



Neutral Citation Number: [2022] EWHC 399 (QB)

Case No: H90EX006

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

Exeter Hearing Centre,  
Southernhay Gardens, EX1 1UH

Date: Friday 25 February 2022

**Before :**

**PHILIP MOTT QC**  
**Sitting as a Deputy High Court Judge**

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**Between :**

<b>KLAUS PETER WILHELM FITTSCHEN</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>THE CHIEF CONSTABLE OF DORSET POLICE</b>	<b><u>Defendant</u></b>

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**David Callow** (instructed by **Jefferies Essex LLP**) for the **Claimant**  
**John Goss** (instructed by **Joint Legal Services**) for the **Defendant**

Hearing dates: 14 & 15 February 2022  
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**Approved Judgment**

**Philip Mott Q.C. :**

1. At 11.43 pm on 20 June 2017 the Claimant was arrested by officers from the Dorset Police. He was released 19 hours later under investigation. Subsequently he was notified that no further police action would be taken against him. He sues for damages for wrongful arrest and false imprisonment, and also for a declaration that his rights under Articles 5 and 8 of the European Convention on Human Rights have been infringed and consideration of whether damages amount to just satisfaction. His claim in negligence is no longer pursued.
2. Case management decisions led to the claim being transferred to the Exeter District Registry, with a trial on liability as a preliminary issue. This trial was conducted remotely before me, with the Claimant being represented by Mr David Callow and the Defendant by Mr John Goss.
3. The Defendant has admitted that the Claimant's arrest was procedurally unlawful, because the arresting officer was not properly briefed. The Defendant submits that, had the proper procedure been followed, the Claimant would still have been arrested, and therefore he should only receive nominal damages under the principles set out in *Parker v Chief Constable of Essex Police* [2018] EWCA Civ 2788. That issue was ordered to be tried as part of this trial of liability.

*The Legal Framework*

4. The legal framework was not in dispute between the parties. In a claim for false imprisonment, where the fact of detention is admitted, it is for the person responsible for the detention to justify it.
5. Police powers of arrest are governed by the Police and Criminal Evidence Act 1984 ("PACE"). Section 24 reads as follows (so far as is material to this case):
  - “(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
  - (3) If an offence has been committed, a constable may arrest without a warrant –
    - (a) anyone who is guilty of the offence;
    - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
  - (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned

in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are –

[...]

(c) to prevent the person in question –

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

[...]

(d) to protect a child or other vulnerable person from the person in question;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question [...].”

6. ‘Suspicion’ is a low threshold. I was referred to the speech of Lord Devlin in *Hussien v Chong Fook Kam* [1970] AC 942, in which he said:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: ‘I suspect but I cannot prove’. Suspicion arises at or near the starting point of an investigation of which the obtaining of *prima facie* proof is the end. [...]

There is another distinction between reasonable suspicion and *prima facie* proof. *Prima facie* proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. [...] Thus the fact that the accused has given a false alibi [...] would undoubtedly be a very suspicious circumstance.”

7. My attention was also drawn to a number of other authorities in relation to the test of reasonable suspicion:

i) *Raissi v Commissioner of the Metropolis* [2008] EWCA Civ 1237.

ii) *Re Alexander & Others* [2009] NIQB 20. Sir Brian Kerr LCJ (as he then was) pointed out at [14]: “Belief involves a judgment that a state

of affairs actually exists; suspicion that a state of affairs might well exist”.

- iii) *Buckley v Chief Constable of Thames Valley Police* [2009] EWCA Civ 356. Hughes LJ (as he then was) said at [6]: “Suspicion is a state of mind well short of belief and even further short of a belief in guilt or that guilt can be proved”. The question of suspicion must be looked at cumulatively, without over-compartmentalising different factors (per Hughes LJ at [16]).
8. The suspicion must be in the mind of the arresting officer (*O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286). The arresting officer may rely on information provided by another officer, but cannot simply rely on an instruction to make an arrest.
9. Where *Parker* is relied upon to limit the claim to nominal damages, the test is not what would have happened if the arrest had not been made by the arresting officer, but what would have happened if the proper procedure had been followed and the arresting officer (whoever he or she was) had been properly briefed (see in particular paragraph [104] of *Parker*). Proper briefing would ensure that the arresting officer had all the relevant information known to the officer actually making the decision that the arrest should take place.
10. In general it seems to me, and certainly where there is no specific evidence to the contrary, it should be assumed that the arresting officer on that counterfactual hypothesis would have come to the same conclusion as the officer making the actual decision, and for the same reasons. So, for example, if a decision was made to arrest for an offence which it was not reasonable to suspect had been committed, but there was another offence which it was reasonable on the same information to suspect had been committed, the *Parker* principle could not be used to substitute one offence for the other. *Parker* prevents mere procedural errors from leading to substantial damages. It does not do anything to cure errors of substance. Neither party sought to challenge that proposition when I raised it in argument.
11. The necessity test in section 24(5) is a more recent addition to the requirements for a valid arrest, introduced from 1 January 2006 by the Serious and Organised Crime and Police Act 2005. That makes the hurdle higher, because a further requirement has been added. But it is also comparatively higher because the requirement is one of “reasonable grounds for believing”, as opposed to “reasonable grounds for suspecting” in subsection (2). As Hughes LJ said in *Buckley*, “suspicion is a state of mind well short of belief”. This distinction, I think, is what Lavender J had in mind in *Rashid v Chief Constable of West Yorkshire Police* [2020] EWHC 2522 (QB) at [25].
12. Sir Brian Kerr LCJ in *Re Alexander* explained it in this way at [18]:

“We consider that the requirement that the constable should believe that an arrest is necessary does not signify that he requires to be satisfied that there is no viable alternative to arrest. Rather, it means that he

should consider that this is the practical and sensible option.”

13. In *Hayes v Chief Constable of Merseyside* [2011] EWCA Civ 911, Hughes LJ said at [34] that an arresting officer does not have to have considered and rejected all alternatives to arrest. But an officer “who has given no thought to alternatives to arrest is exposed to the plain risk of being found by a court to have had, objectively, no reasonable grounds for his belief that arrest was necessary”.
14. At [40] Hughes LJ explained that the arresting officer’s decision “must be one which, objectively reviewed afterwards according to the information known to him at the time, is held to have been made on reasonable grounds”. Although that specifically referred to the necessity test, his reference to *O’Hara* in the same paragraph makes it clear that it is a safeguard which applies wherever objective reasonableness is required.
15. Similarly, in *B v Chief Constable of Police Service of Northern Ireland* [2015] EWHC 3691 (Admin), Lord Thomas CJ giving the judgment of the court stated at [18]:

“In *Hayes* Hughes LJ confirmed (at paragraphs 40 and 42) that the correct test is a two-stage one:

- (1) the constable must actually believe that arrest is necessary, and for a subsection Article 26(5) reason; and
- (2) objectively assessed on the information known at the time, the decision was made on reasonable grounds.

Where the liberty of the subject is at stake, the decision of police officers is open to review by the court. Whilst the expertise, knowledge and operational judgment of the police officers is to be respected, what is required is careful scrutiny by the court. The second stage of the test therefore amply protects the liberty of the subject.”

Although this specifically refers to the necessity test, the comments in relation to the second stage requiring objective reasonableness apply equally when considering the test of suspicion.

16. Code G to PACE provides concrete examples of when an arrest may be considered necessary.

#### *The Claimant’s Evidence*

17. The resolution of this claim depends on an objective review of the decision to arrest, based on the information known to the officer making the decision to arrest at the time (which it is assumed for *Parker* purposes was adequately

passed on to the arresting officer). As a result, what the Claimant says actually happened is not relevant, save where he says the police were made aware of those facts. As I made clear during the hearing, and repeat now, I am not required to make any moral or factual judgment on the Claimant's conduct or his evidence more generally, and I shall not do so.

18. For this reason, I can recount the Claimant's evidence quite shortly. In summary, he said this:
- i) He was born on 24 November 1943, so was aged 73 at the time of his arrest. He is a German citizen, but lives in Switzerland and on Sark. He enjoys a secluded life and has no family.
  - ii) He has been a successful businessman, and owns an aeroplane, two yachts, and 25 motor vehicles. He is mainly interested in old Range Rovers and Land Rover Defenders.
  - iii) In June 2017 he drove a Defender towing a Range Rover on a trailer from Germany to Poole. He intended to leave the Range Rover at Poole (where he would arrive on ferries from Sark via Guernsey) and pick up another Range Rover which was already at Poole. This he planned to leave at St Malo, the French destination of ferries from Sark via Guernsey.
  - iv) Whilst driving through Belgium the Defender lost power, so he swapped the vehicles over and towed the Defender on his trailer with the Range Rover. On arrival in Poole he parked the Defender and trailer at the Harbour. Leaving it there, he drove to London for the weekend, then flew from Stansted to Frankfurt on Monday 12 June 2017.
  - v) He returned from Stuttgart to Stansted on Thursday 15 June 2017 and stayed in a hotel overnight. From there he drove to Poole, but accidentally filled his Range Rover with petrol instead of diesel. As a result the vehicle broke down a few miles away at a roundabout in Christchurch. He was helped to push the vehicle onto the verge by passers-by.
  - vi) The helpers included two Romanian men, who were in a vehicle with a woman. These men loaded his belongings into their vehicle, and drove him to the Travelodge in Poole, about half an hour away. The next day, Saturday 17 June 2017, he phoned the Romanian driver, who returned to take him to hire a car. The Claimant explained that his experience of Romanians was that they are extremely friendly and hospitable.
  - vii) The woman was in the car also, and the Claimant discovered that she spoke German. She said she worked as a pedicurist/manicurist. He asked the driver whether she was in a relationship with her, but was told he was not. So the Claimant took her telephone number as he would have liked some company if he went out for dinner.

- viii) The Claimant said he spent the next two days unsuccessfully trying to get help with repairing his cars (the Defender and the Range Rover). He also had to move from the Poole Travelodge to one in Bournemouth, which he did on Monday 19 June 2017.
- ix) At around 2 pm on Tuesday 20 June 2017 the Claimant phoned the Romanian woman to ask her to have dinner with him. She said she was close by, and they agreed to meet at the hotel to discuss plans. They met in the hotel car park, and returned to his room as the woman wanted to use his bathroom. On the way he asked Reception for extra towels, which he always does in hotels.
- x) Once in his room, the woman disclosed that she was a prostitute, and showed him her phone with her entry on a website called VivaStreet. He looked this up on his phone as well. They talked about her work, and her making fake orgasm noises, then she said she had an appointment and they agreed to meet later that evening.
- xi) A little later he received a phone call from her, but the call broke up and he could not hear what she said. He tried to call her back, but did not get an answer.
- xii) Shortly after that a police officer came to his room. The Claimant assumed it was about the Range Rover parked by the roundabout, and apologised for this. The officer explained that he had not come about that, but they were looking for Romanians who were engaged in trafficking people to England. He asked the Claimant whether he knew of any Romanian people in the hotel. Thinking the officer meant hotel guests, the Claimant answered No.
- xiii) The officer asked whether he had had sex with the woman who had left his room, and he denied this. He volunteered that she was a prostitute, and showed the officer the VivaStreet webpage which was still on his phone's browser. He also told the officer that he had exchanged text messages in German with the woman, and showed him these on his phone.
- xiv) When the police officer arrived, the Claimant was in his underwear for comfort while he worked on his laptop. The bed would have been unmade because he does not like staff entering his room when he has private documents around. There was cash on display in the room, about £200 in £50 notes. This was normal for him when travelling, and he did not consider £50 notes to be at all unusual.
- xv) Later that evening the Claimant said he received a phone call from police while he was driving. He was asked to go to Bournemouth Police Station, but politely declined as he was busy and could tell them nothing more about the Romanian woman. He offered to speak to them when he returned from Switzerland in about two weeks' time.

- xvi) Shortly before midnight he was in his hotel room when police arrived to arrest him. He does not recall being given any reason at the time, but on arrival at the police station was told it was for “inciting prostitution”. It was explained that he was suspected of being “the back door to a Romanian trafficking scheme”.
19. Since there is no freestanding complaint about the length of his detention, if the arrest was lawful, I need not set out the Claimant’s account of this.
20. I should emphasise again that none of this was known to the police before the first visit to the Claimant’s hotel room. I must therefore turn to consider the evidence of what became known to the police, and when.

*Police Evidence*

21. The police first involvement came as a result of a call from a hotel manager at the Travelodge in Bournemouth. He had seen the Claimant enter with the Romanian woman, and thought she looked underage. He also had walked past the room and heard what appeared to him to be sounds of sexual activity.
22. By the time police attended, the manager had seen the woman leaving, and assessed her age at about 30 (she was in fact 26). He pointed her out to police, who spoke to her and her two male companions. The two Romanian men were arrested on suspicion of causing or inciting prostitution for gain, contrary to section 52 of the Sexual Offences Act 2003.
23. The senior officer, Chief Inspector McKerl, instructed PC Lea to go into the hotel to see the male guest who had been seen with the woman (the Claimant as it transpired). Whilst he was doing this, the woman’s phone kept ringing, and Mr McKerl told her to stop using it. He saw that she had another larger phone in her back pocket.
24. The evidence of PC Lea about his first visit to the Claimant’s room is important. He frankly told me that his recollection now is largely drawn from the MG11 statement he made at 6.20 pm on 20 June 2017. That is not surprising, and I am bound to rely heavily on his and other statements made immediately after the events and before any complaint had been made. The following matters appear from that statement:
- i) The Claimant answered his door dressed only in a T-shirt and underpants. He had no trousers on.
  - ii) PC Lea told the Claimant that there had been a report of a possible underage female in his room. He seemed shocked, and his speech was stuttered.
  - iii) On entering the room PC Lea could see the bedding all ruffled up. He saw some £50 notes on the table near the TV set, which looked to be about £250 in total.



- iv) The Claimant explained that he had met the woman on the street (he did not specify where). They both spoke German and exchanged telephone numbers. She “stated” (asked) if he used VivaStreet. The Claimant then produced his phone and showed PC Lea a webpage showing “Sexy Bella”, located in Bournemouth, speaking English and German, and aged 23. There were photos, but none of the head to identify the woman. It looked to PC Lea like a prostitute website (which it is accepted it was).
  - v) PC Lea asked the Claimant whether he had had sex with the woman, and he replied “No, we just chatted”. He became slightly defensive in his tone. PC Lea explained that he was not in trouble and was being treated as a witness. When asked, the Claimant said he would make a statement and was happy to help the police.
  - vi) PC Lea stepped outside the room to speak to Chief Inspector McKerl, then returned to the Claimant. He inspected the Claimant’s ID documents, and noted his date and place of birth. He did not ask for a full home address. The Claimant explained that he was from Germany, had landed the day before, came to England often on business, and was flying back to Germany the next day.
  - vii) The Claimant also volunteered that he had exchanged texts with the woman “Bella”, and showed PC Lea a text conversation in German. PC Lea could not understand the contents, did not ask to take a screenshot or photograph of the screen, and made no note of the date or time of these texts. There was nothing to indicate that any of this would have been refused by the Claimant.
  - viii) PC Lea left the Claimant with a contact card, and collected a printout of his check-in details from Reception on the way out. These showed a home address of “6442 Switzerland” and a telephone number. There was no attempt to return to the Claimant’s room to get his full address. The Claimant told me, and I accept, that 6442 is the postcode of his home in Switzerland, and that this and his name would be enough to find the premises.
25. PC Lea said in cross-examination that if there had been any conversation about cars he would have noted it in his statement. He agreed that he understood the meeting on the street had come as a result of prior contact via the VivaStreet website. This certainly was Chief Inspector McKerl’s belief as a result of speaking to PC Lea outside the hotel, but it is not what appears in PC Lea’s MG11, nor what he appears to have told Detective Inspector Roberts later, as will become apparent. I conclude that his current recollection of this is faulty, and his MG11 statement is more accurate. It also accords with the Claimant’s account of meeting the woman before seeing the VivaStreet website, although the detail he now relies on in his evidence was not given to PC Lea.
26. PC Lea agreed that he was looking for evidence that the woman was working as a prostitute, that the Claimant was being treated as a customer who had not

committed any offence (however embarrassing it may have been for him), and that there was no suggestion that the Claimant had contacted either of the two Romanian men at any time.

27. Chief Inspector McKerl's MG11 statement records PC Lea telling him that "the older man [*the Claimant*] had met the female over the internet and met in the street". I accept that this is what Mr McKerl understood, or assumed, but it is not what PC Lea was saying, as explained above. Not surprisingly, it confirmed that the Claimant appeared to be no more than a customer, who had committed no offence by using the services of an adult prostitute, even if (contrary to his denial) they had sex together.
28. Mr McKerl asked for input from police experts in exploitation and human trafficking. Once it was established that the woman was of full age, this was the key focus of investigations. In fact, despite being assigned a Sexual Offences Liaison Officer, the woman declined to make any complaint of being trafficked. In due course she left the police station and disappeared.
29. At about 4.15 pm on 20 June 2017 Chief Inspector McKerl handed over the investigation to DI Roberts, and briefed him. DI Roberts completed a Major Crime Notebook, which contains a contemporaneous record of what he was told and his thoughts about the investigation. That is clearly a valuable resource in discovering what happened and why.
30. DI Roberts also gave evidence in a careful and measured way, but at times it was apparent that his recollection had been affected by consideration of information and documents which came to light later. One example of this was that he made reference to the Claimant's flight details which were only known after his arrest. I therefore prefer the contemporaneous record as being more reliable than his witness statement and what he said in evidence.
31. Chief Inspector McKerl briefed DI Roberts, as one would expect given his mistaken understanding of what PC Lea had told him, that the Claimant met the woman on a website, and that she was a prostitute. Subsequently DI Roberts spoke to PC Lea. His note about the Claimant, which I accept must have come from that conversation with PC Lea, records "Met (V) [*the woman*] on street – both spoke German. Website 'VIVASStreet.co.uk'". He also records the other features noted by PC Lea, that the Claimant admitted she was a prostitute but denied having sex with her, that there were numerous £50 on the table, that the Claimant had no trousers on when he answered the door, and was in shock, and that he was going back to Germany on 21 June 2017.
32. Armed with this information DI Roberts recorded a decision, sometime between 5 pm and 5.40 pm on 20 June 2017, that the Claimant should be arrested for "control/incite prostitution". This would cover both the offence under section 52 of the 2003 Act and the offence under section 53 of controlling prostitution for gain. The instruction appears to have been given to DS Squires, whose collar number was 2867. The note sets out DI Roberts' rationale for that decision as follows:

“Room booked @ travel lodge. Account is suspicious as to involvement with female (V). Admits (V) on website selling her services but denies Sexual Act. Hotel Staff hear Sexual noises. Travelled from Germany as have (S1) (S2) [*the two Romanian men*] and (V). Thus RGS [*Reasonable Grounds to Suspect*] involved, £ in Room”

33. DI Roberts’ witness statement, at paragraph 20, expands on the reason for this decision. He relies on the partial address for the Claimant shown in the hotel register, but this is not mentioned in his contemporaneous note and I reject it as a consideration at that time. He also refers to “the travel routes, connections and arrangement of all parties”. When investigated, he accepted that he knew nothing of the Claimant’s travel routes at that time, only that he was said to have arrived from Germany the previous day. He agreed that there was no suggestion that the Claimant had ever had contact with either of the Romanian men. The only relevant connection or arrangement was the coincidence that they all met in a cheap hotel in Bournemouth. But of course DI Roberts had no information that the Claimant had ever met the other men, who were simply there because the woman had arranged in some way to visit the Claimant.
34. DI Roberts explained that he had experience of trafficking cases. It happened in Dorset, and involved Romanian females. There was a very organised structure, linked to organised crime groups. He suspected that the Claimant was working with the two other men and inciting or controlling the woman as a prostitute.
35. Whilst accepting DI Roberts’ experience, and respecting it, in essence the only information or inference he had to suggest a connection between the other two men and the Claimant, and therefore to suggest that he was something more than an embarrassed client of a prostitute, was that the Claimant was a German national who had apparently come from Germany the previous day. No departure airport was identified, but the Claimant’s address was said to be in Switzerland. The Romanian men and the woman had travelled on 7 June 2017 from Dortmund to Luton. Dortmund is in Northern Germany, as DI Roberts noted a little later, and he accepted that there was nothing to show that the Claimant had been in Dortmund on 7 June.
36. At 5.51 pm on 20 June 2017 officers went to the Travelodge to arrest the Claimant, but he was not there. There is a note of another visit at 7.17 pm when he was still out. The police officer involved (whose name was Burchett, although there was no direct evidence from him/her) updated the Enquiry Log with a note that the Claimant was spoken to on the phone, and “he seemed quite anti-police stating he didn’t think he was going to have anything more to do with the incident”. This is the call referred to by the Claimant in his evidence, and I accept his account of it.
37. The Major Crime Notebook contains an entry by DI Roberts for 8.50 pm on 20 June 2017 stating that he had completed a DI Review and attached it. That appears as a typed, rather than handwritten, record. The relevant parts of that review are as follows:

“The offences under investigation are those of:

Causing, inciting and controlling prostitution for gain –  
s.52 and 53 SOX 2003

[...]

FITTSCHEN admits to officers that he has seen a website that [*the woman*] was on, and of a sexual nature and had met her. He denies having had any sexual involvement with her. Staff at Travel Lodge report hearing sounds of sexual nature from his room. FITTSCHEN informs officers he is from Germany, booked into the Travel Lodge as single occupant on 20062017, leaving for Germany on 21062017, stating he is due to return to UK again on Thursday. He has cash within his room and answered the door to police with no trousers on. His explanation and involvement with [*the woman*] is suspicious. [*The woman*] is on websites advertising sexual services and it is reasonable to suggest she is involved in prostitution. [...]

Within the Renault Clio [*the Romanians' car*] is a flight manifest showing that [*all three*] travelled from Germany to London Luton airport on 7<sup>th</sup> June 2017, flights paid in cash. The RO [*registered owner*] of the Renault is a male with a foreign name with an address in Middlesex, however [*one of the Romanians*] provided a different name of the RO of the vehicle. All males have quantities of cash and several SIM cards. Given FITTSCHEN's Account, nationality, travel arrangements and involvement with [*the woman*] it is entirely reasonable to suspect he is involved, together with [*the two other men*] in the offences detailed.”

38. Immediately after that, DI Roberts briefed Acting DS Penn, who was to take over from him. Her review also appears in typed form in her notebook, but adds nothing as it says “Full rationale on DI Roberts review”. She was not called to give evidence, but there is absolutely nothing to suggest that she changed or overrode the conclusions of her superior officer DI Roberts.
39. DI Roberts, having concluded that there were reasonable grounds to suspect the Claimant of involvement in an offence under section 52 or 53 of the 2003 Act, did not set out in his review any reason why he believed that an arrest was necessary. Acting DS Penn's reviews adds no such explanation. In his witness statement, DI Roberts said an arrest was necessary to protect a vulnerable person (the woman) from further harm and/or sexual exploitation; to allow for a prompt and effective investigation of the offences, including interview of the Claimant; to enable evidence to be secured and preserved through searches of his room and vehicle; and to prevent any prosecution being hindered by his disappearance out of the UK.

40. DI Roberts agreed in cross-examination that the Claimant had been entirely cooperative with PC Lea, and had said he was willing to provide a statement. Once he had been upgraded to a suspect, a witness statement could not be taken. The decision to arrest was right and practical. He could thereby conduct additional inquiries with additional powers (especially, it appeared, the power of search on arrest).
41. In re-examination DI Roberts said he did not believe it was true when the Claimant said they had not had sex. If true, it raised lots of questions about why he was with her and why hotel staff heard sexual noises. If (as he believed) it was not true, questions of the Claimant's credibility arose.
42. The agreed evidence was that in fact the Claimant had been arrested only for an offence under section 52 of the 2003 Act, and that was recorded in the Custody Record and on the Disclosure form given to his solicitor before interview. DI Roberts maintained that was an error and, if properly briefed, the arresting officer would have made the arrest under sections 52 and 53 of the 2003 Act.

#### *The Legal Basis of Arrest*

43. Mr Callow, for the Claimant, submitted that the arrest was only under section 52, which relates to causing or inciting another person to become a prostitute in any part of the world. Since by the time of arrest it was known that the woman featured on at least three prostitute websites, she could not be caused or incited to become what she already was. He accepted that DI Roberts intended that the arrest should be under section 53 as well, and there was no basis for suggesting that he had a change of heart (which was not suggested to him). But DI Roberts handed over to Acting DS Penn before the arrest, she had authority to change the basis of arrest, and there was no evidence from her or anyone else to explain why the Claimant had only been arrested under section 52.
44. I reject that submission. DI Roberts' intention is clear and unchallenged. The contemporaneous review note of Acting DS Penn clearly endorses and adopts DI Roberts' review note. The failure to arrest the Claimant under both sections is plainly an error in the briefing procedure. In the same way that the *Parker* principle would not allow a defendant to expand the reasons for an arrest, as noted above, neither would it allow a claimant to restrict the reasons in the mind of the superior officer who made the decision and should have ensured that the arresting officer was properly briefed. In my judgment the *Parker* counterfactual hypothesis in this case must be that the Claimant could and would have been arrested for the offences set out in DI Roberts' review note, namely sections 52 and 53 of the 2003 Act.

#### *Reasonable Suspicion*

45. Mr Callow did not suggest that DI Roberts did not honestly suspect the Claimant of committing an offence under section 52 or 53. The only issue in relation to suspicion is whether it was objectively reasonable.

46. Mr Callow accepted that PC Lea provided the information recorded in his MG11, as I accept. He suggested that Chief Inspector McKerl also appreciated this, but in my judgment it is more probable that Mr McKerl misunderstood the position to be as he described it in his MG11, namely that the initial contact between the Claimant and the woman was via the website.
47. The only significance of this would be when judging Mr McKerl's conclusion that the Claimant was a client who had committed no offence, and should be treated as a witness. The effect of Mr McKerl's misunderstanding is that DI Roberts was right to reassess the whole of the information before him.
48. Mr Callow stressed that, when looking at the overall picture, it was important to remember that all the relevant information had been volunteered by the Claimant. He told PC Lea that the woman was a prostitute. He identified the VivaStreet website. He showed PC Lea the text messages, and told him about trying to phone the woman after she had left his room. Without these voluntary disclosures, none of that would have been known to DI Roberts.
49. Mr Callow submitted that the denial of sex by the Claimant does little to undermine his credibility. In the background of all the other indications of sexual activity, the ruffled bedclothes, his state of undress, the sounds heard by hotel staff, the only reasonable suspicion would have been that the Claimant and the woman were engaged in sex. All that was consistent with him simply being a client, and something further was required to raise a reasonable suspicion of causing, inciting or controlling prostitution.
50. The only additional feature known to DI Roberts when he made his decision, whether just after 5 pm or at the time of his review note at 8.50 pm on 20 June 2017, was that the Claimant was German, had apparently arrived from Germany the previous day, and was planning to return there the following day. That, Mr Callow submitted, was not enough objectively to support a reasonable suspicion, notwithstanding the low threshold for that state of mind.
51. Mr Goss directed my attention to a series of features in the case, which he submitted cumulatively gave rise to objectively reasonable grounds for suspicion.
  - i) The Claimant denied that he had sex with the woman. Although he might have been a client, the presence of a false story was significant, as was a false alibi in *Hussien*.
  - ii) It appeared likely at the time that the woman was being controlled, at least by the other two men.
  - iii) The Claimant had a large amount of cash in £50 notes.
  - iv) The Romanian men and the woman had all recently come from Germany, as had the Claimant.
  - v) There was the coincidence of them all ending up in a budget hotel in Bournemouth.

- vi) There had been contact between the Claimant and the woman, not only by text message, but also the attempted contact after she had left his hotel room.
  - vii) The Claimant had provided an incomplete address to the hotel.
  - viii) DI Roberts' experience and knowledge of such cases led to alarm bells being set off for him.
52. Mr Goss reminded me that there can be cases in which a number of people are reasonably suspected of having committed an offence, even though only one of them could actually have committed it. He did not rely on the Claimant's reported response in the telephone call at 7.17 pm, as there was no evidence that DI Roberts was aware of it.
53. In my judgment, on the information he had, DI Roberts was right to consider that the Claimant's denial of sex was implausible. This meant that the features of the ruffled bedclothes, his state of undress, and the sounds heard by hotel staff, were all at best neutral. They did nothing to rule out the possibility that the Claimant was engaged in controlling the woman as a prostitute, but they did nothing to suggest that he was.
54. The denial of sex by a 73 year old man with a prostitute almost 50 years younger than him does little or nothing, in my view, to suggest that he was involved in controlling her. It is not difficult to see that embarrassment at being confronted by police would be a wholly reasonable explanation for the denial.
55. The presence of about £250 in £50 notes (as was believed – in fact it was £200 when the Claimant was arrested) is also neutral. The total is far from a large sum in pre-pandemic days when cash was still used regularly, and especially so for a traveller in a foreign country. The denomination of the notes is large, but of course it makes for fewer notes and less bulk.
56. The coincidence of the Claimant and the woman ending up together in a budget hotel is not so surprising since it was the hotel he had chosen to stay in and the two had the German language in common. If the Claimant was looking for company, whether that included sex or not, what would be more natural than to choose someone who could converse in his first language. There was no information leading DI Roberts to suspect that the Claimant had met up with the Romanian men at the hotel.
57. The contact between the Claimant and the woman by text message was not only volunteered by the Claimant, but also perfectly consistent with him being a client. DI Roberts' notes and review note do not mention the text messages. He may have been told about them, as they are recorded in PC Lea's MG11 statement made at 6.20 pm. But the lack of any reference in his notebook makes it probable that either he did not think they were particularly significant at the time, or he was not told about them.

58. As to the later attempt by the Claimant to phone the woman, there is nothing in PC Lea's MG11 statement to suggest that he appreciated that at the time. DI Roberts, however, noted in his Major Crime Notebook that the Claimant had called the woman's phone and heard a male voice. That information must have come from PC Lea. Chief Inspector McKerl also mentions her phone ringing a number of times. Yet this attempted contact does not feature in either DI Roberts' handwritten or typed reasons for the arrest of the Claimant. I am satisfied that its potential significance was not appreciated by DI Roberts at the time, and it was not treated by him as a reason for suspicion.
59. The incomplete address on the hotel register was never investigated at the time, the Claimant was never asked for an address by PC Lea, and this feature was not recorded as a reason for suspicion by DI Roberts at the time.
60. In the end it is clear that the dominant reason for suspecting that the Claimant was involved in controlling the woman as a prostitute, or even being involved in trafficking her from Romania, was that he was German, and on a date about two weeks after the arrival of the Romanians from Dortmund he flew to the UK from somewhere in Germany.
61. In my judgment that does not withstand the second stage test, that the decision to arrest must be one which, objectively reviewed afterwards according to the information known to him at the time, is judged to have been made on reasonable grounds.
62. I have stood back and looked at the case cumulatively, in the round. I have accorded due respect to DI Roberts' experience and instincts. But on this occasion he was over-enthusiastic, he acted on a speculative hunch rather than reasonable grounds for suspicion, and in the end his hunch was not proved right.
63. I emphasise that this judgment is based on the information known to DI Roberts when he made his decisions to arrest the Claimant. The additional details now provided by the Claimant were not known to DI Roberts when he made those decisions, so they cannot now provide any lawful justification for the arrest.

#### *Necessity for an Arrest*

64. For completeness I go on to consider the position if I am wrong about the reasonableness of DI Roberts' suspicion. It was not disputed that DI Roberts honestly believed that an arrest was necessary. The remaining issue would be whether there were reasonable grounds to believe that an arrest was necessary. For this I must assume, contrary to my findings above, that there were reasonable grounds to suspect that the Claimant was involved in controlling the woman as a prostitute.
65. It is true that there is no justification of the necessity of arrest in the contemporaneous records. That means that DI Roberts ran the risk that the court might find it unreasonable that he failed expressly to consider



alternatives to arrest. In this case, however, necessity seems to me to speak for itself, for a number of reasons:

- i) The suspected victim was vulnerable, the Claimant had her contact details, and there was a real risk to her and/or the enquiry from such contact.
- ii) Two other suspects were in custody, and the time for which they could be detained was limited. The prompt and effective investigation required that all suspects should be interviewed at about the same time.
- iii) The Claimant had said that he was planning to leave the country the following day. Even if he did return as he said, that might well be two weeks later, which would not be consistent with a prompt and effective investigation.
- iv) There was a real risk that, having been seen by police and questioned to a limited extent, the Claimant would not return to the UK but would disappear (assuming that, as suspected, he was involved in the offence).

66. I would therefore have held, if there had been reasonable grounds for suspicion, that there were also reasonable grounds to believe that the arrest was necessary.

#### *Conclusion*

67. It follows that I should enter judgment for the Claimant, not for nominal damages as Mr Goss submitted, but for substantial damages to be assessed if not agreed.

68. The claim in negligence is not pursued, and I should dismiss that lest there be any doubt at a quantum hearing.

69. The Human Rights Act claim in my judgment adds nothing. The Claimant does not need a declaration when he has a judgment. I can see no possibility of “just satisfaction” going beyond the claim for damages, especially where that claim is pleaded to include both aggravated and exemplary damages. I note that the prayers in the Particulars of Claim do not include one for a declaration of breach of human rights, nor one for damages or compensation by way of “just satisfaction”. Accordingly I decline to exercise my discretion to grant any relief under this head.

70. I shall ask counsel to agree a form of order to reflect this judgment. If possible, that should also include agreed orders for costs. If there are any remaining matters, they should be dealt with by written submissions which I shall decide without a further hearing.