



Neutral Citation Number: [2011] EWHC 3411 (QB)

Case No: HQ09X05578

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/12/2011

Before:

MR JUSTICE EDER

Between:

KELLY MINIO-PALUELLO

Claimant

- and -

**THE COMMISSIONER OF POLICE OF THE
METROPOLIS**

Defendant

Mr Stephen Simblet (instructed by **Bhatt Murphy**) for the **Claimant**
Mr George Thomas (instructed by **Director of Legal Services, Metropolitan Police**) for the
Defendant

Hearing dates: 5, 6, 7, 8 and 9 December 2011

Approved Judgment

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

.....
MR JUSTICE EDER

Introduction

1. In these proceedings, the Claimant, Ms Kelly Minio-Paluello, claims damages for assault (or battery) and/or in negligence arising out of injuries which she suffered in the course of a pro-Palestinian demonstration on the evening of Friday 9 January 2009 in the vicinity of the Israeli Embassy in Kensington High Street, London. There is also a pleaded claim for breach of human rights arising out of the police's conduct although it was conceded on behalf of the Claimant that this discrete claim may not add very much to the claims save that it may have a bearing on the approach that would need to be taken to damages. In addition to compensatory damages, the Claimant also claims aggravated and/or exemplary damages.
2. The Claimant is a young woman. She is about 5'3" and at the time of the incident she was 27 years old and weighed about 60 kg. There is no dispute that in the course of arrest of a fellow protester, Mr Taimour Lay, she sustained a double fractured humerus and a rotator cuff injury to her shoulder when she was pulled up from the ground by a police officer (PC Pelham). The main factual issues focus upon the circumstances in which the Claimant sustained her injuries and, in particular, whether they were the result of any actionable fault on the part of the Defendant, the Commissioner of Police of the Metropolis.
3. In essence, the defence is:
 - a. That there was a lawful basis for the use of force by PC Pelham
 - i.) Under section 117 of the Police and Criminal Evidence Act 1984 ("PACE") in order to complete the lawful arrest of Mr Taimour Lay;
 - ii.) In defence of his fellow officers and/or in self defence;
 - iii.) To prevent a criminal offence being committed pursuant to section 3 of the Criminal Law Act 1967, the specific offence being obstruction of a police officer in the execution of his duty; and
 - b. That the degree of force used was reasonable and proportionate in all the circumstances.

The Law

4. Before considering the relevant events, it is convenient to consider the applicable principles of law which were generally common ground and which may be summarised as follows:
 - a) The application of any intentional hostile force amounts to an assault unless legal justification for it can be shown. The burden of proof of justifying the use of force, both as to the ability to use any force at all and its extent, falls upon the Defendant: see Ashley v Chief Constable of Sussex [2008] UKHL 25, [2008] 1 AC 962.

- b) Section 137(1) of the Highways Act 1980 provides that if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence. Thus, in effect, there are three elements to the offence viz (i) an obstruction (although the obstruction may be partial); (ii) wilfulness and (iii) lack of authority or excuse.
- c) Protest on the highway can be lawful but it is not the case that it necessarily will be lawful. For example, in the House of Lords in DPP v Jones [1999]2 AC 240, the Lord Chancellor stated, at 257 D-E: “ *I conclude therefore the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway.*”
- d) A police officer’s power to make an arrest is set out in section 24 of PACE which provides as follows:

“24. Arrest without warrant: constables

- (1) A constable may arrest without a warrant
 - (a) anyone who is about to commit an offence;
 - (b) anyone who is in the act of committing an offence;
 - (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
 - (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
- (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
- (3) If an offence has been committed, a constable may arrest without a warrant—
 - (a) anyone who is guilty of the offence;

- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
- (5) The reasons are—
 - (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
 - (b) correspondingly as regards the person's address;
 - (c) to prevent the person in question—
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;
 - (iv) committing an offence against public decency (subject to subsection (6)); or
 - (v) causing an unlawful obstruction of the highway;
 - (d) to protect a child or other vulnerable person from the person in question;
 - (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
 - (f) to prevent any prosecution for the offence from being hindered by the

disappearance of the person in question.

- (6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.”
- e) As to the defence of self-defence, (i) the belief that it is necessary to act in self-defence must be both an honest belief and one which must be reasonably held; and (ii) the action taken on the basis of this belief must be reasonable: see Ashley v Chief Constable of Sussex Police [2007] 1 WLR 398 CA. This point was not the subject of appeal before House of Lords decision in the same case, reported at [2008] 1 AC 96. For cases of self-defence, pending the decision of the House of Lords, the matter is settled.
- f) However, insofar as PC Pelham was acting in furtherance of the arrest of Mr Lay, the matter is less clear. The House of Lords expressed their concerns about whether a reasonable but mistaken belief in the lawfulness of the actions would be sufficient, albeit the observations are *obiter*. Lord Rodger stated at paragraph 55: “*The argument is encapsulated in Sedley LJ’s crisp observation that “honest belief in a non-existent state of affairs does not excuse a trespass to the person”:* Hepburn v Chief Constable of Thames Valley Police [2002] EWCA Civ 1841; *The Times*, 19 December 2002, at para 24. Again, I would reserve my opinion on that, fundamental, question.” Lord Scott was more forceful, stating at paragraph 20, “*I am not persuaded that a mistaken belief in the existence of non-existent facts that if true might have justified the assault complained of should be capable, even if reasonably held, of constituting a complete defence to the tort of assault. However, and in my view, unfortunately, [this point] has not been contended for on this appeal, its pros and cons have not been the subject of argument, and your Lordships cannot, therefore, conclude that it is the correct solution. But I would, for my part, regard the point as remaining open.*”
5. In addition, it was submitted on behalf of the Claimant as follows:
- a) In relation to assault and the human rights claims, the burden of proof on all relevant matters is on the Defendant. In relation to the negligence claim, the duty of care being admitted, the burden of proof is on the Claimant.
- b) For a state authority to break an arm would plainly amount to inhuman and degrading treatment if arising out of a deliberate and unjustified use of force: see e.g. Sheppard v Home Office [2002] EWCA Civ 1921.
- c) As to proof, following Re B (minors) [2009] 1 AC 17 the position with regard to evidence is relatively straightforward. A matter is either

proven on the evidence or it is not: see Lord Hoffman [1-2] and Baroness Hale [30-32].

6. Against that background, I turn to consider the evidence in relation to the events on Friday 9 January 2009.

The Evidence

The Claimant's Evidence

7. The Claimant gave evidence at the trial. She lived in California USA with her partner. After graduating in 2003 she spent two years volunteering in Palestine and then moved to the United Kingdom. Her work experience is in the field of violence against women. In particular, she worked through college at a women's refuge and in London for the organisation "Rescue" for eight months and thereafter was employed at the charity "Women in Prison" where she supported young women leaving prison to build healthier lives. After leaving Women in Prison, she set up a new project at the "Nia Project", a violence against women charity in London. Whilst employed by the Nia Project, she created an advocacy and training programme for disabled women who had experienced domestic violence. She lived in Palestine between June 2003 and December 2004 volunteering for humanitarian relief organisations. As set out in her statement, she regularly witnessed what she described as human rights abuses of Palestinian civilians and friends and at some time had been arrested by the Israeli army. Following military activities by the Israeli army in December 2008, she felt compelled to attend the demonstrations which were happening on a daily basis outside the Israeli Embassy.
8. In addition, I heard evidence on behalf of the Claimant from Mr Taimour Lay, a friend of the Claimant. At the time, he was a law student. He is now a barrister. He also attended the demonstration on 9 January and, as appears below, was arrested by the Defendant. As described in his statement, he was born in London in 1982. He is a Circassian Arab. Many of his family live in Jordan. He had been politically active as a socialist for a long time. He had spent time in Palestine in 2003 which is when he met the Claimant. The issues surrounding the Israeli-Palestinian conflict are something which he felt strongly about. Following the military activities by the Israeli army in December 2008, he attended the daily protests outside the Israeli Embassy almost every day as part of what he described as a "Gaza Solidarity Group" which was trying to raise consciousness of the events and build links with other protesters.
9. On behalf of the Claimant Mr Simblet submitted that both she and Mr Lay gave evidence in a measured and sensible fashion; and that each took particular care with their answers and, in particular, the Claimant's testimony gave the impression of someone truthful, generally controlled and of an honest and genuine disposition. I consider their evidence further below.
10. I should mention that prior to the trial, there had been served on behalf of the Claimant written statements from four other potential witnesses. However, in the event, these witnesses were not called to give evidence; and the contents of their witness statements did not form any part of the evidence at the trial.

The Defendant's Evidence

11. On behalf of the Defendant, I heard evidence from a number of police officers who attended the demonstration viz PC John Elton, PC Nick Allen, PC Andy Pelham, Police Sergeant Chris Adams and Police Sergeant Sean Dowling. In addition, I heard evidence from Mr Ian Read who had previously been employed as a Police Constable attached to the Metropolitan Police Service Officer Safety Unit based at New Scotland Yard with the responsibility for training instructors in officer safety and to monitor such training in north-west London.
12. On behalf of the Claimant, Mr Simblet launched a substantial attack on the credibility of the first four of these officers. In particular it was his submission that:
 - a) PC Allen was rehearsed.
 - b) PC Elton did not have a "truthful demeanour" in particular when pressed by the Court about his account of what PC Allen said to Mr Lay on arrest.
 - c) PC Pelham was not an impressive witness. His testimony about what he did to the Claimant's arm cannot sit with the expert evidence. He seemed to show little remorse for the serious injury he had caused to the Claimant.
 - d) PS Adams was not an impressive witness. His account as to what the Claimant was doing wrong was not contemporaneous and was made after he knew the Claimant has suffered a serious injury which had to be justified. Further, Mr Simblet criticised the manner in which the officers discussed the events and prepared their notes together. He submitted that the prospects for collusion were "very substantial". As to the Defendant's other witnesses, Mr Simblet submitted that PS Dowling's evidence was not significantly adverse to the Claimant's case; and that Mr Read's evidence was of no value at all. So far as material, I consider these matters below.

The Video Evidence

13. In addition to the evidence from the witnesses referred to above, there was evidence in the form of video recordings as follows:
 - a) A video recording taken from a camera on top of a parked police car situated along Kensington High Street about 200 yards west of the entrance gate to the Israeli Embassy near the junction with a small road called Old Court Place on the north side of Kensington High Street ("CV").
 - b) A video recording from a moving camera ("NW") which was hand-held by a civilian cameraman (Mr Neal Williams) who was employed

on behalf of the Defendant and on the evening of 9 January 2009 worked closely with Sgt. Adams. Sgt. Adams described his own role as that of “Evidence Gatherer” with the aim of obtaining “best evidence of worst offence”; and he would generally tell Mr Williams what to video.

- c) A video recording taken by a third party from a mobile phone or camera. This was in two parts referred to generally during the trial as “Gaza 1” and “Gaza 2”.

The Expert Medical Evidence

14. With regard to both the cause and nature of the Claimant’s injuries there were written reports from Mr Michael Laurence and Mr Anthony Percy, both eminent Consultant Orthopaedic Surgeons. In addition, there was a Joint Expert Report. Both gave oral evidence. I would like to express my thanks to them for their assistance which was invaluable.

The Events on Friday 9 January 2009

The proper approach to the evidence

15. It is not easy to marry together precisely the sequence of events as may be seen in the video footage and the various descriptions given by the different witnesses who gave evidence. One difficulty is that there are gaps in the video footage and that the audio recordings on the videos do not necessarily pick up everything. The latter is perhaps hardly surprising given the noisy and chaotic circumstances that evening. It follows that, as submitted by Mr Thomas, it cannot necessarily be deduced from the absence of particular words from the soundtrack that those words were not said. Another difficulty is that the events took place at night with varying lighting conditions within a relatively small time-frame involving at least in part somewhat fast action in rather chaotic circumstances with a considerable number of people and passing traffic in a very noisy environment. A further difficulty is that there are inconsistencies in the evidence. I bear well in mind that such inconsistencies do not necessarily mean that any particular witness is telling a deliberate untruth. Given the circumstances which existed during the incident, I do not find some at least of the inconsistencies surprising. They are or may well be explicable on the basis of a genuine difference in recollection.
16. In these circumstances, the Defendant submitted that the Court should be particularly careful not to over-analyse a split-second incident. In particular, the Defendant relied on what was said (in the criminal context) by Lord Morris in Palmer v R 1971 AC 814:

"If there has been an attack so that self defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the jury thought that that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary, that would be the most potent

evidence that only reasonable defensive action had been taken
..."

This approach is adopted, almost word for word, in Section 76 of the Criminal Justice and Immigration Act 2008 and, as appears from, in particular, the judgment of the Master of the Rolls in Ashley, is an approach which applies equally in the civil jurisdiction. Thus, at paragraph 80, the Master of the Rolls stated:

"Further, if it is held that the defendant genuinely and reasonably thought that he was being or about to be attacked, the court must again take all the circumstances into account in judging the reasonableness of the action taken by the defendant. In Bici & Bici Elias J said this in paragraph 46:

"Second, I also bear in mind certain observations of Lord Diplock in Attorney General for Northern Ireland's Reference No 1 of 1975 [1997] AC 105 at 138, when he observed that often a soldier has to act intuitively, and that in assessing his conduct and judging the action of a reasonable soldier, it is important to recognise that his action "is not undertaken in the calm analytical atmosphere of the court room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind and degree of force that was used by the accused, but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed". These observations were made in the context of a criminal case, but in my view they apply no less forcefully when considering liability in civil law."

I agree that those are indeed relevant considerations."

Relying on this passage, Mr Thomas submitted on behalf of the Defendant that if "police officer" is substituted for "soldier" and "pull harder" for "shoot", then this passage is directly applicable to the facts of this case, and is the appropriate approach to take to the evidence. I agree.

17. In assessing the reliability of the various sources of evidence, I would note the following. First, the video footage was plainly the most reliable source of evidence. Second, apart from the video footage, the most contemporary evidence was the voice recording taken by Sgt Adams. As he explained, he had a tape recorder with him during the demonstration and, from time to time, he would dictate into the voice recorder what he saw with his comments. However, it should be noted that these voice recordings were not necessarily exactly contemporaneous. Third, as explained by four of the police officers who gave evidence i.e. PC Allen, PC Elton, PC Pelham and Sergeant Dowling, they were unable to take any notes during the demonstration itself. However, after they returned to New Scotland Yard, they each made their own notes in their respective "Evidence and Actions Book" ("EAB"). These notes were written as the officers sat together in the canteen at New Scotland Yard between about 21:15 and 22:45 on the same evening i.e. Friday 9 January. The timing was confirmed by the stamp showing a time of 22:49 on each of the EABs. Although these notes were

prepared within a few hours of the relevant events, it is important to note that Mr Simblet on behalf of the Claimant did not accept that these notes were necessarily accurate. Indeed, his submission was that the notes were in several important respects untrue; that although the notes were near in time to the relevant events, their value was undermined by the fact that they were, in effect, written “in concert” at a time when the officers concerned already knew that the Claimant had broken her arm and that therefore their actions would be subjected to scrutiny and possible criticism. It was on this basis that Mr Simblet submitted that “the prospects for collusion are very substantial”. So far as material, I deal with this below. Fourth, following the arrest of Mr Lay as referred to below, he prepared a short written statement which he signed at 23:28 on that same evening. Fifth, prior to the commencement of this action, the Claimant’s solicitor wrote a long letter on behalf of the Claimant describing events during the demonstration. This was dated 11 January 2010 i.e. just over a year after the events in question. On behalf of the Defendant, Mr Thomas submitted that this letter was important because it was in part inconsistent with the Claimant’s evidence in her witness statement served for the purposes of the trial and her evidence during the trial. I also deal with this further below.

18. In the event, it seems to be impossible and largely unnecessary to resolve all the inconsistencies in the evidence. What follows is my summary of the relevant events and my conclusions so far as relevant and necessary.

Kensington High Street

19. Kensington High Street lies in an approximately west-east direction. It is a busy thoroughfare with heavy traffic generally passing along (mostly) two carriageways in both directions. The Israeli Embassy is situated on the north side of Kensington High Street. Entrance to the Embassy is through a large gate. The Embassy itself is located some distance behind the gate. Prior to 9 January 2009, there had been a number of both pro-Israeli and pro-Palestinian demonstrations in the vicinity of the Israeli Embassy.

The location of the demonstration

20. On the evening of Friday 9 January 2009, both the Claimant and Mr Lay were amongst a number of pro-Palestinian protesters in a group that was contained in a narrow cordoned-off area on the pavement on the south side of Kensington High Street i.e. the opposite side of the street to the gate leading to the Israeli Embassy. It is difficult to estimate the number of protesters in the group but looking at the video evidence, I would say that on that evening there were between about 100 to 200 protesters in that group. That is consistent with other evidence including that of Mr Lay. There were metal barriers on the south side of the road along the edge of the pavement ending at the eastern point of the junction of Kensington High Street and a small pedestrianised road which joined Kensington High Street on the south side at a right angle. There was a line of policeman on the south side of Kensington High Street on the road-side of the barriers which continued beyond the barriers at the end of the pedestrianised road. At the material time, both PC Elton and PC Allen were in that position ie they were in the line of policemen on the edge of the carriageway of

Kensington High Street at the junction with that pedestrianised road towards the western corner of that junction.

21. The apparent justification for this arrangement was to keep the protesters away from both the entrance gate to the Israeli Embassy on the north side of the road and also from another pro-Israeli group of protesters to the east back towards the Albert Hall. Although this had been apparently agreed between the police and the organisers of the demonstration, it is plain that at least some of the group (including both the Claimant and Mr Lay) were not happy with this arrangement. Thus, in his written statement, Mr Lay stated that they all wanted to demonstrate on the same side (i.e. the north side) of the road close to the Embassy and not on the other side (i.e. the south side) of the road; that the point of the pen seemed to be to keep the protesters far from the Embassy; and that if the purpose of the pen was to ensure that the protest did not interfere with the traffic and Embassy business, there was no reason why the police could not have erected a further pen down the road on the same side of the road as the Embassy. In his oral evidence, Mr Lay suggested that this was no more than a general statement and that at least so far as the protest on the evening on 9 January 2009 was concerned, he did not want to demonstrate on the north side of the road. I do not accept that suggestion. It seems to me that what Mr Lay said in his written witness statement is quite clear; and it is also consistent with the evidence in the written witness statement of the Claimant where she stated as follows: *“The distance between ourselves and the Embassy was such that we could hardly see the gate, let alone the actual Embassy. It is located some distance behind the gate on the High Street. The cars that continued to pass blocked our view of the Embassy. I was concerned that a decision had been made by the police to ensure that the protesters were at such a distance from the Embassy that we would not be heard or seen by Embassy staff. I felt that they were attempting to marginalise our protest. I do not understand why the police could not have allowed us to demonstrate nearer the Embassy. There is plenty of room on the road outside the Embassy and had we been allowed to demonstrate there, it would not have disrupted the traffic or posed any threat to the staff.”* (In evidence, the Claimant sought to downplay this dissatisfaction with the position of the demonstration. But I was unpersuaded by this.) Further, it is quite clear from the video evidence that the group of protesters (including Mr Lay and the Claimant) made various attempts to push through the line of policeman on to Kensington High Street presumably to get into the carriageway and to get closer to the Embassy.

The first stage

22. At about 1850 hours, a group of about 20 cyclists cycled from east (i.e. from the direction of Wellington Arch) to west down Kensington High Street in front of the protesters. Some of the cyclists stopped directly in front of the protesters. Others continued slowly in a circular fashion on the road blocking the carriageway and passing traffic. It is plain from NW and CV that the cyclists were part of the demonstration, some with pro-Palestinian placards and shouting “Free, Free Palestine”. CV shows (18:50) protesters in the carriageway waving and jumping. NW also shows (18:51) various protesters including the Claimant having broken through the police cordon, protesting in the road directly in front of the barriers also shouting “Free, Free Palestine”, being told to get back and ignoring police requests.

23. Shortly thereafter, NW shows (18:52) a friend of the Claimant (Ms Ellie Schling) being pushed back towards the barriers only to return to the carriageway as soon as a police officer's back is turned; officers continuing to push protesters from the carriageway back onto the pavement; and the Claimant now back behind the level of the barriers at the end of the junction of the pedestrianised road with Kensington High Street.
24. In her witness statement, the Claimant complains about the fact that the police were "*very aggressive*" to the protesters pushing the group violently back behind the cordon. Similarly, in his witness statement, Mr Lay, complains that the police were "*immediately very rough with the cyclists. They tried to drag the cyclists off their bikes and push them off the road whilst shouting: "Get off the road"*". Plainly, the police were taking robust and firm action. However, I do not agree that the police were "*very aggressive*" or acted "*violently*". It seems to me that the police were faced with a very difficult and potentially dangerous situation. As I say, some at least of the cyclists had actually stopped in the middle of the carriageway. Although others continued slowly in a circular motion, the effect was the same i.e. deliberately to block the carriageway and passing traffic. Further, they had been joined by some of the protesters who had broken through the barriers onto the carriageway. The actions taken by the police were in response to the deliberate and provocative actions of the cyclists and the protesters and were, in my view, at least at this early stage both reasonable and proportionate.
25. In his witness statement, Mr Lay confirms that he was one of the protesters who went into the road to join the cyclists and, in his own words, "*register our concern*". He also confirms that police officers pushed that group back into the pen. Mr Lay complains that the officers were very rough with them and were shouting: "*Get back, get back*". He also states: "*The officers were also aggressively entering the protest space i.e. onto the pavement, which was frightening. I was pushed back towards the pedestrian road by the police officers.*" Mr Lay also complains about the filming of the protesters in what he describes as a "*provocative manner*". In particular, Mr Lay complains that an officer was pushing the camera in all the protesters' faces; that he (Mr Lay) was being pushed violently back from the edge of the pavement into the pedestrian road by the police officers; and that he remembers telling some of the officers to calm down which seemed to have the opposite effect.
26. It is true that there was a police camera taking video footage of the protesters in relatively close proximity to the protesters. This was the camera NW that I have already referred to above. However, it does not appear from that footage that the camera was being "pushed" in the protesters' faces. On the contrary, it appears relatively plain from the footage that it was the protesters who were pushing forward aggressively against the police cordon and advancing towards the camera. NW shows (18:53) Mr Lay pushing forward towards the police together with the group of protesters at the junction of the pedestrianised road – although it is not clear to me from the footage whether Mr Lay or any of the other protesters actually stepped at that stage from the pedestrianised road on to the carriageway.
27. It is also true that the video footage shows the police pushing the group including Mr Lay back. However, in my view, it is important to note that this was in response to the action taken by Mr Lay and the group of protesters. In cross-examination, Mr Lay did not accept that he had acted defiantly or aggressively. On the contrary, he maintained

that he did not lean forward into the officers' faces and reiterated what he said in his witness statement i.e. that he had told the officers to calm down. It is true that as appears in the video footage, Mr Lay did at one stage move his outstretched arms with open hands apparently to indicate to the officers to calm down. Having watched the video footage several times, I am bound to say that I regard that action as more of a taunt than a genuine attempt to seek to calm the situation. Be that as it may, it does not seem to me that Mr Lay was in any frightened by what was happening. Rather, the video footage shows that the problem stemmed from the fact that the protesters including both the Claimant and Mr Lay were continuously trying to push up against the line of police. For example, CV shows (18:53) the Claimant darting quickly into the road, being caught and then moving back to the pavement. NW shows (18:53) Mr Lay being pushed back by the police and then together with the group of protesters pushing back again towards the police line in an aggressive fashion getting right up to the officers' faces, pointing their fingers and shouting repeatedly and loudly at the officers: "*Shame on you*". Mr Thomas submitted that Mr Lay's conduct was deliberately provocative and his attempts to suggest otherwise in evidence were, at best, disingenuous. I agree.

28. Mr Lay states in his witness statement that it was very unclear at this point what the dividing line was and where they were lawfully allowed to stand. I do not accept that evidence. It is quite clear from the NW footage that the police were seeking to maintain a line to keep the protesters in the pedestrianised road out of the main carriageway in Kensington High Street. The police were only moving because the protesters kept on pushing against the line and the police were pushing the protesters back.
29. At approximately 19:00 hours, the cyclists passed a second time – although there is no video footage at this stage. (So far as the NW footage is concerned, it was Sgt Dowling's evidence that the NW recording stopped because Mr Williams needed to replace a battery or tape.) According to Mr Lay's statement, officers went up to the cyclists and pushed them off their bikes so he went out to register his concern at the way they were being treated by the police officers. In his statement he says he did not have to push through any police officers in order to do so. In any event, Mr Lay accepts that an officer shoved him backwards and told him to get back on the pavement.
30. The description of events as set out above is based primarily on the video footage and the evidence of the Claimant and Mr Lay. The evidence of the police officers goes further. Thus, for example the notes of PC Allen in his EAB record the following: "*.... As the cyclist drew near a number of protesters including Mr Lay forced their way forward into the road and towards the Israel embassy. I was aware that I had a duty to clear the road and stop these people getting to the embassy. Some people responded to being told to move back. They were in danger of being hit by passing cars and the cyclists. The cyclists were forced to stop and swerve. Mr Lay did not move back. I stood in front of him to prevent him from moving forward. He ended up in the middle of the road, shouting "Palestine", jumping up and down and waving his hands. I took hold of Mr Lay and told him to move back. He continued to push towards me and I was forced to push him back to make him move onto the pavement. Whilst doing this I warned him to stay on the pavement. Once on the pavement he again forced his way back onto the road. He was again moved back onto the*

pavement. Mr Lay was very difficult to move out of the road. He was clearly using his strength and not listening when being told to "move back". This instruction was shouted and could be clearly heard. Once on the pavement Mr Lay moved down towards the centre of the police line. The road was cleared and all protesters were back on the pavement. I was standing near the end of the police line. Mr Lay began forcing his way towards the officers and again had to be pushed backwards with force. I continued to watch him as I identified the fact that he appeared to have potential to cause trouble. A short while later he worked his way back up to my end of the police line. He attempted to slip past me and again got onto the road. To my right approximately 50 m to my right there was a crossing which other pedestrians not involved in the protest were using. I again had to stop Mr Lay from entering the road using common law powers. I held up my arm and told him to stay back and pushed him back again with my hand on his chest. Mr Lay then calmed and stood in front of me. At this point I told him face to face not to enter the road if he did go into the road again he would be arrested for obstructing the highway I finished by saying "Just stay on the pavement". Mr Lay then moved back into the crowd."

31. In considering this evidence and the evidence generally of the officers, one point which arose in cross-examination was an inconsistency between the evidence of PC Allen and PC Elton over the timing of the caution given to Mr Lay when he was later arrested as referred to below. However, Mr Thomas submitted that that is precisely the sort of mistake that a witness can make nearly three years after an incident particularly a uniformed officer who would witness numerous arrests during such a period. I confess that I was troubled by this point in the course of the trial. However, it seems to me that the point made by Mr Thomas has some force and, at the end of the day, I do not consider that this inconsistency can be regarded as materially undermining the evidence of PC Allen, or PC Elton.
32. In the event, I accept that evidence of PC Allen as set out above. Despite the criticisms of Mr Simblet and having seen and heard PC Allen give evidence, I considered his evidence to be entirely credible and generally preferable to that of Mr Lay. In my view, this conclusion is confirmed by the fact that the account given by PC Allen as to the circumstances when he originally arrested Mr Lay as referred to below is entirely consistent with the beginning of Gaza 1 which he (PC Allen) could not have seen when he originally gave that account. In any event, whatever questions there may be about this particular period, it is absolutely clear to me that Mr Lay was well aware that he should remain on the pavement and not obstruct the carriageway.

The detention/arrest of Mr Lay

33. Approximately 10 minutes later, the cyclists were back again. This must have been about 19:10 hours. There is no video footage of their arrival but there is video footage (Gaza 1 equivalent to about 19:13) showing the cyclists with Mr Lay almost in the middle of the road with one officer holding on to Mr Lay on his left side and, a few seconds later, another officer approaching Mr Lay and then holding him on his right side. According to PC Allen's EAB, he was the officer who first took hold of Mr Lay on his left side and PC Elton who immediately joined him and took hold of his right arm. According to PC Allen, he decided to take this action because when the cyclists came past, Mr Lay had again forced his way forward into the road; stood in the centre of the road near to the white lines; and jumped up and down with his hands in the air

shouting "Palestine". As appears from PC Allen's EAB: "*Cyclist had to stop and swerve and there was the added danger of cars passing from the other direction. Having been warned on several occasions and disrupting traffic movements again I made the decisions that Mr Lay would have to be arrested. I was very concerned that the actions of Mr Lay would cause the other main body of protesters to surge forward towards the embassy resulting in disorder. I immediately went over to Mr Lay and took hold of his left arm. I was immediately joined by PC Elton... who took hold of his right arm. All the while Mr Lay was struggling and pulling away. Cars were sounding their horns. I immediately said to Mr Lay "Your nicked for obstructing the highway". Mr Lay continued to shout during which he shouted "Why? I was crossing the road to see a friend." We made the decision to walk him way towards where the carrier was parked. As we struggled across the road other protesters moved in from behind and began to pull at Mr Lay. As we approached where the carrier was parked Mr Lay was shouting "Why am I being arrested?" I replied "For obstructing the highway and to prevent a breach of the peace". Despite being told again Mr Lay continued to struggle.*"

34. Thereafter, CV shows (19:13) PC Allen and PC Elton walking (or more accurately virtually marching) Mr Lay along the south side of Kensington High Street and, after about perhaps 100 yards, crossing over to the north pavement before disappearing from view at the junction between Kensington High Street and a small road called Old Court Place where a police carrier was parked.
35. Mr Lay accepts in his witness statement that he had run into the road with some other protesters again to register his concern in particular because the police officers went up to the cyclists and pushed them off their bikes and the cyclists were calling out; and that he went to the centre of the road towards a cyclist when he was grabbed by an officer. In evidence, Mr Lay did not remember but did not deny that he was in the road chanting "Free, Free Palestine". He also accepted that he knew he should not be protesting in the carriageway describing this as "common sense". However, on behalf of the Claimant, Mr Simblet did not accept that there was any obstruction of the highway by Mr Lay; nor that there was any actual or threatened breach of the peace that would justify the arrest of Mr Lay. Further, Mr Simblet submitted that Mr Lay had never been informed (either properly or at all) as to the reason for his arrest. For one or more of these reasons, Mr Simblet submitted that the arrest of Mr Lay was unlawful. I consider this further below.
36. In his witness statement, Mr Lay described the circumstances of his arrest in the following terms:

"6.1 This officer first dragged me to the other side of Kensington High Street (the same side as the Embassy) although not all away to the Embassy. I was then dragged to the other side of the road (the same side as the pen but about 10 metres westwards) where a group of officers had assembled. A second officer then grabbed my left arm. The first policeman on my right held my right arm and locked his arm through his arm. The second officer on my left then tugged me to the left with the force of his grip. The officers held onto my arms and pulled them behind my back. They began to shake me at the same time. I shouted out in pain due to the manner that they

were holding my arm. I could hear a third officer saying: "That's right, nick him."

6.2 *I was being pulled on both sides whilst being marched down the road. The officers kicked my calves to make me move me faster. One of the officers tugged my arms back in an unnatural position. I was frightened that the officers would hurt me, especially if the other protesters could not see me.*

6.3 *The officers lifted me and kicked my legs from underneath me at the same time. I am not sure what their intention was. The officers were pushing me too fast for me to keep up. Every time I tried to lean back they would kick my legs again. I kept asking why I had been arrested.*

6.4 *As we approached Old Court Place, the officers yanked my right arm again and I shouted out loud again. I was trying to make eye contact the offices and ask them why they were being so rough in order to calm the situation down but every time I tried to talk an officer would put his forearm against my neck from behind. I tried to say: "Remember it's a peaceful protest" but they would not let me finish.*

6.5 *I realised that people were following us. Someone said: "What's going on?". Someone shouted: "They're arresting him." The officers were dragging me across the road, towards the cars. As the officers were turning me into Old Court Place a car passed and nearly collided with my leg."*

37. I have set out in full this description by Mr Lay in his witness statement of the events immediately following his arrest because it seems to me important in assessing the general reliability of his evidence. In particular, the events which he describes are recorded (at least in part) in both Gaza 1 and CV. Importantly, it seems to me that his description is in some respects at least not consistent with one or both of those video recordings. In particular and contrary to Mr Lay's description of events: (a) It does not appear that the first officer dragged him to the north side of Kensington High Street before dragging him back to the south side of the road. On the contrary, the video footage shows that after initial detention by PC Allen, PC Elton took hold of Mr Lay's right arm almost immediately and those two police officers then took Mr Lay directly to the south side of Kensington High Street. (b) I cannot see in the video footage that the officers began to "shake" Mr Lay although I accept that the video is not absolutely clear in this regard. (c) Although the video footage shows Mr Lay being marched down the road in robust fashion and at a pace, I cannot see in the video footage that the officers kicked his calves at any stage; nor that they lifted him and kicked his legs from underneath him; nor that when he tried to lean back that they would kick his legs again. Further, it was the evidence of both PC Allen and PC Elton that in the course of marching Mr Lay along the south side of Kensington High Street, Mr Lay tried to break free and moved off to the left. In cross-examination by Mr Simblet, it was suggested that this was incorrect and that Mr Lay had in fact just stumbled or perhaps been pushed from behind by another police officer. This

suggestion does not seem to me to be consistent with the video footage which, in my view, rather confirms the evidence of both PC Allen and PC Elton.

Was Mr Lay's Arrest Lawful ?

38. Having considered this part of the evidence, it is convenient to consider Mr Simblet's submission that the arrest of Mr Lay was unlawful. That submission was advanced on two main grounds.
39. First, Mr Simblet submitted that Mr Lay did not in fact obstruct the highway and that there was therefore no offence committed within the meaning of section 137 of the Highways Act 1980. In that context, Mr Simblet relied upon the decision of the Court of Appeal in Hubbard v Pitt [1976] QB 142. In that case, a tenants' rights group picketed an estate agents' premises every Saturday morning for three hours. Mr Simblet submitted that the case is authority for the proposition that reasonable actions including stopping on the highway do not constitute an obstruction. He relied in particular upon the passage in the judgment of Lord Denning MR to the effect that a small picket outside a shop for three hours on a Saturday morning was not an obstruction: see pp 174H – 175A. Further, Mr Simblet submitted that Mr Lay was not himself preventing passage along the highway; that he himself did not obstruct the highway; that, at most, he was going into the road for a few seconds (shouting or not); and that on any view, Mr Lay walking into the road to speak to cyclists or to cross the road and stay there only a few seconds was not an obstruction however many times he did so. Moreover, Mr Simblet submitted that it was the police who were obstructing the highway when, for example, the police stopped one cyclist as shown in Gaza 1 (tape-counter 00:35).
40. For the purposes of argument, I am prepared to proceed on the basis that a jury might well have found Mr Lay not guilty of an offence of obstructing the highway. However, this is not a criminal court; nor is that the relevant issue. For present purposes, the relevant issue is whether or not the arrest of Mr Lay was lawful and, in that context and by virtue of section 24(1)(c) and (d) of PACE, it is sufficient that PC Allen had reasonable grounds for suspecting Mr Lay to be committing or about to commit an offence.
41. As to this, Mr Simblet submitted that, in truth, PC Allen did not honestly believe that Mr Lay was obstructing or was about to obstruct the highway and that, in any event, there were no reasonable grounds for any suspicion to that effect. In support of that submission, Mr Simblet relied on the matters already referred to above and made a number of further points:
 - i) First, if Mr Lay was not told the reason for his arrest (as to which see further below), the court might infer further that PC Allen did not in fact suspect him of obstruction of the highway. In truth, Mr Lay was being targeted for action as a result of his confrontational attitude to being pushed around by the officers in the police cordon. Simply getting into the road would not amount to obstruction and PC Allen did not suspect it. Further, it is noticeable that many of the witnesses including PC Elton said that the most that Mr Lay was doing was going into the road.

- ii) Second, a classic and universally applied definition of suspicion is from Hussien v Chong Fook Kam [1970] AC 942, namely:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police.”

- iii) Third, even if PC Allen did have reasonable grounds for suspecting that Mr Lay was obstructing or was about to obstruct the highway, this would not be sufficient to render the arrest lawful. In particular, it would be necessary for PC Allen to suspect that the use of the highway was unreasonable: see DPP v Jones [1999] AC 240 per Lord Irvine at pp254 G-H, 255 E to 256 and 257 D-F; per Lord Clyde at p281F; and Westminster v Haw 2002 EWHC 2073. As to this, Mr Simblet submitted that Mr Lay had a right of passage over the highway (see Hubbard p175D) and that at the very most Mr Lay's passage into the highway was very short and very limited. When the cyclists passed, Mr Lay had a lawful excuse to do so. Even if he was jumping up and down shouting "Palestine, Palestine", this was for a very short period. It would not cause any reasonable person to suspect that he was going to remain on the highway for an unreasonable time nor that his use of the highway was unreasonable.

42. I do not accept the thrust of these submissions. As already noted, I accept the evidence of PC Allen as referred to above; whereas I found the evidence of Mr Lay unreliable at least in part. Given the account given by PC Allen, I am satisfied that he honestly believed that Mr Lay was obstructing the highway. Further, I am also satisfied on a balance of probability that there were reasonable grounds for such belief. In particular, I do not accept that Mr Lay went out into the road just to see a friend. Nor do I accept what he stated in his brief statement which he signed later that evening at 2328 hours that he was never given any warning that he would be arrested; or that he came out onto the road with the intention of de-escalating any tension; or that he did not intend to obstruct the highway. On the contrary, in my judgment, he went into the road to join the cyclists in order to continue the demonstration in the road with them. This was despite the fact that he had been repeatedly told by the police to remain on the pavement and not go into the carriageway. His action in so doing obstructed in part the highway or at the very least there were reasonable grounds for believing that that was the case. The fact that such obstruction was partial only is irrelevant. It is true that the obstruction was only for a short time. But, again, the fact is that he had been told repeatedly by the police to remain on the pavement and not go on the carriageway. His actions were in defiance of those express instructions which, in my view, were entirely reasonable having regard to the fact that Kensington High Street was a busy thoroughfare. Further, in all the circumstances, his actions were not, in my judgment, a reasonable use of the highway. In summary, it is my conclusion that there were plainly reasonable grounds for believing that Mr Lay was committing the offence of obstructing the highway.

43. The second main ground relied upon by Mr Simblet in support of the submission that the arrest of Mr Lay was unlawful was that Mr Lay was not informed of the grounds of his arrest either at the time of the arrest or as soon as practicable after the arrest. In that context, Mr Simblet relied upon s.28 of PACE which provides in material part as follows:

“28 Information to be given on arrest

- (1) Subject to subsection (5) below, where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.
- (2) Where a person is arrested by a constable, subsection (1) above applies regardless of whether the fact of the arrest is obvious.
- (3) Subject to subsection (5) below, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.
- (4) Where a person is arrested by a constable, subsection (3) above applies regardless of whether the ground for the arrest is obvious.
- (5) Nothing in this section is to be taken to require a person to be informed—
 - (a) that he is under arrest; or
 - (b) of the ground for the arrest,if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.”

44. In the context of that submission, Mr Simblet further relied upon a number of authorities including Wilson v Chief Constable of Lancashire Constabulary (2000) CA (unreported) and Taylor v Chief Constable of Thames Valley Police [2004] EWCA Civ 858, [2004] 1 WLR 3155. As stated in particular at paragraph 26 of the judgement of Clarke LJ in Taylor, “...the question is whether, having regard to all the circumstances of the particular case, the person arrested [is] told in simple, non-technical language that he could understand, the essential legal and factual grounds for his arrest...” Mr Simblet submitted that the reason the law requires this is that if provided, the arrested person will be able to say something exculpatory and/or be able to resist, by force if necessary (though unwise) an unlawful detention.
45. Further, Mr Simblet submitted that even on the Defendant’s own case, the words allegedly spoken by PC Allen, namely "You’re nicked" and then "You’re under arrest for obstruction of the highway and to prevent a breach of the peace" (whether with or without a caution) do not comply with section 28 of PACE. They were, submitted Mr Simblet, on the Wilson side of the line and fall well short of the information given in Taylor. I do not agree. It seems to me that both those cases turned very much on their own facts. As I have found, here Mr Lay had repeatedly been told to stay on the pavement and not go into the road. In addition, he had been told that if he did go into

the road he would be arrested. And that is exactly what happened. I do not accept the evidence of Mr Lay that he was not told that he was being arrested for obstructing the highway. In my view, the fact that he kept on asking why had he been arrested is not necessarily inconsistent with that conclusion. It is equally consistent with an attempt by Mr Lay to feign ignorance or to be deliberately argumentative. The precise reason does not matter. What does matter is that I accept the evidence of PC Allen as to what he said and that, in my view, the words used by PC Allen were sufficient to satisfy the requirements of s28 of PACE.

46. Quite apart from the offence of obstructing the highway, a separate issue arose as to whether or not the arrest of Mr Lay was justifiable on the basis of an actual or threatened breach of the peace. Although it is common ground, that this was not the basis upon which PC Allen originally told Mr Lay that he was being arrested, it was PC Allen's evidence, as noted above, that in response to Mr Lay's questioning as he was being taken to the police carrier in Old Court Place, he (PC Allen) told Mr Lay that he was being arrested both for obstructing the highway and to prevent a breach of the peace. As I have said, I accept PC Allen's evidence in this regard. Even so, it was Mr Simblet's submission that Mr Lay's behaviour came nowhere near that required to amount to a breach of the peace. In that context Mr Simblet relied in particular upon a number of authorities viz. R v Howell [1982] QB 416; R (Laporte) v Chief Constable of Gloucestershire [2007] 2 AC 105 in particular at p130G-132B, 132H and 136G; and R (Kay) v Commissioner of Police [2008] 1 WLR 272 in particular at [28] (Lord Rodger) and [64] Lord Brown. In particular, Mr Simblet submitted that whatever Mr Lay did, his conduct involved no harm or threat of harm through violence.
47. I do not accept that submission. The concept of breach of the peace was summarised by the Court of Appeal in R v Howell [1982] QB 416 in the following terms:

‘...there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.’

In my view, “other disturbance” would clearly cover the disturbance caused by protesters deliberately and repeatedly entering the carriageway of a busy road, at night, where there are no warning signs or road closures to ensure their safety, or the safety of the drivers of cars, motorbikes, (non-protesting) bicycles etc. It is a highly dangerous activity, even in an urban street and likely to put fear into these classes of people. If other protesters joined Mr Lay in conducting an unpredictable protest in the middle of the road, this would constitute a breach of the peace. As quoted above, the evidence of PC Allen (which I accept) was that that he was very concerned that the actions of Mr Lay would cause the other main body of protesters to surge forward towards the Embassy resulting in disorder. In my view, such concern is unsurprising. Moreover, the concept of imminence as set out in Laporte would clearly apply, as Mr Lay was already in the road. He had been asked to leave the carriageway. In such circumstances, an arrest for breach of the peace was proportionate. On this basis as well, it seems to me that the arrest of Mr Lay was lawful.

48. CV shows (19:13:42) Mr Lay disappearing from view followed by a number of people including (it would appear) the Claimant, although the latter is not certain. Thereafter, there is a gap in the video footage until CV pans around and about 12 seconds later (19:13:54) shows both Mr Lay and the Claimant on the ground near the police carrier in Old Court Place. There is a clash of evidence as to how Mr Lay and the Claimant came to be on the ground. It was Mr Lay's evidence that when he reached Old Court Place, he was aware that the Claimant was nearby and could hear her saying "What are you doing?" and telling the officers not to be so rough. His written witness statement then states the following:

"7.1 ...A large number of police officers were lined up along the side of the road. I could feel that the officers were trying to drag me to the floor and I was shouting out. I was frightened that I would get hurt on the ground I was trying to keep on my feet. The officers were trying to force me onto the ground, twisting me in opposite directions and yanking both arms. I was worried that they were going to break my arms. I felt vulnerable as it would just take one wrong move for me to be injured.

7.2 At this point I recollect that Kelly was by my side. I recall her putting her hand onto my right shoulder or arm. It comforted me to know that she was there. She did not grab me or attempt to get in between the officers and me. I just remember her presence and her voice. It felt like she was trying to make sure that the police knew that she was witnessing their behaviour so that they would not use too much force on me.

7.3 Suddenly I was slammed onto the ground. In a split second I went from standing upright to lying on my chest. I realised that the movement also caused Kelly to come down on top of me."

49. The witness statement of the Claimant is in similar terms:

"6.3 As the officers approached a corner where the High Street meets Old Court Place, I became particularly worried. I didn't understand why the officers needed to take him down an alley away from the public view. It seemed that there was no one around except for me, Taimour and a large group of police officers.

6.4 The officers took Taimour into Old Court Place and I followed them. As I turned the corner I could see Taimour between the group of officers. He was calling out and seemed distressed. He was asking the officers why he was being arrested. I approached to ensure that the officers knew that I was present and that I was witnessing their behaviour. I asked the officers what they were doing. I did not grab Taimour or any of the officers.

6.5 I asked Taimour if he was okay and I repeatedly asked the police what Taimour was being arrested for and whether he needed medical attention. I could also hear Taimour repeatedly asking why he was being arrested. We were both ignored by the officers. He continued to call out so I stepped closer to see if he was alright. I was right next to him; although at this point our bodies were not touching. I placed my hand on Taimour's arm to reassure him and to see if he was alright.

6.6 The next thing I knew I was on the ground. I think that as I put my hand on Taimour's arm, an officer forced Taimour to the ground at the same time, bringing me down with them."

50. The above is in stark contrast to other evidence from the police officers concerned. In particular:

- a) Sergeant Adams recorded at 1922 that "... whilst a police officer was trying to make an arrest, the female [i.e. the Claimant], jumped on the back of a police officer and tried to prevent the arrest....." In his later statement in June 2009, Sergeant Adams again refers to the Claimant jumping on the back of one of the police officers and appearing to be attempting to frustrate the arrest.
- b) To similar effect are the EAB notes of PC Elton: "As we entered a few yards into Old Court Place I saw [the Claimant] grab hold of Mr Lay around the waist from behind, she then dropped to her knees pulling down with all of her weight, Mr Lay was still struggling and this caused us to fall to the floor") So too the notes as well as those of PC Allen ("As we came to the junction with Old Court Place, [the Claimant], who appeared to be a friend of Mr Lay grabbed him by the waist. The female dumped her weight downwards, combined with Mr Lay pulling forwards we fell to the floor").
- c) According to the notes in PC Allen's EAB: ".. As we approached where the carrier was parked Mr Lay was shouting "Why am I being arrested?" I replied "For obstructing the highway and to prevent a breach of the peace". Despite being told again Mr Lay continued to struggle. As we came to the junction with Old Court Place a female, who appeared to be a friend of Mr Lay grabbed him by the waist. The female dumped her weight downwards, combined with Mr Lay pulling forwards we felt the floor. Mr Lay fell on top of the female..."
- d) According to the EAB notes of PC Pelham, he observed approximately 4 to 5 people attempting to grab Mr Lay and his colleagues: "... I struck out once with my right hand towards the male in the brown jacket in the shoulder area however I believe I connected with his face, I shouted "Get away from the officers". He let go, at this point [Mr Lay] went to the floor along with my colleagues PC's Elton and Allen I saw a female also go to the ground, she had hold of one of the officers' legs. I cannot recall who, she was also of white skinned European

appearance. She was repeatedly shouting in a high-pitched voice "Get off him"."

51. On behalf of the Claimant, it was Mr Simblet's submission that I should reject this evidence of the police officers and accept the evidence of the Claimant in particular because, as he said, the Claimant was a woman of good character and gave evidence in a "credible and personable way". Mr Simblet submitted that in contrast the officers' accounts were unconvincing and unsatisfactory. In particular, Mr Simblet submitted that, on any view, any person who unexpectedly came at them from behind PC Allen and PC Elton while they were seeking to detain someone they say was struggling would not easily be seen. Further, Mr Simblet submitted that PC Elton looked "extremely uncomfortable" when giving evidence in particular with regard to what PC Allen supposedly said to Mr Lay on arrest. Further, Mr Simblet submitted that given that the Claimant was a relatively small young woman weighing at the time only about 60 kg, it was (he said) inherently improbable and indeed absurd to suggest that she could use her weight to pull Mr Lay and the officers with him down to the ground.
52. I accept that the Claimant is a relatively small young woman who weighed at the time only about 60 kg. I also accept that she gave evidence in a personable way. However, I do not accept the thrust of Mr Simblet's further submissions in this regard. In my view, the Claimant is obviously a very intelligent and articulate individual. Further, it is plain from what she says in her witness statement and from her oral evidence that she was and is passionate about the Palestinian cause and is no shrinking violet in taking positive and active steps to advance that cause. This is also confirmed from the video footage. So, I do not accept that it is inherently improbable that the Claimant jumped on the back of one of the police officers in order to prevent or to frustrate the arrest of Mr Lay.
53. Mr Simblet's submission that it was absurd to suggest that the Claimant could use her own weight to pull Mr Lay and the officers down to the ground would seem to have more force but, in my view, it is based upon a false characterisation of the evidence of the police officers that I have referred to above. None of the officers suggests that they and Mr Lay were all pulled to the ground merely by the weight and actions of the Claimant. In broad terms, their evidence is that Mr Lay was struggling and that it was a combination of the actions of both the Claimant and Mr Lay pulling forwards which brought them all to the ground. I recognise that this aspect of the case is not easy to resolve with absolute certainty. In particular, the evidence of, for example, PC Elton and PC Allen that the Claimant grabbed Mr Lay around the waist is different from that of, for example, Sergeant Adams who described the Claimant as jumping on to the back of one of the officers – although these two versions are not necessarily mutually exclusive. I also bear well in mind the general point emphasised by Mr Simblet that the officers' notes in their EABs were prepared at the same time when they were all together in the canteen at New Scotland Yard in the circumstances I have already described above. However, it does not seem to me that those notes bear the hallmark of some concocted story; and, although there were some inconsistencies in the evidence of the officers, I found their evidence on this part at least to be entirely credible in particular because (unlike, for example, the evidence of Mr Lay) when such evidence could be verified against the video footage it was generally both fair and accurate. In any event, the point made in relation to the officers' EAB notes is not

one which can be advanced against Sergeant Adams' voice recording which is near contemporaneous and in clear terms. Although I accept that such latter evidence is, of course, not determinative, it seems to me entirely credible in the light also of the oral evidence of Sergeant Adams. Having regard to the entirety of the evidence and having heard the cross-examination of all the witnesses, the conclusion I reach is that (whether by jumping on top of one of the officers or by grabbing Mr Lay by the waist and by using her weight) the Claimant did attempt to prevent or to frustrate the arrest of Mr Lay and that in combination with Mr Lay's own actions, this caused them and the officers to fall to the ground.

54. This conclusion is also supported by the near contemporaneous account of the incident when the Claimant went to Chelsea and Westminster Hospital. The A&E records at 9.30pm state: "*Was at protest at Israeli Embassy today. Was trying to prevent friend from being arrested. Police twisted pt's L arm behind her back.*" The phrase "was trying to prevent a friend from being arrested" matches the accounts of the Defendant's officers; and is contrary to the Claimant's account in her witness statement. In evidence, the Claimant's only explanation for this was that it must have been Miss Schling (who accompanied the Claimant to the hospital) who said this. But, even if this is true, it is (as Mr Thomas submitted) no satisfactory explanation at all: if it was indeed Ms Schling who said this, how did she (i.e. Ms Schling) come to believe this unless (a) the Claimant had told her or (b) this was Ms Schling's interpretation of what she herself had seen? Moreover, what appears in these A&E records is also supported, at least in part, by the letter before action sent by the Claimant's solicitors in January 2010 which stated in material part: "*[The Claimant] went into the road to see what was happening and saw officers assaulting Mr Lay. She therefore tried to protect Mr Lay by shielding him with her body. Our client and Mr Lay were knocked over onto the ground.*" Paragraph 7 of the Claimant's Particulars of Claim is in similar vein: "*The Claimant could hear Taimour Lay shouting in pain. She went over to try and protect him. However, at the entrance to the alleyway, the Claimant and Taimour Lay were forced to the ground.*" More specifically, paragraph 10 of the Claimant's Reply states: "*...the Claimant was entitled to, and did, go to assist Taimour Lay in providing lawful resistance to the unlawful apprehension and/or assaulting of Taimour Lay by the Defendant's officers.*"
55. It is not certain exactly when Mr Lay and the Claimant fell to the ground although it appears that they were already in that position when the CV camera pans round (19:13:54). It is about this time that the NW camera restarts. Thereafter, as appears in the footage, a crowd gathers around and there is much shouting and confusion. PC Pelham is seen pushing away Ms Schling. A second officer is also seen taking hold of Ms Schling and pulling her away from the bonnet area of the police carrier. In addition, the footage shows PC Pelham struggling with and pulling away another male protester (Mr George Lavender) who is also on the ground.
56. Meanwhile, the Claimant and Mr Lay continued to remain on the ground for at least 30 seconds surrounded by a number of police officers including PC Allen and PC Elton as well as other protesters and onlookers. Mr Lay can be seen held firmly with his face down on the ground. As stated by PC Elton in his notes, he still had hold of his right arm and had his left knee on Mr Lay's back; he shouted several times at Mr Lay on several occasions to relax his arms so that he could be handcuffed as he was

refusing to comply. According to PC Allen: “[Mr Lay] continued to shout “Why am I being arrested”. I again told him “Your under arrest for obstructing the highway and to prevent a breach of the peace”. He was instructed to release his arms and to stop struggling. I removed my handcuffs and said “I’ve got cuffs”. Mr Lay was handcuffed to the rear stack position..... Mr Lay had struggled with us and people were trying to assist him in escaping. The female was pulled away and Mr Lay was stood up and walked the back of the police carrier. This was parked outside 17 Old Court Place. Here I was able to note the time as 19:15 hours. I again explained to Mr Lay what he was under arrest for I explained that he had obstructed the free movement of road users having been warned on several occasions. I told him that his arrest was necessary to prevent obstruction of the highway and cautioned him to which he repeatedly said “Why?”.....”

57. That general description is consistent with the video footage. In particular, the video footage shows the Claimant lying on the ground to the right of Mr Lay with her left arm over Mr Lay; it is not clear whether her right arm is underneath Mr Lay or possibly holding on to anything. It is impossible to say. In evidence, the Claimant suggested that she was unable to roll away from Mr Lay because there was no room. But that seems extremely doubtful. At an early stage after the people have gone to the ground, PC Pelham is initially dealing with Mr Lavender and is on the far side of him from the Claimant; PC Allen and PC Elton are dealing with Mr Lay; and there appear to be no other people present to obstruct her. Be that as it may, as appears from NW, what is relatively clear is that at about 06:26 on the NW tape counter (equivalent to about 19:14:26), the Claimant’s left arm is being peeled away from Mr Lay. Shortly thereafter, NW shows (tape counter at 06:30:03 equivalent to about 19:14:30), PC Pelham attempting to get the Claimant up from the ground by pulling on her outstretched left arm. A few seconds later, NW shows (tape counter between 06:38:13 and 06:38:18) PC Pelham holding the Claimant’s left arm near her left wrist with his own left hand and his right arm under the Claimant’s left arm near her left elbow and, in that position, attempting to pull the Claimant to her feet. At about this time, the words “Get up” are clearly heard; and shortly thereafter (tape counter at 06:39-06:40) one can hear: “What is he being arrested for ? What am I being arrested for ?” It is not clear from the footage whether that is the Claimant’s voice but that seems very likely as is confirmed by the Claimant in her witness statement. A few seconds later (tape counter at 06:44), Ms Schling shouts: “Help her”.
58. According to the Claimant’s witness statement, she could not move at this stage and was petrified that the officers were going to hurt her and Mr Lay. Her statement continues: “... *The officers were not communicating and did not respond to my questions. I was very frightened.... Without any warning or provocation an officer then suddenly twisted my left arm behind my back with extreme force and lifted me off the ground by my arm. I felt a sharp and terrible pain shoot through my arm. I knew immediately that it was broken. I shouted at the police that they were hurting me.. After I was taken to my feet I was pushed backwards onto the pavement. The officers then formed a line between me and Taimour separating us. I was in pain and shock and shouted: “you’ve broken my fucking arm” but the officers just ignored me.*”
59. Unfortunately, the video footage does not show this crucial part of the incident. In all three videos i.e. NW, CV and Gaza 2, the view is obscured. On NW (tape counter at 06:47 equivalent to about 19:14:47) it is possible to hear a clicking type noise

(although it is impossible to say what this is) and then the Claimant screaming. It seems clear that by this time, the Claimant's arm had been broken although the likelihood is that it must have been broken at least a few seconds before. (The evidence of Mr Laurence, which I accept, was that there is often a time-gap between the breakage of a bone and a person's reaction to that trauma of around 5 or even 10 seconds.) Thereafter, the video footage (both NW and Gaza 2) shows the Claimant in a standing but semi-slumped position with her left arm limp and being moved away.

60. In his EAB notes, PC Pelham describes how he pulled away the man on the ground that we now know to be Mr George Lavender and then states: "*... I could see PC's Elton and Allen still struggling to restrain the male detainee and [the Claimant] on the ground was still struggling with the detainee and officers. I was directly behind her I took hold of her left arm, I shouted to her "Let go now, don't get involved." I could see her continually attempting to hold on. She was repeatedly shouting. I could feel her tense up her arm, I shouted again "Get away from them now". I had my left arm on her shoulder area and my right hand on her forearm. I managed to free her grasp, I repeatedly shouted "Get up". I pulled her away from my colleagues, as I feared she would assault or cause injury to PC's Elton or Allen. [The Claimant] appeared to ignore me struggling to get back to my colleagues, I brought her to her feet, I had her left arm behind her back I turned to crowd and I shouted "I've told you, don't get involved".*"
61. The description in the statement that PC Pelham produced for the trial is in somewhat different terms viz: "*In pulling [the Claimant] off the officers and Mr Lay, when I pulled her arm, she was faced down slightly leaning on her right side. I managed to prise her arm of the police constables leg and I shouted "let go", "let go". This happened all so quickly I did see [the Claimant] holding on to a police officer's leg; I believed this to be PC Elton's leg. I simply lifted her up to her feet which she did quite easily. I did not do anything unusual. As I pulled her to her feet I recall I put her arms to the rear to prevent her striking me or my colleagues. I just turned around and put her in the non-sterile area so she was no longer a threat. I was not aware she had an injury....."*"
62. I found PC Pelham's assertion that he was not aware that the Claimant had suffered an injury rather extraordinary given the agreed medical evidence that the state of an arm with this humeral fracture is quite obvious and could hardly be overlooked. However, this is perhaps explicable given (a) the agreed expert evidence that the "heat of the moment" might explain some oversight and (b) the further evidence of Mr Laurence that I have already referred to viz the time gap which often occurs between breakage of a bone and a person's reaction to such breakage. Equally rather extraordinary was the fact that PC Pelham made no reference in his EAB notes or in his statement to the Claimant's screams which were loud and piercing as can clearly be heard on the video. In cross-examination, he maintained that he had not heard the Claimant's screams.
63. In any event, the crucial point in this context is the manner in which PC Pelham apparently pulled the Claimant to her feet. This is at the heart of the case. As quoted above, in his EAB notes PC Pelham stated that "*... I brought her to her feet, I had her left arm behind her back...*" This seems broadly consistent with the Claimant's own description although it is extremely vague as to the precise manner in which this was done. In his subsequent statement, again as quoted above, PC Pelham states that he

pulled the Claimant to her feet and recalled putting her arms to the rear to prevent her striking him or his colleagues which again is somewhat vague. Be that as it may, the crucial part of this latter statement is when PC Pelham states "*I simply lifted her up to her feet which she did quite easily. I did not do anything unusual.*" On its face, that would seem to suggest a somewhat gentle operation. In my judgment, it was not and could not have been anything of the sort as is plain from the medical evidence which I now turn to consider.

64. As indicated above, there was medical evidence from Mr Laurence and Mr Percy. In the event, as appears in particular from their joint report, both the cause and nature of the breakage were broadly agreed by the experts and can be summarised as follows.

- a) This was a spiral fracture of the shaft of the left humerus with what is known as a "butterfly fragment", a separate triangular shaped piece of bone.
- b) The experts both did not think that any pushing force applied to the arm could have caused the fracture. Equally, as I understood, both experts agreed that this fracture could not have occurred with the arm being simply pulled in an outstretched position.
- c) Rather, the force required to break the Claimant's bone in this fashion was a longitudinal twisting force and must have been "very considerable". In this case the twisting force was probably provided by the inability of the shoulder to twist beyond a certain point at which the arm is fully internally rotated (the classical arm lock). If the force applied is great enough something has to give, in this case the humerus. But it is probable that before that point was reached, the capsule of the shoulder was under huge strain and may have been damaged (not becoming evident until the humerus had healed).
- d) The experts did not think that it was possible for anyone (much less a female) with their arm in the locked position of internal rotation, to be capable of producing the opposing force required to break this bone. There was some dispute between the experts as to whether the injury could have been caused by the officers pulling the Claimant to her feet while she resisted. It was the view of Mr Laurence (which I accept) that this would be true only if the shoulder was "locked" in fullest internal rotation at the time. In other words, as Mr Lawrence emphasised, this fracture could not have occurred unless the Claimant's arm had been internally rotated behind her back and, with her arm in that position, her shoulder had been locked to its maximum. Similarly, it was Mr Percy's evidence that the shoulder must have been locked to its fullest extent.
- e) The force required to lift the person from the ground by a locked and twisted arm would have been enough to produce the injury particularly if she resisted the action e.g. by holding on to some other person or object. As to the latter, there was initially some difference of opinion between the experts as to the additional forces that this would or at least might create. In the event, those experts agreed that such forces

might be increased by as much as perhaps 50 kg or so depending upon the circumstances. However, the experts also agreed that these additional forces were not necessary to cause the fracture. They both agreed that the forces necessary to break the Claimant's humerus as occurred in the present case would be created simply by lifting the claimant from the ground by her arm when held in a locked and twisted position behind her back. The weight of the Claimant's body alone (ie about 60 kg) would have been sufficient. In the course of the oral evidence of both Mr Laurence and Mr Percy, there was some debate as to whether this would have been so if the Claimant's feet remained on the ground. The suggestion by Mr Percy was that if this had been the case, the Claimant's feet would in effect have acted as a "fulcrum" and that this would or at least might have reduced the downward forces. However, Mr Laurence's view (which I accept) was that even on that assumption, any reduction in forces would probably not have been significant since the bulk of the downward forces would be created by the weight of the Claimant's torso and the lower part of her body which would not be significantly affected by the fact that her feet might have remained on the ground. Further, as Mr Percy accepted, if the lifting force were applied quickly (e.g. by a jerking motion), the effect of the inertia would be to increase the likely forces.

65. Given this medical evidence, I am unable to accept the assertion in PC Pelham's statement that he "simply" lifted the Claimant and she came to her feet "quite easily". In particular and at the risk of repetition, in order for this breakage to have occurred as it did there must have been a longitudinal twisting force which must have been "very considerable"; and the overwhelming likelihood is that this happened by PC Pelham internally rotating the Claimant's left arm behind her back into a full armlock with her shoulder locked to its maximum and then lifting her by her arm in that locked and twisted position.
66. Nor do I accept the assertion by PC Pelham that he did not do anything unusual in lifting the Claimant in this way, as I have concluded must have been the case. In this context, it is necessary to refer to the evidence of Mr Read who was called as a witness on behalf of the Defendant. As I have stated, he was a Police Constable previously attached to the Metropolitan Police Service based at New Scotland Yard responsible for training instructors in officer safety. He had over 25 years' experience in self-defence and restraint training with the police service. His witness statement explains certain standard restraint techniques generally employed by the police including what might be described as the classical armlock. As Mr Laurence stated, such a procedure is or at least may be perfectly proper in circumstances where the detained person is standing in a vertical position. However, the position is dramatically otherwise where the detained person is on the ground and an attempt is made to lift the person by the arm when it is locked behind that person's back in the classical armlock. Mr Read accepted that this was not a technique either taught or used by the police. This is hardly surprising because, in my judgment, it was an exercise which was "obviously dangerous", a description which Sergeant Adams accepted in cross-examination.

67. Notwithstanding, it remains to consider whether or not such exercise was justifiable i.e. reasonable and proportionate having regard to the particular circumstances which prevailed at the time. In that context, I bear in mind, of course, the general point reflected in the authorities referred to above and emphasised repeatedly by Mr Thomas on behalf of the Defendant viz. that the Court cannot and should not “weigh to a nicety” in the calm atmosphere of a Court room some years after the event and with the benefit of hindsight the actions taken by a police officer in the course of his duty in circumstances such as those that existed on the evening of Friday 9 January. I should make plain that I agree entirely with that general point and the views expressed in the authorities referred to by Mr Thomas. I also accept that the circumstances which prevailed at the time when the Claimant suffered her injuries were far from easy. In particular, as emphasised by Mr Thomas:

- a) In general terms, this was not a safe environment.
- b) Events were chaotic and fast-moving. If anything, the situation was deteriorating.
- c) The police were faced with numerous protesters causing disturbance and obstructing the police in performing their duty.
- d) Specifically and quite apart from Mr Lay and the Claimant, the police had to deal with many other protesters near the police carrier in the vicinity of Old Court Place who (as appear from the video footage) were forcing their way forward and had to be kept back with some force - including Ms Schling and Mr Lavender.
- e) As I have found, whether by jumping on the back of one of the police officers or by grabbing Mr Lay around the waist, the Claimant had sought to prevent or to frustrate the arrest of Mr Lay and in combination with the actions of Mr Lay had made them and the police officers fall to the ground.
- f) Once on the ground, the Claimant was told to get up a number of times but deliberately refused to do so.
- g) This created a potentially dangerous situation in a public place. It was important to get the Claimant and Mr Lay away as soon as possible. Indeed it was the duty of the police to do this.
- h) Even when PC Pelham is pulling the Claimant’s arm in an attempt to get her up, she does not do so. Nor does she ever say that he is hurting her arm.

Having regard to these matters, it was Mr Thomas’ submission that PC Pelham would have been rightly criticised if he had not physically lifted and shifted the Claimant. He was faced with what Mr Thomas described as an “agony of the moment” and that in the circumstances PC Pelham’s actions were reasonable and proportionate.

68. I accept that the points made by Mr Thomas as summarised in the previous paragraph carry considerable force. However, I do not accept the conclusion which Mr Thomas

urges. Although the situation in Old Court Place was far from easy, it seems to me that it was generally well under control. That is not based on hindsight nor on an over-critical examination of the contemporaneous video footage. There were numerous police officers in attendance keeping the other protesters away and surrounding Mr Lay and the Claimant. Plainly, it was important to get the Claimant (and Mr Lay) off the ground and move them both away as soon as possible. But whatever pressures existed, it seems to me that the operation employed and the force used by PC Pelham to get the Claimant to her feet were neither reasonable nor proportionate. On the contrary, both the operation itself and the force used were obviously dangerous. Given the expert evidence, it is hardly surprising that the Claimant suffered the injuries which she did which injuries were, in my view, entirely avoidable.

69. It follows that I conclude that the Claimant is entitled to damages for assault. For the avoidance of doubt, I would also have held that the Claimant's claim succeeded in negligence. Given these conclusions, it is unnecessary to consider further the other matters addressed in the parties' written submissions e.g. the scope and effect of s.117 of PACE or s.3 of the Criminal Law Act 1967.

Damages

General Damages

70. As to general damages, the parties are agreed that the appropriate bracket is between £8,400 and £12,600. On behalf of the Defendant, Mr Thomas submitted that there is no reason to do anything other than award damages in the middle of this bracket. His suggested figure was £10,600. However, Mr Simblet submitted that the award of damages should be towards the upper end of this bracket. In particular, he relied on the joint expert report, which stated that although the fracture had healed "quite perfectly", the Claimant has been left with a minor limitation of rotatory movement in the left shoulder above the site of the fracture. The experts agreed that this would not interfere with a sedentary job but would limit the Claimant's athletic ability.
71. Mr Simblet also relied on the evidence of the Claimant herself including the fact that quite apart from the physical injury which she suffered, she has felt very traumatised by what happened to her. Her sleep has been disrupted. She could not return to work for at least two months after the incident after which she was on a modified schedule. As appears in particular from the Claimant's second statement, she continues to suffer pain and restrictive movement in her left arm and left shoulder which are, according to Mr Laurence, unlikely to improve any further. The pain varies in severity. Further, the pain prevents her from doing sports to the level and extent that she did before particularly swimming, rugby, self-defence and climbing. In addition, as a result of the injury and the fact that she was unable to exercise as much as before, the Claimant gained approximately 40 lbs in weight although she is losing some of that now.
72. Mr Simblet also submitted that I should take into account that the Claimant is a relatively young woman who will have to live with the consequences of the injuries for longer; and also that injuries of this sort are of a kind which impede lifting/carrying e.g. a young child or equipment for work.

73. In light of all these considerations, it does seem to me that an award towards the upper end of the bracket is appropriate in the circumstances of the present case. Accordingly, I award general damages in the sum of £11,500.

Special Damages

74. As to special damages, the Claimant initially produced a schedule including various expenses totalling £3809 but, in the light of comments made on behalf of the Defendant, this total figure was reduced to £3473.49. However, certain points remained in issue. In the event, I do not allow the claim for the mattress (£200), part of the membership of the swimming pool (£200) and the heating (£270). This leaves a net figure for special damages in the sum of £2803.49. Accordingly, that is the amount of special damages which I award the Claimant.

Aggravated/Exemplary Damages

75. In addition, the Claimant seeks an award of aggravated and exemplary damages. This is on the basis of the principles set out in Thompson v Commissioner of Police of the Metropolis [1998] QB 498 CA. It is common ground that the court has jurisdiction to award such damages. As appears from Thompson in particular at pages 516 – 517 (paragraphs 8 – 14 of the Judgment), aggravated damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high-handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted. Exemplary damages can be awarded where there has been conduct, including oppressive or arbitrary behaviour, by police officers which deserves this exceptional remedy.
76. In support of these claims, Mr Simblet identified a number of aggravating features which he relied upon viz
- a) The injuries were caused deliberately.
 - b) The conduct took place in public.
 - c) The incident involved a big, strong male police officer against a woman.
 - d) The police officer falsely claimed not to realise that he had broken the Claimant's arm and was indifferent to using massive force against a defenceless woman.
 - e) The Claimant's sincerity was impugned. The case was fought all the way to trial which undermined and devalued the Defendant's pleaded

apology in the Defence (which was in any event 18 months after the original incident).

- f) The court should accept the Claimant's version of events with regard to the conversation in Uniqlo with PS Adams.

77. I accept that certain of these features existed in the present case. In particular, I accept that the incident took place in public and involved a big, strong male police officer against a young woman. I also recognise that, as I have found, the operation carried out by PC Pelham in twisting and locking the Claimant's arm behind her back when she was on the ground and lifting her by her arm in that position was one which was obviously dangerous. However, I do not accept (and I have not found) that there was any deliberate intention to cause the Claimant any injury. Nor do I accept that PC Pelham was indifferent to using massive force against the Claimant. The fact is that this was a somewhat chaotic situation which arose in part at least by the fact (as I have found) that the Claimant attempted to prevent or to frustrate what was (again as I have found) a lawful arrest.

78. As to the point made in sub-paragraph f) of the previous paragraph, this relates to the evidence in the video footage shortly after the Claimant broke her arm when she walked away from Old Court Place and went into a nearby shop called Uniqlo. As seen in the footage, the Claimant was followed into the shop by PS Adams. On behalf of the Claimant, Mr Simblet submitted that the footage shows PS Adams insisting on the Claimant leaving the shop and pointing outside, despite being made very clear to him that she did not want the police to involve themselves in procuring treatment; that the Court should infer that the purpose of such conduct by PS Adams was to be able to access and get control of the Claimant, potentially to dissuade her from making a complaint; that, on any view, the conduct of PS Adams towards the Claimant was unwanted and unwelcome and added to her distress; and that this was a relevant factor to take into account for the purpose of an award of aggravated damages. I do not agree with the thrust of this submission. The evidence of PS Adams was that he followed the Claimant into the shop in order, if possible, to assist her to obtain treatment. He accepted that he was persistent but only because she was in obvious distress and he wanted to help her. Given what had happened, it is entirely understandable that the Claimant did not want to have any contact with the police. But it does not seem to me that the scene in the video provides any justification for an award of aggravated damages particularly as I accept the explanation given by PS Adams.

79. Given all the circumstances and notwithstanding my conclusion that the Claimant's injuries were the result of the actionable fault of the Defendant, I am not persuaded that this is a case which justifies the award of aggravated or exemplary damages.

Conclusion

80. For these reasons, the Claimant's claim for damages succeeds in the total sum of £14,303.49. Counsel are requested to seek to agree a draft order including interest and costs, failing which I will deal with any outstanding issues.