IN THE WILLESDON MAGISTRATES' COURT

BETWEEN:

THE COMMISSIONER OF THE POLICE OF THE METROPOLIS

Applicant

-v-

O BOMBIERO
25 PARK PARADE, NW10

Respondent

INDEX

12. COURT ORDER [Adjourning the Closure Order Proceedings and granting a temporary closure order]

13. DRAFT CLOSURE ORDER

14. *R (Qin and ors) v Commissioner of Police of the Metropolis* [2018] PTSR 966 (QBD)

RESTRICTED (when complete)

MG11

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)

URN

Statement of: Constable Ali Kolbabayan Ghazvini
Age if under 18: Over 18
Occupation: Police officer

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 23 Mar 2023

I am the above named police officer and this statement is in relations to O BOMBEIRO restaurant / bar at 25 PARK PARADE NW104JG. The premises is a commercial business that operates as a Portuguese restaurant.

In this statement I will refer to my own knowledge of the local area along with crime reports and crime intelligence reports held on police database. Information from a number of sources suggest controlled drugs are being dealt from O BOMBEIRO 25 PARK PARADE NW10 4JG. Other than the name of the owner of O BOMBEIRO I have removed sensitive information including names of a number of people, addresses, place names and VRM's from the intelligence and crime reports on this statement to protect the privacy and integrity of other people.

I am a Police Officer attached to HARLESDEN TOWN CENTRE TEAM (HARLESDEN TCT) in the NORTH WEST Basic Command Unit (BCU). I have been working in HARLESDEN TCT since DECEMBER 2022 and I am already aware of the issues facing the local community including the prolonged problems with supply of drugs and anti-social behaviour in HARLESDEN in particular on PARK PARADE NW10. From December 2021 to December 2022 the Metropolitan Police have received 4,045 reports of crimes for Ward Boundary of HARLESDEN including 1,592 ASB and drugs related reports creating 39.35% of the crimes recorded in the ward.

I am aware a S23 MDA warrant was executed in AUGUST 2022 on three commercial premises on PARK PARADE NW10 which led to seven arrests for PWITS and I was one of the arresting officers. At that time I was assigned to Street Duties Unit in NORTH WEST BCU. These premises were subject to closure orders as a result of this warrant as Class B controlled drugs, namely herbal cannabis and cannabis raisin, were recovered from all three cafes on PARK PARADE NW10.

Police have received information on multiple occasions from various sources that since the closure orders have been put in place on the three cafés on PARK PARADE NW10, the owner of one of the cafés, has been seen on multiple occasions going into and out of O BOMBEIRO at 25 PARK PARADE NW104JG. There is information that the male, the owner of one of the cafe's, has been seen loitering outside O BOMBEIRO in a group of males which have been observed to deal drugs at the location since his business was closed due to being involved in drug supply, therefore he could not operate from his café' and as such it is believed that he had moved his operations to O BOMBEIRO at 25 PARK PARADE NW10.

The café' has since been re-opened but intelligence suggests that drugs are still being stored, consumed and supplied at O BOMBEIRO at 25 PARK PARADE NW10. Information also suggest groups of males have been actively consuming and dealing drugs outside O BOMBEIRO. These information suggests those males

Signature:

Signature Witnessed by:

RESTRICTED (when complete)

suspected of dealing drugs at the location have been observed to be going into and out of O BOMBEIRO and as such it is believed that drugs may be stored and dealt in the premises. Only recently I spoke to an informant who had observed drugs being dealt from the location. The intelligence from this person suggests the owner of O BOMBEIRO, a male known by the name of Francesco Jose Pinto NUNES, is aware and possibly involved in drug dealing from his business premises at 25 PARK PARADE NW10. Additionally, I recently came across a crime report held on police database highlighting a North African male was arrested for PWITS inside O BOMBEIRO 25 PARK PARADE NW10 by TSG officers.

I have also received information from members of community and local authority about other forms of anti-social behaviour outside O BOMBEIRO on PARK PARADE NW10. Information suggests group of males loiter outside the premises causing nuisance to community members including staring and intimidating members of public walking past the restaurant. In addition, a male was recently reported to have been assaulted by a group of males following a verbal argument inside O BOMBEIRO.

CRIS 1905304/23 CAD 398/26FEB23 - 26/02/2023 – Violent Against the Person
On Sunday 26th February 2023, NW43N were assigned to the above mentioned CAD. The location of the call was outside No. 25 Park Parade, NW10 - Bombeiro Restaurant. The phone call to Police was made by a male who stated that there was a fight at the location involving 20 people with glass bottles.

Police arrived on scene where there were a number of people congregated outside the O Bombeiro Restaurant, Park Parade. Police approached the members of public in an attempt to find out what has happened.
There were a lot of intoxicated people outside the venue. Police identified one male with facial injuries.
Male victim stated that he was at the O Bombeiro Restaurant with around 20 people as he had attended a 50th birthday party. Victim stated that the restaurant is for the Portuguese community and that he gets along with everyone in there. Victim told Police that there were 2-3 males that he did not recognise, he had never seen them before. Victim stated that these males did not belong there. Victim stated that one of these males have thrown his coat on the floor. Victims coat was hanging over a chair. Victim has questioned these males where a verbal argument has started. Victim stated that he went outside the restaurant where the males have followed him. This is when victim was attacked by 2-3 males outside the restaurant. Victim could not remember exactly what happened first or which one of the males initially assaulted him first. Victim stated that he was punched repeatedly by these males before falling on the floor. The males have then continued to attack the victim whilst he was on the floor, the males have kicked the victim in the face, also whilst he was on the floor. The males have then made off prior to Police arrival. Victim stated that he did not see any weapons being used, did not see a bottle being used against him.
Victim was taken to hospital.

QKRT00531729 – 13/02/2023 – E21
On MONDAY 13th FEBURARY 2023 the informant had seen an exchange been made outside O BOMBEIRO 25 PARK PARADE NW10.
A group of North African males were seen going in and out of the restaurant. A male known as Francesco, believed to be the owner of the restaurant, was seen going to the front door of the restaurant telling the males standing outside saying words to the effect of “ONLY ONE BAG”. Few minutes later Francesco was seen behind the bar with another male known as [redacted] standing next to the bar. Francesco was witnessed counting what the informant believed to be a stash of bank notes and handed it to [redacted]. [redacted] had then walked out of the restaurant with the cash and stood by the front door with another male. [redacted] was then seen handing over the cash to the male. The male then walked off going in the direction of HIGH STREET NW10. A little bit later [redacted] was seen handing over what looked like drugs to another male. The item was wrapped in a cling film or a similar packaging. An exchange of money may have taken place. A Mediterranean male who was seen

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

standing outside may have also been involved in the exchange of drugs with the North African males. There is a video recording of the incident.
QHTCT are aware and dealing.

Francesco
55 to 60 YEARS OF AGE
MALE
IC2

[redacted]
Approx. 40 years old
MALE
IC6

'Mediterranean male'
Approx. 40 years old
MALE
IC2 or IC6

QKRT00531725 – 13/01/2023 – E11
Whilst conducting OP NIGHTINGALE PATROLS in the Harlesden Area Police were approached by a member of the public on Harlesden Gardens who stated that a there was drugs going on at a PORTUGUESE restaurant on PARK PARADE HARLESDEN NW10.
Member of the public stated that it was drug dealing going on mainly but possibly could have been drug use as well. The drugs that they believed were being sold was Class A drugs.
They didn't know who was selling the drugs or what they looked like but that they had seen dodgy stuff going on there and also had heard from a number of other people that there was drug dealing going on.
The address of the venue suspected to be dealing drugs is
O BOMBEIRO 25 PARK PARADE LONDON NW10 4JG

CRIS1902968/23
On Wednesday the 1st of February 2023, officers from TSG were on patrol in a marked police carrier with callsign U243.
At 2220 hours officers were on Leghorn Road, NW10, facing north, at junction with Park Parade, NW10.
Officers got out of the carrier and saw a North African male on Park Parade, stood with another male.
When he noticed police, they quickly separated and the Defendant went inside of O BOMBEIRO, 25 Park Parade, NW10 4JG. Both officers followed him inside and he went through the restaurant to the rear of the premises. The defendant has then discarded items onto the floor witnessed by both officers.
The defendant detained for a Section 1 PACE search. The discarded items were retrieved which included, two snap bags of cannabis and kitchen knife.
The defendant was arrested at 2225hours for possession of a pointed/bladed article and possession with intent to supply Class B Cannabis. He was found with £220 cash as well and was suspected to be supplying this cannabis on Park Parade due to the circumstances.

QKRT00531167 – 29/01/2023 – B11
On 29/01/2023 at around 1900hours Harlesden TCT officers were doing mobile patrols when Brent CCTV has informed officers that a male was seen doing exchanges on Park Parade outside O BOMBEIRO.
Male was described IC1 or IC6, mid 20s, about 5ft10 as wearing a distinctive brown camouflage jacket and white camouflage trousers, wearing a black beanie hat.

Witness Signature:

Signature Witnessed by:

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

Officers have then went to the location and seen the male go into MERHABA CAFÉ SHOP where and shortly after left. Officers have tried to detain the male and the male ran inside O BOMBEIRO where he went towards the right hand side of the bar which appears to lead towards the back of the property.
CCTV has monitored the area after the incident and within 20 minutes around 10 to 15 people have gone towards O BOMBEIRO and they appeared to be turned away from the restaurant which makes officers suspect that the restaurant might be used to deal drugs.

QKRT00531156 – 29/01/2023 – E11
On Sat 29th Jan 2023 officers were on Plain Clothes patrols. Parked up on Leghorn Road NW10 junction with Park Parade in an unmarked police car. The area is known for dealing drugs as multiple members of public have stated to police from Public Activity Initiative mobile patrols, males loiter outside the laundrette and deal drugs from 1500 hours onwards.
Two males were parked up on LEGHORN ROAD in a silver BMW there was one sitting behind the driver's seat and one sitting in the front passenger seat, the driver was seen to blow smoke out of the window and officers opened the window and got out of the car and as soon as they walked towards the car they could smell a strong smell of cannabis.
Both males were detained under section 23 MDA, and the driver admitted to having a cannabis spliff in his hand, and when he stepped out the VEH he has thrown the spliff on the floor, cannabis resin was then found in his right jean pocket.
Officers under caution and asking the where did he get the cannabis from said he was offered it from someone who was standing outside O BOMBEIRO. The passenger was asked where it was from by officers and he said to officers they weren't not from the area, and they had just had food have food UNCLE ALIS and they were walking between Uncle Ali when an Algerian male came up to them asking if they smoked and did they want any, the passenger said no but the driver said yes, and he said the guy came from the Brazilin shop with all the lights off and nodded towards O BOMBEIRO.
It cost the driver £5 for the cannabis resin which was rolled up in cling film spliff size.
The passenger described the male who offered the drugs to buy as TALL over 6FT, Arabic Algerian male, Wearing a black puffer jacket with the North Face Jacket on it

QKRT00530453 – 06/01/2023 – B21
There is information that there is drug dealing and the smoking of drugs inside the restaurant O BOMBEIRO 25 PARK PARADE, HARLESDEN, NW104JG
On 06/01/2023, three men walked in front of a bus stop carrying a spliff and walked into O BOMBEIRO.
The males did not come out and believed the owner is allowing people to smoke in the back of the restaurant.
After 1600hours O BOMBEIRO still has a line of dealers outside.

QKRT00529774 - 07/12/2022 – E41
On Wednesday 7th December 2022 at 1110hrs a member of public approached officers and told them about drug dealing on PARK PARADE, HARLESDEN.
He said a group of males going in and out of O BOMBEIRO restaurant around 1500hrs every day and the owner of the restaurant is scared to inform the Police and sometimes locks his door and only allows customers in his restaurant to stop these males from entering his shop.
The shops are all on the same lane and the group of males have been going in and out of these shops dealing drugs.
The member of Public also said another group of young males have also been dealing in class B drugs on LEGHORN road close to Fortune Launderette.
Member of public did not give his details or description of the group of males dealing in drugs.

QKRT00529030 – 05/11/2022 – B11
At approximately 1755hrs on 05/11/22 officer's noticed two males standing outside O BOMBIERO, 25 PARK PARADE NW10.
The location is known for drug consumption and the locality known for drug dealing.

Witness Signature:

Signature Witnessed by:

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

As soon as one of the males has noticed uniformed officers conducting foot patrols along PARK PARADE he has then gone into O BOMBIERO, 25 PARK PARADE NW10 abruptly with the other male walking towards an adjacent shop called UNCLE ALI's.
It is believe that these males have changed their behaviour due to noticing police presence.
As officers walked past O BOMBIERO the male was seen to be at the far end of the restaurant looking at the entrance to where the officers were walking by, it appeared as though this male was waiting for police to leave the area before coming out of the premises once again and it was not believed to be a genuine customer.
Officers re-attended the location at approximately 1807hrs and the male was standing in the doorway to Uncle ALI's and the other male has been seen standing outside O BOMBIERO, 25 PARK PARADE NW10 with another male. The two males outside O BOMBIERO have been stop and accounted and details gathered and checked on PNC (see image attached).
It is believed that the male is coming to the location to engage in antisocial behaviour and possible to deal drugs.
The male is regularly seen at the location and is normally wearing a blue Deliveroo jacket.

QKRT00528265 - 12/10/2022 – B41
The informant has told officers that on the 10/08/2022 that a friend has informed them that whilst they have been sitting inside O BOMBEIRO, 25 PARK PARADE NW10 that they routinely saw individuals consuming drugs including herbal cannabis.
The informant alleges that drugs are routinely consumed at the rear of the premises in an area at the back with has a pool table and seating area. The informant states that she has also seen several exchanges take place at the location and noticed several drug deals at the location.
The informant could not provide further information in relation to the description of these dealers or individuals due to the time since this event.
The informant states that this was a common theme that occurred whilst they were in O BOMBERIO.

QKRT00528256 10/10/22 – B21
Informant states that the owner of Sefar Cafe, has turned up outside O BOMBEIRO at 1700 hours on MONDAY 10/10/2022 and has spoken to a group of people standing outside O BOMBEIRO and has then gone into O BOMBEIRO.
The informant stated that they believed that this group of individuals loitering outside O BOMBEIRO, 25 PARK PARADE NW10 were drug dealers.
The informant has seen the owner of Sefar enter and exit O BOMBEIRO several times through the evening.

QKRT00528264 09/10/22 – B21
Informant states that at approximately 1700hrs on Sunday the 9th OCTOBER that they witnessed a clear drug exchange take place outside O' BOMBEIRO, 25 PARK PARADE NW10.
The informant also stated that they have seen several dealers on PARK PARADE loitering outside O BOMBEIRO, 25 PARK PARADE throughout the day.
The informant stated that the dealer was wearing a pair of dark shades. The informant stated that this male engaged in a very short conversation with another male and the exchange has then taken place.
No further details provided.

QKRT00527986 – 30/09/2022 – E21
Intel suggest that Drug dealers were out in the rain on 30th Sep 2022 in Park Parade NW10, in the BOMBEIRO Restaurant for shelter.
Informant stated that the recent raids that closed 3 cafes in the street has meant they just moved locations.
They stand outside this restaurant from mid-afternoon onwards with the school kids passing by.

QKRT00527902 28/09/2022 – B21

Witness Signature:

Signature Witnessed by:

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

Resident of Leghorn Road contacted the Harlesden Town Centre Team with reports that people have been breaching the Open Space Protection Order most nights.
They stated that when police turn up they depart but as soon as there is no presence they come back. They have started lingering around the junction with Park Parade, NW10 since the shutting of the cafes happened. They are recognised to be the people who own and frequent one of the cafe's which was subject to a closure order recently following a warrant execution.
She stated that some of them stand outside O BOMBEIRO CAFE and the textiles shop which are two adjacent shops directly opposite the Leghorn Road, Park Parade junction.
The textiles shop is believed to not be in use anymore. These males are seen to go into the O BOMBEIRO CAFE which is said to have a pool table and garden out the back where they all hang out. One resident confronted the owner of O BOMBEIRO asking why he encourages the behaviour and he replied that he could not make a living off the restaurant at the front of the venue alone and that they are welcome to stay as long as they buy drinks and food etc.
The resident of LEGHORN ROAD stated that they stay there most of the afternoon/ evening and all talk to each other and on occasions she has seen 'transactions' take place.
At the time she called she could see the three (3) outside the textiles shop, three (3) outside OBOMBEIRO and a four (4) on LEGHORN ROAD. One of the people on LEGHORN ROAD is known to be the owner of SEFAR CAFE.
Although the people stood on Park Parade are not in breach of the OPEN SPACE CLOSURE ORDER they are contributing to the ASB that is happening on the junction of Leghorn as well as Park Parade itself.
O BOMBEIRO owner was identified by the resident as 'FRANSICO'.

QKRT00527637 20/09/2022 – B21
Informant states that on TUESDAY 20th SEPTEMBER 2022 at approximately 1555hrs they have seen an Arabic male wearing a turquoise jacket turn up at the location on LEGHORN ROAD NW10 and park up his moped.
This is a male who the informant states has witnessed on several occasions outside the laundrette on PARK PARADE, 71-72 PARK PARADE NW104JB and also outside 25 PARK PARADE NW104JG parking their vehicle and engaging with those loitering in the location who are believed to be involved in drug supply.
The informant states that when owner of Sefar Café turns up on PARK PARADE/LEGHORN ROAD that this male and his moped turn up shortly after.
The male is an Arabic male with short curly dark hair of medium to large build wearing what appears to be a Deliveroo jacket.
It is believed that this male may be linked with owner of one of the cafe's and as such may be involved with drug supply at the location as this activity appears suspicious according to the informant who states that they think they are operating together.

QKRT00527616 18/09/2022 – B21
Informant states that on SUNDAY 18th SEPTEMBER 2022 at approximately 1430hrs they have seen the owner of one of the cafe's on PARK PARADE standing on LEGHORN ROAD NW10 with someone in the passenger seat. When owner of Sefar Cafe has seen the informant he has then driven off at speed in a vehicle leaving quickly.

The informant states that later at 1615hrs other individuals have joined including owner of Sefar and have stood around O BOMBEIRO and has been seen to enter and exit O BOMBEIRO.
The informant states that a guy with dark glasses arrives first and enters O BOMBEIRO and then come out when other members of the group arrive and are seen to interact with an individual on a motorbike with a turquoise jacket (potentially Deliveroo jacket) who then leaves. The remainder of the group disperse after approximately 20minutes.

QKRT00527623 – 17/09/2022 B21

Witness Signature:

Signature Witnessed by:

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

Informant states that on SATURDAY 17TH SEPTEMBER 2022 at approximately 1515hrs the owner of Sefar has joined a group that were standing outside the Laundrette on PARK PARADE NW10 which is opposite O BOMBEIRO, 25 PARK PARADE NW104JG. The informant states that this is the same group that she has observed loitering outside O BOMBEIRO 25 PARK PARADE NW104JG on numerous occasions and believes that they may be involved in drug supply at the location.
The informant states that after approximately five (5) minutes later a vehicle then pulls up at the end of LEGHORN ROAD NW10. Owner of Sefar Café then approaches and enters the vehicle and speaks with the occupant of the vehicle and spends five (5) minutes in the vehicle before exiting and re-joining the group opposite O BOMBEIRO outside the laundrette whilst the vehicle has driven off from the location.

QKRT00527529 – 15/09/2022 B21
ON THURSDAY 15th SEPTEMBER 2022 at approximately 1720hrs the informant has witness a drug deal take place on PARK PARADE junction with LEGHORN ROAD O/S O BOMBEIRO 25 PARK PARADE NW104JG. The informant states that she clearly saw a deal take place O/S O BOMBEIRO male that was wearing a cap and an exchange take place between this male and another. The dealer is described as an Algerian male approximately in his twenties to thirties with a beard and wearing a cap.
The informant states that they have seen this deal take place and the person who has then remained outside of O BOMBEIRO after the deal has taken place.

QKRT00527532 – 15/09/2022 B21
The informant states on the 15/09/2022 between 1600hrs-1740hrs they have seen a group of approximately eight (8) Algerian males standing outside of O BOMBEIRO, 25 PARK PARADE NW104JG smoking illegal drugs and dealing drugs at the location.
The informant states that due to the closure orders imposed recently that these males have started to loiter O/S O BOMBEIRO, 25 PARK PARADE NW104JG and have been dealing at this location due to the other Cafe's in the area being closed due to police action.
The informant details that one of the males that is wearing a beige top as well as another male wearing a cap with dark clothing are the two (2) males that she has seen dealing drugs O/S O BOMBEIRO, 25 PARK PARADE NW104JG.
The informant states that the other members of this group are engaging in ASB and are smoking drugs at the location also.
The informant states that she has seen the same group of males on the 10/09/2022 whereby the same group of males were dealing and consuming drugs O/S O BOMBEIRO, 25 PARK PARADE NW104JG/ CAD 5287/10SEP22 refers.

QKRT00527528 – 14/09/2022 B11
On Wednesday 14th September 2022 Harlesden TCT Officers were conducting a check on Safar Cafe which subject to a closure order after a positive Sec 23 MDA Warrant was executed. Once Police arrived, the owner of the cafe has then come out of O'BOMBEIRO 25 PARK PARADE LONDON NW10 4JG a cafe directly opposite and has approached police being hostile and argumentative.
It is now believed that he has moved his base of operations to O BOMBEIRO. After police contact he was seen stood with other males who are known to frequent SEFAR and CAMILLIA, another Cafe that has been subject to a closure order for the same reasons. This further leads police to believe that he is now operating for 25 PARK PARADELONDON NW104JG.

QKRT00527533 – 10/09/2022 B21
On SATURDAY the 10th SEPTEMBER 2022 the informant states that approximately six (6) Somali males have been loitering O/S O BOMBEIRO 25 PARK PARADE NW104JG as well as approximately eight (8) Algerian males. This group have all been smoking skunk and have been dealing and consuming drugs at the location whilst engaging in ASB throughout the day.

Witness Signature: 

Signature Witnessed by:

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

The informant has reported this on CAD 5287/10SEP22. The informant has seen the same group of males loitering O/S O BOMBEIRO 25 PARK PARADE NW104JG on the 15/09/2022.

QKRT00528265 – 10/08/22 B41
The informant has told officers that on the 10th August 2022 that a friend has informed them that whilst they have been sitting inside O' BOMBEIRO, 25 PARK PARADE NW10 that they routinely saw individuals consuming drugs including herbal cannabis.
The informant alleges that drugs are routinely consumed at the rear of the premises in an area at the back with has a pool table and seating area. The informant states that she has also seen several exchanges take place at the location and noticed several drug deals at the location.
The informant could not provide further information in relation to the description of these dealers or individuals due to the time since this event.
The informant states that this was a common theme that occurred whilst they were in O' BOMBEIRO.

I believe a closure order should be put in place at O BOMBEIRO 25 PARK PARADE NW10 4JE to prevent storage, consumption and the supply of controlled drugs from this premises. I am concerned that this criminal behaviour will continue at O BOMBEIRO 25 PARK PARADE NW10 4JE without further intervention from the police. I believe the residents will also benefit from the closure order being put in place as it will help to reduce anti-social behaviour in the area such as loitering and intimidation coming from outside O BOMBEIRO. It is clear the owners of O BOMBEIRO are giving no regard to local members of public who have to endure and put up with constant stream of anti-social behaviour. In addition, the owners of O BOMBEIRO does not employ licensed door staff to prevent anti-social behaviour from taking place. This is highlighted in the statement of ASB officer from Brent Council and from my own observations.

Witness Signature: 

Signature Witnessed by:

RESTRICTED (when complete)

MG11

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)

URN

Statement of: Constable Ali Kolbabayan Ghazvini
Age if under 18: Over 18
Occupation: Police officer

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 31 Mar 2023

I am the above named police officer attached to HARLESDEN Town Centre Team and this statement is in relations to when I served Francesco NUNES, the owner of O BOMBEIRO at 25 PARK PARADE NW10 4JG, with a Closure Notice for this address.

On THURSDAY 31st MARCH 2023 I was on duty in full uniform alongside other officers from Harlesden Town Centre Team, Harlesden and Kensal Green SNT and North West Street Duties Unit. At approximately 1900 hours I attended O BOMBEIRO 25 PARK PARADE NW10 4JG to execute a Section 23 Misuse of Drugs Warrant with the assistance of officers from above units. The warrant had been authorised by Croydon Magistrate Court on 10/03/2023 as police had received several pieces of intelligence and information over a period of time that controlled drugs are stored, consumed and dealt in and from the premises.

After the completion of the search of O BOMBEIRO, I handed the owner of the business a bundle of documents in person that included a Closure Notice form. Other documents attached in the bundle included a copy of the unsigned Closure Order, Consultation Document for a Premises Closure Notice, a number of MG11 Statements and a Hearsay Notice. I have informed Mr NUNES he has the opportunity to attend Willesden Magistrate Court at 1100 hours on FRIDAY 31st MARCH 2023 to contest the application for closure order should he wish to do so. Mr NUNES accepted this and understood that a court hearing in relation to a closure order would be held on 31ST MARCH 2023 at approximately 1100hours. This has been captured on my body worn camera and has been exhibited as ALK/01.

I have also with the help of PC BARRIE 2681NW displayed a copy of the Closure Notice on the inside of the front door of O BOMBEIRO 25 PARK PARADE NW10 4JG. This has also been captured on my body worn camera and has been exhibited as ALK/02. I have also taken a photograph of the displayed Closure Notice on my work phone which has been exhibited as ALK/03. The Closure Notice has been authorised by INSPECTOR LE GEYT and is valid for a period of up to 24 hours starting at 1600 hours on 30/03/2023 and ending at 1600 hours on 31/03/2023.

Signature:

Signature Witnessed by:

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This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 31 Mar 2023

I am the above named police officer attached to HARLESDEN Town Centre Team and this statement is in relations to an extension of Closure Notice in respect of O BOMBEIRO at 25 PARK PARADE NW10 4JG.

On FRIDAY 31st MARCH 2023 at approximately 1100 hours I alongside PC BARRIE 2681NW attended Willesden Magistrate Court for an application for a Closure Order which was made under Section 82 of the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of O BOMBEIRO 25 PARK PARADE NW10 4JG.

The court has adjourned the hearing of the application until 4th APRIL 2023 at 1000 hours as the respondent, Mr Francesco NUNES owner of O BOMBEIRO 25 PARK PARADE NW10 4JG, decided to contest the application for Closure Order made by myself. At the same time, the court decided that the Closure Notice should continue in force until 1600 hours on TUESDAY 4th APRIL 2023. The extension of Closure Notice has been signed by the magistrate court.

On FRIDAY 31st MARCH 2023 I was on duty in full uniform with PC OULKADI 2095NW and PC XUEREB-NEIGHBOUR 2713NW. We attended O BOMBEIRO 25 PARK PARADE NW10 4JG where I attached and displayed a copy of the Closure Notice signed by Inspector LE GEYT alongside a copy of extension of the Closure Notice on the front shutter of O BOMBEIRO 25 PARK PARADE NW10 4JG. The process of displaying the Closure Notice and Extension of Closure Notice has been captured on my body worn camera and has been exhibited as ALK/04. I have also taken a photograph of the displayed Closure Notice on my work phone which has been exhibited as ALK/05.

Signature:

Signature Witnessed by:

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RESTRICTED (when complete)

MG11

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)

URN

Statement of: Constable Ali Kolbabayan Ghazvini
Age if under 18: Over 18
Occupation: Police officer

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 04 Apr 2023

I am the above named police officers and this statement is in relations to an application for Closure Order I have made for O BOMBEIRO 25 PARK PARADE NW10 4JG. This statement is in addition to other statements I have made with regards to above.

On THURSDAY 31st MARCH 2023 I was on duty in full uniform alongside other officers from Harlesden Town Centre Team, Harlesden and Kensal Green SNT and North West Street Duties Unit. At approximately 1900 hours I attended O BOMBEIRO 25 PARK PARADE NW10 4JG to execute a Section 23 Misuse of Drugs Warrant with the assistance of officers from above units. The warrant had been authorised by Croydon Magistrate Court on 10/03/2023 as police had received several pieces of intelligence and information over a period of time that controlled drugs are stored, consumed and dealt within the premises. The warrant had authorised search of persons found on the premises including persons in control of the business if grounds existed.

During the briefing for the warrant, I was assigned by OIC, PC OULKADI to be officer responsible for containing the area behind the bar. On entry I found a male who I now know to be [redacted]NUNES dob [redacted] of [redacted] behind the bar who I detained under S23 MDA. NUNES had identified himself as the son of the owner of the premises, Mr Francisco NUNES, who works at the family business as the bar manager. All officers were advised to detain persons and contain the situation before proceeding with the search. I was informed quantity of drugs were found at the rear of the restaurant. At approximately 1945hours I provided NUNES with full grounds for a person search and then I searched him during which I found a small wrap of cannabis raisin wrapped in cling film in the left pocket of his jeans. NUNES had admitted the item was cannabis resin. I know the substance to be cannabis resin as I have experience dealing with the substance and can recognise it. NUNES was dealt with out of court disposal and was issued with PND with the penalty amount of £90. The cannabis resin has been exhibited as ALK/01. Seal number of the exhibit bag is MPSA22941706. The finding of cannabis resin has been captured on my body worn video which I have exhibited as ALK/02.

During the warrant, a bag pack with five blocks of cannabis resin, a scale, cling film and a knife was found at rear of O BOMBEIRO 25 PARK PARADE NW10 4JG. These items were seized and have been exhibited in the statement of PC XUEREB-NEIGHBOUR 2713NW. CCTV from the premises have been reviewed by officers which shows that on the day the warrant was executed, a male with a backpack entering O BOMBEIRO 25 PARK PARADE NW10 4JG and going towards the rear of the premises. He is then seen dropping the bag on the floor by the pool table and is seen waiting around for approximately few minutes before leaving the premises. This bag was searched with items mentioned above found in it. The CCTV has been provided to police by [redacted]NUNES who has provided an exhibiting statement in relation to it.

Signature:

Signature Witnessed by:

RESTRICTED (when complete)

Continuation of Statement of: Constable Ali Kolbabayan Ghazvini

Witness Signature: 

Signature Witnessed by:

RESTRICTED (when complete)

MG11

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)

URN

Statement of: Constable Ryan Xuereb-Neighbour
Age if under 18: Over 18
Occupation: Police Constable

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 30th of March 2023

This statement refers to my exhibits from the Section 23 warrant search that was performed on the 30th of March 2023 at the O Bombeiro restaurant at 25 Park Parade, Harlesden NW10 4JG at 1902 hours. I acted as the book 101 officer for this warrant, the OIC for which was PC Haitam Oulkadi 2095NW. I know the substance on RXN/01 and in RXN/05 to be cannabis resin as I have experience dealing with the substance and can recognise it.

Below are the exhibits, where they were found and by whom.

RXN/01 – Silver coloured knife with cannabis resin residue on blade, found in the main pocket of RXN/02 (black backpack) in pool room by PC Ahmed 2568NW.

RXN/02 – Black backpack branded Kipling, found in the pool room under the table by the rear door 1902 by PC Ahmed 2568NW.

RXN/03 – Black digital scales, found in the main pocket of RXN/02 in pool room by PC Ahmed 2568NW.

RXN/04 – Roll of cling film, found in main pocket of RXN/02 in pool room by PC Ahmed 2568NW.

RXN/05 – 5x blocks of cannabis resin in cling film, found in main pocket of RXN/02 by PC Ahmed 2568NW.

RXN/06 – Bottle of perfume branded Sauvage, found in main pocket of RXN/02 by PC Ahmed 2568NW.

RXN/07 – Snap bag of gummy bear sweets, found in front pocket of black backpack (leather) under the table by rear door, found by PC Sandulescu 3082NW.

RXN/08 – Various (x5) NOs canister interfaces and x4 NOs canisters, found in main pocket of RXN/02 in pool room, found by PC Ahmed 2568NW.

Signature:

RESTRICTED (when complete)

Continuation of Statement of: Constable Ryan Xuereb-Neighbour

RXN/09 – cannabis resin wrapped in cling film, found in draw-string camo pattern bag on top of last table in corridor, found by PC Chowdhury 3073NW.

Witness Signature:

RESTRICTED (when complete)

MG11

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9)

URN | | | | |

Statement of: Mr [redacted] Nunes
Age if under 18: Over 18
Occupation: Not stated

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date: 30 Mar 2023

I am employed by O'BOMBEIRO as a Bar manager at 25 PARK PARADE, NW104JG.

This location is protected by CCTV. There are 8 cameras fitted around the location and these cameras record events within the following areas; Front of cafe, cafe and back garden.

The images from the cameras are recorded onto a IVMS-4500 make of CCTV recorder, in , recording direct to hard drive. The date and time is shown on the recording; I believe it is accurate. The time shown is correct by minutes, this has been cross checked with the speaking clock.

On 30/3/2023 I was visited by PC HULATT from HARLESDEN police station, who requested a CCTV recording covering the area of Front of care and inside the cafe between the time/s of 17:05 and 18:50 on 30/3/2023. I screen recorded the footage through my phone and sent the recording to by PC HULATT via evidence.com. I produce the four recordings as my exhibits DFN/01 DFN/02 DFN/03 and DFN/04 . and the description of my exhibit is male seen dropping bag in OBOMBEIRO café.

Signature:

Signature Witnessed by:

RESTRICTED (when complete)

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of: Anonymous

Age if under 18: Over 18 *(if over 18 insert 'over 18')* Occupation: Anonymous

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Witness Signature: Anonymous Date: 09/02/2023

This statement has been taken over the telephone by PC KOLBABAYAN 2693NW. The declaration above (this refers to the section 9 MC Act 1980 rules about the statement being true to the best of knowledge etc.) has been read over and explained to me. I understand that this statement may be used in court as evidence.

I do wish to remain anonymous in making this statement. I have however signed PC KOLBABAYAN's pocketbook to confirm this a true account of the information which I have provided.

I am providing this statement in regards to on-going anti-social behaviour and drug dealing outside O BOMBEIRO at 25 PARK PARADE in HARLESDEN NW10. In this statement I will refer to a group of males congregating outside O BOMBEIRO at 25 PARK PARADE NW10. There are some characters that are the same, then every so often there are people that you do not recognise. I can describe them as possibly Somalian males and Brazilian or Portuguese individuals. Generally, the Somalian males tend to be standing on the streets with the Brazilian or Portuguese individuals tend to be on mopeds congregating on PARK PARADE outside the restaurant.

I have been living in HARLESDEN for two solid years but I know the area very well for over 25 [TWENTY FIVE] years as I have family members living in HARLESDEN. I have seen a lot of movements and changes in HARLESDEN over these years. These developments have changed the area for worse which is very intimidating beyond anything. As a member of public you cannot function in HARLESDEN especially in PARK PARADE NW10 because these individuals are intimidating.

On occasions I walk on PARK PARADE NW10 the first thing that I notice is group of males standing outside O BOMBEIRO smoking cannabis. There is movement of mopeds and people crossing your pathway. To me this is certainly a unique look that you do not tend to see in other locations in LONDON. As a woman it is intimidating because there is often at least four or five males all dressed in dark clothing standing around staring while I walk past them. This makes me feel really uncomfortable and indicates that maybe I am not supposed to be there. These activities usually occur in the evening including around summer time when it is pretty active.

I always have the opportunity to speak to members of community and they always raise their concerns regarding on-going antisocial behaviour and drug dealing and drug use. One of the

Continuation of Statement of:

things that they mention to me is that they do not want to walk on PARK PARADE NW10 and go to their favourite restaurants because they have to walk past these group of males. For me, I know if I go towards that way passing O BOMBEIRO, I would be impacted by these males who are clearly smoking cannabis and they make no attempts to hide it. That is been definitely the case with O BOMBEIRO as when I sometimes walk past the restaurant I could smell strong and pungent smell of cannabis. I have heard from members of public that there is drug dealing activities inside O BOMBEIRO. I have also heard from a resident on LEGHORN ROAD NW10 which is very close to O BOMBEIRO about people gathering outside the restaurant with loud music being played from O BOMBEIRO between hours of 2 [TWO] and 3 [THREE] in the morning.

I am fully aware of the drug warrants that was conducted in AUGUST 2022 which led to closure of THREE cafés on PARAK PARADE NW10. These closure orders made a huge and noticeable impact which boosted the community because members of public could see the constant change and the constant movement by police to resolve problems associated with drug related activities followed by antisocial behaviour. The drug warrants being implemented simultaneously certainly made a great impact. The area became much quieter and you could see different members of community go out and about at different times of the day without being intimidated by these group of males. I have been approached by members of community and they have told me that these closure orders helped to mitigate and abate anti-social behaviour and problems with drug use and dealing. I strongly believe the community and local and legitimate businesses will benefit from a closure order served on owners of O BOMBEIRO. I believe the area will be more peaceful and pleasant for local community and the impact will be beyond measure if this closure order is authorised. I do know the sense of relief that myself and other members of community will feel when the closure order takes place.

The statement has been read back to me and I have been given the opportunity to make any alterations or additions. I understand the possible consequences of making a statement that is false or one that I do not believe to be true.

Witness Signature: Anonymous
Signature Witnessed by Signature:…….....

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of: Anonymous

Age if under 18: Over 18 *(if over 18 insert 'over 18')* Occupation: Anonymous

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Witness Signature: Anonymous Date: 17/02/2023

I am providing this statement in regards to drug dealing outside O BOMBEIRO at 25 PARK PARADE NW10.

I do wish to remain anonymous in making this statement. For this purpose, I am also going eradicate some sensitive details that may reveal my identity including time of the incident as well as where exactly I was positioned when the incident occurred. I have however signed PC KOLBABAYAN's pocketbook to confirm this a true account of the information which I have provided.

In this statement I am going to refer to a Portuguese male knowns as Francesco. He has been the owner of the O BOMBEIRO for at least TEN years. I know this because I have lived in the area for TEN years and he has been running the business ever since I moved in to the area. I am also going to refer to a North African male known as [redacted]. I do not know if [redacted] is his alias or real name. I am also referring to a Mediterranean male standing outside O BOMBEIRO. I know him as he had previously worked in LA PEARLE cake shop at 8 PARK PARADE NW10. LA PEARLE cake shop was raided during the drug warrant in summer 2022 and as a result it was closed down.

I have been living in HARLESDEN NW10 for approximately TEN years and I know the area very well. This area is subjected to anti-social behaviour and drug dealing has always been a big problem in PARK PARADE NW10. I have sometimes seen some unusual activates at the rear of the restaurant in the back garden. Often you see males who are not clearly customers going in and out of the restaurant. There is always rumours amongst members of community that drugs are dealt from O BOMBEIRO. Residents have always complained about loud noise coming out from the restaurant.

On MONDAY 13th FEBURARY 2023 I was at O BOMBEIRO for around 1 hour and 30 minutes. Throughout my stay I witnessed North African males going in and out of the restaurant. I saw Francesco coming to the front door telling the males saying words to the effect of "ONLY ONE BAG". Few minutes later Francesco was behind the bar and [redacted] was standing next to the bar. Francesco was counting what I believe to be a stash of notes and handed it to [redacted]. [redacted] had then walked out of the restaurant with the cash and stood by the front door with another male. At that point I saw [redacted] handing over the cash to the male. The male then walked off going in the direction of HIGH STREET NW10. A little bit later I saw [redacted] handing over what looked like drugs to another male. The item was

Continuation of Statement of:

wrapped in a cling film or a similar packaging. I think there was an exchange of money but at this moment I wasn't paying close attention as I was recording the activities in the restaurant. I believe the Mediterranean male was also involved in the exchange of drugs with the North African males. I have a recorded video which shows [redacted] going to the till and interacting with Francesco and then he comes out and made an exchange with another male. I have exhibited this video as HAV/01.

I would describe Francesco as a Portuguese male approximately around 55 to 60 years old. He has been the owner of the O BOMBEIRO for at least TEN years. I would describe [redacted] as approximately 40 [FORTY] years of age, 1.65m with olived skin wearing blue jeans and dark colour puffer jacket. I would describe the Mediterranean male as approximately 40 [FORTY] years of age with a beard and a round glasses with metal rim. He was wearing a dark colour jacket and beanie hat.

Witness Signature: Anonymous

Signature Witnessed by Signature:…….....

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN | | | | |

Statement of: Andy Le Geyt

Age if under 18: +18 *(if over 18 insert 'over 18')* Occupation: Police Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Witness Signature: Andy Le Geyt NW1040 Date: 23/03/2023

I am the above named person and I am the Police Inspector of Harlesden Town Centre Team. I have over 19 years' service. Prior to my appointment I was the Learning & Development Inspector for NW-BCU, this entailed training new Constables and delivering a new recruitment pathway, previous to this I worked as a Duty Officer on an Emergency Response Team in Hillingdon as well as being a Safer Neighbourhood Sergeant for three wards in Hammersmith and Fulham, previous to this St Margaret's Ward Sergeant and MSC Task Force Deployment Support Officer in Richmond Borough. I have also worked on Ealing Broadway Safer Neighbourhood Team, Safer Transport Command and I was part of a night time economy task force policing Westminster and Croydon as well as other specialist roles including firearms.

My team was newly created and launched on 14th February 2022 to help improve trust and confidence in the police, reduce violence, violence against women and girls and to reduce Anti-Social Behaviour. During the first 8 weeks of operation the team had achieved a 9.2% reduction in overall crime in the town centre and ASB related calls to High Street, Harlesden which is the focal point of the town centre reduced by 90%. We know from these results and our increased visibility in the town centre, the community are informing us of the difference they are seeing and the fact that they are feeling safer to walk the streets. The chair of Harlesden Safer Neighbourhood Panel has said much the same after speaking with many community members.

In my role as Town Centre Team Inspector I am expected to do everything in my power to help the residents and community of Harlesden in reducing ASB, violence, drug dealing and to use various problem solving tools and initiatives to do this. The main legislation to do this is the Anti-Social Behaviour, Crime and Policing Act 2014 and I am aware the effectiveness of Closure Orders and how they can completely change an area for the better when they are used. My team have obtained 8 Closure Orders of premises and 6 Open Spaces Closure Orders in the town centre.

These closures orders have had a massive impact on stopping and reducing ASB from these premises and areas. One of the biggest complaints from members of the public is when the

Witness Signature: …… Andy Le Geyt NW1040 ……

Signature Witnessed by Signature:……

Continuation of Statement of:

police conduct search warrants, they often just arrest the suspect, who is then released 24 hours later and can freely return to their address and carry on committing ASB.

For some time now after the successful 3 x simultaneous drugs warrants of café's on Park Parade, NW10 there has been a constant flow of complaints regarding the use of O'Bombeiro Café on Park Parade. It appears the persons involved in the other Café's moved to O'Bombeiro after the Closures of the other Café's and have been continuing on their criminal behaviour and causing a misery to the community. Park Parade is a small road with a hub of small Café's and is clear to see the workings of an organised group of people operating the selling of drugs from the area including O'Bombeiro.

A Closure Order is an effective and powerful way to improve the lives of local residents and reduce high levels of ASB and criminality and is essential to address this issue.

Witness Signature: ……  ……

Signature Witnessed by Signature:…….....

Form LP70-Brent

Witness Statement

CJ Act 1967, s9;

MC Act 1980, ss5A(a) and 5B;

MC Rules 1981, r70;

UPRN:

Statement of: Steve Thurlow

Age of if under 18 (if over 18 insert 'over 18') Over 18.

Occupation: Harlesden Connects ASB Localities Officer

This statement (consisting of…2……page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything, which I know to be false or do not believe to be true.

Dated the: 27th January 2023

Signature:

My name is Steve Thurlow, I work as an Anti-Social Behaviour localities officer for Brent Council.

I recently took over the Harlesden ASB localities role as of the 7th of November 2022, but before this, I was a Neighbourhood Patrol Officer with Brent.

As part of my role as a Neighbourhood Patrol Officer whilst doing reassurance patrols on Park Parade and Leghorn Road I did come across Anti-Social behaviour, drug dealing, loitering, smoking cannabis and intimidation coming from outside O'Bombeiro 25 Park Parade, London, NW10 4JG. The youths that were loitering would make remarks at other Neighbourhood Patrol officers and myself when we walked past this included any days of action that we did with the Metropolitan Police Harlesden Town Centre Team or the Safer Neighbourhood Team.

When the males were approached they would start to question why we was in the area and become intimidating towards us and telling us to leave as we was disrupting them.

On some occasions we would contact Brent CCTV (Pyramid) to ask them to have the camera on us whilst speaking to the males for our own safety.

I did notice that the premises never had SIA licenced door staff to stop this type of behaviour going on and the staff working within the premises not engaging and telling them to stop loitering outside the premises,

I am in agreement for a closure order to be put in place at O'Bombeiro to stop this kind of anti-social behaviour going on.

There have been complaints ranging from various anti-social behaviour, such as loitering, drug taking and alleged drug dealing in the neighbourhood. These reports are from local residents, businesses and partners of the London Borough of Brent Council.

Signature: **Date: 27th January 2023**

IN THE WILLESDEN MAGISTRATES COURT

IN THE MATTER OF CLOSURE ORDER:

BETWEEN

METROPOLITAN POLICE SERVICE Applicant

~v~

O BOMBEIRO, 25 PARK PARADE, HARLESDEN, BRENT, NW10 4JG Respondent

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HEARSAY NOTICE SERVED PURUSANT TO S.2 CIVIL EVIDENCE ACT 1995 AND PARAGRAPH 3 MAGISTRATES' COURT (HEARSAY IN CIVIL PROCEEDINGS) RULES 1999

APPLICATION FOR CLOSURE ORDER PURSUANT TO SECTION 80 (5) ANTISOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

TAKE NOTICE

1. This hearsay notice is served in relation to proceedings before the Magistrates' Court brought against you by the applicant under the Anti-Social Behaviour Crime and Policing Act 2014 whereby the closure of the premises you occupy is sought.

2. It is the intention of the Applicant to adduce hearsay evidence at the substantive hearing of this application

3. Such hearsay evidence is contained within the witness statement of:

- MG11 Statement of Inspector Andy Le Geyt, dated 23/03/2023
- MG11 Statement of PC KOLBABAYAN GHAZVINI, dated 23/03/2023
- MG11 Statement of PC KOLBABAYAN GHAZVINI, dated 04/04/2023
- MG11 Statement of PC XUEREB-NEIGHBOUR, dated 30/03/2023
- Anonymous MG11 Statement, dated 17/02/2023
- Anonymous MG11 Statement, dated 09/02/2023
- MG11 Statement of Leroy Simpson, Co-Chair of Harlesden SNT Panel, dated 07/02/2023
- Witness Statement of Steve Thurlow, ASB Localities Officer for Brent Council, dated 27/01/2023
- CCTV Statement of [redacted] NUNES, dated 30/03/2023

Copies of which have been served upon you.

4. The applicant believes that it is disproportionate in the context of this case to call all these witnesses to give oral evidence and to do so would not be

an efficient use of police and public resources. There is also consideration given that there are members of public that have provided evidence, it would be reasonable to consider should they attend court in person they would be subject to reprisals.

5. You have 7 days from the date of service of this notice to make an application to the clerk of the Magistrates' Court for leave to call the aforementioned witness mentioned in paragraph 3 above for the purpose of cross examination.

PC KOLBABAYAN GHAZVINI
Police Constable
Date 04/04/2023

HARLESDEN TOWN CENTRE TEAM

HARLESDEN POLICE STATION

IN WILLESDEN MAGISTRATES' COURT

IN THE MATTER OF AN APPLICATION UNDER S.80 ANTI-SOCAIL BEHAVIOUR, CRIME AND POLICING ACT 2014

BETWEEN:

COMMISSIONER OF THE POLICE FOR THE METROPOLIS

Applicant

-and-

O BOMBEIRO, 25 PARK PARADE, HARLESDEN, BRENT, LONDON, NW10 4JG

Respondent

EXTENSION OF CLOSURE NOTICE UNDER SECTION 81 OF THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

On 31st MARCH 2023,

ON THE COMPLAINT OF:

PC KOLBABAYAN NW2693

HARLESDEN POLICE STATION

CRAVEN PARK ROAD

NW10 8RJ

An application for a closure order ("the Order") was made under section 82 of the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of O BOMBEIRO, 25 PARK PARADE, HARLESDEN, BRENT, LONDON, NW10 4JG

Having heard from the Applicant,

And having heard from the Respondent

The Court has adjourned the hearing of the application until the 4th APRIL 2023 at 1000 hours.

IT IS ORDERED, pursuant to Section 81 (4) that the closure notice continues in force until 1600 hours on Tuesday 4th APRIL 2023.

Note: a person who without reasonable excuse remains on or enters premises in contravention of a Closure Notice (including a notice continued in force under section 81) commits an offence under Section 86 (1) of the Anti-social Behaviour, Crime and Policing Act 2014, liable on summary conviction to imprisonment not exceeding 51 weeks and / or an unlimited fine.

DONE THIS DAY 31st MARCH 2023 AT WILLESDEN MAGISTRATES' COURT

SIGNED: SB

[District Judge/Justice of the Peace]

Closure Order

(Anti-Social Behaviour, Crime and Policing Act 2014 - Part 4, Chapter 3, Section 80)

Willesden Magistrates Court

Sitting at **448 High Road, London, NW10 2DZ**

(Code 2571)

Date: TUESDAY 4th APRIL 2023

Address: O BOMBEIRO, 25 PARK PARADE, HARLESDEN, BRENT, NW10 4JG

On application of (name/rank) of the Metropolitan Police Service: PC KOLBABAYAN 2693NW

Name of Applicant Authority: Metropolitan Police Service

Address of Applicant Authority:
Harlesden Police Station, 76 Craven Park, London, NW10 8RJ

This court is satisfied that (tick the relevant box):

(a) a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or ☐

(b) the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or ☐

(c) there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, ☐

and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

Accordingly, a **Closure Order** is made, pursuant to Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014, in respect of the address specified above

A Closure Order is an order prohibiting access to the premises for a period specified in the order

This Closure Order prohibits access by all persons (except those specified or those of a specified description) at all times (unless specified) in all circumstances (unless specified), for a period of (maximum of three months)

Starting at 04/04/2023 and ending at 04/07/2023

Subject to the following exceptions:

- Emergency Services;

- Official maintenance workers;

- BT/Water/Electricity/Gas on official business;

- Brent Council staff including Maintenance/Wardens/Enforcement Officers/Licensing authorities.

A person who without reasonable excuse remains on or enters premises in contravention of a Closure Order commits an offence under section 86 of the Anti-social Behaviour, Crime and Policing Act 2014, liable on summary conviction to imprisonment not exceeding 51 weeks and / or an unlimited fine.

District Judge / Justice of the Peace

[By order of the clerk of the court] Date:

CLOSURE ORDER

Queen's Bench Division

Regina (Qin and others) *v* Commissioner of Police of the Metropolis and another

Qin *v* Commissioner of Police of the Metropolis

[2017] EWHC 2750 (Admin)

2017 Oct 12; Nov 3

Choudhury J

Crime — Crime and disorder — Closure order — Police issuing closure notices and seeking closure orders against claimants' premises — District judge refusing to adjourn closure order proceedings pending claimants' judicial review of validity of notices — District judge refusing closure orders and refusing claimants' applications for compensation and costs against police — Whether closure notices invalidated by police failure to comply with statutory duty to inform claimants prior to issue — Whether district judge erring in refusing adjournment pending resolution of challenge to validity of notices — Whether validity of notices relevant to question of costs before magistrates' court — Whether district judge entitled to make no order as to compensation in respect of losses incurred as result of closure notices — Anti-social Behaviour, Crime and Policing Act 2014 (c 12), ss 76(6), 90

The commissioner issued closure notices and applied for closure orders under the Anti-social Behaviour, Crime and Policing Act 2014[1] in respect of six massage parlours operated by the claimants which were suspected of operating as brothels. The claimants applied to the magistrates' court for an adjournment of the hearing of the closure order application on the basis that they were seeking permission to proceed with a claim for judicial review of the validity of the closure notices on the ground that there had been a failure to comply with the requirement under section 76(6) of the 2014 Act to inform persons having an interest in the premises that the notices were going to be issued. The district judge refused the adjournment application, stating that any question of the invalidity of the closure notices was a matter for judicial review and had no bearing on the determination of the closure order application. The claimants brought an urgent claim for judicial review of the decision of the police to issue the closure notices and the district judge's refusal to hear their submissions regarding the commissioner's non-compliance with section 76(6). Subsequently, a second district judge refused the commissioner's closure order applications, finding that the test for making such orders had not been met. She also refused the claimants' applications for their costs and for compensation under section 90 of the 2014 Act in respect of losses incurred as a result of the closure notices, holding that the need for public authorities to be able to make such applications for closure orders in the public interest without financial prejudices to them outweighed any financial prejudice which the claimants might have suffered. The claimants sought judicial review of the district judge's decision not to award costs and compensation on the grounds, inter alia, that she had applied the wrong test and/or had regard to immaterial considerations, and further challenged the decision on an appeal by way of case stated. Notwithstanding the fact that they had succeeded in resisting the closure orders, the claimants persisted with the first judicial review claim, and it was ordered that the application for permission to proceed with

[1] Anti-social Behaviour, Crime and Policing Act 2014, s 76: see post, para 23.
S 90: see post, para 29.

A that claim should be heard with the substantive claim, together with the second claim and the appeal by way of case stated.

On the claims and the appeal—

Held, refusing permission to proceed with the first judicial review claim, (1) that section 76(6) of the Anti-social Behaviour, Crime and Policing Act 2014 did not impose upon the police a duty to consult prior to issuing a closure notice; that the primary purpose of the obligation to inform under section 76(6) was to enable
B persons who might be affected by the closure of premises to make such arrangements as might be appropriate to avoid breaching the notice; that in the circumstances, while the commissioner had accepted that not all those affected had been informed prior to the issue of the notices, there had been substantial compliance with the requirements of section 76(6); and that, since the aim of the legislation had been achieved and the failure to comply strictly with section 76(6) had not resulted in any substantial prejudice to any party or individual, the notices had been validly issued
C (post, paras 62, 68, 74, 87).

Bank Mellat v HM Treasury (No 2) [2014] AC 700, SC(E) considered.

(2) That the magistrates' court should not generally consider the validity of the closure notice on an application for a closure order under the 2014 Act; that the justices were not, in particular, required to satisfy themselves that any closure notice was valid before considering an application for a closure order and there was no requirement that, in every instance where there was challenge to the validity of a
D closure notice by way of judicial review, the closure order proceedings before the magistrates' court should be adjourned; that, furthermore, it followed that questions relating to the validity of a closure notice, and the facts giving rise to them, were irrelevant to the determination of costs before the magistrates' court; that the magistrates' court had not, in the circumstances, had jurisdiction to determine the issue of the validity of the closure notices; and that, accordingly, the district judge had been right to decline to entertain such a challenge and to refuse to adjourn the matter
E and to leave any issues regarding the validity of the closure notices to the High Court (post, paras 54, 56, 57, 60, 75, 87).

R (Errington) v Metropolitan Police Authority (2006) 171 JP 89 and *R (Byrne) v Comr of Police of the Metropolis* [2010] EWHC 3656 (Admin) considered.

Allowing the second judicial review claim in part and the appeal in part, (3) that, while there had been no error in the district judge's refusal of the claimants' application for costs against the commissioner, the principle governing the exercise
F of the magistrates' court's power to award costs against a public authority exercising its regulatory functions, the starting point being that there should be no order for costs, had no application to the question whether to award a party compensation under section 90 of the 2014 Act; that since, unlike an award of costs, compensation under section 90 was paid out of central funds, the paying authority would suffer no financial prejudice and there would be no undesirable "chilling effect" on its
G regulatory activities were such an order made; that section 90(5) of the 2014 Act required a magistrates' court to consider the position of each applicant for compensation separately in order to determine whether they were associated with the behaviour on the premises concerned and (if they were the owner or occupier of the premises) whether they had taken reasonable steps to prevent it; that, furthermore, if satisfied that the requirements of section 90(a)(b)(c) were met the magistrates' court had to consider whether it was appropriate to award compensation in respect of the
H particular loss claimed by the applicant, which might be different for each applicant depending on the effect that the closure had on their particular business; that, therefore, the district judge ought to have considered the position of each claimant individually to determine whether each should be awarded compensation but had failed to do so; and that, accordingly, the district judge's decision on compensation would be quashed and the issue remitted for reconsideration with a direction that the

position of each claimant be considered separately (post, paras 41, 42, 43, 47, 78, 80–84, 85, 87).

The following cases are referred to in the judgment:

Bank Mellat v HM Treasury (No 2) [2013] UKSC 39; [2014] AC 700; [2013] 3 WLR 179; [2013] 4 All ER 495; [2013] 4 All ER 533, SC(E)
Boddington v British Transport Police [1999] 2 AC 143; [1998] 2 WLR 639; [1998] 2 All ER 203, HL(E)
City of Bradford Metropolitan District Council v Booth [2001] LLR 151, DC
Director of Public Prosecutions v Hutchinson [1990] 2 AC 783; [1990] 3 WLR 196; [1990] 2 All ER 836, HL(E)
English v Emery Reimbold & Strick Ltd (Practice Note) [2002] EWCA Civ 605; [2002] 1 WLR 2409; [2002] 3 All ER 385, CA
Hoffmann-la Roche (F) & Co AG v Secretary of State for Trade and Industry [1975] AC 295; [1974] 3 WLR 104; [1974] 2 All ER 1128, HL(E)
Pepper v Hart [1993] AC 593; [1992] 3 WLR 1032; [1993] ICR 291; [1993] 1 All ER 42, HL(E)
Quietlynn Ltd v Plymouth City Council [1988] QB 114; [1987] 3 WLR 189; [1987] 2 All ER 1040, DC
R v Secretary of State for the Home Department, Ex p Jeyeanthan [2000] 1 WLR 354; [1999] 3 All ER 231, CA
R v Wicks [1998] AC 92; [1997] 2 WLR 876; [1997] 2 All ER 801, HL(E)
R (Byrne) v Comr of Police of the Metropolis [2010] EWHC 3656 (Admin)
R (Errington) v Metropolitan Police Authority [2006] EWHC 1155 (Admin); 171 JP 89
R (Perinpanathan) v City of Westminster Magistrates' Court [2010] EWCA Civ 40; [2010] 1 WLR 1508; [2010] 4 All ER 680, CA
Westminster City Council v Mendoza [2001] EWCA Civ 216; [2001] LLR 578, CA

No additional cases were cited in argument.

The following additional cases, although not cited, were referred to in the skeleton arguments:

Attorney General's Reference (No 3 of 1999) [2001] 2 AC 91; [2001] 2 WLR 56; [2001] 1 All ER 577, HL(E)
Kavanagh v Chief Constable of Devon and Cornwall [1974] QB 624; [1974] 2 WLR 762; [1974] 2 All ER 697, CA
R (D & D Bar Services Ltd) v Romford Magistrates' Court [2014] EWHC 344 (Admin); [2014] LLR 761

CLAIMS for judicial review and **CASE STATED** by District Judge Matson sitting at Hammersmith Magistrates' Court

On 20 October 2016 the Commissioner of Police of the Metropolis issued closure notices under the Anti-social Behaviour, Crime and Policing Act 2014 in respect of six massage parlours operated by the claimants, Aili Qin, Shi Hong Bi and Xiao Fang Zhang, and on the following day applied to the magistrates' court for closure orders in relation to those premises. At a hearing on 27 October 2016 the claimants applied for an adjournment on the ground that they sought permission to proceed with a claim for judicial review of the validity of the closure notices for failure to comply with section 76(6) of the 2014 Act. District Judge Snow refused the application and adjourned the substantive hearing of the closure order application to 1 November 2016. On 2 November 2016 District Judge Matson, sitting at the Hammersmith Magistrates' Court, dismissed the closure order

A applications, finding that the statutory test for the making such orders had not been met. On 27 February 2017 District Judge Matson, considering the matter on the papers, dismissed applications by the claimants for costs and compensation under the 2014 Act.

By a claim form dated 28 October 2016 the claimants brought an urgent claim for judicial review against the decision of the police to issue the closure notices and the refusal of District Judge Snow to hear submissions regarding
B their validity. On 31 October 2016 Jefford J refused the claimants' application that the claim be urgently considered by the High Court and on 27 February 2017 Morris J refused permission to proceed with the claim. On 3 March 2017 the claimants renewed their application for permission, stating that non-compliance with section 76(6) of the 2014 Act was relevant to the decision on costs, that a separate claim for judicial review against that
C decision would be filed, and that an application to have both joined would be made.

By a second claim form dated 10 March 2017 and pursuant to permission to proceed granted by Langstaff J on 18 April 2017 the claimants sought judicial review of the decision of District Judge Matson on 27 February 2017 not to award costs and compensation on the ground, inter alia, that she had applied the wrong test and/or had regard to immaterial considerations.
D

The claimants also appealed by way of case stated against the decision of District Judge Matson on 27 February 2017 refusing their application for costs and compensation. The questions posed for the opinion of the High Court are stated, post, para 21.

On 27 June 2017 Supperstone J ordered that the application for permission to proceed with the first claim for judicial review be heard with
E the substantive claim, together with the second claim for judicial review and the appeal by way of case stated.

The facts are stated in the judgment post, paras 2–22.

Charles Streeten (instructed by *Wilson Barca llp*) for the claimants.

Stephen Walsh QC and *Daniel Mansell* (instructed by *Directorate of Legal Services, Metropolitan Police*) for the commissioner.
F

The magistrates' court did not appear and was not represented.

3 November 2017. **CHOUDHURY J** handed down the following judgment.

Introduction

G 1 These two claims for judicial review and appeal by way of case stated ("the claims") concern applications made by the Commissioner of Police of the Metropolis for closure orders under the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of six massage parlours in Soho which were suspected of operating as brothels. Those applications were refused on 2 November 2016 by the district judge ("the DJ") on the basis that the commissioner had not proved the alleged criminal conduct to the requisite
H standard. The claimants/appellants in this matter (to whom I shall refer as "the claimants"), who operate massage parlours at the properties concerned, were therefore successful in resisting the closure orders. However, the DJ refused to order costs and compensation in favour of the claimants. It is those refusals which form the basis of the claims before me.

Factual background

2 Operation Lanhydrock was a joint Metropolitan Police, City of Westminster and Modern Slavery and Kidnap Unit Command investigation into six premises believed to have been systematically operating as brothels disguised as massage parlours across London's West End and Chinatown. The evidence giving rise to that belief comprised the following: (1) a number of "reviews" of each of the premises on a website in relation to sexual services offered at the premises. These services included the alleged availability of "extended sessions" during which clients engaged in a variety of sexual acts with "masseuses" upon payment of money. (2) Advertisements on another website, described as "London and the UK's biggest erotic and sensual massage directory", which appeared alongside pornographic images. (3) Intelligence from the Safer Neighbourhoods Team and Westminster City Council, including that: (i) informants had reported that women working at the premises were offering sexual services to customers; and (ii) there had been reports of aggressive touting in the area around the premises by female members of staff dressed provocatively.

The closure notices

3 Under section 76 of the 2014 Act, the commissioner has the power to issue closure notices in respect of premises if she is satisfied on reasonable grounds that the use of the premises had resulted, or was likely soon to result, in nuisance to members of the public or disorder near those premises. Closure notices have the effect of preventing any person (except the owner and persons habitually resident there) from entering or using the premises. Given the evidence available, the commissioner considered that there were reasonable grounds for believing that the use of the premises resulted in or was likely to result in nuisance or disorder. Accordingly, on 20 October 2016, six closure notices were issued under section 76(1) of the 2014 Act.

4 Also on 20 October 2016, six search warrants were executed simultaneously at the six premises. Several items of a sexual nature were found at certain of the premises and at one of the premises a police officer walked in on a couple having sexual intercourse in a room upstairs.

Service of the closure notices and subsequent proceedings

5 The closure notices were served under section 79(2) of the 2014 Act. Once the closure notices are served, the commissioner has a short window of up to 48 hours in which to apply to the magistrates for a closure order under section 80 of the 2014 Act. A closure order may prohibit access to the premises by all persons for a period of up to three months.

6 In the present case, that application for a closure order was made on the following morning, 21 October 2016, to Hammersmith Magistrates' Court. It was agreed that the substantive hearing, to determine whether closure orders should be made by the court under section 80 of the 2014 Act, should be adjourned to 27 October 2016. I am told that the solicitor for the premises did object to the continuation of the closure notices, but the magistrates decided that the continuation of the closure notices pending the full hearing was necessary in respect of all six premises (in accordance with section 81(4) of the 2014 Act).

7 At the adjourned hearing on 27 October 2016, those acting for the premises applied to adjourn proceedings on the basis that they were seeking permission to judicially review the validity of the closure notices on the grounds that there had been a failure to comply with the requirement under section 76(6) of the 2014 Act to inform persons having an interest in the premises that the notice is going to be issued. It is not in dispute that the commissioner did not inform all of the relevant parties that the notice was going to be issued. The reasons for that, as set out in the police evidence lodged in support of the closure order, were the confidentiality of the operation, the suspected role of some of the interested parties in the organised criminal network and the nature of the offences being investigated. There was also a concern that some of the females being required to work at the premises were or may have been victims of trafficking in human beings, and that informing persons that a closure notice was going to be issued would undermine or compromise police efforts to engage with those victims.

8 This application for a further adjournment was refused by District Judge Snow. District Judge Snow accepted the commissioner's argument that any questions of invalidity of the closure notices were a matter for judicial review and should not delay the magistrates' determination of the application for closure orders. Directions were made and the substantive hearing was adjourned to 1 November 2016.

9 On 28 October 2016 the claimants brought an urgent claim for judicial review ("the first JR") against the commissioner's decision to issue the closure notices and District Judge Snow's refusal to hear submissions regarding non-compliance with section 76(6). It was suggested in the first JR that there be a rolled-up hearing on 1 November 2016. On 31 October 2016 the claimants made an application to this court for urgent consideration of the first JR by the next day and prior to the substantive hearing in respect of the closure orders. Jefford J refused that application, considering it neither possible, practicable nor necessary to hold a rolled-up hearing on such an urgent basis.

The closure order hearing

10 The substantive hearing of the application for closure orders therefore went ahead on 1 November 2016 at Hammersmith Magistrates' Court with District Judge Matson presiding. All six premises were legally represented. It was not in dispute at that hearing that the requirement to inform under section 76(6) had not been complied with. Whilst the closure notices had been sought on the basis of likely nuisance and disorder, by the stage of the hearing, the focus of the commissioner's case had shifted to the alleged criminal behaviour on the premises, and the applications for closure orders were made on this basis, as permitted by section 80 of the 2014 Act.

11 After hearing evidence from a number of witnesses and considering documents presented to her, District Judge Matson decided that, whilst "there are many things in this case which may lead to the suspicion that sexual services were being carried out at some of these premises", the test in section 80(5) of the 2014 Act for making closure orders was not satisfied and they should not be made. District Judge Matson's decision was issued on 2 November 2016.

Application for costs and compensation

12 The premises had remained closed for a period of 13 days from the issuing of the closure notices on 21 October 2016 until the refusal of the closure orders on 2 November 2016. The massage parlours lost business in that period. The claimants made applications for their costs and for compensation in respect of losses incurred as a result of the closure notices. These applications were dealt with on the papers and, on 27 February 2017, District Judge Matson handed down her decision. In dealing with costs the DJ applied the principles established in *City of Bradford Metropolitan District Council v Booth* [2001] LLR 151 and in *R (Perinpanathan) v City of Westminster Magistrates' Court* [2010] 1 WLR 1508 ("*Perinpanathan*"), including that a straightforward "costs follow the event" approach may not be appropriate in cases involving public authorities acting reasonably in the public interest, and that in such cases the starting point and default position is that no order for costs should be made. The DJ found that:

> "Given the circumstances in this case as a whole, I find that the police acted reasonably and properly in making the application itself, despite my finding that the grounds were not made out to make the closure orders. I also find the need for public authorities to be able to make such applications in the public interest without financial prejudices [sic] to them, outweigh any financial prejudice [the claimants] may have suffered in this case. I therefore dismiss the application for costs."

13 The DJ also dealt with compensation. Under section 90(5) of the 2014 Act, compensation may be awarded where the court is satisfied that the applicant for compensation is not associated with the impugned conduct on the basis of which the closure notice was issued, that reasonable steps were taken to prevent the impugned conduct, that financial loss has been incurred in consequence of the closure notice, and that, having regard to all the circumstances, an award of compensation is appropriate in respect of that loss. As to compensation, the DJ said:

> "In relation to the application for compensation, having regard to all of the circumstances (as required by section 90(5)(d)) and for the same reasons discussed above, I do not consider it is appropriate to order payment of compensation and also dismiss that part of the application."

14 That reasoning was expanded upon in the case stated:

> "I did apply the same principles that I'd considered whether to award costs [sic] in deciding whether to award compensation . . . However, in coming to the conclusion not to award compensation, I applied the same principles in the authorities above which I considered in relation to the application of costs. That is a need for public authorities to be able to make such applications in the public interest without financial prejudices [sic] to them, outweigh any financial prejudice [the claimants] may have suffered in this case. The use of the word 'them' in this context in my judgment includes all public authorities and includes payments from public moneys even though the police would not themselves have been liable for payment of any order of compensation. I took into account the fact that payment from central funds is of course a payment from public funds."

15 The DJ went on to state that although the requirements of section 90(5)(a)(b)(c) of the 2014 Act were met:

> "the commissioner had acted properly and reasonably in making the application and therefore, having regard to all the circumstances (as required by section 90(5)(d)), I came to the conclusion that it was also correct to refuse the application for compensation."

16 The DJ also confirmed that she did not take into account the commissioner's failure to comply with section 76(6) in her decisions not to award costs or compensation.

The first JR

17 Notwithstanding the fact that they had succeeded in resisting the closure orders, the claimants persisted with the first JR. Permission was refused in respect of the first JR by Morris J on 27 February 2017 on the basis that the claims were otiose as by then the proceedings in respect of the closure notices had already been resolved in the claimants' favour. However, on the basis that the claimants' claim in respect of section 76(6) was strong, Morris J made the provisional order that the commissioner pay the claimants' costs of the application for judicial review incurred up to and including 1 November 2016, subject to any objections raised by the commissioner. The commissioner did object to costs being ordered.

The second JR

18 The claimants also applied for permission to seek judicial review of District Judge Matson's decision not to award costs and compensation ("the second JR"). That claim was brought on three grounds. Ground 1: in determining the applications for costs and compensation the DJ failed to have regard to the fact that the closure notices served by the commissioner were served in breach of the requirements of the 2014 Act. Ground 2: in determining whether or not to award compensation from central funds the DJ applied the wrong test and/or had regard to immaterial considerations. Ground 3: the DJ's determination of the applications for costs and compensation "en bloc" was procedurally unfair and/or demonstrates a deficiency in the reasons for the decision.

19 The commissioner resisted grounds 1 and 3.

20 On 18 April 2017 Langstaff J granted permission in respect of ground 2 which challenged the failure to award compensation. However, Langstaff J refused permission in relation to the costs aspects under grounds 1 and 3 of the second JR and the application to have the second JR consolidated with the renewed application for permission in respect of the first JR, stating:

> "the renewed application deals with an issue which is at most peripheral to any question of compensation, and which in any event appears clearly otiose. I do not regard it as either helpful nor necessary to resolve the question whether the notice was invalid because of a lack of prior notification in order to decide, at the end of a hearing, whether the claimants should have their costs."

Appeal by way of case stated

21 On 7 June 2017 the claimants appealed against District Judge Matson's decision by way of case stated. The questions posed by the DJ for determination by this court are:

"Q1. Was I correct to consider the same authorities and principles in relation to the ordering of costs when considering whether to award compensation under section 90 [of the] Anti-Social Behaviour, Crime and Policing Act 2014?

"Do the same principles apply when considering payment from central funds? Is the starting point that no order should be made?

"Is it necessary to weigh up financial prejudice to the public purse against the need to encourage public authorities to make such applications when considering whether to away during compensation?

"Q2. Should I at the time, have taken account of the commissioner's failure to comply with section 76(6) of the Anti-Social Behaviour, Crime and Policing Act 2014 as a relevant factor in deciding whether to award costs or compensation."

22 On 27 June 2017 with the consent of the commissioner, Supperstone J ordered that the first JR be listed as a rolled-up hearing, to be heard together with the second JR and the appeal by way of case stated.

Relevant legal provisions

23 Section 76 of the 2014 Act, so far as is material, provides:

"*Power to issue closure notices*

"(1) A police officer of at least the rank of inspector, or the local authority, may issue a closure notice if satisfied on reasonable grounds— (a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or (b) that there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

"(2) A closure notice is a notice prohibiting access to the premises for a period specified in the notice. For the maximum period, see section 77.

"(3) A closure notice may prohibit access— (a) by all persons except those specified, or by all persons except those of a specified description; (b) at all times, or at all times except those specified; (c) in all circumstances, or in all circumstances except those specified.

"(4) A closure notice may not prohibit access by— (a) people who habitually live on the premises, or (b) the owner of the premises, and accordingly they must be specified under subsection (3)(a).

"(5) A closure notice must— (a) identify the premises; (b) explain the effect of the notice; (c) state that failure to comply with the notice is an offence; (d) state that an application will be made under section 80 for a closure order; (e) specify when and where the application will be heard; (f) explain the effect of a closure order; (g) give information about the names of, and means of contacting, persons and organisations in the area that provide advice about housing and legal matters.

A "(6) A closure notice may be issued only if reasonable efforts have been made to inform— (a) people who live on the premises (whether habitually or not), and (b) any person who has control of or responsibility for the premises or who has an interest in them, that the notice is going to be issued.

"(7) Before issuing a closure notice the police officer or local authority
B must ensure that any body or individual the officer or authority thinks appropriate has been consulted."

24 Section 77 provides that the maximum period that may be specified in a closure notice is 24 hours unless the conditions of subsection (2) are met in which case the maximum is 48 hours. Those conditions were met in the present case.

C **25** Section 78 provides for circumstances in which a closure notice may be cancelled or varied and section 79 prescribes the requirements for service of closure notices.

26 Section 80 addresses the power of the court to make closure orders, applications for which must be heard no later than 48 hours after service of the closure notice. Under section 80(5) the court can make a closure order if
D it is satisfied:

"(a) that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or (b) that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or (c) that there has been, or (if the order is not made) is likely to be, disorder near
E those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring."

27 Section 81(3)(4) provides that the court may adjourn the hearing of applications for a maximum period of 14 days and, in doing so, order that the closure notice continue in force pending the adjourned date.

F **28** By section 86(1) a person who without reasonable excuse remains on or enters premises in contravention of a closure notice (including a notice continued in force under section 81) commits an offence.

29 Section 90 of the Act deals with compensation and provides:

"(1) A person who claims to have incurred financial loss in consequence of a closure notice or a closure order may apply to the
G appropriate court for compensation."

"(5) On an application under this section the court may order the payment of compensation out of central funds if it is satisfied— (a) that the applicant is not associated with the use of the premises, or the behaviour on the premises, on the basis of which the closure notice was issued or the closure order made, (b) if the applicant is the owner or
H occupier of the premises, that the applicant took reasonable steps to prevent that use or behaviour, (c) that the applicant has incurred financial loss in consequence of the notice or order, and (d) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss."

The issues

30 It is agreed that there are three principal issues to be determined in these claims. Issue 1: did the DJ apply the proper test for the award of compensation pursuant to section 90 of the 2014 Act? Issue 2: what are the legal consequences of the commissioner's failure to comply with section 76(6) of the 2014 Act. Issue 3: was the DJ's "en bloc" approach to costs and compensation correct?

31 The parties' submissions on these issues may be summarised as follows.

(a) Submissions on issue 1: the test for compensation

32 The claimants say that the proper test for compensation pursuant to section 90(5) of the 2014 Act requires the court to apply the four-stage test set out at paragraphs (a)–(d). Consequently: (1) the starting point is not that there should be no order for compensation. On the contrary, where (as in this case) paragraphs (a)–(c) are satisfied, there is a presumption that compensation will be awarded. (2) Compensation is awarded from central funds. Thus, the principles relating to costs awards against public authorities derived from cases such as *Booth's* case [2001] LLR 151 and *Peripanathan* [2010] 1 WLR 1508 designed to prevent a chilling effect on regulatory activity, do not apply.

33 The commissioner does not take issue with the claimants' submissions on the proper approach to compensation.

(b) Submissions on issue 2: the commissioner's failure to comply with section 76(6)

34 The claimants submit that the commissioner's failure to comply with the statutory requirements for issuing the closure notices is relevant and material to whether, and if so in what amount, the court should make an award of compensation and/or costs. In particular, the claimants submit: (1) the relevant authorities on costs require the court to have regard to the commissioner's compliance with relevant procedural rules, including, in the present case, compliance with section 76(6). (2) The commissioner's non-compliance was "substantial" since: (i) section 76(6) is an important procedural safeguard. Its purpose is to consult as well as inform. It provides an opportunity for those specified to explain why it is unnecessary to issue a closure notice and/or to take steps to prevent any nuisance or disorder from continuing, occurring, or recurring, thereby removing the need for a closure order application. (ii) Section 76(6) triggers the requirement for service of the closure notice pursuant to section 79(2)(e). (iii) The search warrant and closure notice procedure should not be conflated. The intention to execute a search warrant does not negate the requirement to inform those with an interest in the premises of the intention to issue a closure notice. (3) The closure notices were thus invalid. This was a matter relevant to the determination of costs and compensation.

35 The commissioner submits that compliance with section 76(6) of the 2014 Act in the context of this case was irrelevant to the question of whether to award costs and compensation because, in the absence of any allegation of a breach of the closure notice (such breach giving rise to a criminal offence), the legality or otherwise of the notice had no impact upon the

A jurisdiction of the magistrates to make a closure order or any decision on costs at the end of a closure order hearing. The commissioner also contends that there was, in any event, substantial compliance with section 76; that strict compliance with section 76(6) would have made no difference to the outcome; and, in the words of District Judge Matson, the commissioner "acted reasonably and properly in making the application itself".

B *(c) Submissions on issue 3: "en bloc" determination*

36 The claimants say in respect of this issue that the relative strength of the commissioner's case against the different premises required the question of costs and/or compensation to be determined on a "premises-by-premises" basis. It is also submitted that the "en bloc" approach is unfair and amounts to a failure to give reasons as to why costs were not awarded to each of the C parties.

37 The commissioner submits that District Judge Matson was entitled to approach the applications for costs "en bloc" given that the premises had been targeted as part of the same police operation, the applications for closure orders had been brought together and on the same grounds, and the commissioner's conduct in respect of them all was essentially the same. D District Judge Matson applied the correct legal test when considering costs and the fact she dealt with them together did not affect this.

38 In relation to the issue of separate consideration of the applications for compensation, the commissioner's stance is neutral.

Discussion and analysis

E *Issue 1: the proper approach to compensation*

39 The first issue can be dealt with briefly due to the helpful stance taken by the commissioner in not taking issue with the claimants' submissions. The essential complaint here is that the DJ erred in law by applying principles relevant to the award of costs to the exercise of their discretion as to compensation. I begin by considering the power to award F costs.

40 The magistrates' power to award costs arises under section 64 of the Magistrates' Courts Act 1980. This provides: "(1) On the hearing of a complaint, a magistrates' court shall have power in its discretion to make such order as to costs . . . as it thinks just and reasonable . . ."

41 The application of this broad discretion as to costs in the context of public authorities carrying out enforcement functions was considered in G *Booth's* case [2001] LLR 151. Lord Bingham of Cornhill CJ, at paras 24–26, held that the question of costs in such cases could be summarised in three propositions:

> "(1) Section 64(1) confers a discretion upon a magistrates' court to make such order as to costs as it thinks just and reasonable. That provision applies both to the quantum of the costs (if any) to be paid, but H also as to the party (if any) which should pay them.
>
> "(2) What the court will think just and reasonable depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection.

"(3) Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appear to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged."

42 The last of these principles, which seeks to avoid any "chilling effect" on the regulatory activities of public authorities that might arise if costs merely followed the event, was further considered in *Perinpanathan* [2010] 1 WLR 1508. After an extensive review of the authorities, Stanley Burnton LJ said, at para 40:

"(5) Where the principle applies, and the party opposing the order sought by the public authority has been successful, in relation to costs the starting point and default position is that no order should be made. (6) A successful private party to proceedings to which the principle applies may none the less be awarded all or part of its costs if the conduct of the public authority in question justifies it. (7) Other facts relevant to the exercise of the discretion conferred by the applicable procedural rules may also justify an order for costs. It would not be sensible to try exhaustively to define such matters, and I do not propose to do so."

43 These principles apply to costs. However, the DJ had applied the same principles to the award of compensation under section 90 of the 2014 Act on the basis that there would also be financial prejudice to the police if compensation were awarded. In my judgment, the DJ erred in so doing: (1) unlike an award of costs, any award of compensation under section 90 of the 2014 Act is made out of central funds. Thus, there would be no financial prejudice to the paying authority in the event such an order is made. (2) The absence of financial prejudice to the paying authority means that there will not be any "chilling effect" on its regulatory activities in the way that there might be had such compensation to be paid out of its own budget. (3) The suggestion by the DJ, namely that there is financial prejudice to the particular public authority in question (and therefore a dissuasive effect on the issuing of closure notices) because any award out of central funds would still mean a payment from public funds, cannot be accepted. It is reasonable to assume that the reason Parliament provided for compensation to be paid out of central funds is precisely in order that the police and local authorities can reasonably exercise their powers in respect of closure notices and orders without the fear of having to pay large sums by way of compensation in the event that such notices or orders are successfully resisted. (4) There is, therefore, no basis for suggesting (as did the DJ in this case) that the starting point or default position in claims of compensation is that there should be no award. Whether or not an award should be made depends on all of the matters to be considered under section 90(5) of the 2014 Act.

A **44** As the decision as to compensation was made on an incorrect legal basis it falls to be quashed. Mr Streeten, on behalf of the claimants, invites me to go further and requests that a mandatory order be made requiring the DJ to award compensation. This request is made on the basis that the requirements for the award of compensation under section 90(5) of the 2014 Act were satisfied and the DJ gave no reason as to why it would not be appropriate to make the award.

B **45** Section 90(5) of the 2014 Act provides that the court has a discretion to order the payment of compensation out of central funds if it is satisfied that the requirements of paragraphs (a) to (c) are satisfied, and that, having regard to all the circumstances, it is appropriate to order payment of compensation in respect of that loss. Mr Streeten submitted that, if it was found that paragraphs (a) to (c) were satisfied, then that raised a C presumption (albeit not an express statutory one) that compensation would be awarded unless it was inappropriate to do so. In my judgment, there is no such presumption. Had that been the intended effect of the section, it could have said that compensation "shall" be awarded in these circumstances unless it would be inappropriate to do so. Instead, the section expressly confers a discretion in terms of compensation and requires the court to have regard to "all the circumstances" in determining whether it is "appropriate" D to order payment of compensation. It therefore remains open to the court not to award compensation even if paragraphs (a) to (c) are satisfied. However, if it chooses to take that course it must explain why it is doing so. That is particularly so given that, in order to satisfy paragraphs (a) to (c), the court would necessarily have concluded that there was limited culpable behaviour on the part of the applicants and that they took reasonable steps E to prevent the impugned conduct from occurring. Where a person has incurred loss in those circumstances, it is incumbent upon the court, if it decides not to award the statutory compensation, to explain why.

46 In this case, the DJ appears to have decided not to award compensation not because of any conduct on the part of the claimants, but because it was considered that the commissioner had acted reasonably and F properly in making the application. That, to my mind, is to focus on the wrong conduct. Whilst the commissioner's conduct may undoubtedly be taken into account as part of the overall circumstances, at the stage of deciding upon compensation, and having concluded that there was little or no culpable conduct on the part of the claimants, and that there was financial loss, it seems to me that it would primarily be factors related to the claimants' conduct which might render it appropriate not to award G compensation. No such factors were identified in the DJ's reasons.

47 Notwithstanding the absence of any such factors, it does not seem to me that this court should make a mandatory order requiring the DJ to award compensation. To do so would be to usurp the function of the DJ who is in the best position to consider all of the circumstances that might bear upon the appropriateness of making such an award, including the particular loss H claimed to have been incurred. Although the DJ did not expressly identify any factors against the award of compensation, that was in the context of an incorrect application of section 90(5) and where it had been assumed that the starting position should be no award of compensation. Had the DJ approached the matter as required by section 90(5), she may well have identified other factors which, in her assessment, made it inappropriate to

award compensation. The appropriate course, in my judgment, is for the matter to be remitted to the magistrates' court, and for the DJ to reconsider the issue of compensation without regard to the principles in *Booth's* case [2001] LLR 151 and *Perinpanathan* [2010] 1 WLR 1508, and on the basis that subsections (a) to (c) of section 90(5) are satisfied in order to determine whether, having regard to all the circumstances, it would be appropriate to order payment of compensation in respect of each of the claimants' claimed loss.

48 In view of the above, the answer to each part of the first question of the case stated is in the negative.

Issue 2: the effect of non-compliance on costs and compensation

49 The first part of Mr Streeten's submission on this issue is that the relevant authorities on costs required the court to have regard to the commissioner's failure to comply with relevant procedural rules. He relies, in particular, upon *Perinpanathan*. The application for costs in that case arose out of the exercise by the police of seizure powers respect of cash under the Proceeds of Crime Act 2002. Once seized, the commissioner applied under section 298 of that Act for the forfeiture of the cash. The DJ dismissed that application, accepting evidence produced by the claimant that the cash had been intended for lawful purposes. However, the DJ refused to make an order for costs. This was on the basis that the police had reasonable grounds for the suspicion that cash had been intended for use in unlawful conduct. On the claimant's appeal, Lord Neuberger of Abbotsbury MR said, at paras 75 and 77:

> "75. As I have indicated, there is a respectable argument for saying that there should be a presumption that a person in the position of the claimant should be able to recover some of her costs because she had successfully defeated the claim by the police to confiscate her money. However, there is also a respectable argument for saying that there is no such presumption, and that, absent other factors, she should only be able to recover any costs in so far as they were incurred as a result of the actions of the police in connection with the detention and claim for confiscation of her money which were unreasonable or in some other way open to criticism. In my view, the resolution of the question as to which of these two views should prevail is really determined by the decisions to which I referred of the High Court and Court of Appeal over the past 30 years the effect of which is encapsulated in Lord Bingham CJ's principles [in *Booth's* case]."
>
> "77. The effect of our decision is that a person in the position of the claimant, who has done nothing wrong, may normally not be able to recover the costs of vindicating her rights against the police in proceedings under section 298 of the 2002 Act, where the police have behaved reasonably. In my view, this means that magistrates should exercise particular care when considering whether the police have acted reasonably in the case where there is an application for costs against them under section 64. It would be wrong to invoke the wisdom of hindsight or to set too exacting a standard, but, particularly given the understandable resentment felt by a person in the position of the claimant if no order for costs is made, and the general standards of behaviour that can properly be

A expected from the police, it must be right to scrutinise their behaviour in relation to the seizure, the detention, and the confiscation proceedings, with some care when deciding whether they acted reasonably and properly."

50 Mr Streeten submits that the requirement set out in *Perinpanathan* [2010] 1 WLR 1508, for magistrates to scrutinise the behaviour of the police
B carefully in order to determine whether they acted reasonably and properly, meant that the DJ was bound to consider whether there had been compliance with the procedural requirements for issuing a closure notice, and that any failure in that regard necessarily meant that their behaviour could not be regarded as reasonable and proper. However, in *Perinpanathan*, it was not alleged, as in this case, that there was any prior unlawful act or failure to act on the part of the police which rendered the act of seizure a nullity or invalid.
C Once the claim of invalidity was raised in the present case, the DJ proceeded on the basis that any question of validity was a matter for judicial review, and that, furthermore, the facts giving rise to that claim of invalidity should not be taken into account in determining the issue of costs. The question is whether the DJ was correct to take that approach.

51 In my judgment, the DJ was correct to do so.

D 52 The DJ was correct to consider that any challenge to the validity of the closure notice was a matter for judicial review and not within the jurisdiction of the magistrates' court: I was referred to *R (Byrne) v Comr of Police of the Metropolis* [2010] EWHC 3656 (Admin) ("*Byrne*") in which there was an appeal against the decision of the Crown Court that it did not have any jurisdiction to consider an allegation that the police had failed to have regard to guidance before the issuing of a closure notice under the Anti-
E social Behaviour Act 2003. The provisions as to closure notices and closure orders under the 2003 Act bear some similarity to those under the 2014 Act, except that there was no equivalent to section 76(6) in the 2003 Act. It is important to note, however, that under the 2003 Act, as under the 2014 Act, it was only once a closure notice was issued that an application could be made for a closure order. There was also a requirement under the 2003 Act
F that a person must have regard to guidance in discharging the functions under that Act. As to the question of the magistrates' courts' and the Crown Court's jurisdiction to hear challenges in respect of the closure notice, Moses LJ said, at paras 15–21:

"15. The question thus arises as to whether any failures, if there were any failures, by the authorising officer, are matters which it was open to
G these appellants to raise in the proceedings before the Crown Court. The allegation was that Superintendent Morgan failed to comply with the obligation imposed on him by section 11K to have regard to the Secretary of State's guidance. That failure, so it was said, was a matter which the Crown Court ought to have considered but failed, by declining to exercise what the court regarded as a species of prior judicial review analysis.

H "16. It is not disputed, and cannot be disputed, that the Crown Court, exercising the statutory jurisdiction conferred upon it by section 11F, must exercise that jurisdiction in a way to achieve the statutory objective of fairness and justice in the consideration of whether it is right to make a closure order or not. This is not correctly described as an inherent jurisdiction, but rather a jurisdiction to be implied from its statutory

function. In order to achieve the objective of deciding whether to make a closure order or not, both the magistrates' court, under section 11B, and the Crown Court on appeal under section 11F, must be able to deploy implied powers so as to achieve fairness and justice in reaching a conclusion. If authority is wanted for such a proposition it can be found in the decision of Hickinbottom J in *R (V) v Asylum and Immigration Tribunal* [2009] EWHC 1902 (Admin) and in *R (Chief Constable of Nottinghamshire Police v Nottingham Magistrates' Court* [2011] PTSR 92. The court is entitled to prevent its processes from abuse and, in exceptional cases, may prevent an application from being persisted in or continued where it is clear to the court that there is either bad faith or manipulation of its processes in order to achieve a closure order. Examples, possibly far fetched, but nevertheless easily identifiable, were given in argument where it could be shown that, for example, the proceedings were being brought in bad faith or for ulterior motives.

"17. There was no controversy about the exercise of that traditional and well recognised power, but the dispute between the parties arose over the question as to whether the court was required to consider a challenge to the closure order on the basis that the superintendent had, as a matter of public law, acted unlawfully, in that he had failed to consider the guidance that he was required to consider. The classic example of bringing a collateral challenge in criminal, or for that matter civil, enforcement proceedings on public law grounds occurs where a public body, in the exercise of its statutory powers, makes an order and seeks to rely upon that order in bringing proceedings for an offence of breach of the order. In such circumstances a defendant may raise a public law defence, contending that the order made was outwith the powers of the authority. In civil proceedings an example of that may be found in *Wandsworth London Borough Council v Winder* [1985] AC 461 where proceedings were brought for arrears of rent and the increase of rent made by the local authority was unlawful. In criminal proceedings the paradigm may be observed in *Boddington v British Transport Police* [1999] 2 AC 143. In that case a criminal prosecution was brought for breach of the byelaw prohibiting smoking in a railway carriage. On appeal, the House of Lords concluded that it was open to the defendant to contend, by way of defence to a criminal prosecution, that the byelaw, or the administrative act of sticking up the notices pursuant to it, was ultra vires and unlawful. Lord Irvine of Lairg LC said, at p 153: 'It would be a fundamental departure from the rule of law if an individual were liable to conviction for contravention of some rule which is itself liable to be set aside by a court as unlawful.' But he pointed out that the extent to which a public law defence might be deployed in criminal proceedings would depend upon analysis of the statutory scheme in question. In a case such as *Boddington* an individual would have no occasion or opportunity for challenging the legality of the acts which ultimately led to his prosecution (see p 161G). He contrasted that situation with cases where administrative acts were specifically directed at the defendants.

"18. The instant case is wholly different. The appellants did not face prosecution for any offence at all. They did not face an accusation that they had acted in breach of a closure notice pursuant to section 11D; it

A was not suggested that they had breached the notice, rather they faced an application for a closure order, consideration of which was a matter for the magistrates pursuant to section 11B. There was no allegation of a breach. In those circumstances, the principle in *Boddington's* case, and for that matter in *R v Wicks* [1998] AC 92 has, in my view, no application. This was not a case where it was open to a defendant to mount a collateral challenge on public law grounds against the basis on B which it was alleged he had committed an offence. True it is that without a closure notice no application could have been made for a closure order, but it simply does not follow that because that is the course of the statutory scheme that someone who faces a closure order should be permitted to challenge the lawfulness of the prior closure notice.

"19. It is true, as Mr Southey points out, that the time for challenging C that notice is necessarily limited. I have already referred to the very short period between the making of a closure notice and its service and the making of a closure order. It is necessarily a limited period because the making of a closure order is a severe measure of last resort, as section 11B(4)(c) makes clear. It would defeat its purpose if there were to be a long delay between the issue of the notice and the making of the order. None the less, the time for challenging the issue of a notice is the D time that it is made and it is open to someone served with a notice, if that person wishes to challenge the legality of the notice, to do so moving by way of judicial review on traditional public law grounds.

"20. That, in my view, is a sufficient basis to uphold what the Crown Court said when it declined to become involved in a form of prior judicial review analysis but there is a distinct ground on which that view should E also be upheld. Even if it was open to someone against whom it was sought to make a closure order to raise questions of the legality of the closure notice, it is necessary to consider the nature of the complaint and allegation and the consequences of the illegality asserted. In *R v Wicks* [1998] AC 92 the House of Lords considered the extent to which the legality of the making of a prior Enforcement notice could be raised in F proceedings for alleged breach of that notice. In his speech Lord Hoffmann considered the question whether the challenge to the validity of a byelaw could be raised as a defence. He said, at p 117: 'The question must depend entirely upon the construction of the statute under which the prosecution is brought. The statute may require the prosecution to prove that the act in question is not open to challenge on any ground available in public law, or it may be a defence to show that it is. In such a case the G justices will have to rule upon the validity of the act. On the other hand, the statute may, upon its true construction, merely require an act which appears formally valid and has not been quashed by judicial review. In such a case, nothing but the formal validity of the act will be relevant to an issue before the justices. It is, in my view, impossible to construct a general theory of the ultra vires defence which applies to every statutory power, whatever the terms and policy of the statute.' He then referred to H the approach of Webster J in *Quietlynn Ltd v Plymouth City Council* [1988] QB 114 in which, in the context of those proceedings in relation to a sex establishment licensing code, Webster J commented that justices should not be expected to assume the functions of a Divisional Court and consider the validity of decisions made by a local authority.

He continued, at p 131: 'every decision of the licensing authority . . . under the [Local Government (Miscellaneous Provisions) Act 1982] is to be presumed to have been validly made and to continue in force unless and until it has been struck down by the High Court; and neither the justices nor a Crown Court have power to investigate or decide upon its validity'.

"21. In the instant case the scheme of the Act is that once an authorised police officer of the rank of superintendent and above has issued a closure notice it is then for the magistrates' court to decide whether it is satisfied of those considerations identified in section 11B(4) and further, I emphasis, to consider whether as a matter of discretion such an order ought to be made. Thus, the issue of a notice is merely the trigger for the magistrates' jurisdiction. In the absence of any allegation of a breach of the notice, the legality or otherwise of the notice has no impact upon the jurisdiction of the magistrates. The magistrates make their own decision as to whether the conditions are satisfied. If they are, the magistrates are then required to go on to consider whether, even though those conditions are satisfied, it is right to make the order. In those circumstances, this is just the sort of statutory scheme to which Lord Hoffmann and Webster J were referring, in which questions of the validity or otherwise of a notice are not questions for either the justices or, on appeal, for the Crown Court. It is the examination and analysis of the statutory scheme that dictates a conclusion that the Crown Court was correct. That seems to me to be a further ground for upholding its conclusion."

53 I was also referred to the earlier case of *R (Errington) v Metropolitan Police Authority* (2006) 171 JP 89 ("*Errington*") in which Collins J dealt with a similar issue arising under the 2003 Act. In that case it was claimed that the closure notice was defective on its face and therefore invalid. The magistrates on that occasion decided to adjourn its proceedings pending a decision on the issue of invalidity by the High Court. As to that decision Collins J said:

"14. I have no doubt that that decision was wrong. This court has indicated that in general it is inappropriate to intervene at an interlocutory stage (see, for example, *R v Rochford justices, Ex p Buck* (1978) 68 Cr App R 114). The court must decide all issues whether of fact or law for itself and reach its decision. If that decision is, or is alleged to have been, tainted by any errors of law, a case can be stated or exceptionally judicial review proceedings can then be brought. It is particularly inappropriate to permit judicial review before the final decision in cases such as this where speed, and the continuing protection of the public, are of particular importance."

"16. (1) Is the jurisdiction of the magistrates' court to hear the application for a closure order under section 2 of the Anti-social Behaviour Act 2003 dependent upon the existence of a validly issued and served closure notice under section 1 of the Act? . . ."

"21. At the hearing of the application the court should satisfy itself that copies of the notice have indeed been served as required by section 1(6) so that anyone who would be adversely affected by it, and entitled to make representations against it because he had control of, responsibility for, or interest in the premises, had been so far as reasonably practicable,

identified and served. One of the purposes of section 1(6) is to give all those who might be affected by an order, or interested in the premises, notice of the intention to apply for the control order. If the magistrates are not satisfied that those mandatory steps have been taken they should then consider whether to exercise their powers to adjourn under section 2(6) and require that the necessary steps be taken. If persuaded that there are shortcomings, they would be likely to take the view that the notice should not continue in effect until those necessary steps were taken; thus they would not exercise their powers under section 2(7) to continue the notice in being.

"22. The notice itself, on the face of it, is required to inform of the date and time of the hearing before the justices. Obviously if the notice does not contain the necessary information the magistrates will be likely to indicate that they are not prepared to continue with any hearing until the notice is put in proper form. In that way the interests of those who are affected by it are preserved while the protection of the public, which stems from the need for the premises to be closed down, if that is established, is also kept in being.

"23. For reasons which will become apparent, I do not think that the jurisdiction to hear the application is affected by any shortcomings in the notice, although they would affect the validity of the notice so as to make it impossible to maintain criminal proceedings under section 4(1) or (2) in so far as they depended upon the validity of the notice. If within the period permitted by the justices any defects were not cured then no doubt the application would be likely to be refused. It is important to bear in mind that the closure notice itself produces an immediate effect in that it prevents anyone other than a habitual resident or the owner from entering the premises. In addition, its breach by any visitor is a criminal offence, as is any obstruction by any person of the taking of any of the steps which have to be taken under section 1(6). It will be a defence to any criminal charge under section 4(1) or (2) in so far as it relates to section 1(6) that the notice is not a valid notice. Such a defence will have to be considered by the court (see *Boddington v British Transport Police* [1998] AC 143), but while the issue of a notice, which does not have to be contemporaneous with its authorisation, is an essential pre-requisite to the application to the court, the court must decide whether an order is needed. The court will consider whatever evidence is put before it in satisfying itself that each of the paragraphs in section 2(3) applies. That is the protection for the claimant and anyone adversely affected by the notice which cannot be in force for more than 16 days, that is a combination of the 48 hours in section 2(2) and the 14 days' adjournment in subsection (6).

"24. Whether or not the superintendent had reasonable grounds for his belief will inevitably be irrelevant at the stage that the magistrates consider whether to make a control order, since they must decide whether in fact there has been the drug use and whether in fact there is the associated disturbance and so the making of an order is necessary.

"25. In so far as breaches result in criminal offences, the validity of the closure notice must, as I have said, be established. Since Parliament has laid down mandatory requirements those must be complied with. The same approach is not necessary in considering an application under section 2 of

the Act. It seems to me that in this respect the approach adopted by the House of Lords in *Attorney General's Reference (No 3 of 1999)* [2001] 2 AC 91 is applicable. A notice must have been issued to enable an application to be made, but the application does not depend, nor does the Act say that it depends, upon the validity of that notice. The justices must ensure that those affected have been properly notified and so can appear and, if they wish, raise objections, but it is for the justices to decide on the evidence before them whether a control order is to be made. That process provides all the necessary protection for those affected and does not frustrate the obvious parliamentary purpose in permitting the making of control orders for the protection of those living near such premises."

"37. Accordingly, for the reasons I have given, I would answer the first question raised in the negative. The magistrates' jurisdiction depends upon an application made under section 2 of the 2003 Act and the existence of a notice. Any relevant issues relating to the notice and, in particular, whether any persons who should have been notified have been must be decided by the magistrates. If the magistrates are in any doubt about whether there has been a proper display of the notice or notification in accordance with section 1(6), they must ensure that all necessary steps are taken to draw its existence to the attention of those who otherwise might try to visit the premises and so commit an offence."

54 It is abundantly clear from these authorities that magistrates should not generally consider the validity or otherwise of the closure notice in an application for a closure order. It is also clear from these authorities that had there been an attempt to prosecute any of the claimants for a breach of the closure notices then of course the validity or otherwise of the notices could have been raised by way of defence. In the present case there is no question of there being a breach of the closure notices by any of the claimants. The magistrates' jurisdiction to hear the application for closure orders is not affected by any shortcomings in the closure notices.

55 Mr Streeten developed a series of sophisticated submissions in support of his contention that the scheme under the 2014 Act was such that the failure to comply with section 76(6) ought to have been taken into account in the determination of costs and/or compensation. It was contended that: (i) the power to make a closure notice and a closure order are inextricably linked such that one cannot deal with the latter without considering the validity of the former; (ii) section 76(6) of the 2014 Act imposes an obligation to consult with affected persons prior to issuing a closure notice; (iii) the commissioner's failure to consult rendered the closure notice, and any act reliant upon that notice, a nullity; (iv) it could not be said that there was substantial compliance with the section 76(6) within the meaning of *R v Secretary of State for the Home Department, Ex p Jeyeanthan* [2000] 1 WLR 354; (v) if the closure notices were unlawful by reason of any of the above, then it could not be said that the application for a closure order was a "reasonable and proper act" for the purposes of assessing costs.

(a) Link between closure notice and closure order

56 It was submitted that the effect of sections 76 and 80 of the 2014 Act is that the closure notice and order are "inextricably linked" and that there is

A no separate power to apply for a closure order; they are simply two stages of a single closure power. I was invited to consider material in Hansard as to the effect of these provisions. It is well established that reference may be made to such material if provision in question is ambiguous or obscure or its literal meaning would lead to absurdity: *Pepper v Hart* [1993] AC 593. In my judgment, however, there is no ambiguity in relation to these provisions, and it would not be appropriate to consider ministerial
B statements. In my judgment, any link between these stages does not preclude the magistrates from considering the application of a closure order even when the closure notice is said to be invalid.

57 Sections 76 to 79 of the 2014 Act deal solely with the powers conferred on the police and local authorities in respect of closure notices. There is no supervisory jurisdiction conferred on the magistrates under these
C sections. The magistrates are not, in particular, required to satisfy themselves that any closure notice is valid before considering an application for a closure order. Thus, whilst there may be a link between the closure notice and a closure order, in that an application for the latter cannot be made without the former having been issued, there is nothing in the statute that requires the magistrates to go beyond confirming that a closure notice had been issued. As was the position under the 2003 Act, the issuing of the
D closure notices merely "triggers the magistrates' jurisdiction": see *Byrne* [2010] EWHC 3656. In my judgment, the magistrates did not, in these circumstances, have jurisdiction to determine the issue of the validity of the closure notices.

58 Mr Streeten further submits that, if that is right then, at the very least, the magistrates should always adjourn the proceedings before them in
E order to enable any judicial review challenge to be heard and determined first. As is apparent from the extracts from *Byrne* and *Errington*, such an approach is considered to be incorrect: see *Errington* 171 JP 89, para 14. I agree. To adjourn proceedings in respect of a closure order whenever there is a challenge by way of judicial review in respect of the closure notice would fundamentally undermine the operation of the legislation, which is intended
F to provide a fast and flexible remedy in cases of substantial nuisance or disorder.

59 It was suggested that there is some conflict in the authorities as to whether the court should adjourn proceedings in these circumstances, given that, in an older case, *Quietlynn Ltd v Plymouth City Council* [1988] QB 114, 131 it was held that:

G "If a bona fide challenge to the validity of the decision in question is raised before them, then the proceedings should be adjourned to enable an application for judicial review to be made and determined. In our view, therefore, except in the case of a decision is invalid on its face, every decision of the licensing authority under the Act is to be presumed to have been validly made and to continue in force unless and until has been struck down by the High Court; and neither the justices nor a Crown
H Court have power to investigate or decide upon its validity."

60 In my view, a proper reading of that passage in the *Quietlynn Ltd* case does not suggest that in every instance where there is challenge by way of judicial review the proceedings before the magistrates should be adjourned. The latter part of the passage refers to the presumption of

validity and the continuation in force of the decision in question until it has been struck down by the High Court. Adjourning proceedings in the face of an undetermined challenge by way of judicial review would not give effect to that presumption. However, even if the claimants' reading of that passage is correct, I note that it pre-dates the decisions of the House of Lords in *Boddington v British Transport Police* [1992] 2 AC 143 and *R v Wicks* [1998] AC 92 which formed the basis of the judgments in *Byrne* [2010] EWHC 3656 and *Errington* 171 JP 89. I was invited not to follow the judgments in *Byrne* and *Errington*. However, I see no error in the approach taken in those judgments and see no reason not take the same approach here. Accordingly, I find that the magistrates were correct in this case not to adjourn the matter and to leave any issues regarding the validity of the closure notice to the High Court.

(b) Is there an obligation to consult?

61 Mr Streeten further submitted that section 76 confers a fundamental procedural protection on property owners and those with an interest in affected properties in that the commissioner is required to consult with them prior to issuing a closure notice. It is said that this would provide owners and those with an interest in the premises with an opportunity to explain, if it is the case, that the conduct giving rise to nuisance or disorder is not occurring such that the issuing of a closure notice is not necessary. It is also said that the failure to comply with this important procedural safeguard renders the closure notice a nullity.

62 Dealing first with the contention that section 76(6) requires consultation, it is my judgment that section 76(6) does not have that effect. I say that for the following reasons.

63 There is a separate, express provision dealing with the obligation to consult under section 76(7). This provides that before issuing a closure notice the police officer or local authority must ensure that any body or individual the officer or authority thinks appropriate has been consulted. Given this provision, it is unnecessary, in my judgment, to import into section 76(6) any further or other obligation to consult.

64 Section 76 itself is in terms that the closure notice may be issued only if reasonable efforts have been made to inform affected persons that the notice "*is going to be issued*". It seems to me that the use of the words, "*is going to be issued*", indicates that, by the stage the obligation to inform arises, the relevant officer has already satisfied himself within the meaning of section 76(1) on reasonable grounds that there is likely to be nuisance or disorder, and that the notice is necessary to prevent that nuisance or disorder from continuing. Any conclusion that the notice was "necessary" could only have been lawfully reached if, on reasonable grounds, the relevant officer had concluded that no lesser measure than the issuing of the notice would suffice. In the circumstances, further consultation with potentially affected persons once the decision to issue had been made would be otiose. Had the intention behind section 76(6) been to require consultation with those affected *before* any decision is made to issue the notice then the subsection would have been in terms that persons should be informed that a notice "might" be issued or that the authority was considering issuing one.

65 Reliance was also placed on *Westminster City Council v Mendoza* [2001] LLR 578, another case dealing with closure notices in respect of

premises believed to be used as sex establishments, this time under the Local Government (Miscellaneous Provisions) Act 1982. In that case, there had been a failure to serve the closure notice properly on some of the occupiers of affected premises, and the issue was whether that failure vitiated subsequent applications. Having regard to the particular statutory scheme in question, the court held that the failure to comply with the procedural requirements did not render the result a nullity. I was also referred to the following passage in the judgment of Lord Woolf CJ, at para 31:

> "However, as the magistrate found that there had not been adequate service, it is necessary to consider the consequence of the service after the first hearing when the proceedings were adjourned. Mr Salter in his argument said that the structure of the Act required the service on the occupiers of the basement to take place before the complaint [seeking a closure order] was issued. That argument, if correct, could be to the disadvantage of those who may subsequently occupy the premises and whose interests might need to be protected. It seems to me that a proper interpretation of section 4(1) only requires service of the principal to have taken place before the complaint is issued. The reason for the two-stage process so far as the principal is concerned, pursuant to sections 3 and 4 of the Act is to give the operator of the sex establishment an *opportunity to discontinue* his activities of which the council makes complaint. The reason for serving others (apart from the person operating the sex establishment) is to enable them to protect their interests. As long as they are in a position to attend the hearing, the policy and the objectives of the Act will be achieved." (Emphasis added.)

66 Mr Streeten sought to persuade me that the reference there to the "opportunity to discontinue" activities under the 1982 Act is mirrored in the operation of section 76(6) of the Act in that the obligation to inform prior to the issuing of notice would also enable parties to discontinue activities. However, the opportunity to discontinue in *Mendoza's* case only arose *after* the service of the closure notice. It does not, therefore, support Mr Streeten's contention, which relates to a prior stage. In any case, there was an express provision under the 1982 Act which meant that the council was obliged to take account of the discontinuation of illicit activity after the service of the closure notice. Under the 1982 Act, the council had a discretion to apply for a closure order following the service of a closure notice and could do so at any time within a period of not less than 14 days and no more than six months after the service of the closure notice (contrast that with the present scheme under which the police or local authority *must* apply for a closure order and must do so within 48 hours of service of the closure notice). Moreover, the exercise of the discretion under the 1982 Act was expressly subject to section 4(2) of that Act under which the council could not apply for a closure order if it was satisfied that the use of the premises as a sex establishment had been discontinued and that there was no reasonable likelihood of any further breach. There is no such provision under the 2014 Act. Accordingly, there is no warrant for importing any similar "opportunity to discontinue" following the closure notice here. The very short timetables applicable under the 2014 Act further militate against there being any such opportunity.

67 I was also taken to the decision of the Supreme Court in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700. In that case, the Treasury had exercised powers under the Counter-Terrorism Act 2008 to make an order prohibiting all persons operating in the financial sector in the United Kingdom from entering into or continuing any transaction with a major Iranian commercial bank (it will be immediately apparent that the circumstances of that case, in which considerations of foreign policy and national security played a significant part, are very far removed from the present case). The order in that case was held to be disproportionate for various reasons including the fact that the bank had not been consulted prior to the making of the order and had had no opportunity to make representations. Lord Sumption JSC stated, at pp 774–777:

"28. I also consider that the Bank is entitled to succeed on the ground that it received no notice of the Treasury's intention to make the direction, and therefore had no opportunity to make representations.

"29. The duty to give advance notice and an opportunity to be heard to a person against whom a draconian statutory power is to be exercised is one of the oldest principles of what would now be called public law. In *Cooper v Wandsworth Board of Works* (1863) 14 CBNS 180, the defendant local authority exercised without warning a statutory power to demolish any building erected without complying with certain preconditions laid down by the Act . . ."

"31. It follows that, unless the statute deals with the point, the question whether there is a duty of prior consultation cannot be answered in wholly general terms. It depends on the particular circumstances in which each directive is made. Some directives that might be made under Schedule 7 to the Act could not reasonably give rise to an obligation on the Treasury's part to consult the targeted entity, for example because there was a real problem about the implicit or explicit disclosure of secret intelligence or because prior consultation might frustrate the object of the directive by enabling the targeted entity to evade its operation, notably in a case involving money-laundering or terrorism . . .

"32. In my opinion, unless the Act expressly or impliedly excluded any relevant duty of consultation, it is obvious that fairness in this case required that Bank Mellat should have had an opportunity to make representations before the direction was made. In the first place, although in point of form directed to other financial institutions in the United Kingdom, this was in fact a targeted measure directed at two specific companies, Bank Mellat and IRISL. It deprived Bank Mellat of the effective use of the goodwill of their English business and of the free disposal of substantial deposits in London. It had, and was intended to have, a serious effect on their business, which might well be irreversible at any rate for a considerable period of time. Secondly, it came into effect almost immediately. The direction was made on a Friday and came into force at 10.30 a m on the following Monday. It had effect for up to 28 days before being approved by Parliament. Third, for the reasons which I have given, there were no practical difficulties in the way of an effective consultation exercise. While the courts will not usually require decision-makers to consult substantial categories of people liable to be affected by a proposed measure, the number of people to be consulted in this case was

A just one, Bank Mellat, and possibly also IRISL depending on the circumstances of their case. I cannot agree with the view of Maurice Kay LJ that it might have been difficult to deny the same advance consultation to the generality of financial institutions in the United Kingdom, who were required to cease dealing with Bank Mellat. They were the addressees of the direction, but not its targets. Their interests
B were not engaged in the same way or to the same extent as Bank Mallet's. Fourth, the direction was not based on general policy considerations, but on specific factual allegations of a kind plainly capable of being refuted, being for the most part within the special knowledge of the Bank. For these reasons, I think that consultation was required as a matter of fairness. But the principle which required it is more than a principle of fairness. It is also a principle of good administration. The Treasury made
C some significant factual mistakes in the course of deciding whether to make the direction, and subsequently in justifying it to Parliament. They believed that Bank Mellat was controlled by the Iranian state, which it was not. They were aware of a number of cases in which Bank Mellat had provided banking services to entities involved in the Iranian weapons programmes, but did not know the circumstances, which became
D apparent only when the Bank began these proceedings and served their evidence. The quality of the decision-making processes at every stage would have been higher if the Treasury had had the opportunity before making the direction to consider the facts which Mitting J ultimately found."

"36. It does not of course follow that a duty of prior consultation will arise in every case. The basic principle was stated by Lord Reid 40 years
E ago in *Wiseman v Borneman* [1971] AC 297, 308, in terms which are consistent with the ordinary rules for the construction of statutes and remain good law: 'Natural justice requires that the procedure before any tribunal which is acting judicially shall be far in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard-and-fast rules. For a long time the courts have, without
F objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation.' Cf Lord Morris of Borth-y-Gest, at p 309B–C."

G **68** I do not consider that there is, by analogy, any similar duty here to consult prior to issuing a closure notice: (1) The 2014 Act expressly provides for a rapid opportunity for affected persons to make representations at the hearing of the application for closure orders. The section 80 hearing goes beyond merely reproducing the right which should be available on an application for judicial review. At the section 80 hearing, the magistrates can make the order only if satisfied of a number of matters including that the
H order is "necessary" (with all the safeguards that that entails, including that there is no less intrusive measure that would suffice) to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring. (2) The time-scales under the 2014 Act are far shorter than those which were imposed by the order in the *Bank Mellat* case, and prejudice to goodwill by

reason of the interruption of business activity is thereby minimised. I do not accept Mr Streeten's submission that the temporary effect of a closure notice is such as to cause irreversible damage to goodwill. Furthermore, unlike the position in the *Bank Mellat* case, there is provision under the 2014 Act for compensation in the event that affected persons incur a loss. (3) To require the police to engage in consultation prior to the issuing of the notice would be likely to frustrate or undermine the purpose of the legislation, which is to provide a "fast and flexible remedy"[1*] in the event of serious nuisance or disorder.

69 I accept Mr Walsh's submission that the primary purpose of the obligation to inform under section 76(6) is to enable persons who might be affected by the closure of premises to make such arrangements as may be appropriate to avoid breaching the notice.

70 Mr Streeten submits that section 76(6) cannot have the primary purpose contended for by the commissioner because if it were to do so it would render the service provisions under section 79 redundant. Section 79 sets out the requirements to fix a copy of the notice on a prominent place on the premises and to points of access, any outbuildings, and to give copies of the notice to persons who appear to have control of or responsibility for the premises, people who live in the premises and any person who does not live there but who was informed under section 76(6) that the notice was going to be issued. In my judgment, the service requirements under section 79 serve a different purpose to the obligation to inform under section 76(6). At the point where persons are being informed that a notice is going to be issued, they would still have the right to enter the premises and make any arrangements that may be necessary for dealing with the imminent closure of the premises, whereas once the notice is actually served, pursuant to section 79, affected persons cannot enter the premises at all.

(c) Does the failure to comply with section 76(6) mean that the closure notice is a nullity?

71 In order to make good his submission that the failure to comply with the obligation to inform arising under section 76(6) of the 2014 Act rendered the closure notice a nullity, Mr Streeten took me to some landmark administrative law authorities such as *F Hoffmann-la Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295, *Director of Public Prosecutions v Hutchinson* [1990] 2 AC 783 and *Boddington's* case [1999] 2 AC 143. It is not necessary to cite the passages to which I was taken, which are very well known, and do not, to my mind, advance the claimants' argument. Perhaps of more assistance in this context is the judgment in *Ex p Jeyeanthan* [2000] 1 WLR 354 to which I was also taken, and in which the Court of Appeal considered the effect of the failure to use a mandatory prescribed form in the course of asylum proceedings. Lord Woolf MR held, at p 362:

> ". . . I suggest that the right approach is to regard the question whether requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance than the application of the

* *Reporter's note*. The superior figure in the text refers to the note at the end of the judgment on p 996.

A mandatory/directory test. The questions which are likely to arise are as follows.

"1. Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and, if so, has there been substantial compliance in the case in issue even though there has not been strict compliance? (The substantial compliance question.)

B "2. Is the non-compliance capable of being waived, and if so, has it, or can it and should be waived in this particular case? (The discretionary question.) I treat the grant of an extension of time for compliance as a waiver.

"3. If it is not capable of being waived or is not waived then what is the consequence of the non-compliance? (The consequences question.)

"Which questions will arise will depend upon the facts of the case and
C the nature of the particular requirement. The advantage of focusing on these questions is it they should avoid the unjust and unintended consequences which can flow from an approach solely dependent on dividing requirements into mandatory ones, which oust jurisdiction, or directory, which do not. If the result of non-compliance goes to jurisdiction it will be said jurisdiction cannot be conferred where it does not otherwise exist by consent or waiver."

D

72 Given the statutory requirement under the 2014 Act that a closure notice may be issued *only* if reasonable efforts have been made to inform affected persons that the notice is going to be issued, it seems to me that the requirement is not one that may be waived. Thus, it is necessary to consider whether there has been substantial compliance with the requirement (as the commissioner contends) and what are the consequences of non-compliance.

E

(d) Was there substantial compliance?

73 Mr Streeten submitted that there cannot be substantial compliance given the important consultative purposes of section 76(6). For reasons already set out above, I do not agree that the provision does have those purposes. The claimants were not deprived of an opportunity to make
F representations. They had that opportunity at the hearing of the application for the closure orders which were to be heard very shortly after the issuing of the closure notices. The claimants have not suggested that the closure order proceedings themselves were deficient in that respect.

74 In the circumstances, where all the affected persons: (i) had notice of the application for a closure order; (ii) were present at the hearing of that
G application; and (iii) had an opportunity to make representations (which in the event led to a successful outcome for the claimants), it is clear that there was substantial compliance with the requirements for the issuing of the closure notices. The aim of the legislation in this regard appears to have been achieved and the failure to comply with section 76(6) has not resulted in any substantial prejudice to any party or individual. Indeed, it is difficult to see what better consequences could have resulted for the claimants if there
H had been strict compliance with the subsection.

(e) What are the consequences for the costs decision?

75 Given my conclusion that the magistrates were correct to consider that questions of the validity or otherwise of the closure notice are not

questions for them, it follows, in my judgment, that those questions, and the facts giving rise to them, are also not relevant to the determination of costs. If that were not so, then the magistrates would, in assessing costs, have to take into account matters in respect of which they would not have had an opportunity to reach a final determination. That could result in unfairness. Furthermore, if the magistrates had expressed a view on the correctness or otherwise of conduct relating to the challenge on validity, then it could be encroaching onto territory reserved for the court dealing with the judicial review.

76 I do not consider that any unfairness would result from the exclusion of matters relating to validity from the DJ's assessment on costs. In so far as any costs issues might arise out of those matters, then they could be addressed, if necessary, by the court dealing with the judicial review.

77 The answer to the second question in the case stated is also in the negative.

Issue 3: en bloc assessment of costs and compensation

78 As already set out above, costs are a matter for the magistrates' discretion: see paras 40–41 above. It is also important to bear in mind that a more restrictive costs approach applies in cases such as the present one where the starting and default position is no order as to costs.

79 The claimants' complaint under this head is that the DJ should not have grouped the claimants together when it came to costs and that she disregarded her own findings as to the differences between them. The claimants place heavy reliance on the DJ's conclusion that "There are many things in this case which may lead to the suspicion that sexual services were being carried out at *some* of these premises" (emphasis added).

80 It was submitted that the reference to "*some* of these premises" necessarily implies that there was no, or very little, evidence to give rise to the suspicion in respect of other premises. However, a fair reading of the entirety of the DJ's judgment reveals that each of the premises was considered in turn, and that at least some evidence giving rise to a suspicion of sexual activity was present for all of them. That included the premises at 52 Rupert Street. Although the quantity of evidence in relation to this property was less than for others, the DJ still found that a search of the premises had disclosed mouthwash, chewing gum, baby wipes, some form of "sex toy"; and that the property is included on a website where those who pay for sexual services post reviews. The DJ did not accept the evidence of a police officer as to the effect of a sign on the wall at this property, which was said to relate to sexual activity, and there was evidence from a Westminster City Council officer that whilst the premises had a "colourful history" there was nothing detrimental in its recent history. The DJ's conclusion was that this material was not sufficient to show, on the balance of probabilities that the person has engaged, or is likely to engage, in criminal behaviour on the premises. The DJ reached the same conclusion, albeit on the basis of other evidence, for all six premises.

81 Furthermore, there was nothing to distinguish the police's actions in respect of the six premises. They were all targeted as part of the same operation; they were the subject of closure notices issued in similar terms; and the applications for closure orders had been heard together and pursued on

A the same bases. The DJ's conclusion that the police had acted "reasonably and properly" was applicable to conduct in respect of all of the premises.

82 In these circumstances, there was nothing wrong in principle in the DJ taking an overall approach to costs rather than on a property-by-property basis.

83 Even if costs had been considered on a property-by-property basis, B the strong likelihood is that the DJ would have come to the same conclusion, namely that no costs should be awarded. The different levels of evidence relating to each of the properties were not such as to render the "en bloc" approach wholly inappropriate. The position might have been different had there been no evidence at all to support proceedings against some of the premises, or if the police's conduct in respect of some of them fell markedly C below the standard applied to the others. However, as stated above, that was not the case.

84 The claimants also argue that the DJ's failure to deal with the costs application on a property-by-property basis necessarily meant that no party was in a position to know why they were not awarded their costs. As such it was argued that the reasons of the DJ did not meet the standard required by *English v Emery Reimbold & Strick Ltd (Practice Note)* [2002] 1 WLR D 2409. In my judgment, it was clear to the claimants why costs were not awarded: the default or starting position in cases such as this is that there should be no order as to costs: see *Booth's* case [2001] LLR 151. The DJ's reasons, as already discussed, dealt with each of the properties, and the DJ concluded that the police had acted reasonably and properly. The only proper inference to be drawn from the DJ's conclusions is that that finding E applied to the police's conduct in respect of all the properties involved. In my judgment, there was no failure to explain.

85 As for compensation, the commissioner takes a neutral stance. I have already concluded that the DJ's approach to compensation was incorrect, and I have directed that the matter be remitted for reconsideration: see issue 1 above. An "en bloc" approach to the assessment of compensation would be F unworkable and incorrect. That is because the magistrates' court is required by section 90(5) of the 2014 Act to consider the position of each applicant for compensation separately in order to determine whether they were associated with the behaviour on the premises concerned and (if they are the owner or occupier of the premises) whether they had taken reasonable steps to prevent it. Furthermore, if satisfied that the requirements of section 90(a)(b)(c) are G met then the magistrates must go on to consider whether it is appropriate to award compensation in respect of *that loss*; that is to say the particular loss claimed by the applicant. That loss might well be different for each applicant depending on the effect that the closure had on their particular business. In these circumstances, it is incumbent upon the magistrates to consider the position of each applicant individually to determine whether compensation should be awarded. For these reasons, in directing that the matter of H compensation be remitted to the magistrates' court, I also direct that the position of each claimant be considered separately.

86 Any inconsistency with the position on costs is justified, in my judgment, by the specific statutory provisions dictating what is to be taken into account in deciding whether to award compensation.

Conclusion

87 For the reasons set out above, I find that: (1) the claimants succeed in respect of issue 1 and the assessment of compensation. The matter shall be remitted for reconsideration in accordance with the terms of this judgment. (2) The claimants fail in respect of issue 2 and the effect of the failure to comply with section 76(6) of the 2014 Act. (3) The claimants fail in respect of issue 3 in so far as it relates to costs, but succeed in so far as it relates to compensation. (4) Permission is refused in respect of the first JR. (5) The second JR succeeds in respect of ground 2 (proper test for compensation). The DJ's decision as to compensation is quashed.

88 The parties are to attempt to agree the terms of an order for this court's approval.

Note

1. See the Home Office guidance in respect of the powers under the Act, which provides that the closure power is intended to be "a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder".

Permission to proceed with first judicial review claim refused.
Second judicial review claim allowed in part.
Appeal by case stated allowed in part.
Decision to refuse compensation quashed.

BENJAMIN WEAVER ESQ, Barrister