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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

SIMONE KATHLEEN HIGGINS

and

ANTHONY LEE

Plaintiffs

and

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant

Mr Frank O'Donoghue KC with Mr Seamus Lannon (instructed by Carlin Solicitors Ltd)
for the First Plaintiff

Mr Brian Fee KC with Mr Ciaran White (instructed by Carlin Solicitors Ltd) for the
Second Plaintiff

Professor Sean Doran KC and Mr Zubair Ahmad KC (instructed by the Special
Advocates' Support Office) for the Plaintiffs in the closed hearings

Dr Tony McGleenan KC and Mr Joseph McEvoy (instructed by Ms Louise Crilly, the
Departmental Solicitor for Northern Ireland) for the Defendant

McALINDEN J

Introduction

[1] The first plaintiff, Simone Kathleen Higgins, who was born in September 1982, commenced these proceedings by writ of summons issued on 14 September 2010, followed up by the service of a statement of claim served on 10 August 2011 as amended on 21 September 2020, in which she claims damages, including aggravated and exemplary damages for personal injuries, loss and damage sustained by her by reason of the malicious prosecution, misfeasance in public office, breach of statutory duty, negligence, trespass to the person, wrongful arrest, unlawful detention, false

imprisonment, breach of article 2 ECHR, assault and battery inflicted upon her by the defendant and his servants or agents from 5 February 2005 to 21 January 2008 at various locations including 16 Fisherwick Gardens, Ballymena, at to and from Antrim Serious Crime Suite, Ballymena Magistrates' Court and Laganside Crown Court.

[2] The second plaintiff, Anthony Lee, born in October 1975, in these proceedings commenced by writ of summons issued on 18 February 2010, followed up by the service of a statement of claim served on 26 May 2011 as amended on 27 June 2016, claims damages, including aggravated and exemplary damages for personal injuries, loss and damage sustained by him by reason of the malicious prosecution, misfeasance in public office, breach of statutory duty, negligence, trespass to the person, wrongful arrest, unlawful detention, false imprisonment, breach of article 2 ECHR, assault and battery inflicted upon the second plaintiff by the defendant and his servants or agents from 5 February 2005 to 5 October 2007 at various locations including 16 Fisherwick Gardens, Ballymena, at to and from Antrim Serious Crime Suite, Ballymena Magistrates' Court and Laganside Crown Court.

[3] The first plaintiff alleges that on 5 February 2005, she was with her sister Aisha Sloane and four male friends (Anthony Lee, Pearse O'Neill, Liam Lyness and Christopher Smiley) at her home address at 16 Fisherwick Gardens, Ballymena, when armed police suddenly entered through the unlocked front door. Liam Lyness was found to have an incendiary device inside a DVD case in his trousers and Christopher Smiley had two such devices in his trousers. The devices were provided to these two men by Patrick Murray who at all relevant times was a covert human intelligence source (CHIS) operating under the control of the police. Mr Murray provided the devices to the second plaintiff on the morning of 5 February 2005 and in anticipation of the police operation. He told Lyness and Smiley that the DVD cases contained counterfeit DVDs. Despite being linked to the devices by DNA evidence, Murray was never charged with any offences arising out of the events described.

[4] As a result of being implicated in the said events, it is alleged that the first plaintiff had explosives brought into her home; had armed police storm her home; had firearms pointed at her by police; was forced to kneel on the ground with her hands on her head whilst armed police continued to point guns at her; was put in fear; was unlawfully searched; had items of her clothing removed; was forced to endure a thorough search of her home; was manhandled during the course of her arrest; was placed in handcuffs; had her fingerprints taken; had swabs and other intimate and non-intimate samples taken; was unlawfully detained and falsely imprisoned for two nights at Antrim Serious Crime Suite; appeared in court in custody as a defendant; was remanded overnight at Hydebank; appeared in the High Court as an applicant for bail; was unlawfully detained throughout the said period until her release on bail; subsequently had to appear in the High Court to have her bail conditions varied; had to appear in the Crown Court as a defendant on several occasions; was subjected to an intimidating and oppressive experience; had to live in Edinburgh as part of her bail conditions; lost her job; found it difficult to find work again; gained employment as a dental nurse but was dismissed after three days as a direct result of the charges that

were brought against her; had her third level studies disrupted; was acquitted at Belfast Crown Court on 21 January 2008 when the prosecution offered no evidence against her or any of her co-accused; and only had charges against her withdrawn by the PPS when her co-accused, Liam Lyness, submitted a defence statement in which he asserted, inter alia, that Mr Murray was an active participating informant on behalf of the police and that he manufactured or may have manufactured the devices.

[5] It is further alleged that the detention of the first plaintiff was without lawful excuse or justification; that the first plaintiff had committed no offence; that the arresting officer and/or investigating officer could not reasonably have suspected that the first plaintiff had committed an offence; and that the arresting officer had no such reasonable suspicion. It is alleged that the defendant continued to detain the first plaintiff when the role of Patrick Murray was clear to the defendant and that the case against her was a sham and in the knowledge of the background facts pertaining to Mr Murray.

[6] It is alleged that by acting as he did, the defendant knowingly, recklessly or negligently exposed the first plaintiff to a risk of death or serious injury and/or failed to take the necessary steps to protect the first plaintiff from the risk of death or serious injury. The risk of death or serious injury arose from the presence of explosives in the first plaintiff's home and the actions of the police in storming the first plaintiff's home when armed. It is alleged that the defendant failed to perform any or adequate risk or threat assessment and failed to take steps to minimise the risk or threat to the first plaintiff's life or wellbeing. It is alleged that the defendant misconducted himself in the performance of his public office by maliciously targeting the first plaintiff and by deliberately or recklessly carrying out an operation which he had no power to do in circumstances where the defendant either foresaw or ought to have foreseen the type of damage which the first plaintiff suffered as a direct result of the defendant's actions.

[7] It is alleged that the first plaintiff suffered psychological damage. She suffered minor physical injuries in the form of bruising and redness as a result of being manhandled by police. It is alleged that the first plaintiff is entitled to aggravated and exemplary damages in that the first plaintiff was victimised; was subjected to a humiliating and frightening experience; had her reputation damaged in the eyes of the local community; was accused of being involved in terrorist activities; did not receive an apology; was the subject of a continued prosecution even after a "No Bill" application on her behalf was refused by the court; was faced with a denial of liability in these proceedings; was subjected to the embarrassment of being arrested; was treated with a callous attitude; was exposed to a potential life sentence of imprisonment; and was treated in a disgraceful and oppressive manner. There is no specific claim for loss of earnings but there is a claim for disadvantage in the labour market allegedly founded and based on the authority of decision of *Smith v Manchester Corporation* [1974].

[8] The second plaintiff alleges that on 5 February 2005, he was at the house of Simone Sloane at 16 Fisherwick Gardens, Ballymena, along with three male friends

(Pearse O'Neill, Liam Lyness and Christopher Smiley), when armed police suddenly entered through the unlocked front door. Liam Lyness was found to have an incendiary device inside a DVD case in his trousers and Christopher Smiley had two such devices in his trousers. The devices were provided to these two men by Patrick Murray who at all relevant times was a covert human intelligence source (CHIS) operating under the control of the police. It is alleged that Mr Murray told Lyness and Smiley that the DVD cases contained counterfeit DVDs. Despite being linked to the devices by DNA evidence, Murray was never charged with any offences arising out of the events described.

[9] As a result of being implicated in the said events, it is alleged that the second plaintiff was present in Ms Sloane's house when armed police stormed the property in question; had firearms pointed at him by police; was forced to kneel on the ground with his hands on his head whilst armed police continued to point guns at him; was manhandled by police; was forced to endure an unlawful search; had items of his clothing removed; was put in fear; was placed in handcuffs; had his fingerprints taken; had swabs and other intimate and non-intimate samples taken; was unlawfully detained and falsely imprisoned for two or three nights at Antrim Serious Crime Suite; had to appear in court, in custody, as a defendant; had to appear in the High Court as an applicant for bail; had to appear in the Crown Court as a defendant on several occasions; and had his life severely disrupted as a result of charges being levelled against him. It is alleged that these charges were maintained without justification until the second plaintiff was acquitted at a hearing at Belfast Crown Court on 26 June 2007, when the trial judge dismissed the charges on an application made by his legal team that there was no case to answer.

[10] It is alleged that the second plaintiff was falsely imprisoned and wrongfully detained from 4 February 2005 until he was granted High Court bail on 28 October 2005. It is alleged that his detention was without lawful excuse or justification; that the second plaintiff had committed no offence; that the arresting officer and/or investigating officer could not reasonably have suspected that the second plaintiff had committed an offence; and that the arresting officer had no such reasonable suspicion. The second plaintiff was subjected to an intimidating and oppressive experience. It is alleged that the defendant continued to detain the second plaintiff when the role of Patrick Murray was clear to the defendant and that the case against the second plaintiff was a sham and in the knowledge of the background facts pertaining to Mr Murray.

[11] It is alleged that by acting as he did, the defendant knowingly, recklessly or negligently exposed the second plaintiff to a risk of death or serious injury and/or failed to take the necessary steps to protect the second plaintiff from the risk of death or serious injury. The risk of death or serious injury arose from the presence of explosives in close proximity to the second plaintiff, and the actions of the police in storming the property in which the second plaintiff was present when armed. It is alleged that the defendant failed to perform any or adequate risk or threat assessment and failed to take steps to minimise the risk or threat to the second plaintiff's life or

wellbeing. It is alleged that the defendant maliciously and without probable cause pursued criminal proceedings against the second plaintiff. It is alleged that the defendant misconducted himself in the performance of his public office by maliciously targeting the second plaintiff and by deliberately or recklessly carrying out an operation which he had no power to do in circumstances where the defendant either foresaw or ought to have foreseen the type of damage which the second plaintiff suffered as a direct result of the defendant's actions.

[12] It is alleged that the second plaintiff suffered psychological damage. He suffered minor physical injuries in the form of bruising and redness as a result of being manhandled by police. It is alleged that the second plaintiff is entitled to aggravated and exemplary damages in that the second plaintiff was victimised; was subjected to a humiliating and frightening experience; had his reputation damaged in the eyes of the local community; was accused of being involved in terrorist activities; did not receive an apology; was the subject of unwarranted and unjustified criminal charges for a very lengthy period of time; was faced with a denial of liability in these proceedings; was subjected to the embarrassment of being arrested and detained; was treated with a callous attitude; was exposed to a risk of injury and/or death by reason of having explosives transported in close proximity to him; was exposed to a potential life sentence of imprisonment; and was treated in a disgraceful and oppressive manner. There is no specific claim for loss of earnings but there is a claim for disadvantage in the labour market allegedly founded and based on the authority of decision of *Smith v Manchester Corporation* [1974].

[13] In his amended defences to these claims, both dated 22 January 2020, the defendant denies the plaintiffs' claims and asserts that both were lawfully arrested at approximately 14:45hrs on 5 February 2005 and subsequently detained pursuant to section 41 of the Terrorism Act 2000 ("the 2000 Act") on suspicion of being involved in the commission, preparation and instigation of acts of terrorism. Con Duffin the arresting officer had reasonable grounds to suspect that the plaintiffs and each of them were in possession of or in control of explosive substances, namely, three incendiary devices. At 15:40hrs on 5 February 2005 the plaintiffs were charged with: (a) possession of explosives with intent, namely, three incendiary devices on that date; (b) membership of a prescribed organisation (RIRA) on that date.

[14] The defences go on to state at para 13 that:

"It is admitted that Patrick Murray supplied certain unknown items to Anthony Lee on the morning of 5 February 2005 in anticipation of a planned operation by terrorists and in respect of the said supply the defendant denies that he or any of his servants or agents authorised, requested or permitted any person to supply Anthony Lee with the alleged or any incendiary devices."

The defences go on to aver that the said Patrick Murray was not charged with any offences in relation to the three incendiary devices because there was insufficient evidence. It is further alleged that any force used during the arrest operation was necessary and reasonable to protect the safety of the police officers involved in the operation. The defendant relies upon the provisions of section 3 of the Criminal Law Act (Northern Ireland) 1967 and section 114 of the 2000 Act to assert that the force used in the circumstances was reasonable and was necessary to prevent crime and to enable the lawful arrest of the plaintiffs to be effected.

[15] Long before the hearing of the plaintiffs' substantive cases in 2023 and 2024, applications were made by the defendant for Orders pursuant to section 6 of the Justice and Security Act 2013 ("the 2013 Act") and Order 126 rule 21 of the Rules of the Court of Judicature (Northern Ireland) 1980 that both of these proceedings are proceedings in which a closed material application may be made to the court. Stephens J heard the applications in June 2016 and delivered a written ruling on 28 June 2016 which is reported at *Higgins and Lee v Chief Constable PSNI* [2016] NIQB 81 in which he made the orders sought. Thereafter, following the approval by the court of draft directions made under Part 2 of the 2013 Act, the matters proceeded to open and closed disclosure followed by oral open hearings of the evidence, oral closed hearings of the evidence, open oral and written final submissions and closed oral and written final submissions with the hearings taking place on various dates between 23 January 2023 and 13 September 2024. In accordance with section 7(2) and (3) the court has kept the issue of the appropriateness of the making of the declarations under section 6 of the 2013 Act under review including considering the matter when disclosure was provided and during the oral hearings, right up to the final oral closed submissions and the court remains satisfied that the maintenance of the declaration made by Stephens J is clearly in the interests of the fair and effective administration of justice in these proceedings.

[16] During the open hearing of the evidence, the court heard from both plaintiffs. The first plaintiff stated that she got up at about 11:00hrs on the morning of 5 September 2005 and was in her pyjamas when a female friend arrived at the house for a chat and a cup of tea. After her friend left the house the first plaintiff made efforts to tidy up the house and to get herself ready for going out later. Sometime after her friend left the house, Anthony Lee and Pearse O'Neill arrived at the house and their arrival was followed by the arrival of Liam Lyness and Christopher Smiley. Anthony Lee was a "big brother" type figure who had gone out with the sister of the first plaintiff for years and was in the habit of just calling into the house and visiting regularly. The others arrived at the house because as far as the first plaintiff was aware there was some form of arrangement between the four men to meet up before going into Ballymena town centre to visit a betting shop and then to spend part of the evening in a pub. The first plaintiff stated that it was her intention to go out to a birthday party that evening and that she had hoped to spend the afternoon getting ready to go out and, therefore, she was keen to see the four men leave the house so she could get ready. She was aware that the four men were intending to attend the same birthday party later that night after leaving the pub.

[17] The first plaintiff stated that she was in the kitchen smoking a cigarette at the time the police entered the house. She had not been in the kitchen for very long before the police entered the house. When the police entered the house, the men were taken into the living room and she remained in the kitchen. Her sister, a social worker, who had been working on a night shift the previous night, was still in her bed at this time and as a result of the commotion, she got up and came down into the kitchen and the first plaintiff and her sister were then taken into a front room.

[18] After what seemed like a long time, the first plaintiff and her sister were taken to Antrim Serious Crime Suite. She remained outside the police station in the car park for a number of hours and then she was taken into the police station, processed and interviewed with a solicitor present. The first plaintiff specifically stated that she answered all the questions posed to her during several police interviews and the transcripts of the interviews bear this out. She denied any knowledge of the incendiary devices found in her house and she denied any involvement with a proscribed organisation.

[19] The first plaintiff stated that she had no criminal record, that she had absolutely no knowledge of the incendiary devices that were in the possession of Lyness and Smiley and that she was never a member of the RIRA. The first plaintiff stated that after almost two days in Antrim Serious Crime Suite, she was charged with possession of explosives and membership and was taken to Ballymena Court where she was remanded in custody. A High Court bail application was made on 9 September 2005 and she was granted bail to her father's address in Edinburgh. Thereafter, she had to travel back and forth to Northern Ireland for various court appearances and had to report daily to a police station in Edinburgh.

[20] The first plaintiff stated that she was working as a dental nurse in a dental practice in Ballymena at the time of her arrest and as a result of her arrest, she was dismissed from her employment. She stated that her arrest was widely reported in the media and she stated that as a result of her arrest and the media reporting of same, her life at that time was ruined. In addition to working as a dental nurse at the time of her arrest, she had been studying with a view to gaining qualifications which would have enabled her to apply for and obtain a place in university. She was forced to abandon her studies. After the charges were dropped, she stated that she returned to Northern Ireland and succeeded in obtaining employment as a dental nurse in another dental practice in Ballymena but, after three days, her employer came to speak to her and informed her that he had been made aware of the first plaintiff's arrest and charging and because of the negative impact this could have on his dental practice, he felt compelled to ask her to leave her employment, which she did. She then picked up where she left off in relation to her studies and succeeded in obtaining a place on an Occupational Therapy degree course at the Ulster University. After she obtained a degree from Ulster University, the first plaintiff sought out employment in Scotland as she did not wish to remain in Northern Ireland. The first plaintiff then moved permanently to Scotland in 2014 and, having obtained employment as a paediatric

occupational therapist for a health trust in Scotland, she now works as an occupational therapist, employed by one of the Scottish local authorities. In terms of the impact of these events on her mental health, the first plaintiff stated that she suffered significant sleep disturbance and an exacerbation of irritable bowel syndrome.

[21] When cross-examined by Dr McGleenan KC, the first plaintiff admitted that she was aware of an incendiary bombing campaign that took place in Ballymena in late 2004 when several retail commercial premises were targeted. The first plaintiff accepted that during her police interviews she had stated that in late 2004, she had been working part-time in a music store in Ballymena and had seen leaflets produced by the police warning about incendiary devices being hidden in DVD cases. The first plaintiff specifically stated that in the days leading up to 5 February 2005, she had no recollection of anyone discussing bringing DVD or video cassette boxes to her home and she did not recall any telephone calls or text messages relating to this subject. She also denied seeing any DVD or video cassette boxes in her home at any time on the day of her arrest.

[22] The first plaintiff was then shown photographs of the kitchen and other areas of her home taken by the police sometime after they entered the house on the afternoon of 5 September 2005. Photograph 5 shows an incendiary device lying in a black case on the floor of the small hall area near to bottom of the stairs leading to the upper floor of the house. Photograph 9 shows two similar incendiary devices in black boxes on the floor of the kitchen. Photograph 14 is a closeup photograph of the kitchen table and it can be seen that there were two tins of Magner's cider and an ashtray with a number of cigarette butts on the table. There were a pair of Marigold rubber gloves turned outside in on the table along with a large pair of scissors. There was also a roll of PVC tape lying on the table with the packaging for this tape which had been opened also lying on the table. The first plaintiff denied using any of these items in her house on the day in question. Crucially, she specifically denied that any of the men who visited her home that afternoon was using any of these items. She denied that any of these items belonged to her or that she bought any of them or that she placed any of them on the table.

[23] The first plaintiff stated that she did not notice these items on the kitchen table when she was tidying the house up after her friend left the house earlier that day and she had no idea how the items came to be on her kitchen table or who put them there. She was reminded that in one of her police interviews she stated that Mr Anthony Lee arrived at her house at 13:30hrs on the afternoon of 5 September 2005 and she agreed that this was probably correct and that he must have been in the house for at least two and a half hours before the police arrived. The first plaintiff stated that Mr Lee may not have remained in the house the whole time but was coming and going. The first plaintiff was also asked about a red Nokia mobile telephone also shown as being present in the house at the time. She could not say whether or not it was hers due to the passage of time, nor could she remember the mobile phone number of the phone she possessed at that time. However, she did admit that she would have allowed any of the four men in her house to use her mobile phone at that time and that they could

have used her mobile phone to make calls or send texts. However, she could not remember whether anyone else had used her mobile phone on the day before her arrest.

[24] The first plaintiff stated that she only found out about the incendiary devices in her home when police officers brought this to her attention during her police interviews. The first plaintiff accepted that she was shown photographs of these items during her police interviews and she accepted that she informed police that she recognised them as incendiary devices as a result of seeing the leaflets distributed to shops in Ballymena by police in late 2004. The first plaintiff denied seeing any of the boxes or other items on her kitchen table at any time on 5 February 2005 either before or after any of the four men came to her house. She denied seeing anyone else in her house working on any of the boxes, cutting tape or affixing tape to the boxes. She denied being present in the same room as Mr Lyness and Mr Smiley when incendiary devices were found on their persons. The first plaintiff denied knowing Mr Paddy Murray and denied having any contact with Mr Murray in the days leading up to 5 February 2005 whether by means of a telephone call or text message or otherwise. When asked about how Mr Smiley and Mr Lyness came to be in her house that afternoon, she stated that she did not have a clear recollection of the arrangement but accepted that in her police interview she had stated that Mr Smiley had telephoned Mr O'Neill when O'Neill was in her house and that the second plaintiff had said to Mr O'Neill to tell Mr Smiley that he was at the first plaintiff's house and not down in his own.

[25] The only other evidence called on behalf of the first plaintiff was the evidence of two doctors relating to the nature and extent of any psychiatric injury suffered by the first plaintiff as a result of the events described above. Dr Mark Davies, Consultant Clinical Psychologist, gave evidence on 24 January 2023 and produced his report dated 2 March 2020. Dr Davies adopted the report as part of his evidence and indicated that he had attended a joint experts' meeting with Dr Brian Mangan and Dr Neta Chata on 21 September 2022, following which a joint minute of this meeting was prepared and agreed, dated 29 September 2022. Dr Davies was then taken through the joint minute and he confirmed that the minute records that the experts agreed that the first plaintiff suffered a "recognised psychiatric or psychological injury" because of the subject events in the form of an adjustment disorder with the issue between Dr Mangan and Dr Chada being the duration of the said adjustment disorder. Dr Davies confirmed that there was agreement between the experts as to the symptoms experienced by the first plaintiff following the events complained of and these included insomnia, nightmare, paranoia, hypervigilance, social avoidance, low mood, thoughts of life not worth living, irritability, labile mood, panic attacks, fatigue, weight loss and escalation of alcohol intake and tobacco use. However, each of the experts agreed that despite some lingering symptomology, the first plaintiff was a resilient individual who was not suffering from a recognised psychiatric or psychological illness when assessed by any of the experts. When cross-examined by Mr McEvoy, Dr Davies confirmed that the focus of his examination in 2020 was to ascertain what if any were the long-term psychological sequelae of the index events

in 2005 and that Dr Mangan and Dr Chada were best placed to deal with the issue of the impact of her arrest, charging and detention on remand upon the first-plaintiff's mental health in the years immediately following the index events.

[26] Dr Mangan, Consultant Psychiatrist, also gave evidence on 24 January 2023 and he adopted his report dated 24 March 2011 and the experts' joint minute dated 29 September 2022. Dr Mangan confirmed that his diagnosis was that the first plaintiff suffered from an adjustment disorder for a period of two years following her arrest and charge and that she then developed a mixed anxiety and depressive disorder lasting for a further eighteen months. In his evidence, he stated that he was of the opinion that the first plaintiff experienced symptoms of depression, anxiety, and sleep disturbance for a continuous period of three and a half years after the index events. Dr Mangan stated that the first plaintiff's medical notes and records indicated that mood disturbance continued up to April 2008, noting that she was acquitted in January 2008. Dr Mangan stated that an entry in the first plaintiff's notes and records relating to a GP attendance in February 2008 recorded that the first plaintiff felt stigmatised with difficulties obtaining employment. She was feeling depressed and had a loss of interest. She was prescribed an anti-depressant and a sleeping tablet at that time. By April 2008, the notes and records recorded that her condition had improved.

[27] During cross-examination, Dr Mangan was referred to entries in the first plaintiff's GP notes and records relating to the birth of her first child in September 2006 and the fact that this child suffered from hip dysplasia. The first plaintiff attended her GP in April 2007 and in August 2007 complaining of IBS symptoms. She also complained of stress at work and difficulties coping with her work and looking after a young child. There is a reference to a manager making snide comments to her about her arrest. The complaints of irritable bowel syndrome must be read in the context of the notes and records revealing that the first plaintiff underwent a colonoscopy in December 1998.

[28] Dr Chada, Consultant Psychiatrist, was retained on behalf of the defendant to provide a report in relation to the nature and extent of any psychiatric/psychological injury suffered by the first plaintiff as a result of the events complained of. In her evidence, she adopted her report which was prepared following an examination of the first plaintiff on 17 May 2012. At the time of Dr Chada's examination of the first plaintiff she was studying at the Ulster University and working part-time in a large retail store. She was not on any medication at that time. Having examined the first plaintiff and carefully studied her GP notes and records, Dr Chada was of the view that the first plaintiff suffered from two discreet adjustment disorders. In her evidence she stated that one was in relation to her being arrested and being charged and having to go to Scotland to live with her father. Dr Chada considered that this was a very difficult period for the first plaintiff but that she recovered well from this within about six months or so. She then functioned well for the next couple of years but suffered another adjustment reaction around the time of the case coming to court when she

was anxious and worried and suffered sleep disturbance. This adjustment reaction lasted for a number of months, probably resolving after two months.

[29] The second plaintiff gave evidence on 23 January 2023. He stated that at the time of his arrest he was residing at 50 Fisherwick Crescent, Ballymena, a short distance from 16 Fisherwick Gardens. He stated that he was a frequent visitor to 16 Fisherwick Gardens as he had previously gone out with the first plaintiff's sister for seven and a half years and was, in fact, engaged to her sister during part of that time. The second plaintiff stated that he had been in the first plaintiff's house on the night of 4 February 2005 in the company of the first plaintiff and Mr Pearse O'Neill. They had a few drinks and the second plaintiff did not leave until the early hours of 5 February 2005. The second plaintiff stated that he returned to 16 Fisherwick Gardens at about 11:30hrs on 5 February 2005 "just to see how she (Simone Higgins) was." The second plaintiff stated that he arrived at the first plaintiff's house on his own and would have gone back and forth several times to his own house thereafter. He stated that his mother knew that the first plaintiff's mother was away on holidays and as a result his mother brought some food up to the first plaintiff's house for her breakfast.

[30] The second plaintiff stated that he had arranged for Mr Pearse O'Neill to meet him up at the first plaintiff's house before going to "The Inn" public house in Ballymena. He knew that Mr O'Neill was playing a soccer match and that he would come up to the first plaintiff's house after the soccer match had finished. According to the second plaintiff, Mr O'Neill arrived up at the house at some time after 14:00 hrs. It would appear that it was Mr O'Neill who made an arrangement for Mr Lyness and Mr Smiley to come up to the first plaintiff's house so they could all go down to the pub together. The second plaintiff stated that these two men arrived at 15:30 hrs. The second plaintiff stated that he was in the kitchen with the first plaintiff when the police entered the house. He thought Mr O'Neill was in the living room, checking the football scores. He could not recall where Mr Smiley and Mr Lyness were.

[31] The second plaintiff was then asked about his arrest and his questioning at Antrim Serious Crime Suite and he informed the court that he was advised by a solicitor to provide no comment answers during his police interviews. The second plaintiff then stated that it had not been put to him during any of his police interviews that there was any forensic, photographic or eye witness evidence linking him to any of the devices found in the house and he further stated that it was never put to him that he had been given any items by Paddy Murray on the morning in question. The second plaintiff stated that despite this he was charged with membership of the RIRA and with possession of explosives and was remanded in custody in prison until October 2005.

[32] After his release on bail, the second plaintiff stated that he felt as if he had a break down caused by the stress of being the subject of regular threats from loyalists. He stated that he was informed by police that correspondence addressed to him was intercepted at the postal sorting facility in Mallusk and was found to contain bullets. The second plaintiff stated that he suffered social isolation and sleep disturbance.

[33] When cross-examined by Dr McGleenan KC, the second plaintiff stated that he did not know Mr Smiley or Mr Lyness very well at that time and that it was Mr O'Neill who made the arrangement with them to call up to the first plaintiff's house in order to meet up and then go to the pub. The second plaintiff was then asked about the incendiary bombing campaign in Ballymena in late 2004 and he stated that he remembered that the Harry Corry store was targeted. He was then asked about where the first plaintiff was when he first came to the house and he stated that he thought she was still upstairs at that time so he went back to his house to get her something to eat and when he went back to her house she was up and was tidying and cleaning up the house. The second plaintiff was referred to the booklet of photographs and identified the table shown in photograph 14 as the kitchen table in the first plaintiff's home and accepted that he would have been seated at the table on some occasions that afternoon. He did not recall drinking any cans of Magners cider that afternoon and queried whether the cans could have been left on the table from the previous night. He stated that he did not notice any rubber gloves or a pair of scissors or the roll of adhesive tape or the box that it came in on the table at any time prior to the police arriving at 15:55 hrs. The second plaintiff was unable to say whether he or the first plaintiff owned the red Nokia mobile phone shown in photograph 37. However, the second plaintiff was clear in his evidence that he did not share a mobile phone with the first plaintiff and he did not recall borrowing the first plaintiff's phone.

[34] The second plaintiff was asked about Paddy Murray and he admitted that he did know Paddy Murray at that time. He stated that Mr Murray was involved with a flute band in Antrim and that he was also involved in an anti-drugs poster campaign in late 2004 and that he helped Mr Murray with the campaign at that time as did Mr Smiley. Mr Murray would have supplied him and Mr Smiley with posters to put up. The second plaintiff stated that Mr Smiley would have known Mr Murray better than he did but that he collected posters directly from Mr Murray on two occasions. On one occasion, Mr Murray brought posters up to the Dunclug estate where Mr Smiley lived and on the other occasion Mr Murray brought the posters to Fisherwick and the second plaintiff met him at the top of Fisherwick to collect the posters. The second plaintiff accepted that there had been two-way telephone contact between Mr Murray and him but this contact would have been about the poster campaign but he was unable to say when the last contact took place.

[35] In relation to the roll of adhesive tape found on the table beside the open packaging, the second plaintiff denied buying the roll of tape and did not know who bought it or when or in what circumstances it was purchased. When asked about his whereabouts on the night of 4 February 2005, he stated that he was in the first plaintiff's house and that Pearse O'Neill was also there. He did not go out into the town and he did not speak to either Mr Smiley or Mr Lyness. In relation to the afternoon of 5 February 2005, the second plaintiff specifically denied making any arrangement for Smiley and Lyness to come to the first plaintiff's house. He stated he only ever made an arrangement with Mr O'Neill to come to the first plaintiff's house.

He stated that as far as he was aware it was Mr O'Neill who made the arrangement with Mr Smiley.

[36] The only other evidence called on behalf of the second plaintiff was the evidence of two doctors relating to the nature and extent of any psychiatric injury suffered by the second plaintiff as a result of the events described above. Dr Mark Davies, Consultant Clinical Psychologist, gave evidence on 24 January 2023 and produced his report dated 14 January 2022, following an examination on 8 January 2022. Dr Davies then participated in a joint experts' meeting with Dr Mangan and Dr Chada on 21 September 2022 and contributed to the joint minute of that meeting which was agreed and signed on 26 September 2022. The experts agreed that the second plaintiff had suffered a recognised psychiatric injury with a significant deterioration in his state of mental health following his arrest and detention. He suffered from depressed mood, anxiety, alcohol misuse, insomnia, lethargy, loss of interest, self-neglect and emotional and social withdrawal. The diagnosis was one of an adjustment disorder with a prolonged depressive reaction.

[37] There was a lack of consensus around the diagnosis of a generalised anxiety disorder as described in DSM – 5. Dr Davies was in favour of making such a diagnosis as the second plaintiff gave a history of excessive anxiety and worrying for a period of over six months with him feeling that he was unable to control this anxiety. He gave a history that he suffered from restlessness and feeling keyed up or on edge. He complained of impaired concentration, irritability, muscle tension and sleep disturbance. His functioning was clearly impaired and these various symptoms were not caused by a substance abuse problem or were not better explained by some other mental disorder. Dr Davies was of the opinion that the second plaintiff's alcohol misuse was in this instance a coping mechanism adopted by the second plaintiff in response to his anxiety rather than being the cause of his anxiety but he accepted that the second plaintiff's alcohol misuse did exacerbate his anxiety symptoms. Dr Davies was of the opinion that following the second plaintiff's initial adjustment disorder (which persisted at least up to the end of 2006), he continued to suffer from a generalised anxiety disorder with significant co-morbid depressive symptomology up to 2012. However, there was little by way of evidence to link the generalised anxiety disorder to the index events. His symptoms after 2012 were more likely to be due to the problem of alcohol misuse. Dr Davies was also of the opinion that the second plaintiff was liable to experience a relapse of his anxiety disorder in response to future stressors. He did not consider that the second plaintiff had a reservoir of psychological resilience and that the index events had lowered his resilience, making him more vulnerable to relapses in response to future stressful life events.

[38] Mr McEvoy for the defendant cross-examined Dr Davies about the second plaintiff's honesty and the weight that could be attached to the accounts he gave particularly in relation to his alcohol abuse and his work record. Dr Davies agreed that the second plaintiff significantly underplayed his difficulties with alcohol both before and after the index events ("four units per week") and was less than forthcoming when it came to his employment record following the index events and the reasons

given on sick lines for his inability to work. He also downplayed the nature and extent of pre-existing psychological difficulties. He was also questioned about the nature and extent of the symptomology after the index events and the fact that the local Community Mental Health team assessed him in October 2006 and concluded that he simply needed some advice and was able to be discharged from review. Dr Davies accepted that this outcome did not feature in his report but was keen to point out that the second plaintiff remained on a prescription of Cipralex (an anti-depressant) at that time. Dr Davies stated that he diagnosed an adjustment disorder of two years duration and that the entry made in October 2006 “was made towards the end of that period.”

[39] In relation to Dr Davies’ evidence about the presence of a generalised anxiety disorder between 2006 and 2012, Mr McEvoy pressed the point that alcohol misuse probably contributed significantly to any problems that the second plaintiff suffered from during this period and that the evidence about the second plaintiff working as a driver and a plasterer during this period indicated that whatever the cause or causes of the anxiety symptoms was or were, the impact of those symptoms upon day to day functioning was not as great as alleged by the second plaintiff. In answer to Mr McEvoy’s points, Dr Davies stated that he considered that the second plaintiff’s adjustment to the index events could be “dated to about two years after the incident.” Although the second plaintiff continued to experience symptoms after that time, it was not clear to Dr Davies that those were solely as a result of the index events and he went on to state that “it may well be other issues, such as alcohol and relationship difficulties that were contributing to his psychiatric symptoms which is essentially ones of depression and anxiety during that period.”

[40] Dr Davies reiterated his evidence that the index events did have an exacerbating effect on the second plaintiff’s use of alcohol. In terms of impact on functioning resulting from the generalised anxiety state, Dr Davies highlighted the history of social isolation, not wishing to leave his house and not wishing to answer the door to any callers. However, it was accepted that such accounts were inconsistent with a recorded history in the notes and records of working at various jobs, or the accounts given to Dr Chada of being harassed or abused whilst out in public and using his car to visit his mother. The history of social isolation was also inconsistent with the fact that the second plaintiff formed a relationship with a woman during this period which lasted a good number of years and which resulted in the birth of two children. Dr Davies accepted that it was very reasonable to suggest that any anxiety symptoms in this case during the period between 2006 and 2012 were due to a long-standing and essentially underplayed alcohol misuse issue and that even if other factors were at play, as time went on, “alcohol misuse, in my opinion, was increasingly responsible during that period.”

[41] Dr Mangan, Consultant Psychiatrist, also gave evidence in relation to the impact of the index events on the psychiatric/psychological wellbeing of the second plaintiff and he adopted both his report dated 21 November 2011 following on from his examination of the second plaintiff on 17 November 2011, and the experts’ joint

minute dated 26 September 2022, following on from a discussion that took place on 21 September 2022. Dr Mangan was keen to point out that he had not been provided with copies of the second plaintiff's updated GP notes and records. Despite this, Dr Mangan confirmed that his diagnosis was that the second plaintiff suffered from an adjustment disorder for a period of approximately two years following his arrest and charge and that he then developed a generalised anxiety disorder thereafter. In essence, he agreed with Dr Davies and disagreed with Dr Chada in relation to this issue. He accepted that the second plaintiff had a long-standing alcohol misuse problem but despite that and despite the second plaintiff's down-playing of that problem, Dr Mangan was satisfied that the symptoms described by the second plaintiff were of sufficient severity and duration to warrant a diagnosis of a generalised anxiety disorder and were genuine although he accepted that the second plaintiff was not a reliable historian when it came to issues such as his work record and that the evidence which pointed towards the second plaintiff engaging in a number of different forms of employment and being able to form a relationship of some duration which resulted in the birth of two children was in marked contrast to the claims of significant functional impairment.

[42] Dr Chada, Consultant Psychiatrist, was retained on behalf of the defendant to provide a report in relation to the nature and extent of any psychiatric/psychological injury suffered by the second plaintiff as a result of the events complained of. In her evidence, she adopted her first report which was prepared on 30 July 2021 following an examination of the first plaintiff on 22 July 2021. She also adopted her second report which is dated 19 November 2021 and this second report is, in effect, a commentary on the second plaintiff's medical notes and records. Dr Chada's evidence was to the effect that the adjustment disorder suffered by the second plaintiff in this case lasted between eighteen months and two years and this was despite her conclusion that the second plaintiff was an unreliable historian in relation to matters such as his alcohol intake, his alleged social isolation and his employment history. Dr Chada stated that she disagreed with the two other experts when it came to the diagnosis of a generalised anxiety disorder and that was primarily on the basis that there was little objective evidence of functional impairment and secondly there was ample evidence of long-standing addiction problems, both in relation to alcohol and diazepam. She was adamant that a diagnosis of a generalised anxiety disorder should only be made until the patient has been detoxed from alcohol and has remained abstinent for some time.

[43] In addition to the medical evidence of Dr Chada referred to above, the defendant's evidence in the open hearing consisted of a further three elements. There were a number of statements which were tendered in evidence by the defendant and were agreed by the plaintiffs. There was a summary of agreed facts and there was oral evidence given by a number of police witnesses. Dealing, firstly, with the agreed facts:

"On 5 February 2005 at 15:55 hrs, Constable Barr entered
16 Fisherwick Gardens, Ballymena. He observed four

males and one female sitting at the kitchen table. The female was the first plaintiff. Con Barr searched Liam Lyness and found a black video cassette box tucked down the front of his trousers and held in place by the waist band. The cassette box had black masking tape on it and had two white plastic cable ties going into one of the faces of the box. Con Barr shouted a warning: "I have found a device." In response to an Article 5 caution, Mr Lyness stated: "I know nothing about it." Constable Bingham entered the kitchen at the same time as Con Barr and observed four males standing in the middle of the floor and a female sitting at the kitchen table. The female was the first plaintiff. Con Bingham searched Christopher Smiley and found two black video type boxes tucked down the front of his jeans. The boxes were approximately 8" x 5" x 1." There was a single length of black masking tape around the middle of the two boxes and two thin white cable ties through one face of each box. When asked what they were Christopher Smiley said: "Video boxes."

Witness M, an Explosive Ordinance Disposal Operator attended the house at 17:15 hrs. He examined one video cassette box lying on the front hallway floor and two video cassette boxes located on the kitchen worktop. Witness M made safe the three incendiary devices which were identical in makeup. White coloured 'zip ties' were used to secure components within each video cassette box. The video cassette boxes were sealed closed using black plastic masking tape. A pair of Marigold gloves was also found on the kitchen table as was a partially used roll of black plastic masking tape, the opened wrapper for which was located nearby.

Eamon McKillop was the proprietor of the Spar Shop in Fry's Road, Ballymena at the time. He was able to produce to D Sgt Davis a record of a transaction that occurred at 13:26hrs on 5 February 2005 which established that he had sold a roll of black plastic masking tape, two pairs of cleanup household gloves, Wrigley's chewing gum and a Quakers' snack product to a customer. Mr McKillop provided the shop CCTV footage that recorded this transaction. On 5 October 2005 Con John Graffin was shown an album of photographs comprising of still images from the CCTV recording and he identified Pearse O'Neill as the person who purchased the items. Con Graffin had known O'Neill for about five years as a result of his police

duties in Ballymena. Con John McIlwaine also identified Pearse O'Neill using these photographs. Con McIlwaine had known O'Neill since 2002 as a result of his police duties in Ballymena. Pearse O'Neill was arrested at 16 Fisherwick Gardens at 16:00hrs on 5 February 2005.

Walter James McCorkell, Senior Scientific Officer at Forensic Northern Ireland examined the three video cassette incendiary devices found at 16 Fisherwick Gardens on 5 February 2005 to ascertain whether the black masking tape used to seal the boxes had come from the roll of tape found on the kitchen table. All the lengths of tape were removed from the boxes for comparison purposes as was the irregularly shaped free end of the partially used roll of tape found on the kitchen table. Mr McCorkell had no doubt that all the adhesive tape associated with the three video cassette boxes originated from a continuous length taken from the partially used roll of tape and that the tape used to seal the devices came from the roll of tape found on the kitchen table.

In relation to the police interviews of Simone Sloan, Anthony Lee and Patrick Murray, it is accepted that Sloan was interviewed by D/Con Bennet and D/Con McKinney; Lee was interviewed by D/Con Kinnear and D/Con Clarke; and Murray was interviewed by D/Con McGivern and D/Con McCauley; and that all the transcripts of the various interviews are accurate."

[44] The statements which were admitted by agreement included a statement made by Con Bingham dated 6 February 2005. Con Bingham and other police were directed by radio transmission to go to 16 Fisherwick Gardens to carry out a search for munitions under Schedule 10 to the 200 Act. In addition to the agreed facts set out above, it is clear from Con Bingham's statement that everyone in the kitchen was told to get down on their knees and to put their hands on their heads. A short time later another female occupant entered the kitchen (the sister of the first plaintiff) and she was told to adopt a similar position. Three of the men were taken to another room and Mr Smiley was searched by Con Bingham in the kitchen. When asked where he got the video cassette boxes Smiley stated that he found them. Smiley was then asked: "Are they going to explode?" and he replied: "No." A blue Nokia mobile was also found on Smiley and this mobile and the two devices were placed on the kitchen worktop. Smiley was then arrested by Con Bingham under section 41 of the 2000 Act. Con Bingham made a second statement on 6 February 2005 which was also agreed. It recorded that Mr Smiley was wearing a pair of black woollen gloves in the kitchen when he was arrested.

[45] Con Barr made a statement dated 6 February 2005. He was directed by radio transmissions to go to 16 Fisherwick Gardens to search for munitions. When he entered the house two men in the living room ran into the kitchen and joined two other men and a woman who was seated at the table. One of the men who ran into the kitchen was told to accompany police into the small hallway. This turned out to be Liam Lyness. On searching Lyness a blue grey Nokia phone was found in the front pocket of his jeans and the police officer felt an object in the area of his trouser waistband at the top of his fly. He was asked what this object was and he stated that he didn't know. The video cassette box was then recovered. When arrested and cautioned, Lyness stated that he knew nothing about the box. Con Barr's police note book entries were also submitted in evidence by agreement.

[46] A statement from "M1" an Explosives Ordinance Disposal Officer dated 26 February 2005 was also admitted in evidence by agreement. The three video cassette box incendiary devices recovered at the scene were virtually identical. Each contained an electronic timer, two electrical two position slide switches, two 9 volt batteries, one firelighter, one small clear cylindrical plastic container containing 30g of a brown granular substance, one improvised initiator consisting of two electrical wires and a vehicle side lightbulb. The glass of the bulb had been removed to expose the filament. There were pieces of red, white and black coated electrical wiring which was used to complete the circuit. The components were fixed to the boxes by means of white zip ties. The video cassette boxes were securely sealed using black plastic adhesive tape.

[47] A statement from Eamon McKillop, the Fry's Road shop owner dated 7 February 2005 was also admitted in evidence by agreement as were statements prepared by Con Graffin dated 12 October 2005, Mr McCorkell dated 1 June 2005 and Con McIlwaine dated 27 October 2005. None of these statements contain any pertinent information in addition to that contained in the summary of agreed facts.

[48] A statement from D/Con Paul Bennett dated 28 February 2005 was also admitted in evidence by consent. This statement dealt with the arrest of the plaintiffs at Antrim PACE Custody Suite and the subsequent charging of both plaintiffs along with Liam Lyness, Pearse O'Neill and Christopher Smiley. Incidentally, the custody records relating to both plaintiffs were admitted in evidence without the need of formal proof and no point was raised on behalf of either plaintiff in respect of compliance with the provisions of Schedule 8 to the 2000 Act. Both plaintiffs were initially charged with (a) possession of explosives with intent and (b) membership of the RIRA. These appear to have been holding charges which were withdrawn on 26 March 2007 at the magistrates' court when these cases were returned to the Crown Court. The Statement of Complaint did not include membership charges in respect of either plaintiff and the Bill of Indictment dated 30 April 2007 charged both plaintiffs with possession of explosives with intent contrary to section 3(1)(b) of the Explosive Substances Act 1883 and possession of explosives in suspicious circumstances, contrary to section 4(1) of the Explosive Substances Act 1883. In addition, the first

plaintiff was charged with using property for the purposes of terrorism contrary to section 16 of the 2000 Act.

[49] A subsequent statement prepared by D/Con Bennett dated 9 June 2005 along with the relevant entries from this officer's notebook were also admitted in evidence by agreement. This officer was involved in conducting the interviews of the first plaintiff at Antrim Serious Crime Custody Suite. D/Con John McKinney's notebook entries were also admitted in evidence by agreement. This officer was also involved in the interviewing of the first plaintiff. Statements made by the officers who interviewed the second plaintiff (D/Con Kinnear dated 5 March 2005 and D/Con Clark dated 15 June 2005) and Patrick Murray (D/Con McGivern dated 8 February 2005 and D/Con McCauley dated 8 February 2005) were also admitted by agreement. Without going through the transcripts with a fine-tooth comb, the first plaintiff as stated in para [18] above answered all questions put to her and denied any knowledge of the incendiary devices found in her house and she denied any involvement with a proscribed organisation. The second plaintiff adopted a no comment approach during his interviews.

[50] The defendant's oral evidence in the open hearings was received over the course of two days on 23 January 2023 and 15 December 2023 and consisted of the evidence of ACC Una Jennings, Con Michael Bullock, D/Con Paul Bennett, D/Insp Glen Poskitt and D/Ch Insp Tim Hanley.

[51] ACC Una Jennings is now the Assistant Chief Constable in Cheshire Constabulary. In 2005, she was a uniformed police officer serving in Ballymena. On the afternoon of 5 February 2005, whilst on duty at 16:10 hrs, she was instructed to attend 16 Fisherwick Gardens and she was informed that she would receive further instructions when she arrived there. When she arrived at the premises at about 16:21hrs, she was informed that incendiary devices had been found in the premises and she was able to see these incendiary devices. She was instructed that she would be dealing with the first plaintiff who was one of the female occupants of the premises who had been found along with the incendiary devices. ACC Jennings introduced herself to the first plaintiff and told her to finish the cigarette that she was smoking at the time. ACC Jennings then arrested the first plaintiff under section 41 of the 2000 Act at 16:57hrs on the basis that she had a reasonable suspicion that as the owner of the house in which the incendiary devices were found, she had been involved in making bombs. ACC Jennings then escorted the first plaintiff upstairs to get some clothing as she had been seated at the kitchen table in her pyjamas and a dressing gown. The first plaintiff was searched but nothing relevant was found. A forensic cape and gloves were placed on the first plaintiff and she was then taken from her house to Antrim Serious Crime Suite by means of a police vehicle, bringing her clothes with her.

[52] When quizzed by Mr Lannon about the basis for her reasonable suspicion for the arrest of the first plaintiff, ACC Jennings stated that the basis for this suspicion was the briefing she received that incendiary devices had been found in the house

coupled with the fact that she had seen the incendiary devices in the house and she had been made aware of the fact that the first plaintiff was the owner of the house who was present in the house at the time the incendiary devices were found. ACC Jennings then stated that whether the bombs were made in the house or were just found in the house was irrelevant. The fact that there were bombs and the fact that they were found on those premises and the first plaintiff owned the house and was present on the premises at the time that they were found satisfied ACC Jennings as to the grounds for arrest.

[53] ACC Jennings stated that the fact that the three video cassette boxes were initially found by police secreted on the persons of Lyness and Smiley was also irrelevant to the issue of reasonable suspicion as the threshold is low in circumstances such as this where the person who she went on to arrest is the householder who is actually present at the time the devices were found in her home. In any event, when ACC Jennings entered the house two of the devices were sitting on the kitchen worktop. They were not secreted on Lyness and Smiley when she saw the devices and the first plaintiff was present in the kitchen at that time. ACC Jennings was then asked whether it would have made any difference to her forming a reasonable suspicion to arrest the first plaintiff if she had been informed that a person (Patrick Murray) had manufactured the devices, had then given them to Lyness and Smiley and that Lyness and Smiley had then entered the first plaintiff's house shortly before the police entered the house. ACC Jennings stated that this would not have made any difference to her forming the requisite suspicion for the reasons set out above.

[54] The next witness to give evidence was Mr Michael Bullock, a retired police constable. He stated that on 5 February 2005 he was attached to the Headquarters Mobile Support Unit (HMSU) based in Mahon Road, Portadown. On that day, his unit was briefed to conduct a search operation for munitions at 16 Fisherwick Gardens, Ballymena, County Antrim, under Schedule 10 to the 2000 Act. When he entered the kitchen, he requested the second plaintiff to accompany him to a separate room for the purposes of undergoing a search. While he was searching the second plaintiff, Con Barr shouted that he had found a suspected explosive device and when he completed his search of Mr Lee (which was negative apart from a mobile telephone), Con Bullock arrested the second plaintiff pursuant to section 41 of the 2000 Act at 16:08hrs on 5 February 2005 and placed a forensic cape and gloves on him and handcuffed him. Mr Bullock stated that he formed the relevant reasonable suspicion in respect of the second plaintiff when Con Barr had shouted that he had found a device in the house. He formed a reasonable suspicion that the second plaintiff was involved in the commission, preparation or instigation of acts of terrorism. He then cautioned the second plaintiff who made no reply. Mr Bullock gave evidence that during the period of time between the first plaintiff being arrested and him leaving the house to be transported to Antrim Serious Crime Suite, the second plaintiff's mobile telephone rang six or seven times. The first plaintiff left the premises at 16:30hrs. He was then taken to Antrim Serious Crime Suite where he was first

processed in the SOCO suite before being taken to the Custody Suite where he was subsequently detained and interviewed.

[55] Mr Bullock was asked by Mr White whether prior to the hearing of these cases he had been aware that a person Paddy Murray had been arrested and questioned on 7 February 2005 about the making of the incendiary devices found in 16 Fisherwick Gardens. Mr Bullock stated that he was unaware of this prior to this matter being raised during the course of hearing. In answer to a question from Mr White, Mr Bullock stated that even if he had been informed that the item that Con Barr found had been secreted on the person of Mr Lyness and even if he had been informed that the items had been made by Mr Paddy Murray and brought to the house by Messrs Lyness and Smiley he would still have arrested the second plaintiff as he had been found in the same location as the explosive devices were found. He stated that he believed he was justified in arresting the second plaintiff because he was found in the same location as the explosive devices.

[56] The next witness to give evidence on 23 January 2023 was Mr Paul Bennett. Now retired, Mr Bennett was a Detective Constable in February 2005 based in Maydown in Londonderry as part of the Major Investigation Team. As a member of the on-call or standby team, he was tasked to attend Antrim Serious Crime Suite and he was involved in the arrest and interviewing of the first plaintiff under the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 and was also involved in her subsequent charging with possession of explosives and membership of the RIRA. He was also involved in the arresting and charging of the second plaintiff. When cross-examined by Mr Lannon, Mr Bennett stated that in terms of decision making, the Senior Investigating Officer would have made the decision about who to charge, with what offence or offences and when to charge. However, as charging officer, Mr Bennett had to be satisfied that there was sufficient evidence to charge the individual and that Mr Bennett discussed the case with the SIO before charging the plaintiffs. It would not be for Mr Bennett to make a recommendation re the charging of an individual. His primary role was to report the facts to the SIO who was the decision maker. Mr Bennett stated that although, with the passage of time, he has no or little recollection of the grounds for bringing of possession charges against the two plaintiffs, he was of the view that the grounds for bringing the possession charges primarily arose out of the fact that both individuals were present on the premises at the time when the incendiary devices were found in those premises. The fact that at that time there was no forensic evidence linking either individual to the devices was irrelevant. Likewise, his recollection in relation to the actual grounds for the membership charges is with the passage of time poor but he was of the view that the reason for bringing these charges was primarily to do with the fact that there had been an incendiary bombing campaign in Northern Ireland in late 2004 and early 2005 including the targeting of commercial premises in Ballymena. The incendiary devices found in Fisherwick Gardens were the same type as those used in the incidents in late 2004 and early 2005 and the RIRA had claimed responsibility for the campaign. He concluded his evidence by stating that:

“I have already made it clear that it [(the formation of his opinion regarding the sufficiency of the evidence)] would have been made based on the evidence from the scene, the evidence from the arresting officers, photographs of the scene. The forensic investigation would have been very much ongoing at that initial stage and there was ample evidence to charge without forensic evidence to actually pursue the matter any further.”

[57] Mr Glen Poskitt gave evidence on 15 December 2023. He is now retired but in February 2005, he was a Detective Inspector stationed at Headquarters but working in Ballykelly on 5 February 2005 as the duty officer in the regional control group whose role was to task and co-ordinate police resources within the region. At 15:00hrs on 5 February 2005, DI Poskitt received an intelligence brief that suggested that named individuals were at 16 Fisherwick Gardens, Ballymena, and that these individuals were in possession of munitions and that they were planning an RIRA operation that afternoon. Det Insp Poskitt then briefed other officers in the operation centre and authorised a search operation under Schedule 10 to the 2000 Act. A specialist counter terrorism firearms unit was fully briefed and was tasked to perform the search and arrest operation.

[58] During cross-examination, Mr White for the second plaintiff referred Mr Poskitt to a handwritten journal authored by a Detective Chief Inspector Tim Hanley who was attached to the Serious Crime Branch in February 2005. When questioned about the discussion he had with Chief Inspector Hanley about the arrest operation Mr Poskitt stated that any references to the possibility of suspects being on board a vehicle referred to the discussion of various scenarios and how to deal with them. It was not a case that those who were to be arrested were in a vehicle at the time the discussion took place. It was more the case of discussing what tactics should be adopted if any of those whom it was intended to arrest succeeded in leaving the premises in a vehicle. It was a discussion about how such an eventuality should be dealt with. Mr Poskitt was then asked the following question by Mr White: “In your dealings that particular day did you hear reference to the name Patrick Murray as one of the possible suspects involved in this series of events?” Mr Poskitt stated in reply that he did not.

[59] Mr Tim Hanley was then called to give evidence at the open hearing on 13 December 2023 on behalf of the defendant. Mr Hanley is now retired but at the time, Mr Hanley was a Detective Chief Inspector in the Serious Crime Branch and the Senior Investigating Officer (SIO) in relation to these matters. His journal and open policy log were produced to the court. He gave evidence that he was at home on 5 February 2005 but was on-call when he received a telephone call from DI Poskitt about a terrorist operation being planned in Ballymena. Mr Hanley’s focus was on how the policing operation was to be conducted: “how we would manage the crime scenes, how we would manage forensics, etc.” Approximately one hour later, Mr Hanley stated that he received another telephone call in which he was informed

that six persons were arrested at an address in Fisherwick and that three potential improvised explosive devices and associated possible bomb making equipment had been recovered from the house. He was informed that one of the suspects had actually been found sitting at the kitchen table on which the suspected bomb making equipment was present. This was the first plaintiff. Other individuals were searched and were found to be in actual possession of incendiary devices.

[60] Mr Hanley stated that he gave initial directions regarding the investigation and then received a security briefing at 18:55 hrs. Mr Hanley then attended the scene with the Deputy SIO and the Crime Scene Manager. All directions given by Mr Hanley were recorded in the policy log. At 17:54hrs on 6 February 2005, Mr Hanley directed the arrest of Mr Patrick Murray on the basis of "actionable intelligence." Mr Murray was interviewed under caution and then released without charge on the basis that there was insufficient evidence to connect him with any offences. Mr Hanley stated that a Detective Superintendent Sturgeon was the SIO in respect of the investigation into a number of prior RIRA incendiary bomb attacks and on 7 February 2005 Mr Sturgeon briefed Mr Hanley on the existence of video evidence obtained from a shop near 16 Fisherwick Gardens that linked Mr O'Neill to "a purchase of items that were used in manufacturing what we believed were improvised explosive devices." Mr Hanley was also engaged in co-ordinating and overseeing the interviewing of the persons arrested at 16 Fisherwick Gardens. Mr Hanley also communicated with a Mr Ronnie McGarry from the DPP's office in order to seek advice about charging with membership of the RIRA and whether section 108 of the 2000 Act could be called in aid to enable charges of membership to be brought at that stage, allowing for detailed case building to take place thereafter by means of assembling and collating forensic and other evidence.

[61] Mr Hanley stated that to the best of his knowledge, section 108 of the 2000 Act had not been invoked in Northern Ireland during any previous police operation. This provision allows for the oral opinion evidence of a police officer of Superintendent rank or above to the effect that an accused belongs or belonged to a terrorist organisation to be admissible as evidence of the matter stated therein but the provision specifically provides that such a statement by itself will not be sufficient to justify committing the accused for trial, or for finding that the accused has a case to answer or for convicting the accused of membership. Following discussions with Mr McGarry and senior police officers it was decided not to rely on section 108 in this case.

[62] Mr Hanley stated that at the time he was of the opinion and he remains of the opinion that, by reason of the purchase of bomb making material from the nearby shop by Mr O'Neill, by reason of the presence of these individuals in the house, by reason of the presence of bomb making material on the kitchen table and the presence of incendiary devices secreted on two of these individuals, the individuals who were arrested in the house were part of a team who were about to deploy on a bombing mission and the similarity of construction of these devices with other devices used in previous incidents throughout Northern Ireland starting in November 2004 which the RIRA had claimed responsibility for, meant that charges of membership of the RIRA

were clearly warranted. The decision to charge was also based on security briefings. Further, prior to charging the arrested persons, all these various issues were discussed with an Assistant Chief Constable, ACC Kincaid who specifically authorised the charging of those arrested.

[63] Mr Hanley also gave evidence that Mr Patrick Murray was arrested again in 2006 and was questioned about the purchase of timer units similar to the ones used in these incendiary bombs. He was subjected to a Video Identification Parade Electronic Recording (VIPER) process but the relevant witness was unable to pick out Mr Murray as the person who purchased the items in question and no charges were brought against Mr Murray. Mr Hanley then gave evidence about files being prepared for the DPP and being submitted on or about 4 April 2005 and directions being received from the DPP's office thereafter which were then followed up. However, Mr Hanley stated that he had no involvement in the decision not to offer any evidence against the plaintiffs.

[64] Mr White when cross-examining Mr Hanley, enquired why the first plaintiff's sister Aisha Sloan who was arrested at the same time as the others was not charged. Mr Hanley stated that he did not recall whether this individual was or was not charged. But he went on to state that the first plaintiff's sister had not been in the house the previous night. She had only arrived back at the house at 15:00 hrs, had a brief conversation with those present and had then gone up to bed. Mr Hanley considered that there was a material difference between this individual and her sister who was sitting at the kitchen table where the bomb making equipment was found by police when they entered the house. Mr White also referred to the police statement of Witness A who stated that at the relevant time, she was a work colleague of the first plaintiff and that she attended the first plaintiff's home at about 14:00hrs on the date in question. In her statement, she stated that she attended the premises in order to collect a work cheque. She arrived at the house at 14:00hrs and sat chatting at the kitchen table for about 25 minutes. He pointed out that this woman was also seated at the kitchen table for a period of time earlier that afternoon yet she was not charged. Mr Hanley stated that he could not recall there being any intelligence relating to Witness A and although she provided a witness statement, she was never seen as central to the police investigation.

[65] Mr White then suggested to Mr Hanley that in relation to the decision to charge and any discussion between Mr Hanley and Mr McGarry, there appeared to be no consideration of whether it was appropriate to charge each plaintiff individually. Rather the consideration related to whether it was appropriate to charge this group of individuals with the charge of membership. This was accepted by Mr Hanley: "certainly we were looking at them as a group because it was early days in the investigation." The decision to charge was based on intelligence and what was found when the police entered the house on the day in question, including where individuals were located in the house when police entered the premises. Mr White suggested to Mr Hanley that the membership charge was very much contingent on the possession charge and any statement made under the provisions of section 108 would have had

to concentrate on the evidence of possession. It was also put to Mr Hanley that the suggestion that section 108 of the 2000 Act was going to be used in this instance was fanciful and that there was really no basis whatsoever to charge the plaintiffs in this case with membership of the RIRA.

[66] Mr Hanley explained that there was considerable debate about how section 108 could be utilised in this case and, in particular, what information could and should be given to the police superintendent who was entirely independent of the investigation to enable that officer to make the relevant statement under section 108. He described the potential use of section 108 as innovative as opposed to fanciful. The decision whether or not to utilise section 108 was carefully considered and ultimately it was an Assistant Chief Constable who made the decision not to have a section 108 statement prepared. Mr Hanley stated that he was never involved in the preparation of a draft section 108 statement but he was able to tell the court that a police superintendent had been identified in case the section 108 route was to be followed and that was Det Supt George Hamilton.

[67] It was then suggested to Mr Hanley that without a section 108 statement the membership charge in reality equated to the possession charge in this case. Mr Hanley freely accepted that the two were inextricably linked because of the strikingly similar nature of the incendiary devices found in Fisherwick to the incendiary devices that had been used in earlier incendiary bomb attacks that had been claimed by the RIRA. Again, Mr Hanley was challenged about the apparent lack of any individual assessment in relation to the decision as to whether each individual should be charged with membership and that once the decision was made not to use section 108, the decision to charge with membership was unsustainable. Mr Hanley accepted that, traditionally, it was difficult to sustain membership charges and that was part of the rationale behind the enactment of section 108. This must all be viewed in the context of what happened in these cases. The holding charges of membership were not pursued and were dropped when the matter was transferred from the magistrates' court to the Crown Court in March 2007.

[68] Turning then to deal with the possession charges, it was put to Mr Hanley that the decision to charge with possession was made in the context of no admissions by either of the plaintiffs in their police interviews. Further, neither of the plaintiffs was found with incendiary devices on their persons and there was no forensic evidence linking the plaintiffs to the devices at that time or any future point in time. It was put to Mr Hanley that when the decision was made to charge the plaintiffs with membership there was nothing to suggest that either plaintiff had any knowledge of these devices which would have grounded a charge of possession. Mr Hanley disagreed and referred to the fact that the plaintiffs were found in the kitchen in proximity to those in actual possession of the devices in circumstances where some of the materials and items which may have been used to assemble the devices were on open display on the kitchen table. Mr White then put it to Mr Hanley that in the absence of any forensic evidence linking the plaintiffs to the devices, the only way in which any charges of any nature could be made out was if sensitive intelligence

material were to be disclosed and brought out into the open in the forum of a criminal trial and that was never going to happen. It was suggested to Mr Hanley that the charges that were levelled against Mr Lee were never going to be made out but that a decision was made to charge him to bring him into the spotlight and bring him to the attention of those who might take the law into their own hands. This was denied. It was also put to Mr Hanley that this prosecution was initiated to protect a covert human intelligence source, namely, Mr Paddy Murray. This again, was denied.

[69] Mr Hanley was questioned as to why any vehicles associated with Mr Murray were not searched at the time when he was arrested. With the passage of time, Mr Hanley had no recollection of there being any specific interest in any vehicle associated with Mr Murray. Mr Hanley was then quizzed by Mr Lannon about the basis of his note that 16 Fisherwick Gardens was a bomb factory. In answer he stated: "It was just a turn of phrase but it's a location in a building where effectively bombs are being made..." It was put to Mr Hanley that there was no evidence that the bombs were actually made in 16 Fisherwick Gardens. Mr Hanley disagreed, citing the finding of materials (black PVC tape and Marigold gloves) on the kitchen table. It was then put to Mr Hanley that given that the devices were found secreted on the clothing of Lyness and Smiley and that there was no forensic evidence linking Simone Higgins to any of the devices or the materials on the table what was the basis for believing that she knew anything about the bombs. Mr Hanley replied that the basis of the belief was the plaintiff's presence in the proximity of the individuals with the devices and the materials on the kitchen table.

[70] During the course of these proceedings the defendant provided the court with a document entitled "OPEN GISTS" which contained two sub-sections entitled "General Gists" and "Document Gists." The "General Gists" apart from number 4 are really in the form of submissions. These are set out below:

- "1. The Claimants are not telling the truth in relation to material and core parts of their claim.
2. The Claimants are deliberately advancing a false claim in order to secure the damages that they seek.
3. The Defendant considers that the Claimants, and all their co-defendants, were guilty of all the charges that they faced.
4. Patrick Murray supplied certain unknown items to Anthony Lee on the morning of 05.02.05 in anticipation of a planned operation by RIRA terrorists, namely, all of those charged (Anthony Lee, Pearse O'Neill, Liam Lyness, Christopher Smiley and Simone Higgins).

5. The defendant considers that Patrick Murray was suspected of the same offences as the Claimants.
6. The defendant denies the allegation made by Liam Lyness that the prosecution was an abuse of the process of the court.
7. In January 2008 a decision was made that there was not a reasonable prospect of conviction in this case."

[71] The "Document Gists" contain summaries of documents which were introduced in the closed hearings along with some submissions based on the open summaries:

- "1. During 2005 it was believed that RIRA had planted incendiary devices at various locations throughout Northern Ireland.
2. The PSNI assessed that Anthony Lee was an active member of the RIRA.
3. In 2005 the RIRA were considering a campaign of incendiary devices throughout Northern Ireland.
4. A PSNI document recorded:

Anthony Lee, Pearse O'Neill and Ryan Agnew are assessed to be members of the RIRA.
5. A PSNI document recorded:

In late 2004 it was asserted that RIRA in the Ballymena area had access to munitions.
6. A PSNI document recorded:

During 2004/2005 it was assessed that RIRA had planted incendiary devices at various locations throughout Northern Ireland.
7. In late 2004 it was assessed that Anthony Lee, Pearse O'Neill and Ryan Agnew were believed to be members of the RIRA.

8. It was assessed that on the afternoon of 05/02/05 Anthony Lee, Christopher Smiley and Pearse O'Neill were present at 16 Fisherwick Gardens.
9. It is assessed that Patrick Murray may have supplied unknown items to Lee on 05/02/05.
10. In 2005 it was assessed that Christopher Smiley was a member of RIRA.
11. Gisted report dated November 2004 (but probably 2005) attached.
12. A PSNI document recorded:

As you are aware 13 incendiary device attacks occurred in various towns and cities across Northern Ireland between 18 December 2004 and 1 April 2005. Resulting damage is estimated at between 25 and 30 million pounds. The devices used in these attacks were similar in construction to those found at 16 Fisherwick Gardens, Ballymena on 5 February 2005 when 5 persons were arrested.
13. A PSNI document recorded:

The presence of Low Copy DNA on the devices raised the suspicion that Patrick Murray may have possibly been involved in the manufacturing process.
14. Gisted PPS Advice Brief attached.
15. A PSNI document recorded:

It is assessed that Patrick Murray had previously bought OM1 timers similar to those used in the incendiary devices that had caused in the region of £30m worth of damage to premises throughout the province. The defendants in the case of *R v Lyness and others* were arrested in possession of incendiary devices incorporating timers identical to that bought by Patrick Murray. One of these devices contained Low Copy DNA which was matched to Patrick Murray.

16. A PSNI document recorded:

Patrick Murray was identified by the shopkeeper from whom he bought a batch of OM1 timers.

17. The defendant denies that he or any of his servants or agents authorised, requested or permitted any person to supply Anthony Lee with the alleged or any incendiary devices."

[72] The documents referred to at paragraphs 11 and 14 of the "Document Gists" are, in fact, redacted documents that appear in unredacted form in the closed hearing materials. Both documents are marked secret. One document is dated 30 November 2004 but the 2004 is circled and "2005?" in handwriting appears above the typed year date. The document relates to incendiary attacks conducted in "greater Belfast and Counties Londonderry, Antrim and Tyrone between 18/12/04 and 1/4/05. It then lists 13 specific targets and the dates on which they were attacked and estimates the cost of the damage caused as a result of these attacks as being between £25m and £30m. At number 6 on the list was Camerons in Ballymena which was attacked on 23 December 2004. The document is signed by D Supt C Sturgeon and was copied to Head of Intelligence C3. The document states as follows:

"These devices are so similar in construction to those recovered at 16 Fisherwick Gardens, Ballymena on 05/2/05 that the issue of similar fact evidence would be likely to be applied to these and the series above thereby causing disclosure of forensic evidence across all these investigations. The net effect therefore is that information contained in forensic statements for one case are likely to be deemed relevant and disclosed under Criminal Procedure and Investigations Act 1995 across all these cases."

[73] The second document is a PPS advice brief re Patrick Murray. This is also marked secret. The document records that Murray was arrested following the discovery of incendiary devices on persons at 16 Fisherwick Gardens, Ballymena on 5 February 2005. Police involved in a proactive search operation entered 16 Fisherwick Gardens, Ballymena, and discovered a number of persons in the kitchen area in possession of three primed and "ready to go" incendiary devices. Five persons were arrested and subsequently charged with possession of explosives with intent and RIRA membership. The arrested persons are then listed in the document. The presence of low copy DNA on the devices raised the suspicion that Patrick Murray may have been involved in the manufacturing process. He was also suspected of being a member of the RIRA. The devices found in Fisherwick Gardens were similar in design to numerous other devices some of which have caused the destruction of or damage to commercial premises. Two of the devices recovered at Fisherwick Gardens

were subject to DNA examination. The findings were not considered to be sufficiently definitive to be of evidential value but the brief states:

“However, for intelligence purposes only all the DNA bands observed in the profile of Murray are represented in this mixture and therefore these observations would support the assertion that he was contributing to part of the DNA tested.”

[74] The brief goes on to state that the peculiar component of these devices is an electrical timer switch within the devices known as an OMI timer. The lead forensic scientist in this field had not encountered this type of timer being used prior to the index campaign by the RIRA. The brief describes the use of this timer as unique. A J Hursts Ltd in Belfast was identified as the only local supplier of these devices and this company obtained the products from Tele Control Limited in England. The brief states that ten such timers were purchased on 3 February 2005 and the description of the man purchasing the devices which was provided by a member of staff in Hursts matched Murray’s description. This witness was prepared to take part in an identification parade. Two of these timers were found in the devices recovered from 16 Fisherwick Gardens and the same timers were subsequently found in devices left in commercial targets in Belfast and Newtownards in March 2005. These timers all had the same batch number and were probably sold as a batch of ten items. The brief goes on to state that a search of premises linked to Murray did not result in any finds of note. The brief also noted that Murray at that time was on licence for terrorist offences relating to the possession of explosives following his conviction at Belfast Crown Court on 25 March 1994.

CLOSED SECTION OF THE JUDGMENT

RESUMPTION OF OPEN SECTION OF THE JUDGMENT

[259] The court has carefully considered the entirety of the evidence in this case including the open and closed oral evidence, open and closed documentation and the open and closed submissions and finds that the plaintiffs’ claims are absolutely without merit or substance in every respect. The court has set out its reasoning for coming to such a conclusion in the closed section of this judgment and (subject to the contents of the gist provided as an annex to this judgment which has been agreed by the representatives of the defendant and the Special Advocates instructed in this case) is precluded from going further in expanding upon its reasoning in the open section of this judgment. Each of the heads of claim put forward by and on behalf of the plaintiffs has been carefully examined and each of those heads of claim have been adjudicated to be without any merit. The plaintiffs’ claims are dismissed. The defendant to have costs and as the plaintiffs are legally aided the orders for costs are not to be enforced without further order of the court and the plaintiffs’ costs are to be taxed as assisted persons. Finally, I wish to state in the clearest and most emphatic terms that the plaintiffs’ interests were fully and properly represented in the closed

proceedings by the two skilled, tenacious and industrious Special Advocates instructed in these matters.

AGREED GIST

[260] In the closed part of this judgment, from paras [75] to [258], the judge details and analyses the documentary and oral evidence received during the closed hearings. The judge then presents his findings on the totality of the evidence with reference to the various heads of claim as set out in the open part of the judgment. The judge's conclusions on the various heads of claim are set out in paras [248] to [258] of the closed section of the judgment and the agreed gist of these paragraphs are as follows:

- At the outset of this judgment, I set out the various heads of claim included in the plaintiffs' pleadings. Irrespective of the court's powers as outlined by Lord Clarke in the Supreme Court in the case of *Fairclough Homes Limited (Appellant) v Summers (Respondent)* [2012] UKSC 26 consequent upon the finding that both plaintiffs have lied on oath about their activities on 5 February 2005 and the days leading up to that date and their state of knowledge of activities of others arrested on that occasion, I am convinced beyond a shadow of a doubt that there is no merit in any of the plaintiffs' claims.
- In relation to the claims of false arrest, having heard the evidence of the arresting officers who were subjected to cross-examination and having considered all the evidence in this case, I am entirely satisfied that the arresting officers genuinely held the belief that there were grounds to arrest the plaintiffs pursuant to section 41 of the 2000 Act. It is frankly preposterous to suggest that either or both of the arresting police officers did not have reasonable grounds to suspect that the persons arrested were involved in the commission, preparation or instigation of acts of terrorism. I accept that both arresting officers formed a genuine suspicion that the person they were arresting was concerned in acts of terrorism and I am convinced that these suspicions were entirely reasonable when judged by the knowledge possessed by the officers at the time and, although strictly unnecessary, by way of a belt and braces approach, also when judged in light of the entirety of the evidence available to the court.
- I unhesitatingly reject the plaintiffs' argument that the arrests were unlawful because the police officers in charge of the operation deceived, misled or misinformed the arresting officers or were deliberately selective in the information that was provided to the arresting officers. There was no plan, intent or effort on the part of the police to "set up" or "fit up" Lee, Higgins or anyone else arrested that day.
- The plaintiffs' claims of false imprisonment are similarly entirely baseless. The detention of the plaintiffs following their arrests was appropriately authorised and appropriately reviewed in accordance with Schedule 8 to the 2000 Act. The

grounding suspicions which justified their arrests clearly endured throughout their detention in Antrim Custody Suite. There was no wastage of time. The interview records disclose clear and carefully planned and executed interview strategies. The successive decisions to detain the plaintiffs were properly informed and objectively justified. The plaintiffs' periods of detention until their first court appearances were entirely lawful and justified.

- The claims for assault and trespass are similarly without any merit or foundation. The strictly limited use of force to enter the premises and to apply forensic attire and handcuffs to those arrested was self-evidently necessary and proportionate and therefore reasonable in the circumstances. Such actions were also authorised within a defined and accessible legal framework and clearly in accordance with the law (Schedule 10 to the 2000 Act). The same applies to the searching of the plaintiffs and the taking of samples for forensic analysis (the plaintiffs having consented to the obtaining of samples).
- When considering the claim for malicious prosecution, I regard it appropriate to concentrate only on the elements of that tort which are in dispute, namely: (a) that the prosecution was without reasonable and probable cause; and (b) that the defendant instituted proceedings maliciously. The plaintiffs were initially charged with possession and membership although those charges were holding charges that were withdrawn on 26 March 2007 at the Magistrates' Court when these cases were returned to the Crown Court. The statement of complaint did not include membership charges in respect of either plaintiff and the bill of indictment dated 30 April 2007 charged both plaintiffs with possession of explosives with intent contrary to section 3(1)(b) of the Explosive Substances Act 1883 and possession of explosives in suspicious circumstances contrary to section 4(1) of the Explosive Substances Act 1883. In addition, the first plaintiff was charged with using property for the purposes of terrorism, contrary to section 16 of the 2000 Act.
- There is nothing to suggest that the prosecution of the plaintiffs in this case was without reasonable and probable cause. The police are only responsible for the initial charging and thereafter the PPS was responsible for the charges that were ultimately faced by the plaintiffs in this case. Having heard evidence in relation to the charging of the plaintiffs given by Det Con Bennett and Det Ch Insp Tim Hanley (which was backed up by the contents of Det Ch Insp Hanley's journal), I am entirely satisfied that those initially charging the plaintiffs honestly believed in their guilt and that the basis of their beliefs when subjected to objective analysis was entirely sound and reasonable. This applies to both the initial possession charge and the membership charge. The basis for the possession charge requires no elucidation. The plaintiffs were caught red handed. The basis for the membership charge requires little by way of elucidation either. The RIRA were in the middle of an ongoing campaign of planting incendiary devices in commercial premises all over Northern Ireland and had caused considerable damage to property as a result of this ongoing

campaign. Here was a team caught red handed preparing incendiaries to plant in Ballymena. It is entirely reasonable to conclude that this was an operation that was part of the ongoing RIRA campaign and these individuals were members of that organisation. In relation to this issue of malice, there was not one shred of evidence of wrong or improper motive in this case. The sole motive operating in this case was the desire to bring to justice those caught red handed with incendiary devices.

- Turning then to the allegation of misfeasance in public office and having regard to the leading authority of *Three Rivers District Council and others v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1, there is not one shred of evidence of targeted malice in this case. There is no evidence of bad faith and no evidence of police powers being used for an improper or ulterior motive.
- When one examines the allegation of untargeted malice, there is no evidence to suggest that any police officer performed any act knowing that he had not power to act in that manner or no power to perform the act complained of with reckless indifference as to the lack of such power. Even assuming that the police knew that the act complained of would probably injure the plaintiffs, there is no evidence that any officer involved in this case did not have the honest belief that his actions were lawful.
- The human rights claims made out in this case by both plaintiffs are just meaningless padding. In summary, the plaintiffs' claims are utterly baseless in each and every respect.
- I do not accept that the prosecution was abandoned because the PSNI were caught out trying to entrap Lee and others. There was no entrapment in this instance.