

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/01/2011

Before :

HIS HONOUR JUDGE RICHARD SEYMOUR Q.C.
(sitting as a Judge of the High Court)

Between :

FLORINA GRAHAM

Claimant

- and -

**(1) PAUL WEST, CHIEF CONSTABLE OF
WEST MERCIA CONSTABULARY**

(2) PHILIP EDWARDS

(3) SUSAN THOMAS

**(4) SARA THORNTON, CHIEF
CONSTABLE OF THAMES VALLEY
POLICE**

Defendants

Mrs. Florina Graham in person

Mark Ley-Morgan (instructed by **Berrymans Lace Mawer LLP**) for the defendants

Hearing dates: 30 November and 1 December 2010

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE RICHARD SEYMOUR Q.C.

His Honour Judge Richard Seymour Q.C. :

Introduction

1. The claimant, Mrs. Florina Graham, is a translator and interpreter. So far as is material to this action, she is able to translate between the English and Romanian languages.
2. Until about 18 August 2009 Mrs. Graham carried on business on her own as an interpreter, offering her services to police forces in England and Wales. As I understand it, in order to offer such services it is necessary to be registered by the National Register of Public Service Interpreters (“NRPSI”). Following a hearing on 18 August 2009 a Disciplinary Panel of NRPSI determined that Mrs. Graham should be excluded from registration with NRPSI with immediate effect and should not be considered for reinstatement for at least five years. Consequently, from that time Mrs. Graham has not been able to offer her services as an interpreter to any police force.
3. The complaint which resulted in the determination of the Disciplinary Panel that Mrs. Graham should be excluded from registration had been made by Chief Inspector Susan Thomas of West Mercia Constabulary (“WMC”). It arose out of the circumstances which gave rise to this action.
4. Mrs. Graham resides, and resided on 10 July 2008, in Beaconsfield, Buckinghamshire. Beaconsfield lies in the area for which Thames Valley Police (“TVP”) is responsible.
5. Inspector Stephen Turner of WMC sent a message dated 8 July 2008 to TVP. So far as is presently material, the message was in the following terms:-

“It is requested that officers attend 34 Candlemas Mead, Beaconsfield, Bucks HP92AP and arrest the occupier Mrs. Florina Graham for sec 2 Protection of [sic] Harrassment [sic] Act 1997. I would recommend a visit to the address between 7-8 am. It is requested that her mobile phone/lap top be seized (possible number 07778483646) as these have been used to send text messages and e mails.”

The circumstances are as follows.

Mrs. Graham is an official police interpreter who attends stations throughout the country to assist with interviews etc. On 31.5.08 she attended the custody suite at Leominster and briefly met the duty inspector as he was conducting an identification procedure with a Rumanian detainee. Since that meeting, the inspector has received a series of e mails, mail packages and text messages which have all been unsolicited and which he considers personal and intrusive. Mrs. Graham has also recently begun communicating with another officer following on from a chance encounter in the station. It is felt that unless she is arrested and interviewed, this practice will continue to cause embarrassment to the officers.”

6. Mrs. Graham was arrested by P.C. Victoria Wellsted at about 7.30 a.m. on 10 July 2008 at her home in Beaconsfield. In her witness statement prepared for the purposes of this action P.C. Wellsted, in a passage which was not challenged, described what she knew at the time of the arrest and what followed the making of the arrest:-

“5. I am aware that an arrest request was made by West Mercia Police to Thames Valley Police on 8 July 2008 requesting the arrest of Florina Graham of 34 Candlemas Mead, Beaconsfield, for Section 2 Protection of [sic] Harassment Act 1997. West Mercia Police also requested that Florina Graham’s mobile phone/laptop be seized as they were evidence of the offence.

6. On 9 July 2008 I was tasked, together with my colleague Constable 4538 Shamin [sic – the correct spelling of the officer’s surname is Shamim] to effect the arrest. Prior to attending the property I would have accessed the Command and Control Terminal to obtain background information of the offence. I can recall that the information provided was along the lines that Florina Graham was an official police interpreter who attended police stations throughout the country. In this capacity she had cause to deal with a West Mercia Police Inspector. Since that meeting Florina Graham had sent the Inspector a series of unwanted emails, packages and text messages which were all unsolicited and which the Inspector considered to be personal and intrusive. It was felt that Florina Graham’s course of conduct amounted to harassment and that she should be arrested. It was also felt that unless she was arrested her course of conduct would continue.

7. I recall that I attended Florina Graham’s property on 9 July 2008 in an attempt to effect the arrest, but was unsuccessful as I found the property to be unoccupied. Constable Shamin and myself therefore re-attended the property on 10 July 2008 at approximately 07.25 hours for the purposes of arresting Florina Graham and conducting a Section 32 search of her home address.

8. A female answered the door in her pyjamas and identified herself as Florina Graham. I identified myself as a police officer and at 07.30 hours said to Ms Graham “I am arresting you on suspicion of harassment to an officer from West Mercia between the dates of 31 May 2008 and today. The arrest is necessary to allow a prompt and effective investigation into the offence by way of interview”. My arrest statement dated 10 July 2008 is erroneous in that I refer to the date of commencement of harassment as being 31 July 2008. This is clearly incorrect given this post dates the date of arrest and is an error on my part.

9. Ms Graham was cautioned but she made no reply, although I do recall that she was surprised to see us. Following the arrest I recall Ms Graham becoming quite theatrical and excitable, not how, in my experience, people ordinarily respond upon being arrested.

10. I also noticed that Ms Graham had a Nokia mobile phone in her hand. I explained that due to the nature of the investigation that I would be searching her house for any mobile telephones or computers. I explained the search was being conducted under Section 32 of PACE. During the course of the search the following items were seized:-

a. 1 x Nokia mobile phone which I seized from Ms Graham as [sic] 07.30 hours. This was bagged and sealed.

b. 1 x Acer laptop which I seized at 07.30 hours from the living room table downstairs which was bagged and sealed.

c. 1 x Sagem mobile phone which I seized at 07.30 hours from the stairs which was bagged and sealed.

d. 1 x laptop which I seized at 07.30 hours from the upstairs spare bedroom which was bagged and sealed.

11. The above exhibits were later sealed in property bag and booked into High Wycombe Property Store at High Wycombe Police Station.

12. The Section 32 search lasted no more than approximately 20 minutes.

13. I recall whilst at the claimant's property I conducted a cursory search of her handbag to ensure there was nothing in it. Ms Graham was permitted to take her handbag to the police station. Whilst in custody the handbag was fully searched and all contents fully itemised and booked into custody.

14. I can also recall that during the course of the search I came across a Royal Mail Special Delivery bag which was addressed to a Police Inspector who's [sic] name I can now not recollect. I cannot recall whether the Special Delivery bag was found in Ms Graham's handbag or on the dining room table. I believe it to be the latter. Given that this item may be evidence to the offence I considered seizing it. Ms Graham was however adamant that she wanted to take it to the police station personally. I therefore agreed to this and allowed her to place it into her handbag whereupon it would be booked into property at High Wycombe Police Station.

15. Prior to transferring Ms Graham to the police station she was permitted to dress. I recall escorting her upstairs to her bedroom whereupon she dressed. I would describe Ms Graham as being co-operative but very vocal.”

7. The custody record compiled in relation to Mrs. Graham’s detention at High Wycombe Police Station showed that she arrived at the police station at 8.05 a.m. The custody record was opened at 8.14 a.m. The detention of Mrs. Graham was authorised by Sergeant Ellis of TVP, the custody officer on duty, at 8.17 a.m. After the arrest of Mrs. Graham Inspector Turner was informed, and he, accompanied by Sergeant Evans, set off from Hereford to High Wycombe. They arrived at High Wycombe Police Station at about 11.36 a.m. Mrs. Graham had, meanwhile, made contact with a solicitor whom she wished to advise her at the police station. The solicitor arrived at about 12.27 p.m. At about 12.34 p.m. the solicitor began a meeting with Inspector Turner and Sergeant Evans in which the officers disclosed to the solicitor the documents about which they wished to question Mrs. Graham. That process, which necessitated the solicitor reading a number of lengthy documents, and the consultation between the solicitor and Mrs. Graham, were completed before the interview of Mrs. Graham by Inspector Turner and Sergeant Evans, in the presence of Mrs. Graham’s solicitor, commenced at about 16.18 hours. The interview continued until about 18.42 hours. The length of the interview was, in part, determined by the fact that on a number of occasions Mrs. Graham wished to break so as to take advice from her solicitor. At about 19.28 hours Mrs. Graham was granted police bail and released.
8. Subsequently the Crown Prosecution Service decided that it was appropriate for Mrs. Graham to be given what was described as a “*First Harassment Warning*”. That took the form of a letter, written on the printed stationery of WMC, dated 23 July 2008 and addressed to Mrs. Graham, of which the material terms were:-

“You are hereby advised that your communication with officers from this division [Hereford] since 31.5.08 has been unsolicited. It has caused our staff distress and they regard your actions as harassment. Such behaviour must stop forthwith. You are hereby given a 1st instance warning under the Protection from Harassment Act 1997. You are warned that there must not be any repetition of any behaviour, which you know or ought to know, amounts to harassment (directly or indirectly) of the complainants. This applies to any other police officer, you may have dealings with.

This will be your only warning. Should your conduct continue, you will be liable to arrest and prosecution.”

9. In this action Mrs. Graham claimed damages for alleged unlawful arrest, false imprisonment, defamation, harassment, discrimination, trespass, theft and illegal recording, monitoring and invasion of privacy. The first defendant was named as Paul West, the Chief Constable of WMC. The second defendant was named as Philip Edwards, who, in the summer of 2008, was an Acting Inspector with WMC. The third defendant was Chief Inspector Thomas. The fourth defendant was named as Sara Thornton, the Chief Constable of TVP.

The Particulars of Claim

10. Mrs. Graham acted throughout in person in conducting this action. She prepared the Particulars of Claim herself. The Particulars of Claim were relatively brief. It is convenient to set them out in full:-

“a. On the 10th of July 2008 I was unlawfully arrested by Thames Valley Police on behalf of West mercia [sic] police (Sergeant 3396 p. [sic] Edwards and his chief insp. susan thomas [sic]) for having allegedly harassed p. [sic] Edwards.

*b. I had never harassed p. [sic] Edwards. He answered my emails volunteering private info., signing his emails in a very friendly manner after writing: - I appreciate it [my writing **compliments** to him], I'm flattered - . He had never warned me that I might be disturbing/distracting never mind harassing him. After my complaint to the IPCC this year, he started making up evidence against me. In 2009 he lied again but this time actually doctored/forged emails dated 2008.*

c. In custody at High Wycombe Police station (thames valley[sic]), on the 10th of July 2008 I was falsely imprisoned. I was not even given food, my privacy was invaded having my handbag searched (and house before that), myself being fingerprinted, DNA-ed and photographed.

d. While I was in custody, sgt. [sic] Edwards was in my house photographing my belongings and placing audio (_video_too) recording devices. He also cut duplicate keys for my property and car. A tracking device was also fitted to my car.

Unlawful arrest, false imprisonment, the invasion of privacy, harassment, etc as above, are serious breaches by him of the HRA 1998, the Harassment Act 1997, etc.

e. Meanwhile his chief, insp. susan (sue) thomas [sic] was busy libelling me to my professional body. I had worked as a NRPSI-accredited translator & interpreter for UK public services. She wrote a (full of spelling, grammar and logical mistakes) letter to my professional body, the NRPSI (a 3rd party), telling them to inform all police forces, etc so that they all ban me. susan [sic] called me unprofessional, incompetent, etc which amounts to defamation-of-character/libel. Because I am actually a business operating under my under my [sic] own name as a Sole Trader, I am suing her/her-force also, for Malicious Falsehood too.

f. Obviously Thames Valley police who colluded in my unlawful arrest, etc are responsible too. Moreover they struck me off themselves. I lost even more money. Furthermore, in August 2008 while trying to work for Hertfordshire police, two male

Thames Valley police officers slandered me regarding the arrest on the 10th July 2008. A Herts-police inspector told me they could not use me, I was banned and must leave Watford (in Herts) police station. I lost even more money.

g. Not only am I claiming for money I lost by not being able to work due to all these bans but compensation/damages for injured feelings, intentional emotional distressed [sic] inflicted upon me, anti-depressants medication, solicitors [sic] fees, taxi fares, phone calls, etc as I tried to sue west mercia [sic] police last year but I was too fraught to do so.

h. Between 2008-2009, even little work I was offered by few organisations that did not remember (or failed to learn) about my ban, I frequently declined being unwell or busy meeting with expensive action-against-the-police solicitors. I expect compensation for all this. In my – Letter Before Action - , - Notice of Writ- and –Letter of Claim- I already sent these forces attempting to settle out of court and as part of protocol/formalities, I requested £450,000.00. As I do not wish UK TaxPayers [sic] to lose a lot of money due to incompetent, unprofessional, unscrupulous, racist, etc officers, whose wages (and solicitors) we already pay for, I'm reducing the amount to £250,000.00 which is meagre.

i. Regarding point 4. on the Claim Form, beginning with 10th July 2008 I have actually been harassed by police, especially him [sic]. It's me who has been harassed by west mercia [sic] and thames valley [sic] police (but not Herts). Several things have happened which now prove p. [sic] Edwards, as a police officer, thinks he's untouchable, he can harass me, have me ridiculed, humiliated, followed, recorded, banned, fined for driving offences which I didn't commit, etc. Even before 10th July 2008, his colleague PC john yarwood [sic] (who lied to me he was an inspector) used racial slur telling me that I am inferior to British people because I am not even Polish but just Romanian.

j. p. [sic] Edwards led me on in his 2008 friendly emails to me, so he would later have something to arrest me for, then age-, sex- and race- discriminate against me (I am not young, a male or British-born), harass me, steal money from me through my former solicitors and other ways.

k. Regarding points 5 and 6 on the Claim Form, p. [sic] Edwards used my unlawful arrest as an opportunity to trespass on to my property. Before the 10th July 2008 he had already been listening to my phone calls, monitoring my email accounts, etc.

However, he needed access to my property (and car) to look at my private documents, things in the house, place monitoring and recording devices in the home and car. An additional thing, a tracking device was placed on to my car.

While I was in the police cell, he took my keyring and cut duplicate keys at a shop in High Wycombe. I had not harassed the fantasist, low-ranking officer p. [sic] Edwards. However, even if I had harassed him, he should have advised me of that at least once; told me how he might have felt. I would have stopped corresponding with him at once. I had never phoned him anyway.

He had not informed me of my potentially “harassing” him. He went along with my minor attempt to platonically befriend him as a work-colleague, long-distance pen-pal. Normal police never arrest (especially from home like I was picked-up [sic]) a person who might have harassed someone. They give the alleged culprit a warning to stop. Only in the case of harassment with threats, do they invite someone to the station for questioning or arrest from home.

l. My arrest was meant to cover up for p. [sic] Edwards’ trespassing on to my property, unlocking my car. Otherwise, he would have had to force entry, break the door. Then he would have committed burglary. He invented my “harassing” correspondence after I had “dumped” him i.e. written to him _Good-bye_ and genuinely stopped contacting him.

m. Money has been stolen from me in different but veiled ways. These sums are supposed to be included in the small amount I am claiming as damages, compensation. As soon as I get some free time after dealing with this civil case, I will report him to the police for theft from person, trespassing, harassment, etc.

o. [sic] Regarding point 7 on the Claim Form, my human rights as below and protection from harassment according to the Harassment Act 1997, have been infringed by p. [sic] Edwards, as a civilian and sergeant, his employer and thames valley [sic] police.

- *Freedom from degrading treatment*
- *the right to liberty*
- *the right not to be punished for something that wasn’t a crime when you did it*
- *the right to respect for private and family life*

- *the right not to be discriminated against in respect of these **rights** and freedoms*

The monitoring, recording and tracking devices, the arrest itself are concrete proof of my plight at the hands of a possibly: racist, uneducated, unscrupulous, untrained, alcoholic, mentally deranged, drugs abusing officer, probably with a criminal record for serious crimes.

*p. His west mercia [sic] police mates gave me a-warning/some-caution [sic] after, **not** before the arrest, which now prevents me from working for the police, other public service bodies in the UK. I applied to annually re-register with the Gwent-Police/Heddlu-Gwent [sic] but because of the warning, never mind the ban, I have been turned down. Basically I lost my career/livelihood in this country.*

r. [sic] Unprofessional, etc p. [sic] Edwards can work as a police officer with a possibly already-acquired [sic] criminal record, whereas I can not work anymore as a freelance/self-employed linguist as I have a warning/mild-caution [sic] due to his invented allegation.

s. p. [sic] Edwards and his force must do the decent thing, apologize to me and compensate me for their lies, my stress, ill-health, etc which their fabrications caused me. Thames valley police must contribute to the damages, etc payout as they colluded, almost conspired, in my arrest and the events after. Two of their officers slandered me on Herts police premises in August 2008.

t. If I do not get a suitable redress and settlement in this court, I will go to the European Court of Human Rights and make my predicament public in the UK, USA, etc Media.

u. The whole amount paid to me as damages, compensation, etc I will donate to kids' charities in: Romania, America, Argentina, Sweden and Italy."

11. The whole focus of the Particulars of Claim appeared to be the arrest of Mrs. Graham on 10 July 2008, her subsequent detention, the complaint made by Chief Inspector Thomas to NRPSI, and the alleged use made by Acting Inspector Edwards of the opportunity provided by the arrest of Mrs. Graham to have copies made of her house and car keys and to enter her house and car and to plant monitoring or recording devices in them. The only allegation against TVP made in the Particulars of Claim which did not seem to be consequent upon the facts that she was arrested by an officer of that force and detained at one of its police stations, was that, "two male Thames Valley police officers slandered me regarding the arrest on the 10th July 2008". In her written opening and closing submissions Mrs. Graham made a substantial number of allegations concerning a Mr. Gheorghe Serbanescu and his alleged connections with TVP. These allegations did not feature in the Particulars of Claim and arose, so far as

this action was concerned, for the first time at trial. Consequently they were not the subject of evidence and the substance of these assertions was not investigated. Mrs. Graham at trial sought to rely on the absence of the fourth defendant as a witness as a fact justifying inferences against TVP. In fact the allegations pleaded in the Particulars of Claim did not necessitate any evidence from Sara Thornton. There was no pleaded allegation that she personally had had anything to do with the circumstances giving rise to the arrest or detention of Mrs. Graham or to the alleged slander of Mrs. Graham by two officers of TVP in Watford Police Station.

The evidence

12. Later in this judgment I shall consider the law relevant to the arrest and detention of a person who is lawfully in this country. I shall explain how it is that the focus of attention in relation to an alleged unlawful arrest and subsequent wrongful detention is really quite narrow. So far as the arrest is concerned, it is upon the thoughts and actions of the arresting officer, and whether the arresting officer had reasonable grounds for the arrest. Whether the person arrested had in fact committed the offence for which he or she was arrested is not relevant to the lawfulness of the arrest. In relation to the detention following a lawful arrest, the issue is really whether the period of detention was unreasonably long.
13. The facts as to the arrest and the detention of Mrs. Graham which I have set out were not, in fact, in dispute. On those facts I am satisfied that the arrest of Mrs. Graham was lawful, and so was her consequent detention.
14. However, because of the other complaints raised by Mrs. Graham in the Particulars of Claim it is necessary to go further into the background facts than would be necessary or appropriate if the only issues were whether the arrest of Mrs. Graham was justified and the ensuing detention lawful.
15. The particular reason to consider the evidence in relation to whether Mrs. Graham had in fact been guilty of harassment of Acting Inspector Edwards was that Mrs. Graham contended in the Particulars of Claim that the complaint made by Chief Inspector Thomas to NRPSI was defamatory. The complaint was set out in an e-mail sent at 15:50 hours on 10 July 2008. The text of the complaint was:-

“Florina Graham was called to assist as an interpreter to Leominster Police Station on 31st May 2008 where she met with the Duty Inspector, Inspector Phillip Edwards, who was conducting a review/PACE matters on the suspect. He had a brief conversation with Ms Graham in the custody area in the presence of the suspects [sic] solicitor.

Following this brief interaction, Ms Graham proceeded [sic] to send several emails to Inspector Edwards and also 4 packages in the post. The first was a letter, the second was a large jiffy bag containing a three page letter, book, DVD and various other papers. The third was another large envelope with a letter and some photographs of art and the fourth was a letter, 2 cards, copies of her degree certificate, copy of her linguists [sic] certificate, copy of her linguists [sic] ID card, copy of her

car park pass for Snow Hill Police Station in the Met and various papers. The content of the letters is very enquiring of Inspector Edwards of a personal nature with some occasional sexual connotation.

Ms Graham has managed to find out the personal mobile telephone number for Inspector Eedwards [sic] and over the weekend of 4th/5th/6th July, he has received 3 text messages from her.

The content of the letters and packages aswell [sic] as the texts are unwanted. Inspector Edwards has never met with her, spoken to her since the custody meeting on 31st May. This matter is considered to be harrassment [sic] and a criminal offence. There are also several blank pages within the letters which are official forms used in both the Met Police area and Hertfordshire Police. She uses these papers to wrap around the personal matters. The possession of the papers could be seen to be theft.

In addition, the content of the letters causes concern regarding the mental health status of Ms Graham and together there are clear concerns regarding her overall ability to fulfil the role of an interpreter for any Police Force in the Country.

I am now required to reauthenticate the work in this matter and will be pursuing the same for all work undertaken in the West Mercia Police area.

Ms Graham was arrested today for theses [sic] matters and is currently in police custody within the Thames Valley Police area. The outcome is awaited and I will inform you of the progress.

I believe that Ms Graham should not be allowed to continue in her role as an interpreter with immediate [sic] for any Police Force – her conduct questions her ability to present the accuracy and relevancy of any information she may interpret in any police cases and will be at the detriment to justice for witnesses and victims. In addition, other Officers are at risk to [sic] her behaviour and they should be protected from such conduct when going about their daily policing activities.”

16. Mrs. Graham did not dispute that she had, indeed, sent the e-mails, packages and text messages to Acting Inspector Edwards which were mentioned in the complaint of Chief Inspector Thomas. Mrs. Graham, however, contended that the sending of those various communications did not amount to harassment of Acting Inspector Edwards. Consequently it is necessary to consider the communications in question.
17. The first message which Mrs. Graham sent Acting Inspector Edwards was sent by e-mail on 2 June 2008 at 23:07 hours and was relatively short:-

“Dear Inspector,

It was a great pleasure to meet you and interpret for you the Viper procedure (Romanian detainee at Leominster police station, on Saturday the 31st of May in the evening).

I wonder if you could t[e]xt me your work mobile number as I have some sensitive/official information that I would like to give you.

Please do not show this email to anyone, you can delete it right away. (I trust it is ok for a female interpreter to ask for your phone number rather than a male one ...)

Sorry for being intrusive but can I ask you if your wife/life partner works for West Mercia Police too? I trust the letter I posted you will not be read by somebody else. I apologise if you are offended by my question, this email or the letter.

Hopefully I will hear from you at some point in future, if not, it was nice meeting you anyway.

I look forward to working again for/with West Mercia Police (especially with you), it will make my day.

Yours faithfully,

Florina Graham BSc (Hons) RPSI UK”

18. Bearing in mind that Mrs. Graham had met Acting Inspector Edwards just once some passages in the e-mail do seem to have been over-familiar, at very least.
19. Acting Inspector Edwards replied to Mrs. Graham’s e-mail also by e-mail, on 3 June 2008:-

“Florina

The generic work mobile is [a number was then set out]. If there is sensitive information you want to give then e-mail it. Your interest is appreciated but may be misplaced.

Kindest regards

Phil Edwards”

20. As it seemed to me, that response was polite, but not encouraging, if Mrs. Graham was hoping for a relationship other than a purely professional one with Acting Inspector Edwards.
21. At 23:08 on 3 June 2008 Mrs. Graham responded, again by e-mail:-

“Hi,

Sorry [sic] about everything.

Hopefully you are indeed the tall and handsome inspector I interpreted for, I do not want this to go to the wrong person.

I just hoped it would be ok to have your phone no., maybe get to speak to you (again)/hear your voice..., etc.

I can assure you I'll NOT contact you AGAIN. I NEVER EVER done [sic] this before, I am a married lady.

I did not contact you because I was seeking more work. Although you are a high ranking officer, you canNOT in any circumstances get me bookings. An inspector does not choose/request interpreters. Furthermore as I am the highest accredited interpreter you can get in the UK, I am very sought after already.

If you want I'll REFUSE assignments from West Mercia Constabulary (I am in so much demand anyway by several other Forces including non-geographic ones like B.T.P., Port of Dover Police and even S.O.C.A.) so there will be NO chance of us meeting again.

It will be a pity though.

What music do you like? I used to be into Dire Straits, I still like U2 though! – I guess you can tell my age now:([sic]

I bet you are into Jazz...

I also like classical music. My hubby (1 year older than me, a Scot) does not like classical music, do you?

Do you smoke? He does, I tried to get him to quit. I only smoked when I did my first degree.

Anyway, please DELETE this email IMMEDIATELY. I apologise for taking up you time + for the intrusive, possibly offending letter and both emails.

Yours, Ms. Florina Graham Tel. 07 778 483 646, Fax 0871 714 5503

P.S. this statement at the end of your email does worry somewhat

<<West Mercia Constabulary monitors all e-mail activity and content>>

Like I said, I have not done this before, I do not know if an officer's emails are monitored/read indeed, all of them[?] I

have had work email correspondence with various officers before but I never had to check this particular aspect.

I do not want to create any problems for you or myself.

Would you be interested in replying to this email but from your private email address?

Probably not, which is absolutely fine after all.

I am sorry but your 'generic' work mobile is a phone which is answered just by yourself or others too? – I never asked an officer this question before; I have been given many Detectives' and PCs' mobile numbers obviously for work purposes again.

I did consider sending you a t[e]xt message instead of this LAST email...

22. That e-mail seemed to me to be flirtatious and at the same time intrusive, seeking personal information from Acting Inspector Edwards, who had already indicated, politely, that he was not interested in continuing contact with Mrs. Graham other than in a professional capacity.

23. The e-mail clearly confused Acting Inspector Edwards. He replied in an e-mail sent at 09:21 hours on 6 June 2008:-

“What exactly are you looking for? I don't care if you work here again. It really isn't an issue. The word misplaced didn't refer to the wrong person but the fact [is] that I am not in a good position for what I believe you want. I am flattered by your comments and appreciate it. I love Classical music and Genesis.

Phil”

24. It appeared to me that it was plain from the response of Acting Inspector Edwards that he considered that Mrs. Graham was inviting some sort of private relationship and was making it clear that he was not interested in such a relationship. However, again, whilst his reply was cooler – no “*Kindest regards*” – he was still striving to be polite.

25. At 01:15 on 15 June 2008 Mrs. Graham sent to Acting Inspector Edwards what appeared to be a more professional e-mail:-

“Dear Inspector,

I am sorry I was late when posting you the sensitive communication I was due to send last week. If it has not arrived yet, it will arrive on Monday, please check now anyway.

My apologies if the material does not help you a great deal, if it is of no great interest to West Mercia Constabulary.

Sorry for sending a t[e]xt message by mistake to [a mobile telephone number] which used to be/is a second work mobile no. of yours, apparently.

There is no need for you to reply to this email or call.

Thank you.

Yours faithfully,

Ms. F. Graham BSc (Hons) RPSI UK

fully accredited Police and Court interpreter/translator.”

26. Acting Inspector Edwards replied at 13:21 on the same day:-

“Again. I appreciate your interest but please STOP.”

27. In my judgment that was a firm indication to Mrs. Graham that her interest in Acting Inspector Edwards was unwelcome to him and that he wished her to cease making contact.

28. Unhappily on 16 June 2008 a letter addressed to Acting Inspector Edwards arrived from Mrs. Graham. It was quite a long letter, but it is appropriate to quote it at length because of the nature of the content. It was extremely intrusive in relation to the private life of Acting Inspector Edwards, whilst containing sexually suggestive passages. Parts of the copy of the letter put in evidence were obscured by police exhibit labels. Enclosed with the letter were a DVD and a book, as well as some other papers. The main part of the letter, which was unsigned, was in these terms:-

“Hi,

Just a last letter. As an apology I am enclosing a DVD (and an album) which I hope you will watch with your sons, if you have any and they are old [words obscured] police and mercenary stuff. Maybe you will find it [words obscured] like it anyway, it stars my favourite actor, John Cusack. [Words obscured] famous but I think he is good. My hubby knows I like him and almost all his movies ☺ Have you seen any of his films?

However, on this occasion he did not play well. You would have done a better job, you are a police officer indeed whereas he is just an actor playing an ex-cop. When/if you watch it, I hope you will think of me. Don't be offended by my giving you this, it is not a great deal of money anyway/unfortunately (!?!?) Please do not return it.

I just want to say that it's ok ... I'm ok. I am not a 'bunny-boiler' (Re: Glen Close and Michael Douglas in Fatal Attraction) but maybe a would be bunny-girl ☺

If anything happens between us , or not , etc I will NOT try to harm you or your family. After all I do not even know where you live. BTW [? by the way], where approximately is your address? I am in South Bucks. Last week I was at Kidderminster station and Corby (Northants), we could have met. I do have something else for you which you might find interesting.

If I happen to work again in West Mercia itself or in Leicestershire, Warwickshire, Gloucestershire, Oxfordshire or the West Midlands do you want me to call you? On what number though? I need a direct one.

My car is easy to spot although it is only a 3 door 4x4, it's metallic blue, is [sic] has a roof-rack. If I am parked in front of a police station, or in a hotel car park ☺ etc you can find it right away. Sometimes, especially at night, I am given a space inside the very police car park, though.

1. Sorry to ask but are you gay? Many interesting men are. Will you change?

2. OTOH [?on the other hand] possibly you are only keen on young ladies, maybe dark ones ... I can get a tan [followed by a miserable face]

3. Is it just that you are married or in a great relationship already and are not seeking anyone else? Fine, I can wait. Is your wife/girlfriend/boyfriend your childhood sweetheart, a model and/or fitness instructor?

4. Perhaps you found me old and not attractive ... sorry but I was working, I do look better when I am "off duty", obviously ☺

5. Maybe you are single but not looking. OK, I can wait again.

6. Finally, perhaps you think I am easy. Trust me, I am not. You will get a chance to see, if you want ... I really am hard to get despite me doing now all the chasing for you, which is NOT ok at all !

I am a (happily) married lady. I have never ever done this before. I have had some offers/proposals ... but I never contemplated cheating on my husband.

There could be more alternatives but since they are rather unsavoury, I'll stop here. Anyway could you advise which option applies? I need to know.

I do not have any kids, my husband wanted kids but I did not want to get pregnant/fat and go through giving birth ... Then I would have not been able to do my 2nd degree, work etc. I am currently self-employed as a freelance interpreter/translator and PAYE employed as an Admin Manager for a Co in South Bucks. Does your wife/girlfriend/life-partner also work (as an Inspector, DC, etc) for West Mercia?

I love classical music as well. When I lived in Romania and briefly in Italy, I went to Opera and Ballet shows too. The 'pub crawl', drugs, raves was not my scene. As a student I got a discount, it was very affordable. There is a very good Romanian opera soprano and even a prima ballerina in London. Not all Romanian ladies are Cheeky Girls [followed by a miserable face] ☺

I DO like Genesis myself. My favourite songs are: Turn it on again, Home by the sea, No son of mine, Follow you, follow me, Abacab, Mama, Tonight-tonight, Invisible touch, yours? How come you don't like U2? I love U2, most fine/classy people do.

I hoped you would reply 'I do like U 2, I do like you too' ☺

Do you speak any foreign languages? I speak some Italian, Russian and French too. There are several sexy words in French and Italian, if you wish I can teach you ... What instrument do you play?

Can you ride horses? I bet you can, I have never tried. BTW once, although I was logged in to do phone-interpreting only, I got a call from the Royal Canadian Mounted Police, a Sergeant asking me to come to his station! I would have loved an assignment, a 'holiday' in Canada. Where do you go on holiday? We went to Iceland (very interesting landscape, moon-like) and a few times to Venice which is fascinating too, more romantic than Paris.

When is your birthday? Did you go to university? If you have a motorbike I guess you look cool on it.

[words obscured] photos of yours? I bet you look even more handsome in a [words obscured] tucked in, obviously☺ and blue jeans although you look [words obscured] I can not actually remember what you look like, when I met you it all 'happened' rather fast. That old solicitor 'got in the way' with his boring story about his daughter.

If you do not have any digital ones, obviously you can scan normal ones and email them attached in a standard image

format to florinabb@ukonline.co.uk BTW bb stands for baby, this is what my hubby calls me 'his baby' ☺

I was disappointed you did not stay to explain the Viper to the 2nd suspect (there was a 2nd one there) your sergeant did it. With other Forces it's only Inspectors who do it. It was not on ...

What sports do you do? Do you happen to have a P.O. Box address?

Are you a religious person?

I do not know why but when you introduced yourself to me I felt there was a spark, there seemed to be some chemistry ...

Probably there was none, it's just all in my head, erroneously.

If I have any time to listen to Genesis, I'll think of you. Probably I'll do that anyway.

Have a great summer, all the best to you and your family!

Bye,

P.S. I got an envelope in the post stamped 'West Mercia Police Authority' ...

I nearly fainted. I thought/hoped it was from you. Unfortunately it was only from the Finance Dept.

They needed me to submit my (proper) invoice rather than just the 'West Mercia timesheet' the Sergeant signed for me. Just in case, I had asked Finance not to deduct any income tax since I genuinely am registered self-employed with HMRC and my accountant does my tax return.

I really thought the letter was from you, I nearly died. It only happened once before with Wiltshire Police.

Did you get my first letter? I definitely do hope this one is not going to be read by somebody else ... I don't think I'll be able to email you again using your work address. Can you not get a P.O. Box?"

29. A separate note in manuscript sent with the letter read:-

"I trust you realize I will not be able to do this again. I do not want to create any problems for you or myself. The best would be to use a P.O. Box."

30. The note was on a piece of paper bearing the caption “METROPOLITAN POLICE SERVICE – MEMO”. It had a printed space for “Contact Name” and another for “Contact Phone”. The “Contact Name” was completed in manuscript “D C F GRAHAM”. The “Contact Phone” was completed with the number which Mrs. Graham had given in her e-mail of 3 June 2008.
31. The letter received by Acting Inspector Edwards on 16 June 2008 was not the last letter to him from Mrs. Graham. A lengthy letter, again undated and unsigned, was despatched at the end of June 2008 and received at Hereford Police Station on 30 June 2008. The letter ran to five pages of single-spaced A4 paper. It was of a similar nature to that which I have quoted in full. For present purposes it is enough to select some passages from the second letter:-

“You have to believe that even it seems incredible, I’m ok. I’m not dangerous in any way. If anything I’m just naïve, young ☺ and naïve ... I am not mentally ill, obsessed, on drugs or an alcoholic etc.

I was not going to stalk you or your family. I definitely do not want to ruin your life or career. However, I did not realise I am (that) bad. Rest assured had anything happened, I would have not made any rape or sexual assault, etc allegations against you.

...

I hope you’ll forgive me here, you might be interested only in: prostitutes or swingers/dogers [sic], transgenders, pornography, much older women, etc ?!?!?

I really am very sorry to state this but one does read in the papers about what some officers (and many other people for that matter) get up to. I do not want to offend you any more that what I did already. However, if you are keen on prostitutes, I would not have minded charging you if it turned you on ☺

...

Maybe you could let me know your rates, I might be able to afford you, now and then. I am not on drugs, mentally deranged, I do not use alcohol despite what happened so far including this letter. Do not worry, I am not obsessed with you. I can handle it. I am not going to do you any harm. I just wanted to speak to you, if possible at all, that’s all. Surely, it’s not bad. BTW this isn’t entrapment.

32. The letter was accompanied by a manuscript note, again written on the printed stationery of the Metropolitan Police, some photographs of an inoffensive nature, a “La Senza” lingerie envelope, some blank statement forms and a printed document entitled, “Strictly private and confidential”.

33. The manuscript note was to this effect:-

“As a last apology, here’s something also (maybe) 4 U 2 remember me by (especially if I die). P/S ensure U don’t put these 2 “photos” on yr desk at work or take them home, etc. U must dispose of them right now; they might give you nightmares... I got them from an immigration officer whose POLAROID did not work. They look like “art” don’t U think.

U don’t have 2 thank me 4 them. They’re a valueless present. I did not pay anything 4 them. He wanted 2 throw them away. I kept them. U can do it now, 4 me. Pls dispose of the letter and photos a.s.a.p. Sorry about the envelope I put them in ... I did not have another one. ..”

34. At 14:46 hours on 27 June 2008 Mrs. Graham sent Acting Inspector Edwards an e-mail with the subject, “*pls. read the LAST official letter from DC John Cusack, Strictly Private & Confidential*”. The message continued:-

“or the one from DC VERity Platonic which arrived on Friday 27/06/08 in the morning”

35. At the beginning of July 2008 Mrs. Graham sent Acting Inspector Edwards three text messages to his private mobile telephone.

36. The first was sent on 4 July 2008 and read:-

“Pls forward this message to INSP 3396 Philip Edwards, at your earliest convenience. Thank you for your co-operation, regards I apologise for being late with the translation you instructed me to do. Pls check your post at work, u-r-g-e-n-t-l-y. I delivered it in person on Friday 04/07/08@ 16:45 despite sending the do’s in with a delay. I hope your force will use my services again one day. I am a professional (police, prosecution, immigration, DCOCU, SOCA, Court, Health & Safety Executive etc) translator/interpreter; the highest accredited one you can get. Obviously there is no need for you to recommend me, even informally, to all your West Mercia custody suites, DC-s, etc. You canNOT, probably don’t want to anyway, especially after my sending you late, possibly substandard work on this occasion. Sorry. Thank you. Good-bye.”

37. Acting Inspector Edwards had not in fact commissioned any translation work from Mrs. Graham.

38. On 5 July 2008 he received a further text message from Mrs. Graham:-

“the witness + victim will be at the Merton restaurant today, Saturday and on Sunday, in the evening. Statements could be taken by one of your DCs or PCs, but only if absolutely

necessary. Good-luck with the case, Regards DC john [sic] Cusack. BTW you did not sat/txt, unless you lost my work email and fax no. Best wishes. Good-bye.”

39. The last of the three text messages was despatched on 6 July 2008. It read:-

“4 the very last time, if u r not abroad (or just away from Herefordshire) u should come to the restaurant in Hereford 4 dinner. The food is exquisite. If yr wife/girlfriend is pregnant, allergic, a vegetarian, etc they will accommodate her. (Even though I am friends with the managers) I won’t intervene; the staff are helpful 2 everyone anyway. Bring yr kids 2. I can pay yr bill beforehand. Will it be 4 more than 4 persons? I will drop £160 (or more) 2 yr station @ approx 16:45, that might cover all food & drinks. Just txt back ‘OK’. I swear to God I’ll Not speak 2 u or yr companion(s). Your wife/girlfriend must b yr childhood sweetheart, stunning model/fitness instructor) very well educated, only 20 years old, etc. Even if she wasn’t I know u r very much in love with her, u r Not interested in talking to people. I do not want 2 humiliate myself any further so I’ll keep my mouth shut. Thks. DC 396 john [sic] Cusack.”

40. Round about the same time Mrs. Graham sent Acting Inspector Edwards a greetings card and a number of other documents. Inside the card she wrote:-

“Pls be careful you don’t take a bad gamble with someone even nastier than me. I don’t want you to end up in prison for rape, etc. Lots of women (and men) are very quick at making all sorts of allegations. I do not care about you, your life career (why would I? – you were so abrasive)

but since I’m probably a “freak”, I don’t want you to end up in such a predicament.

I know you’re not interested in seeking me, in seeing me, but just in case, I can tell you now that my husband and I will not be in the Merton restaurant on any of the days I mentioned.

Happy now?

Like I said, I’m not easy ...”

41. Meanwhile Acting Inspector Edwards had, on 1 July 2008, spoken to Chief Inspector Thomas concerning the contact which he had received from Mrs. Graham. He subsequently told Chief Inspector Thomas about the three text messages which I have quoted. Following receipt of those messages, Acting Inspector Edwards and Chief Inspector Thomas had a meeting on 7 July 2008. Following that meeting Chief Inspector Thomas instructed Inspector Turner to investigate. It was following Inspector Turner’s investigation that the request to arrest Mrs. Graham which I have already quoted was sent to TVP.

The law in relation to harassment

42. By *Protection from Harassment Act 1997* it is provided, so far as is presently material, that:-

“1 (1) A person must not pursue a course of conduct –

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows –

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the circumstances the pursuit of the course of conduct was reasonable.

2 (1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

...

3 (1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

...

7 (1) *This section applies for the interpretation of sections 1 to 5.*

(2) *References to harassing a person include alarming the person or causing the person distress.*

(3) *A “course of conduct” must involve conduct on at least two occasions.*

(4) *“Conduct” includes speech.*

... ”

43. The ingredients of the offence of harassment were considered by the Administrative Court in *C v. Crown Prosecution Service* [2008] EWHC 148 (Admin). The only substantive judgment was that of Thomas LJ. At paragraph 55 he said, so far as is presently material:-

“The provisions creating the offence under s.2 have been subject to consideration by the courts; the relevant law can therefore be summarised:

i) The test as to whether a course of conduct amounts to harassment is an objective one. This is clear from the language of ss. 1(2) and 1(3) of the Act, but if authority is needed, it is to be found in the decision of R v. Colohan [2001] EWCA Crim 1251 where Hughes J giving the judgment of the Court of Appeal Criminal Division said:

“20. We agree accordingly with the learned judge that except in so far as it requires the jury to consider the information actually in the possession of this defendant section 1(2) requires the jury to answer the question whether he ought to have known that what he was doing amounts to harassment by the objective test of what a reasonable person would think. Its words, we are satisfied, are abundantly clear.

21. As to section 1(3)(c) that, we are satisfied, poses even more clearly an objective test, namely whether the conduct is in the judgment of the jury reasonable. There is no warrant for attaching to the word “reasonable”; or via the words “particular circumstances” the standards or characteristics of the defendant himself”

*ii) A course of conduct which is unattractive and unreasonable does not of itself necessarily constitute the criminal offence under s.2; it must be unacceptable and oppressive conduct such that it should sustain criminal liability. In *Majrowski v. Guy & St. Thomas’s NHS Trust* [2006] UKHL 34 ([2007] 1 AC 224), where the issue related to vicarious liability for harassment,*

Lord Nicholls of Birkenhead in giving the first speech made this clear at paragraph 30:

“Courts are well able to separate the wheat from the chaff at an early stage of the proceedings. They should be astute to do so. In most cases courts should have little difficulty in applying the “close connection” test. Where the claim meets that requirement, and the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody’s day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2.”

Baroness Hale observed at paragraph 66 that the definition had been deliberately left wide open and it had been left to the wisdom of the courts to distinguish between the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour.

In Conn v. Sunderland City Council [2007] EWCA Civ 1492, a civil claim was made under the 1997 Act; the judge found 2 out of the 5 incidents relied on proved. The appellant contended that neither of the 2 incidents were of sufficient gravity to amount to harassment. In giving the leading judgment, Gage LJ observed that whether conduct which [sic] crossed the line might well depend on the context in which the conduct occurred:

“What might not be harassment on the factory floor or in the barrack room might be harassment in the hospital ward and vice versa. In my judgment the touchstone for recognising harassment for the purposes of sections 1 and 3 will be whether the conduct is of such gravity as to justify the sanctions of the criminal law.”

Buxton LJ made it clear at paragraph 18 that the court had to consider whether the conduct was of such an order that it would sustain criminal liability and not merely civil liability on some other register.

It is therefore important to emphasise the need for the court specifically to address the question as to whether the course of conduct crosses the boundary, so that it is unacceptable and oppressive conduct, such that it should sustain criminal liability.

iii) The conduct relied upon must comprise a minimum of two incidents, so connected in type and context, that it can be seen as amounting to a course of conduct. In Pratt v. DPP [2001] EWHC (Admin) 483 (165 JP 800), counsel for the defendant submitted, that the conduct with which the defendant was charged, did not amount to a course of conduct by reason of the distance in time between the two incidents and the lack of any sufficient connecting factual detail to suggest that the two amounted to behaviour which was akin to, as the appellant submitted, stalking; stalking was, in his submission, the mischief to which these provisions were originally directed. He had based his submission on Lau v. DPP [2001] 1 FLR 799, where Schiemann LJ had said “None the less the broad position must be that, if one is left with only two incidents you have to see whether what happened on those two occasions can be described as a course of conduct.” Latham LJ continued at paragraph 10:

“In my view, these propositions accurately set out the law and the cautious approach that any court should adopt where the allegation of harassment is based upon either two incidents or any other series of incidents, if few in number and widely spaced in time. The issue for the court is whether or not the incidents, however many they may be, can properly be said to be so connected in type and in context as to justify the conclusion that they can amount to a course of conduct.

...

12. I would, however, say one word of caution. This case is one which is close to the borderline; and it seems to me that prosecuting authorities should be hesitant about using this particular offence in circumstances such as this where there are only a small number of incidents. They should ensure that what they are seeking the court to adjudicate upon can properly fall within the category of behaviour which is behaviour causing harassment of the other, not merely that there have been two or more incidents. The mischief, which the Act is intended to meet, is that persons should not be put in a state of alarm or distress by repetitious behaviour.”

In R v. Patel [2004] EWCA Crim 324 ([2005] 1 Cr App R 27) Maurice Kay LJ in giving the judgment of the court approved at, paragraph 40, what was said in Lau and Pratt:

“Adopting the approach of the Divisional Court, we conclude that if there is any possibility (seen prospectively or retrospectively) that the jury has convicted on the sort of basis to which we have referred, then assistance of the kind prescribed by the divisional court is in our judgment essential. It is not just a matter of counting the incidents and saying “We

have two, that is enough.” It is necessary for the jury to be given some guidance so that they address the question of whether the incidents give rise to a nexus sufficient for there to be a “course of conduct”. As Latham LJ said in Pratt, the issue is whether or not the incidents, however many there may be, can properly be said to be so connected in type and in context as to justify the conclusion that they can amount to a course of conduct.

...”

Conclusions as to harassment

44. In my judgment it is plain, from the communications passing between Mrs. Graham and Acting Inspector Edwards between the package received on 30 June 2008 and the greetings card received sometime after about 6 July 2008, that she was pursuing a course of conduct which a reasonable person would have known amounted to harassment. The initial communications between Mrs. Graham and Acting Inspector Edwards, whilst excessively familiar in tone, were not, perhaps, such as should attract the attention of the criminal law. However, once Acting Inspector Edwards had made clear, as he had, by his e-mail of 16 June 2008, that the attentions of Mrs. Graham were unwelcome, continuing to send the communications which Mrs. Graham did, did amount to harassment. It is apparent from some of the passages in the communications which I have set out earlier in this judgment that in fact Mrs. Graham understood perfectly well that her attentions were, or were likely to be, unwelcome, yet she persisted. The references to allegations of rape, and so forth, whilst expressed in terms of not being in the mind of Mrs. Graham were particularly disturbing, for, having met Mrs. Graham only once, in a police station in the presence of others, it would not have occurred to anyone that there was any risk of an allegation of rape or some other sexual offence being made by Mrs. Graham against Acting Inspector Edwards, had she not mentioned it.
45. It follows that, in my judgment, the complaint made by Chief Inspector Thomas to NRSPI was true in all its material particulars and, consequently, not defamatory of Mrs. Graham.
46. It also follows that, if and insofar as Mrs. Graham seeks to complain that action taken against her by WMC or TVP amounted to harassment, contrary to *Protection from Harassment Act 1997 s.1*, I am satisfied that such action was justified because it was pursued for the purposes of preventing or detecting crime, within *s.1(3)(a)*.

The law in relation to arrest and imprisonment

47. I have already indicated, in general terms, the issues which arose in this case in relation to the arrest and detention of Mrs. Graham. However, it is now appropriate to expand somewhat upon that broad summary.
48. A convenient starting point is the observation of Lord Atkin in his dissenting speech in *Liversidge v. Anderson* [1942] AC 206 at page 245 that:-

“a principle which again is one of the pillars of liberty ... in English law [is that] every imprisonment is prima facie unlawful and that it is for a person directing imprisonment to justify his act.”

49. That principle was referred to by Diplock LJ in *Dallison v. Caffrey* [1965] 1 QB 348 at page 370:-

“Since arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest.”

50. Both of these passages appeared in the submissions of counsel for the plaintiff in *O’Hara v. Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, and were noted by Lord Steyn in his speech at page 296F-H. Lord Steyn did not suggest that the principle was of historic interest only or had been superseded or modified by the more complicated world in which we now live. In my judgment the principle is sound and as in need of being scrupulously maintained as it has ever been.

51. In the present case the arrest of Mrs. Graham was sought to be justified by the powers to be found in *Police and Criminal Evidence Act 1984 s. 24*, as amended by *Serious Organised Crime and Police Act 2005*. So far as presently material that section is in these terms:-

“(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3) ...

(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are –

(a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person’s name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b) correspondingly as regards the person’s address;

(c) to prevent the person in question –

(i) causing physical injury to himself or any other person;

- (ii) *suffering personal injury;*
- (iii) *causing loss of or damage to property;*
- (iv) *committing an offence against public decency (subject to subsection (6)); or*
- (v) *causing an unlawful obstruction of the highway;*
- (d) *to protect a child or other vulnerable person from the person in question;*
- (e) *to allow the prompt and effective investigation of the offence or of the conduct of the person in question;*
- (f) *to prevent any prosecution for the offence from being hindered by the disappearance of the person in question. ”*

52. In his written skeleton argument prepared for the purposes of the trial before me Mr. Mark Ley-Morgan, who appeared on behalf of the defendants, relied upon *s.24(5)(e)* as amounting to the reason why it was necessary to arrest Mrs. Graham.
53. In *O’Hara v. Chief Constable of the Royal Ulster Constabulary* the House of Lords had to consider the provisions of *Prevention of Terrorism (Temporary Provisions) Act 1984 s. 12(1)*. However, in my judgment, the approach explained by Lord Hope of Craighead at page 298A-E to determining whether, for the purposes of that section, a police officer had reasonable grounds for suspecting an offence was equally applicable to the determination of the same issues under *Police and Criminal Evidence Act 1984 s. 24:-*

“My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer’s

own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances.”

54. What, I think, one derives from that passage is, first, that a police officer exercising a power of arrest on the grounds that he or she reasonably believes that an offence has been committed and that he or she reasonably believes that the person arrested committed that offence, must actually suspect that an offence has been committed and actually suspect that the person arrested committed it. Second, the grounds upon which the police officer suspected that an offence had been committed and that the person arrested had committed it, must be objectively reasonable.
55. Mr. Ley-Morgan drew to my attention a useful summary of questions to be considered in a case of alleged false arrest set out by Woolf LJ in *Castorina v. The Chief Constable of Surrey*, in which judgment was handed down on 10 June 1988:-

“1. Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer’s state of mind.

2. Assuming the officer had the necessary suspicion, was there reasonable cause for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.

*3. If the answer to the two previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion [sic] has been exercised in accordance with the principles laid down by Lord Greene MR in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223, [1947] 2 All ER 680.”*

56. The same approach, as it seems to me, as that set out in paragraph 54 above, should be applied to the question which did not need to be considered in *O’Hara v. Chief Constable of the Royal Ulster Constabulary*, but which arises in the present case, namely whether the requirements of *Police and Criminal Evidence Act 1984 s. 24(4) and (5)* were satisfied. The test is, did the arresting officer actually believe that it was

necessary to arrest the person in question for one of the reasons set out in s. 24(5), and, if so, did he or she have reasonable grounds for that belief?

57. Mr. Ley-Morgan relied upon two passages from the advice of the Privy Council, delivered by Lord Devlin, in *Hussien v. Chong Fook Kam* [1970] AC 942, at pages 948 and 949 as to what amounts to suspicion:-

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove”. Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage...

*There is another distinction between reasonable suspicion and prima facie proof. Prima proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. There is a discussion about the relevance of previous convictions in the judgment of Lord Wright in *McArdle v. Egan* (1934) 150 LT 412. Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstance.”*

58. He also relied, in the same context, upon a passage from the speech of Lord Steyn in *O’Hara v. Chief Constable of the Royal Ulster Constabulary* at page 293 B – E:-

*“Certain general propositions about the powers of constables under a section such as section 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: *Hussien v. Chong Fook Kam* [1970] AC 942, 949. (2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers: *Hussien’s case*, *ibid*. (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes his arrest. (4) The executive “discretion” to arrest or not, as Lord Diplock described it in *Mohammed-Holgate v. Duke* [1984] AC 437, 446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers.”*

59. In *O’Hara v. Chief Constable of the Royal Ulster Constabulary* Lord Steyn went on in his speech on page 293, at E – F:-

“Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12(1). It is accepted, and rightly accepted, that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion.”

60. The reason for these views is, I think, obvious: to be justified in making an arrest the arresting officer must himself or herself actually have information, from whatever source, which leads that officer to form, himself or herself, a suspicion that an offence has been committed and a suspicion that the person arrested committed it.
61. Mr. Ley-Morgan also drew to my attention this comment on what amounts to suspicion made by Hughes LJ in *Buckley v. The Chief Officer of the Thames Valley Police* [2009] EWCA Civ 356 at paragraph 6:-

“Suspicion is a state of mind well short of belief and even further short of a belief in guilt or that guilt can be proved.”

62. Another member of the Court involved in the decision in the case of *Castorina v. The Chief Constable of Surrey* was Sir Frederick Lawton. As it seems to me, these observations of Sir Frederick are helpful in the present context:-

“Suspicion by itself, however, will not justify an arrest. There must be a factual basis for it of a kind which a court would adjudge to be reasonable. The facts may be within the arresting constable’s own knowledge or have been reported to him. When there is an issue in a trial as to whether a constable had reasonable cause, his claim to have had knowledge or to have received reports on which he relied may be challenged. It is within this context that there may be an evidential issue as to what he believed to be the facts, but it will be for the court to adjudge what were the facts which made him suspect that the person he arrested was guilty of the offence which he was investigating.”

Reasons for my conclusions on the issues of arrest and detention of Mrs. Graham

63. Against the background of the authorities I turn to elaborate upon the conclusions which I have already expressed that the arrest and detention of Mrs. Graham were lawful.
64. Whilst P.C. Wellsted would not have been entitled to arrest Mrs. Graham on 10 July 2008 simply because she had been requested by Inspector Turner to do so, she was in fact provided by Inspector Turner with background information as to the circumstances of the case, which I have set out, from which she was in a position to form her own view as to whether she suspected that a crime of harassment had been

committed and that it had been Mrs. Graham who had committed it. Her evidence was that she did suspect that a crime of harassment had been committed, in the light of the information provided by Inspector Turner, and that she did suspect that it was Mrs. Graham who had committed it. P.C. Wellsted also explained in her witness statement that she considered that, in the light of the information available to her, she thought that Mrs. Graham should be arrested. I accept that evidence. The necessity for the arrest was plainly so that Mrs. Graham could be interviewed by officers from WMC, a reason falling within *Police and Criminal Evidence Act 1984 s.24(5)(e)*. It follows that the arrest of Mrs. Graham was lawful.

65. I have recited the circumstances following the arrest of Mrs. Graham in the period before her release from detention. I am satisfied that she was properly detained from the moment of her arrest until her eventual release.

Unlawful search

66. It was accepted by Mr. Ley-Morgan that the search of Mrs. Graham's home undertaken by P.C. Wellsted and P.C. Shamim on the occasion of her arrest was in fact unlawful. I was told that the search was carried out in good faith, but that the effect of a change in the law had not been noted. However that may be, the fact is that Mrs. Graham's home was searched unlawfully and computers and mobile telephones were unlawfully seized.
67. Mr. Ley-Morgan accepted that Mrs. Graham was entitled to damages in respect of the unlawful search of her home and the unlawful seizure of property found there. However, he drew attention to the fact, which Mrs. Graham agreed was correct, that a couple of weeks after the arrest Mrs. Graham had encountered P.C. Wellsted and P.C. Shamim at a petrol station whilst they were on duty, and had asked them home for tea. The officers declined, but, contended Mr. Ley-Morgan, the fact of the invitation indicated that Mrs. Graham had not found the illegal search particularly traumatic. I accept that submission. Mr. Ley-Morgan went further and submitted that, in essence, what I was concerned to do in assessing damages was to compensate Mrs. Graham for the injury to her feelings resulting from the unlawful invasion of her privacy. Again I accept that submission. The final submission of Mr. Ley-Morgan on this part of the case was that, as Mrs. Graham's feelings do not seem to have been much affected by the unlawful search, she was not entitled to much in the way of compensation. I accept that submission up to a point. In principle it must be relevant to have regard to the impact of the unlawful search on the victim of it. However, it does not follow that, if the victim was hardly affected at all, little or no compensation was payable. Doing the best I can, I award Mrs. Graham the sum of £250 in respect of the unlawful search and unlawful seizure of the computers and mobile telephones.

Mrs. Graham's other claims

68. I can deal with Mrs. Graham's other complaints in the Particulars of Claim shortly.
69. If and insofar as Mrs. Graham seeks to complain about harassment of her by WMC or TVP otherwise than in relation to the investigation of the harassment of Acting Inspector Edwards and her subsequent arrest and detention, nothing was particularised in the Particulars of Claim or covered by her evidence, save a vague suggestion that recently her driving had attracted the notice of TVP, and she had been accused of

motoring offences. There was no precise evidence of any driving offences which may have been alleged against her, and no evidence at all that any such alleged offences had not actually been committed by her. This claim fails, insofar as it was pursued.

70. In the absence of any further particulars of the alleged slander of Mrs. Graham by TVP officers, or any detailed evidence in support of that claim, it must fail.
71. Mrs. Graham sought, in the Particulars of Claim to raise allegations of discrimination against her on the grounds of race, sex and age. This court has no jurisdiction to entertain any such claims: see *Sex Discrimination Act 1975 s.66(2)*; *Race Relations Act 1976 s.57(2)*; and *Employment Equality (Age) Regulations 2006 reg. 39(2)*.
72. Mrs. Graham complained that the search of her handbag and herself after her arrest amounted to trespass, as did the taking of her photograph, a DNA sample and her fingerprints. The search of herself and her handbag was permitted by *Police and Criminal Evidence Act 1984 s.32(2)*. The taking of the photograph, DNA and fingerprints were permitted by the provisions of *Police and Criminal Evidence Act 1984 ss. 61, 63 and 64A*.
73. The complaints of Mrs. Graham that Acting Inspector Edwards had stolen money from her, or that he had entered her home and placed there recording devices, or fitted a tracking device to her car, or photographed her belongings, or copied her keys, or looked at her private documents were all without any foundation on the evidence led before me.

Conclusion

74. Save in relation to the admitted unlawful search of the home of Mrs. Graham and the unlawful seizure of two computers and two mobile telephones, in respect of which I award damages of £250, all of the claims of Mrs. Graham fail and are dismissed.