IN THE SUPREME COURT OF THE UNITED KINGDOM **UKSC 2013/0114**

ON APPEAL FROM:

HER MAJESTY'S COURT OF APPEAL **[2013] EWCA Civ 192**
(ENGLAND AND WALES)
(CIVIL DIVISION)
Lord Dyson MR, Lord Justice Moore-Bick, Lord Justice McCombe

BETWEEN :

THE QUEEN
(on the application of JOHN OLDROYD CATT)

Respondent

-and-

(1) THE ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND AND WALES AND NORTHERN IRELAND

(2) THE COMMISSIONER OF POLICE OF THE METROPOLIS

Appellants

-and-

(1) THE EQUALITY AND HUMAN RIGHTS COMMISSION

(2) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interveners

-and-

THE NETWORK FOR POLICE MONITORING

Proposed Intervener

AND BETWEEN : **UKSC 2013/0112**

THE QUEEN
(on the application of T)

Respondent

-and-

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Appellant

STATEMENT OF CASE OF THE NETWORK OF POLICE MONITORING

A. Introduction and Summary

1. This written case is served on behalf of the Network for Police Monitoring ("Netpol"). Although the Court has not yet granted Netpol permission to intervene, Netpol has drafted these submissions immediately in light of the imminence of the hearing and with a view to minimising any disruption to the Court or the other parties.

2. Netpol recognises the importance of not repeating submissions made by the other parties and is grateful for the provision of all parties' written cases in advance of drafting this statement of case.

3. This appeal raises the fundamental question of the legality of the collection and retention of personal information relating to members of the public by the police. It raises significant issues about the legality of police monitoring of public protest that reach beyond the particular circumstances of the Respondents. This written case seeks to address these wider issues.

4. The key point that Netpol seeks to stress is the importance of the rights to freedom of speech and freedom of assembly. While those rights are not directly in issue in this claim, they are relevant to:

   a. The seriousness of any infringement of Article 8 of the Convention; and

   b. The proportionality of any such infringement.

5. In summary, Netpol makes the following points:

   a. The database at the heart of his appeal, namely the database within the National Domestic Extremism and Disorder Intelligence Unit ("the database") includes wide-ranging and trivial matters. This retention causes particular practical difficulties to members of the public, including elected officials and journalists;

   b. The database creates a signficant and serious impact on freedom of speech and public assembly. This is an area on which the common law

and the European Convention of Human Rights ("the Convention") place particular importance;

c. The impact of the database on peaceful protesters and public officials. is signficant, unnecessary, and disproportionate.

6. For these reasons, and those set out by the Respondents and the Equality and Human Rights Commission, Netpol respectfully invites the Court to conclude that the decision of the Court of Appeal was clearly correct.

B. Netpol

7. Netpol is a non-profit organisation concerned with monitoring police conduct and challenging policing which is unfair, discriminatory, or threatening to human rights.

8. Netpol was created on 2nd November 2009. It is a network of organisations with an interest in monitoring or observing policing. These organisations are each directly affected by the issues raised by this appeal. They include those based within a set community, such as the Newham Monitoring Project, and those that work directly with protesters, such as the Green and Black Cross, who train and support legal observers. Netpol acts as a focus for campaigns relating to aspects of policing that are viewed as excessive or oppressive. It also includes the Netpol lawyers group, which acts as a forum for solicitors and barristers who practise in the area of public order and police law to meet, exchange knowledge, and assist groups who share Netpol's objectives. There are currently 38 members of the Netpol lawyers group, 115 members of the Netpol mailing list and 16 members of the Netpol steering group.

9. Netpol has played a long-standing role in campaigning for reforms to policing, including by way of responses to government consultations, submissions to Parliamentary committees, and the publication of documents and video guides for those involved in protests. In recent years, Netpol has campaigned about the gathering of data by the police on political protest.

10. Netpol is regularly contacted by those involved in peaceful protests for advice and assistance in relation to their legal rights. Recently, Netpol has been

approached by a large number of members of the public who are concerned by the maintenance of a database of the National Domestic Extremism and Disorder Intelligence Unit. These members of the public include peaceful protesters, an elected councillor, and a working peer of the House of Lords.

11. Acting on their behalf, Netpol has commenced a claim for judicial review in the Administrative Court in which it seeks to challenge the ongoing collection and retention of personal information of individuals who are involved in peaceful protest (Administrative Court reference: CO/16765/2013). That claim is currently stayed pending the resolution of this appeal.

C. Additional Evidence

12. In preparation for its Administrative Court claim, Netpol has gathered witness statements from the following, amongst other, people:

    a. Baroness Jones of Moulsecoomb, a working peer of the House of Lords who has been an elected member of the London Assembly since its creation in 2000. She sits on the Economy Committee and Environment Committee of the Assembly and is the Deputy Chair of the Police and Crime Committee. She stood as the Green party candidate for Mayoyr of London in 2012, coming third, and was a member of the Metroplitan Police Authority between 2000 and 2012. She has no criminal record and strongly rejects any description of her as a "*domestic extremist"*. Her witness statement complements the evidence from Baroness Jones that is already before the Court (Exhibit SD2, at pp.1-62);

    b. Mr Ian Driver, who has been an elected local councillor for Thanet District Council in Kent from May 2011 to the present. Cllr Driver has also been invovled in a campaign against the export of live farm animals to mainland Europe for slaughter. He is of good character.

13. The Commissioner has collected and retains personal information relating to both Baroness Jones and Cllr Driver on the database. Their witness statements, which they have updated for the purposes of this appeal, provide the Court with a helpful context for the wider issues raised by this appeal. They make the following points:

a. The information retained in respect of Baroness Jones and Cllr Driver is wide-ranging and signficant:

   i. In the case of Baroness Jones, it includes the retention of notes of engagements at which Baroness Jones has spoken as a member of the London Assembly or as the Green Party candidate for London Mayor, historic quotes provided to newspapers (including one quote in relation to the Critical Mass bicyle protest in 2003), online media, or social networking sites, and notes identifying her as having attended marches, rallies, or demonstrations. Each of the databse entries relating to Baroness Jones relate to her political self-expression (Exhibit SD2, at pp.6-9);

   ii. In the case of Cllr Driver, there are 20 separate entries for him on the database. These entries comprise information from meetings and demonstrations he has attended and comments made on social media and in the local media. The entries on the database relating to Cllr Driver all arise in the context of his expression of his political views;

b. The evidence is of limited, if any, intelligence value. It is very difficult to understand how public quotes provided to newspapers, social media postings, or the mere presence at marches, rallies or demonstrations could possibly assist the police in any inquiry. It does not appear that either Baroness Jones or Cllr Driver have ever been suspected of any involvement in any crime or of the presentation of any threat;

c. The database has a serious impact on freedom of expression and public assembly. Baroness Jones is "*alarmed"* at the contents of the database and considers that the collection and retention of the information about her is not a "*good use of police resources"*. Cllr Driver describes himself as being "*very upset and annoyed"* that he has been "*spied upon for 2 years"* and describes the database as a "*harmful practice"*.

14. The witness statements provided by Baroness Jones and Cllr Driver are indicative of the concerns expressed by those with whom Netpol regularly

works, including peaceful protesters and specialist lawyers. As Ms Val Swain, a director of Netpol, explains in her witness statement, Netpol members are concerned at the collection and retention of personal information about members of the public who engage in peaceful, political protest. Ms Swain understands that the information recorded on the database can include an individual's name, age, looks, personal preferences, political views, political activities, and personal associates.

15. These witness statements also complement the evidence on which Mr Catt relies. Netpol is not surprised to note that the database includes information relating to a number of journalists who seek to expose corporate and state misconduct. The evidence on which Mr Catt and Netpol rely suggests that there are numerous individuals in the same position as Mr Catt.

D. Is Article 8 engaged?

16. For the reasons set out by the Court of Appeal, in its carefully reasoned judgment, and by Mr Catt and the Equality and Human Rights Commission in their statements of case, Artilce 8(1) is engaged by the retention of personal information on the database. The domestic and Strasbourg jurisprudence clearly demonstrates that a reasonable expectation of privacy is a significant, but not conclusive, factor as to the engagement of Article 8. If the state retains personal data in a permanent or systematic database, Article 8 is engaged:

    a. In *Bouchacourt v France* (App. No. 5335/06), at [57], the European Court held that the retention of data relating to private life represents an interference with Article 8, irrespective of its senstitivity (per Lord Wilson in *R (T) v Chief Constable of Greater Manchester Police and others* [2014] 3 WLR 96*,* at [21]);

    b. In *Leander v Sweden* (1987) 9 EHRR 433, both the storing and the release of information gathered on a police register were considered to amount to an interference with Article 8 [48];

    c. In *Rotaru v Romania* (2000) 8 BHRC 449, at [43], the European Court held that "*public information can call within the scope of private life where*

it is systemically collected and stored in files held by the authorities". This information included information about the applicants' studies, politcal opinions or criminal record;

d. The storage of inaccurate information about a person's membership of a political organisation engaged Article 8 in *Cemalettin Canlı v Turkey* (App. No. 22427/04), at [33] and [37]. At [35], the European Court held that this interpreation of the notion of "*private life"* was in line with the Council of Europe's Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (to which the UK acceded on 1st December 1987), whose purpose is "*to secure ... for every individual ... respect for his rights and fundamental freedoms, and in particular his right to privacy with regard to automatic processing of personal data relating to him*" (Article 1), such personal data being defined in Article 2 as "*any information relating to an identified or identifiable individual*" (paragraph 17 above). This suggests that the automatic processing of information that relates to an identifiable individual will amount to an interference with Article 8. This conclusion is consistent with the interpretation of Article 17 of the International Covenant on Civil and Political Rights;[1]

e. In *Segerstedt-Wiberg and Others v Sweden* (2007) 44 EHRR 2, the fact that information relating to political activities, including information that was public, had been "*systemically collected and stored in files held by the authorities"* was sufficient to engage Article 8 [72];

f. In *Amann v Switzerland* (2000) 30 EHRR 843, the storage of non-sensitive information relating to the applicant engaged Article 8 [66-67];

g. In *S v United Kingdom* (2008) 48 EHRR 1169 the Grand Chamber held that the retention by the police, save in exceptional circumstances, of DNA samples and fingerprints taken from persons suspected, but not convicted, of a criminal offence represented an interference with Article 8

[1] UN Human Rights Committee, General Comment No. 16 on the Right to Privacy, at [10]: "The gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law"; Report of the Special Rapporteur on the promotion and protection of human rights and fundemental freedoms while countering terrorism (2009), A/HRC/13/37, at [12].

(at [77] and [86]). It rejected the UK's argument that there was no interference until use was made of the retained material [70] and it held that the applicants' reasonable concern about its possible future use was relevant to whether an interference had already arisen [71];

h. In *R (L) v Commissioner of Police for the Metropolis* [2010] 1 AC 410, at [27], Lord Hope referred to a line of Strasbourg authority establishing that "*information about an applicant's convictions which is collected and stored in central records can fall within the scope of private life within the meaning of article 8(1)"*, even though convictions are "*public information because the convictions took place in public"*.

17. In any event, even if the test is a "*reasonable expectation of privacy"*, it is wrong in law to apply a test about whether events took place in public (*Van Hannover v Germany* (2005) 40 EHRR 1, at [23]). An individual does not, by appearing or commenting in public, give up any expectation that they may have as to the use that may be made of data collected about them on that occasion (*PG v United Kingdom* (2008) 46 EHRR 51, at [57]).

18. When attending a public meeting, Baroness Jones and Cllr Driver, like Mr Catt, may have expected that they would be seen by members of the public, or even that they may be seen in general photographs of the event. But they were also entitled to expect that they would not, simply as a result of peaceful attendance, be identified and recorded on a searchable database relating to "*domestic extremists"*. The retention of their data on a database of "*domestic extremists"* removes their autonomy over their personal data. It has the potential to impact seriously on their personal reputations and employment prospects, if wrongly or accidentally disclosed. It also has a chilling effect on their exercise of freedom of expression and freedom of assembly.

E. The Importance of Freedom of Expression

19. Article 8(1) should not, therefore, be narrowly construed. As Laws LJ held in *Wood v Commissioner of Police of the Metropolis* [2010] 1 WLR 123, at [21], Article 8 includes the notion of the personal automony of an individual. It includes the "*zone of interaction"* between an individual and others. A person is the presumed owner of these aspects of his own self; his control of them

can only be loosened or abrogated if the state shows an objective justification for doing so. The law does not therefore focus on confidentiality, but rather on the protection of human autonomy and dignity — the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people (*Campbell v MGN Ltd* [2004] 2 AC 457, per Lord Hoffmann, at [51]).

20. The concept of individual automony in relation to interactions between an individual and others is closely linked to an individual's freedom of expression and assembly. It is therefore no surprise that the European Court has considered issues relating to state retention of information relating to political expression as falling automatically within Articles 8, 10, and 11 of the Convention. In *Segerstedt-Wiberg*, the European Court considered the collation and storage of information pertaining to a radical politcal grouping. In assessing proportionality for the purposes of Article 8(2), the European Court had particular regard to the "*nature"* of the information (namely the participation of the applicant in political expression) [90]. In considering Articles 10 and 11, the European Court held that "*the storage of personal data related to politcal opinion, affiliations and activities that is deemed unjustified for the purposes of Article 8(2) ipso facto constitutes an unjustified interference with the rights protected by Articles 10 and 11"* [107].

21. There is good reason for considering Articles 8 and 10 together - both rights lie at the heart of liberty in a modern state. Restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state (*Campbell,* per Lord Nicholls, at [12]).

22. A consideration of the importance of political expression is therefore relevant not only to issues of proportionality, but also to any consideration of any "*threshold of seriousness*" that the Appellants claim is required to be met in order to engage Article 8 (paragraph 15 of the Appellants' statement of case). The signficance of these rights is also an answer to the submission of the Secretary of State for the Home Department, at paragraph 15 of her written case, that "*something more"* is required to engage Article 8.

23. It is clear that political expression is a right of fundamental importance. This submission is consistent with the importance granted to political opinions in

s.2(b) Data Protection Act 1998; in Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data; and in the common law.

24. In this regard, Netpol stresses the following principles of the common law:

a. In *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277, at 297, and *R v Shayler* [2003] 1 AC 247, at [21], Lord Steyn and Lord Bingham respectively described freedom of expression as having "*the status of a constitutional right with attendant high normative force*", and "*a fundamental right*" which "*has been recognised at common law for very many years*". One of the consequences of giving this constitutional status to freedom of expression is that clear words are required to restrict it, and thus in that sense there is a narrower approach to the interpretation of legislation and instruments made under legislation restricting it;

b. In *Redmond-Bate v DPP* [2000] HRLR 249, the appellant was said to be a Christian fundamentalist who had been preaching a message that concerned morality, God and the Bible. Sedley LJ said at [20]:

> "*Nobody had to stop and listen. If they did so, they were as free to express the view that the preachers should be locked up or silenced as the appellant and her companions were to preach … Mr. Kealy was prepared to accept that blame could not attach for a breach of the peace to a speaker so long as what she said was inoffensive. This will not do. Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having. … From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas. A central purpose of the European Convention on Human Rights has been to set close limits to any such assumed power. We in this country continue to owe a debt to the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy*."

c. Similarly, in *Abrams v United States* 250 US 616, Holmes J (with whom Brandeis J concurred) held, at 630 (in words that have become the orthodoxy in American First Amendment jurisprudence):

> *"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution … I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."*

25. This common law *dicta* is consistent with the jurisprudence of the European Court of Human Rights, which has repeatedly stressed the need to narrowly interpret any provision which infringes an individual's freedom of expression, as set out in Article 10 of the Convention, and an individual's freedom of assembly, as set out in Article 11:

a. In *Sunday Times v United Kingdom (No 2)* [1992] 14 EHRR 123, the European Court held, at [50(a)] that "*Freedom of expression constitutes one of the essential foundations of a democratic society"* and that any exception to freedom of expression "*must be narrowly interpreted"* and "*convincingly established"*;

b. In *Steel and Morris v United Kingdom* (2005) 41 EHRR 22, the European Court held at [88] that it has "*long held"* that *"politcal expression … requires a high level of protection".* Similarly: "*in a democractic society … there exists a strong public interest in enabling small and informal campaign groups and individuals outside the mainstream to contribute to the public demate … on matters of general interest"*;

c. In many cases, the European Court has highlighted the "*danger of creating a chilling effect on the exercise of public debate*" as a key factor in the assessment of proportionality (*Kaperzyński v Poland*, (App. No. 43206/07), at [74]; *Bladet Tromso v Norway* (2000) 29 EHRR 125, at [64]). As above, the unjustified collation and storage of information pertaining to a radical political grouping represents an infringement of Articles 10 and 11 (*Segerstedt-Wiberg*, at [107]). This reflects the European Court's acceptance that such collation and storage has a chilling effect on expression and assembly rights;

d. The freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as he or she does not commit any reprehensible act on such an occasion (*Ezelin v France* (1992) 14 EHRR 362, at [53]; *Yılmaz Yıldız and Others v Turkey* (App. No. 4524/06), at [42]);

e. The European Court has therefore found breaches of Articles 10 and 11 in cases involving direct sanctions, defamation claims, and in cases involving the collation and storage of material.

26. This clear line of authority suggests that particularly weighty justification is required to justify any interference with freedom of expression and freedom of assembly. Given that this appeal arises in the context of the collection and retention of information relating to political expression, this line of authority is of considerable importance. It demonstrates that any intereference with political expression, whether direct or indirect, is inherently serious. The collection and retention of personal information relating to political expression therefore engages Article 8(1).

F. "In Accordance With the Law"

27. Netpol agrees with and adopts the submissions made on the issue of "*in accordance with the law"* in the statements of case of Mr Catt and the Equality and Human Rights Commission. There are no clear, detailed rules governing the scope and application of the database and there are no publicly accessible or adequate safeguards concerning the duration, storage, and removal of, and access to third parties to, the data on the database.

28. This submission is emphasised by the difficulties faced by Baroness Jones in seeking to challenge the database through her work as an elected member of the London Assembly (Exhibit SD2, at pp.1-62). Baroness Jones has sought to question such officials as the Mayor of London, the Commissioner himself, Deterctive Chief Superintendant Greany (ACPO's National Coordinator for Domestic Extremism) in relation to the scope and nature of the database. The answers she has obtained have been highly unsatisfactory. By way of example:

a. In a Committee meeting on 27th June 2013, the Commissioner told Baroness Jones that he would "*certainly have a look at"* the definition of the term, "*domestic extremism"* and accepted that there had been "*a problem of definition … It is really difficult to be absolutely clear about it … You are right. It should be clearer"* (Exhibit SD2, at p.11);

b. In a letter dated 13th November 2013, the Mayor of London wrote to Baroness Jones to inform her that the Commissioner was "*working with partners and other agencies in an attempt to gain consensus across all areas as to one definition"* of the term, "*domestic extremism"* (Exhibit SD2, at p.15);

c. In a London Assembly Plenary session on 5th March 2014, the Commissioner informed Baroness Jones that those responsible for the database had used a new definition of "*domestic extremism"* in 2013 (Exhibit SD2, p.50). This definition was different to that set out by the Mayor of London on 13th November 2013 (Exhibit SD2, at p.14).

29. This evidence demonstrates that those responsible for the database are, themselves, unclear about the definitions that are applied in order to qualify an individual as a "*domestic extremist"*. They are also unclear as to the scope and purpose of the database itself. If those responsible for the database are so unclear, it is difficult to see how it can be sensibly suggested that members of the public have a clear understanding of the scope, and application of the database.

30. The extent of the retention of data in respect of Baroness Jones and Cllr Driver also demonstrates that there are insufficient safeguards in place to ensure the prompt removal of data that has been unnecesarily included in the database. It appears that some of the data relating to Baroness Jones has been retained since 2001, even though it relates merely to her presence at lawful, peaceful, political meetings.

G. Proportionality and Necessity

31. For the reasons given by the Court of Appeal, the retention of data relating to Mr Catt was unjustified. The same argument applies to the database more widely, particularly insofar as it impacts on Baroness Jones and Cllr Driver.

32. In recent years, the European Court has ruled on a number of occasions on bulk data collection and retention issues. These cases each confirm that any kind of bulk data collection and analysis poses grave risks and must be very narrowly confined:

    a. First, in *Weber and Saravia v Germany* (2008) 46 EHRR SE5 the Court confirmed the lawfulness of a German "*strategic monitoring*" system that collected wireless satellite telecommunications (but not wired communications) amounting to up to 10% of calls subject to extremely stringent safeguards;

    b. Secondly, in *S v UK* (2009) 48 EHRR 50 the Grand Chamber held that the mere collection and retention and DNA fingerprints of innocent people was contrary to Article 8. Collecting such information about innocent people failed to strike a fair balance between public and private interest. The UK argued that retaining and searching the records of

innocent people on the database was necessary "*to increase the size and, therefore, the use of the database in the identification of offenders in the future*" [123]. The innocent had nothing to fear. All these arguments were rejected. The UK had "*overstepped any acceptable margin of appreciation in this regard"* [125] even though the DNA database was undoubtedly a valuable tool for detecting and prosecuting serious criminals;

c. Finally, in *MK v France* (App. No.19522/09), the European Court held that the French national digital fingerprint database was unlawful. The French court held that "*retaining the fingerprints was in the interests of the investigating authorities, as it provided them with a database comprising as full a set of references as possible. Furthermore, this measure was not prejudicial to the applicant thanks to the confidentiality of the database, which prevented any impact on the applicant's private or social life*" [13]. France argued that bulk collection and automated searching of fingerprints was a good idea because it would protect the innocent by ruling out their involvement in crimes, and prevent identity theft. The Court disagreed. It noted that the need for safeguards *"is all the greater where the protection of personal data undergoing automatic processing is concerned, not least when such data are used for police purposes*" [32]. The Court noted that the logic of the arguments put forward by France would justify universal collection and automated processing of everyone's fingerprints: "… *would in practice be tantamount to justifying the storage of information on the whole population of France, which would most definitely be excessive and irrelevant*" [37].

33. These findings of the European Court are consistent with the common law, which has repeatedly set its face against the obtaining of personal information by way of general warrants. Even as long ago as 1765, the common law courts have understood the dangers of the Executive collecting private information held by individuals and the attendant risks of abuse. In *Entick v Carrington* (1765) 2 Wilson 275, a general warrant issued by Lord Halifax led to an award of damages. The argument of Treasury Counsel was akin to that of the Appellants in this appeal, namely that this is an area in which individual rights should be sacrificed for more and better intelligence:

"Supposing the practice of granting warrants to search for libels against the State be admitted to be an evil in particular cases, yet to let such libellers escape who endeavour to raise rebellion is a greater evil, and may be compared to the reasoning of Mr Justice Foster in the case of pressing where he says, "that war is a great evil, but it is chosen to avoid a greater. The practice of pressing is one of the mischiefs war brings with it; but it is a maxim in law and good policy too, that all private mischiefs must be borne with patience, for preventing a national calamity," &c."

34. The Lord Chief Justice disagreed:

"The defendants have no right to avail themselves of the usage of these warrants since the Revolution, and if that would have justified them they have not averred it in their plea, so it could not be put, nor was in issue at the trial; we can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society; for papers are often the dearest property a man can have."

35. The evidence as to the operation of the database insofar as it impacts on Mr Catt, Baroness Jones, and Cllr Driver suggests that it is plainly disproportionate:

a. The information that is recorded is trivial and of limited, if any, intelligence value. As Baroness Jones suggests in her witness statement, it is absurd to suggest that a bland quote that she gave to the *Metro* newspaper in 2003 is of continuing intelligence value. The data that is retained in both Baroness Jones and Cllr Driver's case do not relate to criminality at all, let alone serious criminality. It is therefore difficult to see how the measure in question in this case is rationally connected to the objective;

b. The impact of the retention on an individual's privacy rights is signficant;

c. For the reasons set out above, freedom of expression and freedom of assembly are issues on which the common law and the Convention place particular importance. When considering proportionality, the jurisprudence set out above, at paragraphs 21 to 22, is of particular relevance;

d. For the reasons set out above, there are no adequate safeguards in place to protect individuals against arbitrary collection and retention of their data.

D. Conclusion

36. For the reasons set out above, Netpol respectfully invites the Court to uphold the decision of the Court of Appeal in this case and also to rule that the interference with Article 8 in this case is not "*in accordance with the law"*.

NATHALIE LIEVEN QC
Landmark Chambers

JUDE BUNTING
Doughty Street Chambers

LEIGH DAY
Acting *pro bono*

20th November 2014

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM:

HER MAJESTY'S COURT OF APPEAL (ENGLAND AND WALES)

B E T W E E N

(1) THE ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND AND WALES AND NORTHERN IRELAND
(2) THE COMMISSIONER OF POLICE OF THE METROPOLIS

Appellants

- and -

JOHN OLDROYD CATT

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(2) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interveners

STATEMENT OF CASE ON BEHALF OF THE PROPOSED INTERVENER, THE NETWORK OF POLICE MONITORING

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REF : RS/ Netpol
DATE : 24/11/14
AGENTS FOR THE PROPOSED INTERVENOR