

**IN THE CITY OF WESTMINSTER MAGISTRATES' COURT
No. 011503187270**

**FOR MENTION ON 12th APRIL 2016 AND FOR FINAL HEARING ON 28th JULY
2016**

DISTRICT JUDGE TEMPIA

**IN THE MATTER OF AN APPLICATION UNDER SECTION 1 OF THE POLICE
PROPERTY ACT 1897**

LAURI LOVE

Claimant

-v-

NATIONAL CRIME AGENCY

Respondent

**SUPPLEMENTARY SKELETON ARGUMENT OF THE RESPONDENT
AS TO WHETHER THE COURT SHOULD DIRECT THE CLAIMANT
TO DISCLOSE PASSWORDS OR ENCRYPTION KEYS**

1. This skeleton argument supplements the skeleton argument dated 28th March 2016.
2. On 4th April 2016 the Criminal Procedure (Amendment) Rules 2016 SI 120 came into force. By Schedule 1 the Criminal Procedure Rules 2015 are amended to incorporate sub-rules relating to applications under the Police Property Act 1897. These are set out below for convenience:

SECTION 4: ORDERS FOR THE RETENTION OR RETURN OF PROPERTY

47.35.— When this Section applies

(1) This Section applies where—

(a) under section 1 of the Police (Property) Act 1897, a magistrates' court can—

(i) order the return to the owner of property which has come into the possession of the police or the National Crime Agency in connection with an investigation of a suspected offence, or

(ii) make such order with respect to such property as the court thinks just, where the owner cannot be ascertained;

(b) ...

(2) In this Section, a reference to a person with ‘a relevant interest’ in seized property means someone from whom the property was seized, or someone with a proprietary interest in the property, or someone who had custody or control of it immediately before it was seized.

47.36.— Exercise of court's powers

(1) The court may determine an application for an order—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing;
- (b) in a party's absence, if that party—
 - (i) applied for the order, or
 - (ii) has had at least 14 days in which to make representations.

(2) The court officer must arrange for the court to hear such an application no sooner than 14 days after it was served, unless—

- (a) the court directs that no hearing need be arranged; or
- (b) the court gives other directions for the hearing.

(3) If the court so directs, the parties to an application may attend a hearing by live link or telephone.

(4) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Section;
- (b) dispense with a requirement for service under this Section (even after service was required); and
- (c) consider an application made orally instead of in writing.

(5) A person who wants an extension of time must—

- (a) apply when serving the application or representations for which it is needed; and
- (b) explain the delay.

47.37.— Application for an order under section 1 of the Police (Property) Act 1897

(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(a) refers.

(2) The applicant must apply in writing and serve the application on—

- (a) the court officer; and
- (b) as appropriate—
 - (i) the officer who has the property,
 - (ii) any person who appears to be its owner.

(3) The application must—

- (a) explain the applicant's interest in the property (either as a person who claims to be its owner or as an officer into whose possession the property has come);
- (b) specify the direction that the applicant wants the court to make, and explain why; and
- (c) include or attach a list of those on whom the applicant has served the application.

...

47.39.— Representations in response

This rule applies where a person wants to make representations about an application under rule 47.37 or rule 47.38.

(2) Such a person must—

- (a) serve the representations on—
 - (i) the court officer, and
 - (ii) the applicant and any other party to the application;
- (b) do so not more than 14 days after service of the application; and
- (c) ask for a hearing, if that person wants one.

(3) Representations in opposition to an application must explain why the grounds on which the applicant relies are not met.

3. The Respondent submits that the new requirement that an applicant should “*explain [his] interest in the property*” lends some support to its submission that Mr Love should in this case be required to provide the encryption key or password as only thus will the Court be able to adjudicate fairly upon the complete contents of the devices.

4. In its previous skeleton argument the Respondent referred to the case management powers in Rule 3A of the Magistrates’ Courts Rules 1981. The new provisions of the Criminal Procedure Rules do not expressly purport to exclude those Rules in relation to applications under the 1897 Act, and do not state that such applications are now considered to be a “criminal case” for the purpose of the Rules but insofar as that is implied:
 - The equivalent case management powers are to be found in Rule 3.5 of the Crim PR 2015
 - The Crim PR 2015 also includes an “overriding objective” in Rule 1 which is that cases should be dealt with justly and this includes dealing with the case “efficiently and expeditiously”
 - It is generally a feature of a fair trial that disclosure should, so far as it does not infringe other legislation or fundamental rights, permit a level playing field, so that each party can make informed submissions.

5. It is therefore submitted that the directions proposed by the Respondent are permissible under either set of procedural rules. The attached draft recites both in the alternative.

Andrew Bird
5 St Andrew’s Hill
London EC4V 5BZ

5th April 2016

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No. 011503187270

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Respondent

[Proposed] DIRECTIONS

UPON HEARING [counsel for] the Claimant and counsel for the Respondent

IN EXERCISE OF ITS CASE MANAGEMENT POWERS UNDER RULE 3A OF THE
MAGISTRATES' COURTS RULES 1981 AND/OR RULE 3.5 OF THE CRIMINAL
PROCEDURE RULES 2015

IT IS DIRECTED AS FOLLOWS:

- (1) By **19th April 2016** the Claimant shall provide to the Respondent any necessary password or key so that the Respondent may have access, for the purposes only of defending these proceedings, to the encrypted data stored on the following exhibits:
 - **AH/01/25/10/13** Samsung Laptop and its internal Hard Drive exhibit **AH/01/HD1/25/10/13**;
 - **AH/01/SD1/25/10/13** - SD Card
 - **AH/02/25/10/13** - Western Digital Hard Drive
(together the "encrypted data")

- (2) If the Claimant fails to comply with Direction (1) above then the Court may, subject to any further evidence or submissions, use this fact in support of an inference in these proceedings (a) that the Claimant has no right to some or all of the encrypted data and (b) that the contents of the encrypted data are such that it would not be in the public interest for it to be returned to the Claimant.

Signed:

Dated: