

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2011

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR JUSTICE SWEENEY

Between :

The Queen on the application of Joshua Moos and Hannah McClure	<u>Claimant</u>
- and -	
The Commissioner of Police of the Metropolis	<u>Defendant</u>

Michael Fordham QC and Iain Steele (instructed by **Bindmans**) for the **Claimant**
Monica Carss-Frisk QC and David Pievsky (instructed by **Met. Police**) for the **Defendant**

Hearing dates: 22nd, 23rd and 24th March 2011

Judgment

President of the Queen's Bench Division

This is the judgment of the Court

Introduction

1. On 1st April 2009, there were two large demonstrations in the City of London. They were in protest against the G20 Summit, which was to take place in London on the following day, when there were to be further demonstrations. The first of the two demonstrations on 1st April 2009 was outside the Royal Exchange towards the Bank of England. The second was a quarter of a mile or so away in Bishopsgate outside a building called the Carbon Exchange. This was referred to as the Climate Camp. The Royal Exchange "meltdown" demonstration was disorderly to the point of serious violence. At one point, a branch of the Royal Bank of Scotland in Threadneedle Street was attacked and set on fire and computers were damaged. The Climate Camp demonstration was less disorderly and only intermittently and to a much lesser extent violent. Some of those who took part in the Climate Camp demonstration brought tents and cooking equipment and put their tents up in the road intent on staying there overnight. This demonstration completely blocked Bishopsgate, a four lane highway constituting a major thoroughfare into and out of the City to the North-East.

2. There quite soon came a time when the police decided to deal with the Royal Exchange demonstration by containing it within a police cordon which blocked all five of the ways out. This was followed towards the evening by a dispersal procedure by which the Royal Exchange demonstrators were allowed to leave in small numbers, and they did so. This Royal Exchange containment is not criticised in these proceedings as unlawful. At the same time as they began the Royal Exchange dispersal, the police decided to contain the Climate Camp demonstration within Bishopsgate. They did this, not because they believed that, if it was uncontained, the Climate Camp demonstration alone would result in an imminent breach of the peace, but because they believed that otherwise the more violently disposed demonstrators from the Royal Exchange would join (“hijack”) the Climate Camp and that breaches of the peace would thereby occur.
3. The main claim in these judicial review proceedings is that the containment of the Climate Camp was unnecessary and unlawful and the court is asked so to declare. Other more specific complaints of unlawfulness are made which criticise police action at and in relation to the Climate Camp.
4. Collins J, in giving permission to bring these proceedings, questioned the appropriateness of a judicial review claim, suggesting that a witness action might be more appropriate. He was persuaded to give permission for judicial review, but observed that the claim would have to be limited to examine the actions and decisions of senior police officers. The court would not entertain claims that individual more junior police officers acted improperly if this was not the result of more general senior decision or instruction.
5. The first and main police witness was CS Michael Johnson who was the Bronze officer operationally in charge of the police operation for both demonstrations. He made a long witness statement and directions were given enabling him to be cross-examined, as he was, on five limited topics. He made a contemporaneous log of events during the day. There were witness statements also from three sub-bronze officers, Chief Inspectors John Dale, Neil Moscrop and Michael Dod, each of whom also had logs. There were statements from three claimants, one of whom, Chris Abbott, ceased to be a claimant in the course of the proceedings, and statements from 28 more junior police officers.
6. The police were aware that demonstrations were likely on 1st April 2009, but had little or no prior contact with those organising them, being told that the Climate Camp was a non-hierarchical organisation.

The Law

7. It is convenient at the outset to refer to two House of Lords authorities. *Laporte v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105 concerned a protest at an RAF airbase in Gloucestershire used by the US Air Force. Passengers in coaches from London intending to travel to the protest were intercepted by police before they reached their destination. The intercepting police concluded that some of those on the coaches were intent on causing a breach of the peace. They were not arrested, but were made to return to the coaches which were escorted by the police back to London. On appeal against decisions of lower courts that preventing participation in the demonstration had been necessary and proportionate, the House of

Lords held that the common law entitled and bound police officers and citizens alike to seek to prevent, by arrest or action short of arrest, any breach of the peace occurring in their presence or which they reasonably believed was about to occur. If no breach of the peace had actually occurred, a reasonable apprehension of an imminent breach of the peace was required before any form of preventive action was permissible. There had been no indication of any imminent breach of the peace when the coaches were intercepted, nor was it considered likely to occur. The action preventing the claimant and others from continuing to the demonstration had been an interference with their right to demonstrate at a lawful assembly which was not prescribed by domestic law.

8. All the judgments in *Laporte* emphasise that the common law power and duty to take reasonably necessary steps to prevent an apprehended breach of the peace depends on the apprehended breach being imminent. Lord Mance, for instance, at paragraph 141 regarded the reasonable apprehension of an imminent breach of the peace as an important threshold requirement, which must exist before any form of preventive action is permissible at common law. Where a reasonable apprehension of an imminent breach of the peace exists, then the preventive action taken must be reasonable and proportionate. Lord Mance then said later in the same paragraph:

“The requirement of imminence is relatively clear-cut and appropriately identifies the common law power (or duty) of any citizen including the police to take preventive action as a power of last resort catering for situations about to descend into violence. That is not to suggest that imminence falls to be judged in absolute and purely temporal terms, according to some measure of minutes. What is imminent has to be judged in the context under consideration, and the absence of any further opportunity to take preventive action may thus have relevance.”

To like effect is Lord Rodger of Earlsferry at paragraph 69, where he said that there is no need for the police officer to wait until an opposing group hoves into sight before taking action. That would be to turn every intervention into an exercise of crisis management. See also Lord Brown of Eaton-under-Heywood at paragraph 114, who added that even when a breach of the peace is reasonably judged imminent, the police must still take no more intrusive action than appears necessary to prevent it.

9. Lord Carswell said at paragraph 102:

“I agree with your Lordships that the imminence or immediacy of the threat to the peace is an essential condition, which should not be diluted. As Lord Rodger has pointed out, para 67, the test has to be applied in the conditions of today, which may include the availability of better information to police officers on the ground about the way in which events are unfolding. I do consider, however, that it can properly be applied with a degree of flexibility which recognises the relevance of the circumstances of the case. In particular it seems to me rational and principled to accept that where events are building up inexorably to a breach of the peace it may be possible to regard

it as imminent at an earlier stage temporarily than in the case of other more spontaneous breaches.”

10. Lord Rodger said at paragraph 84 that provided there was no other way of preventing an imminent breach of the peace, under the common law a police officer could stop a coachload of protesters from proceeding further, even although those on board included entirely peaceful protesters. Lord Rodger had said at paragraph 82 that, as *O’Kelly v Harvey* (1882) 10 LR Irl 285; (1883) 14 LR Irl 105 shows, where it is necessary in order to prevent a breach of the peace, at common law police officers can take action (in that case dispersing a meeting) which affects people who are not themselves going to be actively involved in the breach – see also Lord Rodger at paragraph 78.
11. Their Lordships considered the case of *Moss v McLachlan* [1985] 1 RLR 76, Lord Rodger in these terms in paragraph 70:

“The closest parallel to the present case is *Moss v McLachlan* [1985] IRLR 76, a test case brought by the National Union of Mineworkers to clarify the law on police road blocks. These were in widespread use during the miners’ strike which was in progress at the time. In April 1984 the police stopped cars carrying striking miners as they left the motorway at a point near four collieries in the Nottingham coalfield where work was continuing. The miners in the cars were intending to picket one or more of the pits. Two of the pits were between a mile and a half and two miles from the exit, while the two others were between four and five miles away. In the atmosphere of the time, and in view of previous events, it was easy for senior police officers to foresee that, if the striking miners reached the working pits, at some point there would be violent clashes between the striking and working miners. They therefore set up a police cordon at the motorway exit so as to be in a position to avert any clashes by keeping the two forces apart. When the striking miners tried to break through the cordon, they were arrested and charged with obstructing a police officer in the execution of his duty in contravention of section 51(3) of the Police Act 1964. The miners were convicted and, on appeal, contended that the officers at the cordon had not been acting in the execution of their duty since no breach of the peace was imminent at the motorway exit and therefore the officers had no power to stop them at that point. In a reserved judgment the Divisional Court rejected the argument.

In my view they were right to do so, even though, as I have already pointed out, their reasoning was flawed in an important respect. I consider that, as *Skinner J* held [1985] IRLR 76, 79 and para 27, the justices were entitled to hold that in all the circumstances, because of the proximity of the pits and the availability of cars, a breach of the peace was “imminent, immediate and not remote”. In the present case, on the basis of

the information and advice available to him, Chief Superintendent Lambert considered that a breach of the peace would occur if the coaches and the protesters reached Fairford. It was only just over three miles away – a few minutes by coach. In these circumstances, if Mr Lambert had concluded that a breach of the peace at Fairford was imminent, I might have been disposed to accept that. But it is unnecessary to decide the point since Mr Lambert, who knew all the relevant circumstances, in fact considered that, when the coaches reached Lechlade, a breach of the peace was not imminent. That being so, he had no power, and was under no duty, to take steps to prevent the breach of the peace. It follows that stopping the coaches from proceeding further was unlawful.”

12. We derive from *Laporte* the following (among other) propositions:
- (1) for a police officer to take steps lawful at common law to prevent an apprehended breach of the peace, the apprehended breach must be imminent;
 - (2) imminence is not an inflexible concept but depends on the circumstances;
 - (3) if steps are to be justified, they must be necessary, reasonable and proportionate;
 - (4) depending on the circumstances, steps which include keeping two or more different groups apart may be necessary, reasonable and proportionate, if a combination of groups is reasonably apprehended to be likely to lead to an imminent breach of the peace; and
 - (5) again depending on the circumstances, where it is necessary in order to prevent an imminent breach of the peace, action may lawfully be taken which affects people who are not themselves going to be actively involved in the breach.
13. *Austin v Commissioner of Police of the Metropolis* [2009] 1 AC 564 concerned a violent and disorderly demonstration in London which converged on Oxford Circus. The police imposed a cordon round the area enclosing thousands of people who could only leave with the permission of the police. A demonstrator, who was not herself violent but intent on peaceful protest and who had been thus contained for about 7 hours, claimed damages for false imprisonment and breach of her right to liberty under Article 5 of the European Convention on Human Rights. The claim failed before the judge and in the Court of Appeal, who held that the detention or imprisonment were not unlawful. The House of Lords dismissed the demonstrators’ appeal, holding that the court should adopt a pragmatic approach taking account of all the circumstances. Crowd control measures resorted to for public order and public safety reasons had to take account of the rights of the individuals and the interests of the community. Such measures fell outside the ambit of Article 5 provided that they were not arbitrary in that they were resorted to in good faith, were proportionate and enforced for no longer than was reasonably necessary. They constituted a restriction of liberty, not a deprivation of it. The police had been engaged in an unusually difficult exercise of crowd control which had as its aim the avoidance of personal injuries and damage to property and the dispersal as quickly as possible of a crowd bent on violence and impeding the police. The police had acted reasonably and

properly to prevent serious disorder and violence. The restriction of the claimants' liberty had not been an arbitrary deprivation of liberty and Article 5 was not applicable.

14. Lord Hope of Craighead noted at paragraph 10 that the judge had held that the police reasonably believed that all those within the cordon, including the appellant, were demonstrators about to commit a breach of the peace. The Court of Appeal upheld the appellants' appeal against this finding, but held that the police did what was necessary to avoid an imminent breach of the peace, so that, in this very exceptional case, the actions of the police were lawful at common law.
15. The Court of Appeal had held more generally that, where a breach of the peace was taking place or reasonably thought to be imminent, the police could not interfere with or curtail the lawful exercise of rights of innocent third parties unless they had taken all other possible steps to prevent the breach or imminent breach of the peace and to protect the rights of third parties. This should include making proper advance preparations. Only where the police reasonably believed that there was no other means whatsoever to prevent a breach or imminent breach of the peace could they as a matter of necessity curtail the lawful exercise of their rights by third parties. The test of necessity would be met only in truly extreme and exceptional circumstances. The action taken had to be both reasonably necessary and proportionate. On the facts found, containment of all those present had been lawful at common law, since it had been necessary to prevent an imminent breach of the peace by others. The policy of leaving to police officers a discretion to release individuals was rational, sensible and necessary.
16. The appeal to the House of Lords was limited to the false imprisonment and Article 5 claims. Lord Hope said at paragraph 36 in the House of Lords that in almost every situation it would be an impossible exercise, especially in an emergency, for the police to have to identify each and every individual in the crowd to determine whether it was necessary in his particular case for his liberty to be restricted.
17. Lord Neuberger said at paragraphs 58-60:

“The police are under a duty to keep the peace when a riot is threatened, and to take reasonable steps to prevent serious public disorder, especially if it involves violence to individuals and property. Any sensible person living in a modern democracy would reasonably expect to be confined, or at least accept that it was proper that she could be confined, within a limited space by the police, in some circumstances. Thus, if a deranged or drunk person was on the loose with a gun in a building, the police would be entitled, indeed expected, to ensure that, possibly for many hours, members of the public were confined to where they were, even if it was in a pretty small room with a number of other people. Equally, where there are groups of supporters of opposing teams at a football match, the police routinely, and obviously properly, ensure that, in order to avoid violence and mayhem, the two groups are kept apart; this often involves confining one or both of the groups within a relatively small space for a not insignificant period.

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Or if there is an accident on a motorway, it is common, and again proper, for the police to require drivers and passengers to remain in their stationary motor vehicles, often for more than an hour or two. In all such cases, the police would be confining individuals for their own protection and to prevent violence to people or property.

So, too, as I see it, where there is a demonstration, particularly one attended by a justified expectation of substantial disorder and violence, the police must be expected, indeed sometimes required, to take steps to ensure that such disorder and violence do not occur, or, at least, are confined to a minimum. Such steps must often involve restraining the movement of the demonstrators, and sometimes of those members of the public unintentionally caught up in the demonstration. In some instances, that must involve people being confined to a relatively small space for some time.

In such cases, it seems to me unrealistic to contend that article 5 can come into play at all, provided, and it is a very important proviso, that the actions of the police are proportionate and reasonable, and any confinement is restricted to a reasonable minimum, as to discomfort and as to time, as is necessary for the relevant purpose, namely the prevention of serious public disorder and violence.”

Thus, a process of police containment of a demonstration may be lawful at common law and not a violation of Article 5 of the Convention, if the stringent requirements enunciated by the Court of Appeal and the House of Lords are fulfilled. It was common ground before us that the circumstances in which police containment action would be lawful at common law are for practical purposes the same as the circumstances in which there would be no violation of Article 5.

The facts

18. On 1st April 2009, the police had had information tending to suggest that disorder in the City of London was a very real possibility. In the event, the numbers of demonstrators was significantly higher than the police had anticipated. Mr Johnson’s statement gives details of events and information known to the police beforehand. A G20 meltdown website advertised the event at the Bank of England as the convergence at 12 noon of protestors moving behind four Horses of the Apocalypse from London Bridge, Cannon Street, Moorgate and Liverpool Street stations. Meanwhile the Climate Camp website requested those attending to snoop to the Carbon Exchange in Bishopsgate from various directions with tents and sleeping bags. Those concerned had not enabled the police to liaise with organisers in advance.
19. At 10.24am an armoured vehicle containing people dressed up as police officers was removed from the area of Liverpool Street station. Soon after 11.00am four crowds were moving towards the Royal Exchange from the four railway stations. Within about half an hour the number of demonstrators at or near the Royal Exchange was

described by Mr Johnson as thousands. They were being managed by loose police filter cordons, which soon after 12.00 noon became severely strained. Bottles were being thrown. At about this time there were some 2000 demonstrators at the Climate Camp, many of whom were setting up tents.

20. At 12.25pm Mr Johnson decided to impose full containment at the Royal Exchange at all exit points in order to prevent breaches of the peace. He had two groups of protestors at the Royal Exchange and the Climate Camp estimated at 4000 and 2000 respectively. He feared that if he did not contain the Royal Exchange demonstrators, there would be groups running amok in the City with damage to property, and people attacked or put in fear of attack. He based this on the mood and actions of the crowd at the Royal Exchange, previous history and intelligence about those organising the events. He also had concerns that the larger crowd would join the smaller crowd and become totally uncontrollable. At about this time, the Climate Camp crowd was blocking Bishopsgate with tents, but were not hostile. The police put a filter cordon at each end of Bishopsgate which allowed people to pass through.
21. There was a break in the cordon at the Royal Exchange at around 1.00pm and the police had been the object of items thrown at them by the crowd. One officer was injured on the chin and at least one officer was concerned for her personal safety. Missiles were thrown and smoke bombs let off. At about 1.30pm, it was reported to Mr Johnson that the numbers at the Climate Camp had increased to between 3000 to 4000. There was some disorder with bottles and coins being thrown. It was not thought that full containment in Bishopsgate was then necessary, but it would be put in place if they tried a large breakout. There was no real disorder and many of the crowd were voluntarily complying with the filter cordons, leaving in small groups. At 1.48pm, Mr Johnson was told that some of those at the Climate Camp were putting on masks. At 1.53pm he was told that the Royal Bank of Scotland building in Threadneedle Street was under attack, although he at first mistook this message as referring to the Royal Bank of Scotland building in Bishopsgate. At about 2.10pm, the protestors set fire to the Threadneedle Street building. There was serious damage and looting of computer equipment. At 2.50pm, there was break out of the Royal Exchange crowd at Queen Victoria Street. They were prevented from getting to the Stock Exchange, but some of them broke into a disused building and threw things from the roof. By 3.38pm, the breakaway crowd in Queen Victoria Street was growing in size. Mr Johnson instructed the police to use reasonable force to move them back along Queen Victoria Street towards the Royal Exchange. At 4.28pm he was told that about 1000 protestors were running along Cannon Street smashing windows. At 4.40pm, a hard core group of 200 protestors were reported as having joined the Climate Camp protest with missiles being thrown. There was an attack on a police van at 5.15pm.
22. At 4.52pm, Mr Johnson decided that controlled dispersal of the more or less contained Royal Exchange crowd should begin at 7.00pm. The crowd was still hostile with sporadic violence. He invoked section 14 of the Public Order Act 1986, which enables the senior police officer to impose conditions on a public assembly. He did this, believing that serious disorder, damage and disruption would occur unless the Royal Exchange assembly finished before the public transport system closed. He imposed the condition that the assembly should be finished by 7.00pm. The Climate Camp demonstration was still then being policed by filter cordons.

23. Mr Johnson considered that, when the Royal Exchange dispersal took place, he did not want the two groups joining up under any circumstance, as he feared widespread violence and breach of the peace. He decided to disperse the Royal Exchange crowd from two exits in Princes Street and Queen Victoria Street, that is those away from Bishopsgate, to try to prevent those leaving from going towards the Climate Camp. At the time, he was told that the crowd at the Climate Camp was volatile and that tyres on police vehicles had been slashed. He had been at the Special Operations Room in Lambeth, but returned to the Climate Camp where, at 6.17pm, he decided to put in a containment there to start when the Royal Exchange dispersal began, i.e. at 7.00pm. His rationale was that there were about 4-5000 demonstrators at each of the demonstrations. The Climate Camp was relatively peaceful, but the Royal Exchange groups were not. There had been some disorder and violence at the Climate Camp and some of the protestors had put on masks. He considered that there was a real danger of a breach of the peace at the Climate Camp if the groups were allowed to mix, and he believed that this would happen imminently, which he explained in his witness statement as within a few minutes allowing for the short distance between the two demonstrations. He said that the major change which caused him to contain the Climate Camp was the dispersal of people from the Royal Exchange who had been acting in a disorderly and criminal manner. It was not practical to find out which individuals at the Climate Camp were intent on disorder or criminality. He had however to prevent those groups from getting out and mixing with the disorderly and violent elements from the Royal Exchange. The converse applied to the troublemakers from the Royal Exchange.
24. Dispersal of the Royal Exchange crowd released some police resources to deploy to the Climate Camp. But as the groups were released from the Royal Exchange, Mr Johnson considered there was an imminent threat of disorder by those released from the Royal Exchange going to the Climate Camp.
25. When the containment of the Climate Camp was imposed, Mr Johnson expected officers to use their discretion to release non-protestors and protestors with a genuine and pressing reason for leaving who were not believed to be intent on disorder or criminality. This had been the briefing he had given to his sub-bronze officers at the Royal Exchange.
26. Mr Johnson ordered containment of the Climate Camp demonstration at 7.07pm. The Royal Exchange dispersal began at 7.25pm and was complete by 8.30pm. The evidence indicates that there were four ways by which the Climate Camp demonstration in Bishopsgate could be approached, that is (a) from the south via Gracechurch Street, (b) from the north via Wormwood Street or Camomile Street, (c) from Great St Helens Street, which is a side street into Bishopsgate from the eastern side approximately level with the southern end of the Carbon Exchange building and leading through to St Mary Axe and then to Leadenhall Street, and (d) a street or alleyway on the west side of Bishopsgate opposite Great St Helens Street, the name of which was not given in evidence. You would need a fair knowledge of the geography of the City to find these two streets from Princes Street or Queen Victoria Street.
27. Mr Johnson's fear that dispersed Royal Exchange protestors might try to join those at the Climate Camp was justified to the extent that 200-300 people from the Royal Exchange found their way into Gracechurch Street to the south of Bishopsgate, where they were throwing missiles at the police, lighting fires and damaging property.

Somewhat later, at about 9.35pm, other Royal Exchange protestors found their way to Wormwood Street and tried to approach the Climate Camp from the north. Meanwhile the risk of infiltration from the two side streets was dealt with by a line of heavily protected police officers with batons and small shields pushing the southern line of the Climate Camp demonstration, which had been formed of a rough barricade of bicycles, some 30 metres north so that it was to the north of the two side streets. There is a short clip of this part of the operation on a DVD which is in evidence and which we have seen, and some individual police officers have given evidence about it in their witness statements. The advance began at about 7.04pm and lasted for perhaps 25 minutes. The claimants' case is that the advancing police used their shields to push or strike protestors back. This is shown on the DVD. There was some hitting or punching by the police and by some of the demonstrators. The claimants' witness statements and that of Mr Abbott describe what they say happened. Mr Abbott's partner, who needed medical attention, was not allowed to leave. Mr Moos, who was dehydrated, was refused permission to leave once containment was imposed.

28. The Royal Exchange protestors who arrived at Wormwood Street were throwing bottles, coins and other articles at police officers and causing major difficulties to the planned Climate Camp dispersal. Mr Johnson decided to deal with this group first. He invoked section 14 of the 1986 Act at 9.10pm but dispersal did not then begin. At 10.30pm, there were some arrests and the remaining Wormwood Street protestors dispersed voluntarily. The dispersal of the Climate Camp then began at about 11.10pm. The cordon at Wormwood Street was opened to allow small groups to leave. Most of them did so and were escorted by police to Liverpool Street station. By 11.44pm most had left, but 200-300 protestors were refusing to leave. Many of them were in tents and were refusing to move. Others were sitting in the roadway or chained to railings and the like. Mr Johnson therefore imposed a condition under section 14 of the 1986 Act that the Climate Camp must stop. He considered that the disruption to traffic in this main City thoroughfare could not go on and his police resources were limited. The dispersal was achieved, according to the claimants, by lines of police officers in riot gear, some with raised batons who physically drove the remaining protestors back, striking some of them. Ms McClure saw someone fall to the ground to be trampled under foot. The dispersal was complete by around 1.30am when Mr Johnson went back to the Operations Room in Lambeth. According to his log, he had been on duty in charge of the policing of these demonstrations since 6.00am the previous morning.

The claimants' claim

29. The claimants in these proceedings claim declarations to the effect that:
- (1) the decision to contain the Climate Camp between 7.00pm and 11.15pm on 1st April 2009 was unlawful;
 - (2) there was an unlawful failure to make appropriate and timely release arrangements while the containment was in place;
 - (3) there was an unlawful use of force against some of those who were contained resulting from a failure to give adequate guidance and instruction to the officers involved; and

- (4) the decision to impose conditions purportedly under section 14 of the 1986 Act to disperse those taking part in the Climate Camp protest was unlawful.

There was originally a further claim to the effect that it was unlawful to prevent would-be protestors from joining the Climate Camp, which Mr Fordham QC did not pursue. Of the four issues for decision, (1) and (3) are the most important and are linked. We say at once that we do not find issue (4) persuasive, for reasons which we shall give later in this judgment.

30. Mr Johnson was cross-examined before us on five, largely general issues. The first was whether the police had reasonably apprehended that there would be an imminent breach of the peace at the Climate Camp. In summary, Mr Johnson's evidence was to this effect. There had been serious violence at the Royal Exchange and the containment there was necessary to prevent serious breaches of the peace. Between 12.30pm and 7.00pm, there had been some disorder and violence at the Climate Camp, but not such as by itself to require containment. This included the fact that it was reported to Mr Johnson that at 4.40pm a group of 200-300 hardcore protestors had joined the Climate Camp. However, the Climate Camp crowd became more volatile during the afternoon and the mood changed quite dramatically as time went by. There was increased tension and the crowd became more aggressive. The deciding factor to implement containment at the Climate Camp was the beginning of the dispersal operation at the Royal Exchange and the two were timed to coincide. The Royal Exchange dispersal was the tipping point.
31. It is, we think, clear that the situation at the Climate Camp up to 7.00pm, taken alone, did not justify containment there, although we accept Mr Johnson's evidence that, in his view, the situation at the Climate Camp before 7.00pm presented a strong possibility that the police would have to react to more serious violence there than had occurred during the afternoon. However that may be, the justification for the Climate Camp containment has to depend on the proposition that dispersal of violent protestors from the western end of the Royal Exchange demonstration created a reasonable apprehension of an imminent breach of the peace at the Climate Camp, or possibly elsewhere but including those at the Climate Camp. There were in reality two possibilities – one that dispersed Royal Exchange protestors would join the Climate Camp; the other that Climate Camp protestors would break out to join dispersed Royal Exchange protestors on the streets of the City. The first of these was perhaps more likely than the second, and it was to this which Mr Johnson's evidence was mainly directed.
32. The second topic of Mr Johnson's cross-examination was the linked question whether, to prevent violence and risk of injury to persons or property, the police had a practical alternative to containment of the Climate Camp protestors, that is the use of cordons to turn away protestors who had dispersed from the Royal Exchange. The Royal Exchange protestors were dispersed in small groups from the western end of that demonstration at Princes Street and Queen Victoria Street. As Mr Johnson agreed, no one could go directly from the Royal Exchange to Bishopsgate because Threadneedle Street, Cornhill and King William Street were blocked by police cordons. There was a circuitous route on reasonably main streets by Princes Street, Lothbury, Throgmorton Street, Old Broad Street and Wormwood Street which would reach the north end of the Bishopsgate demonstration, and which incidentally is a main direct route from Bank to Liverpool Street station (where some of the Royal Exchange

protestors had arrived and gathered). To the south, a circuitous route could reach Gracechurch Street (and Fenchurch Street station), which would take you to the southern end of the Bishopsgate demonstration. Each of these two routes were in fact used by smallish groups of Royal Exchange protestors, and those trying to join the Climate Camp from the north caused trouble and had to be removed by the police.

33. The two other routes by which protestors from the Royal Exchange might have reached the Climate Camp in Bishopsgate (but do not appear to have done so) were by Great St Helens Street from St Mary Axe and an alleyway opposite Great St Helen Street leading to and from Old Broad Street. There is some incomplete evidence that officers were deployed in these areas. It would not be surprising if Mr Johnson or others were unfamiliar with the precise geography of these smaller streets.
34. Mr Johnson's evidence was that he did not have the resources to seal off all roads and that this would have been physically impossible. We accept this evidence, but are not convinced that it would have been impossible to seal off Great St Helens Street and the unnamed alley way opposite. It is evident that there was a decision to instruct officers to push the southern end of the Climate Camp approximately 20 to 30 metres to the north, so that the two side streets were not within the area occupied by the Climate Camp, although Mr Johnson told us that this was not his decision. Other evidence suggests that it was CI Dale who made the decision. We think it was a broadly sensible decision, subject to the details of the pushing operation to which we will come. It was put to Mr Johnson that cordons of police could have simply blocked Great St Helens Street and the alleyway opposite and that to an extent this was done anyway. He did not agree, and mentioned questions of police resources. Nor did he agree that it would have been possible and sensible to leave loose cordons at the possible exits from the Climate Camp (which had been effected during the afternoon) and to wait and see if general containment became necessary. It was suggested that he already had the resources necessary for full containment of the Climate Camp and that this could be put in place quickly if it became necessary. He said that this was not a viable plan and again mentioned the matter of police resources.
35. The next issue on which Mr Johnson was cross-examined was whether there was a release policy which could and should have been adopted other than the one communicated, which concerned non-participants. We are again concerned here, not with the actions of individual officers, but with the instructions they were given. Mr Johnson's log records a briefing to his sub-bronze officers for the Royal Exchange at something before 12.00 noon that it was to be full containment, but utilising discretion. This meant allowing people out who were obviously distressed or who could prove that they were not involved in demonstrating or likely to cause disorder. There is no equivalent recorded instruction for the Climate Camp containment, but Mr Johnson said that his instructions again were that officers should use discretion to allow those who could show that they were not involved to leave or if it was safe. The individual officers had to make a judgment and it was a difficult decision to make. He agreed that this aspect of the operation had been criticised, for example by the House of Commons Home Affairs Select Committee. We see no reason to doubt but that instructions as to release were given for the Climate Camp in terms equivalent to those recorded for the Royal Exchange. The evidence indicates that in some individual cases officers declined to release people who should have been released if

the instructions were adhered to. Mr Johnson's evidence was that he did see some people being allowed to leave, and, as to the northern end of the Bishopsgate containment, the large crowd from the Royal Exchange that had gathered at Wormwood Street had to be cleared first. He did not agree that with the police resources available to him it was possible to allow a general dispersal from the south of the Climate Camp soon after 8.30pm.

36. The next issue on which Mr Johnson was cross-examined was whether there were instructions as to the use of force which could and should have been given to protect the Climate Camp demonstrators from aggressive advances to compress them into a smaller space and later to clear them away. As to this, Mr Johnson agreed that a decision to contain predicated the possibility of force or violence, either by the police or by protestors reacting to the containment. He said that he would not have used force against a peaceful crowd. His officers must be aware that some in the crowd would be violent towards the police. There were two uses of force, each of which was co-ordinated. One was to push the southern front of the Climate Camp approximately 20 to 30m. back to the north. This was not done on his instructions. The other was the removal of the final group of protestors at around 12.50am. His instructions were that any force used should be reasonable and he said that the officers were trained in this. There were no specific instructions about the use of shields, although officers had had general training in the use of short shields. The tactic was to use the flat of the shield to push. There were circumstances in which an individual officer might decide to use his shield. There is evidence from one or more individual officers that they were instructed to use shield strikes. The House of Commons Home Affairs Select Committee was critical, among other things, of the use of shield strikes and in particular of lack of communication and training and the placing of untrained officers in the front line of public protests. The Committee report includes consideration of what happened at G20 protests on 2nd April 2009, the following day.
37. The last subject of Mr Johnson's cross-examination was whether the police had a practical alternative to dispersal (with force, if necessary) of the last remaining Climate Camp protestors to prevent obstruction of a major arterial route. It is suggested that they should have been allowed to continue with the camp overnight. Mr Johnson said that Bishopsgate is a major arterial road into and from the City. There was some danger to buildings and his resources were limited, not least because there were to be further G20 demonstrations on the following day. Those apparently intent on remaining were camped in the road, and too numerous to be accommodated on the pavements, even if they would move there. They had tents and cooking utensils. They were those most intent on disorder or violence. The demonstration had become an unlawful obstruction of the highway and it was necessary to invoke section 14 of the 1986 Act to enable local and through traffic once more to use it.

The Claimants' case

38. Mr Fordham submits that the use of containment as a police tactic to control demonstrations is controversial. The policing of the G20 protests has been the subject of considerable controversy as contained in the House of Commons Home Affairs Committee's report (HC 418, Eighth Report of Session 2008-9, 23rd June 2009), to which we have referred; a report of HM Inspectorate of Constabulary *Policing of the G20 Protests*, whose recommendations were fully endorsed by a report *Responding to G20* by the Metropolitan Police Authority's Civil Liberty's Panel. We have been

provided with copies of each of these Reports. The Home Affairs Committee was particularly concerned about the police preventing peaceful protestors and others innocently caught up in a protest from leaving a contained area; the use of inexperienced officers; and the overzealous use of section 14 of the 1986 Act. The Independent Police Complaints Commission was highly critical of the treatment of some individuals, including Chris Abbott, who complained of their treatment.

39. Mr Fordham refers to a number of authorities including *Redmond-Bate v Director of Public Prosecutions* (1999) 163 JP 789 for the proposition that coercive use of force (by arrest or containment) must depend on a sufficiently real and present threat of breach of the peace coming from the person to be arrested or contained. In *Redmond-Bate*, the police arrested three peaceful preachers when some members of a crowd gathered round them threatened hostility. Sedley LJ said that an imminent breach of the peace by itself was not in these circumstances enough. It was also necessary to determine where the threat was coming from, and for the police to direct preventive action there. So Mr Fordham submits that, if the police reasonably apprehended breaches of the peace by dispersing Royal Exchange protestors, the police preventive action should have been directed against them and did not justify containment of the Climate Camp protestors who were in the main peaceful. We see the force of this submission.
40. Mr Fordham submits that at 6.17pm, when the decision to contain the Climate Camp was taken, there was no sufficient apprehended imminent breach of the peace by any of those participating in the Climate Camp demonstration to justify containment. That in our judgment is correct. The Climate Camp was largely not hostile and such violence or disorder as there had been there during the afternoon was sporadic. The police were able to cope with it. The very fact that the Climate Camp containment was not put in place until 50 minutes after it had been decided to do so shows that there was no apprehended imminent breach of the peace at the Climate Camp at 6.17pm. When it was put in place, it was at most precautionary. Mr Fordham is also, we think, correct to submit that, apart from the possibility of dispersing Royal Exchange protestors mixing with those at the Climate Camp, there never was a reasonable apprehension of imminent breaches of the peace at the Climate Camp. Mr Fordham submits that the defendants' contention that there were groups within the Climate Camp who were intent on disorder or criminal damage is largely unsupported by the evidence. We think this is correct, although Mr Johnson did say as much in general terms. This was one part of Mr Johnson's otherwise truthful and straightforward evidence which we did not find convincing. Apart from the reported arrival of 200-300 hardcore protestors at around 4.40pm, the specific incidents of disorder relied on had occurred earlier in the afternoon. The real justification relied on for the Climate Camp containment was the dispersal of the Royal Exchange demonstration and the perceived need to prevent some of those dispersed from hijacking the relatively peaceful Climate Camp.
41. Mr Fordham submits that at 7.07pm and thereafter there was no sufficient apprehension of any breach of the peace at the Climate Camp to justify containment. Even if dispersed Royal Exchange protestors were intent on joining the Climate Camp and intent on violence there, there was no reasonable apprehension by those putting the containment in place that it was likely to occur. The two obvious routes to Bishopsgate were quite a distance on foot from the western end of the Royal

Exchange demonstration at Bank where the dispersals were occurring. If Royal Exchange protestors did approach the Climate Camp, an appropriate cordon could be formed at short notice. In the event, it was not until around 9.30pm that some Royal Exchange protestors reached the northern end of the Bishopsgate demonstration via Wormwood Street. This is, of course, hindsight but the journey required made delay quite likely. It is not clear to us that the protestors who reached Gracechurch Street ever got as far as the southern end of the Climate Camp. There was no evidence that the police had to take expansive measures to deal with them. It may well be that they simply made their way to Fenchurch Street station. Mr Fordham submits that there was no reasonable apprehension of an imminent breach of the peace. No breach of the peace was about to be committed nor on the point of happening in the near future. This was not a case where there was no need to wait until an opposing group hove into sight, since there was no opposing group and no groups on the point of converging. It would not be crisis management to wait to see how things developed. The Royal Exchange protest had dispersed by 8.30pm after which any apprehension of an imminent breach of the peace was further lessened. If the containment at the Climate Camp was originally justified, it ceased to be so soon after 8.30pm when the Royal Exchange demonstration had dispersed. Mr Fordham submits that there are parallels with *Laporte* where the police prematurely contained a large number of people who were not likely to cause violence for a number of hours, if at all.

42. Mr Fordham further submits that the Climate Camp containment was not reasonably targeted at those who it was thought might cause violence. Disorderly Royal Exchange protestors could have been the target, and any who were not a threat to the peace could and should have been allowed to join the camp. The Climate Camp was not a violent crowd, although some individual police officers appear from their note books to have thought wrongly that they were and met resistance with force associated with policing a violent mob, which the Climate Camp essentially was not. Advancing towards the Climate Camp in riot gear and using shields and batons offensively was a totally disproportionate response to any need to keep Royal Exchange protestors away. An absolute cordon keeping the Climate Camp protestors in was not necessary, regardless of whether a cordon keeping others out might have been. It was entirely possible to distinguish between the two groups. There is no evidence whether any alternative to containing the Climate Camp demonstration was considered, other than Mr Johnson's answer in cross-examination that cordoning the Royal Exchange protestors out was not possible because of lack of police resources. Furthermore, lawful release arrangements should have differentiated between those who were a threat to the peace and those who were not. There was at least confusion as to what instructions were given about release as police evidence to the Metropolitan Civil Liberties' Panel showed (see page 31 of that report).
43. Mr Fordham submits that there was unnecessary and disproportionate interference with the Climate Camp demonstrators' rights under Articles 10 and 11 of the European Convention on Human Rights by a forcible containment which did not allow the assembly to take place freely. The freedom to join an assembly carries with it the freedom to leave. The containment entirely changed the complexion of the Climate Camp assembly. The interference was not prescribed by law because the domestic law preconditions for lawful action were not satisfied. He submits that on any view the Climate Camp containment was disproportionate and in force for longer than was reasonably necessary.

44. As to the pushing operation to move the line of the demonstration back by approximately 20 to 30m., even if (which Mr Fordham does not accept) this was in principle justified, its execution was unnecessarily and disproportionately violent, with police officers striking or trapping some of those at the front with their shields, when these were unable to move backwards because of the press of demonstrators behind them. The crowd was, according to one officer, fifteen people deep. Mr Fordham submits that the defendants' response that there was no high level decision on behalf of the defendant to use other than reasonable force is no justification for what was plainly a co-ordinated advance by a phalanx of heavily armed officers.
45. As to the use of force, the claim mainly concerns (1) its use between 7.00pm and 7.30pm to push protestors back, and (2) its use between 12.50am and 1.00am to remove remaining protestors. Mr Johnson's evidence was that the only instruction he gave was to use reasonable force if it was necessary and justified. This is not recorded. CI Dale accepts that he expected officers to use reasonable force if necessary, but denies giving any particular direction about this. Mr Fordham submits that, given the evidence of individual use of force, it is difficult to maintain that what happened did not result from some kind of instruction. In any event, shield strikes were not a recognised use of reasonable force at all, and should not have been used.
46. Mr Fordham maintained that putting absolute cordons in place did not require the police to move protestors forcibly backwards. Cordons could, if necessary, simply have been placed across the two adjoining streets. An incident of the use of force on Mr Abbott appears to have been wholly gratuitous. [We do not comment on this, as it is not by itself a suitable subject for judicial review.] As to the use of force at 12.50am, it is said that, even if section 14 of the 1986 Act was lawfully invoked, force should not have been used before the protestors had a reasonable opportunity to comply.
47. As to the use of section 14 of the 1986 Act, this was initially invoked at 9.10pm, but the dispersal did not start until about 11.15pm. It was invoked again around midnight to disperse the protestors bent on remaining overnight. The main justification for this forcible removal was that the remaining protestors were continuing to block a main thoroughfare in the City. Mr Fordham submits that the remaining protestors could have been moved to one side; that there was no basis for concluding that they might be violent; and that specific hardcore protestors, if there were any, could have been specifically targeted. He submits that there was no need to disperse all the protestors and that those remaining could have been permitted to do so overnight.

The Defendants' case

48. Ms Carss-Frisk QC, on behalf of the Commissioner, submits generally that the relevant decisions were made in good faith, with the legitimate object of maintaining public order (which we accept) and cannot be said to have been arbitrary, disproportionate or otherwise unlawful. She reminds us that these are judicial review proceedings, not a witness action, and that, as Collins J said, individual alleged acts of violence against the claimants or others are not proper subjects for this court. The court has to approach the claims on the basis that the police version of events cannot in general be gainsaid, although Mr Johnson did give oral evidence which we are to an extent able to evaluate.

49. Ms Carss-Frisk emphasises that the Climate Camp demonstration was not entirely separate from that at the Royal Exchange. This is obviously correct. The two demonstrations were taking place within about a quarter of a mile of each other at the same time, and the object of the two protests was the same. The police had information suggesting the possibility that the two groups might mix. She says that the claimants' presentation of the facts is one-sided, and elements of the various subsequent reports which are favourable to the police are ignored. She says that it is illogical for the claimants to complain both that demonstrators were not allowed to leave and that they were made to do so. We do not see this. No doubt some wanted to leave and some did not. A loose cordon permits two-way traffic.
50. Ms Carss-Frisk accepts that arrest or containment in this context require a reasonable apprehension of an imminent breach of the peace, but this must be applied realistically and in context. The police are not required to wait until violence actually erupts or until those from whom violence is apprehended have come into sight, this expression not being limited to confrontation between rival gangs. Containment is in principle a lawful means of preventing imminent breaches of the peace provided it is proportionate and not arbitrary. Lawful containment may require the inclusion of those unintentionally caught up in a demonstration who are not themselves intent on violence. It is almost always impossible to distinguish those who are intent on violence and those who are not. Ms Carss-Frisk accepts that rights under Articles 10 and 11 of the Convention were in play, but restrictions of these rights are permissible if, for example, they are aimed at preventing disorder or maintaining the orderly circulation of traffic – see *Molnar v Hungary* (ECHR, 7th January 2009); *X v Norway* (1984) 6 EHRR 358, where it was held that a demonstration by setting up a tent for several days in an area open to traffic must necessarily cause disorder; and *CS v Germany* (App 138588/88) where a claim failed because the anti-nuclear demonstrators had blocked a public road and caused more obstruction than would normally arise from the exercise of the right of peaceful assembly. She says that hindsight should not colour a judgment about difficult decisions which had to be made in the heat of the moment and during a long and arduous day.
51. Ms Carss-Frisk submits that Mr Johnson reasonably anticipated serious breaches of the peace if Royal Exchange demonstrators, who were not entirely separate, were allowed to mix with those at the Carbon Exchange. There were limited police resources. The group at the Royal Exchange had already proved to be disorderly and violent and there was an imminent danger that those released from the Royal Exchange would cause disorder. This would become uncontrollable if those at the Carbon Exchange were also involved. It was likely to happen imminently (i.e. within a few minutes given the short distances) if the Carbon Exchange group were not contained. It was necessary, but only as a last resort. Mr Johnson's concern was in fact borne out because two groups from the Royal Exchange, one from the south and the other from the north, did in fact make for Bishopsgate. One of them got there at around 9.35pm. The Carbon Exchange group was volatile with disorderly and violent elements within it.
52. Ms Carss-Frisk submits that the court is not concerned simply with whether those at the Climate Camp alone were imminently likely to cause a breach of the peace. The apprehension was that there would be breaches of the peace if those from the Royal Exchange were allowed to join them. She submits that it was Mr Johnson's

reasonable view that the only viable way of preventing Royal Exchange protestors from joining the Climate Camp was to contain the Climate Camp. As to whether the apprehended breach of the peace was imminent, Ms Carss-Frisk says that this is in the first instance a matter for the judgment of the police officer in charge. She points out that in *Laporte* it was accepted on the facts that the apprehended breach of the peace was not imminent. The police are not obliged to wait until violence is actually erupting. It was legitimate to continue the Climate Camp containment after 8.30pm, because there were violent elements in the Climate Camp and because soon to arrive dispersed Royal Exchange demonstrators were heading for the northern end and had to be dealt with first.

53. As to release arrangements, Mr Johnson had specifically briefed his officers about the need to exercise discretion, so that non-protestors and protestors with a genuine and pressing need who were not intent on disorder could be released. A very similar instruction in *Austin* was held to be rational and sensible. The detailed exercise of the discretion is not a proper subject of these proceedings. As to rights under Articles 10 and 11, the Climate Camp protestors were enabled to exercise these rights for many hours and the eventual dispersal of the assembly was neither arbitrary nor disproportionate.
54. As to the use of force, Mr Johnson gave no instruction to use force other than that, if it were necessary, it should be reasonable. There was no high level decision to use any particular type or degree of force. CI Dale did instruct officers to move towards the crowd to effect containment and, at the southern end, to move them back. He expected his officers to use reasonable force if necessary, but gave no specific indication as to the level or kind of force required. The same applied to CI Dod, whose role was limited to clearing the remaining protestors later on after mid-night. He had no cause to issue any general instruction following the direction under section 14 of the 1986 Act. Questions of the use of force by individual officers is not a proper subject of these proceedings.
55. As to the use of section 14 of the 1986 Act, Ms Carss-Frisk says that the police were entitled to use it to make lawful the removal of the remaining demonstrators who were intent on remaining in Bishopsgate blocking the highway overnight. The demonstrators were unlawfully blocking a major highway, which they had blocked for upwards of 12 hours, without lawful excuse and they were committing an offence under section 137 of the Highways Act 1980. It was reasonable and proportionate for the police to take the view that the demonstration should end. It was reasonable that the remaining 200-300 demonstrators should be removed. Those who remained were described as hard core.

Discussion

56. The principal issue in these proceedings is whether the containment at the Climate Camp between 7.07pm on 1st April 2009 and 11.15pm or so was necessary, proportionate and justified in law. To be justified in law as being the lawful exercise of the common law power to take reasonable steps to prevent a breach of the peace and as not constituting an unlawful deprivation of liberty under Article 5 of the Convention, the police had reasonably to apprehend an imminent breach of the peace at the Climate Camp or, if not at the Climate Camp, so associated with the Climate Camp that containing the Climate Camp itself was reasonably necessary. A breach of

the peace is imminent if it is likely to happen. Immediacy or imminence is an essential condition which should not be diluted, although it may be applied with a degree of flexibility. If a breach of the peace is imminent, the police may lawfully take preventive action, provided that there is no other way of preventing the imminent breach of the peace. They must take no more intrusive action than appears necessary to prevent the breach of the peace, and it must be reasonable and proportionate. The police may only take such preventive action as a last resort catering for situations about to descend into violence. What is imminent is to be judged in the context under consideration. There have to be proper advanced preparations. It is only when the police reasonably believe that there is no other means whatsoever to prevent an imminent breach of the peace that they can as a matter of necessity curtail the lawful exercise of their rights by third parties. The test of necessity is met only in truly extreme and exceptional circumstances. The action taken has to be both reasonably necessary and proportionate and taken in good faith. The case of *Austin*, where the containment was held to be lawful, was a very exceptional case.

57. We are clear that the decisions which Mr Johnson took during these demonstrations on 1st April 2009 were taken in good faith. We have indicated that we accept the truthfulness of his factual evidence, and only question whether he did not overstate the extent to which there had been elements of disorder at the Climate Camp during the day, and any basis for supposing that violence there might break out as the evening approached. Speaking generally, we have considerable sympathy with Mr Johnson and his officers, who had, throughout a long and gruelling day, to deal as best they might with two large and often disorderly demonstrations.
58. There are two clear factual starting points for our consideration. First, there had been serious and sustained violence at the Royal Exchange demonstration sufficient to justify its containment throughout the period it was in place, that is the whole of the afternoon and early evening. Second, there had been no equivalent disorder or violence at the Climate Camp during the afternoon, not even when 200-300 so called hardcore protestors had joined the Climate Camp at around 4.40pm. Containment of the Climate Camp was not justified by the behaviour and conduct of those at the Climate Camp alone. When the Royal Exchange protestors were dispersing from 7.25pm there was clearly a risk that some of them might head for the Climate Camp and the police were right to anticipate the risk and take appropriate steps to deal with it, if it materialised. But it was, we think, no more than a risk, and the distances between Bank and the demonstration in Bishopsgate were significant for people travelling on foot and the available routes were circuitous. A Royal Exchange protestor bent on joining the Climate Camp who was reasonably familiar with the geography of the City might at a stretch and in theory reach the Climate Camp in 10 minutes or so, but those who did reach the northern end in fact took up to 2 hours to do so. As we have said, we are not clear on the evidence that those in Gracechurch Street ever really reached the outskirts of the Climate Camp.
59. There was at 7.07pm no reasonably apprehended breach of the peace, imminent or otherwise, within the Climate Camp itself sufficient to justify containment. The Commissioner's main case depends entirely on the risk that there would be breaches of the peace at or associated with the Climate Camp resulting from the arrival of protestors from the Royal Exchange. There was such a risk, but it was at that stage only a risk; and it was not, in our judgment, a risk of *imminent* breaches of the peace

sufficient to justify full containment at the Climate Camp. Such flexibility as the concept of imminence bears does not extend that far on the facts of this case.

60. Accepting, as we do, that the police were right to take steps to guard against the risk, we have to consider other possibilities. These, we think, included being prepared to implement some form of absolute cordon or cordons, if that became later necessary to deal with an imminent risk, and, it may be, sealing off some side roads. An absolute cordon at the north of the Climate Camp may well have become necessary and proportionate at or around 9.30pm when some Royal Exchange protestors did eventually arrive there. That may not have justified an absolute cordon at the south, since the need was, not so much to keep the Climate Camp protestors in, as to keep the Royal Exchange protestors out.
61. We think that the police were right to have an eye to infiltration from Great St Helens Street and the street or alleyway opposite, but we are not persuaded that the pushing operation of a 15 person deep crowd to move them approximately 20 to 30m. to the north and beyond these side roads was reasonably necessary. We accept that Mr Johnson had finite and limited resources. We note that his evidence was that it was not he who instructed this operation. But the officers who did the pushing and some others could have cordoned the relatively narrow side roads as an extension of the filter cordon at the southern end of Bishopsgate. We think that at 7.00pm filter cordons at each of the side roads would have sufficed. We accept that blocking all the more distant means of access to Bishopsgate would not have been feasible. It follows that, in our judgment, the pushing operation from the south was not necessary or proportionate. In the event, those side streets were not used by Royal Exchange protestors in any number to try to reach the Climate Camp.
62. The questions relating to release arrangements and the use of force in a sense do not arise, except for the removal operation at the end of the evening. If there had been no containment, there would be no need for release arrangements or the use of force. Given that there was containment, it is evident that there were instances of unduly inflexible release and instances of unnecessary and, we think, unjustified force in the pushing operation. The evidence as to instructions in these respects is not satisfactory. No doubt instructions of the kind which Mr Johnson described were given, but they were very general and imprecise and may not have been fully conveyed to individual officers, some of whom appear not to have been trained for crowd control operations of this kind. It is not for us to be prescriptive in detail as to how such matters should be dealt with. But no doubt it is necessary to have a combination of training and on the spot instruction. The proposition that no more force should be used than is reasonable must apply to every police operation, but it needs fleshing out for individual possible situations. The policy and training about the use of shields as it came over to us in the evidence appeared to be insufficient for individual circumstances. There needed to be clear cut instructions as to whether shield strikes were ever justified, and, if so, when.
63. As to the decision to terminate the demonstration and clear the Climate Camp, by force if necessary with the aid of section 14 of the 1986 Act, in our judgment this was fully justified. The demonstration had lasted the best part of 12 hours – quite long enough to take full advantage of rights under Articles 10 and 11 of the Convention - and those wishing to remain were intent on continuing to block the highway, which was a main thoroughfare into and out of the City. The prolongation of the

demonstration, thus blocking the highway until the morning, had no justification and would continue to cause serious disturbance and disruption to traffic and pedestrians wishing to use the highway. The police had a duty to clear the highway, which could not be done without removing the protestors by force if necessary. If there were individual occasions when the force used may have been excessive, that is a matter for individual complaint, not for these judicial review proceedings.

64. In the result, the claimants succeed in establishing that (a) the containment of the Climate Camp, and (b) the pushing operation to move the crowd approximately 20 to 30m. to the north at the southern end of the Climate Camp were not lawful police operations, except that temporary containment at the northern end became justified at around 9.30pm. Although we have been to an extent critical of the police instructions as to release arrangements and as to the use of reasonable force, we are not at present persuaded that these readily or necessarily require the court to make declarations on those subjects.