

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2015/CLE/gen/00702**

B E T W E E N

JINNAH FORDE

First Plaintiff

AND

RESHENDA FORDE

Second Plaintiff

AND

A.B. (A Minor)

(a minor, by Jinnah Forde his father and Next Friend)

Third Plaintiff

AND

THE HONOURABLE ATTORNEY GENERAL

First Defendant

AND

ROYAL BAHAMAS POLICE FORCE

Second Defendant

Before: Acting Registrar Renaldo Toote

Appearances: Damien Gomez K.C. and Dywan Rodgers of Counsel for the Plaintiff
Luana Ingraham of Counsel for the Defendants

Hearing date(s): 28th June 2022, 29th June 2022, 30th June 2022

Constitutional Law – Deprivation of Liberty – Article 17 and 19 of the Constitution – Unlawful arrest and detention – Police officers arresting landlords in civil contractual dispute over forfeiture of rent – constructive arrest — No reasonable suspicion of criminal offence – Detention for 31 hours — Whether entitled to compensation.

ASSESSMENT OF DAMAGES

Toote, Registrar (Acting)

Introduction

This matter comes before the Court for assessment of damages following a consent order filed on 30 November 2020 for the entry of judgment without admission of liability. Jinnah Forde and Reshenda Forde ("the Claimants") are a married couple who seek damages (including exemplary, aggravated, compensatory and vindictory damages) arising from wrongful arrest, false imprisonment, assault and battery, and the violation of their constitutional rights under Articles 17 and 19 of the Constitution by officers of the Royal Bahamas Police Force ("the Defendant").

2. The circumstances giving rise to this claim are deeply troubling, revealing an abuse of executive power. What began as a civil dispute culminated in the overnight detention of the Claimants, who were taken by police from their home in the early hours of the morning to attend at the police station where they were subsequently detained for approximately 31 hours.

Background Facts

3. On 21 March 2014, the Claimants as landlords, entered into a written lease agreement with a prospective tenant whom we will refer to as "SB" (as this person is not a named party to this matter) for the rental of their apartment unit. The terms of the agreement indicated that SB would pay the sum of One Thousand Six Hundred and Fifty dollars (B\$1,650.00) representing the first and last month's rent and the security deposit.
4. Less than a week later, a dispute arose between the parties. As a result, the Claimants advised the tenant that they no longer wanted to proceed with the rental arrangement. It is alleged that the Claimants had not returned SB's funds in whole or in part. This represented, at most, a civil contractual dispute of the type routinely adjudicated in the Magistrate's Court.
5. It is alleged that the Claimants relied on a term and condition of the agreement to forfeit the deposit paid and refused to return the tenant's monies. Subsequently, the tenant filed a civil suit in the Magistrate's Court and lodged a criminal complaint with the Police Force, accusing the Claimants of refusing to return the monies paid.

The Arrest and Detention

6. On the morning of 25 March 2014, sometime around 9:45 a.m., officers of the Royal Bahamas Police Force attended the Claimants' residence in an unmarked police vehicle in connection with a criminal complaint made by SB and compelled the Claimants to get dressed and accompany them to the police station. What is particularly harrowing, is that the Claimants had to prepare their minor child to be transported with them to the police station. During the testimony of the arresting officer, DC 3025 Deon Barr acknowledged

effecting what he termed a "constructive arrest", which I will address later in the legal analysis of this assessment.

7. While at the Grove Police Station, the minor child was left unattended in the patrol car until a family member arrived to take custody of him. After which, the Claimants were placed in handcuffs and booked into the Grove Police Station. According to their respective Detention Records, the Claimants were being investigated for the offence of "Stealing by Reason of Service". The Claimants, while handcuffed, were then transported to the Central Detective Unit ("CDU"). The Claimants maintained that they were not informed of the reason for their arrest at any point during their initial detention.
8. Upon arrival at CDU, the Claimants were placed in separate cells for several hours. Mrs. Forde's evidence revealed that the female cells front-faced the male cells, which presented an opportunity for other male detainees to reveal their private parts to her, much to the embarrassment of her husband who, by his testimony, witnessed the ordeal. Mrs. Forde further testified that because of the cell placement, she was able to witness other men relieve themselves using an open toilet; conditions that can only be described as an affront to her self-dignity. The positioning of the cells was later confirmed by one of the witnesses for the Defendants, Cpl. Yvette Davis-Rolle.
9. The Claimants were detained in holding cells for more than six (6) hours without being seen by investigators and later transported back to the Grove Police Station for overnight detention. The following morning, around 7:30 a.m., detectives collected the Claimants from the Grove Police Station and transported them to CDU, where they were placed in a holding cell again for several hours. After waiting for an extended period, Mr. Forde fabricated an excuse that his wife was pregnant and complained of pains to secure some attention from the officers.
10. The Claimants indicated that this was the first time any officer explained to them the reason for their arrest, which related to the refusal to return monies to SB. The Claimants testified that they informed detectives that there were certain terms and conditions of the tenancy agreement which provided for the forfeiture of funds. Notwithstanding, the Claimants testified that without any further consideration of the civil nature of the case, detectives advised the Claimants that their release from custody without being charged was predicated upon returning the tenant's monies.
11. Mrs. Forde testified that despite their reluctance to return the funds, as they reasonably believed they had invoked the forfeiture clause of the lease agreement, she and her husband had to consider the enduring and harrowing conditions and the consequential effect of being charged with a criminal offence. At the time, Mrs. Forde was a veteran banker with a reputation to protect. After much consideration, Mrs. Forde testified that they had no choice but to return the funds under duress of further incarceration.
12. Mrs. Forde was first released from custody at approximately 2:00 p.m. on 26 March 2014, while officers later interviewed Mr. Forde under caution prior to releasing him at 4:37 p.m. on 26 March 2014. In totality, the Claimants were detained for approximately 31 hours.

13. The circumstances of this case are goaded by evidence demonstrating that the arrest appears wholly without lawful basis, having regard to the fact that the dispute was patently civil in nature. As mentioned earlier, the Detention Records disclose the Claimants committed the act of "stealing by reason of service", which is governed by provisions of the Penal Code. Section 46 of the Penal Code defines stealing as:

"A person is guilty of stealing if he dishonestly appropriates a thing of which he is not the owner."

14. Section 340(4) of the Penal Code addresses the offence of stealing under special circumstances for a valuation exceeding five hundred dollars and provides:

"stealing anything of which he had the custody, control or possession, or to which he had the means of access, by reason of any office, employment or service."

15. Having reviewed the appropriate legislation, I find it difficult to determine how a landlord's refusal to return a tenant's rent pursuant to a tenancy agreement's forfeiture clause can constitute "stealing by reason of service" pursuant to sections 46 and 340(4) of the Penal Code. The key distinction lies in the nature of the relationship and the legal concept of dishonest appropriation without a claim of right.
16. The landlord-tenant relationship is primarily governed by contract, not the type of employment or fiduciary service relationship typically addressed by sections 46 and 340 to constitute "stealing by reason of service". That specific charge is generally reserved for employees, agents, or trustees who abuse a position of trust. The Claimants, as landlords, asserted a contractual right to retain the funds based on a forfeiture clause in the tenancy agreement. If the Claimants genuinely believed they were legally entitled to the money under the signed lease agreement, they lack the necessary criminal intent, even if a civil court later determines they were wrong and the forfeiture clause was mis-applied. A criminal offence requires *mens rea* (criminal intent). This negates the essential element of dishonesty required for a criminal conviction of stealing.

The Test for Lawful Arrest

17. What must now be determined is whether, at the time of the arrest, the police reasonably believed that a potential criminal offence had been committed. In ***Kevin Renaldo Collie v Attorney General*** [2020] 1 BHS J. No. 59 at [46], *Stewart J.* identified the basic circumstances in which an arrest by a police officer without warrant pursuant to section 31(2)(a) of the Police Force Act 2009 would be unlawful. She determined that an arrest is unlawful if:

"the arresting officer has not sufficiently satisfied himself that a suspect is responsible for the commission of an offence and therefore arrests a suspect without reasonable suspicion."

18. Further, in ***Parker v The Chief Constable of Essex*** [2019] 3 All ER 399, *Sir Brian Leveson P.* at paragraph 115 summarized the leading English authorities on the concept of "reasonable suspicion" and stated:

"the bar for reasonable cause to suspect set out in s. 24(2) of the 1984 Act is a low one. It is lower than a prima facie case and far less than the evidence required to convict." [underline mine]

19. During the *viva voce* testimony of the arresting officer, Constable 3025 Deon Barr stated that he conducted a "*constructive arrest*" of the Claimants at their residence based on certain information received. However, the specific information that the police acted upon was never disclosed, and neither witness for the Defendant articulated any cause to reasonably suspect that the Claimants were committing a criminal offence. During their examinations, the Claimants maintained that the dispute was purely contractual and their reluctance to refund SB was based on a forfeiture clause contained in the lease agreement.

20. *Winder, CJ in Daran Neely v Attorney General et al* (unreported) SC 623 of 2016 held:

"while an arresting officer must have more than a suspicion of general unlawful conduct, the arresting officer needs to know or be able to specify the specific details of the particular offence for which the arrest is made."

21. When asked to explain "a constructive arrest", Officer Barr explained that he arrested the Claimants without actually physically restraining them. Simply put, it was akin to compulsion. In stating that a constructive arrest was made, Officer Barr admitted to depriving the Claimants of their liberty without their consent. There is no evidence that the Claimants were invited on their own free will and volition to the Police Station to clarify the dispute or aid the Police in their investigation to determine whether criminal culpability existed. This is evident from the fact that officers escorted them from their home via a police vehicle.

22. The core principle that an unlawful detention occurs when someone is held or transported against their will without a reasonable suspicion of criminal activity was codified and highlighted by *Darville-Gomez, J.* in the local decision of *Sgt. 2375 Theodore M. Neilly v. The Commissioner of Police et al* (unreported) 2021/CLE/gen/00368.

23. In *Neilly v COP et al (ibid)*, Sgt. Neilly while on active duty, commented in the Central Detective Unit (CDU) that a detained individual, Maria Daxon, should be freed and said, "no justice no peace". He was subsequently questioned by his superiors and instructed to go to Police Headquarters to see the Commissioner of Police. Neilly requested to drive his own vehicle but was denied and was forced instead to ride in the back of an unmarked police jeep in the area typically used for suspects or prisoners. The court ruled that he was not reasonably suspected of having committed a criminal offence, which made his forced transportation unlawful.

24. The Court of Appeal (SCCivApp. No. 88 of 2023) upheld the Supreme Court's finding of unlawful detention and dismissed the appeal by the Commissioner of Police and the Minister of National Security. The Court stated that the trial judge's factual findings were binding unless plainly wrong. Given the judge's acceptance of Neilly's account of being forced into a vehicle against his will, the finding of unlawful detention was considered inevitable and not a basis for appeal. The Court reiterated the paramount importance of the right to personal liberty and that state interference must be legally justified.

25. On the face of the evidence in this instant case, the police's motivation appears to have been purely driven by the complainant SB. Unfortunately, this appears to be a classic scenario of "arrest first then investigate later". Counsel for the Claimants, Mr. Gomez KC, submitted that the arrest was not motivated by any legitimate law enforcement purpose but rather by improper considerations.
26. The conduct of the police officers in this matter represents a fundamental misunderstanding or worse, a deliberate disregard of the boundaries of police authority. The police are not debt collectors. They are not arbiters of civil contractual disputes. Their powers of arrest are not to be deployed as instruments of intimidation or oppression in matters properly reserved for the civil courts. There appears to be no reasonable or probable cause for the arrest. The dispute between the Claimants and their tenant was patently civil in nature and based on the evidence, SB had already invoked the jurisdiction of the civil courts.

Findings of Fact

27. Having reviewed and observed all of the witnesses under oath, I have determined that the Claimants' testimonies are more credible than those of the Defendant's witnesses. I accept that the Claimants were falsely imprisoned and unlawfully detained for approximately 31 hours. I further accept that the female cells were front-facing the male cells, which resulted in the Second Claimant being exposed to the indignity of observing detained males relieve themselves and expose their private parts.

Issues for Determination

28. As the facts pleaded in the Statement of Claim and established through the evidence are predominantly accepted, *save* for inconsistencies that have been addressed hereinbefore, the issues are:
1. What is the appropriate quantum of general damages to be awarded to the Claimants for wrongful arrest, false imprisonment, and assault and battery?
 2. Whether the Claimants are entitled to exemplary damages?
 3. Whether the Claimants are entitled to vindicatory and/or compensatory damages for the violation of their constitutional rights?
 4. Whether the Claimants are entitled to aggravated damages?
 5. If so, what are the appropriate quantum of damages under each head?

The Assessment

29. In *H West & Sons Ltd v Shephard* [1964] AC 326, Lord Pearce explained the Court's task in assessing damages for wrongs that cannot be precisely quantified:

"The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum."

30. The Bahamian case of *Matuszowicz v Parker* [1987] BHS J. No. 80 establishes that assessment of damages in cases of this nature should be informed by comparable awards in similar Commonwealth Caribbean jurisdictions with analogous socio-economic conditions. English authorities and practice texts, including Kemp and Kemp on Damages, serve as persuasive guides.

General Damages for Wrongful Arrest and False Imprisonment

31. As stated by Lord Griffiths in *Murray v Ministry of Defence* [1988] 1 WLR 692 at 703:

"The tort of false imprisonment has two ingredients: the fact of imprisonment and the absence of lawful authority to justify it."

32. In assessing damages for false imprisonment, the Court considers: (i) the length of detention; (ii) the conditions of detention; (iii) the effect on the claimant; (iv) whether the circumstances of the arrest; and (v) the conduct of the officers involved.
33. In the present case, the Claimants were detained for approximately 31 hours. An overnight incarceration that extended across two days. No evidence was led as to the conditions of detention save for the indignity of Mrs. Forde who witnessed male detainees using open toilets and exposing themselves. The Claimants were handcuffed, transported between stations, and subjected to the distress of separation from their minor child who was himself initially transported in a patrol car.
34. The manner of arrest was particularly troubling. This invasion of the sanctity of the home, the involvement of the child, and the compulsion exercised without any lawful basis significantly intensified the wrong.
35. The Claimants were not informed of the reasons for their arrest initially, and were effectively coerced into returning monies they believed they were contractually entitled to retain, under threat of continued detention or criminal charges. This represents an abuse of police power that goes beyond mere negligence or error of judgment.
36. Useful guidance as to how compensatory damages should be assessed for unlawful detention of this nature was provided by in *Kevin Renaldo Collie v Attorney General* [2020] 1 BHS J. No. 59, where the claimant was unlawfully detained for approximately 32 hours. The Court awarded \$35,000.00 in general damages for false imprisonment, noting the absence of physical abuse but recognizing the significant deprivation of liberty.
37. In *Gilford Lloyd v Chief Superintendent Cunningham et al* 2016/CLE/gen/0062, the Court awarded \$40,000.00 in general compensatory damages, emphasizing the public circumstances of his arrest and the psychological impact.
38. In *Immigration Officer Norman Bastian v Claudia Edwards Bethel et al; Claudia Edwards Bethel (Deceased by her Estate) v The Attorney General of the Bahamas et al*

[2024] BS CA 89, the plaintiff was unlawfully detained for 48 hours (immigration detention at Carmichael Road Detention Centre). The Court found the detention unlawful and awarded damages to be assessed. While the quantum was not determined in the judgment (as the plaintiff died before assessment), the Court confirmed that 48-hour detention warrants substantial compensation.

39. The Judicial Committee of the Privy Council in *Douglas Ngumi v The Attorney General of the Bahamas & Others* [2023] UKPC 12 provided a modern framework, drawing on English authorities like *Alseran & others v Ministry of Defence*, that helps courts in The Bahamas and other Commonwealth jurisdictions quantify damages for false imprisonment based on five heads of injury:
1. Injury to liberty (the primary loss of freedom).
 2. Injury to feelings/dignity/humiliation.
 3. Any physical injury or discomfort.
 4. Any mental suffering.
 5. Any injury to reputation.
40. Taking into account the aforementioned authorities and the Claimants 31-hour detention, the degrading conditions, the involvement of the Claimants' minor child, the manner of arrest, the coercion exercised, and the psychological impact described in evidence, I assess general damages for wrongful arrest and false imprisonment as follows: Mrs. Reshenda Forde: \$35,000.00 and Mr. Jinnah Forde: \$32,000.00.
41. The slightly higher award for Mrs. Forde reflects the additional indignity she suffered in being exposed to male detainees in the cell configuration, as well as the particular impact on her professional reputation as a veteran banker.

Assault and Battery

42. As stated in *Collins v Wilcock* [1984] 1 WLR 1172, battery is "the actual infliction of unlawful force on another person." It is trite, that the tort of battery is committed when a person intentionally or recklessly applies unlawful force. Hence, the application of handcuffs and the physical compulsion to move from one location to another constitute a battery when done without lawful authority. As *Lord Griffiths* stated in *Murray v Ministry of Defence* [1988] 1 WLR 692:

"When a person is lawfully arrested, reasonable force may be used if necessary to effect the arrest. But if the arrest is unlawful, any force used, however minimal, constitutes a battery."

43. In the present case, the Claimants were handcuffed at the Grove Police Station and while being transported to CDU the application of handcuffs in the context of an unlawful arrest constitutes a battery, even if applied without excessive force.
44. While there is no evidence of gratuitous violence or excessive force beyond that inherent in the arrest and detention process itself, I find that the repeated applications of force over

the 31-hour period including handcuffing, transportation, and confinement amount to a continuing series of batteries.

45. As such, I award the sum of \$5,000.00 each to the Claimants as damages for assault and battery.

Aggravated Damages

46. *Lord Devlin* in ***Rookes v Barnard*** [1964] AC 1129 explained:

"Aggravated damages are given to compensate for the injured feelings of the plaintiff when his sense of injury resulting from the wrong done to him is justifiably heightened by the manner in which or the motive for which the defendant did it."

47. In ***Thompson v Commissioner of Police of the Metropolis*** [1998] QB 498, the Court of Appeal held that aggravated damages are appropriate where the defendant's conduct was "high-handed, insulting, malicious or oppressive."

48. The facts of this case cry out for an award of aggravated damages. The manner in which the Claimants were treated demonstrates a callous disregard for their dignity and rights:

- (i) They were removed from their home in the early morning in the presence of their minor child, who was then detained in a patrol car;
- (ii) They were not informed of the reasons for their arrest;
- (iii) Mrs. Forde was subjected to the humiliation of being exposed to male detainees using open toilets and exposing themselves and witnessed by her husband;
- (iv) They were held for 31 hours without proper access to investigators or any meaningful opportunity to address the allegations;
- (v) They were coerced into returning monies under threat of continued detention or criminal charges, despite the civil nature of the dispute;
- (vi) Mrs. Forde, as a veteran banker, suffered particular anguish regarding the impact on her professional reputation.

49. The police effectively used their powers of arrest not to investigate, but to coerce the resolution of a civil debt, a practice that strikes at the heart of the separation of civil and criminal matters and defies the sanctity of the rule of law.

50. In ***Pedro Morley v The Commissioner of Police, Police Constable Courtney Hall and The Attorney General*** [2021] BHS SC 117 the plaintiff was awarded aggravated damages after being unjustifiably assaulted by an off-duty police officer while outside a nightclub. The off-duty officer pulled a firearm on Mr. Morley who then left the club but was later stopped by a marked police car. The off-duty police officer arrived in his private vehicle shortly after and punched Mr. Morley twice in the mouth, damaging eight of his teeth. The off-duty police officer's behavior was classified as "high-handed and outrageous" and a "contumelious disregard" for the plaintiff.

51. Given the particularly egregious circumstances of this case, including the involvement of the minor child, the coercion exercised, and the impact on the Claimants', an award of \$10,000.00 to both Claimants for aggravated damages seems appropriate.

Constitutional Redress (Art. 28)

52. In The Bahamas, legal authorities have established that constitutional damages are awarded only in exceptional circumstances where common law remedies for tortious claims, such as false imprisonment and unlawful arrest, are deemed inadequate to provide effective relief or sufficiently vindicate the claimant's rights. The Judicial Committee of the Privy Council (JCPC), in ***Douglas Ngumi v The Attorney General of the Bahamas & Others*** [2023] UKPC 12, affirmed that while Article 28 of the Constitution provides a path for constitutional redress, this route should generally be a remedy of last resort. The courts are directed to first assess whether general and aggravated damages which encompass injury to liberty, feelings, dignity, and any physical or mental suffering adequately compensate the claimant for the injuries sustained. Therefore, an award of both robust common law damages and separate constitutional damages is only appropriate where the circumstances of the state's conduct involve an additional, distinct element of high-handed, arbitrary, or unconstitutional behavior that cannot be fully captured by the common law assessment alone.
53. In my opinion, the circumstances of this case presents a paradigmatic example of conduct warranting exemplary damages. The police officers acted in a manner that was oppressive, high-handed, and demonstrated a fundamental disregard for the boundaries of police authority.
54. This was not a case of mere error or negligence. The officers either failed to understand the most basic distinction between civil and criminal matters, or deliberately chose to abuse their powers to assist a private complainant in recovering a civil debt. Either scenario warrants punishment and deterrence.
55. The deployment of police powers as instruments of debt collection or civil coercion represents a serious threat to the rule of law. Citizens must be secure in the knowledge that civil disputes will be resolved by civil courts, not by police intimidation. An award of exemplary damages is necessary to vindicate this principle and to deter similar conduct in the future.
56. The conduct in this case was sufficiently egregious to warrant a substantial award of exemplary damages. The police not only acted without lawful authority, but deployed their powers in a manner calculated to coerce the Claimants into surrendering what they believed to be their contractual rights. This represents a serious abuse of executive power that must be firmly denounced.
57. I award the sum of \$15,000.00 to each Claimant for exemplary damages, as these damages are aimed at punishing and deterring the conduct of the state actors, and both Claimants were equally subjected to the oppressive conduct warranting such punishment.

A.B. (A Minor)

58. The Claimants also brought this action on behalf of their minor child, seeking damages for his detention in the police vehicle and the psychological impact of witnessing his parents' arrest. While the Court is deeply sympathetic to the distress undoubtedly experienced by the child, I must determine whether the evidence supports a finding that the child was the subject of a separate and independent tort actionable in his own right.

59. The fundamental question is whether the police officers' actions were directed at the child himself, or whether the child's involvement was purely incidental and consequential to the unlawful arrest of his parents. In ***R (on the application of L) v Commissioner of Police of the Metropolis [2010] EWHC 2552 (Admin)***, the English High Court addressed a similar issue where children were present during the execution of a search warrant at their home. The Court held at paragraph 44:

"The police were not acting in relation to the children at all. The fact that the children were affected by what happened does not mean that the police were acting in relation to them... The presence of the children was an incidental consequence of the execution of the warrant."

60. Similarly, in ***Austin and Another v Commissioner of Police of the Metropolis [2007] EWCA Civ 989***, the Court of Appeal considered whether a child present during her mother's arrest could claim damages for false imprisonment. Lord Justice May held:

"For there to be false imprisonment of the child, there must be a detention of the child as such, not merely the child being required to remain with or accompany a parent who is herself detained."

61. In the instant case, the crucial question becomes whether the child was detained, or whether the child simply accompanied his parents who were detained?

62. If it is the latter, there was no false imprisonment of the child, even if the child's freedom of movement was in theory restricted by his need to remain with his parents.

63. The evidence establishes that police officers attended the Claimants' residence to arrest the Claimants, not the child. The officers did not assert any authority over the child; did not accuse him of any wrongdoing; and did not seek to detain him for any purpose independent of his parents' arrest. The child was required to accompany his parents because the officers were removing both parents from the home simultaneously.

64. The child's presence in the police vehicle and at the station was entirely a derivative of and incidental to the unlawful arrest of his parents. The police intention was not directed towards the child; rather, the child's involvement was a necessary consequence of the officers' decision to arrest both parents at the same time from their home.

65. While the manner of the arrest included removing both parents simultaneously in the early morning hours, may have been insensitive and poorly considered, particularly given the presence of a minor child, I am of the view, that this does not transform the child's

experience into a separate actionable tort. The child was not falsely imprisoned, as he was not himself the subject of restraint. He was not assaulted or battered, as no force was directed at him. His constitutional rights were not directly violated, as the police actions were not directed at him.

The Duty of Care Towards the Child

66. Having found that the arrest of the Claimants was unlawful, it follows that the entire enterprise, including the involvement of the child, was tainted by that illegality. However, the Court must also consider the practical reality facing the officers once they had embarked upon the unlawful arrest.
67. Given that both parents were being removed from the home, what should have been done with the child?
68. In *Kirkham v Chief Constable of Greater Manchester Police* [1990] 2 QB 283, Lord Justice Lloyd surmised that the police are not entitled to detain anyone without good reason. But when they have a person in their custody, whether lawfully or not, they are under a duty to take reasonable care for that person's safety.
69. In *Barrett v Enfield London Borough Council* [2001] 2 AC 550, Lord Hutton stated at 568:

"Where a defendant has assumed responsibility for the care and welfare of a person, particularly a child, the law imposes a duty of care which requires the defendant to take reasonable steps to safeguard that person from harm."
70. The principle is well established that once police officers have taken action that affects a child's welfare, they come under a duty to take reasonable steps to protect the child. This was acknowledged in *Commissioner of Police of the Metropolis v DSD* [2018] UKSC 11, where the Supreme Court recognized that police officers may assume responsibility for vulnerable persons, including children, in the course of their operations.
71. In the present matter, the officers acted reasonably, once having embarked upon their unlawful course of action, in ensuring that the child was not left alone. They arranged for the child to accompany his parents and upon arrival at the station, contacted a family member to take custody of him. While the child undoubtedly should never have been placed in this position and would not have been but for the unlawful arrest, the officers' handling of the child's welfare in the circumstances was appropriate.
72. In *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310, the House of Lords drew a clear distinction between direct victims of tortious conduct and those who suffer psychiatric harm as a consequence of witnessing or learning about wrongs done to others. While that case concerned nervous shock claims by secondary victims, the underlying principle is relevant:

"...not every person adversely affected by tortious conduct has a direct cause of action".

73. The child's claim is more properly understood as falling within the ambit of his parents' claims. The fact that the police conducted the arrest in a manner that traumatized the child is a factor that aggravates the parents' claims and has been taken into account in assessing aggravated and exemplary damages awarded to the parents. The involvement of the child, the manner in which he was required to accompany his parents, and the distress this caused to the entire family are all circumstances that enhance the parents' claims for damages.
74. For these reasons, I find that while the child was undoubtedly affected by the unlawful arrest of his parents, he was not the subject of a separate and independent tort. The police intention was not directed towards the child. His transportation and temporary detention at the police station were parallel to and derivative of his parents' claims, rather than constituting separate actionable wrongs against him.
75. Accordingly, no direct award of damages should be made to the minor child. Further, even if the Court was to consider resiling from this position, no evidence was led on behalf of the minor child to establish any damages.
76. This conclusion should not be understood as minimizing the trauma experienced by the child or the poor judgment exercised by the officers in handling the arrest in the manner they did. Rather, it reflects the legal reality that the child's involvement was incidental to the primary wrong committed against his parents, and the harm he suffered is properly compensated through the enhanced awards made to them.

Vindictory Damages

77. The purpose of vindictory damages is not primarily compensatory, but rather to acknowledge the constitutional dimension of the wrong and to affirm the importance of the rights violated. Even where other heads of damages provide adequate compensation, a vindictory award may be necessary to mark the constitutional significance of the breach. See *Attorney General of Trinidad and Tobago v Ramanoop* [2006] 1 AC 328
78. The Claimants' claimed that their constitutional rights under Articles 17 and 19 of the Constitution were violated.
79. The threshold for degrading treatment under Article 17 was recently considered in *Claudia Edwards Bethel v Attorney General (2023)*, where *Charles J.* held that overcrowding, sleeping on floors, and poor sanitary conditions at the Carmichael Road Detention Centre, while undesirable, did not meet the threshold for 'degrading treatment' under Article 17. The Court noted that the conditions, though poor, were not 'so egregious' as to constitute inhuman or degrading treatment.
80. The present case is distinguishable on critical facts. Unlike Bethel, where general poor conditions were alleged, Mrs. Forde was subjected to gender-specific sexual humiliation. The cell configuration forced her to observe male detainees using open toilets and exposing their private parts, conduct that specifically violated her sexual dignity and modesty. This direct affront to her dignity, witnessed by her husband, crosses the threshold that mere poor conditions do not. In my opinion, the degrading treatment in this case is qualitatively

different from overcrowding or inadequate facilities; it involves the specific violation of sexual dignity that the Article 17 protection was designed to prevent.

81. When comparing local authority, in *Kevin Renaldo Collie v Attorney General* [2020] 1 BHS J. No. 59, vindictory damages of \$10,000 were awarded for violation of constitutional rights during unlawful detention.
82. Given the serious nature of the constitutional violations, particularly the deliberate use of police powers to coerce the resolution of a civil matter and the affront to their dignity, I award the sum of \$7,000.00 each for vindictory damages.
83. The total damages awarded to each Claimant are as follows:

Head of Damages	JF/Amount	RF/Amount
General Damages (False Imprisonment & Wrongful Arrest)	\$32,000.00	\$35,000.00
Assault and Battery	\$5,000.00	\$5,000.00
Aggravated Damages	\$10,000.00	\$10,000.00
Exemplary Damages	\$10,000.00	\$10,000.00
Vindictory Damages	\$7,000.00	\$7,000.00
TOTAL	\$64,000.00	\$67,000.00

84. No damages are awarded to the minor child, for the reasons set out in paragraphs [58] to [76] above.

Interest

85. The Claimants seek interest pursuant to the Civil Procedure (Award of Interest) Act, 1992. Section 3(1) of that Act provides:

"Subject to rules of court, in proceedings for the recovery of any debt or damages the court may include in any sum for which judgment is given simple interest, at such rate as it thinks fit or as may be prescribed, on all or any part of the debt or damages in respect of which judgment is given..."

86. I consider it appropriate to award interest at the rate of 3% per annum on general damages, aggravated damages, and vindictory damages from the date of service of the Writ of Summons to the date of this judgment. No interest should run on exemplary damages, as these are punitive rather than compensatory in nature.
87. There after the statutory rate of interest of 6.25% is to be applied from the date of judgment until payment.

Costs

88. The Claimants are entitled to their costs of this action, having succeeded on liability (by consent order) and having obtained substantial awards of damages.
89. Pursuant to the Civil Procedure Rules, 2022 costs follow the event unless the Court orders otherwise. There is no reason to depart from this principle in the present case.
90. Having regard to the nature of the claim, I therefore order that the Defendants pay the Claimants' costs of this action, to be fixed at \$60,000.00. This would include pre-trial preparation and research, liability and assessment hearings, post-trial submissions and other miscellaneous applications and court appearances.

DATED this 28 day of November, 2025.

[Original signed & sealed]

Renaldo Toote
Registrar (Acting)