

Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

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

For Court use only

Appeal Court Ref. No.

Date filed

SEAL

Section 1 Details of the claim or case you are appealing against

Claim or Case no.

1CF03361

Fee Account no.
(if applicable)

Help with Fees -
Ref no. (if applicable)

H W F - - - - -

Name(s) of the

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

Maurice John Kirk

Name(s) of the

☒ Defendant(s) ☐ Respondent(s)

The Chief Constable of South Wales Police

Details of the party appealing ('The Appellant')

Name

Maurice John Kirk

Address (including postcode)

c/o Coal Lex Chambers
1st Floor
Portland House
113-116 Bute Street
Cardiff

Tel No. 02920 099907

Fax

E-mail david.leathley@coalxlex.cjsm.net

Details of the Respondent to the appeal

Name

Messrs Dolmans for The Chief Constable of South Wales Police

Address (including postcode)

Capitol Tower
Greyfriars Road
Cardiff

Tel No.

Fax

E-mail

Details of additional parties (if any) are attached

☐ Yes

☐ No

Section 2 Details of the appeal

From which court is the appeal being brought?

- ☒ The County Court at
Cardiff
- ☐ The Family Court at
- ☐ High Court
- ☐ Queen's Bench Division
- ☐ Chancery Division
- ☐ Family Division
- ☐ Other (please specify)

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

His Honour Judge Petts

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

- ☐ District Judge or Deputy ☒ Circuit Judge or Recorder ☐ Tribunal Judge
- ☐ Master or Deputy ☐ High Court Judge or Deputy ☐ Justice(s) of the Peace

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

15th September 2021

Is the decision you wish to appeal a previous appeal decision?

☐ Yes ☒ No

Section 3 Legal representation

Are you legally represented?

☒ Yes ☐ No

If Yes, is your legal representative (please tick as appropriate)

- ☐ a solicitor
- ☐ direct access counsel instructed to conduct litigation on your behalf
- ☒ direct access counsel instructed to represent you at hearings only

Name of your legal representative

David Leathley Coal Lex Chambers

The address (including postcode) of your legal representative

Coal Lex Chambers
1st Floor Portland House
113-116 Bute Street
Cardiff CF 10 5EQ

Tel No.	
Fax	
E-mail	
DX	200763 Cardiff Bay
Ref.	

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate?

☐ Yes ☒ No

Is the respondent legally represented?

☒ Yes ☐ No

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

Name and address (including postcode) of the respondent's legal representative

Dolmans as above

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Section 4 Permission to appeal

Do you need permission to appeal?

☒ Yes ☐ No

Has permission to appeal been granted?

☐ Yes (Complete Box A)

☒ No (Complete Box B)

Box A

Date of order granting permission

Name of Judge granting permission

Box B

I

the Appellant('s legal representative) seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

☐ Yes ☐ No

Section 5 Other information required for the appeal

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

Judgment dated 15th September 2021 dismissing the Claimant's claim of malicious prosecution and misfeasance in a public office

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

☒ Yes ☐ No

If '**No**' you must also complete
Part B of Section 10 and Section 11

Section 6 Grounds of appeal

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

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

Section 7 Arguments in support of grounds for appeal

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

OR (in the case of appeals other than to the Court of Appeal)

- ☒ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.

Section 8 Aarhus Convention Claim

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim ☐ Yes ☐ No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarhus claim set out the grounds below

Section 9 What are you asking the Appeal Court to do?

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

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

- ☒ order a new trial

Section 10 Other applications

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

Part A

- ☒ I apply for a stay of execution. (You must set out in Section 11 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- ☐ I apply for an extension of time for filing my appeal notice. (You must set out in Section 11 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- ☐ I apply for an order that:

The costs of the respondent be stayed pending a new trial

(You must set out in Section 11 your reasons and your evidence in support of your application.)

Section 11 Evidence in support

In support of my application(s) in Section 10, I wish to rely upon the following reasons and evidence:

The trial was unfair.

The costs awarded against me are manifestly excessive and disproportionate

Statement of Truth

This must be completed in support of the evidence in Section 11

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- ☒ **I believe** that the facts stated in section 11 are true.
- ☐ **The Applicant believes** that the facts stated in section 11 are true. **I am authorised** by the applicant to sign this statement.

Signature

David J Leathley

- ☐ Applicant
- ☐ Litigation friend (where applicant is a child or a Protected Party)
- ☒ Applicant's legal representative (as defined by CPR 2.3(1))

Date

Day Month Year
6 10 2021

Full name

david Jonathan Leathley

Name of applicant's legal representative's firm

Coal lex Chambers

If signing on behalf of firm or company give position or office held

Section 12 Supporting documents

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

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

In the County Court or High Court:

- ☐ three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- ☐ one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- ☐ one copy of the sealed (stamped by the court) order being appealed;
- ☐ a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- ☐ a copy of the Civil Legal Aid Agency Certificate (if legally represented).

In the Court of Appeal:


- ☐ three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- ☐ one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- ☐ one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- ☐ a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- ☐ one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- ☐ where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- ☐ in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- ☐ one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- ☐ a copy of the approved transcript of judgment; and
- ☐ a copy of the Civil Legal Aid Certificate (if applicable)
- ☐ where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources

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

Title of document and reason not supplied	Date when it will be supplied
3 x Appeal Bundles	
Judgement To be copied	
Transcripts (Not obtainable)	

Section 13 The notice of appeal must be signed here

Signed



Appellant('s legal representative)

Find out how HM Courts and Tribunals Service uses personal information you give when you fill in a form.

<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

In The Cardiff Civil Justice Centre
on Appeal

Case Number 1CF03361

MAURICE JOHN KIRK

Appellant

-v-

THE CHIEF CONSTABLE OF SOUTH WALES POLICE

Respondent

PROVISIONAL GROUNDS OF APPEAL

1. The judgment of His Honour Judge Petts dated the 15th day of September 2021 failed to give adequate regard to **legal** and factual submissions of the Appellant which ought to have weighed with him in consequence thereof an injustice resulted.
- (i) At paragraph 33 of the judgment the Learned Judge, in dealing with the exemption for '*an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament*' pursuant to **section 58 (2) Firearms Act 1968** failed to have due regard to the whole point of the **Appellant's** case namely that the alleged firearm was acquired by him as long ago as 1997 and sold by him to a Mr. Cooper in 2008 so that it was unsafe to conclude that in 2009 the alleged firearm was in the same condition as when the **Appellant** owned it. The **Appellant** had acquired a reproduction World War One fighter aeroplane that required a Lewis Gun mounted on the front to maintain the aeroplane's centre of gravity. The paragraph totally rejected unexplained evidence consistent with the **Respondent** having modernised the alleged firearm. Further, and or, in the alternative, in paragraphs 37, 38 and 39 of the said judgment the Learned Judge accused the **Appellant** of outright lies in distancing himself from the pleaded **decommissioned Lewis gun**. These findings of lies afforded the **Appellant** the shield of **section 58 (2) Firearms Act 1968**.

- (ii) At paragraph 34 the Learned Judge dealt with **section 7 (1) of The Firearms (Amendment) Act 1988** and the evidence of Mr. Rydeard *'once a machine gun, always a machine gun'*. A deactivation certificate from the Birmingham Gun Barrel Proof House dated the 11th June 2010 provided irrefutable proof that the alleged firearm was *'a single barrel shotgun'*. Both Mr. Rydeard and the Learned Judge **presumed** that after trial the alleged firearm had been given to Litts at the Sportsman *(for) some work...carried out to put it beyond doubt that the gun had been deactivated*. Once deactivated, the Learned Judge found the alleged firearm ceased to have the properties of a machine gun but as the court did not know what work Litts the Sportsman carried out the deactivation certificate could not be used as proof of the state or best description of the gun before it was deactivated. In fact had the **Appellant** been allowed to adduce any supporting evidence whatsoever (he had been constrained by sanctions imposed by the court that disallowed any evidence in support of his case being called) there was available evidence that Litts the Sportsman carried out **no such** deactivation work and the Learned Judge's presumption was both legally and factually incorrect. Mr. Rydeard's evidence was that the alleged firearm could be made to fire but one shot, its barrel was smooth-bored (a machine gun's barrel would have been rifled) and it had the appearance of something that could be used for training or display purposes only. The concluding line of paragraph 34 makes no sense in context and supports the above propositions **Mr. Huxtable, the SWP armourer, said the police would not send a gun off to be deactivated and I accept this as well**. The only sensible conclusion was that the alleged firearm had not the capacity to be a machine gun and had never been a machine gun at all.
- (iii) At paragraphs 29, 100 and 101, in addressing **section 57 (1)(b) Firearms Act 1968** the Learned Judge dealt with the evidence of firearms expert Mr. Rydeard that the alleged firearm had a combination of original Lewis gun components with non-standard components that did not allow full automatic function. In fact Mr. Rydeard's evidence was that the said component parts had the **appearance** of original component parts only and it was accepted that records had been destroyed that could speak conclusively as to the provenance of the alleged firearm. The Learned Judge should have had regard to the fact that witnesses attested to the magazine, barrel, trigger mechanism and other component parts all having an appearance inconsistent with their originality and , most importantly, Mr. Rydeard concurred with the proposition that the case of **R v Rogers (2011)EWCA Crim 1459** was good law, a case in which a judge similarly erred in law in ruling that components were capable in law of being components of a firearm as distinct from an imitation firearm. Mr. Rydeard concurred that imitation component parts were incapable of rendering the alleged firearm a machine gun. The irresistible inference here was that the alleged firearm was a 'dummy' machine gun (as described by Brookes Auctioneers whence the exhibit originated) or, in the words of Mr. Rydeard, ***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.*** Indeed, in his witness statement dated 24th June 2020 Mr. Rydeard seemingly anticipated the **Rogers** scenario at his paragraph 18 ***It has been debated by some that components intended for use in a firearm, for example new, unused components, as***

opposed to components taken from an existing gun might not fulfil the definition in section 57 (1)(b).

- (iv) At paragraph 101 the Learned Judge dealt with the test-firing of the alleged firearm using a 'capped case' from a .303 cartridge and a number of normally loaded .410 shotgun cartridges. In the words of the Learned Judge ***He found that missiles were discharged.*** These conclusions conveniently ignored the fact that when a gun is fired using a 'capped case' no missile is projected and that Mr. Rydeard's second statement (prepared for the civil as opposed to criminal case) clarified the point in the **Appellant's** favour. At paragraph 23 Mr. Rydeard clarified that he only managed to fire a shotgun cartridge (.410) with lethal effect as opposed to Lewis gun ammunition (.303). In SWP armourer Huxtable's second witness statement he described how in December 2009 the recent discovery of .303 calibre ammunition at the **Appellant's** home caused him to try the ammunition for size but he found machine gun ammunition would not engage with the alleged firearm. It is averred these facts, on the balance of probability, all made for an unassailable case that the proposed **Appellant** had been prosecuted with extreme prejudice for an article which, although capable of working as a single shotgun at no time merited prosecution as a prohibited weapon deserving of a mandatory minimum term of five years' custody. As such the Learned Judge failed to have regard, or any proper regard, to the fact that the alleged firearm was not a machine gun. He wrongly determined that its functionality as a shotgun determined it to be a prohibited weapon.
- (v) The Learned Judge failed to have regard, or any proper regard, to the fact that the Claimant was a *bona fide* collector of antique curios in his purchase of a World War 1 DH2 Airco 'Gunbus' aeroplane with attached 'machine gun'. The said aeroplane and gun had flown at Farnborough Air Show. Even Mr. Rydeard attested to the fact that in his long career as a firearms expert he had experienced only a 'handful' of such prosecutions. The Claimant was prohibited from relying on **ACPO** guidelines (notwithstanding he had both pleaded and served the same) which afforded amnesty from prosecution for bona fide collectors. Although the alleged firearm had not been deactivated to modern specifications Mr. Rydeard, on mature reflection, was prepared to concede in paragraph 28 of his statement dated 24th June 2020 ***section 8 of the 1988 Firearms Act does not preclude the deactivation of a firearm by other means but without Proof House markings and suitable certification the status of such a firearm would be unclear and ultimately may require the arbitration of a court.*** Further, at paragraph 21 of the aforesaid statement he reflected on his evidence at the criminal trial thus: ***Page 89 as part of my evidence in chief and with reference to the normal deactivation of firearms, in response to His Honour Judge Thomas's question who asks 'nothing could be done to get around (this) without taking it to the Birmingham Proof House' I reply 'nothing could be done'. On reflection, I could have added that while there may be other, non-official methods of deactivation, the procedure I had described was the normal, most secure route.*** The decision to prosecute the **Appellant** was consistent, on the civil standard of proof, with targeted malice.

(vi) The Learned Judge failed to have regard, or any proper regard, to the fact that witnesses Scott, Martlew and Cooper all attested to the fact the alleged firearm appeared to have been tampered with since it had last been in their possession. The Learned Judge failed to have regard, or any proper regard to the attached **Claimant's Closing Submissions 'The Alteration of Crown Exhibit AJR/1**. At paragraphs 98 and 104 to 108 of the aforesaid judgment the Learned Judge dealt in a perfunctory way with the irresistible inference that documented references in the evidence of DC Phillips and Dodge to the alleged firearm being collected by and from Chepstow Forensic Science Services (wherein there is absolutely no evidence of its purpose in residing there) did not sit well with DC Dodge taking the alleged firearm back to Mr. Cooper to reaffirm the exhibit was in the same state as when he surrendered it via Mr. Scott to the police unless validation of an alteration was sought. The Learned Judge failed to have regard, or any proper regard, to Mr. Cooper telephoning DCI Suzanne Hughes via his solicitor on the 6th January 2010 to protest the alleged firearm **had been tampered with**. On the balance of probability there was sufficient evidence to propound misfeasance in a public office by the altering of the alleged firearm to facilitate a firing capacity or modernisation so as to divest it of immunity based on antiquity. It was unrealistic for the Learned Judge to expect either admissions or a precise audit trail to this misfeasance.

(vii) There is fresh evidence with regard to MAPPA, the status of the alleged firearm and the intervention of Social Services that could not with reasonable diligence have been made available before trial. In clear breach of CPR Rule 1 the **Appellant** was sanctioned by his incarceration and penalised for his inability to serve statements on time notwithstanding the fact he was a litigant in person and new evidence revealed he had had his legal papers stolen. Further court orders were sent in error to a bail hostel at which the **Appellant** no longer resided. There was no way he could have complied with directions by His Honour Judge Keyser, QC. The entire trial process was unfair because the **Appellant** could not adduce evidence in his own cause. The disclosure revealed SWP nominated Gold, Silver and Bronze commanders to coordinate the prosecution of the **Appellant**. A number of decisions were made by the court to sanction and limit the Appellant's evidence. The **Appellant** sought disclosure of **Operation Orchid** with regard to the targeting of his daughter by SWP but was refused. This created the tension that if the **Appellant** was not protected from non-disclosure the trial ceased to be fair. The HM inspectorate report on South Wales Police dated July 2008 showed the structure of Gold, Silver and Bronze Group and implied **The Respondent** hid who was making the decisions and what decisions they were making. A risk register was thereby maintained reviewable by The Chief Constable of South Wales Police. Further *indicia* of the unfairness of the judgment subject to appeal is provided by paragraph 60 wherein documents linking Operation Challis and former Detective Superintendent McKenzie's admission to his having instigated MAPPA are dismissed by the Learned Judge who regarded the officer as 'misspeaking' in stark contrast to his assessment of the **Appellant** as a liar.

(viii) **The Appellant** was denied his statutory right to trial by jury. The court handed control of the way the **Appellant** could present his case to **The Respondent** who insisted upon the scope of materials to be relied upon being redacted out of existence. The exception to the right to trial by jury is the lie that the case was 'document-heavy' was a myth propounded by **The Respondent** given the comments in paragraph 118 of the said judgment that the case was completed ahead of schedule and the fact that documents relied upon by the Claimant numbered less than fifty pages ~~in number~~. DJL

I believe the Contents of this Notice of Appeal are true

SIGNED

DATED

David Jonathan Leachley
per pro Maurice
John White

This 6th day of October 2021