Neutral Citation Number: [2020] EWHC 2522 (QB)

County Court Claim No: D63YJ172

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEEDS DISTRICT REGISTRY
ON APPEAL FROM
THE COUNTY COURT AT BRADFORD

Combined Court Centre
1 Oxford Row
Leeds LS1 3BG
(Remote hearing on Skype for Business)

Date: 25 September 2020

Before:

MR JUSTICE LAVENDER

- -

Between:

DR ABDUL AZEEM WAQAR RASHID — **Claimant/ Appellant**

- and -

CHIEF CONSTABLE OF WEST YORKSHIRE POLICE — **Defendant/ Respondent**

- -

Ian Pennock (instructed by **Simon Blakeley Solicitors**) for the **Appellant**
Olivia Checa-Dover and **Daniel Penman** (instructed by **Alison Walker, West Yorkshire Police Legal Services**) for the **Respondent**

Hearing date: 14 May 2020

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JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. This is an appeal against the judgment of Mr Recorder Nolan QC handed down on 20 September 2019, dismissing the Claimant's claim for damages for wrongful arrest, false imprisonment and trespass.

2. The Claimant was arrested on 7 March 2012 at his home in Bradford. The arresting officer was DC Mark Lunn. The Claimant was taken to a police station, where he was interviewed. He was released on bail later in the day. Three of his premises were searched, pursuant to warrants. He was interviewed again on a number of occasions. In June 2013 the Crown Prosecution Service decided that no charges should be brought against him and he was released from bail.

3. The Claimant's arrest formed part of an investigation called Operation Thatcham, which resulted in 45 individuals being convicted of fraud-related offences relating to fraudulent claims against motor insurers for compensation for alleged whiplash injuries sustained in fictitious or exaggerated road traffic accidents. That operation commenced in April 2011, following the conviction of Nadeem Khaled and his brother Khazeem for mortgage fraud. Nadim Khaled was the ringleader of the organised crime group. He ran a claims management company known initially as Advance Claims and later as Concept Claims. Like the Recorder, I will refer to it as Advance Claims. It made many fraudulent claims. The Recorder found it to be a corrupt and dishonest organisation inextricably linked to the organised crime group.

4. The Claimant was a GP who provided medical reports for Advance Claims' clients. The Recorder found that:

   (1) The Claimant first came to the police's attention when a hand-written appointments diary was found in the car of one of the conspirators, Frank El Habbal, showing appointments for the Claimant to examine potential claimants. Similar diaries were found in Advance Claims' offices.

   (2) The Claimant would examine up to 50 potential claimants in a day, booked 10 minutes apart over a continuous 8 hour period.

   (3) He charged his instructing solicitors £470 for each claimant he examined and reported on.

   (4) A Dr McAvoy advised the police that medical examination of claimants in such cases should take between 20 and 30 minutes and that a reasonable fee for the examination would be between £250 and £300.

   (5) A Dr Tedd commented adversely on the quality of the Claimant's reports, saying, for instance, in a note dated 29 November 2011, "I still don't believe that the person doing these reports is qualified, unless he/she is just taking the mickey."

   (6) The Claimant made regular payments to Advance Claims, including payments totalling £24,865 in the period from 28 June 2010 to 20 September 2011.

(7) Nadeem Khaled and others were arrested on 10 October 2011. A restraining order was imposed on the account into which the Claimant had been paying this money. On 3 November 2011 the Claimant was told in an email about the frozen bank account. On 21 November and 11 December 2011 the Claimant made payments of £825 and £2,550 respectively into the account of NK Business Consultants, which was controlled by the organised crime group.

(2) The Trial

5. The claim was tried over 10 days. The central issues in the case were whether DC Lunn and his fellow officers (a) honestly, and (b) reasonably believed:

(1) that there were reasonable grounds for suspecting that an offence had been committed by the Claimant; and

(2) that it was necessary to arrest the Claimant to allow the prompt and effective investigation of the offence.

6. There were also issues as to:

(1) Whether the search warrants had been obtained lawfully and by due process.

(2) Whether the Claimant would have been lawfully arrested by another officer, if he had not been arrested by DC Lunn. This was referred to as the "*Lumba/Parker* issue", by reference to *Parker v Chief Constable of Essex Police* [2019] 1 W.L.R. 2238.

(3) Whether the ex turpi causa doctrine applied.

7. DC Lunn did not give evidence. He had left the police force following an allegation of misconduct made in 2012, which concerned his proposing to set up in business as a private investigator.

8. Taken at its highest, the Claimant's case was that DC Lunn decided to arrest the Claimant, not because he genuinely suspected the Claimant of any crime, but because he wanted to further his own career as a private investigator by being able to boast of having arrested a GP as well as having been part of Operation Thatcham. The Claimant also contended that other officers either did not properly investigate, or covered up, DC Lunn's activities, which may have gone so far as his receiving £183,000 from an insurance company to finance his proposed business, and which certainly appear to have created a potential conflict between his duties as a police officer and his interest in furthering his proposed business.

9. The Claimant also submitted that there were a large number of missing documents, including documents which ought to have contained a statement of the grounds for suspecting the Claimant and/or the grounds for believing that it was necessary to arrest the Claimant. Against this, the Defendant relied in particular on three documents as containing a statement of the grounds for suspecting the Claimant:

(1) The Policy Log for Operation Thatcham, in particular the entry for 19 January 2012, where DC Lunn wrote:

> "Meeting with Julian Briggs, DI White etc to discuss progress and the way forward. We discussed the arrest of Dr Rashid and it was decided to continue as planned rather than delay his arrest so as to preserve evidence etc.
>
> It was agreed that we have enough evidence to go with on all of the claims arrested for so far and to call it a draw with any further other than the coach."

(2) An Operational Order dated 28 February 2012.

(3) Undated Interview Notes.

10. At trial, the Defendant relied on 9 items as providing reasonable grounds for the Claimant's arrest. These were as follows:

(1) "Advance Claims/Concept Accident Management are submitting fraudulent accident claims."

(2) "Claimant is connected to Advance/Concept. [*Claimant's*] Appointment diaries in el Habbal's car + Advance Claim offices."

(3) "Claimant is making payments to Concept Accident Management Ltd."

(4) "Paying funds into account of NK Business Consultants while Advance Claims is subject to restraint order."

(5) "Sole director of Concise Medical Legal is a 19-year old relative."

(6) "Running medicolegal practice from the same address as a CMC run by a man suspected to be his brother."

(7) "Reports are of a poor standard and give similar prognoses."

(8) "Charging £552 per appointment, which is in excess of what experts advise is reasonable, and appointments last only 10 minutes, which is less than experts advise."

(9) "Claimant's finances contain suspicious features."

11. The witnesses at trial included the Claimant and various officers involved in Operation Thatcham, including DI Taylor, who gave evidence over the course of 3 days and whom the Recorder found to be "a truthful, reliable and extremely professional police officer of the highest calibre" and party to the decision to arrest the Claimant and present at the meeting on 19 January 2012 recorded in the Policy Log.

(3) The Recorder's Judgment

12. In the first 19 pages of his judgment, the Recorder set out the history of the investigation. It is unnecessary for me to repeat what he said. I note, however, that the Recorder dealt at some length with the evidence as to the decision to arrest the Claimant, from paragraph 23 on page 14 to paragraph 30 on pages 18-19. He found that the

decision to arrest the Claimant was well-documented and he quoted the entry from the Policy Log for 19 January 2012.

13. As to DC Lunn, the Recorder said as follows in paragraph 28 of his judgment:

> "I utterly reject the fanciful suggestion that he has somehow taken over the investigation and pursued Dr Rashid to arrest for his own ends."

14. In paragraph 30 he said as follows:

> "Mr Pennock's suggestions that DC Lunn was allowed to hi-jack this investigation for his own ends and to manipulate Dr Rashid's arrest is utterly preposterous and I soundly reject it.
>
> DI Taylor didn't know his whereabouts but he candidly agreed with Mr Pennock that he could find him if he needed to. Mr Pennock submitted that I should draw an adverse inference from his absence from the witness box. I draw no such inference. Although he is in name the arresting officer his importance to the case has been greatly over-blown."

15. The Recorder summarised the applicable law on pages 20 and 21 of his judgment. No criticism is made of what he said on the law.

16. The Recorder set out the following findings on page 22 of his judgment:

> "39. Taken together the matters relied upon by the Defendant provided ample grounds for reasonable suspicion of the Claimant's willing and active complicity in the illegal activities of the OCG in the operation of Advance Claims for the purpose of frauds against motor insurance companies.
>
> 40. I further find that all the active members of the team who were present at the meeting on the 19th January 2012 had an honest and reasonable belief in that complicity and that they held that belief up to and indeed beyond the date of Dr Rashid's arrest.
>
> 41. This includes DC Mark Lunn, the arresting officer and I therefore hold that he held the same honest and reasonable belief when he arrested the Claimant.
>
> 42. I find that all those present (including D.C. Lunn) at the meeting on the 19th January 2012 held an honest and reasonable belief that it was necessary to arrest the claimant to allow the prompt and effective investigation of the offence for which the claimant was arrested and that they (including D.C. Lunn) held that belief up to and beyond the date of the claimant's arrest.
>
> 43. I further find that on the date of the arrest and the searches of the claimants various properties there were valid warrants authorising the search of each of those properties and that those warrants had been obtained lawfully and by due process."

17. Then on page 23 of his judgment the Recorder said as follows:

> "44. These findings require me to dismiss the claim and it is unnecessary for me to give detailed rulings on the remaining issues. However I will add the following. On what has been called that "*Lumba/Parker* issue", I find that, had the Claimant not been lawfully arrested by DC Lunn, his lawful arrest by other officers would have followed.
>
> 45. On what has become known as the "ex turpi causa issue" I heard evidence from the claimant in cross-examination on the various allegations which underpin that issue. I found his answers were evasive and equivocal and I accept the Defendants submission that the Claimant had neither a proper understanding nor respect for the duty he owed to the court and the solemnity of the declarations he was making in his reports."

(4) The Grounds of Appeal and the Law

18. There were originally 10 grounds of appeal, but Mr Pennock sensibly abandoned two of them (grounds 5 and 8) in the course of the hearing. By grounds 2 to 4, 6 and 7 the Claimant contended that the Recorder was wrong in his primary conclusion that the Claimant's arrest was lawful. Ground 1 concerned the adequacy of the Recorder's reasons. Grounds 9 and 10 concerned the Recorder's alternative conclusions in paragraphs 44 and 45 of his judgment on, respectively, the *Lumba/Parker* issue and on the ex turpi causa issue. These grounds are only relevant if I set aside the Recorder's primary conclusion.

(4)(a) The Requirement for Reasonable Grounds for Suspicion

19. The Recorder referred to subsection 24(2) of the Police and Criminal Evidence Act 1984 ("PACE"), which (as amended with effect from 1 January 2006) provides as follows:

> "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."

20. It is the latter part of this subsection which is relevant in the present case, since there is no doubt that offences had been committed. The issue was whether there were reasonable grounds to suspect that the Claimant was party to those offences. So it may be that the more relevant subsection was 24(3), which provides as follows:

> "If an offence has been committed, a constable may arrest without a warrant—
>
> … ;
>
> (b) anyone whom he has reasonable grounds for suspecting to be guilty of it."

21. On either view, DC Lunn had power to arrest the Claimant if he had reasonable grounds to suspect the Claimant of being guilty of an offence.

22. The Recorder was referred to the well-known decision of the House of Lords in *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] A.C. 286, which was a decision on the similarly-worded section 12(1) of the Prevention of Terrorism

(Temporary Provisions) Act 1984, but which is acknowledged to apply in the present case. In that case, Lord Hope said as follows (at p. 298A-E):

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."

23. By grounds 2 and 3 in the grounds of appeal, the Claimant challenges the judge's conclusions on the issues

(1) whether DC Lunn had formed a genuine suspicion in his own mind that the Claimant was party to the frauds being committed through Advance Claims; and

(2) if so, whether he had reasonable grounds for that suspicion.

(4)(b) The Requirement for Reasonable Grounds to Believe Arrest is Necessary

24. If DC Lunn had power to arrest the Claimant, the exercise of that power was subject to subsections 24(4) & (5) of PACE, which (as amended with effect from 1 January 2006) provide, insofar as is material, as follows:

> "(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—

…

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

25. I note that, whereas the requirement in subsections 24(2) and (3) for reasonable grounds for suspecting a person to be guilty of a crime imposed a comparatively low hurdle, the requirement in subsections 24(4) and (5) for reasonable grounds for believing that an arrest was necessary imposed a comparatively high hurdle. Hughes LJ said as follows in paragraph 15 of his judgment in *Hayes v Chief Constable of Merseyside* [2012] 1 WLR 517 of the amendment to section 24 which took effect on 1 January 2006:

> "The effect of this is, in one sense, to tighten up the accountability of police officers, at least in the case of arrest for serious offences, because those arrests now become subject to the criterion of necessity, whereas previously only non-arrestable offences were. As Toulson LJ pointed out in this court in *Shields v Chief Constable of Merseyside Police* [2010] EWCA Civ 1281, the new formulation also: (a) creates a single code for all offences; (b) ensures conformity with article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and (c) incorporates the Wednesbury principle of review via the concept of reasonable grounds, brought forward from the previous law and extended to the new general requirement of necessity."

26. By grounds 4 and 6 the Claimant challenges the Recorder's conclusions on the issues:

(1) whether DC Lunn had a genuine belief that the Claimant's arrest was necessary to allow the prompt and effective investigation of the offence or of the Claimant's conduct; and

(2) if so, whether he had reasonable grounds for that belief.

27. By ground 7 the Claimant contended that DC Lunn's decision to arrest Dr Rashid was unlawful in public law terms. However, this ground of appeal is misconceived, because the lawfulness of DC Lunn's decision to arrest the Claimant did not fall to be assessed in the same manner as an exercise of discretion in a public law case: see *Hayes v Chief Constable of Merseyside* [2012] 1 WLR 517, at paragraphs 18, 21, 39, 40 and 42.

(4)(c) Code G and the Question Whether to Arrest or Invite for Voluntary Interview

28. Section 66(1)(a)(iii) of PACE obliged the Secretary of State to issue a code of practice in connection with the exercise by police officers of statutory powers to arrest a person. The Secretary of State has issued Code G. It is admissible in evidence pursuant to section 67. I was not referred to the version of Code G in force at the time of the Claimant's arrest (which I will refer to as "the 2006 version"), but to the version which came into force on 12 November 2012 (which I will refer to as "the 2012 version").

29. Some provisions of Code G remained unaffected by the revision. These include the following:

> "1.3 The use of the power [*of arrest*] must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less obtrusive means. …"
>
> "2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be arrested …" [*The 2012 version has "taken to a police station ..." instead of "arrested ...".*]
>
> "2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process."

30. The 2006 version of Code G went on to provide, inter alia, as follows:

> "2.9 The criteria are that the arrest is necessary:
>
> …
>
> (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question.
>
> This may include cases such as:
>
> (i) Where there are reasonable grounds to believe that the person:
>
> …
>
> - may steal or destroy evidence;
>
> …
>
> (ii) when considering arrest in connection with an indictable offence, there is a need to:
>
> …
>
> - search the person
>
> …"

31. The 2012 version of Code G contains a much-expanded paragraph 2.9, which provides, inter alia, as follows:

> "2.9 When it is practicable to tell a person why their arrest is required …, the constable should outline the facts, information or other circumstances which provide the grounds for believing that their arrest is necessary and which the officer considers satisfy one or more of the statutory criteria in sub-paragraphs (a) to (f), namely:
>
> …
>
> (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question. *See Note 2E.*
>
> This may arise when it is thought likely that unless the person is arrested and then either taken in custody or granted "street bail" to attend the station later, *see Note 2J*, further action considered

necessary to properly investigate their involvement in the offence would be frustrated, unreasonably delayed or otherwise hindered and therefore be impracticable. Examples of such actions include:

(i) interviewing the suspect on occasions when the person's voluntary attendance is not considered to be a practicable alternative to arrest, because, for example:

- o it is thought unlikely that the person would attend the police station voluntarily to be interviewed;
- o it is necessary to interview the suspect about the outcome of other investigative action for which their arrest is necessary, see (ii) to (iv) below.

…

- o it is thought likely that the person:
  - may steal or destroy evidence

  …

See *Notes 2F and 2G.*

(ii) when considering arrest in connection with an indictable offence (see *Note 6*) there is a need:

- o to enter and search without a search warrant any premises occupied and controlled by the arrested person or where the person was when arrested or immediately before arrest;
- o to prevent the arrested person having contact with others;
- o to detain the arrested person for more than 24 hours before charge.

…

(iv) when considering arrest in connection with any offence and it is necessary to search, examine or photograph the person to obtain evidence. See *Note 2H*.

32. Note 2F to the 2012 version of Code G states as follows:

> "An officer who believes that it is necessary to interview the person suspected of committing the offence must then consider whether their arrest is necessary in order to carry out the interview. The officer is not required to interrogate the suspect to determine whether they will attend a police station voluntarily to be interviewed but they must consider whether the suspect's voluntary attendance is a practicable alternative for carrying out the interview. If it is, then arrest would not be necessary. Conversely, an officer who considers this option but is not satisfied that it is a practicable alternative, may have reasonable grounds for deciding that the arrest is necessary at the outset 'on the street'. Without

such considerations, the officer would not be able to establish that arrest was necessary in order to interview.

Circumstances which suggest that a person's arrest 'on the street' would not be necessary to interview them might be where the officer:

- is satisfied as to their identity and address and that they will attend the police station voluntarily to be interviewed, either immediately or by arrangement at a future date and time; and
- is not aware of any other circumstances which indicate that voluntary attendance would not be a practicable alternative. See paragraph 2.9(e)(i) to (v).

When making arrangements for the person's voluntary attendance, the officer should tell the person:

- that to properly investigate their suspected involvement in the offence they must be interviewed under caution at the police station, but in the circumstances their arrest for this purpose will not be necessary if they attend the police station voluntarily to be interviewed;
- that if they attend voluntarily, they will be entitled to free legal advice before, and to have a solicitor present at, the interview;
- that the date and time of the interview will take account of their circumstances and the needs of the investigation; and
- that if they do not agree to attend voluntarily at a time which meets the needs of the investigation, or having so agreed, fail to attend, or having attended, fail to remain for the interview to be completed, their arrest will be necessary to enable them to be interviewed."

33. *Hayes v Chief Constable of Merseyside* is an example of a case in which the arresting officer believed that it was necessary to arrest the Claimant in order to interview him effectively and in order to seize his mobile telephone. The Court of Appeal held that there were reasonable grounds for that belief. Hughes LJ said as follows in paragraph 42 of his judgment:

> "… 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 the *Richardson* case [2011] 2 Cr App R 1, 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 1984 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. …"

34. It may be that the final bullet point in Note 2F to the 2012 version of Code G was included in consequence of Hughes LJ's statement that 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. An officer who told a suspect that that was his intention would not be being dishonest.

35. Note 2G to the 2012 version of Code G also deals with the implications for the power of arrest of the fact that a suspect may be arrested if he leaves a voluntary interview. It states as follows:

> "When the person attends the police station voluntarily for interview by arrangement as in Note 2F above, their arrest on arrival at the station prior to interview would only be justified if:
>
> • new information coming to light after the arrangements were made indicates that from that time, voluntary attendance ceased to be a practicable alternative and the person's arrest became necessary; and
>
> • it was not reasonably practicable for the person to be arrested before they attended the station.
>
> If a person who attends the police station voluntarily to be interviewed decides to leave before the interview is complete, the police would at that point be entitled to consider whether their arrest was necessary to carry out the interview. The possibility that the person might decide to leave during the interview is therefore not a valid reason for arresting them before the interview has commenced. See Code C paragraph 3.21."

36. Paragraph 3.21 in the version of Code C in force at the time of the Claimant's arrest began as follows:

> "Anybody attending a police station voluntarily to assist with an investigation may leave at will unless arrested. See Note 1K. If it is decided they shall not be allowed to leave, they must be informed at once that they are under arrest and brought before the custody officer, who is responsible for making sure they are notified of their rights in the same way as other detainees. …"

37. *Commissioner of Police for the Metropolis v MR* [2019] EWHC 888 was a case in which the Claimant was arrested when he voluntarily appeared at a police station in connection with an allegation of harassment. The officer considered that the claimant's arrest was necessary, inter alia, to interview the claimant and to obtain his telephone. HHJ Baucher held that there were no reasonable grounds for believing that the arrest was necessary and Thornton J dismissed the appeal against that decision. At paragraph 49 of her judgment, Thornton J said as follows:

> "Whether a person attending at a police station voluntarily for the purpose of assisting with an investigation needs to be arrested is fact specific. The officer who has given no thought to alternatives to arrest is exposed to the risk of being

found by a Court to have had objectively no reasonable grounds for his belief that arrest was necessary (*Hayes* at [34] & [40]). The obvious alternative to arrest was to interview MR, establish his identity and require that he hand over his phone. Any difficulties in this regard could have necessitated his arrest at that juncture, but not before. Whilst acknowledging the operational experience and professionalism of the officer, I cannot see a rational basis for the arrest."

(4)(d) Powers to Search the Person for Mobile Phones

38. As has been seen, both versions of Code G recognise that an arrest may be necessary to allow the prompt and effective investigation of the offence or of the conduct of the person in question where there is a need to search the person. One of the consequences of arresting a person is that the officer is given a power to search that person, subject to various conditions and limitations. Section 32 of PACE provides, insofar as material, as follows:

> "(1) A constable may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others.
>
> (2) Subject to subsections (3) to (5) below, a constable shall also have power in any such case—
>
> (a) to search the arrested person for anything—
>
> … ; or
>
> (ii) which might be evidence relating to an offence; and
>
> …"
>
> "(3) The power to search conferred by subsection (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence."
>
> . "(5) A constable may not search a person in the exercise of the power conferred by subsection (2)(a) above unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph."

39. I note that, if the only purpose of arresting a suspect is to exercise the power of search conferred by subsection 32(2)(a)(ii), then the condition set out in subsection 32(5) needs to be satisfied if the arrest is to be lawful. If that condition is not satisfied, then arresting the suspect will not confer a power of search on the officer, and the arrest will be unnecessary and, therefore, unlawful.

40. If that condition is satisfied, then it is still open to the officer, instead of arresting the suspect, to ask the suspect to hand over the mobile telephone or other item of potential evidence which is reasonably believed to be concealed on the suspect's person. Of course, depending on the circumstances, making such a request may or may not be practicable. *Hayes v Chief Constable of Merseyside* is an example of a case in which such a request would not have been practicable, whereas *Commissioner of Police for the Metropolis v MR* is an example of case in which the request could, and therefore should, have been made. As acknowledged by Thornton J in that case, where such a

request is made and the suspect does not comply, the officer would have the power to arrest the suspect in order to search for the item.

41. In principle, an arrest will not be necessary if the only purpose of it is to exercise the power of search conferred by subsection 32(2)(a)(ii), but the officer already has a power to search the person arrested. That gave rise in this case to the issue whether the search warrants obtained by the police authorised them to search not only the properties identified in the warrants but the Claimant's person.

42. The Defendant submitted that the warrants were obtained under section 8 of PACE and therefore could not have authorised the search of the Claimant's person. However, neither the warrants nor the applications for the warrants were disclosed. That led Mr Pennock to question whether the warrants were issued under some other provision.

43. Some provisions, such as section 23 of the Misuse of Drugs Act 1971 and section 46 of the Firearms Act 1968, empower a justice of the peace to issue a warrant to search both premises and persons found therein. Those particular sections are obviously not relevant in this case. Mr Pennock submitted that the search warrants might have been search and seizure warrants issued under sections 352 and 353 of the Proceeds of Crime Act 2002, but section 352(4)(a) specifies that a search and seizure warrant authorises the search of premises, not persons.

44. A warrant to search premises does not carry with it an implied authority to search any person: see paragraph 10 of the judgment of Sedley LJ in *Hepburn v Chief Constable of Thames Valley Police* [2002] All ER (D) 214. The Court of Appeal in *Connor v Chief Constable of Merseyside Police* [2006] EWCA was critical of what Sedley LJ went on to say in paragraph 14 of his judgment in *Hepburn*, but did not question what he said in paragraph 10.

(4)(e) Recording the Reasons for an Arrest

45. Paragraphs 4.1 to 4.3 of the 2006 version of Code G provided as follows (emphasis added):

> "4.1 <u>The arresting officer is required to record in his pocket book or by other methods</u> used for recording information:
>
> - the nature and circumstances of the offence leading to the arrest
> - <u>the reason or reasons why arrest was necessary</u>
> - the giving of the caution
> - anything said by the person at the time of arrest
>
> 4.2 Such a record should be made at the time of the arrest unless impracticable to do. If not made at that time, the record should then be completed as soon as possible thereafter.
>
> 4.3 On arrival at the police station, the custody officer shall open the custody record (see paragraph 1.1A and section 2 of Code C). <u>The information given by the arresting officer on the circumstances and reason or reasons for arrest shall be recorded as part of the custody record.</u> Alternatively, a copy of the record made by the officer in accordance with paragraph

4.1 above shall be attached as part of the custody record. See paragraph 2.2 and Code C paragraphs 3.4 and 10.3.

4.4 *The custody record will serve as a record of the arrest.* Copies of the custody record will be provided in accordance with paragraphs 2.4 and 2.4A of Code C and access for inspection of the original record in accordance with paragraph 2.5 of Code C."

46. DC Lunn's pocket book or other record of this information was not disclosed.

(4)(f) The* Lumba/Parker *Issue

47. A claimant who has been arrested unlawfully will be entitled to only nominal damages if, had the defendant acted lawfully, the claimant would have been detained in any event: see *Parker v Chief Constable of Essex* [2019] 1 WLR 2238, in which the Court of Appeal applied the principle stated in *R (Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245. This is what was referred to in the recorder's judgment as "the *Lumba/Parker* issue". Ground 9 challenges the Recorder's alternative conclusion on this issue.

(4)(g) Ex Turpi Causa

48. Ground 10 challenges the Recorder's alternative conclusion on the ex turpi causa issue. It is necessary to explain how the Defendant put its case on this issue at trial. The Defendant cited *Holman v Johnson* (1775) 1 Cowp. 341, 343; 98 ER 1120; *Grey v Thames Trains Ltd* [2009] 1 AC 1339, at paragraph 30; and *Les Laboratoires Servier v Apotex Inc* [2015] AC 430. The Defendant rightly acknowledged that it is difficult to find a definitive statement of the scope of the ex turpi causa doctrine, but submitted that the Claimant's "industrialisation" of his medico-legal work involved a breach of his duty to the court and was contrary to the public interest and that this was capable of constituting turpitude for the purposes of the ex turpi causa doctrine. The Defendant relied on *Liverpool Victoria Insurance Company v Zafar* [2018] EWHC 2581 (QB), in which Garnham J held that a doctor who engaged in such "industrialisation" was in contempt of court.

49. The Defendant submitted that the Claimant's turpitude consisted of:

(1) reporting in cases in which he had an involvement with the claimant, or who were related to someone with whom he had an involvement, or in which he had a personal interest and failing to disclose the same to the court;

(2) conducting his reporting in a manner which was reckless as to whether the content was true and accurate and/or whether the contents would mislead the court; and

(3) continuing to assist and work with individuals whom he believed, or ought reasonably to have believed, were engaged in fraudulent activity.

50. However, the Defendant did not cite any case in which the ex turpi causa doctrine had been held to constitute a defence to a claim for wrongful arrest. There is no specific judicial guidance as to how, if at all, the principle is to apply in such cases. In general terms:

(1) In paragraph 22 of his judgment in *Les Laboratoires Servier v Apotex Inc*, Lord Sumption said that:

> "The application of the ex turpi causa principle commonly raises three questions: (i) what acts constitute turpitude for the purpose of the defence? (ii) what relationship must the turpitude have to the claim? (iii) on what principles should the turpitude of an agent be attributed to his principal, especially when the principal is a corporation?"

(2) As to the second of these questions, Lord Hoffmann said as follows in paragraph 54 of his judgment in *Grey v Thames Trains Ltd* [2009] 1 AC 1339:

> "This distinction, between causing something and merely providing the occasion for someone else to cause something, is one with which we are very familiar in the law of torts. It is the same principle by which the law normally holds that even though damage would not have occurred but for a tortious act, the defendant is not liable if the immediate cause was the deliberate act of another individual. Examples of cases falling on one side of the line or the other are given in the judgment of Judge LJ in *Cross v Kirkby* [2000] CA Transcript No 321. It was Judge LJ, at para 103, who formulated the test of "inextricably linked" which was afterwards adopted by Sir Murray Stuart-Smith LJ in *Vellino v Chief Constable of the Greater Manchester Police* [2002] 1 WLR 218. Other expressions which he approved, at paras 100 and 104, were "an integral part or a necessarily direct consequence" of the unlawful act (Rougier J: see *Revill v Newbery* [1996] QB 567 , 571) and "arises directly ex turpi causa " (Bingham LJ in *Saunders v Edwards* [1987] 1 WLR 1116 , 1134.) It might be better to avoid metaphors like "inextricably linked" or "integral part" and to treat the question as simply one of causation. Can one say that, although the damage would not have happened but for the tortious conduct of the defendant, it was caused by the criminal act of the claimant? (*Vellino v Chief Constable of the Greater Manchester Police* [2002] 1 WLR 218). Or is the position that although the damage would not have happened without the criminal act of the claimant, it was caused by the tortious act of the defendant? (*Revill v Newbery* [1996] QB 567)."

(5) Genuine Suspicion and Reasonable Grounds

51. It is convenient to begin with grounds 2 and 3 in the grounds of appeal, which are in the following terms:

> "2. The learned Recorder below erred in law and fact when he held that DC Mark Lunn, the arresting officer, or anyone else, held an honest and reasonable belief in the grounds for Dr Rashid's suspected complicity in the fraudulent crash for cash claims.
>
> 3. The learned Recorder below erred in law and fact when he held that DC Mark Lunn, the arresting officer, or anyone else, had objectively assessed reasonable grounds for that belief in suspecting Dr Rashid of complicity in the fraudulent crash for cash claims."

52. I accept Miss Checa-Dover's submission that one has to consider the cumulative effect of the nine items which were relied on by the Defendant and which I have already set out. Having said that, she did not place much reliance on items (5), (6) and (9), and so I will say no more about them. Item (1) was not disputed, but it merely establishes that crimes were being committed, not that there were grounds to suspect that the Claimant was party to that criminal activity. So it is necessary to focus attention on items (2) to (4), (7) and (8).

53. In the case of items (3), (4), (7) and (8), Mr Pennock raised factual issues as to what was known to DC Lunn before he arrested the Claimant. Before addressing the individual items, however, it is appropriate to consider some more general submissions made by Mr Pennock:

(1) Mr Pennock submitted that the Recorder was wrong in his decision not to draw an adverse inference from the Defendant's failure to call DC Lunn. However, there was no ground of appeal to this effect. In any event, I am satisfied that the Recorder was not obliged to draw an adverse inference, given the documentary evidence and the fact that he heard from DI Taylor, who was party to the decision to arrest the Claimant and whom the Recorder found to be a reliable witness.

(2) As at trial, Mr Pennock contended that it was suspicious that the Defendant did not disclose a number of documents which ought to have recorded the grounds for arrest and contended that the documents which were disclosed could have been tampered with after the event. However, these matters were investigated at trial and they did not dissuade the Recorder from finding that DI Taylor was a reliable witness. The Recorder noted in paragraph 14 of his judgment the challenge to the integrity of the disclosure process and the attack on the authenticity of the documents relied on by the Defendant, but it is plain that he did not accept either of them, since he regarded the contemporary documents as supporting the Defendant's case.

(3) As at trial, Mr Pennock submitted that DC Lunn had decided to arrest the Claimant in order to promote his private investigator business (and, indeed, had been bribed to do so by the alleged payment of £183,000). However, in paragraphs 28 and 30 of his judgment the Recorder roundly rejected the suggestion that DC Lunn had hijacked the investigation for his own ends. This was a factual finding which was not challenged in the grounds of appeal and which, in any event, the Recorder was entitled to make, having regard in particular to the evidence of DI Taylor.

(5)(a) Reasonable Grounds for Suspicion: Item (2)

54. As to item (2), the fact that Advance Claims had the Claimants' appointments' diaries, Mr Pennock submitted that that was what one would expect in the case of an honest doctor. Advance Claims were arranging the appointments and therefore it is not surprising that they had a record of them. Miss Checa-Dover accepted that, on their own, the appointment diaries would not justify an arrest. Their principal significance was that they were what first connected the Claimant to Advance Claims, although the Recorder noted in paragraph 15 of his judgment that they "suggested that Dr Rashid

was conducting his examinations in bulk and at great speed." That leads on to items (7) and (8).

(5)(b) Reasonable Grounds for Suspicion: Items (7) and (8)

55. These two items focus on what the Claimant was doing and what he was being paid. In summary, the Defendant's case was that it was suspicious that the Claimant saw potential claimants for only 10 minutes, produced poor reports, yet charged such a high amount. The figures certainly are striking. Using the recorder's figures of up to 50 potential claimants per day and £470 per report, the Claimant was earning up to £23,500 for one day of seeing potential claimants (plus the time taken to dictate or write up his reports).

56. These matters were referred to in the Operational Order and the Interview Notes. The purpose of the Operational Order was to provide information to the officers engaged in the arrest of the Claimant and of one other person and associated searches. DI Taylor's evidence in relation to the Operational Order was that it was drafted by DC Lunn and then approved first by DI Taylor and then by the detective chief inspector in charge of the operation.

57. The Operational Order stated, inter alia, as follows:

(1) "Experts are working with the enquiry and together have identified serious area's for concern in how this Doctor is handling the examinations & subsequent reports."

(2) "NOTES OF OPINION OF DR TEDD ON WHIPLASH INJURY

DOCTORS EXAMINATION

This should take 20 to 30 minutes for a proper head & neck exam.

Should be done with medical records to be able to make a full assessment.

NOTES OF OPINION OF DR McEVOY ON WHIPLASH INJURY

Usual fee is between £250 to £300
Examination should take between 20 & 30 minutes.
Should be done with medical records to be able to make a full assessment."

58. DI Taylor's evidence was that the Interview Notes were "very much pre-arrest", that they were written up by DC Lunn, but that they were the product of a discussion between DC Lunn and DI Taylor and were sent to DS David West, a tier 5 interview advisor. There is an email dated 14 February 2012 in which Mr West said that he had read "the note" and then went on to discuss the strategy for the Claimant's interviews.

59. The Interview Notes stated, inter alia, as follows:

> "Experts will say that a proper examination for this type of injury should take between 20 & 30 minutes and at today's rates should be charging between £200 & £300 but not more.
>
> In the 1st arrest phase on 10/10/11 the Advance Claims shop was searched and recovered from there was a black A4 ring binder which has many dates of examinations in it. Its basically lists of names of claimants for a Doctor to

examine but they're booked in 10 minutes apart over an 8hr period. My experts will say that this amount of time is nonsense for an examination.

On each of the claim files containing his reports the Dr is billing £552 per person. This is going to be a matter of much debate as to whether he's being fraudulent or whether he's being unethical but for now the suspicion is that it's fraudulent.

One of the medical experts has inspected several of Dr Rashid's reports so far and submitted interim reports. His overall opinion is that they are of very poor quality and even makes comment that he thinks they have been written by someone with very poor medical knowledge such as a hospital porter! To this day he remains convinced that the author is not a Doctor! One reason for this is the way he describes certain body parts in that my expert says he doesn't know what he's talking about.

A very interesting comment from one of my experts is that Dr Rashid always works in imperial measurements when in fact the medical profession has, as standard practice used metric for at least the last 30 years.

On all of the Doctors medical report he or she will include a page of references they have used in which to form their opinion. The list Dr Rashid uses is the same on every report & is very out of date with the references being dated from 1983 to 1998 though he doesn't always include this list. One reason for having a list of references is so that those authors can be brought to court to support the diagnosis.

The experts will say that in order to make a proper diagnosis & more importantly give a realistic recovery time the examining Doctor should have access to the claimant's medical records from his GP. This isn't always done but Dr Rashid never does this. This isn't something written in stone just a recommendation of good practice."

60. These documents constitute evidence which tends to show that items (7) and (8) were indeed relied on by DC Lunn, DI Taylor and others when they decided that the Claimant should be arrested. They are, no doubt, among the documents referred to by the Recorder when he said that the decision to arrest the Claimant was well-documented.

61. Nevertheless, Mr Pennock submitted that DC Lunn did not rely on Dr McAvoy's opinion. This submission was based on one part of his cross-examination of DI Taylor, where DI Taylor accepted that the only pre-arrest advice which they had was from Dr Tedd and a Dr Moffatt. However, in his evidence in chief, DI Taylor had confirmed, by reference to the Operational Order, that Dr McAvoy's evidence had been received before the Claimant was arrested. The Policy Log also showed that DC Lunn had sent an email to Dr McAvoy as early as 15 November 2011, although it is fair to say that no reply from Dr McAvoy is recorded.

62. This submission was, in effect, a challenge to the Recorder's factual finding in paragraph 15 of his judgment that Dr McAvoy was one of the experts who provided advice pre-arrest and that his advice was as recorded in the Operational Order. Given the state of the evidence, that was a finding which the Recorder was entitled to make and there is no arguable basis for challenging it. Indeed, I note that there is no challenge to it in the grounds of appeal.

63. Mr Pennock further submitted, in effect, that Dr Tedd's opinion was such that it ought not to have been relied on. It appears that he was a friend of DC Lunn's mother, and it would have been preferable to use someone independent, but he was still a doctor and DI Taylor's evidence was that he was content that Dr Tedd was an expert and that he had had no occasion to question Dr Tedd's credibility. Mr Pennock sought to challenge that by reference to documents produced after the arrest, but those documents could not have influenced anyone's view of Dr Tedd's opinion at the time of the arrest.

64. Once again, Mr Pennock's submission amounted to a challenge to a finding by the Recorder which is not the subject of any ground of appeal. In paragraph 15 of his judgment the Recorder referred to Mr Pennock's submission that Dr Tedd's opinion should not have been relied on and rejected it, as he was entitled to do.

65. Mr Pennock further submitted that it was unreasonable for DC Lunn to rely on the amounts charged by the Claimant without checking with the solicitors who had agreed to pay these amounts. He referred to the witness statement of James McBride, a solicitor, who said that the usual sort of fee was about £550. In effect, this was a submission that the opinions of Dr McAvoy and Dr Tedd as to what as a reasonable amount for a doctor to charge could not reasonably be relied on. I do not accept that.

(5)(c) Reasonable Grounds for Suspicion: Item (3)

66. DC Lunn's attitude to the payments made by the Claimant to Advance Claims can be seen from the following passage in the interview notes:

> "Barclays private premier account in the name Dr A A W Rashid (*697)
>
> This account began in Feb 2007 & seems to be a general account.
>
> 1) On 30/7/10 there is a payment of £500 out to 'Concept Accident M'. There's no professional reason for any Doctor to have dealings with a CM as its all done through a solicitor."

67. The Recorder's view of these payments is set out in paragraph 19 of his judgment, in which he said as follows, after setting out the payments totalling £24,865:

> "In short a picture of large sums of money always in round figures being paid on random dates, on regular occasions into a bank account controlled by an OCG!"

68. Mr Pennock submitted that these payments were not suspicious because in fact it was not uncommon for doctors to make such payments and DC Lunn knew this. He relied for this purpose on a document sent by DI Taylor to the CPS, some time after the arrest, in which DI Taylor said as follows:

> "At numerous points throughout the wider Op Thatcham investigation we have been told by solicitors, insurance companies, regulators and our own medical experts that the practices we see Dr Rashid employing are not uncommon in the industry. This is usually said with a sigh and a shrug as if to say 'what-can-we-do-about-it?'"

69. Mr Pennock submitted that this was an acknowledgement by DI Taylor that the police had been told before the Claimant's arrest that the Claimant's practices were not

uncommon. However, Mr Pennock put this suggestion to DI Taylor and DI Taylor's evidence was that they were only told this after the Claimant had been arrested. That evidence is supported by the passage from the Interview Notes which I have cited and was given by a witness whom the Recorder found to be reliable, so the Recorder was entitled to accept it, and it is clear from paragraph 15 of his judgment that the Recorder accepted that the content of the Interview Notes was correct insofar as they referred to Dr McAvoy.

(5)(d) Reasonable Grounds for Suspicion: Item (4)

70. The first payment to the account of NK Business Consultants was referred to in the Interview Notes, as follows:

> "On 21/11/11 there's a payment of £825 out to NK Consultants. This is a company set up by Nadeem Khalid (main suspect) as NK business consultants ltd which has no use and is suspected to have been set up as a money laundering tool. His co accused Sahir Mohammed also set up SR Business Consultants ltd at the same time."

71. The Recorder found as follows in paragraph 20 of his judgment:

> "The N.K. Business Consultants account was a further account run by the OCG (N.K. presumably the initials of Nadeem Khalid) but one which was not known about by the Enquiry team at the time of the first phase arrests otherwise it too would have been subject to the restraining order. The fact that it was known about and used by Dr Rashid after the first phase arrests was regarded and recorded by the enquiry team as intensely suspicious."

72. This amounted to a finding that the officers knew of the payments to the NK Business Consultants account and regarded them as suspicious before the Claimant's arrest. Mr Pennock submitted, in effect, that that finding was wrong, despite the fact that there was no ground of appeal to that effect. He referred to a copy of the relevant statement for the NK Business Consultants account, which was sent to the Operation Thatcham team on 7 August 2012, and to what DI Taylor said about this statement when cross-examined, which suggested that they had not known about the account before 7 August 2012.

73. But in paragraph 41 of his witness statement, DI Taylor had said that it was on 12 December 2011 that documents obtained from Barclays Bank (i.e. the Claimant's bank) pursuant to a production order revealed payments from the Claimant to NK Consultants. Moreover, the first payment was, as I have noted, referred to in the Interview Notes. In the light of this evidence, the Recorder was entitled to find, as he did, that DC Lunn and DI Taylor were aware of the payments before they arrested the Claimant and regarded them as suspicious.

(5)(e) Reasonable Grounds for Suspicion: Summary

74. In my judgment, on the material available to DC Lunn at the time, items (3), (4), (7) and (8), taken together with items (1) and (2), constituted reasonable grounds for suspecting that the Claimant had been party to the offences being committed by those operating Advance Claims. As stated in the Interview Notes, there was scope for debate

whether the Claimant's activity was fraudulent or not, but it was reasonable to suspect that it was. It follows that the Recorder was entitled to reach the conclusion which he did on this issue in paragraph 39 of his judgment.

(5)(f) Genuine Suspicion

75. Rightly, Mr Pennock concentrated his submissions in the hearing on ground 3 in the grounds of appeal rather than ground 2, which challenged the Recorder's finding on the issue whether DC Lunn genuinely suspected that the Claimant had committed a crime. In his skeleton argument, Mr Pennock submitted that there was no, or insufficient, evidence as to DC Lunn's state of mind, given in particular that DC Lunn did not give evidence and given the absence of various contemporary records.

76. I do not accept this submission, for reasons which will already have become apparent, and which include the Recorder's acceptance of DI Taylor as a reliable witness and his acceptance of the Interview Notes, the Operational Order and the Policy Log as genuine contemporary records.

(6) Honest and Reasonable Belief that it was Necessary to Arrest the Claimant

77. I turn next to grounds 4 and 6 and in the grounds of appeal, which are in the following terms:

> "4. The learned Recorder below erred in law and fact when he held that DC Lunn, or anyone else, held an honest and reasonable belief that it was 'necessary' to arrest Dr Rashid for the prompt and effective investigation of the suspected offence for which he was arrested.
>
> 6. … the learned Recorder erred in law in failing to consider relevant matters and considering, insofar it can be determined the learned Recorder considered anything in this regard, irrelevant matters."

78. The Defendant's case was that DC Lunn, DI Taylor and others genuinely and reasonably believed that it was necessary to arrest the Claimant to allow the prompt and effective investigation of the suspected offences. I have already quoted the Recorder's conclusion on this issue in paragraph 42 of his judgment. More detail is to be found in paragraph 25 of the judgment, in which the Recorder said as follows:

> "It was put to D.I. Taylor that Dr Rashid could have been expected to have been co-operative and he agreed with that proposition. It was put to him that in those circumstances there was no necessity to arrest him and he could have been asked to attend the police station as a voluntary attender. He did not agree with this. The view of the whole team he said was that it was necessary to exercise powers of arrest. He gave their reasons. First, he said that the time constraints of voluntary attendance may not have been sufficient (PACE Code G gives this as a specific example of something that may make arrest necessary). Secondly he said there was a need to secure information contained, in particular, on the Claimants phone or phones. Thirdly he said that there was a need to obtain evidence seized on arrest for the purposes of later interviews. As to the degree of detention which followed the arrest D.I. Taylor considered that it was proportionate to the time needed for interview, particularly as Dr Rashid had

asked to be and had been medically examined and provided with appropriate assistance."

79. Since the Recorder accepted DI Taylor as a reliable witness, he was entitled to accept DI Taylor's evidence that he, DC Lunn and others genuinely believed that it was necessary to arrest the Claimant. That is sufficient to dispose of ground 4.

80. As to ground 6 and the question whether there were reasonable grounds for that belief, Miss Checa-Dover acknowledged that the Recorder had accurately summarised DI Taylor's evidence. Mr Pennock submitted that the three reasons listed by the Recorder did not constitute reasonable grounds for believing that it was necessary to arrest the Claimant in circumstances where:

(1) the ringleader of the organised crime group, Nadeem Khaled, and 62 others had already been arrested, so any conspirator would long have known that the police were investigating the conspiracy and would have had ample opportunity to dispose of or conceal evidence;

(2) the police had obtained search warrants authorising searches of the Claimant's properties;

(3) the police anticipated that the Claimant would be cooperative; and

(4) no contemporary document was disclosed in which DC Lunn recorded his reasons for believing that the Claimant's arrest was necessary.

81. It is relevant to consider the nature of the offence of which the Claimant was suspected and Miss Checa-Dover stressed that the Claimant was suspected of involvement in a large-scale conspiracy. She submitted that in such a case there is an obvious risk of suspects tampering with evidence or tipping off co-conspirators. Those are likely to be significant factors in many conspiracy cases, but they were not relied on by DI Taylor in this case, no doubt because so many conspirators had already been arrested and the Claimant was expected to be cooperative.

(8)(a) Reasonable Grounds: First Reason

82. Mr Pennock submitted that:

(1) There were no time constraints on voluntary attendance for interview.

(2) PACE Code G did not refer to time constraints on voluntary attendance for interview.

(3) The Claimant could have been invited to attend an interview voluntarily, and only arrested if he proved non-cooperative at the police station.

83. It is right that there is no time constraint on voluntary attendance for interview. It appears that what DI Taylor actually had in mind was the period of 24 hours which, as provided for in section 41(1) of PACE, and subject to sections 41 to 43 of PACE, is the maximum period for which a person may be kept in police detention without being charged. But that period is not applicable to someone who attends a police station voluntarily, since they are not detained.

84. That period of 24 hours is referred to in paragraph 2.9(e)(ii) of the 2012 version of Code G, where it is stated that it might be necessary to arrest a person if there is a need to detain him for more than 24 hours before charge. However, DI Taylor's evidence was not that it was necessary to detain the Claimant for 24 hours, but rather that the police might not be ready to interview him within 24 hours, depending on what evidence emerged from the searches. DI Taylor did not say, for instance, that it was considered necessary to detain the Claimant before his interview in order to prevent him from having contact with others.

85. If the police had not been ready to interview the Claimant on the day of his arrest, then he could have been invited to attend the police station for interview on the following day or on a subsequent occasion. In the event, the Claimant was released on bail later in the day, after much less than 24 hours.

86. Relying on paragraph 42 of Hughes LJ's judgment in *Hayes v Chief Constable of Merseyside*, Miss Checa-Dover submitted that DC Lunn could not have invited the Claimant to attend a voluntary interview, while intending to arrest him if he tried to leave, as that would not have been honest. I do not accept this. Paragraph 3.21 of Code C recognised that a person might be arrested to prevent them leaving a voluntary interview. As appears from Note 2F in the 2012 version of Code G, it was possible to invite a suspect to a voluntary interview, while intending to arrest him if he tried to leave, without any dishonesty. In any event, there was no evidence from DI Taylor that this supposed difficulty formed any part of the grounds for believing that it was necessary to arrest the Claimant.

87. In all the circumstances, I do not consider that the first reason given by DI Taylor was a reasonable ground for believing that it was necessary to arrest the Claimant.

(8)(a) Reasonable Grounds: Second and Third Reasons

88. Miss Checa-Dover acknowledged that the second and third reasons were really two ways of saying the same thing. Moreover, given that the police had search warrants, the only evidence which could necessitate an arrest of the Claimant would be evidence concealed on his person, which in practice meant his mobile telephone.

89. It is clear from the Operational Order and the Interview Notes that the intention to arrest the Claimant was formed before DC Lunn and his colleagues attended at the Claimant's home. That is perhaps difficult to square with the requirement of section 32(5) of PACE, under which the power to search the Claimant on arrest could only arise if the officer had reasonable grounds for believing that the Claimant might have concealed on him anything for which a search was permitted. The arrest took place at 6 am, when the Claimant answered the door in his night clothes. The search record shows that his I-phone was seized from his bedside table. The custody search record shows that he did not have a mobile telephone on him when he was searched at the police station. These factors certainly cast doubt on the question whether section 32(5) was satisfied.

90. In addition, however, Mr Pennock submitted that, with a suspect who was expected to be cooperative, an arrest could not reasonably be thought necessary unless the suspect refused to cooperate or gave the appearance of refusing to cooperate. In other words, as in *Commissioner of Police for the Metropolis v MR*, DC Lunn could have asked the Claimant for his telephone and would only have had reasonable grounds for believing

that it was necessary to arrest the Claimant if the Claimant appeared to be failing to comply with that request.

91. Given the particular circumstances of this case, I accept that submission. I conclude that there were no reasonable grounds for believing that it was necessary to arrest the Claimant and that his arrest was therefore unlawful.

(7) The Recorder's Alternative Conclusions

92. As I have said, grounds 9 and 10 in the grounds of appeal concern what the Recorder said about issues which did not arise for decision, given his primary conclusion. The Recorder did not give reasons in paragraphs 44 and 45 of his judgment for his conclusions on these issues, and I agree with Miss Checa-Dover that the Recorder did not in fact go so far as to say in paragraph 45 that he would, if necessary, have held that the ex turpi causa doctrine applied. He merely made findings as to the nature of the Claimant's conduct.

93. In any event, however, it follows from my conclusion that there were no reasonable grounds for believing that it was necessary to arrest the Claimant that:

(1) it cannot be said that, if DC Lunn had not arrested him, another officer would have arrested the Claimant lawfully; and

(2) there is no scope for the application of the ex turpi causa doctrine, since the conduct on the part of the Claimant referred to in paragraph 45 of the Recorder's judgment merely provided the occasion for his arrest, but did not cause him to be arrested unlawfully.

94. It follows that this appeal should be allowed.

(8) The Recorder's Reasons

95. Since I am disagreeing with him, I need not say much about ground 1 in the grounds of appeal, which alleges that the Recorder failed to give any, or any adequate, reasons, for the findings which are challenged by grounds 2 to 4 and 6 to 10 in the grounds of appeal and for his decision not to draw an adverse inference from the Defendant's failure to call DC Lunn.

96. As I have said, the Recorder did not give reasons for his alternative conclusions. As to the reasons which the Recorder gave for his primary conclusion, a judgment does not have to address every piece of evidence relied on or every argument advanced during the trial. I accept that it could be said that, viewed in isolation, page 22 of the judgment is terse, but it has to be read in the context of the 21 pages which precede it. I have had occasion in this judgment to look in some detail at some of those earlier pages, where it can be seen that the Recorder has considered and rejected various submissions made on behalf of the Claimant, but has accepted the evidence of the Defendant's principal witness and has accepted that the principal documents relied on by the Defendant were genuine contemporary documents.

97. Looking at the judgment overall, it cannot be said that the Recorder failed to give sufficient reasons for his primary decision. In short, the judgment said enough to tell the Claimant why he had lost.

(9) Summary

98. I allow this appeal. I quash the Recorder's decision and substitute for it a judgment that the Claimant's arrest was unlawful for the reason which I have given.