

**BETWEEN:**

**MAURICE JOHN KIRK**

**-and-**

**SOUTH WALES CONSTABULARY**

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**CLAIMANT'S POSITION STATEMENT WITH REGARD TO COSTS**

**& ANCILLARY MATTERS RE HEARING LISTED ON FRIDAY 4<sup>TH</sup> NOVEMBER**

**2016**

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- 1) The Claimant respectfully submits that the detailed judgment in his unsuccessful claim BS 614159 proves the factual and legal nexus of BS61419, 7CF07345 and 1CF03361. He draws the court's attention to paragraph 10 of the said judgment::

*'he insisted that the police were collusive with others to secure that he be struck off the register of the Royal College of Veterinary Surgeons, an aim achieved in May 2002, whereupon police action subsided...In his closing submissions he relies on the fact that he was 'MAPPA' categorised in June 2009, arrested 14 days later, and detained for nearly 8 months on charges of possession of a machine gun, only to be acquitted at his jury trial in February 2010.'*

- 2) The Claimant therefore resists paragraph 16 of The Defendant's Position Statement dated 1st June 2016 that the claim involving sixty separate claims be heard separately to 'the machine gun case' ( 1CF03361). The Claimant respectfully asks the honourable court to consolidate the two cases and to set the matter down for trial before a jury in 2017. Therefore Quantum of Damages and Costs should be adjourned pending The Claimant's application to lift the stay on machine gun case 1CF03361. In this regard this document reiterates the Claimant's position as at 8<sup>th</sup> June 2016.
- 3) The question of Costs in unsuccessful action BS614159 be reserved until the conclusion of the consolidated trial as set out in paragraph 2 as the court's discretion as to costs is

governed by the conduct of either party before the proceedings. In the event of a finding in The Claimant's favour in the forthcoming actions questions of The Claimant's alleged vexatiousness could be assuaged. The claims that are already resolved in The Claimant's favour (paragraphs 947-999 of Judgment in BS614159) and 1092-1140) should be set against the back-drop of the machine gun action and the damages augmented accordingly.

- 4) The Claimant acknowledges the hard work and commitment of the learned trial judge in unsuccessful action BS614159. The Claimant therefore respectfully asks that paragraph 9 of The Defendant's position statement dated 1<sup>st</sup> June 2016 '***In view of the fact that many of the issues raised in action four are intertwined with actions 1-3, it might be thought appropriate that these preliminary issues are decided by the judge who heard actions 1 to 3***' be adopted by the honourable court. The Claimant refers to The Defendant's Application to strike out the 4<sup>th</sup> action ( 7CF07345) and their skeleton argument dated 23<sup>rd</sup> September 2016.
- 5) The said Fourth action is by no means a collateral attack upon an existing judgment which would be an abuse of process although it does trespass factually on a number of incidents in BS614159. Paragraph 2 of the Particulars in 7CF07345 spotlights the same incidents as misfeasance in a public office, not by wrongful arrest and malicious prosecution, but by the systematic failure to exercise a statutory power ( see ***Civil Actions Against The Police 3<sup>rd</sup> edition 11-011 p468***). Accordingly the application to amend said 4<sup>th</sup> action should be allowed and consolidated with the machine gun action once stay has been lifted. Accordingly the question of costs is premature and the hearing on 4<sup>th</sup> November 2016 should be adjourned.

David Jonathan Leathley

*David Jonathan Leathley*

Barrister At Law

3<sup>rd</sup> November 2016.