Neutral Citation Number: [2017] EWCA Civ 1484

Case No: A2/2016/3388

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT, QUEEN'S BENCH DIVISION
The Honourable Mr Justice Green
[2016] EWHC 1682 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2017

Before :

LADY JUSTICE GLOSTER,
Vice President of the Court of Appeal, Civil Division
LORD JUSTICE GROSS
and
LORD BRIGGS OF WESTBOURNE

- -

Between :

IPSWICH TOWN FOOTBALL CLUB COMPANY LIMITED	**Appellant/ Claimant**
- and -	
THE CHIEF CONSTABLE OF SUFFOLK CONSTABULARY	**Respondent /Defendant**
- and -	
THE ENGLISH FOOTBALL LEAGUE	**Intervenor**

- -
- -

Mr Michael Beloff QC and Mr Nick De Marco (instructed by **Solesbury Gay**) for the **Appellant**
Mr Dijen Basu QC and Ms Catriona Hodge (instructed by **the Head of Legal Services, Suffolk County Council**) for the **Respondent**

Hearing dates : 27 and 28 June 2017

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Approved Judgment

Lady Justice Gloster:

Introduction

1. This is an appeal by the appellant, Ipswich Town Football Club Company Limited ("the Club"), from the decision of Green J, sitting in the High Court (Queen's Bench Division), dated 8 July 2016 ("the judgment")[1]. It concerns the scope of section 25 of the Police Act 1996 ("the 1996 Act"), which provides:

> "25 – Provision of special police services
>
> (1) The chief officer of police of a police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the local policing body of charges on such scales as may be determined by that body."

2. The dispute between the parties concerns whether section 25 of the 1996 Act entitles the police to charge the Club for special police services ("SPS") provided on land immediately adjacent to, and outside, Ipswich football stadium. The disputed area essentially consists of land comprising the public highway, in respect of which the Club has no proprietary interest, but over which it exercises a degree of de facto control.

3. The Club submits that the respondent, the Chief Constable of Suffolk Constabulary,[2] with responsibility for the direction and control of that Constabulary, ("the respondent" or "the Chief Constable") has no such power, section 25 being effectively confined to private premises such as, paradigmatically, the inside of the stadium. The Chief Constable submits that the judge was correct to find that the statutory power to charge for the provision of policing services extends to land of the type in question, and that, in any event, the judge's finding was within the bounds of his permissible fact finding remit.

4. The Honourable Michael Beloff QC together with Mr Nick De Marco appeared on behalf of the Club; Mr Dijen Basu QC together with Miss Catriona Hodge appeared on behalf of the Chief Constable.

5. Permission to appeal was granted by Green J on 3 August 2016.

Factual background

6. The Club holds a long lease over the Club's stadium, the Portman Road Football Club Stadium and Practice Pitch, Portman Road, Ipswich, IP1 2DA ("the stadium"), the freehold reversion of which is owned by the local authority. The stadium has a maximum capacity of around 29,000 spectators, although typically around 20,000

[1] [2016] EWHC 1682 (QB)

[2] It appears that any payment for SPS should technically be made to the Police and Crime Commissioner for Suffolk. However, it was agreed at first instance that no point would be taken as to the correctness of the identification of the Chief Constable as the appropriate Defendant in these proceedings (see judgment of Green J at [21], footnote 1).

spectators attend each match. It is primarily accessed via two streets which directly adjoin two sides of the stadium, namely Portman Road and Sir Alf Ramsey Way. Both are public highways. It is on these two streets that the majority of the stadium's turnstiles and exit gates are situated. Accordingly, on match days, very large numbers of people congregate on these streets on their way into the stadium. This creates obvious safety risks. The entry and exit gates and turnstiles for fans are accentuated pinch points and require very careful control. Tens of thousands of fans coalesce at these points before and after a match.

7. The Club employs stewards who carry out a number of functions, both on Portman Road and Sir Alf Ramsey Way, and within the stadium itself, with a view to ensuring that fans enter and exit the stadium in a secure and peaceful manner.

8. As a designated sports ground, section 1(1) of the Safety of Sports Grounds Act 1975 ("SSGA 1975") requires that the stadium has a safety certificate which, under section 2(1) of the SSGA 1975, must contain such terms and conditions as the local authority considers necessary to secure reasonable safety at the stadium. On match days, policing is sometimes necessary within the stadium to prevent crime and keep the peace. However, most of the Club's matches are not policed. The Club's Safety Certificate granted by Ipswich Borough Council ("the Council") is contingent upon the Club having a police presence within the stadium during certain matches. Without that police presence, the Club is in breach of its Safety Certificate and may be subject to criminal sanctions. In practice, this means that those matches cannot be played. The Safety Certificate does not require the Club to secure a police presence outside the stadium.

9. In order to facilitate matches at the stadium, on 18 July 2000, and following the Club's application, the Council issued a Traffic Regulation Order (or traffic control order) entitled Ipswich Borough Council (Portman Road / Sir Alf Ramsey Way) (Prohibition of Entry) Order 2000 ("the Order"). The Order came into operation on 1 August 2000 and has the effect of closing the roads in an area surrounding the stadium ("the TCO area") during certain matches. Schedule 1 of the Order sets out an Operational Plan which provides for: i) the closure of Portman Road and Sir Alf Ramsey Way on match days from 90 minutes prior to kick-off to 30 minutes after the final whistle; ii) all vehicles to be prohibited from entering the TCO area during that time, save with the permission of a police officer or traffic warden or in relation to certain exempt vehicles including emergency vehicles; iii) the placement of barriers and bollards on the boundaries of the TCO area 90 minutes prior to kick-off, and; iv) the use of various "road closed" signs and "no waiting" cones in a number of strategic locations prior to kick-off.

10. It is the Club's stewards and employees (and not the police) who insert the physical barriers that close the roads and who then regulate traffic in the TCO area. No police officers are involved in the road closures. The stewards put crowd control barriers in the roads in the TCO area in order to control fans as they approach the turnstiles.

11. On 23 July 2008, the parties agreed a Memorandum of Understanding ("MOU"), intended to govern the provision of police services by the Respondent to the Appellant during the period 1 July 2008-30 June 2011. Pursuant to that MOU, the Chief Constable was required to provide policing services to the Club "sufficient to facilitate the safety of both home and away spectators and to prevent crime, violence

and disorder". The level and type of policing services provided for any particular match depended on which 'risk grade' the parties assigned to that match, each grade corresponding to a sum chargeable by the Chief Constable for providing the services. Grade A represented a low risk of disorder, and was charged at £5,926, Grade B denoted a medium risk of disorder and was charged at £10,928, and Grade C, which was charged at £25,242, was reserved for matches carrying the highest risk of disorder. The MOU covered all policing operations, and drew no geographical distinction between policing provided: i) inside the stadium; ii) on Portman Road and Sir Alf Ramsey Way, and/or; iii) elsewhere in Ipswich.

12. In January 2011, the parties agreed a Statement of Intent, which was stated not to be legally binding, but rather simply to define the respective duties of the Club and the Chief Constable. Paragraph 1.1 of the Statement provided that the sole responsibility for the safe management of crowds entering and leaving the stadium rested with the Club. Paragraph 3 provided that "external areas" were the responsibility of the Chief Constable. The TCO area was excluded from the definition of "external areas".

13. Upon the expiry of the 2008 MOU in June 2011, the parties agreed a document entitled "Terms for the request and supply of special police services under section 25 Police Act 1996" ("the 2011 Terms"). This document was signed on 5 August 2011, and related to matches played during the 2011-2012 season. It made provision for the supply of SPS within and around the stadium, including within the TCO area. These services were to be chargeable on essentially the same basis as under the 2008 MOU, save that the basis of charging was geographically limited to policing services provided within the stadium and the TCO area, thereby excluding policing services provided in other areas of Ipswich.

14. On 24 July 2012, judgment was delivered in the case of *Leeds United Football Club Limited v Chief Constable of West Yorkshire Police* [2012] EWHC 2113 (QB) ("*Leeds"),* in which the High Court held that the police were not entitled to charge for policing services provided on the public highway and in car parks immediately surrounding the stadium. The police subsequently appealed.

15. On 1 August 2012, upon expiry of the 2011 Terms, the Club and the Chief Constable agreed a second set of "Terms for the request and supply of special police services under section 25 Police Act 1996" ("the 2012 Terms"). As with the 2011 Terms, the 2012 Terms provided for the Chief Constable to charge the Club for the provision of SPS within the TCO area. However, under clause 23 of the 2012 Terms the Club reserved the right to renegotiate the contract once the legal effect of the *Leeds* case was finally determined.

16. On 17 December 2012, the Club wrote to the Chief Constable explaining that, as a result of the High Court judgment in the *Leeds* case, the Club believed that it had been overcharged by the Chief Constable in the sum of £99,000 during the 2011-2012 football season. The Club did not dispute the Chief Constable's right to charge the Club for the provision of SPS within the Stadium. On 22 January 2013, the Chief Constable replied stating that, pending the determination of the appeal in *Leeds,* any claim by the Club to recoup the costs of such charges would be premature. The Club thereafter refused to pay any further invoices.

17. In March 2013, the Court of Appeal upheld the High Court's judgment in *Leeds* and dismissed the Chief Constable's appeal; see [2014] QB 168, [2013] EWCA Civ 115. On 21 June 2013, the Club wrote a letter before claim to the Chief Constable seeking, among other matters, recovery of overpaid charges under the MOU and the 2011 and 2012 Terms. As no agreement as to charges could be reached between the Chief Constable and the Club, the Club issued these proceedings on 29 April seeking recovery of allegedly ultra vires charges made by the Chief Constable for services that the Club claimed were not provided in accordance with section 25 the 1996 Act, but rather in discharge of the police's ordinary public duty to prevent crime and protect life and property.[3]

18. The matter came before Green J in June 2016. By his judgment dated 8 July 2016, the judge: i) found that the Chief Constable was entitled to charge for the policing services provided in the TCO area but not in the areas beyond the TCO area that had been charged for under the MOU, and ii) gave directions for the hearing of issues relating to quantum and recovery. On 3 August 2016, Green J granted the Club's application for permission to appeal. By Appellant's Notice dated 24 August 2016, the Club asks the Court of Appeal to make a declaration that the Chief Constable is not entitled to impose charges for the provision of police services within the TCO area.

19. On 23 January 2017, the Football League Limited ("the FL") made an application to intervene in the proceedings. On 31 January 2017, I gave permission for the FL to intervene by way of written submissions, and ordered that the FL should bear its own costs of the intervention, without prejudice to the right of any other party to seek its costs of the intervention against the FL. The FL subsequently provided written submissions settled by Mr Shane Sibbel, and, although I had not given permission to do so, additionally a witness statement by Nicholas Craig, the governance and legal director of the FL. However, neither party objected to the service of that witness statement.

The judgment

20. The judge delivered a judgment of some 157 paragraphs. In summary:

    i) He made the following findings of fact:

> "I now set out my principal findings of fact in relation to the TCO area:
>
> i) Primary responsibility for ensuring safety and public order in the stadium lies with the Club.
>
> ii) Predominantly the persons present in the TCO area at the relevant time are football fans and not general members of the public.

[3] In addition to this central issue, there arose a number of issues as to quantum and the basis upon which, if entitled to do so, the Club could recover the monies wrongly paid. These issues arose primarily out of the counter-claim, set-off and limitation defence raised by the Chief Constable in respect of certain elements of the Club's claim. They are set out in full by Green J in his judgment and are not materially relevant to the subject matter of this appeal, which is confined to liability.

iii) Primary responsibility for safety and public order in the TCO area lies with the Club. The Club exercises exclusive control over the TCO area in the majority of cases (see statistics at paragraph [23] above). The Club has a high degree of de facto control over the TCO area. This is not absolute and they have no legal power to eject persons from the area. But they control traffic into the area; they erect crowd control barriers; they conduct searches of persons entering the stadium; they eject drunks and aggressive spectators; and they shepherd and control flows of fans coming into and out of the stadium.

iv) Primary responsibility for traffic control within the TCO area lies with the Club.

v) The activities of the stewards in the TCO area represent the corollary or counterpart of the crowd control activities they also perform within the stadium both before and after the match to ensure order and safely.

vi) The Club also uses the TCO area as a site for commercial activity by deploying kiosks and sales staff to sell match programmes etc. The Club does not have an exclusive right to use the TCO area for commercial activity and obtains permission from the local authority to exploit the TCO in this way.

vii) All of the activities of the Club in the TCO area are performed with the agreement of the local authority and the Police and Safety Advisory Group.

viii) The services provided by the Police in the TCO area are in response to a request issued by the Club. They are overwhelmingly preventative and supportive of the Club's stewarding activities. They are analogous to the services provided by the Police inside the stadium and are a natural extension of those services.

ix) Not every service provided by the Police in the TCO area is preventative or secondary. Where serious public order issues arise or crime is witnessed or anticipated the Police might react in their usual operational manner. However, the need for reactive policing in the TCO area is rare.

x) The Club has an excellent record for ensuring safe and orderly matches and it benefits materially from a Police presence in the TCO area which instils a calming atmosphere both in that area and inside the stadium. This is good for the Club's reputation as a safe venue."

ii) Having reviewed certain of the relevant cases he summarised what he regarded as the most important principles as follows:

> "(3) Summary of relevant principles
>
> 115. I set out below a summary of the most important principles which arise from the case law.
>
> *(i) The distinction between the operational duty and SPS*
>
> 116. For the purposes of section 25 the services provided by the Police can be divided into operational (for which no charge may be levied) and SPS (for which a charge may be levied). There are no hard and fast rules governing whether a policing service is operational or an SPS. The issue is fact and context specific.
>
> *(ii) The scope of the operational duty: reactive and preventative policing*
>
> 117. The core operational service embraces both reactive policing and preventative policing. Reactive policing is Police intervention in response to actual or imminent crime or disorder; preventative policing is policing designed to prevent or deter the emergence of crime or disorder. The securing of safety and preservation of property may be an inherent aspect of both reactive and preventative policing.
>
> *(iii) Preventative policing as SPS*
>
> 118. Preventative policing can be both an operational activity *and* SPS.
>
> *(iv) Reactive policing as SPS*
>
> 119. There is no authority suggesting that the provision of reactive policing services can amount to SPS and *Harris* (at page [91F]) suggests that reactive policing may never be SPS.
>
> *(v) Factors relevant to determining whether a requested preventative service is SPS*
>
> 120. Assessment is fact specific: In determining whether a service is operational or capable of amounting to SPS there are no hard and fast, black and white rules. Nonetheless there are guidelines arising out of case law which create indicators and some are of much greater weight and importance than others. I identify below some of the main indicators and the weight which has been attributed to them in case law.

121. Preventative policing on private land or land the recipient controls: Preventive policing performed on private premises or land controlled by the recipient is *prima facie* SPS. This might indicate that the service is SPS because, but for the permission of the service recipient granted to the Police to enter the land, the Police would have no *prima facie* right to enter and because the degree of control exercised by the recipient is indicative of the commercial nature of the use of the land and the relationship of the service provided by the Police to the recipient. The relationship in law of the recipient of the Police service to the land in question is not in itself dispositive but it is an important factor which can shed light on the broader question which is as to the essential nature of the service provided by the Police to that recipient.

122. Preventative policing on public land or on the public highway: Preventative policing on public land or on the public highway will, *prima facie*, be part of the operational duty. But, it is still capable of being an SPS in appropriate circumstances (such as the provision of a Police escort service on the public highway).

123. Reactive policing on private land: Reactive policing on private premises will still be operational. There is no case law indicating that the performance of normal reactive policing, for example arresting a person intent on assault or drug dealing in a stadium, is anything other than an activity within the operational duty.

124. The relevance of the discretion of the Police: The Police have a discretion as to how resources are allocated. The operational duty may arise only after the exercise of discretion. If the unilateral decision is taken not to allocate (say) preventative resources a private person may request those services for consideration as SPS.

125. The nature of the benefit provided: The identity and nature of the recipient who benefits from the service is a relevant but not conclusive consideration. This may involve a consideration of the predominant purpose of the service. If the beneficiary is the public at large this is an indication that the service is operational. But if it is directed towards a private person for a private gain and/or to a limited category or sub-set of persons that may have some significance. The mere fact that the beneficiary is a sub-set of the public does not without more mean that the service is SPS: See paragraph [111] above in relation to the example given of the apprehension of the burglar, though the illustration given in *Leeds* seems to be of reactive policing.

126. No "but for" test: A Police service is not an SPS simply because it would not have been provided "but for" the existence of the event in question."

iii) In paragraph 127 of his judgment, the judge said that, in the light of the case law, he had identified "the following issues and questions as relevant to the facts". In effect, these were nine factors which he went on to consider. These factors were as follows:

"(i) Preventative policing as both a core duty and SPS;

(ii) Policing within a stadium on private land and the analysis of the TCO area;

(iii) Control of the TCO area as a relevant factor;

(iv) The relevance of the assessment of the risk of disorder and violence in relation to the TCO area;

(v) Preventative policing on the TCO area as public land;

(vi) Whom the service provided by the Police in the TCO area is directed at (its predominant purpose / benefit);

(vii) The nature of the "request" for services;

(viii) The relevance of the strain on Police resources;

(ix) The relevance of a "but for" test."

iv) He summarised his conclusions as follows:

"**F. Conclusion**

153. In my judgment, and taking all of the relevant facts in the round and attributing due weight to each factor, the provision of policing services in the TCO area amounts to SPS. This is because:

i) **Principal responsibility for safety and order in the stadium**: The principal responsibility for crowd safety and order in the stadium lies with the Club.

ii) **Principal responsibility for traffic, safety and order in the TCO area**: The principal responsibility for traffic, safety and order in the TCO area lies with the Club.

iii) **The Club has significant control over the TCO area**: The Club has a substantial measure of control over the TCO area during the relevant periods and it exercises this control with the consent and approval of the local authority and the Police.

iv) **The nexus between the TCO area and land under the legal control of the Club:**The TCO area is contiguous to land (the stadium) over which the Club exercises a proprietary (leasehold) interest.

v) **Use made by the Club in the TCO area**: The use made of the TCO area by the Club is necessary to enable it to perform its normal stewarding functions. The work of the stewards in the TCO area outside the stadium in controlling entry and exit is a logical and natural corollary to the work of the Club and its stewards inside the stadium. They are part and parcel of the same core Club function.

vi) **The parties do not categorise the TCO areas as a public highway**: The Police and the Club agree (cf paragraph [47] above) that the TCO area is not to be treated as the "Public Highway" for the purpose of traffic control or public order.

vii) **The essentially preventative, peace keeping, role played by the Police in the TCO area**: The service provided by the Police in the TCO area is preventative and intended to instil a calming influence on spectators and is designed to support and supplement the work of the stewards both in that area and also inside the stadium.

viii) **Nexus between Police service inside and outside the stadium in the TCO area**: In the stadium policing services provided by the Police amount to SPS. By parity of reasoning when the Police perform an equivalent role and service outside in the TCO area those equivalent services should equally be classified as SPS.

ix) **There is a logical cut off between the boundary of the TCO and public land outside the TCO area**: The TCO area bounds the entry/exit gates and turnstiles. The position inside the TCO area is qualitatively different to areas beyond the TCO area. Services provided in the TCO area are inward facing (i.e. stewarding spectators into the stadium and then (after the match) dispersing them from inside the stadium out into the TCO area and away) and based on large scale crowd control. They therefore have a strong nexus to Police services provided inside the stadium. However, that nexus substantially weakens or disappears outside the TCO area. Hence there is a logical analytical cut off at the boundary of the TCO area.

x) **Value of the policing service to the Club:** The service provided by the Police in the TCO area is predominately directed at the Club and its supporters and not to the general public. It is valuable and beneficial in commercial terms to the Club since it (a) enables the Club to meet essential regulatory requirements and (b) reduces

> tension around the entrances and exits and turnstiles and it therefore materially assists to engender the wider reputation of the Club as a safe venue for spectators to visit.
>
> 154. It follows from the facts of the case that the services provided by the Police within the TCO area constitute SPS and the Police are entitled to impose charges for the provision of such services. I will grant a declaration in appropriate terms to this effect."

The Club's grounds of appeal

21. The Club appeals on three grounds, namely:

    i) the judge failed to apply the correct legal test (which was clearly set out by the Court of Appeal in *Leeds* in determining whether police services are special police services); and/or

    ii) the judge instead applied a test that: i) failed to take into account the factors identified by the Court of Appeal in *Leeds*; ii) accorded weight, or too much weight, to factors not considered significant in *Leeds*; iii) gave insufficient weight to the most important factors identified in *Leeds*, and/or; iv) elevated the less significant factors; and/or

    iii) the judge made a number of factual errors when applying the facts of this matter to the law.

The Chief Constable's response

22. In response, the Chief Constable seeks to support the decision of the judge. He contends that the judge's self-directions of law were impeccable, that he made permissible findings of fact and correctly applied the facts and context to the law, giving each of the applicable factors a weight which was open to him. The Chief Constable further contends that the appeal is largely a perversity challenge and that the Club must cross a very high threshold in order to make good such a challenge.

The FL's intervention

23. The FL supports the position of the Club. It contends that the judge made two key errors of law in the judgment:

    i) first, the judge did not give sufficient weight to what was submitted to be the most important factor, namely whether police officers were required to attend on private premises or in a public place; the judge, it was said, failed to recognise the importance of this factor when addressing the scenario of services provided on public land and wrongly relegated the factor; and

    ii) second, the judge wrongly elevated as a key factor the extent to which the relevant club enjoys some relevant degree of non-proprietary control over the land in question, notwithstanding that it is public land; there was no support for such an analysis in the relevant authorities.

24. In addition, the FL submitted by reference to its evidence, that, if upheld, the approach developed in the judgment would have serious and widespread ramifications for the members of the FL.

Discussion and determination

Approach by reference to relevant authority

25. I start by making the perhaps obvious point the outcome of this case does not depend on what individual judges, the public, or the media, think is the "right" answer to the question as to whether the police should be entitled to recover for providing the additional cost of policing a sporting event which is intended to be run for profit. The answer depends on what the law is. And that is contained in section 25 of the 1996 Act as interpreted by subsequent case law, by which this court is bound. Subject to any ruling by the Supreme Court (which has not to date considered the issue of policing football matches), it is for Parliament to change the law if it considers it appropriate to do so. As Scott Baker LJ said in *West Yorkshire Police Authority v Reading Festival Limited* [2006] 1 WLR 2005 at [72]:

> "There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit. That however is not the law."

Analysis of existing case law

26. As Mr Beloff submitted, an analysis of the existing case law is necessary. However, since this was done by Lord Dyson MR in the *Leeds* case, I gratefully adopt his analysis of the cases until 2013.

27. The starting principle is contained in G*lasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270. That was a case where, on the occasion of a colliery strike, a colliery manager applied for police protection for his colliery and insisted that it could only be efficiently protected by billeting a police force on the colliery premises. The police superintendent was prepared to provide what he considered to be adequate protection, but only if the manager agreed to pay for it. By a majority, the House of Lords decided that there was nothing illegal in the agreement. Although the House was split on the question whether the particular agreement was lawful, there was no disagreement as to the relevant principles. It is sufficient to refer to the speech of Viscount Cave LC. He said, at page 277, that the practice by which police authorities charge for "special services" outside the scope of their obligations had been established for upwards of 60 years. It was an absolute and unconditional obligation binding on police authorities

> "to take all steps which appear to them to be necessary for keeping the peace, for preventing crime, or for protecting property from criminal injury; and the public, who pay for this protection through the rates and taxes, cannot lawfully be called

> upon to make further payment for that which is their right" (p 277)."

He continued at p 278:

> "But it has always been recognised that, where individuals desire that services of a special kind which though not within the obligations of a police authority can most effectively be rendered by them, should be performed by members of the police force, the police authorities may (to use an expression which is found in the Police Pensions Act, 1890) "lend" the services of constables for that purpose in consideration of payment. Instances are the lending of constables on the occasions of large gatherings in and outside private premises, as on the occasions of weddings, athletic or boxing contests or race meetings, and the provision of constables at large railway stations. Of course no such lending could possibly take place if the constables were required elsewhere for the preservation of order; but (as Lord Justice Bankes pointed out) an effective police force requires a margin of reserve strength in order to deal with emergencies, and to employ that margin of reserve, when not otherwise required, on special police service for payment is to the advantage both of the persons utilising their services and of the public who are thereby relieved from some part of the police charges."

At p 281, he said that if in the judgment of the police authorities the garrison was "necessary for the protection of life and property", then they were not entitled to make a charge for it. But if they thought that the garrison was a "superfluity" and they "only acceded to Mr James' request with a view to meeting his wishes, then in my opinion they were entitled to treat the garrison duty as a special duty and to charge for it."

28. Thus, as Lord Dyson said in *Leeds* at [6], in *Glasbrook*:

> "a distinction was clearly drawn between the police (i) performing their duty of doing what is necessary to prevent crime and provide protection (for which they cannot make a charge) and (ii) doing something else at the request of an individual (for which they can charge). That was the position at common law. It was later reflected in legislation. It is common ground that the legislation (including section 25 of the 1996 Act) did not change the law."

29. The next case is *Harris v Sheffield United Football Club ("Harris")* [1988] 1 QB 77. That was a case where the judge at first instance (Boreham J) had decided that the attendance of the police *within* the club's football ground was indeed the provision of "special police services" and accordingly that the police authority was entitled to

make a charge. The Court of Appeal upheld that decision. Again, I adopt the description of the case given by Lord Dyson MR in *Leeds* at [7 to 14[4]]:

> "7…….. The chief constable arranged for police to attend at matches both inside and outside the club's ground in order to fulfil his duty to maintain law and order and to protect life and property. The issue was whether the club was obliged to pay for services inside the ground as being SPS within the meaning of section 15(1) of the Police Act 1964 ("the 1964 Act"). The Court of Appeal held that these were SPS and the club was therefore obliged to pay. Section 15(1) of the 1964 Act was in the same terms as section 25(1) of the 1996 Act."
>
> 8. It was submitted by Mr John Griffiths QC on behalf of the club that the predominant role of the police inside the ground was to maintain law and order and that there was no difference between the performance of "ordinary police duty" on private and on public premises. The operation was planned as a whole and it was impossible to make a satisfactory distinction between the duties which the officers carried out outside the ground and those which they carried out within it."
>
> 9. It was also submitted that there was a finding of fact that, unless the police were present at matches in numbers, serious breaches of the peace were probable. Moreover, it was accepted by the police that their predominant role inside the club's ground was to maintain law and order and to prevent riot and consequent injury to law-abiding persons and property. In short, it was submitted that, where a chief constable accepts that there is a necessity for a police presence in order to keep the peace, the officers who attend are performing "ordinary police duty", provided that the predominant purpose of their presence is to fulfil that necessity; and there is no difference between the performance of "ordinary police duty" on private or on public premises. These submissions were based on *Glasbrook*.
>
> 10. Neill LJ gave the lead judgment. He said (p 83G) that SPS were not defined in the 1964 Act, but it was clear that section 15(1) provided statutory authority "for a long-established practice whereby police officers have been made available to carry out functions at private premises in return for payment to the relevant police authority". At p 89D he said that, if the words of Viscount Cave in *Glasbrook* were applied as if they were the words of a statute, the case for the club would be very strong if not overwhelming. That was because it was not in dispute that the chief constable had been of the opinion that the attendance of police officers at the ground was necessary for the maintenance of law and order and the protection of life and

[4] All bolded text in citations is my emphasis.

property. But he said that the question before the House in *Glasbrook* was whether a charge could be made where the precautions taken were more extensive than those which the police authorities considered to be necessary. More importantly, the emergency which required the presence of police officers in *Glasbrook* arose in the context of an industrial dispute and not because the colliery had chosen to invite a large number of people to watch a football match or other spectacle.

11. At p 91D, Neill LJ addressed the question whether, having regard to the chief constable's general duty to enforce the law, the provision of the officers could properly be considered as the provision of SPS. As to this, he said:

> "In answering this question I do not propose to attempt to lay down any general rules as to what are or are not "special police services," because in my judgment it is necessary to look at all the circumstances of the individual case. I would, however, venture to suggest that the following matters require to be taken into account **(1) Are the police officers required to attend on private premises or in a public place?** Though in *Glasbrook Brothers Ltd. V. Glamorgan County Council* [1925] AC 270 the fact that the garrison was to be stationed on private premises was not treated as conclusive, the fact that the police will not as a general rule have access to private premises suggests that prima facie their presence on private premises would constitute special police services. (**2) Has some violence or other emergency already occurred or is it immediately imminent?** I can at present see no basis for an argument that the attendance of police officers to deal with an outbreak of violence which has actually occurred or is immediately imminent could constitute the provision of special police services, even though officers who would otherwise be off duty had to be deployed. (**3) What is the nature of the event or occasion at which the officers are required to attend?** It is to be noted that in *Wathen v. Sandys* (1811) 2 Camp. 640 , which was referred to in the course of argument in the *Glasbrook* case in the Court of Appeal [1924] 1 K.B. 879 , 882, the sheriff was not entitled to charge the candidates for the provision of constables at the polling booth because he was under a duty to procure the peace of the county. But a distinction can be drawn between public events such as elections which perhaps lie at one end of a spectrum, and private events such as weddings which lie at the other end. At various points in the middle may lie events such as football matches to which the public are invited and which large numbers of the public are likely to attend. It may also be relevant to inquire whether the event or occasion forms part of a series or whether it is a single occasion or event.

> Someone who stages events which require the regular attendance of police officers will be placing an exceptional strain on the resources of the police, particularly if the events take place at weekends or on public holidays. (**4) Can the provision of the necessary amount of police protection be met from the resources available to the chief constable without the assistance of officers who would otherwise be engaged either in other duties or would be off duty?** It was argued on behalf of the club that though it was relevant to take account of the total number of men available it was not permissible to take into consideration the fact that the use of "off-duty" officers might increase the payment of overtime. I am unable to accept this argument. The chief constable when deciding how to deploy his forces is subject not only to the constraints imposed by the number of men available, but also to financial constraints. The payment of overtime on particular occasions may mean that on other occasions reductions have to be made in the ordinary services provided by the police or sacrifices have to be made in the provision of equipment."

12. Taking these factors into account, he concluded that the regular attendance of police officers at the ground constituted the provision of SPS. In particular, he mentioned the fact that the club was not under any duty to hold matches; the charges related solely to the officers on duty inside the ground and not those in the street or other public places; and the chief constable would be unable to provide the necessary amount of protection within the ground without making extensive use of officers who would otherwise have been off duty.

13. Balcombe LJ said that, in deciding how to exercise his public duty of enforcing the law, a chief constable had a discretion and was required to consider what resources were available to him. In answering the question whether the attendance of police within the ground was the provision of SPS, the first instance judge in that case had said:

> "The numbers considered necessary to carry out these services could only be provided by calling on officers who, at the material times, would otherwise have been off duty. The scope and extent of those services and their impact on the chief constable's manpower resources put them beyond what the club, in the circumstances, was entitled to have provided in pursuance of the chief constable's public duty. He was entitled to provide those services because he was able to do so without depriving other people of police protection. In other words, the services provided were within his powers; they were not within the scope of his public

> duty. I am satisfied that they were special services as I understand that expression to have been used in the Glasbrook case and within the meaning of section 15(1) of the Police Act 1964. It follows that he was entitled to provide them on condition that they were paid for."

> 14. Balcombe LJ said that this was a correct statement of the legal position which could not be faulted. He made no explicit reference to the four factors identified by Neill LJ. But in substance he expressed agreement with Neill LJ's fourth factor, since he considered that the fact that the chief constable would be unable to provide policing services within the ground without calling on officers who would otherwise have been off duty pointed to the policing being SPS. Kerr LJ agreed with both judgments."

30. The next case chronologically in this line of authority is *West Yorkshire Police Authority v Reading Festival Ltd* [2006] EWCA Civ 524, [2006] 1 WLR 2005. The issue concerned the policing at a music festival which took place every August bank holiday weekend at an outdoor site in Leeds and whether the police authority was entitled to charge for the police services as SPS under section 25(1) of the 1996 Act. The Court of Appeal held that, since there had been no request, the authority was not entitled to charge. That is the ratio of the decision (see [58] in the judgment of Scott Baker LJ). Nevertheless, Scott Baker LJ went on to express an opinion (obiter) on the question of whether SPS had been provided. He said:

> "63. Police operations conducted on the public highway or in villages will not ordinarily be conducted for the benefit or protection of particular persons such as those organising occasions like sporting events or music festivals and their attendees. Rather, their purpose will be for the protection of the public at large. That, in my judgment, was their predominant purpose in this case albeit this was occasioned by the existence of the festival.
>
> 64. The distinction in the *Harris* case [1988] QB 77 between policing outside the football ground and within the football ground has been picked up in a number of Home Office circulars and documents, for example Home Office Circulars 36/1991 and 34/2000. While these documents cannot determine the law, they are a useful guide to how it has been pragmatically applied.
>
> 65. In my judgment it is not apposite to consider the request and "special police services" as completely separate entities when considering the application of the section; the two things are related.
>
> 66. I agree that it is impossible to lay down a comprehensive definition of "special police services" and that the particular circumstances are likely to be critical. I have, with respect found the guidance in the *Harris* case helpful. It does however, seem to me that one of two key features is ordinarily likely to be present. Either the services will have been asked for but will be beyond what the police consider necessary to meet their public

> duty obligations, or they are services which, if the police do not provide them, the asker will have to provide them from his own or other resources. Essentially, however, "special police services" will be something that someone wants, hence the importance of the link in the section with a request.
>
> 67. ….
>
> 68. I turn to consider, as did the judge, the factors mentioned by Neill LJ in the *Harris* case [1988] QB77 in relation to the facts of the present case. Section 25(1) refers to services at any premises or in any locality in the police area. As the judge pointed out, where the services, as here, are deployed off site it is more difficult to establish "special police services". It is true that the police were ready at short notice to go onto the festival site but it seems to me that in that event it would be in order to perform their public duty of keeping law and order rather than to provide any special service to Mean Fiddler.
>
> 69. As to the second consideration, no violence or other emergency had occurred or was imminent although all were aware of what had occurred the previous year.
>
> 70. As to the third and fourth considerations, certainly the festival put an exceptional strain on police resources and the amount of police protection provided could not be met by the chief constable without calling on officers who were on leave or on rest days.
>
> 71. I agree with Mr Englehart's submission that the fact that the services were not on private property in this case is an important factor. **In many, perhaps most, cases whether the services are provided on private property or in a public place is likely to be a very strong factor in determining whether they are "special police services".**
>
> 72. There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit. That however is not the law.
>
> 73. On balance I have come to the conclusion that the police did not provide "special police services" in this case."

31. In the *Leeds case* Lord Dyson MR (at [18]) rejected the suggestion that at [63] Scott Baker LJ had introduced an additional factor to the four stated by Neill LJ, namely whether the services are (predominantly) for the benefit of the person requesting the services. However Lord Dyson accepted a submission made by Mr Beloff in that case that:

> "the focus on who benefits from the service may be a relevant part of the analysis of whether the service provided falls within the scope of the constable's ordinary public duties."

32. The next relevant[5] and highly important case is the *Leeds* case itself. In that case the issue was whether the West Yorkshire Police ("WYP") were entitled to charge Leeds United Football Club the cost of public order policing and crowd control outside the immediate environs of the club premises at Elland Road (on land neither owned nor controlled by the club), both before and after football matches. It was not in dispute for the purposes of the appeal that the club had requested and WYP had provided police services (i) within the club's stadium, (ii) in the areas immediately outside the stadium that were owned or controlled by the club and (iii) in certain identified streets and public areas *beyond the stadium and the areas owned or controlled by the club*. The club had always accepted that the police services provided in (i) and (ii) were SPS within the meaning of section 25 of the 1996 Act. The issue was whether the police services provided in (iii) (which the court referred to as "the extended footprint") were also SPS. The extended footprint *included public highways, a number of residential streets as well as other public areas such as car parks and open spaces.* At first instance Eady J had held that the services provided in the extended footprint were not SPS, but were police services provided in discharge of WYP's ordinary public duty to prevent crime and protect life and property for which they were not entitled to charge the Club. WYP appealed from that decision.

33. Having conducted an analysis of the relevant cases, which I have largely reproduced above, Lord Dyson MR then analysed the relevant factors which the court has to take into account in deciding whether the provision of police services *on private land* constitutes the "discharge of [the police's] public duty of preventing crime and disorder and protecting life and property, or, alternatively the provision of some other service which, in their discretion, they may or may not decide to provide"[6]. Lord Dyson concluded that the factors identified by Neill LJ in *Harris* were "in varying degrees useful pointers to the application of the *Glasbrook* principles and as to whether police services provided in any given case are or are not special police services."[7] whilst questioning the utility of factors 3 and 4. Because of the importance of certain of Lord Dyson's statements, and the reliance placed by counsel upon them, I set out the relevant paragraphs of his judgment in full, emphasising those passages of particular importance, notwithstanding that they relate to the provision of police services on private land:

> "*The provision of policing services on private land*
>
> 25. I shall start with policing on private land, since the cases to which I have referred all involved such policing. There is no doubt that *Glasbrook* remains good law. **The police are under a duty to prevent crime and disorder and to protect life and property.** They cannot charge anyone for the cost of discharging this duty. But they may charge for the provision

[5] *Chief Constable of the Greater Manchester Police v Wigan Athletic AFC Limited* [2009] 1 WLR 1580 is not directly relevant since the SPS charges in that case all related to areas of private land.
[6] See [25] of Lord Dyson's judgment.
[7] See [29] of Lord Dyson's judgment.

of other services which they choose to provide at the request of any person. These other services are SPS. None of these principles is controversial. But the cases show that difficulties can arise in relation to their application. The policing of large sporting events and, in particular, football matches, raises particular difficulties of application. When, pursuant to a request by the club, police attend an important football match, are they discharging their public duty of preventing crime and disorder and protecting life and property or are they providing some other service which, in their discretion, they may or may not decide to provide?

26. In answering this question, two points should be borne in mind. First, although professional football is usually played on private land owned or controlled by football clubs, it is unrealistic in the 21st century to regard football matches attended by many thousands of spectators as in any way analogous to weddings. One only needs to look at the newspapers and other organs of the media to see how important a part professional football plays in public life. Secondly, as is well known, professional football matches often attract violence and disorder. As the judge stated, the Club's home matches[8] have one of the worst records for football-related violence in the country. The Home Office statistics consistently show the Club's supporters at or near the top of the league when it comes to arrests and football banning orders. I hasten to say, however, that the problem of football-related violence is by no means confined to the Club.

27. It might be thought that these two factors should lead to the conclusion that the provision of policing services even inside football grounds is not SPS, but a service which the police are obliged to perform as part of their public obligation to maintain law and order. That was what was unsuccessfully argued by Mr Griffiths on behalf of Sheffield United FC in the Harris case. **The Court of Appeal did not accept that the fact that the services were to be provided on private land determined conclusively that they were SPS. Nor did they consider that the fact that the police thought the services were necessary to prevent a breakdown of law and order determined conclusively that they were not SPS**. Instead, Neill LJ propounded a nuanced approach suggesting a number of factors which are required to be taken into account in deciding whether the services are to be classified as SPS. Of these, the most important is whether officers are being required to attend on private premises. That is because, since the police

[8] This was not the case in respect of the Club in the present case, which has a very good record for non-violence amongst its fans. As the judge found, given the sheer number of people who attend matches at Portman Road, they are very peaceful indeed [23]. The Club's fans and its general ability to ensure a safe and orderly environment for games are amongst the very best in the Championship.

do not as a general rule have access to private premises, their presence there would suggest that prima facie policing on private premises amounts to the provision of SPS.

28. Mr Beloff makes a number of detailed criticisms of Neill LJ's four factors and indeed Scott Baker LJ's "benefit" factor. He submits that the Court of Appeal in Harris failed to apply the principles stated by the House of Lords in *Glasbrook*. Had they done so, they would have focused on the simple question whether the services were considered by the police to be necessary in order to maintain law and order and would have accepted the submissions of Mr Griffiths.[9]

29. I proceed on the basis that what Neill LJ said in Harris formed part of his reasoning and that, whether or not Balcombe LJ agreed with this reasoning, Kerr LJ certainly did. In my view, for that reason alone it should be followed by this court. There is the further point that Harris has been treated as good law for some 25 years. It was said (obiter) to be "helpful" guidance by Scott Baker LJ in Reading Festival and seems to have been applied by Mann J in Wigan. **In any event, I regard the four factors suggested by Neill LJ as in varying degrees useful pointers to the application of the Glasbrook principles and as to whether police services provided in any given case are or are not SPS.**

30. His first factor is clear enough. In my judgment, it is the most important factor in the context of policing to maintain law and order. Prima facie, the police are obliged to maintain law and order in public places. They are not usually obliged to do so on private premises, at any rate unless violence has actually occurred or is immediately imminent. The police may, of course, be asked to provide other services on public land. The provision of a road escort is an obvious example. But the question whether the services are provided on public or private land is plainly of central importance to whether they are SPS where those services are provided in order to promote the maintenance of law and order. The second factor is closely related to the first. I would accept that the fact that there is actual or imminent violence at private premises may well indicate that the provision of police services at those premises for law and order purposes is in performance of the general police duty and not SPS. But attendance at private premises just in case there is an outbreak of violence is likely to be SPS. **On the other hand, policing provided in a public place in order to protect persons and property, even where there is no actual or**

[9] I mention that Mr Beloff reserved the right to make a similar argument should this case go to the Supreme Court, but accepted that in this court he was bound by the approach in *Leeds.*

imminent threat of violence, will usually be in discharge by the police of their ordinary public duty.

31. As regards the third factor, I have already made the point that professional football matches attended by many thousands of members of the public are essentially public events. Indeed, they almost certainly require a greater police presence than elections which Neill LJ placed at the opposite end of a spectrum from private weddings. **I would also respectfully question the relevance of whether events place an exceptional strain on the resources of the police.** This leads to the fourth factor, which also concerns resources**. I suggest that the question whether the provision of police services places a particular strain on their resources is unlikely to shed much light on whether those services are SPS. The police sometimes provide law and order services which they are undoubtedly obliged to provide despite the very considerable strains that this places on their resources.** A good example is the policing of a large protest march which the police authority believes may give rise to violence and which therefore requires the deployment of off-duty officers paid on overtime and the deployment of substantial additional resources.

32. As regards Scott Baker LJ's fifth factor, I have already said that the focus on who benefits from the police service may be a relevant part of the analysis of whether the service provided falls within the scope of a police officer's ordinary duties. I do not believe that Scott Baker LJ was saying anything more than this at para 63 of his judgment. In other words, if the police operation is conducted solely or predominantly for the protection of the public at large, this is a factor which points strongly against the services being SPS. **This is the point that Eady J was making at para 41 of his judgment. I do not consider that a benefit test should be regarded as determinative or even necessarily of great weight in all cases.** For example, take the apprehension by the police of a criminal who is engaged in robbing a jeweller's shop. This police service clearly benefits the jeweller. But it would be absurd to regard the services provided by the police as SPS so that the jeweller would have to pay for the cost of the police operation (on the assumption that he had summoned the police and asked for their help). The short answer to the suggestion that the jeweller would be the sole or even principal beneficiary of the police service is that the entire community benefits from the detection and prevention of crime.

33. As I have earlier noted, having identified at para 63 of his judgment the predominant purpose of the police services, Scott Baker LJ went on at paras 66 to 71 of his judgment to refer to

> and apply Neill LJ's four factors. At para 29 of his judgment, **Eady J said that there was not a simple "benefit" test in the sense that the question should turn on an ex post facto analysis as to whether the services provided by the police primarily benefited the general public or particular groups or individuals. He said that this was "not a practical or sufficiently certain approach". I agree, but would add that it is also too narrow an approach, since it overlooks the fact that there is a real public interest in the police maintaining law and order.**
>
> 34. To summarise, the provision of policing services at football matches on private land at the request of a football club will usually be SPS except where the police are summoned to deal with actual or imminent violence."

34. Lord Dyson then went on to consider the provision of policing on public land -which was the specific issue to which the dispute in *Leeds* related. Again, because of its importance to the present case, I set out the relevant paragraphs in full, again with the critical passages emphasised:

> "*The provision of policing on public land*
>
> 35. It was the provision of law and order services by the police on private land that was in issue in the authorities to which I have referred. The Club accepts that it is obliged to pay WYP for the provision of such police services inside its stadium at Elland Road and in the land immediately outside the stadium that it owns and controls. **The present case concerns the question whether the Club is also required to pay for the services provided in the extended footprint, that is on land which the Club does not own or control which is public land.** Although we have been shown no authority in which this issue has arisen, it seems to me that it should be resolved by applying the principles that are to be derived from the authorities to which I have referred.
>
> **36. Neill LJ's first factor, namely the fact that the land on which these services are to be provided is public land and not owned or controlled by the party requesting them, is a strong indicator that the services are not SPS. Although not conclusive, it is common ground that it militates in favour of treating the services as being performed by the police in discharge of their duty to maintain law and order.** That duty is most obviously to be performed in places to which members of the public have recourse.
>
> 37. Mr Beggs submits that Neill LJ's second factor supports his submission that the services provided in the extended footprint are SPS. He says that the officers who are required to police the extended footprint attend as part of a pre-planned operation to

prevent or control disorder. They are not required to attend in response to an emergency that has already occurred or is imminent. For this reason, Mr Beggs submits that the routine provision of policing services in the extended footprint is SPS. On the other hand, if disorder breaks out or becomes imminent and additional officers are required, it is accepted by WYP that the provision of these additional resources would not amount to SPS. **As I have already said, I regard this as closely connected to the first factor. In a public setting away from any relevant private premises, the question whether the police provide services in response to an emergency that has already occurred or is imminent (as opposed to responding to the need to provide protection against the possibility of disorder) is unlikely to shed light on whether the provision of the services is part of the police obligation to maintain law and order or the provision of SPS. Prima facie, in a public location the provision of police services in both situations is likely to be in discharge of the duty to maintain law and order. As I have explained at para 30 above, the position is likely to be different in private premises.**

38. As regards the third factor, Mr Beggs submits that with respect to policing in the extended footprint, the situation is closer to a wedding than an election. Most weddings are private affairs. He submits that the Club's matches are also private affairs in that they can only be attended by paying ticket holders. The vast majority of members of the public who are in the extended footprint on match days are ticket holders who are there solely because they wish to enter or leave the ground. **The extended footprint is not accessed by the general public on match days. Conversely, when matches are not being played, the extended footprint is almost deserted. Mr Beggs submits further that the Club's games form part of a series of events throughout the football season; and the events place an exceptional strain on police resources. I have already made the point that football matches attended by large numbers of people are essentially public events. Although the Club can exclude those it wishes to exclude, in reality almost a**nybody who is willing to pay and applies for a ticket in time will be admitted to a match, unless he or she is subject to a football banning order. Football matches are a far cry from a private wedding. I have also said why I do not regard the fact that policing the Club's matches places an exceptional strain on police resources is a factor of much weight.

39. As regards Mr Beggs' criticism of the judge for failing to address Scott Baker LJ's "benefit" point, I refer to what I have said at para 32 above.

40. Before I express my conclusion, I should make two further points. First, it is perhaps tempting to say that the Club should pay for all the services that the police consider are required for the maintenance of law and order by reason of the holding of a football match. After all, the Club profits from football matches at Elland Road. Why should it not pay for all the costs of the provision of such police services as it requests and which the police decide that it is necessary or desirable to provide in order to maintain law and order? This is the point that Scott Baker LJ made at para 72 in Reading Festival. But as he said, that is not the law. WYP (rightly) recognises that there is no room for a "but for" test here. On match days, WYP responsibly provide additional policing at Leeds City railway station which is approximately two miles from the Elland Road ground. They do so in order to protect supporters and members of the general public who are in the vicinity of the station and to protect property in that area from the risk of criminal damage. It is not suggested that the provision of these services is SPS. It is rightly acknowledged by WYP that, in providing these services, the police are discharging their public duty of maintaining law and order and protecting life and property.

41. Secondly, WYP say that, from an operational point of view, there is no difference between policing within the land owned and controlled by the Club immediately outside the stadium and policing within the extended footprint, which is contiguous to that land. Mr Beggs submits that there is no good or practical reason for drawing the line at the boundary of land controlled by the Club for the purposes of deciding what are SPS. The line should be drawn not on the basis of the ownership or control of land, but on the basis of where significant numbers of police are required to be deployed exclusively (or nearly exclusively) for the benefit of the Club and for the protection of the Club's customers. The difficulty with this argument is that it treats Scott Baker LJ's benefit factor as if it were conclusive. But as the authorities show, that is not the law.

Conclusion

42. The essential question that arises on this appeal is whether the law and order services provided by WYP in the extended footprint are in discharge of their public duty to maintain law and order and protect life and property or are SPS requested by the Club. That is the question mandated by Glasbrook. In Harris, Neill LJ suggested four factors which, for the reasons I have given, have varying degrees of utility in pointing to the answer to the essential question. In Reading Festival, Scott Baker LJ suggested that the so-called "benefit" test may also be useful.

> 43. It should be borne in mind that in this case we are concerned with the provision of police services to maintain law and order at and in the vicinity of a football stadium owned by a club whose supporters have a poor record for football-related violence. No doubt most of their supporters and other visitors to matches are law abiding. As the judge said, they do not lose their status as members of the public when they come to a match. They are entitled to police protection when they come to a match. The police have a duty to maintain law and order and to protect them and their property when they approach and leave the stadium. In Harris, this court held that, on the facts of that case, the duty did not extend to providing police protection within the land owned and controlled by the club. But it does not follow from that decision that the public duty imposed on the police does not extend to providing protection in public land in the vicinity of the land owned and controlled by the Club. Their most important duty is to prevent crime and maintain law and order and protect life and property. If the police consider that the discharge of that duty requires the provision of policing in a public place, it is difficult to see why that is not the end of the enquiry. The provision of other policing services in public places raises different considerations.
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> 44. It is pertinent to ask why WYP accepts that police protection at Leeds City station on football match days is provided in discharge of their public duty, but the provision of such services in the extended footprint is not. It seems to me that the answer must be that the provision of police protection in the extended footprint is predominantly for the benefit of the Club and its customers, whereas the provision of protection at the station benefits not only the Club and its customers, but many other members of the public as well. But for the reasons already given, the benefit test has limited value. Perhaps more importantly, it has never been suggested in the authorities that the benefit test is conclusive.
>
> 45. The policing of the extended footprint on match days is provided in order to maintain law and order and protect life and property in a public place. None of the arguments advanced on behalf of WYP persuades me that the law and order services provided by them in the extended footprint are different in principle from the law and order services that they provide in any other public place. I would dismiss this appeal."

Analysis of the judge's judgment

35. In my judgment, I would allow this appeal for the broad reason that it is not possible to distinguish the present case on its facts from the situation in *Leeds* and the same legal principles should apply. Whilst I accept that each case will turn on its own facts, certainty and predictability of outcome is key in an area such as this. The disputed

area in *Leeds*, namely the public highways and residential streets surrounding the stadium, in which the Court of Appeal found the police could not charge SPS, was remarkably similar to the disputed area in the present case. The fact that, in *Leeds*, there does not appear to have been a TCO or that the history of violence amongst home and away fans at Leeds' matches was historically much greater than that at Ipswich, cannot to my mind be regarded as distinguishing factors. My detailed reasons for this conclusion follow.

36. At the outset, I should say that, contrary to the submissions of Mr Basu, the Club's appeal is not a perversity challenge. I do not accept that the judge had a "discretion" as to whether to conclude that the services provided by the police in this case were SPS or not, and that, provided such conclusion was properly within the ambit of his discretion, his decision could not be challenged. The correct approach is that the judge was either right or wrong, as a matter of law, in the conclusion which he reached.

37. My reasons for disagreeing with the conclusion reached by the judge, which largely reflect the oral and written submissions of Mr Beloff and Mr De Marco, may be summarised as follows.

38. First, the first and most important factor in the relevant determination is whether the place where police provide public order services is *private or public land*; see per Lord Dyson MR in *Leeds* at [30] and per Neill LJ in *Harris* at page 91E. Although not dispositive, this factor is clearly of critical importance - indeed the most important factor. There are good reasons for giving special importance to this factor, as Mr Sibbel, counsel for the intervener, pointed out in his written submissions. In particular:

    i) the access of the police to private premises is restricted in law; see *Harris* at page 91E; the powers of the police to enter private premises without a search warrant are restricted to the circumstances set out in section 17 of the Police and Criminal Evidence Act 1984; no such restrictions apply to public land;

    ii) this has an obvious impact upon the responsibility that the police can, under their public duty, be expected to assume for the protection of life and property and preservation of order; as Lord Dyson recognised in *Leeds* at [37], both preventative and reactive policing can *prima facie* be expected to fall within the public duty on public land, whereas again *prima facie* only reactive policing can be expected on private land;

    iii) whilst the owner or occupier of private land has power at law, pursuant to their proprietary interest, to control access to that land, and the uses to which such land is put, which imposes a greater degree of responsibility on them in relation to measures designed to protect life and property, private individuals have no such legal powers or duties in relation to public land;

    iv) public land which is the subject of a TCO is no exception; such power as a club will exercise within a TCO area is exercised on authority or delegation from the local authority or police and only in relation to those subsidiary matters which the police, in the exercise of their discretion, have determined not to be required under their public law duties; and

v) there is an inherent unlikelihood that police would be providing SPS on public land.

39. However, although the judge referred (at [113]) to the fact that the provision of police services in a public place (whether preventative or reactive) was *prima facie* part of the operational duty of the police he did not state, or approach the problem on the basis that, the *most important consideration*, as explained in *Leeds*, was whether the police were being required to attend on public land or private land; see for example [113, 121, 122 and 130 to 135] of his judgment. Although the judge recognised the importance of the legal status of the land when addressing the scenario of services provided *on private land* (supporting a finding of SPS), he did not address the factor in the converse scenario of services provided *on public land* (which would support a finding of operational services). Rather, the fact that the TCO is public land is treated as the fifth of nine "relevant questions" which the judge considers at [130] to [153]. And even where the judge does deal with the factor "preventative policing on the TCO area as public land", as he has defined it, namely at [146] and [147], he does not address or recognise the central importance of the public land factor in the determination of the relevant question, or explain why he has paid no regard to it. All he essentially says in these paragraphs is that the fact that the relevant land is public land is not dispositive, but merely gives rise to a rebuttable presumption. But he does not go on to explain what circumstances justify him disregarding this critically important factor and why, in this case, the presumption fell to be rebutted. Moreover, in his "conclusion" paragraph [153], where he summarises his reasons for his decision, he does not explain why he is able wholly to disregard the "most important" factor that the policing takes place on public land and, in particular, on two public highways.

40. Second, there is no mention in the judge's conclusions, or reasoning, of the second, connected, factor, which is addressed by Lord Dyson at [37] in *Leeds*. That is the point that the very fact that the police are not required to attend in response to an emergency that has already occurred or is imminent, but rather are required to attend as part of a pre-planned operation to prevent or control disorder, in a public location "is likely to be in discharge of the duty to maintain law and order" rather than SPS. In the present case, the police only attended to police certain matches at the stadium where there was a perceived risk of public disorder. That is wholly consistent with the discharge of a public duty and not SPS.

41. Third, the judge appears to have paid no, or no sufficient regard, to the third factor, identified in *Harris* (at pages 91 – 92) and referred to in *Leeds* (at [26] and [31]), namely that football matches, where there was a police presence and many thousands of attendees, were essentially public events, which again points to the conclusion that the police were exercising a public function in so far as they exercised their functions on public land.

42. Fourth, and in my view most importantly, the judge gave too much emphasis to what he (wrongly) characterised as the "control" exercised by the Club over the TCO area. In my judgment, the judge made a number of errors of both law and fact in this context.

43. For example, at [136 to 138] the judge considered that, even in circumstances where such control is not derived from any proprietary interest in the land, but takes the form

of a permission and can only be classed as control "to some relevant degree", that can nonetheless lead to a finding of SPS where the control is exercised for commercial purposes and the services provided are preventative. He concluded that such a conclusion becomes "even stronger" where the area is physically contiguous to private land over which is exercised a "fuller" proprietary interest; and where there is a "strong nexus" between the policing activities performed in the controlled land and the policing services performed on the private land.

44. I do not agree with this analysis. There is no suggestion in *Leeds*, or indeed in any other authority, that a relevant or determining factor as to whether police attendance should be characterised as SPS, is the amount of so-called "control" which a club exercises over public land pursuant to the authority conferred by a TCO which entitles it to shut off a highway by bollards, prior to and during a match, and allows it and other vendors licensed by the relevant council to sell merchandise in the restricted TCO area. The only authority to which the judge referred to support his argument (see [137] is the first instance decision i*n Leeds*, in which the arguments referred to were dismissed at [44 and 45] as "contorted and artificial". In every other relevant authority, where "control" is mentioned, it is clear from the context that what is being referred to is the control resulting from a *proprietary* interest in the land; see for example *Leeds* (CA) at [35] where the reference is to "the question whether the club is also required to pay for the services provided in the extended footprint that is on land which the club does not own or control which is public land"; and per Mann J in Chief *Constable of Greater Manchester v Wigan Athletic AFC* Ltd [2007] EWHC 2095 at [89 to 93] where the control referred to is the control consequent upon the club leasing the land in question. Although the judge states that:

> "Case law recognises that the provisions of preventative policing to a person who controls a piece of public land may, in appropriate circumstances, amount to SPS" [147],

he cites no authority for that proposition and this court has not been referred to any such case.

45. In my judgment there is no justification for concluding from the undisputed facts that, pursuant to the authority granted by the Council under the terms of the TCO, the Club was entitled to shut off the highway by means of bollards, and to shepherd fans in that area, in order to ensure their swift and safe entry to and exit from the stadium, or from the fact that the TCO area was contiguous to the stadium, that the functions discharged by the police during the course of the policed matches in the TCO area were SPS.

46. Even if it were to be the case (which I doubt) that the extent of so-called "control" which a person exercised over public land was a relevant factor in determining whether police services were SPS or not, the judge afforded too much weight to this factor and wrongly elevated it over the public/private land test. On the facts of this case, such de facto control as the Club exercised over the TCO land could not, in my judgment, rebut the assumption that the police were discharging their normal public duties of maintaining law and order in the TCO. The fact that the Club stewards' shepherding role may have assisted the maintenance of public order in the TCO area, does mean that the services provided by the police at policed matches were SPS .

Absent actual, or imminent crime, the stewards could exercise no coercive powers akin to those preventative powers exercisable by a police constable.

47. The judge was, in my judgment, wrong to find on the evidence before him - and this was an evaluative finding of secondary fact – that the Club had "responsibility" for public order in the TCO. Such responsibility as the Club had, could not, in any event, have justified a conclusion that the functions discharged by the police in the TCO areas were SPS. He was also wrong to find - and again this was a finding of secondary fact – that the Club exercised "a high degree of control" over the TCO area. Again, such degree of control exercised by the Club could not, in any event, have justified a conclusion that the functions discharged by the police in the TCO areas were SPS.

48. First, the evidence before the judge in my view could not justify his finding that the Club had "responsibility" for public order in the TCO. For example, the authority which the Club had to place or install bollards or other barriers in the TCO area, and remove them after the match was over, derived exclusively from the authority conferred by the Council pursuant to the TCO. But if there was any question of vehicular entry to the TCO area during the period of prohibition that could only be conferred by a police constable or traffic warden, not by the Club; see paragraph 2 of the TCO. Likewise, the evidence clearly demonstrated - as indeed was the law - that only the police had power to remove or eject a drunken or badly behaved fan from the TCO area, as opposed to from the stadium itself, where the Club's proprietary rights entitled it to do so. Nor did the 2011 or the 2012 terms suggest that the Club, *as opposed to the police*, had responsibility for public order or public safety in the TCO areas; on the contrary, both sets of terms contained the statement that the Club was

> "solely responsible for public safety **at the Stadium** and that they should take all appropriate steps to ensure public safety and compliance with the Safety Certificate for the Stadium." (My emphasis.)

49. The mere fact that the Club, pursuant to the authority conferred by the TCO, carried out the function of "shepherding" fans in the TCO areas and ensuring that they queued for the turnstiles in an efficient and orderly fashion, and likewise left the stadium in such a manner, could not amount to "responsibility for public order" in the TCO areas. These stewards' shepherding function was to ensure safe and swift access and exit to and from the stadium. The fact that the Club's efficient management of queues and crowds in the TCO area might have contributed to the maintenance of public order did not detract from the fact that, when the police were present in the TCO area, on policed match days, their job was to maintain law and order on the public highway. Absent actual or imminent crime, the Club stewards could exercise no coercive powers akin to those preventative powers exercisable by the police. Thus, it was clear from the evidence that it was for the police to apprehend aggressive, or otherwise badly-behaved fans, or fans who were threatening to cause trouble, in the TCO area and that this was carried out as part of their functions of maintaining law and order and preventing crime. Mr Basu tried to suggest that the fact that the stewards would have the normal powers of citizen's arrest or detention as articulated in *Albert v Lavin* [1982] AC 546[10] meant that the club stewards could indeed be

[10] That is to say the right "of every citizen in whose presence a breach of the peace is being, or reasonably appears to be about to be, committed….. to take reasonable steps to make the person who is breaking or

regarded as having the right to exercise such control in the TCO area, but that in my judgment is unreal - their position was no different from any other citizen on the public highway.

50. Moreover, the judge was wrong when he said at [69]:

> "It is apparent from the Club Stewards Handbook and from the Statement of Intent that the Club assumes responsibility for: … the initial responsibility for public order within the site and in the TCO area".

The Statement of Intent states that the Club is responsible "initially for matters of public order within the Event site", not *within* the TCO area. Likewise, the judge's reliance in [47 and 153v)] on what is said at paragraphs 3.1 and 3.2 of the Statement of Intent to justify his conclusion that "The parties do not categorise the TCO areas as a public highway" is also misplaced. First of all, those paragraphs related solely to traffic management, not to maintenance of public order; second, the Statement of Intent was based on pre-*Leeds* law; and third, what the parties said in a non-binding contractual statement cannot alter the legal reality that the TCO area was a public highway, in which any functions discharged by the Club (whether excluding traffic, traffic control, or otherwise shepherding fans) were discharged pursuant to authority or delegation conferred by the Council or the police. The public highways remained public highways despite the provisions of the Order. The Order only had the effect of limiting vehicular access (and not, for example, access of the public other than in vehicles). The roads in the TCO area did not become "private" roads during the matches. Furthermore, the Stewards Handbook (which is, in any event, not a legal document agreed between the parties) does not state or suggest that the Club has responsibility for public order in the TCO area. In fact, it makes clear that the stewards have no power to control spectators outside the stadium.

51. Likewise, the judge paints an exaggerated, picture when he says at [87(iii)]:

> "Primary responsibility for safety and public order in the TCO area lies with the Club. The Club exercises exclusive control over the TCO area in the majority of cases (see statistics at paragraph [23] above). The Club has a high degree of de facto control over the TCO area. This is not absolute and they have no legal power to eject persons from the area. But they control traffic into the area; they erect crowd control barriers; they conduct searches of persons entering the stadium; they eject drunks and aggressive spectators; and they shepherd and control flows of fans coming into and out of the stadium."

52. First, the only thing that the statistics at paragraph 23 show is that of the total number of matches in each of the seasons from 2011/12 to 2015/16 the majority were not attended by the police. The statistics do not show any figures for arrests or ejections at un-policed matches or demonstrate any control by the Club, whether at policed or un-policed matches. Second, as I have already mentioned, the Club has no, and certainly no primary, responsibility for public order in the TCO area. Moreover, as Mr Beloff

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threatening to break the peace refrain from doing so; and those reasonable steps in appropriate cases will include detaining him against his will"; see ibid per Lord Diplock at 565 B-C.

submitted, the degree of control is exaggerated and contrary to the evidence before the court: the Club does not "control traffic" - only a police constable in uniform or a traffic warden is entitled to control traffic pursuant to the terms of the TCO. The fact that Club stewards may have done so at unpoliced matches, would have been pursuant to the delegated authority of the Police. Moreover, as the judge himself seems to accept, the Club only has the power to eject drunks from the stadium not from the TCO area, so ejection as such from the stadium demonstrates no "control" by the Club in the TCO area, merely the right of a landowner to eject a person from, or not permit entry to, its premises. Furthermore, as the witness statement of a Mr Ian Rowland, one of the Chief Constable's witnesses, makes clear[11], dealing with public order issues in the TCO area, that is to say escorting drunken or disruptive supporters, or those who have been denied entry, away from the turnstiles, and out of the TCO area, is always the job of the police;

> "the police always end up dealing with those supporters. The stewards tend to refuse entry and then revert to the police to engage with the supporters and asked them to leave the area there are occasions where arrest may be made for the offences of being drunk while entering a designated sports ground." However those that are intoxicated present a threat to the safe running of the event. Identifying monitoring and dealing with them is an important part of what police officers do at policed matches."

The fact that the deployment of police in the closed TCO area is also to prevent any potential incidents of crushing and safe crowd dispersal is no reason to conclude that are not discharging their primary function of maintaining public order and preventing crime in the TCO area.

53. So far as unpoliced matches are concerned, I also agree with Mr Beloff that the fact that the stewards may, on unpoliced matches, be operating in the TCO area without police assistance, does not suggest or predicate that Club stewards have the primary responsibility for maintenance of public order and the public peace. Again, as Mr Rowland's witness statement made clear, in the event that a public order issue arises, for example aggressive or assaultive behaviour on the part of supporters, police officers will be called to deal with such conduct in the TCO area, in the same way as they would at any other public highway:

> "24. At Club Security matches [i.e. unpoliced], stewards may refuse entry to the stadium but they often have problems with encouraging supporters who have been refused entry to leave the area outside the turnstiles. …. That situation is significantly more difficult after an ejection where emotions are running high and aggressive and assaultive behaviour can be the response from the ejected supporter.
>
> 25. It is a regular occurrence at Club Security matches for uniformed police to have to be called to move on or arrest ejected supporters. In the event that there is any confrontation

[11] See e.g. paragraphs 8 and 9.

> between rival supporters in the closed road area stewards will intervene at Club Security matches, but at the same time there will be an almost immediate request from the Club Safety Officer via the Dedicated Football Officer, for uniformed police to be called."

54. Nor did the judge identify any legal basis upon which the stewards had either the power or the responsibility to conduct public order operations outside of the stadium; and, as I have already said, the principle of *Albert v Lavin* does not assist in this context.

55. The judge attempted to distinguish the Club's so-called "control" from that found by the High Court in *Leeds*. But although the activities in *Leeds* could be said to have been "control" of a much lesser degree (clearing snow from a bus park and employing a person to open a car park during matches and make charges for parking on behalf of the council), both activities derived from permission given by others. The evidence in this case demonstrated that only the Council had power to decide whether or not to close the roads and whether and on what terms licenses should be granted to traders (whether employed by the Club or in competition with it) to erect stands to sell programmes or food, etc. in the TCO area. Accordingly, such control, if any, that the Club had over the TCO area, was in my judgment insignificant since it derived exclusively from the authority conferred by, or delegated from, the Council and the police, and only to the extent that policing for public order was not required.

56. Another factor upon which the judge wrongly relied in finding that the services in that area were SPS, was what he referred to as:

> "The nexus between the TCO area and land under the legal control of the Club: The TCO area is contiguous to land (the stadium) over which the Club exercises a proprietary (leasehold) interest" [153(iv)].

It is not clear to me from [137] of the judgment whether the judge was under the mistaken impression that, in the *Leeds* case, none of the disputed land was adjacent to the stadium. The fact that the TCO area is directly contiguous to the Club's land in the present case is not, in my view, a relevant factor to the determination of the question as to whether the police are providing SPS. In *Leeds* the "extended footprint" (the area with regard to which it was disputed the SPS was payable) also appears to have included land contiguous to, or within 200 m of, the stadium, being private land in respect of which the club had a proprietary interest. Both Eady J and the Court of Appeal in *Leeds* held that policing on that contiguous "extended footprint" did not amount to SPS.

57. Nor do I consider that any of the other reasons summarised by the judge at subparagraphs 153 vii)-x) of the judgment provide good grounds for concluding that the services provided by the police should be regarded as SPS. In summary:

i) The importance which he gave to his finding at subparagraphs 153 vii) that the policing was an "essentially preventative, peace keeping, role played by

the Police in the TCO area" appears to have been regarded by the judge as a ground for distinguishing the situation at Ipswich from that in *Leeds,* where the supporters were historically prone to violence. But, in my view, this cannot be a relevant factor. To the extent that the policing was preventative, it was still normal policing, - that is to say, the discharge of one of the police's statutory duties to deploy officers sufficient in their estimation to prevent and deter crime and maintain public order. The evidence demonstrated that there was no distinction between the "preventative policing" deployed by the police within the TCO area and that outside for which it did not charge SPS. If a match was a high-risk category C match, for example, police would be deployed outside the railway station and certain public houses, as well as in the TCO area, and their function would be the same, i.e. "intended to instil a calming influence on spectators".

ii) Likewise, I do not consider that the factor which the judge described at [153(viii)] as "Nexus between Police service inside and outside the stadium in the TCO area" was a relevant factor. There was a similar, if not closer nexus, between the police inside the TCO area and those outside it, as the evidence relating to crowd segregation and dispersal showed. But even if this were not the case, there was inevitably going to be some sort of "nexus" - or connection - between what the police were doing in each of the relevant areas.

iii) Again, I do not agree with the judge's conclusion at [153(ix)], that "[t]here is a logical cut off between the boundary of the TCO and public land outside the TCO area" and that "[t]he position inside the TCO area is qualitatively different to areas beyond the TCO area." As Mr Beloff submitted, the logical cut off point was the turnstiles and entrances to the stadium. Within the stadium, spectators are customers of the Club and hence its responsibility. When they leave it, they revert to being members of the public and as such are entitled to such protection from the police as is necessary in the circumstances; see *Leeds* at [43].

iv) Finally, I do not agree with the judge that weight fell to be attached to the fact that "policing outside the stadium was of value to the Club", as he held at [153(x)]. As Lord Dyson MR stated in *Leeds* (at [32]), a benefit test is not to be regarded "as determinative or even necessarily of great weight in all cases." The Club's legal responsibilities end when the spectators leave the stadium. The primary benefit of policing outside of the stadium enures to the members of the public leaving the stadium, who are entitled to the protection of the police if there is a risk of public disorder. I am not persuaded that the so-called "value" of policing to the Club in the TCO area can be regarded as a significant factor in determining whether the services are SPS or not.

58. For the above reasons, I see no basis for distinguishing the TCO area in the present case from the extended footprint in the *Leeds* case. An outcome dependent on the simple, but critical, factor whether the land, where the police discharge what are clearly public order functions, is public land or privately owned land has the advantage of simplicity and predictability of outcome in football cases such as the present one. It obviates the need for irrelevant enquiries as to, for example, the level of violence amongst club supporters, the precise geographical configurations of the closed areas and the functions carried out respectively by club stewards and the police

in such areas, or other variables such as the financial profitability or size of the club concerned. It is for Parliament to change the law, if it considers it appropriate to make football clubs pay for police attendance at football matches on the highway, outside the stadium or other privately owned land.

Disposition

59. Accordingly, I would allow this appeal and grant the declaration sought by the Club.

Lord Justice Gross:

60. I agree with Gloster LJ that the appeal should be allowed and add only a few words of my own, essentially to highlight two considerations. In doing so, I gratefully adopt Gloster LJ's summary of the facts, the history and the case law.

61. The two considerations are these:

    i) First, certainty and predictability in the law;

    ii) Secondly, the distinction between the roles of the courts and the legislature.

Certainty and predictability

62. The test articulated by Viscount Cave in *Glasbrook (supra)*, at p. 277 was whether the police services were *necessary* for keeping the peace, preventing crime or protecting property from criminal damage; if so, they fell within the basic public duty of the police and could not have been SPS, regardless of whether they were provided on private or public land: see, the argument advanced by Mr Beloff QC in *Leeds United (supra)*, recorded in the judgment of Lord Dyson MR, at [15].

63. At least in the football context, however, that test has been refined, so that the question of "central importance" (*Leeds United*, at [30]) – if not itself dispositive - is whether they are provided on public or on private land. If the former, they will usually involve performance of the general police duty and will not comprise SPS; if the latter, the converse is likely to be the case (at least absent actual or imminent violence on the private land).

64. In the *Leeds United* case, this Court held that the provision of police services in the "extended footprint" on match days formed part of the general police duty and were not SPS: see, at [42] – [45]. The "extended footprint" comprised streets, public areas and open spaces in the vicinity of but beyond those areas owned and controlled by the Club.

65. For the reasons already given by Gloster LJ, I am persuaded that the TCO area in the present case cannot properly be distinguished from the "extended footprint" in *Leeds United.* For my part and though cases are inevitably fact specific, I would deprecate the drawing of fine factual distinctions between one case (or area in the vicinity of a stadium) and another, with inevitable attendant uncertainty. Instead, the application of the principle in *Leeds United*, leads to a simple and usable approach here; as Mr Beloff put it, the "Rubicon" in terms of where SPS end and public duty services begin, on the facts of the present case, is the boundary between the stadium (private land) and elsewhere (public land).

66. On this footing, I would allow the appeal.

The courts and the legislature

67. Notwithstanding my conclusion on the law as it stands, I confess to some sympathy with the policy ramifications flowing from the conclusion reached by the Judge, especially having regard to straitened police resources. As expressed by Scott Baker LJ in *Reading (supra)*, at [72]:

> " There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit….."

Unfortunately for the respondent here, Scott Baker LJ immediately went on to say "That however is not the law". See too, *Leeds United*, at [40] – [41].

68. In my judgment, if the law is to be changed to accord with such a "benefit" test, it should be a matter for Parliament not the courts (at least below the level of the Supreme Court). Sympathetic though one might be to the argument in the case of football matches, what of other sporting events, charitable functions, concerts and, for that matter, political demonstrations (see, the observations of Balcombe LJ, in *Harris, supra*, at p.96)? The question, it must be accepted, is complex and a public consensus as to the underlying issues of social policy cannot be assumed: see further, Lord Bingham, *The Judge as Lawmaker*, in *The Business of Judging* (2000), at pp. 31-32. Accordingly, any change in the law falls more appropriately to Parliament than to judicial development by way of case law.

Lord Briggs of Westbourne:

69. I agree that this appeal should be allowed, for the reasons given by Gloster LJ. I also agree with Gross LJ's judgment.

70. I have not myself been persuaded, as has Gloster LJ, that the judge's findings about the significant level of de facto control of the TCO area by the Club during match days were wrong. But they are not sufficient to make this case distinguishable from the *Leeds* case, for the reasons which she explains.

71. I was for some time powerfully affected by a perception that there was something a little less than logical in drawing a sharp distinction between police operations within, and just outside, the stadium when, in all probability, they would be planned, directed and executed as a composite whole. But the same could be said about the *Leeds* case, and the same could also probably be true of police activities in a much wider area, including the streets between the stadium and the railway station, and within the station itself, where it is common ground that police activity is not SPS.

72. For as long as it remains the law that police operations connected with football matches are in part SPS and in part normal police operations, so that a line has to be drawn somewhere, the drawing of that line along the boundary between the private

land of the host club and the public highway outside it seems to me to be the best normal (although not invariable or automatic) means of identifying SPS. This is what this court has already decided, and it would be destructive of the certainty of this part of the law to do otherwise than to follow and apply that decision.