

ENGLAND AND WALES / JUDGMENT

Searson & Anor v Chief Constable of Nottingham Constabulary [2025] EWHC 1982 (KB) (25 July 2025)

[2025] EWHC 1982 (KB)

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County Court Case No.: H53YJ882

IN THE HIGH COURT OF JUSTICE

BIRMINGHAM DISTRICT REGISTRY

On Appeal from the Nottingham County Court

25th July 2025

B e f o r e :

MR JUSTICE WALL

Between:

(1) ALAN SEARSON

(2) PAMELA SEARSON

Appellants

- and -

THE CHIEF CONSTABLE OF NOTTINGHAM CONSTABULARY

Defendant

Ms Sarah Hemingway (instructed by Gregsons Solicitors) for the Appellants

Mr Matthew Holdcroft (instructed by Simon Staples at the East Midlands Police Legal Services
Collaboration) for the Defendant

Hearing date: 25 July 2025

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Mr Justice Wall:

I have ordered that the names of the Claimants' children should not be used and I will refer to them as A, B and C in this judgment. This is to protect them given the nature of the allegations which led to this case being brought. The Claimants' names can be used. Their names appear on the Court List and the pleadings and were not withheld in the court below.

The Claimants, who are a cohabiting married couple of good or statutory good character, seek damages for false imprisonment, trespass to the person and trespass to goods – the latter arising from an allegedly unlawful search of the couple's house after arrest. These torts are said to have been committed by police officers from the Defendant's force on 26 March 2019. The Second Claimant also claims damages for personal injury arising from the same incident. She was someone with significant health difficulties who claims to have sustained physical and psychological ill effects as a result of her unlawful detention. The Defendant avers that any time spent in custody by the Claimants was justified in law and therefore did not amount to false imprisonment. Any act which is alleged to amount to a trespass to the person or to goods was a lawful action taken by the Defendant; and any injury proved to have been suffered by the Second Claimant was sustained in the course of the Defendants' lawful actions.

The issues were tried by HHJ Jonathan Owen in the County Court at Nottingham between 9 and 11 July 2024. He dismissed the claims.

The Claimants have appealed. There are four grounds of appeal which relate to the action itself, and a fifth relating to the costs order made by the Judge at the conclusion of the trial. Soole J considered the application for permission to appeal on paper on 4 April 2025. He granted leave on Ground Four, one of the grounds which related to the Defendant's alleged conduct, but refused leave on the other four grounds. The Claimants have renewed their application in respect of the grounds on which permission was refused. Pursuant to an order of HHJ Kelly of 25 June 2025, I have today heard both the renewed application for leave and the appeal in relation to Ground Four.

The basic facts are not much in dispute.

The Background. The Claimants have three children; A born in 1992, B born in 1994, and C born in 1998. The Second Claimant had been twice married previously. She has children from her previous marriages.

In 2011 A, who had left home, made allegations to Social Services that her parents had physically ill-treated her as a child and professed concerns for the children who still lived with the Claimants. In 2012, B, who had also left home, told them that he too had been abused by his parents and again expressed concern for C, who was still living at home. Social Services investigated. They spoke to C who reported as being happy at home although she described her parents as being "quite strict". They closed their file.

On 30 January 2019, A made a report to the police that she had been abused by the Claimants. She said that she was abused by them on a daily basis between the ages of six and ten. She also reported that C had told A that she had seen the Claimants putting poison in A's boyfriend's food on an occasion while he was staying with them. This complaint prompted a police investigation. DC Percival was put in charge. She spoke to the boyfriend who said that he had experienced stomach problems while living with the Claimants. He did not wish to make a formal complaint. Another of A's former boyfriends was spoken to. He said that the First Claimant had admitted to him a drowning incident involving A. DC Percival undertook further investigations: she obtained the Social Services' file, visited the Claimants' former home where the abuse was said to have happened and reviewed some Facebook messages. There was no dispute that by the stage at which she had concluded these investigations the officer had reasonable grounds to suspect that the Claimants had committed offences of child cruelty and the malicious administration of a poison.

Against that background, at 8:30 a.m. on 26 March 2019, the Claimants were arrested at their home address. They were taken to Mansfield Police Station, arriving there at 8:49. Their continued detention was authorised by the custody sergeant; in the case of the First Claimant at 8:51 and in the case of the Second Claimant at 9:02. Their home was searched after their arrest: nothing of significance to the investigation was found. C, who by then had attained her majority, was also spoken to by the police. She denied that she had been ill-treated by the Claimants. She said that she had lied when she previously told her sister that she had seen her parents trying poison the sister's boyfriend's food.

The First Claimant was interviewed between 12:52 and 2:26 p.m.; the Second Claimant between 3 p.m. and 4:30 p.m. An Inspector of police reviewed the First Claimant's detention at 4:01 p.m. and that of the Second Claimant at 4:15 p.m. It is to be noted that these reviews took place after the conclusion of the First Claimant's interview but while that of the Second Claimant was still in progress. The First Claimant was spoken to by the Inspector conducting the review before he took the decision to approve continued detention. Neither the Second Claimant nor her solicitor were spoken to as they were engaged in an interview at the time. The continued detention of the Second Claimant was nonetheless authorised. Both Claimants were released under investigation at 6:29 p.m. the same day. They were not charged with any offence arising out of this investigation. The CPS decided that the evidential test for prosecution was not met.

The contentious issues at trial were:

- (a) Whether the Defendant acted lawfully in arresting the Claimants from their home that morning.
- (b) Whether the Claimants should have been de-arrested after the search of their home had been completed and C spoken to.
- (c) Whether the reviews of the Claimants' detention which occurred at 4:01 p.m. and 4:15 p.m. were properly carried out.
- (d) Whether the Second Claimant suffered any personal injury arising from any unlawful detention there might have been.
- (e) The quantum of damages in the event that a tort or torts had been established.

The Law.

- (i) Section 24 PACE 1984 gives a constable the right to arrest anyone without warrant in defined circumstances. These include, where necessary, "to protect a child or other vulnerable person from the person in question", "to allow the prompt and effective investigation of the offence" and "to prevent any prosecution for the offence from being hindered by the disappearance of the person in question".
- (ii) Section 32 PACE provides a power, subject to certain limitations, to search the person or premises of someone who has been lawfully arrested. There is no dispute in this case that the searches conducted would have been lawful had the arrests been lawful and not otherwise.
- (iii) Section 40 PACE deals with the duty to hold regular reviews of detention. The relevant parts read:
 - (1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section ... (b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.
 - ...
 - (3) Subject to subsection (4) below (a) the first review shall be not later than six hours after the detention was first authorised; ...
 - (4) A review may be postponed— (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3) above, it is not practicable to carry out the review at that time; (b) without prejudice to the generality of paragraph (a) above—(i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or (ii) if at that time no review officer is readily available.

- (5) If a review is postponed under subsection (4) above it shall be carried out as soon as practicable after the latest time specified for it in subsection (3) above.

...

- (12) Before determining whether to authorise a person's continued detention the review officer shall give—(a) that person (unless he is asleep); or (b) any solicitor representing him who is available at the time of the review, an opportunity to make representations to him about the detention.
- (13) Subject to subsection (14) below, the person whose detention is under review or his solicitor may make representations under subsection (12) above either orally or in writing.
- (14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

The trial judge, in a most careful and full judgment, found that the arrests were lawful, that they continued to be justified to the point at which the Claimants were released, and that the reviews of detention had been properly carried out. He found that the Claimants were not falsely imprisoned at any time, that the search of their homes had been lawful and that they were due no damages for wrongful detention or personal injury.

Grounds of appeal. The four grounds of appeal which relate to the Judgment are:

- (1) the judge was wrong in law to find that the matters in the mind of the arresting officer amounted to reasonable grounds to believe it was necessary to arrest at the time that the arrest was effected. The Claimants would in all likelihood have attended voluntarily for interview, the police could have spoken to 'C' away from her parents without arresting them, the Claimants had already had seven years to concoct a story (if they had wanted to) before interview given the fact that they had previously been asked about these allegations by social services, and the search of the house could have been achieved by requesting a search warrant from the Magistrates Court. It was the Claimants' case that the investigation should have proceeded by way of asking the Claimants to attend the police station voluntarily rather than by way of arrest. The Defendant's case was that the arrest was necessary in order to ensure that there was no collusion between two married cohabiting suspects prior to their attendance at the police station, to protect the adult child who was still living at home, to and to search the house. They rely on the judge's finding that the officer in the case had considered the alternatives to arrest and rejected them.
- (2) the judge was wrong in law to find that the detention remained necessary once the house had been searched and C had been spoken to by the arresting officer, both of which happened shortly after the arrest and the Claimants should at that point have been de-arrested. The Claimants asserted that any necessity to compulsorily detain them had gone once the police had completed their search and spoken to C. The Defendant's case was that there was still a need to interview the suspects before they had an opportunity to talk to one

another about what they might say.

- (3) the judge was wrong in law to find that the matters in the mind of the custody officer amounted to reasonable grounds to believe it was necessary to detain the Claimants following arrest, as opposed to dealing with them by way of s29 PACE voluntary interview; and
- (4) the Judge was wrong in law to find that there had been no failure to comply with the requirements for conducting a lawful review under section 40 PACE and that the detention of the Claimants after that review was lawful.

I shall deal with the application in respect of Grounds 1-3 and then deal with the appeal on Ground 4.

When considering the application for leave to appeal on paper, Soole J wrote, "In respect of each of the challenged decisions, the Judge identified the correct legal principles and made his findings of fact and evaluation in the light of all the evidence and those legal principles. In each case the Ground of appeal in substance amounts to little more than a rehearsal of the arguments of fact and evaluation which were advanced below. I see no real prospect of a successful challenge to the Judge's conclusion on each issue".

Respectfully, I agree with this assessment. The parties helpfully provided the Judge with a note setting out the state of law as to the necessity of arresting a suspect. The note was accurate. He applied the law as set out in that note and made a comprehensive assessment of the evidence. He gave himself careful directions as to how to approach the evidence before doing so, such as reminding himself that police officers had no special status over civilians as witnesses and that he should not consider the evidence relating to child cruelty on the basis that there is no smoke without fire. He found DC Percival to be an "experienced, competent and professional officer... with a mature understanding of her powers and responsibilities". He said that "she did give genuine consideration to inviting the suspects to voluntary interview" but rejected it as a proper course. He found that she had reasonable grounds to suspect that C might have been a victim of abuse and that the police might find something of use to their investigation when they searched the property. He further found that it was properly open to her to approach the case on the basis that the Claimants might have been manipulative of C. This would be a justification for not accepting at face value anything exculpatory said by C about her parents. The Judge found that the arrests were objectively necessary to ensure that the Claimants did not collude before interview, to allow for a prompt and effective investigation, and to protect C. Similarly, he concluded that the custody sergeants had proper reason to detain and that detention continued to be lawful after the witness statement was taken and the search completed.

I refuse leave to appeal on Grounds 1 – 3.

I turn to Ground 4. This is the ground in respect of which leave was granted on paper. That Ground as argued relates only to the duty to consult before determining a review as set out in s40(12). It does not criticise the slight delay in carrying out the two reviews. A first review of

detention is due after six hours. The six hour period elapsed at 2:51 p.m. for the First Claimant and 3:02 p.m. for the Second Claimant. The Judge accepted the evidence of the Inspector that he was carrying out reviews for many prisoners housed in two police stations that afternoon and was not available to conduct the reviews before he did. This is proper reason for delaying a review – see s40(b)(ii).

The Claimants assert that the reviews were defective in that there is no evidence that the Inspector who conducted them was aware that nothing had been found in the course of the search of the house and C had made no complaint against her parents. The Defendant relies on the custody record of each Claimant which reveals that the only reason given by the Inspector for continued detention of the Claimants was to complete the interview of the Second Claimant and thereafter decide whether any further interviews were necessary that day. The Inspector did not rely on the need for a search of the house or the protection of C as reasons for the continued detention. The trial judge found that the Inspector was a careful man who did not treat applications to extend of this sort as a "tick box exercise". The judge accepted that he had appraised himself of the current position before authorising further detention. There is no basis on which I can, or would, go behind his careful findings.

The further point for the Second Claimant is that there was a duty to consult which the Inspector did not comply with. This argument only effects the status of the Second Claimant: the First Claimant was consulted before the decision was made in his case.

The Second Claimant asserts that continued detention past the point of review would be unlawful unless that review was properly conducted and that a proper review required a consultation to have taken place with the suspect or her solicitor before it was concluded. The Claimant referred me to various parts of Code C to PACE which require the recording of any submissions made as part of the review as evidence of their vital importance. If there was no properly conducted review, there was no lawful basis for detaining the Second Claimant between 3:02 p.m. (the time at which her review should have been carried out) and 6:29 p.m. (the time at which she was released under investigation) – a period of 3 hours 27 minutes.

The Defendant's case is that a review was carried out by an officer of appropriate rank. The fact that there was no consultation did not invalidate that process. This situation is to be contrasted with other powers given to officers in PACE which specifically render any action unlawful unless the terms of the section are complied with – e.g. the power to enter and search property under s15 ("an entry on or search of premises under a warrant is unlawful unless it complies with this section and section 16 below") and an officer's duties on making an arrest in s28 ("the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as practicable after his arrest").

In my judgement, the last point is unsustainable. It is true that s40 does not specifically declare unlawful any act done in breach of its terms. That does not mean that any act carried out in breach of its terms remains lawful. It was acknowledged in

R -v- Roberts

[1999] 2 Cr App R 243

that detention without review in circumstances in which a review of detention is required renders any subsequent detention unlawful. The question here, is whether a review which does not comply with the requirements of s40 counts as a review sufficient to justify continued detention.

I am persuaded that it does not. The basic principle is that any citizen has the right to move freely about the country unless there is a lawful restraint placed on that freedom. A police officer is no more able to restrict someone's freedom without lawful reason than is an ordinary citizen. The importance of this right is demonstrated by the fact that any act which unlawfully restricts this freedom is actionable per se without proof of the detained person having suffered damage. It is against that background that any power to detain must be examined. The duty to review in s40 is set out in prescriptive terms. It does not authorise detention after a review conducted as the officer conducting it, or even the Chief Constable of the force holding the suspect, sees fit. The power to authorise continued detention after a review is couched in strict terms. It requires the review to be carried out within a strict timeframe unless that is impractical. It requires it to be carried out by an officer of a particular rank. It requires the officer not to have been involved in the investigation. And, save in defined circumstances, it imposes a requirement that there be a consultation process as part of the review. Each of these requirements provides statutory protection for a suspect being detained in a police station. They ensure that the suspect is not held for an excessive period without the need for his continued detention to be assessed. They ensure that there is a degree of independent assessment of the need for continued detention by an experienced officer. Finally, they ensure that the reviewing officer before making his or her decision considers not only what can be gleaned from the officers who are involved in investigating the offence or detaining the suspect, but also from the suspect himself or someone representing him who might have extra significant information to give. Each of those things is a significant safeguard. The section does not give one safeguard more importance than another. Failure to comply with any one of them means that a proper review has not been carried out. If there was no proper review, there was no lawful detention after the time that the defective review was conducted. The lawfulness of the continued detention of the Second Claimant depended on there having been an effective review.

I have sympathy with the Defendant's argument that the Inspector was in a quandary. He had the choice either to continue the review process without consultation or further delay the already late review. However, the proper answer to that quandary is to be found in the words of the section. Section 40(4)(b)(i) provides for delaying a review where the "

review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned"

. Relying on this power, the Inspector could have considered interrupting the interview for a short period so that his review could be lawfully conducted or, if he thought that it was be prejudicial to the investigation to do so, to delay his review until the interview had been completed. These were the lawful options open to him. The option to conduct the review without offering the suspect the opportunity to take part in a consultation process was not an option properly available.

The Defendant further contends that no consultation process was required on the facts of this case. S40(12) only requires consultation with a suspect who is awake, or any solicitor representing him

who is available at the time of the review

. The Defendant asserts that a solicitor who is involved in a police interview with his client is not available for review. It is further asserted that the Inspector should have been asked about what was in his mind concerning the availability or otherwise of the solicitor at trial. That not having occurred and therefore no factual findings about it having been made by the trial Judge, it was not open to me to allow an appeal on this basis.

I reject those arguments. The real question is what is meant by the phrase "who is available at the time of the review". That is not a fact specific question. Either the fact that a solicitor is involved in an interview renders that solicitor unavailable or it does not. The Inspector's view, with respect, cannot alter that bare fact. It would damage a suspect's rights to hold that a solicitor in interview was unavailable to consult on a review. It is the same police force which is engaged in questioning the suspect and is responsible for a proper view of his detention. It is within the lawful gift of the Inspector to postpone the review to allow for the solicitor's participation in the process or, in an appropriate case, to ask that there be a short break in the interview to allow that participation to take place without delay. I cannot think that the actions of the investigating officers in deciding to interview a suspect at a particular time can permit their Inspector-colleague to conduct a review in circumstances which would otherwise be unlawful – i.e. without any defence input. Unavailability as far as a solicitor is concerned must mean more than he is at the police station where the suspect is being detained working only on the suspect's case but currently involved in an interview with that client in an interview room.

In reaching this conclusion I make no criticism of the Inspector who I am sure carried out his duties diligently and in a way designed to ensure that the delay in carrying out the review was not too great.

I therefore allow the appeal on Ground Four. While the First Claimant was lawfully detained throughout the period of his detention in the police station, the Second Claimant was unlawfully detained for a period.

I assess that period to have been one of 2 hours 14 minutes between 4:15 p.m. and 6:29 p.m. The Defendant was entitled to hold her in custody for six hours and for as long thereafter as any review was lawfully postponed; that is, until 4:15 p.m. Once the ineffective review had been conducted, she was entitled to be released.

The limited way in which this appeal succeeds necessarily means that the searches conducted were lawful and the claims for trespass to property fail.

Allowing the appeal to this limited extent does not affect the claim for personal injury. The Second Claimant through her counsel accepted before me today that there is no evidential basis for a finding that any personal injury suffered by the Second Claimant, if there was any personal injury suffered by her, was sustained during the relatively short period that I have found she was unlawfully detained. The likelihood is that any damage to her mental health which may have occurred, and about which I make no finding, arose from her being unexpectedly arrested from her own home and the initial shock of her detention and being interviewed as a suspect in a police station. There is no evidence upon which the Judge could have based a conclusion that being detained for a total of ten hours was more injurious to her mental health than would have been the case had she been released after eight hours once her interview had been completed.

I next consider the issue of damages for her unlawful detention. No assessment of damages was made by the trial Judge as he found that no tortious act had been established. I am in a position to assess damages today and I will do so.

I have concluded that the correct approach to awarding damages where there has been an unlawful detention is to consider whether the detention would have been lawful had the Defendant carried out the review properly in accordance with the law. This is consistent with the reasoning in

Parker -v- Chief Constable of Essex

[2018] EWCA Civ 2788

which flows the principle established in immigration detention in

Lumba

. It reverses the position taken in

R -v- Roberts (supra)

where the Court found that if the detention was in fact unlawful, the suspect was entitled to substantial damages for the whole of the period it remained so even in circumstances in which the suspect could have been lawfully detained had the correct process been followed. The Claimant asserts that there is no way to know whether any properly conducted review would have reached the same decision.

There will be an order for damages in the nominal amount of £1. That is because I am satisfied that, had the Defendant conducted a lawful review under s40, her continued detention would have been authorised and she would have been held in custody. I have reached that conclusion for three reasons. First, she was in the same position as the First Claimant. They were detained at the same time and for the same reasons. I have already dismissed the application for permission to appeal insofar as it was asserted that there was any unlawful detention outside of that occasioned by the defective review. The First Claimant's review was properly conducted. It involved a consultation process. Having considered any submissions made to him as part of that process, the Inspector authorised further detention. Second, there is no evidence that the continued detention of the Second Claimant was not appropriate. The initial interviewing process was not completed until 4:30 p.m. The investigators then had to consider what the suspects had said in interview and what steps would be taken from then onwards. Whether, for example, further interviews were required that day before the Claimants had an opportunity to discuss with each other what they had said in their initial interviews. They then had to consider whether to release the Claimants under investigation, as they did, or on police bail. It is unreal to think that these factors could all have been considered and a decision taken the moment the second interview was completed. In the end, the Claimants were only detained for a further two hours. That was not an unreasonable period. Third, the trial judge made that finding after a full and proper cross examination of the Inspector at trial as to matters which might have altered his decision, all of which he dismissed.

There remains Ground 5 which relates to the costs order made at the conclusion of the trial. The relevant part of that order reads as follows: "The claimants to pay the defendant's costs of the claim, with such costs to be subject to detailed assessment... (a) The first claimant is not entitled to qualified one way costs shifting protection and the defendant is permitted to enforce those assessed costs against the first claimant to their full extent, and (b) the defendant may, pursuant to Section 2 of part 44 of the Civil Procedure Rules 1998, only enforce against the second claimant up to 50% of those assessed costs".

The Claimants' case is that this was primarily a personal injury claim brought by the Second Claimant and that she should have been given full protection against enforcement.

On paper, the First Claimant sought to argue that, although in his case there was no personal injury claim, his case and that of the Second Claimant was so bound up that he too should have been protected from enforcement. Sensibly, that argument was abandoned before me today.

Soole J in refusing permission to appeal said, "As to the first claimant, the judge was right to conclude that his claim did not enjoy QOCS protection. His claim did not include any claim for damages for personal injury. The fact that his claim was brought within the same proceedings and on the same claim form as the second claimant is irrelevant. The application of QOCS protection is determined by reference to the claim or claims made by the particular claimant in question: see

BB and others -v- Khayyat and others

[2025] EWHC 443 (KB)

.

As to the second claimant, the judge correctly concluded that she had made a mixed claim and that accordingly it was necessary for him to carry out the evaluation as required by CPR 44.16 and as explained in the authorities. The judge carried out a careful evaluation and concluded that the Second claimant should have QOCS protection to the extent of 50% of the costs ordered against her. I see no real prospect of a successful challenge to the judge's assessment and conclusion".

Again, I am in agreement with Soole J. The Second Claimant, while making a personal injury claim, also pleaded that her detention was unlawful and actionable. She sought damages for unlawful detention for a period of approximately ten hours. Had her claim succeeded, she would have received substantial damages for that tort whatever the result of her personal injury claim might have been. The majority of the trial was taken up with the determination of the lawfulness of her detention and not an assessment of her pleaded injuries. Costs are discretionary. I should only interfere with the decision taken below if it is one that the Judge could not properly have come to. It cannot be said that the Judge was arguably wrong to proportion the amount of costs that could be recovered from her as he did. Therefore, I refuse permission on this Ground.

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