Hilary Term
[2017] UKSC 9
On appeal from: [2014] EWCA Civ 3

JUDGMENT

R (on the application of Hicks and others) (Appellants) *v* Commissioner of Police for the Metropolis (Respondent)

before

Lord Mance
Lord Reed
Lord Carnwath
Lord Toulson
Lord Dyson

JUDGMENT GIVEN ON

15 February 2017

Heard on 28 and 29 June 2016

Appellants
Phillippa Kaufmann QC
Ruth Brander
(Instructed by Bhatt Murphy Solicitors)

Respondent
Sam Grodzinski QC
Mark Summers QC
(Instructed by Metropolitan Police Directorate of Legal Services)

Intervener (Secretary of State for the Home Department)
Ben Jaffey
(Instructed by The Government Legal Department)

LORD TOULSON: (with whom Lord Mance, Lord Dyson, Lord Reed and Lord Carnwath agree)

Introduction

1. The wedding of the Duke and Duchess of Cambridge on 29 April 2011 attracted vast public interest nationally and internationally. Managing the crowds presented the Metropolitan Police with a big challenge. In giving the judgment of the Administrative Court, [2012] EWHC 1947 (Admin), Richards LJ explained the nature of the policing operation, its command structure and planning, in considerable detail. This was necessary because at the heart of the claims made against the police in these proceedings was a broad challenge that the planning and execution of the policing operation did not make proper allowance for the democratic rights of anti-monarchist protestors to express their views in a peaceable way. For present purposes, the background and circumstances giving rise to the claims may be outlined more shortly.

2. The police were aware that on the day of the wedding a large number of members of the Royal Family, foreign royalty and other heads of state would be moving around London and that thousands of citizens including children were expected to converge on central London to take part in the day's celebrations. One month earlier, on 26 March 2011, a day of action organised by the TUC had been marred by the actions of outsiders who used the occasion to commit various offences of violence. There had been similar violent disruption of student protests in November and December 2010, including an attack on the Prince of Wales's car. In the build up to the royal wedding, the police had intelligence that activities aimed at disrupting the celebrations were being planned through social websites. The threat level from international terrorism at the time was assessed as severe, meaning that an attempted attack was thought to be highly likely. Thousands of police officers were deployed across the metropolis. The strategic aims, as set out in briefing materials prepared by the "Gold commander" with overall responsibility for the safe policing of the event, included to "provide a lawful and proportionate policing response to protest, balancing the needs and rights of protesters with those impacted by the protest" and to "maintain public order". The same aims were reflected in tactical operational plans prepared by subordinate commanders.

3. The four appellants were part of a larger group of claimants, but it was agreed before the Court of Appeal that their cases should be treated as test cases. They were arrested in separate incidents at various places in central London on the grounds that their arrest was reasonably believed by the arresting officers to be necessary to

prevent an imminent breach of the peace. They were taken to four different police stations and later released without charge, once the wedding was over and the police considered that the risk of a breach of the peace had passed. Their periods of custody ranged from about 2½ hours to 5½ hours.

4. The power of the police, or any other citizen, to carry out an arrest to prevent an imminent breach of the peace is ancient, but it remains as relevant today as in times past. The leading domestic authorities on the subject are the decisions of the House of Lords in *Albert v Lavin* [1982] AC 546 and *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105. There are important safeguards for the citizen, in order to prevent breach of the peace powers from becoming "a recipe for officious and unjustified intervention in other people's affairs" (in Lord Rodger's words in *Laporte*, at para 62). The essence of a breach of the peace is violence. The power to arrest to prevent a breach of the peace which has not yet occurred is confined to a situation in which the person making the arrest reasonably believes that a breach of the peace is likely to occur in the near future (quoting again from Lord Rodger in *Laporte*, at para 62). And even where that is so, there may be other ways of preventing its occurrence than by making an arrest; there is only a power of arrest if it is a necessary and proportionate response to the risk.

5. The Administrative Court rejected the broad complaint that the police adopted an unlawful policy for the policing of the royal wedding. After close examination of the facts of the individual arrests, it also held that the arresting officers had good grounds to believe that the arrests were necessary in order to prevent the likelihood of an imminent breach of the peace. It dismissed as unrealistic the argument that lesser measures would have been adequate to meet the degree of risk. Continuous police supervision was not a feasible option, given the many demands on police resources. The claims that the police acted unlawfully as a matter of domestic law therefore failed.

Article 5

6. The appellants also alleged that their detention violated their rights under article 5 of the European Convention on Human Rights, and on this issue alone they were given permission to appeal to the Court of Appeal and subsequently to this court.

7. The material parts of article 5 for present purposes are the following:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> …
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> …
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. …
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Decision of the Administrative Court

8. The Administrative Court interpreted the phrase "effected for the purpose of bringing him before the competent legal authority" in article 5.1(c) as limited in its

application to the words immediately following it, that is, for the purpose of bringing the person concerned before the court on reasonable suspicion of having committed an offence, and not applying where the purpose of the arrest was to prevent the commission of an offence. The court considered that this was the more natural reading of the wording, and that the Strasbourg case law on the point was inconclusive. For the purposes of the Convention a breach of the peace counts as an offence, despite it not being classified as an offence under English law: *Steel v United Kingdom* (1998) 28 EHRR 603, paras 46 to 49. The Administrative Court therefore concluded that the arrests conformed with article 5.1(c).

9. The police also relied on the wording of article 5.1(b). Richards LJ commented that that the wording seemed ill suited on its face to cover arrest and detention for the purpose of preventing a future, albeit imminent, breach of the peace, but that it was unnecessary for the court to decide the point and better not to do so: para 187.

Decision of the Court of Appeal

10. The Court of Appeal agreed with the decision of the Administrative Court in a judgment given by Maurice Kay LJ, [2014] 1 WLR 2152, but not with its reasoning. The Court of Appeal was strongly influenced by the judgment of the Strasbourg court in *Ostendorf v Germany* (2013) 34 BHRC 738, which post-dated the decision of the Administrative Court. The Court of Appeal held that it was well established in the Strasbourg jurisprudence that the words "for the purpose of bringing him before the competent legal authority" govern all the limbs of article 5.1(c) and that English courts should accept that interpretation. However, it declined to follow the majority view in *Ostendorf* that article 5.1(c) was incapable of authorising purely preventive detention, notwithstanding the existence of good grounds to believe an offence to be imminent, and that the person concerned must be suspected of having already committed a criminal offence.

11. On the facts, the Court of Appeal concluded that it was "an irresistible inference that the officers who arrested and detained the [appellants] appreciated that, if only by reference to domestic law, the [appellants] could not be lawfully detained beyond the point at which it was reasonably practicable to take them before the magistrates' court": para 85. The court also inferred that as things were in central London on the day of the royal wedding it would not have been practicable to take the appellants before a magistrates' court before they were released, but that they would have been taken to court if the situation had deteriorated to the extent that it was necessary to continue their detention to a point in time when it would have been practicable to do so. The court therefore concluded that that the appellants were arrested and detained "for the purpose of bringing [them] before the competent legal

authority", if that were to become necessary, so as to prolong their detention on a lawful basis: para 86.

12. As to article 5.1(b), the Court of Appeal observed that the decision of the majority in *Ostendorf* had strengthened the argument advanced by the police (para 90), but considered it unnecessary to reach a conclusion on that issue.

13. The appellants argue that the Court of Appeal was wrong not to follow the interpretation of article 5.1(c) by the Strasbourg court in *Ostendorf*, and that the process of reasoning by which the Court of Appeal arrived at its finding that the appellants were detained for the purpose of bringing them before the court was artificial and contrived. They submit that it was plain from the evidence as a whole that the purpose of the appellants' arrest and detention was purely preventive. They also submit that article 5.1(b) was not applicable even on the approach taken by the court in *Ostendorf*.

14. The police argue that the Court of Appeal was right to hold that there was a contingent purpose to bring the appellants before the court sufficient to satisfy the requirements of article 5.1(c) and that the appellants' detention was also justified under article 5.1(b).

Strasbourg case law

15. *Lawless v Ireland (No 3)* (1961) 1 EHRR 15 concerned the internment without trial of IRA members by the Irish government. The applicant was detained for five months, without being brought before a judge, under legislation which gave to ministers special powers of detention without trial, whenever the government published a proclamation that the powers were necessary to secure the preservation of peace and order. The government argued that such detention was permitted by the second limb of article 5.1(c), which was not qualified by the words "for the purpose of bringing him before the competent legal authority" and therefore was also not within article 5.3. The court rejected this argument, noting that in the French text there is a comma after the passage up to "for the purpose of bringing him before the competent legal authority ("en vue d'être conduit devant l'autorité judiciaire compétente"), meaning that this passage qualifies all the categories after the comma. The court also said (at para 14) that the government's interpretation would permit the arrest and detention of a person suspected of an intent to commit an offence for an unlimited period on the strength merely of an executive decision, and that this, with its implications of arbitrary power, would lead to conclusions repugnant to the fundamental principles of the Convention.

16. I interpose that two linked points are important to note: the reference to the potential for unlimited detention without judicial oversight and the fundamental objectionableness of arbitrary detention.

17. The court held that the expression "effected for the purpose of bringing him before the competent legal authority" qualified every category of arrest or detention referred to in article 5.1(c), and the clause therefore permitted deprivation of liberty "only when such deprivation is effected for the purpose of bringing the person arrested or detained before the competent judicial authority, irrespective of whether such person is a person who is reasonably suspected of having committed an offence, or a person whom it is reasonably considered necessary to restrain from committing an offence, or a person whom it is reasonably considered necessary to restrain from absconding after having committed an offence". The court further held that the purpose of bringing the person before the court might, depending on the circumstances, be either "for the purpose of examining the question of deprivation of liberty or for the purpose of deciding on the merits" (para 14).

18. In *Brogan v United Kingdom* (1988) 11 EHRR 117, the four applicants were arrested and detained under prevention of terrorism legislation on suspicion of being concerned in the commission, preparation or instigation of acts of terrorism. They were released without charge after periods between four and six days and without having been brought before a magistrate. The court held that in each case there had been a violation of article 5.3 but not article 5.1. The court accepted that there was an intention to bring them before a court if sufficient and usable evidence had been obtained during the police investigation following their arrest, and that this was sufficient to satisfy the requirement in article 5.1(c) that the detention was for the purpose of bringing them before the court. There was no reason to believe that the police investigation was not in good faith or that their detention was for any other reason than to further the investigation by confirming or dispelling the suspicions which grounded their arrest. In other words, the police were not required to intend to take the applicants to court in the event of there being insufficient evidence after investigation to proceed against them.

19. In *Jecius v Lithuania* (2000) 35 EHRR 16, the applicant complained of violation of his article 5 rights in successive periods of detention. The first period of five weeks was under a broad provision of the criminal code which permitted preventive detention in connection with banditry, criminal association or terrorising a person. During that period no investigation was carried out and no charge was made. In holding that preventive detention of the kind found in that case was not permitted by article 5.1(c), the court stated that a person may be detained under that clause only "in the context of criminal proceedings" for the purpose of bringing him before the competent legal authority "on suspicion of his having committed an offence" (para 50). However, as the Court of Appeal observed in this case (para 61), that was plainly not a complete statement of article 5.1(c).

20. *Nicol and Selvanayagam v United Kingdom*, (Application No 32213/96) 11 January 2001, provides an example of a case where the court recognised that article 5.1(c) embraces different sets of circumstances. The applicants took part in an anti-fishing protest at an angling match on 28 May 1994. Their aim was to sabotage the match by throwing twigs in the water close to the anglers' hooks so as to disturb the surface, while other protestors sounded horns to frighten the fish. When they refused to stop, they were arrested. The custody record gave the reason for their initial detention as to "allow a period of calming, and to determine method of processing". They were later kept in custody in order to take them before the magistrates for the purpose of being bound over to keep the peace. The court found that their complaint under article 5.1 was manifestly unfounded. It said that their initial detention was to prevent them from committing an offence and their continued detention was for the purpose of bringing them before the court on suspicion of having committed an "offence". Both the initial arrest and their subsequent detention were therefore compatible with article 5.1(c).

21. Most recently, *Ostendorf* raised parallel issues to those in the present case. The applicant was known to the police as a suspected football hooligan and gang leader. He travelled by train from Bremen to Frankfurt to attend a match with 30 to 40 other fans, most of whom were known to the police and considered to be hooligans prepared to use violence. The group went under police surveillance to a pub. They were told that they would be escorted to the football ground and that any member leaving the group would be arrested. At the pub the applicant was seen talking to a member of a rival hooligan group. He remained in the pub when the rest of his group left and was discovered by the police hidden in a locked cubicle in the ladies' bathroom. He gave no plausible explanation why he was there. The police reasonably concluded that he was trying to evade police surveillance and that he was planning violence. He was arrested under public security legislation which permitted the police to take a person into custody if necessary to prevent the imminent commission of a criminal or regulatory offence of considerable importance to the general public. He was taken to a police station and released one hour after the game finished, when it was considered that the risk of violence had passed. He complained that his arrest and detention violated his rights under article 5. The Strasbourg court (Fifth Section) unanimously rejected his complaint.

22. The following paragraph in the leading judgment merits citation in full, not only because it states a central principle but also because it has a direct resonance in the present case:

> "88. The court is aware of the importance, in the German legal system, of preventive police custody in order to avert dangers to the life and limb of potential victims or significant material damage, in particular, in situations involving the policing of large groups of people during mass events … It

> reiterates that article 5 cannot be interpreted in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public - provided that they comply with the underlying principle of article 5, which is to protect the individual from arbitrariness (see *Austin v UK* (2012) 32 BHRC 618 at para 56)."

23. The court was divided on how to implement that principle. The majority held that the applicant's detention was permitted under article 5.1(b) but not under article 5.1(c). Conversely, the minority were for holding that it was permitted under article 5.1(c) but not under article 5.1(b).

24. As to article 5.1(c), the majority held (at paras 82 to 86) that the second part ("when it is reasonably considered necessary to prevent his committing an offence") only covers pre-trial detention, and not custody for preventive purposes without the person concerned being suspected of having *already* committed an offence. Moreover, it held that the purpose of bringing the person before a court must be for the purpose of trial, and not just for the purpose of determining the legality of his preventive detention. The majority sought to answer the government's argument that on this analysis the second part would add nothing to the first, saying that it was not superfluous since it could cover the detention of a person who had already committed preparatory acts which were themselves punishable in order to prevent him from going on to commit the full offence. However, that does not fully meet the point, for in the hypothetical case postulated by the majority the applicant would already be suspected of having committed an offence, for which he could be detained under the first part of article 5.1(c).

25. The minority (Judges Lemmens and Jaderblom) considered that the case law to the effect that preventive detention under article 5.1(c) was permissible "only in the context of criminal proceedings, for the purpose of bringing [a person] before the competent legal authority on suspicion of his having committed an offence" (*Jecius v Lithuania* at para 50), derogated without any specific explanation from what the court stated in *Lawless*, and that it went too far. In *Lawless* the court recognised that article 5.1(c) covered three different types of situation. The judgment in *Lawless* stated (para 14) that the clause had to be construed in conjunction with article 5.3, with which it formed a whole; and that the obligation to bring a person arrested or detained in any of the circumstances contemplated by article 5.1(c) was "for the purpose of examining the question of deprivation of liberty or for the purpose of deciding on the merits". The minority in *Ostendorf* said that later case law had unduly restricted the purpose of bringing the detainee before the court to "deciding on the merits" and had done away with the possible purpose of "examining the question of deprivation of liberty". They favoured returning to *Lawless*, which did more justice to prevention as a possible justification for a

deprivation of liberty than the interpretation followed by the majority. They said at para 5 of their judgment:

> "An early, 'prompt' release, without any appearance before a judge or judicial officer, may occur frequently in cases of 'administrative' detention for preventive purposes. Even so, in such a situation it will be enough for the purpose of guaranteeing the rights inherent in article 5 of the convention if the lawfulness of the detention can subsequently be challenged and decided by a court."

26. Applying that approach to the facts, the minority said that the applicant was detained in order to prevent a brawl in connection with a football match. They were of the opinion that the police, faced with the situation of a large football event with the assembly of many aggressive supporters in which the applicant appeared and, as assessed by the authorities, planned to instigate fights, could reasonably consider it necessary to arrest and detain him. He was detained for approximately four hours. It did not appear that this period exceeded what was required in order to prevent the applicant from fulfilling his intentions. For those reasons they concluded that his arrest and detention were justifiable under article 5.1(c).

27. As to article 5.1(b), it is well established in the Strasbourg case law that an "obligation prescribed by law" within the meaning of the paragraph must be "concrete and specific" and that a general obligation to comply with the criminal law will not suffice: see, for example, *Schwabe v Germany* (2011) 59 EHRR 28, paras 70 and 73. The majority found that the requirement of specificity was satisfied on the facts because the obligation whose fulfilment was secured by the applicant's detention was not to arrange a brawl between Bremen and Frankfurt hooligans in the hours before, during and after the football match in the vicinity of Frankfurt. In the case of a negative obligation, it was necessary and sufficient to show that the applicant had taken clear and positive steps which indicated that he would not fulfil the obligation. For this purpose it was necessary that the person concerned was made aware of the specific act which he or she was to refrain from committing, and that the person showed himself or herself not willing to refrain from doing so (as the applicant had done by ignoring a police warning). They added that in the case of a duty not to commit a specific offence at a certain time and place, the obligation must be considered as having been fulfilled for the purposes of article 5.1(b) at the latest at the time when it ceased to exist by lapse of the time at which the offence at issue was to take place.

28. Judges Lemmens and Jaderblom disagreed, because the legislation under which the applicant was arrested did not specify any obligation which he failed to fulfil. Although the police specifically ordered him to stay with his group of fans,

the statutory obligation not to commit criminal or regulatory offences was in the view of the minority too general for the purpose of article 5.1(b). The cases on the subject all concerned obligations to perform specific acts. Things might have been different if the applicant had been the subject of a specific banning order, but that was not the case. His only legal obligation was the general obligation not to commit certain crimes or regulatory offences. That general obligation did not become specific and concrete merely because he was reminded of it in the context of a specific football match.

Analysis

29. The fundamental principle underlying article 5 is the need to protect the individual from arbitrary detention, and an essential part of that protection is timely judicial control, but at the same time article 5 must not be interpreted in such a way as would make it impracticable for the police to perform their duty to maintain public order and protect the lives and property of others. These twin requirements are not contradictory but complementary, and this is reflected in the statement in *Ostendorf* cited at para 22 above.

30. In balancing these twin considerations it is necessary to keep a grasp of reality and the practical implications. Indeed, this is central to the principle of proportionality, which is not only embedded in article 5 but is part of the common law relating to arrest for breach of the peace. In *Austin v Commissioner of Police of the Metropolis* [2009] 1 AC 564 Lord Hope made the point at para 34:

> "I would hold … that there is room, even in the case of fundamental rights as to whose application no restriction or limitation is permitted by the Convention, for a pragmatic approach to be taken which takes full account of all the circumstances. No reference is made in article 5 to the interests of public safety or the protection of public order as one of the cases in which a person may be deprived of his liberty … But the importance that must be attached in the context of article 5 to measures taken in the interests of public safety is indicated by article 2 of the Convention, as the lives of persons affected by mob violence may be at risk if measures of crowd control cannot be adopted by the police. This is a situation where a search for a fair balance is necessary if these competing fundamental rights are to be reconciled with each other. The ambit that is given to article 5 as to measures of crowd control must, of course, take account of the rights of the individual as well as the interests of the community. So any steps that are taken must be resorted to in good faith and must be

> proportionate to the situation which has made the measures necessary."

31. In this case there was nothing arbitrary about the decisions to arrest, detain and release the appellants. They were taken in good faith and were proportionate to the situation. If the police cannot lawfully arrest and detain a person for a relatively short time (too short for it to be practical to take the person before a court) in circumstances where this is reasonably considered to be necessary for the purpose of preventing imminent violence, the practical consequence would be to hamper severely their ability to carry out the difficult task of maintaining public order and safety at mass public events. This would run counter to the fundamental principles previously identified.

32. There is, however, a difficult question of law as to how such preventive power can be accommodated within article 5. The Strasbourg case law on the point is not clear and settled, as is evident from the division of opinions within the Fifth Section in *Ostendorf.* Moreover, while this court must take into account the Strasbourg case law, in the final analysis it has a judicial choice to make.

33. The view of the minority in *Ostendorf,* that article 5.1(c) is capable of applying in a case of detention for preventive purposes followed by early release (that is, before the person could practicably be brought before a court), is in my opinion correct for a number of reasons.

34. In the first place I agree with the Administrative Court that the situation fits more naturally within the language of article 5.1(c) than 5.1(b). On its plain wording article 5.1(c) covers three types of case, the second being when the arrest or detention of a person "is reasonably considered necessary to prevent his committing an offence."

35. There is force in the argument that the interpretation adopted by the majority in *Ostendorf* collapses the second into the first ("reasonable suspicion of having committed an offence") and is inconsistent with *Lawless.*

36. It is accepted by the police that English courts should treat *Lawless* as authoritative, but in that case the court was not concerned with a situation in which the police had every reason to anticipate that the risk necessitating the person's arrest would pass in a relatively short time and there was every likelihood of it ending before the person could as a matter of practicality be brought before a court. It would be perverse if it were the law that in such circumstances, in order to be lawfully able to detain the person so as to prevent their imminently committing an offence, the

police must harbour a purpose of continuing the detention, after the risk had passed, until such time as the person could be brought before a court with a view to being bound over to keep the peace in future. This would lengthen the period of detention and place an unnecessary burden on court time and police resources.

37. Some analogy may be drawn with *Brogan*, in which the court rejected the argument that at the time of the arrest the police must intend to take the arrested person before the court willy nilly, regardless of whether on investigation there was cause to do so.

38. In order to make coherent sense and achieve the fundamental purpose of article 5, I would read the qualification on the power of arrest or detention under article 5.1(c), contained in the words "for the purpose of bringing him before the competent legal authority", as implicitly dependent on the cause for detention continuing long enough for the person to be brought before the court. I agree therefore with Judges Lemmens and Jederblom in para 5 of their judgment in *Ostendorf* (cited at para 25 above) that in the case of an early release from detention for preventive purposes, it is enough for guaranteeing the rights inherent in article 5 if the lawfulness of the detention can subsequently be challenged and decided by a court.

39. I prefer to put the matter that way, rather than as the Court of Appeal did by inferring the existence of a conditional purpose ab initio to take the appellants before the court, although it makes no difference to the result. I have no disagreement with the Court of Appeal that the appellants would have been brought before a court to determine the legality of their continued detention, if it had been considered necessary to detain them long enough for this to happen. The case would then have been materially similar to *Nicol and Selvanayagam*, where the applicants' initial detention was preventive and they were later kept in custody and brought before the court to be bound over. It would be contrary to the spirit and underlying objective of article 5 if the appellants' early release placed them in a stronger position to complain of a breach of article 5 than if it had been decided to detain them for longer in order to take them before magistrates to be bound over.

40. As to article 5.1(b), I am inclined to the same view as the minority in *Ostendorf* that the obligation has to be much more specific than a general obligation not to commit a criminal offence (or, in this case, a breach of the peace), and that such a general obligation does not acquire the necessary degree of specificity by focusing narrowly on the particular facts or by the person concerned being given a reminder of it in specific circumstances. There are also practical considerations. The police may find it necessary to take action to prevent an imminent breach of the peace in circumstances where there is not sufficient time to give a warning. An example might be a football match where two unruly groups collide and the police

see no alternative but to detain them, or the ringleaders on both sides, immediately for what may be quite a short time. In summary, I would be concerned that in stretching article 5.1(b) beyond its previously recognised ambit the majority found it necessary to impose limitations which in another case might leave the police effectively powerless to step in for the protection of the public.

Conclusion

41. I would uphold the decision of the lower courts that the appellants' arrests and detention were lawful under article 5.1(c) and dismiss the appeals.