Case No: 1CF03361

IN THE COUNTY COURT AT CARDIFF

Cardiff Civil and Family Justice Centre
2 Park Street
Cardiff CF10 1ET

Date: 15th September 2021

Before :

HIS HONOUR JUDGE PETTS

Between :

MAURICE JOHN KIRK — **Claimant**

- and -

THE CHIEF CONSTABLE OF SOUTH WALES — **Defendant**

David Leathley (instructed on a Direct Access basis) for the Claimant
Lloyd Williams QC and Christian Howells (instructed by Dolmans) for the Defendant

Hearing dates: 6th, 7th, 8th, 9th, 10th and 13th September 2021

Judgment Approved by the court for handing down (subject to editorial corrections)

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HHJ Petts :

Introduction

1. The Claimant seeks general, aggravated and exemplary damages from the Defendant for false imprisonment, malicious prosecution and misfeasance in public office. In summary, following an investigation by South Wales Police (SWP), the Claimant was arrested on 22nd June 2009 on suspicion of having committed firearms offences. He was charged and thereafter remanded in custody until and throughout his trial at the Crown Court at Cardiff, which began on 25th January 2010 and finished with his acquittal by the jury on 9th February 2010.

2. The Defendant was tried on a two-count indictment:[1]

> Count 1: Possessing a prohibited weapon – between 1st January 2008 and 23rd June 2009, without the authority of the Secretary of State, had in his possession a firearm, namely a Lewis machine gun which was so designed or adapted that two or more missiles could be successfully discharged without repeated pressure on the trigger (contrary to section 5(1)(a) of the Firearms Act 1968);
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> Count 2: Selling or transferring a prohibited weapon – between 1st January 2008 and 23rd June 2009, without the authority of the Secretary of State, sold or transferred a firearm, namely a Lewis machine gun which was so designed or adapted that two or more missiles could be successfully discharged without repeated pressure on the trigger (contrary to section 5(1)(a) of the Firearms Act 1968).

3. Offences under section 5(1)(a) carry a mandatory minimum sentence of 5 years' imprisonment (unless the court concludes that there are exceptional circumstances relating to the offence or the offender that justify the court not imposing such a sentence).

4. The provenance and nature of the "Lewis machine gun" referred to in the indictment, including whether it was in whole or part an original or a replica, and whether it fulfilled any or all of the legal elements of a prohibited weapon, were in issue in the criminal trial and also in this trial. The Claimant has also raised the issue of whether the gun produced at trial was the same one that he had once owned or whether it had some stage been switched or modified by the police to justify or improve the case against him. For now, when I refer to the item in question as the "gun" or the "machine gun", I am not pre-emptively expressing a conclusion on what it was in fact or in law, simply applying a label for the purpose of the narrative portions of my judgment.

5. In essence, the Claimant's case is that:

   i) SWP never had any honest belief in the illegality of the Claimant's possession and sale of the machine gun, since it was never a prohibited weapon, and there

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[1] A copy of the indictment is not included in the trial bundle, as far as I can see, so I have taken the wording from the indictment as read by the court clerk to the jury when they were put in charge of the Defendant – D1/38.

were no reasonable grounds for anyone in SWP to suspect that any relevant offence had been committed, such that while the arresting officer DC Richard Jones did not act with malice, his superiors did;

ii) SWP's exaggerated and false evidence led to the Crown Prosecution Service wrongly but in good faith considering that the evidential and public interest tests for prosecution were made out, and also to the CPS objecting to bail such that the Claimant was remanded in custody pending trial;

iii) false and / or corrupted evidence was given at trial, in particular whether the machine gun put before the jury as the key exhibit was actually the gun owned by the Claimant, and as to whether an undercover officer "Foxy" who gave evidence in the Crown Court trial was actually the person who spoke to the Defendant on the telephone;

iv) the underlying motive was to frustrate the Claimant's ability to bring his existing civil claims against the Defendant, this being "targeted malice" against him for the purpose of his claims for malicious prosecution and misfeasance in public office.

6. The claims are denied. The Defendant says the Claimant's arrest was justified based on the Claimant's behaviour at the time when he was apparently in possession of a machine gun. This led to the Claimant's arrest on 22nd June 2009, his being interviewed and charged, and further evidence being obtained including evidence from the London and Birmingham Proof Houses that the machine gun had not been decommissioned. It is said therefore that the Claimant's arrest was lawful, necessary, reasonable and proportionate, and that his prosecution and his remand are not matters for which the Defendant can be held liable as a matter of law. The supposed reason for SWP acting as it did is denied.

Procedural chronology

7. The Claimant issued these proceedings as long ago as 27th May 2011 and a defence was filed on 30th June 2011.

8. On 12th July 2011, HHJ Seys-Llewellyn QC (Designated Civil Judge for Wales at the time) gave the parties permission to file amended statements of case and then stayed this claim, pending determination of existing civil proceedings brought by the Claimant against the Defendant.[2]

9. The stay was lifted by order of HHJ Seys-Llewellyn QC on 29th December 2016 and thereafter came before HHJ Keyser QC on 12th June 2017 for directions, which included permission for further amendments to the statements of case, disclosure by list, and exchange of witness statements coupled with a debarring order for statements not served by the given date. By order of 1st September 2017, HHJ Keyser QC ordered the Claimant to answer some (but not all) of the questions posed in the Defendant's lengthy Request for Further Information. Thereafter, the case management timetable was

[2] The trial bundle did not include a copy of the judgment of HHJ Seys-Llewellyn QC in those other claims, and I have not considered or taken into account any evidence or findings from those proceedings, beyond noting the parties' agreement that the majority of the claims made by the Claimant in that litigation failed, including the allegation of an over-arching conspiracy by SWP against him.

suspended by HHJ Keyser QC while the Claimant was serving a prison sentence and the next effective hearing took place in January 2019. New dates were given for the Claimant to answer the permitted questions in the Request for Further Information and (subject to a debarring order) to give disclosure by list; a new date was also given for exchange of witness statements.

10. On 30th May 2019, HHJ Keyser QC noted that the Claimant had failed to give disclosure and noted that he was therefore debarred from relying on any document in these proceedings other than documents disclosed by the Defendant. As the Claimant was again serving a prison sentence at that time, the rest of the case management timetable was suspended. On 24th January 2020, provision was given for the Defendant to file a supplementary list of documents and for a new date for exchange of witness statements. HHJ Beard gave some further directions on 3rd August 2020.

11. On 18th December 2020, HHJ Keyser QC recorded that the effect of previous orders was that the Claimant was not entitled to rely on documentary evidence other than that served by the Defendant and ordered that the Claimant was not entitled to rely on any witness statement other than his statement dated 9th October 2020 (on both issues, subject to any further orders). No further relevant orders having been made, that is the basis upon which this trial has been conducted.

12. I was then allocated to be the trial judge and held a pre-trial review on 12th May 2021, the trial by that stage having been listed for ten days commencing 6th September 2021. I dismissed the Claimant's belated application for the trial to be held with a jury and gave directions for trial bundles, a witness timetable and skeleton arguments. I struck out some passages from the Particulars of Claim and some passages of the Claimant's first witness statement. I refused an application for the Claimant to be able to rely on three further witness statements from himself.

13. An application for permission to appeal against the decision to refuse a jury trial and to refuse the Claimant's further witness statements (but not the other parts of my order) was issued out of time by the Claimant. The application was refused on paper by Mrs Justice Stacey on 25th August 2021, both on the grounds of being out of time and also on the merits. Her order gave a specific and time-limited method by which a request for an oral hearing of the application for permission to appeal could be made by the Claimant.

14. The Claimant applied on 1st September 2021 for the trial to be vacated pending an appeal against interim orders (namely the refusal of permission to appeal by Mrs Justice Stacey). The application was heard by Mrs Justice Tipples on 3rd September 2021, who noted that the Claimant had failed to apply for a hearing at which to renew his application for permission to appeal and who dismissed the application to vacate the trial as totally without merit.

15. After the opening speech from Mr Leathley, I heard evidence from the Claimant and other witnesses from the afternoon of the first day to the close of the fifth day. The trial was a fully "in-person" trial. The electronic trial bundle had 25 volumes and over 6,800 pages, so of necessity I have had to concentrate on the parts of the bundle to which my attention was drawn. Many points were raised by both sides during the trial. If a particular point in the evidence or submissions is not mentioned, that is not because it

has been ignored but because I have had to draw the line somewhere on what this judgment should contain in order to explain my reasons for my decisions.

16. Before closing submissions on the sixth day, the Claimant issued an application for specific disclosure and witness summonses. Mr Leathley did not press the application before Mr Williams QC began his speech, simply saying that on instructions he was reading it into the record, so there was nothing for me to do. Mr Leathley returned to the matter briefly at the end of his closing submissions, asking on instructions that I delay judgment until the documents (set out in 22 categories) were obtained. At that stage, I still not been passed a copy of the application, and I said I would deal with it when the court office passed it to me, which it did after the hearing.

17. The application is completely without merit and so I will not be deferring judgment for further disclosure to take place or further witness evidence to be heard. The application had not been served on the Defendant by the time we reached the close of submissions, which is an indication of how late the Claimant was in making the application. There was no witness statement in support of the application and so no explanation for why the application was being made so late in the day. The unexplained extreme lateness of the application is sufficient reason to refuse the application. It would have made completing the trial this week impossible. In any event, in an application for specific disclosure against SWP, I cannot order that third parties such as the RAF, HMP Cardiff, the Imperial War Museum Duxford or named medical practitioners (to name just a few of the non-SWP entities, none of whom had been served with the application either) provide their records. As for the list of witnesses to be summonsed to give evidence for the Claimant, there are again many reasons to refuse the application. The Claimant is debarred by previous order from calling any witnesses and he has not explained why that situation should be reversed, which is particularly relevant in the case of his (now ex-) wife and his daughter who, if they had relevant and helpful evidence to give about events, might have been expected to provide statements for the Claimant at a much earlier stage. Some witnesses are police officers, including one who was unable to give evidence because of illness during the trial as evidenced by medical notes, and in reality the Claimant wants them to be called so that he can have them cross-examined, which is not a proper use of the witness summons procedure as it would get around the rule that it is for a party, not his or her opponent, to decide which witnesses (if any) to call in support of their case.

The law relating to false imprisonment

18. SWP's skeleton argument summarises the main principles as follows, which I accept:

    i) The burden of proof is on SWP to justify imprisonment, not on the Claimant to show that his imprisonment was unjustified.

    ii) The arresting officer must personally have reasonable grounds for suspecting that the Claimant was guilty of an offence and consider that the Claimant's arrest was necessary for the prompt and effective investigation of the offence.

    iii) The grounds must be honestly held and objectively justifiable.

iv) A *prima facie* case against the Claimant is not required in order for an arrest to be justified – the requirement is "reasonable grounds for suspecting", which is a low bar.

v) If SWP establishes reasonable grounds for arrest, the Claimant bears the burden of showing that the exercise of discretion to arrest was unreasonable in the sense that no reasonable police officer could have come to such a conclusion.

19. SWP notes that case law establishes that the court has to "*focus upon the state of mind and state of knowledge of the arresting officer, not the briefing officer*".[3] In this case, there was no challenge to the state of mind and state of knowledge of the arresting officer. It was not suggested, for example, that based on the briefing he received, he did not have reasonable grounds for suspicion of guilt or that he did not honestly hold these grounds, or that he was *Wednesbury* unreasonable in exercising his discretion to arrest. The argument of the Claimant was that the briefing was infected by the malice of those higher up in the investigation who had improper grounds for acting as they did and briefed the arresting officer on a maliciously false basis. SWP says that that is an argument in misfeasance in public office, not false imprisonment, and I agree.

20. Thereafter, once the Claimant had been remanded in custody by the crown court pending trial, there is no basis for a claim against SWP for false imprisonment because the imprisonment is based on a judicial decision and no longer upon the initial arrest. Clayton and Tomlinson's *Civil Actions against the Police* (3rd edition, para 4-052) notes that after remand, the claim is not for false imprisonment but for malicious prosecution. I respectfully agree.

21. It follows therefore that the claim for false imprisonment fails, and that the Claimant's grievances against SWP need to be considered only under malicious prosecution and misfeasance in public office, where the Claimant bears the burden of proof.

The law relating to malicious prosecution

22. SWP's skeleton argument sets out five elements for the Claimant to prove (and there was no dispute on the principles):

i) That he was prosecuted by the Defendant;

ii) That the prosecution was determined in his favour (which is not in dispute);

iii) That the prosecution was without reasonable and probable cause;

iv) That it was malicious;

v) That he suffered actionable damage.

23. As to factor (i), SWP cites caselaw to the effect that a police officer can only be the prosecutor in a case prosecuted by the CPS where the facts are peculiarly within that officer's knowledge and where the dishonest provision of information to the CPS makes it virtually impossible for the CPS to exercise their discretion independently, such that

[3] *Mouncher v SWP* [2016] EWHC 1367 (QB), paragraph 424 per Wyn Williams J.

the CPS is deliberately manipulated into bringing the proceedings.[4] The Claimant accepts that this is the test, and argues that this is such a case.

24. As to factor (iii), SWP cites caselaw to the effect that the Claimant must prove that the police officer in question did not actually and reasonably believe that there was cause for prosecution and a proper case to go before the court.[5]

25. As to factor (iv), SWP cites caselaw to the effect that the Claimant has to prove that the relevant officer caused the prosecution to be brought for an improper motive. Absence of reasonable and probable cause is evidence of malice, but malice is not necessarily to be inferred from unreasonableness.

Law relating to misfeasance in public office

26. The Defendant cites caselaw to the effect that the Claimant must prove that a police officer acted in bad faith and deliberately engaged in conduct with the specific intention of injuring or causing loss to him.[6] Again, there was no disagreement on this.

Firearms Act 1968 and Firearms (Amendment) Act 1988[7]

27. Before I turn to the evidence, I ought to summarise the relevant points of firearms legislation.

28. In general terms, a "firearm" is defined in the 1968 Act as meaning a "*lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged*" (section 57(1)). Or, to put it another way, an item is not a "firearm" – and so possession or transfer of it cannot be an offence under s.5(1) – if no shot, bullet or other missile can be discharged from it. The 1988 Act provides a statutory presumption (section 8) as to how a firearm can be shown to have been rendered incapable of discharging any shot etc, namely being marked and certificated by the London or Birmingham Proof House. However, it was accepted in evidence by Philip Rydeard, a former Home Office forensic scientist called by SWP, that there are and were other ways of deactivating a firearm otherwise than in accordance with that statutory presumption (albeit that he said that this weapon had not been deactivated at all).

29. By section 57(1)(b), the term "firearm" also includes "*any component part of such a lethal or prohibited weapon*".

30. While Section 1 of the 1968 Act makes it an offence to possess certain firearms without a certificate, section 5(1) of the 1968 Act prohibits possession or transfer of a firearm within particular categories. This case is concerned with an alleged prohibited weapon under section 5(1)(a), namely a firearm "*which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger*", often called a machine gun.

31. I can deal briefly with a point raised in the Particulars of Claim and in opening but, correctly, not pressed in closing, which is whether the machine gun could be possessed

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[4] *Rees v Commissioner of Police for the Metropolis* [2018] EWCA Civ 1587, paragraphs 45-52
[5] *Glinski v McIver* [1962] AC 726, 758 (Lord Denning) and 768 (Lord Devlin)
[6] *Three Rivers DC v Governor and Company of the Bank of England (No. 3)* [2003] 2 AC 1
[7] References to the relevant statutory provisions are to the versions in force at the time of events.

without a certificate under section 13(1) of the 1968, headed "equipment for ships and aircraft". This provides that a person may, without holding a certificate,

> "(a) have in his possession a firearm or ammunition on board a ship, or a signalling apparatus or ammunition therefor on board an aircraft or at an aerodrome, as part of the equipment of the ship, aircraft or aerodrome;
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> (b) remove a signalling apparatus or ammunition therefor, being part of the equipment of an aircraft, from one aircraft to another at an aerodrome, or from or to an aircraft at an aerodrome to or from a place appointed for the storage thereof in safe custody at that aerodrome, and keep any such apparatus or ammunition at such a place; and
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> (c) if he has obtained from a constable a permit for the purpose in the prescribed form, remove a firearm from or to a ship, or a signalling apparatus from or to an aircraft or aerodrome, to or from such place and for such purpose as may be specified in the permit."

32. It is clear from section 13 that a distinction is drawn between items that can lawfully be held on board a ship (a firearm or ammunition) and items that can lawfully be held on board an aircraft or at an aerodrome (signalling apparatus or its ammunition). It does not legalise possessing a firearm on an aircraft. Furthermore, as section 13(1) only removes the need for a certificate for a firearm that would otherwise require one under section 1, it does not authorise the possession of a weapon that is prohibited under section 5(1)(a).[8]

33. I can also deal with the issue of whether the gun would inevitably have been outside the scope of the Firearms Act 1968 for being "*an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament*" – section 58(2). The evidence from Mr Rydeard was that the guidance now in place about the meaning of an antique weapon excludes firearms that use modern ammunition, such as the .303 bullets used by a Lewis machine gun. In my view, while this guidance was not in force at the time, the logic of it is obvious. A non-deactivated firearm of considerable vintage which uses ammunition no longer manufactured or commercially available poses little or no risk to others, particularly in the hands of a criminal. A non-deactivated firearm, even if nearly 100 years old, that uses ammunition readily available in the present day is still a risk to others, particularly if it would otherwise be a prohibited weapon. Accordingly, the Claimant has not shown that a 1916 Lewis gun would necessarily have been an antique such that it was unreasonable for SWP not to have operated on that basis when investigating and / or prosecuting the Claimant.

34. Section 7(1) of the 1988 Act provides that any weapon prohibited by section 5(1) of the 1968 Act is to be "*treated as a prohibited weapon notwithstanding anything done for the purpose of converting it into a weapon of a different kind.*" This is the provision that led Mr Rydeard to agree with the proposition in cross-examination that "once a

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[8] For what it is worth, I note that HHJ Paul Thomas QC, the trial judge in the Crown Court, ruled that section 13 was not relevant to the issues and did not leave this issue to the jury – D4/140 to D4/143

machine gun, always a machine gun." He was shown a deactivation certificate from the Birmingham Gun Barrel Proof House dated 11th June 2010, so a few months after the crown court trial. It stated that work had been carried out on the gun – describing it as "a single barrel shotgun" – to render it incapable of discharging any shot, bullet or other missile such that no firearms certificate is required to possess it. It noted that the gun had been submitted by Litts at the Sportsman, who Mr Rydeard described as a reputable firm of gunsmiths, so he presumed that the exhibit had been given after the trial to Litts to perform some work before sending it to the Proof House for a deactivation certificate. Asked how it could be described as a shotgun if "once a machine gun, always a machine gun", Mr Rydeard said that once the gun has been deactivated, it is no longer a machine gun and becomes pieces from which something could be made. He also suggested that this description might have been used because it had (when he saw it) a smooth-bored barrel not a rifled barrel. For what it is worth, I consider that Mr Rydeard's supposition is the most likely version of events – some work was carried out to put it beyond doubt that the gun had been deactivated, but as we do not know what work was carried out, the deactivation certificate cannot be used as proof of the state or best description of the gun before it was deactivated. Mr Huxtable, the SWP armourer, said that the police would not send a gun off to be deactivated and I accept this as well.

The Claimant's evidence

35. Mr Kirk gave evidence on the first afternoon of the trial. His long-standing interest in aircraft was common ground. He said in his statement, without challenge, that he has collected vintage aeroplanes for about 50 years and can trace his interest back to his early childhood. He and his late father, from whom he inherited his interest, were both veterinary surgeons and they each in turn have been known as the "Flying Vet".

36. He said that in 1997 he purchased a replica DH2 aircraft. The original DH2s saw active service in the First World War and had an unusual design, namely that the propeller was at the rear with a machine gun mounted at the front. This avoided the difficulty of having to fire a machine gun through the propeller, which in 1916 some German aircraft (but not British ones) could do. The DH2 was difficult to fly and needed the weight of the gun on the front to provide the correct centre of gravity in balance with the engine at the rear.

37. He said in paragraph 11 of his statement that he bought the DH2 "*together with film prop gun, both had been used in the film 'Gun-bus'*". He said that the Lewis display gun was one of a batch of five which he was told came originally from the RAF and then the Imperial War Museum, having been decommissioned under old legislation with an easy to see 'barrel' with no 'rifling' – he described the barrel in his statement as "*a piece of pipe that was blocked near the breach end and so could not fire a single round*". Later he said it "*appeared to be water pipe with no internal trigger mechanism*". He added in his statement that he was more interested in the aeroplane than the gun in any event. He said that he acted in good faith in reliance on what he was told, namely that the gun had been deactivated to standards required by old legislation which would be sufficient as long as no-one tampered with it, and so did not explore the internal parts of the gun. He said that he was also told that parts had been stolen from it when it had been lying around for year, hence the lack of deactivation markings on the barrel, which was a replacement.

38. In cross-examination, he was asked about the description of the gun in paragraph 4 of the Particulars of Claim as "*a decommissioned Lewis machine gun*" and about the passage in paragraph 5 of his witness statement in which he referred to it again as "*a decommissioned Lewis gun*". He initially said that he knew it was decommissioned, then said that he always thought it was a "*piece of old rubbish*" as it had a smooth bore barrel which he knew was not a Lewis machine gun barrel. Then he changed his approach, in my view, downplaying any examination of the gun, by saying that he owned it and looked at it and realised it was essential for the DH2 to fly, and that was the limit of his examination. Later on in his evidence, he said that he had never even examined it. The differences between his answers on this important point are obvious.

39. He said that he used this phrase "*a decommissioned Lewis gun*" in his witness statement because he had been told in the crown court trial that it was a prohibited weapon, a decommissioned or partly decommissioned firearm, and he was prepared to believe the witness who had said that, but he now knew that that was a pack of lies. To be frank, this answer made no sense at all and was clearly a lie. On his own case, he would have considered such evidence a pack of lies long before the time he prepared his witness statement in October 2020. He cannot have decided to use that phrase in reliance on anything said during his crown court trial. Then he said to me that he never agreed to the description of the gun as "*decommissioned*" in the Particulars of Claim, although I note that he signed this with the required statement of truth and used the same phrase at one point in his witness statement. Given the care and attention he gives to all aspects of his claim, I do not believe that he did not agree to this description. This answer was another lie.

40. He said that he flew the DH2, with its gun, at the Farnborough Airshow but that there was an incident on his return from the air show which led to a forced landing in a field near a school, which made the news. Photographs of the DH2 in the field with a broken propeller were in evidence. In some of them, the gun can be seen. He noted that the police attended but no issues were raised about the gun. He said that the DH2 and the Lewis display gun spent a lot of time being kept and maintained at RAF Lyneham, as at the time this was the home of No 24 Squadron RFC which was the first to operate the DH2.

41. He was asked in cross-examination about the passage in the Particulars of Claim that said that all relevant authorities – the CAA, RAF and police – were aware that the gun was decommissioned. He was asked whether it was his case that they all knew that the "gun" was a load of rubbish, as he was now saying, or that it was a decommissioned gun. He said he did not think he could answer that question, but that was the information he obtained from the authorities. The real reason he could not answer that question, in my view, is because the question exposed the changing nature of his case. He had to concede that the police, namely SWP, had never told him that it was decommissioned. The witness statement (from the criminal proceedings) of Alan Twigg, Hercules Operations Manager at RAF Lyneham, was put to him. The Claimant denied that Mr Twigg was correct in saying that the gun had been described to him by the Claimant as an original Lewis machine gun. He said that he could not remember whether he had described it as "*deactivated*", as Mr Twigg had stated, saying that his memory that far back is difficult but that this was what he assumed at the time based on what he had been told. As for the CAA, of which he is no fan at all, he disagreed with the evidence given at his criminal trial that the CAA did not concern itself with the legality of

weapons on aircraft, only the impact on airworthiness, saying that if the CAA inspector did not think it was legal, he would have raised it with the police or with his as the owner.

42. He sold the DH2 to Gerry Cooper on 24th June 2008 and sold the gun to him separately in August 2008. He was asked why his website advertised "Lewis machine gun with spare ammunition c.1916" for sale, if he did not think it was, and he said he "*was behaving like a lawyer in Wales and being economical with the truth*", and he told people the truth when they phoned up anyway. He was asked why he was selling it separately from the DH2 if the gun was an integral part of the DH2 (having earlier agreed that the gun had been separated from the DH2 for some years when he owned both) and he said that the advert was because he had not finished the transaction with Mr Cooper. Asked why the advert was posted in April 2009, he firstly said that he had other things to do with his family, then he said that he wanted the general public to know that he anticipated this conspiracy against him. I fail to see how posting an advert in these terms on his website would show the general public that there was a conspiracy against him.

43. He was asked about various photographs or videos on his website in which he was holding the gun. He said that the photographs were taken on the day that he sold it as he realised that he had never even picked it up, so got his daughter to take some funny shots. Photographs of him holding the gun with captions such as "*dressed for Cardiff Court and a level playing field*", or "*Glorious 12th - crooked lawyer shoot*" were (he said) either put up to wind up SWP who were keeping him under 24-hour surveillance under MAPPA[9] or as attempts at humour. He was asked about a short article on his website headed "*The Final Solution?*" complaining of the breakdown of law and order through corruption, with a photographs of him holding a gun at the top. He agreed that by the use of that title he was referring to what the Nazis had done, but he said did not remember writing the article in question.

44. He was asked why his website listed the names of many police officers with a request for information about their families, schools and clubs attended and so on. He said that this was in order to find out where they lived, by trailing them like a private detective, so he could serve witness summons on them as he was unable to do so at police stations. Similarly, a photograph of members of the South Wales Police Authority with the words "*So who is accountable? Well I know where a few of these live, for starters*" was posted, he said, in order to obtain their contact details so he could ask for their help.

45. He was asked in cross-examination about a recording of a conversation in May 2009 said to be between him and an undercover officer identified as "Foxy", who purported to be someone interested in buying the machine gun advertised for sale on the website. He did not accept that the second voice on the recording was his, although he said that he had had an extremely similar conversation but with someone with a female voice not a male voice as on the recording. He said that his wife had received a call from a woman and he knew on questioning the person during the telephone call that it was a set-up. It was put to him that he had not said during the crown court trial that the man who gave evidence as being "Foxy" was not in fact the correct person because the conversation had been with a woman, and he said that he did not remember. He was asked why he had said to Foxy that "*this one worked*" (i.e., the machine gun) and, after saying he

[9] Multi-Agency Public Protection Arrangements

knew that the person was a police plant, he said that he knew "*of course it worked*" as it was a single shot shotgun if you unblocked the barrel, based on what he had been told. He said that he wanted to provoke. However, the Claimant cannot have it both ways. He cannot say that he was provoking the police, in other words misleading them, by saying to someone he knew or assumed to be a police officer that it worked, while saying a moment later that he had been told that it would work as a shotgun if steps were taken to alter it. The two explanations are inconsistent.

46. One theme of the Claimant's case is that the gun was switched at some point by SWP before or during the crown court trial. He was asked why he did not put this allegation to any witness during that trial, and he said he could have done a lot of things but he was in custody without access to a lot of his documents and also he was never allowed to examine the gun. Shown photographs of the gun with the relevant exhibit number showing a black body, silver magazine and wooden handle, he said he would have remembered a silver magazine.

47. He gave his evidence in a clear but determined way, although he sometimes seemed to me to be a witness who was determined to get his point across regardless of what the question actually was about. On several occasions, he interrupted Mr Williams QC to disagree with what he thought the question was going to be and had to be reminded to listen to the whole question before answering. On some occasions, his pre-emptive disagreement was repeated when the question had been posed in full, but not on others when he heard what the question actually was. He seemed to be thinking carefully about his answers and was very particular in his use of words on some occasions (e.g., when asked why he believed such-and-such to be the case, he replied that he did not <u>believe</u> this, he <u>knew</u> it) which made a contrast with times when his use of language seemed to be to be strained or difficult to justify or contradictory, as noted already. He was generally courteous towards Mr Williams QC (apologising, for instance, when a criticism of SWP appeared to have been framed as a personal criticism of him) and although he took some time to comply with my repeated instruction to stop making notes during cross-examination, which was slowing things down (and perhaps could have been used as a means of giving himself time to think about some awkward questions that came later, had he continued doing this) he did stop, as Mr Leathley also urged him to do.

48. The Claimant clearly had a fixed point of view under questioning. He is entirely sure that he is correct in every allegation he has ever made against SWP, notwithstanding that many of his allegations have been dismissed in the past or that there may be alternative explanations not involving SWP at all or SWP misfeasance. He is convinced – he knows (he says) – that he has been the victim of SWP harassment and targeted malice for the best part of 30 years, with the machine gun allegation being brought to scupper his prospects in litigation that was due to have been tried in January 2010. I take the view that he will not accept any criticism of his actions or anything less than full condemnation of SWP, and that he will view anything less as further evidence of a conspiracy against him. He traces the root of his behaviour back to a request to SWP by authorities in Guernsey (where he once lived) to "*put the boot in*", as he put it.

49. I had many difficulties with the reliability of the Claimant's evidence. On the important issue of what he considered the gun to be (decommissioned or a load of old rubbish), I was left with the distinct feeling that the Claimant was twisting in every direction during cross-examination to avoid being frank about what he knew or believed about the gun

and when. His answers were mutually contradictory and evasive. I do not believe he formed the view while owning the gun that it was a load of old rubbish. That is a later invention of his. In my view, he probably gave the question of the legality or otherwise of the gun little consideration at the time. I have already noted the difficulty he had in answering the question about what the RAF and CAA knew about the gun. I do not accept that he deliberately placed a false description of the gun on his website to be economical with the truth or to provoke the police. Similarly, I do not accept his evidence that Foxy was a woman or that he knew that Foxy was a police officer or that he was intending to refer to the use of the machine gun as a single shot shotgun when he said it worked. As for his videos and captioned photographs, I can see how they could have been intended by him as grim or inappropriate humour but, as I shall go on to consider, I can also see how SWP would understandably have a sense of humour failure when it comes to such jokes made by someone acting in a disturbing manner towards police and others and with apparent access to a working machine gun.

The Defendant's evidence – events leading up to the investigation

50. In the Defence, SWP sets out a long list of incidents or other matters relating to the Claimant of which it was aware before the Claimant was arrested. Most of these predate the start of Operation Challis (the name given to the investigation into the Claimant in May 2009). In large part these were not in dispute, and I can summarise them as follow.

    i) A history of previous convictions, including assault on police officers (albeit I note that no convictions for violence were recorded in the intelligence documents for Operation Challis that post-dated 1999);

    ii) His removal from the register of the Royal College of Veterinary Surgeons in 2002 because of his behaviour (not his treatment of animals within his care), for which he blamed SWP;[10]

    iii) The long history of litigation against SWP and others alleging conspiracy against him;

    iv) Frequent and serious allegations against SWP and its officers;

    v) Occasionally bizarre and unpredictable behaviour, including landing his airplane near the ranch of US President George W. Bush in April 2009 – which was said to be to thank the President for the actions of US military personnel in rescuing him after crashing in the sea – and his visit in January 2009 to the home of Prince Charles in Gloucestershire to hand-deliver a letter about SWP misconduct (when, after being refused entry, he asked locally about a rear entrance to Highgrove). The Claimant was asked about this in his evidence in chief, saying that he was on his way to a nearby airfield and wanted to deliver a letter to Prince Charles about 20 years of SWP's behaviour, but the "*lovely police officers*" at Highgrove, "*straight out of Noddy Land*" (which he said was a compliment to their genial nature, not an insult, although I do not accept this)

[10] The Operation Challis intelligence briefing sets out extracts from the judgment of Lord Hoffmann, giving the decision of the Judicial Committee of the Privy Council in *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 4 (reported in full at https://www.bailii.org/uk/cases/UKPC/2004/4.html), rejecting the Claimant's appeal against the decision to remove hm from the register.

would not take it, so he had to post it. He denied that his behaviour could have been construed as a threat, saying that he was a royalist.

vi) An advert on his website, posted initially in August 2008 but most recently posted in April 2009, of items for sale, including a 1916 Lewis machine gun with spare ammunition;

vii) Videos on his website with what appeared to be a machine gun (in one, referring to a test flight he had to make for CAA purposes picking up the gun saying "*I don't think she'll be with me tomorrow. I hope it won't be appropriate*");

viii) Photographs of him on his website holding what appeared to be a machine gun, captioned as previously noted;

ix) Attending SWP headquarters in Bridgend in February 2009, asking to see the Chief Constable and saying that he would arrest her for fraud;

x) Entering SWP HQ without authorisation in June 2009, announcing an intention to arrest the Chief Constable;

xi) Putting on his website in April 2009 a list of individuals from the police and elsewhere, asking for information to assist in their prosecution including their addresses, families, schools, friends and acquaintances, and offering a £10,000 reward;

xii) The conversation with Foxy, in which he had said that the gun was no longer with him but that it worked;

xiii) The potential for the Claimant to be able to access the firearms legally held by his wife, a practising vet.

The start of Operation Challis – D/Supt McKenzie and DI Hughes

51. Although Stuart McKenzie was the second witness to be called by SWP, it makes sense to start with him. At the time Mr McKenzie was a Detective Superintendent and head of the Serious and Organised Crime Department at SWP headquarters in Bridgend. In his statement, he said that he had no knowledge of the Claimant before this investigation or of any claims being brought against SWP by the Claimant. He was appointed as Senior Investigating Officer (SIO) for the investigation concerning the Claimant on 29th May 2009, codenamed "Operation Challis". He was appointed to this role by DCS Ken Isaac, who provided a statement for civil proceedings but who is now (post-retirement) working in the Gambia on a long-term police reform project. A hearsay notice was served for his evidence, which covers some of the background to the setting-up of the investigation, but I was not taken to any specific part of his evidence by either party.

52. Mr McKenzie states that he commenced a policy file to ensure an audit trail of the decision-making process, and he exhibits handwritten documents to that effect. He was accused of having retrospectively created those notes for the purposes of these proceedings to justify his actions. He denied it. I accept his denial. There is no evidence to support an accusation of fabricated documents. There was no suggestion to him that

it would not be normal procedure to keep a policy file for decisions, and there would have been no reason for him not to have done so at the time.

53. He read a confidential briefing pack prepared by South Wales Police Intelligence Directorate, dealing with events to date. He exhibited this to his statement. It provided a considerable amount of background material for the police and in large part refers to the events summarised above. It said that the gun in the photographs on the Claimant's website appeared to be operable but that this could only be confirmed by obtaining and checking the serial number.

54. The document said that the threat assessment should be reassessed for the following reasons:

> "1. Mr Kirk has posted a reward for information regarding her home address and social engagements. This shows his determination in locating Miss Wilding and confronting her over his personal vendetta. Given that he has offered violence in the past, this should not be ignored.
>
> 2. He is advertising, albeit a 1st world war antique, a machinegun for sale.
>
> 3. the fact that his wife still legally possesses a number of firearms to which her husband may have access"

55. The intelligence document was added to as further information was obtained – for example, later versions list matters such as: vehicles and aircraft and premises linked to him; and details of occasions when he travelled to and from France (where he had property) by ferry or by airplane.

56. Mr McKenzie said in his statement that he did not regard posting a reward for information about the named individuals as a legitimate method of seeking to contact them, and that he could see no reason for the need for information about schools attended by family members. The material on the website, accompanied by the fact that he may be in possession of at least one firearm, made him concerned that the Claimant could cause significant harm to any of the named individuals. Overall, the previous incidents and material showed him "*to be a volatile and erratic individual, who had no respect for authority [and who] was displaying concerning behaviour.*"

57. Mr McKenzie recorded that the primary objective of the investigation/operation was "*to ensure the safety of the public, potential victims, witnesses, police staff and Mr Kirk himself.*" Advice was to be sought from CPS about the machine gun and also about the material on the website offering a reward for information, with its implied threats, and the intention to arrest the chief constable. A decision was made by him on 28th May 2009 not to arrest the Claimant at that time as he assessed the risk to individuals as relatively low, based on a lack of previous convictions for firearms offences and his being in France, coupled with the need to ensure that any firearms and ammunition were recovered on arrest to avoid a situation where the Claimant was released on bail but still had access to firearms. He also said that he was mindful of the litigation against SWP and wanted to avoid any suggestion that his actions were influenced by that case.

58. On 29th May, he required arrest, custody, search, forensic and interview strategies to be prepared. On 1st June, he noted that the Claimant had attended Barry Police Station to speak to one of the police witnesses in the civil proceedings, leading to safety measures being put in place for the officer and making Mr McKenzie more concerned for the safety of witnesses. He was made aware of the contents of the telephone call with Foxy, in which the Claimant had said that he no longer had the gun, but he said that this was not verified. On 2nd June, he decided that the Claimant should be arrested on suspicion of possession of a prohibited weapon and ammunition but that the arrest should be deferred pending the Claimant's return to the UK. At one stage, the plan was to arrest him in London after he had attended a hearing at the Royal Courts of Justice, but this was not done pending further enquiries. On 20th June, he was made aware of an apparent threat by the Claimant to cause criminal damage at the offices of the solicitors instructed by SWP in the civil proceedings (although nothing in fact came of this allegation, as the person to whom the Claimant spoke thought that he was being sarcastic not serious, and the CPS eventually decided that in all the circumstances there was no realistic prospect of conviction). However, at the time this was seen by Mr McKenzie as evidence that the risk to members of the public from the Claimant was accelerating, leading to the balancing exercise tipping in favour of arresting him.

59. From 21st June 2009, Mr McKenzie was away on a two-week training course and handed over responsibility for the investigation to Detective Inspector Hughes, albeit she and he still discussed matters by telephone thereafter. He denied in his statement the allegations made against him and SWP.

60. In cross-examination, he was asked why there was no reference in his statement to him instigating MAPPA level 3 certification for the Claimant on 3rd June 2009. His recollection was that he had not instigated this and although at one point later in his cross-examination he appeared to say that he had, I regard this as him misspeaking and not of him accidentally revealing the truth under sustained questioning. He was taken to minutes of a briefing meeting that day which said that "*Det/Supt McKenzie confirmed that consideration has been given to putting [the Claimant] through the MAPPA process, DI Jim Dyson to progress this.*" He said that DI Dyson was part of the Gold Group responsible for witness protection, and although junior in rank to him, DI Dyson was not under his command for the investigation. He denied the accusation that there had been a plan to get the Claimant certified as MAPPA level 3 – said in one of Mr Leathley's rhetorical flourishes to be for the most dangerous individuals, akin to the Krays, Charles Bronson and Osama Bin Laden) – so that the Claimant would be remanded in custody. While he agreed that SWP were involved with MAPPA arrangements, he said that it was a multi-agency process and that he personally was not part of it. He denied any suggestion that he had been at the MAPPA meeting, yet alone that he had personally hosted it, on 8th June 2009 that reached this decision or that he had procured this outcome in any way. He denied the suggestion that the arrest had been delayed until after MAPPA certification had been put in place, saying that it was a question of balancing the risk to the public with the need to recover the firearm.

61. He disagreed with the suggestion that it was curious and suspicious that so many high-ranking officers were being involved with a low-key arrest (as it was described to him, not by him). He denied any suggestion that he knew all about the civil litigation, saying that any witness protection issues arising from that litigation were not his responsibility during the investigation, so he did not need to familiarise himself with it. He denied the

suggestion that there was any sinister in his note that the CPS were advising that SWP "build a case" against the Claimant, saying that this was a phrase frequently used when investigators progress lines of enquiry. He denied the suggestion that there was anything suspicious about him going absent on the eve of the arrest, or that he had fled from Operation Challis because of nerves or because he did not want to be associated with it. He denied being part of an ongoing vendetta to hobble the Claimant in his civil litigation against SWP.

62. At the end of his evidence, Mr McKenzie left court. I did not particularly notice the Claimant leaving also, while counsel and I discussed arrangements for the following day. It then became apparent that there was an incident taking place outside court. I heard the Claimant saying "Liar!" in a raised voice. The usher came back in and reported that the Claimant had come up behind Mr McKenzie, put his hand on his shoulder and carried out a citizen's arrest. On returning to court, and after discussion with Mr Leathley, the Claimant agreed that he had done this. I warned him as to his future behaviour in the courtroom and that any repetition or any other confrontation with witnesses could lead to him being remanded in custody for contempt and missing the rest of the trial. Thereafter he did not speak to or confront any of the witnesses – with the exception of standing up to thank one police officer at the conclusion of his evidence for his "rare honesty", behaviour that I still regarded as unacceptable and so I told him to sit down and not speak to the witness.

63. Notwithstanding the slip or misspeaking about MAPPA, I was thoroughly impressed by Mr McKenzie. He struck me as an honest officer who had acted with integrity, balancing the need to protect the public with the need to secure what was – for all he knew – a potentially lethal firearm. His evidence was not dented in cross-examination. Crucially, I accept his evidence that he did not act with any motivation connected to the ongoing civil litigation against SWP, and that MAPPA arrangements were not put in place to aid SWP either in defending the civil litigation or in increasing the likelihood of the Claimant being remanded after his arrest. It has previously been ordered that the MAPPA minutes are not disclosable and I refused an application by the Claimant to reverse that position in the light of Mr McKenzie's evidence.[11] Even if SWP (whether through Mr McKenzie or otherwise) were the driving force behind MAPPA certification in the Claimant's case, I am satisfied that it was an appropriate and proportionate response to the risk potentially posed by the Claimant as assessed at the time by SWP. Whether MAPPA level 3 was the appropriate level is not for me to decide, there being no evidence in any event relating to what difference to the Claimant another level would have meant, and such matters go well beyond the scope of this litigation.

64. Turning now to Mrs Suzanne Hughes, a Detective Inspector at the time, she was appointed as Mr McKenzie's deputy at the start of Operation Challis. It was Mrs Hughes who prepared the arrest strategy document, for the Claimant's arrest on suspicion of being in possession of a section 5 firearm and ammunition, and threats to cause criminal damage. The justification for arrest referred to the photographs posted by the Claimant on his website, the listing of a machine gun and ammunition for sale, and the threat to cause damage to Dolmans solicitors. It said that there were reasonable

[11] I have not seen the order and I am unsure whether it was an order made in this claim or in a previous claim between the parties, but it was common ground that such an order had been made. In fact, it was also common ground that the Claimant has in fact obtained copies of the minutes in any event.

grounds to suspect that he had committed an indictable offence, and that his detention was necessary to allow the prompt and effective investigation of the offence including by interview and searches, and to prevent prosecution being hindered by his disappearance to the property he owned in France. At some point before the arrest, she says, she knew about the phone call with Foxy but did not receive a statement until after the arrest. She says that she mistakenly assumed that Foxy was female, not having been told anything about the undercover officer, and in due course referred to the officer as "she" on that basis in the MG3 report to the CPS.

65. She took over the investigation on 22nd June 2009 and briefed the arrest team early that morning. He was arrested (I deal with that below) and she tasked officers with searching the Claimant's home address for the gun and evidence relating to it.

66. At 11.05 that morning, she recorded that information from the scene (in fact, from Mrs Kirk) was that the Claimant may have bought the gun with a DH aeroplane which had subsequently been sold, which led to a telephone call to the CAA being made to locate the current owner. At 15.55, she recorded that the CAA had contacted Ronald Cooper directly, who stated to them he intended to take the firearm to an armourer, and that he should be spoken to and told to keep it until police could recover it. Shortly afterwards, at 16.10, she recorded that she had been informed that Mr Cooper had taken it to Scott arms in Lincolnshire as he was concerned about it. At 17.20 she recorded that Mr Scott had been spoken to by a SWP firearms examination officer, who confirmed he had the gun and an initial examination showed that it had not been deactivated.

67. At 20.15, she recorded that officers at the scene had concluded the search apart from Mrs Kirk's study with material relating to her work as a vet and the Claimant's study containing "*a vast amount of documentation*" about his civil claim against SWP. She recorded trying to obtain legal advice about potential legal privilege issues and decided to retain the scene overnight.

68. The next day, she decided that Mr Cooper should be treated as a significant witness not a suspect because of his responsible act in handing the gun to a firearms dealer rather than attempting to frustrate the investigation. She made arrangements for the search of the Claimant's property to continue with precautions to ensure no contamination of the civil proceedings when scanning the documentation for any information about the machine gun. She also was told that it would not be possible to obtain fingerprints from the gun as it had been recently painted and lubricated, and in any event, Mr Cooper had had the gun for 11 months.

69. A statement was obtained from Mr Cooper, in which he said from his 15 years in the RAF he could say that the gun was deactivated because there were parts missing (the trigger seat mechanism, the feed mechanism from the magazine, and part of the magazine) such that it would cause more damage to the person firing it than anyone standing in front of it. He said that he purchased it in good faith, having been informed by the Claimant that it had been deactivated.

70. A statement was obtained from Mr Scott, in which he confirmed the circumstances in which the gun came into his possession and said that the gun appeared to be partially de-activated but the barrel and firing pin appeared intact. He doubted its authenticity for various reasons that he explained, including the magazine being the wrong size,

being partly made of aluminium not steel, and being inconsistent with the .303 cartridges it would have fired.

71. The gun was recovered from Mr Scott by PC Rigley at 7pm, and it was from PC Rigley that it obtained its exhibit reference AJR/1. PC Rigley made sure it was safe but doubted its authenticity. He then passed it to a colleague at 10pm who passed it to Nigel Brown from SWP at 11.40pm as I will come on to deal with. After further examination of the gun by SWP (again covered below) she noted the view that it was a prohibited weapon and recorded that the CPS were to be consulted about charge. A decision was made by the CPS, based on the documentation submitted (the MG3), to charge the Claimant.

72. On 24th June at 08.00, Mrs Hughes recorded a decision that the gun should be examined by the Forensic Science Service as a priority submission, and it was received at the Manchester laboratory the following day.

73. At 13.00, she noted that the Claimant had been given bail by the magistrates and that the CPS were to challenge the decision. On 25th June 2009, HHJ Merfyn Hughes QC remanded the Claimant in custody. Thereafter the investigation continued. On 6th January 2010, she was contacted by a solicitor for Mr Cooper to advise that Mr Cooper, Mrs Cooper and Mr Page were concerned about giving evidence in court, and that Mr Cooper would say that the gun was blocked in his possession, and it had been tampered with since he handed it over. She recorded her view that the evidence of Mr Scott, that he could see daylight down the barrel, would negate any suggestion of tampering.

74. In general, she denied any impropriety in the investigation or any malice towards the Claimant, about whom she knew nothing before becoming involved in the investigation.

75. It was suggested that she and others were all too senior to have been involved in such an investigation, but she said it was justified given the information she had. She denied any suggestion that she was making a mountain out of a molehill. She denied that she knew before the Claimant's arrest that gun had been sold. The Claimant was unable to point to any information showing this, however, nor was it satisfactorily explained how SWP should have been able to find this out (insofar as this is relevant to the causes of action). She denied being sufficiently curious about the Claimant so as to lead her to research the civil proceedings. She was asked about the risk he posed to others including those involved in the legal establishment, and whether she knew that at the time the Claimant lived next door to a (since-retired) circuit judge based at Cardiff Crown Court – she said that she did not know this, but she denied the suggestion that the only threat the Claimant posed was to the integrity of SWP through his civil proceedings. She disagreed that in reality she regarded the Claimant as minor and significant.

76. She was asked about a Proceeds of Crime Act application made to the Crown Court at Merthyr Tydfil, which she said was designed to see if there was any evidence that the gun had been sold by getting access to his bank accounts. She denied the suggestion that this application was proof that SWP knew that the gun had been sold, saying it was a line of enquiry. She denied any knowledge of or involvement in the MAPPA process. She denied that the plan was to use MAPPA to stop the Claimant getting bail and denied that the police had put pressure on the CPS to appeal the decision of the magistrates to grant bail. She said that even though the gun had been recovered, based on the Claimant's actions before, there was a real concern that he would interfere with

witnesses She defended the decision to treat Mr Cooper as a witness not a suspect, saying that while he had been in possession of the gun there was no evidence of him posing with it, making implied threats or offering rewards, and he had acted responsibly when informed of SWP interest.

77. She was extensively cross-examined but in my view her evidence was not shaken. She was a clear and impressive witness. I accept what she said, in particular that she did not act with malice or in a way so as to prejudice or interfere with the ongoing civil proceedings against SWP.

Arrest – DC Richard Jones

78. DC Jones, as he then was, was designated as the arresting officer. He said that he had not had dealings with the Claimant before the day of his arrest, 22nd June 2009, but had heard of him and had taken a statement from a witness to the incident in which the Claimant gained unauthorised access to SWP headquarters. He and a colleague were briefed by DI Hughes and told of the arrest strategy. He said – and he was not challenged on this – that on the basis of the briefing he was satisfied he had been given "*sufficient information to suspect Mr Kirk of committing arrestable offences, and that his arrest was legal, proportionate and necessary in order to secure and preserve evidence, and question him regarding the offences.*" His instructions were to carry out an urgent interview to establish the location of the gun and ammunition, then transport him to Port Talbot police station. He arrested the Claimant at about 8.15am, carried out the urgent interview (in which the Claimant did not disclose the whereabouts of the gun or ammunition), and transported him to Port Talbot as instructed, and had no further dealings with him or the investigation after completing that process.

79. In cross-examination, he said that he was not a firearms officer and was not accompanied by firearms officers despite the nature of the offence for which the Claimant was to be arrested. He said that he did not know what the policy was behind the decision for the arrest to be carried out without firearms officers, but he did not know anything more than he had been told.

80. His evidence was not really in dispute, and I accept it. For reasons I have given already, based on the law and his evidence the claim for wrongful imprisonment fails.

Dealings with Mrs Kirk – DC Stuart Davies

81. After the Claimant was arrested, DC Davies and a colleague were tasked by DI Hughes to obtain a statement from Mrs Kirk about her knowledge of the Claimant's possession of the gun and ammunition and their current location, as well as information about his physical and mental health relevant to an assessment of his risk. After speaking to her on the telephone and arranging for her to return home, he outlined the circumstances of and reasons for the Claimant's arrest. Mrs Kirk provided some information which was put into a witness statement in her name, but she eventually decided that she was not willing to sign it at that stage. Shown a photograph of the gun, she informed DC Davies that as far as she knew the gun was from a replica DH2 aircraft and had been sold. He could not remember the name of Mr Cooper being mentioned at that stage and that name does not appear in the statement drafted for her by DC Davies.

82. He denied the suggestion that his use of the term "antecedent statement" was a Freudian slip showing he had been tasked to dig up dirt on the Claimant and the state of his marriage. He denied that this was his role and denied that he had been trying to make her fear that her husband was worse than simply grumpy. He said that he was not told by Mrs Kirk that she was filing for divorce and had no knowledge of how that claim was said to have appeared in a document setting out objections to the Claimant being given bail. He was not taken to any such document during his evidence, nor was anyone else, nor was I was referred to any such document during closing submissions, I should add, so it is an allegation that has no evidence in support.

83. He said that he had had no previous dealings with the Claimant but might have known that he was known as the "Flying Vet" and had a website under that name. He agreed other officers would have known of the Claimant.

84. He could not remember if he had been told before heading to the Claimant's house that the Claimant was MAPPA level 3, saying that he has dealt with a number of people like that in his various roles. He confirmed that he was not a firearms officer and denied being in trepidation going to the Claimant's house, making the obvious point that the Claimant had been arrested by that time.

85. He was asked about the attendance of social workers at the property, being used to put pressure on Mrs Kirk to assist the police by threatening care proceedings. He did not recall any social workers being present. There is no evidence from the Claimant or anyone else, or from any disclosed document, that anything like this happened.

86. I have no difficulty in accepting his evidence.

Interviews – DC Erica Knight and DC Ian Williams

87. DC Ian Williams had been tasked to plan and manage the interview. He said in cross-examination, and I accept, that he had no knowledge of the Claimant before becoming involved in the investigation. He said, and again I accept, that he was only told of the fact that the Claimant was involved in civil proceedings against SWP as the focus was on the offences under investigation and he did not have access to other files relating to the Claimant. Asked about why such an apparently dangerous man was not arrested at the first opportunity, he said that he was not involved in the decision as to when the Claimant was to be arrested

88. He said that after the Claimant arrived at Port Talbot (which was the point at which he went down to the custody suite), the Claimant "*remained mute refusing to answer all questions during the booking in process. He refused to make eye contact remaining focused on the floor.*" DC Williams arranged for a nurse to examine the Claimant to ensure he was fit for interviewed and, before this examination, arranged for an appropriate adult to attend to protect the Claimant's interests. An hour or so after the Claimant's arrival at the station, he was asked if he wanted something to eat or had any medical issues, replying "*the only thing I'm allergic to is pretty girls.*" Just under half and hour later, the nurse examined the Claimant, obtained details of his medication and said that he was fit for detention and interview. DC Williams said that as the Claimant otherwise remained completely uncommunicative, he arranged for an examination by a psychiatrist from Caswell Clinic Bridgend, to see if there were any underlying mental health issues meaning that he was not fit for interview or detention. This happened a

few hours later and the psychiatrist concluded that the Claimant was fit for interview and detention.

89. He was asked extensively about these arrangements in cross-examination. He said that in his twenty years of experience, he had not seen a suspect come in and remain mute, adding that the Claimant's behaviour was unique. He denied the suggestions that the use of a nurse and an appropriate adult and a psychiatrist was all pre-planned as part of a SWP strategy to ensure that the Claimant could be described in court as a 'mentally defective person' or a 'mental delinquent' or as part of a plan 'to get him certified and in a mental institution for life' (the phrases used by Mr Leathley). I accept his evidence on this point. The timings do not fit with a nurse being in attendance in readiness, as was suggested, nor with a psychiatrist being on standby (there being approximately six hours between the arrival of the Claimant and the attendance of the psychiatrist). I accept his evidence as to the Claimant's behaviour in custody – there was no contrary evidence from the Claimant, I note – and its very unusual nature. Notwithstanding that there were a few occasions he talked, such as to the nurse or his wife (making a joke when telephone her, in the presence of DC Williams, about trying to get the police to dig up part of the garden so he could plant some potatoes) or his comment about being allergic to pretty girls, he was mute in response to the important questions that would have enabled DC Williams to assess fitness for detention and interview. In such circumstances, therefore, it would only be right and proper for DC Williams to ensure that the Claimant's interests and the integrity of the interview process were protected by taking the steps that he did. There was no sinister underlying purpose. DC Williams denied, and I accept, that he had no knowledge of any MAPPA issues concerning the Claimant.

90. Six interviews took place over the two days during which the Claimant was in custody, observed by DC Williams from an adjacent room. The Claimant was largely silent during the interviews, although he said in the final interview that the RAF had told him that the gun had been decommissioned.

91. DC Knight was one of the interviewing officers and was the officer who charged him, and she had limited involvement in the investigation thereafter. She confirmed that the Claimant offered a prepared statement at one point in his interview, although it did not concern the offences for which he was being interviewed. As a long time had passed since the interviews, she could not recall his demeanour but agreed she never felt that he posed a threat to her personally. Her actions were not the subject of criticism and I accept her evidence, although I do not think anything turns upon it.

Examination of the gun – Andrew Huxtable and Philip Rydeard

92. As noted above, once the CAA contacted Mr Cooper about matters, he took the gun to Mr Scott, a registered firearms dealer in Nottinghamshire. Nigel Brown, SWP Force Firearms Examination Officer, prepared a statement for these proceedings, exhibiting his reports and previous witness statement, but he was in hospital and unable to give oral evidence at trial. I read his statement but will bear in mind the usual principles about statements whose authors were not cross-examined at trial (although Mr Brown was cross-examined by the Claimant in the crown court trial).

93. In his statement, he said that he spoke to Mr Scott on the telephone at 5.10pm on 22nd June 2009 and was told by him that as far as he could see, the weapon had not been

deactivated, the firing pin was still intact, daylight was visible along the barrel length, there was no sign or any pin or block and no visible Proof House markings. Nottinghamshire Police retrieved the gun from Mr Scott, and it was handed over to Mr Brown at a service station on the M42, before being kept in the locked firearms cage in his office. On the following day, he passed the gun to Andrew Huxtable, SWP Forensic Firearms Examiner and National Ballistics Intelligence Service Armourer.

94. Mr Brown's main roles are to establish continuity of the exhibit from Nottinghamshire Police to SWP and to confirm what Mr Scott said to him in the telephone call, of which he made a note. Although he was not cross-examined in this trial, I accept his evidence on both points, having not been given any reason to doubt the contents of the note of the conversation with Mr Scott.

95. In his statement, Mr Huxtable said that he had been asked to carry out a preliminary examination of the gun. He noted an Allen key-type headed screw, about 1.5 inches long and 3mm in diameter, screwed vertically from above into the barrel. His view, recorded in a statement dated 23rd June 2009, was that this was not in line with deactivation regulations required by firearm law since it was neither pinned nor blocked, and that the weapon was a firearm within the meaning of section 5(1) of the Act.

96. He was extensively cross-examined. He was unable to remember whether the magazine was attached to the gun or not when he first saw it, but he said that it would be good practice for the Nottinghamshire firearms officer to have made it safe by removing the magazine. He was repeatedly criticised for not being able to remember but I found this answer entirely convincing. I am not surprised that he cannot remember, more than twelve years later, whether a particular firearm had had the magazine removed before it was handed to him. It was put to him that he had to remove the magazine to make it into a firearm within the meaning of the Act, but that proposition is simply wrong in law. He was able to remember that the hexagonal screw obstructed the chamber, but he could see light either side of the screw when he looked down the barrel. He was asked about Mr Cooper's evidence in the crown court trial that the breach was blocked when he got it, and Mr Huxtable said that the screw was the only blockage.

97. He was adamant despite heavy challenge that his role was only to see whether the gun had been decommissioned and whether it was capable of being a prohibited weapon. If so, it would need a more detailed examination. I accept his evidence that he had not been asked to carry out a full examination, and so the lack of a full examination or a test firing to see whether the gun was in full working order is not surprising. He denied that he had been put under any pressure to produce a report favourable to the investigation and I accept this. Had he given in to any such improper pressure, then no doubt the report would have made claims about it being in full working order or the like to make it more favourable, but the limited nature and purpose of the examination and the report seems to me to be entirely realistic for his role and the stage of the investigation at that point. He denied that he had fiddled or tampered with the exhibit in any way to ensure that his report was damning to the Claimant. I accept his evidence on that.

98. He was asked why the gun stayed with him in his secure store for two days before being sent on for a further examination. I accept his evidence that it was for others, not for him, to decide what happened next with the gun and when, so his lack of explanation

for the passage of time is understandable. He was asked whether the gun had been to the Forensic Science Service in Chepstow during this time and unsurprisingly after this length of time he said that you would need to refer to the continuity documents. The only document referring to Chepstow before the gun goes to Mr Rydeard is one to which I was referring in closing submissions – it was not put to any witness, including DC Dodge from whom apparently it comes. It is a brief note on 24th June 2009, so the day after Mr Huxtable's examination, which seems to say "*enquiries with FSS Chepstow arrangement made for gun to be collected*". That someone (be it DC Dodge or someone else) had a discussion with Chepstow on 24th June 2009 is far too inadequate a basis for a conclusion that the gun actually went to Chepstow at some point between 23rd and 25th June 2009, let alone a conclusion that the gun was tampered with there before being sent on for examination by Mr Rydeard at the Forensic Science Service in Manchester (where it arrived on 25th June 2009).

99. I found Mr Huxtable to be a careful and thorough witness. I found no basis for doubting his evidence or accepting any of the serious accusations levelled against him in cross-examination.

100. Mr Rydeard examined the gun on 10th July 2009 and he made a full and detailed report on the same date. His expertise and his integrity were not challenged in cross-examination. He described the gun as "*a composite weapon having the appearance of a British Military, Mk.II, .303 Lewis, aircraft model, light machine gun. In its current form, it may have been constructed for training or display purposes.*" He noted a combination of original Lewis Gun components with non-standard components that did not allow full automatic function. Asked to explain further, he said to me that it appeared to him that the weapon had been taken from previous military use and for one reason or another, perhaps because it was defective or obsolete, certain modifications had been made to it to make it more appropriate for a training or display weapon as opposed to being one used for full operational use. It had all the appearance of being an original weapon, he added. He noted that the magazine would normally have been attached with a spring-loaded catch, but for some reason (perhaps for display) someone had subsequently fitted a screw to fix the magazine as a permanent feature. While the screw was of sufficient length to prevent a cartridge being inserted, the cartridge could be inserted by simply removing the screw, so it was not a permanent blockage and did not amount to deactivation. Neither the screw nor any of the other changes made to the gun, such as the substitution of the barrel or the removal of the mechanism allowing for automatic firing, amounted to a deactivation even if they were attempts to reduce its effectiveness by turning it into a single-shot weapon.

101. He noted that the barrel was smooth-bored rather than rifled. (My understanding from the evidence of Mr Huxtable is that this would affect the performance and accuracy of a machine gun, since the bullets would not be spinning, rather than affect the ability of the gun to be used at all, and the contrary was not put to or suggested by Mr Rydeard). The original barrel would have been rifled and of a smaller diameter. He test-fired the weapon using a capped case from a .303 cartridge and a number of normally loaded .410 shotgun cartridges. He found that missiles were discharged with lethal potential and that the recoil effect recocked the weapon; however, the cartridges need to be fed manually. He concluded that the gun was a firearm within the meaning of the Act and had not been deactivated. He also considered that it appeared to contain component parts of a firearm under section 57(1)(b) to which section 5(1)(a) relating to prohibited

weapons applied. He explained in his evidence that this was because there were several components that could be taken and fitted into another Lewis gun to make a fully functioning automatic weapon.

102. He was asked about Mr Cooper's evidence at trial that the breech had been blocked when he had it, and he said that if the magazine was not attached and the screw was screwed all the way in, then the breech would be blocked or partly blocked. The suggestion was put to him that the gun had been tampered with after leaving Mr Cooper's possession and he said that he had no knowledge of that. As was pointed out by SWP in closing submissions, he was not asked if the gun showed any sign of recent interference, nor asked if there was anything to show that the gun had previously been blocked (i.e., by something other than the screw) and the blockage removed.

103. Mr Rydeard was clearly very experienced in examining firearms and I accept his detailed evidence.

Other actions involving the gun before trial

104. DC Dodge was tasked on 24th July 2009 with going to Carmarthen library and researching from the local newspaper the incident in the summer of 2000 when the Claimant had been forced to land his DH2, and also speaking to the officer who attended. On 6th August 2009, he took the gun from the Bridgend armoury to the Birmingham Proof House, where it was examined by the Superintendent, from whom a statement was taken confirming that the gun had not been deactivated. Then on 14th August 2009, he again took the gun from the Bridgend armoury to show it to various people and take statements from them: Charles Page, who transported Mrs Cooper by airplane to collect the gun from the Claimant; Mr and Mrs Cooper; and Mr Scott, the firearms dealer to whom Mr Cooper handed the gun after being informed by the CAA that SWP were interested in it. Asked whether he could identify the gun, Mr Page said that he recognised the barrel, but the rest had been covered up, although it felt similar in weight. Mr Cooper said that the gun looked similar in shape, size and markings to the one he had purchased from the Claimant and subsequently passed to Mr Scott. He said that he could not previously push a wire rod down the barrel but was now unable to do so. Mrs Cooper said that the gun looked similar to the one she saw but she had little knowledge of it. Mr Scott was able to confirm it was the same gun because of the serial number.

105. He said that he did not know why these enquiries were needed, and he was just doing what he had been instructed to do. He did not wonder why Mr Cooper said that there was a difference in the gun, as that was not for him to deal with.

106. He said that he had not been involved with the Claimant before these actions as part of the investigation, apart from one occasion when the Claimant had come to SWP headquarters demanding to see the Chief Constable. He could not remember the Claimant's demeanour but agreed that he had not been remarkably aggressive as this would have been memorable.

107. It was not suggested to him that he had acted improperly, and I accept his evidence.

108. Various other witnesses prepared statements for the purpose of these proceedings but were not called (it being said, for example, that the evidence they would have given

was not in dispute or had already been covered by other witnesses). As I said to the Claimant during the trial (in an observation that Mr Leathley endorsed), it is not for the court or the Claimant to tell SWP who to call to deal with the allegations made against SWP. I have not taken into account the statements of these other witnesses, and I have not drawn any adverse conclusions from the fact that they were not called at trial, no submission to that effect having been made.

Conclusions

109. In the preceding sections of this judgment I have made various factual findings or comments on the witnesses, and now I can draw the threads together.

110. I appreciate that the nature of the Claimant's case is such that much of the building blocks for his case of malicious prosecution and misfeasance may need to be found by inference or by adding together helpful snippets of evidence from different sources to show what he would say is the reality behind the SWP cover-up. I accept that in such a case it might be unrealistic to expect that the disclosed documentation from SWP would contain (no pun intended) a "smoking gun", laying bare the malice. I accept that the police account has to be considered carefully, not accepted blindly, and that I do not give the evidence of current or former police officers or those working for the police more weight simply because of their role. I remind myself that I am operating on the civil standard of proof, not the criminal standard (i.e., I do not have to be satisfied so that I am sure that there was a decision by one or more SWP officers to take action maliciously against the Claimant, only to consider that it is more likely than not). But none of these considerations mean that I can jettison the usual rules and find for the Claimant based on supposition or guesswork, or assume the worst construction of every possibility where there is uncertainty. The fact that he was successful in the defence of the criminal proceedings does not mean that the prosecution should never have been brought, still less that he should never have been arrested. The fact that he was prosecuted and Mr Cooper was not prosecuted is amply justified by the very different behaviour of both, as Mrs Hughes said, rather than being evidence of a vendetta against the Claimant. There has to be an evidential basis for his claims of police malpractice to be able to succeed, and despite the very considerable efforts of Mr Leathley through thorough cross-examination and submissions orally and in writing, there is simply nothing.

111. The Claimant is not a reliable witness, for reasons given above, and where there is a conflict of evidence between his evidence and that of SWP, I prefer SWP's evidence. His claims at this trial in particular about the nature of the gun have differed from his pleaded case and in some respects from the way he presented his case in the crown court. This too has an adverse effect on my view of his reliability. The allegations of widespread fraud by Mr McKenzie and Mrs Hughes were never part of the pleaded case, as SWP noted, but were groundless in any event.

112. Putting it simply, there was no cunning SWP masterplan to thwart the Claimant's civil litigation by arresting, prosecuting and remanding him on some false or trumped-up charge. The reality is that SWP had ample reason to investigate and arrest, based on the combination of the evidence available to it – the pictures and video of the machine gun, the offer to sell it, the concerning call for information about witnesses in the civil case against him, his bizarre and unpredictable behaviour and so on. Indeed, it would have been surprising if SWP had not done so – Mr Williams QC said it would have been a

dismissed. In reaching this conclusion, I am in no way undermining or contradicting the decision of the jury in the criminal court trial to acquit the Claimant of both charges, as their task and mine are very different and involve considering different issues.

116. Some final comments. Firstly, nothing I have read about the Claimant or heard from or about him causes me to doubt the accuracy of what Lord Hoffmann said about him in January 2004 in the Privy Council case to which I have referred earlier, and which was quoted in the SWP intelligence briefing for the investigation (at paragraphs 2 and 3 of the judgment):

> "This is a very unusual case. Mr Kirk has an inherited love of veterinary surgery (his father was a veterinary surgeon) and there is no question about his dedication and competence. On the contrary, he appears to be one of a small number of veterinary surgeons practising in Wales who is willing to be called out any time of the day or night to a sick creature. He will sometimes even use his own light aircraft to get there. No animal has any ground for complaint against him.
>
> "Mr Kirk's problem is with people. He combines independence of spirit and a passion for justice with a flaming temper and complete insensitivity to the feelings of others. He sees conspiracies under every bush and believes on principle that all members of the police and legal profession are dishonest and corrupt. He can be abrasive with animal owners and abusive – sometimes violent - towards any of the substantial number of people whom he regards as enemies of justice. The result of this explosive mixture of admirable and less admirable qualities has been a long series of incidents which have brought Mr Kirk into conflict with the law."

117. Secondly, I must thank those at the Defendant's solicitors who were tasked with the preparing the electronic (and for the witnesses, paper) bundles, which were extremely efficiently organised and which greatly assisted all parties.

118. Thirdly and finally, to thank those involved for SWP and the Claimant in the preparation and presentation of this long-running case for trial, which not only ran to time but has finished ahead of schedule, even with a day for preparation of judgment. A particular word of thanks and appreciation to Mr Leathley, instructed in a difficult case on a direct access basis and so lacking the team of support available to Mr Williams QC. It is difficult to think of how the Claimant's case could have been more thoroughly or ardently presented than it was by Mr Leathley, and although it may be of little consolation to the Claimant, in my view he can be assured that his case was put to the very best way it could have been.

HHJ Petts

15th September 2021