between the lobby area and the guest floors when it applied to the

difference between areas accessed by guests and others and hotel staff. I did get the impression that this misunderstanding might have influenced his approach to lift key card readers, but it was only part of his evidence. Mr Langham's evidence was more directed to the practicalities of what was being done in comparable London hotels for which he had established some security systems. It is right to note that some of his evidence depended on assertion about what was done because there were no documents against which to assess the evidence and it was apparent some of his evidence was based on observations of other hotels. Those observations would not identify further levels of security which were not obvious even to the trained observer. In my judgment both experts were doing their honest best to assist me and their evidence was very helpful in explaining the security systems and practices, although as is apparent from my findings on breach of duty I have not accepted all of their respective opinions.

171. Mr Davis noted that Mr Zafar appeared to have engaged only with 3 guests over the relevant period of CCTV coverage in the hours before the attack. Mr Davis noted that there had been acts of violence committed by non-guests in hotels in the past being: the 1984 IRA Brighton bombing, the 2007 OJ Simpson armed robbery of memorabilia in the US; the 2010 assassination of the Hamas leader in Dubai; and the robbery of Kim Kardashian in a Paris hotel.
172. Mr Davis noted that effective security should be in layers, and each different layer should have different vulnerabilities so that once one vulnerability had been identified or exploited, there would remain other layers of security. Mr Davis gave evidence about the importance of understanding risk from an organisational point of view, and what tolerance levels the organisation had to risk. This evidence was helpful so far as it went, but it did not particularly assist me in determining whether any reasonable standard had been met because different organisations might have different approaches to risk where one approach was reasonable and the other was not. Mr Davis considered that the evidence showed that the Cumberland hotel had no clear risk management strategy and there were missing a security policy, implementation plan, and a continuous review process. There was no security risk management system in place at the time, which meant that the hotel was not operating in accordance with security industry good practice.
173. Mr Davis considered that there was a catalogue of security risk management failings which could have prevented Mr Spence gaining access to the Claimants' bedroom. Mr Davis said that the hotel should have identified that criminals had access to the guest floors. Mr Davis accepted that the reports of losses were about 1 per week in the context of 1,100 rooms with an occupancy of 900 per night 7 days per week. Mr Davis disagreed with the proposition that the risk of non-guests getting to guest floors was low or very low. He said it was necessary to consider both likelihood of the event occurring and the consequences of it occurring.
174. Mr Davis said that Mr Loughrey should have identified at night that there were few barriers preventing a criminal entering the hotel and reaching guest floors, Mr Zafar failed to carry out his duties, and the risk of Middle East



guests leaving their doors on the latch should have been managed by informing guests of the risks and giving more key cards. CCTV should have been extended to the staircases and should have been monitored. Mr Davis would have recommended a key card reader to call the lift. Doors should be alarmed if left open. Mr Davis would have ensured more patrols and introduced an additional security officer. All of this would have increased the likelihood that Mr Spence would have been deterred from accessing the guest corridors or intercepted. Mr Davis maintained this position even though the introduction of the card reader had not apparently impacted on the reports of thefts.

175. Mr Davis accepted that the hotel had: brand operating standards; a crisis manual; a security training summary; DSO training; Security Induction slides; Security awareness training; job descriptions; training records; Housekeeping security awareness training; Housekeeping training manuals; a duty manager checklist; minutes of weekly meetings; but he maintained that it was not possible to glean clearly the security procedures for the hotel.
176. Mr Langham noted that there was no prescribed formula for putting hotel security systems and procedures in place, so each hotel would try to put in place a reasonable set of systems and procedures to reduce its own particular risks. Mr Langham said that in his view the hotel sat firmly within the range that he would consider reasonable taking account of all the relevant factors at the time of the incident, noting that the hotel's security and processes were generally in line with what Mr Langham had put in place at other London hotels.
177. Mr Langham said that there were appropriate levels of staff. The hotel had restricted entrance to one door after 11 pm. There was nothing about Mr Spence to cause Mr Zafar to challenge him. Mr Langham questioned the effectiveness of key card systems because it was so easy to tailgate and it was not common in hotels with a security team. The evidence showed that key card lift access was mainly used at that time by what were considered to be budget hotels who did not have lobby security officers.
178. Mr Langham said that the number and positioning of the CCTV cameras was adequate. He had never known a hotel to monitor live the CCTV. The hotel had a comprehensive training programme. One patrol each nightshift was entirely reasonable. There were Brand Operating Standards that covered key areas. The guest bedroom doors were standard fireproof doors with self-closing and a locking mechanism. The risk assessments were reasonable. Reporting and responding to allegations of theft were in line with other practice. Mr Langham did not consider that the hotel could reasonably have been expected to structure its security processes any differently or to have implemented additional security systems. The only way to stop the attack would have been to lock the bedroom door.

**Duty extends to take reasonable steps to prevent attack of this nature (issue 1)**

179. The legal submissions before me raised issues about the scope of the hotel's duty, the reasonable foreseeability of the attack, and causation. The real issue on the legal submissions before me was whether the hotel's duty was limited to a duty not to cause harm to the Claimants or whether it extended to a duty to protect the Claimants against injury caused by the criminal acts of third parties. In order to impose liability on the Cumberland hotel for the criminal actions of Mr Spence against the Claimants I will need to find: a duty of care; a breach of that duty of care; which caused damage which was reasonably foreseeable.
180. The modern starting point for an analysis of the circumstances in which a party might owe a duty to protect another person from the criminal activities of a third party used to be *Dorset Yacht v Home Office* [1970] AC 1004 where a duty of care was imposed on the Home Office which had brought young offenders to an island in Poole Harbour and allowing them to escape and cause damage. This was followed by *Smith v Littlewoods Organisation* [1987] AC 241 where no duty of care was imposed on the occupier of an empty cinema to prevent vandals from breaking in and starting a fire in circumstances where it was not reasonably foreseeable that a fire started by vandals would spread to other properties. Other relevant cases included *Attorney General of the British Virgin Islands v Hartwell* [2004] UKPC 12; [2004] 1 WLR 1273 where the police were found to owe a duty of care to a tourist shot by a probationary police officer after supplying the gun to him. Further developments continued with *Mitchell v Glasgow City Council* [2009] UKHL 11; [2009] AC 874, where it was held that there was no duty of care owed by the Council to warn a neighbouring tenant that a tenant had been given notice to quit because of the nuisance caused by that tenant to his neighbouring tenants, and *Michael v Chief Constable of South Police* [2015] UKSC 2; [2015] AC 1732 where it was held that there was no common law duty of care on the call handler of a 999 call to report threats to kill made by the caller's ex-partner, although there was arguable liability under article 2 of the European Convention of Human Rights pursuant to the Human Rights Act 1988.
181. However the law in relation to duties of these type for omissions (or failing to make things better as it has sometimes been called) was comprehensively reviewed by the Supreme Court in *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4; [2018] AC 736 in which the police were held liable for the actions of the person that they were about to arrest for knocking over a passer-by. The judgment in *Robinson* means that the need to refer to the previous authorities is very much reduced, although it was common ground that some of the earlier dicta were relevant. In *Robinson* Lord Reed explained at paragraphs 22-25 of the judgment that some of the difficulties in the law of negligence had been caused by the decision of the House of Lords in *Anns v Merton London Borough Council* [1978] AC 728 at 751-752 when the House of Lords had attempted to set out an approach which could be applied in all circumstances to determine whether a duty of care existed. There had also been some misunderstanding of the effect of the judgment in *Caparo Industries v Dickman* [1990] AC 605. Lord Reed followed the approach of Lord Toulson in *Michael v Chief Constable of South Wales*

*Police* at paragraph 106 to the test set out in *Caparo* [1990] 2 AC 605 at 617-618 noting that Courts should follow established principles and in novel situations “following *Caparo*, the characteristic approach of the common law in such situations is to develop incrementally and by analogy with established authorities”.

182. Lord Reed reaffirmed the general reluctance of English law to impose liability in tort for pure omissions. However, notwithstanding that starting point, the law will impose liability for pure omissions in certain circumstances, including the four situations identified in *Robinson* at paragraph 34. One of these situations is where “A has assumed a responsibility to protect B from that danger”. Absent these situations private bodies and public authorities will not generally owe a duty of care to prevent the occurrence of harm, see paragraph 35 of the judgment. One of the cases in which responsibility had been assumed was *Stansbie v Troman* [1948] 2 KB 48, where it was held that a decorator who had been left in charge of a house and went out leaving the door unlocked owed a duty to the householder to use reasonable care and skill to keep the house locked.
183. So far as a duty in this case is concerned in my judgment it is necessary to start off from the fact that the Defendant operates a hotel. The common law developed special rules for those who are InnKeepers, now called hotel proprietors by the Hotel Proprietors Act 1956 which replaced and repealed the InnKeepers’ Liability Act 1863. For a person who operated a common inn and received all travellers willing to pay a reasonable price, there was strict liability on the InnKeeper for the goods of a guest. McCardie J in *MacLenan v Segar* [1917] 2 KB 325 explained that this was because of the prevalence of highway robbery and the possible collusion between thief and innkeeper, although Graham McBain in his interesting article “Abolishing the strict liability of hotelkeepers” JBL 2006 705-755 suggests at page 721-722 that the origin of this strict liability was Roman law. In any event, and whatever its origins, the law imposed stricter duties for the protection of the goods of guests than the duties for the protection of guests. Under the old common law it seems that the InnKeeper was not liable for any criminal assault on his guests, see *Calye’s Case* (1604) 8 Coke 32a at 33b “if the guest be beaten in the inn, the innkeeper shall not answer for it”.
184. The position at common law evolved and by 1917 in *MacLenan v Segar* it was held in the context of a fire that a hotel proprietor owed a common law duty “to take reasonable care to prevent damage to the guest from unusual danger which the occupier knows or ought to know of”. As McCardie J noted the strict liability for goods and duty only to take reasonable care of the person of the guest was on the face of it anomalous, but with the intervention of the Innkeepers Act and the Hotel Proprietors Act the strict liability for loss of goods was limited to comparatively small sums save in specified circumstances including “default, neglect or wilful act of the proprietor”, see section 2(3). *Anande v Firoka* [2018] EWHC 3679 (QB) was an example of the limits on liability being set aside under the terms of the Act where problems with the hacking of the Onity door lock known to the hotel were not reported to guests.

185. In *Everett v Comojo* [2011] EWCA Civ 13; [2012] 1 WLR 150 the Court of Appeal confronted the issue of whether a nightclub owed a duty of care in respect of the actions of another member of the nightclub who had attacked another guest with a knife. The judge had found a duty of care but found that there was no breach of duty. In finding a duty of care the judge had relied upon a Federal Court of Australia decision in *Chordas v Bryant (Wellington) Pty Ltd* (1988) 91 ALR 149 which held that hotel managers owed a duty to protect one guest from the foreseeable actions of another guest. The injured guest appealed and the nightclub cross-appealed in respect of the finding about the duty of care. The nightclub submitted that “the courts have always been slow to impose on a defendant liability for the deliberate acts of third parties and that any such duty should be narrowly drawn ... the issue was of some importance for the hotel industry ...”. The Court of Appeal applied the three fold test from *Caparo* and concluded at paragraph 34 that “there is a duty on the management of a nightclub in respect of the actions of third parties on the premises, but I stress the standard of care imposed or the scope of the duty must also be fair, just and reasonable” noting in paragraph 36 that “the common duty of care is an extremely flexible concept, adaptable to the very wide range of circumstances to which it has to be applied”. The appeal was dismissed because the judge’s finding that there was no breach of duty was upheld.
186. Mr Block, while recognising that *Everett v Comojo* was binding on this Court, criticised the approach of the Court of Appeal in *Everett v Comojo* because the Court had simply applied the *Caparo* test in a way which he submitted was inconsistent with the approach now taken by the Supreme Court in *Michael and Robinson*. Mr Block also relied on the cases which showed that there was no duty to protect persons against obvious risks, such as diving into a gravel pit in *Tomlinson v Congleton Borough Council* [2003] UKHL 47; [2004] 1 AC 46.
187. In the light of all these authorities in my judgment, among other duties which are not material, the Cumberland Hotel owed the claimants, as guests of the hotel, a duty of care “to take reasonable care to protect guests at the hotel against injury caused by the criminal acts of third parties”. In my judgment the duty of care arises in respect of the omission to take steps to prevent the attack (or the duty to make things better by preventing the attack) as a “responsibility” type case as identified in paragraph 35 of *Robinson*. This is because the hotel invited guests to come and stay at the hotel and thereby assumed a duty to take reasonable care to protect guests. There is a loose analogy with the situation in *Stansbie v Troman* and the imposition of the duty is consistent with the result of the decisions in *Chordas* and *Everett v Comojo* the latter of which is binding on me. As is apparent I have found the duty to exist by reason of the assumption of responsibility test set out in *Robinson* rather than by the use of the *Caparo* test, although I should record that in my judgment the imposition of such a duty of care accords with the reasonable expectations of both hotel proprietors and guests, as well as the subjective expectations of both the Claimants and the Defendant’s witnesses such as Mr Stanbridge as given in evidence. It is clear that the common law relating to hotel proprietors has developed since 1604.

188. In *Smith v Littlewoods* it was noted that in assessing the likely outcome it is not necessary to establish the precise means by which a loss occurred, but it is necessary to establish that the particular risk – in that case a major fire – was reasonably foreseeable, see *Hughes v Lord Advocate* [1963] AC 837 as explained in *Smith v Littlewoods* at page 248c. In this case this means that the likely outcome has to be an attack on guests in their bedrooms, but it is not necessary to show that a hammer was likely to be used.

**No new intervening event to break the chain of causation (issue 2)**

189. In *Smith v Littlewoods Ltd* [1987] 1 AC 241 at page 272A reference was made to the judgment of Lord Sumner in *Weld-Blundell v Stephens* [1920] AC 956 at 986 where it was said that “In general ... even though A is in fault, he is not responsible for injury to C which B, a stranger to him, deliberately chooses to do”, noting that this had been regarded as expressing the view that the voluntary act of another breaks the chain of causation. However as Lord Goff noted at page 272C “if a duty of care is imposed to guard against deliberate wrongdoing by others, it can hardly be said that the harmful effects of such wrongdoing are not caused by such breach of duty. We are therefore thrown back to the duty of care”.
190. It follows from the wording of the duty of care that I have found to exist the fact that the attack by Mr Spence was a criminal act would not amount to a new intervening act and break the chain of causation. This is because the duty is to take reasonable care to protect guests against injury caused by the criminal acts of others.

**Criminal attack by Mr Spence reasonably foreseeable (issue 3)**

191. If there is a breach of duty, the loss caused by the loss must be “reasonably foreseeable” to the reasonable hotel proprietor, see *The Wagon Mound (No.2)* [1967] 1 AC 617.
192. I was referred to a number of passages about reasonable foreseeability in *Dorset Yacht v Home Office* and *Smith v Littlewoods*. However it is important to recognise that some of those statements were made in the context of varying degrees of “reasonable foreseeability” being used as part of the test to establish the existence of a duty of care. In *Dorset Yacht v Home Office* at page 1028E Lord Reid illustrated the difference between reasonable foreseeability and bare foreseeability, without using those terms, when saying “If I buy a ticket in a lottery ... it is foreseeable that I may win a very large prize – some competitor must win it ... but no one could say that winning was a natural and probable result of entering such a competition”. In *Smith v Littlewoods Ltd* [1987] 1 AC 241 Lord Mackay drew a distinction at page 255 between “bare foreseeability” and “reasonable foreseeability”.
193. In *Attorney General of the British Virgin Islands v Hartwell* [2004] UKPC 12; [2004] 1 WLR 1273 at paragraph 21 Lord Nicholls noted that reasonable foreseeability did not denote a fixed point on the scale of probability saying “as the possible adverse consequences of carelessness increase in seriousness, so will a lesser degree of likelihood of occurrence suffice to

satisfy the test of reasonable foreseeability”. The fact of human intervention was something to be considered when assessing the degree of likelihood necessary to give rise to a duty of care, see paragraph 25. In that case the fact that guns were inherently dangerous was a very relevant factor, see paragraphs 33 and 39 of the judgment.

194. Mr Block relied on the evidence of the past events to show that incidents of theft were very low and submitted that there was no known incident of a guest being attacked by non-guests in a hotel room before this case. It was said that this is a case of possibility upon possibility, that an attacker might enter the lobby, that he would not look suspicious and would walk confidently to the lifts, that he might get to the guest floors, that he might come across an unlocked door, that he might start to steal, that he might inadvertently wake the occupants, and that he would be carrying a weapon to attack them with, and that he might use it. Ms Rodway relied on the evidence of the past events to show that thefts had occurred, non-guests had wandered around the hotel, and the hotel’s own training had identified the possibility of non-guests coming in to attack guests. The evidence did show that on occasions non-guests had accessed guest floors, that thefts had occurred, and that those thefts might have been committed by hotel staff, guests and non-guests.
195. In my judgment it was reasonably foreseeable to the Cumberland hotel that a third party might gain entry to the hotel and might injure the guests by a criminal assault, whether as part of an armed robbery, sexual assault or physical assault, with consequences which might be very serious. This was specifically identified in the DSO training programme referred to above. However it is also right to record that the evidence showed that the likelihood of such an attack occurring was extremely low, which is relevant to what steps ought reasonably to be taken by the hotel to prevent such an attack.

#### **No breach of duty (issue 4)**

196. It was common ground that when assessing what is reasonable the relevant standard is that of a reasonable 4 star London hotel. A breach of duty is “something which a reasonable man would blame himself as falling beneath the standard of conduct for himself ...” and also required of a person in a similar position, see *Smith v Littlewoods* at page 270 referring to *Bolton v Stone* [1951] AC 850 at 868-869.
197. It was common ground that I should have regard to any reliable evidence of the practice of similar 4 star hotels in London, while noting the fact that just because every other similar hotel did not adopt a particular security measure was not proof that the practice was reasonable if the measure was required to provide reasonable protection against risks.
198. I have addressed the allegations of breach of duty below by broad reference to the way that they were pleaded in the Particulars of Claim and Defence, although as is often the case once the evidence had been heard the submissions concentrated on some issues more than others, and set out my findings on the evidence in relation to each matter. I have then stepped back

and considered as a whole whether there has been any breach of the duty of care.

199. (1) Security governance. It is right that there was no single overarching security policy or plan, but the evidence before me showed that there were Brand Statements, job descriptions and training materials which showed that risks had been identified and relevant training provided.
200. (2) Risk assessments. It is right to record that there was no single risk assessment for the hotel, and Mr Davis who emphasised the importance of these processes, considered this a relevant failing. It was a failing much emphasised by the Claimants. However it is also necessary to record that the relevant risks had been identified in the documentation referred to above, including the risks of “armed robbery ... burglary, rape, sexual assault, physical assault etc” in the DSO training programme even though the evidence showed that there was a very low likelihood of this occurring. There were also some internal and external risk assessments including one carried out in part by Mr Loughrey at the end of the NaCTSO document. It is not apparent that any further risk would have been identified or preventative measure reasonably required to be implemented if all the documents had been collated into one formal risk assessment.
201. (3) Assessment of threat levels. The hotel had a detailed system for recording and investigating incidents of criminal and other undesirable activity. It was apparent that the hotel kept up to date with terrorist threat levels, and responded to those.
202. (4) Security operating procedures. The hotel had detailed security policies and the evidence showed that they were training on the policies and they were used.
203. (5) Access control. The hotel did operate procedures to control access. These included shutting two out of three entrance doors at night, having a lobby officer, having CCTV as a deterrent, having other hotel staff in the lobby being receptionists and the concierge, having housekeeping staff who were trained to spot persons wandering around, having patrols by the DSO, and having self-locking guest doors.
204. (6) Reviews of plans and procedures. It is apparent that the hotel security policies were kept under continuous review by Mr Loughrey, who considered among other matters, what effect the Olympics would have, what other hotels were doing, and what reports were showing him about security at the hotel.
205. (7) System for reporting. There was a system of reporting by departmental meetings and weekly meetings between Mr Stanbridge and Mr Loughrey.
206. (8) Job descriptions. There were job descriptions set out in the training programmes which identified the duties of the security officers.
207. (9) Inconsistent requirements to lobby officer. It is right to record that the list of duties for the lobby officer did on a literal reading require the lobby

officer to meet and greet every single guest and also to patrol the Momentus bar, the Brasserie and outside the main entrance. However it is apparent that everyone knew that the lobby officer did not have to meet and greet everyone, and the duties were clear in practice.

208. (10) Criminal trends. The evidence showed that Mr Loughrey was well aware of relevant criminal activities and trends. Both Mr Stanbridge and Mr Loughrey were members of the Institute of Hotel Security Management which was established in conjunction with the police. In my judgment both Mr Stanbridge and Mr Loughrey were concerned to ensure that they had a good understanding of anything relevant in relation to security and the hotel industry. The fact that one person described as a regular troublemaker was photographed for the purposes of reporting on shows that criminal activities were not ignored.
209. (11) Reviews in the light of past incidents. It was apparent from the evidence that past incidents were investigated and recorded and considered by Mr Loughrey and Mr Stanbridge. I did detect a tendency on the part of Mr Stanbridge and Mr Loughrey to assume that, in the absence of clear evidence to prove the involvement of a non-guest, the thief would have been another guest or member of staff, but it is apparent that incidents were investigated properly using CCTV and key card interrogation and considered. Further it was apparent that both Mr Stanbridge and Mr Loughrey were aware that non-guests had on occasions accessed guest floors and the risk of them doing so.
210. (12) Meetings of the security department. The evidence showed that Mr Stanbridge and Mr Loughrey met each week and that incidents were reviewed.
211. (13) Departmental meetings. It is apparent that the departmental meetings, and in particular the last two before the attack, did consider the relevant reports of incidents.
212. (14) Continuous training. The evidence showed that there was proper induction training and regular annual training. This was properly recorded. The only evidence that the signatures were not reliable came from Mr Ullah and I have explained in paragraph 23 above why I was not able to accept his evidence.
213. (15) Monitoring security officers' performance. It was apparent that Mr Loughrey did work closely with his security officers, and had a good idea about their abilities. It was also apparent that failings were picked up by others, as appears from the email from Mr Peck. I should record that the evidence showed that on 4 April 2014 there was no lobby officer on duty for a period of time. There was no good reason to explain this in the evidence. However it is apparent that for the overwhelming majority of the time there was a lobby officer on duty.
214. (16) Membership of professional security body. The security officers were members of the Security Industry Association and were properly trained. Mr



Stanbridge had a diploma in Security Management. Mr Stanbridge and Mr Loughrey were members of the Institute of Hotel Security Management.

215. (17) Training of Mr Zafar. Mr Zafar was trained by Assist Security Limited and he had received lobby officer training on 3 August 2013 from Mr Loughrey.
216. (18) NaCTSO guidance. I have noted that the hotel did not have a formal risk assessment but did identify and confront risks. For the reasons which I have already given the NaCTSO guidance did not, when properly understood, require magnetic swipe card access at the lift lobby area. There was no continuous monitoring of CCTV.
217. (19) CCTV cameras in the lifts and on the fire escape stairs. There were no CCTV cameras on the fire escape stairs and in the lifts. There were about 135 CCTV cameras in the hotel, and Mr Spence had been recorded on the CCTV. It is right to record that some of the CCTV cameras which were motion activated did not activate, as is apparent from the intermittent coverage of some of the entries and exits to the lifts. The CCTV cameras were maintained under a maintenance contract and it is apparent from the CCTV coverage at the trial that the overwhelming majority were in proper working order.
218. (20) Monitoring of CCTV. I have already noted that there was no continuous monitoring of CCTV.
219. (21) Doors being left open by Middle East guests. There was a proper system for ensuring that open doors were shut by housekeeping or security staff. There was no alarm system to alert security staff to open doors. There was no notice on the back of doors telling guests to shut the door or welcome leaflet to the same effect. There were patrols of the guest floors at least once a day and it is apparent from the reports that open doors were picked up.
220. (22) Numbers of patrols. The patrols were carried out once a day.
221. (23) Morse watchman and shutting of doors. The evidence of the reports of open doors found by the DSO's shows that the timing requirements of the Morse watchman did not prevent DSO's from identifying open doors.
222. (24) Patrols before the attack. The evidence shows that Mr Stoyanov was on tour at the time of the attack, but had not carried out tour 2 which would have included the seventh floor. I could not discern any duty to carry out that tour at any specific time.
223. (25) Shortcomings in patrols. It is apparent from the reports from the tours that patrols were regularly carried out and relevant matters reported. Although it is apparent that Mr Marshall would not have walked every part of the corridor and so might have missed an open door, the evidence which I accept showed that patrols were taken seriously even if they were carried out briskly as shown by the evidence from the timing of the touchpoints.

224. (26) Numbers of security staff. At the material time there was a lobby officer, DSO and back of house officer on duty. Mr Loughrey was also on duty, although his formal shift had finished. I noted Mr Loughrey's evidence that an ideal solution would be to have another lobby officer to greet every single guest, but the test is whether the hotel took reasonable care to protect the Claimants against Mr Spence's attack and in my judgment the single entrance after 11 pm, the lobby officer together with the other staff in the lobby, the CCTV, the possibility of finding housekeeping and the DSO on the guest corridors, and the self-locking door showed that the hotel had taken reasonable care to protect against this attack.
225. (27) Positioning of the lobby officer. The lobby officer was not in a fixed position between the left hand entrance and the lift lobby area. It is apparent that Mr Zafar was walking around the lobby, including the bar area in the period of time leading up to the attack. He was coming back towards the front left hand entrance when Mr Spence walked into the lobby and towards the lift lobby area.
226. (28) Monitoring of Mr Zafar. I have already addressed the monitoring carried out by Mr Loughrey. On the night apart from resting his head on the edge of the concierge desk for about 5 seconds Mr Zafar did appear to be in the lobby and carrying out his duties. I did reflect on Mr Marshall's evidence about the relative lack of importance of the lobby officer when compared to the roles of DSO and Back of House security officer to consider whether that reflected the attitude generally of the hotel to the role of the lobby officer. However it was apparent from the evidence of Mr Loughrey, as security manager, and Mr Zafar, as lobby officer at the material time, that they understood the importance of the role of the lobby officer.
227. (29) Hosting and greeting. It is right to record that Mr Zafar appeared to speak to only one guest between 2315 and 0115 hours, and the evidence showed that the night before (4 and 5 April 2014) that both Mr Stoyanov and Mr Zafar seemed to have spoken to guests only when the guests had addressed them. However it is also apparent that at the material time Mr Zafar was walking around the lobby, looking at persons, and was for (what was estimated to be) 52 of the 120 minutes of the period from 2315 to 0115 hours standing between the entrance door and the lift lobby area.
228. (30) No hosting or greeting of Spence. Mr Zafar appeared to look towards Mr Spence, and he would have had a side view about 8 metres from him, but he did not host or greet him.
229. I have considered carefully all of the lay and expert evidence about the breaches of duty. In my judgment the evidence as a whole showed a hotel in which security was taken seriously by Mr Loughrey and the security officers and the hotel did take reasonable care to protect the Claimants against the injuries caused by Mr Spence. The hotel did not need to monitor continuously CCTV cameras. This is because there is nothing to suggest that this is an activity carried out by any other hotel proprietor given the low likelihood of any attack occurring. For similar reasons in my judgment to act reasonably the hotel did not need to install CCTV cameras in the lift or on

the fire escape staircases. The hotel did not need to have an alarm system to alert security staff to open guest doors. Any such system would generate alarms when there was cleaning of the rooms, or guests were taking too long leaving the room. There was nothing to suggest that this should be used by any reasonable hotel proprietor. The duty was to take reasonable care to prevent the attacks, it was not an absolute duty to prevent an attack.

230. Although the evidence showed that some guests from the Middle East had a tendency to leave their doors on the latch it was common sense that the guest door should be shut. I do not consider it likely that guests would have known that there were 1,100 guest bedrooms at the hotel, but guests would have known that this was a large hotel and that there were numerous other guest bedrooms and, at the very least, those other guests would have had access to the guest floors. The evidence in this case shows that the reason that the door was not shut was not because it was not perceived to be necessary to shut the door but because the key card could not be found before Shaikha left, and that if it had been found the door would have been shut. In my judgment to act reasonably the hotel did not need to put a notice on the door or hand out a leaflet telling guests to shut their doors.
231. In my judgment the number of patrols was sufficient to show that the hotel acted reasonably to protect the Claimants. There was no requirement to have any specific number of patrols, or to have the patrols at any particular time. Although matters might have turned out differently if Mr Stoyanov was carrying out tour 2 at some time after Shaikha had first left the door open at midnight and before the attack at 0125 hours, I can discern no duty for Mr Stoyanov to be on tour 2 at the time that Shaikha had left the door to room 7008 on the latch, because he could decide when to carry out the patrol.
232. In my judgment the duty on the hotel did not require the hotel to provide another lobby officer or to require the lobby officer to host and greet every guest entering the hotel after 11 pm. This is because there was sufficient security provided by the lobby officer walking around the lobby and looking at guests, even though this activity was not apparent on all occasions as appears from Ms Coleman's evidence. In my judgment to act reasonably the hotel was not required to insist that the lobby officer greet every single guest after 11 pm. This was because the lobby officer was looking after the whole of the lobby and looking at some, but not all guests when they entered. For similar reasons there was no duty to put a key card reader and insist that every guest show their key card, even though this occurred later at a time of heightened terrorist alert.
233. In my judgment to act reasonably the hotel did not have to provide key card access to the lifts, even though it had been proposed by Mr Loughrey in 2012 and the system was adopted after the attack. The evidence showed that such systems were liable to being overridden by tailgating and other guests pressing buttons allowing access to others. Even after its installation it was noted that the lobby security officer was the primary means of providing security. My conclusion on these matters is part supported by the approach taken to security by other 4 star London hotels where all but one did not have key card lift access readers.

234. I have considered Ms Rodway's complaint that in the absence of a physical barrier and key card access to the lifts the guest rooms were in effect opening on to Oxford Street but I do not accept that that is a fair characterisation of the matter. It is right that there was no physical barrier to stop someone walking from Oxford Street into Great Cumberland Place and going through the left hand entrance after 11 pm, but such a person would have to avoid staff in the form of a lobby security officer somewhere in the lobby, receptionists ahead, and the concierge staff to the right. There were numerous CCTV cameras capturing that person. If the person walked to the lift lobby area and travelled up to the guest floors there was the possibility of coming across housekeeping staff, who had been trained to look out for non-guests, and the DSO on patrol. Finally there were the guest bedroom doors secured by self-locking devices. All the evidence shows that it was understood that the door should be shut. In some respects Ms Rodway might have said that the guest bedroom doors opened on to the world. This is because anyone paying the room rate would be able to become a guest. The reality is that, given the unpredictability of criminal behaviour, the attack on the Claimants could just have easily been carried out by another guest, or a person accompanying a guest into the hotel. In this respect I note that there was concern about the person who came up to the seventh floor in the same lift as Shaikha, Alnood and Mubarakah. Greeting every individual guest or insisting on key card access would not have prevented an attack by a fellow guest, and it emphasises the importance of the guest bedroom door.

#### **Causation (issue 5)**

235. The issue is whether, if I had been satisfied that in order to act reasonably the Cumberland hotel should have employed any of the measures set out above, such a measure would have prevented the attack by Mr Spence. I accept that if there had been a duty to provide: continuous monitoring of CCTV; there had been CCTV on the fire escape staircase and lifts; a notice or leaflet telling guests to shut the doors; another lobby officer; more patrols; or a key card providing lift lobby access; these measures might have prevented the attack, but I am unable to say that it was more likely than not that they would have prevented the attack. This is because it is unlikely that Mr Spence would have been identified as a non-guest on CCTV or by another lobby officer, or that he would have come across a patrol. The notice on the door about shutting the door or a leaflet would have added nothing to Shaikha's understanding that the door should be closed. It is right to note that there was a period of time separating Mr Spence from the guest before who had gone up in the lift and the guest who came up after Mr Spence, but it is apparent that he was able to negotiate his way around the hotel and I consider it more probable than not that he would have successfully tailgated another guest in this comparatively busy lobby.
236. On the other hand if there had been a requirement for the lobby officer to greet every single person including Mr Spence I consider it more likely than not that Mr Spence would have pretended to be coming into the public area of the lobby, such as the bar, and that he would then have left the hotel unobtrusively. If there had been a requirement for an alarm on each open

door I consider it more likely than not that this would have sounded before the attack had been carried out, and that the door would then have been shut before the attack. The reality is that in most cases it will always be possible to identify something which would probably have prevented an attack, for example security arches which would have picked up the hammer carried by Mr Spence, although it was not contended that the duty to act reasonably extended to requiring the erection of such a security arch in this case.

237. In the light of the conclusion on causation set out in the paragraph above I did revisit my conclusion on breach of duty of care but there was nothing to cause me to change my conclusion that the hotel acted with reasonable care to protect guests at the hotel against injury caused by the criminal acts of third parties.

### **Contributory negligence (issue 6)**

238. When analysing the preliminary issue as ordered it became clear that issues of contributory negligence, or even potential liability to make a contribution, on the part of Shaikha were not part of the preliminary issue. Therefore the only question on contributory negligence is whether there was contributory negligence on the part of Ohoud. It is well-known that contributory negligence raises issues of blameworthiness and causation.
239. In the light of my previous conclusion it is not necessary for me to express any conclusion on this issue and I have decided not to do so. This is because any finding of contributory negligence depends on a broad assessment which will include respective blameworthiness and causative relevance. In circumstances where I have not found any negligence on the part of the hotel it would mean that any finding on contributory negligence would not be a fair assessment of respective contributions to the incident.

### **Conclusion**

240. For the detailed reasons given above: (1) in my judgment the Cumberland hotel owed the Claimants a duty to take reasonable care to protect guests at the hotel against injury caused by the criminal acts of third parties; (2) the attack by Mr Spence was a criminal act but did not amount to a new intervening act and break the chain of causation; (3) the attack by Mr Spence was reasonably foreseeable to the hotel but the likelihood of such an attack occurring was extremely low; (4) the hotel did not act in breach of any duty of care to the Claimants; (5) I have made findings on whether any actions might have prevented the attack; and (6) in circumstances where I have not found any breach of duty on the part of the hotel I have not made any findings on the issue of contributory negligence. I therefore determine that there was no liability on the part of the Cumberland hotel to Ohoud, Khaloud and Fatima for the attack carried out by Mr Spence.