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PACE UPDATE

Tom Silson & Matthew Smith, Partners

P L E X U S



Introduction

- *PACE* - now almost 40 years old, but still subject to fresh interpretation by judges in important areas.
- Search warrants - Matt Smith
- Powers of arrest/necessity - Tom Silson.





***PACE* search warrants**

- *Section 8* - powers of magistrate to authorise
- *Section 9-14* - rules on types of material that may be obtained
- *Section 15-16* - statutory safeguards
 - *Section 15* - requirements applicable to the process of obtaining a warrant and its contents
 - *Section 16* - requirements as to how searches must be carried out and post-search steps.

Section 15 and the ‘it’ point

S15(1)

... an entry on or search of premises under a warrant is unlawful unless it complies with this section and S16 below.

Does this mean that the warrant must comply with S15 and S16, or that the entry and search must comply?



R v Longman [1988] 1 WLR 619

Lord Lane CJ: “*we are inclined to think that it most probably refers to the warrant, but the real probability is that the intention...was to provide that the warrant should comply...with S15 and the entry and search with S16...unhappily that is not what it says.*”

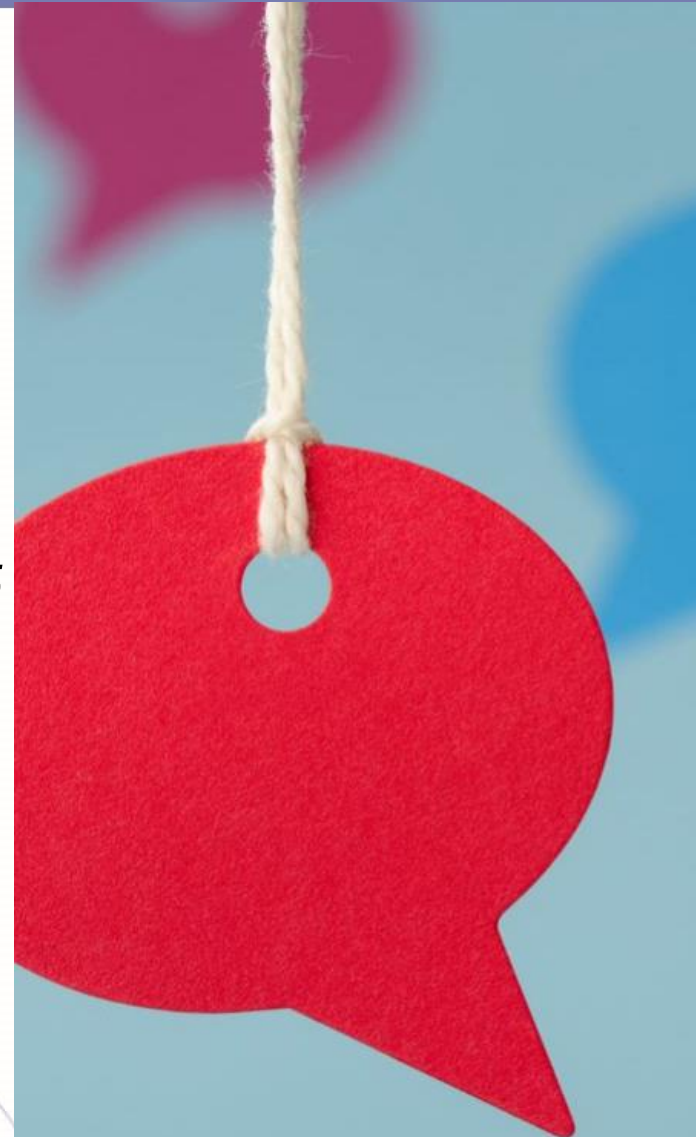
Subsequent interpretations

R v CC Lancashire, ex parte Parker [1993] QB 577

- Breach of *Section 16(5)(c)*
- *Section 15(1)* refers to the whole process, application and issue must comply with *S15* and entry and search with *S16*.

R v CC Warwickshire, ex parte Fitzpatrick [1999] 1 WLR 564

- Divisional Court
- Breach of *S16(8)* - “*lawfulness requires compliance with both sections*”.



Subsequent interpretations



R (Bhatti) v Croydon Magistrates Court *[2011] 1 WLR 948*

- Divisional Court
- Failure to leave copy schedules with “all premises” warrants
- Officers followed Home Office guidance/document template.

Elias J “*conditions...must be properly and stringently complied with*”. Did not assist the officers that they were acting in good faith, and following Home Office guidance. Lord Lane’s interpretation doubted.

Current position

Westminster College of Computing v Commissioner of Police of the Metropolis [2020] - EWCA Civ 561

- Alleged failure to leave warrant in prominent place or with a person in charge of the premises.
- LJ Holroyde *“there is no decision binding on this court.”*



Extension of the ‘Lumba’ Principle?

R (Lumba) v Secretary of State for the Home Dept
[2012] 1 AC 245

Parker v CC Essex [2019] 1WLR 2238

- Claimant’s entitled to nominal damages for false imprisonment only where technical breach led to unlawful detention.
- Argued that this principle should be extended to warrant cases in **Westminster College v Commissioner** but not decided upon. High Court referred to this as being an “*attractive argument.*”



Post-search *S16* issues

Post-search *S16* breaches:

R (Hicks) v Commissioner [2012] EWHC 1947

- Doubted that failure to return warrant under *S16(10)* would render search unlawful

R (Haly) v CC West Midlands [2016] EWHC 2932

- Failure to endorse warrant under *S16(9)* with details of items taken related to actions after search completed.

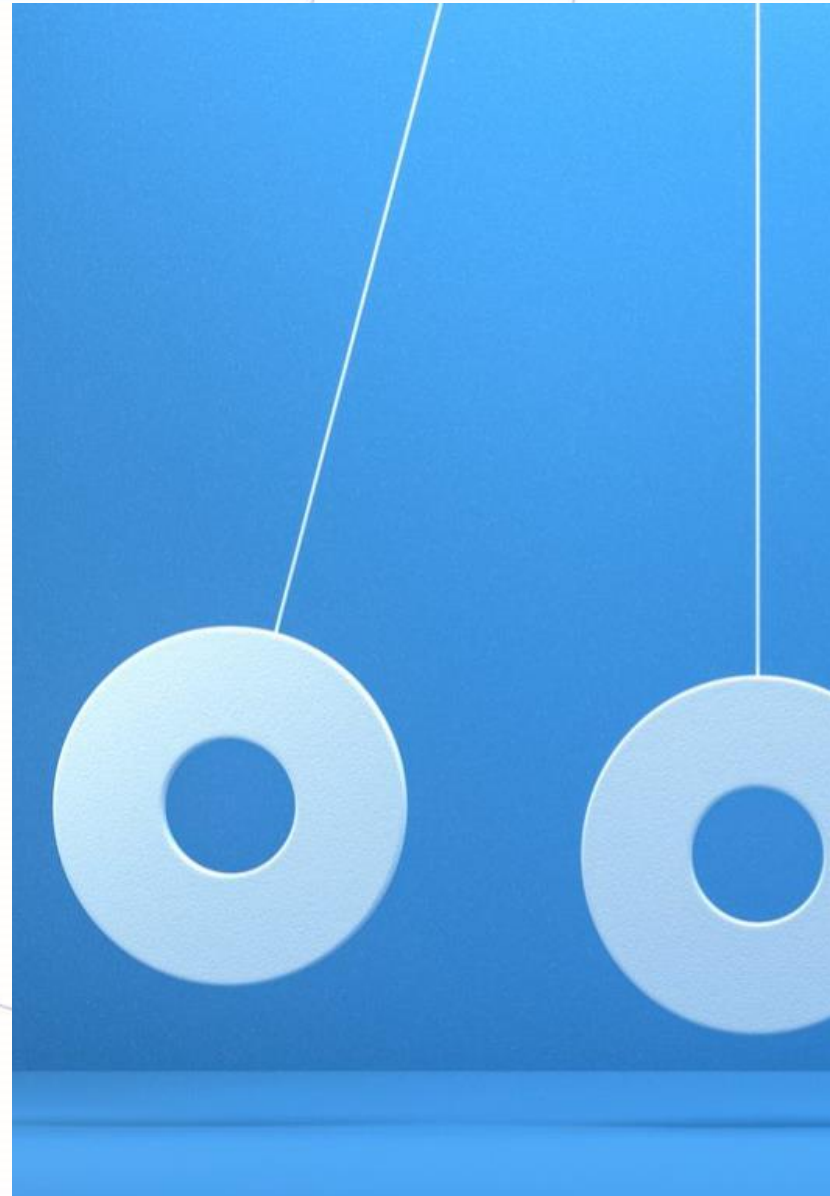
Law Commission reform proposals



- 64 recommendations in total
- Four recommendations in relation to the statutory safeguards
- **Recommendation 3** - *S15(1)* of *PACE* be amended to clarify that that entry, search and seizure are unlawful unless the warrant, entry and search comply with *S15* and *S16*.
- **Recommendation 4** - *S15(1)* of *PACE* be amended to clarify that an entry on, search of, or seizure of materials from any premises under a warrant is unlawful unless the warrant, entry and search comply with *S15* and *S16*.

Effects of proposed reforms

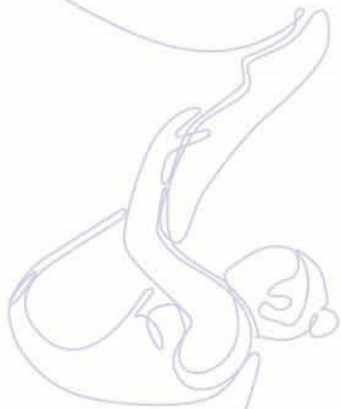
1. Will all forms of non-compliance result in unlawfulness?
 - Lack of specificity
 - Post-search requirements
 - Retention of Judicial discretion?
2. Consequences of a finding of unlawfulness
 - *S78 of PACE.*





Necessity to arrest

Tom Silson, Partner





When is it necessary to
arrest?



When did the necessity principle arise?

Before the *Serious Organised Crime and Police Act 2005*

- Arrestable/non-arrestable offences S24 of *PACE*
- Arrestable offences used to be listed in *Schedule 1A to PACE*
- Grounds for arrest were based on reasonable suspicion of offence; reasonable grounds to suspect; and a discretion as to whether to arrest or not.



When did the necessity principle arise?

After the *Serious Organised Crime and Police Act 2005*

- New S24 of PACE substituted by SOCA
- Introduction of “**necessity**” in S24(4)
- List of reasons why arrest is necessary contained in S24(5)(a)-(f).

‘Suspicion’ and ‘belief’

- An officer may arrest without a warrant if there is a reasonable suspicion an offence has been committed
- However, the power of arrest is only exercisable if the officer also has reasonable grounds for *believing* that it is necessary to arrest the suspect
- This is a higher test than *“suspicion”* that an offence has occurred
- It is a matter of judgment of the officers and context is always important.



Subjective and objective elements

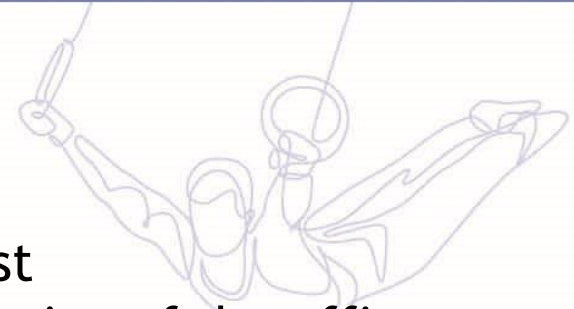


Subjective

- Suspicion that an offence has been committed; and
- Belief that arrest was necessary for one of the preventative reasons
- Each part will be a question of fact about the state of mind of the arresting officers.

Objective

- Was the officer's suspicions demonstrably reasonable?
- Was the officer's belief that the arrest was necessary based on demonstrably reasonable grounds?
- The test of necessity is more than simply "*desirable*", "*convenient*" or "*reasonable*" - [Commissioner of Police v MR \[2019\] EWHC 888 \(QB\)](#)



Code G of PACE

- *Code G* deals with the statutory power of arrest
- It remains an operational decision at the discretion of the officer to decide which necessity criteria apply and whether to effect an arrest
- In all cases the officer should consider that an arrest is the practical, sensible and proportionate option in all the circumstances
- The officer needs to explain the necessity criteria to the suspect when making an arrest
- Alternatives to arrest?
- ***Richardson v Chief Constable of the West Midlands [2011] EWHC 773 (QB)***
- Breach of *Code G* not actionable by itself.



Case law/developments

- *Hayes v Chief Constable of Merseyside Police [2012] 1 WLR 517*
- *Commissioner of Police v MR [2019] EWHC 888 (QB)*
- *Rashid v Chief Constable of West Yorkshire [2020] EWHC 2522 (QB)*
- *Reay v Chief Constable of Northumbria Police [2020] EWHC 3246 (Admin)*



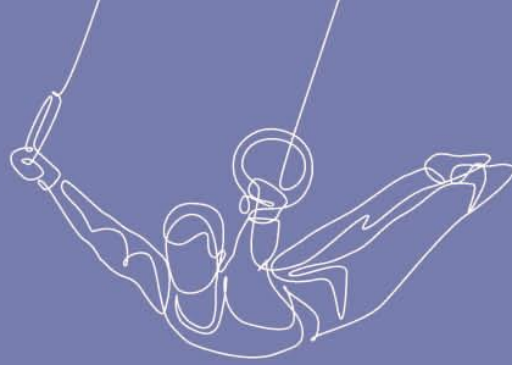
Application for forces

- What should be done following an arrest?
- Officers/forces should be familiar with *Code G* of *PACE*
- Officers should verbally explain upon arrest the reason arrest was necessary - especially important with the prevalence of BWV
- Officers should document the clear reasons for arrest - MG11, PNB, custody records etc.
- Officers should try to provide evidence as to why other alternatives were considered, and ultimately rejected - e.g. if invited for a voluntary interview that may alert the suspect and potentially give opportunity to conceal evidence
- Ensure the arresting officer is available for evidence and can attend trial.

Any questions?

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