Neutral Citation Number: [2024] EWHC 2859 (Admin)

Case No: AC-2024-LDS-000031

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

Tuesday, 12th November 2024

Before:
FORDHAM J

- -

Between:
CHIEF CONSTABLE OF HUMBERSIDE POLICE

Appellant

-and-

KELLY MORGAN

Respondent

- -
- -

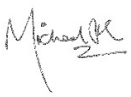
John-Paul Waite and **Conor Monighan** (instructed by Humberside Police) for the **Appellant**
Oliver Shipley (instructed by John Robinson & Co) for the **Respondent**

- -

Hearing date: 3.10.24
Further submissions: 18.10.24
Draft judgment: 4.11.24

- -

Approved Judgment



- -

FORDHAM J

This Judgment was handed down remotely at 10am on Tuesday 12 November 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

FORDHAM J:

Introduction

1. This case is about whether a "Closure Order" made by a magistrates' court under s.80 of the Anti-Social Behaviour, Crime and Policing Act 2014 can be suspended by the magistrates' court, pending the determination by the crown court of a statutory appeal pursuant to s.84. There are related questions about Article 6 ECHR rights and the jurisdiction of the crown court and High Court.

2. The premises in question are a council house occupied by Kelly Morgan and her daughters. The applicant for the Closure Order was the Humberside Chief Constable. Ms Morgan and the Chief Constable are the parties to this appeal. The Closure Order was made by District Judge Daley sitting at Hull Magistrates' Court, being satisfied that the s.80 "Statutory Necessity Criteria" (as I will call them) were met and a 3 month Closure Order was necessary. What happened next was that Ms Morgan's representatives asked the Judge to suspend the Closure Order pending her s.84 appeal to the crown court against the Closure Order. The Judge decided there was power to do that under s.63(2) of the Magistrates' Courts Act 1980, and that it was appropriate to exercise that power. Based on what he was told he was concerned that – absent such a suspension – an eviction of the family on "absolute" grounds could become "irreversible" before the crown court appeal had been determined. That has proved to be wrong, and Parliament had addressed it by means of a suspensive protection in the 2014 Act.

3. Closure Orders are short-term orders governed by Part 4 Chapter 3 of the 2014 Act. They are made by magistrates (s.80) on the prompt application by a police force or local authority who has first issued a "Closure Notice" (s.76). They sit on a site of legal archaeological interest. In the ten years before the 2014 Act there were similar statutory provisions about closing so-called "crackhouse" premises associated with Class A drug use. That was Part 1 of the Anti-Social Behaviour Act 2003, discussed in Metropolitan Police Commissioner v Hooper [2005] EWHC 199 (Admin) [2005] 1 WLR 1995 at §8. Part 1A was then added in 2008, in relation to premises associated with persistent disorder or persistent serious nuisance, discussed in R (Byrne) v Metropolitan Police Commissioner [2010] EWHC 3656 (Admin) at §5.

4. Here is an overview of the case-law which applies to Closure Orders under Part 4 Chapter 3 of the 2014 Act and its predecessor species in the 2003 Act. Hooper and the sequel case of R (Turner) v Highbury Corner Magistrates' Court [2005] EWHC 2568 (Admin) [2006] 1 WLR 220 decided that the magistrates' court – in order to secure Article 6 fair hearing rights and in the interests of justice – could adjourn beyond the statutorily-prescribed 14-day period, invoking the power in s.54 of the 1980 Act and with the consequence that the Closure Notice lapsed. R (Taylor) v Metropolitan Police Commissioner [2009] EWHC 264 (Admin) decided that the costs power in s.64 of the 1980 Act was applicable. Three cases – Byrne, the predecessor case of R (Errington) v Metropolitan Police Authority [2006] EWHC 1155 (Admin) (2007) 171 JP 89, and the successor case under the 2014 Act of R (Qin) v Metropolitan Police Commissioner [2017] EWHC 2750 (Admin) [2018] PTSR 966 – all decided that public law collateral challenges to a closure notice did not preclude or vitiate a closure order. R (Cleary) v Highbury Magistrates' Court [2006] EWHC 1869 (Admin) [2007] 1 WLR 1272 explained how hearsay and disclosure issues were to be approached to achieve both

expedition and Article 6 compatibility. R (Leary) v West Midlands Chief Constable [2012] EWHC 639 (Admin) decided that Article 8-compatibility of a closure order did not require the demonstrated unavailability of less draconian alternative measures. Crocker v Devon and Cornwall Police [2020] EWHC 2838 (Admin) [2021] 1 WLR 569, a 2014 Act case about appeal time limits, decided that s.84(5) of the 2014 Act is to be read alongside Crown Court Rules r.7(5), and allows the statutory 21-day time limit for appeal to be extended. That reversed the position found in Hampshire Police v Smith [2009] EWHC 174 (Admin) [2010] 1 WLR 40 which had decided the opposite, on the differently-worded statutory 21-day time limit in s.6(2) of the 2003 Act. Hooper, Turner, Taylor and Crocker all support the view that Part 4 Chapter 3 of the 2014 Act is not a self-contained code. The Judge was right on that point.

5. Closure Orders sit within a wider legal landscape. They are one species of protective civil measure, attracting rights of statutory appeal or statutory review. In the 2014 Act itself, examples of other species include the following: anti-social behaviour injunctions made by courts (ss.1-21); community protection notices (CPNs) issued by the police and local authorities (ss.43-58); and public spaces protection orders (PSPOs) made by local authorities (ss.59-75). Anyone who consults the chapter on "preventive and closure orders" in Archbold's Magistrates Courts Criminal Procedure will find many civil orders, governed by other enactments, which like Closure Orders are appealable to the crown court. There are sexual risk orders (appealable under s.122G of the Sexual Offences Act 2003); stalking protection orders (appealable under s.7 of the Stalking Protection Act 2019); knife crime prevention orders (appealable under s.28 of the Offensive Weapons Act 2019); domestic abuse protection orders (appealable under ss.46-47 of the Domestic Abuse Act 2021); closure orders relating to unlicensed premises (appealable under s.24 of the Criminal Justice and Police Act 2001); and closure orders relating to premises associated with sexual offences (appealable under s.136K of the Sexual Offences Act 2003).

6. The case comes before me as an appeal by the Chief Constable by way of case stated. Such appeals are governed by s.111 of the 1980 Act, Part 35 of the Criminal Procedure Rules (CrimPR) and Part 52 of the Civil Procedure Rules (CPR). Under s.111(1), the Chief Constable is a person aggrieved by the Judge's order suspending the Closure Order pending appeal. My function is to consider whether the Judge was wrong in law or acted in excess of jurisdiction. In the Stated Case, the Judge has identified three questions for the High Court's opinion. To understand the Judge's reference in (Q2) to "the statutory purpose", see §38 below. Here are the three questions:

> ***(Q1) Does s.63(2) of the 1980 Act empower magistrates' courts to suspend a Closure Order pending an appeal to the crown court?***
>
> ***(Q2) If the answer to (Q1) is yes, in what circumstances should the power be exercised, taking into account the statutory purpose of Part 4 Chapter 3 of the 2014 Act?***
>
> ***(Q3) Was the power lawfully exercised in this case?***

For reasons which I will explain, my answers will be as follows. (A1): "No". (A2): "Does not arise". (A3): "Does not arise".

7. The environment for my deliberation contrasts sharply with the one in which the Judge was acting. I had the benefit of a full day's legal argument, preceded by skeleton arguments and bundles of authorities, and with reading time. I received post-hearing

submissions and further authorities. I am grateful for all the assistance provided by all Counsel. I have had time to reflect and deliberate. The Judge's environment on the ground was very different. On the afternoon of 28 November 2023, the Judge had just given his ruling setting out his reasons for making the Closure Order. He was told that Ms Morgan wanted to appeal to the crown court. He was asked to suspend the Closure Order pending that appeal. He needed to make a decision, with such assistance as he could elicit. He recognised that he had no power of suspension within the 2014 Act. He knew that the 2014 Act is not a complete code, having previously used an adjournment power in s.54 of the 1980 Act. He drew the parties' attention to s.63(2) of the 1980 Act and he heard submissions. He was shown no case or commentary addressing whether there was power to stay. Nobody focused on s.63(5). He was told, incorrectly, about the prospect of "irreversible" eviction on the "absolute" ground for possession.

8. This appeal is "academic". That description is used for a case which no longer involves any live issue which will directly affect the rights and obligations of the parties. Sometimes, courts decline to determine legal issues in academic cases. But in this case I am going to address the law. I will explain why. There are points of law, involving statutory construction. They are raised for the opinion of the High Court, raised in the Stated Case. The Judge asked those questions, knowing that the case was going to become academic because the crown court appeal hearing had been fixed. The implications of suspending a Closure Order pending an appeal – or not – are significant for everyone affected by decisions about Closure Orders. Here, the questions arise in a real case against a set of concrete facts. Both parties, like the Judge, are inviting me to deal with them. The points have been fully argued. The question of a stay will always arise for consideration at speed, in the climate I have described. They would be expected to come in the environment of the High Court for ruling only when individual circumstances are 'water under the bridge'. That means they may never be determined unless the Court is prepared to resolve them in a case such as the present. These are the points which found traction in the judicial review case of R (Brooks) v Islington LBC [2015] EWHC 2657 (Admin) [2016] PTSR 389 at §§24-27.

Stays Pending Judicial Determination

9. The idea of a stay or suspension of a decision or order, pending a future judicial determination or redetermination, is a very familiar one. Such suspensions can be mandated by legislation or rules. By s.14(5) of the Housing Act 1957 a charging order is suspended pending appeal. By s.78 of the Nationality, Immigration and Asylum Act 2002 an applicant for asylum or humanitarian protection is irremovable pending their appeal. By r.14.9(3) of the CrimPR an individual remains detained pending a prosecution appeal against a decision of a court granting bail. By s.1(2) of the Dangerous Dogs Act 1989 a magistrates' court's order for the destruction of a dangerous dog is not to be implemented pending the dog owner's appeal. These are all suspension duties. As I will explain, the 2014 Act itself (by ss.94-95 and 97) imposed a species of suspension duty in relation to an appeal to the crown court against a Closure Order, so far as concerns any eviction on "absolute" grounds: see §28 below.

10. Sometimes, suspensions are not mandated, but are expressly empowered. The 2014 Act itself contains examples of this (§12 below). A driving disqualification "may, if it thinks fit" be suspended pending appeal, by the court imposing it or by the appeal court: see ss.39-40 of the Road Traffic Offenders Act 1988. CPR r.52.16 – which governs civil appeals in the county court, High Court and Court of Appeal – provides

that an appeal does not operate as a "stay" of the order being appealed, "unless" the appeal court or the lower court "orders otherwise". The White Book commentary – Civil Procedure (2024) at §52.16.2 – cites Bibby v Partrap [1996] 1 WLR 931 in relation to this parallel jurisdiction of the Court of Appeal and a first instance court (see Bibby at 934B). Bibby describes the advantages of a stay first being considered by the court whose decision is being appealed (see 934C-D). It also explains why granting a stay pending an appeal is not inconsistent with the lower court having determined that there is a legal entitlement to an immediate order (see 935C-936A). A judicial review court – which has jurisdiction to consider the legality of orders of magistrates' courts as well as crown court decisions on appeals from magistrates – may "stay" the proceedings to which a judicial review claim relates (CPR 54.10) and has powers to order other interim relief.

11. The public interest – including any question of public safety or public protection – feeds into the consideration of any question about exercising a power to grant a stay or interim remedy, including where there is a statutory right of appeal. An example is R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd [2001] QB 445. There, the port authority had served a statutory abatement notice requiring a water company within 3 months to stop discharging sewage into an estuary. There was a statutory right of appeal to the magistrates' court. In accordance with regulations, the abatement notice was not suspended pending appeal (see 451D). The water company said (see 451E), because there was no real prospect of the magistrates' court hearing the appeal within 3 months and there was no statutory provision for compensation, judicial review was appropriate and a stay of the enforcement notice should be granted. The Administrative Court agreed. But the Court of Appeal was concerned at the public health implications of such a stay. Simon Brown LJ addressed "whether … a stay ought ever to have been granted in the first place" (at 472B). Speaking in that public safety context, he said that "the need to safeguard the public, even sometimes at the expense of the other party, is likely to be the paramount consideration" (474E). Pill LJ agreed (at 477B). Simon Brown LJ also said of the statutory right of appeal that "the aim must be to make that remedy effective" (at 477C-D). Pill LJ agreed that "the emphasis should … be upon making the statutory procedures effective" (at 477E). These were clear references to expedition as the answer: see §19 below.

Express Suspensive Provision within the 2014 Act

12. I have explained that the 2014 Act contains provision for various civil orders. In the case of three of them, Parliament made express provision about the mandatory or discretionary suspension of a measure, pending a judicial determination. First, in relation to an appeal to the magistrates' court against a CPN issued by a police or local authority, s.46(3) of the 2014 Act provides:

> ***(3) While an appeal against a [CPN] is in progress— (a) a requirement imposed by the notice to stop doing specified things remains in effect, unless the court orders otherwise, but (b) any other requirement imposed by the notice is of no effect. For this purpose an appeal is "in progress" until it is finally determined or is withdrawn.***

By this provision, the magistrates' court is expressly empowered to suspend a prohibitory requirement in a CPN pending the appeal with which the magistrates' court is seized; and other mandatory requirements are suspended by operation of the statute pending the appeal. Secondly, in relation to an application to the High Court for

statutory review of a PSPO issued by the police or a local authority, s.66(4) of the 2014 Act provides:

> ***On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.***

By this provision, the High Court "on" the statutory review is expressly empowered to suspend a PSPO, in whole or in part, pending determination of the statutory review. Thirdly, in relation to an appeal to the magistrates' court against a s.116(4) police notice requiring a hotelier to provide information about guests at a hotel at which there is suspected child sexual exploitation, s.117(3) of the 2014 Act provides:

> ***(3) Where there is an appeal against a notice under section 116, then until the appeal is finally determined or withdrawn— (a) no requirement may be imposed under subsection (4) of that section in relation to the premises in question; (b) any such requirement already imposed is of no effect.***

By this provision, there is automatic suspension of the hotelier's duty to provide this information, pending the appeal to the magistrates' court. To these, I add that s.81(3)(4) of the 2014 Act impose a 14-day maximum on the continuation of Closure Notices pending magistrates' consideration of whether to make a Closure Order; and ss.94-95 and 97 of the 2014 Act imposed a species of mandatory suspension in relation to an appeal to the crown court against a Closure Order, so far as concerns any eviction on "absolute" grounds.

Article 6, Practical-Effectiveness and Infringed-Essence

13. Questions about suspending a decision or order pending a judicial determination can have an important human rights dimension. Article 6 ECHR is one of the Convention rights protected by the Human Rights Act 1998 ("the HRA"). That means – unless primary legislation drives a contrary conclusion – public authorities are statutorily prohibited from violating it (HRA s.6); and legislation is interpreted compatibly with it (HRA s.3). The importance of that compatibility with Convention rights has been recognised by the Courts in the context of Closure Orders: see Hooper at §16; Cleary at §22; Leary at §23; Crocker at §18. Article 6 contains due process guarantees. These include the right to a fair and public hearing before an independent and impartial tribunal, in the determination of civil rights and obligations (Article 6(1)). As Mr Waite and Mr Monighan point out, whether domestic law provides for interim relief has been characterised as a question of the content of that law, and not of itself an Article 6 procedural guarantee: see Steer v Stormsure Ltd [2021] EWCA Civ 887 [2021] ICR 1671 at §§31-33. But Article 6 requires that fair hearing rights must be "practical and effective", and not "theoretical and illusory".

14. When traders were refused statutory approval by the Revenue on fitness and propriety grounds, they faced consequential insolvency before their FTT appeals could be heard. They argued that the non-suspensive nature of the FTT appeals made those appeal rights "theoretical and illusory" and infringed the very "essence" of the right of access to the court. They asked the High Court, on judicial review, to step in and order a sort of provisional-approval by way of interim relief, based on Article 6. The case went to the Supreme Court: R (ABC Ltd) v Revenue and Customs Commissioners [2019] UKSC 30 [2019] 1 WLR 4020. That Court expressed particular concerns about an

interim order of provisional-approval, which would force the Revenue to treat as fit and proper those whom it had assessed as being the opposite (see ABC at §71). But the Article 6 point about practical-effectiveness and infringed-essence had traction in the Court of Appeal (see ABC at §§56-59), which has been retained in subsequent case-law (see R (Kingdom Corporate Ltd) v Revenue and Customs Commissioners [2023] EWHC 773 (Admin) at §31).

15. In an appeal to the FTT against action by the Revenue, the appeal to the FTT is supplying the Article 6-guaranteed independent and impartial tribunal. Sometimes, the appeal arises after the Article 6-guaranteed independent and impartial tribunal has already been supplied. In extradition cases, an appeal to the High Court arises after the case has already been decided by a district judge in the magistrates' court. In Closure Order cases, an appeal to the crown court arises after the case has already been decided in the magistrates' court. Yet Article 6 issues can arise in relation to those kinds of appeal too: see Crocker at §§21-22.

16. Mr Waite and Mr Monighan, very properly, drew my attention to Andrejeva v Latvia (2010) 51 EHRR 28. In that case the Strasbourg Court explained that, where the state has provided for an appeal the arrangements for the appeal must comply with the Article 6 "guarantees to litigants" of "an effective right of access to the courts for the determination of their civil rights and obligations", with "fair trial" rights which are "not theoretical or illusory, but practical and effective": see §§97-98. So, if a right of appeal has been conferred, it should not then be defeated or emptied of content. The arrangements for the appeal must not infringe its essence. In Andrejeva, those Article 6 guarantees were denied, because the appeal hearing took place ahead of its scheduled timing, which completely denied the appellant the opportunity to be heard and violated her Article 6 rights. The dangerous dog example (§9 above) may be a good illustration where an appeal would be "negated" if non-suspensive, so that Article 6-compatibility would require a suspension. What is the point of a crown court appeal, against the magistrates' court order for the destruction of a dog, if the dog is going to be destroyed before the appeal can be heard and determined? That, I observe, is also an example where public protection and public safety (South West Water) are readily secured, because the dangerous dog can be kept in secure conditions, pending the appeal.

17. In Crocker, these ideas of Article 6 practical-effectiveness and infringed-essence were encountered in the context of the power to extend time for giving notice of an appeal against a Closure Order. The crown court was wrong in that case to dismiss an appeal where the notice of appeal had been given late, because s.84(5) of the 2014 Act was to be read alongside Crown Court Rules r.7(5), which rule allowed for the extension of time. The Divisional Court referred to the cases about extradition appeals to the High Court from the magistrates' court (§§20-21) and explained that for appeals where civil rights are the subject of adjudication, strict time limits with no possibility of extension have been held to have "infringed the very essence of the right of appeal", so that a discretion in exceptional circumstances to extend time was necessary "in order to vindicate the rights under Article 6" (§21). So, where Parliament has made specific provision for issues of procedure (such as service of notices of appeal), if the appeal is "to determine issues of civil rights", Article 6 of the ECHR may require the court to retain a discretion, to be exercised in exceptional cases, to ensure that the essence of the right of appeal is not negated" (§22). The Court then explained why no such problem arose in relation to extension of time for giving notice of appeal against a Closure

Order. That was because s.84(5) was not a complete code, and r.7(5) was available (see §29).

18. In my judgment, this Court's consideration of the questions raised by Judge Daley in the present case ought to confront the question of how compatibility with Article 6 is secured: see §59 below. How is the appeal to the crown court from the Closure Order an effective right of access to the courts which is not theoretical or illusory, but practical and effective, to ensure that the essence of the right of appeal is not negated? Apart from anything else, that could inform a Convention-rights compatible interpretation of the magistrates' statutory powers, pursuant to HRA s.3. In Crocker, the extension of time would be the gateway for there being any appeal at all. In the present case, the appeal route is available.

Expedition as the Answer

19. Sometimes, the answer to competing considerations about stays and interim orders pending judicial determination will lie in steps taken to expedite the judicial determination, rather than any stay of the decision or order in the meantime. Bail pending criminal appeals is a good example. Bail pending a criminal appeal is statutorily empowered but is described as "rarely appropriate", emphasising that the appeal court "may instead order expedition of the appeal especially if the sentence is short": Beldam and Holdham, Court of Appeal Criminal Division (2nd edition) at §5-094 (in relation to appeals from the crown court to the Court of Appeal); and to like effect Crown Court Index (2024) at §8-013 (in relation to appeals from the magistrates to the crown court). In the Administrative Court Judicial Review Guide (2024) (at §16.6.4) it is similarly explained that the judicial review court "may respond to an application for interim relief by ordering expedition of the substantive claim instead". Expedition was emphasised in the South West Water case (§11 above), where Simon Brown LJ said of the statutory right of appeal that "the aim must be to make that remedy effective" (at 477C-D) and Pill LJ said "the emphasis should … be upon making the statutory procedures effective" (see 477E). In the ABC trader case (§14 above), the Supreme Court endorsed (at §59) the observation that "the first port of call must be the FTT itself, which could be expected to expedite the appeal to avoid the problem". Sometimes, expedition will be necessary even where there is a suspension. A good example may be magistrates promptly hearing the hotelier's appeal under s.117 of the 2014 Act, given the context as to suspected child sexual exploitation.

A Fast Flexible Power, based on Statutory Necessity Criteria

20. Having surveyed that legal landscape, I can turn next to identify ten key features of the statutory Closure Order regime. The first is that the issuing of a Closure Notice and the obtaining of a Closure Order is:

> ***a fast, flexible power which can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder.***

This can be seen in the design of the statutory provisions. It is the identified purpose recorded in the s.91 Statutory Guidance for Frontline Professionals (March 2023). The Closure Order is made only where a court has determined that the order and all of its terms are necessary in the application of the Statutory Necessity Criteria in s.80(5):

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

The Closure Order prohibits access to premises: whether by all persons or by specified persons; whether at all times or at specified times; and whether in all circumstances or in specified circumstances; and whether in respect of all or a specified part of the premises (s.80(7)(8)). It triggers police or local authority powers to enter and secure the premises (s.85).

A Relatively Short-Term Order

21. This is the second feature. A Closure Order prohibits access for whatever period is specified in the order, and this cannot exceed 3 months (s.80(6)). The period can be extended by the magistrates, where the Statutory Necessity Criteria remain satisfied, but only up to an overall maximum period of 6 months (s.82). The preceding Closure Notice is for a maximum of 48 hours (s.77) and can be continued by the magistrates if they need to adjourn the case, but only for a maximum of 14 days (s.81(3)(4)). Parliament prescribed that the appeal be made within 21 days (s.84(6)), which time may be extended (Crocker). Two things are immediately obvious. The first is that an appeal determined later than 6 months will necessarily be after the Closure Order (even if extended) has ceased to be extant. The second is that it could be structurally impossible to hear an appeal while the Closure Order is extant: an example is a Closure Order made for 21 days, where the appeal is made at the end of that period.

Draconian Effect and 'Baked-In' Substantive Convention Rights

22. This is the third feature. As Dingemans LJ said in Crocker (at §2), "closure orders are … draconian in effect because they prevent people living in their own homes". In Hooper (at §10), Mitting J called this "a significant effect". A Closure Order can, where required by the Statutory Necessity Criteria, prohibit access to the premises by "all persons" (s.80(7)(a)). By contrast, the prior Closure Notice cannot prohibit access to any person who habitually lives on the premises or is the owner (s.76(4)), though those persons should be pre-warned (s.76(6)) and must be served (s.79(2)). Contravention without reasonable excuse of a Closure Order, or of the preceding Closure Notice, is an imprisonable offence (s.86). All of which means magistrates are statutorily empowered to exclude people from their homes, by court order, and on short notice. This engages an owner's property rights (ECHR Article 1 Protocol 1) and an occupier's rights to respect for private and family life (ECHR Article 8): Hooper §16. Those rights are statutorily protected from disproportionate public authority interference by the HRA. Consideration will need to be given to the welfare and best interests of children. Then there are the procedural human rights implications and Article 6. However, there are also the rights of neighbours, victims and communities in the vicinity of the premises causing the nuisance or disorder (see Byrne §14), whose interests also provide the legitimate aim. The faithful application of the statutory necessity criteria – having had regard to all the relevant facts, circumstances and impacts – is designed to produce an outcome which is ECHR-compliant, so far as these rights are concerned. In other words, substantive ECHR-compatibility is 'baked-in' to the scheme. This was

recognised in Byrne at §28; and Leary at §23. It is because the Closure Order and its scope must be shown, on careful consideration by an informed judicial decision-maker, to be necessitated by a public interest imperative.

Prompt Judicial Consideration by the Magistrates

23. This is the fourth feature. In deciding whether to make the Closure Order, the magistrates need to be satisfied as to the Statutory Necessity Criteria (s.80(5)). It is here that the Article 6 guarantee of an independent and impartial tribunal is provided. The prior Closure Notice – which can exclude third parties but cannot exclude someone from their home – expires after 24 or 48 hours depending on the seniority of the issuer (s.77), unless extended by magistrates for up to 48 hours (s.81(2)) or, on a s.81(3) adjournment, for up to 14 days (s.81(3)(4)). Unless the Closure Notice has been cancelled (s.78), the required police or local authority application (s.76(5)(d)) "must be heard by the magistrates' court not later than 48 hours after service of the closure notice" (s.80(3)). Parliament conferred a power of statutory adjournment with permitted continuation of the Closure Notice – but "for a period of not more than 14 days" – "to enable" those persons with an interest in the premises "to show why a closure order should not be made" (s.81(4)). Any 1980 Act s.54 adjournment (Hooper, Turner) means the Closure Notice lapses.

Interim Continuation directed by the Magistrates

24. This is the fifth feature. There is an express statutory power which addresses a question about interim continuation pending a judicial determination. The question addressed is whether a Closure Notice should continue in effect. The judicial determination is the magistrates' court hearing of the application for the Closure Order. The provision is s.81(4), which provides:

> ***If the [magistrates'] court adjourns the hearing under subsection (3) it may order that the Closure Notice continued in force until the end of the period of the adjournment.***

The word "may" in s.81(4) reflects the fact that the magistrates have to decide whether or not the Closure Order should continue "in force" for the maximum 14 days of the adjournment to enable the fair hearing for a person who may be facing exclusion from their home or property. In substance, this would be a decision about whether or not the Closure Notice should be suspended, pending the magistrates' determination of the application of the Closure Order. There is no interim continuation beyond 14 days, in the case of a further (1980 Act s.54) adjournment (Hooper, Turner).

Triggering an "Absolute" Ground for Possession

25. This is the sixth feature. Part 5 of the 2014 Act introduced "absolute" grounds possession for anti-social behaviour, where the premises are the subject of a secure tenancy or an assured tenancy (ss.94, 97), subject in the case of secure tenancies to ECHR-compatibility (s.94) and prior notice requirements (s.95). One of the triggers for the "absolute" ground inserted into the legislation is where "a dwelling-house is or has been" subject to a Closure Order prohibiting access for a continuous period of more than 48 hours: see Housing Act 1985 s.84A(6); Housing Act 1988 Schedule 2 Ground 7A. The focus is on the fact of the Closure Order having been made, and Parliament here (and in s.80(6)) is contemplating that the specified period in the Closure Order

may have been short (3 days is enough for the "absolute" ground). The background is explained in the Explanatory Notes to the 2014 Act (at §§15-20): the "discretionary" grounds for eviction of secure and assured tenants require the county court to be satisfied both that anti-social behaviour has occurred and that it would be reasonable to grant possession (1985 Act Schedule Ground 2; 1988 Act Schedule 2 Ground 14) and those proceedings could be protracted. ECHR-compatibility in those county court possession proceedings themselves is addressed in Manchester City Council v Pinnock [2010] UKSC 45 [2011] 2 AC 104 (in respect of public authority landlords) and McDonald v McDonald [2016] UKSC 28 [2017] AC 273 (in respect of private landlords).

Extension of a Closure Order

26. This is the seventh feature. Parliament has provided for a Closure Order to be extended by the magistrates' court, on an application made prior to expiry of the Closure Order (s.82(1)). The Statutory Necessity Criteria must be met (s.82(3)). In the statutory provisions relating to extensions, there is no express duty as to promptness of the hearing (unlike s.80(3)) and there are no express powers of adjournment or interim-continuation (unlike s.81(3)(4)).

Statutory Appeals to the Crown Court

27. This is the eighth feature. Parliament has provided various statutory right of appeal to the crown court, against magistrates' decisions as to whether – or not – to make or extend a Closure Order (s.84):

> ***84. Appeals. (1) An appeal against a decision to make or extend a closure order may be made by— (a) a person on whom the closure notice was served under section 79; (b) anyone else who has an interest in the premises but on whom the closure notice was not served. (2) A constable may appeal against— (a) a decision not to make a closure order applied for by a constable; (b) a decision not to extend a closure order made on the application of a constable; (c) a decision (under section 81) not to order the continuation in force of a closure notice issued by a constable. (3) A local authority may appeal against— (a) a decision not to make a closure order applied for by that authority; (b) a decision not to extend a closure order made on the application of that authority; (c) a decision (under section 81) not to order the continuation in force of a closure notice issued by that authority. (4) An appeal under this section is to the Crown Court. (5) An appeal under this section must be made within the period of 21 days beginning with the date of the decision to which it relates. (6) On an appeal under this section the Crown Court may make whatever order it thinks appropriate. (7) The Crown Court must notify the relevant licensing authority if it makes a closure order in relation to premises in respect of which a premises licence is in force.***

The s.84 appeal is not governed by the CrimPR or by CPR Part 52: see Crocker §17. It is an appellate jurisdiction conferred by an Act for the purposes of the Senior Courts Act 1981 s.45(2)(a)), to which s.48 of the 1981 Act and the Crown Court Rules (SI 1982/1109) apply. An appeal to the crown court will engage substantive ECHR rights and compatibility is again baked-in. Article 6 is relevant (§§16-17 above), because of the guarantees to litigants of an effective right of access to the courts for the determination of their civil rights and obligations, with fair trial rights which are "not theoretical or illusory, but practical and effective"; to ensure that the "essence of the right of appeal is not negated" (§§16-17 above).

Appeal as a Shield Against Absolute Possession Grounds

28. This is the ninth feature. The pursuit of the statutory appeal is a complete shield against "absolute" basis for eviction, on a mandatory ground for possession of a relevant tenancy (§25 above). In this important sense, the appeal is suspensive in effect by operation of the statute. The appeal can also, for this reason, have a real utility even if the Closure Order has expired: see Crocker at §32. The fact of the making of a Closure Order is the trigger for the "absolute" ground for possession. But that fact is not a trigger for possession on that ground while an appeal is pursued, and it is never a trigger if the appeal succeeds. This is the subject of express provision in s.84A(8) of the 1985 Act and Schedule 2 Ground 7A to the 1988 Act, as introduced by ss.94 and 97 of the 2014 Act. Further, in the case of a secure tenancy, the required prior notice cannot be issued until after the appeal is determined, abandoned or withdrawn. That is the effect of s.83ZA(7)(b)(ii) of the 1985 Act, introduced by s.95 of the 2014 Act. These express provisions in Part 5 of the 2014 Act appeal appear immediately after the Part 4 Chapter 3 provisions dealing with Closure Orders. All of this was considered in Crocker at §32, as to whether the appeal against the decision to make the Closure Order had a continuing utility. Importantly, Crocker illustrates that an appeal against the decision to make a Closure Order may have an eviction-related utility, even after the Closure Order has run its course.

Discretionary Compensation

29. This is the tenth feature. Parliament has provided by s.90 for discretionary compensation paid from central funds, in prescribed circumstances:

> ***90. Compensation. (1) A person who claims to have incurred financial loss in consequence of a closure notice or a closure order may apply to the appropriate court for compensation. (2) The appropriate court is— (a) the magistrates' court that considered the application for a closure order (except where paragraph (b) applies); (b) the Crown Court, in the case of a closure order that was made or extended by an order of that Court on an appeal under section 84. (3) An application under this section may not be heard unless it is made before the end of the period of 3 months starting with whichever of the following is applicable— (a) the day on which the closure notice was cancelled under section 78; (b) the day on which a closure order was refused; (c) the day on which the closure order ceased to have effect. (4) For the purposes of subsection (3)(b) the day on which a closure order was refused is— (a) the day on which the magistrates' court decided not to make a closure order (except where paragraph (b) applies); (b) the day on which the Crown Court dismissed an appeal against a decision not to make a closure order. (5) On an application under this section the court may order the payment of compensation out of central funds if it is satisfied— (a) that the applicant is not associated with the use of the premises, or the behaviour on the premises, on the basis of which the closure notice was issued or the closure order made, (b) if the applicant is the owner or occupier of the premises, that the applicant took reasonable steps to prevent that use or behaviour, (c) that the applicant has incurred financial loss in consequence of the notice or order, and (d) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss. (6) In this section "central funds" has the same meaning as in enactments providing for the payment of costs.***

So, the person seeking discretionary compensation must show that they have incurred financial loss in consequence of a Closure Notice or Order; having not been associated with – and having taken reasonable steps to prevent – the use or behaviour which were the basis for issue of the Notice or Order; and that payment of compensation in respect of that loss is appropriate in all the circumstances. In Qin, the operators of premises against which Closure Notices had been issued but in respect of which the magistrates had refused to make Closure Orders because the Statutory Necessity Criteria were not met. Discretionary compensation was not lawfully considered by the magistrates' court,

to whom that question was remitted for reconsideration (see §§44-47). Importantly, Qin illustrates that an appeal against the decision to make a Closure Order may have a compensation-related utility, even after the Closure Order has run its course.

The Facts

30. I will now turn to the background facts. Ms Morgan had been, since July 2014, the secure tenant and occupier of the semi-detached council house at 36 Brigg Drive, Hessle. She lived there with her two daughters (now 19½ and 17½ years old). On 30 October 2023 Humberside police issued a s.76 Closure Notice in respect of the premises and promptly applied to Hull Magistrates' Court for a s.80 Closure Order, to exclude all persons from the premises. The case first came before Judge Daley on 31 October 2023. That was a first hearing within the statutory 48 hours (s.80(3)). The Judge granted a s.81(3) adjournment until 7 November 2023, with a s.81(4) direction that the Closure Notice continue in force. The hearing resumed on 7 November 2023 when it was adjourned part-heard pursuant to s.81(3) until 13 November 2023, again with a s.81(4) direction for continuation of the Closure Notice. When the hearing resumed on 13 November 2023 Ms Morgan did not attend. The Judge was told that she was absent by reason of illness. The statutory s.81(3)(4) 14-day period for adjournment with continuation of the Closure Notice were now up. The Judge decided to adjourn to 21 November 2023, pursuant to s.54 of the 1980 Act under the Hooper and Turner line of authorities, with the Closure Notice lapsing. The hearing resumed on 21 November 2023 and was completed, with judgment reserved to 28 November 2023.

31. On the morning of 28 November 2023, the Judge gave an oral summary and emailed the parties his full 13-page 77-paragraph written judgment. As helpfully summarised in the Stated Case, these were the Judge's key findings. I have inserted some dates in square brackets. The reference to "the Temporary Closure Order" is to the continuation of the Closure Notice directed by the Judge pursuant to s.81(4).

> ***8. I concluded that there were at least fourteen incidents between 9 July 2023 and 10 October 2023 involving disturbances by abusive behaviour, shouting, arguing among family members or with neighbours in the street. I found that it "is clear that anti-social behaviour, arguments, disturbances, drug and alcohol use are a way of life at number 36". 9. It was accepted at trial that there has been an accumulation of rubbish at the property which attracted vermin and that the abatement notice [10.5.23] was not complied with, resulting in nuisance to neighbours. It was also accepted that 17 garden fires had occurred and that Ms Morgan had posted a message on Facebook about those living near to her. 10. Two incidents of anti-social behaviour had taken place between the issuing of a Community Protection Warning [13.7.23] and a [CPN] [19.7.23], and nine further incidents of anti-social behaviour had occurred after the [CPN] had been issued. 11. I concluded that the Temporary Closure Order had also been breached. 12. I acknowledged that "The Local Authority has confirmed that it has plans to place the family in emergency accommodation while longer term options are considered. This is likely to involve hotel or bed and breakfast accommodation in the short term, with social services accepting they have a duty to safeguard the child". 13. I concluded that each of the alternative statutory conditions for making a closure order were made out, that an order was necessary and that a partial order would be insufficient. I gave an oral summary of my decision and granted a full closure order for a three-month period.***

32. I can take what happened next from the Judge's Stated Case:

> ***14. Ms Morgan's representative, Mr Clay, then asked for time to speak to his client about the possibility of appealing to the Crown Court and applying to suspend the order during the intervening period. I suggested that in the absence of a power to suspend the order in the 2014***

> ***Act the parties might consider the application of s.63 of the 1980 Act and granted the requested time. The parties received the full written reasons for the Closure Order by email. 15. Following a short adjournment, Mr Clay provided a completed appeal form and a Form 98 (complaint / application to suspend the Closure Order that had been granted). The request for suspension was contained within the appeal form, which stated as follows: 16. "[Ms Morgan] lives in the property under a secure tenancy with the Hull City Council. Her two teenage daughters (aged 16 and 18) are also resident at the property. If the Closure Order is not suspended pending the outcome of the appeal it will result in [Ms Morgan] and her daughters being excluded from their home and having to present themselves as homeless to the local authority". Whilst drafting the notice, Mr Clay had also been endeavouring to obtain the telephone number of the 'homeless team' from Council representatives to provide to [Ms Morgan]. 17. It was argued orally that if the order was not suspended Hull City Council could apply for a possession order on an absolute ground and that the appeal might not be heard for some time.***

The request for suspension in the Appeal Form, to which the Judge refers in the Stated Case (§§15-16) is annexed to the Stated Case and so is part of it. Ms Morgan's representatives had added this:

> ***I want my application considered by the magistrates' court [ticked] the Crown Court [ticked]. Each court can consider these applications. You can apply to both.***

33. This was the Chief Constable's position, again summarised in the Stated Case (I am going to omit case references already given in this judgment):

> ***18. The suspension application was opposed by the Chief Constable's representative, who: (a) Pointed out that the court had already found the statutory conditions for a closure order to be made out and that such an order was necessary; (b) Explained that there did not appear to be any case in which the full closure order did not take immediate effect upon it being granted; (c) Noted that s.63 of the 1980 Act referred to a power to 'suspend', rather than 'set aside'; (d) Relied on R (Majera) v SSHD [2021] UKSC 46, in which the Supreme Court stated "It is a well established principle of our constitutional law that a court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation)" (at [44]); (e) Cited Crocker, in which it was held the Criminal Procedure Rules do not apply to closure order proceedings (at [17]). The Chief Constable's representative explained that she had not had sufficient time to properly consider the case law. (f) Stated that suspension of the order would undermine the statutory purpose of the closure order regime including the need for expedition as reflected in the Hooper line of authority and placed insufficient weight on the Article 8 rights of local residents.***

34. The Judge decided to suspend the Closure Order pending appeal to the crown court. Here are his reasons:

> ***19. I considered that the point in issue was not 'setting aside' an order but 'suspending' it so that there would be a delay in it taking effect. This would protect the position of [Ms Morgan] until the appeal could be heard, since otherwise the appeal might become an academic exercise if the family were dispossessed of their home immediately meaning that the interference with their Article 8 rights to respect for private and family life would be potentially irreversible. I considered that the status quo ought to be preserved, if possible, until the appeal was determined or abandoned and therefore directed that the closure order be suspended to allow an appeal to take place. 20. In reaching this conclusion I considered the application of s.63 of the 1980 Act, the context of which relates to proceedings brought by way of complaint. 21. Applications for closure orders are not expressly stated to be brought on complaint, although applications to extend or discharge closure orders are. 22. Provisions within the 1980 Act relating to complaints have been held to be applicable to applications for closure orders, for example the power to adjourn proceedings brought on complaint under s.54 (Hooper; Rayner) or to make an order for costs under s.64 (Taylor). 23. Section 63 of the 1980 Act has also been recognised as a power to suspend, rescind or vary an order by complaint in relation to orders***

made in criminal proceedings (Chief Constable of Merseyside Police v Doyle [2019] EWHC 2180 (Admin)).

Post-Decision Events

35. After the Judge made the Closure Order, and after he made the impugned decision suspending it, two appeals were pursued. The first appeal was Ms Morgan's s.84 appeal to Hull Crown Court. At a mention for fixing hearing on 15 January 2024, this was fixed for a 3 day hearing 4-6 March 2024 before a Recorder sitting with Justices. The hearing went ahead as scheduled. Ms Morgan did not attend. Evidence was called by the police and considered by the crown court. The appeal was dismissed for reasons set out in a detailed written judgment. The crown court found compelling evidence of drug use, disorder and nuisance; with 14 proven incidents between June 2023 and February 2024. It found that the statutory necessity criteria were satisfied; and that the Closure Order including its scope was necessary and proportionate and compatible with the Article 8 rights being interfered with. Because the Closure Order had been suspended by order of the magistrates' court it now came into effect for 3 months from 5 March 2024 until 5 June 2024. Ms Morgan returned to the premises on 17 June 2020. The second appeal is this appeal by the Chief Constable to the High Court. The Stated Case was finalised by the Judge on 24 January 2024 in the knowledge that the crown court appeal hearing had by then been fixed for 5 March 2024. There was one other development. It relates to possession proceedings in the Hull County Court. The local authority landlord brought possession proceedings against Ms Morgan. On 22 August 2024, Hull County Court made an order for possession suspended for 2 years, pursuant to Schedule 2 of the Housing Act 1985. The possession order records that the local authority did not seek an outright order for possession in all the circumstances of the case and referring to the prospect of Ms Morgan "mutually exchanging" her property.

36. As the Chief Constable has pointed out, for the purposes of answering the questions posed, the factual and evidential focus is on the facts as described in the Stated Case: see Skipway Ltd v Environment Agency [2006] EWHC 983 (Admin) [2006] Env LR 41 at §15. Having said that, it is common ground that the Court has properly been made aware of what happened after the Closure Order was made and suspended. Indeed, that material was directly relevant and admissible on the preliminary question of whether the appeal was academic, which I needed to consider and address: see §8 above.

37. In light of the Chief Constable's application to state a case – in which reliance was placed for the first time by the Chief Constable on s.63(5) – the Judge has said this in the Stated Case:

> ***6. … The suspension is the decision complained of and to which I have given further consideration in light of the Chief Constable's application to state a case for the opinion of the High Court. Whilst it is for the High Court to determine the point I do now consider the Chief Constable's argument that suspension of the order was not a power available to me is likely to be the correct one, and I set out my reasons below at paragraphs 24-26 …***
>
> ***24. [H]aving considered the Chief Constable's application to state a case I do now consider that I may have omitted to place sufficient weight on the effect of s.63(5) of the 1980 Act which provides: (5) The preceding provisions of this section shall not apply to any order for the enforcement of which provision is made by any other enactment. 25. Enforcement is provided for within the 2014 Act in so far as penalties for breaches of closure orders are set out there. There is a provision for discharging a closure order (as opposed to rescinding, the term used in s.63 of the 1980 Act), but no provision for suspension. [Ms Morgan] contends by way of***

> ***response to the draft case that s.63(2) of the 1980 Act is not an 'enforcement power' and is therefore not ousted by the enforcement provisions in ss.84-85 of the 2014 Act. 26. Nonetheless since general powers of enforcement exist in the 2014 Act, albeit without a power of suspension, it would follow that s.63 of the 1980 Act would not apply to closure orders and the absence of a power to suspend in the 2014 Act is likely to be an intentional one, as the Chief Constable argues. 27. I consider therefore that I am likely to have fallen into error in applying s.63(2) of the 1980 Act to the closure order made on 28 November 2023 for the purpose of delaying it taking effect.***

The Statutory Purposes and Reconciling Them

38. As I turn to the issues in the case, I start with what Mr Waite and Mr Monighan for the Chief Constable say is "the statutory purpose". One of their central submissions is that "the statutory purpose of the closure regime" is to "speedily close down premises which fulfil" the Statutory Necessity Criteria. In (Q2) the Judge refers to "the statutory purpose", having recorded the Chief Constable's submission (Stated Case §18(f)) about not acting "to undermine "the statutory purpose of the closure order regime including the need for expedition as reflected in Hooper line of authority". In Crocker, Dingemans LJ said of the 2014 Act (at §2) that "closure orders are intended to provide a swift means of dealing with very disruptive behaviour affecting neighbouring occupiers of houses". In Qin (at §58), Choudhury J explained that "the operation of the legislation … is intended to provide a fast and flexible remedy in cases of substantial nuisance or disorder". In Hooper, Mitting J had referred (in the context of the 2003 Act) to the need to act "with sufficient speed so as not to defeat the beneficial object of the statute", which object was "to procure the closure of what can colloquially be referred to as 'disorderly crack houses' and to protect the neighbours of such premises from the severe nuisance caused by them" (§18). In Cleary, May LJ had described "the legislative intention … that applications for closure orders should be dealt with speedily" (at §22).

39. That is undoubtedly part of the picture. But there are other statutory purposes. In particular, there are the statutory purposes which relate to fair and effective judicial protection. There is express judicial protection before the magistrates, and on appeal in the crown court, and these are intended by Parliament to be fair and effective. That purpose is reinforced by the statutory duty to act compatibly with Article 6, intended by Parliament through the HRA. In Byrne, Moses LJ identified fairness and justice as "the statutory objective" of the statutory appeal. He was speaking of the 2003 Act, so I have inserted the equivalent provisions of the 2014 Act in square brackets. Moses LJ said this (at §16):

> ***It is not disputed, and cannot be disputed, that the Crown Court, exercising the statutory jurisdiction conferred upon it by [s.84], must exercise that jurisdiction in a way to achieve the statutory objective of fairness and justice in the consideration of whether it is right to make a Closure Order or not. This is not correctly described as an inherent jurisdiction, but rather a jurisdiction to be implied from its statutory function. In order to achieve the objective of deciding whether to make a Closure Order or not, both the Magistrates' Court, under [s.80], and the Crown Court on appeal under [s.84] must be able to deploy implied powers so as to achieve fairness and justice in reaching a conclusion.***

40. The cases discuss the principled reconciliation of all of the statutory purposes, including fair, just and effective judicial protection. Take the magistrates' power under the 1980 Act s.54 to adjourn, beyond the statutory 14 days (2014 Act s.81(3)), such that the Closure Notice lapses. That power comes to be exercised because the purpose of

speedy closure of premises for public protection has to be reconciled with the purpose of fair, just and effective judicial protection. That reconciliation was addressed in Hooper and Turner. In the present case, it was what the Judge was doing on 13 November 2023. The same reconciliation is found in the context of hearsay and disclosure, in Leary. And again in Crocker in the context of extending time for notifying an appeal.

41. There are many examples in the case-law of the Courts recognising both the "statutory purpose" of speedy closure for public protection, and also the purpose of effective judicial protection, and therefore the need to reconcile these. In Hooper, Mitting J explained (at §§23-25) how the magistrates' 1980 Act s.54 power to adjourn should be exercise consistently with the statutory purpose and human rights. Like Moses LJ, Mitting J was dealing with the predecessor 2003 Act so, again, I have inserted in square brackets the equivalent provisions of the 2014 Act:

> ***23. It is clear that the power [to adjourn] must not be exercised so as to frustrate the statutory purpose. I gratefully adopt and repeat the observation of Moses J in R v Dudley Magistrates' Court, Ex p Hollis [1999] 1 WLR 642 , 660: "The wide discretion as to whether to grant an adjournment conferred by sections 10 and 54 of the Magistrates' Courts Act 1980 cannot, usually, be impugned. But it is a power which must not be exercised in a manner which undermines the statute under which the proceedings are brought ..." The power should only be exercised when no other way is available to avoid a breach of a relevant person's Convention rights. The factors which should be taken into account must always include the statutory purpose of closing down by a speedy procedure premises fulfilling the conditions identified in [s.80(5)]. One factor which must always be borne in mind is that if the power to adjourn under section 54 of the 1980 Act is exercised, the express power under [s.81(4)] to order that the closure notice continues in effect until the end of the period of adjournment, is not available. By exercising the power under section 54, a magistrates' court would, accordingly, deprive itself and the police of a valuable weapon to ensure that premises to which the conditions in [s.80(5)] apply are closed. 24. When considering whether or not to exercise their power under section 54, the justices should have in mind the possibility of adjourning the case to another bench if, as here, due to the lack of availability of one or more justices, it was not possible to continue within the time frame envisaged by the statute or within a shorter time frame than that which would apply if the original justices were to continue the hearing… 25. In a nutshell, the court must always have in mind that it should exercise its powers consistently with the Convention rights of affected persons, but also consistently with the statutory purpose which I have identified.***

42. In Turner, Keene LJ referred to Hollis and Turner and said (at §46):

> ***when a closure order is being sought … the magistrates' court must remember that Parliament has clearly intended that such proceedings are to be dealt with as a matter of urgency. The reasons for that are obvious and lie in Parliament's intention. The impact of premises being used in connection with Class A drugs and causing disorder, or serious nuisance to others, should be removed without delay. Such an effect upon neighbours or other members of the public should not be allowed to persist as a result of prolonged court proceedings. None the less, there will be occasions when a fair trial necessitates an adjournment in the way described by Mitting J in Hooper … The court may exercise its general powers under section 54 of the 1980 Act to grant an adjournment in such a case if it is satisfied that the need for such an adjournment, in the interests of justice, overrides Parliament's intention that the proceedings should be concluded speedily…***

43. In Cleary (at §§22-23), May LJ referred to Hooper and Turner, in considering how to reconcile prompt action to protect the public and procedural fairness, in the context of hearsay evidence and disclosure at the magistrates' hearing. He said this (at §§22-23):

> ***the legislative intention is that applications for closure orders should be dealt with speedily …. The court should exercise its power [to adjourn] consistently with the Convention rights of affected persons, but also consistently with the statutory purpose… In this context, it is obviously important that the police provide affected persons with all information which they ought fairly to have in sufficient time for it to be fair for the hearing to be completed … Otherwise the court may be constrained to grant a further adjournment. As to the service of evidence, in my view fairness requires that the police must normally serve written versions of the evidence they propose to adduce in sufficient time before the hearing to enable the defendant fairly to deal with it…***

44. A key feature in the reconciliation of these purposes, in the idea that fairness and effectiveness should be delivered at speed. This is expedition providing the answer: §19 above. The need for expedition in appeals was identified by Collins J in Errington; in a passage endorsed in Smith at §17. Collins J said this (at §12):

> ***The closure notice was issued on October 6 and an order was made by the magistrates on October 12. An appeal was brought to the Crown Court, the notice of appeal being lodged on October 26, 2005. The hearing of the appeal was not fixed until December 14, 2005. That was far too long a delay since the order was for three months from October 12. It is important that appeals against closure orders be heard by the Crown Court as soon as possible, ideally within a very few days of the lodging of the notice. Steps, in my judgment, should be taken by the courts to ensure that such appeals are given the necessary priority.***

The Error about "Irreversible" Eviction on an "Absolute" Ground

45. The Judge was led into a material misapprehension as to the correct legal position regarding the potential for irreversible eviction. As the Stated Case emphasises (at §17) Ms Morgan's representative argued as follows: if the Closure Order were not suspended, the local authority "could apply for a possession order on an absolute ground". That was a powerful point when put alongside the concern that "the appeal might not be heard for some time". It was unanswered in the Chief Constable's submissions (Stated Case at §18). So far as the short term position was concerned, the Judge had recorded that the local authority had confirmed that it had plans to place the family in emergency accommodation while the longer term options were considered, and that social services had accepted that they had a duty to safeguard the daughter who was under 18. The Judge's reasons for suspending the Closure Order show that he was very concerned about this "potentially irreversible" interference with Article 8 rights (Stated Case at §19). He described protecting the position of Ms Morgan until the appeal could be heard, since otherwise the appeal might become an academic exercise if the family were dispossessed of their home immediately, meaning that the interference with their Article 8 rights to respect for private and family life "would be potentially irreversible". The irreversibility related to a "possession order on an absolute ground".

46. However, the 2014 Act supplied a complete answer to the concern: see §28 above. This tailored suspension was supplied by operation of the statute. That means the Judge was induced into a material error of law. And it follows, for this reason alone, that I would not be able to say that any power of suspension was exercised lawfully.

Was there power under s.63 of the 1980 Act?

47. The Judge thought the magistrates' court had power by virtue of s.63(2) of the 1980 Act, to suspend a Closure Order pending determination of appeal to the crown court. Here is s.63:

> ***63. Orders other than for payment of money. (1) Where under any Act passed after 31st December 1879 a magistrates' court has power to require the doing of anything other than the payment of money, or to prohibit the doing of anything, any order of the court for the purpose of exercising that power may contain such provisions for the manner in which anything is to be done, for the time within which anything is to be done, or during which anything is not to be done, and generally for giving effect to the order, as the court thinks fit. (2) The court may by order made on complaint suspend or rescind any such order as aforesaid. (3) Where any person disobeys an order of a magistrates' court made under an Act passed after 31st December 1879 to do anything other than the payment of money or to abstain from doing anything the court may— (a) order him to pay a sum not exceeding £50 for every day during which he is in default or a sum not exceeding £5,000; or (b) commit him to custody until he has remedied his default or for a period not exceeding 2 months; but a person who is ordered to pay a sum for every day during which he is in default or who is committed to custody until he has remedied his default shall not by virtue of this section be ordered to pay more than £1,000 or be committed for more than 2 months in all for doing or abstaining from doing the same thing contrary to the order (without prejudice to the operation of this section in relation to any subsequent default). (4) Any sum ordered to be paid under subsection (3) above shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court. (5) The preceding provisions of this section shall not apply to any order for the enforcement of which provision is made by any other enactment.***

48. I will need to return at the end of this judgment to questions of Article 6 compatibility, because the interpretative obligation in HRA s.3 is a strong one and could make a difference. But for now, I put Article 6 to one side.

49. As a matter of statutory interpretation, there is a complete answer to the reliance on s.63(2). It is found in s.63(5), read with ss.85-86 of the 2014 Act. As soon as s.63(5) was brought to the Judge's attention – in the Chief Constable's application to state a case – the Judge rightly saw the problem: see §37 above. Section 63(1) is a power which ensures that any non-pecuniary mandatory order, or any prohibitory order – which magistrates are empowered by an Act to make – can spell out the details as to the what and when and how. It is in that context – of "any such order as aforesaid" – that s.63(2) empowers the magistrates to revisit such a non-pecuniary mandatory or prohibitory order, by suspending or rescinding it. Then s.63(3) empowers financial and custodial penalisation for default, but by s.63(4) a conviction will wipe-out the financial debt. Finally, there is s.63(5), whose clear meaning, purpose and effect is that none of these powers (s.63(1)-(4)) applies if there is an enactment which makes provision for the enforcement of the non-pecuniary mandatory order or prohibitory order. This promotes certainty. If Parliament confers a power on magistrates to make a non-pecuniary mandatory order or a prohibitory order, but there is no enactment making provision for enforcement, the powers in s.63 will apply. But if Parliament confers a power on magistrates to make a non-pecuniary mandatory order or a prohibitory order, then as soon as there is an enactment making provision for enforcement, we all have to look to the empowering provisions and the enforcement provisions to see whether and how they deal with questions about spelling out details, suspending or rescinding, and penalisation.

50. To apply s.63(5), you ask this question: can I point to an enactment which makes provision for the enforcement of the non-pecuniary mandatory order or prohibitory order in question? In the case of a Closure Order, the answer is yes. Here are ss.85 and 86 of the 2014 Act, together with the heading that introduces them:

> ***Enforcement. 85. Enforcement of closure orders. (1) An authorised person may— (a) enter premises in respect of which a closure order is in force; (b) do anything necessary to secure the***

> ***premises against entry. (2) In this section "authorised person"— (a) in relation to a closure order made on the application of a constable, means a constable or a person authorised by the chief officer of police for the area in which the premises are situated; (b) in relation to a closure order made on the application of a local authority, means a person authorised by that authority. (3) A person acting under subsection (1) may use reasonable force. (4) A person seeking to enter premises under subsection (1) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of his or her identity and authority before entering the premises. (5) An authorised person may also enter premises in respect of which a closure order is in force to carry out essential maintenance or repairs to the premises. 86. Offences. (1) A person who without reasonable excuse remains on or enters premises in contravention of a closure notice (including a notice continued in force under section 81) commits an offence. (2) A person who without reasonable excuse remains on or enters premises in contravention of a closure order commits an offence. (3) A person who without reasonable excuse obstructs a person acting under section 79 or 85(1) commits an offence. (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction— (a) to imprisonment for a period not exceeding 3 months, or (b) to a fine, or to both. (5) A person guilty of an offence under subsection (2) is liable on summary conviction— (a) to imprisonment for a period not exceeding 51 weeks, or (b) to a fine, or to both. (6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5)(a) to 51 weeks is to be read as a reference to 6 months.***

51. Mr Shipley's invitation is to interpret s.63(5) as if it said: "The preceding provisions of this section shall not apply to any order for enforcement for which provision is made by any other enactment". That would rewrite the subsection, in language which the drafter would have used had it been intended. Section 63 is not about enforcement orders, but about aspects of enforcement relating to non-pecuniary mandatory orders or prohibitory orders. Section 63(5) is about whether s.63 applies. If there are applicable enforcement provisions, it is those that govern. If they involve a gap, that gap is the product of the design of the provision which has been made.

52. In relation to adjournment, on the authority of Hooper and Turner, s.81(3)(4) of the 2014 Act has to be read with s.54 of the 1980 Act. In relation to costs, on the authority of Taylor, Part 4 Chapter 3 has to be read with s. 64 of the 1980 Act. In relation to extension of time to serve notice of appeal, on the authority of Crocker, s.84(5) of the 2014 Act has to be read with r.7(5) of the Crown Court Rules. Part 4 Chapter 3 of the 2014 Act is not therefore a self-contained code. But Part 4 Chapter 3 is not to be read with s.63 of the 1980 Act, because s.63(5) expressly precludes reliance on the powers in s.63(1)-(4).

53. The Judge referred to the case of Doyle (§34 above) and Mr Shipley relies on that case. That was a dangerous dogs case. The question was whether a contingent destruction order could be enforced. The dog owner argued that there was no provision for enforcement. The Court held as follows. First, that there was statutory provision for enforcement (§§20-22). But secondly, and "if that is wrong", then s.63(1) of the 1980 Act would allow the making of an order to give effect to the contingent destruction order (§23). The premise for the second, and alternative, finding was that there was no provision for enforcement. That premise explains why s.63(5) would then involve no bar. There was no discussion of s.63(5), still less a suggestion that it bears the interpretation suggested by Mr Shipley. In my judgment, Doyle does not materially assist.

What about a s.80 Deferred Start-Date?

54. I was assisted by Counsel as to whether s.80 would empower a deferred start-date, which could achieve suspension pending appeal. Here is s.80:

> ***80. Power of court to make closure orders. (1) Whenever a closure notice is issued an application must be made to a magistrates' court for a closure order (unless the notice has been cancelled under section 78). (2) An application for a closure order must be made— (a) by a constable, if the closure notice was issued by a police officer; (b) by the authority that issued the closure notice, if the notice was issued by a local authority. (3) The application must be heard by the magistrates' court not later than 48 hours after service of the closure notice. (4) In calculating when the period of 48 hours ends, Christmas Day is to be disregarded. (5) The court may make a closure order if it is satisfied— (a) that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or (b) that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or (c) that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring. (6) A closure order is an order prohibiting access to the premises for a period specified in the order. The period may not exceed 3 months. (7) A closure order may prohibit access— (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description; (b) at all times, or at all times except those specified; (c) in all circumstances, or in all circumstances except those specified. (8) A closure order— (a) may be made in respect of the whole or any part of the premises; (b) may include provision about access to a part of the building or structure of which the premises form part. (9) The court must notify the relevant licensing authority if it makes a closure order in relation to premises in respect of which a premises licence is in force.***

55. Mr Waite and Mr Monighan say a deferred start-date under s.80 cannot achieve suspension pending an appeal. They make two points. The first point is this. A Closure Order must necessarily start on the day that the Closure Order is made. There can in law be no deferred start-date. Once the Statutory Necessity Criteria are met, it follows that it must be necessary for occupants to be excluded forthwith. If exclusion forthwith is unnecessary or disproportionate, no Closure Order can be made at all. It is all or nothing. And it is immediately now or never.

56. In agreement with Mr Shipley, I cannot accept the rigidity of this first point. At the heart of the consideration of necessity and proportionality will be the Article 8 rights of the persons for whom the premises are home, as well as the best interests of any affected child. Closure Orders are a first flexible power. The flexibility is reflected in Parliament's recognition (s.80(7)) that the prohibition may apply to all persons or only to some; at all times or only at some times; in all circumstances or only in some circumstances. The magistrates' court is empowered to specify who, when and in what circumstances the prohibition on access will apply. It follows that the magistrates court has to focus on the necessity and proportionality of the prohibition, by reference to its design. I can see no reason why the start-date for excluding a family or a family member must inevitably be immediate, with no brief grace period. Suppose the teenage family member has one more GCSE to sit. Why should magistrates be empowered to say that a family can remain in the home, or access the home at specified hours or in certain specified circumstances; but disempowered to allow any grace period. Parliament could in s.80 have spelled out that the period specified in the Closure Order, which may not exceed 3 months, which must start immediately on the day on which the Closure Order is made. It did not do so.

57. Secondly, Mr Waite and Mr Monighan say this. Even if, in principle, a Closure Order could lawfully involve a deferred start date in respect of the prohibition on some or all

of those affected, it does not follow that a s.80 start date can be deferred until after the determination of a crown court appeal.

58. I accept that second submission. I am unable to see any convincing answer to it. The magistrates court has to decide whether a closure order is or is not necessary, applying the Statutory Necessity Criteria. The magistrates court has to 'own' that conclusion and follow it through in the content of the Closure Order. If an appeal succeeded it would be because the crown court took a different view. The magistrates cannot, consistently with their own view, build in a start-date designed to accommodate a view which they do not hold. That is a back door suspension pending appeal. Bibby tells us that a suspension power, where it exists, can be exercised even where a court has made an order reflecting an immediate entitlement. But that does not entail inventing a back-door extension by redesigning the order so as not to reflect the immediate entitlement which has been found. A deferred start-date under s.80 cannot achieve suspension pending an appeal, because that would subvert the statutory responsibilities of the two courts and abdicate the magistrates' court's primary function.

What About Article 6 Compatibility?

59. If there were an issue of Article 6 incompatibility so far as the suspension powers of the magistrates are concerned, the question would be whether it is "possible" to read s.63(5) of the 1980 Act as follows:

> ***Except where necessary to prevent a contravention of Convention rights, the preceding provisions of this section shall not apply to any order for the enforcement of which provision is made by any other enactment.***

60. In my judgment, that question does not arise. I will explain why. What needs to be remembered is that violation of Article 6 would entail the right of appeal being "defeated" and "negated", so that its very "essence" is "infringed". To return to the dangerous dog example (see §§9, 16 above), the right of appeal could be defeated so that its very essence is infringed, if the dog were destroyed pending the appeal against the destruction order. The dog owner's appeal would be meaningless. So, absent a statutory protection, the Article 6 question would be whether any court could provide effective protection against that taking place.

61. The first point is that expedition may supply the answer. This is what Collins J said in Errington at §12; what the Divisional Court endorsed in Smith (at §17); what the Supreme Court said in ABC; and what the Court of Appeal said in South West Water. See §§11, 19 and 44 above. If there is any argument about the timetabling of a crown court appeal against a Closure Order being too slow, such that the right of appeal is "defeated" and its very "essence" is "infringed", a judge in the crown court would be able to consider that argument, alongside consideration of what practical steps can be taken by the parties and by the court itself. In the same way, if a chief constable considered that there were an urgent public protection imperative in a case where a magistrates' court has declined to make a Closure Order, they could ask the crown court to expedite their appeal.

62. The second point is that an expired period of a Closure Order does not make the appeal academic. The appeal can still involve a live issue which can directly affect the rights and obligations of the parties. First, there is the Qin sense of utility, because the

outcome of the appeal can be a stepping stone to s. 90 compensation: see §29 above. Secondly, there is the Crocker sense of utility, because the outcome of the appeal affects whether the fact of the Closure Order triggers eviction on an "absolute" ground: see §28 above. I consider this to be important. In the very design of the 2014 Act, Parliament thought an ongoing appeal had an ongoing utility, in any case where the Closure Order had a duration of more than 48 hours. The utility was to resolve the question whether the fact of the making of the Closure Order would stand as a trigger to an "absolute" eviction. That utility is reflected in the shield which Parliament designed. And the longer the appeal takes to be determined, the longer the duration of the shield. This reason alone may make it difficult for an appellant to argue that the right of appeal is "defeated" and that its very "essence" is "infringed", because the Closure Order will have expired before the appeal is determined. A key function of the appeal, which Parliament thought mattered, remains.

63. The third point is that the crown court would, in my judgment, itself have a power to suspend a Closure Order pending appeal, if it were persuaded that such an order were necessary to ensure that the right of appeal is not "defeated" and its very "essence" is not "infringed". That calls for brief explanation. The arguments were as follows. Mr Shipley points to s.84(6) of the 2014 Act as an expansive empowering provision, amply covering suspension pending appeal, because it says:

> ***On an appeal under this section the Crown Court may make whatever order it thinks appropriate.***

Not so, say Mr Waite and Mr Monighan. The phrase "on an appeal" means "in the determination of an appeal". And s.84(6) operates "merely to confirm" that Parliament is not exercising its power in s.48(3) of the Senior Courts Act 1981, such that the "full range of powers" available to the crown court under s.48(2) in determining an appeal are available. They point to the absence of an express suspension power in the 2014 Act and in the Crown Court Rules. They say that the crown court's powers as to "matters incidental to its jurisdiction" (see 1981 Act s.45(4)) cannot extend to a suspension pending appeal, because such an order does not "ensure" or "relate to" the "proper despatch of the business before" the crown court: see In re Trinity Mirror [2008] EWCA Crim 50 [2008] QB 770 at §§29-30.

64. I am unable to see s.84(6) as an expansive empowering provision. It needs to be read consistently with Part 4 Chapter 3 itself. And it needs to be read alongside the provisions of the 1981 Act. The crown court is considering the Closure Order against the Statutory Necessity Criteria. It would not be entitled to apply different criteria. Its role on an appeal is to correct mistakes in the decision under appeal, as s.48(1) of the 1981 Act provides. Section 84(6) is not, for example, a general costs or compensation power. Costs are addressed in s.88. Compensation is delineated in s.90. Section 84(6) would confer no general power to issue post-determination injunctions (cf. Trinity Mirror). It would not permit the crown court to make a new Closure Order beyond the 6 months maximum duration (s.82(8)). I agree that, so far as substantive determination is concerned, the provisions of s.48(2) of the 1981 Act are in play. I cannot agree that "on" in s.84(6) means "in the determination of". A suspension could be an order "on" an appeal just as it could be "on" a statutory review (s.66(4)): §12 above. But I do accept that the power to make an "appropriate" order (s.84(6)), "on" the appeal and aside from the order determining the appeal, is to be read with s.45(4) of the 1981 Act. It is common ground that s.45(4) of the 1981 Act is in any event applicable. It speaks of

the crown court having powers equivalent to the High Court on "matters incidental to its jurisdiction".

65. The nub of the Article 6 question comes to this. Suppose a crown court were persuaded that suspension of a Closure Order pending an appeal is an order which is necessary to ensure that the right of appeal to that court is not "defeated" or "negated", and its very "essence" is not "infringed", so as to discharge the duty to act compatibly with Convention rights. In that situation, I think the HRA s.3 interpretive obligation would interpret "powers" in relation to "matters incidental to its jurisdiction" (s.45(4) of the 1981 Act) as extending to such an order being made by the crown court. I think an order to ensure that the right of appeal is not "defeated" and its very "essence" is not "infringed" is an order which does "ensure" or "relate to" the "proper despatch of the business before" the crown court (Trinity Mirror). By that means, Article 6 compatibility would be secure, by the court best able to deal with the appeal and solve any issue by expedition.

66. The fourth point is that, even if the third point is wrong, there is no doubting that the High Court would have jurisdiction by way of judicial review. That was the safety net in Trinity Mirror (see §31). It is the protection which was invoked in ABC. If suspension were necessary to ensure that the right of appeal is not "defeated" and its very "essence" is not "infringed", and if the crown court can neither expedite nor suspend, the High Court would have jurisdiction and would need to consider its exercise. I am not saying that these routes will prove necessary. What I am saying is that they are safety nets which mean there is no question of any Article 6 incompatibility arising from my analysis of the magistrates' court's powers; so that I do not need to address whether there is an alternative possible interpretation of the statutory powers pursuant to HRA s.3.

Conclusion

67. For all these reasons, I will allow this appeal. I return to answer the three questions:

> ***(Q1) Does s.63(2) of the 1980 Act empower magistrates' courts to suspend a Closure Order pending an appeal to the crown court? (A1) No.***
>
> ***(Q2) If the answer to (Q1) is yes, in what circumstances should the power be exercised, taking into account the statutory purpose of Part 4 Chapter 3 of the 2014 Act? (A2) Does not arise.***
>
> ***(Q3) Was the power lawfully exercised in this case? (A3) Does not arise.***

I will allow the appeal with no order as to costs (save that there be a detailed assessment of Ms Morgan's publicly funded costs), that being agreed between Counsel as the appropriate order in light of the circulation of this judgment in draft.