

## **Abdulla and ors Judgement**

### **Introduction**

The matter I have been dealing with between the 11 and 15 April is the trial of eight defendants each facing a charge that they did, without lawful authority or excuse, wilfully obstruct the free passage along a highway. The alleged offences arose on different dates but all of them arose from actions taken by the defendants in relation to the DSEI arms fair which is held biannually at the Excel Centre in London's docklands.

Ms Ditchfield faces an allegation relating to 9 September 2015 and is represented by Mr Payter. Mr Abdulla and Mr Franklin face allegations relating to 10 September and are represented by Ms Khan. Ms Butler faces an allegation relating to 12 September and is represented by Mr Greenhall. Ms Mengesha also faces an allegation relating to 12 September and has very ably represented herself. Mr Garate Neidhardt, Mr Tinoco Torrejon and Mr Vranken all face allegations relating to 12 September and are represented by Mr Broomhill.

### **The Prosecution Case**

Although there are some factual disputes between the Crown and the defendants the parties have very helpfully sought to agree as many of the facts as possible.

In the case of **Ms Ditchfield** the agreed facts were as follows:

1. On Wednesday 9 September 2015 police officers were posted to the Defence Security and Equipment International (DSEI) exhibition held at the Excel Centre, London arriving at 07.00.
2. On arrival at the Excel Centre mobile patrols were conducted from the west gate to the east gate. Near to the east entrance of the Excel centre protestors had set up a small camp area of approximately five tents. This was on a grass area next to the north

bound carriageway of Royal Albert Way, E16. The southbound carriageway leads onto a roundabout giving access to the Excel Centre via Eastern Gateway.

3. A small number of protestors were also seen by the side of the road gathering on the bank leading towards Prince Regent DLR Station. Police officers went to speak to this group to confirm their intentions.
4. Police officers had been informed that a number from the group had attempted to block the highway the previous day, in an attempt to prevent military vehicles from entering Excel Centre.
5. At approximately 10.35, approximately 20 protestors were seen to rush across Royal Albert Way into the southbound carriageway obstructing the progress of a military style vehicle which had to slow and stop.
6. The vehicle was a Pinzgaver yellow fitted van, registration number EU06 ZSK, registered to Selex Galileo Ltd.
7. A group of approximately 8 protestors were stood directly next to the bonnet of vehicle EU06ZSK. Two of this group had used "lock on" equipment to secure themselves to the front of the vehicle more effectively. The remaining 6 protestors had linked their arms to the 2 individuals who had "locked on" to the vehicle. These individuals were singing.
8. The two individuals who had "locked on" were Angela Ditchfield and Ana Gutierrez. Ana Gutierrez had locked herself onto the vehicle using a chain. Ms Ditchfield had placed one of her arms and hand inside a black cylinder shaped tube. With her hand inside this tube out of view she was holding the metal chain secured to the vehicle. Ms Ditchfield was not in fact locked on. The chain that hung from the black tubing was passed through the metal bars at the front of the vehicle. The other end of the chain was then wrapped around and around the hand of Ms Guterrez and appeared to be secured by a metal clip.

9. At 10.43 PC Williams gave Ms Ditchfield the 'five stage appeal', including that if she had not cleared the carriageway by 10.50 she could be arrested for obstructing the public highway. Ms Ditchfield acknowledged the warning and said she would not let go.
10. Following a request for bolt cutters they arrived at 11.17. Officers cut the metal chain at 11.18.
11. Once the chain was cut Ms Ditchfield immediately sat down on the floor making it more difficult for officers to escort her from the carriageway.
12. At 11.19 all protestors were escorted from the carriageway of Royal Albert Way and the vehicles that had been obstructed for 44 minutes began to move.
13. At 11.20 Ms Ditchfield was arrested by PC Williams for wilfully obstructing a public highway contrary to section 137 of the Highways Act 1980. When cautioned she replied "OK".
14. PC Golden acted as evidence gatherer for the incident recording his observations on a video camera. (WZG/09092015/01)
15. On 9 September 2015 Ms Ditchfield was charged with an offence of wilful obstruction of a highway contrary to section 137 of the Highway Act 1980.
16. Ms Ditchfield has no previous convictions, cautions or arrests.

In the case of Mr Abdulla and Mr Franklin the agreed facts were as follows:

1. On Thursday 10 September 2015 police officers were posted at the Excel Centre DSEI arms event. Officers attended at approximately 07.30. On arrival at the area a small camp of a few tents and a gazebo were visible on the grassy area between Royal Albert

Way and Victoria Dock Road, E16. The camp was believed to comprise of protesters. Throughout the morning the number of protesters in the vicinity grew. Some of the protesters held placards against war and certain countries.

2. At approximately 10.50 a group of protesters ran towards the Prince Regent DLR Station and sat down in protest outside the DLR Station on the Victoria Dock Road, E16. As a result of this other police officers were radioed to assist at the location.
3. A group of five protesters had lain down in the road linking arms. They lay in front of a HGV that was carrying a military vehicle on the back under tarpaulin, causing the HGV to stop in the road. As a result of the protesters lying in the road the HGV was unable to continue its journey causing traffic congestion. There were several TFL buses and other vehicles prevented from continuing their journey behind the HGV.
4. On the side of the road a bus stop had several individuals waiting to board the buses behind the HGV. Also on the side of the road was a female holding an "anti-arms" poster and using a microphone. There were also several other protesters in the immediate vicinity.
5. Police officers spoke to the protesters some of whom stated that they would move after 5 minutes. 5 minutes elapsed and the protesters remained lying in the road preventing the free-flow of traffic.
6. Police officers then commenced the 5 stage appeal with the protesters lying in the road. In response to the 5 stage appeal one protester stood up and went on to the pavement. The other protesters remained lying in the road. Those that remained were Isa Abdulla, Thomas Franklin, Alistair Wedderburn and Natalie Hynde.
7. PC Quarendum issued the 5 stage appeal to Isa Abdulla. Mr Abdulla shook his head when asked to get out of the road and to stop causing an obstruction. He continued to shake his head throughout the 5 stage appeal. When Mr Abdulla was informed of his arrest he shut his eyes and again shook his head. He made no reply to caution.

8. Following Mr Abdulla's arrest PC Quarendum attempted to hand cuff him. In attempting to do so Mr Abdulla tensed up his body and held his hands together very tightly making it impossible to separate him from the female to his right. With assistance from other officers Mr Abdulla was brought to his feet. He then refused to walk to the footpath as a result of which he had to be carried. Mr Abdulla was uncooperative throughout.
9. PC Northover issued the 5 stage appeal to Thomas Franklin. Mr Franklin ignored repeated requests to move to the footpath as he was causing an obstruction on the highway. When asked if he needed any assistance in moving, Mr Franklin stated that if the HGV van turned around he would move. PC Northover arrested Mr Franklin for obstructing the highway and answered "no comment" to caution. Mr Franklin was carried to the footpath as he refused to walk.
10. Whilst efforts were being made to move the protesters one of the buses, a route 325 one, had to move into the opposing carriageway to continue its journey. There were others police officers attempting to direct traffic on the eastbound carriageway despite which traffic continued to build. At another stage an ambulance, with its emergency hazard lights in use, was seen to approach the obstruction on Victoria Dock Road where it was forced to slow down.
11. PC Sims acted as evidence gatherer for the incident recording his observations on a video camera. (RAS/1)
12. On 10 September 2015 Isa Abdulla and Thomas Franklin were both charged with an offence of wilful obstruction of a highway contrary to section 137 of Highways Act 1980.

In the case of Mr Vranken, Mr Tinoco Torrejon and Mr Garate Neidhardt the agreed facts were as follows:

1. On Saturday 12 September 2015 police officers were briefed to attend the DESI Exhibition at the Excel Exhibition Centre in Newham, E16.
2. Police Officers were briefed that numerous protesters had attended the location, some camping over night, protesting about the arms industry holding an exhibition at the Excel Centre the aim of which was to sell military equipment to various governments/militaries around the world. There had been incidents of people lying in front of vehicles as they attempted to make their journey to the exhibition in the days previous. Concerns were raised over “lock ons” that had been seen in and around the small campsite created by protesters a short distance away.
3. “Lock ons” are used by protesters to attach themselves to one another. Protesters lock themselves together by a tube device around their wrists and then sit or lie down in the road obstructing traffic.
4. Police officers were briefed at the eastern entrance to the Excel site at 11:15 of incidents of protesters lying down in front of vehicles.
5. At approximately 12:16 a group of approximately 100 people were protesting on the pavement and on the road. The protesters were mainly on the road and were blocking the Royal Albert Way, E16 so that a large articulated lorry could not get past and make its way to the Excel Centre thereby causing a backlog of traffic. The vehicle had a registration number of WTPH37 on the rear and BSFN 71 on the front. The Royal Albert Way has a raised concrete barrier in the middle of the dual carriageway so that vehicles could not turn around, go back or go forward. The obstruction on the highway was preventing vehicles and lorries from making their way towards the London Docklands.
6. Some protesters were sat down in front of the lorry. Others had lain down in front of the lorry. Three of the males that had lain down in front of the lorry had locked themselves together using “lock ons”, obstructing the lorry from travelling any

further. They had formed a 3-man human chain using black tubing and chains that could not be easily broken. The protesters were singing songs.

7. At approximately 13:22 police officers initiated the 5 stage appeal by which point the group had been obstructing the Royal Albert Way for an hour. During this period several attempts had been made to stop the protesters obstructing the Royal Albert Way. The protesters were warned, amongst other things, that should they not move they could be arrested for wilfully obstructing a public highway contrary to s137 of Highways Act 1980. A number of the protesters were known to the police officers from having had interactions with them during the course of the exhibition.
8. The three males lying in the road, locked on to each other, were approached and given the 5 stage appeal. They responded that they could not hear what PC Blaszczyk was saying despite he being able to hear them clearly in response.
9. The protesters were given several warnings between approximately 13:22 and 15:30, at which point final warnings were given. A number of officers went through the protesters issuing final warnings with only a small number of people moving out of the road as a result.
10. At this point protesters had been obstructing Royal Albert Way for over three hours. During this time at least 2 cars were seen to drive over the central reservation kerb turning around as the road was obstructed. People staying in nearby hotels had walked past dragging suitcases past the obstructed road. A second lorry was parked further down the road unable to drive up to the Excel due to the obstructed road.
11. At approximately 15:38 a police line was created in front of the roundabout at the base of the Royal Albert Way. The roundabout leads directly in to the grounds of the Excel Exhibition Centre.
12. At 15.42 further attempts were made to move the protesters off the road. Some protesters moved off the road freely, others refused. The vast majority moved to the

pavement of their own free will. Most of those that would not move to the pavement police officers managed to push back onto the pavement. The protesters were actively pushing police back so they could get onto the road. There was a lot of shouting and screaming from the protesters whilst the police were shouting "Get back". A group of protesters were moved off the road onto the pavement with a grassy area behind.

13. Once the majority of the protesters were clear from the road there remained the three males, chained together, as well as an elderly lady who was lying on the floor refusing to get up. There were also approximately six other males and females sat with their arms linked also refusing to move out of the road. Further attempts were made by police officers to get these protesters to move and further warnings were given.
14. Once the road was clear the MOD Police Protest Removal Team moved in to begin the process of cutting free the three individuals who were "locked on". These three males had been obstructing the highway for a period of hours and had failed to move after a minimum of ten warnings.
15. Once released from the chain PC Kittredge arrested and cautioned Bran Vranken for wilfully obstructing a public highway contrary to s137 of the Highway Act 1980. Mr Vranken made no response to caution.
16. Once released from the chain PC Lucioni arrested and cautioned Tinico Torrejon for wilfully obstructing a public highway contrary to s137 of the Highway Act 1980. Mr Torrejon replied "ok" to caution.
17. Once released from the chain PC Howard arrested and cautioned Javier Garate for wilfully obstructing a public highway contrary to section 137 of the Highway Act 1980. Mr Garate made no response to caution.
18. Once the road was cleared of the protesters the lorry that had been blocked was escorted into the Excel Centre as well as several other vehicles.

19. PC Sims acted as evidence gatherer for the incident recording his observations on a video camera. (RAS/1)

20. On 12 September 2015 Mr Tinico Torrejon, Javier Garate Neidhardt and Bram Vranken were all charged with an offence of wilful obstruction of a highway contrary to section 137 of the Highways Act 1980.

In each of these cases the prosecution 'supplemented' the agreed facts by showing the court video footage taken at the relevant times which showed the acts of the defendants. A police officer attended court to, in the words of the prosecution, 'present' the video footage in the cases of Ms Ditchfield and Mr Abdulla and Mr Franklin but not for the video relating to Mr Tinico Torrejon, Mr Javier Garate Neidhardt and Mr Bram Vranken.

PC Gareth Williams presented the video relating to Ms Ditchfield. Under cross-examination on behalf of Ms Ditchfield PC Williams said:

**She was polite and it was a jovial atmosphere**

**She said in relation to the vehicle she had stopped – 'it either injures me or someone else.'**

**She asked me about searching vehicles to ensure that there were no items of torture.**

**She said in relation to the vehicle she had stopped – 'it helps to kill people more accurately.'**

Under cross-examination by Ms Mengesha he said:

**I believe Ms Ditchfield believed that there were items of torture going into Excel**

**I didn't record this as a crime.**

**I am not aware of instruments of torture being found at the fair.**

**I am not aware of officers being briefed about items for torture being available inside Excel.**

**I was dealing with an obstruction.**

PC Natalie Quarendom presented the video evidence in the cases of Mr Abdulla and Mr Franklin. Under cross-examination on behalf of those 2 defendants she said:

**They blocked one lane of the road so vehicles were able to pass by.**

**I didn't speak to Mr Franklin so I don't know if he said he would move if lorry went away.**

**I'm aware the vehicle was going to the arms fair but I don't know what it was carrying.**

In the case of Ms Mengesha and Ms Butler there were no agreed facts. The reason for this was not fully explained to the court. It may have been a consequence of Ms Mengesha representing herself or it may have been because these two defendants sought to raise an additional issue or potential defence which flowed from the location where they were arrested being a 'private road'.

In the case of Ms Mengesha and Ms Butler the court heard from Mr Mohammed Salman, who on the day in question was employed by Excel as a traffic marshal and from two police officers - PC Salam and PC Bow.

Mr Salman told the court that on 12/9/15 he was directing traffic and telling vehicles where to go. He went on to tell the court:

**There are 2 entrances at Excel one at east and one at west. On 12/9/15 I was only at one location – the west gate.**

**The roundabout where I was based is used by local residents and people driving past Excel and people coming to Excel.**

**There were temporary fences at the entrance to the Excel and there were more fences further along the road.**

**There was very tight security. The general public was not allowed into Excel.**

**Although the fences were open everyone going through was being checked.**

**There were 4 security guards at the fences. The fences were closed for the protesters.**

**They kept the whole of Excel barriered off. The whole site was barriered off but people who are entitled to be in there were allowed through – people who work for Excel or who are part of the show.**

**While the fences were open the traffic was flowing up and down the road. Everyone with a DSIE pass was allowed along the road or any with an Excel pass.**

**Other people shut the gates. I had no control over the barriers. The barriers where I was remained open. The barriers along the road were closed and had security on them.**

**At my gates there was one police guy and me. Then protesters came and tried to lock themselves to the gates. The protesters closed the gates. There were quite a few people there. They pushed the gates. The traffic was then stopped.**

**They used bike D locks to lock themselves by their necks to the gate. 2 ladies did this.**

**There was one policeman there and he radioed through to others. 25 police arrived. The locks were removed. The fences were opened and the people taken away and the traffic flow was back to normal.**

Under cross examination on behalf of Ms Butler, Mr Salman stated:

**I didn't touch one of the women and prevent her locking herself to the gate. I don't recall a third person locking herself to the gate.**

**I can't really recall how the women locked themselves on.**

**The panel that was not locked did allow a police van through but it was very tight.**

Under cross examination by Ms Mengesha, Mr Salman stated:

**I don't know who the gates and fencing belonged to.**

**They were just there for DSEI event.**

**I was just a traffic marshal that day.**

**This level of security was not usual.**

**I was instructed someone who lived in the area was allowed through and anyone using a local restaurant and any Excel user.**

**Most of the military stuff went through the other entrance**

**I think the inner gates were shut by another group of protesters.**

**I think it's a public highway because there's a restaurant through there and a residential area.**

**I had no discretion about closing the gates – security did that.**

PC Salam told the court:

**On 12/9/15 I was on duty at Excel. There were fixed and mobile patrols around Excel. I was called to Seagull Lane at 1340. There was a large crowd outside west gate**

**There were protesters who had locked themselves onto the fences. I can't recall exactly where it was on Seagull Lane. There were a lot of protesters there. I don't recall how many.**

**There were other police there. The protesters were locked to a fence by D locks and by bike chains. I can't say how many. I dealt with one. I tried to persuade her to give me the key and take off the D lock. I explained that she could be arrested and also explained implications.**

**She didn't respond.**

**There were 2 locks attached to her and to the fence. MOD police removed the first lock attached to fence. She was told she would be arrested for obstructing highway. This was Ms Mengesha. Someone offered her a cigarette which I removed.**

**She lay flat on the ground on her back. Me and colleagues picked her up. We moved her from the fence and waited for a van to arrive.**

**I arrested her as soon as the first lock was broken. She kept the other one on till released from custody. I can't really comment on traffic. I was aware that vehicles were being diverted because of the protesters.**

Under cross-examination on behalf of Ms Butler PC Salam said:

**I can't say if the gates along road were closed before the gates I was at.**

Under cross-examination by Ms Mengesha PC Salam said:

**You didn't speak at all but there was no force or rudeness on your part.**

**I saw you being released and you still had a D lock on your neck.**

**Every public order trained officer would give a 5 stage appeal in this situation and I am a public order trained officer. I gave you so many requests but you just wouldn't respond. I agree that I didn't put in my notes that I have given you the 5 stage appeal. I actually say I saw other officers give you the 5 stage appeal. The 5 stage appeal involves a simple request to stop; an explanation you are breaking the law; what happens if you're arrested and the implications for your job; a final request and arrest**

PC Bow told the court:

**On 12/9/15 I was on duty at the Excel. I was called to Seagull Lane**

**There was some white temporary fencing across the road which seemed to be there for regulating access. There were a number of protesters in front of the fencing and some police officers. The fencing was closed.**

**There were 2 women who'd locked themselves on to the fence. I had an interaction with Ms Butler. I was told that other officers had tried to get her to move. I said 'I'm PC Bow. What's your name?' She looked away.**

**I said 'You're blocking the road. We can't get vehicles along the road.' I said 'if you refuse to move you might get arrested for obstruction.'**

**This was a few minutes.**

**She didn't respond at all.**

**She was attached to the fence by a D lock. She had her back to the fence.**

**The MOD police came and cut through the D lock**

**We explained the implication re arrest and employment. I arrested her as they cut the lock off.**

**She became a dead weight so other colleagues helped me move her to roundabout.**

**I was aware of one other lady who'd locked herself to the fence.**

**I wasn't aware of what was happening to the fences.**

**I did ask if she had key for D lock and she ignored me.**

When cross-examined on behalf of Ms Butler PC Bow said:

**I don't accept she told me that she didn't have a key.**

**When I arrived she was locked on to the fence.**

**I don't accept any vehicles were able to pass through.**

**I don't recall any key being found on Ms Butler.**

At this stage PC Bow was shown photographs taken by a witness who was present on the day in question and which showed at least 2 police vehicles passing by the location where Ms Butler and Ms Mengesha were located and he agreed that his recollection had been wrong.

When cross-examined by Ms Mengesha PC Bow said:

**I have added to my notes that a 5 stage appeal was followed through. This is because I was told it had been given by Inspector Walton and PC Maloney.**

**I don't recall being given a briefing on the legality of what was going on inside Excel.**

### **Legal Argument on the Availability of the 'Prevention of Crime' Defence**

At this stage in the proceedings I heard legal submissions as to whether the defence of acting in the prevention of crime was available to the defendants and whether expert evidence in relation to which crimes were allegedly being committed at the DSEI arms fair was or was not admissible for consideration by the court.

The prosecution in their submissions on this issue relied heavily on the comments of Lord Hoffmann *R v Jones & Millings* [2007] 1 AC 136, HL. Those comments indicated, in a very robust fashion, that defendants in circumstances such as these defendants should only be permitted to rely on a 'prevention of crime' defence in the most exceptional circumstances.

However, in the case of *R v Barkshire and Ors* 21 May 2010, Flaux J sitting in the Crown Court at Leicester referred to Lord Hoffman's remarks on this issue as *obiter* and wrong. Flaux J indicated that save in the most exceptional circumstances such a defence should be left to a jury.

When given the opportunity to review Flaux J's approach and comments, the Court of Appeal ([2011] EWCA Crim 1885) did not overturn his analysis but stated that it had 'reservations about it' (paragraph 8). The Court of Appeal went on to say that:

**The circumstances in which what would otherwise amount to criminal conduct may be justified on the basis of honestly held, political beliefs of the perpetrators, will need reconsideration in this court on another occasion.**

That 'other occasion' does not appear to have yet arisen. I think that the best that can be said is that the law on this issue is in a state of flux, development and consequent uncertainty. I therefore applied the principle that any uncertainty must be resolved in a defendant's favour and I agreed to hear the arguments in relation to the potential 'prevention of crime' defence and the supporting expert evidence.

### **The Defence Case**

I then heard from the defendants and from three experts called on behalf of the defence. For the sake of clarity, I have set out in this judgement the defendants' evidence and then the experts although the expert evidence was mixed in with the defendants' evidence according to their availability.

Ms Ditchfield told the court:

**I am 36 and a full time mother. I have 2 children aged 11 and 9 - boys.**

**I went to Cambridge University.**

**I have a medical history – I had a brain tumour removed in 2010. I am consequently sometimes forgetful and incoherent. Sometimes I lose my way and panic. I experience anxiety and depression.**

**I am a Christian. My faith is everything to me. I seek to follow God in all I'm doing.**

**I run a small charitable fund 'Margaret's Hope' that provides support to parentless children in Uganda.**

**I started writing letters with Amnesty International when I was 12 about victims of torture.**

**I have been involved in challenging the arms trade through non-direct action – I have spoken to MPs I have used social media and email. I have petitioned. I bought a share in British Aerospace. I went and spoke to the people there about whether they realised the impact of their activities. I have been involved in co-ordinating support for refugees. I have campaigned to get DSEI stopped. I have stood for election for the Green Party.**

**I don't think these steps have made much difference to DSEI. There are some governments they don't invite but others they do - Saudi Arabia, Bahrain, Turkey, Pakistan and Israel which are regimes with [poor human rights records].**

**We know that real deals get made there. Relationships are established that are used in the future. The items sold are used to kill and torture people**

**Companies there have sold illegal torture weapons.**

**We thought there was a high probability of illegal torture weapons being at DSEI. When I spoke to the police I said that I would be happy to move out the way if they arranged an inspection of what was actually going on inside DSEI. There was also the issue of legal weapons being sold to questionable regimes such as the ones I have mentioned above.**

**On 9<sup>th</sup> September 2015 I went to pray and to prevent the arms fair from being set up as much as I could do.**

**The strategy was that the more lorries we could stop going in then ultimately the fewer people would be killed and the fewer crimes committed.**

**I wasn't actually locked on I was holding on to Ana through a tube.**

**That vehicle was destined to help kill people more accurately**

**I had spoken to driver. He said it was to let them 'see and keep them safe'.**

**The company was Celex. It is owned by a bigger company infamous for selling arms to Israel.**

**There were only 2 other vehicles behind this vehicle and one of those was a police van.**

**We were only blocking one half of the road and there was also a slip road leading to the hotel which was unblocked.**

Under cross-examination by the Crown Ms Ditchfield said:

**I am involved with the Campaign Against the Arms Trade and other groups.**

**I do object to the whole [DSEI] event. Everyone attending the event is contributing to death.**

**I was there in 2013 and on other days.**

**We [the groups] have tried bringing legal action.**

**I was involved in other actions including prayer and an act of penitence – wearing sackcloth and ashes.**

**I accept that there are actions at DSEI that are immoral rather than illegal. That was why I asked the police to arrange an inspection for the illegal activities as a compromise.**

**I accept I was on a public highway.**

**I don't accept that there was no illegal activity going on on the road. The driver tried to run Ms Ana Guterrez over.**

**At the east gate of the DSEI no crimes were being committed but crimes were committed elsewhere – in Yemen, for example.**

**The aim was to stop all vehicles getting in but especially the ones looking like tanks. This wasn't a tank but the indication was it helped to kill people more accurately.**

**I don't know what particular aspect of genocide the vehicle was destined for. Statistically it was likely to be bought by Saudi Arabia as they are the largest purchaser of arms from the UK. The state has been involved in the killing of civilians in Yemen during 2015.**

Mr Franklin told the court:

**I am Jewish by descent and an atheist. I have been politically active since a young teenager. I have been involved with Amnesty International. I was a member of the Labour party but left over their war-mongering.**

**I joined the Green Party and stood as a councillor 2 years ago.**

**I'm concerned with torture, human rights and the arms trade.**

**I've written to MPs about the arms trade and torture. Particularly saying we should not be working with certain countries or insisting harder on their desisting in certain activities. I've received no effective response.**

**I am also involved in blogging, tweeting, signing petitions and demonstrating.**

**I believe I saw something online that referred to protests going on. I was able to go on the Thursday. I wanted to be there in body to say I object to this.**

**I was convinced DSEI was going to be used for the illegal arms trade because independent reports re previous DESI arms fair have shown this always happens.**

**There's a wide variety of different sources all with similar conclusions.**

**I got to the area about 0930 and it was due to begin at 10.**

**I attended a seminar I think called Academics against Arms**

**Someone then headed off and was involved in stopping a vehicle carrying a tank. I felt that I had to be involved to uphold the rule of law. The government was not upholding its own laws – no action was being taken against companies involved in earlier deals.**

**The crimes I was concerned about were the sales of items for torture, the sale of weapons for use against civilians, and war crimes.**

**[The vehicle I stopped] looked like a tank it was sitting on the back of a low loader.**

**I was asked by a police officer if there was anything he could do to get me to move and I said to get the low-loader to turn around.**

Under cross-examination by the prosecution Mr Franklin said:

**We all have a duty to uphold the law. I felt I was doing my job that the police and government were failing to do.**

**I was planning to attend seminars.**

**In my view the vehicle was taking preparatory steps to commit a crime. I accept that I didn't know that it was going to commit a crime – there could have been intervening events. But it was a sales sample. If this one wasn't used for a crime, then an associated vehicle would have been.**

**I don't think its relevant that this particular tank might have been sold legally.**

**I do have an objection to the arms trade generally but I wasn't aiming to stop legal activities – I didn't try to stop a catering truck.**

**People buy tanks to kill people a few might be used for a May Day parade but they're used largely to kill and to kill civilians.**

**If the government enforced its own laws, I wouldn't have to take direct action. My action is based on a failure by government and the police to enforce its own laws and to enforce the rule of law.**

Ms Butler told the court:

**I am a freelance writer and am 36 years' old**

**I have no criminal convictions.**

**I have been writing articles about militarism in Turkey. I have been twice to Kurdistan.**

**I visited Jazira [I'm not sure if I have the spelling of this location correct] and interviewed families there about the oppression and repression there. I had met people who had had relatives killed by the state of Turkey.**

**During the arms fair the state of Turkey had put a 24-hour curfew on Jazira. Anyone who went out on streets was shot and killed.**

**There was clear professional opinion that Turkey was in breach of international law.**

**Turkey is a DSEI 'partner'. Turkey is invited every time. There would have been representatives from Turkey at the arms fair making deals.**

**Other arms deals I regard as immoral and should not be taking place**

**On 12/9/15 I started out at Tower Hill with group of Critical Mass cyclists**

**We cycled to the west gate.**

**We cycled up to a closed blue gate beyond where I was arrested.**

**There was a line of G4S security.**

**Some people tried to tie banners but were told they couldn't. Some sat and some did speeches.**

**I then walked down to the roundabout. I had arranged for a Kurdish speaker to speak at the east gate of Excel but had arranged to meet him at the blue gate.**

**I thought that this was part of the Excel complex.**

**Between the blue gate and the roundabout there were just protesters and police**

**I was standing chatting to a Kurdish friend**

**There was the roundabout and a security booth and then if you were walking to arms fair there was a police van.**

**The protesters were closing the gates.**

**The police van drove and stopped both gates closing.**

**A protester was trying to D lock herself to the gates. A security guard was getting very physical with her trying to get the D lock off her neck.**

**I sat effectively in her place and someone locked me to the fence.**

**I hadn't intended to do this I had intended to go to the east gate with the Kurdish speaker.**

**When I was locked on I had multiple purposes – to bring attention to the massacres that were happening that day in Jazira. I was worried about the woman who was sitting down and the man grabbing at her neck. I thought it was a great way to raise the issue of what was happening to the Kurds.**

**I think Ms Mengesha had 2 D locks. I think she was able to accomplish shutting the gate more successfully than I did. I didn't try to shut the gate because a police van had driven forward.**

**I don't think a single D lock could have locked on to both gates.**

**Someone took the D lock key from me and rode off on a bike.**

**it was a quiet road. I wasn't aware it was a public highway I thought it was a delivery road for Excel.**

**I was locked on for a short period.**

**The Turkish delegation does deal with DSEI and the arms bought there were used on Kurdish civilians.**

**I am a supporter of Campaign Against the Arms Trade.**

**I believe I have been on about 10 demonstrations in last couple of years.**

**I have also written about the actions Turkey has taken against the Kurds.**

**When I was arrested I was taken to the roundabout first and then to a Police Station. I was strip searched even though I had said I didn't have the key.**

Under cross-examination by Ms Mengesha, Ms Butler said:

**I don't recall any 5 stage appeal and I didn't hear you [Ms Mengesha] being given it.**

Under cross-examination by the prosecution Ms Butler said:

**I was protesting against the exhibition. I had travelled to the location with 40-50 others.**

**I was going to go to the east gate and the banner I had was intended for there.**

**The blue gates were closed. I'm not sure if they were official gates.**

**We only got half the gates closed. It was a partial obstruction and the police intervened to prevent a total obstruction. I don't agree that I increased the obstruction. The police van came to stop the gates closing completely.**

I can't say if it was more difficult to open the gate because I was locked on.

I don't know if they would have had to carry me to open the gate. If they didn't they would have hurt me.

Half the road was open. My contribution to the obstruction was minimal.

2 police vans drove through while we were locked on. One was to stop the gates closing and the other just drove through.

Ms Mengesha was locked on to a different gate to me. I could just about see her. She was 5-6 m away.

I locked on to raise awareness regarding the crimes that were happening elsewhere.

I don't agree that its unreasonable. I think that attaching yourself to a gate is more effective than standing with a banner. The Kurdish community has tried the straightforward demonstration and it has not been effective.

I don't accept we were successful in causing an obstruction. Vehicles and people were able to pass down the road.

The police intimidate me so I looked down when they came to speak to me. I can't recall if more than one was speaking to me. I recall them making sexist comments about a naked woman in a window.

I was aiming at preventing crimes in Turkey. I believe that in the DSEI arms fair which we were trying to stop there were crimes being committed in relation to the sale of weapons.

My third reason for attaching myself was that the person I was replacing was being hurt. There was one security guard and one police officer there at that time.

**The police officer was watching the security guard but not doing anything. He was making the situation worse.**

**I dispute that my actions were ineffective in preventing my friend from being hurt.**

**Cutting the D lock off me took a little time.**

**I was passive when they carried me. I didn't resist. It took 1-2 seconds to carry me. I didn't refuse to move - I became passive.**

**The whole incident took minutes.**

**The road wasn't blocked and we didn't succeed in our action.**

**I said I was looking at ground I didn't say I wasn't paying attention. I said I couldn't see Ms Mengesha very well not that I couldn't hear what was said to her.**

Mr Abdulla, with the assistance of an Arabic interpreter, told the court:

**I was born in Bahrain and grew up there. In my childhood I was like other children and attended school. Within a few years my life changed**

**I was aware of demonstrations in Bahrain.**

**I realised that there was mistreatment and unfairness in my country.**

**I heard of arrest and torture.**

**There were small demonstrations before 2011 but I didn't take part.**

**In 2011 there was an uprising, part of the Arab Spring, and I took part.**

**The police were heavy handed in their response to the demonstrators.**

**This was an uprising against the government and the ruling family of Bahrain.**

**The police used munitions and gas against the demonstrators. The gas was aimed at specific demonstrators and resulted in deaths.**

**I saw people being killed and injured.**

**Saudi Arabia and UAE entered the country and crushed the uprising.**

**I was arrested myself - more than once.**

**The first time I was followed by a number of police cars. I realised I had to run away.**

**I didn't succeed in running away. A man chased me and jumped on me causing me to fall. The police came and wanted to take me to a police station.**

**I refused on basis I had committed no crime – I was concerned I would be tortured and killed**

**The man put a gun against my head and told me to go with police. He said If I didn't he would kill me.**

**Then they used force to take me to an open area and they took off my clothes.**

**I was beaten. I fell unconscious. They were beating me to admit things I didn't even know about. After the beating I wasn't able to stand or even move. They picked me up and put me in car. These were I think the police.**

**They were hitting me with helmets and the bottom of their guns on my head.**

**They even threatened to cut off my penis if I didn't admit to being involved in criminal offences**

**My hands were tied with cable tie at the back. They were holding my feet.**

**There were 2 other occasions when I was arrested - in 2013.**

**I continued to attend demonstrations.**

**The police continued to attack such demonstrations.**

**They arrested killed and tortured people.**

**I was arrested and tortured.**

**I managed to get to the UK and have been granted asylum here on the basis of what happened to me in Bahrain.**

**I attended DSEI to protest against the sale of arms at the fair because dictatorial regimes get armed through this fair included the regime that victimised me.**

**When I was at DSEI I saw the vehicle coming - it dropped its speed and I went in front of it and I sat on the floor.**

**Most likely the lorry would be sold at that fair and used to kill innocent people.**

**British made tanks [and armoured vehicles] were used in the demonstrations in Bahrain to crush the uprising.**

**I said to the police they should address the wrong doing at the fair and not me.**

Under cross-examination by the prosecution Mr Abdulla said:

**We didn't block the road totally. Traffic was running even when I was doing what I was doing. Buses passed by.**

**The video shows better than what's been put in writing - how vehicles could pass by.**

**My lying in the road was an extension of my freedom of expression and my protest against what was happening at the arms fair. What's important is the crimes that would be committed in the future. Those crimes are more serious than what I did.**

**I don't break the law but I express myself.**

**I accept I may not know precisely where the vehicle was destined for but the vehicle might be sold legally but then used illegally.**

**There may have been some countries with democratic governments in attendance at the fair, but Saudi Arabia, Bahrain and Turkey are the biggest buyers from there and they are all oppressive regimes that have mounted attacks on civilian populations.**

**I know that that item was going to be exported to a dictatorship.**

Ms Mengesha told the court:

**I work in the voluntary sector supporting vulnerable people.**

**I am a mother with a 9-year-old daughter.**

**My girl's father is a survivor of torture in Eritrea and Libya. The population is forced to fight in Eritrea.**

I believed at the time that the DSEI fair was occurring that there would be items for sale that could be used for torture. This is illegal and immoral.

I also felt that I could be involved in preventing war crimes in Yemen as Saudi Arabia and coalition members [of the intervention in Yemen] were invited to DSEI.

By September 2015 [the date of DSEI] there had been on and off 6 months of air strikes in Yemen mounted by the coalition. The air strikes had targeted civilians.

There had been a short cease fire that had broken during that week [the week of the actions at DSEI].

I had been reading trade press including Janes. This suggested there was an imminent ground troop invasion of Yemen including troops from Egypt and Sudan. There had been relentless bombardment of civilians and civilian infrastructure.

My understanding was that such targeting was a breach of international law.

The day before my action Oxfam had put out a press release urging UK to cease selling arms to Saudi Arabia because of what was occurring in Yemen.

I tried a lot of things before my direct action. I signed a petition from Amnesty. I was one of a group who contacted Caroline Lucas and got her to raise questions in Parliament about DSEI. I also went on a speaking tour and delivered lectures about why the issue needed to be raised.

I was also involved in a private prosecution against 2 companies that had been found to be selling illegal arms at the 2013 DSEI arms fair. We wanted the CPS to take this over but they didn't.

I also looked into a Judicial Review of arms sales to Saudi Arabia. But I don't qualify for legal aid and it wasn't clear if I had standing to bring such an action.

I didn't know what I was going to do the morning I was arrested.

I met with others that morning. I managed to get some bike D locks.

About early lunch time I agreed to be locked by D lock to some gates. There was no big plan. People were acting autonomously.

I became locked on to a gate.

I was at the outer perimeter fence [of the arms fair].

I was locked on to the gate. I heard shouting to right and the gate was being yanked about as it was temp fence. I was shouting 'you're strangling me'. The D lock was quite tight round my neck

I thought I saw 2 security personnel. They were shouting which was quite deafening.

The gate on the right hand side - there was a big gap where one of the gates would have been. We were only blocking a quarter of the road as the gate I was on was at an angle and the other gate was open.

I was concentrating on the pain to my neck.

Things were informal. No one was there. It seemed a bit ridiculous. I tried my best to stop the arms fair but ultimately I think I was unsuccessful.

I don't recall being given a '5 stage warning'.

**I recall a large white man saying to me 'I don't suppose there's any point in asking you to move?'**

**Then someone came and sat next to me as a supporter.**

**Then an officer – I think PC Salam – came and said to me we all have the right to protest as long as its peaceful. Someone else said to him 'She's inanimate and not speaking – how more peaceful can she be?'**

**The cutting team came really quickly to cut off the D lock. I was quite quickly cut off. I was moved to a central reservation. I let them carry me. Then they pinned me to the ground for what like seemed for forever**

**Salam, I think, then pinned me to the ground by my hands and wouldn't let me move.**

Under cross-examination of behalf of Ms Butler Ms Mengesha said:

**It was like the area was on lock-down. There was nothing going on. It looked like a check point to a secure private area. No private cars passed through. It was really quiet embarrassingly so as it meant our action was ineffective.**

**I think police cars turned up and went through.**

**Residents of the area could pass freely through on a different route.**

Under cross-examination of behalf of the prosecution Ms Mengesha said:

**I wish I had caused an obstruction but I think I was unsuccessful.**

**There was nothing wanting to access the area I was partially blocking.**

**I can't say whether the police van came in response to my action – I can't speak for the police.**

**I was concerned about promotion and sale of torture equipment – that's a breach of domestic law not just the breach of the law in a foreign jurisdiction. I was also concerned about the use of weapons in the killing of civilians. I don't agree that my tactics were doomed to be unsuccessful – such tactics in Australia have been successful in shutting down arms fairs.**

**I have no doubt that crimes were going to be committed at DSEI.**

**I don't accept I was impacting on other road users. There was no one there. I intended to block the road but I failed.**

Mr Vranken told the court:

**I work for a peace organisation in Belgium**

**I have been involved in various campaigns including a major campaign against nuclear weapons being stationed in Belgium.**

**I am currently involved in campaigning against the arms trade.**

**Before that I was working for the UN in Malawi. I received refugees from Congo and Burundi.**

**I met a lot of people heavily affected by war who were traumatised. There were many children.**

**I heard about the arms fair at DSEI going ahead.**

**Getting involved was a way of expressing my discontent against the arms trade.**

**I think many of the weapons being sold are being sold in breach of the law. For torture and to create regional instability.**

**I got to DSEI at 10 am on the day in question.**

**There was a large crowd of about 200. The police surrounded the crowd.**

**The police also surrounded a lorry headed for DSEI.**

**Me together with 2 others - we locked ourselves together and lay on the floor.**

**If someone wanted to get round me they could have done so. If they had done so they would have encountered the demonstrators and the police.**

**I was concerned that the sales at the arms fair would breach international humanitarian law.**

Under cross-examination of behalf of the prosecution Mr Vranken said:

**Its possible that the police were asking the demonstrators to move off the road. it was hard to hear. I was in the road with several others for several hours.**

**There was 3 of us chained together and an elderly lady who was just sitting there.**

**We weren't the only ones causing an obstruction - there were a lot of police.**

**The vehicle was a big lorry. I didn't know what was inside but I knew it was going to the arms fair.**

**I think that the criminal offences at the arms fair were much bigger than what I was doing. I think the prevention of war crimes is very important.**

**I don't see the difference between seeking to stop the arms fair and 'demonstrating'.**

Mr Garate Neidhardt told the court:

**I was born in the US because my father was in exile from Chile. We moved back to Chile when I was 18 months old.**

**I spent the first 10 years of my life under Pinochet. I recall many negative things from this period including the father of a friend being killed**

**I moved to the UK.**

**I have been working with groups who are involved in promoting peace and non-violent demonstration tactics.**

**I attended my first arms fair in 2005. I have attended them all but haven't committed any acts of civil disobedience.**

**Every other year I would attend. The same things occurred – weapons being sold for torture and weapons being sold which were then used by regimes to kill civilians.**

**So in 2015 I made a conscious decision to use my body to seek to stop the fair.**

**I arrived at the road in question and I saw a lot of people and a lot of police.**

**The people in the road were blocking the traffic.**

**I laid down to stop a lorry entering the arms fair.**

**I had been watching and every single lorry passing by had been heading for Excel and DSEI.**

**This was before the arms fair started and the lorries were there to set up the arms fair.**

**The idea was to stop the fair starting.**

**Different police cut me free from the original police.**

Under cross-examination of behalf of the prosecution Mr Garate Neidhardt said:

**I was there for some time before I lay down.**

**I had seen some lorries go in.**

**I don't accept that just because some had gone in that the fair was going to be successful regardless of my actions.**

**I had sought to block previous lorries but just by standing in the road. I then went to lock myself to others. I cannot say that I knew I was going to be moved.**

**The lorry moved while we were still in the road**

**There have been other demonstrations where I have just been left to lie in the road rather than being removed.**

**I believe that my actions were reasonable and proportionate given the crime and harm I was seeking to prevent.**

Mr Tinico Torrejon told the court:

**I was born in Peru but I now have Belgian citizenship.**

**I have been involved with many organisations most recently with the peace and anti-terrorist movements.**

**I am a trainer in non-violent direct action and civil disobedience.**

**I am also involved with INTAL – trying to raise awareness of torture and the breach of civil rights in non European Union countries.**

**The Campaign Against the Arms Trade invited people to attend London during the period leading up to DSEI.**

**This was the first time I had attended an arms fair.**

**I have family in the Army. I love them but I don't agree with what they are doing.**

**I was in the Peru during the terrorist period of Shining Path. I don't agree with the terrorist tactics or the army tactics in response either.**

**I have been involved in all sorts of actions – theatre, demonstrations and other actions regarding the arms trade but there has never been any change. I have become more convinced about the need for civil disobedience.**

**I was only in one lane of the road. I took up body width and outstretched arm.**

**Three of us were arrested.**

Under cross-examination of behalf of the prosecution Mr Tinico Torrejon said:

**I was there in solidarity with people in the UK to shut down the arms fair.**

**We were a whole bunch of people obstructing the road including the police.**

**When I was lying locked with the 2 others vehicles were passing around us.**

**They were not going so much around as we were near the pavement.**

**I don't know what was in the lorry but it was headed to the arms fair**

**DSEI was involved in the sale of arms to countries that used them against civilian populations and also for torture. I accept I don't know what was in that particular lorry.**

### **The Expert Evidence**

The court heard from three expert witnesses called on behalf of the defendants – Mr Oliver Sprague, a Programme Director at Amnesty International with responsibility for the charity's work on arms control and policing; Ms Kathryn Hobbs from the Campaign Against the Arms Trade and Mr Sayed Ahmed Alwadaei from the Bahrain Institute for Rights & Democracy.

All three expert witnesses adopted their reports as their evidence in chief and rather than reproducing these within the judgement I have annexed the reports to the judgement.

Under cross-examination of behalf of the prosecution Mr Sprague said:

**DSEI is one of the largest exhibitions of its kind in the world. Around 1100 exhibitors. Its over 3-4 days.**

**It's a busy event I don't know number of attendees.**

**I accept that there is a significant amount of legal activity that goes on at DSEI. I've been asked to focus on illegal activity.**

**I can't say if any illegal activity was specifically identified at the 2015 fair. I was barred from entering the fair that year.**

**There have been memorandums of understanding I think for every fair – between the government and the fair organisers. These are supposed to prevent the illegal sale of arms.**

Under cross-examination of behalf of the prosecution Ms Hobbs said:

**Its very hard to say when an arms deal has actually been done but fairs are very important in 'getting there'. The signing of a contract is the end of the process.**

**The fair does, I accept, also facilitate the lawful sale of arms although there is always the qualification that arms sold lawfully may then be used by the purchaser in an unlawful manner.**

Mr Alwadaei was not cross-examined by the prosecution.

### **The Possible Defences**

A discussion was held at the start of the hearing with a view to identifying the issues in the case and the possible defences that the defendants would be seeking to rely on. The prosecution and the defence representatives had also prepared some skeleton arguments which were submitted to the court although due to generally rather poor case management (a point I shall return to later) these were made available to me just a few minutes before the start of the trial and did not address all the relevant issues adequately – for example the skeleton from the prosecution dealt almost solely with the possible defence of 'necessity' which none of the defendants was actually relying on.

The actual possible defences/issues can be summarised as follows:

1. Whether the prosecution has satisfied the court so that it is sure that the defendants were not acting in the prevention of crime.

2. Whether the prosecution has satisfied the court so that it is sure that the defendants' use of the highway was unreasonable. This entails, amongst other points, an examination of the nature and length of the alleged obstructions and a consideration of the defendants' rights under Articles 10 and 11 of the ECHR and, in Ms. Ditchfield's case Article 9.
3. In the case of Ms Mengesha and Ms Butler whether the acts complained of took place upon a 'highway' – it having been admitted by the prosecution during the course of the trial that the location where Ms Butler and Ms Mengesha took their action was a private road.
4. During the course of the trial some of the cross-examination also appeared to suggest that for some of the defendants there might be an argument that there was no actual obstruction because vehicles and pedestrians were able to manoeuvre around them.

At the conclusion of the evidence I asked all the legal representatives and Ms. Mengesha to address me initially only upon the 'prevention of crime' defence so that I could consider my decision on that issue alone before moving, if necessary, on to considering the other issues. Mr. Payter, speaking, I think, on behalf of most of the defendants rather than just Ms. Ditchfield asked that I consider and determine all of the issues outlined above.

He made this request for two principal reasons:

1. If I were to reach a decision on the 'prevention of crime' issue that was in favour of the defendants, then there was a possibility that the prosecution would seek to challenge my analysis by way of an appeal. If my analysis was then overturned on appeal the case would quite possibly be remitted back to this court for a determination of the other issues and this would prolong the litigation.
2. If I were to determine one or more of the other issues in favour of the defendants, then this might render any appeal on the 'prevention of crime' issue purely technical and may even discourage the prosecution from mounting any appeal.

Whilst I understand the reasons for My Payter making this suggestion it is not a course that I am going to follow for the following reasons which are overlapping:

This case has been the subject of very poor case management. The responsibility for this lies principally with the court. It should have been quite clear to the court that at the time when the 'Preparing for Effective Trial' forms were completed that there were a very substantial number of unresolved issues – the issues in the case were unclear, the witness requirements had not been addressed adequately, the need for CCTV playing equipment had not been identified, no directions were given for the service of skeleton arguments and authorities nor for the defence to serve expert evidence or identify witnesses they intended to rely on. This was the type of case that should have been listed for a pre-trial review 4-6 weeks before the trial to ensure that preparations had been appropriately undertaken and to give final directions to ensure that the trial ran as smoothly as possible.

Although I acknowledge that the court is mostly at fault here the various legal representatives also bear a responsibility. The PET forms were poorly filled out. There have been complaints in relation to inadequate disclosure and yet no defence representative sought to return the matter to court for further directions. The issue as to the admissibility of expert evidence could and should have been dealt with at a preliminary hearing. The CPS were entirely passive over checking the availability of CCTV playing equipment and whether their recordings worked on it. This list is not exhaustive.

The net result of this poor case management is that the trial has taken approximately the time estimated on the PET forms more by luck (and some hard work by all concerned outside of the hours of court sitting) than careful planning. Mr Payter urges that the other issues in the case can be considered and resolved within the 5 days allocated to the trial but I cannot agree. It seems to me that consideration of the 'prevention of crime' issue alone will ultimately take the work involved well beyond the 5-day time estimate. To consider and determine the other issues will involve the case going 'part heard' and will create a further delay of the type that Mr Payter is seeking to avoid.

I also do not agree that determining the other issues would have the potential to render any challenge to my analysis of the 'prevention of crime' issue (if favourable to the defendants) academic or would have the potential to discourage any appeal by the Crown. It seems to me that all the issues raised by the defence, if resolved in their favour, have the possibility of being challenged by an appeal by way of case stated – they are not, in short, purely factual issues – for example the 'private road' issue raised on behalf of Ms Butler and Ms Mengesha, if resolved in their favour, would be amenable to a challenge along the lines of 'bearing in mind the current state of the law on what constitutes a 'highway' was the District Judge right to determine that this particular location was not a 'highway'?'

On the 'private road' issue – I also consider that this issue has simply not been adequately explored during the course of the trial. It was only on the second day of the trial that the defence properly set out their concerns on this issue when they sought to make use of an unserved s.9 statement from the local authority explaining which were private and which were adopted roads in the relevant area. Ms Daly quite rightly objected to this. It was only on day 3 of the trial that the Crown conceded that the location where Ms Butler and Ms Mengesha were arrested was a private road. The fact that the location is a private road does not automatically mean that it is not a 'highway'. There are other issues to be considered and, in my view, because of the late identification of this point, these issues have not been properly explored with the witnesses attending court. If this issue was to be determined, then it is quite possible that some of the witnesses would have to be recalled to address this specific issue. Again, this would inevitably involve the case going 'part-heard'.

The final (an arguably least significant) point I would make here is that although Ms Daly, on behalf of the CPS, has done a commendable job in presenting the Crown's case there have clearly been many points where she has struggled. This has partly been due to late and poor case preparation by the defence (resulting in a substantial number of documents being thrust at her during the course of the trial) and partly due to the CPS's inadequate resourcing of this case – it is not appropriate for the prosecution of 8 defendants involving 4 defence advocates and a self-representing defendant to be handled by a sole counsel. Ms Daly should at the very least had some form of administrative support. There is potentially an equality of arms issue here – although the CPS must take the blame for their own poor case management decisions.

The issues raised by this case are quite complex and even at this level of tribunal are of some significance. They should be debated thoroughly if the court is going to make the correct decisions. As I have said Ms Daly did a commendable job in presenting this case but her submissions in relation to the 'prevention of crime' were not as detailed and coherent as I would have wished and I have a concern that this would be repeated in relation to the other issues set out above.

For all these reasons and because of the decision I have reached on the issue I am going to confine myself to a consideration of the 'prevention of crime' issue alone.

### **The Prevention of Crime Issue**

Section 3(1) of the Criminal Law Act 1967 provides:

**A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.**

Mr. Payter, whose submissions were adopted by the other defendants, sets out the basic argument on behalf of these defendants as follows:

**A person's belief that a step was necessary to prevent a crime must be assessed subjectively. Lord Hoffman in *R v Jones & Millings* [2007] 1 AC 136, HL noted:**

**"72. In *R v Baker* [1997] Crim LR 497, the Court of Appeal decided that in considering whether a defendant was entitled to rely upon section 3, it must be assumed that the events which the defendant apprehended were actually going to happen. Provided that his belief was honest, it did not matter that it was unreasonable. If those events would in law constitute a crime, he was entitled to use such force as was reasonable to prevent it.**

73. My Lords, I have no difficulty with these propositions. I am willing to assume that, in judging whether the defendant acted reasonably, it must be assumed that the facts were as he honestly believed them to be. But the question remains as to whether in such circumstances his use of force would be reasonable. And that is an objective question.”

The defence is therefore established if the Court is satisfied that (i) the defendant honestly, even if mistakenly, believed he acted to prevent a crime; and, (ii) in the circumstances as he believed them to be the force used was reasonable.

In relation to reasonableness of the force used, the Criminal Law Revision Committee noted in relation to the then proposed section 3 defence: *“The court, in considering reasonable force, would take into account all the circumstances, including in particular the nature and degree of force used, the seriousness of the evil to be prevented and the possibility of preventing it by other means...”*

The defence have noted the comments about section 76 of the Criminal Justice and Immigration Act 2008. Section 76 clarified the ambit of the section 3 offence. The explanatory notes to the 2008 Act (§§532-534) make clear that section 76 was not intended to change the test to be applied, but *“to improve understanding of the practical application of these areas of the law. It uses elements of case law to illustrate how the defence operates.”*

Section 76 applies to force used against a person only (see section 76(1)(b)). With that limitation in mind, section 76(7)(b) provides *“evidence of a person having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.”*

In summary, in order to find that Ms. Ditchfield was not acting to prevent a crime, the Court must be sure of at least one of the following:

- (i) Ms. Ditchfield's intention in applying force to the vehicle was not to prevent a crime;**
- (ii) Ms. Ditchfield did not honestly believe that the force used was necessary to prevent a crime; and,**
- (iii) The force used was not reasonable in the circumstances as she believed them to be.**

Ms. Daly's response to these contentions can be summarized as follows:

Ms. Daly first submitted that the actions of the defendants in chaining themselves to vehicles or fencing or lying in the road cannot properly be characterized as using 'force' and on that basis alone the defence under s.3 Criminal Law Act 1967 would not be available to them.

Ms. Daly characterized the actions of the defendants as a form of 'self-help' and submitted that case law indicated that 'self-help' was only appropriate in the most limited circumstances. Ms. Daly referred to paragraph 78 of *R v Jones & Millings* [2007] 1 AC 136, HL, where Lord Hoffman stated:

**In principle therefore the state entrusts power to use force only to the armed forces, the police and other similarly trained and disciplined law enforcement officers. Ordinary citizens who apprehend breaches of the law, whether affecting themselves third parties or the community as a whole, are normally expected to call in the police and not take the law into their own hands. In *Southwark LBC v Williams* [1971] Ch 734, 745 Edmund Davies LJ said: 'the law regards with the deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances.'**

Ms. Daly characterized the defendants' actions as unreasonable and disproportionate – even if some unlawful activity was taking place at DSEI there was a significant risk that they would inconvenience parties engaged in wholly lawful activities at DSEI and indeed parties who were not involved in the arms fair at all.

Ms. Daly also referred to the defendants' actions as ultimately being wholly unsuccessful in preventing any criminal offences, and that this was an inevitable and foreseeable outcome and that this point needed to be considered in assessing the legitimacy of the defendants' actions.

Ms. Daly also cautioned legitimizing the type of activity in which the defendants had engaged suggesting that it might 'open the floodgates', so to speak, and allow demonstrators to take whatever action they deemed fit in relation to activities of which they disapproved and which they believed to entail criminal wrongdoing.

In relation to the first point about the defendants' actions not amounting to the use of force I thought that Mr. Payter dealt with this point commendably well in his submissions:

#### **The requirement of force**

**Force, for the purposes of section 3, need not be directed against a person (Swales v Cox [1981] QB 849; R v Renouf [1986] 1 WLR 522). In Swales v Cox, the Divisional Court observed that a police constable uses "force" if he meets an obstacle to his entry and applies energy to the obstacle with a view to removing it. It followed that force was used if a door, which is ajar, is pushed open or the handle of a door is turned and the door is eased open. In Renouf, the defendant chased a person who had assaulted him using a car, which he parked to prevent their escape.**

**Lord Hoffman in Jones & Millings assumed for the sake of argument that "chaining oneself to railings" constituted force for the purposes of argument (§71).**

**As observed in the case comment on Birch v DPP [2000] Crim LR 301, "if it would, in certain circumstances, be lawful to use force, it would be very odd indeed if it were unlawful, in the same circumstances to do less harmful acts which would be crimes in the absence of a defence. If, for example, it would be reasonable in certain circumstances to drive into an intending assassin's vehicle to prevent him committing murder, it could hardly be unlawful to obstruct his passage along the**

**highway by parking across the road. The answer seems to be that section 3 is a partial codification of the common law, and that the common law would still justify reasonable acts, other than the use of force, in the prevention of crime.”**

For my part, I prefer Mr. Payter’s analysis and references to pertinent case law to the prosecution’s assertion that what the defendants did not being capable of being characterised as force. I conclude therefore that the defendants’ particular actions do not preclude them from seeking to rely on the s.3 Criminal Law Act defence or its common law equivalent.

In relation to Ms. Daly’s reference to the restrictions on the availability of self-help – I of course accept the judgement and analysis of higher courts. But in this particular case the court has been presented with clear, credible and largely unchallenged evidence from three experts that criminal wrongdoing had occurred at past DSEI exhibitions involving the sale of arms to countries which then used those arms against civilian populations and the sale of items that were inherently unlawful such as cluster munitions and items designed for torture and inappropriate restraint. There was, as a result, a compelling inference that such activities would also take place at the 2015 DSEI exhibition.

The court was also presented with clear, credible and largely unchallenged evidence that such criminal activities are not being properly investigated and, where appropriate, prosecuted. Ample evidence of this was provided by the three experts. One can also look at the response of the police officers to whom these individual defendants complained about likely criminal activity occurring at the 2015 DSEI fair. Such complaints were not, apparently, taken seriously and no action was taken in relation to them.

It seems to me that the strong restrictions on self-help need to be viewed in this very particular context.

In relation to the prosecution submission which dealt with the inconvenience caused to innocent third parties by the defendants’ actions I cannot accept that there is a principle that ‘collateral inconvenience’ renders any actions taken, aimed at the prevention of crime,

illegitimate. There are ample examples of steps taken to prevent crime causing collateral inconvenience – the closure of an area to apprehend a criminal, the emptying of a building as the result of a bomb threat, the security measures that we all experience now at airports. I note that the prosecution does not cite any authority to support their proposed principle.

Similarly, I do not accept that there is a principle that means that very limited chances of actually preventing the apprehended crime renders steps taken to do so illegitimate. Would a frail elderly gentleman who plucks fruitlessly at the sleeve of an escaping shoplifter be committing an assault but the security guard who successfully brings him to the ground not? I don't think that this can be the case.

In reaching my decision on the prevention of crime issue I have also taken into account the particular actions taken by the defendants. Those actions were non-violent, targeted and restrained.

I also do not accept that any decision made by this court would 'open the floodgates' in terms of legitimizing actions taken by demonstrators. It is a decision that is confined to its own very particular facts. It cannot and does not set any precedent.

Ultimately I return to the three-stage test proposed by Mr. Payter which I have already referred to. Although Mr. Payter refers only to Ms. Ditchfield his points apply to all 8 defendants:

**in order to find that Ms. Ditchfield was not acting to prevent a crime, the Court must be sure of at least one of the following:**

- (i) Ms. Ditchfield's intention in applying force to the vehicle was not to prevent a crime;**
- (ii) Ms. Ditchfield did not honestly believe that the force used was necessary to prevent a crime; and,**
- (iii) The force used was not reasonable in the circumstances as she believed them to be.**

I believe that the questions posed by Mr. Payter are the correct ones for me to consider in this case.

On the first point it seems to me that the evidence I have heard from the eight defendants points clearly to each of them holding a sincere intention to try and prevent the sale of unlawful arms and the sale of arms used for unlawful purposes against civilian populations by seeking to obstruct the passage of vehicles heading to DSEI or by seeking to block the general access to the arms fair. Each of the defendants has had a long-standing involvement with campaigns against the arms trade, each of them was very knowledgeable on the subject and each was aware of the literature that describes the exhibition of unlawful arms at previous DSEI fairs, and the use of arms lawfully sold through the medium of arms fairs for unlawful purposes, and the consequent likelihood of similar sales taking place at the 2015 fair. Some of the defendants had direct experience of the use of weapons sold by the United Kingdom against civilian populations. The defendants' belief that weapons were being sold unlawfully at DSEI was supported by the detailed expert evidence on this point.

It follows that I cannot be sure that any of these defendants' intention in applying force (or its common law equivalent) was not to prevent a crime.

On the second point I was impressed by the evidence of each defendant, which in each case was expressed with great sincerity, as to how they came to the conclusion that the form of direct action which they chose to adopt was the only effective method left to them in seeking to prevent the unlawful sale of arms which they believed was occurring at the 2015 DSEI. These defendants' decisions were not irrational, impulsive decisions taken on the spur of the moment but decisions that were reached after the consideration of and attempts at other methods of bringing the issues to the attention of the government and the relevant UK law enforcement agencies. Again the defendants' decision making process was supported by the expert evidence which indicated a repeated failure of the UK law enforcement agencies to take effective action in relation to the unlawful sale of arms at previous DSEI arms fairs.

It follows that I cannot be sure that any of these defendants did not honestly believe that the force used was necessary to prevent a crime.

In relation to the third point - I have taken into account, in particular the nature and duration of the actions taken by the defendants. As I have already indicated, their acts were non-violent, targeted (in the sense that the defendants sought to target either a vehicle clearly destined for the DSEI fair or the immediate access to the Excel site) and limited in duration (although arguably duration was more a function of the police decision-making rather than anything the defendants did). The actions taken by the defendants were relatively minimal without being completely ineffective. As the preceding paragraphs indicate I believe that the defendants were perfectly sincere in their conclusions first that the unlawful sale of arms would almost certainly be occurring at DSEI and, secondly, that their intervention was necessary to seek to prevent this.

It follows that I cannot be sure that the force used by any of these defendants was not reasonable in the circumstances as they believed them to be.

For all the reasons set out above the simple fact is that I am not sure on any of these points. My uncertainty must be resolved in the defendants' favour and I therefore dismiss each charge against each defendant.

**District Judge Angus Hamilton**

**15 April 2016 (full judgement provided 18 April 2016)**