Neutral Citation Number: [2023] EWHC 1582 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
Appeal from His Honour Judge Simpkiss
County Court at Brighton Case: F52YX490

Case No: KA-2022-000205

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2023

Before :

MR JUSTICE COTTER

- -

Between :

Mr Jonathan Alger	**Claimant/ Appellant**
- and -	
The Commissioner of Police of the Metropolis	**Defendant/ Respondent**

- -
- -

Sam Jacobs (instructed by **Hudgells Solicitors**) for the **Appellant**
Stephen Morley (instructed by **Plexus Law**) for the **Respondent**

Hearing dates: 26 May 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 28 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE COTTER

Mr Justice Cotter:

Introduction

1. This is an appeal from the order of HHJ Simpkiss sitting at the County Court at Brighton dismissing the Appellant's claim for false imprisonment.

2. The claim arises out of the arrest of the Appellant on 16th May 2016. The circumstances of the arrest related to a dispute between the Appellant, a window cleaner, and one of his customers.

3. This appeal focuses on the single issue of whether the arresting officer, PC Lockyer, had objectively reasonable grounds to believe that arrest was necessary for one of the reasons specified in section 24(5) of the Police and Criminal Evidence Act 1984 ("PACE"). It is common ground that absent such objectively reasonable grounds, the arrest was unlawful and the ensuing detention is a false imprisonment.

Factual background

4. The Appellant owned and operated a window cleaning company trading as 'Squeaky Clean', as he had done for a period of approximately 12 years.

5. On 16th May 2016 the police were contacted by a Mrs Napier. PC Gear and PC Lock (not PC Lockyer) attended Mrs Napier's address to speak to her about what had happened.

6. Mrs Napier alleged that for a period of two years she had had "issues" with 'Squeaky Clean.' She alleged that in November 2015 the Appellant had demanded money and was aggressive. She then referred to two specific incidents.

7. The first incident was on 1st March 2016. Mrs Napier alleged that the Appellant had demanded money and been aggressive. She alleged that when she had tried to close the front door the Appellant kicked the door open and threatened to fight her husband outside of the house. It was not in issue before the trial Judge that if what Mrs Napier alleged happened on 1st March 2016 was proved that an offence may have been committed under section 4 of the Public Order Act 1986.

8. The second incident occurred earlier that day; 16th May 2016. At around 14:15hrs on 16th May 2016 a window cleaner from 'Squeaky Clean' had delivered a slip requesting payment of £97.50. Mrs Napier had sent a text message to the Appellant stating she did not owe any money and 'Squeaky Clean' should not attend the address again. Mrs Napier received a telephone call from the Appellant. She alleged that the Appellant had said during the call (so not in a text message)

> "You are going to pay me, you will pay either way. I'll come round now, I'll smash the door in, I'll then smash your face in and then I'll come back later and do over your husband…You are a fucking lying bitch you told me in November you lost your job. You are a fucking lying cunt."

She further alleged that the Appellant continued to swear before putting the phone down. Mrs Napier said that the Appellant had then made five further phone calls which she did not answer, and had left a voicemail and a text message. I pause to observe that Mr Jacobs submitted that these allegations could have been provable by checking Mrs Napier's phone. However, as the Judge pointed out, Mrs Napier did not say that the Appellant had been

aggressive or offensive in the text or voicemail messages. Her allegation concerned a telephone call that was neither recorded or witnessed and as the trial judge was to hold;

> "An investigation of the text messages and voicemails would not have shed any light on her allegations."

9. It was not in issue before the trial Judge that had the Appellant acted on 16th May as Mrs Napier alleged that he might have been committing offences under section 1 of the Malicious Communications Act and section 127 of the Communications Act.

10. The text message and voicemail message were calm, professional and courteous;

    a) At 14:32hrs Mrs Napier sent the Appellant a text message which read:

    > "I received a slip through my door 5 minutes ago regarding payment. I do not owe any money to your company. Please do not come back to my property. 38 Dryden Road."

    b) At 14:49hrs the Appellant sent Mrs Napier a text message in reply which read:

    > "The outstanding balance you owe is £72.50 which needs to be paid. You can continue to pay in instalments as you have been, but I will need £25 to be paid in May and June and then the remaining £22.50 in July. Failing to do so will result in legal action commencing. I feel that I am being more than fair as this money has been owed for over 8 months."

    c) In the voicemail message, subsequently played to the police, the Appellant's voice was calm and conveyed similar information to that expressed in his text message.

11. PC Gear set out Mrs Napier's account of events on the MPS CRIS crime reporting system later that evening. That document set out that

    i) The problems between Mrs Napier had been ongoing for two years;

    ii) That there was a "previous incident reported to the Police" (but with no details given);

    iii) In November 2015 the Appellant visited Mrs Napier at home, demanded money and became aggressive;

    iv) In March 2016 the Appellant visited Mrs Napier at home and demanded money. When Mrs Napier tried to close the door the Appellant kicked it open and then threatened to fight her husband, only leaving when Mrs Napier said she was calling the police;

    v) On 16th May 2016 the Appellant telephoned Mrs Napier and threatened her that if she didn't pay him he would smash her door down and assault her and her husband;

    vi) The Appellant telephoned five more times, but Mrs Napier did not answer;

vii) The Appellant lived close to Mrs Napier, less than a mile away;

viii) That details of the Appellant were on the "suspect page" (which was not supplied to me) and that his address was on the PNC (no further details given);

ix) Due to the 'overall gravity' of the situation PC Gear had spoken to the control room to ensure any calls to the premises were treated as an emergency;

12. The CRIS records that Police Sergeant Simpson had assessed the risk posed to Mrs Napier and noted that arrest arrangements had been made and CID informed.

13. I pause to observe that the CRIS gave no details as to what had happened when there had been a previous complaint to Police (see ii above). As I indicated to Mr Morley during submissions ordinarily a complaint would be followed up and the detail of what occurred may be highly relevant to any subsequent decisions. However no detail was given[1].

14. The Defendant's officers then attended the Appellant's home to effect an arrest, but the Appellant was not present.

15. The Appellant learnt of the police attendance at his address and suspected that their attendance was connected with Mrs Napier. Wishing to cooperate and assist with police enquiries, he voluntarily attended Bexleyheath police station that evening. As the Judge stated:

> "he decided that he would go to Bexleyheath police station to find out why they wanted to speak to him. In his witness statement he says:
>
> While I couldn't be sure I had an idea it may relate to Mrs Napier so I took with me both my personal and my company mobile phone."

16. On his arrival at Bexleyheath Police Station the Appellant told reception who he was and waited as he was requested to do.

17. PC Lockyer stated that at about 22.45 whilst on duty at Bexleyheath Police station together with PC Clark

> "we were tasked with an arrest enquiry at Bexleyheath Police Station front office."

18. During his evidence he was to explain that

> "Yes, so I was on night duty and my response sergeant would've called me in because I was available and said "can you arrest someone in the front office' who's handed himself in."
>
> Q; And the request was to arrest someone
>
> A; Yes"

[1] In fact an officer did attend at Mrs Napier's home in March but was of the view that no offence had been committed. The Appellant was not spoken to.

Although he later added

> "Every time we arrest someone it's our own decision, we can't be forced to arrest someone."

19. About 5 minutes after the Appellant was told to wait PC Lockyer appeared and immediately told him that he was being arrested for "malicious communications".

20. The arrest occurred at 22.56; so 11 minutes after PC Lockyer was "tasked" with the arrest enquiry.

21. In his statement the Appellant stated:

> "On arrival at the station I introduced myself at the reception and was asked to wait. I was then met with a police officer who I know now to be a PC Lockyer. I was astounded when I was told I was to be arrested for "*malicious communications*". I remember that while going through the booking in process the Custody Sargent made a comment to PC Lockyer, "*you are on thin ice with this one*" or words to that effect. While I didn't know exactly what he meant by that, I assume it related to the decision to arrest me, particularly as I was there at the police station offering to help however I could. Nobody wanted all this resolving as much as I did. To be arrested, was frankly shocking."

22. The Judge found that PC Lockyer had the information in the CAD and the CRIS report, which:

> "had not taken him very long to read…and form a view about arresting" (the Appellant).

23. Importantly in my view there was no further interaction between the officer and the Appellant before the arrest. Mr Morley submitted that although the Appellant had voluntarily attended (with both of his phones) he may not have been happy to remain if there was (as there as likely to be) a delay before any voluntary interview. However this is speculation. The Appellant had made the effort to attend at the station and the officer never enquired if he would wait.

24. PC Lockyer, as he was to accept at trial, had the ability to ask to interview the Appellant on a voluntary basis and hear his side of the story. Instead, and notwithstanding that the Appellant had proactively attended the station wishing to co-operate, PC Lockyer recorded having stated to the Appellant that arrest was

> "necessary to allow for a prompt and effective investigation via tape recorded interview."

25. Sergeant Longmuir then authorised the detention.

26. PC Lockyer completed an 'Evidence and Actions Book' after arresting the Appellant, which he completed and date stamped at 23:43 hours. He stated that:

    (a) He had read out the exact words set out in the CRIS report that Mrs Napier recalled were said by the Appellant during the relevant telephone call;

(b) He told the Appellant that the arrest was necessary to allow for a prompt and effective investigation; and

(c) The custody sergeant authorised detention '*on the necessity of preventing harm to any person*'.

27. Between 00:58hrs and 01:34 hrs the Appellant was interviewed by DC Goodman and admitted that he had visited Mrs Napier in November and March and spoke to her by telephone in May. He denied any wrongdoing. The Appellant showed officers the text messages and played the voicemail message.

28. After the first interview, DC Goodman telephoned Mrs Napier to speak to her about whether or not there were any witnesses.

29. During that conversation Mrs Napier gave DC Goodman more information about the incident involving the Appellant on 1st March 2016 when he had kicked her door and made threats.

30. At around 05:24hrs the Appellant was interviewed again, solely in relation to the March 2016 allegation.

31. At the start of the second interview with the Appellant DC Goodman arrested the Appellant on suspicion of committing a public order offence as a result of what Mrs Napier had told her. Again, the Appellant denied any wrongdoing.

32. By around 05:53hrs following a review of the evidence it was determined by PS Greenbank that no further action should be taken in relation to the alleged threats made on 16th May 2016, but the incident in March 2016 should be further investigated.

33. The Appellant was released from custody around 05:50 hours, bailed to reattend Bexleyheath Police Station on 27th June 2016 with conditions not to contact Mrs Napier or go to the road she lived in.

34. The Appellant was thus detained for a total period of about 7 hours.

35. On 6th June 2016 Mrs Napier, her husband and daughter all provided formal statements regarding the Appellant's behaviour on 1st March 2016.

36. The Appellant reattended Bexleyheath Police Station on 27th June 2016 and was issued with a Penalty Notice for public disorder for the March incident.

37. The Appellant elected to have a court hearing and on 6th September 2016 he was given a court date.

38. By 23rd September 2016 it was realised that the statutory time limit for summary only offences had expired and thereafter the CPS determined that proceedings against the Appellant had to be discontinued.

39. The Appellant brought a claim for damages for unlawful imprisonment. As the Judge noted

> "In summary the claim alleges that the following were unlawful:
>
> > "a. The original arrest and detention following the Claimant's attendance at Bexleyheath police station;

> b. The continued detention following the first interview, when the Claimant says that he should have been released;
>
> c. The arrest for the section 4 offence and continued detention.
>
> 11. It is accepted by the Claimant that if the court decides that the original arrest was lawful (including the continued detention in respect of that offence after the first interview) then the issues about the second arrest do not arise."

40. By a defence it was denied that the Appellant's detention was without lawful justification.

41. The Appellant also brought a separate claim in respect of the unpaid cleaning fees against Mrs Napier which was successful.

Trial

42. The trial took place before HHJ Simpkiss on 9th December 2021.

43. The Appellant, PC Gear, PC Lockyer and DC Goodman gave evidence.

44. Within his statement PC Lockyer stated:

> "My involvement in arresting the Claimant came as a result of an arrest enquiry. My usual practice when receiving arrest enquiries is to print off the arrest CAD which provides information with regards to the circumstances of the offence. In addition, I would also review the CRIS report to understand what had happened. The CRIS report provides all of the information that was taken from the Investigating Officer and I would read both this and the CAD document. Therefore, I had a full understanding as to the circumstances of the allegations and the reason why the arrest enquiry had been distributed. The information provided me with my reasonable grounds to suspect the Claimant of committing the offence that I arrested him for.
>
> Further, I considered that the Claimant's arrest was necessary. This was both to conduct a prompt and effective interview and to ensure that appropriate measures could be taken to protect the Complainant and her family given the threat alleged to have been made by the Claimant.
>
> As such, I deny that the Claimant's arrest was unlawful for the reasons set out above."

45. According to his contemporaneous note, PC Lockyer stated to the Appellant:

> "I am arresting you for malicious communications. Your arrest is necessary to allow for a prompt and effective investigation via tape recorded interview."

46. His note further recorded that the facts were relayed to the custody sergeant

> "who authorised detention on the necessity [*sic*] preventing harm to any person."

47. At trial, PC Lockyer included the seizure of the Appellant's phones as one of the reasons for arrest, although it had not featured in either his contemporaneous notes, or, indeed, his witness statement. The relevant part of his oral evidence as to reasons for arrest was as follows:

> "Q. Right, I'll come back in a moment to policing the phone, in terms of conducting an arrest via tape recorded interview, that could've, the interview could've been done voluntarily couldn't it?
>
> A. An interview could've been, yes, but obviously when we're looking to seize someone's phones or if you're going to put things like bail conditions in place, that can't be done when someone attends a police station voluntarily.
>
> Q. Okay, so arrest, you say, was not so that an interview could be conducted?
>
> A. It was part of the process so an interview to be conducted, but also as I wrote in my statement, it's to seize electrical devices to confirm, obviously those two devices would confirm whether any phone calls took place as well, same as text messages that would be on there.
>
> Q. Yes, I'll come back to the phones in a moment, in relation to interview, is it your evidence that that in itself would not have made arrest necessary?
>
> A. The interview itself, no, an interview can take place outside of an arrest.
>
> JUDGE SIMPKISS: In its place, I think is what he is referring to.
>
> A. Ah, that would be no.
>
> Q. It was necessary to arrest?
>
> A. I believe it was necessary to arrest, if you want me to go further, like I said before, the, to protect any further harm from taking place. Reading the crime report there was previous mention of this incident in March where an allegation of violence was mentioned, and obviously this incident is in May where violence had been present over the phone, there was a clear escalation and I didn't deem it appropriate for a caution plus free interview, that would be an interview outside arrest to have taken place."

He also gave the following answers concerning the need to seize the phones;

> "Q. Right, okay, and if Mr Alger is present and willing to cooperate, he could just be asked to show his phones, can't he?

A. He could do, yes, but I've already explained for the reasons of prompt, effective and to prevent further harm why I believed arrest to be necessary in this case.

Q. Yes, but at the moment we're focussing on the phones issue because you've relied on it quite a lot, if someone is voluntarily cooperating you can, and they're present in front of you, you can say to them, 'Are you willing to show me your phone?' And if the answer is yes, there's no need to arrest them in order to see their phone, is there?

A. Okay, yes.

Q. So, why wasn't that an option in this scenario?

A. For the reasons of necessity, counsel.

Q. To protect someone?

A. To protect someone.

Q. Right, okay, so is your evidence now that in fact the phones issue wasn't a basis for arrest being necessary?

A. I wholeheartedly stand by everything I've said, I believe necessity for the arrest was prompt and effective and to prevent further harm, I then executed my power of seizure and taken the phones in so they could be looked at in relation to the offence. I've said that numerous times.

Q. Yes, okay, in relation to interview, you have said that that in itself would not make arrest necessary, so we're really left with to protect Mrs Napier and the phones, is that right?

A. Mm-hmm.

Q. But I think you acknowledge that in this scenario where someone's attending voluntarily and they're physically in front of you, they can just be asked to see their phone, so I, I think what we're left with is it was necessary in order to protect Mrs Napier, is that right?

A. If that's what you're saying.

Q. No, no.

A. I've given you the grounds as to what I believe necessity for the arrest for; I stand by that.

Q. Okay, so focussing on the phones issue, why do you say that seizing the phones was a basis for arresting Mr Alger even though he could simply be asked for them?

A. It wasn't the sole reason for the arrest, if it was just the one thing, I can see that it's not just the one reason for the arrest.

> Q. Those are my questions, thank you, officer.

And during re-examination

> "Q. Then we get to the phones, the phones don't feature in your statement or your notes other than to refer to the fact that phones were seized; was the seizure of phones part of your necessity thinking within the prompt and effective investigation, part or not?
>
> A. No, I accept it's a power of seizure, obviously seizure of evidence that I carried out afterwards.
>
> Q. Right, so I just want to be clear about whether seizing the phones was part of the reason to arrest or not?
>
> A. I was, I was cautious of, the phones were probably going to be seized as a result of the arrest due to the fact that it's all taken place over, over a phone.
>
> JUDGE SIMPKISS: Sorry, seizure of the phones was not the reason for the arrest; the seizure of the phones is something that followed from the arrest?
>
> A. Yes, it's the only evidence we have to say that a phone call took place as well as duration, otherwise it's just a matter of he said, she said.

48. PC Lockyer then accepted that the need to interview the Appellant would, of itself, not be enough

> "JUDGE SIMPKISS: Right, the question, let me put it in a slightly different way.
>
> A. Yes, I might be misunderstanding[?].
>
> JUDGE SIMPKISS: You have got three things and Mr Jacobs has pointed out he is going to give you a chance to answer all of these three things, but we are just looking at the first. Let us just assume that Mr Alger has come into the, he has arrived at the desk, there is a CAD to arrest him, ignore that, let us just say that you do not regard the person who has come in, in that particular case, as a danger to be likely to harm anyone, okay?
>
> A. Mm-hmm.
>
> JUDGE SIMPKISS: So that, let us rule that out for the time being, and so just to interview him alone, would it be necessary to arrest him if you have just conducted; you mentioned a minute ago that you did not think it was appropriate for a free interview in this particular case?
>
> A. If the question is just whether he could be interviewed, then obviously he could be interviewed whether he's arrested or not.

JUDGE SIMPKISS: Yes.

A. Yes.

JUDGE SIMPKISS: I mean, you can arrest someone under caution even with a tape running, even if they are not arrested.

A. Mm-hmm.

JUDGE SIMPKISS: Yes, so the answer is it would be possible to -?

A. It would be possible to, yes.

JUDGE SIMPKISS: - to do it without an arrest?

A. Yes.

JUDGE SIMPKISS: Okay.

Q. Okay, so I'll move then, officer, to the protection of Mrs Napier.

49. In relation to protecting Ms Napier, PC Lockyer stated as follows:

"Q. Yes, and central to that risk assessment was this threat *by Mr Alger* to go to Mrs Napier's house and assault someone?

A. Yes.

Q. Yes, that risk is not ongoing is it when Mr Alger is present in the custody suite wishing to cooperate with the police enquiries?

A. If you're asking me whether *he can assault someone* while he's in the front office then that's an obvious no.

JUDGE SIMPKISS: Well, other than the police?

A. Other than the police, of course.

JUDGE SIMPKISS: That does happen?

A. Unfortunately so, we're talking about an incident that had taken place all within a matter of 12, 24 hours, if you'd asked me two weeks later whether *he's more likely to assault* then I'd have two weeks there to say less likely because no assault had taken place. But, bear in mind this has all taken place on the same day, I was satisfied that there was a risk there; they were known parties to one another, he knew where she resides and obviously on the same report that you've mentioned there was a previous incident that had, an incident had taken place in March, there's clear previous history and escalation." (emphasis added).

I pause to observe that all the references were to the potential threat from the Appellant. There was no suggestion of anyone else being involved.

50. PC Lockyer was asked about whether the protection of Ms Napier was associated with a desire to impose bail conditions, but he confirmed that it was not.

51. When pressed about the need to protect Mrs Napier he gave the following evidence:

> "Q. Officer, at 11 o'clock at night when Mr Alger has volunteered himself to police custody, your thought process cannot have been, 'If I don't arrest him now he's going to go and sort Mrs Napier'?
>
> A. Unfortunately, sir, crimes do take place overnight, I can't predict what someone's going to do or when.
>
> Q. Yes, but what's the indication that at 11 o'clock on 16 May what he's going to do is assault Mrs Napier when what he is doing before your own eyes is presenting himself at a police station saying, 'I understand you want to speak to me, I'm here to speak to you'?
>
> A. I can entertain the devil's advocate if you like, but what's to say that if we hadn't arrested then, he then went and damaged property or attended her address, we can't deal with, 'What ifs', I can only deal with what's in front of me."

Again the references are solely to the risk of the Appellant going to see Mrs Napier.

52. When pushed on whether, in reality, there was a risk which required an arrest, there was this exchange

> "Q. Officer, let me, let me put it this way, if, Mr Alger had attended, he was, he was clearly willing to cooperate wasn't he?
>
> A. Mm-hmm.
>
> Q. If you had said, 'We would like to speak to you about this allegation that's made, we're going to do it in an interview room over there', the likelihood of Mr Alger saying, 'No, I'm not going to do that' and then going off to assault Mrs Napier is zero, isn't it?
>
> A. I can't answer a question [inaudible], I can't."

Judgment

53. The trial judge addressed the issues relevant to this appeal as follows;

> "39. I find that there were 2 reasons for PC Lockyer's decision to arrest the Claimant: (1) to enable a prompt and effective investigation of the offence and (2) to protect Mrs Napier. The CRIS information shows a pattern of threats, with aggression.
>
> 40. PC Lockyer accepted that it would have been possible to carry out an interview without an arrest, but because of the seriousness of the allegations and the apparent escalation of a long running dispute which was continuing, it was necessary to carry out the interview under arrest. The overall reason for the arrest must also be considered

> with the need for protection to Mrs Napier. Each reason formed part of his decision.
>
> 41. Mr Jacobs submits that it was not necessary to arrest the Claimant for either of these reasons. The interview could have been carried out voluntarily since he had come to the police station. It was hardly likely that the Claimant would leave the police station and carry out his threats once the police were involved.
>
> 42. In my judgment there were objectively reasonable grounds for arresting the Claimant. The evidence given by Mrs Napier was specific and showed a serious threat to her and her husband of physical violence and the escalation of those threats in a telephone call. The investigation needed to be concluded quickly and, as Hughes LJ said in **Hayes**, a voluntary interview could be terminated at any moment by the Claimant. The police had no means of knowing whether the Claimant seriously intended violence and whether he might send associates along to deter Mrs Napier. The completion of an effective interview would be the most effective way of deciding these matters and would be likely to protect Mrs Napier or establish if an offence had in fact been committed."

Grounds of Appeal

54. There are two grounds

(a) Ground one is that the learned Judge failed to determine the question of necessity with reference to PC Lockyer's actual reasons for arrest. The Judge instead applied his own, retrospective justification and, in doing so, erred in law (so he failed to consider the reasons which in fact existed).

(b) Ground two is that the learned Judge erred in concluding that PC Lockyer had reasonable grounds to consider that arrest was necessary for one of the reasons specified in section 24(5) of PACE i.e. the Judge made a mistake in law when applying the objective test.

55. Ground one argues that the Judge adopted the wrong approach, and added his own reasons to those which the officer considered at the time. However Mr Jacobs recognised that it would then be necessary for this Court to consider the issue of whether, objectively reviewed, and according to the reasons which the officer actually used, the arrest was made on reasonable grounds. Ground two is that the Judge was wrong on the substantive question of whether PC Lockyer had objectively reasonable grounds (when the reasons which he erroneously added are left out of account).

Legal principles

56. Section 24 of PACE provides, materially:

> "(4) But the power of summary arrest … 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;
>
> …
>
> (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;
>
> …"

57. There is no dispute as to the relevant legal principles to be applied when considering this section.

58. The arresting officer must honestly believe that arrest is necessary, for one or more of the reasons identified in section 24(5). In addition his 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; see generally **Hayes v Chief Constable of Merseyside Police** [2012] 1 WLR 517, at 529.

59. In **R (L) v Chief Constable of Surrey Police** [2017] 1 WLR 2047, a Divisional Court of Lloyd Jones LJ and Jay J, emphasised that *"the underlying concept in section 24(5) is that of necessity"* and this *"cannot be envisaged as a synonym for 'desirable' or 'convenient'"* or I would add, given the submissions before me to gain "control" of a person for a period of time.

60. Whilst the expertise, knowledge and operational judgment of the police must be respected, the decision to arrest involves a deprivation of liberty, and demands *"careful scrutiny"* by the Court and sets a *"high bar"*: see generally **R (B) v Chief Constable of NI** [2015] EWHC 3691 (Admin) per Lord Thomas LCJ, and **Commissioner of Police of the Metropolis v MR** [2019] EWHC 888 (QB). In **Rashid v Chief Constable of West Yorkshire Police** [2020] EWHC 2522 (QB) Lavender J drew attention to the fact that, whereas subsections 24(2) and (3) of PACE require reasonable grounds to *suspect* a person to be guilty of a crime, the requirement in subsections 24(4) and (5) **"**for reasonable grounds for *believing* that an arrest was *necessary*, imposed a comparatively high threshold".

61. In respect of the grounds the officer actively considered, in **Alexander and others: Applications for Judicial Review** [2009] NIQB 20, Kerr LCJ observed …

> "15. Of perhaps greater pertinence in the present debate, however is the question whether having reasonable grounds to believe (just as having reasonable grounds to suspect) restricts the ambit of permissible review by the courts to an examination of the actual grounds considered by the arresting officer. After all, it is to the grounds which the officer had, as opposed to those that he might have considered, that the subsection directs one's attention. This suggests that one should concentrate on the specific grounds to which the constable had regard. As against that approach, however, a wilful refusal to take into account factors that might have led unmistakably to a contrary view as to the necessity to arrest surely cannot be ignored in any judgment on the reasonableness of the grounds on which the belief was formed."

62. The position was similarly explained by Jay J in **R (L) v Chief Constable of Surrey Police** [2017] 1 WLR 2047 at [39]:

> "…the court does not ask itself whether any police officer could rationally have been the decision under challenge; it directs itself to the particular decision maker and his grounds."

Jay J went on to refer to the case of **Edwards v DPP** [1993] 97 Cr App R 301 which

> "supports the contention that the focus should be on the arresting officer's actual reasons for his arrest, not on those which might arise by inference or retrospective justification."

63. Similarly, in **Rashid v Chief Constable of West Yorkshire Police** [2020] EWHC 2522 (QB) Lavender J rejected the Chief Constable's reliance on an asserted reason for arrest on the basis that

> "there was no evidence from [the arresting officer] that this supposed difficulty formed any part of the grounds for believing that it was necessary to arrest the Claimant."

64. In **Re Alexander's Application** Kerr LCJ rejected the submission that the requirement for necessity of arrest means that there must be no feasible, or viable, alternative, or that arrest must in every case be a matter of last resort. He also considered and rejected the submission that in order to have reasonable grounds for believing arrest to be necessary, the officer must ask the suspect as to whether he will attend the police station voluntarily. He stated:

> "Given the scope of the decision available to a constable contemplating arrest, we do not consider that it is necessary that he interrogate a person as to whether he will attend a police station voluntarily. But he must, in our judgment, at least consider whether having a suspect attend in this way is a practical alternative. The decision whether a particular course is necessary

> involves, we believe, at least some thought about the different options. In many instances, this will require no more than a cursory consideration but it is difficult to envisage how it could be said that a constable has reasonable grounds for believing it necessary to arrest, if he does not make at least some evaluation as to whether voluntary attendance would achieve the objective that he wishes to secure."

65. In **Hayes** Lord Justice Hughes referred to this passage and continued:

> "The correct analysis is contained in the last four lines of the passage cited above. The relevance of the thought process is not that a self-direction on all material matters and all possible alternatives is a precondition to legality of arrest. Rather it is that the 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. In the single case whose merits were considered, Farrelly, this was precisely the reasoning of the court. The officer in that case had adopted a predetermined decision to arrest and had not thought about any alternative. The court held that he had not, objectively viewed, had reasonable grounds for his belief that arrest was necessary: see para 24."

He added:

> "The officer ought to apply his mind to alternatives short of arrest, and if he does not do so he is open to challenge. The code provides a sensible warning to that effect. But the challenge, if it comes, is not one which requires the officer's decision to be subjected to a full-blown public law reasons challenge. It is one which requires it to be shown that on the information known to the officer he had reasonable grounds for believing arrest to be necessary, for an identified section 24(5) reason."

66. As I set out in **ST-v-The Chief Constable of Nottinghamshire** [2022] EWHC 1280 (QB),

> "92. Consideration by an officer of the necessity for arrest or detention does not require consideration of all potentially relevant circumstances. So much is clear from the judgment of Lord Hughes in *Hayes.* There is no need for a self- direction as to all factors that weigh in favour of arrest and those that weigh against. Also a failure to comply with any provision of the code does not by itself, without more, render an arrest or detention unlawful. Rather if its provisions appear to be relevant to any question arising, it is to be taken into account.
>
> 93. However, these principles are not, to use an apposite term a "get out of jail free card" for an officer who has failed to properly evaluate the need for arrest or detention. The test of necessity is designed to protect the public from autocratic decisions and as explained by Lord Thomas LCJ in R (B) -v- *Chief Constable of Northern Ireland [2015] EWHC 3691* the objective second limb of the test set out in Hayes encompasses the concept of Wednesbury reasonableness. Although not bound to take into account all considerations an officer should consider, to give at least some thought to, obviously material ones including any practical alternatives which are less intrusive than arrest. Were this not a requirement the test would be

> watered down so as to provide an inadequate safeguard. Code G 1.3 reminds the officers that the use of the power of arrest must be fully justified and in exercising the power they should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used (or is simply convenient for the progression of an investigation)."
>
> And
>
> "113. I recognise that in evaluating the grounds for the decision to arrest the Judge had to allow sufficient room for individual judgment and the exigencies of policework. Ms White is correct that a Court must be careful to give due regard to matters of operational discretion."

67. I turn to the grounds of appeal.

Analysis of the Grounds of Appeal

68. The Judge found as a fact that that there were two reasons for PC Lockyer's decision to arrest the Claimant:

(1) to enable a prompt and effective investigation of the offence, and

(2) to protect Mrs Napier

69. It was Mr Jacobs' submission that the Judge then introduced two factors of his own into the objective analysis which had not been considered by the officer;

(a) That the Appellant could terminate a voluntary interview at any point; and

(b) That the Appellant might send "associates" along "to deter" Mrs Napier.

I will deal with these in turn.

70. The Judge held that arrest was necessary as the investigation needed to be concluded quickly;

> ".. and as Hughes LJ stated in **Hayes** a voluntary interview could be terminated at any moment by the Claimant".

71. However there was no evidence at all from PC Lockyer, either in his written or oral evidence, that he was concerned that the Appellant may terminate a voluntary interview, or that this formed any part of his rationale. Neither was it relied upon in the closing submissions of the Commissioner.

72. Further, in relation to protecting Mrs Napier, the Judge held that

> "The police had no means of knowing whether the Claimant seriously intended violence and whether he might send associates along to deter Mrs Napier."

73. Again there was no evidence at all from PC Lockyer, either in his written or oral evidence, that he was concerned by, or ever entertained the possibility of, the prospect

of the Appellant deploying "associates" to deter or harm Mrs Napier. It was not suggested as part of the reasoning in the Commissioner's closing submissions.

74. Mr Morley submitted the Judge's references to terminating the interview, or sending 'associates' to see Mrs Napier, were simply examples of why such investigations need to be conducted promptly. The trial Judge was clearly not suggesting that these would happen in this case and his decision was based upon the need for a prompt investigation and the need to protect Mrs Napier. It was not based on these hypothetical examples.

75. I cannot accept Mr Morley's submission. In my judgment is it clear that the Judge added extra reasons into his evaluation of the necessity for arrest beyond those considered by PC Lockyer. The Judge set these out as realistic possibilities that required consideration, yet they did not feature in the thinking of the arresting officer.

76. In answer to the Judge's questions PC Lockyer agreed with the proposition that if necessary, the Appellant could have been arrested during a voluntary interview. That this may not have been a proper approach does not detract from the fact that PC Lockyer did not indicate within consideration of this issue during his evidence that he took into account the possibility of the Appellant leaving the voluntary interview. Put simply there was no suggestion made at any stage that this possibility crossed his mind.

77. I have set out all the evidence concerned the possibility of the Appellant going to Mrs Napier's property. The notion of "associates" deterring Mr Napier solely came from the Judge and, again, was without any evidential foundation and, with respect, somewhat unrealistic.

78. In my judgment it is likely that the Judge took comments made by Hughes LJ and applied them to the case before him without adequate consideration of the facts before the court in **Hayes** which provided the context for what was said. In that case the Claimant was allegedly a drug dealer who was said to have made reference to sending "some lads" around to the complainant's house, threatened the alleged victim with kidnap and the arresting officer was worried about the Claimant making an unsupervised call (to associates) if not arrested. Hughes LJ set out that

> "Whilst of course it may be that it is quite unnecessary to arrest a suspect who will voluntarily attend an interview, as it was with the schoolteacher in Richardson , it is not the case that a voluntary attendance is always as effective a form of investigation as interview after arrest. Section 29 of the Act reminds officers of their duty, if inviting voluntary attendance, to tell the suspect that he may leave at any time he chooses. It would not be honest for an officer to invite a person to attend a voluntary interview if he intended to arrest him the moment he elected to leave. Nor would it be effective. It would mean that the suspect could interrupt the questioning the moment it reached a topic he found difficult. Even if it were possible simply then to arrest him, the interview could not continue until all the important formalities of reception into custody, checks on health, notification of friends or relatives and so on had been complied with. If the complaint made by Mr Mooney was true and the suspect was a drug dealer manipulating his customer, this was a case where that might happen. Moreover, the officer did need to inspect any mobile telephone which the suspect might have, and without warning him of the intention; the suggestion that he ought to have been asked politely to bring

> his telephone with him would, assuming a truthful complaint, have accomplished nothing other than the deletion of all relevant information or the leaving of the phone behind. Thirdly, the officer did need to be able to frustrate any attempt, if it were made, to send an unsupervised message on arrest, which might, assuming the complaint to be true, easily involve getting someone else to visit the complainant to deter him. I also agree that it was very likely, if the investigation proceeded, that the suspect would have to be released on bail conditions designed to prevent contact with the complainant; whether this can properly go to necessity on ground 24(5)(e) or would have to call for separate invocation of ground 24(5)(d) ("to protect a….vulnerable person from the [suspect]") is a question on which we have not heard argument and which we do not need not resolve."

79. The present case was very far removed from drug dealing; it was a dispute over window cleaning fees. There was no suggestion that the Appellant was intending to do anything save assist the Police with his version of events (and show his phones which he had brought to prove that his communications had been civil). There was no suggestion of "associates".

80. The Judge fell into error in taking these two additional possibilities, which formed no part of PC Lockyer's reasoning, into account.

81. Given this error the question which falls for consideration is whether the actual reasons behind PC Lockyer's decision were objectively sufficient as reasonable grounds for the necessity of arrest. This is addressed by ground two. It is a question of law and it is not an exercise of discretion (or part of the fact finding exercise). Given that the trial Judge erred in taking into account matters which were not in the officers mind, it is for me to reconsider the question giving appropriate weight to the Trial Judge's assessment in light of what Lord Justice Richards described in **Alford-v-Chief Constable of Cambridgeshire** [2009] EWCA Civ 100 as his proximity to the evidence and his better overall feel for the case

82. It is first necessary to deal two other matters which were not reasons which justified the arrest.

83. As the Judge observed

> "In his oral evidence PC Lockyer was somewhat confused about the reasons for the arrest"

84. PC Lockyer referred in his evidence (for the first time) to the need to seize the Appellant's phones. The Judge was not convinced by his evidence and found as a fact that investigation of the Appellant's phone "wasn't in his mind at the time".

85. Also the issue of the need for bail conditions was ventilated in evidence but PC Lockyer agreed that this was not part of his reasoning.

86. Mr Jacobs submitted that:

(a) PC Lockyer conceded that arrest was not necessary for the purposes of interviewing the Appellant. The Appellant had attended at the police station

wishing, proactively, to assist. There was no basis to consider that voluntary interview was anything other than a practical and sensible option;

(b) PC Lockyer had no objectively reasonable grounds to believe that arrest was necessary for the purposes of protecting Mrs Napier. The question was not whether there existed some general, hypothetical or vague risk or threat. The question was whether arrest was necessary, in that moment, to protect a person from physical injury. The Appellant had attended at a police station to co-operate. There was no basis to believe that if he was not arrested he would leave the police station to assault Mrs Napier. When pushed on whether the prospect of the Appellant at that point leaving to assault Mrs Napier was *"zero"*, PC Lockyer simply said he could not answer the question. That is impossible to square with the contention that he had reasonable grounds for believing that arrest was necessary to protect Mrs Napier; he plainly did not.

87. Mr Morley submitted that the key finding of the trial Judge was that PC Lockyer had objectively reasonable grounds for believing that the arrest of the Appellant was necessary for two reasons:

(a) in order to conduct a prompt and effective investigation and

(b) to prevent the Appellant causing harm to others.

That finding was based on the evidence and was an entirely proper finding.

88. Mr Morley submitted that the Appellant's submissions ignored the risk assessment conducted by other officers concerning the risk the Appellant posed to Mrs Napier and her family and the detailed concerns about the (escalating) behaviour set out in the CRIS report. This was read and considered by PC Lockyer before he conducted the arrest. Further, as set out in **Hayes** attendance for a voluntary interview does not rule out the necessity of arrest. Indeed, whilst considerations should be given to alternatives to arrest, in many instances this need be no more than a '*cursory consideration*', depending upon the facts.

89. In all the circumstances PC Lockyer's belief was objectively reasonable given the circumstances of threats of violence allegedly being made by the Appellant that day and that the Appellant had only appeared at the police station, late at night, because he knew that the police were looking for him.

Analysis of the grounds for arrest

90. The question of whether or not an arrest is necessary is fact specific.

91. It must be borne in mind that the test of necessity remains a 'high bar'.

92. PC Lockyer stated in evidence that his involvement started with a request to effect an arrest. He explained that

> "Yes, so I was on night duty and my response sergeant would've called me in because I was available and said "can you arrest someone in the front office' who's handed himself in."

93. This is contrast with a request to speak to a person who has attended at the Station because he understands that the Police wish to speak with him and to then evaluate whether an arrest is necessary. However PC Lockyer stated

> "Every time we arrest someone it's our own decision, we can't be forced to arrest someone."

94. His evidence was that he read the CRIS report and the arrest request (the "CAD") and arrested the Appellant without any discussion or investigation of what he was prepared or not prepared to do. This limited his ability to make an informed decision.

95. Mr Morley suggested that the Appellant may have left the station if he was told that there would be a delay before he could have been interviewed and/or that he may have refused to make no further calls with the risk that he could have stepped outside the station and rang Mr Napier. However this is speculation and in any event PC Lockyer gave no evidence that he considered these matters.

96. PC Locker stated that he;

> "didn't deem it appropriate for a caution free interview"

However when challenged as to his rationale he struggled to explain why a voluntary interview would not have been a practical and sensible option given that the Appellant was there voluntarily to assist.

97. It is difficult to envisage how an officer can have reasonable grounds for believing it is necessary to arrest, if he does not make at least some (rationale) evaluation as to whether voluntary attendance would achieve the objective that he wishes to secure a fortiori if the person has already taken the step of attending to assist and is sitting in the Police reception patiently waiting to speak to someone about the matter in issue. Given the nature of the alleged offences and the Appellant's apparent willingness to assist the Police it was clearly necessary for PC Lockyer to consider if steps short of arrest would suffice. Whilst sometimes consideration of whether a voluntary interview need only be cursory, in some circumstances it requires more careful analysis. It is entirely fact specific. Here, viewing matters objectively, PC Lockyer needed to give the issue more consideration than it appears he did.

98. PC Locker could also not provide any response to the suggestion that the risk to Mrs Napier was non-existent. Whilst the Appellant was in the station (and assisting) and willing to assist he could pose no realistic threat to Mrs Napier.

99. In my judgment it is illuminating that the Judge felt it necessary to "add in" the matters that he did; the possibility of the Appellant terminating any voluntary interview and of the Appellant posing a threat through associates. Stripped of the additional reasons the decision to arrest is objectively unsustainable. Arrest was not necessary for either of the reasons PC Lockyer gave.

100. For the reasons which I have set out it is my view that the Judge fell into error. The decision to arrest, objectively reviewed, was not made on reasonable grounds.

101. Given that this appeal has succeeded I turn to the issue of damages. The Trial Judge did not consider the issue.

102. In addition to damages in accordance with the guidelines in **Thompson and Hsu v Commissioner of Metropolitan Police** [1997] EWCA Civ 3083 [1998] QB 498 (CA). The Appellant seeks an award of aggravated damages.

103. A court may make an additional award of aggravated damages where there are aggravating features about the case, which would result in the claimant not receiving sufficient compensation for the injury suffered if the award were restricted to the basic award. As I observed during Mr Jacobs' submissions having appeared in, or decided, many cases of this nature over the last 38 years as practitioner and Judge I cannot immediately recall a claim where the Claimant did not argue for aggravated damages notwithstanding the reference to the existence of "straightforward cases" in **Thompson.**

104. As Woolf (MR as he then was) set out in **Thompson** aggravating features can include

> "humiliating circumstances at the time of arrest or any conduct of those response for the arrest of prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution".

105. Mr Jacobs submitted that aggravated damages are appropriate principally due to the Appellant having been being arrested and detained notwithstanding his attempts to cooperate with the arrest and detention this being acutely frustrating and distressing. It was also through the night.

106. In my view aggravated damages are not appropriate. There was nothing out of the ordinary in the circumstances of the arrest. A mistake was made, but otherwise the Appellant was dealt with calmly and professionally. The Appellant will be adequately compensated by the basic damages award.

107. Turning to the basic award in **Thompson** the court set out a starting point (in February 1997 values) of £500 for the first hour in a *"straightforward case of wrongful arrest and imprisonment"*. While an additional sum is to be awarded after the first hour, it is to be on a reducing scale so that it keeps the damages proportionate to those paid in personal injury cases, and gives a higher rate of compensation for the initial shock of the arrest. Twenty four hours of being wrongly held in custody would give an award (in February 1997 values) of about £3,000. Those figures, bearing in mind the 10% uplift in **Simmons v Castle** [2012] EWCA Civ 1039 [2013] 1 WLR 1239 give current day figures of £1,084 and £6,500, and £1000 and £5,900 on Mr Jacobs' and Mr Morley's calculations respectively.

108. For the seven hours of detention, Mr Jacobs submits £3,500 is an appropriate figure. Mr Morley submits that the appropriate bracket is £2,000-£2,500.

109. I award £2,750.

110. I leave it to Counsel to prepare a draft order.