Neutral Citation Number: [2023] EWHC 146 (KB)

Case No: QA-2022-BHM-000004

IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY

ON APPEAL FROM HIS HONOUR JUDGE BOORA
BIRMINGHAM COUNTY COURT
Case No: F20YM029

Birmingham Civil Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date: 27/01/2023

Before :

MRS JUSTICE HILL

- -

Between :

	DE	**Appellant**
	- and -	
	The Chief Constable of West Midlands Police	**Respondent**

- -
- -

Sarah Hemingway (instructed by **DPP Law**) for the **Appellant**
Charlotte Ventham (instructed by **West Midlands Police Legal Services**) for the **Respondent**

Hearing date: 19 December 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 27/01/23 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is an appeal against the order of HHJ Boora sitting at the Birmingham County Court dated 1 February 2022, by which he dismissed the Appellant's claim for false imprisonment arising from his arrest and detention on 12 September 2013. The trial of the claim had taken place before the judge, sitting without a jury, from 14-16 December 2021. The Appellant appeals with permission granted by Mr Justice Martin Spencer on 11 October 2022.

2. The Appellant advances four grounds of appeal. He asserts that the judge erred in finding that (1) the officer's belief in the necessity of the arrest under the Police and Criminal Evidence Act 1984 ("PACE"), section 24 was objectively reasonable; (2) purely speculative grounds for believing that bail conditions might be necessary was sufficient to meet the necessity criteria under section 24(5)(e); (3) a two hour delay in releasing the Appellant from custody following conclusion of his police interview was reasonable in the circumstances; and (4) the Appellant had committed the criminal offence of harassment.

The facts

Events leading to the 7 April 2013 harassment warning and the decision to "no crime" the allegations against the Appellant

3. The Appellant is a man of good character. In June 2012 his son ("C") had attended a school camping trip in Wales. Two boys ("A" and "B") subsequently made allegations of sexual misconduct against C, with whom they had shared a tent. All of the boys were around 12 years old at the time. On or around 3 September 2012 the investigation by Dyfed Powys Police was discontinued in light of A and B not wishing to pursue the matter.

4. The Appellant was very concerned that his son had been falsely accused of sexual misconduct and was being bullied at school as a result. He was also concerned about the school's handling of the matter. He communicated regularly with the school to express his concerns, which were discussed at a lengthy meeting on 18 October 2012. The meeting notes reflect a difficult meeting in which the Appellant was asked to refrain from shouting. They record the Appellant saying he considered that he was being forced to take legal action against A and B given their false allegations against C. He mentioned that the children were above the age of legal responsibility and that he had the time and money to pursue legal action. The notes record him saying he felt he had to "turn the screws" on the children and "this absolutely was a revenge vendetta".

5. On 19 December 2012, the Appellant wrote a four page letter to A's mother. He said in the letter that A had to choose between formalising his allegations to the police and being interviewed; accepting that they were false; or doing nothing. He made clear that if A chose the latter option, he would commence legal proceedings against A. Reference was made to a private prosecution, with the accompanying risk of A incurring a criminal record. The Appellant also wrote "As a mother, you should be aware of the type of son you have". He made various assertions about A's behaviour including saying that he

would be asked questions about whether he slept naked and suggesting that A had said he wanted to be a male prostitute.

6. Having received no response to this letter, on 15 February 2013, the Appellant wrote to A himself. The Appellant said that he was writing to A directly because he was above the age of criminal responsibility and because his parents had failed to respond to the earlier letter (a copy of which was enclosed). He said that A's untrue allegations constituted defamation which had damaged C's reputation and that A's actions had caused C to be harassed by other children. He wrote that High Court proceedings would be brought against A unless he admitted in writing that his allegations were fabricated, issued a written formal retraction of them, wrote an apology to C and provided the Appellant with a copy of the statement he had made to the school. The Appellant suggested in the letter that A seek legal advice.

7. On 26 February 2013 A's mother provided a witness statement to Leicestershire Police setting out how "totally distraught and upset" the first letter had made her feel. She explained that she had attended a meeting at the school about it and decided to ignore it. She described seeing the second letter arriving by Recorded Delivery and how "angry and upset" she was that the Appellant had sent this "very threatening" letter to her young son. She explained how A had been so distressed and troubled by the letters that he had asked if he could sleep with his parents which was very much out of character for him. She described other behavioural changes that she had seen in A since the events in June 2012 and said "I want this harassment to stop".

8. A's father provided a statement in similar terms.

9. A himself provided a statement reiterating his allegations of a sexual nature against C, confirming how upset the letters from the Appellant had made him and saying "I want [the Appellant's] letters and threats to stop towards me and my family".

10. At 11.30 am on 7 April 2013, PC Condron and PS Farr of West Midlands Police ("WMP") met with the Appellant. As agreed with the Appellant in advance, the meeting occurred at his mother's address. The officers verbally issued the Appellant with a harassment warning in relation to his contact with A and his family.

11. At 2.34 pm that day the police investigation log was updated by Detective Inspector Mason as follows:

> "This was a single letter sent to a 12 year old surrounding a complaint made by that 12 year old around 1 year ago about the offender's son. The threats are around legal action rather than any physical threats. This single action is likely to caused h/a/d [harassment, alarm or distress] as this was to a 12 year old. However, single action and no course of conduct. No offence and therefore this needs to be no-crimed and filed. The offender has been advised".

12. On 18 May 2013 the Appellant made a complaint to WMP about the harassment warning as he did not consider that it was justified. He stated that all he had done was send two letters before action under the CPR pre-action protocols, having taken legal advice, and this could not properly be considered harassment.

Events leading to the re-opening of the investigation into the Appellant on 3 September 2013

13. Although the Appellant did not accept that the harassment warning was valid, he had no further contact with A or his family after the warning was given.

14. However on 24 May 2013, the Appellant wrote a letter in similar terms to B's mother. He referred to the possibility of High Court proceedings against B. He said that he had taken legal advice from prominent barristers who specialise in harassment and associated allegations. He referred to the high costs of such litigation and set out how much the legal advice that he had obtained had cost. The Appellant said that in order to resolve the matter, B was required to sign a written retraction of the allegations and provide a copy of the statement he had given to the school. Draft letters for B to sign were enclosed.

15. The Appellant continued to communicate with WMP, principally Chief Inspector Metcalfe, in respect of his complaint about the harassment warning. On 10 June 2013 he was told that the view of WMP's internal lawyer was that the letters he had sent to the A family did constitute harassment, notwithstanding the Appellant's assertion that they were nothing more than letters before action.

16. On 18 June 2013 Patel & Company solicitors, instructed by B's mother, wrote to the Appellant. The letter explained that B's allegations had been referred to the police by the school, not B; and that while B maintained his account of what had happened on the camping trip, he did not at this stage intend to take matters further. It stated that any High Court proceedings would be strenuously defended.

17. On 19 June 2013 the Appellant replied to Patel & Company stating that he was well able to cover the costs of litigation (estimated at £100,000 to trial) and would seek to recover his costs from B's family or B, and if necessary would initiate bankruptcy proceedings against B when he reached the age of 18. The letter also made reference to bringing up unpleasant issues in court regarding B's mother's partner.

18. At 9.37 pm on 20 June 2013 B's mother telephoned the Appellant. At 10.46 pm the Appellant emailed Chief Inspector Metcalfe to inform him of the call. He stated that in the call B's mother had said that (i) B had admitted that one of the allegations he had made against C was fabricated and that A had asked B to "back him up" with regard to it; (ii) B had accepted that another of the alleged instances of indecent touching could have been accidental; and (iii) she would inform the school and the police the following morning that B would retract his statements. The Appellant's email concluded by saying that it was now clear that A had lied and that his parents had been complicit in the lies, such that a full investigation and the arrests of members of the A family should follow.

19. On 28 June 2013 the Appellant wrote to Patel & Company referring to the telephone call and asking whether B's mother had been in touch with the school and police.

20. On 6 July 2013 the Appellant wrote to Chief Inspector Metcalfe saying he wished to make a formal complaint against A and his family as the information given by B's mother was clear.

21. On 10 July 2013 Chief Inspector Metcalfe wrote to the Appellant indicating that his complaint had not been upheld, because the harassment warning was considered justified.

22. On 11 July 2013 PS Bircham emailed the Appellant indicating that he had been allocated the investigation and was in the process of gathering documents and information from WMP's records and those of other forces. He updated the Appellant at various points over the following weeks.

23. On 9 August 2013 the Headmaster of the school, provided WMP with a detailed witness statement about the Appellant's continued contact with the school. He described the volume of the correspondence from the Appellant as "immense", such that he was spending at least two hours of each working day dealing with matters relating to the Appellant. He said that the Appellant had made a complaint to Ofsted that had led to an unannounced inspection of the school. He explained how a website purportedly about the 11+ examination which was linked to the Appellant included reference to allegations of race discrimination against the school. The Headmaster exhibited the relevant correspondence to his police statement. This included an email dated 22 October 2012 asking the Appellant not to make direct contact with school governors contrary to an agreed protocol at the school. There was correspondence suggesting that despite this, on 2 April 2013 and 8 July 2013, the Appellant had telephoned one of the governors at home.

24. On 13 August 2013 the Appellant wrote to B's mother, again asking whether she had been in touch with the school and police to retract B's allegations.

25. On 21 August 2013, B's mother provided WMP with a witness statement and copies of the relevant correspondence. She explained how she had found the 24 May 2013 letter "very intimidating" and had reported it to the police as well as taking legal advice. She described feeling "physically sick" when receiving an email from the Appellant referring to court action against her son and legal costs. She disputed the Appellant's characterisation of what she had said in the 20 June 2013 call. She explained how her son had been very distressed by the communications and said that the entire family felt harassed by all the contact from the Appellant.

26. On 28 August 2013 PS Bircham updated the investigation log requesting that the allegation of harassment against the Appellant be "reinstated as a crime" in light of the further incidents that had occurred since Detective Inspector Mason's "no crime" decision. This was agreed to.

The Appellant's arrest on 12 September 2013

27. At 5.48 pm on 3 September 2013 PS Abbott updated the investigation log as follows:

> "Neil as discussed please familiarise yourself with this enquiry and make arrangements to arrest offender. I will conduct interview of offender with you when you are ready. Please speak to IP and ensure they are updated of the investigation".

28. These comments were addressed to PC Neil Kimberley, the officer who later arrested the Appellant and who therefore gave evidence for the Respondent at the trial. By the

time of the trial he had become a DC, and that is how the judge referred to him throughout the judgment. For consistency I will do the same.

29. On 12 September 2013 the Appellant voluntarily attended at Willenhall police station, having been asked to do so by police the previous day. At 5.45 pm he was arrested by DC Kimberley on suspicion of harassment. His detention was authorised by the custody officer PS Wilkinson.

30. PS Wilkinson noted the Custody Record to the effect that the Appellant had been arrested for an offence of harassment.

31. The reason for the Appellant's arrest was recorded on the Custody Record as follows:

> "To allow the prompt and effective investigation of the offence or of the conduct of the person in question, officer is looking to impose bail conditions on the [person in custody] and these are not available if not arrested".

32. The circumstances of the Appellant's arrest were described on the Custody Record as follows:

> "An allegation has been made that between Sept 2012 and August 2013 the [person in custody] has sent several communications in the form of letters and emails to staff at [the school] , governors at the school, the B family and the A family. Messages were unwanted and have caused distress to the parties involved."

33. The Appellant's interview commenced at 7.20 pm, concluding at 8.24 pm. At 10.22 pm he was released on bail, subject to certain conditions including that he not contact the A and B families, the school and its governors.

34. On 25 September 2013 DC Kimberley signed an MG11 witness statement to the effect that he had told the Appellant on arrest that his arrest was "necessary in order to carry out a prompt and effective investigation of the matter and to enforce bail conditions should they be required".

35. On 3 November 2013 the 'no contact' bail conditions in relation to the school and governors were removed.

36. On 21 February 2014 the Appellant was advised by DC Kimberley and DS Petch that WMP was taking no further action against him in respect of the harassment allegations.

The trial

37. The Appellant duly brought a claim of false imprisonment against WMP. His claim alleged, in summary, that there were no reasonable grounds for suspecting him of harassment; it had not been necessary to arrest him; and he had been detained for longer than was reasonably necessary in the circumstances.

38. The Appellant gave evidence at the trial as did DC Kimberley.

39. The transcript makes clear that much of the trial focussed on whether it had been necessary to arrest the Appellant. During closing submissions, it became necessary to replay the recording of certain parts of DC Kimberley's evidence so that the court could be clear about the evidence he had given on the extent to which he had had specific bail conditions in mind in deciding whether to arrest the Appellant.

The law

The Protection from Harassment Act 1997

40. Summary only offences of harassment are set out in the Protection from Harassment Act 1997, section 1 as follows:

> "(1) A person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.
>
> (1A) A person must not pursue a course of conduct (a) which involves harassment of two or more persons, and (b) which he knows or ought to know involves harassment of those persons, and (c) by which he intends to persuade any person (whether or not one of those mentioned above) (i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do".

41. The following further parts of section 1 are also relevant:

> "(2) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> (3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows….
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable".

42. Further, under section 7(3), a "course of conduct" must involve:

> "(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
>
> (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons".

43. In *Majrowski v Guy's and St Thomas' NHS Trust* [2007] 1 AC 224 at [30], Lord Nicholls held that:

> "Where…the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day to day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."

The Police and Criminal Evidence Act 1984 ("PACE"), section 24

44. The Appellant was arrested pursuant to the power set out in PACE, section 24. This provides in material part as follows:

> "(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it…
>
> (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".

45. In *Parker v Chief Constable of Essex Police* [2017] EWHC 2140 (QB) at [14] Stuart-Smith J distilled the relevant questions to be asked in determining the legality of an arrest under section 24 as follows:

> "[1] Did the arresting officer suspect that an offence had been committed? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
>
> [2] Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely objective requirement to be determined by the Court.
>
> [3] Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
>
> [4] Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely

> objective requirement to be determined by the judge if necessary on facts found by a jury.
>
> [5] Did the arresting officer believe that for any of the reasons mentioned in subsection (5) it was necessary to arrest the person in question? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
>
> [6] Assuming the officer had the necessary belief, were there reasonable grounds for that belief? This is a purely objective requirement to be determined by the judge, if necessary on facts found by a jury.
>
> [7] If the answer to the previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion the question arises as to whether the discretion has been exercised in accordance with the principles laid down by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223".

46. The test for determining whether an arrest was necessary under PACE, section 24(4) reflected in questions [5] and [6] above had been set out by the Court of Appeal in *Hayes v Chief Constable of Merseyside* [2012] 1 WLR 517 at [40] thus:

> "(1) the policeman must honestly believe that arrest is necessary, for one or more identified section 24(5) reasons, and (2) 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".

47. In *Hayes* at [32], the Court of Appeal cited a passage in *Alexander and others* [2009] NIQB 20 [2009] NIQB 20 at [19] to this effect:

> "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".

48. At [33]-[34] the Court rejected the argument that the second-stage of the thought-process required the officer to take into account all obviously relevant circumstances, saying thus:

> "That, however, would be to subject the process of arrest to the rigour of a public law reasons challenge. That this is not what the court in Alexander had in mind is clearly demonstrated: the thought-process

> was aptly described as "at least consider", and "a cursory consideration" was held to suffice. 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 pre-condition 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".

49. In *R (TL) v Chief Constable of Surrey Police* [2017] EWHC 129 (Admin) at [39], Jay J, with whom Lloyd Jones LJ agreed, described the objective element of the test thus:

> "Insofar as the second limb deploys the adverb "objectively", all that means is that this Court, in the exercise of its judicial function, applies independent, objective standards to its review of the Defendant's decision: in particular, the reasonableness of the grounds upon which that decision was founded. That review is carried out on the basis of information known to the decision-maker at the time it was made. Finally, the Court does not ask itself whether *any* police officer could rationally have made the decision under challenge; it directs itself to the particular decision maker and *his* grounds. In my view, that is what this Court, Lord Thomas CJ presiding, was saying at paragraphs 22 and 23 of its judgment in R (B) v Chief Constable of the PSNI [2015] EWHC 3691 (Admin).

50. In *TL*, the Divisional Court considered the extent to which the ability to impose bail conditions could satisfy section 24(5)(e) and thus render an arrest necessary. At [50], Jay J cited *R (B) v Chief Constable of the PSNI* [2015] EWHC 3691 (Admin) at [64] as follows:

> "[The Police Officer's] final and third given reason was that arrest is necessary to allow an effective investigation because it was likely that he would wish to consider the imposition of post-interview bail conditions…In submission it was suggested that one condition might be that a Claimant should not speak to any other suspect. In circumstances where the Claimants are of good character who have fully co-operated and who will continue to co-operate, it is difficult to imagine a proper basis for imposition of any such bail condition. But in any event, the highest [the police officer] can put it is to say that he would probably wish to consider the imposition of a condition or conditions. That is not, objectively assessed, a reasonable basis for considering that arrest is necessary to allow an effective investigation. If arrest were deemed necessary under Article 26(5)(e) [the equivalent to s.24(5)(e)] because of the possible desire to impose post-interview bail conditions, then the safeguards intended under Article 26(5) would be swept way: arrest could in nearly every case be said to be necessary for this reason."

51. At [51], Jay J accepted the argument that the final clause in the above paragraph (after the colon) was addressed to a situation where the police officer had merely a "possible desire" to impose bail conditions. He held that:

> "If a police officer could be heard to say – "I have the possibility (or probability) of bail conditions in mind, but I have not given thought to what they might be in this particular case" – it seems to me that the section 24(5)(e) safeguards could readily be circumvented, thereby frustrating the policies and objects of the statutory scheme. If, on the other hand, the police officer wished to impose specific conditions in order to protect a witness/complainant from intimidation, which (if it took place) would undermine an effective investigation, the position would be rather different".

52. As to the key question of whether in principle the imposition of bail conditions could conduce to a prompt and effective investigation, Jay J concluded as follows at [52]:

> "In my judgment, this question requires an affirmative answer in this precise respect: if there are reasonable grounds for believing that bail conditions are necessary to protect a witness from intimidation which would or might render the investigation substantially less effective, then the requirements of sub-paragraph (e) would be satisfied. There are no considerations of statutory language or policy which properly indicate otherwise".

53. In *Commissioner of the Police for the Metropolis v MR* [2019] EWHC 888 (QB) at [47], Thornton J emphasised that the test of necessity is more than simply desirable, convenient or reasonable. It is a "high bar, introduced for all offences in 2005 to tighten the accountability of police officers".

The length of detention

54. Once a person is arrested and brought to a police station, the custody officer becomes the responsible officer under PACE, Part IV.

55. Under PACE, section 37(3), a custody officer may authorise a person's detention without charge if s/he reasonably believes it is necessary to do so to obtain evidence by questioning.

56. Under PACE, section 34(2) it is the duty of a custody officer to order a person's immediate release from custody if the officer becomes aware that the grounds for detention have ceased to apply and s/he is not aware of any other grounds to justify continued detention under the provisions of the Act.

The appeal court's role

57. CPR 52.21(2) provides that every appeal is limited to a review of the decision of the lower court unless (a) a practice direction makes different provision for a particular category of appeal; or (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

58. Under CPR 52.21(3), the appeal court will allow an appeal where the decision of the lower court was "(a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court". The White Book 2022 at paragraph 52.21.5 explains that "wrong" in CPR 52.21(3)(a) means that the court below (i) erred

in law or (ii) erred in fact or (iii) erred (to the appropriate extent) in the exercise of its discretion.

59. Although Ms Hemingway advanced Ground (1) on the basis that the finding as to the second limb of the *Hayes* test was one that no reasonable judge could have reached, the approach on appeal to necessity questions is more nuanced: in *MR* at [30], Thornton J explained as follows:

> "A decision on the existence of reasonable grounds for arrest, for suspecting an offender or as to the need for arrest, is treated as a question of law rather than of fact, although it will involve an evaluation of the facts and, in many cases, a weighing of different factors. The question is one on which an appellate court has to reach a conclusion of its own, rather than limiting itself to deciding, for example, whether the trial judge's conclusion was plainly wrong. If, however, the trial judge has approached the task correctly, it will generally be appropriate to place weight on their assessment, given their proximity to the evidence and their better overall "feel" for the case. An appellate court is likely to be slow in practice to interfere with the trial judge's conclusion: *Alford v Chief Constable of Cambridgeshire Police* [2009] EWCA Civ 100 at [33]. Accordingly, and at Counsels' request I approach my judgment by considering the judgment below before forming my own view on the matters in question".

The judgment

60. The judge reserved judgment at the end of the trial, giving it several weeks later. It is a comprehensive judgment. Transcribed, it runs to some 31 pages.

Overarching findings

61. The judge found DC Kimberley's evidence to have been "cogent, consistent and clear" and observed that "[a]ll of it made sense and resonated with me". The reasons the judge gave for this assessment were that the officer had answered questions fully and without hesitation; he had remained calm and courteous when asked difficult questions, including ones alleging he had acted with bad faith; he had put comprehensive questions to the Appellant in interview which evidenced an "impressive" understanding of detail of the underlying facts; his oral evidence was supported by the contemporaneous documents such as the Custody Record; and the officer had made sensible concessions when giving his evidence: judgment [68]-[76]. The judge repeated his positive assessment of DC Kimberley's evidence at several further points throughout the judgment.

62. During the trial the Appellant had challenged DC Kimberley's reasons for arresting him on two overarching grounds.

63. First, it was the Appellant's case that DC Kimberley had been instructed to arrest the Appellant by PS Abbott and had not made his own independent decision as to the arrest. This was an understandable impression, given the wording of the 3 September 2013 update to the police investigation log (see [27] above). However DC Kimberley's clear

evidence was that he had made his own independent decision to arrest, and the judge accepted this evidence: judgment at [27], [48] and [68]-[76].

64. Second, it was suggested that the decision to arrest the Appellant had been motivated by an attempt to "silence" him over his complaints to WMP about the harassment warning. DC Kimberley accepted that he did not know whether these complaints had formed any part of the decision to reinstate the case as a crime (see [26] above) which had not been made by him: judgment at [29]. The judge rejected the suggestion that there had been some malevolent intention in the decision to arrest the Appellant: judgment at [81]-[82].

65. The judge accepted DC Kimberley's evidence as to how he approached the decision to arrest the Appellant to the following effect:

(i) When DC Kimberley was allocated the harassment investigation on 3 September 2013, this was his first involvement in the case: judgment at [30];

(ii) He was provided with a folder of the evidence, which included the correspondence between the Appellant, the A and B families, the school and Inspector Metcalfe as well as the crime report and the investigation log: judgment at [26]; and

(iv) In the week or so that followed, he reviewed the "voluminous papers" he had been provided with carefully, and it was this material which led to his decision to arrest the Appellant: judgment at [25]-[26] and [71].

Issue (1): Suspicion that the Appellant was guilty of the offence of harassment

66. The judge accepted DC Kimberley's evidence that he had subjectively suspected the Appellant of being guilty of harassment, reciting his evidence as follows:

> "40. DC Kimberley was asked questions as to why he thought an offence of harassment might have been committed. He said: "I took into account, firstly, the volume of letters between the school and [DE]; and secondly, the letters sent to Families A and B. The nature of the letters sent to the families concerned me. One was sent to A himself. He was only 12 at the time. In that letter [DE] made reference to bankruptcy and pointed out that a child of A's age was at the age of criminal responsibility. In the letter, [DE] stated that he was prepared to see the family taken through the court and made bankrupt. At the time of viewing the letters between [DE] and Families A and B, I took into consideration how those families and how a reasonable family would have felt, having received letters of that nature, particularly when concerning 12 year old children. I also accept that Family A had been dealt with by a harassment warning and that there had been no correspondence from [DE] to that family which post-dated the harassment warning. However, it did show a course of action that [DE] had demonstrated in the past, and which I took into account."

67. The judge concluded "without hesitation" and "unequivocally" that DC Kimberley had reasonable grounds for his suspicion: judgment at [126]-[127] for these reasons:

(i) He considered that the part of DC Kimberley's evidence quoted at [66] above was a "model evaluation of whether his suspicion that the claimant had committed an offence of harassment could be deemed to be reasonable": judgment at [41].

(ii) He accepted the Respondent's position that the Appellant's contact with the A family alone would have provided an objective justification for suspecting him of harassment. This was because of the threatening content of the 19 December 2012 letter to A's mother and the 15 February 2013 letter to A, which meant they could not possibly be regarded as pre-action protocol letters and that the Appellant knew or ought to have known that they were oppressive and unacceptable: judgment at [90]-[95] and [127]-[134]; and

(iii) He agreed with the Respondent that the Appellant's contact with the B family supported the objective justification. This was because of the threatening references in the 19 June 2013 letter to Patel & Company, the wilful misrepresentations of what B's mother had said in the telephone call with the Appellant and the 13 August 2013 letter which encouraged B to retract his allegations: judgment at [96]-[99] and [127].

Issue (2): Belief in the necessity of the arrest

68. In DC Kimberley's witness statement for the trial he said that he had arrested the Appellant "so that wider police powers could be used and he could be given bail conditions to stop him further contacting the victims while the investigation continued". As noted on the Custody Record (see [31] above) bail conditions could not have been imposed if the Appellant had been interviewed voluntarily, without being arrested.

69. DC Kimberley's evidence at trial was more detailed. The key parts of it were as follows:

(i) He was concerned that after interview under caution the Appellant would contact the A and B families in an attempt to get them to withdraw the allegations they had made, and this would cause him difficulties in the investigation: judgment at [53]-[54];

(ii) The Appellant's previous conduct suggested that he would not let matters rest until the allegations against his son were withdrawn or were otherwise resolved to his satisfaction: judgment at [53] and [56];

(iii) The Appellant had demonstrated that he was happy writing letters to get the families to follow a course of action: judgment at [53];

(iv) The harassment warning given to the Appellant in relation to the A family had not stopped him sending further letters to the school and the B family: judgment at [54];

(v) A police interview under caution at a police station, with his solicitor present, would be a much more formal experience for the Appellant than the meeting about the harassment warning which had taken place in the comfort of home. Further, the Appellant had never experienced such an interview before: judgment at [57];

(vii) DC Kimberley was not prepared to take the risk on how the Appellant might behave after such an interview: judgment at [57];

(viii) He thought that having the bail conditions written out in black and white would make it easier for the Appellant to understand: judgment at [54]; and

(ix) The families had described the letters from the Appellant as threatening and harmful and DC Kimberley was concerned about the upset that further contact might cause them, which affirmed the need for 'no contact' bail conditions: judgment at [54] and [57]-[59].

70. The judge accepted DC Kimberley's evidence that the possible or probable need for specific bail conditions to prevent the Appellant from contacting potential witnesses was the officer's reason for considering it necessary to arrest him. This was because:

(i) DC Kimberley's witness statement had been to this effect and this had not been explicitly challenged in cross-examination;

(ii) The court could infer that the bail conditions DC Kimberley had had in mind would have included that there was to be no contact with the complainants: taking into account the nature of the alleged harassment it was inconceivable that these were not the bail conditions he had had in mind;

(iii) DC Kimberley's detailed oral evidence was supported by the contemporaneous evidence namely the Custody Record as well as the questions put by him to the Appellant in interview: judgment at [77]-[80] and [151].

The judge found that DC Kimberley's belief in the need for bail conditions constituted the requisite belief in the necessity to arrest for the purposes of section 24(4): judgment at [84].

71. Further, he accepted that the reasons DC Kimberley gave for his belief, as summarised at [69] above, were based on objectively reasonable grounds: judgment at [136]-[151], making the following key findings:

> "148. DC Kimberley thought that 'no contact' bail conditions were necessary to protect vulnerable people (including a child) from the potential behaviour of a man with a history of belligerent behaviour who was to be subject to formal police questioning for the first time. He believed that man needed his potential behaviour regulated by clear and enforceable rules. Bail conditions provided such rules. I think any reasonable officer would have come to the same decision and concluded that an arrest was necessary, because potential bail conditions could not be imposed without an arrest…
>
> 151…I agree with the counsel for the [Respondent] that the two limbs of the test for issue two are satisfied because the reasons which the officer gave for why he thought the arrest was necessary (which I accept) are also reasons why a reasonable officer would have come to the same conclusion. The reasons DC Kimberley gave smacked of complete common sense."

Issue (3): Length of the Appellant's detention

72. DC Kimberley's evidence was that the delay in releasing the Appellant from custody was due to the time he had taken to discuss the interview with DS Petch to see if any answers needed clarifying and type up the bail conditions; and the handover between the late day shift and the night shift. The latter factor explained the majority of the delay: judgment at [55].

73. The judge correctly noted that the period of delay was nearly two hours rather than the 90 minutes referred to by DC Kimberley, but otherwise accepted his evidence on this issue: judgment at [158].

74. The judge found that the Respondent had proved that the Appellant had not been detained any longer than was reasonably necessary, based on DC Kimberley's evidence as to the reasons for the delay, which was supported by the references to bail conditions and the staff handover in the Custody Record: judgment at [155]-[161].

The appeal

Ground (1)

75. Ground (1) asserts that the judge erred in finding that the officer's belief in the necessity of the arrest was reasonable. It overlaps considerably with Ground (2) and in her oral submissions Ms Hemingway addressed them together. I take the same approach here, save for the discrete points that genuinely seem to relate to Ground (2).

76. The parties agreed that the judge correctly directed himself to the two-stage necessity test derived from *Hayes*, and that necessity imposes a high bar and means more than simply desirable, or convenient or reasonable: judgment at [8] and [113].

77. The central question under Ground (1) is therefore whether the judge erred in finding the objective element of the necessity question satisfied. I remind myself that the task of the judge was to apply "independent, objective standards" to the review of DC Kimberley's decision; that the review was to be conducted based on the information known to DC Kimberley at the material time; and that the judge was required to look at DC Kimberley's own decision and his grounds, not to determine whether *any* police officer could rationally have made the decision under challenge: *TL* at [39] (see [49] above).

78. I also remind myself of the review function on appeal as set out by Thornton J explained in *MR* (see [59] above).

79. As a preliminary matter, Ms Ventham argued that there was a disjoint between the grounds as pleaded and the submissions made. This was because the grounds were framed as relating to the second (objective) limb of the *Hayes* test, but in submissions Ms Hemingway appeared to seek to challenge the judge's findings on the first (subjective) limb of the *Hayes* test, or indeed his factual findings more generally, without having advanced grounds to this effect. For the reasons that follow I find that there was force in this submission.

80. First, Ms Hemingway submitted that DC Kimberley was not the key decision-maker but had simply been tasked with effecting the arrest. The relevance to Ground (1) was, I assume, to imply that he had not given independent consideration to the necessity question. As I have noted at [63] above, that DC Kimberley had been tasked with effecting the arrest is an understandable reading of the 3 September 2013 entry on the investigation log. However, as Ms Ventham rightly submitted, the difficulty with advancing this interpretation on appeal is that the judge specifically rejected the "instructions to arrest" argument which it generated (see again [63] above) and there is no ground of appeal seeking to challenge that finding.

81. Second, Ms Hemingway focused on the fact that there was very limited contemporaneous evidence showing DC Kimberley's decision-making on the necessity question: there were no entries on the investigative log between 3 and 12 September 2013, and there was no recorded arrest plan or strategy or other similar note. She submitted that this was surprising in the context of the proposed arrest of a man of good character who posed no immediate threat to any alleged victim/witness, for an offence which was summary only.

82. However, as Ms Ventham highlighted, there was some contemporaneous evidence supporting DC Kimberley's decision-making as to necessity. The Custody Record specifically recorded that DC Kimberley was "looking to impose bail conditions on the [person in custody] and these are not available if not arrested". This note had to be seen in the context of the other entry on the Custody Record describing the circumstances of the Appellant's arrest as him having sent "several communications in the form of letters and emails to staff at [the school] , governors at the school, the B family and the A family" which were "unwanted and have caused distress to the parties involved": see [31]-[32] above. Further, DC Kimberley's MG11 witness statement dated 25 September 2013 referred to the fact that he had considered arrest necessary to "enforce bail conditions": see [34] above.

83. On that basis the judge was entitled to find that the contemporaneous evidence supported the more detailed account that DC Kimberley gave at trial: see [70] above. In any event, again, these points bear most directly on the judge's factual finding as to DC Kimberley's subjective belief that the Appellant's arrest was necessary due to the bail conditions issue, and there is no ground of appeal specific to that finding.

84. Third, Ms Hemingway submitted that it was a "stretch" to say that DC Kimberley had given even a cursory consideration to the alternatives to arrest, as the legal principles summarised at [46]-[48] above required him to do. However the judge gave careful consideration to, and ultimately accepted, the officer's evidence that he considered that arrest was necessary in order to impose 'no contact' bail conditions: see [70] above. I consider Ms Ventham is correct to submit that the judge's findings implicitly accepted that the officer had rejected the non-arrest route. Further, a brief or summary rejection of a non-arrest option is sufficient to meet the "cursory consideration" element of the two-stage *Hayes* test. Again, these submissions sought to attack the judge's finding on the first limb of the *Hayes* test.

85. Fourth, in what was her central submission, Ms Hemingway argued that it was not objectively reasonable for DC Kimberley to have rejected a non-arrest route. She placed significant reliance on the fact that the Appellant was of good character and had voluntarily attended at the police station. She noted that he had not contacted the A

family after the harassment warning and that the B's family's solicitor had not complained to the police about the contact they had had from him. She relied on the summary nature of the offence under investigation and submitted that there was a lack of immediate physical threat to the alleged victims/witnesses. In these circumstances, she argued, as she had at trial, that DC Kimberley should have interviewed the Appellant voluntarily and warned him not to contact the witnesses, giving him a further formal harassment warning in relation to the B family and the school if need be, rather than arresting him and imposing 'no contact' bail conditions to this effect.

86. The non-arrest option proposed by counsel was plainly one that was open to DC Kimberley. The judge concluded that it was objectively reasonable for DC Kimberley to reject this option, for the reasons the officer gave (see [68]-[69] and [71] above). I note that the judge decided that "any reasonable officer" would have formed the same view as DC Kimberley, but it is clear that he was focusing on the decision DC Kimberley himself reached, on the basis of the information available to him. Having conducted my own assessment, I also find that it was objectively reasonable for DC Kimberley to reject the non-arrest option. I note in particular that:

(i) The previous harassment warning had not prevented the Appellant from making contact with the B family in a very similar way to his contact with the A family (which contact had led to the harassment warning) and continuing to contact the school. Indeed he had refused to accept that the harassment warning was valid, and had engaged in protracted correspondence with WMP, and lodged a complaint about it.

(ii) There was also evidence in the bundle considered by DC Kimberley of the Appellant ignoring a warning not to contact school governors directly (albeit that DC Kimberley did not refer to this specifically in his evidence).

(iii) A police interview under caution would have been a much more formal, and potentially intimidating, experience, for the Appellant.

(iv) It was reasonable for DC Kimberley to conclude that he was not "prepared to take the risk" on how the Appellant might react to such an interview in terms of contacting witnesses.

(v) This was especially so given that the very nature of the harassment of which the Appellant was suspected involved trying to pressure A and B into retracting the initial allegations they had made against C. This had involved correspondence sent to children of a kind which the judge had understandably described as "emotionally devastating", "inappropriate", "border[ing] on outrageous", "oppressive and unacceptable": judgment at [129]-[131].

(vi) DC Kimberley had to have regard to the potential ramifications of a warning proving insufficient to prevent the Appellant from making contact with witnesses. There was a realistic prospect that the witnesses (in particular the families) would disengage from the police investigation, bearing in mind the significant level of distress that the Appellant had already caused them by his correspondence. The nature of the correspondence had caused this distress even without the Appellant making physical contact with the witnesses.

(vii) Generally due deference should be given to the expertise, knowledge and operational judgment of the police (*Lord Hanningfield v Chief Constable of Essex Police* [2013] EWHC 243 (QB) at [29]) which is relevant to the objective justification of the assessments DC Kimberley made.

87. Fifth, Ms Hemingway relied on DC Kimberley's admission that there was no urgency to the arrest. However the officer did not argue that he considered that arrest was necessary to enable a "prompt" investigation under PACE, section 24(5)(a), but rather an "effective" one under the same section. Further, the lack of urgency prior to arrest is irrelevant given that DC Kimberley's concern was the risk of the Appellant making contact with the witnesses (and thereby rendering the ongoing investigation less effective) after interview.

88. Sixth, she argued that (i) DC Kimberley's main concern was the Appellant's contact with the school and governors rather than the families; and (ii) the removal of the bail conditions in relation to the school and governors in November 2013 showed that their imposition in September 2013 was not necessary. I respectfully disagree.

89. As to (i), the assertion that DC Kimberley's main concern was the school and governors and not the families derives from one part of his cross-examination (page 36 of the 14 December 2021 transcript) where he mentioned his concern about the volume of correspondence with the school. However shortly thereafter (at page 38) he explained that he had also considered the correspondence with the families. Fairly read, the totality of his evidence shows that he was concerned with both the school and governors and the families.

90. As to (ii), the decision as to whether bail conditions needed to be imposed was one that DC Kimberley had to take based on what he knew immediately prior to arrest, and at that point, it was not known how the Appellant would respond to a formal police interview. The fact that just under two months later it was decided that the conditions could be removed does not indicate that it was not necessary to impose them in the first place.

91. Finally, Ms Hemingway submitted that the Appellant's case was comparable to several other cases where courts have found that the necessity element of section 24 was not satisfied. In *Lord Hanningfield v Chief Constable of Essex Police* [2013] EWHC 243 (QB), Eady J held there was no rational basis for rejecting alternatives to arrest, because there were no solid grounds to suppose that the claimant would suddenly start to hide or destroy evidence, or that he would make inappropriate contacts; only the theoretical possibility that he might do so. In *TL* the Divisional Court concluded that the arrest of a man of good character was not necessary because the officer's concerns could have been addressed by warning him not to have further contact with any of the alleged victims. Finally, in *MR* Thornton J upheld a finding that the arrest of a man accused of harassment of his ex-partner who had attended at the police station voluntarily was not necessary.

92. I accept Ms Ventham's submission that attempts to draw analogies with other cases on necessity to arrest are of limited assistance, because all these cases turn on their own facts. In any event, there are various ways in which the cases relied on by Ms Hemingway can be distinguished from this case. In *Lord Hanningfield* the factual context was fundamentally different to this case (see [2]-[6] and [18]-[19] of the

judgment). A key element of the reasoning was that the claimant had known of the allegations against him but done nothing about them. By contrast, here, there was at the time of the Appellant's arrest already a corpus of evidence illustrating his willingness to contact witnesses and seek to persuade them to retract their evidence. In *TL* there was no evidence that the arrested man had previously breached any assurance that he had given or had been imposed on him (see [54]). Here, the harassment warning had not stopped the Appellant from engaging in behaviour of a similar kind to that which had led to the warning, albeit in respect of different people. The reasoning as to the absence of necessity in *MR* relied on a series of factual matters, one of which was that a harassment warning could have been deployed (see [14]). For the reasons set out at [86] above, there were particular facts in this case which justified DC Kimberley in concluding that this option was not appropriate.

93. For all these reasons I consider that the judge approached the task of determining the second limb of the *Hayes* test correctly, and I place weight on his decision given his proximity to the evidence and his better overall "feel" for the case. However, having conducted my own assessment, the result is the same. In my judgment, objectively reviewed, according to the information known to him at the time, DC Kimberley's belief that it was necessary to arrest the Appellant was based on reasonable grounds.

94. Ground (1) is therefore dismissed.

Ground (2)

95. The Appellant's grounds of appeal assert that the judge was wrong in law to find that purely speculative grounds for believing that bail conditions might be necessary could satisfy the necessity criteria through section 24(5)(e).

96. I can see no evidence that the judge made such a finding. The key authority relating to necessity and bail conditions is *TL*. The parties had placed *TL* before the judge and he directed himself to the key paragraphs of *TL* (set out at [50]-[52]) above in the judgment at [149]-[153]. The parties had agreed that, in light of *TL*, bail conditions can, in principle, satisfy section 24(5)(e), depending on the facts of the particular case.

97. The key paragraphs of *TL* reflect a "spectrum" between an officer who considers bail conditions at the most general level but who does not think what they might be in a particular case; and an officer who wishes to impose specific conditions in order to protect a witness/complainant from intimidation, which (if it took place) would undermine an effective investigation. *TL* indicates that the approach of the first officer may well fall foul of the section 24(5)(e) safeguards, but the position of the second officer would be different.

98. The judge found as a fact that DC Kimberley was in the "second officer" category in *TL*, because he wished to impose specific conditions relating to protecting witnesses from intimidation, and there were reasonable grounds for this belief. Applying [52] of *TL*, the requirements of section 24(5)(e) were thereby satisfied.

99. I therefore find that the judge directed himself entirely correctly on the general necessity test derived from *Hayes* and the specific guidance on the bail conditions issue set out in *TL*. He therefore recognised that an officer who considers entirely "speculative" bail conditions without any regard to the case in hand would be at risk of contravening

section 24(5)(e), but found that DC Kimberley was not in that category. I do not consider that he erred in law in the manner alleged in Ground (2).

100. The remaining submissions under Ground (2) related to the evidence rather than the law.

101. Ms Hemingway relied on the extract from DC Kimberley's MG11 to the effect that he had told the Appellant that his arrest was "necessary in order to carry out a prompt and effective investigation of the matter and to enforce bail conditions <u>should they be required</u>" [my emphasis]. She argued that the latter words showed that at the time of the arrest the issue of bail conditions was still speculative.

102. Again, though, the difficulty for the Appellant's case on appeal is that this relates to DC Kimberley's own state of mind, and the judge made an unchallenged finding based on the totality of the evidence on that issue. This was to the effect that DC Kimberley's state of mind was sufficiently specific in terms of the bail conditions he had in mind for him to fall within the second officer category in *TL*, and thus meet section 24(5)(e).

103. Ms Hemingway also submitted under Ground (2) that it was "speculative" to conclude that the Appellant would seek to contact witnesses after his interview and the judge was wrong to find that DC Kimberley's view to the contrary was reasonable.

104. While this was, in substance, a re-formulation of Ground (1), it is apposite to note that the judge specifically addressed the issue of speculation in the context of risk as follows:

> "DC Kimberley accepted that his assessment of the risk of the claimant contacting the families and the school when considering bail conditions was speculative. But I would note that any assessment of risk is speculative. The main thing is that there should be a tangible risk rather than speculation without any foundation": judgment at [116].

105. Ms Ventham characterised this as an "entirely correct, common sense statement" and submitted that DC Kimberley's inevitably speculative assessment of the risk was nevertheless made with a proper foundation. I agree.

106. Ground (2) is therefore also dismissed.

<u>Ground (3)</u>

107. This ground asserts that the judge was wrong to find as he did (see [74] above) that a two hour delay in releasing the Appellant from custody following the conclusion of his interview was reasonable in the circumstances.

108. The issue for the judge was whether the Respondent had proved that the Appellant had not been detained any longer than was reasonably necessary. Both counsel had agreed that "reasonably necessary" in this context is a matter of fact and judgment: judgment at [156].

109. Ms Hemingway submitted that the only reason DC Kimberley gave for the delay in releasing the Appellant from custody was the shift handover. However the Respondent had not called evidence from any custody sergeant as to how long the handover process takes. She submitted that a two hour delay in release is significant; the burden on the

Respondent to show that it was justified was a heavy one; and the judge was wrong to find that it had been discharged based on DC Kimberley's honesty as a witness. It was suggested that he had not been directly involved in the shift handover.

110. Ms Ventham is right to highlight that DC Kimberley's evidence as to the reasons for the delay in fact included two other elements: the time for him to discuss the interview with DS Petch to see if any answers needed clarifying and type up the bail conditions: see [72] above. She referred to his evidence as to the shift handover as follows:

> "…Also what didn't help at that time period was that when I came to release [the Appellant] the late shift were handing over to brief the night shift…and a requirement under the safer detentions policy, the lates need to brief the night shift, go through the welfare of whatever prisoners are in the cell block… It's part of the safer detention. There's a requirement for them to go through that with the staff that is taking on. And it's just unfortunate that was the time of day that…".

The judge then interrupted and asked about bail conditions. Separately the judge had stopped questioning from Ms Ventham which sought to introduce further evidence about the safer detention policy. She highlighted that as well as DC Kimberley's evidence, the reasons for the delay were supported by the references to bail conditions and the staff handover in the Custody Record: judgment at [155]-[161].

111. In my judgment Ground (3) was really a challenge to the judge's factual finding on this issue, rather than raising an identifiable error of law. There was sufficient evidence to support the judge's finding that the Respondent had discharged the burden of showing that the Appellant had not been detained any longer than was reasonably necessary. While DC Kimberley may not have been directly involved in the shift handover he had, on his evidence, seen the consequences of it, because it was this which delayed him in being able to release the Appellant. The judge was entitled to accept his evidence, especially as it was corroborated by the reference to the staff handover on the Custody Record. The judge was also justified in concluding that he could accept what DC Kimberley said about the requirements of the safer detentions policy and did not need to see the detail of it. The absence of evidence from a custody sergeant does not undermine this analysis. The Custody Record also referred to the bail conditions which, together with the discussions DC Kimberley had with DS Petch, provided an explanation for the remainder of the delay.

112. Ground (3) therefore fails.

Ground (4)

113. Ground (4) asserts that the judge erred in law in finding that the Appellant had committed the criminal offence of harassment.

114. It relates to the judgment at [132] where the judge said as follows:

> "Therefore, at the very least, those two letters <u>would have amounted to harassment of A's mother</u>. That would have been apparent to any reasonable police officer looking at those letters, including DC Kimberley. Indeed, counsel for the claimant accepts that these two letters

> alone sent to Family A are enough to have crossed the low threshold for establishing reasonable grounds for suspecting that the claimant had committed the offence of harassment for which he was arrested" [my emphasis].

115. Ms Hemingway submitted that the nature of any correspondence is only one element of the offence of harassment and cannot in itself satisfy the test that is required to be met in order to find someone guilty of the criminal offence of harassment. She argued that the judge wrongly found, in the part of [132] which is underlined above, that the Appellant had committed the offence, when none of the police officers tasked with assessing whether an offence had been committed have reached such a conclusion. She points to the fact that the entry on the investigation log reflecting the February 2014 decision to take no further action against the Appellant indicated that the evidential threshold for a charge in respect of the A and B families had not been passed.

116. The parties agree that the judge directed himself entirely correctly that the first two issues he had to determine in respect of the legality of the arrest were whether DC Kimberley suspected that the Appellant was guilty of harassment and whether he had reasonable grounds for that suspicion. It is therefore clear that the judge was well aware that it was no part of his role to go further and determine whether the Appellant was, in fact, guilty of the criminal offence of harassment, nor could it ever be, given the nature of this jurisdiction. Accordingly if indeed the judge's observation at the outset of [132] can be characterised as a finding of guilt, it was an entirely *obiter* comment.

117. However I am not persuaded that the judge really did make such a finding. The remainder of paragraph [132] itself indicates that the judge was properly focussed on the question of reasonable grounds for suspicion, not substantive guilt; and the judgment read as a whole confirms this. Read in context, therefore, the words at the outset of [132] were almost certainly a slip of the tongue by which the judge meant to indicate that the tone of these letters contributed to there being reasonable grounds for DC Kimberley to suspect the Appellant of harassment.

118. Further, the Appellant otherwise takes no issue with the judge's findings that DC Kimberley suspected that the Appellant was guilty of harassment and had reasonable grounds for doing so. Against that background it cannot be said that the words at the outset of [132] evidence any error that vitiated the judge's overall decision on these issues.

119. Ground (4) therefore also fails.

Conclusion

120. Accordingly, for all these reasons, despite the comprehensive submissions of Ms Hemingway, the appeal is dismissed.