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Case No: CO/4793/2020
CO/577/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT
IN AN APPLICATION FOR JUDICIAL REVIEW

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 March 2022

Before :

LORD JUSTICE EDIS
MR JUSTICE LANE

- -

Between :

THE QUEEN (on the application of HM)	**Claimant**
and	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
and	
THE QUEEN (on the application of (1) MA and (2) KH)	**Claimant**
and	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
and	
PRIVACY INTERNATIONAL	**Intervenor**

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- -

Thomas de la Mare QC, Jason Pobjoy and Gayatri Sarathy

(instructed by **Gold Jennings, on behalf of HM**)
Tom Hickman QC, Bernadette Smith and Julianne Kerr Morrison
(instructed by **Deighton Pierce Glynn, for MA and KH**)
Sir James Eadie QC, Alan Payne QC, Celia Rooney, Remi Reichhold and Emmeline Plews
(instructed by **Government Legal Department**)
Ben Jaffey QC and Tom Lowenthal (instructed by **Linklaters, on behalf of the Privacy International**)

Hearing dates: 25, 26, 27, 28 January 2022
Further written submissions on 2, 15 and 25 February 2022

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This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be 10:30am on Friday 25 March 2022.

Edis LJ and Lane J:
This is the judgment of the court to which we have both contributed. It contains the following sections:-

A: Introduction

1. These claims concern the search for and seizure of, and the retention of data taken from, the mobile telephones of individuals who arrived in the United Kingdom as migrants in small boats from France. The defendant has accepted that she operated an unlawful policy during the relevant period. That policy changed in certain respects during the relevant period, but it was unlawful in some material respects throughout. It is agreed that a further hearing, following this judgment, will be required to consider what relief is required and to address also the extent and consequences of an apparent failure by the defendant (for which the court has received an apology) to comply with her duty of candour when responding to these claims for judicial review. Her initial stance was that there was no policy of the kind which is now admitted, and which is also now admitted to have been unlawful.

2. The number of such small boat crossings grew rapidly in the course of 2018 and continues to rise. In 2021, 1034 small boats made the journey, carrying 28,526 people.

3. It is not in dispute that the organisation of the small boat crossings is, in large part at least, the work of criminal enterprises, which require payment for providing the potential migrant with a place in a small boat. Each such boat has to be under the control of at least one individual, who may have been a part of the criminal enterprise, perhaps only to a limited extent.

4. The defendant's response to the growth in small boat crossings involved a number of Home Office departments and units. These are described in the Glossary contained in Appendix A to this judgment. The information is drawn from that provided by the

defendant. It does not appear that the claimants take any issue with its accuracy. Most of the acronyms used in this judgment (which feature throughout these voluminous papers) are explained there.

5. Appendix B to this judgment sets out the relevant legislation. Of particular significance are paragraph 25B of Schedule 2 to the Immigration Act 1971 (searching persons arrested by immigration officers), Appendix B page 7, section 48 of the Immigration Act 2016 (seizure and retention in relation to offences), page 20, section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure from premises), page 14, and section 19 of the Police and Criminal Evidence Act 1984 (general power of seizure etc.), page 11.

6. Concessions have been made by the defendant at various times from June 2021 and after a referral of a data breach by the defendant to the Information Commissioner's Office on 8 July 2021. The referral document itself was disclosed on 28 January 2022 as a result of a disclosure order made by the court during the substantive hearing. We shall say more about that at the end of this judgment. The current state of the issues following those concessions was described as follows by the defendant in her Skeleton Argument for the purposes of this hearing. We adopt this extract now for the purposes of explaining the present state of these claims. It records the very significant concessions which have been made. The effect of these concessions is that each of these claims succeeds, and that the issues we have to decide are limited. It is convenient to use one of the defendant's documents because they properly express the important concessions she has made. It reads (with some amendments to harmonise the language with that used in this judgment):-

> "In final form the claimants' challenge is now brought on nine grounds:
>
> > *Ground 1*: The search of the claimants was unlawful in circumstances where the defendant's officers searched every person arriving by small boat and/or the statutory preconditions under paragraph 25B(2) and (3) of Schedule 2 to the Immigration Act 1971 were not met.
> >
> > *Ground 2:* seizure of the Claimants' phones was unlawful where it was undertaken pursuant to a blanket policy and/or the statutory preconditions under paragraph 25B(6)-(7) and/or s.48 of the Immigration Act 2016 were not met.
> >
> > *Ground 3:* The seizure of the Claimants' phones was *Padfield* unlawful, where it was carried out for the improper purpose of harvesting intelligence, and not for the statutory purposes in paragraph 25B and/or section 48 of the Immigration Act 2016.
> >
> > *Ground 4:* The seizure and retention of the Claimants' phones was unlawful where it was undertaken in order to "*sift*" through material for potential intelligence, without the necessary "*seize and sift*" powers.

Ground 5: The PIN Policy, pursuant to which officers demanded PIN numbers both orally and through the provision of the 'Phone Seizure Receipt' documents, was unlawful, where PIN numbers were demanded under threat of (non-existent) criminal sanctions.

Ground 6: The Policies were generally unlawful because they were unpublished, and the relevant statutory powers were fettered by the blanket operation of the Policies.

Ground 7: The Seizure and Retention policies were contrary to Article 8 and/or Article 1 of the First Protocol ("A1P1") of the ECHR.

Ground 8: The processing conducted pursuant to the Policies, including the seizure and retention of phones and the extraction of data (in the case of MA/KH) was contrary to the Data Protection Act 2018.

Ground 9: The extraction and further processing of data from MA/KH's phones represents a further breach of Article 8 ECHR.

The defendant has conceded that: -

The seizure policies under challenge (which in fact continued to be applied until November 2020) were unlawful by virtue of: - (i) their general (or 'blanket') nature, and (ii) being unpublished. As a result, the defendant concedes that the seizure policies under challenge: - (i) were unlawful, (ii) were 'not in accordance with law' for the purpose of the ECHR, and (iii) did not provide a lawful basis for the processing of data pursuant to Data Protection Act 2018.

The version of the retention policy which provided for phones to be retained for a minimum period of 3 months was capable of giving rise to a disproportionate interference with rights under the ECHR and data protection legislation and, as such, was unlawful.

The version of the extraction policy which permitted the complete extraction of every mobile phone seized did not comply with the ECHR or the Data Protection Act 2018 and, as such, was unlawful.

The practice pursuant to which officers required or attempted to require migrants to provide the PIN numbers for their phones (referred to by the Claimants as the "PIN Policy"), was unlawful.

The Data Protection Impact Assessments ("DPIAs") did not properly assess the risks to the rights and freedoms of data subjects and, as a result, were unlawful (in accordance with *R*

(Bridges) v Chief Constable of South Wales [2020] 1 WLR 5037).

In the light of these concessions the position is as follows:

> Grounds 5 (the PIN Policy) and 6 (unpublished policies) are conceded in their entirety. For the avoidance of doubt the defendant's concession in relation to the PIN Policy (Ground 5) is not limited to written demands for PIN numbers, nor to any illegality arising from the provision of the Phone Seizure Receipt after phones were seized. The defendant accepts that (i) absent judicial intervention under s.49 of the Regulation of Investigatory Powers Act 2000, the Claimants were not under any legal obligation to provide their PIN numbers upon request, and (ii) insofar as any officer suggested otherwise – whether orally or in writing, in particular, under any threat of any criminal sanction – such conduct was unlawful.
>
> Insofar as Grounds 2 and/or 3 are premised on, or involve, a challenge to the blanket nature of the seizure policy (and thus the fettering of the relevant seizure powers), those grounds are fully conceded.
>
> Grounds 7, 8 and 9 are also conceded on the basis that officers' conduct was not in accordance with law for the purpose of the ECHR and did not have a lawful basis for the purpose of the Data Protection Act 2018, as a result of the blanket/unpublished nature of the seizure policy.

The claimants' remaining grounds of challenge can be grouped into three categories:

> The *vires* challenge (Grounds 1 to 4), which is now brought in respect of both the search and seizure powers (albeit that the challenge to the relevant seizure powers is now also framed in the language of 'improper purposes'/*Padfield* illegality).
>
> The ECHR challenge, which the Claimants bring in respect of the seizure and retention of phones (Grounds 7 & 8).
>
> The ECHR and Data Protection Act 2018 challenge which the Claimants bring in respect of the extraction and processing of data (Grounds 8 & 9).

7. The effect of all this is that it is conceded that these claimants' phones were seized and retained unlawfully. No data was ever extracted from HM's phone. There was data extraction in the cases of MA and KH, and that data has not been deleted. It is agreed that this also was, and is, unlawful. There are nevertheless issues which we will resolve, although they could be said to be academic in these claims, about:-

a. Whether paragraph 25B of Schedule 2 to the Immigration Act 1971 allows the search of the person which was carried out in these circumstances.

b. Whether section 48 of the Immigration Act 2016 allows a personal search, or whether it only permits a search of premises.

c. Whether section 48 of the Immigration Act 2016 allows a seizure when there is no apparent search and sift power, and at the time of the seizure the officer making it does not know whether there is evidence of an offence on the phone and will only be able to find out by seizure, and extraction.

d. Whether these seizures were unlawful because the powers of search under paragraph 25B or seizure under section 48 were exercised in an endeavour to recover intelligence as opposed to evidence.

8. These issues have been fully argued before us, and are matters of importance in the scope and exercise of existing statutory powers. It would, we think, be wrong to leave them undetermined.

9. Such issues as remain under Grounds 7, 8 and 9 are in a different category. They all relate to matters which are now entirely historical in that the policies concerned have been replaced by different policies. The lawfulness or otherwise of those new policies is irrelevant to the claims made by these claimants and is not before us. The remedy to be granted to these claimants is for determination at a later date and will not be affected by the outcome of these arguments. Moreover, as has become clear, the data protection allegations are being investigated by the Information Commissioner's Office which has investigatory and enforcement powers specifically designed to address these questions. We shall return to this area of the case in paragraph 136 below, but we do not consider that there is any real purpose in deciding these issues. The court does not determine academic issues, particularly where there is an alternative remedy which has not yet been exhausted, or even pursued at all by the claimants. The referral to the Information Commissioner was a self-referral by the defendant.

B: Background

10. In December 2018, the defendant published a "Gold Command" strategy, the principal aim of which was the "preservation of life and limb", including the protection of the vulnerable and those at risk making the crossings. A potential further aim was the "preservation of evidence" and the "arrest, detention and prosecution of offenders".

11. In July 2019, a revised "Gold Command" strategy was created. The focus of this revised strategy remained prevention of loss of life and injury, and the provision of welfare to migrants. The strategy also recognised that the defendant's officers should take "all steps to secure evidence and forensic opportunities to enable the identification of prosecuting those criminally involved in organising … clandestine activity". The strategic intent was "disrupting, dismantling and prosecuting the criminal networks involved in" facilitating the small boat crossings.

12. Migrants arriving by small boat are ordinarily met by members of the defendant's Border Force, supported by the Royal National Lifeboat Institution, where appropriate. Items

carried by migrants are not ordinarily seized whilst they are at sea; but they may be asked to place items they are carrying in a plastic bag.

13. For channel crossings, the nearest port to which small boat migrants are taken is, almost invariably, Dover Western Docks Tug Haven. At Tug Haven, the defendant's Duty Officer will raise a report in respect of each small boat, using a system named "PRONTO". This is a mobile application which allows the Duty Officer to record information whilst engaged on an operational visit and which acts as an electronic personal notebook. The Duty Officer allocates a team of first responders to the vessel, into whose care the migrants are disembarked. Medical staff assess all new arrivals at Tug Haven. Subject to any pressing medical needs, each migrant is arrested, pursuant to the administrative power of arrest contained in paragraph 17(1) of Schedule 2 to the Immigration Act 1971.

C: The Individual Cases

HM

14. Each of the claimants had his mobile telephone seized by the defendant at Tug Haven. HM arrived on 2 September 2020, following a crossing in a small boat with 13 others. That day alone, 29 such vessels arrived, with a total of 425 migrants. HM was intercepted at sea at approximately 6am by a BF vessel and subsequently brought to Tug Haven. There, he was arrested by a member of the defendant's Clandestine Operational Response Team under paragraph 17(1) of Schedule 2 to the Immigration Act 1971, Appendix B page 7. The defendant states that HM was subsequently searched pursuant to the power contained in paragraph 25B of Schedule 2 (page 8) and his mobile telephone was said to be seized pursuant to the power contained in section 48 of the Immigration Act 2016 (page 20).

15. The receipt provided following the seizure of HM's mobile phone records that it was seized at Tug Haven on 2 September 2020 at 06:35am. It is in a standard form which was in use throughout the relevant periods, and says this:-

> "The following item has been seized under Section 48 of the Immigration Act 2016 as it is believed to contain evidence in relation to immigration offences. You are lawfully required now to provide the officer seizing the phone the PIN/security code which unlocks it. It is an offence to fail to provide these details."

16. The defendant's present position on the issuing of this notice is set out in the extract from the Skeleton Argument which deals with Ground 5 at paragraph 6 above. Her original position, and the origin of the notices, was that section 48(4) and (5) of the Immigration Act 2016 entitled the officers to issue these demands in this form. The claimants responded that such demands with threats of penal sanctions can only properly be made under section 49 of the Regulation of Investigatory Powers Act 2000, which requires the permission of a judge and contains substantial safeguards. That approach is now accepted. It has never been clear what the defendant believed was the origin of the "offence" referred to in these notices was. It certainly cannot have been section 48 of the 2016 Act.

17. HM was not in fact asked to provide the PIN for his phone and his proceedings did not challenge the lawfulness of the demand. The proceedings issued by MA and KH did make this challenge. The defendant's response was to say that these new proceedings should be stayed because the issues raised in them were identical to those in HM. The stay was granted. In fact, as those representing MA and KH had pointed out, the issues were not identical and one of the matters relied upon is the unlawful demand for PIN numbers reinforced by an apparently entirely baseless threat of criminal sanctions in the event of non-compliance. This was a significant issue and the defendant had, we think, made no concessions about it by that stage. We shall revisit this at the remedies stage.

18. HM's mobile was retained in breach of the defendant's then policy of retaining seized mobiles for three months. It was returned only after the proceedings on 21 December 2021.

MA

19. MA arrived on 8 May 2020, in a small boat in which there were 19 others. The boat was intercepted at sea at 5.55am and MA was brought to Tug Haven, where he was arrested under paragraph 17. After being searched, it is said, pursuant to paragraph 25B, MA's mobile telephone was seized. He was asked for, and gave, the swipe pattern for his mobile. The receipt for the seizure is in the same form as HM's. The device was then passed to the CIB (see Appendix A) and held in its secure store. On 13 May 2021 data from the device was fully extracted (but not, however, from the SIM card).

20. The extraction of MA's data was undertaken using a digital forensic system known as KIOSK. Data is held on KIOSK pending upload to CLUE 3, which is a case management system, introduced in June 2020 as the principal system for processing data relating to enquiries undertaken by the defendant's Criminal and Financial Investigation Unit. Access to CLUE 3 is, the defendant says, restricted to officers working within the CFI and a small number of officers working within the Immigration Intelligence Directorate and Criminal Casework Directorate. CLUE 3 is said to have been designed so that data protection compliance fields can not be by-passed. Although officers generally have access to all data on CLUE 3, sensitive parts of an investigation can be restricted.

21. MA's data is now under the control of the CFI's Cyber and Digital Capabilities Team who, the defendant says, can alone access the information. MA's data has been physically moved, using hard drives, to a secure location and is not available anywhere online. Except for the officers tasked with the initial download of MA's mobile, who had access for that purpose only, the defendant states that the only officers who had access to MA's data were those in the CIB who were involved in the specific event investigation.

22. MA's data is still being held by the defendant. She says this is, in part, because of a moratorium on the deletion of government-held data. Mr Stephen Blackwell, Assistant Director of the CFI, explains that the moratorium was established to ensure that the defendant does not destroy information that will be of relevance to a number of inquiries; namely, the Independent Inquiry into Child Sex Abuse, the Undercover Police Inquiry, the Grenfell Tower Fire Inquiry and the Infected Blood Inquiry. Mr Blackwell states that there are, in addition, active investigations into allegations of mistreatment at Brook House Immigration Removal Centre and the Manchester Arena Inquiry, to which the moratorium also appears to apply. The defendant has also given undertakings to retain

information relating to the Windrush Lessons Learned Review. The moratorium is, he says, "public knowledge", citing the defendant's web page headed "Transparency Data – What to Keep: Home Office Retention and Disposal Standards".

23. MA's data is additionally said by the defendant to be continuing to be held as a result of the defendant's self-referral to the Information Commissioner in respect of breaches of the defendant's duties under data protection legislation, arising from her policy concerning the seizure of mobile telephones, which was in force at the time MA's mobile was removed from him. We shall have more to say about this policy in due course.

KH

24. KH was in a small boat, attempting to cross to England from France on 25 April 2020, when it was intercepted at sea at around 7:50am by HMC Vigilant, which brought KH and 14 others to Tug Haven. Like MA, KH was searched and his mobile telephone seized. Officer Wilson of the Defendant's Rapid Response Team was responsible for searching KH, whilst Officer Harwin later affected seizure of the mobile, giving KH a receipt. It does not appear that a copy of this was retained but there is no reason to suppose that its content was different from that issued to HM and MA.

25. KH contests that description of events. He recollects that his phone was taken from him while he was still at sea. The defendant's PRONTO report, inputted from the relevant officer's own mobile telephone at the time of arrest, search and seizure, is said to record KH's phone as having been seized upon arrival at Tug Haven. The records show this:-

> "KH was arrested by Sarah Wilson at 08:36 'On arrival at Tug Haven'. KH was subject to an 'arrest search' by Sarah Wilson and his mobile phone was found in his pocket. KH's mobile phone was formally seized by Carl Harwin at 09:10."

26. KH's phone was passed to officers in the defendant's JDT (see Appendix A) who, until June 2020, had access to KIOSK Technology and were able to carry out extractions. Extraction of the data from KH's phone took place on 30 April 2020. His phone was locked and there is no record of him being asked to provide, or providing, his PIN number. In any event, the data extracted by the defendant was from KH's SIM card, rather than from the handset itself.

27. KH's data comprised pre-set contact numbers, call records, photos (primarily "emojis") SMS and other chat messages, location and browsing history, and applications.

28. The data from KH's SIM card was initially shared by CIB and immigration analysts in the defendant's II Directorate (Appendix A) for investigative purposes. The data was never logged on CLUE 3. The JDT also created an intelligence report on KH.

29. The present position of the extracted regarding data regarding KH mirrors that of MA. The defendant says that although KH's phone was extracted by the JDT (which comprises individuals from a range of different organisations, including the National Crime Agency), the data extracted from KH's SIM card was at no time made accessible to any officer outside the Home Office.

30. As with MA, KH's data is being retained pursuant to the moratorium and the defendant's self-referral to the Information Commissioner.

31. MA's and KH's phones were returned to them by the defendant in March 2021.

D. The Unlawful Policy

32. In their grounds of claim, the claimants contend that, at the relevant times, the defendant was operating a policy of seizing all mobile telephones from migrants arriving in small boats. Although, as we shall see, the unlawfulness of this "blanket" seizure policy has been conceded by the defendant, the claimants complain that the concession is, in several respects, incomplete. They say it is extremely belated and that the defendant breached her duty of candour, not only because she failed to mention it earlier but also because the defendant in fact made statements denying the existence of the policy. In pre-action correspondence, it was said on behalf of the defendant that HM's assertion of a "blanket policy" was "based on anecdote and surmise". Following the initiation of the proceedings, the defendant did not resile from that position in her summary grounds of defence to HM's claim. It was only in correspondence on 25 June 2021 and then in her amended detailed grounds of resistance to the claim of HM that it was accepted the defendant's position, as put forward both prior to commencement of the claim and in the acknowledgment of service, was "inadvertently inconsistent with the duty of candour". The defendant has offered "an unreserved apology" and has sought, apparently unsuccessfully, to understand how the error had come to be made.

33. We shall need to say more about all this in due course. For the present, however, it is sufficient to record that the defendant now accepts that between April and November 2020, a blanket seizure policy of migrants' mobile telephones was in operation at Tug Haven. According to the defendant, the precise origins of the blanket policy are not known; but it appears to have developed organically, effectively as a practice of the first responders (the CORT and RRT- see Appendix A) operating at Tug Haven. The defendant accepts that the blanket nature of the policy means that the defendant's officers did not turn their minds to whether the statutory powers of seizure were met, in any particular case. Thus, whatever might be the actual ambit of those powers – as to which there is a "live" issue between the claimants and the defendant which we need to determine – they could not authorise the blanket policy. Furthermore, the defendant concedes the blanket policy was unlawful by reason of being unpublished.

34. The unlawful nature of the blanket policy has a number of consequences, which are also conceded by the defendant, as explained above. The seizure and retention of mobile telephones, and the extraction of data from them (or their SIM cards) were not "in accordance with the law", for the purposes of the European Convention on Human Rights. By the same token, the relevant conduct did not have a lawful basis for the purpose of the Data Protection Act 2018. Moreover, the relevant Data Protection Impact Assessments, undertaken by the defendant, were not lawful because, as in *R (Bridges) v Chief Constable of South Wales* [2020] 1 WLR 5037, the Assessments did not properly assess the risks to the rights and freedoms of data subjects.

35. So far as the defendant's retention policy provided for mobile telephones to be retained for a minimum period of three months, it was capable of giving rise to a disproportionate interference with ECHR rights and data protection legislation. Furthermore, the data extraction policy unlawfully purported to permit the complete extraction of data from

every mobile telephone and so was contrary to the ECHR and the Data Protection Act 2018.

36. As explained above, the defendant also concedes the unlawfulness of her "PIN policy", as in force at the relevant times. The policy was not only unlawful because it was an unpublished blanket policy, but also because it required the officers to commit this specific unlawful act on multiple occasions against multiple people.

37. Despite the defendant referring to the blanket seizure policy as operating between April and November 2020, she acknowledges that its precise origins are unknown. There must, accordingly, be some doubt as to when the unlawful policy began. The claimants point out that, in June 2019, the JDT issued Guidance in relation to the seizure of mobile telephones. This Guidance, however, was concerned with the procedure under section 19 of PACE to obtain PIN numbers/patterns needed to access the phone or SIM card; leaving the phone in the property of the individual and then requesting seizure; and providing information to the seizing officer detailing the suspected offence and thus, the justification for seizure. Although the title of the Guidance refers to section 48 of the 2016 Act, its opening paragraph states that the policy "defines the procedure for seizure and examination of material seized under section 19 PACE". The relationship between section 48 and section 19 PACE is a central issue of continuing contention between the parties and is addressed later in this judgment.

An undertaking to the defendant?

38. The claimants point to emails, which indicate that in May 2020 the NCA gave an undertaking to the defendant (referred to as "HS" in an email from Vanita Singh of II to other colleagues) that "all phones seized over the weekend would be downloaded by COP", no doubt "close of play". The defendant has been unable to shed any light on this undertaking, except by interpretation of the documents. The NCA has been approached and has said that no undertaking was given. It is clear that there had been a high level of phone seizures that weekend, and there is another email from the NCA about assistance by the NCA in dealing with downloads to "get phone numbers for intelligence purposes" dated 11 May 2020 which says:-

> "……very grateful for any help you can lend to this, as you know this threat is very high profile at the moment with daily contact from HO Ministers checking our progress. Could you please let me know what assistance you are giving."

39. Further emails also show that at this point Immigration Enforcement and the NCA were acting together at the request of Ministers to download all the phones which had been seized and to "wash the data", in the words of one later email. In a response to a Request for Further Information dated 28 October 2021, the situation was described on behalf of the defendant in this way:-

> "(i) the undertaking appears to have been given by the NCA and (ii) the precise terms of the undertaking were not within the knowledge of Ms. Singh or the CFI. To the best of the defendant's knowledge, however, the undertaking in question was (as the email from Ms. Singh records) that all phones seized

> over the weekend of 9 and 10 May 2020 would be downloaded by close of play that day"."

40. Notwithstanding the serious problems that have arisen in these proceedings concerning the defendant's duty of candour, we do not consider there is any reason to refuse to take the defendant at her word regarding the undertaking. The word "undertaking" has a legal connotation which was almost certainly absent from any relevant communication between ministers and the NCA. Whether any such commitment was given by the NCA to ministers about the phones seized on that particular weekend, it is quite apparent from the existence of the blanket policy that the defendant's officers were, at that time, concerned to maximise the gathering of information, which might lead to the identification of the organised criminals responsible for facilitating at least the majority of small boat crossings of the Channel. The correspondence clearly shows that the relevant officials felt under some pressure from ministers to carry out this work quickly. This is not surprising. It has subsequently transpired that this exercise, which by its nature was a blanket policy, was unlawful. It is not suggested that anyone involved actually knew this at the time, although none of the legal concepts involved is novel or recondite.

The gradual ending of the unlawful policy

41. On 18 June 2020, the ICO published a report into mobile phone extraction. This was not limited to the arrival of migrants by small boats. The report is said to have led the defendant to adopt what is described as "a more focused and targeted response to the extraction of data" from the mobile phones of those arriving on small boats. In fact, the defendant's strategy document of 20 June 2020, "Minimum Investigation Requirements Strategy", issued by the senior investigating officer of the CIB, still espoused key elements of the blanket seizure policy. It is, nevertheless, possible that the issuing of the 20 June strategy document was later mistakenly thought by those responsible for preparing the materials described in paragraph 32 above to signal the end of the blanket policy. The defendant may rely on some such confusion when addressing the apparent failure to comply with the duty of candour to which we have referred above, and we will evaluate this further at that stage.

42. In any event, further revisions to the strategy took place in July and September 2020. The first pre-action letter challenging a phone seizure was received on 27 October 2020. On 23 November 2020, a decision was taken to "pause" the blanket seizure policy, possibly as a result of some form of internal review carried out by or on behalf of the defendant. At some point between 23 November and 16 December 2020, a decision was taken to adopt the "interim solution" of seizing only phones linked to "s.25 pilot cases"; that is to say, cases concerning the investigation of a criminal offence under section 25 of the Immigration Act 1971 of assisting unlawful immigration to a Member State (and, presumably, section 25A: helping an asylum seeker to enter the United Kingdom, if there were reasonable grounds for suspecting that the help was provided in return for "gain").

43. In an email of 5 February 2021, Stephen Blackwell, Assistant Director in the CFI, said:

> "We will only be seizing phones where there is reasonable grounds to suspect that material relevant to a criminal offence (namely facilitation in most cases) would be achieved (sic) by examining the device. In order to examine a device, we must

> seize it or obtain consent of the witness in question. If we don't do this accessing a device takes us into unlawful interference territory and would render any material obtained questionable and undermine our prosecution".

The nature of the blanket seizure policy means that, whatever the actual scope of the defendant's powers of seizure, those powers did not authorise what happened up to November 2020.

E. Paragraph 25B of The Immigration Act 1971

44. The important issue which remains live between the parties concerns the extent of the powers of an immigration officer to search those who have been arrested under Schedule 2 to the Immigration Act 1971 and to seize property from them. The parties are not agreed on whether the claimants were, during the currency of the blanket policy, lawfully searched by the defendant's officers under paragraph 25B of Schedule 2 to the Immigration Act 1971. This power allows the search of people who have been arrested under Schedule 2. It is a limited power which allows a search if the officer has reasonable grounds for believing that the arrested person may present a danger to himself or others (25B(2)), or that he may have things which he might use to assist his escape from lawful custody, or certain kinds of document concealed about his person (25B(3) and (4)). Pointing to the unlawful policy of seizing all mobile telephones, the claimants contend that, at the relevant times, searches for mobile phones purportedly under paragraph 25B were, in fact, automatic upon disembarkation, being carried out without regard to the actual terms of paragraph 25B. The claimants are critical of the defendant's reliance on paragraph 25B(2) and (3)(a) of paragraph 25B, categorising this as an *ex-post-facto* attempt to impose a rationale on a search policy which does not fit the facts. The claimants urge this court not to accept it.

45. The defendant submits that it is standard practice to search migrants who are detained under paragraph 16 of Schedule 2. This permits detention for the purposes of an examination pending a decision on the grant or refusal of leave to enter the country. It is submitted that this is done in order to check whether, for example, they have anything concealed which they might use to escape lawful custody or use as a weapon. Given that the claimants were liable to be detained, and given the circumstances in which they were encountered, the defendant says it was entirely reasonable for them to be searched under paragraph 25B.

46. Paragraph 25B(2) empowers an immigration officer to search an arrested person if the officer has reasonable grounds for believing that the arrested person may be a danger to himself or others. Paragraph 25B(3)(a) empowers an immigration officer to search the arrested person for anything which he might use to assist escape from lawful custody. This power is also conditional upon the officer having reasonable grounds for believing the person has any such thing.

47. There is no doubt that the claimants could be arrested under Schedule 2, paragraph 17, since they were liable to be detained under paragraph 16, as persons liable to examination or removal. This had nothing to do with whether the claimants might have committed a criminal offence of illegal entry. Mr Blackwell's witness statement says:

> "21. Once detained, migrants are searched under Schedule 2, paragraph 25B Immigration Act 1971. The rationale for this is to ensure that migrants do not present a danger to themselves or others and to ensure they are not carrying items or material that will assist their escape. Officers have to be vigilant and perform the searches as concealed items such as knives and lighters have been recovered from previous arrivals. The Home Office considers that a mobile phone can also be used to aid escape. Calls or text messages can be sent to third parties to notify of the individual's detention and to advise of where they are being taken. An example of this is where migrants are secured in housing, they make calls and are collected or instructed by the crime group and either leave or are taken away under the crime group's control. A mobile phone can also be used as a weapon either as a blunt instrument or by shining lights into officer's eyes to hamper visibility. Migrants can not be expected to volunteer these items so to ensure the safety of the officer's dealing with them, as well as that of other migrants, all migrants are routinely searched for any items that could present a safety issue."

48. Sub-paragraphs (8A) to (8D) of paragraph 25B concern documents stored in electronic form, on a device or medium found on a person. They enable the officer, in certain circumstances, to seize the device or medium on which the document is stored. At paragraph 16.8 to 16.10 of the detailed grounds of defence in respect of MA, the defendant notes the claimants' contention that paragraph 25B(8A), (8B), (8C), and 8(D) are limited to the seizure of documents only and not the "electronic device or medium" upon which those documents are found.

49. Paragraph 16.8 of the detailed grounds of defence points out that those provisions only apply where the officer is exercising the power of search under paragraph 25B(3)(b), which concerns documents that might establish a person's identity, nationality or citizenship; or indicate the place from which they have travelled or are proposing to go.

50. Accordingly, the defendant's position on paragraph 25B is that the relevant powers of search of the claimants are those in paragraph 25B(2): reasonable grounds for believing that the arrested person may present a danger to himself or others; and paragraph 25B(3)(a): anything which a person might use to assist his escape from lawful custody. Reliance on sub-paragraphs (8A)-(8D) is therefore disavowed.

51. Paragraph 16.9 of the detailed grounds of defence states that "all phones seized following a search under [paragraph 25B] are initially seized under paragraph 25B(6) and/or (7)". These provisions empower seizure and retention of items of danger, in the sense just described, or items that might be used to assist escape.

52. Paragraph 16.10 of the detailed grounds then says "items so seized may also trigger the seizure powers under section 48 of the 2016 Act", where an officer reasonably believes that they have been obtained in consequence of the commission of an offence; or are evidence in relation to an offence and, in either case it is necessary to seize the item to prevent the evidence being concealed, lost, altered or destroyed.

53. As the claimants observe, however, the "PRONTO" records of their arrest and the seizure of their telephones do not specify any paragraph 25B justification for the searches or seizures undertaken. In particular, they do not support the contention that either paragraph 25B(2) or (3)(a) comprise the legal basis for the seizures. On the contrary, the predominant justification given was that each search was undertaken to obtain documents to substantiate identity; but that, as we have seen, is the power that the defendant disclaims: see paragraphs 49 and 50 above.

54. We find this means that the defendant is unable to establish that the claimants were searched under paragraph 25B(2) or (3)(a). Although a mobile telephone may be used as a weapon or as a means of evading lawful arrest, the overall circumstances need to be considered. As the claimants point out, whatever else may be said about migrants who arrive in small boats, there is nothing to suggest that they are, as a general matter, likely to seek to escape from the custody of the defendant's officers once they have been encountered. Many of them intend to claim asylum, and escaping would defeat their objective.

55. On the totality of the evidence, we conclude that the claimants were not in fact searched for their mobile phones under paragraph 25B(2) or (3)(a) of Schedule 2. Any search for those items was in pursuance of the blanket policy which, on its true construction, involved not merely seizure, as the defendant accepts, but a corresponding search element. Whilst conscious of what Mr Blackwell says at paragraph 21 of his witness statement, we accept the claimants' submission that, during the time of the blanket policy, the defendant's officers were not looking for and seizing mobile phones because they feared the phone would be used as a weapon or to effect escape. The defendant's case to the contrary is, as the claimants contend, *ex post facto* reasoning. The documentary evidence as to the true purpose of these searches and seizures is very strong, and we have identified some of it above when dealing with the suggested "undertaking" by the NCA to the defendant, and in summarising the history of the unlawful blanket policy and its gradual abrogation.

56. This is, however, in no sense to diminish the importance of paragraph 25B. As a general matter, the defendant is entitled to use paragraph 25B(2) to search a person who has arrived by small boat. The words "reasonable grounds for believing that the arrested person may present a danger to himself or others" set a low bar for the exercise of the power. The immigration officer considering whether to carry out search has an obligation to consider his own safety and that of others who may encounter the arrested person while he is in custody. We are not considering a case where paragraph 25B(2) was in fact relied upon an immigration officer when carrying out a search and nothing in this judgment seeks to define or confine the circumstances where that power may be used.

57. Furthermore, although paragraphs 16.8 to 16.10 of the detailed grounds of defence describe the mobile phones as being seized under paragraph 25B, the power of search of the person under paragraph 25B may result in the defendant's officer finding something which he or she is not empowered by that paragraph to seize and retain. Thus, if an individual is being searched under paragraph 25B(2) for a concealed weapon and the officer comes upon the individual's mobile telephone, the device can only be seized under some other statutory power, if that power authorises seizure in those circumstances. There is no power to retain anything seized under paragraph 25B(2) or 3(a) when the person from whom it was seized is no longer in custody or is in the custody of a court

but has been released on bail. It is not an apt statutory framework for what was being done in the time of the blanket policy.

F. Section 48 of the Immigration Act 2016

58. It is at this point that section 48 of the 2016 Act falls for consideration. We will set out section 48(1) and (3) here, as these subsections require detailed analysis:

> (1) This section applies if an immigration officer is lawfully on any premises.
>
> (2) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing:-
>
> (a) that it has been obtained in consequence of the commission of an offence, and
>
> (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
>
> (3) The Immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing –
>
> (a) that it is evidence in relation to an offence, and
>
> (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

59. Both Sir James Eadie and Mr De La Mare draw comparisons between section 48 of the 2016 Act and section 19 of PACE which, so far as relevant states:

> **19. – General power of seizure etc.**
>
> The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.
>
> …
>
> (3) The constable may seize anything which is on the premises if he has reasonable grounds for believing -
>
> (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
>
> (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

60. The primary question is whether section 48 is, like section 19, confined to a search of premises, or whether it enables seizure of an item that comes to light during the search of a person. The claimants contend that the former is the case, that section 48 is a "premises search" power, like section 19.

61. Mr De La Mare submits that the courts recognise there is a fundamental distinction between searches of premises and searches of persons. Whilst both are plainly intrusive and require clear authorisation, the latter represents a far more substantial interference with individual rights than does the former. As a result, the power to search persons cannot be inferred from the existence of a power to search premises. This distinction is supported by authority.

62. In *Hepburn v Chief Constable of Thames Valley Police* [2002] EWCA Civ 1841, the Court of Appeal held that a warrant sought and obtained so as to invoke only the statutory power to search premises, did not encompass the power to search persons found on those premises. On its face, the warrant gave no authority to search anyone (paragraph 10: Sedley LJ).

63. In *Dr Abdul Azeem Waqar Rashid v Chief Constable of West Yorkshire Police* [2020] EWHC 2522 (QB), Lavender J held at paragraph 44 that, "a warrant to search premises does not carry with it an implied authority to search any person".

64. Mr De La Mare contends that this distinction runs through the Immigration Act 1971 and the Immigration Act 2016, both of which differentiate between personal search and premises search. So too do sections 50 and 51 of the Criminal Justice and Police Act 2001, which confer separate "search and sift" powers of premises and persons respectively.

65. In *Secretary of State for the Home Department v GG* [2009] EWCA Civ 786, the Court of Appeal held it was axiomatic that the fundamental common law rights of personal security and personal liberty prevent any official search of an individual's clothing or person without explicit statutory authority. The principle of legality renders general statutory words insufficient to take away fundamental rights, unless it is clear from the whole statutory context that Parliament intended to achieve that result.

66. At paragraph 22, Sedley LJ concluded that the language of section 1(3) of the Prevention of Terrorism Act 2005 was insufficient to authorise inclusion in a control order of a general requirement to submit searches of the person. The absence of such a power from the list of specific obligations in and following section 1(4) was as consistent with deliberate as with accidental omission. Even if that omission was due to legislative oversight, it was not the role of the courts, in a matter touching on fundamental liberties, to supply what Parliament might have inserted.

67. In his judgment, Dyson LJ addressed the principle of legality:

> "29. The principle of legality is that fundamental rights cannot be overridden by general or ambiguous statutory words: see per Lord Hoffmann in *R v Home Secretary, Ex p Simms* [2000] 2 AC 115, 131. As he said:
>
> "This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore

> presume that even the most general words were intended to be subject to the basic rights of the individual."

68. At paragraph 38, Dyson LJ relied upon the judgment of Lord Bingham in *R (Gillan) v Commissioner of Police of the Metropolis* [2006] UKHL 12:

> "38. Lord Bingham said, at para 15, that the principle of legality had no application, since even if the statutory powers did infringe a fundamental human right, (itself, he said, a debatable proposition), "they do not do so by general words but by provisions of a detailed, specific and unambiguous character". …
>
> 39. In these circumstances, Lord Bingham was able to say, at para 14:
>
> "But examination of the statutory context shows that the authorisation and exercise of the power are very closely regulated, leaving no room for the inference that Parliament did not mean what it said."
>
> 40. In other words, there was no risk that the full implications of section 44(3) may have passed unnoticed by Parliament. …"

69. Next, Mr De La Mare urges this court to interpret section 48 in the light of the Explanatory Notes to the 2016 Act. The Notes have this to say about section 48:

> "261. Currently, when immigration officers in England and Wales search premises for immigration purposes, (e.g. to check the immigration status of a person), they can only seize evidence of a non-immigration crime if they are trained criminal investigators by relying on the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013 [sic]. Therefore, often immigration officers must contact the local police and await their response when they encounter non-immigration crime. In the meantime the immigration officer has no powers to prevent the potential evidence from being removed or destroyed.
>
> 262. This section provides all immigration officers with a power to seize anything that has been acquired through committing a non-immigration offence, and evidence in relation to offences (subsections (2) and (3), including electronic information) subsections (4) and (5). Immigration officers cannot seize anything that is subject to legal privilege (subsection (6))."

70. As to Parliamentary materials, in a debate in the House of Commons on the Bill for what became the 2016 Act, the Attorney General explained (what was then) clause 21 as follows:

> "Clause 21 provides a power for immigration officers to seize anything they may find in the course of exercising a function under the Immigration Acts while lawfully on the premises where they believe that it has been obtained in the consequence of committing a crime, or where it is evidence of an offence. …
>
> Immigration officers sometimes encounter evidence of other crimes when they are searching premises using immigration powers. …"

71. In the House of Lords, the Advocate General for Scotland said:

> "… it is sometimes the case that, while searching premises using immigration powers, immigration officers may encounter quite clear evidence of a criminal offence. …
>
> This power will therefore enable immigration officers to retain such material in circumstances where they are already lawfully on premises, either by virtue of a warrant or because they have been given entry but only for the purpose of preserving that evidence. They will not be responsible for the chain of evidence through, for example, to a prosecution. They will take steps to hand that evidence over to the police at the first available opportunity. For that purpose, they will be trained with regard to obtaining that evidence. I make clear, to reassure the noble Lord, Lord Kennedy of Southwark, that there is no provision in Clause 22 for any search of the person. That power will not be conferred on immigration officers in this context……
>
> I add that, in fact, some immigration officers have power under section 19 of the Police and Criminal Evidence Act 1984 to search for and recover evidence of a crime, however that power is exercised only when the relevant immigration officers have gone through the full training that would also be available to police officers. Therefore we accept that is an exceptional case. Here there will be suitable training for immigration officers for the purpose of seizing and retaining evidence of a criminal act. …"

Mr De La Mare emphasises that no mention was made in either House of a power of personal search. On the contrary, it is evident that what is being described is a search of premises; nothing more.

72. For her part, the defendant emphasises the width of the phrase "anything which the officer finds in the course of exercising a function under the Immigration Acts" in section 48(3). She says these words are inconsistent with any suggestion that an immigration officer is entitled to seize only items identified in searching the premises or as a by-product of such a search. On the contrary, the only limit on the power is that the item has to have been found whilst exercising an Immigration Acts function.

73. In the light of that clear wording, Sir James Eadie submits that there is no need to consider any wider aids to interpretation. On the contrary, the authorities show that the principle of legality is a principle of statutory interpretation; no more and no less. Given that the language of section 48 is unambiguous, any recourse to the principle is unnecessary. Indeed, it is wrong to invoke it.

74. He also submits that the absence of ambiguity also precludes this court from having regard to the Explanatory Notes and to the *Hansard* record of what was said during debates on what became the 2016 Act.

75. Sir James distinguishes *GG* on the basis that the statutory provision under examination in that case was of a different nature to section 48. The latter cannot be described as general words. On the contrary, it is a carefully crafted provision.

76. Any reliance on section 3 of the Human Rights Act 1998, is, Sir James says, misplaced. Section 48 is not a provision that, on its face, would be incompatible with ECHR rights in all or almost all cases.

Discussion and conclusion on section 48

77. There can be no doubt that the principle of legality is potentially in play in relation to section 48. The claimants are, in our view, right to point to the distinction drawn between seizures from premises and seizures from persons. Each must be clearly and unambiguously authorised by statute. A power of one kind is not to be inferred merely from the conferring of a power of the other kind.

78. The starting point is to decide whether section 48 is unambiguous and clear. The first question in this regard concerns the significance of section 48(1), whereby the power is predicated on the immigration officer being "lawfully on any premises".

79. At this point, the comparison between section 19 of the 1984 Act and section 48 is instructive. They both use the phrase "lawfully on the premises" as a foundation for the power of search which they confer. Does the phrase mean the same thing in both places and, if not, what does it mean in section 48?

80. The definition of "premises" in section 23 of the Police and Criminal Evidence Act 1984 refers to premises including "any place", it is common ground before us that this does not include such places as a street or a beach. We were shown a letter from the Police Powers Unit of the Home Office dated 11 August 2021 which refers to Home Office Guidance as stating that:

> "Although "any place" can include any place in the open air, that place should itself be capable of amounting to "premises" in the ordinary sense of the word. That is, it should be a distinct piece of land in single occupation or ownership and therefore, for example, the middle of the high street would not constitute "premises"."

81. This guidance, in our judgment, reflects the law. In order to be able to seize something in the premises, under section 19, the police officer must be lawfully on those premises. The premises may include any "place" of a kind which constitutes "premises". This is

because the definition given in section 23 of the 1984 Act must be read together with the word actually chosen by Parliament of which it is a definition. The authors of *Bennion Bailey and Norbury on Statutory Construction* (8th Ed) explain at 18.6 that the natural meaning of the defined term is not irrelevant, particularly where there is scope for doubt about what the definition itself means.

82. Lord Hoffmann explained in *MacDonald (Inspector of Taxes) v. Dextra Accessories Ltd*. [2005] UKHL 47, [2005] 4 All ER 107 at paragraph 18:-

> "… a definition may give the words a meaning different from their ordinary meaning. But that does not mean that the choice of words adopted by Parliament must be wholly ignored. If the terms of the definition are ambiguous, the choice of the term to be defied may throw some light on what they mean."

83. Likewise, in *Birmingham City Council v. Walker* [2007] UKHL 22; [2007] 2 AC 262 at [11] Lord Hoffmann observed:-

> "Although 'successor' is a defined expression, the ordinary meaning of the word is part of the material which can be used to construe the definition."

84. By section 58(2) of the Immigration Act 2016, the expression 'premises' in section 48 has the same meaning as it does in the Police and Criminal Evidence Act 1984. Section 48(1) closely resembles section 19(1) of PACE, which is undoubtedly a power of seizure from premises, not persons.

85. On the defendant's interpretation of section 48, we are faced with an oddity, in that an immigration officer may find things in the course of exercising a function under the Immigration Acts, irrespective of whether that officer is present on any premises. One such example is, of course, paragraph 25B. This enables an immigration officer who is, say, encountering a migrant on a beach, to exercise the powers there contained of search and seizure. However, at that point in time, section 48 can have no application. If section 48 were intended to operate in respect of seizures that follow personal search, the purpose of the limitation on the power in section 48(1) whereby it only applies if the immigration officer was lawfully on the premises is unclear.

86. The absence of a reference in section 48(2) or (3) to the act of finding being one of finding something that is on the premises perhaps points against this conclusion. However, section 48(1) confines the powers of that section to situations where the immigration officer is on premises, and Parliament may have concluded that such a further limitation would be unnecessary repetition. The thing that is found could only be a thing which is on the premises. The fact that section 19(2) of PACE did include the words "which is on the premises" after "anything" does not diminish the force of this observation.

87. We accordingly find that section 48 is not, on its face, entirely clear or unambiguous. The presence of the word "premises" in section 48(1) and its absence from section 48(2) and (3) in our judgment creates a degree of ambiguity. Even without reference to the principle of legality and to Parliamentary materials and the Explanatory Notes, we would prefer the claimants' submissions on the issue of the correct construction. This is because section 48 is clearly closely modelled on section 19 of the Police and Criminal Evidence

Act 1984, as its wording and the two definition sections make clear. If Parliament had intended section 48 to have a radically different scope from its ancestor section 19 it would surely have made this clear by express words. If the defendant were right there would be no point in section 48(1) at all, and proper statutory construction requires the words in a statute to be given a meaning if possible.

88. If we are wrong about that, then the provision is ambiguous in the way we have explained. The principle of legality and the materials which can properly be used as aids to construction on this basis come into play and put the matter beyond any doubt. Faced with more than one possible interpretation, this court should adopt the interpretation that section 48 does not authorise a search of the person as opposed to a search of premises.

89. The principle of legality is engaged and is strongly in favour of the claimants' position. *R v. Home Secretary, Ex p. Simms* [2000] 2 AC 115 was decided a long time ago and the Immigration Act 2016 was enacted when it was well established and applied as we have recorded at paragraphs [65]-[68] above, among other occasions. Parliament must be taken to know that clear words are required to authorise a non-consensual search of the person and to have appreciated that their absence from section 48 was because no such power was being granted.

90. Further, on this basis recourse may properly be had to the Explanatory Notes and *Hansard* records. At the hearing, the parties made submissions by reference to *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holm Ltd* [2001] AC 349. On 2 February 2022, the Supreme Court handed down judgment in *R (on the application of O (a minor, by her litigation friend AO)) v SSHD* [2022] UKSC 3 Lord Hodge (with whom Lord Briggs, Lord Stephens and Lady Rose agreed) held:

> "29. The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:
>
> > "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context."
> >
> > (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, 397:
> >
> > > "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."
>
> 30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission

reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole.

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme*, 396, in an important passage stated:

> 'The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. ... Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.'"
>
> …"

91. On the basis that the provision is ambiguous, these extra-statutory materials fall to be considered. At the very least, the Explanatory Notes and *Hansard* serve to illustrate the suggested ambiguity of the words Parliament has used. If they are admissible, they point decisively in the claimant's favour. The Notes and *Hansard* record make it clear that section 48 is about searches of premises, not searches of persons.

92. We are acutely conscious of Sir James Eadie's warning that such an interpretation of section 48 may have serious consequences for the defendant, not least in tackling the plainly serious problems caused by the exponential growth in unauthorised arrivals of migrants by small boats from France. There is, however, nothing in the defendant's General Instructions: Search and Seizure (version 3.0: 16 December 2016) that suggests the defendant has hitherto regarded section 48 as covering seizure from persons as well as premises. On the contrary, the Instructions emphasise the importance of seeking advice if the officer is in doubt of what to do at the scene; and that "When in doubt, leave the evidence where it is, secure the scene and call the police in." This fits precisely with the kind of power described to Parliament by the Attorney General and the Advocate General. We also acknowledge the point made by Mr De La Mare that interpreting section 48 as we have leaves unaffected the powers of immigration officers under PACE

(as to which, see section 48(10)). The final point in this regard is that following the abandonment of the blanket seizure policy in November 2020, fewer mobile telephones have apparently been seized by the defendant in reliance on section 48; and that the great majority of small boat arrivals are currently treated as witnesses, whose consent is now sought if the defendant wishes to examine their mobile phones. If Parliament sees a need for further legislation to address the problem, then it is for Parliament to do that, and not for the executive to assume powers on the basis of an impermissible construction of existing legislation.

Re-seizure, an alternative route to legality?

93. Even though section 48 is about the seizure of things found on premises, rather than a power of seizure related also to the search of persons, the defendant might be able to rely on section 48, if it permits the re-seizure of something that has been found and seized by an immigration officer, exercising powers under paragraph 25B of Schedule 2. In view of our conclusion set out above that the seizure of the phones in this case did not in fact come about in this way, but was the result of a blanket policy to seize all phones however they were "found", this does not arise, but since it was fully argued we will express our decision on the point.

94. At first sight, the judgment of Mitting J in *Chief Constable of Merseyside v Hickman* [2006] A.C.D 38 could be said to provide some support for this possibility. In *Hickman*, cash was seized from a house, under section 19 of PACE. The cash was taken to a police station. Cheques representing the sum in question were subsequently seized at the station, pursuant to section 294 of the Proceeds of Crime Act 2002. The 2002 Act permits a constable who is lawfully on any premises, and who has reasonable grounds for suspecting there is on the premises cash which is recoverable property, to search for the cash. Section 294 permits a constable to seize any cash if he has reasonable grounds for suspecting it is recoverable property or intended by any person for use in unlawful conduct. "Cash" is defined by section 316(1) as having the meaning set out in section 289(6), which provides that cash means coins, notes and other specified things which are "found at any place in the United Kingdom".

95. Mitting J addressed the question of whether the constable could seize cash which was already in the possession of the police:

> "The answer was clearly yes, just as seizures under s.19 could be, and were routinely, made of property in the possession of the police at a police station following the arrest and search of a suspect".

96. Mitting J also held that the definition of cash by reference to its being "found" in the United Kingdom did no more than define the territorial extent of the power within which seizure might lawfully occur. It did not require that the cash be in the possession of another person, or a person other than a police officer, before it could be seized by a constable.

97. In *R (Cook & Anor v Serious Organised Crime Agency)* [2011] 1 WLR 144 computers and documents were unlawfully seized from premises, owing to deficiencies in the relevant search warrants. When the first claimant later attended a police station, he signed three receipts in respect of the seized material and was permitted to take away the

computers. Then, however, an officer purported to re-seize the material pursuant to section 19 of PACE.

98. The Divisional Court held that section 19 does not permit the further seizure at the police station of property unlawfully obtained pursuant to an unlawful seizure and unlawfully brought to the police station. Before unlawfully seized property can be lawfully re-seized, it has to be restored into the possession of a person from whom it had been taken. Signing a receipt for the property was insufficient for that purpose.

99. *Hickman* and *Cook* demonstrate, the defendant says, that section 19 of PACE is not limited to a situation where there has been no previous seizure of the thing in question. Given the similarities between section 19 and section 48 of the 2016 Act, the defendant therefore submits that it would be wrong to interpret section 48 so as to preclude an immigration officer from acting under it in the same way as a constable (or immigration officer) who is acting under section 19 of PACE.

100. At this point, it is necessary to have regard to what happens on the ground in Dover. The defendant tells us that immigration officers are assigned to particular roles at Tug Haven. Accordingly, the officer who arrests and searches the migrant will not be the same officer who subsequently seizes the mobile telephone.

101. The process is illustrated by what happened to KH. The "PRONTO" record shows that KH was arrested by immigration officer Sarah Wilson at 8:36am on arrival at Tug Haven. Officer Wilson carried out an "arrest search", in the course of which KH's mobile phone was found in his pocket. The defendant says that KH's mobile was not, however, seized until 09:10 hours (although it may have been 09:00 hours) by Officer Harwin. The defendant explains that the procedure at Tug Haven allows separate officers to search and seize, in order to expedite migrant processing (including for their own safety, in the light of the circumstances of their arrival, and the ongoing pandemic).

102. We do not consider that *Hickman* offers any assistance to the defendant. The reason why section 19 can be employed in order to seize property which is at a police station following, say, an arrest and search of a suspect, is because of the breadth of the language in section 19(2), which permits the constable to "seize anything which is on the premises". In the case of seizure at a police station, this breadth means section 19 is not confined to things which the constable "finds", in its primary sense of "discovers".

103. The fact that "cash" is defined for the purposes of the "Proceeds of Crime Act 2002" by reference to it being "found at any place in the United Kingdom" is, as Mitting J held in *Hickman*, nothing more than defining the territorial extent of the power.

104. Nor is *Cook* of assistance to the defendant. On the contrary, as a judgment of Ouseley J makes plain, the Divisional Court's approach to interpreting section 19 had due regard to the principle of legality:

> "The question is: does section 19 permit the seizure at the police station of material unlawfully obtained pursuant to an unlawful seizure and unlawfully brought to the police station? For the reasons given by Leveson LJ I agree that section 19 cannot be interpreted so as to permit its powers to be exercised in that way. Were that to be the true ambit of section 19 I would have

> expected Parliamentary provision for what would amount to a considerable limitation of the safeguards in the police and Criminal Evidence Act 1984 …" (paragraph 24).

105. The strongest case for interpreting "finds" in section 48 in a way that goes beyond its primary meaning, so as to encompass retaining an object of which the person concerned is already aware, lies not in case law but in section 50 of the Criminal Justice and Police 2001 Act, see Appendix B at page 14. These are the "search and sift" powers which enable the seizure of property whose contents cannot be determined at once in order to decide whether either the property or its content may lawfully be seized under other powers.

106. Although section 50(1) is very clearly about the true "discovery" of something whilst a person is for example, engaged in executing a search warrant in respect of premises, it appears that section 50(2) is regarded by the law enforcement community as applying in relation to section 19 of PACE, so as to enable seizure of something that section 19 would cover, but for the thing being comprised in something else that the person concerned has no power to seize. Both section 50(1) and (2) use the word "finds". Thus, at least in section 50, it may well be that "finds" carries a broader meaning than "discovers".

107. Even if one interprets "finds" in section 48 in this broader sense, however, it does not assist the defendant, in the context of what happened at the relevant times at Tug Haven. As we have seen, Officer Wilson "found" KH's mobile telephone. Even if Officer Harwin can later be said to have "found" it, within the meaning of section 48(3), he did not do so in the course of exercising an immigration function; at least, not one to which our attention has been drawn. Although wide in scope, the words "in the course of exercising a function under the Immigration Acts" in section 48(3) cannot include the act of seizure under that provision. Otherwise, section 48(3) would amount to a free-standing power of seizure. Because of these words, section 48 is narrower in this regard than section 19 of PACE. A constable who is lawfully on premises has a power of seizure under section 19. An immigration officer only has the power under section 48 if the officer finds the thing in course of exercising a function under the Immigration Acts. The expression "the Immigration Acts" is defined by section 61 of the UK Borders Act 2007, Appendix B page 19. This lists the relevant statutes and the provision plainly means that the immigration officer must be exercising some function which is mandated by a statutory provision there referred to. Section 50(2) of the 2001 Act is drafted so as to confer precisely such a free-standing power. There is nothing comparable in section 48. Indeed, at page 25 of 33 of the defendant's General Instructions: Search and Seizure (version 3.0 16 December 2016), it is said of section 48 that "officers must be lawfully on the premises and **find the evidence in the course of exercising a function under the Immigration Acts.** This power does not entitle the officer to look for this evidence alone" (original emphasis). Although a "free-standing" interpretation of section 48 may, it seems, have been taken by the defendant's officers in the past, it rightly does not represent the defendant's current position.

Evidence and intelligence gathering

108. Before us, there was much debate as to whether, even if it were relevant, section 48 enables the defendant to seize mobile telephones for "intelligence" as opposed to "evidential" purposes. In view of our findings, it is unnecessary to address these submissions at any length. Section 48(3) is clear. The power of seizure applies only

where the officer has reasonable grounds for believing that the thing to be seized is evidence in relation to an offence; and that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

109. So far as concerns the offence of illegal entry, the judgments of the Court of Appeal in *Bani v R* [2021] EWCA Crim 1958 and *R v Kakei* [2021] EWCA Crim 503 are now relevant. In essence, an intention either to be intercepted during a journey across the English Channel by small boat or to arrive at a port in the United Kingdom in order to claim asylum will mean that the person concerned has not attempted to enter this country illegally. The offence may, however, be one of actual or attempted facilitation (by the person controlling the small boat). This is because section 48(3)(a) is not confined to an offence that may have been committed by the person whose property is being seized.

110. We agree with the defendant that there is no bright line that differentiates seeking or discovering evidence in relation to an offence from intelligence-gathering. As a general matter, the defendant's concern to obtain intelligence about the criminal gangs who are putting migrants' lives at risk by selling them places on small boats is not only entirely understandable but also likely to have a direct bearing on bringing members of those gangs to justice, whether in the United Kingdom or elsewhere. Material gathered as intelligence may well be evidence in relation to an offence as well. In these cases, it is likely that analysis of the mobile phones of migrants may show common numbers contacted shortly before the voyage. If all the migrants on a boat had been in contact with the same number shortly before the boat sailed, but not otherwise, and particularly if the migrants were not otherwise connected with each other, this would be intelligence which might lead to the arrest and prosecution of a people trafficker and would then become evidence in any such proceedings. Merely because an investigator chooses to describe material as "intelligence" does not mean that it is not capable of being "evidence" for the purpose of search and seizure powers.

111. No real purpose would be served by analysing the materials filed in these claims in order to determine whether, but for the blanket seizure policy, the defendant could, in any particular case, have established that the seizure of a mobile telephone was permitted under section 48(3)(a) or (b). Quite apart from our findings on the ambit of section 48, the admitted unlawfulness of the policy because of its blanket and secret nature makes such an exercise unnecessary.

E. Powers To 'Seize and Sift'

112. The claimants contend that, in any event, the actions of the defendant in retaining the claimant's mobile telephones for the purpose of ascertaining, at a later date and on download of the data from the phone, whether it contained evidence of any offences is what they describe as a "classic example" of so-called "seize and sift". Mr De La Mare and Mr Hickman say that no express statutory authorisation for seizing and sifting is contained in section 48 of the 2016 Act. The power in that section requires the immigration officer to have identified the evidence that is to be seized under section 48(3) and retained under section 48(7). Those provisions, the claimants say, do not confer an additional power to seize any device on which evidence might be held, for the purpose of sifting through it to see whether such evidence in fact exists. On the contrary, the claimants submit that it was the identification in *R v Chesterfield Justices Ex p Bramley* [2000] QB 576, of the lack of such a power in "ordinary" search and seizure cases which led to the enactment of Part 2 of the Criminal Justice and Police Act 2001.

113. Section 50(1) and (2) of the 2001 Act provide as follows:

> "50. Additional powers of seizure from premises
>
> (1) Where –
>
> (a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises,
>
> (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
>
> (c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—
>
> (i) whether what he has found is something that he is entitled to seize, or
>
> (ii) the extent to which what he has found contains something that he is entitled to seize,
>
> that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined.
>
> "Where—"
>
> (a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,
>
> (b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and
>
> (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,
>
> that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it."

114. Section 50(3) exhaustively defines the factors to be taken into account in considering whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, or as otherwise specified in that subsection.

115. Part 1 of Schedule 1 to the 2001 Act sets out powers in other enactments, to which section 50 applies. Paragraph 78 of Schedule 1 specifies the power of seizure conferred by section 28G(7) of the Immigration Act 1971 (seizure of evidence of offences under the Act etc).

116. Section 51 of the 2001 Act provides for additional powers of seizure from the person, in similar terms to that of section 50 in respect of premises. The following sections comprise a system of procedural requirements and safeguards. They include section 59, wherein any person with a relevant interest in seized property may apply to the appropriate judicial authority for return of the whole or part of the seized property.

117. In *R (A and Anor) v Central Criminal Court* [2017] 1 WLR 3567, the Divisional Court was concerned with warrants that purported to authorise the seizure of mobile phones and SIM cards but which specifically excluded the seizure and retention of items subject to legal privilege. The court held that a mobile phone was a single object or thing which could properly be the subject of a search warrant under PACE; and that this was so even where material subject to legal privilege might be found on the phone, provided that the wording of the warrant clearly excluded any such material from that which could be sought or seized. The operation of section 50 and following of the 2001 Act was not confined to legally privileged material encountered unexpectedly on the day of the search. Section 50(1) furnished the power of seizure to enable the removal of a phone or computer in cases where the sift for material which might be subject to legal privilege could not reasonably be conducted on the premises searched. The 2001 Act provided a regime for sifting to exclude legally privileged material and excluded material in such cases.

118. In *R (Business Energy Solutions Ltd and Others) v Crown Court at Preston* [2018] 1 WLR 4887, the Divisional Court held that the provisions of the 2001 Act were to be construed purposively. Taking a copy was a "seizure" of property within the meaning of Part 2 of the Act. Although the law treated a computer or mobile telephone as a single item, it did so only until the point when it was interrogated and a copy of the document contained therein had been made. At that point, the copy, whether it was being transferred onto a server or drive of the seizing party or turned into a hardcopy, existed independently of the computer drive from where it had come. The 2001 Act accordingly created new property, which was property seized from the original owner and therefore capable of being subject to the statutory duty to return "seized property". In this context, the concept of "return" included within it the idea that no trace or residue of the returned data was to be left with the authority which had seized the device.

119. For the purposes of Part 2, what was "reasonably practicable" involved a consideration of more than that which was merely possible. Something may be possible but not, necessarily, practicable.

120. In *R v Bater-James* [2021] 1 WLR 725, the Court of Appeal gave guidance concerning the personal records of a witness in a criminal case. If it was necessary to look at the witness's digital device, the authority should ask whether it was sufficient simply to view limited areas and whether this could be done without taking possession of, or copying, the device. If a more extensive enquiry was necessary, downloading the contents of the device with minimum inconvenience to the witness, and, if possible, returning it without any unnecessary delay should take place.

121. In *R (Cabot Global Ltd and Others) v Barkingside Magistrates Court* [2015] 2 Cr App R 26, the magistrates' court granted search warrants that authorised the police to enter premises to search for computer equipment, mobile phones and cash representing the proceeds of criminal activity. The search warrants were executed, and the police removed a number of items from the premises searched. The claimants contended that, so far as the computers and mobile phones were concerned, the police should have relied on sections 19 or 20 of PACE, or on section 50 of the 2001 Act, and should therefore not have sought to remove the computers or mobile phones but instead should have requested copies of particular documents or information contained in them.

122. The Divisional Court dismissed the application. The term "material" in section 8 of PACE had been accorded a broad meaning and was capable of covering a computer and its hard disk. Accordingly, a warrant could properly authorise the seizure of computers or hard disks, if there were reasonable grounds to believe that they contained incriminating material, even though they might also contain irrelevant material.

123. Fulford LJ held:

> "41. The arguments concerning sections 19 and 20 of the Police and Criminal Evidence Act 1984 and section 50 Criminal Justice and Police Act 2001 are equally misconceived. These sections are concerned not with powers of search but instead with powers of seizure, and there is no sustainable basis for the suggestion that the police were obliged to resort to section 19(4), section 20 or section 50.
>
> 43. Section 50 enables a person who is already lawfully on premises and to whom a power of seizure applies, to seize the whole or part of a suspect item so as to remove it from the premises for the purpose of determining whether it falls within the power of seizure. In my judgment, the existence of this provision does not render the seizure of computers or mobile telephones under section 8 Police and Criminal Evidence Act 1984 unlawful: the additional power of seizure from premises under section 50 does not invalidate the act of taking devices of this kind under a warrant issued under section 8 if there are reasonable grounds for believing that they may contain relevant evidence, albeit that they might also contain irrelevant material."

124. As its side note indicates, section 50 comprises an "additional" power of seizure from premises, while section 51 comprises an "additional" power of seizure from the person. The defendant's Immigration Enforcement: Digital Device Extraction Policy (version 1.0: 7 July 2021) explains that section 50 "allows you to seize items and sift through them elsewhere".

125. Although one of the reasons for invoking section 50 may be the difficulty of determining, whilst on the premises, whether the material is exempt from seizure by reason of legal privilege, section 50 is of wider application, as subsections (1) and (2) make plain. So too is section 50(3), which speaks in general terms about ascertaining the reasonable practicability "on particular premises for something to be determined".

126. Sir James Eadie submits that the fact an electronic device may or is likely to contain irrelevant material does not preclude its lawful seizure. He relies on Cabot Global where, at paragraph 38, Fulford LJ held that:

> "… the fact that there may also be material that is irrelevant does not make the computer any less material which is likely to be of substantial value to the investigation, as well as likely to be relevant evidence".

127. Sir James submits that where there are reasonable grounds for considering that a mobile phone is evidence of an offence, then it is the phone (as opposed to its contents) which is seizable under section 19 of PACE. The same must apply to section 48 of the 2016 Act. In the absence of reasonable grounds for considering that the phone might contain legally privileged material, there is no obligation on the defendant to exercise the powers under section 50 and 51 of the 2001 Act in order to carry out a subsequent forensic investigation of the phone. If the position were otherwise, then every computer, mobile phone and other similar device which could not be forensically examined on the relevant premises would need to be seized under sections 50 and 51. In fact, however, mobile phones are routinely seized under section 19 of PACE where there are no grounds for considering that they contain privileged or other excluded material.

Decision on "search and sift"

128. Whilst acknowledging that the power of search and seizure conferred by section 8 of PACE differs from that in section 48, in that section 8 involves judicial authorisation in the form of a search warrant, we consider that the submissions of the defendant on this issue are compelling. Once one accepts the proposition that a mobile phone is a single item; and that it may itself be evidence in relation to an offence (albeit that it contains other material) then section 48(3) may be invoked in order to seize the mobile phone. Despite what we have held to be the meaning of the first 21 words of that subsection, there is nothing ambiguous about the rest of it.

129. The qualification in section 48(6) concerning items that the immigration officer has reasonable grounds for believing to be subject to legal privilege will apply. Mr De La Mare suggests that an officer would not know whether a mobile phone contained communications between its owner and, say, a solicitor. That may be so; but it does not take the claimants any relevant distance. It will be for the officer, in a particular case, to consider in good faith whether such reasonable grounds exist.

130. Mr De La Mare submits that section 48(7) does not bear comparison with section 50 and that, in any event, the defendant cannot not rely upon the ability to retain a mobile phone "for forensic examination or for investigation in connection with an offence", so as to retain the phone for the purposes of interrogating its data.

131. In this regard, Mr De La Mare points to the fact that section 50 etc of the 2001 Act is applied by paragraph 78 of Schedule 1 to the power in section 28G(7) of the Immigration Act 1971. Section 28G, however, is a provision to which section 28ZI of the Immigration Act 1971 applies. Section 28ZI(2) contains provisions corresponding to those in section 48(7), including that as to forensic examination. According to Mr De La Mare, the fact that section 50 nevertheless applies to section 28G must, therefore, mean that section 48(7) does not confer the powers that the defendant says it does.

132. In other words, with the advent of section 28ZI, there would have been no need for paragraph 78 of Schedule 1 to the 2001 Act to continue to specify section 28G as a provision to which section 50 etc applies. The fact that paragraph 78 continues to specify section 28G must therefore mean that section 28ZI does not confer "search and sift" powers. Given the common language of section 28ZI and section 48, this means that section 48 does not confer such powers either.

133. We do not accept this submission. It would require far more than this to displace the plain words of section 48(7). Section 28ZI was inserted by the 2016 Act and applies not just to section 28G but also to the other powers contained in Part 3 of the Immigration Act 1971. The continuing existence of paragraph 78 cannot be regarded as shedding any light on the scope of section 48(7).

134. We also agree with the defendant's submission that, when read together, section 48(7) and section 49(1) strongly suggest that Parliament envisaged section 48 would be used to remove digital devices such as mobile phones and laptops, for examination off-site.

H. ECHR Article 8

135. The defendant has made concessions in respect of the ECHR. She accepts that the blanket seizure policy meant that, during the times in question, the seizure of the mobile phones of the claimants was not in accordance with the law. Accordingly, the seizure and retention of the claimants' mobile phones violated the claimants' Article 8 rights because the interference with those rights cannot be justified in terms of Article 8(2). In view of our findings regarding the ambit of section 48, it follows that the defendant breached the claimants' Article 8 rights, for the additional reason that the defendant could not, in any event, rely on section 48 to authorise seizure. Further, given our finding at paragraph [55] above that the defendant's officers did not apply their minds to the requirements of paragraph 25B of the Immigration Act 1971, the searches and seizures were not in accordance with the law for this additional reason, with the same consequences for Article 8 as just described. Finally, the obtaining of access to private material by demanding the PIN numbers of phones without any lawful authority and using a threat of prosecution for a non-existent offence to enforce the demand was a further clear intrusion into the Article 8 rights of the claimants. The Article 8 claims are fully addressed by the concessions and the findings we have made above, and there is no purpose to be served in considering any further issues there may be between the parties under this heading.

I: The balance of the claims (Data Protection)

136. At paragraph [9] above, we indicated that we do not intend to resolve these arguments. We heard careful and helpful submissions from Mr. Hickman QC and Mr. Payne QC about them, but at that stage we had not considered the consequences of the self-referral by the defendant to the Information Commissioner's Office.

137. We consider that such issues as remain in this regard should be determined if they arise in a case in which their resolution is necessary.

138. At the hearing of these claims the court ordered disclosure of a "self-referral" by the defendant to the Information Commissioner's Office on 8 July 2021. This has provoked further controversy (in post-hearing communications from the claimants: 2

and 25 February; and the defendant: 15 February), which primarily relates to further suggested breaches of the duty of candour and what remedies should be granted to these claimants. It provides strong evidence to show that the concessions of breaches of the Data Protection Act which were made very soon after the self-referral were well-founded.

139. It appears to us that the Information Commissioner is well placed to investigate the matters which arise from the Data Protection Act breaches, both in respect of the risk to those whose data has been illegally treated in the past, and in respect of present policies which post-date the claims of the claimants. In these circumstances, we do not consider that there is anything to be gained from determining the competing arguments we received in this area of the case.

J. Conclusion

140. For these reasons, these claims succeed to the extent indicated above. We direct that there shall be a further hearing at which we will decide what orders should be made in consequence of that success, and also will hear submissions on the duty of candour question and decide what should be said or done about that. The parties should agree a date for that hearing with the Administrative Court Office and give an estimate of length. They should also attempt to agree an order for directions. If they cannot, a single document should be submitted which sets out the areas of agreement and disagreement about the necessary directions.

APPENDIX A

GLOSSARY

1 The Home Office is made up of four separate commands in this area of its work: Her Majesty's Passport Office; the United Kingdom Visas and Immigration Service; Immigration Enforcement and Border Force.

Home Office Departments and Units

2 **Border Force** ("**BF**"), "*secures the UK border by conducting immigration and customs controls on people and goods entering or leaving the UK. They have no investigation capability and refer potential cases to other agencies to progress.*" BF comprise non- PACE trained officers. BF vessels are usually the first response, sometimes supported by the Royal National Lifeboat Institution, to intercept and rescue a migrant vessel and ensure their safe and secure passage to the nearest UK port that can accept them (in virtually all cases this is Dover Western Docks, Tug Haven).

3 **Immigration Enforcement** ("**IE**") was set up in 2012 and is responsible for enforcing immigration rules and for investigating those who disregard or breach them.[5] IE includes the following three directorates:[6]

(1) **Criminal and Financial Investigation** ("**CFI**") is the IE competent investigative resource and is responsible for investigating all forms of criminal immigration matters and conspiracy to commit such acts using Immigration Act and PACE powers.[7] It is a national command of about 460 officers tasked with investigating immigration crime. CFI officers have powers under PACE and is made up of immigration officers and seconded officers from forces around the UK. CFI also has access to a Forensics Management Unit, which was created in 2018, with the aim of centralising all forensic submissions[8] and a Cyber and Digital Capabilities Team.[9] It continued to take a lead on phone seizures as at December 2020. Within CFI is:

(a) the **Clandestine Investigation Brigade** ("**CIB**"), which is charged with investigating criminal offences arising from, and related to, small boat crossings;[10] and

(b) the **Clandestine Channel Threat Command** ("**CCTC**") which was set up in May 2020 and coordinates the cross-government response to small boat arrivals to the UK.[11]

(2) **Immigration Compliance and Enforcement** ("**ICE**") **2**deals with identifying illegal immigrants, overstayers and is concerned with removals and deportations.

(3) **Immigration Intelligence** ("**II**") is responsible for the acquisition, enrichment, analysis and development of intelligence.

4 **The Joint Debriefing Team** ("**JDT**") was set up in October 2015 by the Organised Crime Taskforce and its officers come from IE, BF, Kent Police and it "*receives tasking from the NCA Invigor Hub*".[12] All JDT officers are warranted Immigration Officers or police on secondment.[13] JDT is primarily tasked with carrying out the 'de-briefing' of migrants upon arrival in the UK. Pursuant to an Instruction from July 2019, JDT officers may seize mobile phones.[14] Until around June 2020, the JDT (like the CFI) had access to the KIOSK system (described below) and was therefore able to conduct data extraction. The extraction process was, however, primarily conducted by the CFI (and exclusively so from around June 2020).

5 **The Clandestine Operational Response Team** ("**CORT**") was formed in May 2020 and comprises staff from BF and IE. CORT effectively acts as a 'first responder' for new migrant arrivals. Whereas it was initially envisaged that CORT would have a more general role in clandestine arrivals (including, for example, arrivals by road vehicle), the escalating nature of the small boat crisis has resulted in CORT's role being almost exclusively concerned with small boat arrivals. CORT is tasked with ensuring the health and safety of new arrivals, including the provision of food and clothing. CORT officers, on occasion, assist with seizure of mobile phones and conduct searches under para 25B of Schedule 2 to the IA 1971 (but not extraction). CORT officers are not PACE trained staff.[15]

6 **The Rapid Response Team** ("**RRT**") was formed in Spring 2020 (shortly after the creation of CORT) to assist with small boat arrivals.[16] The RRT is a flexible resource, primarily comprised of 'first responders', who can be deployed nationally. The RRT is primarily comprised of ICE officers. All members of the RRT are warranted investigating officers, authorised to use s.48 of the IA 2016.[17] Like the CORT, the RRT has been almost exclusively been tasked with working at the Tug Haven. Since its formation, the RRT has worked cooperatively and largely interchangeably with the CORT staff (albeit effectively under their command) and like the CORT staff, therefore, has been involved in the seizure of (but not extraction from) phones. From about April 2020, the RRT (as opposed to the JDT and CFI) carried out the majority of seizures of phones from migrants arriving in small boats.

APPENDIX B

LEGISLATION

APPENDIX B

Only relevant parts of the legislation are set out here

Immigration Act 1971

4. Administration of control

(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions) [or to cancel any leave under section 3C(3A)] , shall be exercised by the Secretary of State; and, unless otherwise [allowed by or under] this Act, those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by order made by statutory instrument.

(2) The provisions of Schedule 2 to this Act shall have effect with respect to—

(a) the appointment and powers of immigration officers and medical inspectors for purposes of this Act;

(b) the examination of persons arriving in or leaving the United Kingdom by ship or aircraft . . . and the special powers exercisable in the case of those who arrive as, or with a view to becoming, members of the crews of ships and aircraft; and

(c) the exercise by immigration officers of their powers in relation to entry into the United Kingdom, and the removal from the United Kingdom of persons refused leave to enter or entering or remaining unlawfully; and

(d) the detention of persons pending examination or pending removal from the United Kingdom;

and for other purposes supplementary to the foregoing provisions of this Act.

24. Illegal entry and similar offences

(1) A person who is not [a British citizen] shall be guilty of an offence punishable on summary conviction with a fine of not more than [level 5 on the standard scale] or with imprisonment for not more than six months, or with both, in any of the following cases:—

(a) if contrary to this Act he knowingly enters the United Kingdom in breach of a deportation order or without leave;

(b) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly either—

(i) remains beyond the time limited by the leave; or

(ii) fails to observe a condition of the leave;

(c) if, having lawfully entered the United Kingdom without leave by virtue of section 8(1) above, he remains without leave beyond the time allowed by section 8(1);

(d) if, without reasonable excuse, he fails to comply with any requirement imposed on him under Schedule 2 to this Act to report to [a medical officer of health][the chief administrative medical officer of a Health Board][or the chief administrative medical officer of a Health and Social Services Board], or to attend, or submit to a test or examination, as required by such an officer;

(e) . . .

(f) if he disembarks in the United Kingdom from a ship or aircraft after being placed on board under Schedule 2 or 3 to this Act with a view to his removal from the United Kingdom;

(g) if he embarks in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act;

(h) if the person is on immigration bail within the meaning of Schedule 10 to the Immigration Act 2016 and, without reasonable excuse, the person breaches a bail condition within the meaning of that Schedule.

25. Assisting unlawful immigration to member State [or the United Kingdom]

(1) A person commits an offence if he—

(a) does an act which facilitates the commission of a breach [or attempted breach] of immigration law by an individual who is not [a national of the United Kingdom],

(b) knows or has reasonable cause for believing that the act facilitates the commission of a breach [or attempted breach] of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not [a national of the United Kingdom].

(2) In subsection (1) "immigration law" means a law which has effect in a member State [or the United Kingdom] and which controls, in respect of some or all persons who are not nationals of the State [or, as the case may be, of the United Kingdom], entitlement to—

(a) enter the State [or the United Kingdom],

(b) transit across the State [or the United Kingdom], or

(c) be in the State [or the United Kingdom].

(2A) In subsections (1) and (2), "national of the United Kingdom" means—

(a) a British citizen;

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom; or

(b) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

……..

25A. Helping asylum-seeker to enter United Kingdom

(1) A person commits an offence if—

(a) he knowingly and for gain facilitates the arrival [or attempted arrival] in [or the entry [or attempted entry] into,] the United Kingdom of an individual, and

(b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.

(2) In this section "asylum-seeker" means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under—

(a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or

(b) the Human Rights Convention (within the meaning given by that section).

28G Searching arrested persons.

(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

……

28ZI Retention of seized material

(1) This section applies to anything seized by an immigration officer under this Part for the purposes of the investigation of an offence or on the basis that it may be evidence relating to an offence.

(2) Anything seized as mentioned in subsection (1) may be retained so long as is necessary in all the circumstances and in particular—

(a) may be retained, except as provided for by subsection (3)—

(i) for use as evidence at a trial for an offence, or

(ii) for forensic examination or for investigation in connection with an offence, and

(b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing may be retained for a purpose mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

Schedule 2 to the Immigration Act 1971

2.(1) An immigration officer may examine any persons who have arrived in the United Kingdom by ship [or aircraft] (including transit passengers, members of the crew and others not seeking to enter the United Kingdom) for the purpose of determining—

(a) whether any of them is or is not [a British citizen]; and

(b) whether, if he is not, he may or may not enter the United Kingdom without leave; and

(c) whether, if he may not—

(i) he has been given leave which is still in force,

(ii) he should be given leave and for what period or on what conditions (if any), or

(iii) he should be refused leave; and

(d) whether, if he has been given leave which is still in force, his leave should be curtailed.

……..

16.— (1) A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.

……

17.— (1) A person liable to be detained under paragraph 16 above may be arrested without warrant by a constable or by an immigration officer.

……….

25A (1) This paragraph applies if—

(a) a person is arrested under this Schedule; or

(b) a person who was arrested [other than under this Schedule] is detained by an immigration officer under this Schedule.

(2) An immigration officer may enter and search any premises—

(a) occupied or controlled by the arrested person, or

(b) in which that person was when he was arrested, or immediately before he was arrested,

for relevant documents.

(3) The power may be exercised—

(a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;

(b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and

(c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.

(4) ……

25B. (1) This paragraph applies if a person is arrested under this Schedule.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for—

(a) anything which he might use to assist his escape from lawful custody; or

(b) any document which might—

(i) establish his identity, nationality or citizenship; or

(ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.

(4) The power conferred by sub-paragraph (3) may be exercised—

(a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and

(b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.

(8A) Sub-paragraph (8B) applies where—

(a) an officer is searching a person under this paragraph, and

(b) any document the officer has reasonable grounds for believing is a document within sub-paragraph (3)(b) is stored in any electronic form on a device or medium found on the person.

(8B) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(8C) If a requirement under sub-paragraph (8B) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the officer may seize the device or medium on which it is stored.

(8D) Sub-paragraphs (8B) and (8C) do not apply to a document which the officer has reasonable grounds for believing is an item subject to legal privilege.

(9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—

(a) is no longer in custody, or

(b) is in the custody of a court but has been released on bail.

POLICE AND CRIMINAL EVIDENCE ACT 1984

19. General power of seizure etc.

(1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The constable may require any information which is [stored in any electronic form] and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible [or from which it can readily be produced in a visible and legible form] if he has reasonable grounds for believing—

(a) that—

(i) it is evidence in relation to an offence which he is investigating or any other offence; or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

23. Meaning of "premises" etc.

In this Act—

"premises" includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation;

(ba) any renewable energy installation;

(c) any tent or movable structure; . . .

HUMAN RIGHTS ACT 1998

3. Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

CRIMINAL JUSTICE AND POLICE ACT 2001

50. Additional powers of seizure from premises

(1) Where—

(a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises,

(b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and

(c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—

(i) whether what he has found is something that he is entitled to seize, or

(ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined.

(2) Where—

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation—

(i) would be likely, or

(ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (powers of seizure not to include power to seize anything that a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).

(5) This section applies to each of the powers of seizure specified in Part 1 of Schedule 1.

(6) Without prejudice to any power conferred by this section to take a copy of any document, nothing in this section, so far as it has effect by reference to the power to take copies of documents under section 28(2)(b) of the Competition Act 1998 (c. 41), shall be taken to confer any power to seize any document.

51. Additional powers of seizure from the person

(1) Where—

(a) a person carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search,

(b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and

(c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search—

(i) whether what he has found is something that he is entitled to seize, or

(ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from that place to enable that to be determined.

(2) Where—

(a) a person carrying out a lawful search of any person finds something ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following—

(a) how long it would take to carry out the determination or separation at that time and place;

(b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;

(c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation—

(i) would be likely, or

(ii) if carried out by the only means that are reasonably practicable at that time and place, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (powers of seizure not to include power to seize anything a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).

(5) This section applies to each of the powers of seizure specified in Part 2 of Schedule 1.

SCHEDULE 1

Police and Criminal Evidence Act 1984 (c. 60)

1. Each of the powers of seizure conferred by the provisions of Part 2 or 3 of the 1984 Act (police powers of entry, search and seizure).

Immigration Act 1971 (c. 77)

78. The power of seizure conferred by section 28G(7) of the Immigration Act 1971 (seizure of evidence of offences under that Act etc.).

UK BORDERS ACT 2007

61. Citation

(2) A reference (in any enactment, including one passed or made before this Act) to "the Immigration Acts" is to—

(a) the Immigration Act 1971 (c. 77),

(b) the Immigration Act 1988 (c. 14),

(c) the Asylum and Immigration Appeals Act 1993 (c. 23),

(d) the Asylum and Immigration Act 1996 (c. 49),

(e) the Immigration and Asylum Act 1999 (c. 33),

(f) the Nationality, Immigration and Asylum Act 2002 (c. 41),

(g) the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19),

(h) the Immigration, Asylum and Nationality Act 2006 (c. 13), ...

(i) this Act ...

(j) the Immigration Act 2014 ...

(k) the Immigration Act 2016, and

(l) Part 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (and Part 3 so far as relating to that Part).

IMMIGRATION ACT 2016: Part 3

48. Seizure and retention in relation to offences

(1) This section applies if an immigration officer is lawfully on any premises.

(2) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—

(a) that it is evidence in relation to an offence, and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The immigration officer may require any information which is stored in any electronic form and is accessible from the premises to be produced if the officer has reasonable grounds for believing—

(a) that—

(i) it is evidence in relation to an offence, or

(ii) it has been obtained in consequence of the commission of an offence, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The reference in subsection (4) to information which is stored in any electronic form being produced is to such information being produced in a form—

(a) in which it can be taken away, and

(b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) This section does not authorise an immigration officer to seize an item which the officer has reasonable grounds for believing is an item subject to legal privilege.

(7) Anything seized by an immigration officer under this section which relates to an immigration offence may be retained so long as is necessary in all the circumstances and in particular—

(a) may be retained, except as provided for by subsection (8)—

(i) for use as evidence at a trial for an offence, or

(ii) for forensic examination or for investigation in connection with an offence, and

(b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(8) Nothing may be retained for a purpose mentioned in subsection (7)(a) if a photograph or copy would be sufficient for that purpose.

(9) Section 28I of the Immigration Act 1971 (seized material: access and copying) applies to anything seized and retained under this section which relates to an immigration offence as it applies to anything seized and retained by an immigration officer under Part 3 of that Act.

(10) This section does not apply in relation to anything which may be seized by an immigration officer under—

(a) section 19 of the Police and Criminal Evidence Act 1984 as applied by an order under section 23 of the Borders, Citizenship and Immigration Act 2009, or

(b) Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12) as applied by that section.

(11) In this section and section 49 "immigration offence" means an offence which relates to an immigration or nationality matter.

49. Duty to pass on items seized under section 48

(1) This section applies if an immigration officer exercises—

(a) the power under section 48 to seize or take away an item on the basis that the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence other than an immigration offence (a "relevant offence"), or

(b) a power to that effect in Part 3 of the Immigration Act 1971 as applied by section 14(3) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

(2) Subject to subsection (3), the immigration officer must, as soon as is reasonably practicable after the power is exercised, notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

(3) If the immigration officer has reasonable grounds for believing that the item referred to in subsection (1) has also been obtained in consequence of the commission of, or is evidence in relation to, an immigration offence, the immigration officer may notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

……..

58. Interpretation of Part

(2) In this Part "premises" and "item subject to legal privilege" have the same meaning—

(a) in relation to England and Wales, as in the Police and Criminal Evidence Act 1984;

……..

DATA PROTECTION ACT 2018

32. Meaning of "controller" and "processor"

(1) In this Part, "controller" means the competent authority which, alone or jointly with others—

(a) determines the purposes and means of the processing of personal data, or

(b) is the controller by virtue of subsection (2).

(2) Where personal data is processed only—

(a) for purposes for which it is required by an enactment to be processed, and

(b) by means by which it is required by an enactment to be processed,

the competent authority on which the obligation to process the data is imposed by the enactment (or, if different, one of the enactments) is the controller.

(3) In this Part, "processor" means any person who processes personal data on behalf of the controller (other than a person who is an employee of the controller).

34. Overview and general duty of controller

(1) This Chapter sets out the six data protection principles as follows—

(a) section 35(1) sets out the first data protection principle (requirement that processing be lawful and fair);

(b) section 36(1) sets out the second data protection principle (requirement that purposes of processing be specified, explicit and legitimate);

(c) section 37 sets out the third data protection principle (requirement that personal data be adequate, relevant and not excessive);

(d) section 38(1) sets out the fourth data protection principle (requirement that personal data be accurate and kept up to date);

(e) section 39(1) sets out the fifth data protection principle (requirement that personal data be kept for no longer than is necessary);

(f) section 40 sets out the sixth data protection principle (requirement that personal data be processed in a secure manner).

(2) In addition—

(a) each of sections 35, 36, 38 and 39 makes provision to supplement the principle to which it relates, and

(b) sections 41 and 42 make provision about the safeguards that apply in relation to certain types of processing.

(3) The controller in relation to personal data is responsible for, and must be able to demonstrate, compliance with this Chapter.

35. The first data protection principle

(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.

(2) The processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law and either—

(a) the data subject has given consent to the processing for that purpose, or

(b) the processing is necessary for the performance of a task carried out for that purpose by a competent authority.

(3) In addition, where the processing for any of the law enforcement purposes is sensitive processing, the processing is permitted only in the two cases set out in subsections (4) and (5).

(4) The first case is where—

(a) the data subject has given consent to the processing for the law enforcement purpose as mentioned in subsection (2)(a), and

(b) at the time when the processing is carried out, the controller has an appropriate policy document in place (see section 42).

(5) The second case is where—

(a) the processing is strictly necessary for the law enforcement purpose,

(b) the processing meets at least one of the conditions in Schedule 8, and

(c) at the time when the processing is carried out, the controller has an appropriate policy document in place (see section 42).

(6) The Secretary of State may by regulations amend Schedule 8—

(a) by adding conditions;

(b) by omitting conditions added by regulations under paragraph (a).

(7) Regulations under subsection (6) are subject to the affirmative resolution procedure.

(8) In this section, "sensitive processing" means—

(a) the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;

(b) the processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual;

(c) the processing of data concerning health;

(d) the processing of data concerning an individual's sex life or sexual orientation.

36. The second data protection principle

(1) The second data protection principle is that—

(a) the law enforcement purpose for which personal data is collected on any occasion must be specified, explicit and legitimate, and

(b) personal data so collected must not be processed in a manner that is incompatible with the purpose for which it was collected.

(2) Paragraph (b) of the second data protection principle is subject to subsections (3) and (4).

(3) Personal data collected for a law enforcement purpose may be processed for any other law enforcement purpose (whether by the controller that collected the data or by another controller) provided that—

(a) the controller is authorised by law to process the data for the other purpose, and

(b) the processing is necessary and proportionate to that other purpose.

(4) Personal data collected for any of the law enforcement purposes may not be processed for a purpose that is not a law enforcement purpose unless the processing is authorised by law.

37. The third data protection principle

The third data protection principle is that personal data processed for any of the law enforcement purposes must be adequate, relevant and not excessive in relation to the purpose for which it is processed.

38. The fourth data protection principle

(1) The fourth data protection principle is that—

(a) personal data processed for any of the law enforcement purposes must be accurate and, where necessary, kept up to date, and

(b) every reasonable step must be taken to ensure that personal data that is inaccurate, having regard to the law enforcement purpose for which it is processed, is erased or rectified without delay.

(2) In processing personal data for any of the law enforcement purposes, personal data based on facts must, so far as possible, be distinguished from personal data based on personal assessments.

(3) In processing personal data for any of the law enforcement purposes, a clear distinction must, where relevant and as far as possible, be made between personal data relating to different categories of data subject, such as—

(a) persons suspected of having committed or being about to commit a criminal offence;

(b) persons convicted of a criminal offence;

(c) persons who are or may be victims of a criminal offence;

(d) witnesses or other persons with information about offences.

(4) All reasonable steps must be taken to ensure that personal data which is inaccurate, incomplete or no longer up to date is not transmitted or made available for any of the law enforcement purposes.

(5) For that purpose—

(a) the quality of personal data must be verified before it is transmitted or made available,

(b) in all transmissions of personal data, the necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of the data and the extent to which it is up to date must be included, and

(c) if, after personal data has been transmitted, it emerges that the data was incorrect or that the transmission was unlawful, the recipient must be notified without delay.

39. The fifth data protection principle

(1) The fifth data protection principle is that personal data processed for any of the law enforcement purposes must be kept for no longer than is necessary for the purpose for which it is processed.

(2) Appropriate time limits must be established for the periodic review of the need for the continued storage of personal data for any of the law enforcement purposes.

40. The sixth data protection principle

The sixth data protection principle is that personal data processed for any of the law enforcement purposes must be so processed in a manner that ensures appropriate security of the personal data, using appropriate technical or organisational measures (and, in this principle, "appropriate security" includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage).