Case No: 2CL01225

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
RCJ
Strand
LONDON

Date: 18/05/2015

**Before :**

**HHJ HAND QC**

**and**

**MRS CHARMAINE BROWN**
**(Equality Act Assessor)**

THE COUNTY COURT

**Between :**

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| **Traveller Movement** | **First Claimant** |
| **Ms Pauline Anderson** | **Second Claimant** |
| **Mr Matthew Brindley** | **Third Claimant** |
| **Mr Joseph Browne** | **Fourth Claimant** |
| **Mrs Sabrina Franklin (neé Fahy)** | **Fifth Claimant** |
| **Mr Brian Foster** | **Sixth Claimant** |
| **Mr Martin Howe** | **Seventh Claimant** |
| **Mrs Elizabeth Keates** | **Eighth Claimant** |
| **Ms Helena Kiely** | **Ninth Claimant** |
| **Mr Conn MacGabhann** | **Tenth Claimant** |
| **Ms Yvonne MacNamara** | **Eleventh Claimant** |
| **Mr Thomas McCann** | **Twelfth Claimant** |
| **Ms Bridget Mc Carthy** | **Thirteenth Claimant** |
| **Ms Grace O' Malley** | **Fourteenth Claimant** |

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| **Ms Tracy Sherlock** | **Fifteenth Claimant** |
| **Mr Michael Ridge** | **Sixteenth Claimant** |
| **Ms Sarah Vale** | **Seventeenth Claimant** |
| **Ms Sophia Vale** | **Eighteenth Claimant** |
| **Mr Mark Watson** | **Nineteenth Claimant** |
| **and** | |
| **JD Wetherspoon Plc** | **Defendant** |

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**Mr Marc Willers QC and Mr Owen Greenhall of counsel** (instructed by **Howe and Co**) for the **Claimants**
**Mr Thomas Kibling of counsel** (instructed by **Kingsley Napley**) for the **Defendant**

Hearing dates: 10th, 11th 12th, 13th, 14th 17th, 18th, 19th, 20th, 21st, 24th, 25th, 26th 27th and 28th November 2014

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# 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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HHJ HAND QC

**HHJ Hand QC:**

## Introduction

1. This is a claim by a company limited by guarantee with charitable status and also by eighteen[1] individual Claimants in respect of alleged race discrimination (taking the form of direct discrimination and harassment) in respect of the provision of services contrary to the terms of the **Equality Act 2010** ("**EA**") by the Defendant through the acts of its servants and/or agents, for which it is alleged the Defendant is vicariously liable. It concerns events, which occurred on the Holloway Road in the late afternoon of 17 November 2011 over a period of about 20 minutes. The Claimants have been represented by Mr Marc Willers QC leading Mr Owen Greenhall of counsel and the Defendant by Mr Thomas Kibling of counsel. The hearing commenced with a reading day on 10 November 2014 and hearing days, which, with some interruption continued until 28 November 2014 by which time the evidence and submissions had been completed. I was assisted by Mrs Charmaine Brown sitting as an assessor and we were able to discuss the case on 22 and 23 December 2014 and again by e-mail on 20 and 21April 2015 (see Appendix 1).

## Common ground

2. By the end of the hearing the parties were agreed on the following:
   a. that the claim of the twelfth Claimant, Ms Bridget McCarthy, who is of Irish Traveller origin[2], must be dismissed;
   b. that the other seven Claimants[3] who are of Irish Traveller or Romani Gypsy ethnic origin can rely on the protected characteristic of race for the purposes of their claims pursuant to the **EA**;
   c. that so far as the other ten individual Claimants[4] are concerned, potentially they can rely on the protected characteristic of the race of the other seven individual Claimants provided they can show that they, i.e. the other ten individual Claimants, were less favourably treated because of it.

## Controversial issues

3. Although some of the controversial issues between the parties had disappeared by the end of the hearing the following remained:
   a. whether the first Claimant, a company limited by guarantee with charitable status, is "another person" for the purposes of sections 13(1) and 26(1) of the EA?
   b. whether each Claimant was less favourably treated by the Defendant than it treats or would treat others?
   c. whether each Claimant was subjected to harassment (as defined by section 26(1) of the EA)?
   d. whether each Claimant can recover aggravated damages?

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[1] One of whom did not attend the hearing.

[2] In her witness statement she referred to herself as a traveller but even though she did not give evidence I am prepared to infer that is the same as an Irish Traveller.

[3] The Second, Eighth, Ninth, Twelfth, Fifteenth, Seventeenth and Eighteenth Claimants. Those of Gypsy origin referred to themselves in their witness statements as "English Gypsy" but during the circulation of the draft judgment I was asked to describe them as "Romani Gypsy" and am happy to do so.

[4] The Third, Fourth, Fifth, Sixth, Seventh, Tenth, Eleventh, Fourteenth, Sixteenth and Nineteenth Claimants; the First Claimant's complaint is controversial but if it is within the scope of the EA the First Claimant may also be in this category.

In order to answer the second and third of these questions it is necessary to consider in considerable detail both the background and the actual events and, therefore, it is to these that I now turn.

**The Background**

4. The Jones Brothers department store on the Holloway Road ceased trading in 1990 since which time it has been put to good use as the Resource Centre[5], providing office and conference facilities to a variety of charities and voluntary sector organisations. One of those is the first Claimant in these proceedings. At the time of the events with which this case is concerned the first Claimant was known as the Irish Traveller Movement in Britain but either shortly before, or even during, the hearing it changed its name to the Traveller Movement[6]. It occupies offices in the Resource Centre and every autumn since 2007 it has used the conference facilities to hold its annual conferences. These take place during the daytime and usually have ended by about 4:30 pm. This was the case in 2011 when about 150 delegates were in attendance, some 50 or so of whom were of Irish Traveller or Romani Gypsy origin[7]. Adjacent to the Resource Centre is what used to be the Coronet Cinema. It has been redeveloped by the Defendant, the well-known owner and operator of licensed premises, as a public house, not surprisingly called the Coronet; as a former cinema it has a large capacity. Its convenience for those coming from the Resource Centre is obvious. The distance between the then doorway of the Resource Centre[8] and the doorway of the Coronet was estimated by witnesses to be 50 metres or less. So it is not surprising that something of a tradition had grown up amongst those attending the conference to have a post conference drink in the Coronet. Up to 2011 these post conference occasions had passed off without difficulty.

5. In 2005, however, two years before the first Claimant had taken up office space at the Resource Centre, there had been some public order difficulties after an event staged at the Resource Centre, called the Anarchist Book Fair. The manager of the Coronet, the late Mr David Leach, made a record of what happened in an "Accident and Incident Form", which appears to have been completed the following day (see pages 195AC and 195AD of the core bundle). From his note it seems that the police had been called after a significant number (estimated at 500) of "anarchists" started playing music inside the public house. At least part of the problem seems to have been the sheer weight of numbers of those disposed to disorder inside the Coronet. They were asked to leave and eventually had to be ejected but there seems to have been a considerable disturbance as they left, resulting in a number of people having to seek medical and hospital treatment.

6. The Coronet is relatively close to the Emirates Stadium, the home ground of Arsenal Football Club. On match days, nowadays not restricted to Saturday afternoons but also comprising weekday evenings and Sunday afternoons, both home and away fans on their way to and from the ground pass the Coronet in considerable numbers and some of them drink there before and/or after the game. Jubilant as well as despondent football fans can pose a security problem and on match days the Defendant has used the services of a security

[5] This may be a short form of a longer title – the London Voluntary Sector Resource Centre - but the premises have been referred to as the Resource Centre throughout the case and I propose to use that title in this judgment.
[6] I need to reflect that and other name changes in the order made consequent to this judgment.
[7] According to a witness, Mr Joseph Browne.
[8] Mrs Brown and i were told that there have been some changes not only to the doorway but also to the layout and location of some of the features of the pavement and its furniture. Although we were asked to consider a site visit because of these changes we decided not to make one because it seemed to us that the geography was clear from the CCTV footage and still photographs.

supplier in respect of both the interior and on the door of the Coronet; since at least 2008 the provider of such services has been Secure Frontline Services Limited.

7. A written Risk Assessment originally completed on 29 July 2008 by Mr Craig Koekemoer, a manager for Secure Frontline Services Limited, as a result of an assessment made by him and somebody described only as "David (DPS)"[9] and reviewed on 5 January 2011 appears at pages 204 to 219 of the core bundle. It is a comprehensive pro forma document (altered and adapted by the author to the circumstances of the Coronet) relating to health and safety risks to security personnel and customers caused by a variety of factors, which, most pertinently for present purposes, includes violent behaviour on the part of customers. Several specific manuscript notes have been added to the printed pro forma; a manuscript note requiring "Usage of Plastic containers on Football days" appears at page 209, there is another note at page 211, which reads "Local area can be risky at night. FOOTBALL issues also occur", and on the last page there is a larger manuscript entry which reads:

> **"Main Entrance – FOOTBALL ISSUES:**
> **– grade of game for ARSENAL home matches affects risk level**
> **– HOME SUPPORTERS ONLY – thus away supporters are escorted down high Street by Police to the stadium past front of venue.**
> **– Plastic containers used according to licence conditions.**
> **– 4 sets of double doors to control.**
> **– Venue has large capacity."**

8. There is no mention in the Risk Assessment of what is pleaded at paragraph 9.1 of the Defence (see page 49 of the core bundle) as a long-standing:

> **"... policy that at times of heightened risk, such as when football matches are held at the Emirates Stadium situated nearby, security measures are put in place, including the exclusion of large groups from entering its premises, in order to ensure the health and safety of, and quiet enjoyment of its premises for its customers and the health and safety of its staff."**

This is repeated at paragraph 7 of the witness statement of the Area Manager of Secure Frontline Services Limited, Mr Tony Dushku, in partly similar but by no means identical terms as follows:

> **"When I have been engaged by the Pub it is to ensure compliance with the policy that no large groups are to be admitted entry to the Pub. My services and those of the Company are used only when it is determined that there is a heightened risk, including the risk that large groups may wish to enter the pub, for example when there are football matches at the Emirates Stadium. A large group comprises four or more individuals, however it is for us, as trained door supervisors, to use our discretion to permit entrance to large groups if we deem the risk very low, for example if a family of four or five individuals wish to use the Pub."**

9. When he was asked about the manuscript note referring to a Home Supporters Only policy (see paragraph 5 above) he explained that home supporters would be identified either by their season ticket or the colour of the individual ticket but if there was a large group they would be excluded, although he said there had never been large groups and that season-ticket holders were less troublesome than other supporters. He was adamant that there was a "Large Groups Policy" and that it applied to home football supporters. In quick succession he identified a large group as comprising six people and then as being constituted by more than

[9] A "DPS" is a "Designated Premises Supervisor" and "David" must be Mr David Leach, the manager of the Coronet.

four people. He emphasised that it was all a matter of discretion for the head door supervisor and he considered it possible that a family of away supporters might have been admitted. Also the policy did not apply to groups of regular customers who could be allowed in even if there were more than four in the group; this was because he had a good relationship with the locals.

10. I do not accept his evidence on this point. Had there been a "Large Groups Policy" of the kind pleaded at paragraph 9 of the Defence it would have found its way into the risk Assessment material, either in 2008 when it was created or in 2011 when it was reviewed

**Evidence and findings of fact – general approach**

11. The above summary of the background sets the scene for the events with which this case is concerned and it is to these that I now turn. Before looking at the sequence of events, however, first I wish to make some observations of general application to all the evidence.

12. The oral evidence came from the seventeen Claimants, who gave evidence, the three witnesses called on their behalf and the two witnesses who gave evidence on behalf of the Defendant. Each had made a witness statement for the purpose of these proceedings and some had made other witness statements to the Metropolitan Police. Some others had made notes. After argument on 11 November 2014 I admitted[10], as hearsay evidence, three[11] witness statements from the late Mr David Leach, who had been the manager of the Coronet at the relevant time, he having unhappily died earlier in 2014. This evidence has not been tested by cross examination and obviously that diminishes the weight that I can give it. Moreover he was not an eyewitness; he was no longer on duty by the time the relevant events occurred. But it was common ground that his first witness statement was made very shortly after the events (possibly on 30 November, 2011) and for that reason I have concluded that I can give it some weight.

13. In fact, there are not many contemporary accounts and most of the witnesses, who gave evidence had made witness statements two years or so after the events. No witness had made his or her statement after viewing the CCTV footage taken by the external and internal cameras at the Coronet. A comparison between that CCTV footage and a number of the witness statements reveals a marked inconsistency between the events as recorded by the CCTV and as described in the witness statements. Indeed, the CCTV footage was only considered in detail by some of the witnesses shortly before the hearing and some viewed it for the first time during the hearing.

14. I should make it clear, however, that the CCTV footage has a number of limitations. Firstly, the quality of its images is variable and often not very clear. Secondly, it only shows images; there is no sound track. This is, of course, quite usual in this kind of recording. Thirdly, the camera takes a limited number of frames per second with the result that footage does not reproduce a natural moving image. Thus the action proceeds by a series of fits and starts and to that extent is reminiscent of the kind of movement one sees sometimes in very old films. It is also incomplete in the sense that the movement of people along the street or, even, the making of gestures cannot be seen from start to finish.

15. These artefacts of the recording prompted the Claimants to question the integrity of the CCTV footage. The seventh Claimant, Mr Martin John Howe, was the first witness. His

[10] At the same time I did not admit into evidence the witness statement of Mr Timothy Martin, the Chairman of the Defendant and I would not permit him to be called. I dealt with these matters in an oral judgment.
[11] The first and second are identical except for being differently dated.

evidence started on 13 November 2014 and was completed the following day. He is a trustee of the first Claimant and a partner in the firm of solicitors, which acts for the first Claimant. He was one of a number of witnesses who I permitted to give extensive evidence in chief because their witness statements had been completed before the CCTV footage had been available for scrutiny. Mr Howe's evidence on it was considerably longer, however, because, with my permission, he gave a commentary on all of it and not simply on those parts where he appeared in shot. Together with his nephew, he had been able to devote time to the CCTV footage in the period before he gave evidence and he had found what he described as "gaps" in the footage. By this he meant that there was a longer lapse between frames at some points than occurred generally. For instance, at 16:46:33 to 16:46:48 there was a gap of 15 seconds and at 16:46:53 to 16:46:58 there was a gap of 5 seconds and there are several other gaps. He plainly had suspicions about whether the CCTV footage had been tampered with and these suspicions were shared by, and expressed by, a number of the Claimants when they gave evidence.

16. By the following Monday 17 November 2014, the Defendant had asked the Technical Director of the manufacturer of both the software and hardware comprising the CCTV system at the Coronet, a Mr Gary Bowyer, to look at and comment upon the CCTV footage. He had viewed all three segments of the CCTV coverage and commented upon two of the three segments (not upon the third segment) in a witness statement signed and dated by him on 17 November 2014. I permitted the Defendant to adduce this statement as his evidence and it was added to the core bundle at pages 193A to 193F. His evidence can be summarised by saying that the footage cannot be interfered with and that the "gaps", which he accepts are present, are "almost certainly" due to a lack of change of light and/or a lack of movement for a period of time. The camera reacts to both and in their absence it stops recording images with the result there will be no recording for a short period until either a change of light or a movement triggers the camera to start recording again. Although the Claimants called no evidence to rebut Mr Bowyer's statement and, thus, did not challenge it, even after it had been admitted into evidence witnesses for the Claimant's continued to refer to these gaps when being asked about the consistency of the CCTV footage with their witness statements.

17. Mr Kibling made submissions about the significance of the evidence of Mr Bowyer and the Claimants' apparent refusal to accept it, as part of his very comprehensive written and oral closing submissions to which I will return shortly, but at this stage I need only say that, speaking generally, I accept the CCTV footage has not been altered or interfered with. Moreover, notwithstanding its drawbacks, to which I have referred above, it represents, in my judgment, the best contemporary account of the events in this case. I can also make one further general observation at this stage namely, that where there is a contemporary or relatively contemporary account of events I repose a great deal more confidence in it than I do in an account made many months later but insofar as a contemporary account appears inconsistent with the CCTV footage I prefer the latter.

**The Submissions**

18. By way of a final point on my general approach to the extensive evidence in this case I wish to make clear my position as to the submissions from counsel. This was a long case in which a good deal of factual material was investigated in very considerable detail. Both opening and closing submissions were accompanied by skeleton arguments or speaking notes of some length and the submissions themselves were of considerable duration. The CCTV footage which is at the evidential core of the case has been the subject of a synopsis, an amended synopsis and a further amended synopsis.

19. Mr Willers QC submitted that I should accept the accounts given by the Claimants and their witnesses and reject those given by the Defendant's witnesses. Mr Kibling made a careful and detailed analysis comprising some sixty eight pages of Speaking Note, as explained and deployed in his subsequent oral submissions. He argued that there had been collusion between the Claimant's witnesses and orchestration of their evidence to the point where none of it was reliable. At the start of the Speaking Note he made some "Overarching Observations" and before considering the individual cases in detail he later distilled what he described as "Ten Critical Questions". I intend no disrespect to his considerable industry by summarising, as opposed to setting them out in full, these points as follows: the evidence of those Claimants who said they heard the doormen saying "No Travellers" was unreliable and at odds with more reliable accounts from other Claimants; the common form of some of those statements suggested a degree of orchestration; the CCTV footage should be treated by the Court as unchallenged. Likewise the "Ten Critical Questions" can be distilled into four. Why had some of the section 9 witness statements not been disclosed until after the start of the trial and why did some of the later witness statements differ markedly from statements made to the police by the same witnesses very soon after the events? How can evidence about events, no matter how confidently asserted, be accepted when it has become clear, as the evidence has unfolded and CCTV footage has been viewed, that the deponent was not present at the time these events took place? Looked at as a whole did much of the Claimants' evidence bear the hallmark of having been shaped, either by the discussion in the Metro public house later on 17 November 2011, or at a later stage?

20. This judgment is long but even so it does not purport to deal with each and every aspect of the case either as to findings of fact or credibility nor does it record each and every submission, which has been made. It is not my duty to decide each and every point but only those which I think are necessary for me to reach a judgment either on the case generally or in relation to the individual Claimants. Consequently some of the points raised in the course of oral evidence and some of the submissions may not be reflected in the text of this judgment. That does not mean to say that I have not considered these matters and certainly does not mean that I have ignored them. I have simply chosen not to set them out because it seems to me that they are subsumed in the more general points and more general findings that I have made.

**Evidence and findings of fact – instructions to the security personnel**

21. On 19 October 2011 a number of Travellers and sympathisers were evicted from a residential site known as Dale Farm, which is located in the vicinity of Basildon in Essex. I am not concerned with the rights or wrongs of the manner of eviction or with the eviction itself. Indeed, although, through one medium or another, a considerable amount of documentary evidential material about that event was proffered to the court, I was not prepared to take account of any of that material unless it could be demonstrated it had been considered specifically by any of the witnesses at the time of the events with which I am concerned and, in the event, there was no evidence put before me that it had been.

22. Nevertheless, the eviction was a notorious event attended by a great deal of publicity in every form of mass medium and I am prepared to take judicial notice of the fact that it generated a great deal of controversy on all sides. I also accept that it was of considerable concern to those involved with the first Claimant, as established by the News Release of 2 November 2011 (see page 222 of the core bundle) issued by the first Claimant, the pertinent parts of which read as follows:

> **"The conference will focus on the challenges Gypsies and Travellers face in a changing policy environment and in the aftermath of the Dale Farm eviction. It will offer dynamic approaches to the sweeping policy changes being implemented by the Coalition Government.**
>
> **Yvonne MacNamara, Director of ITMB said:**
>
> ***This year's conference will take stock of the current political climate and the inhumane and unnecessary eviction at Dale Farm. The conference will explore improved and targeted ways in which the challenges that face Gypsies and Travellers can be successfully overcome. It will focus on discriminatory and unacceptable practices such as the Dale Farm eviction and highlight how community members, policymakers and service providers can work together to avoid such tragedies."***

23. Not surprisingly this found its way into at least one newspaper. It appeared in The Irish Post on 12 November 2011 in the bottom right-hand column of page 5. Whilst the resemblance to the News Release is strong and obvious, given its role as a catalyst of subsequent events, it is perhaps better to set it out in full:

> **"IRISH TRAVELLERS' FUTURE ON AGENDA**
> **The future for Britain's Irish travellers in the aftermath of the Dale Farm eviction will be explored at the annual Irish Traveller Movement in Britain (ITMB) conference next week. The event – entitled What Lies Ahead for Gypsies and Travellers? – takes place at the Resource Centre in London's Holloway Road from 9 AM – 4:30 PM on Thursday, November 17. Yvonne MacNamara, director of ITMB said: "It will explore improved and targeted ways in which the challenges that face Gypsies and Travellers can be successfully overcome and will also focus on discriminatory and unacceptable practices such as the Dale Farm eviction and highlight how community members, policymakers and service providers can work together to avoid such tragedies."**

24. I accept this article was drawn to the attention of Mr Leach by a customer. In paragraph 3 of his first witness statement, which was agreed to date from November 2011 even though it bears the date of 28 June 2012 (see pages 195J to 195M of the core bundle) Mr Leach refers to this as having happened "on or about the 15 November 2011". In the note of the investigation meeting, which took place on 24 November 2011, Mr Leach refers to having purchased a copy of The Irish Post "to confirm the details of the article" (see the transcript at page 195G of the core bundle). There is a more elaborate account of this at paragraph 6 of Mr Leach's third witness statement (see page 195Q) where he refers to the customer having said "that there might be potential trouble in the Coronet if the Dale Farm protesters showed up". No mention is made of this in any earlier statement and this third witness statement is dated 31 March 2014, some two and a half years after the events. I am not prepared to give it much credence because I think it is an attempt to provide the added justification of a third party opinion for the actions which Mr Leach took in deciding that door security staff ought to be employed on 17 November 2011.

25. In the investigation interview with Mr Morris on 24 November 2011 (i.e. a week after the events with which I am concerned) Mr Leach said this (see the transcript at page 195G of the core bundle):

> **"I was made aware by a customer that was reading the Irish Post that "Travellers" and "Dale Farm Residents" were holding a meeting on 17 Nov at the "Resource Centre" situated next door to the pub (Coronet). I purchased a copy of the Irish Post to confirm the details of the article**

> **Due to the media attention relating to the eviction of Dale Farm Residents the previous week and the subsequent disorder that occurred I thought it prudent to employ door staff to ensure the welfare and safety of staff plus customers for any potential disorder that may arise from this meeting."**

He was then asked about "the brief to the door team employed on the day" and he answered as follows (see the transcript at page 195 H of the core bundle):

> **"I gave/showed the article to the door team (Tony) showing the event that was happening next door and I advised that in the interest of safety I didn't want any large groups of people entering the premises."**

26. In his first witness statement (made at about the same time) at paragraphs 4, 5 and 6 (see pages 195J to 196K of the core bundle) Mr Leach also relied on his own analysis apparently made without having sought or considered anybody else's opinion:

> **"4. The Article made reference to a meeting with "Travellers" and "Dale Farm residents." Due to the media attention relating to the eviction of Dale Farm residents the previous week and the resulting disorder, I discussed the Article with the head-doorman, Tony Dushku, with a view to having door staff on the 17 November, 2011 to ensure the safety of staff and customers."**

At paragraph 5 Mr Leach said in the first sentence:

> **"5. I was particularly concerned that disorder may result from the conference at the Resource Centre following the London Anarchist Book Fair which took place at the Centre on the 22 October 2005."**

This is, perhaps, badly expressed. I regard it as being meant to convey a connection between disorder following an anarchist event at the Resource Centre in 2005 and the risk of repetition following the first Claimant's 2011 conference. It reflects what Mr Leach had said at the investigation meeting that since the disorder subsequent to the "Anarchist Book Fayre" he had "paid more notice to potential disorder that may occur from events held at the "Resource Centre"" (see also page 190 5G). Then at paragraph 6 Mr Leach said:

> **"6. I discussed having door staff with Steve Morris, my Area Manager, who agreed to have door staff in place. We had three door staff on duty on the 17 November, 2011 and I had instructed Tony prior to the day, when he was working the door for an Arsenal match, not to allow any large groups into the Pub."**

27. In paragraph 11 of his third witness statement (at page 195S of the core bundle) Mr Leach gave a more detailed account of this instruction saying:

> **"Tony came to the pub a few days before the conference and I instructed him not to permit any large groups to enter the pub on the day of the conference. He understood as this was the same approach that was applied on event days at the Emirates."**

Whilst this is not a contemporary account, I am prepared to give the first sentence some weight because, as can be seen, it had been foreshadowed by what had been said at the investigation and in the first statement made only a short time after the events. I will return to the second sentence when I consider the nature and scope of the instructions given.

28. Mr Dushku gave his account at paragraph 5 of his witness statement (see page 184 of the core bundle) as follows:

> **"I was first aware of an event taking place at the Resource Centre which is located slightly further up the Holloway Road from the Pub about a week before 17th November, 2011. David Leach, known to me as Dave, who was the Pub manager at the time, and I discussed the conference which was due to take place at the Resource Centre on that date, which we understood was to involve discussions about Dale Farm. It was accepted that a large number of people would be attending the conference. Dave Leach showed me a newspaper article about the conference. This article was from The Irish Post and was dated 12th November, 2011. It is attached to this statement. Dave Leach considered that door staff were required and we agreed that three, including myself, was an appropriate number. He said that in order to ensure the safety of staff and customers, no large groups were to be permitted entry. This was to prevent any trouble similar to that which Dave Leach told me occurred after an event at the Resource Centre some years previously, which had involved a significant amount of disorder in and outside the Pub and which required the attendance of several police officers."**

29. But when he gave evidence Mr Dushku said, in effect contradicting paragraph 4 of the first witness statement of Mr Leach, that he had not been told by Mr Leach or anybody else that there would be a meeting between Irish Travellers and Dale Farm Residents at the conference. In my judgment this is not surprising because neither the press release nor the newspaper article had said any such thing. At best it was a speculative assumption by Mr Leach that some of those involved at Dale Farm might attend the conference; at worst it was an example of him trying to elevate the risk in order to justify the use of enhanced security, something, which must have appeared at the time of the investigation on 24 November 2011 to have misfired badly. Unhappily as a result of his untimely death there has been no opportunity to probe and test these matters during the course of oral evidence.

30. I find on the evidence available that Mr Leach made an assumption that there might be disorder outside or inside the Coronet on the basis that those attending the conference might be prone to disorder. Wrapped in that assumption is the further assumption that those in attendance might behave in a disorderly manner either because some of those present at Dale Farm, who had behaved in a disorderly fashion during the eviction, would be in attendance and behave badly again and/or encourage other persons in attendance to do so or because a discussion of the Dale Farm eviction, even in the absence of attendance by any participants, might so inflame the delegates that they would indulge in disorderly conduct inside or outside the Coronet during or after the conference.

31. In my judgment these were very large assumptions to make. Mr Leach did not know that anybody from Dale Farm would be in attendance. Even if he was entitled to think that some from Dale Farm might attend he could not know that those who did had behaved improperly during the eviction unless he was making some broad assumption about the propensity of all those who were Irish Travellers or English Gypsies to engage in disorder. The same applies to other attendees at the conference, whether they were Irish Travellers or Gypsies or those associated with them. But the evidence was that the conferences over the previous four years had never resulted in disorderly behaviour. Moreover he made no contact with the first Claimant to clarify the situation or attempt to reach any consensus with the organisers of the conference as to how things might be managed. I will need to return to these assumptions later in this judgment.

32. It seems to me obvious that the solution arrived at by Mr Leach was to exclude "large groups" from the Resource Centre, irrespective of their demeanour or behaviour. He said so in the investigation meeting on 24 November 2011 and in his witness statements (see above).

Moreover, Ms Agnieszka Seemungal, who was the shift manager taking over from Mr David Leach at about 15:00 on 17 November 2011, said at paragraph 8 of her witness statement (see page 191 of the core bundle) that she and other staff had been told "... that the brief which had been given to door staff was not to let any large group in but to serve those who were allowed entry".

33. Although Mr Dushku had read the article in The Irish Post he agreed in oral evidence that his instruction from Mr Leach was not to allow large groups coming from the Resource Centre into the Coronet on 17 November 2011. This was also consistent with part of paragraph 6 of his witness statement (see pages 184 to 185 of the core bundle) where he deals with his instructions as follows:

> **"At no time in my discussions with Dave Leach did we focus on the interests or background of the group but just on the potential number who might want to enter the pub at the same time."**

34. I find that entirely plausible and I find that the instruction given was in the vague and ill-defined form that "large groups" were to be excluded. I reach that conclusion notwithstanding the second sentence from paragraph 11 of the third witness statement of Mr Leach (quoted above at paragraph 21 of this judgment but repeated here for the convenience of the reader):

> **"He understood as this was the same approach that was applied on event days at the Emirates."**

I have the same reservation about this sentence in paragraph 11 of the third witness statement made by Mr Leach as I have already expressed above at paragraph 24 of this judgment in relation to the comment he alleges was made by the customer who showed him the newspaper article. It does not appear in any earlier account and it smacks of a later attempt to make the instruction more specific than it had hitherto appeared.

35. It is, however, of interest that the only admittance policy Mr Leach was able to refer to related to football matches and that policy as set out in the risk assessment referred to above at paragraph 5 of this judgment contains no reference to "large groups". Moreover, Mr Dushku's explanation of what happened when Arsenal were playing at home was self-contradictory to the point of incoherence. He did not define "large groups" with any consistency; apparently locals might be exempted and he seemed to suggest in his oral evidence that away supporters might be admitted in some circumstances, which would have been contrary to the terms of the risk assessment and, I would have thought, contrary to common sense. Mr Dushku is of Albanian origin and although English is not his first language I do not think that explains his difficulty in giving a consistent and coherent explanation of it.

36. In my judgment his difficulty stemmed from the fact that whilst, of course, it was the Defendant's policy to avoid violent disorder and there was a recognition on the part of the Defendant's management and on the part of the door security it employed, that disorder might be latent in larger groups, there was no rule other than that away supporters should not be allowed into the Coronet on match days. The rest was left to the discretion, good sense and experience of the doormen. What might constitute a large group was not defined precisely and locals known to the door staff, whether in a family group or any other combination, might well fare better than complete strangers.

37. I find that Mr Dushku was not under instructions to exclude people who had not come from the Resource Centre. I accept he had received some instructions on or before 17 November 2011. But I do not accept, notwithstanding the terms of paragraph 9 of his witness statement, that the instructions made any reference to excluding "large groups" generally by reference to a "Large Groups Policy". Nor do I find the evidence of Ms Agnieszka Seemungal at paragraph 9 of her witness statement (see page 191 of the core bundle) at all convincing. There she refers to seeing "a number of customers who appeared to be delegates from the conference", recognising them because they were wearing name badges which said "Resource Centre". She then constructs this reasoning:

> **"This was in line with the instructions that Dave Leach had given to us and the door staff, which were that individuals or small groups were to be admitted and it was only large groups, irrespective of whether they had attended the conference or not, who should not be admitted to the Coronet that day."**

I find several aspects of this very odd. Firstly I do not understand why any instructions about entrance to the Coronet would be given to the bar staff; this was a matter for the security team. Secondly, it introduces the concept of the "small group" without any clear definition of a "small group" or, for that matter any clear definition of a "large group". Thirdly, it seems to me plainly at odds with the evidence of Ms Karen Lewis, to which I will come directly, that she and one other were excluded. Fourthly, in so far as Ms Agnieszka Seemungal claims to have seen badges labelled "Resource Centre", I think her recollection is at fault. My understanding is that the "badges" used at the Traveller Conference were in reality stickers upon which names were written and I do not understand them to have included the words "Resource Centre". Fifthly, Ms Seemungal started her shift at 3.00 pm; lunch had been served at the Irish Travellers Conference and I have heard no other evidence of delegates leaving before the conference had finished. For these reasons I reject both the evidence that there were numbers of people from the Resource Centre in the Coronet at or after 3.00 pm and that there was any instruction to admit individuals and small groups irrespective of their origin.

38. I find that Mr Leach had a discussion with Mr Dushku about why he wanted security and that Mr Dushku then discussed it on the day with his colleagues, Mr Jones and Mr Correia. I accept that Mr Leach suggested that exclusion of large groups would be the way to minimise the risk of disorder but gave no instructions about differentiating between one group and another by reference to "interests or background" as Mr Dushku put it in his witness statement (see paragraph 33 of this judgment above). Indeed, without questioning of potential entrants it is difficult to see how there could be such differentiation, unless there was an obvious difference in physical appearance (and there has been no evidence of that); it has been suggested that name badges provided the necessary identification but, although I accept that the poor quality of the CCTV footage might obscure name badges, I find that not very many of them were wearing name badges by this time.

39. Moreover, whilst eliminating the entry of large groups at the door might solve one problem it would not prevent the accumulation of large groups inside the Coronet if members of that group had entered in smaller groups, which had then coalesced inside the Coronet. There is nothing to suggest that Mr Leach gave any instructions as to how this problem might be solved and I find that beyond being instructed not to let in large groups emanating from the Resource Centre into the Coronet the Defendant left the detail of how to prevent any disorder to the security team. In my judgment it was fairly obvious that the only solution

would be to keep an eye out for people coming from the Resource centre and exclude them. I do not find that this was an instruction given by the Defendant rather that the Defendant left the detailed implementation of the general instruction to prevent large groups from the Resource Centre to the initiative of Mr Dushku and his team. How they implemented it must be inferred from what happened on 17 November 2011 and it is to those events that I turn now.

**Evidence and findings of fact - sequence of events on 17 November 2011**

**(1) 4.15 pm**

40. The first incident occurred at about 4.15 pm on 17 November 2011. No CCTV footage from this time has been put before the court and I am reliant on the evidence of Ms Karen Lewis, who was not a Claimant in these proceedings. When she made her witness statement, which is dated 5 November 2013 (see pages 175 to 178 of the core bundle), Ms Lewis described herself as the Advocacy Manager for PACE (Project for Advocacy Counselling and Education). In the letter, which she wrote to the Defendant on 18 November 2011 (see page 179 of the core bundle) she signed herself as Mental Health Advocacy Coordinator; perhaps they are the same thing. PACE is a charity "promoting lesbian, gay, bisexual and transgender health and well-being" (see paragraph 2 of her witness statement) and at the outset of her oral evidence Ms Lewis added the further information that she was a Jewish lesbian, and as such she had experience of suffering discrimination.

41. On 17 November 2011 PACE was also holding what Ms Lewis described as a "small conference" at the Resource Centre. It comprised all the PACE office staff, taking a day out of the office to come to the Resource Centre, in order to indulge in "blue sky thinking", as Ms Lewis put it. The PACE conference and that being held by the first Claimant, although being held in adjacent rooms, were entirely separate and Ms Lewis had no dealings with the first Claimant's conference apart from picking up a spare delegate pack at lunchtime. In her oral evidence Ms Lewis said that she had no contact with anybody connected with the first Claimant until she had spoken to the seventh Claimant, Mr Martin Howe, some two years later when her witness statement was being prepared.

42. The PACE conference finished around 4.05 pm and after clearing up Ms Lewis and her colleague Ms Deryn Howard left the Resource Centre at about 4.15 pm and walked to the Coronet. Standing outside the entrance doors were Mr Gary Jones and Mr Albano Correia, who refused them entrance. In her witness statement at paragraph 10 she said that when she asked for an explanation she was told by one of the doormen "that he was under instructions not to allow anyone into the pub who had been at the Traveller Conference". In her oral evidence she put it slightly differently saying that the explanation was that the doormen would not allow anybody in who was associated with the Travellers Conference. Despite her explanation that she had not been to the Travellers Conference, something which the doorman with whom she was conversing said he did not believe, the refusal to allow entrance to Ms Lewis and her companion was maintained.

43. Ms Lewis described the doorman with whom she had this conversation as being quite rude (see paragraph 11 of her witness statement). She said that she could see through the doors of the Coronet that two of her colleagues, who she identified as Frances and Becky, were inside. She caught their attention by waving at them and beckoned them to come out, which they did, and the party then went to another venue. Having studied the CCTV footage and heard descriptions of the internal geography of the Coronet I have some difficulty in

accepting this part of the evidence given by Ms Lewis. I have already referred to the Coronet as having previously been a cinema and, in consequence, it is of large capacity. There are four large doors at the entrance; behind them is a landing area and steps lead down into the very large bar area, which is at a considerably lower level than the entrance area. I do not think it can have been easy for those on the outside to have seen down into the bar area, identified friends or colleagues and attracted their attention by waving to them.

44. The following day Ms Lewis wrote the letter of complaint which appears at page 179 of the core bundle. In the second paragraph she said this:

> **"Yesterday afternoon at approximately 4.15 p.m. my colleagues and I came out of the Resource Centre, which provides conference space to voluntary sector organisations, after having had a team away day. As the Resource Centre is next door to the pub, we attempted to go into the Coronet for a drink and were refused entry by two door staff who believed that we had been attending an Irish Travellers Conference which was taking place at the same time. We were told that anyone attending the conference was not allowed entry. Despite telling them that we were not part of that delegation we were not believed and were still refused entry."**

Her evidence, both in her witness statement and orally, was largely consistent with that account and I set it out only to contrast it with another letter of the same date written by a Mr Tim Eastwood, which appears at page 230 of the core bundle. The letter is written on paper with an eQuality letterhead and Mr Eastwood describes himself in the letter as an eQuality Coordinator. The offices of eQuality and PACE are at same address; indeed, I understand the oral evidence of Ms Lewis to be that there is one office used by both organisations.

45. In the letter Mr Eastwood said this in the second and third paragraphs:

> **"I was attending an all-day staff meeting at The Resource Centre on Holloway Road (next door to your pub) which provides conference and meeting facilities for charities and voluntary sector organisations. In the same building the Irish Traveller Movement in Britain was also holding their conference.**
>
> **Along with my colleagues I was troubled and surprised at your door staff refusing to allow us entry to your premises, initially without any explanation. The door staff were rude and intimidating, which we strongly feel is unnecessary unjust and wrong. It further alarmed me to find the reason we were refused entry was because your staff had "heard that there are some travellers nearby" and they thought we were part of the same conference."**

46. One striking feature of this letter is not only that there are some inconsistencies as between this account and that set out in the letter written by Ms Lewis about the explanation allegedly given by the doorman but also that Ms Lewis was quite clear in her evidence apart from her female colleague nobody else had been present at the door of the Coronet when she had a conversation with the doorman. Ms Lewis said in oral evidence that she had discussed the events with Mr Eastwood later and that both she and he had decided independently to write separate letters. But another striking feature of this letter is that it was written in terms that suggested Mr Eastwood had been present and, to my mind, that raises the further question as to why it was written at all?

47. In his witness statement (see paragraph 9 at page 185 of the core bundle) Mr Dushku refers to an incident at the entrance to the Coronet in which he was involved. It seems to me clear that this is not the incident involving Ms Lewis.

48. Mr Dushku said this at paragraph 9:

> **"On 17 November, 2011, at approximately 4:15 p.m., a group of approximately 5 or 6 people attempted to gain entry to the Pub. I did not consider that they were from the Resource Centre as they were not wearing name badges. I did not see whether they came from the Resource Centre or not, but, as I say, I assume that they did not come from the Resource Centre because they were not wearing name badges. In line with the policy that no large group should be permitted entry to the Pub, I refused entry because they comprised a large group with no obvious family connection. I now understand, from their correspondence to JD Wetherspoon, that this group was part of a group called eQuality, which supports relationship services for lesbian, gay, bisexual and transgender couples, and which was completely unrelated with those attending the ITMB conference, which was discussing the recent events and problems at Dale Farm."**

In his oral evidence Mr Dushku recollected that one member of the group was a woman 5 feet 7 inches in height. Ms Lewis told me that she was 5 feet tall and plainly she was not part of this group, which cannot have been outside the Coronet at 4.15 pm otherwise it would have been seen by Ms Lewis, who, I have no doubt, would have given evidence about it. I think the assumption made by Mr Dushku at paragraph 9 of his witness statement that this was a group of people, which included Mr Eastwood, is without any solid foundation and I regard it as wholly improbable that had there been two groups attempting to gain admittance at around the same time they would have been unaware of each other. I do accept that there was an incident involving Ms Lewis but I am not prepared to find on a balance of probability that another different and quite separate incident occurred at approximately the same time.

49. When cross-examined by Mr Kibling, Ms Lewis denied that she had spoken to Ms Yvonne MacNamara the Director of the first Claimant. The latter wrote a note to all delegates, who had attended the first Claimant's conference; a copy of it appears at pages 233 and 234 of the core bundle. It is not dated but was probably sent out under cover of the e-mail, which is dated 23 November 2011 (see pages 231 and 232 of the core bundle). In what can be described as the third paragraph of the second page of the note (i.e. page 234 of the core bundle) the following appears:

> **"We have also been informed by delegates attending a separate training event held at the Resource Centre on the 17 November, they were also refused entry. It was suggested to them that they had attended the ITMB conference and were therefore barred from entering the pub."**

50. I cannot understand to whom this referred unless it was to Ms Lewis. If so, it contradicts what Ms Lewis told Mr Kibling in cross examination. I should add that in her oral evidence in chief Ms MacNamara said she could not recollect having seen a copy of the letter written by Ms Lewis to the Defendant, even though it states that it has been copied to the first Claimant nor had she seen the letter from Mr Eastwood, likewise said to have been copied to the first Claimant. Indeed she went further and said that she had no idea who either Ms Lewis or Mr Eastwood were. I am sorry to say that I found this unbelievable and I do not accept there has been no contact between them.

51. My conclusions in respect of this first incident are as follows; firstly, it seems to me probable that Ms Lewis and Ms MacNamara did have some conversation. Secondly it seems to me improbable that Mr Eastwood and Ms Lewis decided independently to write separate letters. Thirdly, given that the account set out in Mr Eastwood's letter, contrary to what the reader might understand, is not an eyewitness account but must have come from conversations with others, it seems to me it can be given so little credence that no weight attaches to it. I reach that conclusion notwithstanding Mr Dushku's evidence that he turned away another group because of the "large groups" policy. I have already found that there was no such incident but if any such incident occurred plainly the timing must be wrong and, as I have already said, there is no evidential basis for concluding that Mr Eastwood was in that group. Moreover, although these matters are relevant in relation to the credibility of the evidence of Ms MacNamara generally, I am not clear that they have much bearing on the all important later events. What Ms Lewis recounted in her letter may well be consistent with the approach taken by the door men but the account given in Mr Eastwood's letter is different and yet both may have emanated from Ms Lewis. Overall, I have considerable reservations about the reliability of Ms Lewis as a witness.

52. That being so, and having regard to the physical layout of the interior of the Coronet, I cannot find that the account given by Ms Lewis about having identified colleagues in the interior, attracted their attention and beckoned them to come outside, was probably what happened. In any event, as I shall explain later in this judgment, whether or not people who had come out of the Resource Centre had been allowed into the Coronet does not seem to me to be a factor of very great importance in this case.

53. Having said all that, I do accept that some of the account given by Ms Lewis is probably correct. I think that she and her colleague were refused admission to the Coronet. Moreover, I accept that on asking for an explanation Ms Lewis and her colleague were told that it was because they had come from the Resource Centre.

**(2) 4.45pm - 4.53 pm**

54. The next three stages in the sequence of events were all recorded on CCTV footage and a short part of the second stage was also filmed on an iPhone. Mr Howe, the seventh Claimant, started his evidence with a long commentary on the CCTV footage. Subsequently he prepared an extensive note as to what the Claimants contended could be seen. During closing submissions Mr Kibling added his commentary and Mr Willers QC then added a further commentary by way of reply. The Assessor and I spent a good part of two days looking again at the CCTV footage and at these commentaries. What follows is a synopsis of the observations made on behalf of the Claimants and the Defendants together with our own views of what the CCTV footage shows together with an analysis of the consistency of that material with the various accounts given by the various witnesses who are shown in it.

55. The CCTV footage starts at 16:45:59 with two large men standing on the street immediately outside the doors of the Coronet. They are the two doormen, Mr Jones and Mr Correia. At this point Mr Dushku, their supervisor, is not in shot. Although the equipment cannot be clearly seen in the CCTV footage it is common ground that each man had a personal radio so as to allow radio communication between them when they were too far apart to converse.

56. The Claimants interpreted this opening sequence as showing the two men looking to their right towards the Resource Centre. The Defendant did not accept that this was clearly the case. What was accepted was that both men took a step forward and a step backward and that one of them had his head turned slightly to the right but it could not be said that he was probably looking towards the Resource Centre. My own observation[12] is that it is difficult to be confident that they were probably looking to the right, although it does seem clear that they shifted their position and then resumed the posture of having their arms clasped together in front of their torsos. The Claimants' case is that until he came into shot Mr Dushku was located closer to the Resource Centre where he was "spotting" people coming out and then sending a message by his radio to the two men at the door to say that people from the Resource Centre were heading their way. In my judgment it cannot be said with any degree of probability that the doormen were either looking to their right or receiving any message, although such is the poor quality of the imaging the possibility of this having occurred cannot be excluded.

57. At 16:46:25 a group of people can be seen in the CCTV footage to approach the doors of the Coronet. Two men in this group have not been identified. It is common ground that one of them was totally unconnected with the others and had nothing whatsoever to do with the first Claimant's conference and probably was not connected with the Resource Centre at all. In other words although he appears to be in the group, he never was part of it. Towards the back of the group is another man who was described by Mr Howe, the seventh Claimant, as the "Oriental" delegate. His name has never been discovered but it is suggested that he had attended the first Claimant's conference. Given that there was a list of delegates this anonymity seems somewhat strange but it does not matter very much. The others can clearly be seen to be the ninth Claimant Ms Helena Kiely, who is an Irish Traveller, the fourth Claimant Mr Joseph Browne, "a Roman Catholic Priest ... no longer in active ministry and currently a trainee solicitor in Mr Howe's firm" (see paragraph 2 of his witness statement at page 55 of the core bundle), the seventh Claimant Mr Howe and the nineteenth Claimant, Mr Mark Watson, who is a police inspector in the Cheshire Constabulary and who I will refer to from now on as Inspector Watson.

58. Thus, there was a group of six people, four or five of whom had attended the Travellers Conference at the Resource Centre and one of whom was an Irish Traveller. Mr Howe's witness statement is at pages 62 to 72 of the core bundle. As with all the Claimants' witness statements it was made without sight of the CCTV footage. He had attended all the conferences since 2007 and neither he nor any other delegates had experienced any difficulty in going for a drink at the Coronet after such conferences and he had never seen any disorderly behaviour on such occasions (see paragraph 10 of his witness statement at pages 64 and 65 of the core bundle).

59. At paragraph 24 of his witness statement (see page 68 of the core bundle) he said that he was in a group of four people, the others being Inspector Watson, Mr Browne and Ms MacNamara. But in the CCTV footage of the first group approaching the door of the Coronet Ms MacNamara is not to be seen and I find that she arrived later. The only female in view in the CCTV footage is Ms Helena Kiely. Therefore Mr Howe's witness statement on this point was incorrect.

[12] In every instance my observation coincides with that of the Assessor. She was not, of course, a finder of fact but in a case of this kind an Assessor must have some basis of fact in order to be able to give advice to the Judge and so it seemed to me that a discussion of the evidence between us was appropriate; happily our observations always coincided.

60. Paragraph 24 is incorrect in another respect; Mr Howe says that as the group approached he could see Ms Helena Kiely and Ms Tracey Sherlock, the fifteenth Claimant, already at the entrance to the Coronet and talking to the two doormen and that he

> **"...could hear the doormen saying that they were not allowing Travellers or people from the Traveller conference to enter the pub. The two young women were challenging the door men to explain why they could not enter and the doormen was saying it was the management's orders."**

This is totally inconsistent with what is to be seen in the CCTV footage; Ms Sherlock, who is an Irish Traveller, does not arrive until 16:47.03 (i.e. about thirty seconds later than the others) according to the summary (or, having studied the CCTV footage, perhaps a second or two before).

61. According to paragraph 25 of his witness statement, Mr Howe moved forward to talk to the doormen who he says:

> **"... stood tall, wide in their stance, stood squarely in front of myself and Mark Watson, who had also approached them to discuss the situation, and spread out their arms to prevent anyone getting past them. Their posture was physically intimidating. It was a very worrying situation. I thought the spreading of their arms to be an aggressive movement. I thought that there was a real risk that someone, including myself could be physically injured by the doormen if we did not immediately step back."**

Other witnesses allege that one of the doormen raised his right arm. Having considered the CCTV footage I have come to the conclusion that neither is probable and it seems to me very clear that Mr Howe's account does not match what is to be seen on the CCTV footage. I can see the doorman furthest away from the camera moving his left arm upwards; this is all part of the movement of him bowing his head and speaking into his lapel. It is common ground that he was wearing a lapel microphone; I will return to this below. I do not think any other arm movement is clearly visible and there is nothing like the barring gesture suggested by Mr Howe and some of the other witnesses.

62. Mr Howe gave an account of the conversation that he had with the doormen at paragraphs 26 and 27 of his witness statement (see page 69 of the core bundle); it is in the following terms:

> **"26. I spoke to the door men who were standing close to each other to block the entrance doors to the pub and asked why I and others were not being allowed to enter. One of the door men asked me where I had come from. I told him I was a solicitor who had been at a conference in the Resource Centre next door to the pub. The doormen both said they were under orders from the management not to allow anyone from the "Traveller Conference" to enter the pub. One of the doormen said "you are from the conference up there [indicating with his arm the direction of the Resource Centre], no one from that conference is allowed in.**
>
> **27. I asked why we were being denied entrance and the response was that "there had been trouble last year with Travellers from the conference".**

From my viewing of the CCTV footage I can see no visual support for the gesture alluded to by Mr Howe. I have no reason, however, to doubt the accuracy of the conversation reported in paragraph 26 about the reason for exclusion. I find paragraph 27 more problematic. On my findings above, such a statement cannot have emanated from instructions given by Mr

Leach and, unless Mr Dushku had misconstrued those instructions very greatly, it seems to me unlikely any such statement came from instructions passed on to the doormen by Mr Dushku. Of course, there had been no such incident the previous year, something which I think both Mr Leach and Mr Dushku must have been aware of, and it seems very unlikely that either intended to convey any such statement when giving instructions. Whether or not the instructions Mr Dushku gave to the doormen were grossly misconstrued by them must remain a possibility but I think it improbable and I am not prepared to find on a balance of probabilities that paragraph 27 of Mr Howe's witness statement is an accurate recollection of the conversation he had. But if I am wrong to do so and such a statement was made by the doormen having regard to my findings set out below it seems to me to have no significant impact on the case.

63. Finally, in relation to this first incident, at paragraph 31 of his witness statement (see page 69 of the core bundle) Mr Howe refers to people inside the Coronet gathering near the doors and looking out to see what was going on. Any group looking out of the Coronet at what was happening outside the doors must have gathered on the landing or, at least, on the stairs. I cannot see this on the CCTV footage but accept that the quality of imaging is too poor for me to say categorically that it did not happen.

64. However, although it remains a possibility, I find it difficult to understand that something happening at the door of the public house would be of interest to those lower down in the bar area. Firstly I think it might be difficult for them to catch sight of anything going on. Secondly I understand Mr Howe himself to be saying that there were very few people in the public house. Thirdly I cannot think this incident, even assuming it could be seen clearly at all on a dark November evening, when viewed at some distance from down in the bar area, would have been of sufficient interest to persuade those either standing at the bar or sitting at tables to leave their drinks and move towards the door. In my mind this is a possibility but I do not regard it as probable.

65. I find that the CCTV footage shows Mr Howe's and others conversing with the two doormen. To my mind the most accurate account of the conversation taking place is that given by Inspector Mark Watson in the notes that he made in his pocket book on the train on the way back to Cheshire (a transcription appears at pages 104A and 104B of the core bundle), and in the extended note that he made on his computer over the weekend (see pages 3 to 7 of supplementary bundle C4), which is replicated in a **section 9 Criminal Justice Act 1967** statement that he made to the Metropolitan Police on 26 November 2011 (see pages 8 to 18 of supplementary bundle C4). Somewhat surprisingly in the case of a police officer, who then had 29 years' experience and had reached the rank of inspector, these accounts are by no means accurate in every respect or always consistent with the CCTV footage.

66. Inspector Watson clearly believed that the group he was in was "mostly female"; but that is contradicted by the CCTV footage. Even though it is consistently stated throughout all the relatively contemporaneous documents prepared by Inspector Watson I do not accept that was probably the case. His notebook makes no reference to the doormen holding out their arms, although it does refer to them having "blocked the door". In the statement that he prepared over the weekend, however, he said (see page 4 of supplementary bundle C4):

> **"At this point I intervened and moved to speak with the two Door Supervisors. As I and others move to the front of the group, they position themselves in front of us, raise their arms from the side of their bodies and widen their stance to prevent entry. I was wearing my normal Cheshire**

> **Constabulary uniform covered with a black non-uniform overcoat and had my Warrant Card displayed in a lanyard around my neck."**

I do not accept this account as probably accurate for two reasons. Firstly, as I have already explained, my observation of the CCTV footage is that such a movement of the arms cannot be seen. Secondly, I do not understand why a few words describing this movement were not included in his pocket book entry.

67. But I do think that his account of the following conversation (see page 4 of supplementary bundle C4) that Helena Kiely had with the doormen is both entirely plausible and consistent with the CCTV footage:

> **"One of the group was Helena Kiely, who I know is an Irish Traveller and who works for the London Gypsy and Traveller Unit. As I joined the back of the group, Helena was asking in perfectly measured and reasonable terms why they could not enter the premises. The two Door Supervisors were dressed entirely in black and were not displaying any relevant security Industry Authority identification that I could see. They both seemingly wished to say very little and did not want to engage in conversation, rather they simply blocked the entrance door, placing themselves in such a way stood side by side so that no one could pass them. The only phrases they seem willing to repeat when asked why none of us could come in was that it was "manager's instructions" because we had come from the "conference up the road".**

(and two paragraphs later on)

> **"Helena and others within the group asked more than once if the Door Supervisors would tell them exactly what the manager's instructions were and why they couldn't come in. She asked if it was because they were Irish Travellers and had come from the conference, and why was that any problem anyway. Again, the two door supervisors simply refuse to answer the questions and just kept blocking the door."**

68. This is to be contrasted with the account given by Ms Helena Kiely who said that she had been told no Travellers would be allowed inside the Coronet (see paragraph 12 of her witness statement at page 107 of the core bundle); likewise that of Mr Martin Howe (see paragraph 24 of his witness statement at page 68 of the core bundle); that of Ms Yvonne McNamara (see paragraph 13 of her witness statement at page 75 of the core bundle), who I have already found as a fact was not there at the time; that of Ms Tracey Sherlock (see paragraphs 10 and 11 of her witness statement at page 111 of the core bundle), who, in any event, probably had not actually reached the group at that stage, although she must have been close by and so it is possible she may have heard the conversation; I do not regard it as probable, however, because when she approached she was in the company of Mr Conn Macgabhann, the tenth Claimant, who said at paragraph 6 of his witness statement at page 119 of the core bundle that he had not been able to hear the conversation going on between the front of the group and the two doormen.

69. It is also not entirely consistent with what Mr Joseph Browne said at paragraphs 17 to 22 of his witness statement at pages 59 and 60 of the core bundle. But I have some doubts as to the accuracy of Mr Browne's account; he described himself as being behind the first group, which was not correct; he was clearly part of it. He describes the group as mostly female, whereas there was only one woman present at the outset. However, apart from his assertion that one of the doorman identified the conference they were talking about as the "Traveller Conference", something totally absent from Inspector Mark Watson's account, his narrative

of the conversations is broadly similar to that of Inspector Mark Watson. Even without that limited corroboration, however, I have no hesitation in accepting Inspector Mark Watson's account. Accordingly, I reject the contention that at this stage either doorman said that Travellers would not be admitted; I find that they were reluctant to say very much at all, that they regarded their instructions as being to exclude anybody coming from the Resource Centre and that is what they told the Claimants.

70. It is more or less common ground that at this point Inspector Mark Watson came to the fore, produced his warrant card to the doormen and asked to see the Duty Manager. I find that, as I have already mentioned, this is when one doormen can be seen on the CCTV footage inclining his head downwards to the left. I find he was, in fact, talking into his lapel microphone and I infer that he was talking to Mr Dushku. He was located some distance away beyond the phone box which is just visible in the upper left hand corner of some of the CCTV footage. I think it is common ground that he moves into shot at about 16:47.07, although I think he is visible a second or two before that but one has to look very carefully in order to make him out.

71. The Claimants suggest that he was lurking in the vicinity of the phone box in order to spot people coming out of the Resource Centre and then radio instructions to the doormen. He denied that; he said he was standing by the kerb having a cigarette, a position that he often took up in order to indulge his habit. On viewing the CCTV footage at about 16:47:18 he can be seen to be throwing away a cigarette as he approached. I reject the contention that he had strategically placed himself in that location in order to report on movement out of the Resource Centre.

72. Firstly, nothing on the CCTV footage clearly suggests any earlier use of the microphone by either doorman. This was a single channel radio system, in which the receiver has to acknowledge the transmitter in order for the latter to know that he is being received and transmission and reception are not simultaneous. There is no obvious inclination of the head to the lapel by either doorman before Inspector Mark Watson approaches and converses with them, although as I indicated above because of the low quality of the imaging, the possibility cannot be excluded. Secondly, I find that the doormen were in a position to step slightly forward and look to their right, which movement would give them a clear view of people emerging from the Resource Centre. It has been suggested that this is what they were doing at the start of the CCTV footage but, again, as I have already indicated, although the possibility cannot be excluded, the imaging is too poor to say this was probably the case. But, thirdly, in my judgment it is the evidence of Mr Dushku, which enables me to find that he had not taken up a reconnaissance position. I readily acknowledge that his evidence was unsatisfactory in a number of respects, which will have to be investigated as the story unfolds, but on this aspect of the case I accept that he was telling me the truth.

73. As Mr Dushku walked towards the group, approaching it, as it were, from the rear, the doormen allowed a man entry to the Coronet. I understand it to be common ground that this was the one of the two unknown men included in the original party of six and that he had not been in attendance at the conference or come from the Resource Centre. The CCTV footage at this time shows the unknown man looking relaxed throughout with his hands in his pockets. He appeared to keep looking into the Coronet, then stepping to the right he stooped and looked down into the interior and then went inside. In other words he gives the appearance of somebody not connected with the group. Before his admittance the group had

comprised eight people, after having been joined by Ms Tracey Sherlock and Mr Conn MacGabbhan (at about 16:47:01). In paragraphs 10 and 11 of her witness statement (at page 11 of the core bundle) Ms Sherlock refers to the doorman barring the group's entrance and saying that as they had come from the Travellers Conference they would not be let in. When she asked for an explanation and asserted that it was unfair she was told that they had been told by management not to let any Travellers into the Coronet. In her oral evidence she repeated this saying that the expression "No Travellers" had been used a couple of times. Although I accept that this was broadly similar to what she said in her section 9 witness statement made to the police it is contradicted by the evidence of Inspector Watson, who said that it was Ms Kiely who had suggested to the doormen that Travellers were being excluded because they were Travellers. I have already indicated that I found Inspector Watson to be a reliable witness and I accept his contemporary account in preference to that of Ms Sherlock. I find as a fact that none of the security staff said that no Travellers would be admitted. I have reached the conclusion that this represents the Claimants' own belief as to the reason for exclusion but no such thing was ever communicated to them.

74. Although not part of the chronology assembled by the parties from the CCTV footage at 16:47:29 I think I can see that Inspector Mark Watson puts out a left arm behind him. It seems to me at least possible that he was pointing towards Mr Dushku, although he was still facing the door men and may be talking to them at this point. Shortly afterwards the group turned around to face, and then walk towards, the approaching Mr Dushku with, as it seems to me, Inspector Mark Watson being somewhat ahead of the rest. By now the group had dwindled to four or five people because by 16:47:34 Mr Joseph Browne and Mr Conn MacGabbhan are deep in conversation, having moved and turned away from the others, as has Ms Tracey Sherlock who can be seen standing alone smoking a cigarette. More or less at the same time Inspector Mark Watson can be seen showing Mr Dushku his warrant card. Very shortly afterwards Ms Tracey Sherlock finished her cigarette and joined the group around Mr Dushku.

75. The conversation between Mr Dushku and the group, but, essentially with Inspector Mark Watson, is dealt with by him in his notebook, his later notes, his section 9 statement made to the Metropolitan Police and his witness statement. Once again I find these accounts the most reliable of the various accounts placed before me by the Claimants. He recorded that Mr Dushku appeared to be uncomfortable in conversing with him. I entirely accept that; indeed, I do not find it at all surprising; I think many people would be disconcerted by a police officer showing them his warrant card. I also accept Mr Dushku said that the group could go inside the Coronet so long as Inspector Mark Watson would "vouch" for them and "keep an eye on them" (see page 104A of the hearing bundle).

76. Both in his witness statement and in his oral evidence Mr Dushku said that this had been a joke. Even allowing for the fact that this was a difficult situation and that Mr Dushku is of Albanian origin, that his first language is not English and that, although he has lived and worked here for many years, he may not yet be completely attuned to the "English" sense of humour, I cannot accept that this was a light hearted remark. I have reached the conclusion that Mr Dushku felt himself to be in a very difficult situation. He was subject to the instructions that he had received from the Defendant, for whom he was performing a paid service, but was now confronted with a person in authority, acting as such by showing him the warrant card, who clearly wished to challenge the position taken by Mr Dushku and his colleagues with the Defendant's management. In my judgment Mr Dushku thought the best policy lay in allowing him to do that and he intended to mitigate what would otherwise be a

breach of his instructions by placing the responsibility for good conduct on Inspector Mark Watson. In other words, in my judgment this was a serious request on his part.

77. Ms Tracey Sherlock joined the group and the on-going conversation with Mr Dushku. It is at this point in the narrative, namely between 16:47:55 and 16:48:09 that there is a 14 second gap in the CCTV footage and when the CCTV camera starts recording again Ms Sherlock is clearly in conversation with Mr Dushku. At about 16:48:32 he can be seen walking towards the doors of the Coronet with Mr Martin Howe and Inspector Mark Watson. A couple of seconds afterwards Ms Helena Kiely can be seen walking towards another group of delegates who are standing in the background in the vicinity of a tree. She is followed by Ms Tracey Sherlock and the unknown man with a rucksack. Also at this point Ms Yvonne McNamara can be seen talking to Mr Joseph Browne and Mr Conn MacGabbhan.

78. The factual issue which arises out of the position of these figures is as to how close they are to any conversation taking place by the doors and as to the location of the two doormen. The interpretation put on this part of the CCTV footage by the Claimants is that one doorman was standing in front of the centre doors whilst the other was leaning against the wall very close to the second group of delegates. This group now comprised Ms Yvonne McNamara, Ms Aileen Kitchin, who is neither a Claimant nor a witness in these proceedings, Mr Russell Hall and Ms Sybil Ah-Mane, independent filmmakers, who have been witnesses but not Claimants in this case, Mr Joseph Browne and Mr Conn MacGabbhan.

79. But my own interpretation of the CCTV footage is that two doormen are not both in shot at this point; I accept there is a man close to the wall, who is smoking a cigarette, but it seems to me unlikely that he was a doorman. There was a doorman in front of the centre doors. At about 16:48:36 Mr Dushku, Mr Martin Howe and Inspector Mark Watson moved to the side. Up to about 16:48:42 the head of a door man may be visible behind Inspector Mark Watson but my interpretation of the footage at this point is that it does not show both doormen together and I find that one of the two went inside at around this time.

80. It is alleged by Ms Yvonne MacNamara that she heard a conversation in which a doorman had clearly said that no Travellers were to be admitted. Inspector Mark Watson's note quoted above at paragraph 67 of this judgment states that when Ms Kiely was in conversation with the doorman she raised the issue as to whether the exclusion was because the group included Travellers and she received no reply. I have already accepted that evidence. I find therefore that at some point she identified herself as a Traveller. I also find that the doormen had no means of identifying her or any other Claimant as a Traveller or Gypsy. I asked her whether she believed that by her dress or her manner or her accent it would be obvious to an observer that she was of that origin. She said that she had her hair down and was wearing make up and that because of negative self image she often tries not to look like a Traveller or sound like a Traveller. I find that there was no basis upon which the doormen or Mr Dushku could have differentiated between the Traveller or Gypsy origins of some of those trying to gain admittance to the Coronet and those others who did not have that origin.

81. The remaining issue is whether Ms MacNamara can have heard the door men asserting that the reason for exclusion was because the group included Travellers? In her oral evidence she said that she had been in the background but within earshot of what was happening in the vicinity of the entrance doors. She said that "may be" she was in shot in the distance at 16:40:18. I agree this is a possibility but at that point the images are really just shadows and

it cannot be said that it probably was her. She may be the figure next to Mr Joseph Browne and apparently talking to Ms Helena Kiely at 16:48:33 - 34. She is definitely in shot at 16:48:40.

82. There are two difficulties with the possibility of her having overheard a statement by the doorman from a distance. Firstly, although she claims to have been in earshot so that it might have been overheard while she was in the vicinity of the tree, it does not seem to me very likely that somebody in that position would overhear what was being said by the entrance doors. Secondly, it does seem to me probable that at this point there was only one doorman because the other had gone inside the Coronet. At 16:49:11 I believe that the head of a doorman coming from inside the Coronet to the outside is visible as the door opens; he then stands with his back to the door. Mr Dushku is plainly in shot around this time in conversation with Inspector Mark Watson and Mr Martin Howe. Ms Yvonne MacNamara joined this group but neither Ms MacNamara nor anybody else contends that Mr Dushku said that no Travellers would be admitted. I reject Ms MacNamara's evidence that this was said at any time by either of the doormen or Mr Dushku.

83. From a vantage point at the back of the now enlarged group, Mr Russell Hall took a short film using his iPhone. This short iPhone footage is of far superior quality to the CCTV footage but it reveals nothing in addition to it. It has been suggested that it shows Mr Dushku becoming angry. In this film Mr Dushku appears to have had his attention caught by something and he turned and looked outwards so it seems to me probable that he had become aware Mr Hall was filming. But I find nothing significant in that; he must have been aware that much of what he did would be caught by the CCTV cameras. I reject any suggestion that he reacted angrily.

84. At 16:49:36 both of the other doormen are in shot and at 16:49:40 the group, which now comprises eleven individuals, started to enter the Coronet through a door which is being opened. One of the two doormen is outside the door and the other may be hidden by the door. As the group enters it seems to me obvious that the door is being held open and I think it probable that it was being held open by the second doorman who was hidden from the camera by the door. Whilst the group filed into the Coronet Ms Tracy Sherlock, Mr Russell Hall and Ms Sybil Ah-Mane continued a conversation with Mr Dushku. It was pointed out by Mr Howe in his commentary on the CCTV footage that there are a series of short gaps varying between 3 and 6 seconds in the period between 16:49:40 when the group starts to enter the pub and 16:51:32 when the CCTV footage shows a doorman going inside. This is factually correct but in my judgment of no significance. Clearly the conversation was continuing despite these gaps.

85. Ms Sybil Ah Mane, Mr Russell Hall and Ms Tracy Sherlock did not go inside the Coronet straightaway but remained outside talking to Mr Dushku. His recollection was that all shouted at him to the effect the group had been discriminated against because they were Travellers. Ms Ah Mane and Ms Sherlock denied being aggressive or offensive but accepted that they were debating the issue with Mr Dushku. Ms Sherlock said that there had been discussion about Mr Dushku's Albanian origin; he denied this and given that nobody else but Ms Sherlock gives evidence about this in my view it probably did not happen. Nor do I accept Ms Sherlock's evidence that Mr Dushku referred to "your community" or "your lot"; he denied it vigorously and only Ms Sherlock gave evidence about it. I accept Mr Dushku's evidence on this matter. I find, however, that there was a discussion about discrimination between Ms Ah Mane, Mr Hall and Ms Sherlock involving first the doormen and then Mr

Dushku. The CCTV footage does not indicate that it was an overheated or vociferous discussion but, of course, there is no soundtrack. I am quite prepared to accept that it was a vigorous discussion but in my judgment there is insufficient evidence to support Mr Dushku's characterisation of the behaviour of Ms Ah Mane, Mr Hall and Ms Sherlock as aggressive or offensive.

86. Ms Ah Mane had arrived at about 16:48:39 but it was not until 16:53:47 that she went inside. She and Mr Hall were at the back of the group whilst he was using his iPhone to film the scene ahead of him. She alleges that she heard a doorman state that nobody from the Travellers Conference could come into the Coronet but I am not at all clear as to when she is saying that happened. There is nothing in the CCTV footage that suggests her being in proximity to a doorman in the first minute or so after her arrival and then the doormen are occupied by the group filing into the Coronet. It seems to me illogical, and therefore unlikely, that this could have been said once the group had started to file into the Coronet. Obviously at that stage people from the Travellers Conference were going into the Coronet and any statement by the doormen that they could not go in would be pointless. After the group started to file into the Coronet Ms Ah Mane, Mr Hall and Ms Sherlock continued to converse with Mr Dushku and I reiterate that it is not alleged it was Mr Dushku who made such a remark.

87. Between 16:51:35 and 16:16:52 a group of four women arrived at the entrance and go into the Coronet in two groups of two. It is common ground that they had nothing to do with the Resource Centre or the Travellers Conference. Then at 16:52:22 two other girls arrived at the entrance. The Claimant's synopsis of events suggests that they were refused entry but on my observation that is not the case.

88. One of them was talking on a mobile telephone all the time and the other went into the Coronet and came out at 16:54:03. At paragraph 10 of his witness statement Mr MacGabhann said this:

> **"As I went through the exit of the bar, I overheard a conversation between two young white Englishwomen who were not members of our group and were being refused entry by the door staff. One woman said "what's wrong?" The answer the other gave as she rummaged in her bag for identification was: "He wants to know if we are Irish or something?"**

Looking at the whole of the CCTV footage that is the only instance of two young women at the entrance of the Coronet. But this footage does not fit the description given by Mr MacGabhann and there are a number of other difficulties with this account. Firstly, he was not there at the time but had gone inside the Coronet so he cannot have heard the conversation. Secondly, there seems no question of entry being refused. Thirdly, Mr Dushku has said that the two women were part of the bar staff and that one of them was Hungarian; Ms Agnieszka Seemungal also gave oral evidence to a similar affect and named them as Cilla Lavatz and her friend Diana. I accept the evidence of Mr Dushku and Ms Seemungal on this point and, as a result, I do not accept this part of Mr MacGabhann's evidence.

89. Whilst all this was going on the conversation between Ms Ah Mane, Mr Hall and Ms Sherlock and Mr Dushku continued. Ms Sherlock entered the Coronet at about 16:53:02 but the conversation continued with the other two until Mr Dushku went into the Coronet at 16:53:35 and shortly afterwards Ms Ah Mane and Mr Hall followed him. After Mr Dushku went inside that left only one doorman on the exterior and that remained the position whilst the delegates from the Traveller Conference were inside the Coronet. Mr Howe and other

witnesses said that they were watched by the security staff and I infer that what happened was that one of the doormen took up a position inside the entrance doors from which vantage point he could survey the bar area below.

90. In my judgment there is nothing in the sequence of events or in the CCTV footage to suggest that the remarks, which Ms Sherlock and Ms Ah Mane seek to attribute to a doorman, were made in their hearing or presence. In reaching that conclusion I do not reject their evidence that there was a debate about the fairness of exclusion on racial grounds but on their own accounts that was something in which the doormen concerned appeared disinterested. Also I do not accept Ms Sherlock's evidence that she heard Mr Dushku say that the group was not welcome. Mr Kibling submitted that her oral evidence, which contained this assertion was to be contrasted with her witness statement with which it was inconsistent. I accept that submission and find Mr Dushku said nothing of the sort.

**(3) 4.47pm - 4.55 pm**

91. The CCTV footage taken inside the Coronet differs from that taken outside in that it is in colour but like the exterior footage there are gaps and it is not particularly clear. Mr Howe can be seen at 16:50:05 talking to a barman. He was soon joined by the unknown man with a backpack. Almost immediately afterwards Ms MacNamara and Ms Kiely come into shot. The latter stopped where Mr Howe was conversing with the barman but the former carried on walking past them to the end of the bar. Yet Ms MacNamara suggested in her oral evidence that she heard the barman saying that the refusal to admit the Claimants had been a management decision taken because of a previous incident. Given that Mr Howe says nothing about this and that the CCTV footage showed her to have walked beyond the position where the barman was standing, I do not accept her account.

92. A second or two later Inspector Watson, Mr Browne and Mr MacGabbhann came into shot together with others who are more difficult to identify and joined Mr Howe, who was still in conversation with the Barman. Inspector Watson did not stay but moved further down the bar. This conversation ended at 16:50:57 and Mr Howe and the others moved away from the camera to the far end of the bar and gathered around Inspector Watson who was speaking to Ms Agnieszka Seemungal there. I need not go into the details of their conversation. Inspector Watson once again produced his warrant card and asked her a series of questions. I am not surprised that she said in her oral evidence she found this intimidating. Inspector Watson thought she was evasive and defensive; I accept that she was but again am not surprised. In my judgment she was placed in a very difficult position being interrogated by a relatively senior police officer. Ms Seemungal relates another part of the conversation at paragraph 13 of her witness statement (see page 192 of the core bundle); the person referred to there must be Ms MacNamara but she denied ever referring to any acquaintance with Environmental Health Officers. In my judgment no part of the conversation at the far end of the bar takes this case any further. Overall, I regard Ms Seemungal as a reliable witness and so I accept her evidence that some reference was made to Environmental Health Officers but I cannot think it is of any great significance.

93. At 16:53:15 Ms Sherlock comes into shot and walks to the end of the bar and about 40 seconds later Ms Ah Mane and Mr Hall come into the bar and stay at the end closest to the camera. About 30 seconds later Mr Howe starts to leave and shortly afterwards Inspector Watson and the rest of the group can be seen leaving. During the time that this group of Claimants was inside the Coronet Mr Dushku had also come inside. He said that he had

come to get a coffee. Perhaps he did but I find that he also came into the bar area to see what was happening.

94. There was nothing sinister about that, however; as I suggested earlier I think he was concerned he had acted contrary to his instructions by allowing the party into the bar even though they were accompanied by a police inspector and I think he felt it was part of his duties to make sure he knew what was going on. He alleges that as the group left he observed "that was a quick drink". I reject that evidence. It suggests that he believed that the group was coming into the Coronet to have a drink. In my judgment this is a disingenuous gloss added by Mr Dushku. I find that he never believed that the group members intended to enter the premises to have a drink; he knew perfectly well that they only wished to complain to the manager about their treatment.

95. There is a postscript to this part of the narrative; it comes from paragraph 14 of the witness statement of Ms Agnieszka Seemungal where she describes two people already in the bar when the group entered. According to paragraph 14 she was asked by one of the two for a refund in respect of the drinks, which these two had already purchased. The person requesting a refund was a woman but was not part of the group led by Mr Howe and Inspector Watson. She was wearing "a name badge from the conference" and gave the reason for the request as being that she was "with the group which had just left the Coronet". Although, as I have just said, I found Ms Agnieszka Seemungal on the whole to be a reliable witness I can see no evidence of this transaction on the CCTV footage. Even assuming that it takes place after the interior footage ends, I can see no evidence of two people leaving the Coronet when looking at the exterior footage taken after the group have left.

96. This evidence, along with other evidence from Ms Agnieszka Seemungal and Mr Dushku to the effect that people who had been at the Resource Centre were admitted in small numbers throughout the day is relied upon by the Defendant as illustrating that there was no blanket exclusion only a "Large Groups Policy" in operation. I have already indicated that I find this evidence unsatisfactory. I do not discount the possibility that one or two people from the Resource Centre obtained entry to the Coronet, although I am disposed to doubt that any of them were wearing badges that identified them as having attended the Resource Centre or one or other of the conferences being held there because had they been I think they would have been refused entry by the doormen. But, even if they had been wearing such badges, that fact does not seem to me to provide support for the existence of a "Large Groups Policy". What happened to Ms Lewis and her companion seems to me to illustrate that the implementation by the doormen of whatever instructions they had received from Mr Dushku took the form of excluding those known or suspected to have been at the Resource Centre, irrespective as to whether they were in a small group or a large one. That some people might have been admitted in small numbers to my mind only proves that the doormen might not have been consistent in their approach or, more likely, might not have been efficient enough to spot each and every person emerging from the Resource Centre.

**(4) 4.58 - 5.14 pm**

97. About three minutes after the group come out of the Coronet at 16:55 the twelfth Claimant, Mr Thomas McCann, who is in Irish Traveller, approached the entrance to the Coronet at 16:58:03. There he encountered the two doormen. About 14 seconds later he was joined by the sixteenth Claimant, Mr Michael Ridge who was one of the Trustees of the first Claimant. Both men engaged one of the doormen in conversation some distance from the door.

98. Mr McCann's account is that before he approached the Coronet he had been forewarned by Ms Yvonne MacNamara that she and others had been barred from entering the pub "because we were Travellers or had been to the Traveller conference" (see paragraph 11 of his witness statement at page 151 of the core bundle). Armed with this information Mr McCann "asked why we were being barred from entering the pub"; he said in his oral evidence that he had asked the doorman because he wanted to "verify this for myself". In answers to questions from myself he said that he wished "to clarify for myself why we were not being allowed in" and that he wanted "to check it out". His question was answered by one door men who told him "he was under orders from the management that he was not to allow any Travellers or people from the conference into the pub" (see paragraph 12 of his witness statement at page 151 of the core bundle).

99. He repeated this account in his oral evidence saying that he had gone up to the doormen and asked "why we were not being allowed in" and was told that nobody who was a Traveller or had been to the conference would be allowed in. He referred to a "smaller doorman, who seem to be more senior". This might appear to be a reference to Mr Dushku, who although of stocky build, is shorter than the other two but Mr Dushku was not outside the Coronet at this time and he does not emerge from the interior until about 5 minutes later.

100. Paragraph 13 of Mr McCann's witness statement also contains this sentence:

> **"This was clearly discriminatory and I was about to retort when the chair of the ITMB, Father Joe Browne, came over to me and explained that some of the group that had now gathered were being allowed into the pub."**

The difficulty about this sentence is it does not fit the known sequence of events; the group had been into the Coronet and come out of it before Mr McCann arrived and Mr Browne, who had been part of that group, could scarcely have given different information to Mr McCann. When pressed in cross examination by Mr Kibling about his account Mr McCann said that he had been stopped from going in. But in his witness statement he does not say that he attempted to gain entry only that he queried the reason why others had been refused. I find on a balance of probabilities that was Mr McCann's position. Like his other colleagues during this last part of the sequence of events I have reached the conclusion that he was not attempting to gain access to the Coronet but seeking to know and explore the reason why others had been refused access earlier.

101. In his witness statement Mr Ridge said this at paragraphs 7 to 10:

> **"7. As I got to the entrance at The Coronet I noticed that the door was blocked by a set of doormen. I went up to the nearest doorman and asked if I could enter the pub. I was immediately told by this doorman that I would not be allowed entry because I was with a group of Travellers. I was astonished at what I had just heard.**
>
> **8. I immediately told the doorman that I wanted to speak to the manager, because I consider that his refusal for the reasons he had given was discriminatory and racist towards Travellers.**
>
> **9. I asked the doorman how he would feel if he was denied access to a public place because he or some of his friends were from an ethnic minority? The doorman then move towards me in an intimidating manner and asked me if I was calling him a racist?**
>
> **10. I explained that if he and his fellow doormen had made a decision to stop our group from entering the pub on the grounds of their being Travellers amongst the group then yes I consider that he was acting in a racist**

> **manner. I recall the doorman I was speaking to glared at me in a threatening manner. I waited for the manager with the group outside, but the manager did not appear."**

102. Mr Ridge has been employed as a social worker since the year 2000. As such he must routinely make notes and he said in cross-examination that a few days after these events he had made brief notes for his own reference, although he had not supplied them to his solicitor nor had they been disclosed. The question of these notes was not pursued and I was not minded to further interrupt the proceedings. Mr Ridge also said in cross-examination that he had been made aware of problems over entry to the Coronet before he got to the entrance doors. He was not aware, however, that a group of delegates from the Travellers Conference had been inside the public house.

103. If Mr Ridge knew it was clearly the case that those attending the Travellers Conference were not being admitted to the Coronet, then it seems to me to follow logically that his purpose in demanding entry must have been to test the matter out for himself. To my mind this is supported by the alleged conversation, to which he refers at paragraphs 8 and 9 of his witness statement (as set out above), about discrimination and racism. Mr Ridge also accepted in answer to some questions from me that his purpose was to find out what had been happening and he wished to establish whether it was correct that the group was not being allowed in and, if so, the reason for that. I do not accept the he himself asked to be admitted. Moreover, if, as I have found, relying largely on the evidence of Inspector Watson, that when Inspector Watson and those in the first group attempted to gain access to the Coronet and were excluded it was never stated by either Mr Dushku or his colleagues that the reason for exclusion was because Travellers and those with Travellers would not be admitted, then I have some difficulty in accepting that such a reason for exclusion was being given by the security team at a later stage. I have reached the conclusion whilst it is possible that such a conversation occurred I do not regard it as probable.

104. Just less than a minute later at 16:59:17 the thirteenth Claimant, Ms Bridget McCarthy, joined this conversation. It will be recalled that she did not attend the trial and, therefore, did not give evidence. About thirty seconds later at 16:59:45 Mr Joseph Browne arrived and joined the other three. Both in his written and in his oral evidence Mr Browne said nothing about the conversation, which took place after he joined the other three.

105. There is a gap in the CCTV footage between then and 17:01:12. By then the four people referred to in the previous paragraph can no longer be seen in conversation with a doorman. In the background to the left a group of shadowy figures stand in the pavement area between the tree and the entrance. At 17:01:53 Mr Joseph Browne is captured very briefly by the CCTV footage walking towards another public house called the Metro. A second later Mr Howe can be seen in footage walking in the same direction. He appears to be smiling.

106. By 17:02: 35 quite a large group has gathered in the area between the phone box and the tree. The seventeenth Claimant, Ms Sarah Vale, an Romani Gypsy, and her daughter, the eighteenth Claimant, Ms Sophia Vale, also in Romani Gypsy and now a full-time employee of the first Claimant, but then an intern working for the first Claimant, can be recognised amongst them. Less than 10 seconds later a group of four people, comprising two men and two women, who, I understand it to be common ground had no connection with the Resource

Centre, gained entry to the Coronet, without any apparent difficulty. On one of Mr Dushku's definitions they might have fallen to be considered as a large group.

107. At about 17:03:07 the second Claimant, Ms Pauline Anderson, who is an Irish Traveller[13] then working for Sheffield City Council in a leading role in school improvement[14] and had been chairing the Traveller Conference, can be recognised; after having appeared to say something to the Vales, she walked up to the doormen. There is a short gap in the footage and when it resumes Ms MacNamara appears to be immediately behind Ms Anderson and I infer that the latter must have been slightly ahead of Ms MacNamara even though she could not be seen on the CCTV footage at the time Ms Anderson first comes into shot. At 17:03:24 both can be seen talking to a doorman.

108. It seems to me inevitable that the earlier events had been discussed between those who had taken part in them, like Ms MacNamara, and others like Ms Anderson, who had come later. It is common ground that for some time there was a group of delegates gathered in the area between the tree and the telephone box and from time to time those involved in the earlier stages appear to have gone in that direction. I have no doubt that the exclusion would have been reported on by those involved to those gathered in that area. Ms MacNamara was the Chief Executive and Ms Anderson was the Conference Chair; if Ms McNamara told anybody I infer it would have been Ms Anderson. Moreover, by the time she arrived in the vicinity of the Coronet a decision had already been made by those excluded that they would go to the Metro Public House just further down the Holloway Road. I also have no doubt that would have been communicated to the other delegates. I infer, therefore, that when Ms Anderson approached the entrance to the Coronet she did so in the knowledge that there had been a previous exclusion of Traveller Conference delegates from the Coronet and that an alternative venue had been selected. In so far as her witness statement and, for that matter her oral evidence, created the impression that Ms Anderson was blithely pursuing the original intention to have a drink in the Coronet unaware of the previous events I am sorry to say that strikes me in the same way as did part of Mr Dushku's evidence, namely that it is disingenuous.

109. Mr McCann also appears in the images at about this time walking past the Coronet and taking up a position where he can observe the entrance. He makes no reference to this in his witness statement and made no comment about it in his oral evidence, save that he was talking to the security team. Due to the poor quality of the CCTV footage I accept that this is possible although my own impression is that he is not talking to anybody.

110. Then Ms Grace O'Malley, the fourteenth Claimant, who was employed by the first Claimant as a Capacity Development Officer, appeared in the vicinity of the entrance at 17:03:29. In her witness statement (see pages 125 to 128 of the core bundle) she said that she could hear people asking why they were not being let into the Coronet but read as a whole paragraphs 12 to 15 of her witness statement must be referring to the refusal to admit the first group of delegates and at that stage she was certainly not in view in the CCTV footage. Her explanation in oral evidence was that she was out of shot but in the area between the tree and the telephone kiosk. Despite the fact that all these events were taking place on the Holloway Road at 5.00 pm in the rush hour, she maintained, however, that she could hear every word

[13] In her witness statement she described herself as a member of the traveller community but I take that to be the same as an Irish Traveller.

[14] At the time of the hearing she was performing a similar role for Bradford City Council.

being uttered at the entrance. I do not accept that located in that position she could have heard any of the conversation at the entrance. In any event she agreed in her oral evidence, having seen the CCTV footage, that paragraph 15 of her witness statement where she said that she had seen Inspector Watson and his group going into the Coronet was simply wrong. I infer that she was told what had happened earlier but find that even if she was located in the area between the tree and telephone box during the first stage she could not have heard anything of the conversation taking place at the entrance or on the pavement outside. Moreover although she was approaching the entrance at the time that Ms Anderson was engaged in conversation with the doormen and it is possible that Ms O'Malley overheard part of that conversation, I think she cannot have overheard all of it and that probably she did not hear very much of it. I find that she never attempted to gain entry herself and therefore was not refused entry.

111. In the next three seconds both Ms Sarah Vale and Ms Sophia Vale came towards the entrance in the wake of Ms Anderson and Ms MacNamara. Ms Sophia Vale said at paragraph 14 of her witness statement (see page 164 of the core bundle) that she

> **"... immediately went over to the doormen and asked what the problem was and why we could not be allowed into the pub. One of the doormen said that there was nothing he could do about it, and then would not enter into any other discussion. He simply would not move."**

112. In her oral evidence she would not accept that she had only been present at the entrance for about a minute and that it appeared she had never been closer to a doorman than about a yard away. When I asked some questions at the end of her evidence she said that she knew what had happened in the earlier stages before she had approached the entrance and she thought she had been told something by Ms MacNamara but could not remember what she had been told.

113. Her mother, Ms Sarah Vale said that she could hear her daughter asking to be able "to go in for a while" and saw her being refused access. Ms Sarah Vale was at pains to emphasise the aggressive behaviour of the door men and how frightening and intimidating the situation was. She said that one of the door men had got so irate that the other had asked him to go inside. I find it very difficult to see any of this on the CCTV footage, even after making allowance for its poor quality and somewhat disjointed nature. I do not find the evidence of either consistent with the CCTV footage or with their written witness statements. I do not regard it as probable that Ms Sophia Vale asked to "go in for a while" or that Ms Sarah Vale heard what was being said. Nor do I find it likely that either took much part in the debate between Ms Anderson and Ms MacNamara and the doormen.

114. Shortly afterwards the eighth Claimant, Ms Elizabeth Keates, a Romani Gypsy, who is a psychotherapist at Birkbeck College came towards the entrance, followed a few seconds later by Inspector Watson and the third Claimant, Matthew Brindley, a Policy and Research Officer employed by the first Claimant. Ms Keates's witness statement is neither consistent with the established order of events nor with the CCTV footage. Ms Keates explained this by saying that it was in the wrong order. She accepted that she was only in the CCTV footage for about a minute but she said had been in the area between the tree and telephone kiosk in the shadows in the vicinity of a waste bin and out of shot for a considerable time and from there had been able to hear what was going on at the entrance to the Coronet. I do not accept that nor that she was excluded from the Coronet.

115. Mr Matthew Brindley had also made a witness statement (see pages 146 to 148 of the core bundle) and it also appears to be at odds with the CCTV footage. He accepted in cross-examination that it was possible that he was not remembering the detail accurately. Like other witness statements I find that of Mr Brindley related what has been said to him by others as having occurred. At paragraph 13 he gives a hearsay account of what Ms Sophia Vale had said to him. Although he believed his memory to be accurate he placed Mr Howe in the group outside the Coronet during the period when Mr Brindley was there. But Mr Howe can be seen leaving the area two minutes before Mr Brindley appears in the CCTV footage. He did accept that paragraph 14 of his witness statement (see page 147 of the core bundle) could not be correct because he had not been present when Inspector Watson, Mr Howe, Mr Brown and others had entered the public house. I do not regard his account as reliable and I find that he did not hear anybody being refused admittance to the Coronet nor was he refused admittance himself because he never asked to go into the Coronet.

116. Ms Helena Kiely was the next person to join the group, which then comprised eleven people. She does not say anything about this in her witness statement or in her oral evidence and I infer, therefore, that nothing memorable occurred so far as she was concerned.

117. At 17:04:03 most of that group walked towards the camera in the direction of the Metro pub. Then about 20 seconds later the fifth Claimant, Mrs Sabrina Franklin (neé Fahy), then employed as an administrator by the first Claimant, walked with another young woman, Ms Jean O'Rourke, who was a Housing Officer for the Irish Housing Association, towards the entrance doors of the Coronet. Mrs Franklin made a half turn towards the door, said something to the doorman and then stepped back. At paragraphs 13 to 15 of her witness statement at page 160 of the core bundle she said:

> **"13. I also noticed that there were some delegates from our conference slightly away from the doorway, and standing in a group. I assume at the time that these were smokers and that others from the conference were already inside.**
>
> **14. I simply approached the doors, and immediately noted that the two doormen came together and barred my way. One of the doormen shook his head at me, suggested that I join the group stood slightly away from the doors which I did.**
>
> **15. I went over to Grace O'Malley who I recognised, and asked her what was going on. Grace explained that the doormen were refusing entry to anyone who attended the Traveller conference, I could not believe what I was hearing."**

118. I accept it is possible that Mrs Franklin had arrived in the vicinity of the Coronet much later than other delegates. But the gestures she attributes to the doormen at paragraph 14 of her witness statement (as set out above) are simply not visible on the CCTV footage and the half turn and step back, which is visible on the CCTV footage, to my mind cannot be a movement to join a group; by this time there was no group because most, if not all, of all the people who comprised it had left for the Metro. In her oral evidence Mrs Franklin was adamant that the doorman had used the word "no", although this does not appear in the passage from her witness statement quoted above. Clearly, by the time Mrs Franklin arrived the earlier debate had ended. I think it is likely that she was attempting to enter the Coronet and, for whatever reason, was refused entry. From the CCTV footage I infer that she might have been unaware of the previous events and that the doorman was pointing out that others had gone down the road in the direction of the Metro. In that sense he refused her entry.

119. Finally, the sixth Claimant, Mr Brian Foster, who was a Trustee, and Treasurer, of the first Claimant and an educational consultant specialising in the educational needs of the Traveller, Gypsy and Roma communities can be seen to pass the Coronet with his bicycle. He maintained in his evidence, however, that he had been further up the pavement for some time and had been a witness to events almost from the start. When it was decided that the delegates would go to the Metro Mr Foster had gone back to the Resource Centre and collected his bicycle. It was this part of his involvement that is captured in the CCTV footage. His alleged earlier presence is not recorded on the footage.

120. In paragraphs 9 to 12 of his witness statement at page 142 of the core bundle he refers to having been in a group standing outside the Coronet. He accepted in his oral evidence that he was not visible in any of the CCTV footage until he is seen wheeling his bicycle past the Coronet at 17:09:06. This was because he had been located by the bus stop. From there he had not been able to hear conversations at the entrance to the Coronet but what had happened there had been related to him by Ms Sophia Vale and others. I do not accept that he ever asked to be admitted and to my mind there is no acceptable evidence that he ever asked for and was refused entry to the Coronet and I find that he did not.

## (5) Postscript

121. In accordance with the arrangements made by the Claimants during the course of the events just described, some of them went to the Metro public house further down Holloway Road. It was accepted that there was discussion amongst the Claimants of the events, which had just taken place at the Coronet but collusion or orchestration was denied. On 23 November, 2011 Ms MacNamara sent an e-mail to all delegates (see pages 231 and 232 of the core bundle). It is clear from its terms that Mr Howe's firm had been instructed to consider litigation. Attached to the e-mail was a two-page account of events (see pages 233 and 234 of the core bundle).

122. During the course of cross-examination and in his submissions Mr Kibling pointed out that the account of events set out there asserted only that the Defendant had refused to allow entrance "to anyone who had been at the Irish Traveller conference". In his extensive submissions to which I referred earlier in this judgment he contrasted that account with the accounts given by several witnesses in later witness statements to the effect that the security team had refused access to people because they were Travellers. He submitted that this contrast revealed a degree of later orchestration and an exaggeration of the events.

123. I accept that there has been a great deal of discussion about this case by the Claimants amongst themselves. In my view this has led to the creation of a false memory of events but I do not accept that anybody has deliberately orchestrated a false or misleading account of events. The experience of this Court is that the account of one witness is easily influenced by the account of another and that after the event rationalisation can be a very powerful factor in the distortion of evidence without there being necessarily any deliberate intention to mislead. This process is amplified by the passage of time and by the fact that some types of incident generate a great deal of emotion. Undoubtedly this is the case here. Many of the Claimants were not able to maintain their self-control whilst giving evidence. Some became extremely and, in my judgment, genuinely, distressed when recounting their experience of past discrimination. I think these powerful emotions have distorted their recollections and have

led to an erroneous collective memory being built up but I do not find this to have been deliberately orchestrated by anybody.

124. Mr Kibling was very critical of the conduct of the case by the Claimant's solicitors. He was particularly critical of the fact that Inspector Watson's earlier accounts differed from the witness statement, which was filed and served in these proceedings. He was, in many ways, the critical witness in the case and I accept that the expanded note and the section 9 witness statement were important documents. But, although his expanded note and his section 9 witness statement were not disclosed until after the trial had started (and, indeed, until after he had given his evidence) his notebook had been disclosed and so I do not think that the Defendant was placed at a great disadvantage. In one sense it is not necessary for me to decide anything about this omission in order to reach conclusions in this case but because the matter has been raised by Mr Kibling I should say that I do not regard the omission of Inspector Watson's other documents as deliberate either on his part or on the part of anybody else.

**The law**

125. It is common ground that Irish Travellers and Romani Gypsies have the protected characteristic of race by reason of their ethnic origins. It is also accepted that the Defendant provides services to the public so that the provisions of section 29 of the EA apply to it.

126. Mr Kibling submitted, however, that the first Claimant could not bring a claim under sections 13 and 29 of the EA. Mr Willers QC argued that there was no reason in principle as to why a corporation could not bring proceedings under the EA. After all, the Defendant, a corporation, was being sued and it would be a very odd outcome if the EA allowed proceedings to be brought against corporations but did not allow them to be brought by corporations.

127. As a matter of textual interpretation section 13(1) of the EA starts with the phrase "A person (A) discriminates against another (B)..." and section 29 (1) of the EA begins thus: "A person (a "service provider") concerned with the provision of a service to the public or a section of the public (for payment or not)..." and then subsequent sub sections prohibit discrimination as between "a service provider" and "a person." Mr Willers QC pointed out that, as a matter of statutory interpretation, the combined effect of section 5 and schedule 1 of the **Interpretation Act 1978** is that the definition of the person includes a corporation.

128. To my mind this is a powerful argument; both as a matter of statutory interpretation and of logical symmetry it seems to me difficult to resist the proposition that the first Claimant is "a person" for the purposes of the EA and therefore able to bring an action based on its provisions. There are difficulties but it seems to me that they mainly relate to the nature of the remedies that ought to be available. By section 119(2) of the EA this court has power to grant any remedy which could be granted by the High Court in tort proceedings or on a judicial review and by section 119(4) any award to a Claimant of damages may include compensation for injured feelings. It is however difficult to conceive of the situation in which a corporation might be granted such an award. My conclusion is that the first Claimant is a person for the purposes of the EA and, therefore, is able to bring these proceedings; I will return to the question as to what remedy might be available if there has been a breach of the EA later in this judgment.

129. The Claimants' case now relies upon direct discrimination contrary to sections 13 and 29 of the EA and harassment contrary to sections 26 and 29 of the EA; other ways of putting the case, such as segregation and indirect discrimination, are no longer pursued. Section 13(1) defines direct discrimination in these terms:

> **"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."**

Whilst this can be analysed into a series of different components, as Lord Nicholls observed at paragraph 11 of his speech in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 in many cases the answer to the simple question "why did this happen?" will not only deal with whether the treatment was "because of a protected characteristic" but will also at the same time dispose of the question as to whether or not there was less favourable treatment. Accordingly one of my tasks is to ask myself why any particular Claimant was not admitted to the Coronet?

130. Mr Kibling submitted that because section 23(1) of the EA requires "On a comparison of cases … there must be no material difference between the circumstances relating to each case" no analogue, either real or hypothetical, could be compiled from the circumstances of the instant case. But, even if there is a material difference, as Lord Scott points out in **Shamoon** (at paragraph 107 at page 374) the "*comparator*" may still have an evidential role.

131. So far as section 29 and direct discrimination are concerned it seems to me that the most obviously applicable provision is that contain in section 29(1) which reads:

> **"A person (a 'service-provider') concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service."**

There is no issue as to this; it is accepted the Defendant provides a service to the public, which service it did not provide to the Claimants. Thus the sole question in this context is whether in refusing to provide the service the Defendant discriminated against the Claimants or any of them?

132. Only eight of the eighteen individual Claimants are of Irish Traveller or Romani Gypsy origin[15]. It follows that in order for the rest to succeed they must rely upon what is sometimes called "associative discrimination". Mr Kibling submits that a recent decision of the Court of Appeal in **Hainsworth v Ministry of Defence** [2014] EWCA Civ 763 has cut down the scope of any such concept and he relies upon paragraph 40 of the judgment of Laws LJ as providing support for that proposition. It seems to me that at paragraph 40 of the judgment the Court of Appeal (there was in effect only one judgment) is considering the extent to which Article 5 of Council Directive 2000/78/EC might have direct effect. This disposed of an alternative argument advanced by the Appellant in that case. The appeal foundered, however, on the Court's conclusion that a parent could not be included within the scope of Article 5. Therefore it does not seem to me that this authority is relevant to any consideration as to whether a non-Traveller or non-Gypsy refused entry to the Coronet fell within the definition in section 13(1) of the EA. To my mind "associative discrimination" can operate in circumstances where A refuses B entry to A's public house because B is in the company of Travellers and Gypsies.

[15] Only seven if one excludes Ms McCarthy who did not attend the trial.

133. Mr Dushku, Mr Correia and Mr Jones were, of course, not employed by the Defendant. At one time there was an issue as to whether the Defendant could be liable in respect of the actions of Messrs Dushku, Correia and Jones; in particular the Defendant sought to pursue the "reasonable steps" defence provided by section 109(4) of the EA but that has been abandoned. If any vestige of arguments relating to section 109 remains, it seems to me that the doormen must have been acting as agents for the Defendant, which will be liable as a principal pursuant to section 109(2) of the EA, providing that any act done by them was done with the authority of the Defendant.

134. Harassment is an altogether more complex topic. Section 26 (1) of the EA requires unwanted conduct related to a protected characteristic (in this case race), the purpose or the effect of which is violating the dignity of another person or of creating an intimidatory or hostile or degrading or humiliating or offensive environment for that person. This is largely, if not entirely, a question of fact. So where there is only a single act that can nevertheless amount to harassment if sufficiently serious and whether that is the case will be a question of fact and degree. The nature of the conduct is assessed subjectively (see **English v Sanderson Blinds Limited** [2009] ICR 543) although that is subject to section 26(4)(c) which requires consideration of whether it is reasonable for the conduct to have the effect of violating dignity or creating an adverse environment.

135. Finally on the question of discrimination I need to consider section 136 of the EA. The Claimants submitted that enough has been proved for the burden of proof to be reversed in this case. Reversal of the burden of proof applies to any contravention of the Act. Accordingly, it is relevant also to harassment. Section 136 or earlier iterations of it have generated much debate.

136. The topic[16] of how to address the difficulties of proving discrimination can be traced from the seminal judgment of Neill LJ on the drawing of adverse inferences in **King v Great Britain-China Centre** [1992] ICR 516 (decided before there was any concept of the reversal of the burden of proof) and through the judgment of the House of Lords in **Glasgow City Council v Zafar** [1998] ICR 120 (unreasonable conduct is not, without more, evidence of discrimination) and that of the Court of Appeal in **Anya v University of Oxford** [2001] ICR 847 (the need for a thorough factual investigation and the reaching of reasoned conclusions as to the facts found before rejecting a claim of discrimination) and through the cases in the Court of Appeal on the statutory reversal of the burden of proof (first introduced by section 54A of the Race Relations Act 1976 (as amended)) and now found in section 136(2) and (3) of the EA), namely **Igen Ltd and others v Wong** [2005] ICR 931 and **Madarassy v Nomura International plc** [2007] ICR 867, and, finally, on to judgment of the Supreme Court in **Hewage v Grampian Health Board** [2012] ICR 1054.

137. In different ways all explore the same tension; how to recognise the difficulty of proving discrimination without stigmatising, as being racially discriminatory, conduct, which is merely irrational or unreasonable. The solution proposed by these authorities collectively is to require an explanation of conduct only where there is an evidential basis for thinking that the conduct is potentially discriminatory.

[16] What follows very closely resembles what I said in **Veolia Environmental Services Ltd v Mr M Gumbs** [2014]UKEAT/0487/12 at paragraphs 47 to 54; both counsel referred to it and so rather than simply refer the reader to it for the convenience of the reader I set it again albeit with some adaptation.

138. In his judgment Mummery LJ in **Madarassy** in discussing this question at paragraphs 54, 56 to 58, 69 to 72 and 77 to 79[17] rejected the proposition that merely establishing a difference in status and treatment would cause the burden of proof to shift. He accepted that the scrutiny as to whether the court or tribunal "could conclude" that an unlawful act of discrimination had probably occurred would include evidence adduced by the Defendant/Respondent although not that explaining the conduct because the scrutiny has to be on the premise of an "absence of any other explanation". He also pointed out the "air of unreality" of dividing the evidence into two stages when all the evidence has been heard and in particular when the case might turn on whether particular conduct had in fact occurred or not.

139. In the latest and highest authority on the subject, **Hewage v Grampian Health Board**, at paragraphs 30 and 31 of the judgment of the Supreme Court Lord Hope refers to "*paras 56 and following*" of the judgment of Mummery LJ in **Madarassy** and specifically quotes parts of paragraph 70 and paragraph 77 and then says this at paragraphs 31 and 32 of the judgment of the Supreme Court:

> **"31. ... The assumption at that stage, in other words, is simply that there is no adequate explanation. There is no assumption as to whether or not a prime facie case has been established. The complainant must have proved facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the complainant which is unlawful. So the prime facie case must be proved, and it is for the claimant to discharge that burden.**
>
> **32. The points made by the Court of the Appeal about the effect of the statute in these two cases could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J (President) pointed out in *Martin v Devonshire Solicitors* [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."**

140. In my judgment what was said by Underhill J at paragraph 39 of the judgment **Martin v Devonshires Solicitors,** and approved by Lord Hope in the passage quoted immediately above, namely that it is important not to make too much of the burden of proof provisions, should never be lost sight of. Sometimes consideration as to whether the burden of proof has shifted is entirely artificial and sometimes concentration on it can impose an unnecessary layer of complication onto what may be an essentially simple case. Consequently, if a court reaches firm conclusions as to fact (i.e. that something did in fact happen or did not in fact happen) then it may be artificial to consider whether the burden of proof has been reversed (see paragraph 64 of the judgment of the EAT presided over by Elias J in **Laing v Manchester City Council** [2006] ICR 1519 and paragraphs 26 to 39 of the judgment of Mummery LJ in **Brown v Croydon LBC** [2007] EWCA Civ 32, [2007] IRLR 259, a case conjoined with **Madarassy**).

141. Likewise where the conduct is blatantly discriminatory there may not be much need for recourse to reversal of the burden of proof. In **Veolia Environmental Services Ltd v Mr M Gumbs** [2014] UKEAT/0487/12 counsel suggested in argument that calling somebody "a black so and so" would be evidence that might tip the balance and reverse the burden of

[17] Which are set out in **Veolia** and which I do not propose to repeat here.

proof. My answer to that submission then applies equally now to the instant case; it is that if one thinks at all of the burden of proof in such circumstances then, of course, the burden of proof would shift in the circumstances of such a remark having been made. But the reality is that it would not be necessary to consider the burden of proof; the remark is at one and the same time, both axiomatically discriminatory and inexplicable in non-discriminatory terms. Where the Court concludes that a blatantly discriminatory remark has been made the exercise of solemnly considering whether the burden of proof has been reversed has the "an air of unreality". By parity of reasoning similar considerations should apply to a refusal to admit somebody to premises by reference to their ethnic origin.

142. The claim for exemplary damages having been abandoned, I now need only consider the question of aggravated damages, which are sought by the Claimants. These can be claimed where subsequent conduct adds another layer to the original insult or where a discriminatory motive can be proved or where the conduct has proved particularly upsetting to the innocent party.

**Summary of findings of fact**

143. At this point in what may already be an overlong judgment, I think it would be helpful if I summarise the important findings of fact made in the previous discussion of the sequence of events. These are:

i. I find there was a "Home Supporter Only Policy" on match days at the Emirates Stadium but (subject to subparagraph vi. below) there was neither a general nor a specific "Large Groups Policy" in force on 17 November 2011;
ii. I find that the CCTV footage has not been interfered with or manipulated;
iii. I find that the late Mr Leach assumed, on no very good evidence, there might be those in attendance at the Travellers' Conference who were liable to indulge in public disorder;
iv. the premise on which that assumption was founded was that persons guilty of disorderly conduct at the Dale Farm eviction might have been in attendance at the Travellers' Conference and might engage in disorderly conduct or that other delegates at the Conference might also engage in disorderly conduct;
v. in turn, that assumption involves the further assumption that Irish Travellers and English Gypsies are, by nature, prone to engage in public disorder;
vi. sometime between 15 November 2011 and 17 November 2011 Mr Leach devised an ad hoc policy of excluding from entry to the Coronet large groups of people who had been in attendance at the Resource Centre;
vii. Mr Leach discussed this with Mr Dushku and instructed him that large groups from the Resource Centre were not to be admitted but was no more precise about the matter than that with the result that a good deal of discretion as to how to achieve that objective of preventing large numbers from the Resource Centre congregating inside the Coronet was left to Mr Dushku and his colleagues;

viii. I do not accept that throughout the day small numbers of people who had attended the Resource Centre were allowed into and out of the Coronet because they were not disqualified from doing so by any "Large Groups Policy" although I accept the possibility that a few people from the Resource Centre might have been allowed to enter the Coronet without challenge from the security team; if that happened I infer that was because the doormen did not realise that such people had come from the Resource Centre;

ix. I find that the pragmatic solution adopted by Mr Dushku and the doormen was to exclude any person known by them to have come from the Resource Centre;

x. I accept that Ms Lewis and her colleague were refused entry to the Coronet at about 4.15 pm on the ground that they had been at the Resource Centre but I do not accept her account that at the time other colleagues of hers were already inside the Coronet nor do I accept Mr Dushku's account of having refused entry to a party of 5 or 6 people at the same time;

xi. Ms MacNamara was not part of the first group that came up to the entrance to the Coronet; initially, this group contained only one person who was an Irish Traveller, Ms Helena Kiely;

xii. I do not accept that the door men raised their arms or widened their stance or acted in an aggressive manner at any stage;

xiii. I do not find it to be more probable than not the door men were looking to their right and/or receiving a message over their radios;

xiv. I find that the reason given for exclusion was that the group had been at the Travellers' Conference;

xv. It is possible but not probable that a door man said that the reason for exclusion was trouble at the previous year's conference;

xvi. Neither door man said that Travellers would not be admitted; I find it was Ms Kiely who asserted to the door men that she and her companions were being excluded because they were Travellers or were with Travellers;

xvii. I find there was nothing about the appearance of any of the Claimants from which the doormen could identify any individual as an Irish Traveller or an Romani Gypsy;

xviii. Mr Dushku did not place himself in the vicinity of the telephone kiosk in order to spot people emerging from the Resource Centre;

xix. I find Mr Dushku did say that the group could be admitted so long as Inspector Watson would vouch for their behaviour and that this was not said in jest;

xx. In a series of debates which took place at various times between Mr Dushku and the doormen and some of the Claimants, it was never said that the Claimants were not welcome at the Coronet nor was it said they had been excluded because they were Irish Travellers or English Gypsies;

xxi. Mr McCann was seeking to know and explore the reasons why others had been refused entry to the Coronet rather than attempting to gain admittance himself; that also applies to those who approached the doors of the Coronet after 5.00pm namely, Ms Anderson, Mr Ridge,

Mr Brindley, Ms Sarah and Ms Sophia Vale, Mrs Keates and Ms O'Malley;

xxii. I find that Mr Foster was not refused entry;

xxiii. But I find that Mrs Franklin (nee Fahy) was;

xxiv. I find that in the period after that, the doormen never said Travellers would not be admitted nor did they behave in an aggressive or intimidatory way.

**Discussion and conclusion**

144. It is common ground that a group of delegates, which initially included Mr Howe, Mr Browne, Inspector Watson, Ms Kiely and an unknown man, were refused entry to the Coronet by the doormen on duty at about 4:45 pm. They were joined shortly afterwards by Ms Sherlock. Ms Kiely and Ms Sherlock were the only Irish Travellers in that group. Later Ms MacNamara joined the group; I have found as a fact that the doormen would not allow them to enter the Coronet. The doormen did not say the group was being excluded because it included Irish Travellers and I have found that they did not refuse entry in an aggressive or intimidatory way. Consistent with the approach of Lord Nicholls referred to above the question I should ask myself is why was this group excluded?

145. To my mind the answer lies in the assumptions, which lay behind the decision made by Mr Leach (see above at paragraphs 29 to 31 of this judgment). Whether or not he was influenced by events in 2005 following the Anarchist Book Fair or by the opinions of one of his customers, importantly he concluded that the Travellers' Conference was a source of potential disorder. He did so because he thought that those in attendance might be likely to engage in disorder. I have inferred that his analysis must have been that because of disorder at the Dale Farm eviction it was possible it would be repeated inside the Coronet; therefore, security measures were necessary. In turn, that must have been based on the premise either that some of those guilty of violent behaviour at Dale Farm might be in attendance at the conference and would be likely to repeat such behaviour in the Coronet or that those in attendance, even if not involved in or responsible for the disorder at Dale Farm, would be likely to engage in disorderly behaviour once inside the Coronet. There could have been, of course, a combination of the two.

146. The matter cannot be explored further because of the untimely death of Mr Leach and each party has been put at a disadvantage (albeit a different one in each case) as a result and I am concerned about what I should make of this limited and, in the sense of being unexplored, incomplete evidence. Nevertheless, I have reached the conclusion that each limb of the alternative just referred to (and also, therefore, of any combination of the two) must involve the further implicit assumption that Irish Travellers and Romani Gypsies are liable to engage in public disorder. I have not lost sight of the fact that Mr Leach was concerned to ensure that large numbers should not be allowed to congregate in the Coronet but I have rejected the Defendant's case that there was a "Large Groups Policy" generally in operation. In my judgment the evidence does not support that; all the evidence establishes is that there was a "Home Supporters Only" policy and I regard that as a very different thing.

147. The "Home Supporters Only" policy is based on another assumption, namely that if football fans from opposing teams are not segregated disorder will be inevitable. It is arguably rational because it is based on long historical experience of clashes between rival groups of supporters but as set out at paragraph 7 above it is a blanket exclusion owing

nothing to the size of group involved. Moreover it has no obvious connection to ethnic origin.

148. By contrast the policy which Mr Leach proposed was irrational. It was not based on any actual experience. There is no evidence that any Irish Travellers or English Gypsies had been involved in the disturbance created by visitors to the Anarchist Book Fair in 2005 and Mr Leach referred to no other incident at the Coronet and I infer he had not been involved in any. Also I infer his knowledge as to what had happened at Dale Farm must have been second hand. There was no evidence of any personal involvement on his part or even any acquaintance with anybody who had been there. Even if the alleged conversation with an Irish customer probably did take place (and I have found that it did not) Mr Leach had no rational basis for accepting the suggestion that there might be trouble if the Dale Farm protesters showed up. The newspaper article did not suggest that they would and he appears to have taken no steps to investigate further. Moreover, even if some did turn up what evidence was there that taken out of the Dale Farm context disorder would accompany them wherever they went?

149. In my judgment the whole of the thinking of Mr Leach, in so far as it can be inferred from the evidential material, was suffused with the stereotypical assumption that Irish Travellers and English Gypsies cause disorder wherever they go. In my judgment this is a racial stereotyping of those with that ethnic origin. It can be reduced to this crude proposition; whenever Irish Travellers and English Gypsies go to public houses violent disorder is inevitable because that is how they behave. In itself that is bad enough but it was accompanied by the false understanding that protesters from Dale Farm had been invited to attend the Conference and/or the organisers of the Conference were encouraging them to do so. I can find no evidence to support any such understanding. But even if that had been a correct understanding there would still have been embedded in it more or less the same assumption, namely that those who had protested violently at Dale Farm would inevitably repeat that behaviour in the different context of a public house because that is how Irish Traveller and English Gypsies behave.

150. The actual implementation of this ad hoc policy devised by Mr Leach differed from what he had discussed with Mr Dushku. Mr Leach had given no instructions about evaluating which delegates might be admitted and which excluded; he merely required large groups to be excluded. I have found that the doormen attempted to exclude everybody, who emanated from the Resource Centre, although I accept that they may not have been entirely consistent in their approach. In my judgment this was to ensure that delegates were prevented from entering in small numbers and then coalescing to form a larger group once inside. But I do not think that this difference in implementation meant that the security team were acting outside the authority of their principal, the Defendant. Generally they had the Defendant's authority to keep the premises safe and secure. They were called in by the Defendant to deal with a perceived security risk emanating from the Resource Centre and the Travellers' Conference. The fact that Mr Leach gave instruction about not admitting large groups does not seem to me to circumscribe the discretion, which Mr Dushku told me, the security team exercised as to who could or could not enter the Coronet. I do not regard it as a departure from their authority to keep the premises safe and secure that they decided to exclude all who came from the Resource Centre. Mr Leach had given no instructions as to how they were to differentiate between one person and another but I have concluded that they had authority to take what steps appeared to them necessary in order to achieve the objective of keeping numbers of people from the Resource Centre out of the Coronet. I have reached

the conclusion that the Defendant was responsible for the acts of its agents, namely the members of the security team.

151. I return to the question I posed above at paragraph 144 of this judgment, namely why were people who had been in attendance at the Travellers' Conference at the Resource Centre excluded from the Coronet? In my judgment it was not because they were in a large group but because they had plainly come from the Resource Centre and, therefore, it was very likely they had been in attendance at the Irish Travellers' Conference. In turn, that was because the Defendant considered it desirable in order to preserve the Coronet from disorder to exclude Irish Travellers and Romani Gypsies, who might be in attendance at the Conference being held at the Resource Centre.

152. Mr Kibling submitted that it was not possible to construct a proper comparison. I accept that sometimes there is a degree of artificiality about identifying an actual or a hypothetical comparator and it may well be that he is right and that this case is an example of that difficulty, although it seems to me construction of an hypothetical comparator would not be impossible. Suppose that the Conference had been of members of the Anglican Communion discussing the ordination of women bishops, a subject that had led to an uncharacteristically unchristian outbreak of violence on a previous occasion. Mr Kibling would no doubt argue that a "Large Groups Policy" would have been applied and his point really depends on establishing that a "Large Groups Policy" was in operation, something which I have rejected, but such a hypothetical comparison might serve. In any event I refer again to the remarks made by Lord Nicholls at paragraph 11 of his judgment in **Shamoon** (see above at paragraph 129 of this judgment). It seems to me this is a classic case where the issue of less favourable treatment and answering the question as to whether the treatment was because of a protected characteristic are so inextricably linked together that identifying why the treatment occurred answers both questions simultaneously. It is for much the same reason that it seems to me nothing in this case turns on section 136 of the EA and any shifting of the burden of proof. Although I have reached the conclusion that the doormen never said that the reason for refusing to admit the group was because they were Travellers or associated with Travellers I conclude such reasoning must have been behind that refusal.

153. No effort was made to identify who in any particular group might have the ethnic origin of being either an Irish Traveller or an Romani Gypsy. In the result some of those excluded had that ethnic origin but others, accompanying them, did not. Despite Mr Kibling's submissions as to the effect of **Hainsworth v Ministry of Defence** (set out above at paragraph 132 of this judgment) it seems to me that those excluded, who were not of either Irish Traveller or Romani Gypsy origin, had been excluded because they were associated with people who were of Irish Traveller or Romani Gypsy origin. Therefore it follows that they were directly discriminated against in terms of section 13 of the EA:

> **"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."**

in respect of the provision of a service falling within the terms of section 29 of the EA.

154. As many commentators have pointed out the statutory definition does not require B to have the protected characteristic only to be less favourably treated because of it. This is what happened here. Mr Howe and Inspector Watson, for example, were excluded because they had kept company with Irish Travellers and Romani Gypsies at the Conference and

afterwards. As a result they were treated less favourably by being excluded than people who had not attended the Resource Centre. My conclusion is that the refusal to admit the first group was direct discrimination contrary to sections 13 and 29 of the EA and that the claims to that effect made by the fourth Claimant, Mr Browne, the seventh Claimant, Mr Howe, the ninth Claimant, Ms Kiely, the tenth Claimant, Mr MacGabhann, the eleventh Claimant, Ms MacNamara, the fifteenth Claimant, Ms Sherlock and the nineteenth Claimant, Inspector Watson, succeed, although some arrived later than others, something which I will discuss further below when considering remedy.

155. The fact that members of this first group were admitted to the Coronet makes no difference to that finding. I have rejected Mr Dushku's evidence that he was joking when he suggested that Inspector Watson should vouch for the behaviour of the group when inside the Coronet and that he was surprised that they did not stay and have a drink. Their admission was conditional; in my judgment they were allowed inside only to discuss matters with management and the fact that they were eventually permitted access for that limited purpose does not alter the fact they had been refused admittance earlier.

156. Save for Mrs Franklin (nee Fahy), the fifth Claimant, I have more difficulty with the cases of the other Claimants. I have inferred that Mrs Franklin may have been unaware of what had happened earlier. I think that the CCTV footage does support her contention that she attempted to gain entry and was refused and pointed down the road in the direction of the Metro. But on my findings the other Claimants, Ms Anderson, the second Claimant, Mr Brindley, the third Claimant, Mr Foster, the sixth Claimant, Mrs Keates, the sixth Claimant, Mr McCann, the twelfth Claimant, Ms O'Malley, the fourteenth Claimant, Mr Ridge, the sixteenth Claimant, and the seventeenth and eighteenth Claimants, Ms Sarah and Ms Sophia Vale, were all aware of what had happened earlier and as a result were involved in a debate with the security team about the rights and wrongs of the refusal to admit. I have found that they did not themselves seek admission.

157. The difficulty confronting me is that I have no doubt that if they had specifically asked to be admitted themselves rather than debating the merits of the refusal to admit colleagues, then they too would have been refused entry. By the time they were debating the matter the decision had been made to go elsewhere and, having found as a fact that probably none of them asked to be admitted, it seems to me that there has been no breach of section 13 of the EA in their cases. This is, of course, a fine distinction; it might be said that it is an artificial distinction. Nevertheless it seems to me that if A and B are discussing the less favourable treatment of C because of a protected characteristic, as opposed to A treating B less favourably because of a protected characteristic, then that does not amount to direct discrimination.

158. Finally, on the question of direct discrimination contrary to sections 13 and 29 of the EA it seems to me that the First Claimant can succeed in its claim. As in the case of the individual Claimants once the "Large Groups Policy" is rejected, then it seems to me that even if one constructs a comparison as factually extreme as the conference of members of the Anglican Communion, which I postulated earlier, less favourable treatment on the grounds of a protected characteristic is the inevitable conclusion.

159. On my findings of fact, namely that the door security team did not misconduct themselves, I can see no basis upon which the Claimants can succeed in respect of the statutory tort of harassment contrary to sections 26 and 29 of the EA. I have no doubt that the

doorman remained firm but in my judgement the evidence falls far short of them having conducted themselves either with the purpose of violating the dignity of the Claimants or creating an intimidating, hostile, degrading, humiliating or offensive environment for them nor did the conduct have that effect. I have considered the other circumstances of the case and whether in those circumstances it would be reasonable for the conduct to have that effect. I have taken into account the fact, as mentioned above, that many of the Claimants became overtly emotional during the course of their evidence. Nevertheless, it does not seem to me that in the circumstances as I have found them to be it would be reasonable for the behaviour of the doormen to have the effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. In any event, if I am wrong as to that, it does not seem to me, given my findings of fact, that harassment takes the matter any further and I would not have made any separate award even if I have concluded that the statutory tort of harassment had been made out.

160. I turn now to the question of remedy. All Claimants, who have succeeded, are entitled to a declaration, the exact terminology of which can be the subject of discussion later. So far as the first Claimant is concerned I see no basis upon which it should be awarded damages. Firstly, I can see no basis for a corporation receiving an award in respect of injury to feelings. Whilst it may be a legal personality, statute has not given it the sensibility of an actual person. Secondly, whilst it may be possible in other circumstances for a corporation like the first Claimant to be awarded compensatory damages, on the facts of this case I fail to see that it has suffered any loss calling for compensation. Thirdly, insofar as any award of aggravated damages is still being pursued in respect of the first Claimant my judgment it stands in exactly the same situation as any individual Claimant.

161. So in considering the cases of the individual Claimant's who have succeeded, I turn straightaway to the question of aggravated damages. In my judgment none of the circumstances which attract aggravated damages apply in the instant case. I referred to those above at paragraph 142 of this judgement. I do not see any basis on which it can be argued that subsequent conduct on the part of the Defendant has added anything the original insult. Nor do I accept that any discriminatory motive on the part of the Defendant has been proved. On the contrary, it seems to me that this was an ill thought out strategy, which Mr Leach arrived at without sufficient reflection. It does not seem to me, however, that he can be said to have had a truly discriminatory motive nor does it seem to me that the security team were doing anything other than implementing what they conceived to be their instructions within their sphere of discretion. I accept that many of the Claimants regarded their exclusion from the Coronet as the culmination of a lifetime of discrimination suffered since they were children. I have already referred to the extent to which some of the Claimants, and, indeed, their witnesses, became extremely emotional during the course of the hearing.

162. Nevertheless, that does not seem to me to justify an award of aggravated damages. Although I accept that the context cannot be ignored, it seems to me that the focus must be on the conduct itself. Albeit in a firm way, I have found that the Claimants were refused admission to the Coronet in a manner which was neither aggressive nor hostile. Insofar as tempers became frayed, it seems to me that was the consequence of constantly debating the matter and I think that the security team remained relatively calm throughout the whole incident. Moreover the whole sequence of events covers less than twenty five minutes and the operative refusals occurred within the first few minutes. Even if I am wrong to regard later events as not amounting to discrimination in my judgement even extending the conduct to its maximum period of twenty-five minutes would not call for an award of aggravated damages.

I have concluded that a conventional injury to feelings award is the appropriate method of compensating the Claimants for the injury that has been done to them.

163. The award of damages for injury to feelings must be a matter of impression and to use the well-worn judicial cliché it must involve painting with a broad brush. I have mentioned above there may be differences so far as individual Claimants are concerned. Ms MacNamara clearly did not recollect events accurately and she joined the first group at a later stage. Others like Mr Browne and Mr MacGabhann were not as persistently involved in the debate with the doormen as Mr Howe and Ms Kiely. The person most consistently involved was Inspector Watson. On her own account Mrs Franklin (nee Fahy) was more or less refused admission by a nod of the head and a gesture; certainly, she was not involved in any sort of debate. I have given considerable thought to whether there should be any differentiation in terms of individual awards to take account of these different features.

164. The case of **Vento v the Chief Constable of West Yorkshire Police (No 2)** [2002] EWCA Civ 1871; [2003] IRLR 102 remains the leading authority and its division of awards into three bands still governs the approach that I should take. In the recent case of **Kemeh v Ministry of Defence** [2014] EWCA Civ 91, [2014] IRLR 377 the Court of Appeal approved the approach of the Employment Appeal Tribunal in placing a single racial slur with aggravating features at the top of the lower band identified in **Vento** (as subsequently adjusted by later cases to take account of the passage of time).

165. In this case I have found that there was no slur but I accept that in the context of those with the ethnic background of Irish Travellers and English Gypsies this was a distressing experience. Should I make any distinction for the time a Claimant was involved or should I look separately at those excluded by association and who therefore suffer a different kind of insult as a separate category? I have concluded that such distinctions are to be avoided unless justice compels a bespoke approach. I do not believe that it does and consequently I will award each Claimant the same amount.

166. This treatment was more than simply being temporarily denied a social occasion in the most convenient venue but I think it a less serious case than **Kemeh**. The Claimants were excluded but were not badly treated and they were able to go to another venue, albeit with a degree of inconvenience. In my judgment the appropriate award in respect of injury to feelings is £3,000.00 and I will award that sum to the Claimants who have succeeded.

167. For the sake of completeness I should consider what award I would have made to the other Claimants if they had succeeded. Here I do think a distinction should be made between the two categories of Claimant. It seems to me a quantitatively different thing to go and seek entry to premises in the full knowledge that others have been denied admission. If I am wrong to find as a matter of fact that none of the other Claimants actually sought admission, as opposed to simply wishing to debate the non-admission of others, then I would have made a more modest award of £2000 for injury to feelings in respect of each of those Claimants.

# APPENDIX 1

Wed 22/04/2015 07:27

Dear HHJ

I have looked at 123 (iv) and (v). I agree that JD Witherspoon's acted on stereotypical assumptions based on feedback from the Irish customer and its own prejudices about Irish travellers and English Gypsies related to Dale farm. This indeed amounts to less favourable treatment.

Mrs Charmaine Brown

On 21 Apr 2015 08:28, John Hand wrote:

Dear Mrs Brown,

Hope you are well. I attach the introductory and factual findings part of the long delayed judgment in this case. I have been unwell intermittently since we met last December hence the delay.

Whilst I would welcome your comments on the whole judgment so far, I would like to have your advice on the findings I have summarised at paragraphs 123 (iv) & (v). In particular I would like to have your views as to whether these might amount to stereotypical assumptions and, if so, whether acting on those types of assumptions might capable of being be less favourable treatment because of a protected characteristic, in this case race.

I would be grateful if you were able to give this a high degree of priority because there is an urgent need to get this judgment handed down.

Regards

John Hand