Neutral Citation Number: [2017] EWHC 1461 (QB)

Case No: HQ12X04287

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2017

Before:

MR. JUSTICE WALKER

- -

Between:

FELIX WAMALA	Claimant
- and -	-
TASCOR SERVICES LTD (formerly Reliance Secure Task Management Ltd)	Defendant

- -

- -

Mr Tom Hickman (instructed by Deighton Pierce Glynn) for the claimant
Lord Marks QC (instructed by Horwich Farrelly Solicitors) for the defendant

Hearing dates: 21, 22, 23, 24, 27, 28, 29 July 2015.
Written submissions were complete on 6 November 2015.

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Judgment including Annex 1 & 2

Mr Justice Walker:

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A. Overview, outcome, background, concerns, issues

A1. Overview and outcome

A1.1 Overview: Christmas eve and the claim

1. This claim arises from events on a crucial day, 24 December 2011. In this judgment I refer to that crucial day simply as "Christmas eve". The claim relates to the use of force, and the threatened use of force, against the claimant, Mr Felix Wamala, by employees of the defendant, a company which has changed its name and is now known as Tascor Services Ltd. At the time of relevant events its name was Reliance Secure Task Management Limited.

2. The defendant was referred to as "Reliance" throughout these proceedings, and I shall do the same in this judgment. It did not dispute that, in the circumstances of the present case, it would be liable for legal wrongs committed by its employees. Accordingly, where it is convenient to do so and clear from the context that this is what I have done, I have from time to time used the abbreviation "Reliance" to include its employees. This and other abbreviations and short forms used in this judgment are set out in Annex 1.

3. In order to decide the claim the court must apply UK statutes, in particular the Immigration Act 1971 ("the 1971 Act") and the Immigration and Asylum Act 1999 ("the 1999 Act"). The court must also apply fundamental principles of the common law of England and Wales.

4. In the present overview section A1.2 gives a brief description of some key documents, as a prelude to section A.1.3 which gives a nutshell account of events on Christmas eve. Section A1.4 gives an overview of the

procedural history before, during and after the trial. In section A1.5 I deal with some preliminary matters concerning video extracts of CCTV recordings, and the report made by Ms Jenny Beck. Section A1.6 describes undisputed aspects of events during the period from 19:38 to 20:43 on Christmas eve. Section A1.7 gives more detail about the claim as advanced at trial.

5. Section A2 below deals with the background prior to 23 December 2011, while section A3 deals with background events on 23 December 2011 and on Christmas eve.

6. In section A4 I deal with beliefs and concerns which Mr Wamala described and which I consider shed much light on Mr Wamala's perception of events. Section A5 sets out the issues at trial.

7. Section B below deals with the course of the trial generally, and makes observations on the factual witnesses and expert witnesses. Section C deals with the legal framework. Section D analyses the evidence concerning Mr Wamala's mental health. Section E analyses the evidence concerning Mr Wamala's physical injuries. In section F I make findings as to what happened on Christmas eve. Section G deals with Mr Wamala's claim for damages, and section H summarises my conclusions.

A1.2 Overview: Mr Wamala's MS778 notice and his removal JR

8. In December 2011 Mr Wamala was in immigration detention at Brook House Immigration Removal Centre ("Brook House IRC"), located at Gatwick Airport in West Sussex. Brook House IRC was run by G4S, a private organisation, under contractual arrangements with the Home Office.

9. On 16 December 2011 Mr Wamala was given a notice issued by the United Kingdom Border Agency ("UKBA", part of the Home Office) informing him that directions had been given for his removal to Uganda. For reasons which will become apparent I shall refer to this notice as "Mr Wamala's MS778 notice".

10. Shortly before 2pm on 23 December 2011 Mr Wamala sent a fax to UKBA. It included a sealed copy of an application for permission to apply for judicial review ("Mr Wamala's removal JR"). Mr Wamala's removal JR had been issued by the Administrative Court earlier that day. The fax also included a covering letter referring to policy under which UKBA would "normally defer removal where a JR application has been properly lodged…". Relying on this policy Mr Wamala sought deferral of his removal.

A1.3 Overview: course of events on Christmas eve

11. Mr Wamala's MS778 notice stated that Mr Wamala was to be removed on flight MS778, scheduled to depart at 2pm on Christmas eve. "MS" is the code for EgyptAir. Flight MS778 was scheduled to depart from Terminal 3 at Heathrow airport. If Mr Wamala were to be removed on flight MS778 at its scheduled time of departure, then in the ordinary course he would have been collected from Brook House IRC mid-morning. It is difficult to see how he could be put on the flight at its scheduled departure time if he were collected from Brook House much later than noon. However noon came and went without him being collected. Indeed 2pm, the scheduled departure time, came and went without him being collected.

12. Reliance is a private contractor. From May 2011 onwards it provided immigration escort services under contractual arrangements with the Home Office. At around 3pm on Christmas eve, after flight MS778 had departed, Reliance employees asked for and took custody of Mr Wamala at Brook House. They transported him in their van to Heathrow. Their intention was that at Heathrow he, accompanied by 4 of the Reliance employees, would be put on Qatar Airways flight QR2 to Doha in order to connect with an onward flight to Uganda. Flight QR2 was scheduled to depart from Heathrow Terminal 4 at 8.30pm on Christmas eve. At Heathrow Terminal 4 they put Mr Wamala on an Airbus A340-600 aircraft ("the aircraft") used by Qatar Airways for flight QR2. A struggle occurred on board. Force was used by Reliance employees on Mr Wamala. The captain then refused to carry Mr Wamala. Reliance employees took Mr Wamala off the aircraft, put him in their van, and took him to Colnbrook Immigration Removal Centre.

A1.4 Overview: procedural history

13. Mr Wamala brought the present proceedings against the Home Office as first defendant and Reliance as second defendant. He sought, among other things, aggravated and exemplary damages for defamation, negligence, false imprisonment, assault and battery, and personal injury. On 28 March 2014 Mr Justice Mitting ordered that a preliminary issue be tried of the following question ("the March 2014 question"):

> Whether or not there was lawful justification for the use of force to convey the claimant to Heathrow airport or put him on or remove him from Qatar Airways flight QR2 to Doha on 24 December 2011.

14. On 20 June 2014, however, a different course was adopted. On that day Mrs Justice Patterson granted a declaration ("the June 2014 declaration") that:

> … there was no valid removal direction for the Qatar Airways flight.

15. Also on 20 June 2014 Mrs Justice Patterson directed that determination of the March 2014 question be adjourned generally pending the trial of the present action. Among other ancillary directions provision was made to enable case management directions to be given for trial.

16. On 25 November 2014 a consent order was made as between Mr Wamala and the Home Office. Under that order, upon the giving of certain undertakings by the Home Office, Mr Wamala discontinued his claim against the Home Office. These proceedings have, since 25 November 2015, continued as a claim against Reliance alone.

17. Reliance did not, and does not, dispute the June 2014 declaration. Nevertheless it maintains that its employees were entitled use force against Mr Wamala in circumstances which are broadly described in section A1.5 below, and are described in more detail in later sections of this judgment.

18. At the trial before me Mr Tom Hickman, instructed by Deighton Pierce Glynn ("DPG", an abbreviation which I also use for its predecessor firms Deighton Guedalla and Pierce Glynn), appeared for Mr Wamala. Lord Marks QC, instructed by Horwich Farrelly, appeared for Reliance. Mr Wamala gave oral evidence. A number of other witnesses gave oral evidence for Reliance. Expert evidence, on orthopaedic and psychiatric matters respectively, was given by Mr Saeed Mohammad and Professor Cornelius Katona for Mr Wamala, and by Mr Stuart Matthews and Dr Darryl Britto for Reliance. Oral submissions by counsel were supplemented by written submissions and further written observations, which were completed on 6 November 2015. I thank the legal teams on both sides for the assistance which has been provided to me. The delay in producing this judgment has occurred as a result of illness on my part.

A1.5 Overview: CCTV evidence and the Beck report

19. As discussed in more detail in section B1 below, at the trial I was shown video extracts of CCTV footage recorded in the Reliance van. The sound quality of the video was variable. In relation to what was said, I was assisted by a document prepared by UKBA's Professional Standards Unit in response to a complaint to UKBA by Mr Wamala. A team led by Ms Sally Beck, investigating officer, in addition to seeking information from those who had witnessed events, assembled recordings made by the CCTV cameras in Reliance's van. A report ("the Beck report") was produced on 12 March 2012. Among other things it contained summaries of what could be seen and heard on the recordings. In subsequent sections of this judgment I refer to certain of these summaries.

20. There are four further things to mention about the Beck report and the CCTV evidence:

(1) Ms Beck, after examining Mr Wamala's complaint in the context of the material that she and her team had gathered, concluded that some elements of the complaint were substantiated, but its main elements were unsubstantiated;

(2) Ms Beck's conclusions were reached on more limited evidence than is available to me, and neither side suggests that her conclusions are binding on me;

(3) Timings given in this judgment, like those in the Beck report, are generally timings which were displayed in the recordings made by the main CCTV camera in the van ("the CCTV timings"), but on occasion I have given rough timings which use the CCTV timings as a reference point;

(4) in this judgment I shall refer to Ms Beck and others in the Professional Standards Unit who assisted her as "the Beck team".

A1.6 Overview: pre-boarding to the UKBA replacement instruction

21. Much of what happened in the aircraft, and when getting Mr Wamala into and out of the aircraft, is in dispute. However it is not in dispute that, using the CCTV timings:

(1) prior to boarding the aircraft, Mr Wamala and Reliance employees were in Reliance's van on the tarmac, and beside it was a staircase which had been put in position so as to give access to the aircraft's rear door;

(2) at 19:38 Mr Wamala told Reliance employees that by law they were not allowed to remove him as the removal directions notified to him were for a different flight and a different airline, but this did not deflect the Reliance employees from their intended course;

(3) at 19:49, shortly before leaving the van to board the aircraft, Mr Wamala asked to speak to the captain of the aircraft;

(4) at 19:50, in response, Mr Wamala was told by Reliance's team leader, Mr Ian Charles, that when they were on board the aircraft:

> … I will go and see the captain on your behalf and ask him to speak to you.

(5) at 19:53 Mr Wamala, who was not handcuffed at this stage, left the van and was escorted up the staircase to the rear entrance of the aircraft;

(6) waiting at the rear entrance of the aircraft were two stewardesses, one of whom was Ms Naphitchaya Lertsakdadet, cabin senior in charge of the economy section at the rear of the aircraft;

(7) upon entering the aircraft Mr Wamala raised a concern with one or both of the stewardesses;

(8) there was a struggle in which Reliance's employees used force against Mr Wamala to restrain him;

(9) Mr Wamala resisted restraint and went to the floor in the rear of the economy class cabin, where the struggle continued a few rows away from passengers who had already boarded;

(10) at an early stage after boarding the aircraft, and before Mr Wamala went to the floor, Mr Charles handcuffed Mr Wamala's right hand with rigid bar handcuffs, but attempts to secure his left hand in the same handcuffs were unsuccessful;

(11) the aircraft crew relayed a direction from the captain ("the captain's direction") that Reliance's employees and Mr Wamala must leave the aircraft;

(12) after this direction the struggle did not immediately stop, but eventually Mr Wamala's left hand was secured in the rigid bar handcuffs and the process of getting him down the staircase began;

(13) from a point at or near the bottom of the staircase Mr Wamala was bodily transferred by Reliance's employees into the van;

(14) the transfer of Mr Wamala into the van began at just after 20:02 and was completed by 20:04;

(15) at 20:43 UKBA faxed on form IS.276 a movement notification ("the UKBA replacement instruction") instructing Reliance to take Mr Wamala to Colnbrook IRC, which was then carried out.

22. Getting Mr Wamala from the van to the top of the staircase and into the aircraft was uneventful. It would not have taken long – perhaps a minute. My rough timing for Mr Wamala's arrival on board the aircraft is thus 19:54. Getting Mr Wamala down the staircase took much longer. It was probably 3 minutes or so before the process of transferring him to the van began. My rough timing for Mr Wamala's exit from the aircraft is thus 19:59.

23. On this basis Mr Wamala was on board the aircraft from 19:54 to 19:59, roughly 5 minutes. This period is likely to have comprised no more than a minute before Mr Wamala went to the floor, roughly 2 minutes on the floor before the captain's direction was relayed by the crew to the escorts, and roughly another 2 minutes for the struggle to come to an end, for Mr Wamala's left hand to be put in the handcuffs, and for Mr Wamala to be transferred to a position near the door.

24. The 5 minute period that Mr Wamala was on the aircraft was a period of frenetic activity. The 3 minute period from shortly after boarding until the captain's direction was relayed was a period of particularly intense and frenetic activity. It occurred in a small physical space. Even in the immediate aftermath of the incident it is likely that recollections would differ. In these circumstances it is neither necessary nor desirable to conduct an elaborate analysis of accounts given by particular individuals at particular times over the period since the incident. In section F below I make findings which give a broad picture of what happened. I make findings on points of detail only when doing so may help me to make findings on key features of the broad picture.

A1.7 Overview: claims at trial for physical injury, MDD & PTSD

25. Mr Wamala claims damages ("ordinary damages"), aggravated damages and exemplary damages. I shall refer to these three types of damages together as "the overall damages". Mr Wamala's claim form and amended particulars of claim had sought such damages by alleging that a number of legal wrongs had been committed. At the trial, however, the legal wrongs asserted by Mr Wamala were limited. First, it was said that Reliance was responsible for two types of trespass to the person. These were battery, constituted by force that was used upon Mr Wamala, and assault, constituted by the threat of battery. Second, it was said that the overall damages could equally be awarded for breach of article 3 of the European Convention on Human Rights ("ECHR").

26. As regards both types of alleged trespass to the person, and as regards the alleged breach of article 3, Mr Wamala's case was, in broad terms, advanced on two alternative bases. The first, which I shall call "Mr Wamala's primary claim", was that Reliance had no authority to use force against him. In that regard, Mr Wamala said that:

(1) while there had been authority to put him on flight MS778, at the time that Reliance took custody of him it was no longer possible to do this;

(2) prior to the UKBA replacement instruction to take him to Colnbrook IRC, no authority existed for Reliance to do anything else with him; and

(3) there was nothing which entitled Reliance to use force on him.

27. The second basis, which I shall call "Mr Wamala's alternative claim", arose only if Reliance had an entitlement to use force on him. In that event, Mr Wamala's alternative claim was that the type or degree of force in fact used by Reliance was not permitted by that entitlement.

28. Other bases for seeking damages were not pursued. In particular, a claim for damages for false imprisonment was no longer advanced. In that regard, Mr Wamala accepts that if he had not been picked up by the escorts on the afternoon of the Christmas eve he would have remained in immigration custody throughout that day.

29. The ordinary damages sought by Mr Wamala are for both physical injuries and mental injuries. As regards physical injuries, he says that these occurred to his hands and wrists, neck, back, shoulders and legs. As regards mental injuries, in addition to claiming for assault, Mr Wamala claims damages for major depressive disorder ("MDD"), and for post-traumatic stress disorder ("PTSD"), saying that the use of force against him materially contributed to both these illnesses.

30. Reliance says that it had both statutory and common law entitlements to use force on Mr Wamala. Alternatively, if Reliance were held not to have such an entitlement, or to have gone beyond what was permitted, it says that Mr Wamala cannot complain about injuries arising from his own use of unreasonable force. Reliance adds that Mr Wamala has exaggerated his physical injuries. As to mental injuries, it is common ground that Mr Wamala suffers from MDD and PTSD. However Reliance rejects the contention that these disorders arose from the events on Christmas eve. Relevant mental injuries, says Reliance, have arisen from other causes.

A1.8 Outcome

31. For reasons given in this judgment I conclude that:

(1) on Christmas eve Reliance gained custody of Mr Wamala at Brook House IRC by presenting a UKBA movement notification which had been amended to say that Mr Wamala was to be put on QR2 departing at 8.30pm that day;

(2) Reliance had no authority from UKBA to gain custody of Mr Wamala in this way;

(3) moreover, even if UKBA had purported to give Reliance authority to put Mr Wamala on QR2, which it did not, any such purported authority would have been invalid as UKBA had no power to authorise Mr Wamala to be put on QR2;

(4) force threatened and used by Reliance when seeking to bring about Mr Wamala's removal on QR2 constituted the tort of trespass to the person, with consequential liabilities in damages.

A2. Background prior to 23 December 2011

A2.1 Mr Wamala's 1999 deportation, and secret return here

32. Mr Wamala is a citizen of Uganda. He was born there on 10 December 1970 and is of black African ethnicity. He came to the UK in 1995 and claimed asylum here, but that claim was rejected in 1997. In the meantime Mr Wamala made a return trip to the United States of America under a false name and a false passport. On returning to the United Kingdom he was found to have substantial quantities of cocaine in his luggage. Mr Wamala was charged with smuggling class A drugs. He pleaded guilty and was sentenced to 7 years' imprisonment. The sentencing judge made a recommendation for deportation. A deportation order was duly made by the Secretary of State on 10 February 1997 ("the 1997 deportation order"). Mr Wamala was successfully deported in 1999, but returned secretly a few weeks later.

33. Mr Wamala's re-entry into the UK in 1999 was, among other things, a breach of the deportation order. From the moment that he re-entered the United Kingdom he was an "illegal entrant" as defined in s 33(1) of the 1971 Act.

34. Mr Wamala has said that he returned here because his deportation to Uganda led to him being tortured there. It is common ground that during this period in Uganda Mr Wamala was in fact tortured there.

35. In 2003 he was granted temporary admission pending consideration of a claim to stay here. From 17 July 2010 onwards he was held in immigration detention.

A2.2 Mr Wamala's detention authority naming "Brynner MVOI"

36. In order for Mr Wamala to be kept in detention a form IS.91 was completed by a UKBA immigration officer. As so completed I shall call it "the detention authority". The front page of the detention authority stated:

> *IMPORTANT:* THIS AUTHORITY MUST BE PASSED ON TO EACH SUCCESSIVE CUSTODIAN AS APPOINTED BY THE IMMIGRATION SERVICE
>
> 1. To the custodian. This is to authorise the detention of:

37. Beneath the passage quoted above the remainder of section 1 of the detention authority had a space in which a photograph of Mr Wamala was inserted. Other details inserted in that space were the name, "Brynner MVOI", a date of birth of 1 January 1968, and an indication of Kenyan nationality. This name, along with the date of birth and nationality, had appeared in the false passport used by Mr Wamala when committing the drug smuggling offence which led to his imprisonment.

38. Section 1 of the detention authority also provided for information to be set out in relation to an alias. Here details were inserted of Mr Wamala's correct name, nationality, and date of birth.

39. Page 2 of the detention authority recorded that Mr Wamala was the subject of a deportation order, and was a person whose detention had been authorised by the Secretary of State under paragraph 2(3) of schedule 3 to the 1971 Act.

40. Section 3 on page 2 of the detention authority dealt with risk factors. Here a tick was placed in a box indicating "Violence Toward Or Assaults On Others." In that regard a comment was added:

> Subject was wanted on PNC [the Police National Computer] for assaulting a police officer. …

41. It is not in dispute that by December 2011 Mr Wamala had been concerned for some time that Home Office files suggested he had assaulted a police officer. In correspondence with DPG the Home Office eventually accepted that Mr Wamala was never charged with an offence of assault on a police officer. Concern remained that, despite what had been accepted by the Home Office, Mr Wamala was treated as if he had been wanted by the police for such an offence. This led to a telephone conversation between DPG and UKBA on the morning of 22 December 2011. At DPG's request, UKBA wrote that day confirming that Mr Wamala's records on Home Office files, including computer records, had been amended to reflect that he was never charged, convicted nor given conditional discharge for the alleged offence of assault on a police officer.

42. The confirmation given by the Home Office was inaccurate. On 22 December 2011 the detention authority continued to include the comment set out above. The statement that Mr Wamala was wanted for an assault on a police officer, and the consequent assertion that he posed a risk of violence towards others, remained on the detention authority until after the events with which this case is concerned.

43. Page 3 of the detention authority was headed:

> TRANSFER RECORD: Row 1 to be completed by the authorising Immigration Officer. Thereafter for completion by *each receiving* Detaining Agency (e.g. Detaining Agency company, Prison Service, Police).

44. This was followed by a table with a series of rows in which a record could be made of each place of detention, the relevant detaining agency, and the date and time that detention commenced. Row 1 identified Mr Wamala's initial place of detention as Peckham Police Station, the detaining agency being UKBA, with detention commencing at 13:05 on 17 July 2010. The transfer record indicated that Mr Wamala was then detained for a period in HMP Brixton. From 27 July 2010 onwards his place of detention was Brook House IRC, for which the detaining agency was G4S.

45. Section 5 of the detention authority, headed "Outcome", enabled insertion of the date and time when the detainee was removed from the UK or released, and was to be completed by the custodian at the time of removal or release. Section 6 made provision for risk factors to be reviewed and withdrawn.

A2.3 Mr Jimmy Mubenga dies when restrained on an aircraft

46. Mr Jimmy Mubenga was an Angolan national who had been released from a period in custody in this country following a criminal conviction. He was due to be removed to Angola on the afternoon of 12 October 2010, using a scheduled British Airways flight. Mr Mubenga boarded the flight accompanied by immigration escorts. About twenty minutes after boarding, and before the plane began to taxi towards the runway, the escorts used force to restrain Mr Mubenga. His hands were cuffed behind his back and he was manoeuvred into a seat in the back row of the plane. When the plane began to taxi towards the runway the escorts realised that Mr Mubenga was unconscious and not responding. The plane returned to the stand, where paramedics attended and made attempts to resuscitate Mr Mubenga. Those attempts were unsuccessful: Mr Mubenga was transferred to hospital where his death was later confirmed. A post-mortem report concluded that he died from cardio-respiratory collapse, caused by restraint.

47. Mr Wamala's unchallenged evidence was that Mr Mubenga was in a room next to Mr Wamala at Brook House IRC up until the attempt to remove Mr Mubenga on 12 October 2010. Mr Wamala got to know him. Mr Wamala added:

> I was extremely upset when I heard of [Mr Mubenga's] death and I still find it upsetting. It also brought home to me how vulnerable detainees are when being removed by overseas escorts who use excessive and dangerous force.

48. Mr Mubenga's death attracted significant public concern. An inquest into his death was held after the events with which the present case was concerned. The jury at the inquest concluded that Mr Mubenga's death had been caused by the restraint to which he had been subject, and that his death was unlawful. Following the inquest, Assistant Deputy Coroner for Hammersmith and Fulham issued a report under rule 43 of the Coroner's Rules 1984. The report concluded, among other things, that:

(1) there was doubt about the suitability of control and restraint techniques to the specific circumstances in which immigration escorts may find themselves, for example in the confined space of an aircraft, or on the steps boarding one;

(2) an unauthorised technique had been used to restrain Mr Mubenga: that is to say, his head had been held down for an extended period of time, while he was in a seated position with his hands cuffed. Although the then contractor's staff had been told not to employ this technique, its use in this case raised concerns about the effectiveness of that prohibition and its enforcement.

A2.4 Home Office refusals & Mr Wamala's unsuccessful appeals

49. On 10 February 2011 decision letters were signed on behalf of the Home Secretary. They concerned Mr Wamala's application for revocation of the deportation order and his application for the grant of asylum. Both applications were refused. Mr Wamala's appeal against those decisions was heard by the First-tier Tribunal on 24 June 2011 and dismissed. An application to the First-tier Tribunal for permission to appeal was refused on 4 August 2011. The application for permission to appeal was then renewed to the Upper Tribunal. The Upper Tribunal refused that application on 24 November 2011. The result was that on 24 November 2011 Mr Wamala's appeal rights were exhausted.

A2.5 Help from DPG, Mr Stephen Timms MP, and Mr Kola Adelabuo

50. Mr Wamala nevertheless continued to try to find ways in which he could lawfully remain in the UK. Applications by him in this regard were received by the Home Office on 16 and 23 December 2011: see section A3.7 below. As noted in section A2.2 above, DPG acted for Mr Wamala in relation to references in Home

Office documents suggesting he had assaulted a police officer. DPG did not, however, have instructions to act for Mr Wamala in relation to his immigration status. On that topic Mr Wamala received help from the Rt Hon Stephen Timms MP. Mr Timms wrote a number of letters on Mr Wamala's behalf to UKBA. Also in relation to Mr Wamala's immigration status, Mr Wamala received help from a friend, Mr Kola Adelabuo.

A2.6 EgyptAir's MS778 directions & form IS.152B, 14 Dec 2011

51. On 14 December 2011 UKBA, using form IS.152B, issued directions ("EgyptAir's MS778 directions") addressed:

> To the aircraft: MS778

52. The heading to form IS.152B describes it as "Notice of directons to remove an illegal entrant/other immigration offender or a family member of such a person". As I understand it however form IS.152B can, and in the present case did, perform a number of roles:

(1) a central part of form IS.152B, as completed, comprises the removal directions;

(2) form IS.152B is used to notify the agents of the aircraft of the removal directions;

(3) form IS.152B can be used to request the issue of tickets for escorts, to require prevention of disembarkation, and to authorise detention: see below.

53. EgyptAir's MS778 directions comprised directions by the Secretary of State to remove Mr Wamala from the United Kingdom by MS778 to Cairo at 14.00 hours on Christmas eve connecting with MS837 at 21:45 hours the same day. As completed, form IS.152B in addition to setting out EgyptAir's MS 778 directions, among other things:

(1) requested the issue of tickets on the same service to four named individuals as escorts of Mr Wamala; and

(2) added in section D:

> I have directed that the person named above be placed on board your ship/aircraft and I require you to prevent him/her from disembarking in the United Kingdom or before the directions for removal have been fulfilled.
>
> For this purpose the captain of the ship/aircraft may detain the above named illegal entrant on board.

A2.7 Mr Wamala's MS778 notice issued/served 14/16 Dec 2011

54. Also on 14 December 2011 Mr Wamala's MS778 notice was issued by UKBA, using form IS.151D. Although this form was headed "Removal directions issued to an illegal entrant/other immigration offender or a family member of such a person", it in fact constituted a notice of EgyptAir's MS 778 directions to be given to Mr Wamala. It stated:

> Under paragraphs 9-10A of Schedule 2 to the Immigration Act 1971 & section 10(1) of the Immigration and Asylum Act 1999
>
> To Felix Brunner Wamala
>
> REMOVAL DIRECTIONS
>
> A. Directions have now been given for your removal from the United Kingdom by (flight) MS778 to Cairo at 14.00 hrs on 24 December 2011 connecting onto the MS837 to Entebbe at

21:45 hrs on 24 December 2011.
…

55. Mr Wamala's MS778 notice was recorded by Brook House IRC on 16 December 2011 as having been served on Mr Wamala.

A2.8 CWT, the ViewTrip website, & changes to the itinerary

56. Carson Wagonlit Travel UK Ltd ("CWT") was the Home Office's travel agent at Heathrow. On 13 December 2011 it had received an email from Gabriella Allman of the Home Office asking for travel arrangements to be made for Mr Wamala's removal to Kampala.

57. Once such arrangements are made they are displayed on the ViewTrip website. This is a limited access website used by the Home Office, CWT and Reliance to record and to access ticketing and travel information for those who are being removed and their escorts.

58. At 11:54 on 14 December 2011 CWT emailed Reliance seeking the names of those who were to act as escorts for Mr Wamala's removal. The email did not set out a detailed itinerary for relevant flights, but instead contained a link to the ViewTrip website. There is no reason to doubt that at this stage the itinerary for Mr Wamala on that website showed the EgyptAir flights described in Mr Wamala's MS778 notice.

59. However at 16:18 on 14 December 2011 CWT emailed the Home Office and Reliance advising that the itinerary had been changed to fly on Qatar Airways at a later departure time. In this regard CWT advised that the original EgyptAir flight no longer had available seats, and that the new itinerary was a more cost effective option. This email, too, did not set out a detailed itinerary for relevant flights, but instead contained a link to the ViewTrip website. There is no reason to doubt that by 16:18 on 14 December2011 the ViewTrip website had been altered so as to show Mr Wamala as departing from Heathrow at 8:30pm on Christmas eve on flight QR2 to Doha for onward travel on a connecting flight to Kampala.

60. However UKBA did not cancel the EgyptAir MS778 directions. Nor did it withdraw Mr Wamala's MS778 notice. Instead it served Mr Wamala's MS778 notice on DPG on 15 December, and on Mr Wamala himself on 16 December: see section A2.7 above.

A2.9 The MS778 movement notification signed on 19 Dec 2011

61. On 19 December 2011 a 2 page document was prepared by the Detainee Escorting & Population Management Unit ("DEPMU", part of UKBA). It was on form IS.278, entitled:

> IMMIGRATION DETAINEE – MOVEMENT NOTIFICATION (Removal Direction)

62. I shall refer to this type of document, whether or not on form IS.278 and whether or not relating to a removal direction, as a "movement notification". The movement notification prepared by DEPMU on 19 December 2011 was addressed to Reliance, and stated:

> You are required to take possession of the detention authority 'authority to detain' form for the detainee as detailed below and take them into your custody. You are required to transfer them to their destination as shown. You are required to hand the detention authority 'authority to detain' to the new custodian.

63. The remainder of the movement notification contained a table setting out information relevant to the movement. The departure location was Brook House IRC. The destination location was described as:

> Heathrow TN3

United Kingdom Border Agency, Terminal 3,

Heathrow Airport…

64. As regards the "detainee as detailed below", the table stated that the family name was "Mvoi", and the forenames were "Brynner Mwaburi". However on the following line in the table aliases were set out, the first of which was "Felix Brunner Wamala".

65. In relation to Mr Wamala's removal, the table gave a date and time of "24 December 2011 at 14.00". It identified the flight number as MS778.

66. The last entry in the table, on page 2 of the document, was concerned with a "Non Medical Risk Analysis Description". In relation to "Criminal Activity" this entry in the table stated that Mr Wamala was wanted by police for assaulting a police officer. The statement that Mr Wamala was wanted by police for assaulting a police officer was repeated later in the entry, in a passage dealing with "Disruptive Behaviour".

67. It will be apparent from this movement notification that:

(1) Mr Wamala was right to be concerned that Home Office files continued to suggest that he had assaulted a police officer (see section A2.2 above); and

(2) those involved in the preparation of the movement notification appeared to have overlooked, or to have been unaware of, the changes in itinerary advised by CWT at 16:18 on 14 December 2011.

68. This movement notification stated that it was created by Harry Sidhu of DEPMU on 19 December 2011 at 11:13. At the foot of the first page, in spaces designated for "Signature" and "Date", there was written in manuscript "Harry" and "19/12/11". It thus seems clear that after creating the document at 11:13 on 19 December 2011 Mr Sidhu signed it later that day. I shall refer to the document, at the stage immediately after being signed on 19 December 2011, as "the MS778 movement notification".

A3. Background events on 23 December 2011 & Christmas eve

A3.1 General aspects of 23 and 24 Dec 2011

69. In section A1 above I have described the issuing of Mr Wamala's removal JR on 23 December 2011, and Mr Wamala's fax to UKBA shortly before 2pm that day informing UKBA of this and seeking deferral of his removal. I describe in section A3.2 and A3.3 below how an earlier judicial review claim by Mr Wamala was finally disposed of on 23 December 2011, and how UKBA utilised this later that day in a letter refusing Mr Wamala's request for deferment of his removal. In section A3.4 below I deal with the outcome of Mr Wamala's removal JR. The arrangements for Reliance's escorts which were put in place on 23 December 2011, and the corresponding arrangements set out on the ViewTrip website, are described in section A3.5 below. Section A3.6 below deals with the faxing to Reliance of, and alterations which are now accepted to have been made by Reliance to, the MS778 movement notification. In section A3.7 below I describe an exchange of letters between Mr Timms MP and UKBA on 23 December 2011 and Christmas eve. The remaining events on Christmas eve are dealt with in section F below.

A3.2 Mr Wamala's detention JR & the Rix refusal of 23 Dec 2011

70. On 23 December 2011 an order ("the Rix refusal") was made by Lord Justice Rix, sitting as a single judge of the Court of Appeal, Civil Division. It concerned an application for permission to apply for judicial review ("Mr Wamala's detention JR") which had been made by Mr Wamala as a litigant in person on 13 June 2011. Permission to proceed with Mr Wamala's detention JR had been refused on the papers by Mr Charles George QC. It had then been refused at an oral renewal hearing before Mr Clive Lewis QC. Mr Wamala sought permission to appeal to the Court of Appeal against the decision of Mr Lewis QC.

71. The application for permission to appeal came before Lord Justice Rix for consideration on the papers. The Rix refusal rejected that application, described it as being totally without merit, and barred any request for this rejection to be reconsidered at an oral hearing. It also refused an application by Mr Wamala for a stay of execution.

72. The Rix refusal contained written reasons for rejecting the application for permission to appeal. Paragraph 1 of the reasons noted the decisions of Mr Charles George QC and Mr Clive Lewis QC. Paragraph 2 of the reasons noted the decisions of the First Tier Tribunal and the Upper Tribunal described in section A2.4 above. In paragraph 3 of the reasons Lord Justice Rix noted that the claim for judicial review was "formally in respect of the decision to detain" Mr Wamala pending deportation. In the same paragraph Lord Justice Rix noted that Mr Wamala's claim "also seeks informally to raise anew all the asylum and human rights grounds which have been concluded against him".

73. In both these respects the Rix refusal said in paragraph 3 that the claim for judicial review:

> is totally without merit: for all the reasons contained in the decisions referred to herein.

74. Mr Wamala had not learned of the Rix refusal at any stage prior to being put in the Reliance van at Brook House IRC on Christmas eve.

A3.3 UKBA refusal to defer removal: 23 Dec 2011

75. At a late stage on 23 December 2011 an official of UKBA signed a letter to Mr Wamala responding to the fax that Mr Wamala had sent from Brook House IRC (see section A1 above). The letter enclosed a copy of the Rix refusal. The letter explained that relevant policy guidance no longer required automatic deferral of removal directions if the judicial review application said to warrant deferral were lodged within 3 months of the conclusion of a previous judicial review on the same issues or similar grounds. The letter noted that Mr Wamala's removal JR sought to rely on matters that were raised or could have been raised in his application for permission to appeal the order of Mr Clive Lewis QC.

76. I shall refer to this letter as "the UKBA refusal to defer removal". It is plain from the letter that, even at this late stage on 23 December 2011, UKBA believed that Mr Wamala's removal was to take place in accordance with Mr Wamala's MS778 notice. The essence of the position adopted by UKBA can be seen from the following passages in the letter:

> … You will know that you are being removed to Uganda on 24 December 2011 @ 14:00 hours.
>
> …
>
> … we are not prepared to defer the directions that are in place for your removal. It will only be appropriate to defer your removal if an injunction is obtained preventing the same. In the absence of an injunction, your removal will proceed as already notified. …

77. Mr Wamala had not learned of the UKBA refusal to defer removal at any stage prior to being put in Reliance's van at Brook House on Christmas eve.

A3.4 Failure to seek urgent relief from the court on 23 Dec 2011

78. When Mr Wamala's removal JR was issued it was not accompanied by a request for urgent interim relief. If it had been accompanied by such a request then the matter would have been put before a judge for immediate consideration on the papers. Mr Wamala appears to have considered that such a request was unnecessary. No doubt this was because of his belief that he could rely on the policy cited in the letter that he faxed to UKBA on 23 December 2011.

79. That belief, however, proved to be mistaken. In the absence of any request for urgent relief, Mr Wamala's

removal JR did not come before a judge until 19 March 2012 when Ms Elisabeth Laing QC considered the matter on the papers.

80. Ms Laing QC's order, made that day, refused permission to proceed. The order set out reasons which can broadly be described as identifying two grounds for the refusal of permission. The first was that the previous directions for Mr Wamala's removal had been cancelled, and the claim was therefore academic. The second was that Mr Wamala's outstanding representations had been considered in a letter from UKBA dated 8 February 2012. That letter had concluded that none of the matters raised by Mr Wamala amounted to a fresh claim for asylum or human rights purposes. Ms Laing QC commented that there was no arguable error in that conclusion and that there was now no legal obstacle to Mr Wamala's removal.

A3.5 Escort arrangements & the ViewTrip website on 23 Dec 2011

81. By the evening of 23 December 2011 Reliance had identified the team of escorts to collect Mr Wamala from Brook House IRC. The team was led by a Senior Detention Custody Officer ("Senior DCO"), Mr Ian Charles. An additional Senior DCO, Mr Robert Simmons, was to drive the Reliance van from Brook House IRC to Heathrow. The remainder of the team held the rank of Detainee Custody Officer ("DCO"). They were Ms Carol Govey, Mr Simon Duke and Ms Carol Lee. The arrangements made by Reliance were that Mr Simmons would assist the remaining escorts in putting Mr Wamala on the aircraft, and would then return to the Reliance van.

82. The escorts who were to travel with Mr Wamala to Kampala were thus Mr Charles, Ms Govey, Mr Duke and Ms Lee. Their names were emailed by Reliance to CWT at 18:31 on 23 December 2011. At 19:48 a reply was emailed by CWT stating that this "name change request has now been completed …"

83. Reliance's records include printouts of two "snapshots" from the ViewTrip website. The first snapshot set out the travel bookings made for Mr Charles, Ms Govey, Mr Duke and Ms Lee. The second snapshot set out the travel bookings for Mr Wamala. On both these printouts, the outward flights begin with QR2, departing from Heathrow Terminal 4 at 20:30 on Saturday Christmas eve, and arriving at Doha at 06:10 on Sunday 25 December 2011. The printouts then showed a continuation outward flight departing Doha at 08:00 on Sunday 25 December 2011 and arriving at Entebbe airport (for Kampala) at 13:30 the same day.

A3.6 Alterations produce the purported QR2 movement notification

84. As part of pre-trial preparation, documents disclosed by Reliance as being held by it included a movement notification ("the purported QR2 movement notification"). A photocopy, which was in black and white, was supplied to Mr Wamala's legal team. At the top of both pages of the document were standard imprints recording that it had been faxed by DEPMU to Reliance at 7:41 on 23 December 2011. In all other respects the typewritten part of the document was identical to the typewritten part of the MS778 movement notification. However the purported QR2 movement notification included more manuscript annotations than appeared on the MS778 movement notification. The manuscript annotations appearing from the photocopy of the purported QR2 movement notification were:

(1) the signature "Harry" and date, "19/12/11", which, as mentioned in section A2.8 above, formed part of the MS778 movement notification;

(2) an indecipherable marking in the top right hand corner with a date, "23/12/11";

(3) an alteration to the entry in the table for the date and time of the flight on which Mr Wamala was scheduled to depart: the time of "14.00" was circled and struck through;

(4) the insertion of a new time for that flight: "20:30";

(5) an alteration to the entry for the flight number: "MS778" was struck through; and

(6) the insertion of a new flight number: "QR2".

85. Until late March 2015 Reliance's case was that all of these annotations had been made by the Home Office prior to faxing the movement notification to Reliance at 7:41 on 23 December 2011. However in March 2015 arrangements were put in place for Mr Wamala's solicitor to inspect the original of the purported QR2 movement notification at the offices of Reliance's solicitor. It was found that the alteration identified at (3) above appeared on the movement notification in blue ink, while those at (4), (5) and (6) above appeared in red ink. By contrast, those identified at (1) and (2) appear on the movement notification in black ink, consistently with them having been present on the document when it was faxed by DEPMU to Reliance at 7:41 on 23 December 2011.

86. On 24 March 2015 Mr Wamala made a request for further information about the alterations shown in blue and red ink. A reply to that request was verified by Reliance on 31 March 2015. It accepted that the alterations in blue and red ink were made by someone in Reliance's office.

87. This represented a substantial change from what had been said earlier by Reliance. Among other things, Reliance had served a witness statement of Ms Michelle Payne, a Senior Overseas Co-ordinator for Reliance dated 18 March 2014, stating that the alterations to the departure time and flight number were not made by her or her department. Her statement added:

> We do not make handwritten amendments to Movement Notifications.

88. The further information supplied on 31 March 2015 said that Ms Payne did not make the amendments in blue and red ink. It added that Ms Payne now realised that she was in error in believing that those amendments were included as part of the fax from DEPMU. The further information added that Reliance cannot be sure who made those amendments, but was making further enquiries to ascertain whether the person who made the amendments could be identified. The stance taken by Reliance since then has been that it does not know who made those amendments.

A3.7 Mr Timms MP's fax/ UKBA response: 23/24 Dec 2011

89. On 23 December 2011 Mr Timms sent a fax to UKBA which he copied to Mr Wamala. The fax noted that Mr Wamala had removal directions set for the next day, and asked whether they could be put on hold until two applications by Mr Wamala were considered. The first application comprised further submissions dated 15 December 2011 for discretionary leave to remain, posted to the Home Office's Further Submissions Unit in Liverpool. The second was a request made on form FLR(O) for leave to remain on the basis of long residence, submitted to UKBA's Durham Office.

90. A reply was sent on Christmas eve by an Assistant Director of UKBA. As to the applications referred to in Mr Timm's fax, the reply noted that an application for discretionary leave had been received on 16 December 2011 and an application for long residence had been received on 23 December 2011. It commented that these applications were submitted only after the removal directions were issued, and added that Mr Wamala's unsuccessful tribunal challenges had taken place after an earlier application on the basis of long residency had been rejected. Moreover, the letter relied on, and attached a copy of, the Rix refusal. The letter concluded that UKBA remained satisfied that Mr Wamala had submitted no new information sufficient to justify reversing the original decision, and that upon this basis his removal would proceed as arranged.

91. The author of UKBA's letter of Christmas eve believed that Mr Wamala would be removed in accordance with Mr Wamala's MS778 notice. This is clear from the first paragraph of the letter, which stated that Mr Wamala was:

> … currently detained at Brook House IRC awaiting his removal to Uganda set for 14:00 today.
> …

A4. Mr Wamala's beliefs and concerns on Christmas eve

A4.1 Mr Wamala's beliefs and concerns: introduction

92. Mr Wamala gave evidence about his beliefs and concerns on Christmas eve. For reasons given in the present section, in section B2.1, and in section F, I accept that evidence to the extent set out below.

A4.2 Belief about escorts' use of excessive and dangerous force

93. Mr Mubenga's death had a dramatic effect on Mr Wamala. That death involved the use of improper restraint techniques by overseas escorts. It was extremely upsetting for Mr Wamala, not merely because of the circumstances in which it occurred, but also because Mr Mubenga and Mr Wamala had been in neighbouring rooms in Brook House IRC.

94. As noted in section A2.3 above, Mr Wamala's evidence was that Mr Mubenga's death brought home to Mr Wamala how vulnerable detainees were when being removed by overseas escorts who use excessive and dangerous force. When cross-examined, Mr Wamala added that:

(1) he had seen people who were beaten with broken jaws; and

(2) he had knowledge of people "being taken to the airport and mugged and beaten up with wounds" and this was "very fresh in my mind".

95. I make no finding as to whether these events had happened. What is relevant is that Mr Wamala believed that they had happened.

96. Mr Mubenga's death had occurred just over a year before the events of Christmas eve 2011. During the days preceding Christmas eve 2011, and on that day, Mr Wamala was detained in what was effectively a segregated cell awaiting removal. I have no doubt that during that period Mr Wamala feared that he would suffer the same fate as Mr Mubenga, and I have no doubt that Mr Wamala's mind dwelt on that fear.

A4.3 Belief that policy required withdrawal of the MS778 directions

97. Mr Wamala was under a misapprehension as to Home Office policy. The issued claim form in Mr Wamala's removal JR had been sent by fax to UKBA on 23 December 2011. There is no reason to doubt that Mr Wamala firmly believed that Home Office policy would require UKBA, on receipt of that claim form, to defer the removal planned for 24 December: see the covering letter described in section A1.2 above. That belief was wrong, but Mr Wamala did not appreciate this at any relevant stage. For much of Christmas eve 2011 Mr Wamala was under the misapprehension that, in accordance with what he understood to be Home Office policy, his removal would be deferred.

A4.4 Belief that the MS778 directions had been withdrawn

98. While at Brook House IRC Mr Wamala had no inkling that anyone had an intention to remove him on a flight departing during the evening of Christmas eve, and not at 2pm. His ignorance arose from a blunder on the part of UKBA, which had failed to ensure that the directions for Mr Wamala's removal on MS778 were revoked and replaced by fresh directions for removal on flight QR2. The notice served on Mr Wamala had specified that he would be removed on a flight departing Heathrow at 2pm. As time went by and no escorts arrived it was natural for Mr Wamala to conclude that, in accordance with what he believed to be relevant policy, the directions for his removal either had been withdrawn or were no longer effective.

99. In that regard, nothing said by the Reliance escorts when taking custody of Mr Wamala at Brook House IRC informed him of any justification for being collected and taken away an hour after flight MS778 had departed. Reliance's skeleton argument asserted that Mr Charles told Mr Wamala that he would be travelling on flight QR2 at 8.30pm. Under cross-examination, however, Mr Charles disavowed saying any such thing. As was accepted by Mr Charles, what happened was:

(1) Mr Charles asked Mr Wamala if he knew what was going on;

(2) the answer that Mr Wamala gave to Mr Charles was, "No";

(3) while at Brook House IRC Mr Charles did not tell Mr Wamala which flight he was going to be put on; and

(4) while at Brook House IRC Mr Charles did not tell Mr Wamala the departure time of the flight that he was going to be put on.

A4.5 Belief that the escorts regarded him as violent

100. There was a further blunder by UKBA which had an important consequence for Mr Wamala. There had been repeated promises made by UKBA, most recently in the letter dated 22 December 2011, that records would be amended to reflect that he was never charged, convicted nor given conditional discharge for the alleged offence of assault on a police officer: see section A2.2 above. Despite this, the paperwork given to the Reliance escorts said that Mr Wamala was wanted for assaulting a police officer. It is common ground that:

(1) Mr Wamala was told by Mr Charles that Mr Charles was aware that Mr Wamala's background included violence, and that Mr Wamala had assaulted a police officer;

(2) Mr Wamala objected to this, and

(3) Mr Charles showed Mr Wamala the references in the paperwork to his being wanted for assault on a police officer.

101. Initially Mr Charles was reluctant to accept that, at this point, he had told Mr Wamala that Mr Charles and his colleagues had power and authority to use force. On day 4, however, Mr Charles was shown the transcript of his interview with Ms Beck. In that interview he described what he had tried to convey to Mr Wamala:

> "I did try to point out to him that because of his violent or aggressive nature where he had been misbehaving it was unfair and I did not expect him to abuse or offer bad behaviour towards my officers because we weren't there for that but should that happen then there are obviously consequences that we are empowered under UKBA terms that we remove detainees to use force if necessary. …"

102. Mr Charles then accepted that this was what he had actually said to Mr Wamala. Mr Charles was asked whether he accepted that saying this to Mr Wamala had resulted in Mr Wamala feeling threatened. Mr Charles replied that he could not speak for Mr Wamala's state of mind in that regard. It was then pointed out to Mr Charles that the transcript continued:

> Unfortunately Felix took that as a threat because he said "Are you threatening me?" and I said "No, I'm not threatening you"…

103. Mr Charles did not deny that this exchange had taken place. What he said in cross-examination was this:

> Unfortunately, I had already got off to a bad footing with Mr Wamala because of the declaration that I was given with regard to an erroneous assault case upon a police officer. Therefore, I think the dialogue between myself and Mr Wamala was somewhat distant and tetchy, to say the least.

104. Mr Wamala gave evidence:

(1) of feeling threatened by what Mr Charles had said;

(2) of not knowing what was going to happen next; and

(3) of being very frightened.

105. Thus the escorts, on arrival at Brook House IRC, made it clear that they believed Mr Wamala to be a violent man. I consider that this undoubtedly exacerbated Mr Wamala's fears that he would suffer the same fate as Mr Mubenga.

A4.6 Escorts' conduct adding to the stress on Mr Wamala

106. Unprofessional conduct, including addressing Mr Wamala in a way that could be seen as racist, strengthened and added to Mr Wamala's concerns. As regards the potentially racist aspect, I note that all 5 escorts were white.

107. As recorded in paragraph 432 of the Beck report, the unprofessional conduct began within minutes of Mr Wamala entering the van:

> 432. Mr Wamala gets onto the van at 15:42:23hrs and has indicated that he does not want to engage in conversation or to be engaged. Less than two minutes after he [enters] the van, DCO Govey says to him "Only trying to be polite… just trying to be nice and polite and professional". This is the first in a number of statements which can only have served to antagonise Mr Wamala, who could not have made any clearer that he did not wish to engage with the escorts.

108. What was actually said by Ms Govey is summarised in paragraph 50 of the Beck report:

> 50. 15:43:50hrs: DCO Govey can be seen getting into the van and closes the door. She looks at Mr Wamala and says "You have got some serious paperwork" before laughing. Her tone is jocular. She asks whether he had kept it all, and DCO Duke asks "Did they let you have it all, your paperwork?" When Mr Wamala does not respond DCO Govey sits down and takes her gloves off, saying "Only trying to be polite, Bruno, just trying to be nice and polite and professional"

109. It can be seen that from the outset Ms Govey paid no regard to Mr Wamala's desire to be left alone. Also from the outset she addressed Mr Wamala as "Bruno". For reasons given in section B3.4 below I conclude that this was not knowingly racist. The CCTV summary in the Beck report records that a male escort also referred to Mr Wamala as "Bruno", but does not identify the escort in question.

110. Paragraph 81 of Mr Wamala's witness statement said of Ms Govey:

> 81. Once in the van one of the female escorts started talking to me. She seemed to think it was all a joke and she kept calling me "Bruno". She did this throughout the journey and kept standing up from her seat and leaning over my shoulder talking at me even though I made clear I did not want to talk back to her. I found her to be sarcastic and patronising. I felt she was trying to wind me up.

111. At a later stage in the journey paragraph 86 of the statement, which referred to Ms Govey as "the other female escort", said:

> 86. When I got back into the van after the security check one of the female escorts moved position and started to sit next to me in the front row. One of the male escorts was sat on the other side of me. The other female escort was sat behind me and she continued to stand up and lean over my shoulder to talk at me. I felt hemmed in and this added to the stress of the situation.

112. I express no view on whether Ms Govey was deliberately trying to wind up Mr Wamala. It is enough for present purposes to record that paragraphs 81 and 86 accurately record Mr Wamala's perceptions.

A4.7 The escorts' confusing statements about judicial review

113. As regards what happens when a judicial review claim form is issued prior to a removal, statements made by the escorts to Mr Wamala were confusing. The assertions made by the escorts in this regard confirmed pre-existing suspicions by Mr Wamala that he could not trust anything said by the escorts.

114. The confusing statements made by the escorts repeatedly referred to judicial review claims being "overturned" by UKBA or a part of UKBA know as the Operational Support and Control Unit ("OSCU"). The notion that UKBA, or any other part of government, can "overturn" a judicial review is fundamentally wrong. This case will, I hope, emphasise how important it is that escorts, and those who give information to them, have a basic understanding of elementary principles as to what UKBA can and cannot do. In order to avoid confusion, it is also important that those communicating information to escorts, and escorts when communicating information to those who are to be removed, use correct terminology. Adherence to professional standards requires nothing less.

115. The basic principles and appropriate terminology can be set out briefly:

(1) In England and Wales judicial review claims are dealt with by the Administrative Court, part of the Queens Bench Division of the High Court of Justice.

(2) If the government considers an Administrative Court order ("the index order") to be wrong, its first step is to consider whether the Administrative Court itself has power to set aside or alter the index order. If so, then the appropriate route of challenge will be to issue an application notice in the Administrative Court for that purpose. If the Administrative Court does not have power to set aside or alter the index order, then the appropriate route of challenge would be to appeal to the Court of Appeal.

(3) It may be that while the challenge is under way the government wishes to be released from its obligation to comply with the index order. If so, then the appropriate course is to issue an application notice seeking a suspension, known as a "stay", of the index order. Unless and until such a stay is granted by the court, the obligation to comply with the index order will remain in place.

(4) Where removal directions are in place, and UKBA is notified of a judicial review claim affecting the proposed removal, then if no court order has yet been made it is for UKBA, in accordance with relevant policy, to consider whether to defer removal. If UKBA decides not to defer removal, this does not mean that the judicial review claim has been "overturned". It means that UKBA has decided to assert that what it knows about the judicial review claim does not warrant deferral of the proposed removal. Such a decision can conveniently be described as a UKBA refusal to defer removal.

(5) What if there has been a UKBA refusal to defer removal, or it is feared that there will be a UKBA refusal to defer removal? In those circumstances, if there is good ground to do so, the person who is to be removed can make an application to the court for urgent interim relief. This will usually be for an order known as a "stay of removal". Such an order temporarily suspends removal directions, and thus stops removal for the time being. When considering such an application, there are in broad terms three courses which may be taken by the court:

(a) the court may consider it appropriate to grant a stay of removal. So long as the stay is in place it will suspend whatever is the subject of the stay.

(b) the court may decline to grant a stay of removal. This does not mean that the judicial review claim is "overturned": the court's order is simply that the application for a stay of removal is refused.

(c) the court may, in addition to refusing to grant a stay of removal, go on of its own motion to refuse permission to apply for judicial review. If the court takes this course then neither it nor UKBA has "overturned" the judicial review claim: what has happened is that the court has

refused permission to proceed with the claim. This means that, unless the refusal of permission is set aside, the judicial review claim has failed.

116. Paragraphs 125-130 of the Beck report summarise a particularly disturbing series of assertions made to Mr Wamala when he was in Reliance's van at Heathrow airport about an hour before boarding the aircraft. Ms Payne rang Mr Charles' mobile telephone in order to inform him about the status of Mr Wamala's removal JR. Mr Charles passed the phone to Mr Wamala, and put it on loud speaker so that all could hear. What Ms Payne then said to Mr Wamala was that his judicial review claim "has been overturned by OSCU". Mr Wamala replied that his judicial review claim had been issued the previous day, adding:

> It hasn't been heard. They haven't set a date for it so don't lie to me that it has been heard.

117. Ms Payne objected to being called a liar, and refused to speak to Mr Wamala further. Mr Wamala commented to the escorts:

> She's not telling the truth. The Immigration is not the Royal Courts of Justice.
>
> …
>
> You are all responsible people and I do not want to disrespect you, but someone tells you something which is a lie.

118. What then happened was that the escorts told Mr Wamala that:

> Immigration can overturn a judge's decision.

119. As to these exchanges, Mr Wamala correctly said that his judicial review claim could not have been "overturned" by the immigration authorities. Moreover, Mr Wamala's comment that the immigration authorities were not the Royal Courts of Justice was absolutely right. It applied, to his own case, the fundamental principle of the rule of law. The escorts' assertion that the immigration authorities can "overturn" a judge's decision was absolutely wrong. It suggested that the escorts had no understanding of the rule of law. The only way in which an Administrative Court judge's decision can be altered is by a further order of the Administrative Court or a higher court. The immigration authorities may seek a further court order of that kind. But unless and until a further court order of that kind has been made, or a court order has granted a stay of the earlier decision, the earlier decision stands and must be obeyed.

120. Shortly after the exchange with Ms Payne matters were made worse. Mr Wamala had rung his friend, Mr Adelabuo. At Mr Adelabuo's request Mr Wamala had asked the escorts for information about the flight that they intended to put him on, and had learned that it was to depart at 8.30pm. Mr Adelabuo then made the point that Mr Wamala's MS778 notice specified the MS778 flight, and he could not be removed on any other flight. Mr Wamala passed his mobile phone to Mr Charles, and Mr Adelabuo made the same point to Mr Charles. The response of Mr Charles was that he was "not too bothered". Mr Charles commented that he had received no phone call stopping the removal. One of the escorts asked where Mr Wamala's paperwork was. When Mr Wamala said it was in his luggage, the reaction of the escorts was laughter, along with a joke that if the flight had been at 2 o'clock Mr Wamala would already have been on it. But this was a serious matter. If there had been no removal direction for flight QR2 then Mr Wamala could not be put on the aircraft that Reliance put him on. In oral evidence Mr Charles said that he was not concerned about this, as he had spoken with Ms Payne when he arrived at Brook House and reviewed the paperwork there, and she had told him he was going on the right flight.

A4.8 Mr Wamala's request to see the captain

121. Shortly before leaving the van Mr Wamala asked to see the captain of the aircraft. He was assured by Mr Charles that once they had boarded the aircraft Mr Charles would ask the captain to come and see Mr Wamala. Mr Wamala's evidence was that he could not trust the escorts and he believed that the captain would be his

saviour. Mr Wamala believed that, while Mr Charles had promised to ask the flight captain to speak to Mr Wamala, Mr Charles had only done this as a way of getting Mr Wamala on to the aircraft and strapped into a seat. Once strapped into a seat there would be little he could do to raise his concerns with the captain.

A4.9 Mr Wamala's beliefs & concerns: conclusions

122. A clear picture emerges of relevant elements of Mr Wamala's mental state. By the time that Mr Wamala boarded the aircraft:

(1) Mr Wamala believed that the escorts would have no compunction in using force against him;

(2) Mr Wamala greatly feared that if he offered any resistance to the escorts he might suffer the same fate as Mr Mubenga;

(3) Mr Wamala believed that the escorts could not be trusted;

(4) Mr Wamala rightly believed that the attempt to remove him on flight QR2 was unlawful because of the absence of any notice to him identifying that flight;

(5) Mr Wamala considered that the only person who could prevent his unlawful removal was the captain of the aircraft;

(6) Mr Wamala believed that once he was strapped to his seat the escorts would go back on their promise to contact the captain;

(7) Mr Wamala therefore considered it vital to make contact with the captain immediately upon entering the aircraft;

(8) Mr Wamala's motive for wanting to see the captain was to prevent being unlawfully removed on a flight that had not been notified to him.

A5. The issues, and Mr Wamala's primary & alternative claims

123. The oral opening submissions from Mr Wamala identified five issues on liability. I describe them in sections A5.1 to A5.5 below. The oral submissions also set out Mr Wamala's approach to his primary and alternative claims (see section A1.7 above). The approach to his primary claim was set out in the course of submissions on issue 2. I accordingly describe it and comment on it in section A5.2 below. Matters relevant to Mr Wamala's alternative claim appear in sections A5.2 to A5.5 below. Issues as to the amount of damages for which Reliance would be liable are dealt with in section G below.

A5.1 Issue 1: the March 2014 question

124. The first issue identified on behalf of Mr Wamala was the question directed by Mr Justice Mitting on 28 March 2014 to be tried as a preliminary issue. In section A1 above I have referred to this question as "the March 2014 question". For convenience I set it out again here:

> Whether or not there was lawful justification for the use of force to convey the claimant to Heathrow airport or put him on or remove him from Qatar Airways flight QR2 to Doha on 24 December 2011.

A5.2 Issue 2: reasonableness of force used by Mr Wamala

125. The second issue identified in the oral opening for Mr Wamala was whether Mr Wamala, in resisting the removal attempt, went beyond the use of reasonable force. As it seems to me, this second issue proceeded upon the footing that the answer to the March 2014 question (issue 1) was "No". If the answer to issue 2 wasalso

"No", then it was submitted for Mr Wamala that Reliance could not succeed. This approach assumed that in these circumstances Mr Wamala's primary claim (see section A1) would have succeeded.

126. There are two implicit corollaries to this approach to Mr Wamala's primary claim:

(1) if the answer to the March 2014 question is "Yes", then Mr Wamala's primary claim fails; and

(2) if the answer to the March 2014 question is "No", but the answer to issue 2 is,"Yes, in certain respects Mr Wamala used more than reasonable force in response to the attempt to remove him", then Mr Wamala could still complain about injuries to the extent that they were attributable to Reliance's actions prior to the stage when Mr Wamala used more than reasonable force. Once Mr Wamala used more than reasonable force, however, he would not be able to complain about injuries resulting from the use by Reliance employees of such force as was reasonably necessary to counter Mr Wamala's use of unreasonable force.

127. Reliance, however, suggests that whether Mr Wamala's primary claim is right, however, depends also on the answer to issue 3, to which I now turn.

A5.3 Issue 3: Reliance's para 18A alleged justifications

128. The third issue identified in the opening submissions for Mr Wamala was whether Reliance had any lawful authority to use force under statutory or common law rules identified in paragraph 18A of Reliance's re-amended defence served on 2 February 2015.

129. In sub-paragraphs (i) to (iv) of that paragraph Reliance identified four justifications for the use of force "as a matter of common law and statute …". Below I set out each such alleged justification in turn. I also set out in square brackets my short form description of the alleged justification. The justifications are that force on the part of Reliance's agents was:

(i) used in self-defence ["the self-defence justification"];

(ii) used in an attempt to prevent the commission of offences by the claimant ["the prevention of crime justification"];

(iii) used to prevent a breach of the peace ["the keeping the peace justification"];

(iv) specifically authorised by Paragraph 2 of Schedule 13 of the 1999 Immigration and Asylum Act, the claimant having been at all material times a detained person for whose delivery and custody the second defendant was responsible in accordance with escort arrangements within the meaning of Sections 147 and 156(1) of the 1999 Act ["the 1999 Act duties justification"];

130. Thus issue 3 comprises 4 sub-issues:

Issue 3.1: was any of the force used by Reliance permitted by the self-defence justification?

Issue 3.2: was any of the force used by Reliance permitted by the prevention of crime justification?

Issue 3.3: was any of the force used by Reliance permitted by the keeping the peace justification?

Issue 3.4: was any of the force used by Reliance permitted by the 1999 Act duties justification?

A5.4 Issue 4: did any Reliance employee use excessive force?

131. The fourth issue identified in opening submissions for Mr Wamala was whether any of Reliance's escorts used

excessive force. In that regard, two observations were made on behalf of Mr Wamala:

(1) if Mr Wamala's primary stance on liability is right, insofar as ordinary damages are concerned, this issue would not arise, as liability would not depend upon any demonstration by Mr Wamala that Reliance escorts had used excessive force;

(2) on that footing, however, this issue would be relevant to the question whether Mr Wamala was entitled to claim aggravated damages;

(3) if Mr Wamala's primary stance on liability were wrong, then this issue would arise in relation to Mr Wamala's claim for ordinary damages, as whatever entitlement Reliance may have had for using force would obviously not extend to the use of excessive force.

A5.5 Issue 5: Mr Wamala's claim under Article 3 ECHR

132. The fifth issue identified in opening submissions for Mr Wamala was whether Mr Wamala was entitled to succeed on his claim under Article 3 of the European Convention on Human Rights ("the Convention" or "the ECHR"). Mr Wamala's skeleton argument, in connection with the prohibition in Article 3 of torture or inhuman or degrading treatment, cited from the jurisprudence of the European Court of Human Rights:

> In relation to detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being. In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in art.3 of the Convention. The burden of proof rests on the Government to demonstrate with convincing arguments that the use of force which resulted in the applicant's injuries was not excessive." (*Tymoshenko v Ukraine* (2014) 58 EHRR 3, para 231)

133. Two propositions were advanced in Mr Wamala's skeleton argument as to the relevance of this issue. The first was that the common law should be read consistently with Article 3 so as to provide at least equivalent protection. The second was that the damages claimed by Mr Wamala at common law could equally be awarded under Article 3 as given effect by section 6 of the Human Rights Act 1998.

B. The course of the trial

B1. The course of the trial: general

B1.1 The course of the trial: introduction

134. As noted in section A1.4 above, Mr Justice Mitting on 28 March 2014 directed a preliminary issue in the form of the March 2014 question. In the second of two judgments that day, he observed that the amended particulars of claim ran to 42 pages and had 140 paragraphs. He added an initial comment, followed by a summary of his reasons (set out more extensively in the first of the two judgments) for directing a preliminary issue (see *Wamala v Home Office* [2014] EWHC 1503 (QB) at paragraph 4):

> … For a claim which fundamentally arises out of a single, short-lived incident on one day, that fact alone is remarkable. In truth this claim turns upon one issue: was the attempt to take him to Heathrow, to put him on the aeroplane, to keep him there and then to remove him lawful or not? That in turn depends upon whether or not there were in place lawful removal directions permitting that to occur. So far I have been referred to nothing which suggests that there was. If there was not then the simple claim for damages for personal injury caused by trespass to the person must succeed. The only issues then will be what was the extent if the injury and what, if any, financial and other consequences there have been.

135. I agree with Mr Justice Mitting's initial comment. I add two additional observations:

(1) CPR 16.4(1) requires that particulars of claim include a concise statement of the facts on which the claimant relies. The particulars of claim were drafted in October 2012. In large part they gave a historical account of events and evidence rather than the concise statement of facts required by CPR 16.4(1). Such an approach runs the risk of making the case unworkable, and loses sight of the need to for statements of case to help the court and the parties: see *Hague Plant Ltd v Hague* [2014] EWCA Civ 1609. There is a real danger that the statements of case of one or more of the parties will become such a morass that the only course is to start again: see *Richardson v Glencore Energy UK Ltd* [2014 EWHC 3990 (Comm).

(2) In the event, however, Mr Wamala avoided that danger. As noted in section A1.7 above, at trial the legal wrongs asserted by Mr Wamala were limited.

136. Turning to the reasons for directing a preliminary issue, as was observed by Mrs Justice Patterson (see *Wamala v Home Office* [2014] EWHC 2039 (QB) at paragraph 52), by the time of the hearing before her the arguments had developed since the matter was before Mr Justice Mitting. In that regard she allowed Reliance time to formulate an application to re-amend its defence. In the event Reliance's re-amended defence was not served until February 2015, and the issues that it raised were extensive. In March 2015 it became clear that the amendments introduced in the purported QR2 movement notice had been made by someone in Reliance's office. Further information was supplied by Reliance in this and other respects, and was verified on 31 March 2015.

137. At trial Reliance accepted that further amendments to the re-amended defence were needed. Formulation of those further amendments proved more difficult than had been expected. In the meantime there was no formulation of any detailed list of the multifarious issues raised by the re-amended defence. The result, as will be seen in sections F9 and F10 below, was that there were continued developments in the way that Reliance's case was put. I do not underestimate the difficulties that arose for Reliance once it acknowledged that the amendments introduced in the purported QR2 movement notice had been made by someone in Reliance's office. Nevertheless it seems to me that the difficulties in formulating the further amendments would have been reduced, if not avoided, if a detailed list of issues had been formulated, and subjected to critical analysis, prior to the trial.

138. During the period from March 2014 onwards judges dealing with this case have expressed concern that the cost of this litigation has become wholly disproportionate to the issues involved. I share that concern. Mr Justice Mitting's direction for a preliminary issue was a valiant attempt to limit the scope for further increases in costs. That direction was overtaken by the additional arguments advanced at the hearing before Mrs Justice Patterson. The outcome summarised in section A1.8 above is that those, and other, additional arguments have been of no assistance to Reliance.

B1.2 Course of the trial: arrangements for oral evidence

139. During pre-reading it seemed to me that it would be desirable for factual witnesses to give evidence in chief orally, rather than adopting the course of allowing the witness's written witness statement to stand as evidence in chief. I invited counsel to give consideration to this. On day 1 of the trial neither side objected to my proposal, provided that it was confined to the course of events from the process of Mr Wamala's boarding the aircraft through to the process of his departure from the aircraft.

140. It was then proposed on behalf of Mr Wamala that defence witnesses should not, prior to giving their own evidence, be permitted to be in court during testimony of other defence witnesses. Reliance had no objection to this course in relation to the five escorts who had taken Mr Wamala from Brook House to Heathrow, put him on the aircraft, and taken him off again. It submitted that there was no warrant, however, for taking such a course in relation to a Qatar Airways employee, Mr Jayatilaka, and in relation to a Reliance employee, Ms Payne, who had not formed part of the escort team. In a civil case witnesses are normally present when the evidence of other witnesses is given. For this reason, it seemed to me that I should not require Reliance to go beyond what had been conceded. Arrangements were accordingly made under which each of the five escorts

was, prior to giving oral evidence, absent from court during the testimony of other escorts.

B1.3 Course of the trial: video extracts of CCTV footage

141. Before hearing witness evidence the parties, at my request, arranged for me to be shown video extracts of CCTV footage recorded in the Reliance van. Ten extracts were proposed to be shown. In the event I was able to watch nine of them, comprising video extracts 1 to 3 and 5 to 10. Of these, video extracts 1-3 and 5-9 were concerned with the journey from Brook House IRC to Heathrow, and what happened in the van at Heathrow, during the period until Mr Wamala was put on the aircraft. Video extract 10 showed Mr Wamala being put back into the van after he had been taken off the aircraft.

B1.4 Course of the trial: oral factual and expert evidence

142. Evidence from factual and expert witnesses then followed as detailed in sections B2 to B4 below. It began on the afternoon of day 1, and ended on the morning on the last day of the hearing, 29 July 2015.

B1.5 Course of the trial: oral submissions & order of 5 Aug 2015

143. At the conclusion of the evidence Reliance sought permission to file a re-re-amended defence. It contained new amendments which were proposed to deal with, among other things, the alterations to the MS778 movement notification. I expressed concern at what appeared to me to be deficiencies in the proposed new amendments. It was agreed that a revised version would be prepared for consideration that afternoon. Much of the remainder of the morning was taken up with Reliance's oral closing submissions on the law. It seemed to me that there was no prospect of completing both sides' closing submissions on the facts as well as on the law in the time available on 29 July 2015. This was the last day of the hearing. I asked the parties to consider over the short adjournment what directions might be made for submissions to be dealt with in writing. When the hearing resumed after the short adjournment I was told that the parties had agreed that factual issues and issues about aggravated damages could be dealt with in writing.

144. During the afternoon of day 7 oral submissions were made for Mr Wamala on general principles of the law of trespass, the statutory regime, and the issues in the case. Turning to the proposed new amendments, it was apparent that there was insufficient time for them to be considered by Mr Wamala's legal team that afternoon. The stance taken for Mr Wamala was that I should, without considering the content of the latest version, make a ruling barring any further amendments to the defence. I declined to make such a ruling. Instead I allowed Reliance, when filing its written submissions on facts and aggravated damages, in addition to apply in writing for a revised version of the proposed amendments to be permitted. This was on the footing that in due course Mr Wamala's answer to the final version of the proposed revisions would be filed. This was to be done when filing his written submissions dealing with aggravated damages and facts.

145. The final stages of the hearing were taken up with a discussion of the extent to which Reliance would be permitted to lodge written submissions in reply to Mr Wamala's written submissions. It was accepted on behalf of Mr Wamala that Reliance would be entitled to reply on two new authorities which had been referred to in Mr Wamala's oral closing submissions, but no other entitlement to reply was accepted. By contrast, Reliance submitted that the way in which Mr Wamala's case had been closed had gone well outside the ambit of the amended particulars of claim. My conclusion was that this dispute could not sensibly be resolved in yet further oral argument at the end of what had already been a long day. I had earlier suggested that if there were any dispute between the parties as to the extent of entitlement to reply this should be dealt with in a joint note from counsel. I remained of the view that this was a preferable way to deal with the matter.

146. Accordingly my order dated 5 August 2015 provided for written submissions by Reliance, and written submissions in reply by Mr Wamala. Paragraph 1 of the order specified the matters which Reliance's written submissions were permitted to cover, and paragraph 3 specified a procedure for further applications:

> 1. The Defendant shall, on or before 2.30pm on 17 September 2015, email to the Court … its closing submissions in writing covering issues as to factual matters (including relevant expert

evidence), issues as to damages, issues in relation to new matters raised in the Claimant's reply, and the application for permission to amend;

…

3. Either side may apply for directions supplementing or varying this order, including a direction for an oral hearing of particular aspects of the closing submissions. Unless there is good reason to the contrary, any such application shall be made by email no later 2.30pm on 13 October 2015, and shall be accompanied by a joint note which:

(1) to the extent that the proposed further directions are agreed, explains the reasons why it is considered desirable for them to be made, and

(2) to the extent that the proposed further directions are not agreed, sets out the rival drafts and the contentions on each side.

B1.6 Reliance's Sep 2015 submissions & proposed amendments

147. In the event the further written closing submissions for Reliance ("Reliance's September 2015 submissions") were filed on 18 September 2015. They were accompanied by a further draft re-re-amended defence ("Reliance's September 2015 proposed amendments"). Among other things:

(1) as regards issue 3, concerned with common law and statutory justifications for the use of force, Reliance's September 2015 submissions sought to advance an additional ground in support of its prevention of crime justification (sub-issue 3.2). The additional ground, as set out in Reliance's September 2015 proposed amendments, was that offences under Articles 73 and 78 of the Air Navigation Order 2005 ("the 2005 Order") could be relied upon not only as a common law justification, as had previously been asserted, but also under a duty imposed by schedule 13 of the 1999 Act, paragraph 2(3)(b), to prevent the commission of offences by Mr Wamala.

(2) paragraph 18A of Reliance's September 2015 proposed amendments re-numbered the 1999 Act duties justification as sub-paragraph (v), and inserted a new sub-paragraph (iv), identifying a proposed additional justification as set out below.

148. I shall refer to this proposed additional justification as "the proposed general prevention of escape justification". As set out in the proposed new sub-paragraph (iv) of paragraph 18A, it asserted that force used by Reliance's agents was:

> used to prevent the claimant from escaping from the second defendant's lawful custody, the claimant being a person detained pursuant to a detention authority in form IS91 pursuant to the Immigration Act 1971 as he was at all material times a person subject of a deportation order whose detention had been authorised by the Secretary of State …

B1.7 Mr Wamala's October 2015 submissions & Mitchell 1

149. In response to Reliance's September 2015 submissions, Mr Wamala filed additional written submissions on 2 October 2015. I shall refer to them as "Mr Wamala's October 2015 submissions". In response to Reliance's September 2015 proposed amendments, Mr Wamala opposed Reliance's application for permission to amend. Four main grounds were identified. The first was that the proposed amendments were very late. The second was that they were "to some extent" unnecessary. The third ground was that in other respects the proposed amendments raised inappropriate and/or unclear points. The fourth ground was that the proposed amendments did not affect a "significant part" of Reliance's case. It was added that if permission were granted then Mr Wamala would need an opportunity to plead a reply.

150. As regards the 2005 Order, Mr Wamala's October 2015 submissions said that it was far too late to seek to place reliance upon Articles 73 and 78 of the 2005 Order. Mr Wamala added that they had no basis on the facts. Moreover Mr Wamala added that "these points fall by the wayside" because Articles 73 and 78 of the 2005 Order were revoked by the Air Navigation Order 2009 ("the 2009 Order"), with effect from 1 January 2011.

151. Mr Wamala's October 2015 submissions were accompanied by a witness statement made by Mr Mitchell of DPG on 1 October 2015 ("Mitchell 1"). It concerned new evidence relating to the number of steps on the rear staircase used by Mr Wamala and the escorts when Mr Wamala was put on and taken off the aircraft.

B1.8 Course of the trial: developments after 3 October 2015

152. On 15 October 2015 Reliance's legal team advised that it agreed to Mitchell 1 being adduced in evidence and did not wish to make any further submissions.

153. However on 28 October 2015 Reliance's legal team sent an email seeking to make additional submissions concerning the 2005 Order. In that regard, Reliance accepted that Mr Wamala's October 2015 submissions were right to say that Article 73 and 78 of the 2005 Order had been revoked by the 2009 Order. Reliance commented, however, that Mr Wamala's October 2015 submissions omitted to point out that the two relevant offences under those articles were replaced in almost identical terms by Articles 137 and 142 of the 2009 Order. I shall refer to this email as "Reliance's October 2015 submissions".

154. A response on behalf of Mr Wamala was sent in an email on 3 November 2015 ("Mr Wamala's November 2015 submissions"). This response objected that neither the 2005 Order nor the 2009 Order had been mentioned in Reliance's opening submissions, that neither of them had been mentioned in Reliance's oral closing submissions on the law, and that as permission had not been given for further legal submissions in writing it was too late for new legal submissions. In any event, it was suggested that more extensive submissions could be made on the part of Mr Wamala if permission were to be given for reliance upon the 2005 Order or the 2009 Order.

155. For reasons given in section F10.4 below I permit Reliance to advance its written submissions on the 2005 Order, but decline to permit Reliance to advance its written submissions on the 2009 Order. My ruling on Reliance's Sept 2015 proposed amendments is set out in section H2 below.

B2. Factual witnesses for Mr Wamala

B2.1 Witness evidence of Mr Wamala

156. Mr Wamala's main witness statement was made on 3 January 2014 ("Wamala 1"). It was supplemented by a further witness statement ("Wamala 2") made on 29 April 2015, giving an update on his injuries and their treatment.

157. As regards Mr Wamala's oral evidence, I noted earlier that both sides agree that Mr Wamala currently suffers from MDD and PTSD. In these circumstances the opening submissions for Mr Wamala properly referred me to what is said in the Equal Treatment Bench Book concerning witnesses with mental disability. Particular reference was made to paragraphs 28 to 31 as follows:

> 28. Health and abilities can affect people's experience of contacts with the justice process and their performance as witnesses. Research has identified the following three main areas of personal functioning which can be affected by mental impairment or learning disabilities.
>
> *Memory*
>
> 29. This may take the form of taking longer to absorb, comprehend and recall information. Recall of details such as chronological order may be particularly affected and recall of significant

events may be blocked if they were traumatic. Questions may need to be repeated or rephrased

Communication skills

30. Having limited vocabulary results in remembering things in pictures rather than words, leading to difficulties in understanding and answering questions. There may also be difficulty in explaining things in a way other people find easy to follow, or understanding subtleties of language or social etiquette.

Response to perceived aggression

31. Some people with mental disabilities are especially sensitive to negative emotion and may be suggestible. They may respond to rough or persistent questioning by trying to please the questioner. Others may respond with tearfulness or panic and be traumatised by the legal process of cross-examination. For responses to be reliable, questions should be kept simple and non-threatening.

158. Additional relevant guidance is found in paragraphs 32 to 39. Among other things it is appropriate to allow pauses for assimilation, and important for those in the witness box not to go on too long without a break. In addition, information which does not fit in with assumptions should not be ignored, as there may be a valid explanation for any apparent confusion.

159. As regards paragraph 31 in the guidance, I stress that during his oral evidence Mr Wamala was not subjected to rough questioning. In accordance with paragraphs 32 to 39 of the guidance Mr Wamala was allowed pauses for assimilation. It was nevertheless apparent that the process of answering questions was both stressful and tiring for him. Accordingly when Mr Wamala gave evidence at trial frequent breaks were made with a view to minimising the strain upon him.

160. Opening submissions for Mr Wamala identified nine preliminary points. In summary:

(1) it is not suggested that there was any aggression or resistance on the part of Mr Wamala during his transportation to Heathrow or at Heathrow prior to reaching the top of the staircase;

(2) Mr Wamala repeatedly objected to his removal, one such objection being that there were no valid removal directions;

(3) it is accepted that before getting on the aircraft Mr Wamala asked to speak to the captain, and was told by Mr Charles that Mr Charles would go to the captain and see if the captain would speak to Mr Wamala;

(4) it is accepted that immediately upon entering the aircraft Mr Wamala asked either to speak to the captain or for help;

(5) it is not suggested that Mr Wamala threatened to strike anyone or said anything to that effect;

(6) it is not suggested that Mr Wamala laid hands on anybody;

(7) it is not disputed that very considerable force was used on Mr Wamala by several escorts in a confined space;

(8) it was only when required to do so by the airline staff that the attempt to remove Mr Wamala from the UK was aborted; and

(9) at the stage when Mr Wamala, after leaving the aircraft, had reached the bottom of the steps he was "pretty much totally immobile, groaning and not putting up any physical resistance".

161. I comment that, as regards point (6) above, there was evidence that Mr Wamala grabbed Mr Duke by the

testicles. Subject to that, however, these preliminary points are sound, as far as they go. I take them into account.

162. I also take into account two points which emerge from psychiatric evidence. These points arise because, as noted earlier, it is common ground that Mr Wamala suffers from PTSD. As to those who suffer from PTSD, Professor Katona's evidence,which was not disputed by Dr Britto, was that:

(1) people with PTSD in the context of physical abuse often fluctuate considerably in their functional abilities, and may experience pain (and resultant limitation of movement) over and above what may be expected from objective imaging-based evidence of nerve or muscle damage;

(2) suspiciousness and dissociation are both common features of PTSD and provide a clinically plausible explanation for an apparent or real reluctance on the part of Mr Wamala to cooperate with Dr Britto and Mr Matthews;

(3) those who experience severe trauma can find it very difficult to recall accurately and in sequence the details of events that happened to them, and it is possible that because of the traumatic nature of some of a sequence of events, the person's memory of the whole of that sequence might be somewhat distorted.

163. This evidence by Professor Katona appears to me to chime with paragraph 29 and other passages in the guidance in the Equal Treatment Bench Book. I have in mind in particular the guidance that information which does not fit in with assumptions should not be ignored, as there may be a valid explanation for any apparent confusion.

164. Reliance submitted that four features concerning Mr Wamala amounted to a picture of a witness who had not been trying to give a truthful account of the incident. On this basis Reliance invited me to reject his evidence altogether unless it was corroborated by other evidence.

165. The four features identified by Reliance were:

(1) Mr Wamala's previous record of dishonesty;

(2) his attempting to present a false picture of his medical condition to the doctors instructed by Reliance;

(3) considerable inconsistency in Mr Wamala's various accounts of the incident; and

(4) Mr Wamala's account "is contradicted by all the other witnesses in the case".

166. As to the first feature, Reliance said that Mr Wamala had repeatedly shown himself as someone who was and is a person prepared to lie and cheat in order to beat the system and for personal gain. Ten specific matters were relied on. The ten matters began with the undoubted fact that Mr Wamala's original entry to the UK in 1995 was clandestine and illegal. In my view, however, this offered no support for a conclusion that Mr Wamala has not been trying to give a truthful account of the incident:

(1) Mr Wamala's unchallenged evidence was that prior to coming here in 1995 he had been detained in a military barracks in Uganda because of his political activity, that his life was in danger, and that he did not have a passport.

(2) In these circumstances the closing submissions for Mr Wamala rightly said that clandestine entry in 1995 was of no significance at all. It was not suggested by Reliance that Mr Wamala could safely have stayed in Uganda. Nor was it suggested that Mr Wamala could have arranged to arrive in a safe country without taking clandestine measures for this purpose.

(3) Reliance suggested that Mr Wamala's evidence of his arrival in the UK was evasive. I do not agree. Under cross-examination he explained in broad terms how he arrived here. When asked for details of locations, and whether at the time he had appreciated that he would have to lie to border staff, he said that he could

not remember and did not know how to answer. He rightly pointed out that these questions concerned the position 20 years earlier. As to the intervening period, Reliance itself asserts that when Mr Wamala was returned to Uganda in 1999 he was tortured there. It is hardly surprising that, coming to give evidence at a time when he suffers from PTSD, Mr Wamala gave the answers that he did.

167. For similar reasons I am not impressed by the fourth matter identified by Reliance. This concerned what happened after Mr Wamala was deported in 1999. As noted above, Reliance positively asserts that once Mr Wamala had arrived back in Uganda he was tortured there. After a few weeks he came back to this country. Reliance observed that he did this illegally, and that he used a false United States passport. Reliance adds that under cross-examination he said that he was planning to go on to Chicago, but decided to overstay in the United Kingdom once he had been admitted here. As to this:

(1) in effect what Mr Wamala said under cross-examination was that his mother arranged the false US passport, that it did not have his photo in it, but contained someone else's photo, and that upon arrival here a lady he was travelling with gave her passport and his to an immigration officer who allowed them to enter. Mr Wamala added that he had been due to fly on to Chicago but was scared to get on another flight.

(2) Mr Wamala's unchallenged evidence was that he re-established contact with the Home Office in 2001.

(3) again, it is Reliance's own case that Mr Wamala fled Uganda in 1999 because he was tortured there.

(4) again, it was not suggested by Reliance that Mr Wamala could safely have stayed in Uganda.

(5) again, it was not suggested by Reliance that Mr Wamala could have arranged to arrive in a safe country without using a forged passport.

168. Of greater concern are points forming part of Reliance's second and third matters. They concern the circumstances which led to Mr Wamala's conviction for smuggling Class A drugs. In cross-examination Mr Wamala accepted that he travelled on a forged passport to the United States and back, that for this purpose he supplied a photo of himself, and that he knew he was bringing back something for the man who had arranged the forged passport and had financed his airline tickets. Mr Wamala nevertheless claimed in cross-examination that he had not appreciated that he was bringing back illegal drugs. It was rightly pointed out to him that if this were the case then he would have been advised to plead not guilty. Mr Wamala sought to justify his account by saying that he was a young man at the time, that he had not even known the name cocaine, and that when he was told that this substance was illegal he thought the honourable thing to do was to plead guilty.

169. Mr Wamala was cross-examined about his suggestion that he had been a young man at the time of the offence. He accepted that in fact he was in his late twenties, he had successfully completed a diploma course in Business Administration in Uganda, and he was married and had one child and another on the way when he arrived here. He added that he was not as mature at that time as he is now, and that he had made a mistake.

170. The closing submissions for Mr Wamala noted that under cross-examination Mr Wamala had said that this was the worst mistake of his life and that he regretted it to this day. As to that, it is right that Mr Wamala has expressed remorse and that he accepted his punishment. However, I do not regard Mr Wamala's evidence in relation to his conviction as either accurate or frank. It was unreal for Mr Wamala to suggest that he had not heard of cocaine. The offence that he had committed was a serious offence. It involved dishonesty, in that Mr Wamala falsely represented to customs officers that he had nothing to declare. His evidence did not recognize the true extent of his culpability. His attempts to blame the offending on his youth, and later on immaturity, were grasping at straws. In the circumstances I am sure that Mr Wamala must have appreciated that what he was being asked to bring back was illegal, and also appreciated that in all probability it comprised illicit drugs.

171. As to the remaining matters identified by Reliance, the fifth concerned the use of aliases. Mr Wamala's drug smuggling attempt had involved the use of a false Kenyan passport, a false name and a false date of birth. The deployment of these falsehoods by Mr Wamala was what led to the inaccurate nationality, name and date of birth in the detention authority: see section A2.2 above.

172. The sixth and seventh matters identified by Reliance involved different aliases which Mr Wamala gave to the police in August and November 2006. A common feature was that on both occasions he wished to avoid detection of his real identity.

173. The seventh and eighth matters identified by Reliance both involved acknowledged criminal conduct on Mr Wamala's part. The seventh involved driving without a licence and driving when using a mobile phone. The eighth involved a shoplifting offence which resulted in Mr Wamala being in Peckham Police Station in July 2010: see section A2.2 above.

174. The ninth matter involved Mr Wamala working here while not permitted to do so. He frankly accepted that he had done this. In his words, it was necessary "to put food on the table". Under cross-examination Mr Wamala had been asked whether he drove a taxi without a licence. In that regard I reminded Mr Wamala of the privilege against self-incrimination. Mr Wamala did not answer the question. As Reliance points out, however, Mr Wamala's account to Professor Katona gives ground to conclude that Mr Wamala was driving a taxi without a licence during the period 2000 to 2010. The likely consequence is that he was driving without insurance and exposing his passengers to the risk of being carried by an uninsured minicab driver.

175. The tenth matter identified by Reliance was that Mr Wamala's lifestyle had involved travelling from job to job using a series of false identities. His evidence about what he had been doing was "extremely evasive", but it was plain that until detained in July 2010 Mr Wamala had lived in the UK trying to avoid detection and lying without compunction in order to avoid the authorities and the law.

176. As regards these remaining matters the closing submissions for Mr Wamala said that he was open with the court about working without permission in the UK and using false names and papers to do so. It was submitted that the position he had found himself in, needing to work in order to provide food, was not uncommon. It was added that Mr Wamala paid his taxes and did not claim benefits. It was also submitted that these matters had no bearing on the truthfulness of his account of events relevant in the present case. My assessment is that Mr Wamala has shown a willingness to lie on occasions when it was not necessary to do so in order to ensure his own safety. This, and his attempt to minimise the seriousness of his conduct leading to the drug smuggling conviction, mean that I must approach his evidence with caution. That said, however, what happened on the occasions identified by Reliance does not of itself warrant a conclusion that the present proceedings are being brought dishonestly for gain.

177. The second feature identified by Reliance asserted that Mr Wamala had attempted to present a false picture of his medical condition to the doctors instructed by Reliance. In sections D and E below I examine Reliance's contention that Mr Wamala did this. As regards Mr Wamala's mental condition, for the reasons given in section D, I do not accept that Mr Wamala tried to present a false picture. In relation to Mr Wamala's physical condition, what happened when he was seen by Mr Matthews is more complex. Mr Wamala's account of his injuries was not consistent with what was seen by Mr Matthews. For reasons given in section E below I conclude that in significant respects Mr Wamala attempted to present a false picture to Mr Matthews. In these circumstances, the second feature identified by Reliance causes concern, but it does not warrant a conclusion that I should reject Mr Wamala's evidence altogether unless it is corroborated by other evidence.

178. Turning to Reliance's third feature, it is right that there has been inconsistency in Mr Wamala's accounts of the incident. The same, however, is true for all other witnesses, with one exception. The exception is Ms Lertsakdadet: see section B2.2 below.

179. The inconsistencies in Mr Wamala's accounts are, however, both more numerous and more serious than those in accounts given by others. To some extent those inconsistencies may be attributable to Mr Wamala's PTSD. There were occasions, including in his statements of case, when Mr Wamala made wild accusations in circumstances where he must have known that they were unwarranted. They are a cause for considerable concern.

180. Reliance's fourth and final feature involved an assertion that Mr Wamala's account "is contradicted by all the

other witnesses in the case". This is too broad a generalisation: see section F below.

181. Overall, in relation to disputed matters I must consider whether assertions by Mr Wamala may be unreliable because of his misleading evidence about his drug-smuggling conviction, because of his willingness to lie in inexcusable circumstances, because of his willingness to make wild accusations, because of his willingness to lie to the court about what happened when he was seen by Mr Matthews, or because of the effect of Mr Wamala's PTSD. For these reasons, and because of the numerous and serious nature of the inconsistencies, I must approach Mr Wamala's evidence with particular care. These features, however, are not in my view sufficient to justify an approach under which Mr Wamala's evidence must inevitably be rejected altogether unless corroborated by other evidence. In particular, as to the period prior to boarding the aircraft, I have identified in section A4 above important uncorroborated evidence concerning Mr Wamala's beliefs and concerns which I accept.

B2.2 Witness evidence of Ms Lertsakdadet

182. As noted in section A1 above, Ms Naphitchaya Lertsakdadet was the cabin senior in charge of the economy section at the rear of the aircraft on Christmas eve. She made a witness statement ("Lertsakdadet 1"). By notice dated 26 June 2015 Reliance was informed that Mr Wamala intended to rely at trial on Lertsakdadet 1 without calling Ms Lertsakdadet to give oral evidence.

183. The background to this was that Ms Lertsakdadet's employers had arranged for her to answer questions by telephone from Doha. Both DPG and Horwich Farrelly were invited to participate in the telephone conference. In the event, while Mr Mitchell of DPG participated in the telephone conference, Horwich Farrelly declined to do so. Following the telephone conference Ms Lertsakdadet's statement was prepared in October 2013 and signed by her on 14 November 2013. The notice dated 26 June 2015 added that it had not been possible subsequently to arrange for Ms Lertsakdadet to give oral evidence by video link.

184. Reliance did not object to Ms Lertsakdadet's evidence being admitted. It asked for further information about the reasons why Ms Lertsakdadet could not be called as a witness. By letter dated 26 July 2015 DPG explained that the position was that it could not secure Ms Lertsakdadet's voluntary attendance at trial, by video link or otherwise, and since she was out of the jurisdiction it was not possible to issue a witness summons requiring her attendance.

185. Ms Lertsakdadet had given an account of events to her employers by email dated 17 January 2012. I set out the substantive content of that email below, with the addition of numbers in square brackets for ease of reference:

> [5] - During boarding, ground staff informed me to open the rear door of the aircraft (L4 door) for deportee.
>
> [6] - After door opened, the deportee boarded the aircraft with 4 escorts.
>
> [7] - Once this man (deportee) stepped inside the aircraft, he approached me and said "Help me, I do not want to go …"
>
> [8] - The escorts pulled him back and 1 of the escort, a lady, stood in front of me to protect me.
>
> [9] - Then the escorts locked him up and tried to calm him down, but he defied and tried to resist escort control.
>
> [10] - During the moment, they fell down on the floor/aisle last row.
>
> [11] – A man (deportee) started screaming and shouting that he did not want to go on board.
>
> [12] - The escorts tried to restrain him.

[13] - I heard deportee shouted “you broke my wrist” “I do not want to go, I want to talk to captain”. Escorts “calm down. give me your wrist. You will not go on board.”

[14] - One escort asked me to talk to this man telling him that he will be offload.

[15] - After they restrained him, they pulled him out of the aircraft.

[16] - I did not see the escort assaulted him on board.

186. Lertsakdadet 1 repeated and amplified what was said in the Lertsakdadet email. Among other things, it clarified what Ms Lertsakdadet had said in the passage in the email which I have numbered [16]: what she had meant by this was that she did not see the immigration escorts punching or kicking Mr Wamala.

187. Ms Lertsakdadet is an independent witness. She was well placed to describe exactly what happened at the time that Mr Wamala reached the top of the staircase and entered the aircraft. I explain in section F why, even though she was not available for cross-examination, I consider it right to attach weight to her account of this stage of events.

188. As to the position when Mr Wamala was on the floor of the aircraft, Ms Lertsakdadet explained in Lertsakdadet 1 that she could not see everything that happened at that stage.

B3. Factual witnesses for Reliance

B3.1 The escorts generally

189. Reliance contends that in their evidence to the court the escorts were all trying to give an honest and clear account of what happened. In support of that contention Reliance made initial points which I accept:

(1) while there are discrepancies, that is to be expected from witnesses describing a fast moving series of events, culminating in a struggle in a confined space, involving considerable violence and action, in which each was personally involved, the whole lasting a matter of minutes; and

(2) as to such discrepancies, and flaws in recollection, it is important to distinguish what witnesses say they themselves were doing from what they say that others were doing;

(3) people’s recollections are likely to be more accurate when recounting their own actions and what happened to them than when attempting to recall what they saw or heard others doing or saying.

190. Also in support of this contention Reliance said that the escorts had compiled their statements separately and without collusion, and had not relied upon pooled recollections. I do not find that the escorts set about pooling their evidence. The answers in the use of force incident reports, and in what the escorts said to the Beck team differed in various ways. Those differences were in my view the kind of differences that are to be expected when those involved in an incident of frenetic activity try to set out their recollections. It is in the nature of things that, even just a few hours after an incident of this kind, those involved would have different recollections, both as to timing and as to the detail of what happened.

191. In sections B3.4 and B3.6 below I explain why I conclude that parts of the evidence of Ms Govey and Ms Lee were concocted. In relation to the other escorts, I do not accept assertions in the closing submissions for Mr Wamala that they had set out to mislead the court. Those assertions place too much significance on discrepancies and omissions that in my view are to be expected in a case of this kind.

192. My finding as to the absence of pooling does not mean that the accounts given by the escorts have been uninfluenced by what others have said about events. Mr Duke frankly accepted that on Christmas eve after the incident the escorts had talked about what happened, both before and after returning to the office. It is likely that during the period since the incident there will have been further occasions when one or more of the escorts

have talked about the incident. It would not be surprising if their recollections were affected by consciously or unconsciously taking account of things said to them by their fellow escorts, and indeed by those who were not present during the incident.

193. On the central factual issues of the case, Reliance asserted that the escorts' evidence was broadly consistent with "all the other evidence apart from Mr Wamala's". This puts the position too high. In particular, it is not true in relation to issues as to what Mr Wamala did immediately on entering the aircraft. The account given by Ms Lertsakdadet in paragraphs [6] to [10] of the Lertsakdadet email, and corresponding parts of Lertsakdadet 1, differs from what was said in their witness statements by each of the escorts.

B3.2 Witness evidence of Mr Charles

194. Mr Charles made a witness statement ("Charles 1") on 7 August 2013. His evidence in chief began on the afternoon of day 3, and was completed later that day, when his cross-examination began. The cross examination was interrupted in order to interpose the expert orthopaedic witnesses on day 4, but continued on the afternoon of that day. It was again interrupted on day 5 in order to interpose the expert psychiatric witnesses, and resumed in the afternoon of that day. Also during the afternoon evidence of confidential matters was given by Mr Charles in closed session. The evidence in closed session continued at the start of day 6. Proceedings in public resumed later that morning. The cross-examination and re-examination of Mr Charles were both completed prior to the short adjournment on day 6.

195. Mr Charles has been a senior overseas DCO since mid-2010. Prior to that he was a DCO. He had initial training in control, restraint and hand cuffing, and has attended refresher courses on control and restraint.

196. The closing submissions for Mr Wamala described Mr Charles's evidence as "obviously concocted in key respects". I do not consider that it was concocted, but I am satisfied that it was inaccurate in certain respects identified in section F below.

B3.3 Witness evidence of Mr Simmons

197. At the time of the incident Mr Simmons was a senior DCO. On this occasion, however, it was not intended that he should travel with Mr Wamala and the other escorts to Uganda. His main role was to act as a driver. He also assisted in the process of boarding the aircraft. Mr Simmons made a witness statement ("Simmons 1") on 1 October 2013.

198. As will be seen in section F below, when taken as a whole, much of the evidence of Mr Simmons was consistent with Mr Wamala's account of events. On certain key aspects Mr Simmons was taken to what he had said when interviewed by the team responsible for preparation of the Beck report. With commendable frankness he recognised that what he had said then differed from his evidence in chief, and that the position when giving evidence in chief was that his memory had dimmed.

B3.4 Witness evidence of Ms Govey

199. Ms Govey's witness statement ("Govey 1") was made on 22 August 2013. She explained that she had been employed as a DCO for 6 years.

200. Ms Govey's evidence about what happened contained features which were deeply troubling. Ms Govey's evidence in chief was that Mr Wamala and the other escorts were in front of her as they went up the staircase. At the top:

> We stepped on to the aircraft … there were two hostesses on the right and Mr Wamala shouted that he wanted to see the captain, aggressively shouted.

201. However, when interviewed by Ms Beck on 30 January 2012 Ms Govey gave what I shall call "Ms Govey's initial account of boarding":

> we advised Felix to walk up … which he did … we got to … top of the steps walking on to aircraft I was behind three officers and at that point I … could not see much … it just went off. I heard it go off. I just heard screams and shouting from Felix.

202. Ms Govey's initial account on boarding is consistent with Mr Wamala having shouted only after force was used against him by one or more escorts. Later in the interview Ms Govey was asked more detailed questions. The answers that she gave were incoherent. Thus, when asked where the crew were when Mr Wamala entered the aircraft, Ms Govey replies, "I can remember seeing two to my right. Two ladies. I think … as they went to the left to the seats then Felix screaming and shouting …". Ms Govey resiled from this, however, when shown the Lertsakdadet email.

203. In the light of what Ms Govey had stated in her interview it is difficult to understand how she could have given the evidence that she did.

204. When cross-examined Mr Govey gave additional evidence which causes concern. She had given evidence in chief that Mr Wamala had, after exiting the aircraft, walked down the staircase without incident until the third step from the bottom, where he dropped to his knees and fell forward. She was cross-examined about evidence given by Mr Jayatilaka that about ten steps down Mr Wamala had started to struggle and nearly fell. It was put to Ms Govey that on the basis of what was said by Mr Jayatilaka, what he had described as happening on the staircase would have been more than half way up. Ms Govey's immediate reply was:

> It is twelve to thirteen steps and it is about the third from the bottom. …

205. The closing submissions on behalf of Mr Wamala said that this was dishonest, for it is obvious that there are considerably more than thirteen steps up to a large jet airliner. If it were necessary to establish the number of steps, a witness statement of Mr Mitchell exhibited confirmation from Qatar Airways that the true number is 25. The submissions for Mr Wamala went on to say that Ms Govey had simply manufactured her testimony to fit Reliance's account. I agree with Mr Wamala that it is obvious that there are considerably more than thirteen steps up to a large jet airliner. I am driven to the conclusion that Ms Govey did indeed manufacture testimony to the effect that there were only twelve to thirteen steps, and that this was dishonest.

206. In the circumstances described above I have grave reservations about the testimony of Ms Govey. I conclude that I cannot rely upon it.

207. In addition, as to the course of events prior to boarding the aircraft, Ms Govey was one of the escorts criticised in the Beck report. The first such criticism was in paragraph 432 of the Beck report. The details are set out in section A4.6 above.

208. In cross-examination Ms Govey insisted that she had indeed been trying to be polite and professional. There was no recognition by Ms Govey that the Beck report effectively pointed out that it was unprofessional to try to chat with Mr Wamala after he had made it clear he did not wish to engage in conversation.

209. At paragraph 433 the Beck report noted two things. The first was that Ms Govey then subjected Mr Wamala to further attempts at conversation. The second was that when it became clear that she was not going to succeed, she started to converse with other escorts about Mr Wamala, in particular by talking to them about his jogging bottoms. Ms Govey's response in cross-examination was that she did not remember the jogging bottoms conversation. There was no recognition by her that, in Mr Wamala's presence, it was inappropriate for her to talk to other escorts about the clothing he was wearing.

210. Paragraph 434 of the Beck report included five specific comments on the part of Ms Govey which were described as professionally unacceptable. Three of them were made before boarding the aircraft. They involved telling Mr Wamala that he might be conveyed back to Brook House IRC, telling him that "to Immigration he was just a name and a number", and telling him that he should get upset with Immigration (if anyone) and not with them (the escorts). Ms Govey accepted that these were valid criticisms.

211. Other things said in the presence of Mr Wamala were identified in paragraph 435, and described as professionally unacceptable. One in particular concerned what was described as "inappropriate language" in front of Mr Wamala. In fact it was sexualised banter. Ms Govey's general response was that she did not remember the matters referred to in paragraph 435.

212. I return to the occasion, shortly after Mr Wamala entered the van, which was the subject of the Beck report's first criticism of Ms Govey. Ms Govey was asked in cross-examination about a different aspect of what she said on that occasion. As set out in section A4.6 above, among other things, she addressed Mr Wamala as "Bruno". Under cross-examination Ms Govey claimed that this was what she had been told was Mr Wamala's name. However, Ms Govey's evidence then continued, confusingly, by saying that she had made a mistake and mispronounced the name. It is right that at least one other escort called Mr Wamala "Bruno", but only after Mr Govey had done so.

213. In cross-examination it was suggested that addressing Mr Wamala as "Bruno" had been racist. Ms Govey asked how it could be that getting Mr Wamala's name wrong was racist? She was told that the suggestion being made to her was that calling a man who is black "Bruno" had racist connotations. Ms Govey's response was that she had called Mr Wamala by a name that she thought she had been told, and that this was not racist. In re-examination Ms Govey explained that she had done diversity training, and participated in yearly refreshers. She said that she had never failed her diversity training.

214. I am satisfied that Ms Govey's conduct as described above was insensitive. It was, as the Beck report pointed out, likely to be perceived as antagonistic. It seems to me that Ms Govey was blind to the likely consequences of her unprofessional behaviour. I am not, however, persuaded that she was knowingly motivated by racism.

B3.5 Witness evidence of Mr Duke

215. Mr Duke has been an overseas DCO since 2010. At the outset he received training in control and restraint techniques and in the use of handcuffs. Thereafter he attended several control and restraint refresher courses.

216. Mr Duke signed a witness statement ("Duke 1") on 12 August 2013. He gave oral evidence on day 6.

217. In cross-examination Mr Duke was asked about what happened on the aircraft. He was also asked whether he had discussed the incident afterwards with his colleagues. In a series of replies, Mr Duke stated that he and his colleagues had spoken about the incident when they were in the van, when they stopped for a drink on the way back, and when they were back at the office.

218. For reasons given in section F, I cannot accept Mr Duke's evidence on certain key points.

B3.6 Witness evidence of Ms Lee

219. Ms Lee's witness statement ("Lee 1") was dated 24 November 2013. It explained that at that time she had been employed as an overseas DCO for 7 years in total, of which the previous 2 years had been with Reliance. Oral evidence was given by Ms Lee on day 7.

220. Ms Lee's evidence about what happened also contained features which were deeply troubling. In relation to the claim that Mr Wamala was shouting before the firm hold and the right hand cuffing, Ms Lee's evidence in chief on this aspect was that, "Mr Wamala started talking to the stewardess … but then his voice was getting higher". However what Ms Lee said in her interview with Ms Beck on 30 January 2012 was that when Mr Wamala boarded the aircraft, "I don't think he said anything to the crew …". In that interview she continued, "I just remember him saying he wanted to see the captain". When Ms Beck asked who Mr Wamala said this to, Ms Lee replied:

> Ms Lee: Well that to Ian. Well, he said it out loud so I mean we all heard but … I think … because Ian is a [team leader], he might have directed it at him first saying, you know, I want to see a captain when I get on board, you know, but you have to behave because the captain won't

come and see you … if you're fighting off the back, he is not gonna come in to see you, captains don't often come down if you're struggling like that.

Ms Beck: Were the crew at the top of the steps?

Ms Lee: Yeah, they were around the galley bit, yeah.

Ms Beck: Did he try to speak to them?

Ms Lee: No, not that I recall. Cause it's literally as soon as you got up there, he didn't see … and he said "Where's captain?" and Ian said, "well, he's not here whatever yet or whatever", and that's when he started.

221. In cross-examination Ms Lee accepted that at the time of the interview she could not recall whether Mr Wamala tried to speak to the crew. Ms Lee then said, in a passage in the transcript which I have corrected in square brackets:

> At that time, I did [not] remember at that time; but 4 years down the line I recall very well.

222. What this passage indicates to me is that 4 years down the line Ms Lee has convinced herself of something which 5 weeks after the incident Ms Lee did not recall and on which her evidence in court was unreliable. As to how she has come to convince herself of this, the likely explanation is that it has come about through learning what others say or have said on the matter. For these reasons I cannot assume that Ms Lee is a reliable witness.

223. The closing submissions for Mr Wamala also referred to Ms Lee's evidence concerning a time when she and Mr Duke were both holding Mr Wamala's head. The question she was being asked concerned whether it was possible to keep the head still. Ms Lee did not directly answer that question, but instead said that Mr Wamala was trying to bite the officers. She re-affirmed that she saw Mr Wamala trying to bite. Mr Hickman pointed out that Mr Wamala was lying on the floor with his head a few inches in front of Mr Duke's knee, with Mr Duke holding him down. Ms Lee replied that Mr Wamala was a very strong man and could lift his head slightly. Ms Hickman asked who it was that Mr Wamala got his mouth near, to which Ms Lee replied, "whoever was closest to him at the time". She was then asked whether someone's body was very close to Mr Wamala's mouth, to which she replied, "No". At this point Ms Lee retreated and said simply that Mr Wamala had "made the motion", lifting his head up with his mouth open. The closing submissions for Mr Wamala said that Ms Lee had constructed an account thought to be helpful to Reliance's case. I agree: in this respect Ms Lee's evidence had plainly been concocted.

224. For these reasons I cannot assume that Ms Lee is a reliable witness.

B3.7 Witness evidence of Mr Jayatilaka

225. Another employee of Qatar Airways on board the aircraft at Heathrow was Mr Charith Jayatilaka. He was there in his capacity as a Senior Customer Services Agent. His role was to act as a member of ground staff working on both the landside and the airside of Terminal 4. Among other things he was responsible for assisting with boarding of flights.

226. Like Ms Lertsakdadet, on 17 January 2012 Mr Jayatilaka had supplied a report for his employers. It took the form of an email ("the Jayatilaka email") dated 17 January 2012. Mr Jayatilaka then produced a witness statement ("Jayatilaka 1") dated 30 April 2013. Curiously, Jayatilaka 1 omitted several prominent features that had been present in the Jayatilaka email. An example is that the Jayatilaka email had said that on boarding the aircraft Mr Wamala was shown to his seat by cabin staff. Jayatilaka 1 made no mention of this. Another example is that the Jayatilaka email said that before taking Mr Wamala down the stairs the escorts were able to stop him struggling by placing a strap around his upper body. Jayatilaka 1 made no mention of this either. In relation to both these examples, what had been said in the Jayatilaka email was completely different from what was said by other witnesses.

227. Mr Jayatilaka gave oral evidence on day 6. That evidence began with what were described as "clarifications" of Jayatilaka 1. However what Mr Jayatilaka went on to assert could not properly be described as mere "clarification":

(1) Paragraph 19 of Jayatilaka 1 stated: "I recall that Mr Wamala bit the finger of one of the escorts which immediately started to bleed heavily." As to this, Mr Jayatilaka said in his evidence in chief:

> This is not something that I witnessed. This is a conclusion that I came to after the incident had happened when one of the escorts were holding their finger. … When the struggle was going on, I heard one of the escorts shout, "Don't bite me, don't bite me" and then after the incident happened and the escorts were coming off there was blood across the aircraft lavatory doors. One of the escorts was holding on to his finger so, naturally, at the end, I came to the conclusion that he has bitten the finger and that is why it is bleeding."

(2) Paragraphs 15 to 17 of Jayatilaka 1 dealt with what happened when Mr Wamala entered the aircraft. As noted earlier, by this stage Mr Jayatilaka was no longer advancing the assertion in the Jayatilaka email that Mr Wamala had been shown to his seat by cabin staff. Indeed in this part of Jayatilaka 1 there was no mention of cabin staff at all. Paragraph 15 asserted that as "the forward escort, Mr Wamala, and the other escorts moved into the galley" Mr Jayatilaka had moved backwards into the left hand aisle towards the front of the aircraft, and that there was a security escort between him and Mr Wamala. Paragraph 16 said that in the galley Mr Wamala turned towards the left hand aisle, and that at that point refused to move to his seat until he had spoken to the captain; that one of the escorts said they would ask the captain to come and speak to him, and that he replied that he wanted to go and speak with the captain and would not wait. Paragraph 17 said that Mr Wamala then moved towards the left hand aisle, looked around, "and he then elbowed the security escort behind him who fell to the floor in the galley. Then he went for the security escort between us and that security escort also fell to the floor." As to that, Mr Jayatilaka said in evidence in chief:

> Where it says that he elbowed the escorts to the ground, it was actually during the struggle, he had obviously used his elbow from each side to shrug off and move forward. When they came to the ground, they came to their knees, to the floor but to their knees.

228. Thus in relation to the first of these "clarifications" Mr Jayatilaka accepted that Jayatilaka 1 gave a misleading account: it said that he had recalled an escort being bitten on the finger when it truth he had not recalled any such thing. Similarly in relation to the second "clarification" he had given an account of unprovoked violence on the part of Mr Wamala before any struggle took place, whereas the violence that Jayatilaka 1 identified as having happened prior to the struggle had, according to Mr Jayatilaka's "clarified" version, in fact happened during that struggle.

229. Reliance submitted that Mr Jayatilaka's oral evidence supported its assertions on key factual issues. I disagree. I cannot accept that anything said by Mr Jayatilaka is reliable. I have noted above two assertions in the Jayatilaka email which were completely different from the evidence of other witnesses. In relation to the two "clarifications", what had been said in Jayatilaka 1 was also completely different from what was said by other witnesses. This pattern continued in Mr Jayatilaka's oral evidence. He said that he was in the galley area when Mr Wamala came up the staircase. Nobody else described him as being there. In paragraph 19 of Jayatilaka 1 he described Mr Wamala as having started to make a move towards him, and as becoming more aggressive still when the remaining two security escorts (those who had not been elbowed to the floor) stopped Mr Wamala. All of this was said to have happened at a time at which no handcuff had been applied to Mr Wamala. Nobody else gave an account remotely similar to this.

230. The closing submissions for Mr Wamala described Mr Jayatilaka's evidence as to what happened on the aircraft as "so hopelessly discordant with that of all the other witnesses that it is plainly unreliable". I agree with this assessment.

231. However the closing submissions for Mr Wamala then cited from paragraph 27 of Jayatilaka 1, which said that after starting to walk down the staircase, about ten steps down, Mr Wamala started to struggle, nearly fell, and at that point was picked up by the escorts and carried down the remainder of the steps. The suggestion advanced in the submissions, as I understood it, was that this supported Mr Wamala's account of being carried down the whole of the staircase. However, Mr Jayatilaka is so plainly wrong on other aspects of events that I cannot rely on anything which he says about the interaction between Mr Wamala and the escorts.

B3.8 Witness evidence of Ms Payne

232. At the time of the incident Ms Payne was a Senior Overseas Co-Ordinator at Reliance's offices in Heston, Middlesex. Ms Payne made a witness statement ("Payne 1") on 18 March 2014. A second witness statement ("Payne 2") was made by her on 21 July 2015, the first day of the trial.

233. At the time of Payne 1 Ms Payne was engaged to be married to one of the escorts, Mr Duke. By the time of Payne 2 she was Mrs Duke. For ease of reference, and with no disrespect intended, I shall continue to refer to her in this judgment as "Ms Payne".

234. Mr Wamala did not require Ms Payne to give oral evidence. Accordingly, Payne 1 and Payne 2 stood as her evidence.

235. The main matter dealt with by Ms Payne's evidence concerned the purported QR2 movement notification: see section A3.6 above. Payne 1 exhibited a copy in black and white of the purported QR2 movement notification. As noted in section A3.6 above, Ms Payne stated that the alterations to the departure time and flight number had not been made by her "or the department", and added that they did not make handwritten amendments to movement notifications. In Payne 2, however, Ms Payne said that she had now seen the original of the purported QR2 movement notification, and the alterations in red pen. She accepted that those alterations must have been made by her department, and that she had been incorrect to say in Payne 1 that she considered that her department did not amend the MS778 movement notification.

B4. Expert witnesses

B4.1 Expert evidence generally

236. In sections 4.2 and 4.3 below I describe the expert evidence. Each of Mr Mohammad, Mr Matthews, Professor Katona, and Dr Britto is a distinguished practitioner with long experience in his field. I am sure that each was doing his best to assist the court in accordance with his duties to the court under CPR 35.

B4.2 Expert evidence of Mr Mohammad and Mr Matthews

237. Mr Mohammad was Mr Wamala's expert witness on orthopaedic matters. He holds the post of consultant orthopaedic spinal surgeon at the Hope Hospital in Salford, as well as holding the post of Honorary Lecturer at Manchester University. He is a fellow of the Royal College of Surgeons with a specialist qualification in orthopaedics and trauma surgery.

238. Mr Mohammad produced a first report dated 20 May 2013 ("Mohammad 1"). On 18 December 2013 he produced a supplement ("Mohammad 2").

239. Mr Matthews was Reliance's expert witness on orthopaedic matters. When he examined Mr Wamala in 2014 he was a consultant trauma surgeon at the John Radcliffe Hospital in Oxford, having previously been a consultant trauma surgeon at the United Leeds Teaching Hospitals and Honorary Clinical Senior Lecturer to the University of Leeds in orthopaedic surgery. In February 2015 Mr Matthews took up a new post as consultant trauma and orthopaedic surgeon at Leeds General Infirmary. He was president of the British Trauma Society during the period 2009 to 2011. He is a fellow of the Royal College of Surgeons both in England and in Edinburgh. Mr Matthews produced an initial report dated 10 January 2014 ("Matthews 1"), an addendum report dated 12 February 2014 ("Matthews 2"), and, in reply to questions from DPG, produced a set of replies dated 25 March

2014 (“Matthews 3”).

240. Mr Mohammad and Mr Matthews prepared a joint report dated 17 July 2015 (“the orthopaedic joint report”). Mr Mohammad gave oral evidence on the morning of day 4. Mr Matthews gave oral evidence later during the morning and in the afternoon of that day.

B4.3 Expert evidence of Professor Katona and Dr Britto

241. Professor Katona was Mr Wamala’s expert witness on psychiatric matters. He is Honorary Professor at the Department of Mental Health Sciences of University College London and is Medical Director of the Helen Banber Foundation. He is a fellow of the Royal College of Psychiatrists, where he was dean from 1998 until 2003. He is Emeritus Professor of Psychiatry at the University of Kent, and was Honorary Consultant Psychiatrist at the Kent and Medway NHS Partnership Trust from 2003 to 2012.

242. Professor Katona produced an initial report dated 16 December 2012 (“Katona 1”). In response to questions raised on behalf of Reliance, professor Katona produced an addendum dated 26 March 2013 (“Katona 2”). He prepared an additional report on 16 December 2013 (“Katona 3”).

243. Dr Britto was Reliance’s expert witness on psychiatric matters. He is a consultant psychiatrist at Cygnet Hospital Bierley Bradford, and is Force Consultant Psychiatrist to the Merseyside Constabulary. He was an honorary senior clinical lecturer in the Department of Psychiatry, University of Leeds, and clinical tutor for Halifax Hospitals, and has been a member of the Royal College of Psychiatrists since 1991.

244. Dr Britto produced an initial report dated 27 March 2014 (“Britto 1”). In response to questions from DPG he produced a set of answers in a report dated 14 May 2014 (“Britto 2”).

245. Professor Katona and Dr Britto prepared a joint report dated 17 June 2014 (“the psychiatric joint report”). Professor Katona gave oral evidence on a morning of day 5. Dr Britto gave oral evidence later that morning and on the afternoon of that day.

C. The legal framework

C1. Legal framework: general

246. Mr Wamala’s core complaints are about two types of conduct: the use of force, and the threat of the use of force. If there is no lawful justification, those types of conduct will constitute torts which are types of trespass to the person. In the case of the use of force the specific tort is battery. In the case of the threat of the use of force the specific tort is assault.

247. Liability in trespass is strict. There is no requirement to prove fault. Moreover if the tort of trespass to the person is being committed, reasonable force may be used to resist that trespass.

248. On Christmas eve the escorts undoubtedly used force against Mr Wamala. The immediate question that arises is thus whether there was lawful justification entitling them to use that force. In section C2 below I discuss the position in relation to the burden of proof in that regard.

249. It is common ground that statute permits the use of reasonable force in order to carry out a lawful removal. In sections C3 and C4 I deal with the statutes which bring this about.

C2. Burden of proof of lawful authority

250. The oral reply submissions for Mr Wamala took issue with the contention advanced for Reliance that the burden was on the claimant to prove that there was no lawful authority for the use of force against him. In that regard Mr Wamala drew attention to analogous principles concerning false imprisonment. The principles were

described by Lord Dyson in his speech in *R (Lumba) v. Secretary of State for the Home Department* [2011] UKSC 12, [2012] 1 AC 245. Lord Dyson JSC, with whom on this point Lord Hope of Craighead DPSC, Lord Roger of Earlsferry, Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood, Lord Collins of Mapesbury, and Lord Kerr of Tonaghmore JJSC agreed, said at paragraphs 64 and 65:

> 64 Trespassory torts (such as false imprisonment) are actionable per se regardless of whether the victim suffers any harm. An action lies even if the victim does not know that he was imprisoned: see, for example, *Murray v Ministry of Defence* [1988] 1 WLR 692, 703A where Lord Griffiths refused to redefine the tort of false imprisonment so as to require knowledge of the confinement or harm because "The law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage." By contrast, an action on the case (of which a claim in negligence is the paradigm example) regards damage as the essence of the wrong.
>
> 65 All this is elementary, but it needs to be articulated since it demonstrates that there is no place for a causation test here. All that a claimant has to prove in order to establish false imprisonment is that he was directly and intentionally imprisoned by the defendant, whereupon the burden shifts to the defendant to show that there was lawful justification for doing so. As Lord Bridge said in *R v Deputy Governor of Parkhurst Prison, Ex p Hague* [1992] 1 AC 58 , 162C-D: "The tort of false imprisonment has two ingredients: the fact of imprisonment and the absence of lawful authority to justify it."

251. I have no doubt that this reasoning applies to the torts of battery and assault. It follows that the burden of proof of lawful justification will be on Reliance.

C3. The 1971 Act: powers of officers of the state

252. The 1971 Act confers powers on the Secretary of State, and on immigration officers, as regards removal from the UK of persons entering or remaining unlawfully: see s 4 and schedule 2. Mr Wamala entered the UK unlawfully in 1999 when he returned clandestinely, and in breach of the 1997 deportation order, a few weeks after he had been deported. From that time he remained in the UK unlawfully, subject only to a grant of temporary admission which is immaterial for present purposes. In these circumstances s 4(2) of the 1971 Act and paragraph 10(2) of schedule 2 to that Act gave power to the Secretary of State to give directions to, among others, the owners or agents of an aircraft for Mr Wamala's removal in accordance with arrangements made by the Secretary of State. The giving of such directions would then enable Mr Wamala to be placed on board an aircraft for removal, but only in accordance with the directions. This is clear from paragraph 11 of schedule 2, which states:

> 11. A person in respect of whom directions are given under any of paragraphs 8 to 10 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

253. Further, because there were reasonable grounds for suspecting that Mr Wamala was a person in respect of whom directions could be given under paragraph 10 of schedule 2, he was liable to be detained under paragraph 16(2) of schedule 2. As substituted by section 104(1) of the 1999 Act and as subsequently amended, paragraph 16(2) of schedule 2 to the 1971 Act states:

> (2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10A … that person may be detained under the authority of an immigration officer pending –
>
> (a) a decision whether or not to give such directions;
>
> (b) [that person's] removal in pursuance of such directions.

254. Additional and overlapping powers under the 1971 Act were available in relation to Mr Wamala because the 1997 deportation order continued to have effect. Under section 5 and schedule 3 this had the consequence that the Secretary of State could give directions similar to those contemplated by schedule 2: see paragraph 1 of schedule 3. Once such directions had been given, paragraph 1(3) of schedule 3 had the consequence that paragraph 11 of schedule 2, as set out above, would apply, with the substitution of a reference to "the Secretary of State" for the reference to "an immigration officer".

255. In the present circumstances schedules 2 and 3 gave power to detain Mr Wamala. The power conferred by paragraph 16(2) of schedule 2 in this regard applied also under schedule 3, again with the substitution of a reference to "the Secretary of State" for the reference to "an immigration officer": see paragraph 1(3) of schedule 3. That power permitted detention "in such places as the Secretary of State may direct": see paragraph 18(1) of schedule 2. Paragraph 18(3) of schedule 2 provides that:

> (3) Any person detained under paragraph 16 may be taken in the custody of a constable, or of any person acting under the authority of an immigration officer, to and from any place … where [the detained person] is required to be for any … purpose connected with the operation of this Act.

256. Moreover under paragraph 18(4) of schedule 2 a person is deemed to be in legal custody at any time when detained under paragraph 16 or when being removed in pursuance of paragraph 18(3).

257. The places where a person may be detained, as directed by the Secretary of State pursuant to paragraph 18(1) of schedule 2, do not include an aircraft. Provision in relation to detention on board an aircraft is, however, made in paragraph 16(4) of schedule 2 as follows:

> (4) The captain of a ship or aircraft, if so required by an immigration officer, shall prevent from disembarking in the United Kingdom on or before … directions for … removal have been fulfilled any person placed on board a ship or aircraft under paragraph 11 … above, and the captain may for that purpose detain [that person] in custody on board the ship or aircraft.

258. The importance of paragraph 11 of schedule 2 was stressed by Woolf J in *R v Immigration Officer, ex p. Shah* [1982] 1 WLR 544, 548E-G. In that case Woolf J held that a direction was invalid because, rather than specifying that the airline was required to remove the applicant, the direction simply indicated that the applicant was a person that might be required to be removed. Woolf J stated:

> The [removal] direction is not merely a means of notifying British Airways of their obligations but is a part, and an important part, of the machinery provided in the Immigration Act for removing persons who are refused leave to enter and unlawful immigrants.
>
> Paragraph 11 of Schedule 2 is a most important provision, since without it the immigration officer would not be able to place the immigrant on board a ship or aircraft. That authority is limited to a person in respect of whom directions are given who is to be removed in accordance with the direction. If these directions were to be quashed, then an immigration officer would be acting unlawfully in placing the applicant, without his consent, on board a ship or aircraft unless and until fresh valid directions are issued.

C4. The 1999 Act

C4.1 The 1999 Act: power of immigration officers to use force

259. As noted in section C3 above, paragraph 11 of schedule 2 to the 1971 Act identifies circumstances where a person may be "placed" on board an aircraft. Paragraph 11 enables this to occur "under the authority of an immigration officer" in relation to removals under schedule 2, and "under the authority of the Secretary of State" where removal directions are issued under schedule 3 to the 1971 Act. That paragraph, however, does

not say anything about the extent to which force may be used for this purpose.

260. General provisions concerning the use of force are found in the 1999 Act. Two categories of persons are given power to use force. The first such category comprises immigration officers. Under section 146 of the 1999 Act:

> (1) An immigration officer exercising any power conferred on [that officer] by the 1971 Act or this Act may, if necessary, use reasonable force.

261. The result is that an immigration officer exercising powers of removal under the 1971 Act "may, if necessary, use reasonable force".

C4.2 The 1999 Act: powers of detainee custody officers

262. The 1999 Act gives general powers to use force to a second category of persons. This category comprises individuals who, under section 154 of the 1999 Act, have been certified by the Secretary of State as authorised to perform escort functions, or to perform both escort functions and custodial functions. A certificate issued by the Secretary of State for this purpose is described in section 147 of the 1999 Act as a "certificate of authorisation". A person in respect of whom a certificate of authorisation is in force is described in the same section as a "detainee custody officer", or using the terminology adopted earlier in this judgment, a "DCO".

263. Both section 147 and section 154 fall within Part VIII of the 1999 Act, entitled "Removal centres and detained persons". Within Part VIII, sections 154 to 157 are entitled "Custody and movement of detained persons". Relevant for present purposes is section 156, which so far as material provides:

> 156 Arrangements for the provision of escorts and custody
>
> (1) The Secretary of State may make arrangements for—
>
> (a) the delivery of detained persons to premises in which they may lawfully be detained;
>
> (b) the delivery of persons from any such premises for the purpose of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;
>
> (c) the custody of detained persons who are temporarily outside such premises;
>
> (d) the custody of detained persons held on the premises of any court.
>
> (2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.
>
> …
>
> (4) Escort arrangements may include entering into contracts with other persons for the provision by them of—.
>
> (a) detainee custody officers; …
>
> ...

264. Arrangements made by the Secretary of State under section 156 are described in section 147 as "escort arrangements". In the same section, "escort functions" is defined to mean functions under escort arrangements. It may be noted that under section 156(1)(b), insofar as escort arrangements are made by the Secretary of State for delivery of persons for the purpose of their removal from the UK, that removal must be "in accordance with directions given" under the 1971 Act or the 1999 Act. In addition, further provision about escort arrangements is set out in schedule 13 to the 1999 Act: see section 156(5) of that Act.

265. Powers and duties of DCOs are dealt with in paragraph 2 of schedule 13. Paragraph 2(1) and (2) deal with powers of search. Relevant for present purposes are paragraph 2(3) and (5):

> (3) As respects a detained person for whose delivery or custody [a DCO] is responsible in accordance with escort arrangements, it is the duty of [that DCO]—
>
> (a) to prevent that person's escape from lawful custody;
>
> (b) to prevent, or detect and report on, the commission or attempted commission by [that person] of other unlawful acts;
>
> (c) to ensure good order and discipline on [that person's] part; and
>
> (d) to attend to [that person's] wellbeing.
>
> …
>
> (5) The powers conferred by sub-paragraph (1), and the powers arising by virtue of sub-paragraph (3), include a power to use reasonable force where necessary.

266. I shall refer to the duties under paragraph 2(3) as "the 1999 Act duties". It may be noted that these duties arise as respects "a detained person for whose delivery or custody [the DCO] is responsible in accordance with escort arrangements".

267. Thus the test for determining whether or not the 1999 Act duties arise is a test concerned with the status of the detainee/DCO relationship. Where convenient, I shall refer to a relationship meeting that test as a relationship with "1999 Act duties status", a "relationship having 1999 Act duties, or simply "a 1999 Act duties relationship".

D. Mr Wamala's mental health

D1. Mr Wamala's mental health: general

D1.1 Mr Wamala's mental health: introduction

268. Evidence as to Mr Wamala's mental health was adduced because it has relevance to substantive issues concerning both the severity of the symptoms of Mr Wamala's undoubted mental illness and the cause of those symptoms. In addition, however, it has relevance to Mr Wamala's ability to cope with procedures during the preparations for trial and when giving evidence at trial. I have dealt with Mr Wamala's ability to cope with pre-trial and trial procedures in section B2.1 above.

269. There are three substantive general matters on which Professor Katona and Dr Britto agree. They agree that:

(1) Mr Wamala currently suffers from a Major Depressive Disorder and Post-Traumatic Stress Disorder;

(2) prior to Christmas eve Mr Wamala suffered from mental illness which would have required treatment in any event;

(3) the experience of Christmas eve can be construed as a "re-traumatisation" process.

270. There are two principal differences between Professor Katona and Dr Britto:

(1) the severity of Mr Wamala's current mental illness; and

(2) the extent to which Mr Wamala's current symptoms were caused by Reliance's use of force on Christmas

eve.

271. I deal with these differences in sections D2 and D3. Before doing so, however, I discuss two preliminary matters in sections D1.2 and D1.3 below.

D1.2 Reliance's new argument

272. The closing written submissions for Mr Wamala objected to a new argument advanced in Reliance's written closing submissions. In that regard they noted, in my view correctly, that:

(1) certain passages in Reliance's written closing submissions asserted that Mr Wamala's PTSD claim should be rejected because he fulfilled the diagnostic criteria for PTSD before Christmas eve;

(2) the argument appears to be that there was no significant aggravation of Mr Wamala's PTSD by events on 24 December 2011, and that Mr Wamala already had full-blown PTSD.

273. The stance taken on behalf of Mr Wamala is that this position is advanced without a proper evidential basis. I consider that this stance is well founded. The agreed position of Professor Katona and Dr Britto was that events on Christmas eve constituted a re-traumatisation, and that prior to this time Mr Wamala's PTSD was relatively asymptomatic and did not impact greatly on his life.

274. Accordingly I refuse to allow the new argument. It relies upon speculation on the part of Reliance's lawyers rather than expert opinion.

D1.3 Reliance's lack of co-operation contention

275. Reliance's closing written submissions made reference to passages of Britto 1 where Dr Britto said:

> 70. … the Claimant was not compliant with the interview and the consultation process. He refused to answer several questions
>
> …
>
> 105. Mr Wamala was reluctant to answer questions. He was essentially non cooperative. His speech was spontaneous and coherent but on occasions, he was deliberately mute and refused to answer questions. …

276. Reliance sought to rely upon these and other similar passages as demonstrating an unwillingness to co-operate with the court and to enable the court to investigate the truth and the causes and nature of his condition. It was said that Professor Katona largely accepted Dr Britto's account. I do not agree:

(1) Reliance cited an answer by Professor Katona to a question whether, assuming that Dr Britto is giving a truthful account, Mr Wamala was not compliant with Dr Britto. Professor Katona's answer, however, merely said that this was the impression that came clearly from Dr Britto's report.

(2) As to paragraph 70 of Britto 1, Professor Katona said that there may be several reasons for an apparent refusal to answer questions, and added that it is sometimes quite difficult to distinguish reasons for refusing to answer questions. He accepted that there seemed to have been some difference in the experience that Dr Britto had of interviewing Mr Wamala and the experience that Professor Katona had on both the occasions that he had interviewed Mr Wamala.

(3) When it was put to him that there was a considerable divergence in the level of compliance shown to him and that shown to Dr Britto, Professor Katona accepted only that this would appear to be the case.

(4) Professor Katona was taken to an assertion by Dr Britto that Mr Wamala refused to provide information about the circumstances of his birth. Professor Katona commented that a theme which came through all

the documentation about Mr Wamala was that:

> … he finds it hard to trust people. He is suspicious and he might well be more suspicious of people assessing him instructed by solicitors who he may regard as hostile. … I think [putting Mr Wamala at his ease] was a slightly more straightforward exercise for me than it might have been for Dr Britto.

(5) As to a passage where Dr Britto said that Mr Wamala refused to answer questions pertaining to family history of mental illness, Professor Katona said this:

> It is not clear on what basis Dr Britto reached his conclusion that this was a refusal. What is clear is that he did not answer the question and that Dr Britto has recorded that as a refusal.

(6) Dr Britto recorded that Mr Wamala refused to provide any information regarding his marital/psychosexual history, adding that Mr Wamala stated, "My wife was born in 1973. Everything you are asking me is my record and you are upsetting me". It was put to Professor Katona that this quotation plainly denoted bare refusal. Professor Katona's response was that it was a quote that also denoted clear stress.

(7) Professor Katona was then shown paragraph 90 of Britto 1. That paragraph in fact made no express assertion that Mr Wamala had refused to answer anything. Professor Katona's comment on the paragraph was this:

> If I understand the beginning of the paragraph correctly, he was given the opportunity to express his feelings, thoughts, emotions, and behaviours that he experienced at the time of the incident and that seems to be what he has done in the passage in italics that Dr Britto has transcribed. He is talking about his feelings in relation to the incident. He says that he finds it difficult to talk about the events of the incident. When we discussed this, if I remember correctly, Dr Britto and I agreed that this was not surprising in that we agreed that he has a diagnosis of PTSD and one of the key features of PTSD, … is avoidance. People do tend to avoid reminders and, in particular, tend to avoid talking about the traumatic events if they can possibly manage to do so.

(8) It was suggested to Professor Katona that his analysis was unsustainable because Mr Wamala had given Professor Katona a detailed account of the incident. In reply Professor Katona pointed out that the extent to which people are avoidant varies. His clinical opinion was that the difference may well be explained by Mr Wamala being more trusting of him, and more relaxed with him.

(9) It was then pointed out to Professor Katona that paragraph 91 of Britto 1 recorded Mr Wamala giving to Dr Britto a much more detailed account of what happened in Uganda. Professor Katona replied that this probably reflected the events in Uganda being much more distant and therefore less immediately painful.

(10) Professor Katona was taken to the passage from paragraph 105 of Britto 1, set out in the citation above. As to Dr Britto's description of Mr Wamala as being deliberately mute, refusing to answer questions and essentially non co-operative, Professor Katona responded that this was Dr Britto's judgment. Having not been at the interview, Professor Katona did not feel he could comment any more than he had done already. When pressed with a suggestion that he did not feel he could question Dr Britto's judgment, Professor Katona replied that he could not question that that was Dr Britto's conclusion. Pressed further to agree that there had been a deliberate attempt by Mr Wamala not to co-operate with the other side's psychiatric examination, Professor Katona responded that he would agree, if Dr Britto's conclusion were right.

(11) Professor Katona was asked about the position if the court concluded that Mr Wamala co-operated with Professor Katona, but deliberately chose not to co-operate with Dr Britto. The suggestion was made that such a conclusion would support Dr Britto's suggestion that Mr Wamala was deliberately exaggerating his

symptoms for secondary gain. Professor Katona replied:

> I would have thought that if he was deliberately exaggerating his symptoms then he would have done so similarly for me and for Dr Britto. Secondary gain is a rather specific clinical notion and it is not about doing anything deliberately. Secondary gain is an unconscious process. I think that apart from the fact that Dr Britto was instructed by … "the other side", I do not really see that, from a clinical point of view, that would explain why he would behave so differently for Dr Britto and to me. I think mistrusting Dr Britto more … does seem more clinically plausible as an explanation …

(12) It then emerged that there was a difference in understanding as to the meaning of the term "secondary gain". Professor Katona said he understood that the point being put to him was that Mr Wamala behaved as he did in order to improve his prospects in this case and for gain, adding:

> … I think that it is very clear that that is a possible explanation and it is one that both Dr Britto and I had to consider. We have tried to consider it not only separately, but also in the context of a joint statement of where we agree and disagree.

277. These detailed answers by Professor Katona did not "largely accept" Dr Britto's account. On the contrary, Professor Katona identified reasons which Dr Britto did not identify for the stance Mr Wamala took in relation to certain questions. Moreover, in relation to the question described in paragraph 90 of Britto 1, Professor Katona said that Mr Wamala had done what Dr Britto had asked him to do. In that context Professor Katona added that he and Dr Britto had agreed that difficulty in talking about the events of the incident was unsurprising in the light of Mr Wamala's diagnosis of PTSD.

278. I conclude that for the reasons given by Professor Katona it would be wrong to describe Mr Wamala as having been obstructive. Moreover, as is pointed out in the closing submissions for Mr Wamala, when asked specific questions about the incident Mr Wamala told Dr Britto about what happened on the aircraft. There was then a question asking how the incident had affected Mr Wamala's mind. It seems to me that the answer to this question was misinterpreted: Mr Wamala said he did not want to talk about it because he had to fight with it everyday. Reliance said that this was a refusal to answer the question. In my view it was directly answering the question. The question concerned the effect of the incident on Mr Wamala's mind. The answer was that the effect on his mind was that he did not want to talk about the incident, the reason being that he had to fight with it everyday. Mr Wamala was then specifically asked about mental health problems and gave a description of them. In response to an additional question as to whether Mr Wamala wanted to say anything more about his mental health, Mr Wamala described speaking to his dead grandfather, being told by his dead grandfather to hide in the cemetery, and doing exactly that.

279. In these circumstances I am dismayed to find Dr Britto characterising the interview in the way set out in paragraphs 70 and 105 of his report. Those paragraphs are a distortion of the interview when taken as a whole.

D1.4 Suggested "stroke-like episode"

280. In cross-examination Professor Katona identified an additional possible explanation for any lack of co-operation when Mr Wamala saw Dr Britto. This was that at court he had been able to review Mr Wamala's more recent medical notes, and that these suggested that he had had a small stroke in January 2014.

281. However it seems to me that Professor Katona is not an expert on cerebrovascular events. I accept that he has, of course had occasion to consider the impact of strokes on his patients. As to precisely what it was that happened in January 2014, and the likely effects, I do not consider that it is satisfactory simply to proceed on the basis of Professor Katona's assessment. The possibility that this suggested stroke might be relevant to any issue in the case had not been raised prior to Professor Katona's cross-examination. After Professor Katona gave evidence Reliance's legal team noted that the trial bundles contained a copy of an MRI scan on 18 March 2014, and suggested that what was said or not said in the report of the scan may be relevant.

282. In these circumstances I do not think it would be right for me to attach significance to this suggested stroke-like incident.

D2. Mr Wamala's mental health: current severity

283. It is common ground that Mr Wamala's current symptoms of one or other or both of MDD and PTSD:

(1) include panic attacks [joint report, paragraph 1];

(2) include dissociative phenomenology [joint report, paragraph 2(b)];

(3) are worse than was the case prior to 24 December 2011 [joint report, paragraph 6(b)];

(4) make Mr Wamala currently unable to work [joint report, paragraph 8]; and

(5) require management with antidepressants and psychological treatments [joint report, paragraph 11].

284. Professor Katona considers that, as an integral part of his PTSD, Mr Wamala suffers from psychotic phenomena comprising:

(1) persecutory ideas;

(2) second-person auditory hallucinations; and

(3) visual hallucinations.

285. Dr Britto considers that:

(1) while Mr Wamala admitted persecutory ideation, he never gave the opportunity for Dr Britto to explore any other symptoms related to psychotic phenomena;

(2) the manner in which Mr Wamala presented himself to the consultation did not suggest psychotic phenomena; and

(3) there was no evidence of delusional thought content.

286. Reliance's closing written submissions noted the disagreement as to whether Mr Wamala was ever psychotic, but questioned whether the argument about whether there was psychosis takes the case further. The submissions then added that there was no basis for arguing that any psychosis there might have been was attributable to the failed removal. The validity of this comment seems to me to depend on whether Dr Britto's arguments about causation are correct: see section D3 below.

287. If it is indeed still maintained by Reliance that Mr Wamala was not psychotic, I have no hesitation in accepting the evidence of Professor Katona supporting his conclusions summarised above. They are fully supported by the detailed matters relied upon in sections 2 and 4 of Katona 2. Dr Britto's reluctance to accept that there was psychosis is largely founded on the assertion that Mr Wamala did not give Dr Britto an opportunity to explore any symptoms related to psychotic phenomena other than persecutory ideation. For the reasons given in section D1.3 above, I do not accept that this was the case. Dr Britto made an additional point that prescriptions for antipsychotic medication were prescriptions for drugs that are also used to treat other conditions. This is a valid point so far as it goes. More difficult, however, for Dr Britto is that Mr Wamala's medical reports include conclusions that Mr Wamala was suffering from psychosis. Dr Britto suggested that these were inconsistent with records from around the same period which showed no evidence of psychosis. However Dr Britto accepted in cross-examination that psychosis may fluctuate.

288. For these reasons I am satisfied that Professor Katona is right to identify the three psychotic phenomena which he describes.

D3. Mr Wamala's mental health: cause of current symptoms

289. Dr Britto's stance is that Mr Wamala's current symptoms are attributable, not to the incident that occurred on the aircraft, but to the "stressor of deportation". In support of that conclusion he expresses the opinion that a significant worsening of Mr Wamala's mental health occurred in 2013, and that if Mr Wamala had been suffering from PTSD earlier than this the symptoms would have been disclosed by Mr Wamala to those concerned with his health, and a diagnosis made earlier.

290. Reliance's written closing submissions relied on an additional reason for concluding that re-traumatisation had occurred because of the stressor of deportation rather than because of what happened on the aircraft. This was that Professor Katona had regarded the twisting of Mr Wamala's neck as the main element in the incident that contributed to its traumatic nature. If, as Reliance submitted, there had been no twisting of the neck then this main element would fall away.

291. This contention, however, does not assist Reliance:

(1) for reasons given in section F7 below, I conclude that there was indeed twisting of the neck in the course of the incident;

(2) in any event, as Professor Katona pointed out, it is Mr Wamala's perception as to what was happening that is relevant. Even if I were not satisfied that there had indeed been twisting of the neck, I would have concluded that, in the light of the matters set out in section A1.4 above, it is likely that Mr Wamala did indeed believe that this was happening.

292. To my mind Professor Katona has given a full and convincing answer to the points made by Dr Britto. First, PTSD symptoms are often delayed in onset. Accordingly, if it were right to say that Mr Wamala was not suffering from symptoms of PTSD until 2013, that is not inconsistent with the re-traumatisation leading to those symptoms having come about by reason of what occurred on the aircraft. Second, however, Professor Katona gave compelling evidence that in his professional experience a detailed assessment by an experienced practitioner such as himself can often illicit mental symptoms that immigration detainees have felt unable or reluctant to disclose to detention healthcare staff. In that regard Professor Katona takes account of a report by Dr Goldwin in January 2012, where the focus was on documenting the acute physical injuries resulting from Mr Wamala's attempted removal. This would explain the suggested "thematic coherence" identified in her report between Uganda and the PTSD. Professor Katona was taken to a note made by Dr Pang on 10 May2013, "assaulted in Uganda, hence has PTSD". Professor Katona acknowledged that this gave him pause for thought. He acknowledged that the fact of deportation, the fact of removal, the fear of removal to Uganda, quite irrespective of what happened on the aircraft, would have some worsening effect. It would undoubtedly have increased Mr Wamala's stress level, as indeed the mere fact of being detained would have done. On the other hand, the physically violent acute events around the attempted removal seemed to Professor Katona to be a more effective acute trigger. The re-experiencing that Mr Wamala described was more around those events than anything else.

293. This evidence by Professor Katona was in my view compelling. I have already made findings as to Mr Wamala's fear that his removal would be accompanied by violence: see section A4 above. My findings as to what in fact occurred on Christmas eve are set out in section F below. It would be astonishing if, in the light of Mr Wamala's beliefs and concerns prior to the incident, what took place on the aircraft could be treated as playing no causative part in the re-traumatisation experienced by Mr Wamala.

E. Mr Wamala's physical injuries

E1 Physical injury: introduction

294. Mr Mohammad saw Mr Wamala on 5 April 2013. Mohammad 1 described his account of the interview that

took place on that day and his conclusions in the light of that interview. Mohammad 2 reviewed those conclusions after MRI scans had been performed. When citing below from Mohammad 1 and Mohammad 2 I have added paragraph numbers in square brackets.

295. In Mohammad 1 Mr Mohammad noted:

(1) what Mr Wamala had told Mr Mohammad about the position on reaching Colbrook IRC late on Christmas eve:

> [3] … the handcuffs were finally removed when he reached the immigration detention centre. At the time he was suffering from pain in his back, shoulders, legs, knees and his wrists. He tells me that he injured his neck and his shoulders and his right wrist. He is right-handed. He also injured his back as a consequence of the way he was treated. …

(2) what Mr Wamala told Mr Mohammad about continuing symptoms in the neck:

> [10] according to Mr Wamala he continues to be symptomatic in relation to his neck … He described the intensity of pain in that it feels to be quite significant in his … neck.

(3) what Mr Wamala told Mr Mohammad about continuing symptoms in the lower back:

> [10] … he also describes pain in his low back region which is at the lumbosacral junction to the left hand side and also thoracolumbar pain on the right hand side. … he describes the intensity of pain in that it feels to be quite significant in his back …

(4) what Mr Wamala told Mr Mohammad about continuing symptoms in the right hand:

> [10] … Pain radiates into his right hand, wrist with pins and needles, aching and pain. …

(5) what Mr Wamala told Mr Mohammad about continuing symptoms in the right shin:

> [10] … Mr Wamala also describes pain in relation to the anterior shin on the right hand side with some numbness.

296. Mohammad 1 also described the result of Mr Mohammad's clinical examination of Mr Wamala, including:

(1) as to the neck:

> [19] **Cervical spine -** pain is described to the base of the neck. Cervical spine range of motion is restricted by around 10 to 20% with extreme range of lateral flexion and in particular rotation being affected.

(2) as to the lower back:

> [20] **Lumbo-sacral spine –** pain is described at the right thoracolumbar junction and also the lumbosacral area on the left hand side. Extension is uncomfortable. Forward flexion fingertips to knees, lateral flexion fingertips to thighs which is also uncomfortable.

(3) as to the upper and lower limbs:

> [21] Power and sensation is normal in the upper and lower limbs. Reflexes are symmetrical. Plantars are down going. Sciatic stretch test is negative.

(4) as to other parts of the body:

> [22] Hip, knee and shoulder examination is unremarkable.

(5) Mr Mohammad's own impression that:

> [33] Mr. Wamala would appear to have been unfortunate enough to have suffered consequences when he was forcefully handcuffed and then dropped on steps of a plane resulting in injuries to his neck, his shoulders, wrists and also injuries to his back and his chest. The incident happened in 2011 but he continues to be significantly symptomatic. He feels that he has not really improved since the time the events occurred and is affected both physically and mentally.
>
> [34] The type of symptoms Mr. Wamala is describing are consistent with nerve root irritation and also soft tissue injury to his neck and his back. In order to have an idea of how long the symptoms are likely to last I would recommend he has an MRI scan of his cervical and his lumbosacral spine. The symptoms that he is describing are however consistent with the injuries of the nature described and under normal circumstances with no significant underlying changes one would expect a resolution of symptoms by around two years. I appreciate the situation with regard to the events are more complex particularly the psychological effect of the incident being significant.

297. Once the scans recommended by Mr Mohammad had been produced, Mr Mohammad reviewed them and prepared Mohammad 2. Mohammad 2 recorded, among other things:

(1) that a report by Dr Collie on the lumbar spine scan included a comment:

> Normal MRI lumbar spine appearances for age.
>
> No traumatic lesion or neural compression.

(2) the report of Dr Collie on the cervical spine scan included a comment:

> Mild chronic mid and lower cervical disc degenerative changes, with left C4 foraminal stenosis, but no frank neural compression or specific traumatic lesion is seen.

(3) comments by Mr Mohammad on what he described as "underlying changes":

> [24] It would appear that the injuries have occurred on background of underlying changes but the changes seen are not due to the injuries sustained which in my view were soft tissue in origin.
>
> …
>
> [26] With the underlying changes noted from a treatment perspective no surgery is indicated but he would benefit from physiotherapy, CBT and possibly targeted injections in relations to the facets.

(4) comments by Mr Mohammad on whether Mr Wamala continued to be affected by what happened on Christmas eve:

> [25] On review of the notes provided and the MRI scan it would appear that Mr Wamala continues to be significantly affected both physically and mentally as a consequence of his experience on 24 December 2011.

(5) comments by Mr Mohammad on prognosis, including:

> [27] I would expect around 18 sessions to be appropriate till March 2014. Treatment of the psychological issues is paramount for the recovery of the physical injuries as well. I can envisage up to three set of injections in the neck and the back.

> [28] I would suggest that with the index incident having occurred on the background of the underlying changes noted the effects of the index incident may last till the treatment is complete.
>
> [29] I would however stress that beyond March of 2014, I would regard any continuing symptoms in the neck and the back to be constitutional with only the psychological issues driving the symptoms if they indeed continue.
>
> [30] It is my view that, in terms of the back and neck injuries sustained by Mr Wamala, any symptoms beyond March 2014 would not be related to index incident unless the psychological assessment is suggestive of psychological trauma as a cause of continuing symptoms. Any continuing symptoms would be constitutional and hence physical work and employment would be encouraged from March 2014. There would be no trauma related cause for not working after 2014.
>
> [31] This is not to say that had the index incident not occurred Mr Wamala would have required treatment in the way of pain management. I suspect not as there was no significant past history of symptoms before. Having underlying changes does not mean symptoms but rather a vulnerability in case of trauma one may encounter symptoms for longer and symptoms that may be more difficult to treat.
>
> [32] In this specific case the perception of pain can be altered due to psychological trauma in which case one can require pain management for longer than what I have suggested above, that is March 2014.

298. Mr Matthews saw Mr Wamala on 10 January 2014. Nine features of what happened on that occasion are said in Reliance's written closing submissions to demonstrate that Mr Wamala was faking symptoms of neck and back pain. I examine those nine features in section E2 below. In that regard I comment on whether Reliance suggests that the feature in question demonstrates, not merely faking of symptoms to Mr Matthews, but also faking of symptoms to Mr Mohammad.

299. The closing submissions for Mr Wamala submitted that Mr Matthews was discredited as a witness. Putting the matter broadly, seven specific criticisms were said to support a contention that Mr Matthews's opinions in relation to Mr Wamala were biassed. I examine those seven matters in section E3 below. In section E4 I discuss Reliance's challenges to Mr Mohammad's evidence. In that regard I comment on relevant opinions of Mr Matthews as set out in Matthews 1 and, after consideration of the scans, in Matthews 2. My findings on Mr Wamala's past and current physical injuries are then set out in section E5 below.

300. Before turning to section E2, I note that a recording was made by Mr Matthews of his interview with Mr Wamala, and that the recording includes what was said by Mr Matthews once Mr Wamala had left the interview. The final passages in the transcript of the recording include the following:

> Dr Matthews: … thank you for coming to see me today Mr Wamala. I have done my examination now. I will read through the notes as you suggest and – I will produce my report as soon as I can …
>
> Mr Wamala leaves
>
> Dr Matthews: (after closing the door) Phew, bizarre.

E2 Faking symptoms to Mr Matthews: 9 features

E2.1 Faking (1): exaggeratedly slow walking

301. Paragraph 11 of Matthews 1 stated:

> 11. Mr Wamala walked when called from his chair in the waiting room, a distance of about 10 yards in an exaggeratedly slow manner and hesitated to take my outstretched welcoming hand.

302. In cross-examination it was suggested to Mr Matthews that the reference to Mr Wamala walking "in an exaggeratedly slow manner" was meant in a pejorative sense. Mr Matthews replied that he did not mean to be rude, adding that he thought that it was a reflection of Mr Wamala's general attitude towards Mr Matthews at the time. Mr Matthews accepted that he thought Mr Wamala was being rude.

303. I do not accept that, on the face of the report at least, in relation to Mr Wamala's manner of walking Mr Matthews was doing anything other than recording that Mr Wamala walked in a slow manner, and that in his opinion it was an exaggeratedly slow manner. I add that it seems to me that an experienced orthopaedic surgeon such as Mr Matthews could be expected to be able to form an opinion as to whether a patient who was walking slowly was doing so in an exaggerated manner. It is not suggested, however, by Reliance that in relation to his manner of walking when seen by Mr Mohammad, Mr Wamala was faking the speed with which he was able to walk.

E2.2 Faking (2): tenderness without spasm

304. Matthews 1 stated at paragraph 12:

> 12. On palpation of his cervical spine he reported tenderness at the level of C5 on the right hand side but there was no associated spasm.

305. Mr Mohammad stated in the course of cross-examination that a spasm when tenderness is reported in the cervical spine is not always present, but is "generally" to be expected. I have no reason to doubt this evidence. On this basis it seems to me that the absence of spasm is too slender a basis to indicate faking on the part of Mr Wamala when he reported tenderness at C5. It is not clear whether Mr Mohammad found tenderness at C5 without spasm, but if he did I would similarly conclude that this would be too slender a basis to indicate faking on the part of Mr Wamala.

E2.3 Faking (3): neck flexion & rotation

306. This third feature has two different aspects. Both are founded on paragraph 13 of Matthews 1:

> 13. He would only move his neck into flexion by 50% of the normal range and external rotation by 30% of the normal range. On getting dressed he demonstrated a full range of movements without apparent difficulty.

307. To my mind the first point to be made about the degree of flexion and rotation of the neck demonstrated by Mr Wamala to Mr Matthews is that if Mr Wamala were indeed only able to achieve the degree of flexion and rotation which he demonstrated to Mr Matthews, then between 5 April 2013 and 10 January 2014 there had been a dramatic deterioration. On 5 April 2013 Mr Wamala had been able to achieve at least 80% of normal flexion and 80% of normal rotation. By contrast, the points at which he told Mr Matthews that he could go no further were 50% of the normal range of flexion and 30% of the normal range of rotation. Mr Mohammad accepted in cross-examination that such a deterioration was inconsistent with the result of a soft tissue injury, that it was inconsistent with simple disc degeneration, and that there was no evidence of any severe neck disease which would otherwise explain such a marked deterioration.

308. This dramatic and inexplicable deterioration seems to me to be very strong evidence that Mr Wamala, when he saw Dr Matthews, was grossly exaggerating the limitations on his ability to flex and rotate his neck. It is not suggested, however, by Reliance that in this respect Mr Wamala was faking when he saw Mr Mohammad. On the contrary, the strength of the evidence of faking in relation to what Mr Wamala told Mr Matthews arises out of the stark contrast between the account given to Mr Matthews and the findings of Mr Mohammad.

309. A second aspect of feature (3) is the contrast between what Mr Wamala said he could do when examined by Mr Matthews, and what Mr Matthews saw Mr Wamala doing when Mr Wamala got dressed. As a layman, I was a little surprised when Mr Matthews said that he was able to witness a full range of movement. It was suggested to Mr Matthews in cross-examination that when getting dressed Mr Wamala was simply putting on a jacket and perhaps a pullover. There was no evidence that, as a matter of orthopaedics, a person putting on a jacket or a pullover would not be able, or would not be likely, to demonstrate a full range of movement. It is suggested on behalf of Mr Wamala that it was absurd to suggest that Mr Matthews could have seen a full range of movement, but in the absence of any expert evidence to support such a contention I am in no position to find that Mr Matthews's evidence is absurd. I add that if it were, indeed, suggested that a full range of movement could not be seen when a person was putting on the suggested items of clothing then, if so minded, Mr Wamala could have applied for permission for Mr Mohammad to deal with this in a supplementary report. No such course was taken. On this aspect of feature (3), what Mr Matthews saw is again strong evidence of faking.

310. It was not suggested to Mr Mohammad that this second aspect demonstrated that Mr Wamala must have been faking when Mr Mohammad made his assessment on 5 April 2013 of Mr Wamala's ability to flex and to rotate his neck. However the validity of that assessment was challenged on other grounds: see section E4.2 below.

E2.4 Faking (4): global weakness of upper limb myotomes

311. Matthews 1 stated at paragraph 14:

> 14. On examination of the upper limb myotomes from C5 to T1 in order to establish neurological deficiet he demonstrated a global weakness of MRC grade 3 out of 5, sometimes 5 out of 5 meaning that this is volitional and not organic and consequently must be regarded as abnormal illness behaviour or a refusal to co-operate.

312. A myotome is a group of muscles or the nerve which are fed from a particular disc root space. What is described in paragraph 14 of Matthews 1 is what was demonstrated by Mr Wamala in relation to the myotomes either side of the spinal column at the fifth, sixth and seventh cervical vertebrae and the first thoracic vertebra. Feature (4) concerns the finding of global weakness in this regard. Mr Mohammad accepted in cross-examination that the whole point of the tests conducted by Mr Matthews in relation to these myotomes is to find out which nerve is affected, there being specific tests associated with each one, and that a global weakness would not be expected to be exhibited throughout the different discs. Mr Mohammad said he had no reason to disagree that, if Mr Matthews had accurately carried out the tests, the response from Mr Wamala was a very strong indication that he was either refusing to co-operate or exhibiting abnormal illness behaviour. It seems to me that this is indeed a very strong indication of faking when Mr Wamala was seen by Mr Matthews. By contrast, however, Reliance accepts that there had been no complaint of such weakness when Mr Wamala was seen by Mr Mohammad. Accordingly this feature does not demonstrate that Mr Wamala was faking when describing his symptoms to Mr Mohammad.

E2.5 Faking (5): upper limb myotome variability

313. Feature (5) also arises from what Mr Matthews recorded in paragraph 14 of Matthews 1. The relevant point as regards feature (5) is that at one moment Mr Wamala was describing a weakness of grade 3 out of 5, while at the next moment his score was 5 out of 5, indicating full power. In the joint orthopaedic report Mr Mohammad accepted that findings of this kind were not consistent with any neurological weakness.

314. It was suggested to Mr Matthews in cross-examination that differences in the strength grading could have been caused by pain. Mr Matthews's reply was that if something was painful, the patient might only be able to achieve grade 3 out of 5 due to pain inhibition. However, the patient would not in the next moment be able to achieve 5 out of 5, because the same pain would still be there and would prevent the patient reaching 5 out of 5. It was then suggested that these findings could have been caused by mental health difficulties experienced by a patient. Mr Matthews rejected this too. He said that if 5 out of 5 could be achieved in one moment, no matter what the patient's mental state was, there would be no reason why the next moment it should be 3 out of 5.

Once a patient reaches 5 out of 5, the patient would have done it, irrespective of the patient's mental state. Mr Matthews was willing to accept that there might be explanations which did not involve deliberately trying to mislead the clinician, but he said that they would only arise if there was a genuine shoulder injury. A genuine shoulder injury in the present case, said Mr Matthews, was not compatible with the remainder of the findings of the other myotomes also being weak. Nor in Mr Matthews's view could anxiety or apprehension provide an explanation for some of the presentation on the part of Mr Wamala recorded in Matthews 1.

315. In these circumstances the variation in myotome weakness appears to me to be strong evidence of faking on the part of Mr Wamala in what he said to Mr Matthews. Here, too, however, there is no suggestion that it demonstrated faking on the part of Mr Wamala when seen by Mr Mohammad, as there was no complaint to Mr Mohammad by Mr Wamala of any symptom attributable to weakness in relevant myotomes.

E2.6 Faking (6): left reflexes giving the lie

316. Paragraph 15 of Matthews 1 stated:

> 15. On examination of the upper limb reflexes, namely the biceps, triceps, Brachioradialis and finger jerk reflexes, which derive their nerve supply from the C5, C6, C7 and C8 spinal nerve roots, he would not relax on the right hand side but held the muscles tensed so that reflexes could not be elicited but relaxed on examination of the left hand side which revealed normal reflexes which contradicts the alleged weakness on the upper limb myotomes.

317. Feature (5) concerns the finding made by Mr Matthews that examination on the left hand side revealed normal reflexes. In cross-examination Mr Mohammad accepted that the presence of normal reflexes on the left hand side was inconsistent with weakness of the upper limb myotomes. This appears to me to be strong evidence of faking on the part of Mr Wamala when seen by Mr Matthews. It does not, however, demonstrate faking on the part of Mr Wamala when seen by Mr Mohammad, as Mr Wamala made no mention to Mr Mohammad of any symptom attributable to weakness in the upper limb myotomes.

E2.7 Faking (7): inhibiting reflexes

318. Feature (7) is also based on paragraph 15 of Matthews 1. It concerns Mr Wamala's failure to relax on the right hand side, instead holding the muscles tensed so that reflexes could not be elicited.

319. It is common ground that for a reflex to be elicited, the muscle concerned has to be in its relaxed state and not held tense. The joint orthopaedic report in this regard added that where relaxation was "not achievable" both Mr Mohammad and Mr Matthews would "comment or use diversional techniques". There is no evidence, however, on the extent to which comments or the use of diversional techniques can be expected to succeed where a patient who is seeking to be co-operative nevertheless tenses up prior to a reflex test. In these circumstances it does not seem to me that this feature adds significantly to feature (6).

E2.8 Faking (8): location of lateral flexion pain

320. Matthews 1 stated at paragraph 19:

> 19. Lateral flexion which occurs at the junction of T12 and L1 (the thoracolumbar junction) was 60% of normal and on questioning this caused pain at the mid-lumbar level of L3 to L4 rather than higher up as I would expect.

321. The point relied upon as regards feature (8) is that when lateral flexion causes pain this would be expected to be at a higher level in the body than was the case with Mr Wamala. Mr Mohammad, however, described extensive experience of circumstances where pain would be felt at levels lower than Mr Matthews had expected. In these circumstances it does not seem to me that this feature assists Reliance.

322. In addition, it may be noted that Mr Mohammad was cross-examined about Mr Wamala's description to Mr Mohammad of pain at the right thoracolumbar junction and the lumbo-sacral area on the left hand side. It was put to Mr Mohammad, and he agreed, that those symptoms were entirely consistent with degenerative change. Mr Mohammad was not, however, asked whether there were factors which indicated that the pain identified by Mr Wamala in this region was attributable to degenerative change rather than to injuries suffered on Christmas eve.

E2.9 Faking (9): location of pain on rotation

323. Matthews 1 stated at paragraph 20:

> 20. When I asked him to rotate, an action which occurs in the thoracic spine, he reported pain over the iliac crests and not in the lumbar spine. He managed however to rotate through a full range of movements.

324. No complaint about the reporting of pain in the iliac crests was put to Mr Mohammad in cross-examination. Accordingly the report of pain in the iliac crests does not give rise to any complaint which can be advanced by Reliance.

E3 Physical injury: criticisms of Mr Matthews

E3.1 Bias (1): recording without consent

325. Criticism (1) asserted that in breach of professional conduct rules and the Data Protection Act 1998 Mr Matthews recorded his conversation with Mr Wamala without Mr Wamala's consent. Mr Wamala relied upon the outcome of the complaint which he made to the General Medical Council ("GMC"). In that regard, a medical and a lay case examiner considered Mr Wamala's concerns. They decided to conclude the case with advice. The reasons for this decision and details of the advice given were sent by the GMC to DPG on 12 August 2014.

326. Reliance accepts that Mr Matthews recorded his meeting with Mr Wamala: see section E1 above. It also accepts that Mr Matthews was required, both by data protection legislation and by compulsory guidance issued by the GMC, not to record the meeting with Mr Wamala without having obtained Mr Wamala's consent.

327. Mr Matthews told both Horwich Farrelly and the GMC that his practice was always to tell his medico-legal clients that he was using a recording device. The recording device that he used was an "Echo Smartpen". Mr Matthews said that he would tell clients that he was using the device before he turned it on, and would only turn it on if they consented. Mr Matthews told Horwich Farrelly that with regard to Mr Wamala or any other particular individual that he had seen, Mr Matthews had no specific recollection of discussing his use of the recording device, but he had no reason to believe that he had not. Mr Matthews's response to the GMC was in similar terms: see section E3.3 below.

328. The advice given by the case examiners included the following:

> … the onus is on Mr Matthews to ensure that patients are fully aware of the fact that he intends to record the consultation, and the implications of this; … he should obtain and retain their consent to this, and any later distribution of the recording.

329. As to what had happened as a result of Mr Wamala's complaint, the case examiners recorded that Mr Matthews had:

> stated that as a result of reflection on this matter, future procedures have been changed and patients will now be given written material beforehand, explaining the use of recording devices. They will also be required to consent verbally to this when the recording device is switched on.

330. The reasons given by the case examiners for dealing with the matter by way of advice included the following:

> The Case Examiners have considered the matter carefully. It is not disputed that Mr Matthews recorded the consultation. It is not the role of the Case Examiners to resolve conflicts of evidence, such as whether verbal consent was or was not obtained before the recording device was switched on. However, it is clear that *robust* consent was not obtained or recorded. If this had occurred, it would have been clear to Mr Wamala that the recording was being made, and may have been forwarded to a third party (i.e. the instructing solicitor). However, the Case Examiners note that the recording was made to assist the legal process, and has not been used for any other reason. We also note that Mr Matthews has determined to change his practice in this regard. We therefore believe that there is insufficient evidence to show that Mr Matthews' fitness to practice is *currently* impaired, and believe that the realistic prospect test is not satisfied. We also do not believe that there is sufficient evidence to suggest that a warning is an appropriate response.
>
> However, we believe that it is likely that Mr Matthews has reflected on the concerns raised in this case and reminded himself of his responsibilities in this area. His attention is directed towards the relevant paragraphs of GMC guidance, and he is strongly advised to ensure that he does apply these principles to his future practice, as he has indicated he will in his response.

331. The closing submissions for Mr Wamala drew attention to the second to last sentence of the first paragraph quoted above. The case examiners emphasised the word "currently". The conclusion that there was insufficient evidence to show that fitness to practice was "currently" impaired, was said to speak volumes.

332. To my mind, what this indicated is that, at the time that Mr Matthews saw Mr Wamala, Mr Matthews did not have in place robust procedures to ensure that consent was both obtained and recorded. The case examiners make no finding that at that time Mr Matthews's fitness to practice was impaired: they leave that question completely open.

333. The case examiners stressed that confidentiality between patient and doctor is the basis of the trust that exists between the public and the medical profession, and that anything which might call that trust into question is a very serious matter. Nothing in the present judgment should be regarded as detracting from the vital importance of confidentiality as between doctor and patient. Nor should anything in the present judgment be regarded as detracting from the importance of the duty of all those affected by relevant data protection legislation to comply with the requirements of that legislation. In relation to Mr Matthews, however, the lapse identified by the case examiners was a failure to have in place procedures to ensure that robust consent was both obtained and recorded. There is no finding by the case examiners that Mr Matthews in fact failed to obtain consent from Mr Wamala. Still less is there any finding by the case examiners that Mr Matthews deliberately made a covert recording. In these circumstances, the sentence relied upon by Mr Wamala gives no assistance to a contention that Mr Matthews was biased.

E3.2 Bias (2): Misleading the GMC

334. The case examiners recorded what Mr Matthews had said to the GMC in this way:

> The position of Mr Matthews in his response to the GMC is that he always informs the patient that he will use the recording device for accuracy before he switches it on. He has no specific recollection in this case, but believes he would have done the same.

335. Criticism (2) is that Mr Matthews's response to the GMC, as described by the case examiners, was misleading. The only basis for contending that it was misleading is an assertion that in his evidence at trial Mr Matthews did not dispute that he had failed to obtain Mr Wamala's consent to the recording. However this misrepresents Mr Matthews's evidence. It was put to him in cross-examination that he had not asked Mr Wamala for consent. Mr Matthews's reply was this:

> It is certainly not recorded and I would be obliged to accept, in this instance, that there is no evidence that I got his verbal consent.

336. That evidence on the part of Mr Matthews was perfectly consistent with his response to the GMC. Nothing said to the court by Mr Matthews involved a concession that he had not obtained Mr Wamala's consent. Nothing that was said to the court by Mr Matthews involved an admission by him that either at the time of his response to the GMC or when giving evidence to the court he did not believe that he would have obtained Mr Wamala's consent. In the passage cited on behalf of Mr Wamala, Mr Matthews simply accepts that he does not have evidence of obtaining Mr Wamala's oral agreement to the recording taking place. There is no basis in this passage for the charge that Mr Matthews misled the GMC.

E3.3 Bias (3): response about duration

337. In Matthews 3 Mr Matthews responded to a question from DPG seeking to know "the approximate duration" of his meeting with Mr Wamala on 10 January 2014. Mr Matthews replied:

> I do not know, I did not time it. It took as long as it needed to in the circumstances. This question is not germane to … CPR 35.6.

338. Criticism (3) asserted that this response was (a) unhelpful, (b) uncooperative, and (c) a flat lie. It was said to be a "flat lie" because Mr Matthews had in his possession the recording of the meeting.

339. Under cross-examination Mr Matthews accepted that he could have looked at the timing of the recording. He pointed out, however, that the recording was made so as to ensure accuracy, and there was no reason why he should time the meeting. His answer had been accurate: he did not know how long the meeting had lasted and he did not consciously time it.

340. I reject the assertion that Mr Matthews was guilty of a "flat lie" in this regard. No doubt if he had thought of the recording, then he could have taken steps to find out the amount of time that elapsed after he greeted Mr Wamala and before Mr Wamala left the room. He had not consciously sought to time the length of the meeting. There is no reason why he should have done. There is no basis upon which I can find, and indeed it has not been expressly suggested, that Mr Matthews thought to himself that he could use the recording to work out how long the meeting had lasted, but nevertheless decided not to do so. As it happens, by the time that Mr Matthews sent his reply on 25 March 2014, DPG had already been told of the recording: a letter dated 17 March from Horwich Farrelly enclosed a transcript of the recording, and gave a link to an audio version of the recording. In these circumstances I find that Mr Matthews was neither unhelpful nor uncooperative, nor guilty of lying.

E3.4 Bias (4): MDDUS response to the GMC

341. It was suggested to Mr Matthews in cross-examination that he had been influenced by his dealings with Horwich Farrelly. Mr Matthews was asked about three aspects of these dealings in cross-examination. I can deal shortly with the second and third. The second was that Mr Matthews had been put forward as a witness to challenge the credit of Mr Wamala. There is no evidence, however, that Mr Matthews was aware of this. The third was that Mr Wamala made an offer to return and be re-examined by Mr Matthews. Mr Wamala accepts, however, that this does not appear to have been communicated to Mr Matthews.

342. That leaves the first and main matter of complaint in relation to Mr Matthews's dealings with Horwich Farrelly. It was said that Mr Matthews's approach to his interview with Mr Wamala, and his report, were "irreparably coloured" by the letter of instruction he had received from Horwich Farrelly. Under cross-examination Mr Matthews acknowledged that the letter of instruction asserted that Mr Wamala had been untruthful and that Mr Wamala's account of the events in question was demonstrably lies. Mr Matthews accepted that the letter of instruction made these, and indeed other, pejorative assertions about Mr Wamala. He maintained that he nevertheless approached the matter independently, in accordance with his duties to the court.

343. With a view to showing that Mr Matthews had ceased to remain impartial after receiving the letter of instruction, criticism (4) seeks to rely upon a letter sent by the Medical and Dental Defence Union of Scotland ("MDDUS") to the GMC on 20 May 2014. I refuse to allow Mr Wamala to rely upon this letter, as it was not put to Mr Matthews in cross-examination.

E3.5 Bias (5): alleged inaccuracies

344. Criticism (5) cited two alleged inaccuracies in Matthews 1. The first concerned the last sentence of paragraph 7:

> I explained to him politely that it was in his interest to co-operate … and that the court may take a dim view of his failure to co-operate but he continued to refer me to the reports and records.

345. It was said that the transcript showed this to be an untrue account of what had occurred. In fact, however, the transcript shows that Mr Wamala's immediate response was, "Yeah, you've got my medical reports". That immediate response of itself justified what was said in the last sentence of paragraph 7 of Matthews 1. He had earlier referred Mr Matthews to "my medical reports", and in his immediate response to Mr Matthews's explanation of why Mr Wamala should answer Mr Matthews's questions, Mr Wamala continued to refer Mr Matthews to Mr Wamala's medical reports. Moreover, after an exchange which I deal with in section E3.7 below, Mr Wamala again said that he would refer Mr Matthews "to the medical reports because I can't answer it". There is no merit in this first aspect of criticism (5).

346. I add that in cross-examination there was a complaint that the second sentence of paragraph 7 of Matthews 1 was inaccurate. This second sentence asserted that Mr Wamala had repeatedly referred Mr Matthews to the documentation supplied, and had said "it's all in the medical records" or "it's all in the records". The sentence had been said to be inaccurate because it was a claim that those repeated remarks had been made before Mr Matthews's explanation of why it was in Mr Wamala's interest to co-operate. Mr Matthews rebutted that allegation of inaccuracy by observing that the second sentence of paragraph 7 was not limited to what was said before that explanation. The closing submissions for Mr Wamala rightly did not persist in this complaint.

347. The second alleged inaccuracy concerned a statement at paragraph 46 of Wamala 1 that during the physical examination Mr Wamala had "simply refused to co-operate". It is said in Mr Wamala's closing written submissions that no such refusal is apparent from the transcript. However this contention was not put to Mr Matthews in cross-examination, and accordingly I refuse to allow it. I add that it takes a small part of paragraph 46 out of context: the full assertion in paragraph 46 is that during the physical examination Mr Wamala "either simply refused to co-operate or alternatively has exhibited substantial abnormal illness behaviour". It seems to me that this general comment could well have been made in relation to the instances where I have identified "faking" on the part of Mr Wamala in section E2 above, and might also have reflected Mr Matthews's assessment of Mr Wamala's conduct in failing to relax muscles on his right side for the purposes of reflex tests.

348. For these reasons there is no merit in criticism (5).

E3.6 Bias (6): "Full range of movement" in neck

349. Criticism (6) concerned what Mr Matthews said about Mr Wamala's neck flexion and rotation. I have dealt with this in section E2.3 above. For the reasons given there, I cannot accept the assertion that Mr Matthews's assertion that he saw a full range of movement was absurd.

E3.7 Bias (7): abruptness and hostility

350. In support of an assertion that Mr Matthews's interview with Mr Wamala was abrupt and hostile, it is said that Mr Matthews did not seek to put Mr Wamala at ease. I reject this assertion. The transcript shows that at the outset there was a series of interchanges. The very first of these began with Dr Matthews saying:

> … Hello there. Will you come in? How are you doing? … come and have a seat.

351. Mr Matthews told Mr Wamala his name, that he was a consultant trauma surgeon, that he worked at the John Radcliffe Hospital in Oxford, and that he had received instructions to do another medical report on Mr Wamala. He asked Mr Wamala whether he had already had another medical report with regard to Mr Wamala's injuries. Mr Wamala replied, "Yeah".

352. Mr Matthews asked whether Mr Wamala had filled in a questionnaire. Mr Wamala handed over the questionnaire and the following exchange took place:

> Dr Matthews: Thank you very much. Where do you come from today Mr Wamala?
>
> Mr Wamala: Manchester
>
> Dr Matthews: From Manchester. Sorry, can you speak up, I am a little bit deaf. It's Felix, is that right?
>
> Mr Wamala: Yeah

353. There were a few similar exchanges until Dr Matthews noted that Mr Wamala had not filled in the questionnaire at all. Throughout this period Mr Matthews described Mr Wamala as "surly". I have no doubt that, in part for the reasons given by Professor Katona and cited in section B2.1 above, the attitude of Mr Wamala to Mr Matthews was hostile. The hostility demonstrated to Mr Matthews, however, went far beyond such hostility as was demonstrated to Dr Britto. I think it likely that the reason for this was because Mr Wamala had decided that he would fake some, at least, of his symptoms when examined by Mr Matthews, and was for that reason on edge and surly in his dealings with Mr Matthews.

354. The remaining point taken in criticism (7) concerns an exchange which occurred not long after the second occasion on which Mr Wamala referred Mr Matthews to Mr Wamala's medical reports:

> Dr Matthews: I am going to be asking you questions about what happened, about your state of health and your symptoms. Or are you simply going to refer me to the medical records?
>
> Mr Wamala: Yeah.
>
> Dr Matthews: Yeah what? Yeah, you are going to refer me to the medical records or are you going to answer my questions?
>
> Mr Wamala: Yeah, I will refer you to the medical records because I can't answer it.
>
> Dr Matthews: You can answer my questions. Would you let me examine you?

355. At this point Mr Wamala indicated that he would let Mr Matthews examine him. Mr Matthews was, from that point onwards, able to ask questions of Mr Wamala, and he received answers from Mr Wamala.

356. Criticism (7) asserts that in the first question quoted above Mr Matthews suggested to Mr Wamala that Mr Wamala could refer Mr Matthews to the medical records. I disagree. It was plain from what had gone before that Mr Matthews did not regard simply referring him to the medical records as satisfactory. It was plain that he wished Mr Wamala to answer his questions. In the event Mr Matthews was able to identify questions which Mr Wamala would answer during the course of examination, but was left to go to the records in order to obtain any sort of history.

357. Thus I reject the assertion that Mr Matthews was abrupt and hostile. I do, however, consider that things could have gone better. In particular, if Mr Matthews had read Professor Katona's report before the meeting, he would have been alerted to Mr Wamala's PTSD and MDD, and could have given thought to ways in which the particular problems associated with those conditions could be anticipated. Mr Matthews appeared to suggest in evidence that knowledge of Mr Wamala's PTSD would have made no difference to his approach. That runs counter to the experience of the judiciary, who have gained assistance from the Equal Treatment Bench Book

for many years. Mr Matthews sought to explain his approach by saying that he wished to form his own view without the danger of it being influenced by the views of others. It seems to me, however, that the court is likely to be better assisted by Mr Matthews if, prior to examining those whom he is asked to report on, he has read available reports. This will enable him to give thought, prior to meeting the individual in question to the particular matters that the court will be likely to want to know about, and to any potential difficulties of communication that may be capable of being catered for.

E4 Physical injury: challenges to Mr Mohammad's evidence

E4.1 Challenges to Mr Mohammad's evidence – interruption

358. In the present section E4 I give an account of key points arising during Mr Mohammad's cross-examination, and my assessment of those points.

359. Much of Mr Mohammad's cross-examination was taken up on aspects described in section E2 above. I mention those aspects in the present section E4 only if there is some additional feature calling for mention.

E4.2 Mr Mohammad's reporting warnings

360. Cross-examination of Mr Mohammad began by taking him to notes made by Nurse Jake, who saw Mr Wamala late on Christmas eve after Mr Wamala's arrival at Colnbrook IRC. Those notes did not mention any complaint concerning the shoulder or neck area. It was suggested to Mr Mohammad that if Mr Wamala had suffered soft tissue injuries beyond the very trivial, the pain would have been felt by the stage at which he reached Colnbrook IRC. Mr Mohammad in response made four points about the danger of placing weight on absence of a recorded complaint in a medical report. I refer to these points as numbers (1) to (4) of Mr Mohammed's reporting warnings:

> (1) those that have been injured do not necessarily list specific areas and make sure that they are noted;
>
> (2) it is not necessarily the case that the clinician will record the areas of pain described by the patient in the way that the patient has in fact described them;
>
> (3) Mr Mohammad's experience is that patients are often referred to him after trauma with a set of symptoms, but when Mr Mohammad looks at the patient and assesses the patient, and has his registrars assess them, they often find many other areas which were initially not brought to attention; and
>
> (4) this pattern is particularly found in patients who have had an issue in multiple areas.

361. Cross-examination continued by taking Mr Mohammad to notes made by Dr Jabbar, who saw Mr Wamala on Christmas Day. Dr Jabbar's notes contain a sentence making a general comment about Mr Wamala's complaints: "He is complaining of sore ribs, especially right and right-sided upper and lower back pain, no other injuries or symptoms". It was suggested to Mr Mohammad that Dr Jabbar was making a full examination the morning after the incident at a time when Mr Wamala was known by Dr Jabbar to be about to complain about the incident. By contrast, it was suggested to Mr Mohammad that his reporting warnings described an omission to mention all injuries which was only likely to occur where a severe distracting injury encouraged a patient to forget about trivial ones. In response, Mr Mohammad made three points, which I shall number as (5) to (7) of Mr Mohammad's reporting warnings:

> (5) Mr Mohammad's experience was that when taking calls from transferring hospitals, despite emphasising to hospital clinicians that they need to go through symptoms thoroughly, it has to be accepted that as human beings doctors can omit issues, with the result that it is necessary to go back to the patient again and again; Mr Mohammad added that he was not always seeing patients who had severe injuries in the first place, for the position at the trauma centre was that patients

often presented with multiple injuries, not necessarily all surgical;

(6) terminology may be inaccurate: Mr Mohammad said he often found that when hospital clinicians described "upper back" pain, it was in fact radiation from the neck which was the cause of the pain, and conversely there may be issues as between the shoulder and the neck and the upper limb and the neck; and

(7) Mr Mohammad, in response to a question about a positive statement in a medical report that there were "no other injuries or symptoms", stressed that an assumption that this was accurate was inconsistent with how the trauma centre practises in real life; if statements of that kind could be relied upon, there would be no point in taking a history again from the patient.

362. In relation to Mr Wamala's neck, Dr Jabbar's notes included "NAD", short for "nothing abnormal detected". Also in relation to Mr Wamala's neck, the letters "FROM" appeared indicating a full range of movement. As regards those notes, Mr Mohammad made additional points which I shall refer to as numbers (8) to (10) of Mr Mohammad's reporting warnings:

(8) stiffness of the neck does not necessarily occur immediately after the injury;

(9) as to ranges of movement, there are some where several doctors examining the same neck would reach different views, some saying that there was a reduced range of movement and others saying that it was not a reduced range of movement: assessing whether there is a reduced range of movement is not a precise science; and

(10) it is "quite customary" for doctors to do a "generalist examination", which does not specifically concentrate on what is being described as a full range of movement – a doctor is unlikely to be able to put in the 45 minutes or so which Mr Mohammad would devote to examining spinal aspects.

E4.3 Right wrist: radicular symptoms?

363. What Mr Wamala described to Mr Mohammad was dealt with in Mohammad 1 in a section entitled "History". The final paragraph of this section was paragraph [9], where Mr Mohammad stated:

No radicular symptoms are described. …

364. In cross-examination Mr Mohammad was taken to the next section of Mohammad 1 entitled "Current state of symptoms". There Mr Mohammad set out the description Mr Wamala had given to him of the current state of Mr Wamala's symptoms. In paragraph [10] this account included:

Pain radiates into his right hand, wrist with pins and needles, aching and pain. …

365. It was suggested to Mr Mohammad that this passage in paragraph [10] was inconsistent with what Mr Mohammad said in paragraph [9]. Mr Mohammad disagreed.

366. First, Mr Mohammad gave an account of radicular symptoms in which he agreed with what was put to him on behalf of Reliance. This was that a radicular symptom was caused by compression of the nerve root at the cervical spine causing pain which often radiated and caused paresthesia (heightened sensitivity, numbness, prickling or tingling) and the like. Mr Mohammad also agreed that pain radiating into the hand and wrist with pins and needles and aching could constitute radicular symptoms. However, Mr Mohammad went on to explain that those symptoms could equally have a peripheral cause originating in the wrist or forearm. As to how radicular symptoms were to be distinguished from those not caused by compression of the nerve root at the cervical spine, Mr Mohammad explained that a symptom coming specifically from the neck gave rise to a dermatomal pattern – a circumscribed thickening of the skin. This pattern is not found where the symptom has a cause which is non-spinal. It was not found in relation to the right wrist pain in the present case. He accepted

that he had not identified any peripheral cause, but noted that in Mohammad 1 he had recommended a test that would do this.

367. Mr Mohammad's evidence in this regard was clear and compelling. It demonstrated Mr Mohammad's expertise in distinguishing pain with an origin which is spinal from pain which is not spinal in origin. It also demonstrated the value of Mr Mohammad's specialist expertise when forming an opinion about symptoms of the kind shown by Mr Wamala.

E4.4 Soft tissue injury: course of recovery

368. Consistently with what was said in Matthews 1, it was suggested to Mr Mohammad that soft tissue injury has a relatively well recognized course of recovery. It will involve an acute phase, typically lasting 6 to 8 weeks. That depended upon the severity of the original injury, and thus might be a few days or might be months.

369. Mr Mohammad replied that, as a description of the position in relation to a limb, he agreed. As regards the spine, however, "it does not quite work that way."

370. This led to a clarification on behalf of Reliance. It was said that the "relatively well recognized course of recovery" that had been put to Mr Mohammad was a course of recovery in relation to the paraspinal muscles, which was where Mr Wamala's pain was located.

371. Mr Mohammad responded that the spine is a very complex structure, and that the clarification was "going down the route of saying that we know exactly where the source of this pain is." It was something which Mr Mohammad would not dare to do. He agreed that soft tissue injuries generally had an acute phase, followed by a lengthy stage where the injury gradually subsides to nothingness. In Mohammad 1 he had considered that the likely end date for continuing symptoms to the neck and back, on the basis of soft tissue injury, would be March 2014. This was not the same as soft tissue injury in any other part of the body. He differed from the opinion which Mr Matthews had described, in which pain going beyond a year would be attributable to degenerative changes rather than pain from the soft tissue injury.

372. In that context, Mr Mohammad explained that in the joint report he had extended the end date by a year to March 2015. The reason for the change was that Mr Mohammad considered that Mr Wamala was "going into a pain syndrome type of scenario". When a patient has had pain for some time other factors become important and pain pathways change. Patients develop "chronic pain syndrome". At that stage it was not the structural injury which was the driver, it was more the overall dimension of what was happening. For this reason, Mr Mohammad had suggested looking at cognitive behavioural therapy and involving a specialist.

373. My assessment of this evidence is dealt with when assessing evidence given on the next topic, the effect of degenerative disc changes.

E4.5 Effect of degenerative disc changes

374. Reliance's stance was that, as asserted in Matthews 1, the fact that Mr Wamala was shown by the scans as already having degenerative disc changes had no effect on progress of the soft tissue injury. When this was put to him, Mr Mohammad replied:

> If you have underlying degenerative changes, often injuries take longer to settle, or they can do – not always, but they can do.

375. Mr Mohammad agreed that the level of degenerative disc disease shown in Mr Wamala's scans could be either symptomatic or asymptomatic. He also agreed that it is impossible to predict from the scan whether the patient will fall into the symptomatic category or the asymptomatic category. Mr Mohammad was asked to agree that there had been extensive analysis of whether symptoms of degenerative disc change can affect the severity of the symptoms of the soft tissue injuries. Mr Mohammad replied:

> There is a plethora of literature which talks about it. One can swing one way or the other with regards to what is being discussed and we can continue to discuss that in spinal circles.
>
> …
>
> … a spine is not like a hip joint or a leg or an arm. It is a much more complex structure with regards to pain generation and how it behaves to trauma. There is a lot of work that is being done by myself and others around the world on pain generation in relation to the spine.

376. It was suggested to Mr Mohammad that Mr Wamala may be suffering symptoms from degenerative change and soft tissue injury, and that when the soft tissue injury disappeared the patient will be left with the symptoms of the degenerative change only, which was a quite separate pain. Mr Mohammad replied that, as a clinician, it was very difficult to distinguish between the two when it came to the spine.

377. The cross-examination then dealt with the "well recognized" course of recovery for soft tissue injury. I have discussed this in section E4.4 above.

378. Mr Mohammad was then taken to the well known book by Robert A. Dickson and W. Paul Butt entitled *The Medico-Legal Back*. The book included a citation from Smeathers to the effect that intervertebral discs are spacers, are not shock absorbers, and facilitate movement without absorbing energy. Mr Mohammad replied that he would not necessarily accept this, because he was himself involved in finite element analysis of the spine at Manchester University. Mr Mohammad added that Professor Dickson was a personal friend and that he and Professor Dickson often argued about these issues. Mr Mohammad said that he had used the information that he had gathered as part of the finite element analysis in order to alter his practice, both surgically and in terms of how he dealt with patients with certain specific issues relating to their spine.

379. Other citations from the book were put to Mr Mohammad. They gave rise to no difference of opinion. Mr Mohammad made it clear that he had not and did not suggest that the incident had caused a disc-specific injury. It was common ground that the scan showed constitutional degenerative change to the disc. He returned to his earlier point that soft tissue injury affecting the spine was different from soft tissue injury affecting a limb.

380. At that point Mr Mohammad was asked questions to which he gave the answers below:

> [Q1] In this court, the judge has to deal with probabilities. You would expect, would you not, that a soft tissue injury of the kind that Mr Wamala sustained would have an acute stage lasting several weeks and would then tail off in its pain generation over a period which you disagree about, but of a year to two years.
>
> [A1] For a soft tissue injury relating to a limb, yes. For the spine, I do not see that always. This is one of the patterns that can follow, but you can also have a pattern when the symptoms increase and decrease. That is something that is not that well understood.
>
> [Q2] Do you accept that the typical pattern that I have described is far more common?
>
> [A2] Yes, I would accept that.
>
> [Q3] And if one is dealing with the balance of probabilities, it is more likely than not that the soft tissue injury had effects which would have disappeared in accordance with the normal course.
>
> [A3] Yes, I would accept that.

381. In re-examination Mr Mohammad was asked about [Q3] and [A3] in the passage quoted above. In response, Mr Mohammad said this:

> A majority of the low to medium injuries are settled fairly quickly and that is a fact. That is how they occur, but that is not universal. That is where, as an expert, you come in in terms of those

> that are not settling. Those are the ones that you concentrate on and you recognize that there are those that do not follow the general rule. It is important because when you treat a patient, you do not say, "I am treating the generality. You do not exist." You recognize that a group of patients will have symptoms, particularly with the spine, that will come and go and you identify that there is a core of those patients. Yes, that is not the majority, of course it is not.

382. This led to a complaint by Reliance. The complaint was that neither the question asked in re-examination, nor the answer given, arose from cross-examination in the sense that it required clarification or explanation. [Q3] had been clear and [A3] had been clear. What had now happened was that Mr Mohammad had effectively been invited to revisit it.

383. In a ruling given later that day I rejected this complaint. In my view [Q3] was a question which should not have been put. It was in my view entirely proper to ask Mr Mohammad in re-examination about [Q3] and [A3]. To my mind, [Q3] was a question which sought to rely upon statistics, and it was appropriate to ask Mr Mohammad about the statistical basis in re-examination.

384. The essential point here is that statistical evidence cannot be looked at in isolation. It can only assist a decision maker if it is properly examined in the light of the circumstances of the particular case. In the criminal law the importance of this has been emphasised repeatedly in the context of DNA evidence. The statistical evidence may be that the probability of someone other than the defendant having the DNA profile in question is one in a million. It is tempting for the prosecutor to invite the jury to infer that it is 99.9999% probable that it was the defendant who left the DNA profile at the scene of the crime. This is, however, what is known as "the prosecutor's fallacy". First, in Great Britain, with a population well in excess of 50m people, this statistical evidence actually suggests that there are at least 50 individuals, other than the defendant, with the DNA profile in question. This puts the matter in quite a different perspective. If, moreover, there is evidence that one such individual, perhaps a close relative of the defendant, was at or near the scene of a crime, then unless that individual can be excluded the statistical evidence offers no basis for convicting the defendant.

385. The same is true in the present case. Without more information, the fact that in most cases a soft tissue injury has effects which disappear "in accordance with the normal course" is of no assistance to me. Mr Mohammad consistently maintained that where there are underlying degenerative changes soft tissue injuries can take longer to settle. In the present case the scan shows that there are underlying degenerative changes. It would be quite wrong to assume on a statistical basis that Mr Wamala was a person in respect of whom it was more probable than not that the normal course would be followed. It was entirely right for the matter to be revisited in re-examination, and I have been assisted by Mr Mohammad's answer pointing out that there is a core of patients, particularly with the spine, where symptoms come and go in a way which differs from the normal position.

386. On the matters dealt with in section E4.4 and the present section E4.5, Mr Matthews disagrees with Mr Mohammad. I have no doubt that Mr Matthews's experience accords with what he says in Matthews 1 and Matthews 2. The difference, however, is that Mr Matthews does not have the highly specialist experience of Mr Mohammad. In relation to relevant differences, I have no hesitation in preferring the expert opinion of Mr Mohammad.

E5 Mr Wamala's past and current physical injuries

387. For the reasons given in section E3 above, I reject the contention that I should pay no regard to the evidence of Mr Matthews. For reasons given in section E2 above, I am satisfied that Mr Wamala was deliberately exaggerating his symptoms in relation to what I have identified as features (1), and (3) to (6) of his meeting with Mr Matthews. Mr Wamala's evidence was that he did his very best with everything that Mr Matthews asked him to do. That evidence was plainly untrue. As explained in section B2.1 the result is that I must approach Mr Wamala's evidence with particular care.

388. On that basis, however, I have reached conclusions in section F below that during the course of the incident Mr Wamala was subjected to considerable force, including twisting of both head and neck, and that one way or

another his body hit the bottom part of the staircase. In these circumstances, I accept, for the reasons given by Mr Mohammad, that at the time of the trial Mr Wamala suffered from the injuries that Mr Mohammad describes.

389. As regards the cause of those injuries, however, Mr Mohammad has explained that during the period after March 2014 they were attributable to the pain which Mr Wamala had suffered previously rather than the incident itself. Moreover, it seems to me likely that during the period after March 2014 the effects of Mr Wamala's PTSD may have played a significant part in Mr Wamala's continued perception of those symptoms.

F. What happened on Christmas eve, & liability for it

F1. The events of Christmas eve: general

390. The present section F is concerned with conflicts of evidence. It fills gaps in the accounts of events given in sections A1.3 and A1.5.

391. In resolving conflicts of evidence I generally adopt the approach urged by Reliance (see section B3.1 above). Under that approach, I work on the basis that people's recollections are likely to be more accurate when recounting their own actions and what happened to them than when attempting to recall what they saw or heard others doing or saying. As regards Mr Wamala's evidence, that approach requires modification. The reason is that, as described in the Equal Treatment Bench Book and in the evidence of Professor Katona, those who experience severe trauma can find it very difficult to recall accurately and in sequence the details of events that happened to them, and the traumatic nature of some of the sequence of events may have the consequence that an individual's memory of the whole of the sequence might be somewhat distorted.

392. As to Mr Wamala's beliefs and concerns on Christmas eve, described in section A4 above, it does not seem to me that Mr Wamala's recollection is likely to be distorted. There is nothing implausible about the beliefs and concerns that Mr Wamala described. Those beliefs and concerns are consistent with the evidence. Thus, for example, numerous witnesses described Mr Wamala crying out that the escorts were killing him. The Beck report at paragraph 140 records Mr Wamala as saying to DCO Duke:

> Yeah, I know, you can do anything outside the law …

393. In section F2 below I deal with a meeting of the escorts which occurred shortly before they went to Brook House IRC to collect Mr Wamala. At that meeting the escorts were given a "job pack" which included either the original or a copy of the purported QR2 movement notification. For convenience I also deal in section F2 with what Reliance's September 2015 proposed amendments seek to say about the purported QR2 movement notification.

F2. Christmas eve: before the escorts arrived at Brook House

394. The escorts assembled for a "muster" meeting at Spectrum House, not far from Brook House IRC. The precise time of this meeting is not clear, but it is likely to have been between 2 and 2:30pm. Mr Charles confirmed that the document received at Spectrum House included the changes to the flight number and departure time which I have described in section A3.6 above. He could not recall whether the document received at Spectrum House showed these changes in red, or whether it had been a photocopy in black and white.

395. Reliance's original defence dealt in paragraph 7 with what it referred to as the "instructions" and on one occasion as the "directions" given to it by the Home Office. By the time of the re-amended defence verified by a statement of truth dated 2 February 2015, the document had been restructured so that after the first two sentences of the original paragraph 7 a new paragraph 7A was inserted, the last sentence of the original paragraph 7 became paragraph 7D, and intervening parts of the original paragraph 7 were woven with new material so as to become paragraph 7B. There was no paragraph 7C. Prior to the re-amendment, the amended defence had stated that the Home Office directions to Reliance were contained in the MS778 movement

notification "amended by the Home Office by hand to change the printed departure time and flight number …" . It admitted that if these directions were unlawful then "the admitted use of force by the second Defendant's agent was unlawful…", and claimed an indemnity from the Home Office. The re-amended defence withdrew this admission.

396. Reliance's September 2015 proposed amendments would remedy the lack of a paragraph 7C. However they would do this twice over, as the document accompanying Reliance's further written submissions contained two different paragraphs, both of which were numbered "7C". For present purposes I shall work on the basis that this error in numbering could be corrected by me numbering the second proposed paragraph 7C as paragraph "7CA".

397. The proposed new paragraph 7C contains a number of sub-paragraphs. The proposed subparagraph 7C(4) would read:

> (4) While it is possible that someone in the second defendant's office spoke by telephone to someone at the Home Office or at CWT and was given the information to be found on CWT's website, the second defendant has no evidence of such telephone call being made.

398. I refuse to allow this proposed sub-paragraph. It introduces something which is no more than a speculation, and it goes nowhere.

399. The remainder of the proposed paragraph 7C invites the court to make an inference concerning the amendments to change the printed departure time and flight number, which were originally referred to in paragraph 7B of the amended defence. Reliance's September 2015 proposed amendments would revise paragraph 7B so as to admit that those amendments were made:

> … by someone (the second defendant does not know by whom) in the second defendant's office …

400. The inference which Reliance would invite the court to make in the proposed new paragraph 7C is that these amendments were made because CWT had changed the flight details "from the EgyptAir flight to the Qatar flight and the second defendant had become aware of the change." Payne 2 supports the inference, as far as it goes, and matters relied upon in the new paragraph 7C as justifying the inference. I accordingly allow the proposed revisions to paragraph 7B, and the proposed new paragraph 7C, subject to:

(1) removing the existing sub-paragraph (4) and re-numbering remaining subparagraphs; and

(2) for reasons given below, removing the existing paragraph 7D.

401. What I have called proposed paragraph 7CA comprises propositions of fact and law as follows:

> 7CA It is admitted and averred that the Home Office omitted to issue and then serve on the Claimant (by no later than 8:30pm on Tuesday 20 December 2011, having regard to the requirements of DSO 07/2011 and given that 24 December was a Saturday) a fresh removal direction in respect of the Qatar flight, as it should have done if it wished to ensure the lawful removal of the Claimant via Qatar, pursuant to DSO 07/2007, on the Qatar flight.

402. These propositions are, as I understand it, common ground. Accordingly I will allow the new paragraph 7CA.

403. Turning to the existing paragraph 7D, it states:

> 7D. For the avoidance of doubt the second defendant alleges that its servants and agents at all times reasonably believed that the instructions given to it by the first defendant's servants or agents were lawful and to date has seen no evidence to the contrary …

404. On 9 March 2015 Mr Wamala made a request for further information of paragraph 7D, and of a passage in

paragraph 10 of the re-amended defence referring to Reliance as having assigned its staff to escort Mr Wamala pursuant to "a lawful instruction" issued by the Home Office. The request was:

> By what means and on which dates were "the instructions" referred to in paragraph 7D of the re-amended defence and "the lawful instructions" referred to in paragraph 10 of the re-amended defence communicated to the defendant's servants and agents?

405. In further information verified on 23 March 2015 Reliance answered:

> By the movement notification, supplemented by the details of the Qatar flight notified by telephone or posted on the ViewTrip website, by [CWT]/the Home Office on 23 December 2011, for the claimant … and for the escorts … .

406. Reliance's September 2015 proposed amendments would make an addition to paragraph 7D. Here it seems to me that there is a defect in what is proposed. The proposal is for that paragraph to begin with the existing paragraph 7D

407. When paragraph 7D appeared in the re-amended defence, however, Reliance's case was that the "instructions given to it by the first defendant's servants or agents" were, as to departure time and flight number, those marked in manuscript on the purported QR2 movement notification. The further information did not depart from this stance, although it identified other methods of communication. What Reliance's September 2015 proposed amendments will do in paragraph 7B and 7C is to explain that the "instructions given to it by the first defendant's servants or agents" were those in the MS778 movement notification, which required Reliance to put Mr Wamala on the EgyptAir flight departing at 2pm. The first paragraph of the proposed paragraph 7D makes no change to the words which previously appeared. However, when it is read with the changes introduced in paragraphs 7B and 7C, those same words have the effect of making a new allegation that Reliance's servants and agents at all times reasonably believed that the instructions to put Mr Wamala on the EgyptAir flight departing at 2pm were lawful. I comment that there is no evidence that anyone at Reliance had any belief about the instructions in the MS778 movement notification. Even if there were such evidence I cannot see that allowing this new assertion to be made serves any useful purpose.

408. The remainder of the proposed paragraph 7D would tack on some additional words:

> … save that it is admitted as aforesaid that there was no lawful removal direction for the Qatar flight.

409. This proposed addition does nothing to remedy the defect identified above. Accordingly I refuse permission to revise the former paragraph 7D, and I make the grant of permission in relation to the new paragraphs 7B and 7C conditional upon there being an amendment to remove the existing 7D.

F3. Christmas eve: when the escorts were at Brook House

410. The escorts arrived at Brook House IRC at around 2:55pm. Mr Charles presented the purported QR2 movement notification, or a copy of it, to G4S staff at Brook House IRC. He did this in order to obtain custody of Mr Wamala and the transfer to Reliance, in the person of Mr Charles, of the detention authority.

411. When describing this in the course of course of cross-examination on day 3, Mr Charles, in relation to the changes marked on the purported QR2 movement notification, said:

> … there is obviously an anomaly on this document, which I had noticed upon my arrival into Brook House …

412. Mr Charles returned to this during the course of cross-examination on day 4, saying:

> I was totally aware of that objection [the objection that Mr Wamala was being put on the wrong

flight], but I have made enquiries on that basis to find out many times. I have made phone calls to my command control centre to verify the situation I was in with my detainee

…

… I was remiss in not putting it in my initial report. On arrival at Brook House, there was conflicting paperwork and documentation. On one piece of paper it stated it was Mr Felix Wamala of Ugandan nationality. On other documentation I had it was Mr Mvoi and there was a talk about a Kenyan. There were problems there on which I immediately contacted the control command centre at my company and I spoke with Michelle [Ms Payne] on that. She allayed all my fears and said I was going on the right flight. The gentleman was Ugandan and I was to remove him on that flight to Uganda.

413. At about 3pm Mr Wamala was taken to the reception area at Brook House IRC and was delivered to the Reliance escorts. There then followed the exchanges between Mr Charles and Mr Wamala described in sections A4.4 and A4.5 above.

F4. Christmas eve: on the way to, and at, Heathrow

414. The Beck report summarises the CCTV as showing that Mr Wamala got into the van at 3:42pm. I have dealt in section A4 above with aspects of what happened in the van on the way to, and at, Heathrow. Two other features of what happened during this period call for mention:

(1) Shortly before his telephone conversation with Ms Payne, Mr Wamala was taken to the Rapid Goods Screening Area, a security building also known as "Wilson James". There he was searched and his bags were x-rayed. While there Mr Wamala stated that he wanted to claim asylum. No immigration officer was available in Wilson James. Mr Charles made a number of calls to seek to ensure that UKBA was aware of Mr Wamala's wish to make such a claim. Mr Wamala was kept in the van on the tarmac while a response to those calls was awaited. At around 7:46pm Mr Charles was told that despite Mr Wamala's wish to make a further claim for asylum UKBA was not prepared to stop his removal. An exchange then took place which included the following:

Mr Wamala: "I have a right to claim asylum in front of an immigration officer".

Mr Charles: "There are no immigration officers here".

Mr Wamala: "So you can do anything you like"

Mr Charles: "I'm not entitled to break the law …"

…

Mr Duke: "You've got to go then Felix. We've tried everything."

Mr Wamala: "Yeah, I know, you can do anything outside the law".

Ms Govey: "We have got authority to use force."

(2) Shortly before boarding Mr Simmons spoke to the station manager and the captain, warning them that Mr Wamala would be disruptive. Mr Simmons accepted in cross-examination that he had discussed with Mr Charles whether Mr Wamala would be disruptive and that they had both taken the view that he would be.

F5. Christmas eve: going up the steps

415. It is common ground that Mr Wamala did not resist when going up the staircase, and that an escort on either side of him had a light hold of his arms. It is also common ground that the escort on Mr Wamala's left was Mr Duke.

416. There are two factual issues concerning what happened on the staircase. The first is whether, as alleged in the amended particulars of claim, an escort following Mr Wamala grabbed hold of Mr Wamala's trousers and pulled him up the stairs. All escorts reject this. This rejection is in my view plainly right. Mr Wamala is a tall and heavy man. It is difficult to see how an escort below him could pull him up the stairs. In evidence in chief Mr Wamala merely said that his belt had been held from the back, and in cross-examination that his waistband had been grabbed. No allegation of being pulled up the stairs was made in his initial complaint or in his interview with the Beck team on 30 December 2011. I conclude that this was a wild allegation which should never have been advanced by Mr Wamala.

417. When interviewed by the Beck team, Mr Wamala said that there was an escort "holding at the back". This is at least plausible, but I cannot be confident that it happened. Accordingly I make no finding that there was any pulling, grabbing or holding of Mr Wamala from the back as he went up the staircase.

418. The second issue concerns the identity of the escort on Mr Wamala's right. Mr Wamala said it was Mr Charles. Mr Simmons told the Beck team that he was sure that it was Mr Charles and Mr Duke who were at the side of Mr Wamala, although he was not sure who was on which side. Other escorts, however, said that it was Ms Lee who was on Mr Wamala's right.

419. I find that it was Ms Lee who was on Mr Wamala's right. In that regard:

(1) I do not rely on Ms Lee's evidence: she was very vague about this when interviewed by Ms Beck on 30 January 2012, and I do not accept Ms Lee's assertion under cross-examination that her recollection has got better with the passage of time;

(2) There is strong evidence from Mr Duke, who stated clearly in his use of force incident report, made on Christmas eve after the incident, that Ms Lee was on Mr Wamala's right, and who has maintained this ever since;

(3) If Mr Charles had been on Mr Wamala's right I consider that he would never have allowed Mr Wamala, when entering the aircraft, to approach Ms Lertsakdadet.

420. As set out in section A4 above, I find that Mr Wamala was willing to board the aircraft without resistance because, among other things, he greatly feared that if he offered any resistance to the escorts he may suffer the same fate as Mr Mubenga, and because he considered it vital to make contact with the captain, who was the only person who could prevent his unlawful removal.

F6. Christmas eve: once Mr Wamala entered the aircraft

421. As noted in section A1.6 above, it is common ground that upon entering the aircraft, Mr Wamala raised a concern with one or both of the stewardesses. As to what then happened:

(1) The pleaded case for Mr Wamala, at paragraph 59 in the amended particulars of claim, is that before Mr Wamala had finished speaking, without any warning, the escorts assaulted him in three ways. It is convenient to deal first with the second of these. What was asserted in this regard in the amended particulars of claim was that the escorts assaulted Mr Wamala by striking his upper body. In his initial complaint on 29 December 2011 Mr Wamala had said he was "beat by five escorts out of the blue, the force was extremely immense". In his interview with the Beck team on 30 December 2011 Mr Wamala said that he was "hit and handcuffed". Reliance's closing submissions asserted that Mr Wamala had "shied away from all versions of his previous account and restricted the allegation to one that he was being manhandled/ overpowered by 5 escorts". I am not persuaded that this is right. In particular, on day 2 in his

evidence in chief Mr Wamala was asked whether the escort on his right had changed the way that Mr Wamala was being held. Mr Wamala replied:

> … they changed very quickly by locking a handcuff on my right hand side and then there was an impact on me, a force that hit me somewhere along my upper body, and the officer was still struggling to get the handcuff locked on my right hand side.

(2) The first and third ways in which Mr Wamala said he was assaulted were that his right wrist was handcuffed and that he was manhandled to the aircraft floor. Mr Wamala's evidence was that these two things went together. He was asked how he was being restrained after the handcuff was applied, and answered:

> At the time, my whole body had been taken up by the escorts in different parts and I think it would have been about the same time I was on the floor, but everybody was trying to get hold of me in some way.

(3) It is convenient to deal here with another criticism made by Reliance in relation to Mr Wamala's oral evidence. As to Mr Wamala's oral testimony concerning what he was saying to Ms Lertsakdadet, Reliance's closing submissions made an accusation that Mr Wamala gave "opportunistic evidence", by saying he had told Ms Lertsakdadet that the reason he wanted to see the captain was because he was being put on the wrong flight at the wrong time. The accusation has no merit. Wamala 1 stated at paragraph 101 that he had said that he wanted to speak to the captain of the aircraft as he was being taken unlawfully against his will. He was not giving a verbatim account of the precise words that he used. Whatever explanation he was giving was, on both his and Ms Lertsakdadet's accounts, interrupted before it was completed. Whether he was saying to Ms Lertsakdadet simply that he was being taken unlawfully against his will, or that he was being taken on the wrong flight at the wrong time against his will, or that he was being taken unlawfully because he was on the wrong flight at the wrong time, is neither here nor there.

(4) The pleaded case for Reliance on this aspect is in paragraphs 14 and 15 of the re-amended defence. For convenience, I divide up what is said into a series of allegations which I identify as (a) to (g) below.

(a) upon entering the aircraft Mr Wamala's demeanour changed;

(b) Mr Wamala shouted that he wanted to see the captain now;

(c) Mr Charles told Mr Wamala that once he was seated Mr Charles would ask the captain if he would come and speak to Mr Wamala; Mr Wamala refused to take his seat; Reliance's officers made repeated requests to calm down and to take his seat; and it became apparent that he was not going to comply with them;

(d) Mr Wamala became increasingly agitated, refused to take his seat, raised his arms, waved them about and continued to shout demands to see the captain;

(e) Mr Wamala was reasonably assessed by Reliance's officers to be a threat to the safety of all around him, it was apparent that he was not going to reply with their repeated requests to calm down and take his seat, and in the circumstances Reliance's officers reasonably decided that Mr Wamala would have to be physically restrained and handcuffed;

(f) Mr Wamala was taken a firm hold of, he proceeded to struggle and to resist lawful restraint, and a handcuff was lawfully placed on his right wrist, but the officers could not successfully cuff his left wrist because of his resistance;

(g) Mr Wamala was taken to the floor in the course of a struggle.

422. I begin with allegation (a), asserting that upon entering the aircraft Mr Wamala's demeanour changed. If it is

rephrased to refer to a change which occurred a short time after arriving on board, it is plainly right. Allegation (g) is also plainly right. Mr Wamala was indeed taken to the floor in the course of a struggle. The key issue is the timing of two actions admitted by Reliance as part of allegation (f). They are, first, the actions by which "Mr Wamala was taken a firm hold of", and second, the securing of Mr Wamala's right hand in the handcuffs. Is Reliance right to say that these two actions ("the firm hold" and "the right hand cuffing") occurred only after the events described at (b) to (d)? Or is Mr Wamala right to say that those two actions occurred without warning while he was talking to Ms Lersakdadet?

423. I am satisfied that Reliance is wrong to say that the events described at (b) to (d) all occurred before the firm hold and the right hand cuffing. My reasons are these:

(1) From Reliance's point of view, for Mr Wamala to approach cabin staff was alarming and out of order. It confirmed Mr Charles's belief that Mr Wamala would be disruptive, and it made it desirable to handcuff Mr Wamala to guard against further disruption;

(2) Mr Charles's evidence in cross-examination on day 3 was that Mr Wamala "wasn't going in the direction we wanted him to";

(3) The Lertsakdadet email indicates at paragraphs [7] and [8] that Mr Wamala was in the course of talking to Ms Lertsakdadet when the escorts pulled him back. This was confirmed at paragraph 11 of Lertsakdadet 1;

> 11. As soon as Mr Wamala started to speak to me the immigration escorts grabbed Mr Wamala around his upper arms and shoulders and immediately pulled him back. …

(4) In his interview with Ms Beck on 30 January 2012 Mr Charles was told of a cabin crew member's account that Mr Wamala "approaches her and says "help me, I do not want to go", at which point the escorts … pulled him back". As to her account of the escorts pulling Mr Wamala back, Mr Charles said:

> Yes, that probably would have happened because, once again, we can't allow a detainee to get in close proximity with a cabin crew member who has got a violent background, so yes, they would have restrained him and pulled him back away from a cabin crew member.

(5) Mr Charles, in cross-examination on day 5, was shown the transcript of this passage in the interview. In relation to it being at the point when Mr Wamala said "help me" that the escorts pulled Mr Wamala back, Mr Charles said in cross-examination:

> They were duty bound to. He was posing a threat to the cabin crew member. He's walked towards her.

(6) Mr Simmons in his interview with the Beck team on 30 January 2012 commented that "we don't want [Mr Wamala] too close to the cabin crew … just in case, so we would move him forward out of the way as quick as we can". In cross-examination Mr Simmons confirmed this, adding:

> We would want to move towards the seats and in the seats as quickas possible. Whether there is any speaking to the cabin crew or not, we want to be straight on and to the seats.

(7) It is accepted by Reliance that Mr Wamala has no history of violence;

(8) Mr Wamala's beliefs and concerns described in section A4 above made it highly unlikely that he would do anything to antagonise the escorts, so long as they were not being violent to him, but highly likely that if they used force on him, he would seek to defend himself with all the energy that he could;

(9) There is strong evidence that Mr Wamala did not shout before the firm hold and the right hand cuffing. Assertions that when Mr Wamala approached the stewardesses he was shouting:

(a) are inconsistent with the use of the word "said" in paragraph [7] of the Lertsakdadet email, and

with the description at paragraph [11] of that email of Mr Wamala as having "started screaming and shouting" after he had reached the floor;

(b) are contradicted by Mr Duke, who in cross-examination accepted that Mr Wamala did not shout;

(c) are contradicted by Mr Simmons, who in cross-examination, having initially said Mr Wamala's voice was raised, accepted that he had told the Beck team that Mr Wamala had a normal level of voice, and also accepted that his recollection had become less firm with the passage of time;

(d) were marginally supported by an assertion in Ms Lee's evidence in chief that Mr Wamala's voice was getting higher, but this evidence is unreliable for the reasons given in section B3.6 above;

(e) were emphatically supported by Ms Govey's evidence in chief, but for the reasons given in section B3.4 above that evidence cannot be relied upon;

(f) were supported by the account given in Mr Charles' use of force incident report, in his evidence in chief, and in cross-examination, but the strength of the contrary evidence set out above leads me to conclude that when preparing his use of force incident report Mr Charles misremembered when it was that the shouting began and that this mistaken memory has cemented itself over the course of time.

(10) There was not enough time for Mr Charles to have given an order to Mr Wamala to take his seat and for Mr Wamala to have been given an opportunity to do so:

(a) this, too, plainly emerges from paragraphs [7] and [8] of the Lertsakdadet email and what was said in Lertsakdadet 1;

(b) Mr Charles's account of this grew in the telling. His use of force incident report described Mr Wamala becoming agitated when Mr Charles said that after Mr Wamala had taken his seat the captain would be asked to come and speak to him. The interview with Ms Beck began by saying that on at least one occasion, possibly twice, Mr Charles had told Mr Wamala to take his seat. By the end of the interview he said he thought he had said this at least twice. In his evidence in chief Mr Charles he thought he possibly repeated "the request or the command for him to take his seat", and in cross-examination he insisted that what he had said was an order, which if obeyed would have resulted in Mr Wamala walking towards the seats, being guided by the staff, and then taking the seat. This all seems to me to be unreal. What was really happening was what both Mr Charles and Mr Simmons would have expected to happen as set out in subparagraphs (4) to (6) above: there would be no question of Mr Wamala merely being "guided by the staff". Within seconds of Mr Wamala approaching Ms Lertsakdadet he was being pulled towards the seats.

(c) Mr Duke's account also grew in the telling. His use of force incident report described Mr Wamala saying to an air hostess that he wanted to speak to the captain. It then said that Mr Duke and Mr Charles said to Mr Wamala that he needed to sit down first, and that in response to this Mr Wamala said "No" and started to swing his arms around, shouting and being abusive. Later accounts by Mr Duke became more elaborate.

(d) Mr Simmons maintained there was an order to take a seat, but accepted in cross-examination that it could well have been after the right hand cuffing.

(e) The accounts given by Mr Charles and Mr Duke involve a relatively leisurely response to Mr Wamala's approach to Ms Lerksatdadet. However I am sure that this was something which to their minds called for, and received, much more urgent action. It is probable, and I find, that they did indeed tell Mr Wamala to get to his seat. This led them, in their accounts after the event, to include his response or lack of it as a factor leading to the use of force on him. But it is far more probable that they were not waiting for a response from Mr Wamala. Such a course would go

against all their professional instincts.

(11) Assertions that Mr Wamala's arms were flailing before the "firm hold" and the "right hand cuffing" cannot be right: witnesses who said this accepted in cross-examination that their account must have been inaccurate because Mr Duke had hold of Mr Wamala's left arm.

(12) Ms Lee gave evidence that she lost control of Mr Wamala's right arm after he became agitated, and "turned back full round and I got took round in the momentum", but for the reasons given in section B3.6 above I do not regard Ms Lee's evidence as reliable. It seems to me much more likely that the right hand cuffing resulted in Mr Wamala being pulled back and Ms Lee losing control of the right arm which was flailing at that stage as Mr Wamala pulled against the handcuff.

(13) In these circumstances there was not enough time for the measured process of decision-making described in what I have called, at the start of the present section, Reliance's allegations (c) to (f).

424. Reliance's closing written submissions asserted that Mr Wamala either lunged or moved in a frightening way towards Ms Lertsakdadet. No such assertion appeared in Reliance's statement of case. Nor was there any evidence of Mr Wamala lunging or moving in a frightening way towards Ms Lertsakdadet. Reliance cited the oral evidence of Ms Govey. I have explained in section B3.4 above why I regard that evidence as unreliable. Even if it were reliable, it amounted to no more than an assertion that she thought Mr Wamala "was going to lunge" towards Ms Lertsakdadet.

425. I turn to evidence as to how Mr Wamala came to the floor, and as to how Mr Duke held Mr Wamala's head.

426. The handcuffs used by Mr Charles call for special mention. The handcuffs were rigid bar handcuffs, also known as a "quick cuff". Each cuff has a single bar mechanism at the front, and a double bar mechanism at the back. The officer takes hold of the detainee just above the wrist. As the arm enters the cuff, the double bar has a ratchet mechanism which engages with the lock. In this way a "single lock" is achieved. However, the ratchet mechanism may tighten the cuff further, unless and until the officer engages a double locking system to prevent the cuffs tightening further.

427. In examination in chief Mr Charles described a procedure under which, with Mr Duke supporting Mr Wamala's head, Mr Wamala was taken to the floor in a controlled move: "we controlled his body weight going down to the floor."

428. This differed from what Ms Lertsakdadet described. The Lertsakdadet email at [10] stated, "During the moment, they fell down on the floor …". At paragraph 12 of Lertsakdadet 1 Ms Lertsakdadet explained:

> After a little while Mr Wamala and the immigration escorts who were restraining him ended up on the floor. Mr Wamala and the immigration escorts fell to the floor together. It looked to me as if they all fell to the floor by accident.

429. Ms Lertsakdadet's account was supported by Mr Duke's evidence in cross-examination. Mr Duke explained that he was worried that Mr Wamala would head-butt or bite Mr Charles or others and so took hold of what he described as Mr Wamala's "head and his chin". He had not heard Mr Charles ask Mr Wamala to get on the floor, and he did not know how they got to the floor, but that was where they ended up. Mr Duke was asked about a procedure in the Use of Force Training Manual under which three people take a detainee to the floor, one on each arm and one taking control of the head. Mr Duke agreed that what was happening was not such a procedure:

> He was not taken down. I did not take him down. We went down. …

430. In fact in cross-examination Mr Charles had described a different procedure, utilising the ability of a rigid bar handcuff to provide a pain compliance mechanism. Mr Charles said that he had been trained in this technique by a police officer on a refresher course on rigid bar cuffing. Mr Charles was taken to a document produced by

the Central Police Training and Development Agency, entitled "Handcuffing skills". This included a description of an officer approaching a potentially uncooperative detainee from the rear. Mr Charles explained that he had been attempting to do the manoeuvre shown there, but from the front.

431. In these circumstances I reach conclusions that:

(1) Mr Wamala suffered intense pain, his right wrist was subject to the ratcheting effect of the handcuff, which had not been double locked;

(2) However, this intense pain did not stop Mr Wamala from continuing to struggle;

(3) Mr Charles succeeded in getting Mr Wamala to the floor, but this was not achieved by pain compliance, it simply happened in the course of the general struggle, and was not a "controlled move";

(4) Mr Charles may have thought that Mr Duke had realised that Mr Wamala was going to the ground and had taken Mr Wamala's head to protect it, but that was not in fact the case;

(5) Mr Duke had taken Mr Wamala's head because he feared that Mr Wamala would attack Mr Charles or other colleagues.

F7. Christmas eve: once Mr Wamala was on the floor

432. Mr Wamala's evidence was that after being taken to the floor he was in a position forward was across the aisle nowhere for his legs to go. Reliance's closing submissions pointed out that this differed from all the other evidence. I find that Mr Wamala after he went to the floor, was in the position described by Ms Lertsakdadet at paragraph 14 of Lertsakdadet 1:

> 14. Mr Wamala's head was pointing towards the front of the aircraft and his feet were pointing towards the rear of the aircraft. He was laying so that his body was adjacent to the toilets and his head adjacent to the rear row of seats. The aisles are narrow … Mr Wamala's body took up most of the width of the aisle.

433. It is common ground that:

(1) Mr Wamala was lying on his back;

(2) Mr Duke was at Mr Wamala's head, where he was joined by Ms Lee;

(3) Mr Charles was standing or kneeling over Mr Wamala from the leg end, and initially was holding the handcuffs which secured Mr Wamala's wrist;

(4) Mr Simmons was lying across Mr Wamala's legs;

(5) During the struggle when Mr Wamala was on the floor Mr Charles lost control of Mr Wamala's right arm, and Mr Charles grabbed the free cuff, cutting his hand in the process;

(6) Both Mr Charles and Mr Duke were trying to get hold of Mr Wamala's left arm so as to put it into the left cuff;

(7) Mr Wamala resisted this, initially by keeping his left arm under his body and later by reaching out with his left arm across the aisle to grasp the underside of a nearby seat;

(8) Mr Wamala cried out that the escorts were killing him.

434. Reliance contends that, in accordance with approved techniques designed to ensure that a detainee's head is not injured, Mr Duke was kneeling with one knee either side of Mr Wamala's head. However, the closing

submissions for Mr Wamala contended that approved techniques were not followed. I agree. In particular, I accept that:

(1) While the approved technique requires the officer kneeling at the head to use knees to stop the head from moving, and Mr Charles said this was what Mr Duke did, Mr Duke's own evidence was that his knees were no more than "quite close" to Mr Wamala's head, and described a gap of "inches".

(2) Mr Duke accepted that he was not able to stop Mr Wamala's neck from twisting as a result of Mr Wamala struggling. Reliance noted that there was a lack of reported injury to the neck, but I consider that the inevitable twisting of both head and neck, as Mr Wamala struggled, must have caused some pain.

435. Mr Charles asserted in oral evidence that he had not put any weight on Mr Wamala. However, as the submissions for Mr Wamala pointed out, Mr Charles told Ms Beck on 30 January 2012 that he sought to take control of Mr Wamala by placing his right knee onto Mr Wamala's right side to stop him thrashing his legs around. I consider that what Mr Charles said to Ms Beck is more likely to be correct than the later oral evidence. Mr Simmons gave evidence that Mr Charles was trying to reach across Mr Wamala to free Mr Wamala's left hand at the time that it was underneath Mr Wamala, and that when Mr Wamala later reached out with his left arm to clutch under the nearby seat, Mr Charles was engaged in trying to extract that hand from underneath that seat. I accept, as submitted on behalf of Mr Wamala, that:

(1) at the same time as doing these things with one hand, Mr Charles, until he lost control, was grasping the handcuffs in the other hand;

(2) Mr Charles's attempts to free Mr Wamala's left arm whilst holding the handcuff in his other hand would have required Mr Charles to lean across Mr Wamala and put considerable weight on Mr Wamala through his knee or knees. This must have caused pain to Mr Wamala.

436. Reliance's closing written submissions asserted that Mr Wamala tried to bite Mr Duke's left thigh while on the floor of the aircraft. I do not accept this. In section B3.6 above I have given my reasons for rejecting Ms Lee's evidence in this regard. There is no doubt that Mr Duke repeatedly said "Do not bite me." Mr Duke said in examination in chief that Mr Wamala was moving towards Mr Duke's thigh and that Mr Wamala's mouth was open in a manner which led Mr Duke to think that Mr Wamala was going to bite him. However in cross-examination Mr Duke said that this occurred after Mr Charles had handcuffed Mr Wamala, that Mr Duke's concern was that Mr Wamala would bite Mr Duke's colleagues, and that Mr Wamala did not have the opportunity to bite anyone because Mr Duke had control of his head. There was thus no evidence from Mr Duke that at the time that Mr Wamala was on the floor he attempted to bite anyone.

437. Mr Duke gave evidence that before grabbing the underside of the nearby seat, Mr Wamala, after removing his left arm from underneath his body, used his left hand to grab Mr Duke by the testicles. This evidence was not seriously disputed and I accept it. There could be no doubt that this caused significant pain to Mr Duke.

438. The closing written submissions for Mr Wamala did not support Mr Wamala's pleaded case that the escorts kicked Mr Wamala. I accept that it may have felt to Mr Wamala that he was being kicked, but I find that there was in fact no kicking of Mr Wamala.

439. Mr Wamala gave evidence that he cried out that he could not breathe. I consider it likely that in the circumstances described above Mr Wamala did indeed have difficulty breathing. Mr Duke was adamant that Mr Wamala had not said this, but it seems to me quite possible that with all the noise and shouting which was going on Mr Duke either did not hear, or simply later did not recall, what Mr Wamala had said in this regard. Mr Simmons accepted that it was indeed possible that Mr Wamala shouted that he could not breathe. There was a suggestion that as Mr Wamala was able to talk, it followed that he was able to breath, but Mr Charles accepted that this was a common misconception.

440. It is not suggested that the escorts were in fact trying to kill Mr Wamala. In the light of my findings in section A4 above, however, I have no doubt that Mr Wamala did indeed believe that the escorts were trying to kill

him.

F8. Christmas eve: after the order to leave the aircraft

441. It is common ground that it took some time for Mr Wamala to appreciate that the escorts were telling him that he was to be taken off the flight and that this was indeed the case. Ms Lertsakdadet said that, at the request of one of the escorts, she had told Mr Wamala that he was going to be offloaded. There is no reason to doubt that evidence, and I accept it. I find that the struggle continued until Mr Wamala was told by Ms Lertsakdadet that he was to be offloaded. Ms Lertsakdadet added:

> The escorts then pulled Mr Wamala up and out of the aircraft.

442. This evidence of Ms Lertsakdadet, along with the evidence of Mr Charles and Mr Duke, is consistent with the contention advanced on behalf of Mr Wamala that he was effectively dragged back to the door that he had come in through. I find that this was the case, and that, as was also submitted on behalf of Mr Wamala, the escorts did not stop to check on Mr Wamala's wellbeing or ask whether he wanted to go down the staircase.

443. As to how Mr Wamala reached the bottom of the staircase, there is a stark contrast between Mr Wamala's evidence and that of the escorts. Mr Wamala said that two male escorts who were to the left and right of him lifted him up, that two other escorts were lifting his legs, and that one was holding on to his belt and trousers, and that in this manner he was taken face down to the bottom steps where he was dropped by the escorts. The escorts, by contrast, say that when Mr Wamala reached the doorway he was in a sitting position, his left wrist was handcuffed, after which they lifted him up and that once he was standing up he was escorted, still standing, down the staircase until towards the bottom of the staircase, he went forwards and to the ground.

444. The written closing submissions for Mr Wamala recognised that if Mr Wamala's account is correct that could only be the case if the escorts had colluded and adopted an agreed line. The submissions asked rhetorically why Mr Wamala would make up an account of being carried down. They also asked rhetorically how Mr Wamala's back came to be injured as both experts accept that it is.

445. I can deal with the second of these questions shortly. There is no doubt that, in one way or another, Mr Wamala hit the bottom part of the staircase. Nor is there any doubt that Mr Wamala was then dragged into the van by his cuffed arms. It seems to me that the injuries to Mr Wamala's back could well have occurred during either of these processes.

446. As to the first of these questions, it seems to me that Mr Wamala's account on this aspect is another example of him making wild accusations. I reject the contention that the escorts' account was an "agreed line". It was submitted for Mr Wamala that the escorts would have had to make up such a line because the CCTV camera shows Mr Wamala being dragged into the van by his arms with his head facing the ground. It seems to me that the camera shows this because it was the method adopted of getting Mr Wamala from his position at the bottom of the staircase into the van.

447. As to the method by which Mr Wamala was dragged into the van, I accept the submissions on behalf of Mr Wamala that the CCTV footage of this is shocking. Mr Wamala is crying out in pain. He is being shouted at by the escorts, but appears plainly incapable of getting up. At one stage an escort pulls Mr Wamala into the van by the rear of his trousers. At this stage the handcuffs had not been double locked and thus must have been digging into Mr Wamala's wrists. The experience for Mr Wamala was both painful and degrading.

448. What seems to have happened is that the escorts were rushing so that the van could be driven off the tarmac as soon as possible in order to ensure that the aircraft did not miss its departure slot. This cannot possibly justify the way that Mr Wamala was treated.

F9. Going up the staircase: liability for what happened

<F9.1 Liability: introduction

449. Sections F9, F10, F11 and F12 deal with liability for what happened on Christmas eve. Sections F9, F10 and F11 deal with liability at common law. They are concerned, respectively, with the period when Mr Wamala was taken up the staircase, the period when he was on the aircraft from the beginning to the end of the struggle, and the period after the struggle was over, including when he exited the aircraft and was put in the van. Section F12 deals with liability under article 3 of the European Convention on Human Rights, as given effect by section 6 of the Human Rights Act 1998.

450. As to the period when Mr Wamala was taken up the staircase, I start in section F9.2 below with the light holds used by the escorts when going up the staircase to the aircraft. In that context I discuss issue 1, and explain why I conclude that the answer to the March 2014 question is "No". In section F9.3 I discuss issue 3 and give initial consideration to whether paragraph 18A of the defence, even if revised in the manner proposed by Reliance, assists Reliance in relation to force used when going up the staircase. I explain that in the context of going up the staircase, while I can rule out the self-defence justification, and I can rule out actual or potential justifications concerned with the prevention of escape, it is necessary to give more detailed consideration to the prevention of crime justification, the keeping the peace justification, and the 1999 Act duties justification. Those justifications are then considered in sections F9.4, F9.5 and F9.6. My conclusions on liability for the light holds are set out in section F9.7.

F9.2 Going up the staircase: issue 1 and the March 2014 question

451. When Mr Wamala was going up the staircase escorts either side of him had a light hold of his arm. This is common ground: see section F5 above, where I conclude that Mr Duke was on the left of Mr Wamala and that Ms Lee was on his right.

452. Reliance submitted that the fact that Mr Wamala was held lightly by the arms "adds nothing to the picture, as a matter of law or common sense". I cannot accept this submission. The light holds necessarily involved a small degree of force on Mr Wamala. The force used was small, but it was important as a matter of principle. Moreover that force gave effect to the specific threats of force made by Mr Charles and Ms Govey, and reinforced the continuing nature of those threats.

453. I have no doubt that the amended particulars of claim sought damages for the application of that force. Paragraph 55 of the amended particulars of claim stated:

> 55. … the arm holds … were an unnecessary, disproportionate and humiliating use of force …

454. Paragraph 32 of Reliance's September 2015 submissions seems to make an assertion that Mr Wamala's claim generally is only pursued to the extent that the behaviour of the escorts was "excessive", "disproportionate", or "unnecessary". The assertion is unfounded for reasons given in Mr Wamala's October 2015 submissions. It is true that Mr Wamala applied these and other characterisations to the actions of the escorts. But these characterisations were not the only basis on which he claimed for trespass to the person. Paragraph 129 of the particulars of claim said expressly:

> 129. … the … use of force applied against Mr Wamala by the Reliance escorts to effect his removal on 24 December 2011 was unlawful.

455. When read in context, this was plainly a contention by Mr Wamala that the mere fact of use of force by the escorts entitled him to claim damages. The same contention was clearly advanced at the outset of Mr Wamala's skeleton argument, and in the oral opening submissions on behalf of Mr Wamala. Thus the point apparently taken in paragraph 32 in Reliance's closing written submissions is a false point. It appeared to be the prelude to a contention in paragraph 38 that Mr Wamala originally proceeded upon the basis that Reliance's officers were entitled to use reasonable force to restrain him if it was necessary to do so. For the reasons given above that contention is unsound.

456. There is no suggestion by Reliance that the light holds were acceptable in everyday life. Nor did Reliance suggest at trial that Mr Wamala consented to these holds. I accordingly conclude that the light holds constituted a use of force against Mr Wamala which, unless permitted by law, will amount to trespass to the person in the form of battery.

457. Reliance accepts that the general position is that, once it is established that Reliance used force against Mr Wamala, the next question is whether Reliance can justify that use of force. In that context I turn to issue 1 and the March 2014 question.

458. The March 2014 question lies at the heart of the present case. It contrasts the present case with a regular case. In a regular case a lawful removal direction will have been issued and served on the agent of the relevant aircraft and notice of that direction will have been issued and served on the detainee. In such a case there would normally be no reason to doubt that DCOs acting in accordance with escort arrangements may use force where reasonably necessary to convey the detainee to the airport, and to put the detainee on board the aircraft using light holds to ensure good order and discipline. In the event that boarding is denied, escort arrangements for overseas removal will normally provide for the escorts to advise UKBA of this, and to escort the detainee in accordance with directions given by UKBA, and the same entitlement to use force will normally apply to this as well.

459. In the present case, as set out in earlier sections of this judgment, by the time Reliance arrived at Brook House IRC, the flight identified in the notice served on Mr Wamala and in the MS778 movement notification had left. Reliance nevertheless took Mr Wamala and put him on flight QR2, without there being any removal directions issued for flight QR2, let alone notified to Mr Wamala, and without there being any movement notification issued by UKBA for flight QR2. Reliance's original defence made a conditional admission of liability. This was that if the Home Office's directions, meaning by this what I have called the purported QR2 movement notification, were unlawful then the escorts' use of force was unlawful. In that event Reliance's original defence claimed an indemnity from the Home Office. It was the Home Office which, causing a degree of judicial consternation, suggested that Reliance's conditional admission of liability was wrong. Eventually Reliance decided no longer to seek an indemnity from the Home Office, and secured permission to amend so as to withdraw the conditional admission.

460. The March 2014 question asks whether there was lawful justification for the use of force for three purposes: see section A1.4 above. As regards force used when going up the staircase, it is the second of these purposes that arises: "the use of force to … put him on … flight QR2". The analysis, however, seems to me to be the same for all three purposes. It does not matter whether the purpose is conveying Mr Wamala to Heathrow, putting him on the aircraft, or removing him from the aircraft. The position is that none of these purposes is said by Reliance to provide lawful justification for the use of force. Instead, as regards the use of force during the period when Reliance held Mr Wamala in their custody, Reliance's case is different. Both as currently pleaded, and as set out in the proposed re-re-amendments, Reliance's case is that it used force for certain specified other purposes ("the other purposes"), and was entitled to do so *for the other purposes*. It necessarily follows that the answer to the March 2014 question is, "No".

F9.3 Going up the staircase: issue 3 and the other purposes

461. Did any of the other purposes apply so as to permit the light holds? There was no evidence from either Mr Duke or Ms Lee as to the specific purpose of the light holds. However they must have been adopted for a purpose or purposes. Mr Duke and Ms Lee believed that UKBA had instructed Reliance to put Mr Wamala on flight QR2. In the absence of any evidence to the contrary, it seems to me that the purpose of the light holds was to guard against the possibility that Mr Wamala might do something to disrupt the process of boarding the aircraft.

462. I do not think that the purpose of adopting the light holds was to guard against escape from lawful custody. I put on one side for present purposes the question whether Mr Wamala was in lawful custody (as to which see section F9.6 below). The key feature here is that while the escorts believed that Mr Wamala was wanted for an offence of assault on a police officer, they had no reason to think that that he would use force to try to gain his

freedom. The risk factors section of the detention authority included a box marked "Escape Attempts", but this box was not ticked. There was nothing to suggest that Mr Wamala had a history of escaping or trying to escape.

463. As to the four justifications pleaded in paragraph 18A of the re-amended defence (see section A5.3 above):

(1) the self defence justification: it is plain that Mr Duke and Ms Lee did not adopt the light holds in self defence, for there had been no use or threat of force toward them;

(2) the prevention of crime justification: it is a fair inference from the circumstances that Mr Duke and Ms Lee thought there was a possibility that Mr Wamala might use unlawful violence in order to resist removal, and that a question arises as to whether it might be said that the light holds were adopted to guard against the possibility of crime in that regard;

(3) the keeping the peace justification: it is a fair inference from the circumstances that Mr Duke and Ms Lee thought there was a possibility that Mr Wamala might use unlawful violence in order to resist removal, and a question arises as to whether it might be said that the light holds were adopted to guard against the possibility of a breach of the peace in that regard; and

(4) the 1999 Act duties required action for four purposes (see subparagraphs (a) to (d) of paragraph 2(3) of Schedule 13 to the 1999 Act, set out in section C4.2 above); as to these:

(a) to prevent escape from lawful custody: for the reasons given above, I do not consider that Mr Duke and Ms Lee adopted the light holds for this purpose;

(b) to prevent, or detect or report on, the commission or attempted commission of other unlawful acts: it is a fair inference from the circumstances that Mr Duke and Ms Lee thought there was a possibility that Mr Wamala might use unlawful violence in order to resist removal, and a question arises as to whether it might be said that the light holds were adopted to guard against that possibility and thus to prevent the commission or attempted commission of unlawful acts;

(c) to ensure good order and discipline: it is a fair inference from the circumstances that Mr Duke and Ms Lee thought that Mr Wamala might act in a manner contrary to good order and discipline, and a question arises as to whether it might be said that the light holds were adopted to guard against that possibility; and

(d) to attend to Mr Wamala's wellbeing: there is nothing to suggest that Mr Duke and Ms Lee considered that the light holds were needed for this purpose.

464. As to Reliance's proposed general prevention of escape justification (see section B1.4 above), for the reasons given above, I do not consider that Mr Duke and Ms Lee adopted the light holds in order to guard against escape.

465. It is accordingly necessary, in relation to the light holds, to examine particular aspects of the prevention of crime justification, the keeping the peace justification, and the 1999 Act duties justification (issues 3.2, 3.3 and 3.4 in section A5.3 above). I examine those aspects in sections F9.4, F9.5 and F9.6 respectively.

F9.4 Going up the staircase: prevention of crime justification

466. Issue 3.2 is whether any particular use of force was permitted by the prevention of crime justification. Under section 3(1) of the Criminal Law Act 1967 any member of the public has the right to use "such force as is reasonable in the prevention of crime". Reliance referred to this as a common law justification. However, the true position is that it is a statutory justification. Moreover, by section 3(2), on the question when force is used for the purpose of preventing crime is justified by that purpose, section 3(1) replaces the rules of common law.

467. As noted in section A5.3 above, the prevention of crime justification is one of the defences identified in

paragraph 18A of the re-amended defence. The opening submissions for Mr Wamala complained that in paragraph 18A Reliance listed a menu of defences, but did not explain how those defences were available to Reliance. In relation to the prevention of crime justification, and generally, I agree with this complaint. Paragraph 18A gave no particulars of what was said to have been done under each justification. Moreover it did not state by whom it was done. This was a manifestly inadequate pleading.

468. In a request dated 9 March 2015 Mr Wamala, as to the assertion in paragraph 18A that Reliance used force to prevent the commission of offences by Mr Wamala, asked for the offences in question to be identified. In a reply verified on 31 March 2015 Reliance identified some, but not all, of the offences in question. This was another manifestly inadequate pleading. Reliance had been asked to nail its colours to the mast, and it needed to do so. The offences it was prepared to identify were set out in a jumble with no punctuation. Below I disentangle them and give them numbers:

(1) disorderly conduct;

(2) assault;

(3) assault occasioning actual bodily harm;

(4) criminal damage; and

(5) offences contrary to articles 73 and 78 of the 2005 Order (see section B1.4 above).

469. I doubt whether the commission of any crime could reasonably have been thought to be so imminent as to justify the light holds. This point, however, was not taken by Mr Wamala and I say no more about it.

470. What soon became apparent was that Mr Wamala's answer, as regards the prevention of crime justification and other alleged justifications, did not involve examination of inadequacies of the kind noted above. The answer given generally by Mr Wamala ("Mr Wamala's general answer") is that, if all that Mr Wamala did was to use reasonable force to resist unlawful removal, the justifications alleged by Reliance could have no application. In support of this general answer, a submission ("Mr Wamala's topsy-turvy world submission") was advanced that:

(1) the starting point must be Mr Wamala's entitlement to use reasonable force to resist unlawful removal;

(2) Reliance's approach wrongly ignored this starting point; and

(3) such an approach could properly be described as the approach of a "topsy-turvy world".

471. Reliance's September 2015 submissions in paragraph 39 made a concession ("Reliance's unlawful acts concession"). The concession concerned that part of the 1999 Act duties which required relevant DCOs to prevent "the commission or attempted commission of … unlawful acts". As regards the powers arising by virtue of that particular duty, and Reliance's assertion that such powers constituted justification for the use of force, the concession was this:

> If Mr Wamala's use of force was not an unlawful act, because he was using reasonable force for the purpose of resisting his unlawful removal, then that particular justification of the use of force by Reliance's officers would not be available to Reliance.

472. I make two observations on Reliance's unlawful acts concession:

(1) although the concession was made in the context of the 1999 Act duties, by parity of reasoning it must equally apply to the more general prevention of crime justification; and

(2) later in Reliance's September 2015 submissions, paragraphs 63 to 66 advanced a contention ("Reliance's 2005 Order extent contention") that even if Mr Wamala was entitled to resist removal he nevertheless

committed offences under the 2005 Order. However there was no express qualification of Reliance's unlawful acts concession. I explain in section F10.4 below, however, why reasonable resistance to unlawful removal would not give rise to an offence under the terms of the 2005 Order.

473. In these circumstances Reliance gave two general replies to Mr Wamala's "topsy-turvy world" submission. Reliance's first general reply was a general reply on the law. It was that the focus should be on Reliance's lawful powers. These powers were said to arise because Mr Wamala was in custody and because of the 1999 Act duties. Effectively, the result of Reliance's first general reply was that, as regards a person falling within Mr Wamala's general answer (i.e. a person using reasonable force to resist unlawful removal), the prevention of crime justification was no longer advanced as an independent defence. I consider in section F9.6 what was said by Reliance in relation to custody and the 1999 Act duties.

474. Reliance's second general reply was factual: the court must look at whether what Mr Wamala was doing was resisting the unlawful removal. However this reply cannot arise in relation to the period when Mr Wamala was going up the staircase. During that period Mr Wamala was not resisting in any way. If, and to the extent that, the escorts believed it to be necessary to guard against resistance, that belief was mistaken: their duty was to accept his contention that he could not lawfully be removed on flight QR2.

F9.5 Going up the staircase: keeping the peace justification

475. Issue 3.3 is whether any particular use of force was permitted by the keeping the peace justification. The common law permits all, and indeed, imposes a duty on all, to seek to prevent, by arrest or other actions short of arrest, any breach of the peace which is about to occur. In relation to the keeping of the peace justification:

(1) the justification is advanced in a manifestly inadequate pleading;

(2) neither party has sought to remedy potentially relevant inadequacies;

(3) I doubt whether any breach of the peace by Mr Wamala was sufficiently imminent to warrant the light holds;

(4) Reliance did not suggest that a person resisting unlawful removal would, if using no more than reasonable force, be committing a breach of the peace; and

(5) the only point argued by way of answer to the keeping of the peace justification was Mr Wamala's general answer, to which Reliance gave the two general replies.

476. In these circumstances, for similar reasons to those given in section F9.4, as regards a person using reasonable force to resist unlawful removal the keeping the peace justification ceases to be an independent justification for the light holds.

F9.6 Going up the staircase: custody/1999 Act duties justification

477. Reliance's arguments on custody and the 1999 Act duties justification were numerous and varied. In this section I begin by noting key provisions in the 1999 Act and in the contractual arrangements between UKBA and Reliance, before summarising contentions advanced in the opening submissions for Mr Wamala. I then summarise Reliance's arguments as they developed, along with Mr Wamala's arguments in response. My analysis of the arguments is set out in section F9.7 below.

478. Paragraph 2(5) of Schedule 13 to the 1999 Act confers on DCOs a power "to use reasonable force where necessary" in order to fulfil duties under paragraph 2(3). Paragraph 2(3) imposes duties on DCOs to take action for four specified purposes. I summarised them in section F9.3 above. Here I set them out in more detail. As can be seen in section C4.2 above, they refer to a particular type of detainee as "that person". In relation to "that person", the duties require DCOs:

(a) to prevent that person's escape from lawful custody;

(b) to prevent, or detect and report on, the commission or attempted commission by [that person] of other unlawful acts;

(c) to ensure good order and discipline on [that person's] part; and

(d) to attend to [that person's] wellbeing.

479. Who is "that person"? Answering this question will determine whether the detainee/DCO relationship is a 1999 Act duties relationship: see section C4.2 above. It requires an analysis of the opening words of paragraph 2(3), and of the expressions that it refers to. The opening words are the starting point. They show that "that person" is:

> A detained person for whose delivery or custody [a DCO] is responsible in accordance with escort arrangements …

480. There are two crucial expressions in those opening words. The first crucial expression is "for whose delivery and custody [the DCO] is responsible". These words contemplate that there has been a conferral of responsibility on the DCO for delivery or custody of the relevant detainee.

481. The second crucial expression is "in accordance with escort arrangements". It is common ground that the relevant escort arrangements in place on Christmas eve were set out in an agreement made between the Home Secretary (referred to as "the Authority") and Reliance (referred to as "the Service Provider") in 2010 ("the 2010 Services Agreement"). As regards overseas escort services, Schedule D4 to the 2010 Services Agreement gave a summary of their scope in paragraph 1.1.1:

> 1.1 SUMMARY OF OVERSEAS ESCORTING SERVICES
>
> 1.1.1 The Service Provider will be responsible for the provisionof Overseas Escorting Services for any Detainee who has been authorised for Removal from the United Kingdom to designated overseas destinations, *as directed by the Authority*. The Service may include the collection of the Detainee from a pre-determined location, escorting and transporting the Detainee to a nominated United Kingdom departure point, escorting the Detainee on the flight, including transit points where appropriate, to the country of return, and ensuring the safe entry of the Detainee at the destination country. (emphasis added)

482. Other provisions in schedule D4 relevant for present purposes are:

> Table 01: definitions and abbreviations

…	
Escort	The activity of transporting a Detainee or group of Detainees from the point of their collection to the point of their delivery at the destination
Escort Staff	Staff provided by Service Provider and/or UKBA for the purposes of Escorting Services
…	
…	
Movement Order	Written document produced by the Authority instructing the Service Provider to carry out a specific Escort requirement
…	
Removal	The removal of a Detainee from the United Kingdom as directed by the Authority

Removal Directions	Papers served under the Immigration Acts in respect of a right to remove Detainees from the United Kingdom
…	
Services or Escorting Services	Escorting and transportation of a Detainee and overseeing the safe custody and welfare of a Detainee in designated Holding Rooms …, in vehicles and on Escort.
…	
Service Requests	The request for the provision of Escorting Services
…	
Travel Services Contract	The contract for the provision of certain travel-related services to the Authority, which complements the Contract
TSP or Travel Services Provider	The provider of travel services to the Authority under the Travel Services Contract
…	

…

1.1.8 Escort movements are allocated by the Authority in writing or, where issued verbally, will be confirmed in writing. Normally the Service Provider will be notified at least 72 hours in advance of known movements. …

…

2.4.2 The Service Provider shall escort and supervise a Detainee in order to ensure their safe Removal from the United Kingdom, which shall be in accordance with the Removal Directions set by the Authority, which shall include, but not be limited to, the country of destination, carrier, time of departure/ arrival and flight number or equivalent.

…

Prior to commencement of Escort

2.4.6 The Authority will undertake a risk assessment in order to establish a number of DCOs and medical Escort Staff required per Escort prior to issuing a Service Request. On receipt of the Service Request, and accompanying risk assessment, the Service Provider shall confirm its agreement to Escort within one (1) hour of the receipt of the Service Request.

…

2.4.9 The Service Provider shall provide the required number of DCOs and medical Escort Staff where required, taking account of the Service Providers' and Authority's risk assessment

2.4.10 The Service Provider shall respond to a request from the Authority for the provision of an Overseas Escort, and provide the Authority and the TSP with details of the Escort Staff allocated to the task within timescales specified by the Authority.

…

483. It will be seen that paragraph 2.4.6 refers to UKBA establishing the number of DCOs and paragraph 2.4.9 refers to Reliance providing the required number of DCOs. Those references accord with s 156 of the 1999 Act, which states in subsections (2) and (4):

> (2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.
>
> …
>
> (4) Escort arrangements may include entering into contracts with other persons for the provision by them of –
>
> (a) detainee custody officers; …

484. I add that although Table 01 included a definition of "Movement Order", I have not been able to find any use of this defined term in Schedule D4. As regards overseas escorting, the procedure for Reliance to become responsible for the provision of overseas escorting services for a detainee as directed by UKBA appears to be that set out in paragraphs 1.1.8 and 2.4.6 of Schedule D4.

485. The meaning of the expression "escort arrangements" is defined in s 147 of the 1999 Act. It means arrangements made by the Secretary of State under s 156. Section 156(1), as set out in section C4.2 above, enables escort arrangements to be made for four purposes. It is common ground that the first and fourth of those purposes do not arise in the present case. The second and third of those purposes are:

> …
>
> (b) the delivery of persons from … premises [in which they may lawfully be detained] for the purpose of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;
>
> (c) the custody of detained persons who are temporarily outside such premises;
>
> …

486. As to the second purpose in s 156(1), the submissions for Mr Wamala noted that the ability to make arrangements for the removal of a detainee is subject to qualifications. In particular, the submissions for Mr Wamala pointed to the closing words of s 156(1)(b):

> removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act

487. The submissions for Mr Wamala then made assertions ("Mr Wamala's s 156 assertions") which I number below:

(1) s 156 of the 1999 Act gives the Secretary of State no power to make escort arrangements extending to removal otherwise than in accordance with removal directions;

(2) if the proposition at (1) above were not obvious from the literal words of s 156(1)(b), that proposition would nevertheless be made good by applying established principles of the interpretation of statutes. In particular, the subsection is to be interpreted in accordance with "the presumption that in the absence of express provision to the contrary Parliament did not intend to authorise tortious conduct" and on the basis that where an authorisation given to a constable curtails the rights of others "it is to be expected that Parliament intended the curtailment to extend no further than its express authorisation" : see *Morris v Beardmore* [1981] AC 448, at 455F-G (Lord Diplock) and 463D-E (Lord Keith);

(3) the Secretary of State and immigration officers have no power to remove an individual otherwise than in

accordance with removal directions: see section C3 above;

(4) the Secretary of State cannot make escort arrangements which confer on DCOs powers which are possessed neither by the Secretary of State nor by immigration officers; and

(5) the escort arrangements between the Secretary of State and Reliance must be interpreted as not extending to the removal of an individual otherwise than in accordance with removal directions, and consistently with this, the 2010 Services Agreement in schedule D, section D4, paragraph 2.4.2 stated that removal:

> … shall be in accordance with the Removal Directions set …

488. The opening submissions for Mr Wamala identified a further reason why s 156(1)(b) should be interpreted in this way. This was that the expression "acting in accordance with escort arrangements" also appears in schedule 11 to the 1999 Act. That schedule, concerned with DCOs, makes it a criminal offence to assault a DCO acting in accordance with escort arrangements. That being the case, it was submitted, it was essential to adopt a narrow interpretation of those words, for otherwise there would be no ability to resist unlawful removal. I shall refer to this as "Mr Wamala's criminal consequences proposition".

489. I add that the opening submissions for Mr Wamala responded to an argument advanced in Reliance's skeleton argument. Reliance submitted that it would be absurd if the fact that there had been an administrative error in the Home Office's failure, without Reliance's knowledge, to serve a fresh removal direction notifying Mr Wamala of the change of route should convert what would otherwise have been perfectly unexceptionable escorts' behaviour into assault and/or false imprisonment. Reliance then asserted:

> 41. There is no doubt that Mr Wamala was at all material times a detained person (under s 147 of the 1999 Act as a *"person detained"* under the 1971 Act - pursuant to the detention authority). Reliance was responsible for his custody in accordance with escort arrangements for his custody made under s 156(1)(c) (whether or not the directions for his removal were properly given under the 1971 Act, so as to entitle Reliance to rely upon s 156(b)). It follows that Reliance's officers had the right to use reasonable force to prevent escape, to restrain unlawful acts and to ensure Mr Wamala's good order and discipline, while he was a detained person in Reliance's custody temporarily outside premises where he might lawfully be detained, e.g. the Immigration Removal Centre at Brook House from which he was collected.
>
> 42. Were this not the case, it would follow that a defect in a removal direction, however minor and whether or not the defect was known to either the detainee or the detainee custody officer, in respect of a lawfully detained person would prevent a DCO from using reasonable force to prevent the detainee escaping from custody, assaulting members of the public or otherwise offending. That cannot be a proper construction of the legislation in respect of a person who is lawfully in custody. Nor can it be what Parliament intended. Such a construction would mean that because the removal direction in respect of Mr Wamala's removal was for the wrong flight and he had not been served with a fresh removal direction for the right flight, he would, as a matter of construction of the 1999 Act, have been able to resist the escorts' attempts to restrain him and escape at will or commit other offences without the officers in charge of him having any statutory authority to bring him under control.

490. In answer to this, the opening submissions for Mr Wamala stressed that liability in trespass in strict. There is no requirement to prove fault. As to whether the statute should be construed in a way which avoided what Reliance described as an "absurd" result, the submissions for Mr Wamala drew attention to the outcome in *Entick v Carrington* (1765) 19 St Tr 1030: those who carry out a command to do an unlawful act are responsible for the consequences, even though they reasonably believed that the act was lawful. That basic principle was the starting point, and was the reason why it would be wrong to give relevant legislation a benevolent interpretation releasing subordinates from liability. I shall refer to this as "Mr Wamala's basic principle proposition".

491. Finally, in relation to relevant parts of the opening submissions for Mr Wamala, I summarise contentions in Mr Wamala's skeleton argument which anticipated that Reliance would seek to justify its actions by citing the third of the 1999 Act duties. This third duty is to ensure good order and discipline on the part of the detained person. It is important in this regard to note that these, like all other contentions in Mr Wamala's skeleton argument, were advanced at a stage where there was no inkling that Reliance would say that the governing escort arrangements were those for custody of detained persons temporarily outside authorised premises. I shall refer to these contentions by Mr Wamala as "Mr Wamala's good order contentions". In summary:

(1) Mr Wamala's first good order contention was that a general power to maintain good order and discipline cannot confer a power to use force to remove a person. The power to effect a removal is specifically addressed by paragraph 11 of Schedule 2 to the 1971 Act (and s 146);

(2) Mr Wamala's second good order contention was that a general power to maintain good order and discipline cannot abrogate the fundamental right of a person to use reasonable force to resist the application of unlawful force against them. Mr Wamala was entitled to resist the use of force to effect an unlawful removal. His resistance was perfectly lawful and was not a departure from good orderand discipline.

(3) Mr Wamala's third good order contention set out submissions which became Mr Wamala's third, fourth and fifth s 156 assertions (see above);

(4) Mr Wamala's fourth good order contention analysed whether Mr Wamala fell within the opening words of paragraph 2 of Schedule 13 to the 1999 Act, and concluded that he did not:

> … Schedule 13 has no application here because C was *not "a person for whose delivery or custody"* for whom an escort was responsible in accordance with escort arrangements made by the Secretary of State. Had the UKBA sought to instruct D to place C on the Qatar flight then its local immigration team would have created a Removal Direction for the Qatar flight, it would then have forwarded a copy of this to DEPMU, this would have prompted DEPMU to issue a Movement Notification – Removal Direction requiring D to remove C on the Qatar flight, and notice of the removal direction for the Qatar flight would have been served on C at least 72 hours before the removal. However, as is now accepted, the UKBA did not take any of these steps.

492. Reliance's oral closing submissions involved both concessions and propositions. Below I set out those that are relevant for present purposes, working by reference to stages in the argument which I have numbered for convenience.

493. The stages, and the concessions and propositions at each stage, can be briefly described:

(1) Reliance's first concession was that if Mr Wamala had not been in lawful custody, and had been simply taken from home and put on the wrong flight, then he would be entitled to damages for false imprisonment: see the decision of Mr Clive Lewis QC in *R (Shaw) v SSHD* [2013] EWHC 32 (Admin);

(2) Reliance's second concession was that Mr Wamala was indeed entitled to the June 2014 declaration: there was no valid removal direction entitling Reliance to put Mr Wamala on flight QR2;

(3) Reliance's first proposition was that Mr Wamala is not entitled to succeed in his claim to damages if the only force used against him was not unlawful;

(4) Reliance's second proposition was that throughout Christmas eve Mr Wamala was in lawful detention;

(5) Reliance's third proposition ("Reliance's inherent liability to be restrained proposition") was that lawful detention involved not merely the loss of liberty but also a liability to be restrained: see the decision of the House of Lords in *R v Deputy Governor of Parkhurst Prison ex p. Hague* [1992] 1 AC 58; this proposition, however, did not assert that a liability to be restrained arose if the detainee/DCO relationship

was not a 1999 Act duties relationship;

(6) Reliance's fourth proposition was that detention does not become unlawful because of the conditions in which the detainee is held;

(7) Reliance's third concession arose in relation to s 156 of the 1999 Act. It will be recalled (see the start of the present section) that DCOs have power to use force under paragraph 2 of schedule 13 to the 1999 Act only as regards detained persons for whose delivery or custody the DCO is responsible in accordance with escort arrangements, and that under s 156 escort arrangements can be made for four purposes only, the first and fourth of which do not arise in the present case. As to the second, found in s 156(1)(b), Reliance noted that this concerned the delivery of persons for the purpose of removal in accordance with removal directions. The third concession ("Reliance's type of escort arrangements concession") was that the events on Christmas eve did not involve the second type of escort arrangements, because what took place on Christmas eve was not a delivery of Mr Wamala in accordance with removal directions;

(8) Reliance's fifth proposition was that its conduct on Christmas eve was in accordance with escort arrangements that had been made for the third of the s 156 purposes, namely escort arrangements for "the custody of detained persons who are temporarily outside premises [in which they may lawfully be detained]", on the footing that the 2010 Services Agreement was an agreement to provide DCOs to take custody of detained persons who were temporarily outside such premises;

(9) Reliance's sixth proposition was that the duties under paragraph 2(3) of schedule 13 to the 1999 Act, and the power to use reasonable force where necessary under paragraph 2(5), arose because there were, in force, escort arrangements comprised in the 2010 Services Agreement;

(10) Reliance's seventh proposition was that mere breach by Reliance of the 2010 Services Agreement cannot have the consequence that Mr Wamala ceased to be a person for whose custody Reliance was responsible in accordance with escort arrangements;

(11) Reliance's eighth proposition ("Reliance's responsibility for custody proposition") was that "responsible in accordance with escort arrangements" means that:

[1] The contract is in place and

[2] The responsibility for Mr Wamala's custody is in place and

[3] Reliance is the person responsible for his custody in accordance with escort arrangements.

(12) Reliance's ninth proposition was that it was absurd for Mr Wamala to suggest that any failure by Reliance to comply with the 2010 Services Agreement had the consequence that relevant DCOs ceased to be responsible for the custody of Mr Wamala:

(a) it would mean that if a detained person is temporarily out of premises where that person may lawfully be detained, then there would be no control upon that person because the escorts had no power to do anything if there was a breach of contract;

(b) by way of example, while there was a technical breach of the Services Agreement in using rigid bar handcuffs, it could not be seriously suggested that Parliament intended that such a breach led to custody becoming unlawful and the escorts being no longer bound to ensure good order and discipline and the like; and

(c) certainly in the present case it would be absurd that the technical failure to issue a fresh removal direction had the consequence that custody became unlawful, with the result that an authorised DCO was no longer in charge;

(13) Reliance's tenth proposition was that in the absence of a removal direction, while a person cannot be forced on to a plane, if the person taken on to the plane is in custody then paragraph 2(5) of Schedule 13 to the 1999 Act permits use of reasonable force where necessary to perform the 1999 Act duties.

494. The oral reply submissions for Mr Wamala responded with a series of propositions. Again, for convenience, I number them, and give a brief description below:

(1) Mr Wamala's first reply proposition was that the requirement in para 11 of Schedule 2 to the 1971 Act for compliance with removal directions was "a most important provision": see the judgment of Woolf J in *R v Immigration Officer, ex p. Shah* [1982] 1 WLR 544, 548E-G and was to be strictly interpreted;

(2) Mr Wamala's second reply proposition, citing the decision in *Shaw* (see stage (1) of Reliance's oral closing submissions as summarised in the preceding paragraph) was that invalidity of removal directions had the consequence that there was no lawful justification for putting individuals on a flight;

(3) Mr Wamala's third reply proposition repeated his third section 156 assertion;

(4) Mr Wamala's fourth reply proposition repeated his fourth section 156 assertion;

(5) Mr Wamala's fifth reply proposition concerned potentially confusing terminology in the 1999 Act; it has different regimes for what it called "custodial functions" and "escort functions". What it calls "custodial functions" are confined to such functions at a removal centre; see ss 147 and 155. Mr Wamala's fifth reply proposition was that, as what was done in the present case was outside the removal centre, the relevant regime was that for "escort functions";

(6) Mr Wamala's sixth reply proposition sought to provide a short answer to Reliance's fifth proposition. As regards the suggestion that Reliance could rely on "escort arrangements for the custody of detained persons who are temporarily outside [authorised] premises", the short answer was that Reliance took custody of Mr Wamala at Brook House IRC by presenting the QR2 amended movement notification. In this regard Reliance was said to be "off on a frolic of their own": it was plainly not a valid document as (a) it was Reliance that had amended it, and (b) the unamended movement notification was to put Mr Wamala on a flight which had already departed. For these reasons it was said to be "perfectly obvious" that Mr Wamala was not in Reliance's lawful custody;

(7) Mr Wamala's seventh reply proposition repeated Mr Wamala's criminal consequences proposition;

(8) Mr Wamala's eighth reply proposition repeated, and extended to the 1999 Act duty to prevent the commission or attempted commission of unlawful acts, Mr Wamala's first good order contention;

(9) Mr Wamala's ninth reply proposition repeated Mr Wamala's third and fourth section 156 assertions;

(10) Mr Wamala's tenth reply proposition repeated Mr Wamala's fifth section 156 assertion;

(11) Mr Wamala's eleventh reply proposition repeated and developed Mr Wamala's criminal consequences proposition. In support of a construction under which a person being unlawfully removed is not within the opening words of paragraph 2(3) of Schedule 2 to the 1999 Act, it was submitted that Mr Wamala's criminal consequences proposition:

> must be right because … were it not right, he could be exposed to criminal proceedings if he resisted the use of force attempting to remove him. In the absence of removal directions, the whole statutory scheme makes clear that he must … be able to resist such action and were he to be prosecuted for assaulting [DCOs] by pushing them in an attempt to get off the airplane … which he should not be on, he obviously should have, and does have, a defence in law to any such charge.

(12) Mr Wamala's twelfth reply proposition concerned custody, as to which (a) custody is ancillary to removal, and (b) in any event for reasons already given there was no question of Mr Wamala having been in lawful custody of the escorts;

(13) Mr Wamala's thirteenth reply proposition concerned the extent to which Mr Wamala said that a breach by Reliance of the 2010 Services Agreement had the consequence that the detainee/DCO relationship was not a 1999 Act duties relationship:

> It is no part of [Mr Wamala's] case that every breach of an escort arrangement necessarily means that Schedule 13 does not apply. … [As] explained … how we put our case – it is quite different – but there will be breaches of escort arrangements which have that effect.

(14) Mr Wamala's fourteenth reply proposition dealt generally with issue 3. Issue 3 concernedwhether Reliance had any lawful authority to use force under statutory or common law rules identified in paragraph 18A of Reliance's re-amended defence: see section A5.3 above. As to that, it was submitted that:

> There can be no possible statutory authority in circumstances where [Mr Wamala] is simply using reasonable force to resist an unlawful arrest. He is not breaching the peace, he is using force to resist an unlawful arrest. It is not a situation of self defence because he is using force to resist an unlawful event and it is lawful force that he is doing.

495. Relevant parts of Reliance's September 2015 submissions can be summarised as proceeding in stages under which Reliance:

(1) in paragraph 32, noted that Mr Wamala had not pursued a claim for false imprisonment as no damages could be awarded, because Mr Wamala was already in custody pursuant to the detention authority;

(2) in paragraph 32, 33 and 38 advanced the assertions which I have rejected in section F9.2 above;

(3) in paragraphs 34 to 36, developed a contention ("Reliance's elision contention") that the closing submissions for Mr Wamala had elided two different questions:

  (a) the correct question was whether Reliance can justify its use of force against Mr Wamala, so as to have a defence to Mr Wamala's assault claim; but

  (b) this had been wrongly elided with the question whether Mr Wamala was entitled to use force to resist unlawful removal;

(4) in paragraph 37, accepted the general position that I have described in section F9.2 above;

(5) in paragraph 39, made Reliance's unlawful acts concession as described in section F9.4 above;

(6) in paragraph 40, made a factual concession which I describe in section F10.3 below;

(7) in paragraph 41, developed Reliance's general reply on the law (see section F9.4 above) by submitting:

  (a) it is quite possible and not self-contradictory for the escorts to have a right to restrain Mr Wamala at the same time as Mr Wamala had a right to resist being removed unlawfully from the country;

  (b) the oral closing submissions for Mr Wamala had failed to consider that possibility;

  (c) those submissions were based on an all-or-nothing approach asserting that if Mr Wamala's removal was unlawful, then he had a right to resist it and any use of force upon him by the escorts was unlawful;

(d) however, it did not follow from Mr Wamala having a right to resist his removal that any use of force upon him by the officers was unlawful;

(8) in paragraph 42, made two further concessions:

(a) a concession that Mr Wamala is entitled to a declaration that his attempted removal on QR2 was unlawful, adding that this was effectively achieved by the grant of the June 2014 declaration; and

(b) a concession ("the Schedule 11 concession") that Mr Wamala would be entitled to defend a charge of assault on a DCO under Schedule 11 to the 1999 Act, had such a charge been brought, on the basis that he claimed to have been using force to resist an unlawful removal and that the force he used was reasonable;

(9) in paragraph 43, qualified the Schedule 11 concession, saying that it:

> does not make Reliance liable to Mr Wamala in an action in damages for [trespass to the person], because Reliance cannot be liable to Mr Wamala in damages for [trespass to the person] if Reliance's use of force was justified by statute or common law.

(10) also in paragraph 43, sought to justify this qualification on an additional basis that Reliance is duty bound to restrain a detainee in its custody, adding that this was what Parliament must have intended to achieve by:

(a) empowering the Secretary of State, under s 156(1)(c) of the 1999 Act, to "make arrangements for … the custody of detained persons who are temporarily outside such premises";

(b) imposing duties on DCOs to prevent a detainee's escape from lawful custody, to prevent the commission or attempted commission by the detainee of other unlawful acts, and to ensure good order and discipline on the part of the detainee (under paragraph 2(3) of Schedule 2 to the 1999 Act);

(c) empowering DCOs to use reasonable force where necessary in carrying out such duties (under paragraph 2(5) of Schedule 2 to the 1999 Act);

(11) in paragraphs 44 to 46, advanced a new contention followed by a criticism of Mr Wamala's contentions:

(a) the new contention was that once detained under paragraph 2(3) of Schedule 3 to the 1971 Act [dealing with detention or control pending deportation], then unless bail is granted or the deportation order is revoked, there is no provision for a person lawfully detained to become free pending removal or departure ("Reliance's limitation on freedom contention");

(b) the new criticism was that Mr Wamala's contentions could not be right as they "start from a position" contrary to Reliance's limitation on freedom contention ("Reliance's unlawful freedom criticism");

(12) in paragraphs 47 to 52, as I understand them:

(a) made a concession that putting Mr Wamala on flight QR2, although it accorded with the alterations to the MS778 movement notification, would nevertheless, because there were no removal directions for flight QR2, be in breach of the 2010 Services Agreement which in paragraph 2.4.2 of Schedule D4 required that Reliance:

> … shall escort and supervise a Detainee in order to ensure their safe Removal from the United Kingdom, which shall be in accordance with the Removal Directions …

(b) noted that Mr Wamala accepted that not every breach of the 2010 Services Agreement meant that a detainee's custody would become unlawful;

(c) postulated that the use of rigid bar handcuffs, contrary to paragraph 2.10.1 of Schedule D2 to the 2010 Services Agreement, would not have the consequence under paragraph 2(3) of Schedule 13 to the 1999 Act that the detainee was no longer "a detained person for whose delivery or custody [the relevant DCO] is responsible in accordance with escort arrangements" (and accordingly would not deprive the detainee/DCO relationship of 1999 Act duties status);

(d) advanced a contention ("Reliance's invalid RD consequences contention") that, just as the postulated breach by using rigid bar handcuffs would not deprive the detainee/DCO relationship of 1999 Act duties status, similarly the invalidity of a removal direction, where such invalidity was caused by reasons which Reliance suggested arose in the present case:

> … does not mean that the detainee's custody became unlawful, so that an authorised DCO is no longer in charge of the detainee.

(13) in paragraphs 53 to 55, as I understand them:

(a) advanced a new contention ("Reliance's referability of detention contention"). This new contention was a variation of Reliance's responsibility for custody proposition (see stage (11) of Reliance's oral closing submissions set out above). It was a contention that "the only sensible construction of the opening words of paragraph 2(3) of Schedule 13 to the 1999 Act" is:

> … that a DCO is responsible for the delivery or custody of a detained person if there are in place escort arrangements, such as the Services Agreement, made by the Secretary of State and a detained person's detention by the DCO is referable to such arrangements.

(b) set out two comments as to the results of Reliance's referability of detention contention, the first being in paragraph 54:

> 54. It follows that it does not render the detained person's custody unlawful if the DCO's employer is in breach of the Services Agreement; that is a contractual matter between the Secretary of State and the DCOs employer.

(c) in its second comment on the results of Reliance's referability of detention contention, advanced what I shall call "Reliance's further invalid RD consequences contention" comprising four elements, which I have numbered in square brackets below:

> 55. [1] Nor does the lack of a valid removal direction of itself make the detention of the detainee by the service provider unlawful. [2] Such a result would be absurd in public policy terms and would offend against the requirement that a court is required to try to ascertain the intention of Parliament when construing statute. [3] The lack of a valid removal direction makes the removal unlawful. It does not render the detainee free of the requirement of the Secretary of State that he be held in detention; and [4] if his detention is for the time being in the hands of DCOs acting under the Services Agreement then the detainee is in the DCOs' lawful custody.

(14) in paragraph 56, advanced contentions ("the re-framed inherent liability to be restrained contentions") which re-framed Reliance's inherent liability to be restrained proposition (see stage (5) of Reliance's oral closing as set out above). Again, however, there was no suggestion that a liability to be restrained would arise if the detainee/DCO relationship was not a 1999 Act duties relationship (see section C4.2 above). There were four re-framed inherent liability to be restrained contentions. I number them in square brackets

below:

> 56. [1] If the detained person is in lawful custody, then restraint is inherent in the custodial regime and is permissible. [2] It is therefore not possible to argue that the use of the guidance hold on Mr Wamala's arms to take him up the stairs into the aircraft is not lawful restraint. [3] That is the real reason why there is no claim for false imprisonment in this case: Mr Wamala was already in lawful custody, subject to a regime of restraint and destined so to remain until his removal from the UK unless he was given bail or the deportation order was revoked. [4] See *R v Deputy Governor of Parkhurst Prison Ex p. Hague* [1992] 1A.C.58 (Tab 20), per Lord Bridge at 162B-163B and Lord Jauncey at176F-H.

(15) in paragraphs 57 to 60, referred to decisions relied on by Mr Wamala, and distinguished them on the basis that they concerned action taken against individuals who were not already in custody and on the basis that Mr Wamala's analysis was unsound for the reasons identified in Reliance's elision contention (see stage (3) above);

(16) in paragraphs 61 and 62 summarised Reliance's overall conclusion and the factual questions which arose;

(17) in paragraphs 63 to 66 made assertions that Mr Wamala committed offences under the 2005 Order. As to this, section F9.4 above notes that these passages do not expressly qualify Reliance's unlawful acts concession, and that they are discussed further in section F10.4 below;

(18) in paragraph 67, made a submission about Mr Charles's initiation of force which I deal with in section F10 below;

(19) in paragraph 68, referred in general terms to Reliance's general claim that "the DCOs' use of force was justified "at common law…";

(20) in paragraph 69, made a submission as to the reasonableness of force used by the escorts which I deal with in sections F10 and F11 below;

(21) in paragraphs 70 to 76:

(a) made a criticism ("Reliance's ability to amend criticism") of the submissions for Mr Wamala. This criticism began with an assertion in paragraph 70:

> … submissions [for Mr Wamala] proceeded on the basis that it was in some way unlawful for Reliance to amend the movement notification and that [a] movement notification amended by Reliance was in itself not capable of being a valid document on which anyone could act.

(b) developed Reliance's ability to amend criticism in paragraphs 71 to 76, which I have dealt with in section A3.6 above.

496. Relevant parts of Mr Wamala's October 2015 submissions can be summarised as proceeding in stages under which they:

(1) in paragraph 1, noted that Reliance's September 2015 submissions included further submissions on the law. This was additional to the matters which were specifically permitted to be dealt with in written submissions. Moreover, there had been no prior communication with the legal team for Mr Wamala about this;

(2) nevertheless, in section C of Mr Wamala's October 2015 submissions at paragraphs 263 to 292, a response was set out to Reliance's further submissions on the law;

(3) in paragraph 263, responding to paragraph 32 of Reliance's September 2015 submissions, it was stressed

that false imprisonment had been pleaded by Mr Wamala, for example in paragraphs 122 to 131 of the particulars of claim. For present purposes it suffices to set out paragraphs 126 to 129 of the particulars of claim:

> 126. Section 156(1)(b) of the 1999 Act specifically provides that arrangements may be made for the delivery of persons from premises "for the purposes of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;".
>
> 127. Since no such directions were given the Secretary of State had no power to make escort arrangements under s.156(1)(b) for the delivery of Mr Wamala to the Qatar Airways aircraft bound for Doha and any purported escort arrangements made by or on behalf of the Secretary of State were ultra vires and null and void.
>
> 128. Further, the Reliance escorts in using force to effect the removal of Mr Wamala on the Qatar Airways flight had no authority to do so as there were no escort arrangements authorizing the same.
>
> 129. In the premises the detention and use of force applied against Mr Wamala by the Reliance escorts to effect his removal on 24 December 2011 was unlawful. …

(4) In paragraphs 263 to 266:

(a) responded to paragraph 32 and 33 of Reliance's September 2015 submissions (see stage (2) of those submissions as summarised above, and section F9.2 above);

(b) gave a summary of three propositions ("Mr Wamala's false imprisonment propositions") in relation to Mr Wamala's case on false imprisonment. Those propositions appeared in paragraph 263(1), to which I add my own numbering in square brackets:

> [1] false imprisonment … is pleaded … but no claim for damages has been pursued because it is recognized that if C had not been in D's custody he would have remained detained by the Home Office and therefore the quantum is minimal …
>
> [2] insofar as it is legally relevant to the use of force claim, the court will have to consider the legality of detention by D.
>
> [3] insofar as it is relevant, C's position is that he was unlawfully detained by D's officers, as pleaded.

(c) set out the reasons which I have referred to in section F9.2 above when rejecting what appeared to be said in paragraph 32 of Reliance's September 2015 submissions.

(5) in paragraphs 267 and 268, in response to Reliance's elision contention (see stages (3) and (15) of Reliance's September 2015 submissions as summarised above):

(a) characterized Reliance's elision contention as saying that the court should not reflect on what would be the case if Reliance brought a claim against Mr Wamala for assaulting its escorts, or if Mr Wamala were prosecuted for assaulting the escorts, because the present claim is brought by Mr Wamala against Reliance;

(b) responded:

> But the law is the law. The legality of the use of force is not different depending on who brings the claim.

(c) and added:

> 268. If C was using reasonable force to resist unlawful removal and the unlawful use of force against him, then he not only has a defence to a claim by D for assaulting escorts, he also has a right to claim damages for assault on his person.

(6) noted that Reliance now placed the 1999 Act duties at the forefront of its submissions, to which Mr Wamala responded by referring to what I have called Mr Wamala's first good order contention and Mr Wamala's eighth reply proposition (see above);

(7) referred back to what I have called Mr Wamala's sixth reply proposition, varying it slightly so as to say that it was Reliance's officers that were "off on the frolic of their own" by amending the MS778 movement notification and presenting that document as amended to G4S staff at Brook House IRC, and adding that the release of Mr Wamala to the escorts should never have happened:

(a) the EgyptAir flight referred to in the MS778 movement notification had already departed by the time the escorts arrived at Brook House IRC;

(b) the escorts had no authority from the Home Office to be there or to hand G4S the amended MS778 movement notification;

(8) characterised Reliance's invalid removal directions consequences contention, and Reliance's referability of detention contention (see stages (12) and (13) of Reliance's September 2015 submissions as summarised above) as advancing a case that:

> … the mere fact that the Secretary of State has made [the 2010 Services Agreement] which is the "escort arrangements" means that anything [Reliance] purports to do pursuant to that agreement is lawful and within Schedule 13 paragraph 2(3);

(9) asserted that this was obviously wrong, and that the correct legal analysis is:

> [1] The Escort Arrangements are the means by which the Secretary of State confers statutory authority on private persons to exercise coercive powers, pursuant to authority given to her by s.156 of the IAA 1999.
>
> [2] The Services Agreement is thus not merely a contract. Pursuant to IAA 1999 s.156(4) (which provides "*Escort arrangements made include entering into contracts…"*), the Services Agreement represents the Escort Arrangements.
>
> [3] The requirements, set out in the Services Agreement/Escort Arrangements, regulate the authority of private contractors delegated by the Secretary of State under s.156 of the IAA 1999.
>
> [4] The authority of detention custody officers to perform the functions set out in s.156(1) is also limited to "*such cases as may be determined by or under the arrangements*": s.156(2). The duties of detention custody officers in Schedule 13 paragraph 2(3) are expressed as applying only where they have been given responsibility under the Escort Arrangements to performing one or more of the s.156(1) functions.
>
> [5] The Services Agreement stipulates, inter alia, that a service provider is responsible for a detainee "*as directed by the Authority*" (Schedule D4 §1.1.1). Escort movements are directed in writing (or confirmed in writing) (ibid. §1.1.8). Also, escorts shall be responsible for detainees being removed only "*in accordance with the Removal Directions set by the Authority"* (ibid §2.4.2).
>
> [6] Where a private contractor takes a person into custody and/or attempts to remove them in the

absence of a direction in the form of a Movement Notification from the Home Office they are clearly acting outside the Escort Arrangements. (They are also acting in breach of contract and also illegally in that sense). Therefore D is wrong to suggest that the mere fact of the existence of the Services Agreement means that everything D's officers do is in accordance with Escort Arrangements. They must, obviously, comply with directions given under the Escort Arrangements.

(10) contended that when developing Reliance's ability to amend criticism (see stage (21) of Reliance's September 2015 submissions as summarised above) Reliance had been wrong to assert that a movement notification lacks statutory force, for on the contrary it was a key part of the escort arrangements which themselves had statutory force, and in addition overlooked the fact that in public law a failure to comply with policies renders coercive action unlawful;

(11) added in relation to Reliance's ability to amend criticism that:

(a) even if removal directions for flight QR2 had been issued and served, without a movement notification by which the Home Office directed Reliance to take Mr Wamala into custody and remove him off that flight, Reliance would have no authority to do so – thus for example the Home Office might decide to use an immigration officer to affect the removal, in which event Reliance could not possibly claim to have had lawful authority by reason of its own amendment to an earlier movement notification;

(b) Reliance's assertion in this regard was "frankly extraordinary", being contrary to Ms Payne's evidence at paragraph 15 of Payne 1 ("We do not make handwritten amendments to movement notifications.");

(c) in law, Reliance can only exercise coercive powers at the direction of the Home Office, it cannot lawfully give itself such a direction;

(12) returned to what was described as "the prior point" that the Secretary of State has no power to remove a person in the absence of removal directions (see Mr Wamala's fourth section 156 assertion and fourth reply proposition summarised above) with the consequence that even if a movement notification for QR2 had been issued it would have been unlawful for Reliance to have used force to remove Mr Wamala in the absence of removal directions;

(13) as to the public policy arguments advanced as part of Reliance's further invalid RD consequences contention (see stage (13) of Reliance's September 2015 submissions as summarised above), asserted that:

(a) as the Home Office would be vicariously liable for the acts of immigration officers removing persons in the absence of removal directions or where removal directions were invalid, even if those immigration officers could not have known of the invalidity, as in the *Shaw* case, it is similarly appropriate that a private contractor firm should be vicariously liable for the acts of its officers in such circumstances;

(b) if a private contractor was acting innocently, it might be able to seek indemnity from the Home Office, but that was not relevant to the liability of the contractor to the detainee, whose rights had been infringed;

(c) there were entirely sound public policy reasons why rights-based torts are torts of strict liability and are not fault based; and

(d) whatever the public policy may be, the position under which rights-based torts are torts of strict liability is the law;

(14) as to Reliance's suggestion that a lack of a removal direction did not make detention unlawful:

(a) contended in paragraph 284 that the statutory foundation for detention to effect removal was separate to that for detention pending removal, contrasting in that regard, paragraph 11 of Schedule 2 to the 1971 Act and paragraphs 16, 18(1) and Schedule 3 paragraph 1(1) to (4), with the consequence that if a removal direction were invalid then detention pursuant to paragraph 11 of Schedule 2 to the 1971 Act would be unlawful – hence the absence of a removal direction led to a false imprisonment award in *Shaw*;

(b) contended that the *Hague* case did not assist Reliance, as it turned on interpretation of the Prison Act 1952 and the Prison Rules, and at all times Mr Hague remained in the custody of the prison governor – he had not been taken into the custody of a private company which turned up at the prison gates and removed him from the prison; and

(c) commented that Reliance's attempts to distinguish cases cited by Mr Wamala (see stage (15) of Reliance's September 2015 submissions) both ignored an important fact in the present case and relied on a factual premise which was incorrect.

F9.7 Going up the staircase: analysis & conclusions

497. The light holds involved no great degree of force, and if taken in isolation the damages recoverable for the light holds will not be large. Nevertheless, Mr Wamala's claim in relation to the light holds concerns important points of principle, and gives an initial factual background against which rival legal contentions can be assessed. For the reasons given in section F9.3, I conclude that neither the self defence justification, nor actual or potential justifications concerned with the prevention of escape, can justify the light holds. For the reasons given in sections F9.4 and F9.5, Reliance has not identified any basis upon which the use of reasonable force by Mr Wamala to resist his unlawful removal could give rise to the commission by him of a crime, or constitute a breach of the peace, such as to give rise to the prevention of crime justification or the keeping the peace justification.

498. Thus the question whether Mr Wamala can complain about the light holds becomes a question whether Reliance's submissions based on Mr Wamala already being in detention, and Reliance's submissions citing the 1999 Act duties justification, provide a sound legal basis for the use of force inherent in the light holds.

499. There is a common feature to Reliance's submissions based on the fact that Mr Wamala was already in detention, and Reliance's submissions citing the 1999 Act duties justification. Both involve an assertion that the escorts gained lawful custody of Mr Wamala. To my mind however it is clear that, at the time when the escorts sought and obtained custody of Mr Wamala, they did not have UKBA authority to do so.

500. If the escorts had taken custody of Mr Wamala at Brook House IRC so that he could be removed on flight MS778, and had presented themselves at Brook House IRC in good time for this purpose, then they would have had UKBA authority to do so. The MS778 movement notification, as was common ground, was designed to authorise Reliance to perform this task. Under the 2010 Services Agreement the MS778 movement notification would have constituted an "Escort movement" allocated by UKBA in writing as provided in paragraph 1.1.8 of Schedule D4.

501. In this regard, the standard form terminology in the MS778 movement notification was not entirely apt:

(1) the standard form began by setting out requirements, first, to take possession of the detention authority for Mr Wamala and take him into custody, second, to transfer him to his "destination as shown", and third, to hand the detention authority "to the new custodian". However as to this third requirement:

(a) it was inherent in Mr Wamala's removal that there would be no new custodian;

(b) accordingly neither side contended that this third requirement was effective: it was simply ignored;

(2) as to transferring Mr Wamala to his "destination as shown":

(a) the standard form envisaged that it would be completed so as to show "Destination Location", "Departure Date/ Time", a "Destination (Country)", and a "Flight/ Ship Number";

(b) when completed it identified a Departure Date/ Time of "24 December 2011 at 14:00", a Destination (Country) of "Uganda", and a flight number "MS778". It gave as Destination Location "Heathrow TN3, UK Border Agency, Terminal 3, Heathrow Airport …";

(c) neither side suggested that it was intended that Reliance's obligations in relation to, and authority over, Mr Wamala should end by delivering him to UKBA at Terminal 3. On the contrary the form was intended to give Reliance all the authority that could be given for Reliance to "transfer" Mr Wamala to Uganda.

502. I turn to the position when the escorts arrived at Brook House IRC at around 2:55pm on Christmaseve. Consistently with what was said at paragraph 128 of the particulars of claim (see stage (3) of Mr Wamala's October 2015 submissions, as summarised in section F9.6 above), Mr Wamala's stance was simple: flight MS778 had departed, the MS778 movement notification was incapable of being performed, and Reliance thus had no authority to do anything with Mr Wamala.

503. As it seems to me, Reliance's type of escort arrangements concession (see stage (7) of Reliance's oral closing submissions as summarised in section F9.6 above) acknowledged the correctness of this simple stance: once flight MS778 had departed without him, the "escort arrangements" for removal of Mr Wamala were no longer effective. Reliance then advanced a contention that there were nevertheless effective escort arrangements in relation to Mr Wamala which were for "the custody of detained persons who are temporarily outside [authorised] premises" (see stage (8) of Reliance's oral closing submissions as set out in section F9.6 above). The first difficulty is that I was not shown anything in the 2010 Services Agreement dealing with escort arrangements of that type. Even if that difficulty here can be overcome, however, I cannot accept that any such escort arrangements for Mr Wamala came into being. The reason is that Reliance's submissions in this regard have two obvious flaws: UKBA had not directed Reliance to take custody of Mr Wamala as a detained person temporarily outside authorised premises, and the escorts' avowed purpose was different: they sought and obtained custody of Mr Wamala for removal on flight QR2. The only direction that UKBA had given Reliance in relation to Mr Wamala was the MS778 movement notification. That direction plainly authorised Reliance to take custody of Mr Wamala only for the purpose of his removal to Uganda on flight MS778.

504. Reliance's submissions did not seem to me to grapple with these obvious flaws. Instead, in large part, they demolished arguments which Mr Wamala had not advanced. The most striking of these was the suggestion that under Mr Wamala's arguments he had become a free man. This suggestion was nonsense. Mr Wamala did not dispute that his duty was to return to detention. His arguments on this aspect, in effect, would put him in the same position as he would have been in if imposters had come to Brook House IRC and taken custody of him. That would not mean that he ceased to be a person who was detained: he was detained at Brook House IRC. All that had happened was that Brook House IRC had given up custody of him on a false basis. In that regard Brook House IRC received an amended movement notification that was presented as if it had been authorised by UKBA, whereas in fact it had not been and could not lawfully have been authorised by UKBA. Mr Wamala did not dispute that his duty was to return to detention in accordance with any instruction given by UKBA. Thus Reliance's limitation on freedom contention (stage (11) of my summary in section F9.6 above of Reliance's September 2015 submissions), assuming it to be right, does not warrant Reliance's unlawful freedom criticism.

505. In other arguments the submissions for Reliance embarked upon the task of finding a way in which, even though Reliance had taken custody of Mr Wamala without any effective instruction from UKBA to do so, the escorts' illegitimately gained custody of Mr Wamala attracted the 1999 Act duties. This task was bound to fail, for it was inconsistent with fundamental principles of the common law and of the interpretation of statutes. As to the common law, I need do no more than refer to Mr Wamala's basic principles assertion, and the celebrated decision in *Entick v Carrington* (see the summary in section B9.6 above of Mr Wamala's opening submissions). In the passage in question the submissions for Mr Wamala were seeking to answer submissions in Reliance's

skeleton argument. Those submissions included extravagant contentions that on Mr Wamala's case a minor defect in a removal direction would entitle Mr Wamala to resist attempts to restrain him, to escape at will, or to commit other offences. However relevant submissions for Mr Wamala made no such contentions, being concerned at that stage with Mr Wamala's entitlement to use reasonable force to resist removal in the absence of removal directions. Reliance's elision contentions do not work at common law, for if Mr Wamala is doing no more than what is permitted by the common law, then he will not be guilty of any common law offence. As to the interpretation of statutes, both in relation to the circumstances in which an offence will be committed, and in relation to the grant of powers to escorts which would curtail the rights of others, it is not necessary to go beyond *Morris v Beardmore*: the clearest possible language will be required before the statute could be interpreted in a way which would impair Mr Wamala's entitlement to use reasonable force to resist unlawful force. Reliance accepted that that entitlement arose by virtue of the fact that there were no removal directions in place for flight QR2. To my mind, that entitlement arose just as much by virtue of the fact that the escorts had no authority to take custody of Mr Wamala.

506. In the circumstances I reach the following conclusions in relation to Reliance's contentions:

(1) as to Reliance's oral closing submissions, Reliance's first proposition was sound, but its second proposition calls for modification to reflect the fact that the escorts took Mr Wamala away from Brook House IRC without authority to do so;

(2) as to Reliance's inherent liability to be restrained proposition (see stage (5) of Reliance's oral closing submissions as summarised in section F9.6 above), there is no problem with that proposition as far as it goes, but it is concerned only with what lawful detention involves;

(3) Reliance's fourth proposition in its oral closing submissions does not arise;

(4) the fifth and sixth propositions in Reliance's oral closing submissions fail for reasons given earlier in this section;

(5) the seventh proposition in Reliance's oral closing submissions assumed, wrongly, that Mr Wamala was asserting that any breach of the 2010 Services Agreement would have the consequence that Mr Wamala ceased to be a person for whose custody Reliance was responsible in accordance with escort arrangements;

(6) Reliance's responsibility for custody proposition ignored the need for a UKBA instruction such as would give the escorts authority to take custody of Mr Wamala at 14:55 on Christmas eve;

(7) the ninth proposition in Reliance's oral closing submissions suffered from the same defect as Reliance's seventh proposition;

(8) the tenth proposition in Reliance's oral closing submissions can only be right if Mr Wamala were in the lawful custody of the escorts, which he was not. Moreover, insofar as the 1999 Act permits use of reasonable force where necessary to perform 1999 Act duties, this will, for the reasons given above, not constitute permission for actions which would impair Mr Wamala's ability to use reasonable force in resisting unlawful force;

(9) turning to Reliance's September 2015 submissions, Reliance's elision contention fails for the reasons given earlier in this section, as do the contentions noted when summarising stage (7) of Reliance's September 2015 submissions;

(10) the same applies to the qualification to Reliance's Schedule 11 concession, proposed at stage (9) of Reliance's September 2015 submissions;

(11) as to stage (10) of Reliance's September 2015 submissions, the words used in paragraph 2 of Schedule 13 undoubtedly show that where, in accordance with escort arrangements, a DCO has responsibility for delivery or custody of a detainee pursuant to an instruction by UKBA to Reliance, such a DCO will be

subject to the duties identified in paragraph 2(3) and will have the powers identified in paragraph 2(5). There is nothing in those words, however, to suggest an intention that, in the absence of an effective instruction by UKBA under the escort arrangements, those duties and powers should apply to DCOs who, for whatever reason, think they have such responsibility when in fact they do not;

(12) as to stage (11) of Reliance's September 2015 submissions, I have explained above why Reliance's limitation on freedom contention, assuming it to be right, does not warrant Reliance's unlawful freedom criticism;

(13) as to stage (12) of Reliance's September 2015 submissions, the logic of Reliance's invalid RD consequences contention is flawed. First, by the end of the oral submissions on behalf of Mr Wamala those submissions, if correct would have had the consequence that the escorts lacked lawful authority to use force both because they were using force in order to remove him on flight QR2 when there was no removal direction for that purpose, and because the only authority which Reliance had been given as regards Mr Wamala was an authority which, once flight MS778 had departed, was ineffective. Second, Mr Wamala had not suggested that the mere fact that there was a breach of the 2010 Services Agreement of itself resulted in a loss of 1999 Act duties status, and thus the position in relation to the use of rigid bar handcuffs had nothing to do with the matter. Third, Reliance's invalid removal directions consequences contention would, even if correct, not assist Reliance, for it only applied in relation to "an authorised DCO", whereas for reasons given by Mr Wamala none of the escorts have been authorised to do anything in relation to him;

(14) as to stage (13) of Reliance's September 2015 submissions:

(a) Reliance's referability of detention contention would substitute a different test for the test set out in the opening words of paragraph 2(3) of Schedule 13 to the 1999 Act. There is no need to do so. There is nothing imprecise about the test specified in those words: it simply involves asking whether the DCO in question, in accordance with escort arrangements, has responsibility for the delivery or custody of the detainee in question. Reliance's proposed test, asking whether the detainee's detention by the DCO "is referable to" escort arrangements would substitute a vague criterion for the precise test that is set out in the opening words of paragraph 2(3);

(b) Reliance's comment in paragraph 54 of Reliance's September 2015 submissions repeats the error in reasoning I have identified in stage (12) of Reliance's September 2015 submissions;

(c) turning to what is said by Reliance in paragraph 55 of Reliance's September 2015 submissions, each of the four elements in that paragraph is flawed. Using the numbering I adopted when summarising stage (13) above, element [1] is inconsistent with Reliance's type of escort arrangements concession in Reliance's oral closing submissions (see stage (7) of Reliance's oral closing submissions as summarised in section F9.6 above): Reliance has in that concession accepted that in the absence of removal directions for flight QR2 there were no valid escort arrangements for Mr Wamala's removal. It may be assumed that element [1] would be correct if there had been an instruction by UKBA for Reliance to take custody of Mr Wamala while he was temporarily outside authorised premises, but there was no such instruction. The arguments of public policy advanced in element [2] are unsound for the reasons that I have identified earlier. Element [3] repeats Reliance's unlawful freedom criticism. For the reasons given earlier in this section, and when discussing stage (11) of Reliance's September 2015 submissions, this criticism is targeted at something which does not form any part of Mr Wamala's submissions. The validity of element [4] depends on what is meant by "DCOs acting under the [2010] Services Agreement". If it means "DCOs acting pursuant to a valid direction given by UKBA to Reliance under the 2010 Services Agreement", then that may well have the consequence that the detainee is in the DCOs' lawful custody. However in the present case, for the reasons given earlier, by the time that the escorts took custody of Mr Wamala, there was no longer any effective direction by UKBA under the 2010 Services Agreement, and if there had been a direction for Mr Wamala's removal on flight QR2 that direction would have been invalid. If the words in question are said to

mean "acting under the [2010] Services Agreement" in some other way, then they overlook the essential need for a valid direction by UKBA giving Reliance authority to detain Mr Wamala;

(15) as to stage (14) of Reliance's September 2015 submissions, the re-framed inherent liability to be restrained contentions are all founded on a premise that the detained person is in the lawful custody of Reliance. For the reasons given above that premise is incorrect. The result is that the reframed inherent liability to be restrained contentions cannot assist Reliance;

(16) as to stage (15) of Reliance's September 2015 submissions, the first ground for distinction relies upon the third re-framed inherent liability to be restrained contention: it is said that, as a detained person, Mr Wamala is subject to a regime of restraint set out in 1999 Act. The difficulty for Reliance is that as the escorts did not have lawful custody of Mr Wamala, they were not persons who could exercise that regime of restraint in relation to Mr Wamala. The second ground of distinction relied upon reasons identified in Reliance's elision contention. However, for the reasons given earlier in this section, those reasons are unsound;

(17) as to stages (16) to (21) of Reliance's September 2015 submissions, they include a reference in stage (19) to Reliance's general claim that "the DCOs' use of force was justified at common law …". However the "common law" justifications, for reasons given above, do not assist Reliance. Other matters dealt with in stages (16) to (21) do not call for further comment, save note that I leave over to section F10 below an analysis of Reliance's entitlement to rely upon the 2005 Order and the 2009 Order.

507. I turn to set out my conclusions in relation to the period when Mr Wamala was going up the staircase. In the circumstances described above, my conclusion is that none of Reliance's justifications permitted the light holds. The escorts were seeking to ensure that Mr Wamala went up the staircase so that he could be removed on flight QR2, but this was an unlawful removal and Mr Wamala was entitled to use reasonable force to resist it. That entitlement, if it is to be of any substantive value, has the consequence that the escorts were not permitted to adopt the light holds, for they would impair Mr Wamala's ability to exercise his right of resistance. Moreover:

(1) for the reasons given in section F9.2 above, none of the purposes identified in the March 2014 question can provide lawful justification for the use of force;

(2) the circumstances at the time Mr Wamala was going up the staircase were not such as would give rise to the self defence justification or to the proposed general prevention of escape justification: see section F9.3 above;

(3) as explained in section F9.4 above, the prevention of crime justification does not assist Reliance, for Reliance has not identified any offence which would be committed in the event that Mr Wamala were using no more than reasonable force to resist his removal;

(4) as explained in section F9.5 above, the keeping the peace justification does not assist Reliance because use of reasonable force by Mr Wamala to resist his unlawful removal would not amount to a breach of the peace; and

(5) for reasons set out earlier in this section and in section F9.6, the 1999 Act duties justification does not assist Reliance.

508. Accordingly I conclude that Reliance is liable to Mr Wamala in damages for the force used in adopting the light holds, and the threat of future force which was inherent in the adoption of the light holds.

F10 Liability: on board the aircraft

F10.1 Injuries on board QR2: introduction

509. It is common ground that on entering the aircraft Mr Wamala approached Ms Lertsakdadet. In section F6 above,

I have made findings that:

(1) that approach was considered by Mr Charles and Mr Duke to require urgent action;

(2) within seconds of that approach Mr Wamala was being pulled towards the seats;

(3) Mr Charles and Mr Duke told Mr Wamala to get to his seat, but did not wait for the response from Mr Wamala;

(4) waiting for a response would have gone against all their professional instincts; and

(5) it was in response to the "firm hold" being taken of him when he was pulled back, and the "right hand cuffing", that Mr Wamala sought to defend himself with all the energy that he could, including flailing his right arm as he pulled against the handcuff.

510. Also in section F6 above I have reached conclusions, so far as relevant for present purposes, that:

(1) Mr Wamala suffered intense pain, as his right wrist was subject to the ratcheting effect of the handcuff, which had not been double locked;

(2) However, this intense pain did not stop Mr Wamala from continuing to struggle;

(3) Mr Charles succeeded in getting Mr Wamala to the floor, but this was not achieved by pain compliance, it simply happened in the course of the general struggle, and was not a "controlled move".

511. In section F7 above I have reached conclusions that once Mr Wamala was on the floor of the aircraft:

(1) during the period that Mr Duke had hold of Mr Wamala's head, the inevitable twisting of both Mr Wamala's head and his neck, as Mr Wamala struggled, must have caused him pain;

(2) Mr Charles leant across Mr Wamala and when doing so Mr Charles through his knee or knees put considerable weight on Mr Wamala, causing pain to Mr Wamala;

(3) Mr Wamala had difficulty breathing;

(4) after the captain had given the order to leave the aircraft, it took some time for Mr Wamala to appreciate that he was to be taken off the flight, and during this period the struggle continued.

512. As regards the injuries to Mr Wamala during this period, I consider in sections F10.2 to F10.6 below whether Reliance can rely upon its proposed general prevention of escape justification, the self defence justification, the prevention of crime justification, the keeping the peace justification, and the 1999 Act duties justification. I add that section F10.3 also deals with Mr Wamala's case that excessive force was used by the escorts, and that in section F10.4 I examine Reliance's case on the 2005 Order and the 2009 Order. In section F10.7 I set out my conclusions.

F10.2 Proposed general prevention of escape justification

513. I can deal with the proposed general prevention of escape justification shortly. For similar reasons to those set out in section F9.3 above, it does not seem to me that any real danger arose in this case that Mr Wamala might try to escape. The proposal to include this justification appears in Reliance's September 2015 proposed amendments, but nothing was said about it in submissions.

514. Prevention of escape might, to the extent that escape from detention under the Immigration Acts may constitute a criminal offence, fall within the prevention of crime justification. No attempt, however, has been made by Reliance to identify the circumstances where such an escape constitutes a crime. Nor have the parties' submissions examined the extent of a common law right to prevent escape by immigration detainees. In these

circumstances I express no view on whether prevention of escape could have the potential to be a defence to trespass to the person in the present case.

F10.3 On board the aircraft: self-defence justification

515. Where an assailant menaces the physical security of a victim, the common law permits that victim to act in self defence by warding off the assailant using such means as are reasonably necessary for the victim's own protection. If Mr Wamala were indeed an assailant, then to the extent that he menaced the physical security of any particular escort, that escort would, in accordance with this principle, be entitled to use reasonable force for the purpose of warding off Mr Wamala.

516. In this regard, however, there is an important concession ("Reliance's reasonable resistance concessions") by Reliance in paragraph 40 of Reliance's September 2015 submissions:

> … if but only if Mr Wamala could establish that the force he used was indeed used for the purpose of resisting his unlawful removal and not simply to cause trouble for the officers, then his defence to any assault claim against him by the officers or to any prosecution of him for assault in respect of the force he used would not be liable to fail on the ground that such force as he used … was unreasonable force for the purpose of resisting his unlawful removal.

517. The premise to this concession is that the force used by Mr Wamala was indeed used for the purpose of resisting his unlawful removal. I am satisfied that this premise is met. All the actions of Mr Wamala from the time he entered the aircraft and throughout the struggle were aimed at preventing him from being strapped into his seat on the aircraft for removal. In that regard:

(1) this includes defending himself against force which was used with a view to stopping him from resisting removal;

(2) during the course of Reliance's oral closing submissions, I noted that Mr Wamala had used force to stop being put in the seat. I asked whether Reliance was saying that when using reasonable force Mr Wamala had to have something more by way of intention than simply an intention to resist being put in the seat. Reliance disavowed any contention to that effect;

(3) it was then, however, suggested by Reliance that whether all Mr Wamala was doing was resisting being taken to his seat for the purpose of removal could be determined by asking whether he would have behaved in exactly the same way had he been on MS778, when his removal would have been lawful. I do not understand the logic of that contention. Reliance was urging that Mr Wamala would have resisted removal on MS778. If right, that seems to me to suggest that what Mr Wamala was doing on QR2 was resisting being taken to his seat for the purpose of removal;

(4) it then seemed that Reliance was urging that Mr Wamala would have resisted removal even if he had known that he had no legal basis for doing so. This seems to me to misunderstand the law. If no more than reasonable force is used to resist unlawful force, then that resistance is lawful whether or not the individual was aware of the unlawfulness of the force that the individual was being subjected to: see *R v Jones* [1978] 3 All ER 1098 and *R v Samuels* (unreported, Court of Appeal, 3 March 1999);

(5) if it is relevant to ask whether Mr Wamala would have used force had he known that removal was lawful, then Mr Wamala's evidence was that he would not have done. It seems to me that there are two good reasons for thinking that that was right. The first is the reason Mr Wamala himself gave: he had not resisted his removal in 1999. The second arises from my findings in section A4.9 above: Mr Wamala greatly feared that if he offered any resistance to the escorts he might suffer the same fate as Mr Mubenga. Consistently with this I have found in section F6 above that Mr Wamala did not offer resistance to the escorts on QR2 until they used force against him;

(6) Reliance also suggested in its closing oral submissions that in order to say that he was acting lawfully, Mr

Wamala would have to suggest that what he was attempting to do was to get down the staircase and wait there patiently until the escorts came down. As it seems to me, however, in order to establish that what he was doing was lawful Mr Wamala need only show that he was using reasonable force to resist removal. As to what he would have done once it became clear that he would not be removed, for the reasons given earlier in this judgment I do not consider that there was any reason to think that he would try to escape.

518. In the light of Reliance's reasonable resistance concession, and my finding that the premise of that concession is met, it is not open to Reliance to assert that the escorts acted in self defence. So long as Mr Wamala was using no more than reasonable force, what he did by way of menacing the physical security of the escorts was lawful. In these circumstances Mr Wamala was not the assailant. The common law right of self defence does not arise where the so-called assailant has an entitlement to use force and is acting within that entitlement. It was the escorts who, by using force to bring about an unlawful removal, were the assailants. Mr Wamala was the victim and was himself entitled to the benefit of the common law of the right of self defence. The duty of the escorts in response to Mr Wamala's use of force was not to seek to counter that use of force. Their duty, although they did not appreciate it at the time, was to stop trying to bring about the unlawful removal of Mr Wamala. The fact that the escorts did not appreciate that the removal was unlawful no doubt explains why they thought they were entitled to counter Mr Wamala's use of force. Whether they could reasonably have been expected to have appreciated that the removal was unlawful does not matter. Once it is established, as is clearly established in the present case, that the escorts' attempts at bringing about removal were themselves unlawful, Mr Wamala had a clear legal entitlement to use force reasonably necessary to resist removal, and to insist that the escorts were in the wrong, both in maintaining the force that they had used originally, and in using additional force to counter his attempts at self defence.

519. In section F6 above, I suggested that Mr Charles and Mr Duke, having told Mr Wamala to get to his seat, acted in accordance with their professional instincts by not waiting for a response from Mr Wamala. Those instincts, giving priority to getting Mr Wamala strapped in his seat, did not however justify the degree of violence with which Mr Wamala was pulled away from Ms Lertsakdadet. There was nothing about Mr Wamala's approach to her which gave any basis for thinking that there would be violence on his part. Still less could there be any possible justification for the handcuffing of Mr Wamala.

520. Accordingly, even if the escorts had been entitled to insist that Mr Wamala take his seat, they used more than reasonable force in this regard. Mr Wamala was entitled to use reasonable force to resist, and it was in the course of his lawful resistance that Mr Wamala suffered injuries on board the aircraft.

521. I turn to the position if I had accepted the allegations which I have identified as (a) to (d) in section F6 above when summarising Reliance's pleaded case. In that event, too, I would have held that the level of force used by the escorts went beyond what was reasonable. In this regard, the use of a pain control technique, which could and did easily go wrong, is a particularly disturbing feature.

F10.4 General prevention of crime, including the 2005 Order

522. In section F9.4 above I noted Reliance's unlawful acts concession. For the reasons given in that section, although the concession was made in the context of the 1999 Act duties, it must equally apply to the general prevention of crime justification.

523. I also noted in section F9.4 above that Reliance's September 2015 submissions included Reliance's 2005 Order extent contention. This asserted that even if Mr Wamala was entitled to resist removal he nevertheless committed offences under the 2005 Order. If this is to be reconciled with Reliance's unlawful acts concession, it can only be by reference to the express qualification set out in that concession. This express qualification is that the concession applies on the premise that Mr Wamala "was using reasonable force for the purpose of resisting his unlawful removal".

524. Accordingly, in theory, Reliance's 2005 Order extent contention could be compatible with Reliance's unlawful act concession if Reliance's 2005 Order extent contention were limited so that it applied only in the event that Mr Wamala:

(1) was not using force for the purpose of resisting his unlawful removal; or

(2) although he was using force for the purpose of resisting his unlawful removal, nevertheless used more than reasonable force for that purpose.

525. The second of these possibilities, however, cannot arise in the present case. It would be incompatible with Reliance's reasonable resistance concession. As set out in section F10.3 above, if Mr Wamala used force for the purpose of resisting his unlawful removal, and were prosecuted for assault in respect of the force he was using, it is conceded that an assertion by the prosecutor that Mr Wamala had used unreasonable force would not succeed. If there was no such unreasonable force as would undermine Mr Wamala's defence to a charge of assault, then there was no such unreasonable force as would take the case outside the unlawful acts concession. Thus the only question becomes whether the force used by Mr Wamala was indeed used for the purpose of resisting his unlawful removal. For the reasons given in section F10.3 above I am satisfied that this was indeed the case.

526. If this reasoning is sound, then there is no need to make further reference to the 2005 Order. Less it be wrong, however, I briefly indicate the approach that I would have taken in relation to Reliance's claim that the force used by the escorts could be justified on the basis that the escorts used such force as was reasonable in prevention of offences under articles 73 and 78 of the 2005 Order:

(1) article 73 created an offence in these terms:

> 73. A person shall not recklessly or negligently act in a manner likely to endanger an aircraft, or any person therein.

(2) Reliance's September 2015 submissions urged that Mr Wamala's behaviour negligently or recklessly put at risk the safety of the cabin crew, notably Ms Lertsakdadet, of other passengers, of the DCOs and himself. I cannot accept this suggestion. Nothing said by Ms Lertsakdadet suggests that Mr Wamala did anything which endangered her, or gave a reason to think that she would be endangered. Paragraph [8] of the Lertsakdadet email referred to a female escort standing "in front of me to protect me". This was said to have occurred at the stage when the escorts pulled Mr Wamala back. There was no suggestion by Ms Lertsakdadet that she in fact needed protection. On the basis of my findings of fact in section F6 above, there is no reason to think that Ms Lertsakdadet actually needed such protection. Mr Wamala had been pulled away from her. If in fact she needed protection, then that protection was provided by the female escort who stood in front of her. I have explained in section F6 why I do not accept Ms Govey's evidence as warranting a conclusion that Mr Wamala either lunged or moved in a frightening way towards Ms Lertsakdadet.

(3) Reliance has not identified how any passenger was endangered;

(4) to the extent that Mr Wamala's actions put himself or the escorts in danger, this was neither negligent nor reckless: on the contrary, it was a reasonable response to the use of unlawful force by the escorts;

(5) even if, however, it might be thought that some action on the part of Mr Wamala would be likely to endanger someone on the aircraft, article 73 would not in my view apply if Mr Wamala were doing no more than using reasonable force to resist unlawful removal. The reason is that article 73 is to be read, in conformity with the principles set out in *Morris v Beardmore* so as not to curtail Mr Wamala's common law rights;

(6) article 78 creates an offence in these terms:

> 78. No person shall in an aircraft –

(a) use any threatening, abusive or insulting words towards a member of the crew of the aircraft;

(b) behave in a threatening, abusive, insulting, or disorderly manner towards a member of the crew of the aircraft; or

(c) intentionally interfere with the performance by a member of the crew of the aircraft of his duties.

(7) the sole basis identified by Reliance for suggesting that Mr Wamala acted contrary to article 78, or needed to be prevented from acting contrary to article 78, was that Mr Wamala's behaviour towards Ms Lertsakdadet was threatening and disorderly. For the reasons given above, I consider that there is no foundation for this assertion.

(8) as noted in section B1.5 above, Mr Wamala's October 2015 submissions said that it was too late to place reliance upon that order. As to this, it seems to me that a painstaking examination of the jumble that I have described in section F9.4 above would have revealed the inclusion of a reference to the 2005 Order. The request for further information had been made generally in order to know the offences which Reliance said in paragraph 18A that it had used force to prevent being committed by Mr Wamala. The answer appears to me to have been a general one in relation to allegations in paragraph 18A that force was used for that purpose. Thus it seems to me that the answer was given both in relation to the general prevention of crime justification and in relation to the specific power arising from the 1999 Act duty to prevent the commission or attempted commission of unlawful acts (although Reliance did not go this far in its October 2015 submissions).

(9) in my view, however, for the reasons given in section F9.4, nothing in the further information supplied by Reliance remedied the failure to give particulars of what was said to have been done under the relevant justification, and the failure to state by whom it was done. As matters stood at the end of oral closing submissions, I had no submissions from Reliance which would have enabled me to find that there had been reason to fear the commission of offences under the 2005 Order. In those circumstances the mere reference to that order in the further information supplied by Reliance would not have enabled me to conclude that the Order assisted Reliance's case. As indicated earlier in this judgment, Reliance had no entitlement to advance further submissions in that regard. However Mr Wamala's October 2015 submissions were content to deal with new legal arguments advanced by Reliance in the September 2015 submissions, and for that reason I give permission for Reliance to advance the arguments on the 2005 Order set out in Reliance's September 2015 submissions.

(10) as is also noted in section B1.5 above, Mr Wamala's October 2015 submissions pointed out that the 2005 Order had been repealed. In the light of my findings above, this is no more than an additional reason for concluding that the 2005 Order does not assist Reliance. Reliance now seeks to say that the 2009 Order contains materially identical provisions. That, however, cannot assist them: for the reasons indicated above the provisions in the 2005 Order do not assist Reliance, and materially identical provisions in the 2009 Order will equally not assist Reliance. The point is simply immaterial, and no useful purpose would be served by giving permission for it to be further elaborated.

F10.5 On board the aircraft: keeping the peace justification

527. In section F9.5 above I noted that Reliance had not suggested that a person resisting unlawful removal would, if using no more than reasonable force, be committing a breach of the peace. I also noted that the only point argued by way of answer to the keeping of the peace justification was Mr Wamala's general answer, to which Reliance gave the two general replies. Both those observations apply to the submissions concerning the position on board the aircraft. The result is that the keeping the peace justification ceases to be an independent justification for the escorts' actions on board the aircraft.

F10.6 On board the aircraft: 1999 Act duties justification

528. For the reasons given in section F9.7 above, I conclude that the 1999 Act duties justification did not arise in the

circumstances of the present case. That conclusion applies equally to the position in relation to the use of force by the escorts on board the aircraft. In addition, as to the specific duties set out in the subparagraphs of paragraph 2(3) of Schedule 13 to the 1999 Act:

(1) the duty under subparagraph (a) to prevent escape from lawful custody does not assist Reliance: see section F10.2 above;

(2) the duty in subparagraph (b) to prevent the commission or attempted commission of other unlawful acts cannot assist Reliance for the reasons given in section F10.4 above;

(3) the duty in subparagraph (c) to ensure good order and discipline on Mr Wamala's part does not extend to the doing of actions which would impair Mr Wamala's ability to resist unlawful removal, and in any event could not justify the degree of violence used by the escorts; and

(4) the duty in subparagraph (d) to attend to Mr Wamala's wellbeing does not arise.

F10.7 On board the aircraft: conclusions on liability

529. For the reasons given in sections F10.1 to F10.6 above, Reliance is not assisted by any of the justifications which it says applied to the period when Mr Wamala was on board the aircraft.

F11 Liability: after the struggle

530. Section F8 above is concerned with what happened after the order to leave the aircraft, and thus includes findings on what happened once the struggle was over. In relation to that period, there are four matters which either caused or may have caused injury to Mr Wamala:

(1) the dragging of Mr Wamala to the aircraft door;

(2) the failure to double lock the handcuffs;

(3) the occasion when Mr Wamala hit the bottom part of the staircase; and

(4) the method by which Mr Wamala was dragged into the van.

531. The events that I have identified above all seem to me to be direct consequences of the use of unlawful force by the escorts during the period prior to the ending of the struggle. By the time that the struggle came to an end all those who had been involved in it had been exhausted. The result of the struggle was that Mr Wamala was, in the immediate aftermath of the struggle, in no fit state to get up and make his way down the staircase into the van. It was in those circumstances that the events I have described ensued. As it seems to me, it was the unlawful use of force by the escorts which directly led to all those things occurring.

532. Should it be relevant, I note that in section F7 above I concluded that the escorts did not stop to check on Mr Wamala's wellbeing. I can understand why the escorts wished to get Mr Wamala and themselves off the aircraft as quickly as possible. This does not, however, in my view excuse the failure to check on Mr Wamala's wellbeing before dragging him to the aircraft door and proceeding in a manner which led to the remaining events noted above.

533. I note also that it was not suggested by Reliance that when Mr Wamala hit the bottom of the staircase this was the result of a deliberate act on his part.

534. As to Mr Wamala being pulled into the van, for the reasons given in section F8 above, the conduct of the escorts in this regard cannot possibly be justified.

F12 Liability: European Convention on Human Rights

535. I noted in sections A1.7 and A5.5 that Mr Wamala claims damages under section 6 of the Human Rights Act 1998 for breach by Reliance of Article 3 of the European Convention on Human Rights. As also noted in section A5.5 above, two propositions were advanced in Mr Wamala's skeleton argument as to the relevance of the Convention. The first was that the common law should be read consistently with Article 3 so as to provide at least equivalent protection. It is not, however, necessary to examine this proposition. Mr Wamala has not identified any aspect of the present case in which the common law fails to achieve at least equivalent protection to that which would be achieved in a claim under Article 3.

536. The second proposition was that the damages claimed by Mr Wamala at common law could equally be awarded under Article 3. Again, I do not need to examine this proposition: there is no contention by Mr Wamala that in the present case his claim under Article 3 would give rise to damages which are not recoverable at common law.

537. In both these respects I think it undesirable for me to attempt to examine these two propositions. Consideration of these propositions should, in my view, be left to be dealt with in a case where they would make a difference to the outcome.

G. Damages

G1. Damages: general

G1.1 Damages generally: introduction

538. I noted in section A1.7 above that Mr Wamala claims ordinary damages, aggravated damages and exemplary damages. Ordinary damages are dealt with generally in section G2 below, and in Annex 2 to this judgment. Aggravated damages are dealt with in section G3 below. Exemplary damages are dealt with in section G4 below.

539. Before turning to section G2, however, I deal with two preliminary matters in section G1.2 and G1.3 below.

G1.2 Liability arising only from lack of removal directions

540. Reliance advances a contention as to the position if the basis upon which Mr Wamala succeeded was only by reason of the fact that no fresh removal directions had been served on Mr Wamala for the Qatar flight. This contention appears to proceed on the basis that if fresh removal directions had been served on Mr Wamala for flight QR2, then the escorts would have been entitled to use force for the purpose of bringing about Mr Wamala's removal, and that the force in fact used by the escorts was no more than reasonable force for this purpose. For reasons given earlier in this judgment that assumption would not be right: on board the aircraft the escorts used more force than was reasonably necessary for the purpose of ensuring Mr Wamala's removal. Thus, if I am right to hold that the escorts used more force on board the aircraft than was reasonably necessary, the premise for Reliance's contention has not been satisfied, for the outcome that the contention postulates has not occurred.

541. In case I am wrong, however, I make brief comments below on Reliance's contention in this regard. I do so on the assumption that the postulated outcome identified above has occurred.

542. In this postulated outcome Reliance submits that Mr Wamala would be entitled to no damages, or, at best, a nominal award of 5p. Reliance comments that this "would reflect the reality that [Mr Wamala] had failed on his case that he was subjected to a serious assault". This comment is difficult to understand. The mere fact that the force actually used by Reliance would have been permissible if a valid removal direction were in place does not of itself show that Mr Wamala has "failed on his case that he was subjected to a serious assault". The amount of physical force permissible to bring about a lawful removal may well be considerable, depending on the circumstances. Such a degree of physical force may equally constitute a serious trespass to the person if it is used with the aim of achieving an unlawful removal.

543. Reliance set out 7 assertions which it said were the reasons why, in the postulated outcome, the damages should be nil (or 5p):

(1) Mr Wamala was liable to be deported imminently anyway;

(2) He was in lawful detention awaiting deportation; he had been served with a lawful removal direction for the EgyptAir flight;

(3) If the defect had been appreciated, fresh removal directions would have been served for the Qatar flight (or another flight) and the deportation attempt would have gone ahead for that flight with the benefit of a valid removal direction;

(4) Even if there had been a delay in serving a fresh removal direction, so that the deportation attempt had not been made on 24 December 2011, but later, it would have been made shortly thereafter in any event;

(5) Mr Wamala's behaviour on the flight had nothing to do with the defect in the removal direction; it is clear that his behaviour was because of his general unhappiness with the deportation; the alleged unlawfulness with which he was concerned had to do with his failed judicial review application, which had been more swiftly dismissed than he had expected; he would have behaved no differently had he been served with a valid removal direction for the Qatar flight;

(6) He was not in the event deported anyway;

(7) He was not held in detention when he would not otherwise have been so held.

544. The closing submissions for Mr Wamala rightly pointed out that the assertion at (5) above is unsound. For the reasons given in sections A4 and F above, I have held that Mr Wamala knew that there was no valid removal direction, and for that reason wanted to see the captain. There was no suggestion by Mr Wamala that he wanted to see the captain in any other context. It is no more than speculation for Reliance to assert that if there had been valid removal directions Mr Wamala would have behaved in a manner which would have entitled the escorts to use force on him in the way that they did.

545. Demonstrating the correctness of assertion (5) is crucial to Reliance's case in this regard. Without it, the remaining assertions go nowhere. For the reasons given above assertion (5) is incorrect. It follows that even if the postulated outcome had come about, it would have made no difference to Mr Wamala's entitlement to substantial damages.

G1.3 Mr Wamala's alternative claim

546. For reasons given earlier in this judgment, I have held that even if Mr Wamala's primary claim had failed, his alternative claim (see section A1.7 above) would have succeeded because the type and degree of force used by Reliance went beyond what was reasonable. Reliance submitted that in that event the damages recoverable would be reduced to take account of the consequences of such use of force as would have been reasonable. In the light of my findings earlier in this judgment, however, this contention will not assist Reliance. From the moment that force was first used against Mr Wamala on the aircraft that force went beyond what was reasonable. It involved the violent pulling away of Mr Wamala and the almost immediate application of handcuffs. There was, however, at that stage, no need to use force at all. For the reasons given in section A4 above, I do not consider that Mr Wamala would have used force if none had been used against him. Accordingly I do not conclude that there is anything which falls to be deducted in the way that Reliance suggests.

G2. Ordinary damages

547. Questions arising as to the amount of ordinary damages were dealt with in written submissions. In Annex 2 to

this judgment I have adopted a table format in order to summarise those submissions, to set out my comments on them, and to set out my conclusions.

G3. Aggravated damages

548. It is common ground that the principles governing an award of aggravated damages are set out in *Thompson v Commissioner of Police for the Metropolis* [1998] QB 498. In summary, as set out by Lord Woolf MR at page 516:

> [Aggravated] damages can be awarded where there are features about the case which would result in the [claimant] not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner, either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.

549. Reliance accepts that in one respect only Mr Wamala could properly be entitled to an award of aggravated damages. This concerns Mr Wamala's claim that the force used against him was excessive and oppressive with the result that he was unnecessarily humiliated or degraded by Reliance's conduct. In the counter schedule Reliance assert that such an award should be no more than £2,000.

550. The first additional matter said by Mr Wamala to warrant an award of aggravated damages concerns the action of a Reliance employee in amending the MS778 movement notification. That of itself does not to my mind have the consequence that ordinary damages are insufficient to compensate Mr Wamala for the injuries suffered. Nor in my view does the next matter relied upon by Mr Wamala: the fact that he was placed on QR2 despite the absence of removal directions for that flight, in itself justify an award of aggravated damages. What does, however, in my view justify such an award is the reaction of the escorts when Mr Wamala raised the matter. Mr Charles said that he was "not bothered", and other escorts simply laughed when Mr Wamala said that his documentation was in his luggage.

551. A further matter relied on by Mr Wamala is that after the incident on Christmas eve Reliance told UKBA that the risk assessment for Mr Wamala should state that he had been violent and aggressive without justification and that "very robust escorts" should be used in future. This had consequences for Mr Wamala which can properly be described as severe. He was thereafter treated as a violent and aggressive detainee. Among other things, when attending court for the purposes of litigation seeking to prevent a later attempt to remove him, Mr Wamala was brought to court in handcuffs. Earlier, at Colnbrook IRC, Mr Wamala was held in segregation for a lengthy period, which it seems to me is likely to have been attributable to the account of events on Christmas eve given by Reliance.

552. Additional grounds for seeking aggravated damages were set out in Mr Wamala's October 2015 submissions. To the extent that those matters had not been raised in Mr Wamala's schedule or in the opening skeleton argument for Mr Wamala I do not consider that it is open to Mr Wamala to rely upon them.

553. In these circumstances I consider that the appropriate sum to be awarded by way of aggravated damages is £8,000.

G4. Exemplary damages

554. Exemplary damages can be awarded in respect of outrageous exercises of unlawful executive power. They can only be awarded if it is clear that an award of basic damages together with aggravated damages will be significantly insufficient to mark the court's disapproval of the conduct in question and, effectively, to punish and deter the defendant.

555. The matters said by Mr Wamala to constitute outrageous exercises of unlawful executive power fall into two main categories. The first category concerns Reliance's conduct in proceeding with removal on flight QR2 when it knew or should have known that important legal requirements had not been complied with. This category involves matters which were relied on as warranting an award of aggravated damages, but which in that context I have rejected, or in large part rejected, because their nature was not such as to impact on Mr Wamala in a way that required additional compensation. The evidence in this case concerning knowledge by Reliance of the lack of removal directions for QR2 offers no satisfactory explanation for how this came about. The evidence by Mr Charles about a telephone conversation with Ms Payne when Mr Charles was at Brook House IRC is an afterthought. The requirement that removals must be in accordance with removal directions is stressed throughout Schedule D4 to the 2010 Services Agreement. Reliance's approach to this was cavalier. That aspect, however, is dwarfed by the insistence on the part of Reliance that the QR2 alterations to the MS778 movement notification were alterations which had been made by UKBA. It is plain that an employee of Reliance made those alterations. Suggestions by Reliance that there may have been a telephone conversation authorising that employee to do so have come to nothing. I am sure that all concerned at Reliance knew that it was highly improper to amend a movement notification in this way. Thus, for example, Ms Payne was adamant in Payne 1 that, "We do not make handwritten amendments to movement notifications". Mr Wamala's complaints resulted in an immediate investigation by the Professional Standards Unit. The irregularity of what happened must have been apparent to whoever it was that had made the QR2 alterations. On Reliance's own case it made no attempt to examine the original of the altered notification until Mr Mitchell asked to inspect it in March 2015. All these matters in my view amply make good the contention in Mr Wamala's schedule of damages that there was at the very least indifference to the legality of removal on the part of Reliance. Reliance's insistence on maintaining its stance without checking the original document seems to me to be a further indication of its failure to appreciate the seriousness of the very important principles which were at stake.

556. The second category concerned Reliance's conduct in relation to the use of force. My award of aggravated damages includes allowance for the need to supplement the ordinary damages so as to give Mr Wamala full compensation in this regard. In my view, over and above that compensation, there were features of the techniques adopted by the escorts, techniques which according to the evidence were regularly adopted by Reliance's staff, and the approach to the requirements of the 2010 Services Agreement, which taken together can properly be described as outrageous. I have already expressed my concern about the use of handcuffs incorporating a pain control mechanism in circumstances where this could and did easily go wrong: see the final sentence of section F10.3 above. This was contrary to the 2010 Services Agreement, as the technique used was not one which was approved by the prison service. A second and serious breach of the 2010 Services Agreement was the flagrant disregard of the express prohibition in that agreement of the use of any head restraint. There was a failure to comply with the requirement in the 2010 Services Agreement that handcuffs should only be used with the consent of the captain. Reliance has conducted this litigation on the basis that such matters are insignificant, and that it was appropriate to adopt procedures which Reliance considered to be needed, and had regularly used. This is utterly unacceptable and calls for condemnation. The starting point must be that requirements in the 2010 Services Agreement have been inserted for good reason and must be respected unless and until they are changed.

557. Taking these two matters together I conclude that an award of £13,000 would be an appropriate sum by way of exemplary damages. To some extent, however, elements in the matters calling for exemplary damages have been compensated by the award of aggravated damages. I will accordingly reduce the award of exemplary damages to £10,000.

H. Conclusion

558. For the reasons given in this judgment I conclude that Mr Wamala is entitled to damages for physical and mental injuries in the amounts totalling £30,000 as set out in Annex 2 of this judgment, and is further entitled to £8,000 for aggravated damages and £10,000 for exemplary damages as set out in sections G3 and G4 above. Thus the total award of damages will be £48,000. In that regard, and in relation to declaratory and any other relief, I ask the parties to seek to agree on consequential orders. In relation to Reliance's application for

permission to make the proposed September 2015 amendments to the defence, I have set out in section F10.2 above my reasons for considering that as regards the alterations of the MS778 movement notification, the proposed amendments are incoherent. As regards the proposed additional paragraph (iv), seeking to introduce a general prevention of escape justification, I have set out earlier in this judgment my reasons for concluding that no such justification can succeed. In these circumstances, I cannot accept that Reliance is able to surmount the high hurdle which would need to be surmounted to allow further amendments at such a late stage.

Annex 1: Abbreviations/Short Forms, and Notes

In the main body of the judgment, unless the context otherwise requires, the abbreviation and short forms listed in the first column below have the meaning set out in the second column. Notes in the third column are provided for ease of reference.

Abbreviation/short form	**Long form**	**Notes**
1971 Act	Immigration Act 1971	Judgment, section A1.1
1997 deportation order	order for Mr Wamala's deportation made by the Secretary of State on 10 February 1997	Judgment, section A2.1.
1999 Act	Immigration & Asylum Act 1999	Judgment, section A1.1
1999 Act duties	Duties set out in para 2(3) of Sched 13 to the 1999 Act.	Judgment, section C3.2.
1999 Act duties justification	Justification for the use of force pleaded at para 18A(iv) of Reliance's re-amended defence	Judgment, section C2. Para 18A(iv) of Reliance's re-amended defence pleaded that force on the part of Reliance's agents was "specifically authorised by Paragraph 2 of Schedule 13 of the Immigration and Asylum Act 1999".
2005 Order	Air Navigation Order 2005	Judgment, section B1
2009 Order	Air Navigation Order 2009	Judgment, section B1
2010 Services Agreement	agreement made between the Home Secretary (referred to as "the Authority") and Reliance (referred to as "the Service Provider") in 2010	Judgment, section F9.6
Adelabuo, Kola	Mr Kola Adelabuo	Judgment, section A2.4 Mr Wamala received help in relation to his immigration status from Mr

		Adelabuo.
aircraft, the	Airbus A340-600 aircraft used by Qatar Airways for flight QR002 on 24 December 2011	Judgment, section A1.2
Authority		See "2010 Services Agreement"
Beck, Ms	Ms Sally Beck	Investigative Officer, Professional Standards Unit, Customer Service Improvement Directorate, UKBA : see Judgment, section A1.5
Beck Report	Report of UKBA Professional Standards Unit investigation into circumstances surrounding Mr Wamala's complaint that he was mistreated by UKBA escort contractors	Judgment, section A1.5
Beck Team	Ms Beck and others in the Professional Standards Unit who assisted her in preparing the Beck Report	Judgment, section A1.5
Britto, Dr	Dr Darryl Britto	Reliance's expert on psychiatric matters: see Judgment, section A1.4
Britto 1	Dr Britto's initial report dated 27 March 2014	Judgment, section B4.3
Britto 2	Dr Britto's report in response to DPG's questions dated 14 May 2104	Judgment, section B4.3
Brook House IRC	Brook House Immigration Removal Centre	Judgment, section A1.2 Immigration Removal Centre run by G4S and located at Gatwick Airport in West Sussex.
captain's direction	direction from the captain of QR002 that Reliance's employees and Mr Wamala must	Judgment, section A1.6

	leave the aircraft	
CCTV timings	timings displayed in the recordings made by the main CCTV camera in the van	Judgment, section A1.5
certificate of authorisation	a certificate issued by the Secretary of State certifying a person as authorised to perform escort functions, or to perform both escort functions and custodial functions.	Judgment, section C3.2. See s 147 of the 1999 Act.
Charles, Mr	Mr Ian Charles	Senior Overseas Detainee Custody Officer employed by Reliance: see Judgment, section A3.5
Charles 1	Witness statement of Mr Charles made on 7 August 2013	Judgment, section B3.2
Christmas eve	Christmas eve 2011	Judgment, section A1.1 24 December 2011
custodial functions	functions described in the 1999 Act	Judgment, section F9.6 (see Mr Wamala's fifth reply proposition)
CWT	Carlson Wagonlit Travel UK Ltd	Judgment, section A2.8. Home Office Travel Agents at LHR
DCO	Detainee custody officer	Judgment, section A3.5 See "detainee custody officer" below.
DEPMU	Detainee Escorting & Population Management Unit	Judgment, section A2.9
detainee custody officer	A person in respect of whom a certificate of authorisation is in force.	Judgment, section C3.2 See s 147 of the 1999 Act.
detention authority	Form "IS.91: detention authority", completed by an immigration officer on 17 Jul 2010 in respect of Brynner Mvoi, alias Felix Wamala	Judgment, section A2.2

DPG	Deighton Pierce Glynn, also its predecessor firms Deighton Guedalla and Pierce Glynn	Judgment, section A1.4 Mr Wamala has instructed DPG to act for him in the present proceedings. He previously instructed DPG to make representations to the Home Office about inaccuracies in their records concerning him.
Duke, Mr	Mr Simon Duke	Overseas Detainee Custody Officer employed by Reliance : see Judgment, section A3.5
Duke 1	Witness statement of Mr Duke made on 12 August 2013	Judgment, section B3.5
ECHR	European Convention on Human Rights	Judgment, section A1.7.
EgyptAir's MS778 directions	directions issued by UKBA on 14 Dec 2011 addressed to "the aircraft: MS778"	Judgment, section A2.7 EgyptAir's MS778 directions: (1) comprised directions by the Home Secretary to remove Mr Wamala from the United Kingdom by MS778 to Cairo at 14.00 hours on 24 December 2011 connecting onto MS837 at 21:45 hours on 24 December 2011; (2) were issued using form IS.152B, which as completed also; (a) requested the issue of tickets on the same service to four named individuals as escorts of Mr Wamala; and (b) required the recipient to prevent Mr Wamala from disembarking in the United Kingdom or before the directions for removal had been fulfilled, and stated that for this purpose the captain may detain Mr Wamala on board.
escort arrangements	arrangements made by the Secretary of State under section 156 of the 1999 Act.	Judgment, section C3.2. See s 147 of the 1999 Act.
escort functions	functions under escort arrangements	Judgment, section C3.2 and F9.6 (see Mr Wamala's fifth reply proposition). See s 147 of the 1999 Act.
firm hold	Actions by which "Mr	Judgment, section F6.

	Wamala was taken a firm hold of"	
Govey, Ms	Ms Carol Govey	Detainee Custody Officer employed by Reliance : see Judgment, section A3.5
Govey 1	Witness statement of Ms Govey made on 22 August 2013	Judgment, section B3.4
Horwich Farrelly	Horwich Farrelly	Judgment, section A1 Reliance has instructed Horwich Farrelly to act for it in the present proceedings.
IS.91	Form IS.91, headed "Detention authority", completed by an immigration officer on 17 Jul 2010	Judgment, section A2.2 See "detention authority"
IS.151D	Form IS.151D, headed "Removal directions issued to an illegal entrant/other immigration offender or a family member of such a person"	Judgment, section A2.7
IS.152B	Form IS.152B, headed "Notice of directions to remove an illegal entrant/other immigration offender or a family member of such a person"	Judgment, section A2.6 See "EgyptAir MS 778 directions"
IS.276	Immigration Detainee – Movement Notification	Judgment, section A1.6
IS.278	Immigration Detainee – Movement Notification (Removal Directions)	Judgment, section A2.9
IS.280	Cancellation of a movement notification	Judgment, section F8
Jayatilaka, Mr	Mr Charith Jayatilaka	Qatar Airways Senior Customer Services Agent on board the flight on Christmas eve : see Judgment, section B1 and B3.7
Jayatilaka email	Email by Mr Jayatilaka on 17 January 2012, giving an account of events on Christmas	Judgment, section B3.7

	eve	
Jayatilaka 1	Witness stamenet of Mr Jayatilaka dated 30 April 2013	Judgment, section B3.7
June 2014 declaration	Declaration granted by Mrs Justice Patterson on 20 June 2014.	Judgment, section A1.4 The June 2014 declaration was that: "… there was no valid removal direction for the Qatar Airways flight."
Katona, Prof	Professor Cornelius Katona	Mr Wamala's expert on psychiatric matters : see Judgment, section A1.4
Katona 1	Prof Katona's initial report dated 16 December 2012	Judgment, section B4.3
Katona 2	Prof Katona's addendum report dated 26 March 2013	Judgment, section B4.3
Katona 3	Prof Katona's additional report dated 16 December 2013	Judgment, section B4.3
keeping the peace justification	Justification for the use of force pleaded at para 18A(iii) of Reliance's re-amended defence	Judgment, section C2. Para 18A(iii) of Reliance's re-amended defence pleaded that force on the part of Reliance's agents was "used to prevent a breach of the peace".
Lee, Ms	Ms Carol Lee	Overseas Detainee Custody Officer employed by Reliance: see Judgment, section A3.5
Lee 1	Witness statement of Ms Lee made on 24 November 2013	Judgment, section B3.6
Lertsakdadet, Ms	Ms Naphitchaya Lertsakdadet	Qatar Airways Cabin senior in charge of the economy section on Christmas eve: : see Judgment, section A1.6
Lertsakdadet email	Email sent by Ms Lertsakdadet on 17 January 2012, giving an account of events on Christmas eve	Judgment, section B2.2
Lertsakdadet 1	Witness statement of Ms Lertsakdadet	Judgment, section B2.2

LHR	London Heathrow airport	
March 2014 question	Question which Mr Justice Mitting ordered on 28 March 2015 to be tried as a preliminary issue	Judgment, section A1.4 The March 2014 question was: "Whether or not there was lawful justification for the use of force to convey the claimant to Heathrow airport or put him on or remove him from Qatar Airways flight QR2 to Doha on 24 December 2011."
Matthews, Mr	Mr Stuart Matthews	Reliance's expert witness on orthopaedic matters : see Judgment, section A1.4
Matthews 1	Mr Matthew's first report dated 10 January 2014	Judgment, section B4.2
Matthews 2	Mr Matthew's addendum report dated 12 February 2014	Judgment, section B4.2
Matthews 3	Mr Matthew's reply dated 25 March 2014 to questions from DPG	Judgment, section B4.2
MDD	major depressive disorder	Judgment, section A1.7
MDDUS	Medical and Dental Defence Union of Scotland	Judgment, section E.4
Mitchell 1	witness statement made by Mr Gareth Mitchell of DPG on 1 October 2015	Judgment, section B1
Mohammad, Mr	Mr Saeed Mohammad	Judgment, section A1.4 Mr Mohammad was Mr Wamala's expert witness on orthopaedic matters
Mohammad 1	Mr Mohammad's first report dated 20 May 2013	Judgment, section B4.2
Mohammad 2	Mr Mohammad's supplemental report dated 18 December 2013	Judgment, section B4.2
movement notification	a document prepared on	Judgment, section A2.9

	form IS.276 or IS.278	
Mr Wamala's alternative claim	Mr Wamala's claim that if Reliance had an entitlement to use force on him, the type or degree of force actually used was not permitted by that entitlement	Judgment, section A1.7
Mr Wamala's basic principle proposition	Proposition advanced by Mr Wamala concerning the basic principle of liability in trespass being strict	Judgment, section F9.4
Mr Wamala's criminal consequences proposition	Proposition advanced by Mr Wamala concerning interpretation of s 156(1)(b)	Judgment, section F9.4
Mr Wamala's detention JR	Mr Wamala's application for permission to apply for judicial review made on 13 June 2011	Judgment, section A3.2. Mr Wamala's detention JR sought to challenge Mr Wamala's detention pending deportation. The Rix refusal noted that it also sought informally to raise asylum and human rights grounds which had been concluded against him.
Mr Wamala's false imprisonment propositions	propositions in paragraph 263(1) of Mr Wamala's October 2015 submissions	Judgmetn, section F9.6
Mr Wamala's general answer	Answer given generally by Mr Wamala, relating to the prevention of crime justification and other alleged justifications advanced by Reliance	Judgment, section F9.4
Mr Wamala's good order contentions	Contentions advanced by Mr Wamala in his skeleton argument, concerning the third of 1999 Act duties: to ensure good order and discipline on the part of the detained person	Judgment, section F9.4
Mr Wamala's MS778 notice	UKBA notice informing Mr Wamala of directions for his removal to Uganda on flight MS778, departing from Heathrow at 2pm	Judgment, section A1.2 and A 2.7. Mr Wamala's MS778 directions were on form IS.151D (see above) and were given to Mr Wamala on 15 Dec 2011.

	on 24 Dec 2011 for Cairo, and connecting onto flight MS837 at 21:45 hrs on 24 Dec 2011 for Entebbe	
Mr Wamala's November 2015 submissions	Mr Wamala's additional written submissions filed on 3 November 2015 in response to Reliance's October 2015 submissions.	Judgment, section B1
Mr Wamala's October 2015 submissions	Mr Wamala's additional written submissions filed on 2 October 2015 in response to Reliance's September 2015 submissions.	Judgment, section B1
Mr Wamala's primary claim	Mr Wamala's claim that Reliance had no authority to use force on him	Judgment, section A1.7
Mr Wamala's removal JR	Mr Wamala's application for permission to apply for judicial review, issued under reference CO/12644 /2011	Judgment, section A1.2 Mr Wamala's removal JR sought to challenge Mr Wamala's MS778 directions.
Mr Wamala's s 156 assertions	Assertions in Mr Wamala's opening submissions as to s 156 of the 1971 Act	Judgment, section F9.6
Mr Wamala's topsy-turvy world submission	submission advanced by Mr Wamala in support of Mr Wamala's general answer	Judgment, section F9.4
MS	EgyptAir	
MS778	flight MS778	Judgment, section A1.3 and A2.7. MS flight scheduled to depart for Cairo from Heathrow Terminal 3 at 2pm on Christmas eve
MS778 directions		See "Mr Wamala's MS778 directions".

MS778 movement notification	movement notification as signed by Harry Sidhu on 19 December 2011	Judgment, section A2.9
MS778 notice		See “Mr Wamala’s MS778 notice”.
Mvoi, Brynner	Brynner Mwaburi Mvoi	Judgment, section A2.2 and 2.9. Name in Kenyan passport falsely used by Mr Wamala when committing the drug smuggling offence which led to his imprisonment.
ordinary damages	damages other than aggravated and exemplary damages	Judgment, section A1.7
orthopaedic joint report	Joint report by Mr Mohammad and Mr Matthews dated 17 July 2015	Judgment, section B4.2
OSCU	Operational Support & Certification Unit	Judgment, section A4.7
other purposes	purposes other than conveying Mr Wamala to Heathrow, putting him on the aircraft, or removing him from the aircraft	Judgment, section F9.2
overall damages	ordinary, aggravated and exemplary damages	Judgment, section A1.7
Payne, Ms	Ms Michelle Payne	Senior Overseas Co-ordinator employed by Reliance. (now Mrs Michelle Duke.)
Payne 1	witness statement by Ms Payne made on 18 March 2014	Judgment, section B3.8
Payne 2	witness statement by Ms Payne made on 21 July 2015	Judgment, section B3.8
PNC	Police National Computer	Judgment, section A2.2
prevention of crime	Justification for the use	Judgment, section C2.

justification	of force pleaded at para 18A(ii) of Reliance's re-amended defence	Para 18A(ii) of Reliance's re-amended defence pleaded that force on the part of Reliance's agents was "used in an attempt to prevent the commission of offences by the claimant".
proposed general prevention of escape justification	Justification for the use of force pleaded proposed new sub-paragraph (iv) in Reliance's September 2015 proposed amendments	Judgment, section B1
psychiatric joint report	joint report by Prof Katona and Dr Britto dated 17 June 2014	Judgment, section B4.3
PTSD	post-traumatic stress disorder	Judgment, section A1.7
purported QR2 movement notification		Judgment, section A3.6. Document disclosed by Reliance comprising the MS778 movement notification with additional manuscript alterations.
QR	Qatar Airways	
QR2	flight QR2	QR flight scheduled to depart from Heathrow Terminal 4 at 8.30pm on Christmas eve
Rapid Goods Screening Area	Rapid Goods Screening Area	Judgment, section F4. The Rapid Goods Screening Area is a security point near LHR, where the van carrying Mr Wamala stopped for security screening. Also known as "Wilson James".
Re-framed inherent liability to be restrained contentions	Contentions advanced by Reliance in its September 2015 submissions concerning re-framing Reliance's inherent liability to be restrained proposition	Judgment, section F9.6
refusal to defer removal		See "UKBA refusal to defer removal".
Reliance	Reliance Secure Task Management Ltd	Judgment, section A1.1 Reliance was originally the second defendant, and is now the only defendant, to this claim. Where convenient, and the context

		makes it clear, "Reliance" is used to include its employees.
Reliance's 2005 Order extent contention	Contentions advanced by Reliance in its September 2015 submissions that even if Mr Wamala was entitled to resist removal he nevertheless committed offences under the 2005 Order	Judgment, section F9.4
Reliance's ability to amend criticism	Reliance's criticism, in paragraph 70 of Reliance's September 2015 submissions, concerning Mr Wamal's submissions about the ability to amend the MS778 movement notification.	Judgment, section F9.6
Reliance's elision contention	Contention advanced by Reliance in its September 2015 submissions that the closing submissions for Mr Wamala elided two different questions	Judgment, section F9.6
Reliance's first general reply	Contention on the law advanced by Reliance in its September 2015 submissions in reply to Mr Wamala's "topsy-turvy world" submission	Judgment, section F9.4
Reliance's further invalid RD consequences contention	Contention advanced by Reliance in its September 2015 submissions	Judgment, section F9.6 (see Reliance's second comment on Reliance's refereability of detenton contention)
Reliance's inherent liability to be restrained proposition	Third proposition advanced by Reliance in its oral closing submissions that lawful detention involved a liability to be restrained, and not merely the loss of liberty	Judgment, section F9.6
Reliance's invalid RD consequences contention	Contention advanced by Reliance in its	Judgment, section F9.6

	September 2015 submissions that the invalidity of a removal direction does not make the detainee's custody unlawful	
Reliance's limitation on freedom contention	Contention advanced by Reliance in its September 2015 submissions concerning limitation on freedom of a lawfully detained person	Judgment, section F9.6
Reliance's October 2015 submissions	Reliance's additional written submissions filed on 28 October 2015 concerning the Air Navigation Orders 2005 and 2009	Judgment, section B1
Reliance's reasonable resistance concessions		Judgment, section F10.3
Reliance's referability of detention contention	Contention advanced by Reliance in its September 2015 submissions concerning the construction of the opening words of paragraph 2(3) of Schedule 13 to the 1999 Act	Judgment, section F9.6
Reliance's responsibility for custody proposition	Eighth proposition advanced by Reliance in its oral closing submissions concerning responsibility for Mr Wamala's custody	Judgment, section F9.6
Reliance's second general reply	Contention on the facts advanced by Reliance in its September 2015 submissions in reply to Mr Wamala's "topsy-turvy world" submission	Judgment, section F9.4
Reliance's September 2015 proposed amendments	Draft re-re-re-amended defence filed on 18 September 2015	Judgment, section B1.
Reliance's September 2015 submissions	Reliance's Further Written Closing	Judgment, section B1.

	Submissions filed on 18 September 2015	
Reliance's type of escort arrangements concession	Third concession advanced by Reliance in its oral closing submissions, concerning escort arrangements under s 156 of the 1999 Act	Judgment, section F9.6
Reliance's unlawful acts concession	Concession made by Reliance in its September 2015 submissions, concerning a part of the 1999 Act duties	Judgment, section F9.4
Reliance's unlawful freedom criticism	Reliance's criticism of Mr Wamala's contentions	Judgment, section F9.6
right hand cuffing	the securing of Mr Wamala's right hand in the handcuffs	Judgment, section F6.
Rix refusal	Order of Lord Justice Rix refusing PTA against the order of Mr Clive Lewis QC in Mr Wamala's detention JR	Judgment, section A3.2
reply propositions	propositions forming part of a series in the oral reply submissions for Mr Wamala	Judgment, section F9.6
s	section	
Schedule 11 concession	Concession made by Reliance in its September 2015 submissions concerning Mr Wamala's entitlement to defend a charge of assault on a DCO under Schedule 11 to the 1999 Act	Judgment, section F9.6
Senior DCO	Senior Detainee Custody Officer	Judgment, section A3.5
self-defence justification	Justification for the use of force pleaded at para 18A(i) of Reliance's re-amended defence	Judgment, section C2. Para 18A(i) of Reliance's re-amended defence pleaded that force on the part of Reliance's agents was "used in self-defence".

Service Provider		See “2010 Services Agreement”
Sidhu, Mr	Mr Harry Sidhu	Officer of UKBA who signed the 19 December movement notification: see Judgment, section A2.9
Simmons, Mr	Mr Robert Simmons	Senior Overseas Detainee Custody Officer employed by Reliance: see Judgment, section A3.5
Simmons 1	Witness statement of Mr Simmons made on 1 October 2013	Judgment, section B3.3
Timms, Rt Hon Stephen	Rt Hon Stephen Timms MP	Judgment, section 2.4. Mr Timms wrote a number of letters on Mr Wamala’s behalf to UKBA.
UKBA	United Kingdom Border Agency	Judgment, section A1.2 Part of the Home Office.
UKBA refusal to defer removal	UKBA letter to Mr Wamala dated 23 Dec 2011	Judgment, section A3.3
UKBA replacement instruction	UKBA instruction given at (“the UKBA replacement instruction”) for Mr Wamala to be taken to Colnbrook IRC	Judgment, section A1.6
ViewTrip	ViewTrip website	Judgment, section A2.7. A limited access website used by the Home Office, CWT and Reliance to record and access ticketing and travel information for those who are being removed and their escorts.
Wamala, Mr	Mr Felix Wamala	Judgment, section A1.1 Mr Wamala is the claimant in these proceedings.
Wamala 1	Mr Wamala’s main witness statement made on 3 January 2014	Judgment, section B2.1
Wamala 2	Mr Wamala’s further witness statement made on 29 April 2015	Judgment, section B2.1
Wilson James		See “Rapid Goods Screening Area”.

Annex 2: Ordinary damages

Submissions	Judge's comments/conclusions
Topic (1)	
C Schedule: 2. BASIC DAMAGES TRESPASS TO THE PERSON 2.1 The Claimant seeks an award of **£2,000** for trespass to the person (as distinct from the award for pain, suffering and loss of amenity).	See below.
D Counter-Schedule: Damages for Trespass to the Person 2. If and insofar as the force used by the Defendant's officers was no more than would have been reasonable had a new removal direction been correctly served, then the Claimant's damages for trespass to the person should be **nominal only**, having regard to the facts that: (1) the Claimant was liable to be deported anyway; (2) had a new removal direction been correctly served, the Claimant would have had no ground at all for complaint; (3) the Claimant used force to resist his being deported because of his unwillingness to be deported in general and not because of any objection to his being placed on the Qatar Airways flight rather than the Egyptair flight or any objection to the effect that he had not been served with a valid removal direction for the Qatar Airways flight; (4) the Claimant was not in the event deported at all, because the Qatar Airways captain refused to take him and he was removed from the flight.	This is dealt with in section G1.2 of the main judgment.
C opening skeleton: <u>J. Quantum</u> (a) Assault and personal injury 110. The Schedule of Loss at [A51-A56] sets out the various Heads of Claim (see also para. 38 above) and it also sets out the basis for those claims. £2000 is claimed for the trespass to the person simpliciter … 136. In addition, C is entitled to an award for the assault simpliciter. £2,000 is claimed.	I understand the claims at paragraphs 110 and 136 to be one and the same.
D Sep 2015 submissions: [nothing further]	
C Oct 2015 submissions: [nothing further]	
	I consider that an award of £2,000 is appropriate to cover the general and continuous threat of the use of force, along with the degree of force inherent in the light holds used when escorting Mr Wamala up the staircase, and the minor transient injuries identified in Topic 2 b.
Topic (2)	
C Schedule: 5. PAIN, SUFFERING AND LOSS OF AMENITY <u>Physical injuries</u> 5.1 The Claimant suffered injury to his back, neck, legs, knees, hands and wrists. The injuries to the Claimant's back, neck and right wrist were significant soft tissue injuries. 5.2 In relation to the back and neck injuries, the Claimant's expert's prognosis in December 2013 was that if the Claimant received appropriate treatment – namely physiotherapy, cognitive behavioural therapy for pain management and possibly targeted injections – any symptoms of pain beyond March 2014 would be not be due to the 24 December 2011 incident save to the extent that the Claimant's perception of pain had been altered due to psychological trauma. 5.3 In the event, the Claimant has not been able to access a consistent	In so far as there were injuries to the legs, knees and hands (other than to the right wrist), they are adequately compensated for by the award of £2,000 under Topic 1 above.

programme of treatment, and he remains symptomatic in terms of neck, back and right wrist pain at the present time. 5.8 The neck and back injuries fall into the (c) (i) back injury bracket (£5,800 - £9,200) for injuries with a recovery period of 2-5 years. 5.9 The wrist injury can be compared with the JC Guidelines on an uncomplicated Colles fracture taking around 2 years to heal: £5,450.	
D Counter-Schedule: Pain, Suffering and Loss of Amenity Physical Injuries 10. The Claimant injuries sustained in the incident on 24 December 2011 were limited to transient minor soft tissue injuries and abrasions following his being handcuffed, the effects of all of which must have passed within a few weeks at most. It is denied that the Claimant suffers any continuing physical symptoms as a result of the incident. 11. The Claimant has since the incident ought to exaggerate his injuries and to attribute to the accident symptoms which, if genuine, were and are attributable to pre-existing conditions and/or (in the case of any back and neck symptoms from which he may genuinely be suffering) to his own constitutional disc problems of genetic origin. 12. It is denied in any event that the Claimant has been unable to access appropriate treatment for such injuries as he genuinely sustained in the said incident. 19. The Claimant's transient soft tissue back and neck injuries attributable to the accident would justify an award of no more than £500, close to the the bottom of the JC bracket for minor neck / back injuries with recovery in a few days, weeks or months (£300 -£1,550), but allowing for a finding that there were transient injuries to both back and neck. 20. Even if, contrary to the Defendant's case, the Claimant sustained lasting soft tissue injuries attributable to the accident, they would fall into the JC bracket for minor injuries, recovering in several months to a year in the case of the neck (£1,550 - £3,200) or within 2 years in the case of the back (£1,550 - £5,800). A combined award would not exceed £2,250. 21. The Claimant's wrist injury (transient abrasions/lacerations as a result of the application of handcuffs) cannot reasonably be compared to a fractured wrist. An appropriate award for such an injury would be £750, which is toward the bottom of the JC bracket for minor hand injuries (£670 - £3,190). 22. There must be an appropriate discount for overlap between the physical and psychiatric injuries (beyond the discounts between the PTSD and depression and between the back and neck injuries taken into account above. The Claimant contends for a discount of about 30 overall, taking the middle of the ranges that he has contended for. It is agreed that a 30% discount would be appropriate..	These assertions in the Counter-Schedule are, save in respect of the conduct of Mr Wamala when he met Mr Matthews, largely inconsistent with my findings in section E of the main judgment.
C opening skeleton: [paragraphs 11 to 121 deal with evidence of injuries] 122. There cannot be any sensible argument that C did suffer injuries form the incident on 24 December 2011. As to quantum, the neck and back injuries fall into the (c)(i) back injury bracket in the Judicial College Guidelines: Where a full recovery or a recovery to nuisance level takes place without surgery within about two to five years. This bracket will also apply to shorter term acceleration and/or exacerbation injuries, usually between two to five years. — In the region of £5,800 to £9,200 123. See: *Davis v Roxby Engineering* (Lawtel 0200619) - £7000 (updated to £9439) for a 2 year acceleration back injury plus 2 year psychological symptoms; *McCarthy v O'Reilly* (Lawtel 0201662) - £5500 (updated to £6025) for a 2 year soft tissue neck and back injury. 124. In relation to the wrist there is little comparative case law. The JC	

Guidelines state that an uncomplicated Colles fracture is worth around £5450 – such fractures typically take around 2 years to heal. Although the injury period in Mr Wamala's case is somewhat longer, a fracture would be more serious and painful in the initial period.	
D Sep 2015 submissions: 106. Mr Wamala's transient soft tissue injuries attributable to the accident would justify an award of no more than £500, close to the bottom of the JC bracket for minor neck/ back injuries which recover in a few days/weeks/months (£300 - £1,550), but allowing for a finding that there was an injury to the neck as well as to the back, contrary to Dr Jabbar's examination report. 107. Even if, contrary to Reliance's case, Mr Wamala sustained lasting soft tissue injuries attributable to the accident, they would fall into the JC bracket for minor injuries, recovering within 2 years in the case of the back (£1,550-£5,800) or within several months to a year in the case of the neck (if indeed any injury to the neck was sustained) (£1,550 - £3,200). A combined award should not exceed £2,250. 108. Mr Wamala's wrist injuries (transient abrasions/lacerations as a result of the application of handcuffs) cannot reasonably be compared to a fractured wrist. An appropriate award for such an injury would be £750, which is towards the bottom of the JC award for minor hand injuries (£670 - £3,190).	
C Oct 2015 submissions: [nothing further]	To a substantial extent the pain experienced by Mr Wamala at the time of trial was attributable to his PTSD. Much, perhaps all, of the neck pain perceived by Mr Wamala when examined by Mr Mohammad is likely to fall within this category. On this footing I conclude that within the (c) (i) bracket a sum of £7,500 will adequately compensate Mr Wamala for pain, suffering and loss of amenity not associated with PTSD. As to the wrist injuries, there was very substantial pain at the time the injuries occurred. From March 2014 onwards wrist pain can be attributed to PTSD. The wrist injuries were particularly unpleasant, and can in my view be reasonably regarded as coming close to, but not equating to, those associated with a Colles fracture. I consider that £4,500 will adequately compensate Mr Wamala for pain, suffering and loss of amenity not associated with PTSD. Total on topic (2): £12,000.
Topic (3)	
C Schedule: <u>Psychiatric injuries</u> 5.4 The Claimant developed symptoms of severe post-traumatic stress disorder (PTSD) as a result of the incident on 24 December 2011. The Claimant's pre-existing depression also became more severe as a result of the incident on 24 December 2011. 5.5 The Claimant's symptoms include intrusive thoughts and nightmares, difficulty sleeping, difficulty concentrating, episodes of anger and irritability and a belief that he will die prematurely. 5.6 In July 2014, the Claimant's expert's prognosis in relation to the psychiatric injuries was that if the Claimant is able to access secure and reliable treatment in Uganda, then the period for recovery would be in the region of 36 months. <u>Quantification</u> 5.7 The psychiatric injury falls into the "Moderately Severe" bracket (b) of the JC Guidelines on Post-Traumatic Stress Disorder (£17,000 - £44,000).	
D Counter Schedule: Psychiatric Injuries	

13. The Claimant's psychiatric history suggests that he was suffering from symptoms of depression and post-traumatic stress disorder prior to the incident of 24 December 2011. His symptoms of post-traumatic stress disorder and, possibly, of depression were a consequence of earlier ill-treatment in Uganda.
14. The fact of the Claimant's being liable to be deported, the inevitability of his deportation, the fear of such deportation and the threat(s) to his physical integrity on return to Uganda together with the actual process of deportation, would have acted as stressors that would have exacerbated and/ or triggered a recurrence of his pre-existing symptoms and/or conditions in any event, independently of the incident on 24 December 2011.
15. The incident was not itself responsible for any aggravation or recurrence of symptoms attributable to the Claimant's pre-existing psychiatric condition.
16. Neither the exact nature nor the extent of the symptoms alleged in Paragraph 5.5 of the Schedule is admitted as genuine or as genuinely continuing.
17. The Claimant is likely to recover his full psychiatric health within 12 months.
Quantification
18. Even on the Claimant's factual case:
(a) his psychiatric injuries only fall towards the bottom of the JC bracket for minor PTSD (£2,900 - £6,000) / depression (£1,125 -£4,300) on the basis (denied) that all his psychiatric symptoms were and are attributable to the incident. Given the very substantial overlap between the two conditions, even *on a full causation basis* the appropriate award for his psychiatric injuries would be no more than £4,000.
(b) having regard to his pre-existing condition(s) and the likelihood that given his inevitable deportation, he would have suffered some psychiatric illness in any event, so that the symptoms attributable to the incident would only fall to be assessed as leading to an award equivalent to a small percentage of an award which might be appropriate if all his past and present psychiatric symptoms had been and were attributable to the incident
Psychological Treatment in Uganda
24. It is denied that the Claimant has any greater need for psychological treatment in Uganda upon his return as a result of the incident than he would have had in any event. No admissions are made as to the fact or extent of any such need, or as to the likely cost of meeting it, although it is admitted that to relieve is psychological symptoms (not caused by the incident) the Claimant needs anti-depressants for a period of 12 to 24 months and some psychological treatments (trauma focussed cognitive behavioural therapy and / or eye movement desensitization and reprocessing). It is further not admitted that there is a real prospect of the Claimant deciding to undergo any such treatment.
25. Although the Claimant will need antidepressants for a further 12 months after making a full recovery to normal psychological health he will need to continue taking anti-depressants for a further 12 months.

C opening skeleton:
ii. Psychiatric harm
137. Damages can include damages for the material contribution to recognised psychiatric harm (e.g. *Clerk & Lindsell on Torts*, 21st ed., p.86, §2-37).
138. Professor Katona has diagnosed C with severe Major Depressive Disorder and severe PTSD (para 12 [D22]). Dr Britto agrees that C suffers from Depression and PTSD (para. 159 [B83]).
139. Professor Katona states that there is relatively little evidence of PTSD-specific symptoms prior to the index event (para. 10.3 [D20]) and that the attempted removal was the main cause of his current symptoms. Dr Britto accepts that the index event was a re-traumatization process, but states that this would have occurred in the absence of violence and aggression and was based on fear of removal (para. 163 [D84]). This is the principal point of difference in the joint expert report (see [D130-D131]).
140. Dr Britto's opinion does not, however, give appropriate consideration to

the serious and debilitating degree of force applied to C during the removal attempt, apparent, for example, from the CCTV footage.
141. Moreover, in his statement dated 29 April 2015, C explains how his mental health has deteriorated still further. He was referred by his GP to a psychiatrist and he had sporadic appointments but these have not recommenced. He is currently taking Ventaflaxine and Quetiapine [B43]. C's GP's records record these continued prescriptions for anxiety and depression and the continued review, with no improvement noted, of his PTSD [D417-D435].
142. The psychiatric injury falls into the moderately severe bracket on the guidelines on PTSD (£17,000-£44,000).

D Sep 2015 submissions:
109. Even on Mr Wamala's factual case:
(a) Mr Wamala's psychiatric injuries would only justify an award towards the bottom of the JC bracket for minor PTSD (£2,900 - £6,000)/ depression (£1,125-£4,300) on the basis (denied) that all his psychiatric symptoms were and are attributable to the incident. Given the very substantial overlap between the two conditions, even on a full causation basis the appropriate award for his psychiatric injuries would be no more than £4,000.
(b) Having regard to Mr Wamala's pre-existing condition(s) and the likelihood that given his inevitable deportation, he would have suffered some psychiatric illness in any event, so that the symptoms attributable to the incident would only fall to be assessed as leading to an award equivalent to a small percentage of an award which might be appropriate if all his past and present psychiatric symptoms had been and were attributable to the incident.

C Oct 2015 submissions:
(e) Quantification of psychiatric damage
230. The Claimant suffers from intrusive thoughts and nightmares, difficulty sleeping, difficulty concentrating, episodes of anger and irritability and belief he will die prematurely. He has also suffered psychotic episodes, as the evidence clearly demonstrates [D450].
231. In July 2014, the Claimant's expert prognosis was that if he is able to access secure and reliable treatment in Uganda, then a period of recovery would be 36 months. There is obviously a significant risk he will not.
232. The Post Traumatic Stress Disorder JC guidelines 2015 are the starting-point.

		With 10% uplift
(B) Post-Traumatic Stress Disorder Cases within this category are exclusively those where there is a specific diagnosis of a reactive psychiatric disorder in which characteristic symptoms are displayed following a psychologically distressing event which causes intense fear, helplessness and horror. The guidelines below have been compiled by reference to cases which variously reflect the criteria established in the 4th edition of Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). The symptoms affect basic functions such as breathing, pulse rate and bowel and/or bladder control. They also involve persistent re-experience of the relevant event, difficulty in controlling temper, in concentrating and sleeping, and exaggerated startle response.		
(a) Severe Such cases will involve permanent effects which prevent the injured person from working at all or at	**£45,000 to £76,500**	**£50,050 to £84,150**

least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected.		
(b) Moderately Severe This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between £21,000 and £27,000.	**£17,600 to £45,500**	**£19,360 to £50,050**
(c) Moderate In these cases the injured person will have largely recovered and any continuing effects will not be grossly disabling.	**£6,225 to £17,600**	**£6,850 to £19,360**
(d) Less Severe In these cases a virtually full recovery will have been made within one to two years and only minor symptoms will persist over any longer period.	**£3,000 to £6,225**	**£3,300 to £6,850**
233. Mr Wamala's injury would fall within bracket (b), "moderately severe" – albeit at the lower end due to the 5-6 year recovery period.		
		Mr Wamala's PTSD cannot be regarded as merely "Moderate" – it cannot be said that he has "largely recovered". It is appropriately placed at the lower end of "Moderately Severe". I consider that, including the effect of PTSD on perception of physical pain, £23,000 will adequately compensate Mr Wamala for pain, suffering and loss of amenity associated with PTSD. However an allowance must be made for psychiatric problems that would have affected Mr Wamala in any event. I deduct £7,000 in that regard, and accordingly award £16,000.
Topic (4)		
C Schedule: 5.10 It is accepted that there would be a degree of overlap between the injuries. Taking the injuries as a whole, the Claimant contends that the value of the PSLA claim is £30,000.		
D Counter Schedule: [nothing further]		
C opening skeleton: [nothing further]		
D Sep 2015 submissions: [nothing further]		
C Oct 2015 submissions: 234. It is accepted that there is an element of overlap between the injuries and therefore a total of £30,000 is claimed to cover physical and mental injuries, in addition to future losses.		
	I have framed my awards separately, seeking to ensure that there is no overlap.	
Topic (5)		
C Schedule: 6. FUTURE LOSSES 6.1 *Blamire Award for loss of earnings in Uganda* 6.2 It is accepted that there are difficulties in precisely quantifying the Claimant's claim for future loss of earnings and in identifying a multiplicand. However it is equally clear that there are such lost earnings to which a value		

should be attributed. Consequently, a *Blamire* award is sought. 6.3 In the light of the meeting of the psychiatric experts of 17 June 2014, the Claimant is prepared to concede that the period for which a *Blamire* award should be sought is limited to 24 months (paragraph 13 (b)). The Home Office has permitted the Claimant to remain in the UK until trial; however the Home Office has not permitted the Claimant to work. Given the adjournment of the trial (listed originally for May 2014), the period of loss now runs from August 2015 (the expected date of return to Uganda). Average income in Kampala is around £3,000 per annum (taking Uganda Bureau of Statistics figures for 2009/10 and applying a modest uprating) 6.4 In all the circumstances it is submitted that the appropriate award would be £6,000.	
D Counter Schedule: 23. Blamire Award It is not accepted that the Claimant has any entitlement to a Blamire award. There is no evidence that he has lost any opportunity of obtaining any or better gainful employment in England or Uganda as a result of the incident. Save that it is admitted that the deportation of the Claimant was deferred and that the Claimant has had no right to work in the UK, the factual assertions made in Paragraph 6.3 of the Schedule are not admitted.	
C opening skeleton: 143. The claim for future losses falls under two heads. The first is a *Blamire* award (*Blamire v South Cumbria Health Authority* [1993] PIQR Q1) to reflect future losses, reflecting the fact that there will be such losses but given the number of imponderables a conventional multiplier/multiplicand approach is not appropriate (see e.g. *Browne v The Commissioner of Police of the Metropolis* [2014] EWHC 3999 where £25,000 award made despite absence of evidence and previous cash-in-hand work). 144. C attended the National College of Business Studies in Nakawa in Kampala and worked in a managerial capacity in his mother's grocery store before coming to the UK (statement para. 5, [B2]). C also completed level 1 and 2 accountancy courses at West End College, London [A103]. However, he was in prison between 1996 and 1999 and was then in immigration detention between 2010 and 2013. He is not currently permitted to work and receives Home Office support. (See statement paras. 7-9 [B2], 20 [B4], 183 [B37]). He claims the modest sum of £6,000 based on £3,000 average annual income in Uganda (Schedule of Loss, para. 6.3-6.4 [A55]).	
D Sep 2015 submissions: 113. It is not accepted that Mr Wamala has any entitlement to a Blamire award. There is no evidence that he has lost any opportunity of obtaining any or better gainful employment in England or Uganda as a result of the incident.	
C Oct 2015 submissons: [nothing further]	
	It is clear that Mr Wamala has been working in the UK since the incident. I have no information about PTSD causing difficulties with, or interruption of that work. It is not clear to me that Mr Wamala will be unable to work, or will experience difficulties with working, in Uganda by reason of his PTSD. Accordingly I decline to make a *Blamire* award.
Topic (6)	
C Schedule: 6.5 *Psychological treatment in Uganda* 6.6 In the light of the joint report of the psychiatric experts on 17 June 2014, it is the Claimant's position that he would require weekly treatment in Uganda	

for a period of 24 months in the event of his return through a combination of psychotherapy and/or trauma-focused cognitive behavioural therapy and/or eye movement desensitisation and reprocessing. The Claimant's orthopaedic expert's opinion is that treatment of the psychological issues is paramount for the recovery of the physical injuries and that cognitive behavioural therapy for pain management is required. 6.7 Treatment in Uganda costs around £80 per session. 6.8 Assuming that the Claimant will require weekly sessions for 50 weeks per year for two years, a sum of £8,000 is claimed.	
D Counter Schedule: Psychological Treatment in Uganda 24. It is denied that the Claimant has any greater need for psychological treatment in Uganda upon his return as a result of the incident than he would have had in any event. No admissions are made as to the fact or extent of any such need, or as to the likely cost of meeting it, although it is admitted that to relieve is psychological symptoms (not caused by the incident) the Claimant needs anti-depressants for a period of 12 to 24 months and some psychological treatments (trauma focussed cognitive behavioural therapy and / or eye movement desensitization and reprocessing). It is further not admitted that there is a real prospect of the Claimant deciding to undergo any such treatment. 25. Although the Claimant will need antidepressants for a further 12 months after making a full recovery to normal psychological health he will need to continue taking anti-depressants for a further 12 months.	
C opening skeleton: 145. The second is a claim for psychological treatment in Uganda, based on weekly treatment for 24 months at a cost of £80 per session = £8,000 (Schedule of Loss paras 6.5 – 6.8 [A55]).	
D Sep 2015 submissions: 110. Mr Wamala has no greater need for psychological treatment in Uganda upon his return as a result of the incident than he would have had in any event. However, given his psychological symptoms (not caused by the incident) Mr Wamala ought ideally to have anti-depressants for a period of 12 to 24 months to relieve them. 111. Ideally Mr Wamala might also benefit from some psychological treatments (trauma focussed cognitive behavioural therapy and / or eye movement desensitization and reprocessing). However, there is no real prospect of his deciding to undergo any such treatment. 112. Although Mr Wamala will make a full recovery to normal psychological health within 12 months he will need to continue taking anti-depressants for a further 12 months.	
C Oct 2015 submissions: [nothing further]	

			I consider it likely that Mr Wamala's mental health on return to Uganda would, even if the incident had not occurred, have required both treatment and medication. In these circumstances I am not satisfied that the incident will result in additional future expense to Mr Wamala. Accordingly I decline to make an award in this regard.

The ordinary damages awarded are, on the above topics, (1) £2,000, (2) £12,000, (3) £16,000, (5) nil, (6) nil: a total of £30,000.