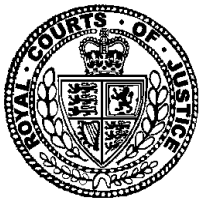

Neutral Citation Number: [2019] EWHC 2339 (QB)

Case No: HQ13X02927 & HQ14X01020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2019

Before :

MRS JUSTICE CHEEMA-GRUBB DBE

- -

Between :

(1) Jonathan Rees	**Claimants**
(2) Glenn Vian	
(3) Garry Vian	
- and -	
Commissioner of Police of the Metropolis	**Defendant**

- -
- -

Nicholas Bowen QC & David Lemer for the **First and Second Claimants**
Stephen Simblet for the **Third Claimant**
Jeremy Johnson QC, Charlotte Ventham & Catrina Hodge for the **Defendant**

Hearing dates: 15-16 May 2019

- -

Approved Judgment

Mrs Justice Cheema-Grubb DBE:

Introduction

1. This is a quantum hearing to assess damages to be paid following findings for the claimants by the Court of Appeal on liability for malicious prosecution and misfeasance in public office. The judgment at *Rees and Others v Commissioner of Police for the Metropolis* [2018] EWCA Civ 1587 sets out the relevant facts and procedural history. I adopt these. Wholesale repetition in this judgment would be superfluous.

2. In summary, as long ago as April 2008 the claimants were charged with murder following the investigation of an alleged contract killing in a pub car park in south London in March 1987. The high-profile case against them reached the Central Criminal Court but in February 2010 Maddison J held that the evidence of a key prosecution witness Gary Eaton ("Eaton") would be excluded. The reason was that a high-ranking police officer, Detective Chief Superintendent David Cook ("DCS Cook"), had compromised the integrity of the evidence Eaton proposed to give by initiating or allowing extensive contact with the witness in contravention of express agreements and accepted procedures. During this period Eaton's evidence, initially innocuous, expanded appreciably to include presence at the scene of the killing shortly after its commission together with knowledge of the claimants in the vicinity. Despite the ruling, at first the Crown indicated that the trial was to proceed on other evidence, but in March 2011 the judge was told that the prosecution was to be discontinued. No evidence was offered, and each of the claimants obtained not guilty verdicts.

3. They issued claims for damages. After a preliminary trial on the issue of liability Mitting J dismissed the action at *Rees and Others v Commissioner of Police for the Metropolis* [2017] EWHC 273 (QB). His factual conclusions, themselves predicated on the findings and decision of Maddison J, were adopted but his decision was reversed on the law by the Court of Appeal. The central points in the appeal were whether the limited but decisive findings in favour of the defendant could be sustained. Firstly, had Mitting J been right to reject the claim on the basis that although it had been established that DCS Cook's actions regarding Eaton had led to the claimants being prosecuted, the defendant was not liable, vicariously, to compensate them for the tort of malicious prosecution because DCS Cook was not a prosecutor, had not been malicious, and there was reasonable and probable cause to prosecute. Secondly, in respect of misfeasance in public office although DCS Cook was a public officer exercising a public power and he had deliberately perverted the course of justice realising that it would probably cause injury to the claimants, the defendant was not liable to compensate them because they would have been prosecuted by the Crown Prosecution Service on other evidence.

4. The claimants' appeal succeeded. DCS Cook was the most senior police officer in the case and he presented the evidence to the Crown Prosecution Service for a decision on sufficiency of evidence for charge. He did so, knowing that he had suborned the evidence of Eaton and falsely presented him as an eye-witness to the murder scene. On analysis the remaining evidence was weak and circumstantial and it had been rejected previously as insufficient to provide a realistic prospect of conviction, so it was inconceivable that charges would have been brought without DCS Cook's deliberate manipulation. The independent prosecutor's decision was overborne or perverted by the police officer's actions: DCS Cook was a de facto prosecutor. The Court held that

he had been malicious, within the meaning of the relevant authorities, because he could not have believed that the case tainted with the evidence of Eaton was fit to go to a jury and such dishonest pursuit of the case, whether or not DCS Cook himself believed the claimants to be guilty, amounted to deliberately perverting the course of justice: sufficient malice.

5. As to misfeasance in public office, Mitting J had relied on the initial continuation of the case against the claimants after Maddison J had excluded Eaton's evidence as the basis for concluding that DCS Cook's actions did not cause loss. There was no evidence before the judge to show whether, in fact, charges would have been brought without Eaton's contribution to the case. The Court of Appeal held, on a balance of probabilities, that a prosecution would not have been brought had it been known in April 2008 that Eaton's evidence would not have been admissible at trial because of the actions of the Senior Investigating Officer in the case who had perverted the interests of justice in order to obtain it. Accordingly, there had been loss to each claimant.

The claim

6. The first two claimants seek damages in the sum of £50,000 to £60,000 by way of a basic award for the harm, by way of mental distress, humiliation and anxiety caused by the malicious prosecution for murder itself. They seek a separate award for their loss of liberty of £100,000 to £150,000 and aggravated damages of £80,000 - £100,000. The third claimant seeks £200,000 for mental distress, humiliation and anxiety caused by the murder charge and his more limited loss of liberty, and aggravated damages of £50,000.

7. This being a case in which malice has been proved on the part of a senior police officer they also seek aggravated damages and an exceptional award for exemplary damages. The first two claimants seek £70,000 - £100,000 each and the third claimant argues for £90,000.

8. In extensive written submissions the parties have referred to the leading authorities. The arguments were refined orally for more than a day. The established approach is set out in *Thompson and Hsu v Commissioner of Metropolitan Police* [1997] EWCA Civ 3083. The Court of Appeal laid down guidelines for directions to a jury on damages in cases where claimants succeeded in claims for false imprisonment and/or malicious prosecution against the police. It was emphasised that the total figure for damages should not exceed what the court considers is fair compensation for the injury which the claimant has in fact suffered. In the two claims then under consideration the arresting officers used considerable force leading to physical injury as well as the humiliation resulting from a forced arrest and detention. Plainly, the circumstances were far removed from the claims in this case and the figures provided are now over twenty years old.

9. The guideline direction for compensatory damages to be awarded to a person arrested and kept in custody for an hour was £500 and for a day £3,000. The case includes all the warnings to be expected to the effect that these figures are guidelines only and it is to be noted that *Thompson* itself was 'a straightforward case'. The court commended an approach which kept a sense of proportion to personal injury cases. For malicious prosecution the damages should start at £2,000; if the prosecution continued for two

years, £10,000 would be appropriate. Adjusted for inflation the amounts are roughly doubled so the upper end of the bracket on contemporary figures is agreed at about £20,000.

10. Where aggravated damages are appropriate they are unlikely to be less than £1,000, or more than twice the basic damages except where those basic damages are modest. The principles governing the award are described thus,

> "…w*here there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can including humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution."*

11. Self-evidently the justification for aggravated damages must be something not satisfied by the award of basic damages. The aim remains compensation.

12. Exemplary damages are an exceptional remedy, awarded only where the basic and aggravated damages together are insufficient to punish the defendant. The potential overlap between the factors which provide justification for both aggravated and exemplary awards require the court to be aware of double-counting. Where exemplary damages are appropriate they are unlikely to be less than £5,000. Conduct must be particularly deserving of condemnation to warrant an award of £25,000 and the absolute maximum should be £50,000. It would be unusual for such damages to be more than three times the basic damages being awarded unless those basic damages are modest. It is a relevant consideration in the award of exemplary damages if they are to be paid out of public money as is the fact that the employer pays the damages rather than the person who has done wrong.

13. The claimants draw attention to the exceptional nature of this case in multiple respects: the horrific facts of the original murder, the everlasting 'taint' borne by the claimants due to the suspicions of a senior police officer and his determined attempt to achieve their convictions, the jeopardy of a murder charge both reputationally and potential life sentences, as well as the length of time these proceedings have taken and the attitude of the defendant, contesting the claims throughout. Although the submissions achieved hyperbole on occasion there can be no doubt that the facts of this case illustrate a particularly gross breach of public trust.

14. Any assessment of general damages (basic and aggravated) must be case sensitive and founded on the relevant harm suffered. By contrast an award of exemplary damages may require a stepping back from the harm done to the individual to give effect to the broader purpose of such an award. A number of witness statements from the claimants and the wife of one of them have been served. They are not accepted, none of them was called and so I have not heard cross-examination. I give little weight to the contents given the other material in the case which is ample for me to determine quantum.

15. Several matters which are not relevant to the court's task have been emphasised at length. In particular it is no part of this court's role to criticise lawful steps taken by the

police during the course of the investigation, such as acquiring a house next door to one of the claimants in order to facilitate the gathering of covert evidence. I have also found, in the end, little assistance in the references to the terms of a settlement reached between the defendant and a man called Sidney Fillery, a former police officer, who was charged with perverting the course of justice in the same proceedings in which the claimants faced a murder charge. He was remanded in custody on that charge for four months and he succeeded in his claim. The defendant paid him £100,000 damages inclusive of exemplary damages. This award followed the acceptance of a Part 36 offer.

Loss of Reputation

16. The claims as pleaded did not include any particularised element for loss of reputation. On the face of it this is unsurprising as all claimants have previous convictions. Jonathan Rees was imprisoned for six years following a trial at the Central Criminal Court in 2000 for conspiracy to pervert the course of justice. Glenn Vian had been convicted of assault occasioning actual bodily harm, theft, going equipped for theft, conspiracy to rob and possession of cannabis with intent to supply. He had been sentenced to imprisonment for 12 months on his last conviction in 1992. Prior to charge in 2008 Garry Vian had previous convictions for criminal damage, conspiracy to rob and conspiracies to supply cannabis resin and crack cocaine. For the last of these convictions, at the Central Criminal Court, he had been sentenced to a total of 11 years imprisonment from December 2006.

17. However, the claimants argue that the pleading of 'injury, loss and damage' is sufficiently broad to include an element of reputations lost. Whether or not this is accepted the defendant argues that the previous bad character of the claimants should lead to a substantial reduction in the basic award on the basis that a large proportion of the compensation awarded for malicious prosecution is for damage to reputation and these claimants had no good reputation to lose. On this, while acknowledging the claimants' antecedent history, Mr Bowen QC submits that due to the notoriety of the crime of which they were accused in 2008 and the publicity which has attended this case there should be no reduction for an absence of loss of reputation. He relies on *Manley v Commissioner of Police for the Metropolis* [2006] EWCA Civ 879 where a man with previous convictions was prosecuted for threatening to kill a police officer and Waller LJ said that,

> "…*albeit the reputation of a man convicted of a very serious offence of violence (as here) may not suffer greatly, he is entitled to be compensated for the fact that (a) there is greater risk of the malicious prosecution succeeding and (b) a risk that he will get a longer prison sentence as a result of it succeeding, all of which will cause stress and anxiety*."

18. In my judgment the pleaded claims are broad enough to encompass an element of loss of reputation on the basis identified by Waller LJ and no amendment to the pleadings is required. Although the loss of reputation component may well be considerably less or even cancelled out altogether for someone who is already a criminal, depending on the nature and gravity of the previous offending and the nature of the current charge, and that must be reflected in the level of award in each case, I do not accept the defendant's submissions entirely. A charge of murder is a very grave allegation and

even a convicted criminal is bound to suffer some added notoriety and stigma from such an accusation as well as the two matters highlighted by Waller LJ.

19. Previous antecedent history is also relevant to the level of aggravated damages necessary to compensate the claimants over and above the basic award.

20. The impact of imprisonment (both initial and long-term) is also less for those who are already experienced in custody. Accordingly, I will reduce each of these elements of the award because the claimants were all previously convicted of offences attracting custodial terms, but in this case, on balance the reduction for the distress element of the basic award and the aggravated damages will be modest because of the gravity of the charge.

21. I add that those with previous criminal histories are also more likely to be targeted for malpractice by police officers in the first place although this feature fits more properly into the consideration of exemplary damages.

Deduction to be made from damages because there was no trial.

22. I reject the defendant's argument that the damages should be substantially reduced because there was no trial. There was a lengthy voir dire in advance of the trial. While that judicial process was underway the claimants were at jeopardy of a jury being sworn to try the case on evidence which was rejected by judicial decision, rather than withdrawn by the prosecutor. Only months after that did the prosecution cease.

Loss of liberty.

23. The first two claimants were lawfully arrested and detained for two days or so before being charged and so the relevant period of custody on the basis of a malicious prosecution is between 23 April 2008 and 3 March 2011: a total of 682 days. Towards the end of that time they were held in category A before being released on bail until the final hearing at the Old Bailey. By contrast, Garry Vian was serving a long prison sentence at the time he was charged and the only relevant loss of liberty in his case is nine days he was held in respect of the murder charge when otherwise he would have been at liberty having become eligible for release on parole after serving five and a half years of the sentence imposed on him in 2006. He was not prepared for release by being transferred to less restrictive conditions as he might have expected, there is some evidence that he spent some time as a Category A prisoner and that once he was released he was also subject to restrictive bail conditions.

24. I accept Mr Bowen QC's argument that where loss of liberty takes place alongside a malicious prosecution there should be separately identified damages. However, it is necessary to avoid double counting. It is also accepted practice to provide a global figure for periods in custody rather than a multiple of a daily rate or tariff. A tapering effect has also been acknowledged so that the longer liberty is lost for the less incremental harm is recognised *R v Governor of HMP Brockhill ex parte Evans* [1999] QB 1043 at 1060.

25. Apart from the obvious relevance of length, the degree of loss of liberty must have some impact on the degree of damage in an individual case. For the first two claimants,

incarceration in category A for 5 months (not 14 as initially claimed by the first claimant) is a factor that increases the award because it is a more restrictive form of custody leading to a diminution in the residual liberty of the claimants *Karagozlu v Commissioner of Police of the Metropolis* [2007] 1 WLR 1881. Particular, additional hardship may arise from being held in isolation due to a perceived risk to life or in circumstances where violence occurred to the claimant: neither of these is present in this case but I am persuaded that some additional uplift is necessary to mark the five months spent by the first two claimants in category A custody. On the same principle, namely further diminution of liberty, I will also allow for the impact of restrictive bail conditions, which included reporting to a police station and a curfew which was checked frequently.

26. Similarly, as I will explain, in the third claimant's case the period of serving his sentence as a category A prisoner and his bail conditions will attract an uplift.

27. On the other hand, the claimants accept that loss of liberty claims will be enhanced where there is an initial shock of detention and so must be diminished in the case of a prisoner who is in lawful custody to begin with or already serving a sentence when the malicious prosecution commences.

Comparator cases and cross checks.

28. Mr Bowen QC submits that awards for unlawful immigration detention are a legitimate comparator for assessment of the basic award for loss of liberty in this case and he has referred me to several examples. Mr Johnson QC urges some caution because when giving judgment the court did not break down those awards into constituent parts: distress and loss of liberty. The context is also very different and will often give rise to greater distress: in some cases, the prospect of removal to a country where the detainee fears persecution, torture or inhuman or degrading treatment. In addition, the detention will have no clear prospective culmination as in a criminal trial where innocence and release may be anticipated. I have not found these awards ideal comparators largely for the reasons identified by the defendant, but some have provided a general, more or less contemporary check to the claims made and the defendant's counter submissions. In *AXD v Home Office* [2016] EWHC 1617 (QB) a man with previous convictions was unlawfully detained for nearly two years (after a period of lawful detention) and was subjected to physical and verbal abuse on the grounds of sexual orientation. He feared being returned to Somalia to persecution. An award of £80,000 recognised all of those features.

29. Mr Johnson QC draws my attention to a number of awards made under a statutory scheme for compensating miscarriages of justice in which the Independent Assessor and, later the court, expressed its application of common law principles of assessment as deployed in tort claims. He points out that the largest award he found was in *O'Brien and others v Independent Assessor* [2003] EWHC 855 (Admin), [2004] EWCA Civ 103 after the claimants had served almost 18 years in prison following wrongful convictions for murder. The awards of £140,000 (2019 equivalent £241,450) were reduced by a quarter or so to reflect their criminality.

30. Mr Bowen QC submits that because in giving guidance the Court in *Thompson* carried out a cross-check with personal injury cases, it is not necessary for any further cross

check to be carried out. The defendant suggests that a cross-check is necessary. I agree that it is necessary to have regard, in respect of the basic and aggravated award, to the sort of sums awarded currently, for serious physical and psychiatric injury. I have taken into account the guidance issued by the Judicial College. The most helpful is the bracket for awards for moderately severe PTSD set at £20,000 to £50,000. No cross check is relevant to the exemplary damages award.

Basic award

31. Mr Simblet for the third claimant, who spent an extra nine days in custody as a consequence of the charge, relies on defamation cases to justify his claim for a basic award of £200,000. Mr Bowen QC whose clients seek more modest figures has adopted Mr Simblet's reasoning. He argues that in this case the gravity of the charge and its potential consequences, against the background of misbehaviour by a senior police officer, is the primary consideration rather than the relevant custodial period. I have found *Bento v Chief Constable of Bedfordshire* [2012] EWHC 1525 of some limited assistance although there are very obvious differences between the two cases.

32. Garry Vian's nine days of loss of liberty came at the end of a long custodial term which was entirely lawful, for an unconnected conviction. The basic award in his case must reflect that feature. It is appropriate in his case to adjust the *Thompson* guidance to take account of the lack of initial shock, his familiarity with custody and the fact that he was a serving prisoner for most of the time he was held under the murder charge: *ex parte Evans*. This is separate from the award for the humiliation, reputational loss and distress caused by the charge and proceedings.

Discussion

33. All three claimants were arrested within few weeks after the murder in 1987 but they were not charged. This feature has some, limited, bearing on the impact of a further accusation in terms of loss reputation and degree of distress at the accusation. The first claimant was arrested again in January 1989 and charged with the murder on 2 February. The same point arises. The charge was dropped on 11 May that year as there was no realistic prospect of conviction. They remained under suspicion. A re-investigation was undertaken in 2000 and the evidence gathered by 2006 was the subject of a report considered by Treasury Counsel. Although no court has been shown the advice upon which the 2008 charges were predicated I proceed on the basis that Eaton's evidence was the compelling evidence which had a decisive impact on the prospects of a successful conviction.

34. I bear in mind that although there was no trial a protracted voir dire was required to determine the admissibility of Eaton's evidence. A voir dire is correctly described as a judicial process short of a jury trial. The period between charge and no evidence being offered was 3 years, a 50% increase on the period in *Thompson*'s case, which should be reflected, to some degree in the award.

Aggravated damages

35. Mr Bowen QC for the first two claimants argues that this is an archetypal case for the award of aggravated damages to mark the *Thompson* features:

> *"..conduct of those responsible for the .....prosecution which shows that they had behaved in a high-handed, insulting, malicious or oppressive manner…. in conducting the prosecution. Aggravating features can also take account of the way the litigation and trial are conducted."*

36. He points to several features which he submits merit a significant award under this head. They include the protracted and concealed nature of DCS Cook's misconduct in relation to Eaton; the time taken to bring the prosecution to an end after Maddison J's ruling excluding Eaton's evidence; the seniority of the police officer concerned; the failure of the defendant to apologise, the defendant's fierce defence against the claim and the defendant's decision not to waive legal professional privilege in relation to the assessment made of the sufficiency of other evidence absent Eaton's accounts.

37. Mr Simblet emphasises the drawn-out nature of the case, from charge to this hearing and asserts that the claim was indefensible from the start. DCS Cook's conduct was deliberate and if a conviction had been achieved the third claimant would have spent the rest of his life in prison. The defendant made a conscious decision to stand behind DCS Cook at a time when there were objective grounds to surrender a defence. One example is from the Defence which stated (at paragraph 472(vii), "*It is denied that DCS Cook's communications with Mr Eaton had been dishonest."*

38. The defendant concedes that the way in which litigation is conducted can add to the aggravated damages but Mr Johnson QC submits that there is nothing in this case to justify such an uplift.

Discussion

39. An award under this heading is plainly merited. The defendant concedes that DCS Cook's drawn out conduct was 'thoroughly reprehensible.' Aggravated damages are also compensatory in nature. It is conceded by Mr Bowen QC that the court may have regard to the claimants' character under this heading of damages. The degree of cynical manipulation embodied in DCS Cook is something that would have aggravated the harm done to suspects of previous good character in an even more profound way than it did to these previously convicted men.

40. No court has directed, nor even could it, that an apology should be made. The defendant may have her own reasons for not making a public apology before now, or ever but whilst an apology may be a mitigating feature, particularly in respect of exemplary damages, the lack of one does not aggravate the damage.

41. Any defendant is entitled to dispute a claim for damages, the quantum sought in damages and to ask the court to adjudicate on the competing submissions. She may be liable for costs unnecessarily incurred by the other side. There was no application for summary judgment in this claim and the defendant succeeded in the cases of these claimants at first instance. Equally, I have found nothing in the submissions from the claimants which persuades me that the defendant has taken a cynical approach to the proceedings or sought to condone the misbehaviour of DCS Cook since the judgment made by Maddison J. The attitude taken by DCS Cook (by then no longer a serving police officer) to the claim and the consequential disadvantages to the claimants, was

not of the defendant's making. Nor can she be criticised, fairly, for the way in which she sought to put evidence before the court: albeit earlier disclosure of the difficulties with her prime witness might have saved time and costs. Defending the claims is not the same as justifying DCS Cook's corruption and Maddison J did not find that DCS Cook had acted dishonestly in his dealings with Eaton. The adversarial nature of this jurisdiction does not preclude or punish an approach which robustly challenges a very substantial claim in what both sides declare to be an unusual and extreme case.

Exemplary damages

42. The first two claimants seek a substantial award of exemplary damages of between £70,000 to £100,000. Mr Bowen QC argues that this is a case in which the defendant deserves to be publicly exposed and castigated for what he called the 'outrageous and criminal' conduct of DCS Cook that could 'easily' have resulted in three men against whom there was no significant evidence being sentenced to serve sentences with minimum terms of thirty or more years in prison for a murder they did not commit. Mr Simblet seeks £90,000 in exemplary damages.

43. That the case is of public importance can hardly be doubted. In 2013 the Home Secretary set up an Independent Panel into the murder of Daniel Morgan. The panel has not yet reported but its terms of reference include addressing 'the role played by police corruption in protecting those responsible for the murder from being brought to justice and the failure to confront that corruption.'

44. Mr Johnson QC argues against exemplary damages. He draws attention to the fact that the defendant is vicariously liable rather than personally; that the power to award exemplary damages is limited; although there have been no disciplinary proceedings against DCS Cook the public enquiry is yet to report and he argues that it is appropriate to make an award if all those wronged in the same way are before the court at the time. Another of his submissions is that exemplary damages in this case will be unnecessarily punitive in light of the large cumulative sums the defendant will be ordered to pay in the other awards and costs.

45. The cost to the public purse is indeed very substantial. The orders already made against the defendant include for payment on account of costs of £225,000. However, Mr Johnson QC recognises that these features do not preclude the award of exemplary damages if recognition is required of the especially odious nature of the misconduct in question and he accepts that the need for public condemnation through the courts is separate from other aspects of the damages.

Discussion

46. As I noted earlier in this judgment those with previous criminal histories are more likely to be targeted for malpractice by police officers in the first place so although I am compelled to make a reduction from the basic award and the aggravated damages for the previous convictions of the claimants I recognise this aspect in the award of exemplary damages.

47. As I have already made clear I do not accept that the failure to apologise should add to the punishment in this case. Although Fillery is not before this court the three men

charged with murder on the evidence secured by DCS Cook's wrongdoing are. The court has not been informed as to the exemplary damages proportion of the settlement reached with Fillery and apart from acknowledging that during the course of oral argument Mr Johnson QC suggested a possible breakdown of the award including both aggravated and exemplary damages, whilst maintaining that he was not able to say how the award was actually made up, the compensation paid to Fillery does not inform my decision as to quantum.

48. I recognise that the defendant will be required to pay substantial damages and costs. The claimants have achieved a Court of Appeal judgment in their favour. I have considered the parties' submissions on *Cairns v Modi* [2012] EWCA Civ 1382. In some cases, the reasoned and extremely clear judgment of the Court would be enough to punish and publicly castigate the defendant for her ex-officer's conduct, but this is not such a case. In my judgment adequate punishment and public censure requires a separate award of exemplary damages to mark the court's denunciation of DCS Cook's unconstitutional behaviour as an agent of the state *Washington v Commissioner of Police of the Metropolis* [2003] Police Law Reports 35. As this part of the award has this function I bear in mind that three claimants are before the court. This ingredient of the total award is a windfall for the claimants, and it comes from public funds which will not be available to be expended for the public good. The award will be split equally between them so that there is no gratuitous punishment *Riches v News Group Newspapers Ltd* [1986] QB 256.

Determination

49. In setting individual components I bear in mind the total award I make in favour of each claimant and strive to avoid double-counting. My attention has been directed to many cases which are said by one party or another, to provide some assistance to me in my task in an unusual case. I refer to some of them but even those which provide guidance cannot be applied mechanistically given that the task I am engaged in is an assessment which, although broadly expressed, must be bespoke for this unusual case.

50. As to the distress element: a murder charge is of a different order to most criminal offences. The anxiety and stress of being prosecuted for a high profile murder and the risk of a conviction with the mandatory life sentence must have a far graver impact for the period that it hangs over a suspect than the sort of offending alleged in *Thompson*. I do not accept that an award which is at least three times the top end of the basic damages in that case for the prosecution itself, is justified. I propose a more modest uplift namely 50%.

51. In the present circumstances a separate element of the award must recognise the period in custody on the murder charge. The first and second claimant spent 682 days in custody charged with murder, but it is conceded that they were initially lawfully detained. In due course they were transferred to category A detention with more onerous restrictions. The third claimant's position is less clear, but I am satisfied on the balance of probabilities that he some spent time as a serving Category A prisoner as a consequence of this murder charge. Nonetheless, the element of initial shock at being deprived of liberty based on a false charge is missing in the case of all three claimants. In addition, this was not the first period in custody for each claimant. In these circumstances the quantum of the claim is ambitious.

52. I do also reduce the aggravated damages award because of the claimants' antecedent history but in a balanced way as I have explained, and the reduction would certainly have been far more significant had the claimants acquired convictions for serious offences of violence. I reject the argument that I should nonetheless ascribe such a propensity because the second and third claimants were overheard on a covert probe discussing the shortening of a gun. The broad approach that the cases indicate is recognition of convictions rather than allegations.

53. In my judgment exemplary damages are required. This award is to highlight and condemn the egregious and shameful behaviour of a senior and experienced police officer, DCS Cook. He oversaw the investigation at the relevant time. He was warned about his behaviour on several occasions and misled superior officers. Axiomatically, honest belief in guilt cannot justify prosecuting a suspect on false evidence. Although the publicly available decision of the Court of Appeal provides some succour it does not replace the impact of a suitable financial award both to the claimants themselves and on the public perception that there is no place for any form of 'noble-cause' justification for corrupt practices in those trusted to uphold the law.

54. The first and second claimants are each awarded £155,000. This recognises (as set out above) the tapering effect of a longer period in custody, and incorporates an uplift for the period spent in Category A and on restrictive bail conditions. The award for distress and aggravated damages incorporates a 10% reduction for previous criminality. The previous convictions of these claimants are already allowed for in the loss of liberty figure. The constituent parts of the award for each claimant are:
    a. **Basic award**
        i. Distress etc from the charge £27,000
        ii. Loss of liberty £60,000
    b. Aggravated damages £18,000
    c. Exemplary damages £50,000 (one third of exemplary damages of £150,000)

55. The third claimant is awarded £104,000. This recognises the shorter period of relevant incarceration, and the uplift for being held in Category A for a period and being subject to restrictive bail conditions. The award for distress and aggravated damages incorporate a 10% previous criminality reduction. The previous convictions are already allowed for in the loss of liberty figure. The break down is:
    a. **Basic award**
        i. Distress etc from the charge £27,000
        ii. Loss of liberty £9,000
    b. **Aggravated damages** £18,000
    c. **Exemplary damages** £50,000 (one third of the total award of £150,000)

56. Interest from the date of this judgment. Costs and interest should be agreed between the parties. It is to be hoped that no further public money need be expended in resolving disputes by a hearing.