

Appellant's notice

(All appeals except small claims track appeals)

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

For Court use only

Appeal Court Ref. No.

Date filed

SEAL

Section 1

Details of the claim or case you are appealing against

Claim or Case no.

CO/4737/2014

Name(s) of the

☒ Claimant(s) Appellant ☐ Applicant(s) ☐ Petitioner(s)

MAURICE JOHN KIRK BVSc

Name(s) of the

☐ Defendant(s) ☒ Respondent(s)

DIRECTOR OF PUBLIC PROSECUTIONS

Details of the party appealing ('The Appellant')

Name

MAURICE JOHN KIRK BVSc

Address (including postcode)

Puits aux Papillons,
St. Doha
22230 Merdrignac
France

Tel No.

07708 586202

Fax

01792 485430

E-mails

maurice@kirkflyingvet.com;

Details of the Respondent to the appeal

Name

DIRECTOR OF PUBLIC PROSECUTIONS

Address (including postcode)

Crown Prosecution Service,
Rose Court,
2 Southwark Bridge,
London
SE1 9HS

Tel No.

020 3357 0000

Fax

020 7035 1864

E-mail

enquiries@cps.gsi.gov.uk

Details of additional parties (if any) are attached

☐ Yes ☒ No

Section 2

Details of the appeal

From which court is the appeal being brought?

☐ ~~The County Court at~~

☒ High Court

☒ Queen's Bench Division, Administrative Court (Cardiff)

☐ ~~Chancery Division~~

☐ ~~Family Division~~

☐ ~~Other (please specify)~~

What is the name of the Judge whose decision you want to appeal?

Mr. Justice Hickinbottom and Mr. Justice Blake

What is the status of the Judge whose decision you want to appeal?

☐ ~~District Judge or Deputy~~

☐ ~~Circuit Judge or Recorder~~

☐ ~~Tribunal Judge~~

☐ ~~Master or Deputy~~

☒ High Court Judge or Deputy

What is the date of the decision you wish to appeal against?

14th July 2016, and 15th April 2016

To which track, if any, was the claim or case allocated?

☐ ~~Fast track~~

☐ ~~Multi-track~~

☐ ~~Not allocated to a track~~

Nature of the decision you wish to appeal

☐ ~~Case management decision~~

☒ Grant or refusal of interim relief

☐ Final decision

☒ A previous appeal decision

Section 3**Legal representation**

Are you legally represented?

☐ Yes ☒ No

If 'Yes', please give details of your solicitor below

Name of the firm of solicitors representing you

--

The address (including postcode) of the firm of solicitors representing you

--

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLS F) certificate?

☐ Yes ☒ No

Is the respondent legally represented?

☒ Yes ☐ No

If 'Yes', please give details of the respondent's solicitor below

Name and address (including postcode) of the firm of solicitors representing the respondent

Mr D. Roberts, Senior Crown Prosecutor, Cardiff Crown Prosecution Service, 19 floor, Capital Tower, Greyfriars Road, Cardiff CF10 3PL
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Tel No.	02920 803800
Fax	02920 803802
E-mails	Wales.communications@cps.gsi.gov.uk; Cardiff.DistrictPCPT@cps.gsi.gov.uk
DX	33056 Cardiff
Ref.	

Section 4**Permission to appeal**

Do you need permission to appeal?

☒ Yes ☐ No

Has permission to appeal been granted?

☐ Yes (Complete Box A)☒ No (Complete Box B)**Box A**

Date of order granting permission <table border="1"><tr><td></td></tr></table>	
Name of Judge granting permission <table border="1"><tr><td></td></tr></table>	

Box B

I Maurice John Kirk BVSc <table border="1"><tr><td></td></tr></table> the Appellant('s solicitor) seek permission to appeal.	

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in☐ Yes ☐ No

Section 5 Other information required for the appeal

Please set out the ~~order~~ (or part of the order) you wish to appeal against

Order of 14th June 2016

This application fails for want of jurisdiction.

Order of 15th April 2016

- i) This application is considered under CPR 52.17.
- ii) The application is dismissed on the papers.
- iii) There is no right of renewal or appeal against this decision pursuant to CPR 52(5)

Have you lodged this notice with the court in time? (There are different types of appeal - see Guidance Notes N161A)

☒ Yes ☐ No
If 'No' you must complete
Part B of Section 9

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

☒ I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

☐ I ~~confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out on a separate sheet and attached to this notice.~~

OR

☒ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

Section 8 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- ✓ set aside the part of the order which I am appealing
- ✓ vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

1. That the court set aside the Order of Mr. Justice Hickinbottom dated 14th June 2016 and reconsider the Appellant's original Application Notice dated 11th February 2016 and the subsequent Application dated 19th April 2016 to set aside the Order of Mr. Justice Blake dated 15th April 2016 under CPR Part 3.1(7).

☐ order a new trial

Section 9 Other applications

Complete this section **only** if you are making any additional applications.

Part A

☐ I apply for a stay of execution. (You must set out in Section 10 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- ✓ I apply for an extension of time for filing my appeal notice. (You must set out in Section 10 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- ✓ I apply for an order that:

1. The court orders a "Protective Costs Order" in favour of the Appellant of £50.

(You must set out in Section 9 your reasons and your evidence in support of your application.)

Section 9**Evidence in support**

In support of my application(s) in Section 9, I wish to rely upon the following reasons and evidence:

1. I seek the making of a “Protective Costs Order” in the sum of £50. I would therefore most respectfully submit that it is just and equitable that there should be a “Protective Costs Order” in this appeal in the overall public interest.

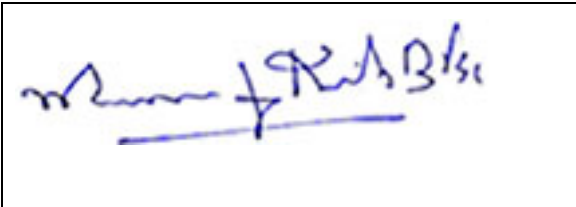
Statement of Truth – This must be completed in support of the evidence in Section 10

I believe ~~(The appellant believes)~~ that the facts stated in this section are true.

Full name MAURICE JOHN KIRK BSc

Name of appellant’s solicitor’s firm

signed



position or office held

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Appellant (’s solicitor)

(if signing on behalf of firm or company)

Section 10 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the county court or High Court:

- ☒ three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal and case stated;
- ☒ one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- ☒ one copy of the sealed (stamped by the court) order being appealed;
- ☐ a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- ☐ a copy of the legal aid or CLSF certificate (if legally represented).

~~In the Court of Appeal:~~

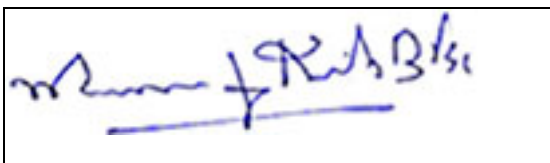
- ☐ ~~three copies of the appellant's notice and three copies of the grounds of appeal;~~
- ☐ ~~one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondent;~~
- ☐ ~~one copy of the grounds of appeal on a separate sheet attached to each of the appellant's notices filed;~~
- ☐ ~~one copy of the sealed (stamped by the court) order or tribunal determination being appealed;~~
- ☐ ~~a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;~~
- ☐ ~~one copy of any witness statement or affidavit in support of any application included in the appellant's notice;~~
- ☐ ~~where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;~~
- ☐ ~~in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;~~
- ☐ ~~a copy of the order allocating the case to a track (if any)~~
- ☐ ~~one copy of the skeleton arguments in support of the appeal or application for permission to appeal;~~
- ☐ ~~a copy of the approved transcript of judgment; and~~
- ☐ ~~a copy of the legal aid or CLSF certificate (if legally represented)~~

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied

Section 11 The notice of appeal must be signed here

Signed



Appellant(~~'s Solicitor~~)

GROUNDS OF APPEAL

PRELIMINARY ISSUE

“CRIMINAL CAUSE OR MATTER”

1. It is contended that although the substantive appeal by Case Stated was a “criminal cause or matter”, the subsequent Orders made by Mr. Justice Blake dated 15th April 2016 and Mr. Justice Hickinbottom dated 14th June 2016 were collateral to a “criminal cause or matter”.
2. Both Orders were made regarding applications made by the Appellant to set aside the Order of Mr. Justice Gilbert dated 21st January 2015 dismissing his appeal by Case Stated in his absence.
3. It is therefore contended that they relate to procedural issues regarding the right of Natural Justice accordingly and not the subject matter of the Appellant’s Case Stated appeal *per se*.
4. Accordingly, this present application for permission to appeal is not prohibited by section 18(1)(a) of the Senior Courts Act 1981.
5. In the premises, the Court of Appeal has jurisdiction to consider the Appellant’s application for permission to appeal accordingly.

ORDER OF MR. JUSTICE HICKINBOTTOM DATED 14th JUNE 2016

(Grounds raise issues of fact and/or points of law)

6. The Honourable Judge erred in law and/or without and/or in excess of his jurisdiction in holding that he had no jurisdiction to reconsider the Order of Mr. Justice Blake dated 15th April 2016.

7. The Honourable Judge further erred in holding that Mr. Justice Blake had been correct to determine the Appellant's Application Notice dated 11th February 2016 under CPR Part 52.17 and that he didn't have the jurisdiction or power to consider it under CPR Part 3.1(7), which is what the Appellant had originally sought in his Application Notice dated 11th February 2016 accordingly.
8. The Honourable Judge further erred in law in holding that the Appellant hadn't satisfied the criteria for making an application under CPR Part 3.1(7) in any event.
9. The Honourable Judge further erred in declining to order an oral hearing of the Appellant's Application Notice dated 19th April 2016, and the Appellant was denied "Natural Justice" thereby, the paper determination not being authorised by Statute, and the Order of the Honourable Judge was thereby unlawful and denied him constitutional access to the court in breach of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
10. In the premises, the Order of the Honourable Judge is "Wednesbury" unreasonable and/or unlawful and/or irrational and/or perverse and such that no reasonable Judge properly directing himself on both the facts and law applicable could reasonably arrive at such findings and Order accordingly.

ORDER OF MR. JUSTICE BLAKE 15th APRIL 2016

(Grounds raise issues of fact and/or points of law)

11. The Honourable Judge erred in law and/or without and/or in excess of his jurisdiction in considering the Appellant's Application Notice dated 11th February 2016 under CPR Part 52.17.
12. The Honourable Judge should have considered the the Appellant's Application Notice dated 11th February 2016 under CPR Part 3.1(7), and accordingly declined jurisdiction as a result thereof.
13. The Honourable Judge further erred in declining to order an oral hearing of the Appellant's Application Notice dated 11th February 2016, and the Appellant was denied "Natural Justice" thereby, the paper determination not being authorised by Statute, and the provisions of Part 52.17. in so far is it purported to authorise determinations on the papers is *ultra vires* and unlawful and denied him the

constitutional access to the court in breach of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.

14. The Honourable Judge further erred in law in holding that he was entitled to hold that Mr. Justice Gilbart on 21st January 2016 was correct to dismiss his appeal by Case Stated in his absence on the unsubstantiated allegations from the authorities at HMP Swansea that he had declined to board the bus to come to court.
15. The Appellant had filed evidence in his Application Notice dated 11th February 2016, supported by a Witness Statement from his sister, Mrs Celia Jeune, that he hadn't declined to get on the bus but was forcibly taken off the bus by prison staff at HMP Swansea who blocked his attempts to attend court on 21st January 2016 accordingly.
16. Mr. Justice Blake therefore sought to determine disputed issues of fact on the papers without hearing proper evidence, and failed to take into account the Appellant's Notice dated 11th February 2016 was his attempt to put his version of what happened before the court accordingly.
17. The Appellant was accordingly driven from the judgment seat and denied "Natural Justice" thereby, and denied his constitutional right of access to the court and/or in breach of in breach of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
18. In the premises, the Order of the Honourable Judge is "Wednesbury" unreasonable and/or unlawful and/or irrational and/or perverse and such that no reasonable Judge properly directing himself on both the facts and law applicable could reasonably arrive at such findings and Order accordingly.

REASONS WHY PERMISSION TO APPEAL SHOULD BE GRANTED UNDER CPR PART 52.3(6)(A)(B)

1. The issues raise matters of constitutional and/or general public importance that satisfy both or one of the 2 tests for granting permission to appeal under CPR Part 52.3(6)(a)(b) relating to whether the proposed appeals "would have a real prospect of success" and/or "other compelling reason", although either and/or the application of both tests are sufficient for the court to grant permission to appeal.