

General Form of Judgment or Order

In the Cardiff County Court	
Claim Number	BS614159
Date	16 April 2012



MAURICE JOHN KIRK	1st Claimant Ref
SOUTH WALES CONSTABULARY	1st Defendant Ref APO.MS.SWP001-138

Before His Honour Judge Seys Llewellyn Q.c. sitting at Cardiff County Court, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

IT IS ORDERED THAT

NOTE OF JUDGMENT 15 APRIL 2012.

1. Trial of these proceedings is listed to commence on 26 April 2012 and has been so listed since 7 September 2011. The hearing is listed for 9 weeks (namely 26 April 2012 to 11 May 2012, 21 May 2012 to 1 June 2102, and 11 June 2012 to 12 July 2012, such being to accommodate intervening weeks when I was committed to sitting elsewhere). The present proceedings concern claims made by Mr Kirk in respect of incidents from 02.01.1993 to 21.05.2002. In the present proceedings he is a litigant in person. I have to determine whether the present date for trial can fairly and justly be held.

2. On 1st March 2012 I circulated to the parties a Note in which I identified 3 features of which I had become aware, none of them helpful to these proceedings: (i) that there was an outstanding appeal against some of my rulings in these proceedings, listed for a date in mid-May 2012, after the date listed for commencement of the trial of Mr Kirk's civil claims in the present proceedings; (ii) that Mr Kirk was awaiting a hearing in criminal proceedings in Cardiff Crown Court listed for 2nd May 2012 ; (iii) that he was still in custody, and I wished to know if he remained in custody what facilities were available to him to prepare for and deal with the present proceedings. I stated that I proposed to list the case for mention at an early opportunity, probably in the course of the next week, to review the situation and to review what other steps if any might be appropriate. I also stated that I was aware that Mr Kirk had written to the court requesting that civil proceedings be adjourned to a date "3 months after his release from prison". A copy of the Note of 1st March 2012 is attached.

3. The mention was listed for, and heard on, 8th March 2012. By that date a fourth feature had been identified, namely that he faced a hearing in Bristol in relation to another criminal proceeding.

4. I directed a number of enquiries, including whether all or some of the hearings of these other matters might be brought forward. Leading counsel for the Defendants having offered that they prepare a revised skeleton argument, with page references as to individual incidents which would assist Mr Kirk further in preparing the civil proceedings

trial, I directed that the Defendants should do so; and they have done so. The matter was listed for further mention and heard on 13th April 2012 when I informed the parties of the outcome of the enquiries which I had directed, and heard their submissions.

Outstanding appeal against rulings in the present proceedings.

5. On 22 June 2009 Mr Kirk was arrested by the South Wales police and charged with firearm offences concerning a Lewis machine gun from an aircraft which Mr Kirk owned. He was remanded in custody and remained in custody for several months awaiting and during a jury trial. At the conclusion of that three week trial in February 2010 Mr Kirk was found not guilty and released. During his remand he had been assessed by psychiatrists in order to report on whether he was fit to stand trial. Those who reported to the court included Dr Tegwyn Williams, a psychiatrist, and Professor Wood, a clinical psychologist.

6. Mr Kirk has following those proceedings instituted two actions, namely an action against Dr Tegwyn Williams and Professor Wood, in action 1CF03456 (instituted on 07.06.2011) and against South Wales Police in action 1CF03361 (instituted on 27.05.2011). Mr Kirk wrote to the court asking to "1. consolidate all claims into one case, 1992 to ongoing where some claims and papers eg Lewis Machine gun are pending 2. Transfer casework into the High Court. 3. For the case to be transferred out of Wales". I refused the application, by order issued and sealed on 2nd February 2012. (The application was not made in the proper form for an application but I had dealt with it on the merits). Mr Kirk issued a notice of appeal. Likewise he had issued appeals against rulings made by me in November 2010, (whereby on application by the Defendants to strike out certain of the claims in the present proceedings, I struck out some of those claims), and permission to appeal was refused.

7. So far as concerns the preliminary rulings, permission to appeal was refused by Kitchen, J on 17th May 2011. Mr Kirk applied for renewed oral hearing of his application for permission to appeal, but this has still not been concluded. (In short, it was due for hearing on 29th July 2011 by Roderick Evans, J but vacated by the judge on the basis that he had been Recorder of Cardiff in an appeal in one of the incidents complained. On 28th September 2011 the appeal was struck out by Wyn Williams, J "upon there being no appearance by the Claimant/Appellant". However on 14th February 2012 that order was itself set aside by Wyn Williams, J ("Application for permission to appeal was refused previously because he did not appear on the date on which his application was listed. No explanation was given to the court in advance of the hearing date .. but it now appears very likely that the Applicant was in custody on the date of the hearing".) On 14th February 2012 a notice of hearing date for the appeal was given for 21 May 2012. Following my discovery that appeal had been listed for that date, I sent to the parties my Note dated 1st March 2012 and at the mention of 8th March 2012 I informed the parties that I was causing urgent enquiry to be made whether that appeal could be brought forward.

8. The date for hearing of the appeal was brought forward to 26th March 2012 and heard by Morgan, J in Bristol but adjourned by him to 23rd April 2012. My understanding has been that Mr Kirk wished the court, on his renewed application for permission to appeal, also to consider his application that there be consolidation of the present proceedings with the claims in respect of or arising out of the machine gun criminal proceedings.

9. If the appeal against refusal of permission to appeal is successful, then a number of claims which had been struck out may be reinstated and in particular if were to be ruled that the other actions arising from the Lewis machine gun should be consolidated with and heard with the present proceedings, there is a simple answer: the other actions are not remotely close to being ready for a trial, and for that reason the date for trial of the present proceedings would have to be vacated, quite apart from the inherent substantial lengthening of the present proceedings by reason of the extra matters. On the other hand if the appeal against refusal of permission to appeal is unsuccessful, this trial can proceed. I therefore do not consider that I should today vacate the trial of the present proceedings simply on the basis of awaiting the outcome of the renewed application for permission to appeal.

10. Independent investigation of the events of 2009. In letters to the court Mr Kirk has argued that the present proceedings should be deferred pending investigation, by an independent police force or other body, of the events of the machine gun prosecution and his detention for a long period in a psychiatric unit. At the hearing on 13th April 2012 at one point he briefly said that he would be willing to withdraw his application to vacate the trial, on the basis that it was self-evident that the trial could not properly proceed before that investigation was carried out. He told me that the IPCC have ordered police to investigate matters relating to the colour of the machine gun; and told me (as he had stated in writing) that there was now documentation that the South Wales Police had come into possession in August 2009 of a prohibited weapon namely a shooting stick with ammunition of the same calibre as caused him to be arrested.

11. These all relate to matters of 2009. As I have already ruled, the current proceedings concern a large number of incidents from 1993 to 2002, and indeed his representations have been that once the police succeeded in getting him struck off as a veterinary surgeon the incidents ceased. If Mr Kirk succeeds in all or some of the claims arising from incidents from 1993 to 2002 he succeeds irrespective of what happened in 2009. If he does not independently so succeed, it does not seem to me that the outcome is likely to be changed even if he were to succeed in establishing impropriety of or in the course of his being charged with and prosecuted for possession of the machine gun in 2009.

12. The "fourth feature": hearing of criminal proceedings due in Bristol. On the one hand, this remains an unhelpful feature in that in reply to my enquiries Bristol Crown Court states that "this appeal has been listed for 25th May 2012" and that this "is the earliest date for a number of reasons, namely court room, witness and also prosecution counsel's availability". On the other hand it is listed only for a single day and Mr Kirk himself is dismissive of its subject matter as involving a common assault. I do not collect any impression that it is a matter of seriousness such as to take away more than one day of the civil proceedings, or to involve lengthy preparation on the part of Mr Kirk, or to be likely to result in extension of the period for which he is in custody, given that according to what he has written to the court he has been in custody since 22nd/23rd December 2011. Therefore I do not consider that trial or preparation of the present proceedings by Mr Kirk of this should be displaced by this alone.

13. The hearing of the criminal proceedings due in Cardiff Crown Court. This is listed for trial on 2nd May 2012. The proceedings appear to be in respect of alleged breach of a harassment order made against Mr Kirk in respect of Dr Tegwyn Williams. I directed enquiries of the Crown Court whether that matter could be brought forward to be concluded before 26th April 2012 the date for commencement of the trial of the present civil proceedings. I am informed that such is not possible.

14. The likely length of the hearing is not known to me. The response from HMP Cardiff to my enquiries about facilities available to him in prison to prepare for a hearing appears to show that he has a very considerable number of files in preparation for the hearing. If on that hearing Mr Kirk is successful then I take it that he will (subject to any orders for bail or remand in respect of the Bristol proceedings) be at liberty. If he is not, the only information which I have as to the seriousness of the allegations against him, and thus as to whether or how long he will remain in custody, is that he was committed to the Crown Court in custody from the Magistrates Court on 20th January 2012 under warrant of committal which refused bail on the stated basis that "likely to offend [and] because the offence is a serious one and you may be afraid of a severe punishment if you are convicted".

15. This poses some risk of losing an unknown period from hearing of the civil proceedings, which might be accommodated, but a risk in particular that Mr Kirk would remain in custody during the civil proceedings.

16. Application for bail and/or for psychiatric report. At the hearing on Friday 13th April, Mr Kirk submitted to me a short letter addressed to "Clerk of Court, Crown Court, Cardiff" and which stated "1. I apply for bail due to a change of circumstances. I wish to tender witnesses to confirm that my custody has been unlawful. 2. I request a psychiatric report and brain scan". As to bail, sitting in the county court I have no jurisdiction to grant bail in the Crown Court nor the full information which would be necessary to consider it. It may be that Mr Kirk has material which is relevant to the affairs of 2009 and their aftermath, and/or to the current criminal proceedings, but on the basis of what I have been told by him which has been put before me, I cannot discern that the witness or other evidence is new evidence going directly to the prospect of bail in the present criminal proceedings. On asking him the purpose of seeking a psychiatric report now, he told me that he wished to have a brain scan, and to know whether he has brain damage. Mr Kirk has long expressed complaint about comment in court on 2nd December 2009 by prosecution counsel in the machine gun proceedings that Dr Tegwyn Williams had some concern whether he might have had cancer, and about an injection he received while in the psychiatric unit. Mr Kirk did not suggest to me in any way that he lacked capacity to conduct the present proceedings.

17. Logically it would be of interest and advantage to the civil court if there were to be a real prospect of bail, since Mr Kirk would then no longer be in custody and better able to deal with the present proceedings. I regret that the material he put before me does not suggest to me that he will gain bail now because of the matters he seeks currently to raise.

18. Facilities available in prison. Mr Kirk would need access to a very large number of lever arch files in the present proceedings. The response from the prison authorities indicates that he would be granted access at any one time to a substantial number of files but that the number would be limited, it seems to some four dozen. He

would have access to a Ministry of Justice laptop but not his own, He would not have instant access to a printer and I am not confident that he would have ready or free access to copying facilities.

19. The trial bundles in this case have been slimmed by striking out of some of the claims but the number of large lever arch files remains at or above the figure of four dozen, the figure indicated by the prison authorities as the maximum to be allowed in his cell for reasons of health and safety, (Mr Kirk having had the misfortune to set a waste bin alight). This is before taking account of such further – relevant – material as Mr Kirk may seek to adduce. Leading counsel for the Defendants told me that up to some 90 witnesses are to be called by the Defendants. (I ruled that Defence witnesses should be called first, because on a number of issues and incidents the Defendants bear the burden of proof, and also because it might assist Mr Kirk to hear what these witnesses said before he called any witnesses of his own). There are 31 incidents which remain in full the subject of claim. They are not capable of being separated each and every one from the others not least because in some cases the same police officer is involved in more than one incident (illustratively Inspector Smith in 2, Inspector Griffiths in 5, PCs Johnson and James in 2, PC Holmes in 2) and because Mr Kirk's case is of collusion and conspiracy. In other words, access may be needed to all of the files at any one time. This is before considering the logistics of Mr Kirk arranging for any witnesses of his own to be called. Whilst Mr Kirk has not supplied an analysis of particular documentary evidence of his own on which he relies and therefore need access, there is at least the "yellow" file of documents lodged by him with the court, a very large lever arch file with a mixture of documents and statements or quasi-statements. These are formidable considerations. In addition, although I consider it significantly less important, it is possible that he would receive less or little practical assistance from a Mackenzie friend while in custody, and he told me that he was denied access by telephone from prison to Ms Sabine McNeill, a person who has on more than one occasion e-mailed material to the county court.

20. General considerations. As I stated in my Note of 1st March 2012, at para 9 to 11,

"The facilities for the hearing and provision of sitting days for it are costly and provided from strictly restricted resources. It is a considerable allocation of resource to provide for a hearing over a period of some 9 weeks. If adjournment is made at short notice it is difficult properly to use the sitting days vacated. These proceedings have been listed for trial over several weeks on more than one occasion, and de-railed on more than one occasion.

I am aware that Mr Kirk has written to the court requesting that the civil proceedings be adjourned to a date "3 months after his release from prison". The reality is that cases are often listed months in advance; cases before me in particular are habitually listed several months in advance; and a case to be heard over 9 weeks could in any event only be listed several months in advance. An adjournment of these proceedings, if there were no alternative, would for all practical purposes mean that hearing of it would not commence before some time in the Spring of 2013.

For these reasons, and in the interests of the parties, it is of high importance that the hearing listed to commence for 26th April be preserved if that can be done consonant with proper conduct of the proceedings; and equally of high importance that if for any one or more reasons such cannot be done, (which would be regrettable in the extreme), it is important that such be crystallised now, in the interests of the parties, in the interest of minimising wasted costs and time, and in the interest of minimising waste of court resources and sitting days."

21. Stance of the Defendant

Leading counsel for the Defendants stated that the Defendants do not support Mr Kirk's application to vacate trial, and on 8th March 2012 he had contended for qualified optimism that the civil trial could be maintained and fairly tried, but on 13th April 2012 he recognised that there was now less reason for such optimism. Not least, he submitted that the court should either way in its decision take a realistic view, not least because of the arrangements which have to be made and have been made for some 90 witnesses to be called by them,

22. Decision.

Twice the present proceedings have been listed for trial, once aborted by the machine gun prosecution and trial and once on account of Mr Kirk's failing physical condition and need for medical treatment. The proper use of the court's resources point strongly in favour of maintaining the trial; although if there were slower progress to resolution of these claims by reason of significant loss of time to other proceedings and/or less effective preparation of the present proceedings, there is a risk of going part heard from the end of the time allotted for trial to some unspecified future date, and for the parties and for the court that would be a disaster. However the central aim and overriding purpose in civil proceedings is, so far as can practicably be achieved, to ensure that any claim is dealt with fairly and justly. Sometimes, despite the best efforts of the court, circumstances limit the extent to which

that can be achieved. Already what should have been unfettered preparation of important civil proceedings has been displaced by preparation for the criminal proceedings; and whatever the cause or the exact course of affairs, there has not been access in prison to any of the extensive trial bundles in the present proceedings. Here, I am driven to the view that that Mr Kirk has not to date been able, and if the civil trial remains as listed there is a plain prospect or grave risk that he will not, in prison, be able to prepare and deal with these proceedings as fully or as properly as he would if not in prison; or as he should generally; and in short that the process of justice would not be as fair or as just as it should be. I am driven, with great regret (to say the very least), to the conclusion that the trial listed for 26th April 2012 should be vacated. I therefore order that trial date of 26 April 2012 be vacated. The court will seek to re-list the hearing of the civil proceedings (subject to any ruling made by an appeal court) as soon as possible but from mid-July 2012 I am already listed to hear other cases virtually continuously until the end of December 2012 and it would be foolish to seek to hear a part of the current proceedings only prior to mid-July 2012. Therefore the earliest practicable listing will be in or after January 2013 and dates of non-availability in the first half of 2013 should be submitted promptly to the court.

23. Other procedural matters. At the hearing on 13th April 2012 Mr Kirk said that he would be wanted access to funds in prison to ensure that he could issue 'some 80' witness summonses. Court orders have been made, long since, requiring witness evidence to be exchanged, by dates long past. Mr Kirk has in the past suggested that until the machine gun matters came to light he had to keep his powder dry as to the disclosure of witnesses, and/or that he would wish to cross-examine witnesses attending on witness summons yet to be issued by him. It has been explained to him on more than one occasion by me that orders for exchange of witness evidence are to be complied with. The purpose is several fold: primarily, just as he has seen witness statements served by the Defendants in order to prepare the case, so must they be able to see witness statements on which he seeks to rely; also to enable proper preparation of the case and control of it (i) to ensure that only evidence which is material to the present proceedings is given and explored, and (ii) to control the proper length of the proceedings. If a witness statement as such cannot be supplied within the proper time, it is open to a litigant to make timely application to rely upon and call witnesses by serving witness summaries of what the witness would say. Therefore as matters stand Mr Kirk does not have permission to call witnesses save as to the matters contained in witness statements or quasi-witness statements in the "yellow" lever arch file to which I have referred above. It will be neither practicable nor just to allow a roving enquiry to call to court witnesses, in respect of whom neither a witness statement nor witness summary has been served. In addition it is reasonably plain that as to at least a number of the witnesses whom Mr Kirk seems to have in mind it will be controversial whether they have evidence relevant to the present civil proceedings.

24. If the matter is left in the air it is therefore overwhelmingly likely that, (save for the relatively small number of witnesses in statements or quasi-statements in the "yellow" bundle), Mr Kirk will not be permitted to call such witnesses, whether to adduce evidence in chief or to cross-examine them. On a number of past occasions I have tried to extract from Mr Kirk orally a list of the names of witnesses whom he wishes to call. Part of the exercise has been to assist Mr Kirk in order to make it more likely that he would make sufficient preparation and disclosure of statements as to be allowed to call them where relevant. Part has been to determine which of them has or may have evidence truly relevant to the present proceedings. Part has been to assist in estimating the length of trial. With the exception of a tiny number of names, my efforts have failed to identify relevant witnesses whom he might be minded to ask to call. It will not be acceptable to the administration of justice to take up time in any re-listed trial with applications to call witnesses which are made far too late. However I consider it important that Mr Kirk is not deprived of reliance on a witness to truly relevant material if there is good reason to allow him to call witnesses. I therefore direct that there be listed, for some weeks hence, hearing for decision on which witnesses he shall be permitted to summons having given him the opportunity for him to identify in advance the list of witnesses in respect of whom he seeks witnesses summonses, by name as to each witness, and identifying with precision in advance in writing the nature of the evidence to be given and the incident issue or matter in respect of which he seeks that they be called to give evidence.

25. I shall direct that the hearing, of any application to permit their evidence to be given (and notably to consider such permission notwithstanding that application is made grossly out of time), be listed with sufficient time to deal properly with each matter.

26. If good reason is identified during such a hearing for a witness summons to issue and for the witness to be called (and sufficient reason shown for Mr Kirk not to have identified the witness to the court before) then his

interests will have been protected. If good reason is not identified during such a hearing for a witness summons to issue and for the witness to be called (or insufficient reason shown for Mr Kirk not to have identified the witness to the court before) then without independently confirmed and compelling evidence it is improbable in the extreme that permission will be given at trial for evidence to be given by such a witness, or therefore for a witness summons to be permitted to stand. I presently have in mind allocation of four days out of the days for which the trial had been listed, to be listed subject to availability in June when it may be hoped that no other criminal proceeding is still extant.

27. Action 1CF 03456. In these proceedings Mr Kirk had been represented, by solicitors G Huw Lewis. On 1st February 2012 application dated 31 January 2102 by Mr Kirk in person was received at Cardiff Civil Justice Centre asking that order be made to "consolidate this action with those currently listed for trial against South Wales Police CF10174 etc in April 2012", on the ground that "consolidation will, with appropriate legal representation, shorten the trial significantly". That application was refused by me, and the refusal communicated to Mr Kirk by the court on 5 March 2012, in the following terms,

"Mr Kirk makes application to consolidate action 1CF03546 with the three actions which are listed for trial commencing 26th April 2012. The application states that such consolidation will shorten the trial considerably. There is some suggestion that it may save costs.

Action 1CF03546 is against Dr Tegwyn Williams and Professor Rodger Wood in respect of matter alleged to have occurred in 2009 and 2010. In the actions listed for trial commencing 26th April 2012 I am considering allegations in respect of a great number of incidents between 1992 and 2002. All long pre-date the period concerned in action 1CF03546.

Further it is part of Mr Kirk's belief, and his case as presented to me, that there is and was a conspiracy to harm his interests and I particular to have him struck off as a practising veterinary surgeon. Part of his case has been that the incidents stopped or greatly reduced once this aim was achieved (or seen to be likely to be achieved) in 2002.

I cannot see, in anything which has been out before me by the Claimant or his solicitors that it is reasonably necessary for there to be consolidation of action 1CF03546, or that such can shorten trial of the matters listed commencing 26th April 2012, or that such can save costs.

No written evidence or witness statement has been served in support of the application pursuant to CPR 23.7 or otherwise. I will give the opportunity to Mr Kirk (or his solicitors) to make written representations in support of the application and/or to lodge (and serve) any evidence in support provided that they do so by 4pm on 9th March 2012 but I shall then proceed to consider the application further on the papers and if appropriate to make ruling on it without a hearing pursuant to CPR 23.8.

The matter is to be diarised to be put before me again on or after 12th March 2012."

No such representations or evidence in support were lodged.

28. I was on leave from 16th March 2012 for 2 weeks returning on 2nd April 2012. On my return from leave I considered a letter from solicitors for Mr Kirk received in hard copy on (I believe) 16th March 2012 and presaged by e-mail letter dated 9th March 2012 stating that they had instructed counsel to settle amended particulars of claim, that they understood that Mr Kirk personally had made application to consolidate action 1CF03456 with the current proceedings and that "Mr Kirk has rather 'jumped the gun', by making the current application, that their intention was to apply to consolidate the present civil actions with action 1CF03456 (against Dr Tegwyn Williams and Professor Wood), and logically with action 1CF03361 (against South Wales Police in respect of the machine gun prosecution); and asking for time suggested as 14 days "in which we may serve the complete Application with the Amended Consolidated Particulars of Claim and appropriate Witness Statement".

29. First, no written representations or evidence had been received upon Mr Kirk's application of 31 January 2012. Second, I had already ruled on application by Mr Kirk to provide for consolidation in 2011. Third, my understanding was that Mr Kirk wished to argue for consolidation, on the appeal hearing due to have been heard by Morgan, J on 26th March 2012. Fourth, no such application or supporting witness statement has so far as I know been lodged with this court by those solicitors.

30. I am informed that when the appeal in the present proceedings was heard by Morgan, J on 26th March 2012, and adjourned, Mr Kirk appeared in person. As to whether matters were or were not sought to be raised in respect

of consolidation, I have no information. I am informed that on 26th March 2012 there was no attendance by those who represent Mr Kirk in action 1CF03456. I might have expected there to be information passing and liaison between Mr Kirk and those instructed by him but (a) he tells me that he last had contact with them several weeks ago and (b) the letter from solicitors refers to inherent difficulty of communicating with their client at short notice while he is in prison. The application or applications to the appeal court for permission to appeal against rulings by me are not within my purview. Further it is a matter for the appeal court what issues are properly under consideration in the application before that court for permission to appeal and what orders the court makes in the application before it. However the solicitors in action 1CF03456 are known, G Huw Lewis of 37 Alfred Street Neath SA11 1EH and I direct that (i) those solicitors shall be notified by the court that Mr Kirk is pursuing application for permission to appeal presently adjourned to 23rd April 2012 and furnished with a copy of this Note of Judgment (ii) a copy of the letter from those solicitors, first sent to the court by them in e-mailed form on 9th March 2012, shall be sent to Mr Kirk.

31. I further direct that a copy of this Note of Judgment shall be made available to Morgan, J prior to the adjourned hearing of Mr Kirk's application for permission to appeal.

32. I ask that counsel for the Defendants should draw up and e-mail to the court an Order reflecting the rulings made by me in this judgment. I reserve to conclusion of trial the costs of the hearings of 8th March 2012 and 13th April 2012.

His Honour Judge Seys Llewellyn, QC

Dated 16 April 2012

Handwritten notes and signatures at the bottom right of the page, including what appears to be a signature and the date 16 APR 2012.