IN THE COURT OF APPEAL **Appeal Court Ref: A2/2017/2747**
Claim No. C90CF012

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

(HIS HONOUR JUDGE KEYSER QC SITTING AS A HIGH COURT JUDGE)

B E T W E E N : **MAURICE JOHN KIRK** Appellant

- and -

SECRETARY OF STATE FOR JUSTICE 1st Respondent

and

PAROLE BD. FOR ENGLAND AND WALES 2nd Respondent

and

CHIEF CONSTABLE OF SOUTH WALES POLICE 3rd Respondent

APPELLENT'S SKELETON ARGUMENT FOR PERMISSION TO APPEAL

TIME ESTIMATE: 2 hours

I certify that no hearing date has been fixed for the hearing of this application for permission to appeal.

Signed

MAURICE JOHN KIRK
Appellant

DETAILS OF CASE

1. The facts and history of the claim are fully set out in the Chronology, and it is unnecessary to recite those details here.

LIST OF ISSUES

GRANT AND REVOCATION OF APPELLANT'S PAROLE LICENCE

1. Whether HHJ Keyser QC was right to hold that the revocation of the Appellant's Parole licence by the officials of the 1st and/or 2nd Respondent was lawful?

PRIVATE LAW CLAIM/JUDICIAL REVIEW

2. Whether the Claim was correctly brought as a private law claim rather than an application for JR?

3. Whether, even if some parts of the claim may raise issues of public law alone, the claim has been correctly brought as a whole as a private law claim, being both mixed private and public law either as a whole or in part?

4. Whether the Claim raises issues of mixed fact and law or fact, which would be more suitably determined in a private law claim rather than by JR?

TIME LIMITS FOR CLAIMS FOR DAMAGES UNDER SECTION 7(5)(A) HUMAN RIGHTS ACT 1998

5. Whether HHJ Keyser QC correctly held that the time limit under section 7(5)(b) Human Rights Act 1998 ran from the date of the final decision of the Parole Bd. dated 19/01/17 regarding the Appellant's claim for being denied an oral hearing of his Parole application?

6. On the footing that HHJ Keyser QC correctly applied the time limit in this case, whether he ought to have considered whether it was appropriate to extend time under section 7(5)(b) Human Rights Act 1998?

INTERPRETION OF SECTION 9 HUMAN RIGHTS ACT 1998

7. Whether HHJ Keyser QC was right to hold that the actions and/or alleged failures of the officials of the 1st and/or 2nd Respondent in failing to arrange an oral Parole hearing for the Appellant were actions and/or alleged failures taken by them that were "judicial

acts" of a "court" with the characteristics of a court for the purposes of section 9(1)(a),(b),(c) Human Rights Act 1998?

8. What is the correct meaning of "judicial acts" of a "court" section 9(1)(a),(b),(c) Human Rights Act 1998, taking into account the requirements of section 3(1) Human Rights Act 1998, regarding the Appellant's "Convention rights"?

LIABILITY OF 3rd RESPONDENT FOR WRONGFUL ARREST AND/OR BREACH OF ARTICLE 5(1)(A) ECHR AS INCORPORTED UNDER SCHEDULE 1 HUMAN RIGHTS ACT 1998

9. Although HHJ Keyser QC did not feel it necessary to deal with this issue, on the footing that the revocation of the Appellant's Parole Licence was unlawful, whether the liability of the 3rd Respondent for the Appellant's arrest depended on whether there were "reasonable grounds" for suspicion on the part of the arresting officer?

10. Whether there is a requirement for "reasonable grounds" of suspicion under section 49(1) Prison Act 1952?

11. Whether, if the Appellant's Parole licence had not been validly and/or lawfully revoked by the 1st and/or 2nd Respondents, this gave rise to liability for wrongful arrest or breaches of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1999, in respect of the Appellant by the 3rd Respondent?

PROPOSITIONS OF LAW

PRELIMINARY ISSUES

PRINCIPLES FOR GRANTING PERMISSION TO APPEAL UNDER PT. 52.6(1)(A)(B) BY CT. OF APPEAL

1. It is contended that the Ct. of Appeal should grant permission to the Appellant, as the issues are of sufficient importance that clarification of the law is required in the public interest regarding issues of when it is appropriate to bring challenges by a private law claim, or by way of JR, and also regarding the application of time limits under section 7(5)(a) Human Rights Act 1998, and the correct interpretation of section 9 Human Rights Act 1998 relating to both as to what may constitute a "court", and what may be a "judicial act".

2. See the previous test for leave to appeal in *Ex p*. Gilchrist *re* Armstrong [1886] 17 Q.B.D. 521, Esher M.R. 527-528, and Buckle v. Holmes [1926] 2 K.B. 125, Banks L.J.

127. The current test for permission to appeal is now set out in Pt. 52.6(1)(a)(b), as a "real prospect of success" or "some other compelling reason for the appeal to be heard".

3. For the test of "reasonable prospects of success", see Tanfern Ltd. v. Cameron-Macdonald (Practice Note) [2000] 1 W.L.R.1311, Brooke L.J. 1316A, no. 21. For the test of "other compelling reason" see Smith v. Cosworth Casting Processes Ltd. (Practice Note) [1997] 1 W.L.R. 1538, Woolf M.R. 1538G-H, nos. 1-2.

SUBSTANTIVE ISSUES

STRIKING OUT UNDER CPR 3.4(2)(A),(B)

1. The Appellant contends that all the causes of claim are known to the law, and requirement of valid pleadings on their face is that all ingredients of torts alleged are pleaded.

2. Contended that that is the case with present amended Particulars of Claim, and that all causes of action are properly pleaded with full ingredients of respective torts, and power to strike out in such cases must be used only in most clear cases.

3. See Attorney General of Duchy of Lancaster v. L.N.W. Rly. Co. [1892] 3 Ch. D. 274, Lindley L.J. 276-277, Lopes L.J. 277, Smith L.J. 278, Frogmore Estates plc. v. Berger [1989] T.L.R, where it was stated that detailed applications for striking out, unless in an obvious case should be discouraged, Midland Rollmakers v. Collins [1981] where it was held that it was wrong to apply to strike out under the former rule 19 R.S.C. without serving a defence first,

4. Also see Drummond-Jackson v. B.M.A. [1970] 1 W.L.R. 688, Pearson L.J. 695H, 696A-H–697A-B. For the position now under the current CPR 3.4(2)(a),(b), see Bridgeman v. McAlpine [2000] W.L. 363, Hale L.J. no. 21.

5. Pleadings therefore stand or fall on their own right, and either reveal valid causes of action known to the law or they do not. The Appellant contends that the pleadings in the present action disclosed proper causes of actions and respective reliefs on their face.

6. Therefore, if any particular aspect of the pleadings has not been fully pleaded, this is not a valid ground for striking out, in view of the fact that they can be remedied, or further particulars can be supplied on request.

7. It is the usual practice to allow a party to amend to cure defects rather than strike out, see Brophy v. Dunphys Chartered Surveyors [1998] transcript, Gibson L.J. Holman J.

8. The current approach is to encourage alternative remedies to the draconian remedy of strike out *per se* in the 1st instance, see Biguzzi v. Rank Leisure Plc. [1999] 1 W.L.R. 1926, Woolf M.R. 133B, Purdy v. Cambran [2000] C.P. Rep. 67, May L.J. no. 51.

VALIDITY OF STRIKE OUT APPLICATIONS RELATING TO COMPLEX ISSUES OF LAW TO BE DETERMINED

1. The Appellant contends that an application to strike out an action is wholly inappropriate in cases where law is either developing or both complex and requires detailed and lengthy argument and consideration of authorities, and that this is the case involving the present claim and the validity of the Appellant's recall *etc.* to prison and the handling of his subsequent oral parole hearing by the 1st and 2nd Respondents' officials.

2. See Lonrho v. Tebbit [1991] 4 All E.R. 973, Brown-Wilkinson V.C. 979F-J–980A-D, upheld by the Ct. of Appeal in Lonrho v. Tebbit [1992] 4 All E.R. 280, Sir Michael Kerr, 288C-H.

3. See also X (Minors) v. Bedfordshire C.C. [1995] 2 A.C. 633, Lord Browne-Wilkinson, 740H–741A-D, 771E-F, Waters v. Commissioner of Police of the Metropolis [2000] 1 W.L.R. 1607, Lord Slynn 1613H–1614A-D, Lord Hutton, 1615E-G, Barrett v Enfield L.B.C. [2001] 2 A.C. 550, Lord Browne-Wilkinson, 557D-G, Lord Slynn, 574D-G, 575D-E, Lord Hutton, 587B.

4. The Appellant contends therefore that in these types of cases the court should refuse strike out applications, and order that any issues of law, be tried as preliminary issues, see Frogmore Estates plc. v. Berger [1989] T.L.R. that detailed applications for striking out is not applicable, except in an obvious case.

5. If necessary, this should be done after oral hearing with live witnesses being heard first, so that the court may find facts of case upon which to thereafter apply relevant legal principles to the case under consideration.

6. It is therefore a well-established principle that where the law is developing as decided in authorities by courts, it is inappropriate to decide or consider issues in the context of a striking out application.

APPLICATION OF STRIKE OUT POWERS UNDER CPR 3.4(2)(A),(B) TO ARTICLE 6(1) ECHR AS INCORPORATED UNDER SCHEDULE 1 HUMAN RIGHTS ACT 1998

1. In addition, such a strike out is a very draconian remedy, and should be used in the clearest cases, as otherwise this might infringe article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998 by denying "very essence" of the right of access to the court, or rendering such access ineffectual or illusory in breach of the well-recognized principles of Strasbourg jurisprudence.

2. See Arrow Nominees Inc. v. Blackledge [2000] C.P. Rep 59, Annodeus Ltd. v. Gibson [2000] T.L.R. 03/03/00, where it was held that striking out for failure to comply with time limits may breach article 6(1) E.C.H.R.

3. It is clear that as substantive proceedings have been issued regarding the Claim, the full procedural guarantees of article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998 are applicable to the current strike out applications and the present claim.

4. It is conceded that where it is alleged that a claim is either an abuse of process of the court, or that it should be stayed or struck out under inherent jurisdiction, it is permissible for court to look at evidence and go behind the face of the pleadings.

5. It is contended that HHJ Keyser QC erred in holding that the burden of proving that there was an arguable claim with real prospects of success lay on the Appellant in the circumstances of this case[1], when clearly it was for the 1st Respondent to show that the revocation of the Appellant's Parole License was unlawful.

6. It is further contended that as the 1st Respondent was applying to strike out the Appellant's Claim, the burden of proving that it had no reasonable prospects of success fell upon the 1st Respondent and not the Appellant in such circumstances.

7. This was certainly case prior to coming into force of Human Rights Act 1998, and the test and burden must be even higher now that the procedural guarantees of article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998 are in full force, guaranteeing that all parties should have access to the court for a "determination of civil rights and obligations".

[1] Item no. 7 – Core bundle, 77-78, 86-87, Transcript of judgment. nos. 10, 41

APPLICATIONS FOR STRIKE OUT AND/OR SUMMARY JUDGEMENT BEING SUPPORTED BY WITNESS STATEMENTS BY THE INSTRUCTING SOLICITORS FOR VARIOUS RESPONDENTS

1. HHJ Keyser QC wrongly held[1] that it was not necessary for any original witness statements to be given, apart from the respective instructing solicitors' Witness Statements in support of all 3 Respondents' Notices of Applications, as they had no personal knowledge of the matters referred to in those respective Witness Statements.

2. It is inappropriate to use evidence in Witness Statements where the maker has no personal knowledge of the facts and the facts are in dispute as in the present case, as such conflicts may only be finally determined after court has heard full oral evidence at trial.

3. See Wenlock v. Moloney [1965] 1 W.L.R. 1238, Sellers L.J. 1242F-H–1243A-C, Danckwerts L.J. 1244A-C, Halliday v. Shoesmith [1993] 1 W.L.R. 1, Beldam L.J. 11B, Bridgeman v. McAlpine [2000] W.L. 363, Hale L.J. no. 21, Swain v. Hillman [2001] 1 All E.R. 91, Woolf M.R. 95A-B, Phelps v. Hillingdon L.B.C. [2001] 2 A.C. 619, Lord Clyde 673A-C, Thames Trains plc. v. Health and Safety Executive [2003] All E.R. D 310 (May), Waller L.J. nos. 8, 20, Richards (trading as Colin Richards & Co.) v. Hughes [2004] P.N.L.R. 35, Gibson L.J. nos. 28, 30.

4. See also Moneypoint v. Morse [1985] where it was held that an action would not be struck out simply on the ground that it stands little chance of success.

5. The Appellant contends that a litigant in person also should not be denied a hearing simply because the case seemed implausible to a judge on the papers, see Merelie v. Newcastle Primary Care Trust [2004] WL 2700864, Eady J. Price Meats Ltd. v. Barclays Bank plc [2000] 2 All ER (Comm) 346, Arden J. no. 1.

6. None of the solicitors concerned were involved in any way with the issue or subsequent revocation of the Appellant's Parole Licence, or the subsequent conduct of the Appellant's Parole application at all, and made their respective statements as a result of reading the documents supplied by their respective clients.

7. The Appellant contends that the 3 instructing solicitors' Witness Statements were insufficient for the purpose of the respective Respondent's respective applications to

[1] Item no. 7 – Core bundle, 86-87, Transcript of judgment. no. 41

strike out and/or for summary judgment as a result of the fact that they did not have personal knowledge of the matters dealt with.

FAILURE TO DEAL WITH THE ISSUES REGARDING THE PAROLE LICENCE

1. HHJ Keyser QC failed to rule on whether or not the conditions imposed by the 1st Respondent in respect of the Appellant's Parole Licence had been unlawful, and/or in breach of article 8(1) and/or 10(1) ECHR as incorporated under schedule 1 Human Rights Act 1998.

2. HHJ Keyser QC had conceded that such conditions would be open to "Wednesbury" reasonable challenges in respect of the reporting and restrictions on contact conditions[1], condition 5 ix and x, (apart from that pertaining to the person subject of the restraining order), xi and xii of the Parole Licence undated.

3. Regarding condition 5 ix, the Appellant was required to report to the hostel staff every hour during the day, which made it difficult to reach the Kingsway Medical Centre or the town shopping area and be back at the hospital within the time frame as set by the 1st Respondent's officials in the Parole Licence.

4. The Appellant contends that the conditions referred to were beyond the powers for the granting of such conditions under rule 2(2)(a)-(g) Criminal Justice (Sentencing) (Licence Conditions) Order 2000, made under section 250(1)(a)(b) Criminal Justice Act 2003, and were thereby *ultra vires* in any event.

5. In so far as condition 5 vi is concerned, the Appellant contended that although authorised by rule 2(2)(e) Criminal Justice (Sentencing) (Licence Conditions) Order 2000, that provision was in breach of EU law and articles 45 to 55 Treaty on the Functioning of the European Union and/or EU Directive 2004/38/E relating to the right to freedom of movement within the EU.

6. It is therefore contended that HHJ Keyser QC acted "Wednesbury" unreasonably in failing to consider the issues raised by the Appellant regarding the initial issue of his Parole Licence accordingly.

[1] Item no. 7 – Core bundle, 79-80, Transcript of judgment. no. 18

REVOCATION OF APPELLANT'S PAROLE LICENCE BY 1st RESPONDENT

1. HHJ Keyser QC was wrong in law and fact to hold that the 1st Respondent's revocation of the Appellant's Parole Licence dated 11/0714 was lawful[1].

2. The only evidence that appeared to have been before the 1st Respondent was a Public Protection Casework Section revocation report regarding the Appellant dated 11/07/14[2], which contained unsubstantiated and hearsay allegations against the Appellant without any proper independent verification at all, or indeed any tangible evidence, which HHJ Keyser QC relied on[3].

3. It appears that no witness statements were taken, and there did not even appear to have been any memos or records of telephone calls at all, showing that any officials of the 1st Respondent interviewed the persons concerned.

4. HHJ Keyser QC further failed to elaborate in any way on his reasons for so holding that the 1st Respondent's revocation on 11/07/14 of the Appellant's Parole Licence dated 04/07/14 was lawful[4].

5. The Appellant contents that there was no credible evidence *per se* before the 1st Respondent that would have justified the revocation of his Parole Licence as a breach of condition 5 i, and certainly no evidence that he had committed or had been accused of committing any criminal offence.

6. As regards the alleged postings on the Appellant's internet site alleged in the Public Protection Casework Section revocation report dated 11/07/14[5], the Appellant was not prohibited from making such postings by any of the conditions of his Parole Licence, and in so far as photographs of other inmates were published, the Appellant would have claimed at trial that they fully consented, and he was therefore merely exercising his rights to "freedom of expression" to "impart information and ideas without interference by public authority" under article 10(1) ECHR as incorporated under schedule 1 Human Rights Act 1998.

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[1] Item no. 7 – Core bundle, 80, 83-84, Transcript of judgment. no. 20, 30-31
[2] Item no. 16 – Supplementary bundle, 49-60
[3] Item no. 7 – Core bundle, 81-82, Transcript of judgment. no. 23
[4] Item no. 7 – Core bundle, 80, Transcript of judgment. no. 20
[5] Item no. 7 – Core bundle, 83-84, Transcript of judgment. no. 31

7. As regards the alleged incidents at the Kingsway Medical Centre alleged in the Public Protection Casework Section revocation report dated 11/07/14, the Appellant contends that any allegations made were unsubstantiated and hearsay and do not appear to have been verified by the taking of any statements from any of the persons unknown, making the allegations by officials of the 1st Respondent therefore completely unsubstantiated.

8. The situation might have been different if the Appellant had say been apprehended at a station by a ticket inspector without a valid ticket, and stopped for alleged fare evasion, or stopped by a store detective outside of a store with goods that he had not paid for, or being in possession of controlled substances.

9. Notwithstanding any legal defences to such matters, such as the requirements for *mens rea etc*., the Appellant concedes that in these types of cases, the 1st Respondent may well be entitled to revoke a released prisoner's Parole Licence and recall that person back to prison, and of course if charged with any criminal offences, the inmate would be entitled to fully defend any charges, and if subsequently dismissed, this would be an important factor to be taken into account at any subsequent Parole Bd. hearing.

10. There was also no evidence that any of the alleged threats claimed to have been made by the Appellant at the Medical Central amounted to any criminal offences in breach of the Public Order Act 1986, and no complaints were ever received by any officers of the 3rd Respondent in respect of the alleged threats from any employees at the Kingsway Medical Centre.

11. There was also no evidence that any of the alleged threats claimed to have been made by the Appellant at the Medical Centre amounted to any criminal offences in breach of the Public Order Act 1986, and no complaints were ever received by any officers of the 3rd Respondent in respect of the alleged threats from any employees at the Kingsway Medical Centre.

12. The only criminal offence committed at the Medical Centre was for the 2nd time by the 3rd Respondent by having refused the Appellant urgent pre-arranged hospital appointments now leaving their victim with potentially carcinogenic lesions requiring possible major surgery.

13. The allegation that the Appellant was posing a danger to the general public[1] was based on unsubstantiated hearsay, and the Appellant suspects that all of these were the true reason why the 1st and/or 2nd Respondents' officials failed to arrange the hearing of his oral parole hearing, as they did not want these matters to be exposed, which would have demonstrated that the Appellant's Parole License had been unlawfully and wrongly terminated both as a matter of law and on the facts.

14. The Appellant therefore considers that there was no breach of condition 5 i either in law or fact and the 1st Respondent unlawfully and therefore "Wednesbury" unreasonably revoked the Appellant's Parole Licence on 11/04/14, purportedly under section 250(1) Criminal Justice Act 2003.

15. The Appellant had set out all of these arguments in detail in his response dated 11/08/14 to his recall, under section 254(2)(b) Criminal Justice Act 2003[2], which set out his case as to why he should not have been recalled, and that his recall was both wrong in law and fact and fully intended to argue at his Parole hearing, if it had been held that the 1st Respondent had unlawfully revoked his Parole Licence in the first place, and of course, the Parole Bd. would have had to have ruled on the issues and take any findings into account regarding whether to further re-release the Appellant on licence again.

APPLICATION OF SECTION 9(1)(A) AND (5) HUMAN RIGHTS ACT 1998 TO 2ND RESPONDENT

1. HHJ Keyser QC was wrong in holding that the various officials and officers of the 2nd Respondent could only be challenged by the routes set out under section 9(1)(c) Human Rights Act 1998, and that as a result, their various actions could only be challenged by way of JR as so provided[3].

2. See section 9 Human Rights Act 1998, White Book 2017 Vol. 2, Section 3D-28 Proceedings under the Human Rights Act, 1478-1479.

3. HHJ Keyser QC further failed to take into account or consider whether the various officials and officers of the 2nd Respondent were acting merely administratively, or were

[1] Item no. 7 – Core bundle, 81-82, Transcript of judgment. no. 23
[2] Item no. 7 – Supplementary bundle, 10-16
[3] Item no. 7 – Core bundle, 85, Transcript of judgment. nos. 36-37

carrying out "judicial acts" on "the instructions, or on behalf, of a judge" as defined under section 9(5) Human Rights Act 1998.

4. The acts referred to, were contained in a series of emails, exhibited to Ms Narjis Khan's Witness Statement dated 31/08/17[1], and were emails passing from both officials of the 1st and 2nd Respondent respectively[2]. These were purely of an administrative nature only, even if the respective officials were employed by the Parole Board as a statutory body, which has not in fact been made at all clear, which is why it may turn out to be the case that they were in fact employed by the 1st Respondent.

5. HHJ Keyser QC further failed to take into account that there was also no evidence exhibited in either Ms Khan's Witness Statement, or that of Mr. Ciaran McQuade dated 31/08/17[3], that any of the officials of the 2nd Respondent either issued or sent their respective emails on the direction of any members of the Parole Bd. or its Chair.

6. The Appellant was not in fact challenging any of the decisions of the Parole Bd. dated 19/08/14[4], and 07/01/15[1], only the failure by the various officials of the 2nd Respondent to arrange for an actual oral hearing of his Parole application.

7. Regarding the Parole Bd. decision dated 19/08/14, that was the direction that the Appellant's Parole Bd. application should be considered at an oral hearing in accordance with R. (Osborne) v. Parole Board [2014] A.C. 111, and that was exactly what the Appellant had asked for, so it would have been irrelevant for the Appellant to have sought to have challenged that.

8. Regarding the Parole Bd. decision dated 07/01/17, that merely observed that the Appellant's hearing was listed for 04/02/15, and that every effort should be made so that it could go ahead, as it was unlikely that it could be relisted after that, due to the Appellant's release date on 07/03/15.

9. Again, the Appellant was not seeking to challenge that decision either, as there would have been no point in doing so, as it was conceding that his Parole hearing was listed for 04/02/15 and should therefore go ahead.

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[1] Item no. 13 – Supplementary bundle, 33-39
[2] Item nos. 19-29 – Supplementary bundle, 70-79
[3] Item no. 11 – Supplementary bundle, 24-30
[4] Item no. 18 – Supplementary bundle, 63-69

10. It is contended therefore that none of the emails or decisions reached by the various officials of the 2nd Respondent could possibly be construed as a "judicial act" for the purposes of section 9(1) Human Rights Act 1998.

11. A "judicial act" has been held in a number of authorities to relate to decisions that determine the rights of a party, and in so considering the arrangements for holding an oral hearing; the officials of the 2nd Respondent did not satisfy this test.

12. See Everett v. Griffiths [1921] 1 A.C. 631, Lord Atkinson, 683-687, Frome United Breweries Co. Ltd. v. Bath JJ [1926] 586, Lord Atkinson, 602-603, Pounds v. Pounds [1994] 1 W.L.R. 1535, Waite LJ, 1548H-1549A-E, Assange v. Swedish Prosecution Authority (Nos. 1 & 2) [2012] A.C. 471, Lord Phillips, 495H, 496A-E, nos. 17-20, Ministry of Justice, Republic of Lithuania v. Bucnys [2014] A.C. 480, Lord Mance JSC, 509D-H, 510A-B, nos. 54-55.

13. HHJ Keyser QC further erred in failing to consider whether the actions or lack of them of the various officials and officers of the 2nd Respondent were taken in the context of what might be construed as constituting a "court", or could be said to have the "characteristics of a court" for the purposes of section 9(5) Human Rights Act 1998.

14. For this purpose, the Appellant concedes that the Parole Bd. may well constitute a tribunal with the "characteristics of a court" for the purposes of hearing and adjudicating on parole applications *per se*.

15. However, even here, where the Parole Bd. considers a parole application on the papers only, this may not satisfy the "characteristics of a court" test, irrespective of whether it satisfies the requirements of article 5(1)(a) ECHR for the purposes of the Strasbourg jurisprudence, relied on by all 3 Respondents.

16. The Appellant contends that whether the article 5 ECHR Strasbourg test is applicable to either oral hearings or paper hearings is irrelevant in deciding whether a paper hearing could satisfy the domestic test of a "court", but either issues are not for consideration in the Appellant's current appeal, as it only concerns what was done to make the necessary arrangements for the oral hearing in the first place.

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[1] Item no. 24 – Supplementary bundle, 75-76

17. It is therefore contended that the actions or lack of them of the various officials and officers of the 2nd Respondent did not take place in the context of a court situation, or could be said to have the "characteristics of a court".

18. For the principles of what may constitute a court, see Attorney-General v. BBC [1981] A.C. 303, Viscount Dilhorne, 339A-H, 340A-F, Lord Edmond Davies, 347B-H–352A, and in particular, for a list of the 5 characteristics of a court, 348B-C, Lord Edmond Davies, 351F, Lord Fraser 353B-H, Lord Scarman, 356A-H–7B-C, 358C–360A-F, Badry v. DPP [1983] 2 A.C. 297, where it was held that a committee of enquiry was not a court, Lord Hailsham, 307D-E.

19. For the relevant tests of whether a tribunal is exercising the judicial power of the state or mere administrative functions, see Royal Aquarium and Summer and Winter Garden Society Ltd v. Parkinson [1892] 1 Q.B. 431, Lord Esher MR, 442-443, Fry LJ, 446-449, Lopes LJ, 452, Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation [1931] A.C. 275, Lord Sankey LC, 295-297, approved in Collins v. Henry Whiteway & Co. Ltd. [1927] 2 K.B. 378, Horridge J. 382-383 and Ranaweera v. Ramachandran (P.C.) [1970] A.C. 962, Lord Donavan, 970G.

20. See also Peach Grey & Co. (a firm) v. Sommers [1995] 2 All E.R. 513, Rose LJ, 519G-J, 520A-J, where the principles in Attorney General v. BBC [1981] A.C. 303 were considered and applied.

21. HHJ Keyser QC therefore failed to consider whether the administrative functions of the various officials and officers of the 2nd Respondent could be differentiated from any court function of the Parole Bd. *per se*, in hearing and adjudicating on parole applications.

22. The Appellant contends that the functions of the various officials and officers of the 2nd Respondent in purporting to arrange an oral Parole Bd. hearing were therefore not a "judicial act", nor were they perpetrated as an inferior tribunal with "the characteristics of a court" at the time of the carrying out of the respective functions at the time for failing to arrange the Appellant's oral Parole hearing.

23. In so far as the Parole Bd. final decision letter dated 19/01/15[1] is concerned, HHJ Keyser QC again further failed to consider whether it could be said that a tribunal having "the characteristics of a court" could issue such a letter[2]. Again, as there had been no interaction with the Appellant, and no oral hearing, it is contended that it clearly did not.

24. In any event, even if the Appellant is wrong about that, the Appellant's case is that it was precipitated as a result of the previous actions or lack of them by the various 2nd and indeed 1st Respondent's failures to arrange for the various reports to be available and to arrange with all due promptitude, the Appellant's oral hearing.

25. Therefore, the Appellant would argue that it is not strictly necessary to have to challenge the Parole Bd.'s decision dated 19/01/15 at all, as part of his case, and his continued detention thereafter, was brought about by the previous failures of both the 1st and 2nd Respondent to arrange the oral hearing in the first place.

26. In addition, the Parole Bd.'s decision letter dated 19/01/15 is unsigned, and there is no evidence by whom it was written or whether it was issued under the directions of any member of the Parole Bd. or its Chair.

27. The Appellant further contends that the provisions of section 9(1) and (5) Human Rights Act 1998 should be interpreted in accordance with the Appellant's "Convention rights" under section 3(1) Human Rights Act 1998, and if necessary read down accordingly.

28. In support, the Appellant further contends that the subject matter of the 2nd Respondent's various officials in purporting to arrange an oral Parole hearing for the Appellant raised both issues of mixed law and fact, rendering JR a totally unsuitable *forum* for determining them accordingly.

29. Alternatively, if section 9(1) and (5) Human Rights Act 1998 is to be interpreted as precluding the Appellant's claim against the 2nd Respondent, the Appellant seeks a Declaration of Incompatibility that section 9 Human Rights Act 1998 is incompatible with article 5(1)(a) and 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998 under section 4(2) Human Rights Act 1998.

[1] Item no. 31 – Supplementary bundle, 80-83

[2] Item no. 7 – Core bundle, 82-83, Transcript of judgment. no. 27

30. The Appellant therefore contends that in the context of the present case, the functions of the 2nd Respondent's various officials were not subject to the restrictions imposed by section 9(1) and (5) Human Rights Act 1998 requiring that any legal challenge be brought exclusively by way of JR.

31. In relation to actually challenging the final Parole Bd.'s decision letter dated 19/01/15, which then informed the Appellant that due to his imminent release from prison, no further oral hearing could be arranged in time, it would have been pointless to have sought a JR of that as the damage to the Appellant had by that time already taken place.

32. After the Appellant's release from prison on 07/03/15, there would have been no point in seeking to get the decision dated 19/01/15 quashed under a Quashing Order, as the High Ct. could not then have directed any further oral hearing to take place due to the Appellant having already been released from custody by that time.

33. The purpose of the Appellant's present claim was to claim damages for compensation for the failure to arrange the oral hearing in the first place, thus resulting in him having to serve the complete term of his sentence in custody until his final release from prison on 07/03/15. JR is also an entirely discretionary remedy in any event, and is not designed to deal with matters and issues that have become of academic interest only due to the expiration of time.

34. In these circumstances, it is contended that such a challenge would have been totally misconceived and a waste of the court's time and recourses, as the compensatory relief claimed by the Appellant was best suited to the private law claim brought.

DETERMINATION OF THE CLAIM AGAINST 2ND RESPONDENT ON THE MERITS

1. HHJ Keyser QC then wrongly held that the acts or lack of them by the 2nd Respondent's various officials were reasonable and lawful[1] without their evidence being subject to live evidence and cross examination.

2. HHJ Keyser QC merely held that the delays had been "unfortunate", which was in effect some sort of value judgment on the evidence itself, again without the benefit of hearing from the officials concerned.

[1] Item no. 7 – Core bundle, 85, 86, Transcript of judgment. nos. 35, 39

3. This appears to have involved taking all of the various emails and decisions at their face value, without any explanation being given orally for the conduct of the officials concerned.

4. The Appellant also contends that the real reason as to why his oral Parole hearing was never heard was because both the 1st and/or 2nd Respondent did not want the issues that the Appellant had raised in his written representations filed under section 254(2)(a) Criminal Justice Act 2003 to ever be determined.

5. The evidence exhibited to Mr. McQuade's and Ms Khan's Witness Statements dated 31/08/17, filed on behalf of the 2nd Respondent therefore raised serious disputed factual issues that could only have been resolved at a full trial, which was required for the determination of the Appellant's "civil rights and obligations" under article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998.

6. It is only after live evidence subject to cross-examination that the court would then have been entitled to have made its findings of fact regarding the failures to arrange the Appellant's oral hearing of his parole application.

TIME LIMIT APPLICABLE UNDER SECTION 7(5)(A) HUMAN RIGHTS ACT 1998 RELATING TO THE APPELLANT'S DETENTION IN LEGAL CUSTODY AFTER REVOCATION OF HIS PAROLE LICENSE

1. HHJ Keyser QC erred in law and fact in holding that time ran under section 7(5)(a) Human Rights Act 1998 relating to his detention in prison custody after the recall of his Parole Licence from the Parole Bd.'s final decision letter dated 19/01/15[1], informing him that the 2nd Respondent would not hold an oral hearing of his parole application in view of his then impending release from his sentence on 07/03/15.

2. See section 7 Human Rights Act 1998, White Book 2017 Vol. 2, Section 3D-28 Proceedings under the Human Rights Act, 1474-1476.

3. The Appellant contends that time in fact ran from the date of his release from prison custody, on the basis that any alleged breach of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998 would be continuous, commencing from 11/07/14 when he was taken back into prison custody, until his eventual release after the expiration of his sentence on 07/03/15.

[1] Item no. 7 – Core bundle, 85, Transcript of judgment. no. 38

4. The Appellant's case was also that the issue of the Parole Licence and its subsequent revocation have a basis in domestic law as well, regarding the legality of its issue and revocation by the 1st Appellant, so the time limits under section 7(5)(a) Human Rights Act 1998 are not essential to this part of the claim in any event.

5. The Appellant was seeking rulings from the court relating to the legality of the granting of both the original Parole Licence and its subsequent revocation therefore, both as regards its basis in domestic law, as well as additionally any related Convention breaches, for which it was not essential that an award of damages be granted, apart from his detention in HMP Swansea, after his recall.

6. However, the Appellant contends that any breaches of the Human Rights Act 1998 were a continuous series of incidents, culminating in his detention in HMP Swansea but being denied the oral parole hearing.

7. The legality of the revocation of the Appellant's Parole Licence played a significant part in his detention, as without it, he would not have been recalled to prison at all, and if this was unlawful, this gave rise to his continued detention in breach of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998, simultaneously with the failure to afford him the oral parole hearing.

8. HHJ Keyser QC further erred in law and fact in holding that as a result, his claim for damages under article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998 was as a result time barred.

9. Alternatively, the learned Judge failed to apply his mind to whether it would be just and equitable to have extended the relevant time limit in respect of this part of the Appellant's claim under section 7(5)(a) Human Rights Act 1998, or to take into account the "overriding objective" to do "justice" under CPR 1.1(1) in this particular case.

10. The Appellant contends that his detention in HMP Swansea was a continuing one, and if found to be in breach of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998, such a breach ran continuously from the time of his recall, until his eventual release from HMP Swansea at the termination of his sentence on 07/03/15.

11. The Appellant therefore contends that certainly, the time limit regarding the alleged breach of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998, must run from the date of his final release, and not the initial date of his recall.

12. The issue of continuing breaches and when time ran from was considered to run from the date of the end of the breach, if a continuing one and not a separate occurrence in Somerville v. Scottish Ministers [2007] 1 W.L.R. 2734, Lord Hope, 2753G-H, 2754A, nos. 51-52, Lord Scott, 2763C-F, no. 81, Lord Mance, 2793H, 2794A-E, nos. 196-197.

13. In addition, the Appellant would further contend that any time limits relating to the original issue of his Parole Licence, if giving rise to any "Convention" breaches would likewise run from the same date.

14. If, however, the time limit for that had already ceased and was not continuous with the Appellant's detention in prison on his recall, the latter certainly ran until his final release, with the result that the time limit for the purpose of section 7(5)(a) Human Rights Act 1998 regarding any damages claims, culminated in his continued detention until final release.

15. The Appellant's Claim Form was in fact issued within the 12-month time limit from the date of his final release from legal custody and is therefore within time accordingly.

16. If, to the contrary, the court finds that all or any of the relevant time limits have expired past the 1 year limitation period, then it is contended that HHJ Keyser QC failed to consider whether to extend them under section 7(5)(b) Human Rights Act 1998 in the particular circumstances of this claim.

17. All of the incidents in issue are so inter related and connected with each other, leading to the series of incidents under review in the present claim, that it would be just and equitable to have done so, see Dunn v. Parole Board [2009] 1 W.L.R. 728, Thomas L.J. 737C-E, no. 20, 743B-H–745A-C, nos. 30-33, Rabone v. Pennine Care NHS Foundation Truest [2012] 2 A.C. 72, Lord Dyson JSC, 100B-F, 101B-D, nos. 75-76, 78-79.

18. If the Appellant's claim was technically out of time, it was only 2 days out and it was not a case of waiting for several weeks or even months before commencing the claim.

19. In addition, there does not appear to have been any evidence filed of what prejudice, if any, had been suffered by the 1st and 2nd Respondents as a result, which would have to be taken into consideration when considering any extension of the relevant time limit.

LIABILITY FOR DAMAGES OF 3RD RESPONDENT

1. HHJ Keyser QC did not rule on whether the 3rd Respondent would be liable for wrongful arrest and imprisonment if the court had found that the Appellant had been "unlawfully at large", thereby giving PC Mitcham on behalf of the 3rd Respondent, the right of arrest on 11/07/15 under section 49(1) Prison Act 1952.

2. HHJ Keyser QC held that such a ruling would be rendered unnecessary in the light of his ruling that the 1st Respondent had lawfully revoked the Appellant's Parole Licence on 11/07/14[1].

3. The possible liability of the 3rd Respondent would however have to be reconsidered in the event that HHJ Keyser QC's findings in relation to the lawfulness of the 1st Respondent's revocation of his Parole License was overturned by the Ct. of Appeal, or the matter was remitted for further hearing.

4. The Appellant would contend that in the event that the Ct. of Appeal were to find that the 1st Respondent had unlawfully revoked the Appellant's Parole Licence, then "reasonable grounds" were not required in respect of the Appellant's arrest, and that there would be liability for a false arrest in domestic law in such circumstances.

5. Such liability would certainly consist of Common law damages for wrongful arrest and false imprisonment.

6. It appears that the right of arrest for someone allegedly unlawfully at large is section 49(1) Prison Act 1952, which gives a constable a right of arrest "without warrant" of any serving prisoner "unlawfully at large".

7. Importantly however, there is no provision that the constable must have "reasonable grounds" to believe that the inmate is "unlawfully at large".

8. This is to be contrasted with the position where a constable makes an arrest of a person on suspicion of having committed a criminal offence, under section 24(2) Police and

[1] Item no. 7 – Core bundle, 84, Transcript of judgment. nos. 32-33

Criminal Evidence Act 1984, which does give a defence to the arresting constable of having "reasonable grounds" for such a belief.

9. The Appellant therefore contends that all of the authorities cited by the 3rd Respondent would appear to be redundant and irrelevant to an arrest under section 49(1) Prison Act 1952, which would appear to be the only statutory provision that would have justified the Appellant's arrest by PC Mitcham on 11/07/14.

10. So far as the right of private individuals to make the well-known power of a citizen's arrest, that is currently provided for in section 24A(2)(b) Police and Criminal Evidence Act 1984, which appears to have been amended to remove the previous "private individual's trap" by also providing that this may also be carried out if the arresting person has "reasonable grounds".

11. However, this was not always the case, and previously the law was that if a private individual arrested a suspect and no actual offence had been committed, that person would be liable for wrongful arrest whether or not that person had "reasonable grounds" of suspicion or not, see Walters v. W.H. Smith & Son Ltd. [1914] 1 K.B. 595, Isaacs C.J. 601–608.

12. This type of claim or action was previously extensively used in respect of store detectives in shoplifting arrests, until the amendments made by section 24A(2)(b) Police and Criminal Evidence Act 1984.

13. It is however contended that the Walters principle may apply to the perpetration of the power of arrest under section 49(1) Prison Act 1952, which may have a *lacuna* regarding the lack of the requirement for the arresting constable to have "reasonable grounds".

14. If this is the case, then the Appellant would contend that if the 1st Respondent wrongfully and unlawfully issued the notice under section 254(1) Criminal Justice Act 2003 regarding the Appellant's purported recall for prison, this would therefore affect the lawfulness of his subsequent arrest by PC Mitcham under section 49(1) Prison Act 1952.

15. It is also an issue of fact as to whether or not the Appellant was informed that the grounds for his arrest at the time was for being unlawfully at large under section 49(1)

Prison Act 1952, as opposed for being informed that he had committed an arrestable offence.

16. The Appellant therefore contends that the liability for his arrest by PC Mitcham on behalf of the 3rd Respondent must therefore hinge on the lawfulness or otherwise of the issuing of the recall notice or the decision to recall him by the at present unnamed officials of the 1st Respondent under section 254(1) Criminal Justice Act 2003.

17. If it is subsequently found that this was indeed unlawful, the Appellant would therefore contend that his status as a person "unlawfully at large" would no longer be applicable, with the result that the foundation for PC Mitcham's arrest under section 49(1) Prison Act 1952 would fall and be fatally undermined, giving rise to an unlawful arrest and subsequent detention accordingly, certainly until delivered to the custody of the 1st Respondent.

18. This would be the case whether or not PC Mitcham had "reasonable grounds" to believe that the Appellant was "unlawfully at large" or not, and whether he was merely acting at the directions given to him by officials of the 1st Respondent that had been supplied to officials of the 3rd Respondent and thereafter conveyed to him in those circumstances.

19. It is an open point as to how far the liability of the 3rd Respondent would extend after the Appellant was delivered to the custody of the 1st Respondent, or whether there would or would not be liability for his subsequent detention by the 1st Respondent until the expiration of his sentence and his final release from prison custody.

20. HHJ Keyser QC also did not apply his mind to the issue of whether any claim for damages under article 5(1)(c) ECHR as incorporated under schedule 1 Human Rights Act 1998 was a separate claim or a continuing one dependant on his subsequent detention in legal custody, as a result of his ruling in relation to the 1st Respondent's revocation of the Appellant's Parole Licence.

21. There is a right to compensation for wrongful arrest and detention under article 5(5) ECHR as incorporated under schedule 1 Human Rights Act 1998

22. Such issues would of course fall to then be determined, including any issues of an extension of time for claiming such damages under section 7(5)(b) Human Rights Act 1998 in the event that the Appellant's claim against the 3rd Respondent was restored.

JUDICIAL REVIEW AND/OR CPR 7.2 CLAIM

USE OF ALTERNATIVE REMEDIES TO JUDICIAL REVIEW

1. The Appellant had previously already used the alternative statutory remedy under section 254(2)(a) Criminal Justice Act 2003 to lodge written representations regarding the original issue and subsequent revocation of his Parole License and his continued detention in custody as a result, both in relation to domestic law and any claimed breaches of any "Convention right" under the Human Rights Act 1998.

2. His representations regarding the initial issue of his Parole Licence and its subsequent revocation raised issues of both fact and law, and was an effective alternative remedy to JR at the time, and it is contended that which would have been totally unsuitable as a remedy regarding the issues that he had raised in any event.

3. In particular, the Appellant would have wanted to have the 1st Respondent's officials responsible for drafting his Parole Licence conditions in the first place, appear to give oral evidence for their reasons for imposing some of the unreasonable conditions, such as reporting every 2 hrs. for instance, and to be able to have cross-examined them.

4. As a result of the officials of the 2nd Respondent failing to arrange an oral hearing of his Parole application, the Appellant in any event lost any opportunity of challenging the original grant of his Parole Licence or its subsequent revocation, as by the time he was finally notified that no oral hearing was going to be listed at all, due to the imminent expiration of his sentence, the relevant time limits had by then passed.

8. It would have been a waste of time and the court's valuable recourses to have then sought to apply for JR out of time, and that being a discretionary remedy, the High Ct. would have been unlikely to grant any such extension.

5. The Appellant by then only had recourse to a CPR 7.2 claim thereafter in order to raise all of his issues regarding both the original issue and subsequent revocation of his Parole License and his subsequent continued detention in custody as a result, as he claimed in breach of article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998.

6. See CPR 7.2, White Book 2017 Vol. 1, How to Start Proceedings — The Claim Form, 421-422.

7. JR is only appropriate where there are no factual issues to be determined at all, see O'Reilly v. Mackman [1983] 2 A.C. 237, and also where cross examination of witnesses will not be required to enable the court to determine what the facts are, before any issues of law are then determined based on those findings of fact.

8. A claim may be brought under CPR 7 even if a large proportion of issues may involve public law, if there are also issues of private law remedies involved, see An Bord Bainne Co-operative Ltd. (Irish Dairy Board) v. Milk Marketing Board [1984] 2 C.M.L.R. 584, Donaldson MR, 587, nos. 9-12, 589, nos. 14-15, Roy v. Kensington & Chelsea F.P.C. [1992] 1 A.C. 624, Lord Bridge, 628H, 629A, 630D-F, G, 649H, 650A-C, 653E-H, approving Davy v. Spelthorne BC [1984] A.C. 262, Lord Fraser, 270E-G, 273A-H–275A-D, Lord Wilberforce, 276E-H–279A-B, Wandsworth LBC v. Winder [1985] A.C. 461, Lord Fraser, 504G-H, 506D-H–510A-C, Clark v. University of Lincolnshire and Humberside [2000] 1 W.L.R. 1988, Sedley L.J. 1993A, nos. 12-13, D v. Home Office [2006] 1 W.L.R. 1003, Brooke LJ, 1008A-B, no. 27, 1031F-H, 1032A-B, nos. 104-106, XEM v. Home Office [2016] WL 06902986, Master Davison, 5-7, nos. 18-26.

9. The effect of the CPR also now has to be taken into account in relation to the application of the "Mackman" principle, before it will be held that there has been any abuse of process of the court, see Clark v. University of Lincolnshire and Humberside [2000] 1 W.L.R. 1988, Woolf M.R. 1994H–1998E, nos. 22-39, and in particular, 1997B–1998A-E, nos. 33-39, P. v. Home Office [2017] 1 W.L.R. 3189, J. Parkes QC, 3193H–3199A-F, nos. 18-41, 3205C, no. 73.

10. In the present case, the rights to Declarations after findings of fact are also established in private law as well as JR, and it is contended that the validity of the grant of the Appellant's Parole license and its subsequent revocation with its implications for the Appellant's "freedom of expression" *etc.* were private law matters pertaining to him, see Gillick v. West Norfolk A.H.A. [1986] 1 A.C. 112, Lord Fraser, 163F, Lord Scarman, 177F-H, 178C-H.

11. In the present claim, even if it were held that the issues involving the grant and subsequent revocation of the Appellant's Parole license involved purely issues of public law, the subsequent issues of arrest by PC Mitcham on behalf of the 3rd Respondent, and the Appellant's subsequent detention without an oral parole hearing being held raise

issues of private law remedies, see Davy v. Spelthorne BC [1984] A.C. 262, Lord Fraser, 273E-H, 274A-F, Lord Wilberforce, 275H–277A-G, 278D-H, 279A-B.

12. It would therefore be totally unrealistic to expect the initial parts of the claim to be brought by JR, and the remainder by a separate CPR 7 claim, as all of the issues form part of a series of incidents, leading up to the Appellant's alleged detention in prison custody far longer than as claimed was necessary.

13. It is also important to maintain flexibility in the distinction between public and private law, and the most suitable *forum* should be considered, and the issue of whether there has been an abuse of the process of the court is paramount, there is in fact no statutory prohibition in commencing claims in private law, see Mercury Ltd. v. Telecommunications Director 1 W.L.R. 48, Lord Slynn, 56C-H–58A-B.

14. So far as the Appellant's continued detention in custody until the expiration of his sentence, damages are the only remedy now available, and any claim for damages only on JR is precluded by CPR 54.3(2), and as such would not have been entertained by the High Ct. In such circumstances, an ordinary private law claim was clearly thereafter the more suitable remedy, and indeed the only remedy available then to the Appellant after his release from custody.

15. The Appellant therefore contends that the issue of the CPR 7.2 claim in the circumstances of his particular case, was not as such as to constitute "an abuse of the court's process" in breach of CPR 3.4(2)(b).

16. It should also be remembered that each case and the relevant facts surrounding it have to be looked at separately and there should now, subsequent to the CPR not be a blanket policy for determining such issues as advocated by all 3 of the Respondents.

EFFECTIVENESS OF JUDICIAL REVIEW AS A REMEDY

1. Although HHJ Keyser QC did not specifically address the arguments of the Respondents advanced that any challenge to the validity of the original grant of the Appellant's Parole Licence and its subsequent revocation could only have been pursued by a Claim for JR, the Appellant nevertheless advances his arguments as to why these submissions were in applicable to the present case, in the event that the same issues are raised by the Respondents in this appeal, in the event that permission to appeal is granted.

2. It is contended that JR was an inappropriate remedy in the circumstances of this particular case in any event, as the issues relating to the original grant of the Appellant's Parole Licence and its subsequent revocation raised issues of both mixed law and fact.

3. It is further contended that the Appellant had a private law remedy regarding a damages claim under article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998 for his detention from the date he was taken back into legal custody on 11/07/14 until his release from prison at the expiration of his sentence on 07/03/15.

4. Again, this clearly raised factual issues that the court should have decided after the various 1st and 2nd Respondents officials had given evidence, after being subject to cross-examination relating to the various administrative decisions that were made, and the correspondence passing between both the 1st and 2nd Respondents officials.

5. It is contended that any public law issues relating to this were therefore ancillary to the claim for damages for the Appellant's continued detention until his from prison at the expiration of his sentence on 07/03/15 under article 5(1)(a) ECHR as incorporated under schedule 1 Human Rights Act 1998.

6. In any event, as the Appellant had already been released from prison, there would have been no point in seeking to challenge the final Parole Bd.'s decision that they were finally not going to hold the oral hearing, as a Quashing Order would have served no purpose in this particular case.

7. The Appellant therefore contends that the issue of the CPR 7.2 was not as such as to constitute "an abuse of the court's process" in breach of CPR 3.4(2)(b), and in the particular circumstances of this case, proceeding by way of a private law claim was not unreasonable, due to the fact that the main relief claimed was damages relating to the Appellant's continued detention until his sentence had expired.

Dated 7th November 2017

Signed

MAURICE JOHN KIRK
Appellant

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

(HIS HONOUR JUDGE KEYSER QC SITTING AS A HIGH COURT JUDGE)

Appeal Court Ref: A2/2017/2747
Claim No. C90CF012

B E T W E E N:

MAURICE JOHN KIRK Appellant

- and -

SECRETARY OF STATE FOR JUSTICE
1st Respondent

and

PAROLE BD. FOR ENGLAND AND WALES
2nd Respondent

and

CHIEF CONSTABLE OF SOUTH WALES POLICE
3rd Respondent

APPELLENT'S SKELETON ARGUMENT FOR PERMISSION TO APPEAL

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