

APPELLANT'S REPLY NOTE III:
REPLY AS TO THE FACTS

The Log Entry at 10.45 am

1. Mr. Freeland made two central submissions about the log entry, neither of which can be supported on the evidence.

Not the "London coaches"

2. First, he submitted that it could not be presumed that the three coaches and a van which DC Lambert referred to in his log 10.45 am entry (as being *en route* from London) were the same vehicles as the three *Greens of London* coaches intercepted at Lechlade.
3. This is a mystifying submission:
 - (a) Mr. Lambert was in no doubt about this on the day. The 10.45 refers to three coaches and a van *en route* from London. The next relevant entry is at 12.45. It reads: "Informed that *the 3* coaches and transit vans have been stopped" (emphasis added): App. II p. 306). In the later of the two entries he was plainly referring to the three coaches and van mentioned in his earlier entry.
 - (b) The 10.45 entry was an instruction to stop the coaches. The only coaches that were stopped at 12.45 were the coaches stopped at Lechlade. It is an agreed fact that the coaches stopped at Lechlade were *in fact* the coaches from Euston: SFI para. 10.
 - (c) Mr. Lambert confirms the correctness of this interpretation in his witness statement (App. II p. 136). At para. 40 he sets out the terms of his 10.45 log entry. The immediately following paragraphs begins: "At 12.45 the same day, I was informed that *the* three coaches and transit vans had been stopped" (emphasis added). If Mr. Lambert had entertained any doubts that they were one and the same then he would have said so in either his first or his second witness statement.

- (d) There is no suggestion in the Agreed Statement of Facts and Issues that there were any other coaches travelling *en route* from London. Indeed the suggestion is flatly contradicted by SFI para. 5(3).
 - (e) By contrast, it *is* an agreed fact that the police intelligence available to Mr. Lambert included information that coaches would be travelling to Fairford from Euston. The same email and telephone contact numbers were given on each of the websites. See, for example, the GWI website (App. II pp. 228, 231) and the Wombles website (App. II p. 234). That indeed was the basis for the prior intelligence that the London coaches may contain Wombles.
 - (f) When the *Greens of London* coaches were stopped at Lechlade (and before the order to turn them back was made) it was discovered by the Metropolitan police FIT teams that there were 7 members of the Womble movement on board the coaches.
 - (g) The forward intelligence had been clear. The JIC report for 12th March referred to intelligence suggesting that “coaches will be available from London for travel to RAF Fairford on the day. These are supported by various known groups” (SFI para. 8(2); App. II p. 257). A further report for 19th March stated: “The latest intelligence (18/03/03) from the internet confirms that the London coaches are still attending Fairford” (SFI para. 8(2); App. II p. 257).
4. Mr. Freeland is unable to explain whether and on what basis it was (or reasonably could be) considered that the coaches Mr. Lambert was referring to in his 10.45 am note were not the “London coaches” described in the intelligence and subsequently stopped, on his instructions, at Lechlade. Indeed, it is difficult to see where this suggestion would leave his client’s case.

The timing point

5. Mr. Freeland's second point on the 10.45 am log entry relates to the statement by Mr. Lambert that the statement that the passengers were not to arrested for breach of the peace "at that particular time...as I do not consider there to be an imminent breach of the peace" related to the time of the log entry rather than the time and place of the proposed stop.
6. This submission is hopeless. The sentence in its context plainly refers to the state of affairs he anticipates at the time of the prospective stop. It would be meaningless to make a decision not to arrest them at the time of the stop on the basis that a breach of the peace was not imminent at the time of the log entry (two hours before they were stopped).
7. Moreover, Mr. Lambert has made it quite plain in his witness statement that his conclusion on imminence related to the time of the stop (App. II p. 139). He says:

"I considered that upon arrival at RAF Fairford a breach of the peace would have occurred. Therefore, had the coaches been permitted to continue to RAF Fairford the protestors on the coaches would have been arrested upon arrival at RAF Fairford, *a breach of the peace then being imminent.*"

8. The meaning is clear. As the Divisional Court held (para. 31), Mr. Lambert did not honestly believe that a breach of the peace would be imminent at the time of the interception some distance from Fairford. He believed it would become imminent on arrival at Fairford.

Did Mr. Lambert believe all the passengers were Wombles?

9. During the course of submissions Lord Mance pointed out that Mr. Lambert referred to the passengers as Wombles at various points, and asked whether this was because he truly believed that all 120 passengers were members of the Wombles movement. Mr. Freeland replied that there was no evidence on the point.

10. In our submission, this is not right. The intelligence available to Mr. Lambert made it quite clear that the passengers were a diverse group. As has been submitted, the only two things they all had in common were (a) that they were coming from London and (b) that they were travelling by coach. Any belief on Mr. Lambert's part that they were all Wombles could not conceivably have been a reasonable belief.
11. The point has already been made that the coaches were being advertised by a number of organisations, including the official organisers of the protest, GWI: SFI para 5(3). The evidence filed on the Appellant's behalf (which could have been, but which was not, contested) is summarised in SFI para. 10:

“[T]he passengers were a diverse group of people of varying age and affiliation. They included Ms Valerie Lucznikowska (aged 65), an American whose nephew was killed in the 9/11 attacks and one of the pre-arranged speakers at the demonstration, Ms. Sue Davis (aged 76), a long-standing member of CND, and Mr. Jesse Schust (a legal observer identified with a sash. The means by which passengers had become aware of the transport arrangements were diverse.”

There are other statements in the Appendix from passengers who – by virtue of their appearance – were most unlikely to be Wombles (such as 55 year old Robert Phillips: App. I p. 218).

12. Thus, the intelligence information about the way the coaches had been advertised, and the profile of the passengers (which was known to Bronze) was entirely inconsistent with the suggestion that all of the passengers were Wombles. Moreover, as noted above, the Metropolitan Police FIT team was able to identify a total of seven members of the Womble movement amongst the passengers on the coaches.
13. The summary Grounds of Resistance, served by Gloucestershire (App. I p. 24, para. 4) state:

“4. The finding of the equipment reasonably confirmed to the Defendant that *at least some* passengers had intentions to conduct themselves unlawfully and non-peacefully in the

course of the protest...The Defendant had no way of knowing whether, and if so which, of the passengers were in fact intending to protest lawfully and peacefully, and which were not.”

14. The evidence of CS Bob Mackie of the Metropolitan Police (App. II p. 151, para. 20) further illustrates the point:

“At 15.20 hours, information was received from Gloucestershire Police that there were 120 Wombles on 3 coaches. I did not take this to mean that all of the 120 protestors on the coaches were members of the Wombles movement.”

Failure to give names and addresses during the s. 60 search

15. Mr. Freeland submitted that the failure of passengers (including the Appellant) to provide their names and addresses was treated by CS Lambert as corroboration of the intelligence he had received, and of the judgment he had formed.
16. This submission is contrary to the evidence. There is no evidence to suggest that the decision of some individuals not to provide their personal details played any part in Mr. Lambert’s decision. He does not cite this factor as being a relevant consideration in his decision-making. He does not even assert (in his statements or his log) that he was made aware of it. (The nearest he comes is to say that he viewed the failure of passengers to dissociate themselves from items found as evidence of their collective intent: App. II p. 141, para 51). Nor is it said by any other witness that this information was conveyed to him.
17. Viewed logically, in the context of the evidence, the decision of particular individuals not to give their names could not conceivably have played any part in his decision. This is because he had determined at 10.45 that the passengers would all be treated in the same way if ‘offensive’ articles were found on the coaches. He repeated that instruction at 13.00.
18. And this is borne out by events. The appendices include three representative statements made by passengers who provided their

names but who were treated in the same way as those, like the Appellant, who did not: Sue Davis (App II, p. 216); Robert Phillips (App. II. P. 218) and Zoe Young (App II p. 203).

19. Lord Mance asked Mr. Freeland whether it was standard procedure for officers conducting a section 60 search to inform the person searched that they were under no obligation to provide their names. Mr. Freeland replied that the evidence was silent on the point. That is accurate as far as it goes. However, the Appellant's statement describes an exchange with her searching officer in which she was asked her name and declined. She states that she was aware that she was not obliged to provide this information.

Responsibility for the decision to confine the passengers on the coaches and return them, without stopping to London

20. The suggestion has been floated that Gloucestershire constabulary may not be legally responsible for confining the passengers to the coaches all the way back to London. The suggestion is that this was the result of a series of operational decisions, some of which were taken by the Thames Valley and Metropolitan police.

21. Again, this submission is unsustainable on the evidence:

- (a) The Divisional Court (para. 6) held that:

“In addition to the defendant, the chief constables of Thames Valley Police and the Metropolitan Police were represented as interested parties. Their officers participated in escorting the coaches back to London. It is accepted that they did so at the instance of Gloucestershire Police.”

- (b) The pre-action correspondence includes a letter from the Legal Services Department of Gloucestershire police dated 16th April 2003 (App. II p. 345). The final paragraph on the foot of p. 345 reads:

“As you are aware, owing to the breadth of police resources required to maintain law and order in the

vicinity of RAF Fairford a number of police forces have contributed resources on the basis of supplying mutual aid to Gloucestershire Constabulary. The policing operation at Fairford on Saturday 22nd March 2003, *including the authorisation of various legal powers, were under the direct command and control of a senior officer from Gloucestershire Constabulary.*” (emphasis added)

- (c) This is confirmed in the witness statement of Michael Page, Assistant Chief Constable of Thames Valley police (App. II p. 175, para. 3):

“The protest at RAF Fairford was to be policed under the command of Gloucestershire Constabulary with support from officers drawn from a wide range of different forces under what are known as “Mutual Aid” arrangements. Mutual aid is provided for under section 24 of the Police Act 1996. Constables provided under these arrangements are under the direction and control of the chief officer of police of the assisted force...Thames Valley were one of those forces supplying officers and other resources under these arrangements on 22nd March 2003.”

- (d) Thus, the summary grounds of resistance filed on behalf of the Metropolitan Police state (App. I p. 51, para. 18:

“18. Whilst officers from the Metropolitan Police were present in Gloucestershire to provide advice and assistance where sought, the Commissioner had no direct involvement in the management of the operation by Gloucestershire Police.”

- (e) The witness statement of Bronze (CI Nigel Wright) makes it clear that he had a telephone conversation with CS Lambert at 2 pm in which Mr. Lambert directed him to ensure that the coaches were “escorted” all the way back to London (App. II p. 187 para. 6):

“He instructed me that the occupants of the coaches be informed that they would not be allowed to proceed to

RAF Fairford and that I arrange they be escorted from Gloucestershire and back to London their point of origin. At 2.15 pm I gave instructions to Inspector Molloy, the Inspector from YK1 and the Inspector from YK2 to organise the return of these people to the coaches where they would be given the information that they would not be able to proceed to RAF Fairford and would be escorted back to London.”

- (f) A motorcyclist from Thames Valley police called PC William Morris (who had been provided pursuant to the mutual aid agreement and was therefore under the direction and control of Gloucestershire police throughout) was assigned to lead the team of police motorcyclists whose job it was to escort the coaches back to London. The statement of ACC Page (Thames Valley) explains the way in which this came about (App. II. P. 176 para. 4):

“PC William Morris was one of the officers deployed to Gloucestershire Constabulary under Mutual Aid. PC Morris is a fully qualified Traffic Motorcyclist...At approximately 14.30 PC Morris and his five motorcyclist colleagues were informed by an Inspector from West Mercia [also deployed under the mutual aid agreement] and a Sergeant from Gloucestershire that the 3 coaches and their passengers were returning to London and that they (the police motorcyclists) were going to take them there. The Inspector further instructed the motorcyclists that the coaches were not to stop and that officers from the Metropolitan Police would meet them at Junction 4 of the M4.”

- (g) ACC Page goes on (at p. 179, para. 12):

“My understanding of events on the day is that, based on information and intelligence, Gloucestershire Gold command decided that the coaches were to be escorted from Lechlade to the Metropolitan Police area by an escort team made up of officers from various forces, including Thames Valley, who were deployed at

Lechlade with instructions to take the coaches back to London without stopping where they would be met by officers from the Metropolitan Police area.”

- (h) The instruction to escort the coaches, without allowing them to stop en route, was thus given by CS Lambert to CI Nigel Wright, who in turn conveyed it to Inspector Molloy and two other officers. These three officers then gave the instructions to the motorcyclists. But all officers were at all times deployed under a mutual aid agreement and under the direction and control of the Respondent. ACC Page (App. II p. 178 para. 9) explains how the order was implemented:

“PC Morris has informed me that, pursuant to the instructions he received on departure from Lechlade, he and his motorcyclist colleagues used standard escort techniques to prevent the coaches from leaving the motorway by blocking the exit slip roads.”

Ben Emmerson QC
Michael Fordham QC