

A **CARDIFF ADMINISTRATIVE COURT**  
**(SITTING IN THE CROWN COURT AT CARDIFF)**

**Indictment No. U20150029**

B The Law Courts  
Cathays Park  
Cardiff  
CF10 3PG

**21<sup>st</sup> January 2015**

C Before:  
**THE HONOURABLE MR JUSTICE GILBART**

D -----  
**R (EWING) - v - CARDIFF CROWN COURT (CO/4249/2014)**

D and  
**KIRK - v - DIRECTOR OF PUBLIC PROSECUTIONS (CO/4737/2014)**

E -----  
Mr Ewing appeared in person and for Mr Kirk  
There was no representation on behalf of the Director of Public Prosecutions

F -----

**ALL PROCEEDINGS**

G -----  
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A

21<sup>st</sup> January 2015**ALL PROCEEDINGS****(10.33am)**

**COURT CLERK:** Court please rise. Case number CO/4737/2014, Kirk v Director of Public Prosecutions. Case number CO/4249/2014, The Queen on the application of Mr Ewing v Cardiff Crown Court and Others, and case number CO/4737/2014, The Queen on the application (inaudible).

C

**MR JUSTICE GILBART:** Is it Mr Ewing?**MR EWING:** I am Mr Ewing, my Lord, yes.**MR JUSTICE GILBART:** Just before you start, Mr Ewing, just sit down, please.

D

**MR EWING:** Yes.

**MR JUSTICE GILBART:** There is no appearance by the Director of Public Prosecutions. Yesterday, the court was informed that so far as Mr Kirk was concerned it was not possible for the prison authorities to produce him at the Cardiff Civil Justice Centre. A suggestion was made that this hearing be conducted by video link, about which I was unhappy because I did not want the position to be that Mr Kirk would be prevented from having access to justice in court. I therefore have made arrangements that the case be listed here at Cardiff Crown Court so that Mr Kirk could be brought on the prison van, he being currently in custody. The court was informed this morning that Mr Kirk refused to get on the bus, and that has been communicated by the prison contractor. It is right to say that the court has also just been informed that Mr Kirk's sister says that he telephoned her to say that he was on the transport but was removed from the bus, physically; that is contrary to the information that I have received and the court has received from the prison authorities. It follows that Mr Kirk is not present. I have no application to adjourn the matter and I am unwilling to do so. We will just park that for the moment, Mr Ewing, and I will hear any application you may have to make so far as your case is concerned.

H

A **MR EWING:** Yes. My Lord, there are two matters. First of all, as you know, Mr Kirk has brought his appeal separately, as party to the appeal at the Crown Court; I was of course not a party to the appeal at the Crown ...

B **MR JUSTICE GILBART:** No, you have applied to intervene in it, as I understand it, to be added to a party?

C **MR EWING:** Well, initially to be added under '19 2 2 A B', but I would prefer, as an intervener, but of course only in respect of the note taking issue on which I am seeking to bring my own claim. I cannot see that I have standing on any other matters.

D **MR JUSTICE GILBART:** Yes, and you, as I understand it, Mr Ewing, need my permission to be able to bring a claim, because of the order that was made against you?

E **MR EWING:** That is right, under Section 42, yes.

F **MR JUSTICE GILBART:** Okay.

G **MR EWING:** And I should add that Mr Justice Supperstone did give a directions order and the bundles were served by email, twice actually, on Cardiff Crown Court, but I, of course I appreciate that the Crown Courts very rarely respond or appear personally on judicial reviews, and they were sent also twice to the Treasury Solicitor's on behalf of Her Majesty's Attorney General. And in the accompanying letter I did say that if they wanted hard copies sent I would be happy to do so; I have not heard anything from them. I do have emails ...

H **MR JUSTICE GILBART:** Yes, good.

**MR EWING:** Yes.

**MR JUSTICE GILBART:** Tell me about your application.

**MR EWING:** My application, yes, if for, well that is the first, you have seen the application notice. The first application notice would be to, I think rather than be joined I would seek to be an intervener, as they call them, simply on, in Mr Kirk's appeal, on the issue of the note taking. Of course, I am mindful that had these been the Magistrates' Court ...

A **MR JUSTICE GILBART:** Just, would you help me on something? I have read your application.

**MR EWING:** Yes.

B **MR JUSTICE GILBART:** Could you help me on something, please?

**MR EWING:** Yes.

**MR JUSTICE GILBART:** What prejudice did you suffer as a result of not being able to take a note?

C **MR EWING:** Well, in my view, it was an infringement of a Convention right, the right to receive and impart information. I am relying on underlying Convention right of Article 10, the right of freedom of ... my case is based very much on freedom of expression. It is possibly not so much, I mean in so far as prejudice is concerned I would say that there is possibly a breach of Article 10 or an underlying Convention right. Also, in bringing these proceedings, the issue of note taking is an issue of general public importance, which has wider aspects for courts up and down the country; supporters of various people attending cases, they could be environmental or whatever, taking notes in Crown Court trials or appeals, or indeed civil proceedings. And, as your Lordship, I think, sees one of the exhibits, there is a freedom of information response from the Minister of Justice.

F **MR JUSTICE GILBART:** Yes, I have read that.

**MR EWING:** Yes.

**MR JUSTICE GILBART:** Let me just make it absolutely plain, what the Minister of Justice said does not bind a High Court judge.

G **MR EWING:** Oh, I appreciate that.

**MR JUSTICE GILBART:** Nor does it bind a circuit judge.

**MR EWING:** I appreciate that.

**MR JUSTICE GILBART:** That is the administration, and separate.

H **MR EWING:** Yes, yes.

A      **MR JUSTICE GILBART:** Good.

B      **MR EWING:** I understand that.

C      **MR JUSTICE GILBART:** I have read it, anyway.

B      **MR EWING:** I would of course seek to say, and your Lordship will not be too surprised, that I agree with the Minister of Justice approach, which is not what his Honour, with respect to Judge Crowther, what Judge Crowther thought.

C      **MR JUSTICE GILBART:** Yes. Just show me in your judicial review application what relief you are claiming, please.

D      **MR EWING:** Yes. If I can just get the bundle. The claim is judicial review. I was, of course, I think seeking partly a quashing order, but I do not seek to pursue that, I am ...

D      **MR JUSTICE GILBART:** Well just show me, take me to the page the number ...

D      **MR EWING:** Yes, yes.

E      **MR JUSTICE GILBART:** ... and show me what it is you are seeking.

E      **MR EWING:** I think, I am just looking for where the declaration is, I think, yes. Yes, I think section 7, I think it would be page 9 to 10, that is remedy section 7 on the judicial review claim forms, a number of declarations.

F      **MR JUSTICE GILBART:** Page 9 to 10?

F      **MR EWING:** 9 to 10, yes. The ...

F      **MR JUSTICE GILBART:** Just a minute, just a minute.

G      **MR EWING:** It is page 9 of the claim form, but it is also page 9 of the, the judicial review page numbering is in bold at the bottom, right side, which I have put in, which I thought was helpful. I think there are two declarations there. Two quashing orders, but I am not going to pursue those; I do not think it is appropriate.

H      **MR JUSTICE GILBART:** Well I am sorry, I still have not found the page you are referring to. Oh, I see, page 12. Is this right, the proposed claimant be granted leave, is that ...?

H      **MR EWING:** Oh, I think that is ...

A **MR JUSTICE GILBART:** Oh, I am sorry, I am not looking at the claim. Just a minute.

**MR EWING:** Yes, I think that is ...

**MR JUSTICE GILBART:** No, I need to look at the claim form. I am so sorry, my apologies to you. I was looking at the ... and your page in the claim?

B **MR EWING:** That would page 9.

**MR JUSTICE GILBART:** Is it page 2?

**MR EWING:** Page 2 is where the claim form ... no, I think page 1 is where the claim form, there is an index. I did supply an updated bundle.

**MR JUSTICE GILBART:** Well I have got your skeleton argument in support of the application for a judicial review.

D **MR EWING:** Yes.

**MR JUSTICE GILBART:** Oh, I see. I am getting there now.

**MR EWING:** Yes, I do print double sided because ...

**MR JUSTICE GILBART:** Mr Ewing, please do not apologise.

E **MR EWING:** Yes, I am sorry, yes.

**MR JUSTICE GILBART:** So it is page 9 of the judicial review bundle, section 7, details of remedy?

F **MR EWING:** Yes, yes.

**MR JUSTICE GILBART:** Let me just reread that, please. (pause) Thank you. Well I understand that, thank you.

G **MR EWING:** So I would submit that the declarations are simply declarations of what the law is.

**MR JUSTICE GILBART:** Right, let us be clear. Do you accept that there are any circumstances in which a judge can refuse to permit note taking in court?

H **MR EWING:** There could be, yes.

**MR JUSTICE GILBART:** Well tell me about that, please.

A **MR EWING:** I would think, I would agree with what the Minister of, Ministry of Justice were saying, and I am going to concentrate on criminal cases, say that if, I think they, in the (inaudible) they say, if say a court usher notices witnesses taking notes and there is some fear that they were communicating to witnesses outside the court, that might be one, interference with the course of justice, if something of that nature.

B **MR JUSTICE GILBART:** Right.

C **MR EWING:** But it is my view that, with respect to His Honour Judge Crowther, he is starting off from the premise that note taking per se, without permission, is a contempt ...

**MR JUSTICE GILBART:** No, I understand your argument on that.

**MR EWING:** ... and I do not ...

**MR JUSTICE GILBART:** I understand your argument on that.

D **MR EWING:** Yes.

**MR JUSTICE GILBART:** But what I would find helpful, please ...

**MR EWING:** Yes.

E **MR JUSTICE GILBART:** ... is if you can take me to the transcript where the order was made and look at any reasons which Judge Crowther gave.

F **MR EWING:** Yes. I think there is the 7<sup>th</sup> April, that is page 22. That is the first order. I have not actually marked them, but I am aware, from what I recall he says that nobody should take notes without his permission.

**MR JUSTICE GILBART:** Well I may actually be able to give you a precise reference to that. Just a minute.

G **MR EWING:** Oh, I see, yes, I think it is page 32.

**MR JUSTICE GILBART:** Page 32, thank you.

H **MR EWING:** Yes, I think he says, "No one in the public gallery has permission to take notes without my leave. No leave has been asked for, and given that Mr Kirk is, since the middle of yesterday afternoon, in a position to see, to write and make notes, it would take very special

A circumstances for leave to be given. I say also that anyone using a recording device will be treated as in ..." well, I have no problems with that.

**MR JUSTICE GILBART:** Sorry, page 32, you said?

**MR EWING:** Oh, that is the 8<sup>th</sup>, that is the 8<sup>th</sup> of ...

B **MR JUSTICE GILBART:** Sorry, page 32?

**MR EWING:** That is page 32, but there is also ...

**MR JUSTICE GILBART:** I see, so that is page 32D, yes.

C **MR EWING:** Yes.

**MR JUSTICE GILBART:** That is with regard to the former Mrs Kirk, is it not?

**MR EWING:** Yes, but there is also, on the 7<sup>th</sup>, if I could just find it. Oh, I think it is page 25.

D "Would you pause, please," paragraph D, "would you pause, please. No one in the public gallery has permission to take notes. I will hear any application made by any person interested in taking notes, but henceforth any taking of notes without paragraph will be regarded as a contempt of court."

E **MR JUSTICE GILBART:** Yes, and then at the bottom of the page he continues with that.

**MR EWING:** Yes.

F **MR JUSTICE GILBART:** My recollection is that Judge Crowther said something about his concern about another case.

**MR EWING:** Ah, that comes later on at Newport.

**MR JUSTICE GILBART:** Right, take me to that, please.

G **MR EWING:** Yes, I will just find it in the index, my Lord. I think it is page 47 to 75. I will find the exact passage. Unfortunately, it is quite a lengthy transcript. I thought I would put it all in so that you ...

**MR JUSTICE GILBART:** I had the pleasure of reading it all yesterday.

H **MR EWING:** Yes. I think he notices me beginning to take notes, or I had a pen in my hand, if I remember rightly, and he challenges me on it.

A **MR JUSTICE GILBART:** Now, can we just look at, in the original ... just a minute. Yes, I think on the transcript relating to the hearing at Cardiff, in this building, on 27<sup>th</sup> March, at page 5.

B **MR EWING:** Yes, he mentions this in his case stated, but when we got the, when the transcript was supplied I could not find any reference to it, which I was rather surprised to, I could not see any reference ...

**MR JUSTICE GILBART:** Just one moment.

C **MR EWING:** I could not see any reference to note taking in there, but I know he refers to it in his ... I was not, of course, present on that occasion, so ...

D **MR JUSTICE GILBART:** Just a moment, because I know I have read this, a reference to a hearing in Bristol. (pause) Yes, here we are. It is a different page 5. It is in the transcript of the hearing of the 7<sup>th</sup> and 8<sup>th</sup> April, and it is on page 5 at letter G.

**MR EWING:** Of the transcript?

**MR JUSTICE GILBART:** Yes.

**MR EWING:** Yes.

E **MR JUSTICE GILBART:** In your bundle it is ...

**MR EWING:** Page 51, is it, page 5 of the transcript?

**MR JUSTICE GILBART:** No, I think it is earlier than that.

F **MR EWING:** Oh, that is 30<sup>th</sup> of, yes, okay. Page 25 I have got ...

**MR JUSTICE GILBART:** Hang on, hang on. Yes, it is the bottom of page 25. That is the reference that you have just made. But I do know that he made a reference to another appeal.

**MR EWING:** Yes, that was the Newport matter.

G **MR JUSTICE GILBART:** No, no.

**MR EWING:** He was referring to the appeal at Bristol.

**MR JUSTICE GILBART:** Yes, and when ...

H **MR EWING:** That came in, he was giving, he was dealing with the, it was when he was sitting at Newport Crown Court he gave his, he said he did not want notes taken because he felt that it

A might prejudice that appeal. I think he had granted leave for one note taker, Mr Matthews, who is sitting behind me, and he said, he challenged me and said, "Are you about to take notes?" as I recall it, and I said, "I am not taking notes," but I said I was about to, and he said, "You will desist from that, you will be in contempt of court," etcetera, and then I think he said he was concerned about any prejudice to another appeal at Bristol, and I have got submissions to make...

B

C **MR JUSTICE GILBART:** So that is, I am just making notes, I am just looking at the page you have just been referring to, which would involve Mr Matthews. Yes, it is page 54 ...

D **MR EWING:** Yes, yes.

E **MR JUSTICE GILBART:** ... 54 and 55.

F **MR EWING:** Yes, page H. "Are notes being made in the public gallery? Are notes ..."

G **MR JUSTICE GILBART:** But does that refer to you?

H **MR EWING:** That does, my Lord.

I **MR JUSTICE GILBART:** No, that is Mr Matthews.

J **MR EWING:** No, that refers to me.

K **MR JUSTICE GILBART:** Oh, because the man says he is Mr Matthews.

L **MR EWING:** Oh no. Yes, then I come later, that is right. He grants leave to Mr Matthews.

M **MR JUSTICE GILBART:** Thank you, and he permitted him to take notes ...

N **MR EWING:** Yes, as a McKenzie man.

O **MR JUSTICE GILBART:** ... as a McKenzie ...

P **MR EWING:** Yes.

Q **MR JUSTICE GILBART:** Yes.

R **MR EWING:** And then I come in later.

S **MR JUSTICE GILBART:** Yes, well you take me to the passage where ...

T **MR EWING:** Yes, I am just trying to find it, my Lord.

U **MR JUSTICE GILBART:** Page 72, is it?

A      **MR EWING:** Yes, yes.

B      **MR JUSTICE GILBART:** Ah, here we are, and this is the reference to the appeal in another court centre, at the top of page 73.

B      **MR EWING:** That is right, yes. “Are you taking notes?” “I am about to.” Yes, I was proposing to, and then he asked me for what purpose, “Well because I am a member of the public and as far as I am aware there are no legal restraints on taking notes.”

C      **MR JUSTICE GILBART:** Right.

C      **MR EWING:** That was my view. Then he says, “This is a case in which there is an appeal in another court centre. I am concerned that promulgation of information ...”

D      **MR JUSTICE GILBART:** “And I am not prepared to allow anyone else to take notes in the case.”

D      **MR EWING:** Yes.

E      **MR JUSTICE GILBART:** That is you, is it?

E      **MR EWING:** That is right, that is myself.

E      **MR JUSTICE GILBART:** Right, I have got your point, now help me on this. Why should I exercise my discretion to make the order in your case, given that this is really satellite litigation connected to Mr Kirk’s complaints?

F      **MR EWING:** I am a person, an independent party affected, because I was the person restrained from the taking the notes. My case is that it engages Article 10 of the ECHR, and that is my basic plank. As far as, well I will deal with the domestic law point first. First of all, it is a matter of some public importance about note taking in a court. Looking at it alongside the Contempt of Court Act 1981, which is the statutory ...

G      **MR JUSTICE GILBART:** Well there is no statutory prohibition on taking notes in court, none at all.

H

A **MR EWING:** No, I appreciate that, well that is one of my points. If the court is concerned about information or things being published, they have, of course, as your Lordship knows, have powers to make an order under the Contempt of Court Act. But that was not done in this case.

B **MR JUSTICE GILBART:** Take me to Article 10, please.

**MR EWING:** Yes, I think I have set it out in my skeleton argument.

**MR JUSTICE GILBART:** Yes. Well your skeleton argument is nothing if not long, so take me to the relevant bit.

C **MR EWING:** Yes, yes. I did set it out, I think. It deals with quite a few issues. I have tried to deal with it exhaustively. Ah, yes, I think it is page 26 of the skeleton argument, I have set out 1 and 2. First of all, 10.1 ...

D **MR JUSTICE GILBART:** Hang on, just a moment.

**MR EWING:** 26. Paragraphs 2 and 3 is where it is set out.

**MR JUSTICE GILBART:** Just let me read that, please. But why does this fall within Article 10?

E **MR EWING:** Well, I would say it is the right to include freedom to hold opinions and to receive and impart information, without ideas, without ...

**MR JUSTICE GILBART:** Well it is the receiving of information.

F **MR EWING:** And impart information, I would have thought, if you are ...

**MR JUSTICE GILBART:** Well no, just bear with me. Your complaint is that you were not being allowed to take notes.

**MR EWING:** Yes.

G **MR JUSTICE GILBART:** That is receiving information, is it not?

**MR EWING:** I would have thought so, yes. So it engages Article 10.1 *prima facie*.

**MR JUSTICE GILBART:** Yes, thank you.

H **MR EWING:** Then, of course, I accept that there are, it is a qualified right, as your Lordship will know, and Strasbourg has upheld that in series of cases. But in order to restrict the right it

A has to satisfy a number of tests, set out in Article 10.2. And it is right to say, with respect to Judge Crowther, the matter was not addressed, and of course hinging on that, of course neither myself nor Mrs Kirk on the 8<sup>th</sup> was permitted to address the judge, but ...

B **MR JUSTICE GILBART:** No, Mrs Kirk has not applied ...

**MR EWING:** No, no, she has not applied to ...

**MR JUSTICE GILBART:** ... you have.

C **MR EWING:** Yes, yes, but I just, in passing, say that neither of the persons who were refused leave to take notes were allowed to address the judge on the occasion, so of course we were not heard on the issue. His Honour Judge Crowther starts from the premise that note taking per se is a contempt of court, but in my view that cannot be right. It might be a contempt of court if there are then valid reasons why note taking should not take place. Now, your Lordship will know, I think it some case at the Old Bailey, and it has been to the Court of Appeal, I think I have put it in the bundle of authorities, where journalists' notes have to be given at the end of the trial, and of course that is a terrorist case, as your Lordship will know, a very serious case, and I think it went to the Court of Appeal, where they said that the blanket ban was wrong but it went back and said that part of it can be heard in open court and part of it ... Inequal (?) is it, Inc ...? I can't ... yes.

F **MR JUSTICE GILBART:** No, it is the case of Mr Justice Nicol.

**MR EWING:** Yes, and as your Lordship will know ...

**MR JUSTICE GILBART:** That is a special case, I think.

G **MR EWING:** Yes, yes, indeed, but that would be a case where, just the sort of case where restrictions would apply. But there is no actual restriction there on the journalists taking the notes, they have to, as I understand, deliver them up so that they can be seen, because presumably there are issues of national security, as I understand in the case, but that certainly does not apply here. So I would, and of course there has to be remembered in this case, jury trials might be slightly different, I am not going to go into what the issue would be at a jury trial,

A but here of course we are sitting, in both appeals we are sitting with a single judge sitting with  
B two lay justices, so your Lordship will know the old adage that judges cannot be prejudiced. But  
C there is no suggestion, or we never get with the transcripts, that anything adverse was going to be  
published. Now if, of course, Judge Crowther thought that anything adverse was going to be  
published on the internet, say, or anywhere by members of the press or members of the public, he  
D has of course, he has got his statutory powers under Section 4(2), is it, of the Contempt of Court  
Act, and he can prohibit restrictions, and normally that type of thing happens in jury trials where  
there is admissibility of evidence, and things like that, that the jury is not supposed to know, that  
is, you know, confessions, police interviews or things that are ruled out for one reason, or illegal  
searches, that type of things, and your Lordship is of course probably very familiar with that, I  
assume that your Lordship sits in a, or has sat in a criminal jurisdiction, I do not know.

**MR JUSTICE GILBART:** Yes, I was Recorder of Manchester for five years.

**MR EWING:** I am obliged, my Lord. Yes, you know the type of thing where Contempt of  
Court Act orders are made. The only, as you know, there was a letter after the 8<sup>th</sup> written to  
Judge Crowther. Again, with respect to Judge Crowther, at the Newport hearing he is trying to  
justify the not taking of notes on the grounds that it might prejudice the Bristol case. And my  
understanding is, if similar orders for non publication are made under the Contempt of Court Act  
it is for the court of trial to make a Contempt of Court Act order prohibiting, it would not be for  
any other court to interfere. But in any event, whether I am right or wrong about that, it is  
difficult to see, without His Honour Judge Crowther going into it, further how the Bristol case  
could have been ...

**MR JUSTICE GILBART:** Where do I find the letter, please?

**MR EWING:** Yes, there was a preliminary letter, and I am just looking at the index. I think it  
is page 36 to 38 of the bundle. 10<sup>th</sup> April, I think there is an initial letter there, clerk to His  
Honour Judge Crowther, where I ...

**MR JUSTICE GILBART:** Let me just read that, please.

A      **MR EWING:** Yes. Page 36 to page 38 of the bundle.

B      **MR JUSTICE GILBART:** Oh, this is the letter.

C      **MR EWING:** Yes.

B      **MR JUSTICE GILBART:** Yes, and is there a reply?

B      **MR EWING:** And then there is a ... I do not think we ever got a reply to that. There was a further one from the 26<sup>th</sup> at page 39 to 40, that was a formal letter ...

C      **MR JUSTICE GILBART:** But you did not get a reply?

C      **MR EWING:** No. There was a formal letter before claim. Oh, I think we did, at page 45 to 46. Yes, there was a reply to that, 29<sup>th</sup> April. That is where His Honour Judge Crowther sets out some reasons. However, I took the view that as the case was still ongoing, I was hoping that the matter would be resolved at the next hearing, if I wished to take notes. So as and when we come

D      to the Newport case, then after that there was further letters to, before claim. It was one of these ongoing type of, where you have got a series of decisions. I know that Chris Grayling, the judicial review reforms tried to amend that, but that was not actually passed, that thing where

E      you have to seek a judicial review in respect of each decision. I know it was very controversial as your Lordships will know; I keep away from that. But those were the letters, so he was put on notice of what we consider, I considered to be the view, and then when we come to the Newport case, he gave us short reasons ...

F      **MR JUSTICE GILBART:** Just, I am sorry, just remind me, let us just go again to what you are seeking. Can we just go back to that, please?

G      **MR EWING:** Yes, you mean the claim form, I think in part 7, is it not?

G      **MR JUSTICE GILBART:** Yes, well just want to look at this again.

G      **MR EWING:** 7, the details of remedy, is it not, the declarations, I think. I think, perhaps if I can read them out?

H      **MR JUSTICE GILBART:** No, no, I have got that ...

H      **MR EWING:** Yes.

A **MR JUSTICE GILBART:** ... you do not need to read, I have got them in front of me.

B **MR EWING:** Then there were two quashing orders and a mandatory order; well I do not think I have got standing for that, that is Mr Kirk, what he is seeking in his appeal if he pursues it, I do not know. I am happy with declarations of rights as good enough, you know, what I am seeking is rulings in the public interest, what is the position for members of the public attending and taking notes, and the other, of course, issue is, if journalists or members of the media are not prohibited from taking notes, why should special rules apply to members of the public. Of course, I fully accept that if there is going to be some, in a jury case or where there are a series of witnesses, if the court is suspecting that, as the Ministry of Justice points out, and a court usher knows, if it is suspected that a member of the public is taking notes and he is going to go out and warn a prospective witness about what is being said, I can well understand in those circumstances some prohibition being placed. But I do not think there is any suggestion of that taking place in this case; it is not suggested anywhere by Judge Crowther that there is going to be interference with any witnesses that Mr Kirk was going to call, and as we know now from the final hearing at Newport, Mr Kirk declined to give evidence or call any witnesses in any event, but I make no comment about that as I do not have standing in respect of his matters.

**MR JUSTICE GILBART:** Thank you. Thank you, Mr Ewing, anything else you want to say?

F **MR EWING:** Well, I think that is the case. It is a public interest matter that there should be some ruling from the court about what, when a judge, a Crown Court judge, either hearing an appeal, possibly during trials are a separate matter, when ...

G **MR JUSTICE GILBART:** But what do you say about the fact that I am going to be making a ruling without hearing any argument from the Director?

**MR EWING:** That is right, my Lord. As your Lordships will know, this application today was for leave under Section ...

H **MR JUSTICE GILBART:** I know, but of course Mr Kirk had permission for his application and the Director is not here for that either.

A **MR EWING:** Yes, and my understanding is the bundles were served and I cannot give any explanation for that.

**MR JUSTICE GILBART:** Right.

B **MR EWING:** But in so far as my case is concerned, Mr Justice Supperstone directed the Attorney General and the Cardiff Crown Court to be served, and that has been done, there has been no response there. I accept that the correct intervening part ...

C **MR JUSTICE GILBART:** And that was in your proceedings that Mr Justice Supperstone ordered that, was it?

**MR EWING:** Yes.

**MR JUSTICE GILBART:** Just take me to his order, please.

D **MR EWING:** Yes, I have his, if I can just find it, because I had it a minute ago.

**MR JUSTICE GILBART:** Is this the order of 1<sup>st</sup> October?

E **MR EWING:** Yes, I think it is.

**MR JUSTICE GILBART:** Just, have I got a copy of the order in the bundle?

F **MR EWING:** I think, yes, I think it is in ...

**MR JUSTICE GILBART:** Yes.

**MR EWING:** It may not be in the bundle, I think it was separate ...

G **MR JUSTICE GILBART:** Yes, I have got it, actually. It is on page 7. I have got this, it is 7 of my sort of introductory pages.

**MR EWING:** I see.

**MR JUSTICE GILBART:** Yes.

H **MR EWING:** He directed service on the Attorney General, but presumably on the basis that he might want to ...

**MR JUSTICE GILBART:** I have read it.

**MR EWING:** A friend of the court, advocate to the court on ... it issued (?) preliminary leave.

**MR JUSTICE GILBART:** I have read it.

A **MR EWING:** Yes. If I could say something about interested parties, obviously the Crown Court, Newport and Cardiff are the defendants, but as is customary in judicial review they do not normally appear by counsel if the interested party, and I accept that the interested party in this case would be the Director of Public Prosecutions. He was not directed ...

B **MR JUSTICE GILBART:** Yes, but anyway he is not here.

**MR EWING:** ... he was not directed in my case to be served it was the Attorney General only.

**MR JUSTICE GILBART:** Well, very well, the Attorney is not here.

C **MR EWING:** No.

**MR JUSTICE GILBART:** No.

**MR EWING:** As I say, I sent an email to the Treasury's Solicitor Department.

**MR JUSTICE GILBART:** I have got the point.

D **MR EWING:** If leave were granted under Section 42, then of course the claim form would be resealed (sic) on the Director of Public Prosecutions and probably have to be reserved on the Crown ...

E **MR JUSTICE GILBART:** So on other words, if I grant your application under Section 42, it would have to be served, so they have not yet properly been served?

F **MR EWING:** No, no, no. They do not, unless the interested parties directed to be served, they have no standing at the present stage.

**MR JUSTICE GILBART:** Right, thank you.

G **MR EWING:** But of course if leave is granted then of course it proceeds in the normal way with acknowledgment of service, and then assumed that it would be considered initially by a judge on the papers who has got, as you know, rather controversial new powers from Chris Grayling; I make no comments about that ...

**MR JUSTICE GILBART:** Thank you.

H **MR EWING:** ... but that is, seems to me to be the position.

**MR JUSTICE GILBART:** Thank you. Thank you, Mr Ewing. Do sit down.

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**(Ruling then follows)**

**(11.05am)**

A We hereby certify that the above is an accurate and complete record of the proceedings, or part thereof.

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Signed: Mendip-Wordwave Partnership

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