

Skeleton Arguments for The Applicant in the matter of Love vs. National Crime Agency for relief under the Police Property Act (1897)

A. Introduction:

1. “Now is the winter of our disk contents made glorious by the summer sun of law...”
2. Every legal argument should commence with a brief summary of facts that are not in dispute.
3. Videre licet, on the evening of 28th October 2013, a person dressed in the uniform of a UPS delivery agent obtained entry to a premises at 2 Ash Walk, Stradishall, Newmarket, under false pretences and by deception.
4. Entering the premises, this person proceeded to assert – but not substantiate – that they were an ‘officer’ of the National Crime Agency and arrested Mr. Lauri Love, subsequently producing a warrant from Westminster Magistrates’ Court authorising – to the extent that the warrant was lawful – the entry and search of the premises.
5. (Regarding this claim, it should be noted that ‘officers’ of the National Crime Agency are in fact civil servants and employees of a non-ministerial governmental body with the designated powers of a police constable; they are not in fact police officers, despite the common misapprehension of this distinction.)
6. Gaining thereby entry, the ostensible UPS delivery agent (and then ostensible officer of the law) was followed by roughly a dozen individuals wearing National Crime Agency garb, who were not identified, nor whose designated authority to assist with a lawful search of a premises was established.
7. Occupants and owners of the house, the Rev. Alexander Love and Mrs. Sirkka Love, as well as Mr. Lauri Love, were detained in the kitchen and lounge of the premises for the next five hours while a rather thorough search and seizure operation was undertaken by the one ostensibly authorised NCA employee and the dozen or so unidentified intruders.
8. Notwithstanding that Rev. Alexander Love – who suffers from heart conditions and whose stress and agitation at his protracted detention without arrest in a room of his own house was palpable – requested quite reasonably that he be allowed to take some fresh air, the detention of all three members of the Love household continued for several tiresome hours, at the unwarranted risk of serious consequences to the health of Rev. Love, as the unauthorised intruders generally made a mess of the place in their attempts to remove anything that might store digital data.
9. Notwithstanding that Mr. Lauri Love is a vulnerable adult who has Asperger’s syndrome and was at the time suffering from acute and suicidal depression and severe anxiety, an unidentified but presumed employee of the National Crime Agency attempted to question Mr. Lauri Love outwith the context of a formal interview situation and without legal representation or the presence of an ‘appropriate adult’.
10. After at least five hours of search and seizure by the one ostensibly authorised person with

the specially designated powers of a police constable and the dozen or so unidentified intruders – which, incidentally, caused some commotion in the estate and might perhaps have been better handled with the involvement of a police community liaison – Mr. Lauri Love was bundled into an unmarked car which drove at high speeds along an A-road towards the Police Investigation Centre in Bury St. Edmunds while Mr. Lauri Love was not wearing a seatbelt.

11. Gaining possession – lawfully or otherwise – of over two dozen articles of property, belonging to Rev. and Mrs. Love as well as Mr. Lauri Love, the National Crime Agency had certain obligations as specified in the Police and Criminal Evidence Act (1984) as amended [hereafter ‘PACE’], and as clarified and elaborated in the PACE Codes of Practice [hereafter ‘PACE CoC’], and as enhanced by the stipulations of the Criminal Justice and Police Act (2001) [hereafter ‘CJPA’].

12. Inter alia, the NCA was under the strict obligation, not only to not initially remove any articles of property from the premises where a photograph or copy would suffice for the purposes of an investigation, but after removal of property to return originals as soon as practicable to the persons from whom they were seized.

13. Very obviously, as we find ourselves in the regrettable position of having to seek relief from The Court under the Police Property Act (1897) [hereafter ‘PPA’], these obligations were and remain unfulfilled.

14. Eventually, after nine months of pre-charge ‘police’ bail – and after an attempt to compel cooperation with efforts of the National Crime Agency to decrypt what is claimed to be encrypted contents of some of the digital storage devices seized from the premises using section 49 of the Regulation of Investigatory Powers Act (2000) [hereafter ‘RIPA’], which was not brought to the correct procedural conclusion at the Central Criminal Court for reasons which remain unexplained by the NCA – Mr. Lauri Love was released from bail and remains to this day uncharged of any offences whatsoever under UK law and at that juncture (July 2014, four and a half years ago) had a reasonable expectation of the prompt return of his and his parents’ property.

15. Yearning to restore title to his property as amicably as possible, Mr. Lauri Love pleaded with the NCA by various means, on the telephone and by email, that the property should be returned, as whatever authority the NCA might have had under PACE to deny him title – and thus to interfere tortiously with his goods and business – had elapsed due to the non-furtherment of the investigation to the point of a charging decision being made by the Crown Prosecution Service [hereafter ‘CPS’].

16. Only after amicable attempts to encourage the NCA to cease to unlawfully retain property not belonging to them had proved fruitless, and after a suggestion of mediation via a mutually respected and trusted third party had not been taken up, and after the clear explanation that eventually the only recourse of Mr. Lauri Love for the restoration of his property rights would be an application under the PPA proved similarly unfruitful, and application was made at Bury St. Edmunds Magistrates’ Court under the act of 1897.

17. Unfortunately for Mr. Lauri Love, and rather to the demerits of the lay Magistracy in Bury St. Edmunds (now defunct), upon the initial case management hearing at that Court the learned counsel for the NCA was able to convince three lay Magistrates to impose upon Mr. Lauri Love an unlawful direction under the criminal procedure rules and practice directions that he facilitate the efforts of the NCA to decrypt what they claim to be encrypted contents of storage devices belonging to Mr. Lauri Love before the case could proceed to a substantial hearing under the PPA.

18. Unable to correct this unlawful direction despite best efforts in correspondence with Her Majesty's Courts and Tribunals Service [hereafter 'HMCTS'], and due to issues of severe mental ill health, Mr. Lauri Love was forced to withdraw the application – which was subsequently resubmitted and transferred to Westminster Magistrates' Court, which itself got only as far as shooting down the previous unlawful case management direction that regrettably the learned counsel for the NCA attempted once again to have imposed.

19. Procedurally, the case has since then been under deferment due to extradition proceedings against Mr. Lauri Love, wherein the United States of America [hereafter, perhaps not much longer...] attempted to extradite Mr. Lauri Love simultaneously to three separate states and which had it been successful might have resulted in Mr. Lauri Love facing up to 99 years in prison – an eventuality which to the delight of perhaps everyone except the US Department of Justice did not come to pass, despite the rather poor ruling from Justice Tempia at Westminster Magistrates' Court in the first instance, which was roundly and comprehensively struck down upon appeal by the Lord Chief Justice of England and Wales, the Rt. Hon. Lord Burnett of Maldon and the Hon. Mr. Justice Ouseley of the Court of Appeal.

B. Skeleton Arguments:

20. Applicant Mr. Lauri Love's legal arguments are comprehensively outlined in his witness statement submitted to Westminster Magistrates' Court and to the NCA on 24th March 2016 (but conspicuously absent from the respondent's bundle) and shall only be summarised here in the interests of clarity and brevity.

B.1 Powers of The Court

21. Court has the limited discretion under the PPA to restore title and order the return of property which has been seized by the police or persons with designated powers to the persons from whom they were removed, or to the rightful owners upon being satisfied that these are others. More comprehensive arguments and matters of fact are in the applicant's witness statement, line numbers: **[94-106]**.

22. The court does not have any enumerated discretion, nor one established by precedent in case law, to consider criminal allegations made by executive agents against the owners of the removed property, which should rightly be made in the appropriate criminal court under the relevant statutory or common law offence.

23. Neither does the court have any enumerated discretion, nor one established by precedent in case law, to consider arguments advanced by executive agents regarding the ownership of articles or contents of articles which are hypothetical, as is the case with the hypothetical contents of digital storage devices should it be possible for portions of them to be decrypted as is claimed - but not substantiated - by the NCA.

24. Neither does the court have any power as enumerated by the PPA, nor the powers obtaining in criminal courts trying defendants for offences defined under other statutes or of common law, to

order any acts of destruction, modification or tampering with property removed by executive agents, which would constitute vandalism and be itself an offence and tort under law.

25. The court is invited by the applicant to exercise its limited discretion to restore property to the persons from whom it was removed having established to its satisfaction that the limited powers to retain property as enumerated and caveated by PACE and the PACE CoC and as further caveated by CJPA have expired. The applicant appreciates that the court may consider a public policy defence advanced by the NCA for its continued retention of property, but is advised that it must hold to the precedent of proximate rulings established in the case of *Chief Constable of Merseyside Police v Owens [2012] [on appeal]* [hereafter ‘Owens’], which establishes clearly that while the court might accept that executive agents have reasonable beliefs regarding the possible commission of criminal offences that might result from the return of property under the PPA the court itself is not required to share those beliefs, and indeed must default to the exercise of its powers to restore title and order the return of property.

B.2 Obligations of the NCA under PACE and PACE CoC

26. As comprehensively outlined by the applicant in his witness statement, the NCA – assuming for the purposes of argument that it obtains and correctly executes a lawful warrant, without any identifiable problems which would render all powers of search and seizure defunct, null and void – has very strict obligations under PACE, sections 21 and 22, and under the PACE CoC. Comprehensive arguments and matters of fact are found in the applicant’s witness statement, on line numbers: [31-38], [40-50], [53], [56], [67-82], [92], [94-95].

27. Specifically in subsection (1)A of section 21 of PACE, it is stipulated that a constable who seizes anything in the exercise of a power conferred by any enactment shall upon request provide a person from whom property was removed a record of what was seized. The NCA failed so to do until the commencement of proceedings under the PPA.

28. Subsection (3) stipulates that if a request is made to be granted access to any property seized by a person from whom it was removed, which is being retained for the purposes of investigating an offence, the officer shall allow the person who made the request access to it under the supervision of a constable. The NCA has failed and continues to fail to adhere to this stipulation, which it is to be well noted has no exceptions under public policy.

29. Subsection (4) stipulates that if a request is made for a photograph or copy of any such thing to the officer in charge of the investigation by a person from whom property was removed the officer shall allow that person access to it under the supervision of a constable for the purposes of taking a photograph or copy. The NCA has failed and continues to fail to adhere to this stipulation, which similarly has no exceptions under public policy.

30. Section 22 of PACE confers the powers of retention of private property for the limited purposes of an investigation with concrete stipulations. Specifically subsection (4) states that nothing may be retained for either the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose. As the NCA would undoubtedly have made multiple forensic copies of data on the physical devices removed from persons at the premises, and given that the NCA has on multiple occasions including recently offered to return the property after ‘wiping’ its contents, it is clear that a copy would suffice for the purposes of an investigation. As such the NCA is in clear violation of section 22. of PACE.

31. There is no provision under section 22 of PACE for the NCA to object to the return of the

original property where a copy would suffice even if they deem rightly or wrongly that it would be prejudicial to their investigation. Similarly there is no public policy exception.

32. The PACE CoC highlights the right to privacy and respect for personal property as enshrined in UK law by the Human Rights Act 1998. The court is advised to consult the applicant's witness statement to achieve total clarity as to the expectations that the court has of the NCA to respect these rights.

33. The applicant argues that the NCA failed to respect article rights in their execution of the search and seizure in October 2013 and failed to exercise their powers courteously and with respect for persons and property. The applicant argues further that the NCA has been in violation of these codes of conduct continuously since October 2013 until the present day, of a duration of more than five years and constituting a tort interference with goods and business.

34. While reminding the court that is engaged in an application for civil relief under the PPA and is not engaged in a trial of the applicant for any criminal offences, it is worth noting that failure to adhere to the PACE CoC not only compromises the powers of the NCA to retain property not belonging to them, but also brings into question the validity of evidence obtained from such a search.

35. In this regards, **the applicant formally moves:** that all ostensible evidence resultant from the search and seizure executed in October 2013 be struck from this case and not allowed to enter the public record, until the court is satisfied that not only was the warrant application lawful but that the execution of the search and seizure satisfied PACE and the PACE CoC and the CJPA and all subsequent conduct by the NCA has satisfied the stipulations of all of the above enactments and documents and has remained consistent with article human rights of the applicant and his family members.

B.3 Issues with the application and the execution of the warrant for search and seizure

36. In the interests of brevity the court is directed to consider in detail the comprehensive arguments outlined by the applicant in his witness statement regarding the numerous issues with the warrant application and its execution as identified both by the NCA in its internal review of [numerous] faulty warrant applications and as identified by the applicant and by Rev. and Mrs. Love in their complaint regarding the manner of the execution of the search and seizure. Comprehensive arguments and matters of fact are found in the applicant's witness statement, on line numbers: [31-34], [38], [43], [68-71]. The court is also referred to the full review of faulty warrants by the NCA available at the following URL:
<http://www.nationalcrimeagency.gov.uk/publications/687-nca-warrant-review-closing-report>

B.4 Obligations of the NCA under the CJPA where large amounts of documents or records are seized without efforts being made at the premises to not remove items irrelevant to the investigation or privileged or special procedure materials

37. The CJPA, Part 2 gives limited powers to seize property from premises or persons so they can sift or examine it elsewhere. These limited powers and the stipulations and responsibilities incurred by their use are general but especially apposite where large amounts of documents and records or digital contents are removed without the exercise of discretion or attempts to not remove items or records or digital contents not directly relevant to the investigation of the specified

offences as detailed in the warrant application, or where materials removed may include legally or otherwise professionally privileged materials or special procedure materials.

38. The court is referred again to the comprehensive arguments and quotations of the statute and relevant sections of the PACE CoC as outlined by the applicant in his witness statement, on lines numbered: [32], [44], [48-50], [53], [74-78], [81], [92].

39. However for the benefit the court this summary is advanced, that – having removed indiscriminately records, documents and/or digital contents in the execution of a search and seizure pursuant to a lawful warrant – the NCA (as any other executive body) is obliged to undertake a careful procedure of sifting through the seized materials and may only do so with the concerned person or their legal representative being present, and must undertake this as soon as is practicable to minimise the inconvenience or other harm or injury to concerned parties.

40. Furthermore, “Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable.”

41. Numerous other stipulations, obligations and responsibilities are incumbent as outlined in the applicant’s witness statement and the applicant argues that there has been failure to adhere to each and every one thus outlined.

B.5 The public policy exception to the discretion of the court under PPA

42. The court is again referred to the comprehensive arguments regarding the public policy objection to the return of property outlined by the applicant in his witness statement, comprehensive arguments and matters of fact appearing at line numbers: [26], [94-106].

43. To summarise for the benefit of the court, we note: the most proximate holdings in the case of *Chief Constable of Merseyside Police v Owens [2012]* establish very clearly that court is under no obligation whatsoever to share the beliefs of executive bodies such as the NCA that the return of property might result in the commission of criminal offences.

44. In *Owens*, the Constabulary of Merseyside was found to believe reasonably that due to the behaviour and previous criminal record of Mr. Owens and due to the objective and uncontentious contents of the article of property to be returned – a CCTV recording of a man setting a fire at a property in the interest of Mr. Owens – that the likely use of that article would be to confirm, rightly or wrongly, the suspicions of Mr. Owens as to the identity of the man setting the fire, and would encourage and enable him to commit a violent and vigilante offence against that person.

45. The court of appeal held that the PPA does not require the court to share beliefs, no matter how reasonable, of the executive body as to what might result from the return of property. This is to say that the consideration of a public policy objection does not of itself affect the discretion and the responsibility of the court under the PPA to exercise its powers to restore title and order the return of property.

46. The applicant further, as comprehensively outlined in his witness statement, advances that the public policy objection offered by the NCA in this matter is substantially weaker than that offered in the case of *Owens* in the very clear regards that the applicant has no relevant criminal record, nor history of offending, has undertaken no actions during the course of the the NCA’s

investigation or since its effective closure in July 2014 to suggest that he will commit criminal offences, and the contents which the NCA claims would enable, encourage or facilitate the commission of offences is not even extant but entirely hypothetical to the claimed ability of the applicant to convert the objective and actual contents into other contents, and that the court in this matter is thus even further removed from being empowered to share the concerns, predictions or consequent objections of the NCA to its obligations to return property.

B.6 The obligations and failure of the NCA to follow through with correct procedure under s.49 of RIPA and consequent loss of any putative ability to make claims about encrypted contents.

47. As outlined in the introductory summary of facts in this document and as more comprehensively outlined in the applicant's witness statement, to which the court is again referred, the applicant was served with a court order under section 49 of RIPA with the intent of compelling the cooperation of the applicant in efforts by the NCA to decrypt what they claim are encrypted contents on some of the digital storage devices which they seized under PACE and continue to unlawfully retain. Comprehensive arguments and matters of fact appear in the applicant's witness statement at line numbers: [23], [43-44], [83-91].

48. Whereas the s.49 RIPA court order did not result in such cooperation, as the applicant advanced a reasonable set of conditions which would have to be satisfied before he were even to consider any obligation or compulsion to cooperate, the NCA had the responsibility to follow the correct procedure and have a summons issued to the applicant by the Central Criminal Court under RIPA. The NCA did not do this and as such it has forfeited any putative authority it might have been considered to hold to make assertions regarding what it claims are encrypted contents of storage devices.

49. The court is advised **with extreme and most emphatic certainty** that it must be incredibly careful not to bring the justice system of England and Wales into disrepute by accepting – without any objective evidence being adduced by the respondent, let alone any conclusive evidence – that there exists on any storage devices any hypothetical contents, which are impossible to examine and come to any satisfactory findings of fact there regarding, and that might hypothetically support the already highly tenuous public policy objection of the NCA to the return of property.

50. The applicant underlines in no uncertain terms and with the greatest possible degree of exhortation that were the court to accept the arguments advanced by the NCA as regards hypothetical contents then it would be doing the greatest imaginable disservice to the justice system of England and Wales and to the mother of all parliaments by legislating from the bench as to the implication of claims regarding encrypted contents which are epistemologically unsubstantiable so as to override the presumption of the right to enjoy personal property which is a fundamental tenet of law. (The applicant encourages the court to reread the preceding sentence as many times as is required for it to comprehend the gravity of the situation, and then a few more times for good measure.)

51. To this end the applicant reserves the right at any point in proceedings to dissolve the court's involvement in the matter should there be a danger of such a grievous mistake being made. The applicant will be contented at that juncture to consider the ability of another Court of Magistracy to provide the required relief or will consider alternative options, including judicial review and the direct involvement of parliamentarians, non-governmental organisations and relevant expert authorities on cryptography.

B.7 The NCA has not acted in good faith in its exercise of powers of search and seizure, subsequent retention of property, its disbursement thereof to third parties – nor has the NCA met its statutory duties, obligations and responsibilities variously and continuously for the last five years.

52. The court is again referred to the comprehensive arguments outlined in the applicant's witness statement regarding the failure of the NCA to act in good faith. These are to be found at line numbers: [6], [8-9], [22-23]. [25], [27-28], [31-32], [34-39], [40-50], [53-54], [56-65], [67-92], [104-107].

53. However, for the benefit of the court the following summary is advanced: the NCA in conjunction with the DOJ has conspired to subject a vulnerable adult to duress, coercion, legal and judicial arbitrage, the loss of his article human rights including the violation of his expectation of due process and the right to a fair trial, and the enjoyment of the rights to a private and family life and of personal property.

C. Conclusion:

54. By virtue of the legal arguments here advanced, in conjunction with the more comprehensive arguments outlined by the applicant in his witness statement, the court is advised that it has an obligation to exercise its powers under the PPA to restore to Mr. Lauri Love the title to his property and order the return of the same to Mr. Lauri Love by the NCA.

55. Whereas the NCA will undoubtedly attempt to make a distinction between the property that objectively exists, and may be examined by the court such that findings of fact can be made, and certain hypothetical contents that might hypothetically be brought into existence by subsequent actions that the applicant might undertake when he has his property restored to him, the court is advised and exhorted that it is obligated due to the proximate holdings in the case of Owens that it must not default to sharing the beliefs and concerns of the executive body (the NCA) even if it is satisfied that they are held reasonably.

56. The court is again reminded that the applicant, Mr. Lauri Love, is a vulnerable adult and is in these proceedings not represented by qualified legal counsel nor enjoys the presence of an 'appropriate adult' and as such it would be troubling in the extreme for the court to hear, let alone entertain, any allegations of criminal conduct.

57. The court has in fact an obligation to safeguard Mr. Lauri Love, as it has to all UK subjects and non-subjects under its jurisdiction, against slander, libel and defamation, even when it originates from executive bodies and agents enjoying the designated powers of police constables.

58. The court should therefore tread carefully and limit its remit in hearing this application to the simple question of to whom should be restored the property which is no longer required physically by the NCA for any legitimate purpose of investigation of criminal offences.

59. As neither party disputes that the physical property being unlawfully retained by the NCA belongs to the applicant, Mr. Lauri Love, the court is encouraged to administer the required relief as empowered by the PPA and order the restoration of title to that property and its return to the premises from which it was removed as soon as is practicable (if not immediately.)

D. Postscriptum:

60. To make up to the court for the slight-to-moderate but unavoidable dullness and abstruseness of technical legal argument, we shall sign off with a few choice quotations which are totemic of the entire history of civil and criminal justice in the wonderful and beautiful tradition of the English common law.

D.1 “Fiat justitia, et pereat mundus.” - Ferdinand I

61. “Let justice be done, though the world perishes.” This motto was adopted by the Holy Roman Emperor Ferdinand I, who probably took it from Johannes Manlius’s *Loci Communes*, a treatise on the law and society. The meaning was and remains clear, justice must be done, no matter the consequences.

D.2 “Fiat justitia, ne pereat mundus.” - Ludwig von Mises

62. “Let justice be done, lest the world perish.” This twist on the admonition due to Ludwig von Mises reminds us also that even if the near-term consequences of the exercise of justice may be regrettable to some, the long-term consequences of its denial are indeed the perishing of the world itself as it is brought into order and equity by the law.

D.3 “Fiat justitia ruat caelum.” - Somerset v Stewart

63. “Let justice be done, though the heavens fall.” This variant of the original sentiment was most famously cited in the landmark and fundamental case under English common law, *Somerset v Stewart*, which brought about an end to chattel slavery in England. The heavens falling here were the strong business interests of those who benefited materially from humans being treated as object and property.

D.4 “Let Right be done.” -Attorneys General, in response to Petitions of Right.

64. This traditional response by Her Majesty’s Attorneys General to the now (perhaps regrettably) defunct procedure in parliament for the redress of the deprivation of property from private individual by the Crown was introduced into the popular imagination by the famous legal case and *cause célèbre* of Archer-Shee (also known as “The Winslow Boy”) where a young man was falsely accused by the military - that is the Admiralty - of depriving them of property and this impugning of his and his family’s honour was eventually overturned through the noble actions of advocates, parliament and the courts.

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11th January 2019, the year of restoration.