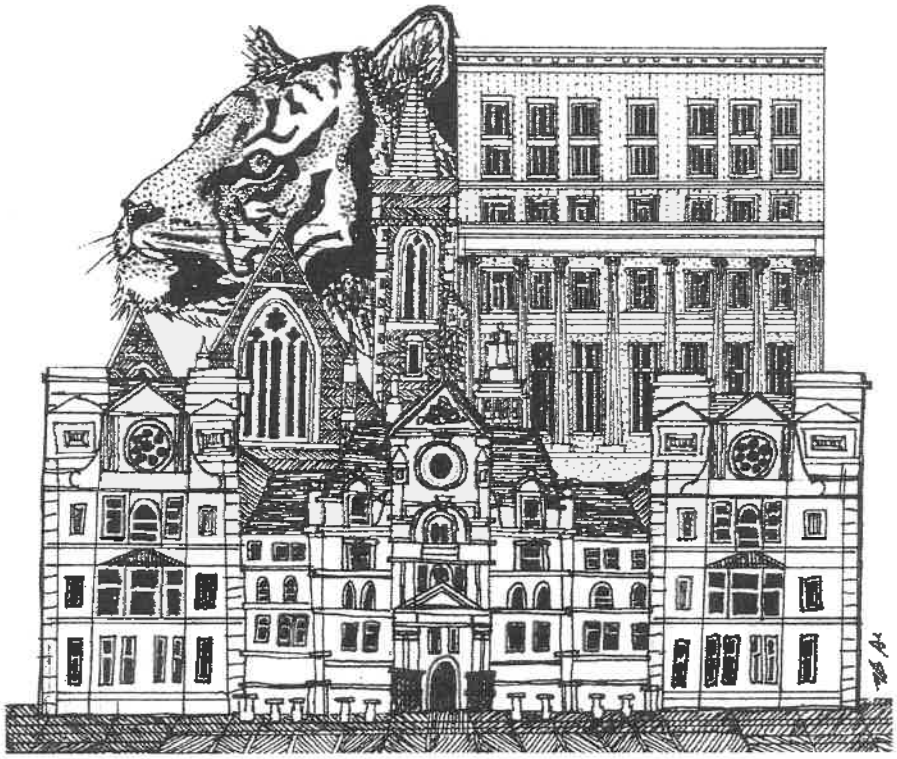

COALLEX

APPEAL CF057/2021 CA MAURICE JOHN KIRK V THE CHIEF CONSTABLE

OF SOUTH WALES CONSTABULARY

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In The Cardiff Civil Justice Centre **Case Number 1CF03361**

on Appeal

MAURICE JOHN KIRK

Appellant

-v-

THE CHIEF CONSTABLE OF SOUTH WALES POLICE

Respondent

PROVISIONAL GROUNDS OF APPEAL

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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 ie the lie that the case was 'document-heavy' was a myth propounded by 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.

I believe the Contents of this Notice of Appeal are true

SIGNED

DATED

IN THE CARDIFF CIVIL JUSTICE CENTRE **CLAIM 1CF03361**

MAURICE JOHN KIRK

Claimant

-v-

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

CLAIMANT'S OPENING NOTE FOR TRIAL DATED THE 6TH SEPTEMBER 2021

PART ONE THE FACTS

1. On the 9th February 2010 the Claimant was **acquitted by a jury** at Cardiff Crown Court on a charge that he possessed a prohibited weapon contrary to section 5 (1)(a) of The Firearms Act 1968 (Count 1), sold or transferred that prohibited weapon (Count 2) and possessed criminal property namely the proceeds of sale thereof. The Count 1 allegation, if convicted, carried a mandatory minimum term of **five years' imprisonment** following conviction. The sentencing range would have been 5-10 years and afforded little scope for flexibility. The trial concerned an exhibit, **AJR/1.** What exactly **AJR/1** was depended on the testimony of experts. All firearms experts offer an opinion on matters outside the knowledge of a lay jury. They cannot, however, usurp the decision on the ultimate question: the guilt or innocence of The Accused. **Philip Charles Rydeard**, states at **page 18** of folder **C5** ***'Ultimately it is for a court to decide the classification of this weapon.*** It therefore follows **the Claimant did not have possession of a prohibited weapon** namely ***5 (1) (a) Firearms Act 1968 'any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger'*** or in lay man's language a machine gun. The route by which the Claimant was prosecuted was nebulous.

2. **THE PROVENANCE OF EXHIBIT AJR/1** The Claimant purchased a replica DH2 Airco World War 1 aeroplane in 1997. He states that the aeroplane came with a

Lewis machine gun that may be exhibit **AJR/1**. The sellers of the aeroplane, Brian and David Woodford of Chalmington Manor in Dorset, boasted the biggest De Havilland aircraft collection in the world. The Claimant was told the Lewis gun was from the RAF via The Imperial War Museum and had been deactivated. Prior to amendment by the **Policing and Crime Act 2017 section 58 of The Firearms Act 1968** provided for 'savings' exempt from classification as firearms offences. These savings applied to proof houses and the Society of the Mystery of Gunmakers and a rifle range at Small Heath in Birmingham. **Section 58 (2) Firearms Act 1968** states ***'nothing in this act shall apply to an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament.'*** **Archbold 2021 24-132 page 2681** sets out the law prior to amendment of **s 58** by the **2017 Act** thus ***' Once there is some evidence that a firearm is capable of being within s 58 (2), it is for the prosecution to prove that the firearm is not and it is for the jury, not the judge, to resolve the matter: Burke (1978) 67 Cr. App. R 220, CA.'*** The same paragraph contains guidance on the term **'antique'**. World War 1 was fought 1914-1918 and the indictment alleged illicit possession between 2008-2009 ergo the acid test propounded by Eveleigh LJ of outside ***'this century'*** in attempting to define 'antique' assists the Claimant who appears to have been prosecuted in the 21st Century for a 20th Century weapon. At page **265** of folder **C4** ballistics expert Andrew Huxtable comfortably refers to **AJR/1 as a 'World War 1 Lewis gun'** . However, there was evidence only recently disclosed from **Brookes** auctioneers that **AJR/1** may just have been a **dummy** that is to say imitation machine gun. **AJR/1 did not have the capacity of a machine gun.** In order to contravene section 5 (1) (a) **AJR/1** needed either (i) the capacity to successively discharge two or more missiles without repeated pressure on the trigger or (ii) the ***component parts of an actual as opposed to imitation firearm.*** In **exhibit ATH/1** (his statement of the 23rd June 2009) at **page 266 of bundle C4** Andrew Huxtable, based on what he has googled about Lewis machine guns, rushed to judgment that **AJR/1** had the **5 (1) (a)** capacity. Ultimately, at **page 18** of bundle **C5 Mr. Rydeard** concluded **AJR/1** was capable of firing a single shot only. He is supported by **Mr Mark Murray-Flutter** (first disclosed to the Claimant in **2020**). Mr Murray-Flutter is an expert in vintage firearms He opined that the date of manufacture of **AJR/1** appears to be **1916**. He opined the exhibit was not capable of firing as a machine gun. Mr Murray-Flutter supports Mr. Rydeard that it is unlikely that **AJR/1** was sold for any military purpose (Mr. Rydeard had concluded **AJR/1** ***'was made for training or demonstration purposes only'***.) Mr. Murray-Flutter appeared under **Tab 434 File 9** of a disclosure by The Defendant in **October 2020**. Further support of the notion **AJR/1** did not have the capacity to fire as a machine gun is provided by the fact that when 'machine gun' .303 ammunition is placed in the barrel it slipped uselessly through it and could not engage with the weapon. In **File 12 Tab 685** of the October 2020 disclosure a **Birmingham Proof House Certificate of Deactivation dated 11th June 2010** certified **AJR/1** ***' a single barrel shotgun'***. The second route by which contravention of section 5 (1)(a) can occur lies in **section 57 Firearms Act 1968** ((ii) above).

3. **SECTION 57 (1) OF THE FIREARMS ACT 1968 DEFINES 'FIREARM' AS 'A PROHIBITED WEAPON' OR A 'RELEVANT COMPONENT PART IN RELATION TO A PROHIBITED WEAPON' (SECTION 51 (1)(C))** Section 57 (1D) states that for the purposes of subsection (1)(c) each of the following is a relevant component part **(a) 'a barrel, chamber or cylinder' (b) a frame, body or receiver (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber'** Mr Rydeard at **page 17 of Bundle C5** opined that some component parts are identifiable. Mr. Rydeard bases his opinion on the originality of component parts on a partly obscured serial number (222166). Under **Tab 531 of File 9** of the Defendant disclosure dated **12th October 2020** there is a memo detailing police efforts to contact The Birmingham Small Arms Company (BSA) in an attempt to trace any records pertaining to the said serial number. A fire is documented therein as having obliterated any proof as to the originality of **ARJ/1**. Mr Rydeard at **page 89 of D2 (the court transcripts)** identified the gas chamber only of the said exhibit as having the potential of being a "component part'. It is submitted that there was nothing to gainsay the proposition **AJR/1** was an imitation prohibited weapon having the ability to be modified allowing a missile to be discharged down it. ***R v Rogers (2011) EWCA Crim 1459*** was a case in which a bag of parts ('component parts') could not be said to have originated from anything other than an imitation firearm and even though the contents could be assembled so as to fire, the fact that ammunition just rattled down the barrel with low velocity (see **Huxtable**) precluded liability under either the **1968** or **1982 Firearms Act.** By analogy **AJR/1** might have been a firearm but not a prohibited weapon deserving of the mandatory minimum term. See **D2 p188** and the evidence of Mr. Mabbit about the weapon's capacity to fire prime case only.

4. **HOME OFFICE GUIDELINES SUBSISTING AT THE TIME OF PROSECUTION. AJR/1** was probably a partially deactivated firearm. The Claimant was told it had been fully deactivated. As he purchased **ARJ/1** in 1997 it is likely that any purported deactivation was to pre-1995 standards which rendered it legal and closer to the original gun. In the transcripts file **D2 page 89** Mr. Rydeard gave evidence that the only method by which **ARJ/1** could be classified as deactivated was if it had been taken to one of the proof houses for certification. The Claimant's 'Further and Better Particulars of Claim' at page 2 **(page 23 of Bundle A)** is not refuted by The Defendant. Ergo, the exacting modern criteria for deactivation do not render illegal retrospectively other forms of deactivation such as those recommended by The Home Office in their **1989 Deactivation Standards Review.** With regard to a firearms certificate **section 13 Firearms Act 1968** absolves the need for a firearms certificate for a firearm regarded **(a) as part of the equipment of.....an aircraft.** In any event, the Home office appeared supportive of the proposition of an amnesty from prosecution for those who had antique guns having had their ability to fire removed. Both Mr. Cooper and The Claimant

claimed the barrel of **AJR/1** was blocked. In folder **E3 page 97 onwards** there are photographs of the DH2 Airco aeroplane in a field at Ferryside on **31/7/2000** and the aeroplane appears to have its gun mounted on the front. The incident **was** attended by **police**. Nobody thought to prosecute the Claimant until **nine years** later. The timing of the decision to prosecute is significant and goes to the issue of '**malice**'. At **page 34** of **C4** a letter there appears from the Civil Aviation Authority confirming, as The Claimant has maintained, that the front of the Airco required a counter balance or weight which can be ***the gun and battery.*** At **page 182 of folder C1** police intelligence on The Claimant refers to The Claimant advertising what the Prosecution said was a working Lewis gun and the following words there appear ***'ALBEIT A WORLD WAR 1 ANTIQUE'.*** In 2008 The Claimant sold a gun or imitation gun to a Mr. Cooper **at C1 page 97** who ***'had no idea it was not deactivated'*** notwithstanding his considerable experience with guns in Her Majesty's Armed Forces. Support for The Claimant's assertion that a gun which could fit to his Airco DH2 for ballast was deactivated in the technical **Firearms Amendment Act 1988** sense ie ***'a firearm is deactivated when it has been rendered incapable of firing any shot, bullet or other missile'*** came from Mr. Cooper and raises disquieting questions about why The Claimant was ever prosecuted at all **(Folder C1 6.1.10 Solicitor for Mr. Cooper rang... said when he had the gun (the barrel) was blocked. It has been tampered with').** Mr. Cooper had advised DC Nigel Brown when looking down the barrel he could see daylight the note goes on to complain. The Claimant will assert such an assertion was a lie.

One of the very real problems with the indictment was the framing of an allegation in 2009 which charged The Claimant with possession of a prohibited weapon between **2008-2009.** There was no way the prosecution could ever prove what state a gun or imitation gun sold by The Claimant to Mr. Cooper in 2008 was in. In **folder C1 at page 95** the police knew Mr. Cooper had recently had the weapon painted and lubricated. It raised questions about what other modifications to the gun or imitation gun sold to him by The Claimant Mr. Cooper had carried out. Notwithstanding the fact that Mr. Cooper told a jury he had painted parts of the gun silver at trial the gun was presented as, with respect to the late Amy Winehouse, **back to black.** Mr, Cooper was right ***the gun had been tampered with*** . Mr. Cooper gave evidence on the 6th January 2010 that when he had the gun the barrel was blocked.

The final problem with the state of disclosure is the history of what might have been **AJR/1** is shrouded in mystery. It was stored by the RAF. It flew at Farnborough Air Show. The Civil Aviation Authority appeared to have known about it. The police knew about it (certainly in 2000). Nobody was the slightest bit concerned.

It is averred that out of desperation to convict The Claimant the Prosecution, as well as ***'sexing up'*** **AJR/1,** propounded the bizarre alternative scenario that the man who sold both the Airco DH2 and (said The Claimant) a gun never in fact sold him a gun at all and that **AJR/1** must have been added to the aeroplane by The Claimant himself. **Andrew**

Huxtable speaks of **DJW/1**, a khaki coloured machine gun found at Chalmington Manor which, the Woodfords maintain, was never on the aeroplane as sold. Exhibits **PJS/1** and **PJS/2** are documents about the DH2 as originally presented by Brookes Auction House. They speak of the DH 2 as being fitted with ***a realistic dummy gun.*** Moreover, the 'dummy gun' must have been sold with the aircraft as, without it, the aeroplane lacked essential ballast **(page 34 C4).** The Claimant has always maintained his interest remains with flying and not with guns. It is averred the Woodford evidence was entirely self-serving and no doubt designed to protect them from the fate the Claimant endured. Further, the evidence of **Mr. Martlew D3 page 79, 118 & 122** go to the provenance of the exhibit. The armourer Mr. Scott to whom Mr. Cooper took the gun once the Civil Aviation Authority alerted him to the police interest in The Claimant spoke during trial at **D1 page 150** of ***'a mock up Lewis gun.'*** The Claimant's case is that **AJR/1** had been deliberately tampered with by the servants or agents of The Respondent and notwithstanding the police had taken the gun from Scott armouries it was necessary for a **DC Dodge (D3 pages 76 & 79)** to revisit Mr. Scott to press the point it was the same gun he had earlier given the police in much the same way a conjuror asks a member of the audience to examine an object he has transformed. It is The Claimant's case that the servants or agents of The Respondent were committing acts tending to and intended to pervert the course of justice and, as such, they were culpable of misfeasance in a public office. Their plan came unstuck. In folder **D1 page 160** Mr. Scott attested to the fact that the barrel of **AJR/1** was not as he remembered it and ***when I first examined it there was an obstruction at the chamber end...'***

At **page 165** Mr. Scott **don't (sic) know if it is the same barrel or not.'**

PART TWO THE LEGAL ELEMEMNTS OF THE CLAIM

5. The nature of The Claimant's claims are set out in the Defendant's skeleton argument for trial dated the 25th August 2021 in paragraphs 3-34 inclusive and the firearms legislation therein and there is little purpose in repeating them here. Contrary to paragraphs **56-58 (False Imprisonment)** the claim does not focus on arresting officer PC Richard Jones alone but file **C1 page 54** and the endeavour ***to build a case*** and an ***adherence to a 'custody strategy'*** **(C1 page 80) which** involved 'the brains' of The Defendant **(Detective Superintendent Stuart McKenzie)** and not just 'the hands' (PC Richard Jones). This custody strategy recognised the elemental weakness of pursuing a prolonged application for a remand in custody **(C1 p132 'there is a strong possibility (Kirk) will be released on bail')** but persisted anyway and so the setting up of a MAPPA strategy (no concession that this was an Independent Advisory Group as appears in the Respondent's paragraph 39 is made here) with the establishment of **OPERATION CHALLIS (C1 PAGES 121-139),** a high level police operation to build a **'federal'**

case out of minor incidents. This **custody strategy** resulted in The Defendant, with the aid of MAPPA, suffering a long and needless remand in custody. **Paragraph 57** of The Defendant document is, with the deepest of respect, an attempt to narrow the issues here to one scapegoat 'hand'. At common law it was previously held a police constable was not a servant of his chief constable within the sense of vicarious liability but exercised 'an original authority'. **Section 48 (1) Police Act 1964** created vicarious liability for the torts of police officers. However ***Hawkins v Bepey (1980) 1 WLR 419*** was a case in which it was decided a police constable instituting a prosecution was, in effect, doing so on behalf of his chief constable. As a consequence **Section 88 of the Police Act 1996**, as amended, was enacted making a chief constable of the relevant police force liable in respect of any unlawful conduct of his constables under his direction and control in the performance, or purported performance of their functions in like manner as a master is liable in respect of any unlawful conduct of his servants in the course of their employment. The Defendant has attempted to justify PC Richard Jones's arrest by imbuing them with archaic 'original authority'. Most arrests without warrant by police officers are based on section **24 of The Police and Criminal Evidence Act 1984** and the relevant tests are ***did the arresting officer suspect that the person who was arrested was guilty of the offence? Was there reasonable cause for that suspicion?*** The 'attendance notes' exhibited by former **Detective Superintendent Stuart McKenzie** appear (as do his 'deputy's', **Detective Inspector Suzanne Hughes**) to have been written up retrospectively but purport to show an interest in The Claimant's **medical history** (beginning at **C1 page 29**). At **page 81,** on the day of the arrest, it seems very clear the police know that The Claimant has parted with both the aeroplane and the 'machine gun' to a film studio. It is submitted that it was therefore no coincidence the Defendant provided the steer at Barry Police Station on the 8th June 2009 (prior to arrest) to make a case the Claimant was both mad and dangerous. A certification of severe mental disorder would augment the likelihood of offending ground for objecting to bail and there was now both an arrest and a remand to custody strategy.

It is difficult to reconcile these notes with the concept that there could ever have been reasonable suspicion The Claimant had a machine gun and no necessity to instruct the CPS to oppose bail to prevent interference in justice etc.

Civil Action Against The Police (Third Edition) by Richard Clayton QC and Hugh Tomlinson QC paragraph 4-034 describes false imprisonment as ***intentionally but without lawful justification subjecting another to total restraint of movement.***

The same tome describes **Malicious Prosecution at 8-011.** Five elements are required to be proven and the fourth and fifth are ***The Defendant acted without reasonable and probable cause and that the Defendant acted maliciously.***

It is the Claimant's case that here was ***targeted malice, a collateral attack on civil action BS 614159.*** **DS Mckenzie's** references to it in **C1** makes for painful reading as does the apparent conflict of interest as he consults with Adrian Oliver, of The

Defendant's legal representatives. The phrase 'he doth protest too much' springs to mind as DS Mckenzie artificially documents **C1 page 12** ***'I was also mindful of the ongoing civil litigation in protecting the integrity of the organisation in relation to this process ie I did not want my decision to reflect ongoing civil litigation'*** **Page 31** then follows ***'inextricably linked to civil litigation'*** and **Page 34** ***'civil litigation and protecting the integrity of the organisation in relation to this process'*****; Page 43** ***'obtain full disclosure re on-going civil litigation'*****; page 62** ***'I do not want any adverse effect on on-going civil proceedings'*** and ***'detaching both enquiries'*** etc. Does the commander really suggest that arresting a litigant in person and procuring his incarceration for eight months would not affect his ability to litigate?

Dr Tegwyn Mal Williams was part of the MAPPA process. He made a report which the writer witnessed him make to the then Recorder of Cardiff, Nicholas Cooke QC.

The Claimant had physiological brain damage. He had a paranoid delusional disorder. All these assertions contradicted by at least four subsequent psychiatrists.

The Claimant's life and reputation was shattered thereby.

He has crusaded for justice denouncing what he perceives are the lies instigated by The Defendant.

A Restraining order was made to prevent further public denouncements with regard to Dr. Williams.

On four occasions the Claimant has deliberately broken it in his quest for justice.

The Claimant has to invite the court to hear his evidence that at his most recent parole board hearing The Defendant represented his PNC as showing convictions he manifestly did not have.

Is there a pattern of targeted malice?

The Claimant invites the court to conclude there was.

If so it is a very sinister ***organisation.***

The Defendant would have the court believe all this was a dream, proceeding from the 'heat-oppressed' brain of a mad man.

Whatever **AJR/1** was there was no public interest criterion in bringing this prosecution in order to procure such a long sojourn in custody, a prosecution that was quite literally *scraping the barrel.*

David Leathley

Counsel for Maurice John Kirk

3rd September 2021

Claimant's closing submissions;-

THE ALTERATION OF CROWN EXHIBIT AJR/1

Undoubtedly, to quote the January 2010 telephone call from Mr. Cooper, this exhibit had been ***'tampered with'.***

In **D3 page 145** HHJ Thomas makes reference to a jury note enquiring if there was more than one machine gun.

Undoubtedly, there were huge gaps in the chain of continuity with regard to the key exhibit.

Prior to a July visit to the Worshipful Company of Gunmakers on the 15th July 2009 **DC Phillips** collects **AJR/1 from FSS Chepstow.** There is no information as to how it got there or why. (see page **68**).

Prior to submission to Mr. Rydeard there is a note concerning a telephone call to Chepstow to arrange collection of the gun: ***'Wednesday 24th June Enquiries with Lewis James re sending Lewis gun to FSS.....Enquiries with FSS Chepstow arrangement made for gun to be collected...'*** One of the notable features of Mr. Huxtable's evidence was the two day hiatus between Nigel Brown (whose absence from these proceedings is noted) bringing **AJR/1** to force HQ at Bridgend and **Mr. Rydeard** receiving it at Manchester

At page **74 DC Dodge** gave evidence and detailed how Mr. Cooper could pass a rod down the barrel whereas he couldn't before **(page 79)**

At **page 112** Mr Martlew gave evidence. At **page 122** Mr. Martlew is handed **AJR/1** and said ***'I have a problem with this...When it came on the aeroplane it was Japan black...but at some period Maurice polished it up bare metal now its black again.'*** His Honour Judge Paul Thomas, Queen's Counsel, attempted to explain this by reminding the jury the discrepancy was on account of Mr. Cooper painting the exhibit silver but this does not explain the problem identified by Mr. Martlew.

Mr. Martlew attests that **AJR/1** was a replica purchased by Mr. Viv Bellamy and incapable of firing.

Mr. Martlew's evidence will be read onto the record in full because he confirms what the CAA have subsequently denied, that the DH2 and gun would have had to have received their blessing before flying at the Farnborough Air Show.

The Claimant's case is that at very least **AJR/1** was painted prior to trial and physically altered so that it could fire a single shot. This involved substantially altering the physical

state of the exhibit ***'and the Magazine isn't the same'*** **(Martlew)**. Mr. Huxtable and particularly, **Mr. Rydeard**, could provide no explanation for the need to involve Chepstow FSS in the process.

The only motive for altering the gun would be to make it a lethal barrelled firearm and by replacing a rifled barrel with a smooth bore to substitute modern components, or imitation components, to place the exhibit outside the **section 58 FA 1968** exception.

Mr. Rydeard concurred that although parts of the exhibit had the appearance of being originals he could not rule out the scenario in ***R v Rogers*** , that imitation components did not render it a machine gun.

See also the evidence of **Mr. Scott.**

The showing of AJR/1 back to Scott and Cooper in August 2009 must infer the police were wishing to procure reaffirmation AJR/1 was the same exhibit because they had altered it. As such there was MISFEASANCE IN A PUBLIC OFFICE.

AJR/1 WAS PROSECUTED USING THE SAME LEGISLATION AS WOULD BE RQUIRED FOR A FULLY FUNCTIONING WORKING LETHAL UZI AUTOMATIC

Mr. Rydeard opined **AJR/1** ***'for one reason or another perhaps because it was obsolete or defective had received modifications to make it more appropriate for training and display as opposed to full combat duties.'***

Contrary to the evidence of **Mr. Cooper** and **Mr. Martlew** the bolt when released would go forward.

As Mr. Rydeard said the magazine was silver it would appear more work had been done to the exhibit after Mr. Rydeard examined it.

This had been a **replica** gun **(Martlew)**, a '**dummy**' **(Brookes Auction House)**.

It was now a firearm. It is The Claimant's case that the prosecution of him was unsafe.

There was no certainty the gun was in the same condition as when he sold it to Mr. Cooper in 2008.

Even the evidence of Mr. Rydeard that a machine gun can never be downgraded was cast into double by the 2010 Proof House Certificate that AJR/1 was a single shotgun. Mr. Rydeard's reply was that perhaps **Litts at the Sportsman** had achieved exactly what he had maintained was not achievable.

The originality of component parts could not be established and BSA records regarding the serial number were not available.

There was no **risk** when the Claimant owned the exhibit.

REASONABLE CAUSE TO SUSPECT THE CLAIMANT HAD A MACHINE GUN WHEN ARRESTED

The Claimant was arrested just after 8.00am on the 22nd June 2009. By 11.00am Mrs Kirk had told the police that the aeroplane had been sold. Enquiries were ongoing with the Civil Aviation Authority whom **Mr. Martlew** maintained knew about the gun. **Mr. Cooper** was located that same day. **(Tab 39 File 13 October 2020 Disclosure).**

Even if the arrest was warranted the decision to detain The Claimant in the full knowledge that there were, in effect, no public safety issues amounted to **FALSE IMPRISONMENT.**

In **Tab 2 File 13** the CPS declined to authorise charge re the threat of damage to Dolmans.

Intelligence reports revealed that the flight to see President George Bush was to give thanks to the American Nation for The Claimant's rescue from the Atlantic Ocean.

The visit to High Grove was similarly not a risk.

Documents further reveal that with regard to visits to the Chief Constable the Claimant presented a **low risk...to such an extent he was arrested by unarmed police.**

Yet the October 2020 Disclosure File 13 Tab 36 revealed that The Claimant was to be referred to MAPPA. See also Tab 48.

In cross-examination Former Detective Superintendent Stuart McKenzie admitted he had *instigated it*.

FALSE IMPRISONMENT

Notwithstanding the fact that by the time of The Claimant's remand in custody The Defendant knew the claimant had no weapon, posed neither risk to Dolmans nor Barbara

Wilding The Defendant instigated his incarceration for eight months. As MAPPA meetings were in future under the auspices of CASWELL CLINIC The Claimant avers the same prejudicial steer was provided to Dr. Tegwyn Mal Williams as had been implemented in opposing bail at the Crown Court.

DC Stuart Davies was not a credible witness with regard to familial pressure having been placed on Mrs. Kirk and misrepresentation that The Claimant posed a flight risk through his being estranged from his wife and daughter.

MALICIOUS PROSECUTION

The jury were concerned that **AJR/1** had been tampered with. The Crown were incapable of proving **AJR/1** was but a shot gun. In all probability component parts may have been altered or added in the year that Mr. Cooper had the item. There was no way of proving the component parts were not from an imitation Lewis gun.

If the remarks ***'this one worked'*** to **Foxy** are to be relied upon and the 'sales puffs' of The Claimant's advertisements then both **Section 58 FA 1968 and Home Office recommendations predicated that no prosecution was warranted.**

This hopeless case was vigorously fought with the inevitable outcome The Claimant was acquitted.

There is but one inference: The motive behind the Prosecution was neither sufficiency of evidence nor Public Interest but to render The Claimant incapable of conducting costly litigating against The Defendant.

Deactivation Certificate

issued by

The Birmingham Gun Barrel Proof House

Banbury Street, Birmingham B5 5RH

CAVENDO *TUTUS*

The Birmingham Proof House hereby certifies that work has been carried out on the firearm described below in a manner approved by the Secretary of State under Section 8 of the Firearms (Amendment) Act 1988 for rendering it incapable of discharging any shot, bullet or other missile.

No Firearms Certificate is required to possess this gun.

Type and Make: **Single Barrel Shotgun - B.S.A.**

Number: **222166**

Calibre/Chamber Length: **.410 Bore**

Barrel Length: **26"**

Country of Origin **U.K.**

Submitted by: **Litts at the Sportsman**

Certified by: **R.J. Hancox**

CG: **91773** Date: **11/06/2010**

PROOF MASTER

for the Guardians of the Birmingham Proof House

Please note: (a) This certificate is an important document: it should be returned by the owner at all times

(b) The main components of the gun to which this certificate relates have been marked with a Proof House inspection mark: these marks must not be removed or altered.

WARNING: **Forging a de-activation certificate could constitute an offence under the Forgery and Counterfeiting Act 1981.**

SPORTSMAN GUN CENTRE LTD

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R. F. D. GWENT 61/801
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Date 17.6.10

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LONGWOOD WAY
BRIDGEND CF31 3SU

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AS ON SHOTGUN REVOK.

Stock No.	Quantity	Description	Unit Price	Amount Credit		TOTAL	
	1	CERTIFICATION OF.					
		LEWIS GUN. (BSA)					
		SERIAL NO 222166					
		(ISSUED AS SINGLE BREECH SHOTGUN)					
		BRNT CERT NO 91773					
		NOT PAID					
			Sub Total			85	11
			Zero				
			17.5 % V.A.T.			14	89
			TOTAL			100	00

Terms 30 days nett. Interest at 2.5% per month will be charged on all outstanding amounts.

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Input Tax has not and will not be claimed by the company in respect of Second Hand Guns on this invoice

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Signed for The Sportsman ..... Signed for Customer .....

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WITHOUT - PREJUDICE

To Whom It May Concern

ENQUIREY LEWIS GUN / BSA 410 BARREL No. V222166

We Litts at the Sportman Gun Centre Ltd was contacted on the 22nd March 2010 by Detective Inspector Suzanne Hughes SWP4149 of South Wales Police in order to quote a price and estimated time scale to have the above weapon deactivated.

No deactivation work is carried out at the premises in Newport.

All deactivation work is out sourced to a qualified company who is authorised in carrying out said work.

Once weapon is deactivated it is presented to Birmingham Proof House who qualify the status of the weapon – in this case being a BSA 410 single barrel shotgun.

A deactivation certificate is then issued by Birmingham Proof House showing description of weapon and serial number.

R M Evans

Sportsman Gun Centre Ltd

Newport

Case No: 1CF03361

IN THE COUNTY COURT AT CARDIFF

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

BEFORE:

HIS HONOUR JUDGE PETTS

BETWEEN:

MAURICE KIRK **CLAIMANT**

- and -

CHIEF CONSTABLE SOUTH WALES POLICE **DEFENDANT**

Legal Representation
Mr David Jonathan Leathley (Counsel) on behalf of the Claimant
Mr Lloyd Williams QC (Counsel) on behalf of the Defendant
Mr Christian Howells (Counsel) on behalf of the Defendant

Other Parties Present and their status
Mr Adrian Oliver, Dolmans Solicitors

Whole Hearing

Hearing date: 7 May 2021
Transcribed from 09:30:15 until 10:53:24
from 11:09:58 until 12:09:31
from 13:03:27 until 13:18:37
from 13:25:21 until 13:59:52
from 14:08:54 until 14:41:24
from 14:43:56 until 14:44:45

Reporting Restrictions Applied: No

Number of folios in transcript 457
Number of words in transcript 32,900

A

***Court Clerk*:** Good morning, Your Honour.

His Honour Judge Petts: Good morning all.

B

Mr Leathley: Good Morning.

***Court Clerk*:** Sir, I've got Mr Leathley for Mr Kirk and Mr Williams, leading Mr Howells for the Defendant.

C

Mr Williams: Your Honour, yes.

Mr Leathley: You, you have, Your Honour, we --

D

His Honour Judge Petts: Mr Leathley, if you prefer to remain seated for the entire proceedings.

Mr Leathley: Well, that's very kind of you.

E

His Honour Judge Petts: Given the amount of material you'll no doubt both be referring to, I'm quite happy for everyone --

F

Mr Leathley: Your Honour, Mr Williams and I do not think that this is going to take six hours.

His Honour Judge Petts: I'm glad you think that as well.

G

Mr Leathley: I think everything has been, if I may say so, reduced admirably by Mr Williams into a succinct position statement. We may not agree with it but we agree that it identifies all the issues.

H

His Honour Judge Petts: Good.

Mr Leathley: We've done a short reply. Has Your Honour had it?

His Honour Judge Petts: I've seen that, yes.

A

Mr Leathley: Yes. There's an N14, an N244 application which, I don't know if that's made its way to Your Honour from --

B **His Honour Judge Petts:** The, it, it's on the, it's on the file, applying for --

Mr Leathley: Jury trial.

C **His Honour Judge Petts:** A jury trial and relying on the second, third and fourth statements, although --

Mr Leathley: Yes.

D

His Honour Judge Petts: I don't know whether the fee's been paid but it, it --

Mr Leathley: It hasn't.

E **His Honour Judge Petts:** But you did --

Mr Leathley: We, we offered to come to the counter. I would pay it myself but, as you know, the Bar Standards Board regard that as handling client money.

F

His Honour Judge Petts: Yes.

Mr Leathley: So Mr Kirk is on his way, hopefully, to pay the fee with a card payment. Mr Kirk has given his blessing that I can commence without him. He also can't stay for the full duration of the hearing anyway, so he's just popping in out of curiosity, I think.

G

His Honour Judge Petts: Well, yes. I suspect mine is not a name he has heard before, or, so --

H

Mr Leathley: Well, he, he welcomes you, Your Honour, very warmly.

His Honour Judge Petts: That's very kind of him. OK, so where shall we start? I think the, the issues that I've flagged up that we need to decide are mode of trial, length of trial, listing of trial if it's going to go, if that doesn't follow from decisions about mode and length of trial, particulars of claim issues, Defendant's application to strike out parts of the Claimant's witness statement, Claimant's application for relief from sanctions for statements two, three and four, the position of Foxy, and then, effectively, timetabling issues.

Are there witnesses who can be dispensed with or agreed? When should the parties be ordered to file and serve things like bundles and skeletons and a trial timetable, and then any issues as to costs. That's what I've flagged up as potentially needing resolution today. I don't know whether anybody had anything.

Mr Leathley: Your Honour, I don't dissent from that. I don't know about Mr Williams. That seems, with the deepest of respect, to be a succinct résumé of where we are.

His Honour Judge Petts: Good. Mr Williams, anything to add?

Mr Williams: Only this, the central issue is mode of trial.

His Honour Judge Petts: Yes, that was where I was proposing to start.

Mr Williams: Yes, because if you decide it can be tried by a judge alone then issues of particulars of claim and the contents of the present existing statement, very interesting issues, but a judge, I'm sure, could put to one side the inadmissible.

His Honour Judge Petts: Yes.

(claimant arrives)

Mr Williams: I'll let Mr Kirk sit down.

His Honour Judge Petts: Yes, good morning, Mr Kirk. Do come in. Do sit down.

Mr Kirk: They took off my lock knife. I had it at the job --

His Honour Judge Petts: I think you're best sitting directly behind Mr Leathley. We have --

A

Mr Kirk: I, I, I'm, I'm --

Mr Leathley: Because of social distancing --

B

His Honour Judge Petts: Yes.

Mr Leathley: Mr Kirk, if go behind me, that may, and I will slide my chair to take

C instructions. I will --

His Honour Judge Petts: Yes.

D **Mr Leathley:** I'll make sure you can speak to me.

His Honour Judge Petts: Thank you.

Mr Leathley: Thank you for coming.

E

Mr Williams: Your, Your Honour the, I think it's my application, in effect, so --

His Honour Judge Petts: Yes, shall I, shall I just explain --

F

Mr Williams: Yes.

His Honour Judge Petts: To Mr Kirk what he's missed so far? I've come in only a couple

G of minutes ago, so you haven't missed that much. I've identified that I've got the Defendant's position statement and Mr Leathley's response, the application by the Defendant and the application by you, Mr Kirk, and I've just set out what I thought were the issues, based on all the applications that we needed to do with, deal with today, and we were going to start with the issue of mode of trial. So, yes, Mr Leathley.

H

Mr Williams: I'm sorry to interrupt.

His Honour Judge Petts: Sorry.

A

Mr Williams: Before, just so that Your Honour is aware, if it should be necessary we have the six lever arch files in respect of the Defendant's evidence.

His Honour Judge Petts: Yes.

B

Mr Williams: If you should wish to see them, because previously courts have indicated that the next judge, it's always the next judge, will, can see these documents if they're required and sometimes all the papers in the, in the, that's been disclosed, but we decided not to bring

C the 17 lever arch files, but we have the statement files if you'd wish to see them.

His Honour Judge Petts: Thank you for that. We'll, if, if, if I think I need to look at the, the statements, which of course I won't have seen before today, we can deal with that at

D some point. Yes, Mr Leathley.

Mr Leathley: Your Honour, may I just for the record set out the White Book and the power pertaining to ordering jury trial --

E

His Honour Judge Petts: Yes.

Mr Leathley: In a civil procedure. First of all, the, the Civil Procedure Volume 1, I'm afraid I've still got the 2020 edition. I shall, obviously, get the 2021 edition, but I'm still using the

F 2020 edition. It's chapter 26.11(1) at page 901 of the Supreme Court Practice, or White Book.

His Honour Judge Petts: Yes, I, I've got it in the 2021 version. I don't think there's any

G difference.

Mr Leathley: I'm very grateful. I read into the record:

> **"An application for a claim, other than a claim for libel and slander**

H **to be tried with a jury, must be made within 28 days of service of the defence."**

That is a point, of course, upon which my learned friend, Mr Lloyd Williams QC, relies heavily in his position statement, that we are outwith 28 days. I don't think subparagraph (2) helps a great deal:

"A claim for libel or slander."

Which, of course, this, this isn't:

"Must be tried by a judge alone."

The footnote then takes us to the Supreme Court Practice, volume two, and the Senior Courts Act 1981, section 69, and the County Courts Act 1984, section 66, and annotations thereof, and it, in fact, refers us to Volume 2 of the White Book, if I may call it that.

His Honour Judge Petts: Everybody else does, so.

Mr Leathley: I'm very grateful. Trial by jury, I'm now looking at White Book Volume 2 - -

His Honour Judge Petts: Yes.

Mr Leathley: Your Honour, it's page 2,559 in my volume.

His Honour Judge Petts: I've got that.

Mr Leathley: However, the, or the paragraph is paragraph 9A/256, and it there appears, section 69 of the Senior Courts Act 1981 is annotated therein, subsection (1):

> **"Where on an application of any party to an action to be tried in the Queen's Bench Division the court is satisfied that the, there is an issue of a charge of fraud against a party or a claim in respect of malicious prosecution or false imprisonment or, (c) any question or issue of a kind proscribed for the purposes of this paragraph, the action shall be tried with jury unless the court is of the opinion that the trial requires any prolonged examination of documents or accounts, or any scientific**

or local investigation which cannot be conveniently made with a jury, unless the court is of the opinion that the trial will involve section 6 proceedings."

Now, one of the reasons why my learned friend, Mr Lloyd Williams QC, wanted to immediately set on the record 16 lever arch files from the Defence is that we perceive that their argument, that is the Defence argument, is that this is a document-heavy application.

I rely heavily upon, with the deepest of respect to that judge, the wisdom of HHJ Keyser QC at the previous case management hearing on 18 December 2020, in, in that he foresaw by his order that the exchange of documents, the, by the Claimant and the statement by the Claimant dated 9 October 2020, was within previous court orders by HHJ Beard and also by HHJ Keyser previously, and that the Claimant be estopped, having failed to apply for relief from sanctions, from overloading with witness statements two, three, four and five, and documents therein.

In fact, the Claimant's case can be placed in a dossier the size of my right hand, which contains not only his case, the transcripts, but everything served on 9 October 2020, ergo I would immediately argue within the spirit of the White Book Volume 2, section 69(1) of the Senior Courts Act 1981, this is not a document-heavy claim. The issue was, of course, tried by a jury in the Crown Court when Mr Kirk was acquitted.

Crown courts and juries regularly deal with issues pertaining to the Firearms Act of 1968. Juries have to deal with such issues as, is this a firearm within the legislation? Juries have to deal with issues, is this an imitation firearm within the legislation? And if it's neither of the above, juries have to consider, in the Crown Court, section 57 of the Firearms Act 1968 which states that something, notwithstanding it may not be a firearm, can be a firearm if any of the composite parts or components of a firearm present on an object.

But we pray in aid, as we did in our application before HHJ Keyser, before the case management hearing on 18 December, that this is not document-heavy and, indeed, although we dissent, with the deepest of respect to that learned judge, from streamlining, streamlining, forgive me, or curtailing the Claimant's bundle, we say that, in fact, it is not document-heavy.

Any attempt to make this document-heavy is rightly otiose and we do not see that the Claimant falls to be culpable of trying to make the case document-heavy by, in effect, wishing to present, as he wanted on 18 December, the fourth, four statements, now five statements, short statements, which, ironically, have now been placed before the Honourable Court by my learned friend for the Defence as exhibits. Quite why they have been exhibited, but it, it seems to me that, notwithstanding the order of HHJ Keyser QC of January this year, the Defence have put the Claimant's documents in, his statements.

So, first of all, without going into the next part of the case management, which is, how much of the Claimant's case stands or falls following case management hearing before HHJ Keyser QC on 18 December we say that, on behalf of the Claimant, this is not document-heavy. There is a statutory right enshrined in the Senior Courts Act 1981 to trial by jury. We also say that that is reciprocated in the County Courts Act 1984, section 66(3) and, as these are false imprisonment and malicious prosecution claims, there is a statutory right by Mr Kirk to his trial by jury.

Perhaps, if I may be forgiven for surmising, the Defence object on the basis that this is document-heavy, they say it's outwith the understanding and comprehension that they would believe a jury capable of but, in the alternative, in their position statement, the Defence are saying that this is simply not good enough. As I read to the Honourable Court, there is generally a 28 day time limit for raising the question of mode of trial and the 28 days by the legislation is activated from the date of the defence.

Your Honour will see that appended to the application that I've put before the Honourable Court there is appended a 2011 defence drafted by my learned friend Mr Lloyd Williams QC. It was included in the email sent to the Honourable Court yesterday morning. Does Your Honour have the defence appended thereto?

His Honour Judge Petts: I'm just double-checking. Yes, I think I do.

Mr Leathley: It's the ultimate paragraph, where my learned friend, Mr Lloyd Williams himself, states quite clearly that the matter has already been raised, and I quote my learned friend in his entirety. Perhaps I ought to read it into the record:

> **"The Defendant, in my response to my learned friend, I start by informing the Honourable Court that the Defendant avers no formal application has been made for trial by jury within 28 days of their defence in 2011."**

A

That simply is not the case and attached to this Claimant position statement is a document settled by my learned friend, Mr Lloyd Williams QC, dated 30 June 2011 which, by paragraph 9, states:

B

> **"It is admitted and averred that the Claimant has a right to request trial by jury."**

C

That is the enabling statutory provision that I've led Your Honour to:

> **"But the Defendant will aver that, given the complexity of the case, the interrelationship with existing actions and the number of documents which will have to be referred to in order for the matter to be fully investigated at trial the claims contained within the particulars of claim should be tried by a judge sitting alone."**

D

E

So Mr Kirk, albeit he was a litigant-in-person in those days, and albeit he's not as familiar, perhaps, with the process of N244s as, perhaps, would expect of a legally qualified person, did properly raise the matter and formalised the matter, and put it before the Honourable Court as long ago as 2011. Those who know Mr Kirk, and have had experience of his many court experiences over the years, know that practically on each and every appearance, like a mantra, he has asked for his statutory right to a trial by jury.

F

It is right, and perhaps this is something that the Honourable Court may wish to have regard to, it is right and it, it something that we have to live with, that the Claimant does have fixed views about Welsh judiciary, Welsh police and the fact that he honestly, whether mistakenly, but honestly perceives that he's not going to get a fair hearing unless his case or claims are put before a jury. In my position statement dated 6 May, final paragraph:

G

H

> **"It is true the Claimant has fixed views about the Welsh judiciary being in cahoots with the police. Win or lose, the Claimant may be**

more accepting of a judgment given by his peers rather than a judge who may be perceived as solitary, conservative and out of touch."

A

That is no disrespect to Your Honour.

His Honour Judge Petts: I've been called worse things.

B

Mr Leathley: This, I'm, I'm, I'm trying to empathise --

His Honour Judge Petts: Yes.

C

Mr Leathley: With the mind-set of my lay client rather than expressing a view that is my own.

D

The, that might just provide the Court and the Claimant with relevant closure, and Mr Lloyd Williams and I can assure the Honourable Court that Mr Kirk is the sort of person who, whatever the result of a trial, if it takes place in September of this year, and we're very grateful to the Honourable Court for giving us a slot so soon, what with the pandemic, we're very grateful indeed for that early opportunity for these matters to be aired, but Mr Lloyd

E

Williams and I could both, perhaps, attest to the fact that Mr Kirk, perhaps, may not accept the result of an adverse finding and would want to take the matters further. But if the matters were tried by a jury, he could accept judgment by his peers more readily.

F

Ergo, our position on mode of trial is, this is malicious prosecution, this is a false imprisonment case, amongst other things, and I'm coming to a close shortly and I'll allow my learned friend, there is an inalienable statutory right. It, it, it, it's something that he did raise as long ago as 2011. To dot the Is and cross the Ts, and be obsequious to the jurisdiction

G

of the Honourable Court, an N244 has been, for the sake of formality, lodged but this matter was raised in the documents as long ago as 18 December last year. It was revisited, and the trial is as long away as September of this year.

H

I accept that there are strictures placed upon all courts by the Covid-19 pandemic and I accept that the safety of members of the public having to come to this court, as well as court staff, judiciary and counsel, will be uppermost in Your Honour's mind, but I can speak from experience that, as of the autumn, certainly late summer of last year, jury trials have been

successfully conducted in both Swansea and Cardiff Crown Courts, where I practice. There have, to my understanding, been absolutely no health and safety issues.

A

We are in a stronger position because a large percentage of the population have had at least one AstraZeneca vaccination and, hopefully, a good deal more will have been vaccinated by the September slot that this case is allocated. I am, therefore, respectfully asking this

B

Honourable Court to grant a wish that Mr Kirk, according to the documents adduced by the Defendant, a, a, a wish that he expressed as long ago as 2011, not 28 days after the defence, even before the defence, so that the Defendant acknowledges the right in his first draft defence statement.

C

So this is of some antiquity and not something the Claimant has just spirited up to bedevil the court process at the eleventh hour. This has been on the record since 2011. I feel it would be prolix if I pressed the point. I am confident Your Honour understands the issue.

D

I'll be seated, unless I can be of further assistance on the point.

His Honour Judge Petts: No, thank you very much, Mr Leathley. Yes, Mr Williams.

Mr Williams: Your Honour, I'll try and be as brief as my learned friend is. I'll assume that

E

Your Honour has seen and read, and digested our position statement.

His Honour Judge Petts: Yes, that's right.

F

Mr Williams: And the law that's set out there. I'm a little puzzled as to whether the Claimant is saying an application has previously been issued or not.

His Honour Judge Petts: I think the way it's being put is that your defence in paragraph

G

whatever it is --

Mr Leathley: 9.

Mr Williams: Paragraph 9.

H

His Honour Judge Petts: 9, of the original version of events is, is obviously responding to something put in the particulars of claim, which referred to a right to jury trial. I, I, I haven't seen the original particulars of claim and, of course, they've gone for other purposes.

Mr Williams: Yes.

His Honour Judge Petts: And been replaced by the, the, the amended (sneezes) excuse me, but Mr Leathley's point, as I understand it, is we don't have to worry about whether an application was made within 28 days of service of the defence because, in effect, an application was made in the particulars of claim for a right to jury trial.

Mr Williams: Yes. Well, undoubtedly, there would have been something in Mr Kirk's particulars of claim referring to jury trial. It's somewhat inevitable --

Mr Kirk: Could, could, could, could I ask Mr Williams to speak up a little? I'm rather deaf.

His Honour Judge Petts: OK, yes, of course.

Mr Williams: Yes, of course. I accept that there was probably something in Mr Kirk's particulars of claim referring to jury trial, and paragraph 9 is in respect of, or in response to something that's been pleaded. It's important to note that what paragraph 9 doesn't say is that the Claimant has a right to trial by jury. What it simply pleads, it's the position then, it's the position now, is that he has a right to request jury trial. We're not acknowledging in that that he had, at that time, a right to jury trial, nor do we now at the moment accept that he has a right to a jury trial.

The factor that was raised prior to the defence ultimately is neither here nor there. Just take you to paragraph 78 of the position statement.

His Honour Judge Petts: Yes.

Mr Williams: Proscribed time for making an application for trial with a jury is set out in CPR 26.11(1), states:

"An application for a claim, other than a claim for libel and slander, to be tried with a jury must be made within 28 days of service of the defence."

A

The purpose of that provision was explained by Cranston J in *Gregory v Commissioner of Police of the Metropolis* [2014] EWHC 3922 (QB), which is referred to and no doubt Your Honour has seen and, in particular, [28] to [30].

B

The purpose is that, apart from the fact it complies with the rules, the thinking behind the rules appears to be that once the defence has been filed the claimant will know exactly what case the defendant is advancing, how much of the claimant's case the defendant is admitting, and what issues there are between the parties, and so therefore whether there is anything for a jury to decide, and that's why the time runs from the date of service of the defence rather than anything before the defence, or anything done 28 days after the defence. So he has a window of opportunity to make the application. He didn't do so.

C

D

That doesn't appear to be in any doubt. The document filed yesterday suggests, in the second line, I accept that it's capable of a number of interpretations, under the heading mode of trial:

"The Defendant avers no formal application has been made for trial by jury within 28 days of their defence in 2011. That simply is not the case."

E

I think that is the case, and I think that, well, the comments made by my learned friend this morning rather confirm it is the case, that no application was made.

F

His Honour Judge Petts: Does anyone have a copy of the, the original particulars of claim? I had a look on the, the court file and couldn't immediately find them but, as you can imagine, the, the court, the court file is rather large and difficult to navigate, being mainly held together with elastic bands.

G

Mr Leathley: Your Honour, I don't, it, it, it could be found but I don't think it's going to be found within the time constraints --

H

His Honour Judge Petts: I see Mr Oliver --

Mr Leathley: Of today.

A

His Honour Judge Petts: Is making a --

Mr Leathley: I simply, as you see, rely upon the, the fact --

B **His Honour Judge Petts:** Yes.

Mr Leathley: That the Defendants formally respond to it.

C **His Honour Judge Petts:** So there must have been something about it.

Mr Leathley: Yes.

D **His Honour Judge Petts:** Yes, thank you.

Mr Leathley: May I just simply say that Mr Lloyd Williams QC may be right. A formal application by this court is, these days, by N244 but I, I impress the point that we have a litigant-in-person and setting things on the record is formal within his idiom.

E

His Honour Judge Petts: Yes, thank you.

Mr Williams: I'm quite happy to accept there was something in the particulars of claim. I

F don't have the original particulars of claim and Mr Oliver might be able to track one down in the next few hours so that you have it chapter and verse, but I accept there must have been something in the particulars of claim. That doesn't meet the point, as I think my learned friend is now accepting, but because of the trenchant terms that it's said that there was, in

G effect, an application within 28 days, I simply take the Court to document 20, which was filed for the hearing before Judge Keyser at the end of last year.

His Honour Judge Petts: Yes.

H

Mr Williams: And it's undated, but it's headed:

> **"Legal submissions in support of the Claimant's right to trial by jury and his application for jury trial."**

A

And the last sentence of that is on page 2:

> **"The Claimant accepts these matters are placed before the Honourable Court more than 28 days after the service of the defence but the Court still, still retains a discretion."**

B

And we agree with that, it was put more than 28 days, in fact, more than ten years almost, since the defence was filed but the Court does ultimately, even when it's not filed within 28 days, retain a, a discretion. So there's no dispute about that. So, unless there is something that I've missed, and there is indeed a, an application lurking in the background, I'll assume for the moment, at least at the commencement of my submissions on the basis that there, there has been no application.

C

D

Mention has been made that Mr Kirk is a litigant-in-person. Mr Kirk almost has as much experience of the courts as I do, in terms of attending court and perhaps more recently attends considerably more than I do. The, Mr Kirk knows how the system operates. He represented himself when dealing with jury trial in respect of, in respect of actions one to three. He is aware you have to issue an application. In that case he represented himself, both below and above, before HHJ Jack, sitting as judge of the High Court, when an appeal was allowed and the original order for jury trial was overturned in those three actions. So he's aware of court proceedings and has represented himself in all courts in this land.

E

F

So, Your Honour, there isn't an application in time. The starting point must be, if we go to paragraph 79 of the position statement, I should say, I'm not going to take you through the provisions of the Act because it's there in paragraph 77.

G

His Honour Judge Petts: Yes.

Mr Williams: But 79:

H

> **"If an application is made within 21 days of service of the defence then there is a presumption in favour of a jury trial which can be displaced**

if, for example, prolonged examination of documents is required. The, however, however, if an application is outwith that time requirement then there is a presumption against jury trial and it's for the party making the application to persuade the court that the presumption is displaced."

A

B And then, this also comes from *Gregory*:

"The 28 day proscribed period cannot be extended by an application for relief from sanction pursuant to CPR Rule 3.1."

C

That's not to say that an application can't be made, but it can't be made so as to bring it within in the 28 day rule. So, for the moment, I'll assume that there wasn't an application in which case it's not within 28 days, in which case there's a presumption against jury trial.

D

We set out at paragraph 80 and 81 the well-known statement of Lord Bingham in the case *Right Hon Aitken MP v Preston & Ors* [1997] EWCA Civ 1710. I don't know whether Your Honour would wish me to read out what Bingham said, which is at page, paragraph 81.

E

His Honour Judge Petts: I, I've got it. I don't think I need you to, to reread it. I can just - -

Mr Williams: Thank you.

F

His Honour Judge Petts: Read, read it to myself.

Mr Williams: The, the ones, provisions upon which we rely are fairly obvious, but we'll turn to that in one moment. Guidance given as to paragraph 82 is *Gregory v The Chief, Commissioner of the Police*, and the learned judge, as Your Honour will have seen, takes us through the cases following on from *Aitken* and, dealing with a case, as I say, quite similar to the present case in terms of the litigant involved. That's at paragraph 84.

G

H

One matter I just want to deal with because it's been raised previously. In fact it's raised nearly every hearing at which Mr Kirk attends, the idea of bias plays any part in this. We have referred to the case of *Williams v Beesley* [1973] 1 WLR 1295 (HL) but I think in view

of what's now said in the, in the documents filed yesterday for the Claimant, it's worth going to the actual provision, or section of the judgment. It's by Lord Diplock and it's at page 1,299.

His Honour Judge Petts: Yeah.

Mr Williams: And this is at letter G, and it, it is worthwhile reading out, this out if I may:

> **"My Lords, in deciding whether a civil action ought to be tried by judge and jury instead of the usual mode of trial by judge alone, the duty of the court is to act fairly to all parties to the action.**
>
> **If that in the incident case all rational considerations point to the conclusion that trial by judge alone would involve a shorter and less expensive hearing, and would be likely, more likely to achieve a just result than trial by jury it would be the height of injustice to the defendant to deprive him of his right to have his case tried by the appropriate method merely because of the mistaken belief of the plaintiff, that judges, as a class, are more likely to be biased against him or in favour of his opponent.**
>
> **To allow the court's decision as to the mode of the trial to be swayed by the existence of such a belief by one of the parties, however sincerely it might be held, would be to acknowledge that there was some substance in it and that our system of justice lacks the firm foundation of impartial judiciary."**

So fairly trenchant terms in relation to the question of bias or a fear of prejudice against the claimant.

We go on then at paragraph 86, and I'm aware, Your Honour, that I'm taking this at a reasonable jog if there is anything you'd wish me to go over then --

His Honour Judge Petts: No, that's fine, I've --

Mr Williams: Then I can deal with it.

A

His Honour Judge Petts: As it happens, fortunately I didn't have a list on Wednesday so I was able to spend Wednesday in pre-reading a lot of the material that had been submitted to the court at that stage, so although I had hearings yesterday I had had some time on Wednesday to pre-read, which was helpful.

B

Mr Williams: Well, Your Honour, we, as an aside, we attempted to emphasise to the Court the importance of Your Honour having time to read the papers. Until last week the usual practice is that it be given to you half an hour before the case started.

C

His Honour Judge Petts: Yes, well I've --

Mr Williams: I'm pleased that that's not proved to be the case.

D

His Honour Judge Petts: Jumping ahead, I, one or either, one or perhaps both of you has, has made a comment that it would be good to, if I could, whenever the trial takes place, if I could arrange some pre-reading days, or pre-trial reading days for myself. That is a good idea and I must make, put that on my list of things to raise with the court administration whenever the, the trial ends up being.

E

Mr Williams: Yes, I, we, I think it's us. We've suggested a minimum time of not less than three days, but it may be, in view of the --

F

His Honour Judge Petts: I'll have to.

Mr Williams: Papers that you may or may not have to consider that you may require more than that.

G

(counsel confer)

Mr Williams: Oh, right. Thank you very much. I'm very grateful. I perhaps put it a little high as to what the Claimant was saying in his particulars of claim. It's at paragraph 80 of his original particulars of claim.

H

His Honour Judge Petts: Yes.

Mr Williams: And he says this:

> **"The Claimant retains his right for trial by jury and for a lawyer to read and amend this claim."**

That's, that would explain why I've pleaded it in the way that I have, that he does indeed, thank you, does indeed retain his right. We can email that to Your Honour if you'd wish to see it, but.

His Honour Judge Petts: No. No, that's fine.

Mr Williams: Your Honour, going back to paragraph 86:

> **"A. Absent there being an application for jury trial within 28 days of the serving of a defence the usual position in respect of trial, civil trials applies, in which case there's an overwhelming presumption against ordering a jury trial."**

Speaks for itself.

> **"B. This is a case where there is inevitably going to be a prolonged examination of many hundreds, if not thousands, of pages of documents which cannot conveniently be made with a jury."**

And we refer you there to, amongst other things, his original statement, that's the statement of 9 October, and then the exhibits at 19, which are the three additional statements that Mr Kirk tries to get in. So that's exhibit 17, with the statement of 9 October, and we then, as Your Honour will have seen, go through various matters, which, I'll put them all together in, in one way in one moment.

So we have C, prolonged examination of documents in re-examination to rebut allegations of wrongdoing on the part of the officers, and then, D, perhaps the most important one, that the usual rule in respect of a statement standing as the witness's statement and not having to

give evidence in chief won't apply, so the Defendants' witnesses will have to be examined in chief in the traditional fashion. I'd also add in with that the issue of the final submissions which have to be made, in particular final submissions on behalf of the Defendants, and I want to bring all those things together.

This is a matter involving, if you believe the Defendants' case, or if it might be true for the purposes of today, over a period of time in 2009, when they became aware of behaviour on the part of the Claimant which appeared to be linked with actions one to three, to put it lightly, the Defendants were concerned as to what the Claimant was about. There were the photographs of him with something which appeared to be a machine gun, prohibited weapon. There were posts made by him on his website which appeared to be threatening, or potentially threatening, seeking the names of, and addresses of the Chief Constable, civil and police witnesses and police authority, and there were various other actions by Mr Kirk which are set out in the amended defence.

The Defendants' officers say, in their statements, as I say, Your Honour can see them if you wish, that over a period of a number of weeks this information was collated by them, considered by them, as well as the telephone call by Foxy, that, having considered that information and considered the advice of the CPS, Mr Kirk was arrested, that when the gun, I'll call it a gun for the moment, there's lots of issues in, as to whether it is or isn't a gun but I'll call it a gun for the moment, when the gun was collected from Mr Cooper it was then taken to a number of experts in relation to firearms.

Those experts expressed a view about the gun. There were investigations with various establishments dealing with the rendering of the gun no longer useable, and that this was a long investigation into what, on any view, was a very serious matter. The Claimant says that's rubbish, that, in effect, the Defendants' evidence is concocted, indeed that the gun was interfered with not just as to how it appeared, in terms of the paint, but also the working parts were interfered with, that the investigation by firearms experts was concocted, untrue or they were examining a gun which had already been altered.

That police officers never believed that his posts on his website were true, or at least that they were threatening, or meant to be threatening, that they should have known that it was a joke. He says, as he has in his existing statement and in the three other documents which were, in effect, struck out by Judge Keyser, he will say that there was published material that

the police officers should have been aware of, which if they'd had in their mind, as they should have had in their mind, would have led them to conclude that this was not a prohibited firearm, or if it was then this fell into one of the exceptions, and the fact that they didn't acknowledge that shows malice in their, on their part.

So, it's a fairly wholesale rejection of the Defendants' case, which means, in effect, that the reams of evidence regarding logs which were produced by the police setting out actions they took, or actions they considered, the obtaining of evidence, the consideration of that evidence by this, by the officers was all made up at some stage. Regardless as to whether the Claimant wishes to cross-examine the officers on that material, and I'll, I'll come back to that point in one moment, regardless of whether he wishes to cross-examine on them, if this matter goes before the jury the police would wish to adduce that evidence in chief otherwise the Defendants' case will be incomprehensible to the jury.

It clearly won't be sufficient for a police officer to simply say, I was told A, B and C, and so decided to, to arrest Mr Kirk, and then we took the gun around and people said that it was a prohibited weapon. They would wish to say, or perhaps more properly the Defendant would wish, wish to put in front of the jury precisely what actions the police took. Once that, those documents are in play at trial then, necessarily, Mr Leathley has to cross-examine on them. It may not be the entire 13 lever arch files that the Defendant produces that the court will have to go to, but there'll be a substantial amount of those documents that the Court will need to consider.

You need to consider it in the evidence in chief, you'll need to consider it, undoubtedly, in the cross-examination and perhaps may need to consider it when we go through re-examination. There'll also be the need to consider it in final speeches. If we have a jury then, from the Defendants' point of view, I'd wish to take the jury to the individual documents, in effect saying to the jury, is this a lie? Is it a complete concoction from some stage in 2009 or 2010, or is it a genuine document? Does it follow in a logical fashion from the previous documents? Does it then continue in a logical fashion with the subsequent documents?

As we say in our position statement, it's an incremental approach that's required by the Defendant. This isn't a punch-up in a pub, it's not arresting someone for stolen goods, it's a prolonged and detailed investigation that this Court will have to consider and that a jury

would have to consider, and it's simply inconceivable that that wouldn't be required at this court.

A

Can I then revert to the, the Claimant's case? It's a little surprising that it's said by Mr Leathley, and he produces a very thin file to say that those are only the documents that he seeks to put before the Court. Your Honour will have seen the Claimant's statement, existing statement, and the three other documents produced before Judge Keyser last year. There are numerable references to documents such as publications issued by the Law Commission, directions given by various police organisations regarding firearms. There's the firearms legislation itself. All of which, it's said, the police officers should have had regard to.

B

C

Well, he can only say that and only establish his case if he puts that to the officers. So if Officer A says, on the basis of what I knew at the time I had reasonable cause to suspect that this was a prohibited weapon, and Mr Leathley, or Mr Kirk perhaps I should say, doesn't accept that, or thinks there are documents which, if they were being fair, that's the police officers, they should have had regard to and should have appreciated that it wasn't a prohibited weapon, and the fact that they didn't have regard to that shows malice, then that has to be put to the officers.

D

E

The important thing to bear in mind when dealing with this question of detailed consideration of documents is that it's not necessarily the amount of documents that's important, it's also the extent to which the documents are before the Court will require careful consideration. In this case however it's not just the amount of detailed consideration of the documents that's important, it's the sheer amount of material that require prolonged examination. Your Honour, if the Court is in, in any doubt about the relevance of these documents, then a perusal of the statements may be required.

F

G

The, we're dealing with events which are now, by the time we get on for trial, 11, 12 years gone by. As one might expect, the officers recollect very little of their day to day actions, of their considered judgments, of their view as to where they were at any particular time in this investigation. They can only give their evidence by reference to those documents. That won't come as any surprise to this Court. In doing so, the officers, if they're to be given a fair opportunity of answering these very serious allegations that are made against them, are entitled to refer to those documents.

H

One of the points made in the authorities is the question as to whether there is an attack upon someone's honour and integrity, this appears at the end of paragraph 81, it's in the heading, it's under the judgment of Lord Bingham, and it's in number 3, not Roman numeral but number 3:

> **"The fact that the case involves an issue of credibility and that a party's honour and integrity under attack is a factor for which should properly be taken into account but it's not an overriding factor."**

In this case, leaving aside the importance to the officers, and it is very important because it's clearly an attempt to pervert the course of justice if what is said is true, leaving aside the importance of that, the fact is that in dealing with the allegation they will have to refer to these documents. The next point, as I say I'm trying to take this through with the same spirit that Mr Leathley showed, which is to get through it more quickly than later, but, more quickly than slowly. But, as I say, if the Court is in any doubt we have the documents here and we can bring the bundles to court.

What is clear is, whether or not Mr Kirk wants to deal with our 13 lever arch files, he certainly wants to put his own four lever arch files and the transcript. Quite how that will be done remains to be seen, but they're the documents and he wishes to challenge what the officers say, both as to what they said in the witness box but also cross-examine them on what others said in the witness box. Whether he's entitled to do that is an issue which will have to be considered, but, in any event, that's what he wishes to do.

There's a further matter in terms of the investigation, prolonged examination of documents, and that's in respect of the scientific investigation, which is letter G of paragraph 86. Scientific investigation which cannot conveniently be carried out with a jury. You see, see his case that the weapon was one, not a prohibited weapon in that it was unworkable replica or a dummy gun or, which had been rendered unworkable, or 2, if it had been prohibited then it fell into the exception of weapons of historical interest.

Now, once again, there's an issue as to whether any of that is relevant at all in the sense that it's what the police officers reasonably thought they were dealing but nonetheless it seems to be case, Claimant's case that he wants to say it was definitely not a workable gun or it fell into one of the categories, one of the exceptions and the police officers should have known

that, and therefore they should have not proceeded with his arrest and certainly not with the prosecution.

A

That is clearly something which cannot be conveniently carried out with a jury, but it does require, apparently, on what the Claimant is saying, very careful considerations of the Act itself, Acts, I'm sorry, there's more than one, recommendations made by the Chief Police Officers Organisation, submissions made to a select committee of the Commons as well as general documents issued at that time by the Home Office regarding what should be regarded as a prohibited weapon or not. He can't just say, there's the material, what do you think about it? He's got to put these things to the police.

B

C

His case is that this was all subject to malice, he seeks to establish malice by saying, if you'd had regard to this material, which you should have had regard to, then you would have realised that this wasn't a prohibited weapon or it fell into the exception. In order to launch that attack upon the Defendant and upon the Defendant's witnesses he'd have to put the material to the officers.

D

Your Honour, we then turn on to H, the length of trial. Well, Your Honour, I know, sits in the Crown Courts and therefore has considerable knowledge as to the amount of time it takes a jury to consider issues, particularly difficult issues in respect of whether or not a gun is a dangerous gun. The trial in, in the civil, sorry, in the criminal proceedings of this matter took three weeks. It's difficult, bearing in mind the much more complex nature of a civil case, where they're asked to answer individual questions, which have to be properly formulated and put to them, it's difficult to see how it'll last less than three weeks, based on likelihood it'll last considerably more.

E

F

His Honour Judge Petts: Sorry, I've just been passed a note that someone's, a Mr Yule, has come to support Mr Kirk. But we're running out of spaces where he could sit. I think the only available place for him to sit would be sitting at the witness desk because we can't, we can't use the middle.

G

Mr Williams: Could you, could you sit over there? That young lady's a pupil, so perhaps if she sits over there and Mr Kirk's friend can sit behind him, or she can sit there, but.

H

His Honour Judge Petts: Yes, I, I, I suppose we probably, actually it, because, and this is no disrespect to her, as she's been sitting there we'd probably have to get it cleaned before somebody else sat there.

Mr Williams: Oh, right.

His Honour Judge Petts: You can't move in the Crown Court where I, in Caernarvon where I more regularly sit, without an usher spraying where you've just risen from. Probably the best thing to do is to ask Mr Yule to sit in the, in the witness box. Should, yes, OK, we'll do that.

Mr Williams: Shall I wait while he's brought in?

His Honour Judge Petts: Yes, just to avoid distraction and disruption.

Mr Leathley: I just have a suggestion, Your Honour. That chair has not been occupied. If that chair were placed against the back wall an even distance between Mr --

His Honour Judge Petts: Yes, that may be, that may be a good idea.

Mr Leathley: Adrian Oliver and the pupil, I think that would satisfy social distancing.

His Honour Judge Petts: Thank, yes, I think it would, Mr Leathley. Thank you very much for that suggestion.

Mr Leathley: Your Honour, Mr Kirk has requested a pen. I can see --

His Honour Judge Petts: Right, he's just passed, he's just been passed one, I'm pleased to say.

Mr Leathley: Oh, I'm, I'm very grateful. Sorry, I do apologise. Have you got paper? You've got paper, have you? I will --

His Honour Judge Petts: Mr Kirk, if Mr Kirk would like me to, to pass him some paper, I can nip back and get some paper for him.

Mr Leathley: I think he's all right. Thank you for very kindly, thank you.

A

His Honour Judge Petts: We, would you like some fresh --

Mr Kirk: Yeah, we're all right. We've got a lot to get through. I don't want any deviations.

B

Yeah, I'm fine, thank you.

His Honour Judge Petts: Are you sure? That's fine.

C **Mr Leathley:** You got to H, I think, Mr Williams.

His Honour Judge Petts: Yes, we're just, we're just, I thought Mr Yule was outside but he, he may be downstairs. Well, we'll, we'll carry on for the moment if that's --

D

Mr Williams: Yes.

His Honour Judge Petts: Yes. So, H about length of trial.

E

Mr Williams: Yes. It's inevitably going to last longer than three weeks. The, we set out in the position statement when dealing with the date of trial how a civil action in respect of a claim of this nature is dealt with, and Your, Your Honour will know how it works.

F So, as well as the traditional opening of the case to the jury and the calling of evidence, there then has to be consideration by advocates usually first of all to see if they can agree what questions should be put to the jury, then the learned judge has to decide whether he agrees with those questions, in particular whether he, he thinks that those questions do impact upon

G the legal issues which he has to decide, and that, even in a relatively straightforward case such as a public order matter, punch-up in a pub, to put it shortly, it can often take half a day. In this case, we don't know. We simply don't know what issues will be in dispute, save that it's probably everything.

H

Once that's done, there's speeches to a jury, there's then a summing up to the jury. Once their verdicts come in, it's not a straightforward matter in working out the result of that and the result of the findings of fact, and the Court is then addressed on matters of law arising

from that, and once the judge is giving judgment in that the same has to be done again in respect of damages. You can't have speeches on, certainly a case of this nature, speeches on liability and quantum together, it has to be separated because until you know what issues of liability the Claimant has succeeded on, you can't make any sensible submissions on quantum.

So, having a jury involved will cause unnecessary and disproportionate increase in the use of court resources and costs. It is a particular matter of concern in the present case. As we've pointed out elsewhere in the position statement, and we refer to it obliquely in paragraph H, we have an order for costs in actions one to three, which has been stood over pending this action, a very large amount of costs that need to be settled by the Claimant, and there is a very real risk that if we go the way through a long jury trial and Mr Kirk fails, or fails to any extent, that the Defendant will stand not only not having the costs of his actions one to three but not having their costs in this action either.

So anything that can be sensibly done to keep this trial within the reasonable ambit of what's appropriate for the proper allocation of resources and court time should be done. We also make a point at the letter I which we think is of considerable importance. In fact, it rather underlines a point made by Mr Leathley this morning, that this is a matter of importance to Mr Kirk. It's an important matter to the Defendants and the officers, or the former officers. The factual matrix is very complicated and in a nature, in a case of this nature the public interest would be best met by a reasoned judgment by a judge rather than the verdicts of a jury.

We have referred to above in the authorities where the need for a reasoned judgment is a matter of considerable importance and indeed, Your Honour, even in cases where the claimant has a right to a jury, in other words where the notice has been issued within 28 days of the defence, even then the courts are anxious to make sure whether or not a reasoned judgment would be better than a, a, verdicts from a jury which then have to be interpreted by the Court.

And, finally, this isn't the most important factor but it's nonetheless something we take into account, if the application's granted, the trial date must be vacated. It simply cannot possibly be heard within the two weeks so far allotted to that.

His Honour Judge Petts: Yes. I'm, I'm, I don't know whether any, I, I suspect not, whether any civil jury trials have been heard in this building since the pandemic started. My understanding is that there's only one courtroom usually used for --

Mr Williams: Yes.

His Honour Judge Petts: Civil jury trials, which is the, I forget the number, it's the one normally used by HHJ Mererid Edwards but, from my recollection of that room, that courtroom, the jury box, such as it is, wouldn't get anywhere near current social distancing measures.

Mr Williams: I think they're almost sitting on each other's laps.

His Honour Judge Petts: They are, yes. The, knowing what I, although I'm based in the Crown Court in Caernarvon and Mold, I, I know that the Crown Court in Cardiff has a considerable backlog and it's more difficult to run jury trials in, in, in, the building that is Cardiff Crown Court because not all of the room, not all of the courtrooms are available for use as jury trials and so I, I, I can't think that there would be capacity for us to take a courtroom in the Crown Court building for a case of this nature at the, at the present time because I suspect the resident judge and presiders would want to give priority to cases underway there in the criminal jurisdiction, particularly when they're, they've got issues of custody time limits in some of them.

So leave, if we don't hold this trial date I don't know when the trial could be, but that doesn't mean to say that if it should be by jury trial that, that the, it, as it were, it, it's, it's one factor in the mix. It's not a be all and end all.

Mr Williams: No, it, it's not unimportant though, Your Honour.

His Honour Judge Petts: No.

Mr Williams: Because if it has to go off and I'm sure we're all aware that Mr Leathley, of course, appears in the Crown Court, so it's late --

His Honour Judge Petts: Yes. In fact, he's, I've had the pleasure of Mr Leathley's company on a, on a few occasions, I think when I was still a recorder.

Court Usher: So sorry, Your Honour. I don't know where he is. They were bringing him up but --

His Honour Judge Petts: So he seems to be --

Court Usher: He seems to be delayed, so I just wondered if you wanted to rise for a few minutes or are you --

His Honour Judge Petts: No, well, we'll, we'll, we'll carry on. We've, Mr Leathley had the brilliant idea, which is that as and when Mr Yule arrives, if we put a chair for him up against the back wall --

Court Usher: There's a chair there.

His Honour Judge Petts: There's a chair there, the mid-way between the people on the back wall, then that should --

Court Usher: And we've got --

His Honour Judge Petts: Keep, yeah, that should keep him sufficiently far away from everybody for everybody's safety.

Court Usher: Yeah.

His Honour Judge Petts: Yes.

Mr Williams: Your Honour, we know that there's a, a large backlog of trials in the Crown Court and when that's going to be sorted out remains to be seen, but it's not likely to be until mid-next year, if then. That means that if we can't fit this case into those two weeks, because we're going to, the Court is considering a jury, then it adds perhaps another year to this case before it eventually gets on to trial. We are dealing with people's recollection of events.

They'll be placed, to place even more reliance upon the documents. It's one year removed from these detailed events which took place.

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His Honour Judge Petts: Although the, the point the other way is, when we're dealing with matters that are 12 years old, what does it matter if we're dealing with matters when they become 13 years old?

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Mr Williams: Well, that isn't how my memory works, but maybe, maybe some people's memories do indeed reach a stage where --

C **His Honour Judge Petts:** But --

Mr Williams: After 12 years there, it's the same for the next 20 years. I, I venture to suggest it's not and as time goes by people's memory deteriorates and if it's difficult now after 12 years it's going to be more difficult at 13 years. I think that's a legitimate point to be made.

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His Honour Judge Petts: Yes.

Mr Williams: And it is something the Court can take into account. Your Honour, those are the points we make in, if the Court's approach it on the basis that the presumption is against a jury trial because the application wasn't made within 28 days of the defence. They are the same points we make if the Court concludes that that application in some way, which we're wholly unaware of, was made within 28 days.

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We rely upon all those factors and, indeed, the only additional matter we'll, we would point out, and it's dealt with in the authorities, is that even in cases where there is a right to ask for a jury trial and, on the face of it, a right to a jury trial, the general movement is away from jury trials, and we know that from the authority of *Aitken* and from the authority set out by Cranston J in *Gregory* at [82]. So even when there is, in the face of it, a right to a jury trial the basic approach of the court is to consider that in general drift, is against there being a jury trial.

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Your Honour, unless there's any particular matter you wish me to deal with, those are our submissions, much truncated but put before you.

His Honour Judge Petts: Thank you.

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Mr Leathley: May I just come back on some of the matters?

His Honour Judge Petts: Yes, I think Mr Kirk is just passing something to you.

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Mr Leathley: Thank you very much, Mr Kirk. Your Honour, when I first addressed you and took you to Volume 2 of the White Book, section 69(1), I read into the record that a, a claim in respect of malicious prosecution or false imprisonment, jumping, the action shall be tried with a jury. My learned friend, very properly and fairly, in his defence dated 30

C June 2011, echoed the phrase, a right to request trial by jury.

The authors of Blackstone's Civil Practice, the commentary, I've only got 2020 edition, has at chapter 60, trial by jury. It reminds the Honourable Court of the statutory rights to trial by jury. That is the phrase, statutory rights to trial by jury. The Senior Courts Act 1981 is

D therein set out, section 69(1) and, again, it sets out that where there is a malicious prosecution or false imprisonment there is a right to a trial by jury. The County Courts Act 1984, the editors go on, section 63(3), is in essentially the same terms for County Court proceedings.

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The result is that the, and I emphasise the phrase, right to a jury trial only arises to claims, only arises to claims proceedings in the Queen's Bench of the High Court and County Court, and not for Chancery Division matters. Claims may be transferred to the Queen's Bench Division for the purpose of securing trial by jury if appropriate. Note also that the right, and

F again the phrase, right to trial by jury, in fraud cases is only available to the defence but that either party has a right to a jury in claims for malicious prosecution, false imprisonment. It then goes on to define fraud for the purpose:

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> **"In considering whether the proviso of the Senior Courts Act 1981 section 69(1) applies, according to *Phillips v The Commissioner of the Police of the Metropolis* [2003] EWCA Civ App 382, or [2003] CP REP 48, three questions must be asked. A, would there be a prolonged examination of documents or any scientific investigation?"**

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The answer is no, there would not be prolonged scientific investigation documents. The Firearms Act is short and to the point. None of the firearms officers made statements in

excess of ten pages, *Huxtable*, *Ridyard*, and in terms of the complexity of having to enunciate in front a jury it would simply be that these witnesses would have their original section 9 Criminal Justice Act 1967 statements, as formulated in 2009 and used at the trial in 2010, put to them and they would simply be asked, is that your statement?

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It would be taking seconds to read into the record and, and they could then be asked, and did you say as much in oath? If they say no, I said something different, then what they said during the trial is transcribed. So, essentially, this is set in cement. The whole point of Mr Kirk's case is, what they said damned him and damned him unfairly. The putting of these technical issues could be done by putting their statements. But going back to Blackstone's:

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> **"Would there be prolonged examination of documents or any scientific investigation?"**

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No:

> **"If so, could the examination be conveniently made with a jury?"**

Yes, and of course it was made at Cardiff Crown Court in 2010, in the criminal jurisdiction:

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> **"If not, should the court nevertheless."**

So notwithstanding A and B:

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> **"Nevertheless there is a discretion to order trial with a jury."**

Over the page, *Oliver v Calderdale Metropolitan Borough Council* [1999] The Times 7 July 1999, in that case, Your Honour, it was said:

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> **"As a secondary ground for refusing a jury that a substantial dispute between experts dealing with the psychological effect of an alleged malicious prosecution rendered the case unsuitable for trial by jury."**

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At the case management hearing on 18 December 2020, HHJ Keyser QC categorically rejected the suggestion that the defence availed, the Claimant, forgive me, avail himself of a

defence expert in firearms. So that this is not a case where one expert for the Claimant will play off against, if you'll forgive the inelegance of that phrase, play off against one expert or a number of experts for the Defendant, and so, with the deepest of respect to my learned friend, Mr Lloyd Williams QC, and that is not said lightly, his, his, his eloquence, with the deepest of respect to that gentleman, is, was, frankly, and a little bit more succinctly put way back in 2011, when he said:

> **"It is admitted and averred that the Claimant has a right to request trial by jury but the Defendant will aver, given the complexity of the case, the interrelationship with existing actions, the number of documents which will have to be referred to in order for the matter to be fully investigated at trial, the claims contained within the particulars of, of claim should be tried by a judge sitting alone."**

With the deepest of respect, we have not, in visiting the issues today, presented any change since June 2011.

I simply say this, that causing the Defendant police authority to instruct a prestigious firm, not said with any cynicism, of Messrs Dolmans, in turn instructing a prestigious Queen's Counsel, not said with any cynicism, Mr Lloyd Williams QC, to settle that defence of 30 June in 2011 and enter it in the court record, it is difficult to deprecate that this was, or, or, or divert, forgive me, from any suggestion that this was not a formal application when Mr Kirk pleaded he retained his right to a jury trial, and I'm very grateful to Mr Adrian Oliver for, very helpfully, flagging up the original pleading on his laptop, and I'm much obliged to him for that. It, it's a right.

There are practical difficulties, I have to concur, with the Covid pandemic. I am not as familiar with this honourable court's available amenities as Your Honour. However, I have experience of the civil jurisdiction making use of criminal courtrooms. I know, for example, that in Swansea there is available to the Crown Court there the council chamber of the Civil Justice Centre and that is a huge open area and is being used as a Nightingale court. There are many facilities, with a bit of give and take and a little use of the imagination, that could, in fact practice social distancing.

Now, as lockdown rules are lifted and there is optimism and prognoses that June and July may see a considerable return to normality, pending vaccination of our populus, I ask rhetorically might not we be forgiven for extending that optimism to September 2021? Indeed, as present scientific evidence is, is leading us to believe, it may be that social distancing is no longer applicable in September of this year, but --

His Honour Judge Petts: If we were to try and have a jury trial in September, how long do you think it would last?

Mr Leathley: I, I, I disagree with my learned friend and I, I, I, with the deepest of respect to him, and this will upset Mr Kirk, who is behind me, but it, it's in his interests that I upset Mr Kirk behind me. The position in 2009 and 2010 was that all witnesses had to give their evidence orally examined, whereas I'm suggesting that, as the, the, the layout of the case as set, set in cement, like Langan's Chinese Brasserie, set in cement, it is our case that what they said could be put to them and then we move on with peripheral questions.

We will have counsel. Now, with all due respect to Mr Kirk, he was operating as a, a defendant representing himself, in very difficult circumstances, and because of that process the examination of witnesses became extremely complicated and, no disrespect to Mr Kirk, complicated through his making. One only has to read some of the transcripts which are, are annexed to the way the Claimant served his case in 9 October of 2020 and some of it makes for nonsensical reading, and so, in answer to Your Honour's question, I can't see this case lasting more than 15 days.

His Honour Judge Petts: Well, there's a difficulty straightaway, which is that Mr Williams and his junior are available for two weeks at the start of September but then are committed to the part heard infected blood inquiry beginning in week three.

Mr Leathley: Well --

His Honour Judge Petts: And I, I, so --

Mr Leathley: Well, then, then I will truncate it to 14 days. I'm optimistic that the, the, the Claimant and the Defendant can concur and put by agreement the essence of a transcript, for example. You would not have to have the jury sit through a transcript in real time. A witness

would simply have put to him, did you not say at the trial in 2010 this was a machine gun? No, I didn't. Well, look at transcript page 56. We can move very quickly, if this is a trial regulated by one of Her Majesty's judges, with, and a jury, and two counsel.

I, I, I, and the precedent is that we, we managed it in 2010, even with Mr Kirk, who was suffering considerable disability, interrupted because he didn't have papers, interrupted because he was hard of hearing and interrupted because he didn't understand such things. He also had to be taken to one side, in the nicest possible way, about breaches of etiquette and one is hopeful that that will not be revisited upon counsel in this case.

Mr Kirk has written:

"I promise, no more than 14 days."

Mr Kirk knows his case.

His Honour Judge Petts: Yes.

Mr Leathley: So we can work within --

His Honour Judge Petts: Well, we've got ten, that's the difficulty.

Mr Leathley: We can work within the stream, the, the diary difficulties of my learned friend, Mr Lloyd Williams QC.

His Honour Judge Petts: Yes. Anything further, Mr Leathley?

Mr Leathley: Not on mode of trial.

His Honour Judge Petts: No, thank you very much.

(judgment given)

Mr Leathley: Well, may I thank you for that, Your Honour --

His Honour Judge Petts: Yes.

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Mr Leathley: And the time you've obviously put into that judgment, with deepest of respect. Your Honour, moving on to the second plank of N244, HHJ Keyser QC, following a case management hearing on 18 December, made an order referencing the statements that Your Honour has indicated, very kindly, he's read, to whit the second, third and fourth Claimant's

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statements, and it's about the second, third and fourth statements by the Claimant that the second application is made.

This is not, with the deepest of respect to the case management of HHJ Keyser, an attempt

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to go round his order. In fact, we say that it's implicit that his order proscribe the application I now make as regards the ability of the Claimant to serve two, three and four statements, for the order of HHJ Keyser dated 27 January 2021 says:

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> **"It is ordered that the Claimant's application for relief from sanction imposed by paragraph 1 of the order dated 30 May 2019 be and is refused.**
>
> **2) The Claimant be and is not entitled to rely on any witness statement other than his own witness statement dated 9 October 2020 and signed on 10 October 2020, except with any permission that might hereafter be given on application."**

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And I stop there. In other words, it is explicit in paragraph 2 of HHJ Keyser's order that permission can be sought as regards two, three and four statements by the Claimant, and it is this very concern for case management and the very issues of complexity that my learned friend for the Defendant has led Your Honour to, that, in my respectful submission,

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necessitate and constrain the Court to allow the Claimant to put those subsequent statements in the, into his bundle, for this reason.

Without going behind the application for relief from sanction, the historic basis of the lead-

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up to a disclosure in October 2020 of the Defence documents was that the fact that the Claimant found himself incarcerated. That is not, in any way, revisiting the relief from sanction point but he was only released during 2020 and he, he was, I hear, I, I may have got that wrong.

(counsel takes instructions)

Mr Leathley: Yes. I'm very grateful to Mr Kirk. I haven't misled the Honourable Court. He came out of prison in July 2020. I know from personal communications from Mr Kirk in letter form, and from his sister who lives in Guernsey, Celia Jeune, that Mr Kirk had an exceptionally hard time. He, he says, and I have no reason to disbelieve him, that he was deprived of his case papers and didn't really know what was going on in the outside world. As I say, to prolong that submission longer will be to revisit the application for relief from sanction that has failed.

Suffice to say, as was put before HHJ Keyser on 18 December last year, the inception date of the Claimant, Claimant's ability to make a meaningful submission about why he perceives he's the victim of a malicious prosecution can only be when the Defendant, to use the vernacular, put all their cards on the table and gave insight into the dossiers that comprised the disclosure of 10 October 2020 and what Mr Kirk seeks to do, and one considers case management of the trial, he, he, he has made a submission that such and such a document enforces such and such a part of his particulars of claim or his pleadings, and says this is in support.

Now, I ask this Honourable Court rhetorically, if Mr Kirk doesn't rely on the, or can't rely on those documents, or he, he stands alone one wonders how, with the case management as it stands, he can possibly be steered onto these points or necessarily how they can be introduced as part of the Claimant's claim.

His Honour Judge Petts: Well, isn't the answer, and I, I put this to you for your --

Mr Leathley: Yes.

His Honour Judge Petts: Consideration, the witness statements are meant to contain evidence --

Mr Leathley: Yes.

His Honour Judge Petts: Rather than, for example, legal submissions or commentary --

Mr Leathley: Yes.

His Honour Judge Petts: On documents --

Mr Leathley: Yes.

His Honour Judge Petts: Or argument or submissions, and so that, in, in, to the extent that his second, third and fourth statements contain analysis and submission, and quotations from documents with his emphasis and his explanation as to what that shows, the, they, they are all points that can be made either in cross-examination of defence witnesses or in, in submissions.

Mr Leathley: If that is Your Honour's view then so be it. My difficulty is that, for example, as frequently happens in the civil court, rather than take a witness through his evidence the practice more commonly has evolved that a witness is shown his or her affidavit. Is that your affidavit? Yes. Do you say it's true to your best of knowledge and ability? Yes, and then the person is cross-examined.

By that process there can be a steer away from Mr Kirk emphasising that the disclosure in October 2020 in fact enforces everything that he's ever said in this action and, of course, by the Defendant asking questions he can be steered off the point and, and so it's my respectful submission that perhaps those statements could be served as part of a Defendant, Claimant bundle, possibly with the submissions about the law redacted.

In other words, for example, Mr Kirk be permitted to say, I've just seen in lever arch file 16 a statement of Suzanne Hughes and I, I, I, I, this is by way of a colourful illustration, it says, we must get Mr Kirk at all costs, if necessary fabricate evidence that he has a machine gun. In that colourful example, for example --

His Honour Judge Petts: Yes.

Mr Leathley: He, he cannot, in all fairness, within the spirit of CPR Rule 1 be estopped from relying upon that document if such a document has been shown to him and it exists.

His Honour Judge Petts: Well, isn't the way to put that document in, if, if that witness is being called the document can be put to the witness and, and asked, the case that he has on that document put to the witness and saying that you were clearly here part of a conspiracy to pervert the course of justice and fit up Mr Kirk, weren't you, or words to that effect, and, and/or it's a document that could be relied upon in, in closing submissions.

Mr Leathley: I take Your Honour's point and, of course, a lot of this hinges upon one of the tertiary matters in this case management hearing and that is what witnesses are going to be called. Of course, if a witness stands before an advocate in any form of litigation their previous deponent statements and exhibits can then be put to them. So, in some ways, I am better advised, with respect, by Your Honour that this can be assuaged by having the right witness and the right document put to that witness.

His Honour Judge Petts: Well, I, I've, I've seen a long list of witnesses whose, from whom statements have been taken for this litigation. As some point, as, as you say, the, the, the tertiary aspect of today is, is, even if we don't work out which witnesses are needed, setting up a process to enable that to be agreed in due course so that a trial timetable can be drawn up. But if there are witnesses to whom Mr Kirk would wish you to put documents or allegations then, and you using your professional duty consider that these, these are proper allegations that, that can be made to advance the, the case as, as, as pleaded, then, then no doubt that would be a witness who you, you don't agree to dispense with, to put it in a double negative.

Mr Leathley: Well, I follow Your Honour's reasoning. May I just say that one of the criticisms of Mr Maurice John Kirk, Claimant, by the Defence was that he's kept things rather close to his chest and not disclosed his case?

Statements two, three and four are, are a, a full and frank analysis of the strength of the Claimant's case and the weakness of the Defendant's case in his opinion. Now, of course, that's for the, a matter for the Honourable Court to decide but it is Mr Kirk's position that the disclosure has not assisted the Defence, Defendant, and has assisted him, and in the spirit of fairness he should be allowed in, in chief, to, to put these matters, lay them out in his depositions, for want of a better word.

There is another point and that is this. One does not know, with the history of Mr Kirk, what will happen in September 2021. More recently he has been diagnosed with a serious heart condition and was hospitalised very recently.

His Honour Judge Petts: I'm sorry to hear that.

Mr Leathley: Well, you, Your Honour he's, he's here today --

Mr Kirk: All due to the South Wales Police.

Mr Leathley: All right. All right, all right, all right. Yeah. The, the position is that I don't know what sort of a witness Mr Kirk will be in September. I use the phrase that lawyers use, I don't know whether he will be fit to stand, fit to conduct a trial and in some ways requires the aide memoire of this statement and those drafted which comprise statements two, three and four.

I'll return to the interesting point that Mr Kirk has made just then and it falls within the chronology. Now that there is a judge and matters of perhaps greater complexity in the context of this particular claim can be opened up and looked at, has Your Honour read the chronology which sets the placing of claim 1CF03361, the machine gun case, within its timeline?

His Honour Judge Petts: I think, yes, I think I have. I've, I did my best to read all the --

Mr Leathley: Yes, I'm grateful.

His Honour Judge Petts: The documents in advance, although I can turn it up if, which chronology is, is the chronology from the, just before the December hearing last year?

Mr Leathley: Yes, the, the chronology was in, in fact, well, it was, the chronology is dated 20 June 2020 and was actually written to assist the Crown Court in Exeter --

His Honour Judge Petts: Oh, I, it, my, my mistake. Is it a, a chronology from Mr Kirk himself? Yes.

Mr Leathley: No, it was actually, I, I wrote the chronology.

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His Honour Judge Petts: On behalf of Mr Kirk, yes.

Mr Leathley: Yes.

B **His Honour Judge Petts:** Yes. I've got that.

Mr Leathley: It was actually written on behalf of Mr Kirk, who is representing himself in the Crown Court at Exeter on Monday of next week, but I've endeavoured to assist. I was
C instructed, as was a solicitor, but Mr Kirk is representing himself now. But the context of the particular matter before Your Honour, the index claim, is therein set out and the, the context therefore is very important because what Mr Kirk says through me is that the machine gun claim 1CF03361 is but one head of the gorgon, the mythical beast, and that
D that, that gorgon is the South Wales Police.

His Honour Judge Petts: Or is it the Hydra? The Hydra is the one where you cut off --

Mr Leathley: I think the gorgon is the snakehead.

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His Honour Judge Petts: The gorgon, the gorgon's the one that turns you to stone if you look at it, I think.

F **Mr Leathley:** Right.

His Honour Judge Petts: The Hydra is the one where you cut off one head and two heads grow in its place.

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Mr Leathley: All right, well --

His Honour Judge Petts: It, it --

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Mr Leathley: Well what's the, what's the mythical beast with a, the snakes for hair, Your Honour?

His Honour Judge Petts: Medusa.

Mr Leathley: Medusa, thank you. Medusa, not Hydra. The, I'm, I'm properly corrected on my --

His Honour Judge Petts: I, I think I've got the gorgon wrong, but --

Mr Leathley: Classical Greek mythology. The position is that Mr Kirk does not make an unreasoned stake for the fact that he has been, for want of a better term, handicapped in the conduct of 1CF03361 by the various events visited upon him. He is adamant that they are not misfortunes and that they're not a series of unfortunate events. They are, in effect, the overarching conspiracy, and I know Mr Lloyd Williams will gleefully grab that phrase with both hands and say that this has been the subject of a judgment by HHJ Seys-Llewellyn QC in actions one, two, that predate this action.

But the position is that Mr Kirk has been through some rigours. I, I, I do actually have involvement in all of them. I first met Mr Kirk personally in 2009, when I was commanded by the former Recorder of Cardiff, HHJ Nicholas Cooke QC, to see if Mr Kirk could be assisted by legal representation in the machine gun case. Mr Kirk didn't want my services when I visited him in Cardiff prison because he, he wanted a civil lawyer and, and I was not holding myself out as a civil lawyer to his satisfaction, so conduct one, the, the, the case with the, with, with the case reference BS614159, and that was some, he, he wanted a lawyer who was up to speed on BS614159 rather than the machine gun case and by that dint he's suffered a, a, a number of incarcerations ever since.

It, it, it is the point within the timeline that even now, 7 May, he is being bedevilled by South Wales Police. The latest bedevilment, which isn't in the chronology but as I've alluded to the Exeter case, is that he wrote from his incarceration, during the period wherein he sought relief from sanctions before HHJ Keyser QC, he wrote to an MP in Taunton called Rebecca Pow from prison. He has now been indicted with sending her a noxious substance in the post, to whit a letter in his somewhat spidery handwriting with, I think, Eucryl toothpowder.

It's been suggested that the Eucryl toothpowder stuck to the letter was, in fact, a noxious substance. I believe, and I'm going to be corrected, because I don't have involvement in that case, but they've dropped the noxious substance, haven't they, Mr Kirk?

Mr Kirk: Yes.

Mr Leathley: Yes. So, having charged Mr Kirk with the somewhat melodramatic charge of sending a noxious substance to an MP, Mr Kirk now finds himself facing a single allegation that, by writing to Rebecca Pow, he has somehow contravened the non-violent offence enshrined in the Protection from Harassment legislation 1997. As I say, I don't want to digress but there is a view of a number of people outside this court, and Mr Kirk's fame is considerable, that South Wales Police are, in fact, trying to nail him to their cross and it is to, effectively, hobble his action in the machine gun case.

And in that chronology I set out BS614159. Now, in fact, Your Honour, I, I take two perspectives here. My learned friend, in his position statement, alluded to what, how at some point there was a Bristol involvement in Mr Kirk's claims, one from HHJ Chambers QC and one from HHJ Ray S Jack QC. In fact, Mr Lloyd Williams QC alludes in his position statement to what His Honourable, His Honour, sorry, Judge Ray S Jack said. In fact, I have attached to the application that as regards the claim BS614159, and I accept that Mr, Mr Kirk has, as a matter of record, res judicata, failed in his overarching conspiracy, even though he won three of his 33 claims.

But during the conduct of, of, of case management of that matter HHJ Jack did actually say in Bristol Crown Court:

> **"It is pretty remarkable tale, if there is any truth in it. I am voicing a little disquiet. Just look at the number of incidents. One asks what is going on?"**

Mr Leathley: I, I, I --

His Honour Judge Petts: I think we're drifting slightly from the point --

Mr Leathley: Yeah.

His Honour Judge Petts: Which is that we, should he have permission --

Mr Leathley: Well --

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His Honour Judge Petts: Under CPR 3.9 --

Mr Leathley: Yes.

B **His Honour Judge Petts:** To rely on, on these, these three statements?

Mr Leathley: What I simply say is that Mr Kirk has, throughout the years, carried a lot of baggage and I wonder, I question, rhetorically, whether the baggage is necessarily of his own
C making. Mr Lloyd Williams QC has a, set out the supposition that a lot of these BS prefixed claims were of Mr Kirk's own making and Mr Lloyd Williams QC has expressed the view that Mr Kirk would tease the police and have spirits and alcohol from his practice as a vet so that the police, espying him in a motor vehicle, would smell alcohol and, and breathalyse
D him. One asks rhetorically where on Earth Mr Lloyd Williams QC gets that from.

Certainly not from Mr Kirk. Who else was in the vehicle? Who espied Mr Kirk dousing himself in alcohol so as to be falsely breathalysed and encouraged that? And so what I'm simply saying to Your Honour is that, in the spirit of HHJ Jack QC, how on Earth is Mr Kirk,
E a postilion struck by lightning 33 times in the BS case, struck by 1CF03361, that is timed in 2009 before BS prefixed claims came to court, how is it that he is a postilion struck by lightning again? And I'm moving on to points that the Defence raise, the Defendant raises, forgive me, about previous rulings about MAPPA and, and, and previous rulings by this
F Honourable Court about overarching conspiracies.

But what I simply say for the moment, without trespass into res judicata, looking in their context, the amount of baggage Mr Kirk has had to carry, the amount of hardship he has
G undergone, he, he has even suffered a number of hunger strikes in prison over his legal papers being taken from him, over being deprived of a wheelchair, over the fact that when he appeared before the Parole Board, and, and his sister, Celia Jeune, a former justice of the peace who lives in Guernsey has made evidence, not before this Honourable Court, to the
H effect that she attended parole hearings when Mr Kirk was incarcerated for, I would respectfully say, spurious allegations of breaching a Restraining Order, a Restraining Order visited upon him in consequence of 1CF03361, in consequence of his, his remand on

1CF03361 and in consequence of him being remanded to Caswell Clinic and meeting Dr Tegwyn Williams.

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Now I know Mr Lloyd Williams QC is very eager to speak about this as part of his application before Your Honour, but I simply say, let's look at this in context. This man has suffered an awful lot and unless he has the guide or the braille of Claimant's statements one, two, three and four I ask rhetorically, having recently been in hospital and diagnosed with a serious heart condition, is he going to be up to speed by September of this year, and does he not need the guidelines of his deponents, his witness statements, where he puts before the Court that he's seen a document in a Defence file?

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My learned friend, if we redact analyses about law, which I accept are for counsel, my learned friend can't really resile from that position because he served the document. HHJ Keyser QC doesn't resile from that position because he says Mr Kirk can rely on any document that the Defendant has served. Well, that's all he's doing in statements two, three and four. He's saying, I'm seeing a document, that proves paragraph 2 of my claim. I see another document, well that's more of the same. It's, it, it, it, it's wind in my sails. It, it, it goes to what I am saying. It proves the point.

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And in terms of streamlining the conduct of this trial, I, I, I am not entirely sure that, unless he's permitted to incorporate some kind of admissible commentary about what's in the Defendant's disclosure, he could even be in a position to close his case and for the Defence to successfully say there's no case to answer because it's not been adduced. To, to do it my learned friend's way is for Mr Kirk to have to wait for the Defendant to serve up the opportunities to adduce statements which are unused, which lie in the long grass, metaphorically, until introduced by him.

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So, in fact, it's with an eye to case management and streamlining that Mr Kirk made these statements, and he puts the Defence on, Defendant, forgive me, thoroughly on notice about how hopelessly weak their position is. It's astonishing, Detective Constable Suzanne Hughes, and anybody can tell from the file that her attendance notes have recently been retrospectively forged, and you don't have to be a handwriting expert, it's bristling with rottenness in the woodwork, so to speak. It's full of --

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His Honour Judge Petts: Mr Leathley, those, those, those aren't, those aren't matters I'm, I'm going to deal with today, are they?

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Mr Leathley: Well, no, what I'm --

His Honour Judge Petts: What the issue is --

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Mr Leathley: Yes.

His Honour Judge Petts: Should, under CPR 3.9, as interpreted by the Court of Appeal --

C

Mr Leathley: Yes.

His Honour Judge Petts: On various occasions, most recent, the most importantly case of *Denton & Ors v TH White Ltd & Ors* [2014] EWCA Civ 906 --

D

Mr Leathley: Yes.

His Honour Judge Petts: Should the Claimant have relief from sanction and be allowed to rely on these three witness statements?

E

Mr Leathley: Well, Your, Your Honour, I say yes because he was in prison and not in a position to deal with the directions of HHJ Beard in early 2020, or the directions of HHJ Keyser that predated the case management in December, and, in fact, HHJ Keyser, by paragraph 2 of his order, has explicitly invited permission for him to make the application I now make. Of course he, he must. May I just read the second statement --

F

His Honour Judge Petts: No.

G

Mr Leathley: Into the record?

His Honour Judge Petts: Please, we're, we're, we're, we're nearly 12.40 --

H

Mr Leathley: All right.

His Honour Judge Petts: And we've dealt with one application.

A

Mr Leathley: All right.

His Honour Judge Petts: And I, I know both of you were anticipating we'd get through things, but the, the, the question of whether relief from sanctions should be granted is not
B going to be helped, in my view, by being asked to re-read parts of the statement. I've already read it.

Mr Leathley: I, I'm very grateful then. In fact, I won't trespass further. The, the position
C is that Mr Kirk has been repeatedly arrested on, on, on spurious matters. One matter before the second Recorder of Cardiff, who's had conduct of Mr Kirk's case, HHJ Eleri Rees QC, concerned the suggestion that Mr Kirk threatened a tenant of his, a Mr Davenport, by drawing his finger across his throat in a vehicle menacingly. That was utter rubbish and was
D thrown out, but not before Mr Kirk suffered a considerable sojourn in custody.

He has been in custody again for the Exeter matter, where all he's simply done is written to an MP holding herself out as having surgery for people with grievances and axes to grind from prison and splattered his correspondence with Eucryl toothpowder, so he gets charged
E with sending a noxious substance. I say to this Honourable Court that this is ongoing conduct designed to kill Mr Kirk before 1CF03361 reaches trial, and that if you read the chronology very carefully Mr Kirk, and the MAPPA meetings, expressly formulate that at one stage, rather like the IRA, he was subject to a shoot to kill policy if certain conditions were met.

F

The most disturbing thing about the conduct of the Defendant, and this will come to the question costs, the conduct during these proceedings of the Defendant, which effectively have been to kill Kirk, is that when he was asking for parole, on, on a spurious fourth breach
G of the Restraining Order, he actually went to Cardiff Bay police station and asked for disclosure, and made a video in which he referred to Tegwyn Williams as a bastard. He was, in fact, arrested and incarcerated for not an inconsiderable period of time, lasting two years, by HHJ Tracey Lloyd-Clarke for that discretion, at his time of life.

H

And when he applied for parole he discovered that the Police National Computer, not the court national computer, the police National Computer, and, and I'm thinking of Lord Gnome in Private Eye, *shome mishtake shurely*, had him down as a drug dealer and a

paedophile. Now, that is the conduct with which Mr Kirk complains. In fact, he's none of those things but one asks the rhetorical question, how is this postilion still being struck by lightning as we speak? How is it that they got the Police National Computer records wrong so as to hobble Kirk in the Parole Board?

And this man was dealing with all of this when he asked for relief from sanctions before HHJ Keyser QC up till June of 2020.

His Honour Judge Petts: Why didn't he make an application for relief from sanctions for late, late service of those three witness statements at the last hearing?

Mr Kirk: Sorry, I didn't hear that. Sorry.

Mr Leathley: He did. He did.

Mr Kirk: Could, could you say that again?

His Honour Judge Petts: Why, the, why was there no application for relief from sanctions in respect of the late-served statements in front of HHJ Keyser?

Mr Leathley: He, he did, Your Honour.

His Honour Judge Petts: Well, in which case, how, if, if that application was made and failed, how can I revisit it?

Mr Leathley: Because, by his order in January, HHJ Keyser has said, no, unless there's an application implicitly by the trial judge, that is you, and it can be revisited.

His Honour Judge Petts: Well what's the change of circumstances since HHJ Keyser refused the application for relief from sanctions?

Mr Leathley: Because we're having to look at this case management and I just, I am concerned, you see, and this is, this is why Mr Kirk is, from his perspective, suspicious of case management decisions made by Your Honour's predecessors that, basically, his case is being case managed into the long grass, because, as I say, if he's restricted to one statement

and that statement is shown to him, then, in fact, all these pertinent points about unused material are implicitly redacted.

A

If the Defence don't bring them in then the opportunity is lost. Mr Kirk reserves the right to make commentary about what the Defendant has served on him.

B **His Honour Judge Petts:** Yes. Anything further, Mr Leathley?

Mr Leathley: No.

C **His Honour Judge Petts:** Thank you. Mr Williams.

Mr Williams: First point is *Denton*.

D **His Honour Judge Petts:** Yes.

Mr Williams: There's no excuse put forward in order to get relief from sanction. I'll leave that to one side, go on to the second point. More generally, there's a confusion between a statement setting out material within the Claimant's own knowledge which are relevant to the action and submissions, and/or material for cross-examination. Two, three and four, objection was made to that by the Defendant on the basis set out in paragraphs 61 and 62 of the positon statement. Objection was taken on the basis that the material set out there was, in fact, in, in effect, written submissions upon which the Claimant sought to rely.

E

F

Mr Kirk: Sorry, could you speak up?

Mr Williams: That the contents of statements two, three and four were submissions upon which the Claimant sought to rely, or would rely upon at his trial, or it contained material upon which the Claimant would seek cross-examination of the Defendant's witnesses on. They did not contain statements of fact and it is on that basis that the Learned Judge, and Mr Leathley, agreed that they no, that they do not go before this Court.

G

H

Mr Leathley: I, I'll just interrupt very briefly. I qualified it, as I have today, that analyses of the law may be inadmissible but the factual matters are Mr Kirk's alone. I concurred that

there may be a, a, a trespass into matters that are properly matters for counsel. Can I just come back on, Your Honour?

A

Mr Williams: I haven't finished yet.

His Honour Judge Petts: No, no. Not yet.

B

Mr Leathley: I do apologise.

His Honour Judge Petts: Mr, you, you, you've spoken for a very, very long time on what should have been a short application and this, it's now Mr Williams' chance to reply.

C

Mr Leathley: Yes. I'm just simply, before he does, going to say that Mr Kirk, not once but twice, did a relief from sanction application and, in fact, there was one as early as March of last year which I'd like to read into the record, but I, I don't want to interrupt my learned friend.

D

His Honour Judge Petts: Well, no, no, no, this is an application in relation to a failure to serve witness statements by 12 October 2020.

E

Mr Leathley: Yes.

His Honour Judge Petts: Not any other application for relief from sanctions. If, as you say, and I haven't seen the application in the bundles, if, if he made an application for relief from sanctions in respect of late witness statements --

F

Mr Leathley: Yes, not once but twice.

G

His Honour Judge Petts: Then, the, the, well, that's another matter we, we may need to come back to.

Mr Leathley: Thank you.

H

His Honour Judge Petts: But I'm concentrating on, on, on the situation --

Mr Leathley: Yes, thank you, Your Honour.

A

His Honour Judge Petts: Now. Yes, Mr Williams.

Mr Williams: *Denton*, one, two, these don't contain material which can go into a statement because they don't deal with issues of fact upon which he can speak about. They're simply

B

submissions or the material for cross-examination. Those are my submissions, Your Honour.

His Honour Judge Petts: Yes.

C

Mr Leathley: Your Honour, you asked me why did he not make an application for relief from sanctions. There's an application notice that was served on 10 March 2020. May I just quickly read his statement:

D

> **"I make this witness statement in support of the application for relief from sanctions imposed on 31 May 2019."**

That was subsequently revisited before HHJ Keyser, when there was a similar application

E

for relief from sanctions, but this is the ancestor to it:

> **"For failure to comply with an order of 28 January that I disclose all my evidence."**

F

In fact, at that time, disclosure was 25 February 2019. It was subsequently extended:

> **"I attended the hearing dated 28 January, having, 2019, having been**

G

released on licence from a sojourn in prison. I knew that I had to comply with Judge Keyser's direction. I was still in the process of attempting to acquire documents, medical records and minutes of MAPPA meetings which comprised facts peculiarly within the knowledge of the Defendant. On 21 February 2019 I was taken ill and

H

attended by train my doctor in Taunton."

He fell asleep on a train going back to his bail hostel. He, his, his licence, his parole was revoked and he was returned to prison:

A

> **"Once in prison I was transferred to HMP Parc, denied access to my laptop, placed in a cell that was not covered by CCTV."**

B

Information had been disseminated and this is the material that the Police National Computer put before the Parole Board:

> **"Information was disseminated within that prison that I was convicted**
C **of child abuse and therefore the other prisoners were treating me as a convicted paedophile. I was terrorised day and night and prevented from association in the prison library. I had my post confiscated along with my stamps."**

D

It's very interesting that there is, the Defendant subsequently prosecutes Mr Kirk from, for sending a letter from prison when the prison are monitoring his correspondence, to Rebecca Pow:

E

> **"I could not conduct my litigation diligently in this environment. My second sojourn in prison I believe was aggravated by the Defendant, who added to my discomfiture by disseminating to the Parole Board that I'd been convicted of narcotics offences, untrue, firearms,**
F **untrue."**

Yes, they told the Parole Board that this 1CF03361 was a conviction when we know it was an acquittal:

G

> **"Recent ABH and child abuse, all untrue. The Parole Board kept opposing my release because of these facts, together the Defendant's malicious registration of me at MAPPA level 3. In the event, I was not released until 1 November 2019, only because I finally got before a**
H **Parole Board. It is provided by rule 3.8(1) that the said sanction imposed by the said rule Practice Direction or court order that I be**

stopped from relying on the evidence in support of my claim has effect unless the application applies for and obtains relief from sanction.

The circumstances of the case which I would invite the court to consider in dealing with the application are as follows. On 24 January 2020 HHJ Keyser QC made a further order which said the parties by 26 June '20 exchange the statements of those witnesses on whose evidence they wished to rely. I submit that the Court can deal justly with the application, etc., etc."

May I just simply say from the Claimant's perspective, this is why he has lost all hope of justice by Her Majesty's judiciary in South Wales, and that is his honest position, and that is why I visited his perspective when considering the overarching principle of fairness and the perception that justice is being seen to be done in CPR Rule 1. Mr Kirk feels he's been blighted and, as I say, he does not think this is a series of unfortunate events. He thinks this is manipulation and design by the Defendant.

His Honour Judge Petts: Thank you.

(judgment given)

Mr Leathley: Yes. Your Honour, before we break off, I anticipate shortly, for lunch, it's subject of course your better view, do I have an undertaking from Mr Lloyd Williams QC that those documents will be, in some form, put before the Court that Mr Kirk comments on in two, three and four, because if witnesses just aren't before the Court, produced by the Defence for whatever reason, then all of this is in the long grass, unused material, and that is the steer the Defendant has put on this case, that is why they object to these statements.

They were also written with a view that, should Mr Kirk exercise his discretion he might, for all I know, end up as a litigant-in-person. I don't know.

His Honour Judge Petts: I don't know whether you need to reply to that, Mr Williams.

Mr Williams: No.

His Honour Judge Petts: It's a, it's, it's a matter, I, I don't think it's a matter for this hearing. It's a matter for discussion afterwards. So, so --

A

Mr Kirk: Sorry, I, I, I think you --

His Honour Judge Petts: No, Mr Kirk. I'm afraid I'm not going to let you speak now --

B

Mr Kirk: I can't hear.

His Honour Judge Petts: Because it, it's five past --

C

Mr Leathley: He's just saying, saying he couldn't hear.

His Honour Judge Petts: Oh, I'm sorry. That's a --

D

Mr Kirk: No, *when* something serious.

Mr Leathley: So he wasn't going to try and argue --

E

Mr Kirk: Is, is said by certain people in this room I find it very difficult to hear.

His Honour Judge Petts: I'm sorry, Mr Kirk, if I was speaking too quietly. What I've said is that's not a matter I'm going to ask Mr Williams to deal with now, it's a matter for discussion after the hearing, before the trial.

F

Mr Williams: I'm obliged.

G **His Honour Judge Petts:** What matters still need to be sorted out?

Mr Leathley: What matters need to be sorted out is that in the pleadings, the recast pleadings, which I am responsible for drafting, Mr Kirk tells about the machine gun, sets out or pleads his case, and, and says that he was, in effect, remanded to the Caswell Clinic, certified MAPPA level 3, and Mr, and that goes towards the hardship of the damages that he asks for, and Mr Lloyd Williams, in his very helpful skeleton, has said that's res judicata

H

because HHJ Seys-Llewellyn QC has already ruled upon it in the previous claim with the prefix BS.

A

His Honour Judge Petts: Yes, we've got --

Mr Leathley: That remains to be seen.

B

His Honour Judge Petts: We've got the particulars of claim issue.

Mr Leathley: Yes.

C

His Honour Judge Petts: We've got the --

Mr Williams: Witness statement.

D

His Honour Judge Petts: Claimant's, first, first witness statement issue.

Mr Leathley: Yes.

E

His Honour Judge Petts: We've got the Foxy witness issue.

Mr Leathley: Well, can I help with Foxy before the lunch adjournment?

F **His Honour Judge Petts:** Yes.

Mr Leathley: I'm, as a criminal advocate, I'm only too familiar with certain sensitive matters wherein police officers acting under a, and I'm thinking about test purchase officers and, I'm familiar with the anonymity afforded these people and special measures being granted. It, it, it, put succinctly, it's an application for special measures and, and the anonymity of Foxy that, so that Foxy doesn't have to appear. Am I right, Mr Lloyd Williams?

G

H

Mr Williams: In effect, yes.

His Honour Judge Petts: Yes, it's an application, I take it, under CPR 39.2(4) --

Mr Leathley: Yeah.

His Honour Judge Petts: That the --

Mr Leathley: I'm not sure I can resist that.

His Honour Judge Petts: No.

Mr Leathley: Because it's the norm.

His Honour Judge Petts: Yes.

Mr Kirk: No.

Mr Leathley: Well, just, just, just, sh.

His Honour Judge Petts: Yes, well we can probably deal with that briefly. The, the, under CPR 39.2(4):

> "The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness."

And, as an aside, any such Anonymity Order has to be set out on the, published on the judiciary website, but that's a matter for the Court rather than the, the parties, and you, Mr Williams, are making the application on the basis that he is an undercover officer whose identity should not be disclosed.

Mr Williams: Yes.

His Honour Judge Petts: And that his, his, his, the witness's identity in the Crown Court was not disclosed, an order having been made, no doubt, under section 88 of the Coroners and Justice Act 2009.

Mr Leathley: Don't, don't purport to revisit that.

His Honour Judge Petts: No.

Mr Leathley: For my part.

His Honour Judge Petts: No, well, it's entirely proper, Mr Leathley. It's a, that you don't resist it but it's a matter for me and, in the circumstances where there's an undercover officer involved whose anonymity was preserved in the criminal proceedings, for very good reason it's only appropriate that his, his or her I say because I realise there is an issue, identity be preserved within the, and kept confidential within the County Court proceedings, so I'll make an order that the identity of the witness given the nickname Foxy shall not be disclosed, and that's in, in order to protect the interests of justice and ensure that the identity of an undercover officer is not disclosed.

We can work out the, the, the practicalities but the suggestion that the evidence, we, video evidence I would have thought from a remote location on a screen only visible to me, but in such a way that everybody in the court can hear it, I would have thought.

Mr Williams: Yes.

His Honour Judge Petts: Yes, good.

Mr Leathley: I would simply ask that there be no voice distortion. There is an interesting point about the sex of Foxy.

Mr Williams: There will be no voice distortion.

Mr Leathley: No.

His Honour Judge Petts: No.

Mr Leathley: I, I, I'm just saying that sometimes to preserve anonymity --

His Honour Judge Petts: Well there hasn't --

A

Mr Leathley: A filter can be applied.

His Honour Judge Petts: Well there hasn't been a request for --

B

Mr Leathley: No.

His Honour Judge Petts: Voice distortion, save as, as it were, sometimes accidentally happens during the course of CVP hearings, as we're all doubt, no, no --

C

Mr Leathley: The cat filter –

His Honour Judge Petts: Yes. Yes, OK, so --

D

Mr Kirk: Could I just raise one point here?

Mr Leathley: Yeah.

E

Mr Kirk: When Foxy rang my wife --

Mr Leathley: Yes, I know.

F

Mr Kirk: She was a woman.

Mr Leathley: Yeah, I know.

G

Mr Kirk: And, and they won't give me the tape recording of that.

Mr Leathley: All right. OK. All right.

H

His Honour Judge Petts: OK, so after lunch we'll deal with particulars of claim, witness statement and then, I think, we're onto timetabling.

Mr Williams: And, and there's a, a few other bits and pieces on witnesses.

His Honour Judge Petts: Oh, yes, you've, you, you, you want indications or, as to whether witnesses need to give evidence, and that may me a, a matter that's best discussed between you and Mr Leathley in the first instance --

Mr Leathley: Well --

His Honour Judge Petts: Rather than --

Mr Leathley: With, with, with respect, it better be on record because Mr Kirk and I harbour the suspicion that Mr Kirk's ability to manoeuvre will be case managed out of existence. As a quid pro quo, if he can't rely and commentate upon the discovery, the disclosure in October, he'd better have all those witnesses to enable me to put the documents to them.

What, what, we, we'd better, I, I've done a full list of witnesses. It can be done formally for the simple reason that Mr Kirk will not be, from his perspective, happy unless it, it is transcribed.

His Honour Judge Petts: That's fine, well –

Mr Leathley: And I'm not saying that with any disrespect to Your Honour or my learned friend, but we have before us a man who, I've already acknowledged, has a genuine belief that he's being, to use the vernacular, stitched up.

His Honour Judge Petts: Yes.

Mr Leathley: And stitched up by these proceedings, that is his perspective.

His Honour Judge Petts: Yes, and, and I thought --

Mr Leathley: And I mean that with no disrespect. I'm simply saying that is my client's perspective, not mine.

His Honour Judge Petts: Yes. What the Defendant has wondered is if the, the Claimant is going to need witnesses to be called about the circumstances of the arrest, for example.

Mr Leathley: Well --

His Honour Judge Petts: When that's a not a matter in the proceedings. Now, that's not, because I've not seen the statement I, I don't --

Mr Leathley: For my part, yes, I, I know we're breaking off and it's impertinent, but for my part if I can assist as we go into the afternoon, after a luncheon break I hope, I would have thought arrest can be agreed and not revisited. The continuity of the machine gun, I know Mr Kirk will want that explored because it's his case that the exhibit was corrupted or, to revisit the Blair years, sexed up.

So the position is that he will want continuity. He will want firearms experts like *Huxtable* and *Ridyard*, and *Stock*, and people who had dealings. There was also a complication in that a second, Lewis gun entered into the trial that was, confused matters but --

His Honour Judge Petts: Yes, the, what the --

Mr Leathley: The arrest and interview, it, we can get through in short order. We can all agree that Mr Kirk was arrested. We can all agree that he was interviewed, etc., etc.

His Honour Judge Petts: Yes, it was, it was, it was my mistake in, in memory of what Mr Williams said, it, it's whether evidence in respect of the search of his house is going to be required at trial, and evidence of his detention in custody --

Mr Leathley: Yes, because --

His Honour Judge Petts: In the absence of a complaint.

Mr Leathley: He has said in, even in the statement of 9 October, which Your Honour's ruling and HHJ Keyser's ruling places in, that it was a spectacular arrest and, and indeed involved police helicopters and --

His Honour Judge Petts: Well, no. No the --

Mr Leathley: Armed officers, and it adds to his discomfiture and his suffering.

A

His Honour Judge Petts: Yes, not, not the arrest but the, the search.

Mr Leathley: The search, yes. There are also issues of ammunition and whether there was ammunition, also his computer was searched, etc. So I think the search of the house, The

B

Marlpits, will be very relevant, but his being arrested whilst wandering along the street, his being interviewed, I can't imagine that there'd be much dispute about that. Witnesses from the Civil Aviation Authority, for example, who give the history of the plane, firearms certification, things of that matter, I'm sure we can deal with in short order.

C

Mr Williams: Well we don't have the witnesses from the CAA. There's a list of witnesses which we've served on you, so I think this is best left until after lunch and then we can take it further.

D

His Honour Judge Petts: I think it is, yes. We'll, we'll start again at 2 o'clock then. Thank you very much.

Court Clerk: Court rise.

E

(luncheon adjournment)

Mr Williams: Yes, Your Honour.

F

His Honour Judge Petts: You, you're calling your learned junior to be the next witness.

Mr Williams: Yes, my --

G

Mr Howells: Yes.

Mr Williams: My learned junior's creeping ever closer to the --

H

His Honour Judge Petts: To, to the bench.

Mr Williams: To the bench.

His Honour Judge Petts: Yes.

Mr Williams: So, yes.

His Honour Judge Petts: And I gather there's some issue about power cables or something.

Mr Williams: His, yes, Mr Howell's power is running out, so, we've got him, got him plugged in.

His Honour Judge Petts: Well, it's Friday afternoon. It's only to be expected, so.

Mr Leathley: I think all our power is running out.

His Honour Judge Petts: No, well I'm, I'm revitalised and refreshed, and ready to go for a, a further round of case management decisions. OK, so --

Mr Leathley: I, I, I think the next point, forgive me, is your application, Mr Lloyd Williams, to, to, about the MAPPA and parts of the pleadings.

Mr Williams: Yeah.

His Honour Judge Petts: Yes.

Mr Williams: Can, can I just touch upon the witnesses, because we have had a discussion?

His Honour Judge Petts: Yes.

Mr Williams: And so, we, we've dealt with, so this is page 25 of the bundle, of the --

His Honour Judge Petts: Yes.

Mr Williams: Position statement. Mr Burr is one of the search witnesses, I think, and we'll just have to see what happens there, is the best way I can put that, Your Honour, the, the, nothing we can do at the moment.

Mr Leathley: Well, he makes the video, sorry to interrupt my learned friend, Mr Burr is actually video, he does a video of the search.

Mr Williams: Yes.

Mr Leathley: So --

Mr Williams: So, the, the video's been disclosed, so it may be we can just have the video insofar as it's relevant at all, and, you know, I'm quite happy for it to be played even if I don't call Mr Burr.

Mr Leathley: I'm, if I can cut across my learned friend, we started to discuss, in the adjournment, the fact that he and I could possibly come to heads of agreement whereby a formula is used, whereby a lot of the routine of arrest and continuity is agreed, apart from, of course, the machine gun, where --

Mr Williams: Yeah.

Mr Leathley: Continuity is not agreed, but things, things like the fact that Malcolm Burr made a video of the search of The Marlpits, I don't need to trouble Mr Burr to come if that video is adduced.

Mr Williams: Yes.

Mr Leathley: That sort of thing.

Mr Williams: Well, I can, I can, I'm not giving an undertaking on anything else, but I'm quite happy to give an undertaking that the film of the search can be produced.

His Honour Judge Petts: Yes.

Mr Williams: So that seems to deal with DC Malcolm Burr and, of course, it would be a big relief for him and his wife. There's CW Huw Smart, we'll just have to see how that goes.

Mr Leathley: Huw Smart, did you say?

A

Mr Williams: Smart.

Mr Leathley: DC Smart, forgive me.

B

Mr Williams: C, CI Huw Smart.

His Honour Judge Petts: See how he is and see whether an application needs to be --

C

Mr Williams: Yes, I, I, I think that's what we'll have to do. More, more --

His Honour Judge Petts: You, yeah, you're flagging it up --

D

Mr Williams: I'm terribly sorry.

His Honour Judge Petts: You're just flagging it up for now. That's fine.

E

Mr Williams: And 70 --

Mr Leathley: Sorry, I'm sorry, forgive me, what's the issue with DC Smart?

F

Mr Williams: He's unwell.

Mr Leathley: Oh, right. I didn't know that. Sorry. DC Smart unwell.

G

Mr Williams: It's CI Smart.

Mr Leathley: CI Smart, sorry.

Mr Williams: Chief, Chief Inspector Smart.

H

Mr Leathley: Yeah.

Mr Williams: So, that, we'll just have to wait and see about that. 72.

A

His Honour Judge Petts: Yes.

Mr Williams: Which is the areas that we've raised, well one of them is the search and it sounds as though we can deal with that via the production of the film, because DC, or former

B

DC Burr is the only search officer we're calling, so if it's accepted he can, that the film goes in, and I'm quite happy that the film goes in, then it may be that that deals with the search, and then over the page, so this is now 72B, this is the part that Mr Leathley and I have been discussing.

C

There are about 11 custody officers, as there always will be. Lots of people booking him in and checking he's all right, and reviewing him and all that sort of stuff, and I think Mr Leathley takes the view that, leaving aside the over, this is an unfortunate phrase to use,

D

overarching allegation --

His Honour Judge Petts: Yes.

Mr Williams: Of the unlawful arrest, that the more mundane, which I think is an expression

E

Mr Leathley has used, more mundane tasks such as booking in and so forth, is not challenged --

Mr Leathley: No.

F

Mr Williams: As an act, in which case that would include, I don't know if there is a, a list of witnesses, but just for the record, it's Police Sergeant Bowden, Police Sergeant Rice, Police Sergeant Thomas, Inspector Osbourne, Police Sergeant Herbert, Inspector Tucker,

G

Superintendent Williams, Inspector Merrick, Police Sergeant Poole, Police Sergeant Hopkins, Police Sergeant Williams.

Mr Leathley: There's no allegation of impropriety by those having charge of Mr Kirk once

H

he's at the police station, once he's being interviewed, all of that doesn't form part of this, it's the --

Mr Williams: Well, that's, that's very helpful.

Mr Leathley: The decision, what was behind the decision to arrest --

Mr Williams: Yes.

Mr Leathley: And it's --

Mr Williams: So --

Mr Leathley: And the continuity of the machine gun exhibit is more crucial to this than custody sergeants and whether he got his three meals a day.

His Honour Judge Petts: Fine.

Mr Williams: In, in, no, that's very helpful. In which case we can take it that I'm not going to call those officers and no doubt Your Honour will have made note of those officers.

His Honour Judge Petts: Yes.

Mr Williams: They're not going to be called.

His Honour Judge Petts: Yes.

Mr Williams: So that's, that deals with the witness point --

His Honour Judge Petts: Yes.

Mr Williams: And that gets that out of the way. Can I deal with the witness statement next, rather than the pleadings? The pleadings, in fact, a very short point and I'd rather deal with the, the slightly longer points. This is at paragraph 70.

His Honour Judge Petts: Yes.

Mr Williams: Can I say at the outset that this has become less important because, because we won't have a jury and we'll have a judge, and judges are used to identifying what's

relevant and irrelevant. The reason why I continue with the application today is that at some stage the Court is going to have to grapple with the issue as to how much that Mr Kirk says in his statement is, in fact, evidence as opposed to comment, matters of law or submissions and we feel that it's probably best looked at today rather than the first day of trial, and spending couple of hours mucking about then, if I can put it like that.

A

B

You will have seen what we say in the, paragraph 70. You'll have seen a statement with the bits that we say should be redacted.

His Honour Judge Petts: Yes.

C

Mr Williams: I'm afraid there's quite a lot that we say should be redacted. I don't want to go all the way through it. Can I just take, and this is a purely arbitrary choice, I could pick anywhere in the statement, but if I could take you to paragraph 34 of Mr Kirk's statement. So, simply repeating what the trial judge said in discussion with Mr Twomlow does not advance Mr Kirk's case any further when it comes to his own evidence. It's on the transcript and if Mr, well, Mr Leathley or Mr Kirk wants to make a point about that to a witness, I don't see what point can be made, but if he wants to make that point to the witness, or he wants to, to rely upon it in final submissions then he can.

D

E

The same applies to paragraph 35. The same applies to paragraph 36. 37 is a matter of comment or submission. 38 is a matter of comment and submission. 39 is a matter of comment or submission. Paragraph 40, comment or submission. Paragraph 41, matters of law. 42, matters of law. That's not say he can't cross-examine the police officers on these points if he wants to, but so far as his own statement is concerned they shouldn't be in there, and then paragraph 43 is submission and comment, and I'll stop there.

F

G

Now, can I make the Defendant's position clear? If Mr Leathley wants to question the Defendants' witnesses on anything arising from these various things, which are relevant, that's a matter for Your Honour, then, of course, he can do so. So he can put the transcript to a witness if it's relevant or if there's a, a legal document, or the Association of Chief Police Officers –

H

Mr Leathley: Guidelines.

Mr Williams: Issued, thank you very much, guidelines, if he wants to put that to an, to one of the officers, he can do that. No problem with him doing that, and Mr Leathley or Mr Kirk, who's, who's represented himself, wants to make the points in paragraphs 37 to 40 then, of course, he can do that and, indeed, the suggestion has been made during our discussions, I'm sure Mr Leathley won't mind me saying, we're quite happy, when he comes to make his final submissions, if he hands in these documents, unredacted, and simply said there's some, there's my submissions, but that's different from Mr --

Mr Leathley: But that's to do with the transcripts, Mr Lloyd Williams.

Mr Williams: Well, the, the, the transcript is in.

His Honour Judge Petts: The transcript's going to be in the bundle anyway, I would have thought, so.

Mr Williams: Yes, it's in the bundle.

Mr Leathley: All, all, all of the transcripts we served on 9 October, all of them.

Mr Williams: Well, the, the, the transcript is a document which is before the Court.

Mr Leathley: Yeah, all right.

Mr Williams: I don't, I, I don't see any problem about that.

His Honour Judge Petts: But it's one of the few documents, it may be the only document, that the Claimant has permission to rely upon as a document as opposed to a statement.

Mr Williams: Yes. Yes.

Mr Leathley: Because it's a matter of court record.

Mr Williams: Yes.

Mr Leathley: Yeah.

Mr Williams: So there's never been any issue about that.

Mr Leathley: OK.

Mr Williams: But if, if, all of this material are not matters of a statement, and I'm not going to go back through that. Your Honour reminded yourself about what should be in a statement and what shouldn't be in a statement. So, we've, we've erred on the side of caution in favour of Mr Kirk and we've allowed matters in which are probably a little bit like comment, but we've, we've sought to redact those matters which are clearly comment or submission, or matters of law, speculation and so forth, and if you look at paragraph 25. It's a slightly different way of putting the same point:

> **"Was the gun the reason or was I the reason? I'm left, left wondering, was the gun the reason or risk, or was I the reason or risk, or both?"**

Well, that's a very good question, but it's not one for Mr Kirk to address in his evidence, it's one for him to put to the police officers. Why were you picking on me? In effect, or it's something he can make to you in final submissions, or Mr Leathley can make in final submissions to you.

Otherwise the problem is that, as I say, when we stand up on the first day of trial and I'm questioning, or about to question Mr Kirk, I'm going to have to raise with you what matters I need to cover in cross-examination. It might be obvious, but there may be things which are not obvious, and if I haven't covered something in cross-examination then ostensibly it goes in as his unchallenged evidence, and so that's why we raise it now, and so, there's no point me repeating the points I've just made. Your Honour is fully aware of what should be in a statement and what shouldn't be in a statement.

His Honour Judge Petts: Yes.

Mr Williams: Nothing further to add to that.

His Honour Judge Petts: Yes, thank you. Mr Leathley.

Mr Leathley: Proving malicious prosecution is one of the hardest hurdles a claimant has to circumvent in order to prove a claim such as this. It, it is actually the apex of difficulty. Mr Kirk's statement, 9 October 2020, I concede trespasses into the thoughts of Mr Kirk. I'm asking myself, in effect, in those controversial paragraphs, how did I come to be here? Why am I here? Why am I being prosecuted? Why can't the police look at the Association of Chief Police Officers guidelines that are available and say, you know, a, a more of a laissez-faire attitude to his deactivated historical antique firearms, etc.

I, I'm not sure that that causes such grave offence and I suspect that the reason why the Defence, Defendant, sorry, want Your Honour to rule on it is that it hurts them and they're worried about it, and whereas it will probably come back in at some stage, now that we have dispensed with the, the jury element, can you not, as a, a judge, disallow comment and exercise a judicial filter on this? I mean, I can't see, myself, a problem with the fact that Mr Kirk has done some research and, and thinks that his prosecution wasn't within ACPO guidelines.

I mean, I say with the deepest of respect to Your Honour and my learned friend, so what? Why was that so harmful? And I suspect the Defendant's worried about it because Mr Kirk may have actually hit the spot there.

His Honour Judge Petts: Anything further?

Mr Leathley: That's, really, all I wish to say, Your Honour.

His Honour Judge Petts: Anything you need to say in reply?

Mr Williams: No.

(judgment given)

Mr Leathley: I'd prefer, with the deepest of respect, a fresh version because, as I say, I, I mean, I have to concede and, as I say, a lot of the prior, I mean, a lot of fear that the Claimant entertained before today is being ameliorated for example, yes. If he, if he refers to a part of the transcript and a witness statement and interprets a view of a judge in that transcription, if the Court has the transcription anyway and can form its own, make its own conclusions

that is a duplication of effort. So I'm not deeply troubled so long as we have the concession that the transcripts are going --

A

His Honour Judge Petts: Well, they're, they're, they're a document that the Claimant --

Mr Leathley: Yes.

B

His Honour Judge Petts: Is, is producing --

Mr Leathley: Yes.

C

His Honour Judge Petts: Which the Claimant will say, and the Defendant will --

Mr Leathley: Yeah.

D

His Honour Judge Petts: No doubt agree, is going in the trial bundle.

Mr Leathley: Yes, I'm very grateful. Yeah.

E

His Honour Judge Petts: So that's, that --

Mr Leathley: Yeah, I, I, I, I, yes.

F

His Honour Judge Petts: That's not a, not an issue, I don't think.

Mr Leathley: I, I, I think, I think, I think a new statement would probably be swifter and more efficient.

G

His Honour Judge Petts: Well, when we say a new statement, what it is to be is a, this statement unchanged save for deleting the sentences and paragraphs --

Mr Leathley: Yeah.

H

His Honour Judge Petts: That have been side-lined, or underlined --

Mr Leathley: We can, we can cut and paste it.

A

His Honour Judge Petts: Yeah, that's fine.

Mr Leathley: And get, get those passages out.

B

His Honour Judge Petts: That's fine. Well, we'll --

Mr Williams: Can I say that, well, it seems Mr Howells' going to speak to me, he can do it very shortly on his computer and he can send a copy of it to Mr Leathley, by just taking out

C

the offending passages. So Mr Howells will do the work for Mr Leathley.

Mr Leathley: Yes, I, I, I quite, I quite agree with that tactic. Let him suffer, yes. Let Mr Howells suffer.

D

His Honour Judge Petts: Well, I was going to say, why, if Mr Howells is going, going to volunteer rather than press upon a pupil to do it, who am I to stop Mr Howells from earning his --

E

Mr Howells: *Well I didn't say that.*

His Honour Judge Petts: Earning his keep? Good.

F

Mr Williams: That just leaves the --

His Honour Judge Petts: Particulars of --

G

Mr Williams: Striking out of parts of the amended particulars of claim.

His Honour Judge Petts: Yes.

H

Mr Williams: And Your Honour sees paragraph 69 of the position statement, and then if I can take you to the particulars of claim, which should also be in the bundle with the relevant parts underlined in red.

His Honour Judge Petts: Yes, I'm rather assuming that the bottom sentence on page 3 of the particulars of claim --

A

Mr Williams: Yes.

His Honour Judge Petts: Was also under challenge because that's the start of a sentence that carries on at the top of the, page 4, which is challenged.

B

Mr Williams: Yes. Can I just make it clear what we're objecting to and the reason why we're objecting to it? First of all, the fact that Mr Kirk was a subject of MAPPA is something that's known. It's something that may be referred to at trial. Its relevance is a different matter, whether it's causative of anything is a different matter, and that will be the subject for final submissions, but the existence of the MAPPA is there. Our objection taken at this point is in relation to the minutes of the MAPPA and we do this not just because we think it's inadmissible but we're obliged to take this because it's PII.

C

D

You will have seen the findings made by HHJ Seys-Llewellyn QC regarding this. So we're not seeking to exclude mention of MAPPA, it's just the minutes. There is, apart from one other thing, there is an executive summary, it's in the Defendant's papers. So the executive summary is in the trial insofar as it's relevant to anything, but the minutes should not go in for the reasons considered at length HHJ Seys-Llewellyn.

E

His Honour Judge Petts: Can you take me, when, at, at the appropriate point in your submissions, to what, the, the passages that he, he dealt with the, the MAPPA issues? Because I know the point's going to be made against you that one of the points that HHJ Seys-Llewellyn QC was dealing with was that the events in the trial that he was considering, or were considering, were many years before MAPPA in 2009 and so they, they, they weren't part of the picture back in events up to, I think, 2002, which was the scope of his trial.

F

G

Mr Williams: Yes. There, there were two points that he considered. The first one was whether MAPPA minutes were admissible full stop, and his conclusion, that's his judgment of 30 December 2010, was that they were not admissible for the reasons we set out in our arguments, but that the --

H

His Honour Judge Petts: OK, let's just find, OK, sorry, I'll just find his, is this the, the judgment on preliminary issues or is --

Mr Williams: Judgment on preliminary issues.

His Honour Judge Petts: Yes, OK. Let's open that up. OK. I'll, you can take me to the appropriate paragraphs in, in a moment then.

Mr Williams: It, it's right at the very end of the judgment, in fact.

His Honour Judge Petts: Yes. Starts at [132].

Mr Williams: Yes.

His Honour Judge Petts: I think, yes.

(pause)

His Honour Judge Petts: Well, if we, in [148] he refers to PII. [149]:

> **"If Mr Kirk has been subject to MAPPA consideration and categorisation as a MAPPA subject only between dates in 2009."**

Then earlier on I think he set out the dates between which, [137], he was a MAPPA category 3 subject between 8 June and 17 December 2009:

> **"If Mr Kirk has only been subject to MAPPA between dates in 2009 it is a formidable if not irresistible argument that any MAPPA involvement and any documents and records arising during that involvement are not relevant to the allegation which he pursues in these three actions running only to 2002."**

[150], reference to what Mr Kirk says the, the minutes will reveal. [151]:

"In short, I consider that the argument to the Defendant is formidable as to likely relevance but he was left ill at ease that the Litigant should be denied the opportunity to see the executive summary."

A

And then he says Mr Kirk, he's not ruling that Mr Kirk is entitled to see the minutes. He said he should first of all look at them and then decide whether PII was, was an issue. So, in the, in his first judgment he's saying, well, relevance seems to shut the door but I'm not shutting the door entirely and I'll hold over PII issue until I've seen it.

B

Mr Williams: But that follows on from [146] through to [148], which is where he's considering PII and the only thing that, if I can put it this way, upholding the Defendants' submissions was out of an excess, and perfectly understandable reason of playing fair to Mr Kirk, who represented himself, and that's when he then went on to consider the question of relevancy. He then went on to consider it again, issue of relevancy, because he wanted to, and this is at the judgment that Mr Leathley has helped, helpfully put before you yesterday.

C

D

His Honour Judge Petts: Yes.

Mr Williams: And that's when he was considering just relevancy, but he did it by considering in particular whether there was anything in the minutes that were not included in the executive summary and I, I think if you, if you look at that judgment, I'm not going to take you to it but it, Your Honour will see, in effect, he, he analysed what was in the executive summary which, in fact, contains large parts, verbatim parts of the minutes.

E

F

His Honour Judge Petts: Yes. The, the judgment, Mr Leathley, that you've put in with your bundle, it finishes rather abruptly at [14]. Was there anything further or was [14] the end of the judgment?

G

Mr Leathley: Oh, oh, I, I, I'm so sorry. There, there, would you like the, there is a [15] and [16]. Obviously there's something gone wrong with the technology. Would --

His Honour Judge Petts: Don't worry, if you've --

H

Mr Leathley: Would, shall I pass it to Your Honour?

His Honour Judge Petts: Yes, please.

A

Mr Leathley: I, I, I wonder if I could put it on that table and retreat whilst Your Honour retrieves it.

His Honour Judge Petts: Yes, I'll try not to cough on you, Mr Leathley. But I have been --

B

Mr Leathley: I have been vaccinated.

C **His Honour Judge Petts:** Yes. Yes.

His Honour Judge Petts: Not old enough to be in a priority group, but.

D **Mr Leathley:** Oh, that hurt.

His Honour Judge Petts: Not, it's quite, it was quite interesting looking at the list of judges who have previously dealt with it and seeing how many of them have been promoted and/or retired in the, in the, in the course of Mr Kirk's --

E

Mr Leathley: Yes.

His Honour Judge Petts: Litigation career, and with his, his litigation career even predates

F Mr Williams taking silk.

Mr Leathley: It's like Star Trek. It's Kirk, the second generation.

G **His Honour Judge Petts:** Yes. Yes. Quite, yes:

> **"Quite apart from arguments of principle against disclosure, which I described as formidable, the minutes appear to me to fall short, well short of relevance to disclosure or use in the present proceedings."**

H

So, I see, thank you very much. That's, that is handy.

Mr Williams: So, Your Honour, at C –

A

His Honour Judge Petts: I'll give that back to you in a moment because this looks like your –

Mr Leathley: You can keep it, Your Honour. I, I've got it on my computer.

B

His Honour Judge Petts: Oh, you have other copies. OK, thank you.

Mr Williams: And so he's had to consider two things, as well as a matter of principle the

C minutes were admissible or not, the Defendants saying they weren't. In fact the Defendants also saying that the, the executive summary wasn't admissible, but he decided against the Defendants on that. He allowed the executive summary in but he didn't allow the minutes in, and also he concluded that they were not relevant in any event. We say the same applies

D to the minutes in respect of the PII in this case.

One can be assured, in view of the exercise undertaken by His Honour, that what's in the executive summary accurately reflects what's in the minutes and it might be thought, well, what on Earth are the Defendants objecting to? The point is, PII is not something for the

E Defendants to claim willy-nilly. If it's there to be claimed we're obliged to claim it, unless it's de minimis. This isn't de minimis. MAPPA has very important meetings, they have a particular function to carry out. The executive summary has been ruled previously to be admissible, we don't challenge that, but the minutes themselves should not go in.

F

There's a second point to be made about the minutes which is that they're not before the Court. Mr Kirk has not disclosed those documents and therefore, in respect of disclosure, they're cut out, or shut out I should say, by all the previous orders, which I'm sure I don't

G have to take the Court to. They're therefore not documents that he has disclosed for the purpose of this litigation during the course of, in, in accordance with the orders that have been made.

H **His Honour Judge Petts:** So, yes, he can't rely on his copy of minutes insofar as he has them because of the previous debarring orders and he can't rely on copies that you have because you're not, you, you, because you're claiming a PII element.

Mr Williams: Yes.

A

His Honour Judge Petts: Yeah.

Mr Williams: And I should say, just for the avoidance of doubt, I've not deliberately avoided reading the minutes so that I'm not contaminated by anything that's in them and
B that I have an advantage over the Judge or over anyone else. Once again, if Your Honour wishes to see the minutes to assure yourself that they, they don't take the matter any further than the executive summary, so be it. If we can still get hold of them although Mr Kirk has his own copy of them. But it's, it might seem a somewhat esoteric point but it is a matter of
C principle. The minutes should not be admitted into this court or, indeed, into any court.

And then just taking it a level further, he refers to what a psychiatric nurse called Elizabeth Paul, her notes, the position being that each party makes their own notes. Elizabeth Paul is
D not giving evidence in this trial. The Claimant has not served a statement from her. We have no idea whether her notes are accurate and true. Moreover, comment that is said to have been made by Elizabeth Paul, which is set out in his, at page 6 of his, those particulars of claim, it's in the middle of particulars of basic damages.

E

His Honour Judge Petts: Yes, it's also in page 4.

Mr Williams: Ah, right.

F **His Honour Judge Petts:** Yes, it comes in twice, which is why you've underlined it twice.

Mr Williams: Yes. Presumably Mr Kirk is seeking to adduce that, not to show merely that it was said but to show the truth of what's said, in which case either Elizabeth Paul should
G be called or if there's some problem with her then a civil evidence notice has to be served, which hasn't been done. These are technical points but they're not without importance for the overall conduct of this case. So, just for the avoidance of doubt, to repeat myself I'm afraid because Mr Leathley may have been under a misapprehension about this, the fact of the MAPPA, that it existed, the fact that it continued from a date to another date, the fact
H that there were meetings, are not in dispute.

The issue as to the executive summary and whether that's in, can be considered by the court is not in dispute. Indeed, they're in the Defendants' documents and they're in the list of documents, and they're in the list that we've appended to our position statement as the last exhibit. So there's no issue about that. The minutes, however, should not go in as a matter of principle, they're covered by PII and, in any event, they're not documents which are before the Court because they haven't been served by Mr Kirk and they don't appear in our list either.

His Honour Judge Petts: So, do the, the paragraph complained of on page 4 of the particulars of claim, does that not come out of the, the executive summary?

Mr Leathley: Yes. If, I, I, I just assist. The genesis of the MAPPA in the original particulars of claim, paragraph 5:

> **"The Claimant's false imprisonment and remand in custody. The Claimant was remanded into custody on the application of the Defendant. The police report to the Crown Prosecution Service revealed a police animus against the Claimant, stating he is anti-establishment, does not appear to recognise authority within the UK, that's the police, Crown Prosecution and court systems. He is currently in civil litigation against South Wales Police.**
>
> **On 1 June 2009 the Defendant had caused the Claimant to be subjected to a multi-agency public protection arrangement, MAPPA, enquiry following a meeting at South Wales Police headquarters Bridgend by the Independent Advisory Group, IAG. On 8 June 2009 at Barry police station MAPPA meeting the Defendant's agents informed the agencies present, including staff from Caswell Clinic psychiatric detention facility, that the Claimant was level 3, category 3, and very dangerous.**
>
> **A psychiatric nurse called Elizabeth Paul, whose notes the Claimant can produce, noted the Claimant was likely to be shot if he approached the Defendant."**

That's the genesis of it. It also raises its head in the claim for damages, particulars of basic damages, under loss and damage --

A

His Honour Judge Petts: Yes.

Mr Leathley: Paragraph 10:

B

> **"Claimant said that he would be very likely shot because of MAPPA 3 categorisation."**

C **His Honour Judge Petts:** Yes. The question, my question was, does, can that be shown by reference to the executive summary or does one need to look at the minutes for that?

Mr Leathley: I believe it's the minutes. I'm looking to Mr Lloyd Williams.

D

Mr Williams: Yes.

Mr Leathley: I haven't got them in front of me.

E

Mr Williams: Well I, I've never seen the minutes.

His Honour Judge Petts: You've no, you've never seen the minutes.

F **Mr Williams:** So I have no idea what's in them.

His Honour Judge Petts: You've seen the executive --

G **Mr Williams:** I've seen the executive summary and, if I can put it this way. HHJ Seys-Llewellyn considered that very point, whether what was in the executive summary, or indeed in the minutes, gave rise to an idea that Mr Kirk was going to be shot and he concluded that it didn't.

H

His Honour Judge Petts: Where, when did, when and where did he reach that, putting you on the, the spot?

Mr Williams: I believe it was in comment, sorry, in his judgment on the preliminary issues.

A

His Honour Judge Petts: Let's go back to that then. [150]:

> **"By email following conclusion of oral argument Mr Kirk asserts that MAPPA minutes reveal a plan or willingness of the Defendant to shoot him as an unarmed man. The "leaked" minutes he attaches an extract supposing them to be a true copy of the minutes, do not, in fact, state that."**

B

C **Mr Williams:** Yes.

His Honour Judge Petts:

> D **"One would have to see the full copy of the minutes or, and what threat was perceived by the police or others and in what context."**

Mr Williams: Yes, and then he went on to consider the, the --

E

His Honour Judge Petts: Issue of relevance. Yes. Anything further, Mr Williams?

Mr Williams: Yes. I don't want to take up too much of Your Honour's time because this is all going to be subject to argument at trial, about relevancy and causation, and so forth. But so far as the minutes are concerned, as I say, it's a matter of some considerable importance to the Defendants. Minutes are not admissible, we say. The Claimant, if he wants to, can rely upon the executive summary, insofar as that takes, takes him anywhere, and he can deal with it like that, but not the minutes. Equally the comment of Elizabeth Paul.

F

G

On information we have before us, the Claimant's statement and documents, there is no evidence that can go before the Court in relation to what Elizabeth Paul did or did not say.

His Honour Judge Petts: And then you also have underlined the words:

H

> **"The jury regarded the case as hopeless and not one that any reasonable jury would wish to convict upon."**

Mr Williams: Yes.

His Honour Judge Petts: Raises a different matter, I assume.

Mr Leathley: Sorry.

Mr Williams: That, that raises a different matter. First of all, it's not relevant to anything. We know that he was found not guilty otherwise he wouldn't be able to bring the claim. What the jury did or did not say is obviously inadmissible. The, what goes on in the jury room stays in the jury room and no-one is entitled to investigate it, even if they're earwigging in a public house, if I can put it like that, and it's certainly not a matter which is open for consideration by this Court in deciding the issues that the Court has to decide.

His Honour Judge Petts: Yes.

Mr Williams: That's our submission on that.

His Honour Judge Petts: Thank you very much. Mr Leathley.

Mr Leathley: I, I, I think there are shades of the stable door being shut after the horse has bolted. Whatever the rights and wrongs of the situation, HHJ Seys-Llewellyn QC, perhaps knowing the sort of individual Mr Kirk is and in order to provide him with closure on what is being said behind closed doors, somewhat generously, you may see, think, given issues of PII, set about a situation whereby Mr Kirk got these minutes. Whether Mr Kirk has been florid in his interpretation of what Liz Paul said but, as a result of that multi-agency meeting at police headquarters Bridgend, the Defendant, the, the Claimant, forgive me, was labelled MAPPA category 3, level 3, very, very dangerous.

One can envisage all sorts of situations where an individual who is labelled very, very dangerous has warnings on his PNC and, in certain situations, people who are very, very dangerous can be shot. One only has to have regard to what may happen in America if they approach the President of the United States. I say that not in jest because Mr Kirk did exactly that. He landed his aircraft at Camp David and had laser sights placed upon him by the presidential protection guard. He was profusely thanking the President for the US Navy

Seals rescuing him from the Atlantic and harboured no ill-will, but he ended up in Waco high security prison.

A

Mr Kirk's had these minutes. HHJ Seys-Llewellyn didn't see them as relevant to the BS claim, for reasons Your Honour has correctly, with respect, identified. They're outwith the timeframe of that action, but two of the --

B

His Honour Judge Petts: I'm sorry, just, just to interrupt you. I'm not sure Mr Kirk has seen them because looking at paragraph 6 of the July judgment, HHJ Seys-Llewellyn said:

C

> **"Mr Kirk has not seen these minutes save that he produces to the court what he says is a copy of a report which must have been made by a social worker with the initials EP at the head of the report, and I was informed by counsel for the Defendant, Mr Lloyd Williams QC, that he had not seen a copy, any copy of the minutes."**

D

So, if the, Judge Seys-Llewellyn having refused disclosure I'm not sure that the Claimant has, hasn't seen it.

E

Mr Leathley: Well, I may be properly corrected there.

His Honour Judge Petts: Yes.

F

Mr Williams: Yes.

Mr Leathley: I'm not sure I've ever seen them so I'm in the position of Mr Lloyd Williams QC. The fact, the fact of the matter --

G

His Honour Judge Petts: Yes.

Mr Williams: Can, can, can I just make the point, I'm sorry to intervene, but it –

H

Mr Leathley: Sorry.

Mr Williams: Your Honour is right, so his, HHJ Seys-Llewellyn did not, as my learned friend suggested, facilitate the Claimant getting hold of the minutes. It's clear from his judgment that he didn't allow Mr Kirk either to rely upon the, what he said was part of it or to see the official minutes that he was presented with by the police officer who turned up with the minutes.

His Honour Judge Petts: Yes.

Mr Williams: So, whatever he's got, and we don't know what he's got because we haven't seen it, it didn't come via the court.

His Honour Judge Petts: Yes.

Mr Williams: Or the Defendants.

Mr Leathley: The, the fact of the matter is, there is a relevance here. Let me just say, when Mr Kirk was recently hospitalised for his heart attack, because he's MAPPA level 3 and considered dangerous, even the nursing staff accompanied him and it wasn't just simply out of care and protection. There, there were police escorts. Mr Kirk can very rarely do anything because he's considered very, very dangerous and this is part and parcel of what he says is the wickedness of what they did to him in 2009.

First of all, they stuck a firearms warning against his name by the bringing of this prosecution, which was all malicious, and that has revisited him as recently as his frustrated applications for parole wherein a firearms conviction appeared on his PNC, and he's never been convicted of a firearms offence, as we know. So Mr Kirk's view is all this comes of wickedness. Prosecute the man for a firearms offence which is non-existent.

Because firearms are something courts generally get very excited about, remand him in custody for fear that he might shoot the Chief Constable of South Wales, which is the most spurious hyperbole one can possibly envisage, and whilst we're, got him in custody, convene a multi, multi-agency public protection arrangement meeting, get him labelled about as dangerous as one gets and the man is marked for life.

Whether or not we adduce this through the minutes doesn't particularly excite me, but the fact that that meeting took place and the fact that Mr Kirk was MAPPA 3, category 3, and the fact that Dr Tegwyn Williams appears to have been at the meeting, and the fact that Dr Tegwyn then writes a totally erroneous, and I say this with confidence, I was actually in Cardiff Crown Court when Dr Tegwyn Williams gave his evidence that there is a brain damage, a physiological brain damage to Kirk that prevents him from being aware of the consequences of his actions on others, so there is no restraining mechanism in his brain about anything he may do, and of course Dr Rose Marnell and endless psychiatrists have since said, this is rubbish, the man hasn't got physiological brain damage, he hasn't got a, he's not insane within the M'Nachten rules and where is Dr Tegwyn Williams? Oh, he fled to Christchurch, New Zealand. *Shome mishtake, shurely.*

Mr Kirk needs to have closure. He has nearly died bringing these claims. The fact of the matter is that he knows about these multi-agency public protection arrangements, and I'm not so bothered about the minutes so long as we can have an accord that these events took place. Redact them and we might as well rip up the entire claim and the heads of damage and go home, and cancel the trial in September. This is his claim. These, this is what they did. They crucified him, in his, his idiom, and he doesn't necessarily have to rely upon public interest immunity protected documentation so long as somehow this is encapsulated and be allowed to plead it.

He knows he's MAPPA level 3 because people tell him wherever he goes, and when he's in prison we have to put a watch on you, Mr Kirk. You're armed and dangerous. Mr Kirk, you can't go to the toilet without a guard. Mr Kirk you can't do this. Mr Kirk you can't do that. So, so long as he be allowed to say it somehow the whys and wherefores as to how Mr Kirk articulates these points, but they mustn't be redacted from his case because, with respect, that is his case and, and the Defendants cannot deny that he was MAPPA 3, category 3, as a result of a meeting at the Defendants' headquarters in Bridgend.

So, I, I think we might be able to meet with an accord, Mr Lloyd Williams and I, without necessarily trespassing on minutes, but, that these events are, are, are, are, are, are true and, if necessary, if Mr Lloyd Williams is making the offer to call Liz Paul then she was a witness and she can --

His Honour Judge Petts: I don't think, I don't think I detected a, an offer by Mr Williams to call Elizabeth Paul. He was making the point that if Mr Kirk wanted to rely on her evidence, the time for doing so having passed, he should have arranged a statement from her and/or produced her notes, neither of which has happened.

(claimant arrives)

Mr Leathley: Mr Kirk has very conveniently arrived back in court. May I just ask him, because this is outwith my knowledge --

His Honour Judge Petts: Yes.

Mr Leathley: And I don't want to deceive Your Honour.

His Honour Judge Petts: Yes.

Mr Leathley: You know the multi-agency public protection arrangement minutes?

Mr Kirk: Yes.

Mr Leathley: Have you actually got minutes of public agency --

Mr Kirk: One of the agents, or two of the agents, yes.

Mr Leathley: You've got, you've got minutes of the meetings?

Mr Kirk: Of, of the parties. They are obliged to keep their own minutes.

Mr Leathley: Yeah, but what have you got?

Mr Kirk: I've got Elizabeth Paul.

Mr Leathley: What is it? A statement by her, or a?

Mr Kirk: It's her notes when they registered me MAPPA level 3.

Mr Leathley: Right. Your Honour is right and Mr Lloyd Williams is right. He's got the notes of Liz Paul where, who was present when Mr Kirk was registered MAPPA category 3, level 3. So he hasn't got the minutes and therefore that –

Mr Kirk: We need those.

Mr Leathley: Well, but he's got the, the notes of Liz Paul as, as he's pleaded.

His Honour Judge Petts: Yes.

Mr Leathley: So, yes, there are issues of hearsay here. Mr Kirk would obviously want the minutes. He's just said that he would wish to make an application. It goes to an issue of credibility and it goes to the issue of, of whether there is wickedness by the Defendants in exaggerating how dangerous Mr Kirk is on the back of a prosecution for firearms he says should never have been brought, because he, you get gun risk warnings wherever you go and Mr Kirk is still bedevilled by gun risk warnings. So, he, he, he would wish this information to be put into the court process.

His Honour Judge Petts: Yes. What about the sentence, it may have been attempted to be redacted as a bit of an afterthought, but be that as it may, the sentence about the jury regarding the case as hopeless?

Mr Leathley: Where is that appearing, forgive me?

His Honour Judge Petts: That's the very last paragraph, sentence of paragraph 5 on page 4.

Mr Leathley: Is, is, is that, is that of the particulars of claim?

His Honour Judge Petts: Of the particulars of claim, yes.

Mr Leathley: Yes, well, the fact of the matter is, quite unwittingly, Mr Kirk went to a pub following his acquittal and the entire jury were there, and bought him a drink. That's where

that comes from, and, and, and they told him that they thought the whole thing was a laughing stock. Something that echoed --

A

Mr Kirk: I, I have them as witnesses. I can get them --

Mr Leathley: Well, well don't speak, Mr Kirk. You've got me to speak for you.

B

Mr Kirk: I have jury witnesses from that trial.

Mr Leathley: The fact of, the fact of the matter is Mr Kirk did not violate the immunity of
C the jury, but the fact of the matter is they were all laughing and joking about it in the pub afterwards and that, I can't resile from the fact that that is his case.

His Honour Judge Petts: Thank you. Anything in reply, Mr Williams?

D

Mr Williams: No.

(judgment given)

E

Mr Leathley: I'm very grateful.

His Honour Judge Petts: OK. So what have we got left to deal with?

F **Mr Leathley:** I don't think there's a great deal --

His Honour Judge Petts: No, it's just the, I'm just --

G **Mr Leathley:** Is there, Mr Lloyd Williams?

His Honour Judge Petts: Let's just go through my shopping list of what I, there's mode of trial, we've dealt with.

H

Mr Leathley: Yes.

His Honour Judge Petts: Length of trial, well it's been listed as two weeks and what --

Mr Leathley: That's doable with a judge.

His Honour Judge Petts: Yes, and what I'm going to ask --

Mr Leathley: Within the constraints of Mr Lloyd Williams's diary, it's doable with a fair wind --

His Honour Judge Petts: Yes.

Mr Leathley: And a little bit of common sense on both sides.

Mr Williams: I'm sorry, Your Honour.

His Honour Judge Petts: Yes.

Mr Williams: I just wanted to check something, which might assist. This is now getting down to the minutiae of case management which, after all, is what we're here for. The Defendants will undertake the preparation of the bundles.

His Honour Judge Petts: I rather hoped you were going to say that.

Mr Williams: So, we have already served the documents on the Defendant --

His Honour Judge Petts: Yes.

Mr Williams: Claimant in any event, but we'll undertake the preparation of the bundles.

His Honour Judge Petts: Yes. In, at, I'd like there to be an agreement in advance, and sufficiently far in advance for it, for it to workable, for a trial timetable, so that we can, well, I'll, I'll put it in, in your respective hands in the first instance, but if we've got ten days for this trial I'm going to anticipate, I'm anticipating that each of you will, effectively, want a day to, for closing submissions, at a rough guess.

Mr Leathley: I think half a day, Your Honour, with all due respect.

His Honour Judge Petts: Well, that doesn't --

Mr Leathley: I don't, I don't think I, even I could go on for day.

His Honour Judge Petts: Don't, don't regard that as a challenge, Mr Leathley. Well --

Mr Leathley: Well, well, Your Honour, with all due respect, perhaps you ought to set a timetable under which Mr Christian Howells can serve the redacted Claimant's statement for inclusion in the bundle and then a time limit by which the Defendant incorporates the transcripts and serves the bundle, with the statement of the Claimant and the pleadings as redacted.

Mr Williams: If the bundles, I'm sorry to intervene.

His Honour Judge Petts: Yeah.

Mr Leathley: No, no.

Mr Williams: But the transcripts are, of course, already noted in our --

Mr Leathley: Yes.

His Honour Judge Petts: Yes.

Mr Williams: List of documents, so there's no issue about that.

His Honour Judge Petts: Yes. No, no, it, it was, what I'm, what I'm, what I want to happen at some point in, well in advance of trial, is agreement as to who, which witnesses are being called on which day.

I'm not going to ask you to sort that out now because it may be that, on looking at some of the witnesses, between you, you agree that their witness evidence is either uncontroversial or is only going to take 15 minutes or whatever, but to have some sort of idea so that we're not operating on a day to day basis, but we have a clear idea of which witnesses we're going

to hear on which day so that we can use the ten days as fully as possible for the opening, the evidence, the closing submissions, because I, I, I wouldn't want a situation where we ended up running out of time and having to deal with written submissions.

Not only does that make much more work for you but also it makes it harder for me and just delays the whole process as, as well. So there, you, you'll have, leaving aside, if we, there'll be some time for an opening on day one, we'll have one or two days of closing submissions, however long it is, on the, the final day, but then you've got, effectively, seven or eight days between you to fit in all the oral evidence and cross-examination.

Mr Leathley: I mean, one, one pragmatic suggestion is that, given Superintendent Stuart Mackenzie and Detective Constable Suzanne Hughes have knowledge of the preparation and presentation of the case as was before Cardiff Crown Court in 2010, you could put to them certain things complied by the police as part and parcel of their records kept acting under a statutory duty to investigate crime and you could, with some common sense, get them to agree that witness statements existed and were put before the Court, and that would streamline and accelerate the process very considerably.

You might even get under the umbrella of that process the continuity of the machine gun. For example, could you, you could, you, although, as I say, I'm not tying myself to that but you could actually deal with a lot of it that way.

His Honour Judge Petts: Well, I'll, I'll, I'll let you, between the two of you, have first go at trying to take a timetable because you're far more immersed in the details of what witnesses say and what they're going to, to need to be questioned about than I am. So let's work out what needs to be, what the order is, is going to need to say.

Mr Leathley: I might just say for the record, I do apologise for interrupting, that the firearms officers of *Huxtable*, *Ridyard* and *Mabbett*, are, are non-negotiable. We'd like them, please.

His Honour Judge Petts: I'm sure that'll ...

Mr Williams: Yes. Can, can I just say, because this is a term Mr Leathley has used before.

Mr Leathley: Non-negotiable.

Mr Williams: Non-negotiable, they're my witnesses and I'll call them if they're appropriate.

His Honour Judge Petts: Yes.

Mr Williams: That applies to all the witnesses.

His Honour Judge Petts: Yes. OK, so the order is going to need to say mode of trial, judge alone. Striking out of, I think, three sentences in the particulars of claim. Mr Leathley, as you drafted that, that's presumably still on your computer somewhere.

Mr Leathley: Yes.

His Honour Judge Petts: And the --

Mr Leathley: No, I've got it as a Word document.

His Honour Judge Petts: Good. So that, that, that won't be too much a difficulty to serve a, a revised version, striking out the parts of the Claimant's witness statement that I've dealt with, where the Defence have agreed to produce a revised version for the Claimant's approval, that it's correctly redacted in accordance with the order. The issue about Foxy, I, I suggest that goes into a separate order because that's the order that needs to go onto the judiciary website as it's an Anonymity Order and I don't see that the judiciary website needs to have the rest of the orders in this case. It's, it's the only one that I'm obliged to publish, or have published on the judiciary website is the, the Witness Anonymity Order.

The refusal of the application for relief from sanctions for statements two, three and four. Timetable for serving bundles, skeleton arguments and trial timetable. By working backwards, if I'm to, and I, I make no promises I'm going to be successful but if I am going to be able to get some reading time out of the administration in a week that I'm, before the trial when I'm presently due to be in Caernarvon Crown Court, the material is going to have to be delivered to court sufficiently far in advance for it to get up to --

Mr Williams: Yes.

His Honour Judge Petts: My neck of the woods in north Wales.

A

Mr Williams: Yes.

His Honour Judge Petts: To save me having to come, come down to, to fetch it, as it were. So skeleton arguments are going to need to be more than a week, well, skeleton arguments

B

aren't so much the trouble because they're, they can be emailed, but it's making sure that, for your sakes, Mr Williams and Mr Leathley, that you have paginated trial bundles sufficiently far in advance in August that you can produce skeleton arguments and chronologies or lists of issues, whatever else you need to produce, with appropriate cross-

C

references going in the trial bundle. So let's work this out.

Mr Williams: Well, Mr Leathley does have all the documents, of course.

D

His Honour Judge Petts: Oh, yes.

Mr Williams: So, it, it's --

Mr Leathley: That's right, yes.

E

Mr Williams: We could, if Your Honour were to allow us, I'm not sure what day 1 September is, but up to 1 September then we can file our skeleton arguments, or whatever, submissions, you want to call them, by 1 September.

F

His Honour Judge Petts: Skeletons, Wednesday, Wednesday 1 September.

Mr Williams: We, we're going to in, in ours, Your Honour --

G

His Honour Judge Petts: Yeah.

Mr Williams: Set out matters of law as well.

H

His Honour Judge Petts: Yes.

Mr Williams: Which we hope will save time.

His Honour Judge Petts: Yes.

Mr Williams: And the, the, I'm sure there won't be anything to dispute about it, but if it's all before you then, then certainly on final submissions would make life easier to do that. What we probably won't be able to make final, in our case summary is anything about damages, that will have to wait until such findings as you –

His Honour Judge Petts: Yes.

Mr Williams: Seek to make. We will be inviting you, as normally happens, for you give a judgment on liability and then if, if it's appropriate, to hear further submissions on quantum.

Mr Kirk: Confirm that with the Judge.

His Honour Judge Petts: Yes. So if we, if skeletons are by, to be, to be filed and exchanged by 4pm on 1 September, I've accidentally put 2022, I mean 2021. Trial bundles are, effectively, that a lot of work has already been done by the sound of things, but they'll need to be finalised and a, a set delivered, well, at least two sets will need to be delivered to the court, one for the witnesses, one for me. When can, when should that be done by? It will need to be in advance of 1 September. We normally say ten working days, I think, so that will take us to about 23 August.

Mr Williams: Yes. Just, just so we know, does Your Honour wish to have, I suspect Mr Leathley and I will be working on paper copies, being old fashioned, does Your Honour wish to have them in paper copies? Or both?

His Honour Judge Petts: I'm just, I'm just trying to think, because we need to, as you will probably know, I don't live in the Cardiff area.

Mr Williams: Yes.

His Honour Judge Petts: And there is, there's a lot to be said for e-bundles, once I can work out how to, assuming I'm in this room, for example, making sure the screens don't all show me three different versions of the, of, of the, three versions of the same screen. I can't

work out how Judge Harrison has set up his multi-monitor display, but that's for another day. I don't particularly want to be lugging 17 trial bundles, or whatever it is --

Mr Williams: No.

His Honour Judge Petts: Backwards and forwards at a weekend to and from north Wales. So I think we'll work on the basis that I'll have electronic copies and then, should I find that I desperately need paper copies of anything, I can either print it off myself or seek Dolmans' assistance in providing a paper version of some of it.

Mr Williams: Yes. We've --

His Honour Judge Petts: The witnesses will probably need to have a paper copy, won't they?

Mr Williams: I think you probably will. I think you'll find it easier to have paper copies.

His Honour Judge Petts: Yes, although there are then, assuming, well, unless things change, there are issues about multiple people handling multiple volumes in the, in the pandemic, but maybe by September things will have eased a bit and there won't be quite the same fear of cross-contamination, because I know in some courts people are told to, every, every witness is being told to bring, to have a copy of the bundle personally, which is all very well when you've got a fast track trial with just a couple of witness statements in it, but when you're talking ten day multi-track --

Mr Williams: Yes.

His Honour Judge Petts: Trials, it's not quite the same.

Mr Williams: Well, Your Honour, when the matter was before Judge Seys-Llewellyn last year, when he re-emerged and did one of the hearings, he wore gardening gloves whilst handling the papers. I don't suppose that's a terribly attractive way --

His Honour Judge Petts: Maybe that was a hint he had, he, he had somewhere else he would rather be. No, well, I, well that I'll leave to how, how things are being logistically

done in September, and if, if I'm needed to help on that I'll, I'll endeavour to do so, but I'd have thought it's something that can be sorted out at, without needing my involvement.

Mr Williams: Your Honour, one matter which I, I'd like to raise now because it, I don't know how much foresight is required in terms of planning this, is that when actions one to three were on, slightly different but nonetheless the trial judge designated certain rooms that we could use and then we could keep our papers in them --

His Honour Judge Petts: Yes.

Mr Williams: And they'd be locked every night, and opened every morning by one of the security guards and that helped considerably in, in the ease of running it, otherwise we'll have to take home our respective 17, or with the, the witness bundles, 23 volumes and so it would be helpful if some thought or some direction could be given by this Court.

His Honour Judge Petts: I will raise the matter with admin staff today. I don't know which room this trial is likely to get. Court 2 is an option, I would have thought, given that Judge Keyser at the moment is predominantly, if not exclusively, working from home, so court 2 is, is available most of the time. This is a, a possibility, depending, although Judge Harrison, I suspect, won't be away all that fortnight as he is this week. But, yes, I'll, I'll raise that issue. I can see the sense in, in a long trial and you each having a, a lockable room to keep your items in overnight to prevent you breaking your backs towing them up and down, to and from court.

Mr Williams: Thank you very much.

Mr Leathley: Your Honour, if I could return to the MAPPA point.

His Honour Judge Petts: Yes.

Mr Leathley: I, I see that one of the exhibits that Mr Kirk emailed to the court and to the Defendant by his 9 October 2020 disclosure, and I, I apologise for not spotting this sooner, was the MAPPA, MAPPA social work minutes, number 24. Now, I have said confidently that it is difficult for the Defendant to go behind the fact that Mr Kirk has these warnings and he can certainly, Mr Kirk, give evidence of how he's constantly reminded that you can't

do that, Mr Kirk, you're MAPPA level 3, category 3. However, the inception of all of this is Liz Paul and the MAPPA minutes which we have already sent to the Defendant by email of 9 October.

So, out, out of an abundance of caution and not trespassing into matters of hearsay, would it not be prudent for, and as I say, I'm revisiting the issue, would it not be prudent that Liz Paul is approached for a statement? For example, if she turns round and says, well, I was there and this, I'm being misquoted, then she ought to be given the right to say it.

His Honour Judge Petts: Well, my understanding, and I'm just trying to see whether I can find it, was that the list described as the Claimant's bundle was not necessarily a list of documents that were disclosed by the Claimant under cover of it, and if he didn't have them then it's difficult to see how he could disclose them, but included documents that he, that the, that Mr Kirk thought ought to be disclosed by the Defendant. So the fact that, and, and --

Mr Leathley: I, I, I think, I think I did email the, the, the, the social worker's minutes. I, I, it does exist and it, I haven't got it with me but I did, it does exist. I have seen it. I have seen it. It's, it went hard copy to this, sorry, it went electronically, forgive me, to this court on 9 October and it's something that Mr Kirk relied upon in his 9 October statement, so arguably it, it's, it's fate's been spared the guillotine of HHJ Keyser's direction. What, what, what I'm asking is, out of the abundance of caution, I don't want to run a bad point in this court, I don't want Mr Kirk to trespass unless and until Liz Paul is given the opportunity to say, well I told Mr Kirk what happened, I was there.

Should she not, I ask rhetorically, be given the opportunity to be proofed by the Defendant, not Mr Kirk, of course?

His Honour Judge Petts: Well, it, it's, it's not for me to say who the Defendant ought to approach and call as witnesses. If the Defendant --

Mr Leathley: No, I, I, I respectfully agree.

His Honour Judge Petts: Doesn't, doesn't, if the Defendant does not want to call any evidence from Elizabeth Paul that's a, a matter for them. It may be that they will reconsider,

I, I don't, I don't know, but they may take the view it's a, it, it's a, a point that your client wanted to run then he should have, at an earlier stage, done so.

A

Mr Leathley: Well, with respect, Your Honour, he, he, he's, he's said it's come to my notice that I was categorised MAPPA 3, level 3, and I've got the minutes of, of the social worker's notes of the meeting which, I presume, are indirectly following the ruling of HHJ Seys-Llewellyn QC, have landed in his possession somehow.

B

His Honour Judge Petts: Well, isn't he debarred by a previous order from relying on, yes, it, here it is, it's the order of HHJ Keyser on 30 May 2019, that:

C

> **"The Claimant having given no disclosure pursuant to paragraph 6 of the order dated 28 January 2019 be and is debarred from relying on any documents save those already listed by the Defendant in its, in its disclosure list."**

D

That's one order about disclosure, debarring, and I've seen something about a transcript, I think. I'm just trying to find that. Mr Williams, can you help?

E

Mr Williams: There is reference somewhere in, in the orders to the transcript. I have to say, at the moment, I can't quite apply my mind to where it is. The, the order seeking --

Mr Leathley: Is the January order that we're talking about? I've got it here.

F

Mr Williams: The order seeking relief from sanction, of course, in, in December, which dealt with documents was refused. So whatever was on, was not before Judge Keyser he refused admission of those documents before the Court.

G

His Honour Judge Petts: Yes. No, I, I don't think there's any need for me to revisit my previous ruling about MAPPA related issues.

Mr Leathley: Yeah.

H

His Honour Judge Petts: Anything apart from costs now that we need to deal with?

Mr Williams: Only costs.

A

Mr Leathley: Costs in the case?

Mr Williams: No.

B

(claimant addresses counsel)

Mr Kirk: I've come back from the motorway, realising this might happen in my absence. You are deliberately cutting out Dr Tegwyn Williams, who, with the help of Elizabeth --

C

Mr Leathley: Sit down Maurice.

Mr Kirk: Will, will clarify the seriousness of this claim. I'm sorry to interrupt, Your Honour.

D

His Honour Judge Petts: Mr Kirk, I'm not --

Mr Leathley: Your Honour, I'll circumvent this another way.

E

His Honour Judge Petts: Yes.

Mr Leathley: I, I can think of one other route that I can take.

F

His Honour Judge Petts: Yes. I, I'm, there's been no application to rely on or call or deal in any way with Dr Tegwyn Williams. I'm not cutting him out as is being alleged.

G

Mr Leathley: Well, I'm very grateful for that concession. I, I think the, the difficulty here is that Mr Kirk having been released in the summer of last year, and we not having had the disclosure of the Defendant's bundle until October, we tried to be obsequious and serve our case by 9 October, which was permissible. You could argue that these documents are under the umbrella of the statement of 9 October which has not been guillotined and is not time-barred. Perhaps it's something I can revisit, or make an application at some later stage.

H

His Honour Judge Petts: OK.

Mr Williams: I'd only say that the statement didn't have attached to it the minutes that we're talking about, so it wasn't --

Mr Leathley: Well, it, it, it, it, with respect, I remember personally, I, I, I, it took me all of a Sunday to scan and email all the documents and I know this Honourable Court had the documents and the Defendant had, on 9 October, which I recall was a Sunday, they had the particulars of claim. They had the statement of Maurice Kirk dated 9 October 2020. They had a Home Office document entitled, grounds on, sorry, controls on deactivated firearms, a consultation paper, May 2009. They had the Claimant's reply to requests for further and better particulars.

They had a transcript of the evidence of *Huxtable*, *Ridyard* and *Powell*, a transcript of undercover officer Foxy, DC Parker, SJ Williams, DC Dixon, DC Robin. Most of these Defendant-produced documents and/or transcripts which we're not arguing about, with the deepest of respect, transcript, transcript, jury empanelling. Yes, psychiatric reports of Dr Tegwyn Williams. They, they were sent. Spec scans and X-rays, Dr Rose Marnell, Civil Aviation letter, letter to Horsey Lightly Solicitors, MAPPA social work minutes, statement of John Davison, Dr James dated 14 January, prison medical records on Claimant, three photographs of the machine gun and the Claimant's home, Claimant's defence statement, witness statement of Casper Kirk.

I, I, I just respectfully submit on behalf of Mr Kirk that there might be some ambiguity about HHJ Keyser's order:

> **"It is recorded, for the avoidance of doubt, that the combined effect of orders of 30 May '19 and 24 January 2020 is that, subject to compliance with any subsequent orders, the Claimant is not entitled to rely on any documentary evidence other than that that has been disclosed by the Defendant, but is entitled to rely on any document that has been disclosed by the Defendant and any evidence of any witness whose statement has been served in accordance with the orders of the court."**

Now, on 9 October, all of that was actually was within time served in accordance with orders of the court. So I, I'm just respectfully submitting that maybe some latitude to the fact that the guillotining of Miss Pauls' minutes did not necessarily redact that from the time limit. Mr Kirk was attempting to be obsequious to the orders. I'm just concerned how we get it in.

Mr Williams: You can't.

His Honour Judge Petts: Well, if, if, if –

Mr Leathley: Well, that's the point. We can't. Mr Lloyd Williams QC is correct.

His Honour Judge Petts: It, it –

Mr Leathley: Although, although it's allowed in, and I, I'm deeply grateful that it's allowed in as part of the particulars, when it comes to Mr Kirk proving his case, even on the balance of probability, the civil standard, I don't see how he, he, he can visit MAPPA. He's, he's been given the permission but not the tools of the job.

His Honour Judge Petts: Well, if he, if he hasn't served evidence to, in accordance with the order, the orders that have previously been given, that will substantiate the allegation, the, the, then the allegation will fail, but I'm not letting the fact that I didn't strike out that passage in the particulars of claim as a back door to get around the effect of previous orders that have debarred him from relying on evidence not served in accordance with previous orders. That's not what I was being asked to do, nor is it what I would want to do.

If he's been debarred from relying on a particular document because it wasn't served in time then nothing I have said today is a mechanism for him to have a second bite at that cherry.

Mr Leathley: But it all came in under the umbrella of his witness statement. For example, when a witness makes a statement, he says and here is my exhibit, and that, those MAPPA minutes are part of his 9 October statement, referred to therein.

His Honour Judge Petts: Well, I, I'm not sure I, I think we're going round in circles. He's either disclosed something in accordance with orders –

Mr Leathley: Which I say he has because what, it's implicit that anything on 9 October that he sent, bar, bar anything inadmissible in law, escaped the guillotine.

A

His Honour Judge Petts: No, there's disclosure of documents and then there's service of witness statements.

B

Mr Leathley: Yeah.

His Honour Judge Petts: And if he didn't disclose a document in accordance with the provisions for serving documents then he cannot rely on it, even if he then subsequently attached it and/or served it alongside his witness statement.

C

Mr Leathley: He served --

D

His Honour Judge Petts: Because the process is different. You, you don't get round a debarring order in relation to documents by attaching or referring to, or certainly not --

Mr Leathley: I'm sure I can get round it another way, Your Honour. I've got, I, I can think a way round this. I, I do apologise for detaining you. I, I'll find another route.

E

His Honour Judge Petts: Fine. Costs.

Mr Williams: Yes.

F

Mr Leathley: In the case?

His Honour Judge Petts: Well, Mr Williams was about to disagree with you and then we got side-tracked.

G

Mr Williams: Yes, won't take very long. The Claimant should pay the Defendant's costs on the Defendant's application, since he has for the most part been successful. The Claimant should pay the Defendant's costs on the Claimant's application because he's failed on all of his applications. Other than that, so we're only dealing the costs of the application, but other than that the costs should be costs in the case.

H

His Honour Judge Petts: So there's the application to, for relief from sanctions by the Claimant, and for jury trial by the Claimant, both of which failed. There's your application to strike out passages of the witness statement, which was successful. The particulars of claim, which was a score draw, and the application of, in relation to Foxy, which wasn't resisted but had to be brought before me --

Mr Williams: Yes.

His Honour Judge Petts: Anyway.

Mr Leathley: What I would submit, as regards these costs, is that the interpretation of statute is a very fine point, that the application for a jury trial was not brought frivolously and the Claimant marshalled comprehensive and coherent argument that, on one interpretation of the statute, he is entitled. It is not, therefore, the case that the Claimant brought an application that was preposterous ab initio and therefore, as regards his failure to secure jury trial, he should not be penalised for costs.

As regards his application to allow witness statements two, three and four, and be, revisit the question of sanctions, he already has to pay costs of his application to be relieved of sanctions on 18 December. We are now before the trial judge, we hope, and case management bites and has more effect. What, in fact, the Claimant has done by this process is put the Defendant on notice as regards how a lot of his case will be put and argued, and the fact of, of the matter is that the materials in those statements, which he's disclosed and he needn't have done this in advance of the trial, we have agreed can be addressed by other methods.

In other words, we haven't said no, no you can't refer to transcripts, no you can't to do this, you can, but in the proper way, and we have saved enormous time and resources of the Honourable Court by deciding how we're going to present this. These are not easy issues and when Mr Kirk embarked upon this he was a litigant-in-person and ergo I say that he should not be penalised for what are very, very difficult points because I've only picked up this case towards the final phase. I helped Mr Kirk draft the particulars and then he vanished.

I'm back on the case but these are things he's had to marshal largely off his own bat while serving as a prisoner and I therefore submit that costs should be in the cause and he shouldn't be penalised for the fact that, on somewhat esoteric points, his applications may have

technically failed but they've assisted the Court in identifying issues, and a lot of the material can come back in through another route.

A

His Honour Judge Petts: Thank you.

(judgment given)

B

His Honour Judge Petts: Anything further?

Mr Leathley: I'm obliged. No, not for my part.

C

His Honour Judge Petts: Mr Williams?

Mr Williams: No.

D

His Honour Judge Petts: Mr Howells, I haven't called on you all day. Is there anything succinct that you, you wish to say at this stage?

Mr Howells: Your Honour, no.

E

His Honour Judge Petts: No. Can I leave it between you to liaise as to preparation of the, the orders and submit them in the usual way for my approval? I see, see Mr Williams already looking over at his junior and his junior trying to avoid his gaze. I'm here next, well, I was going to say, I, I am here next week. In fact I have been rostered to sit in family law in Wrexham next week, lucky me, but emails will reach me with the proposed draft order and then I'll process them as soon as I can.

F

G **Mr Williams:** Thank you, Your Honour.

His Honour Judge Petts: Thank you all very much for your assistance today.

Mr Leathley: Thank you, Your Honour.

H

Court Clerk: Court rise.

A

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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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);
>
> 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

[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.

Mr Williams: I'd only say that the statement didn't have attached to it the minutes that we're talking about, so it wasn't --

Mr Leathley: Well, it, it, it, it, with respect, I remember personally, I, I, I, it took me all of a Sunday to scan and email all the documents and I know this Honourable Court had the documents and the Defendant had, on 9 October, which I recall was a Sunday, they had the particulars of claim. They had the statement of Maurice Kirk dated 9 October 2020. They had a Home Office document entitled, grounds on, sorry, controls on deactivated firearms, a consultation paper, May 2009. They had the Claimant's reply to requests for further and better particulars.

They had a transcript of the evidence of *Huxtable*, *Ridyard* and *Powell*, a transcript of undercover officer Foxy, DC Parker, SJ Williams, DC Dixon, DC Robin. Most of these Defendant-produced documents and/or transcripts which we're not arguing about, with the deepest of respect, transcript, transcript, jury empanelling. Yes, psychiatric reports of Dr Tegwyn Williams. They, they were sent. Spec scans and X-rays, Dr Rose Marnell, Civil Aviation letter, letter to Horsey Lightly Solicitors, MAPPA social work minutes, statement of John Davison, Dr James dated 14 January, prison medical records on Claimant, three photographs of the machine gun and the Claimant's home, Claimant's defence statement, witness statement of Casper Kirk.

I, I, I just respectfully submit on behalf of Mr Kirk that there might be some ambiguity about HHJ Keyser's order:

> **"It is recorded, for the avoidance of doubt, that the combined effect of orders of 30 May '19 and 24 January 2020 is that, subject to compliance with any subsequent orders, the Claimant is not entitled to rely on any documentary evidence other than that that has been disclosed by the Defendant, but is entitled to rely on any document that has been disclosed by the Defendant and any evidence of any witness whose statement has been served in accordance with the orders of the court."**

Now, on 9 October, all of that was actually was within time served in accordance with orders of the court. So I, I'm just respectfully submitting that maybe some latitude to the fact that the guillotining of Miss Pauls' minutes did not necessarily redact that from the time limit. Mr Kirk was attempting to be obsequious to the orders. I'm just concerned how we get it in.

Mr Williams: You can't.

His Honour Judge Petts: Well, if, if, if --

Mr Leathley: Well, that's the point. We can't. Mr Lloyd Williams QC is correct.

His Honour Judge Petts: It, it --

Mr Leathley: Although, although it's allowed in, and I, I'm deeply grateful that it's allowed in as part of the particulars, when it comes to Mr Kirk proving his case, even on the balance of probability, the civil standard, I don't see how he, he, he can visit MAPPA. He's, he's been given the permission but not the tools of the job.

His Honour Judge Petts: Well, if he, if he hasn't served evidence to, in accordance with the order, the orders that have previously been given, that will substantiate the allegation, the, the, then the allegation will fail, but I'm not letting the fact that I didn't strike out that passage in the particulars of claim as a back door to get around the effect of previous orders that have debarred him from relying on evidence not served in accordance with previous orders. That's not what I was being asked to do, nor is it what I would want to do.

If he's been debarred from relying on a particular document because it wasn't served in time then nothing I have said today is a mechanism for him to have a second bite at that cherry.

Mr Leathley: But it all came in under the umbrella of his witness statement. For example, when a witness makes a statement, he says and here is my exhibit, and that, those MAPPA minutes are part of his 9 October statement, referred to therein.

His Honour Judge Petts: Well, I, I'm not sure I, I think we're going round in circles. He's either disclosed something in accordance with orders --

Mr Leathley: Which I say he has because what, it's implicit that anything on 9 October that he sent, bar, bar anything inadmissible in law, escaped the guillotine.

A

His Honour Judge Petts: No, there's disclosure of documents and then there's service of witness statements.

B

Mr Leathley: Yeah.

His Honour Judge Petts: And if he didn't disclose a document in accordance with the provisions for serving documents then he cannot rely on it, even if he then subsequently attached it and/or served it alongside his witness statement.

C

Mr Leathley: He served --

D

His Honour Judge Petts: Because the process is different. You, you don't get round a debarring order in relation to documents by attaching or referring to, or certainly not --

Mr Leathley: I'm sure I can get round it another way, Your Honour. I've got, I, I can think a way round this. I, I do apologise for detaining you. I, I'll find another route.

E

His Honour Judge Petts: Fine. Costs.

Mr Williams: Yes.

F

Mr Leathley: In the case?

His Honour Judge Petts: Well, Mr Williams was about to disagree with you and then we got side-tracked.

G

Mr Williams: Yes, won't take very long. The Claimant should pay the Defendant's costs on the Defendant's application, since he has for the most part been successful. The Claimant should pay the Defendant's costs on the Claimant's application because he's failed on all of his applications. Other than that, so we're only dealing the costs of the application, but other than that the costs should be costs in the case.

H

His Honour Judge Petts: So there's the application to, for relief from sanctions by the Claimant, and for jury trial by the Claimant, both of which failed. There's your application to strike out passages of the witness statement, which was successful. The particulars of claim, which was a score draw, and the application of, in relation to Foxy, which wasn't resisted but had to be brought before me --

Mr Williams: Yes.

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technically failed but they've assisted the Court in identifying issues, and a lot of the material can come back in through another route.

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His Honour Judge Petts: Thank you.

(judgment given)

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His Honour Judge Petts: Anything further?

Mr Leathley: I'm obliged. No, not for my part.

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Mr Williams: Thank you, Your Honour.

His Honour Judge Petts: Thank you all very much for your assistance today.

Mr Leathley: Thank you, Your Honour.

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Court Clerk: Court rise.

A

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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

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Introduction

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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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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.

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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;

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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.

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His Honour Judge Petts: Because the process is different. You, you don't get round a debarring order in relation to documents by attaching or referring to, or certainly not --

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As regards his application to allow witness statements two, three and four, and be, revisit the question of sanctions, he already has to pay costs of his application to be relieved of sanctions on 18 December. We are now before the trial judge, we hope, and case management bites and has more effect. What, in fact, the Claimant has done by this process is put the Defendant on notice as regards how a lot of his case will be put and argued, and the fact of, of the matter is that the materials in those statements, which he's disclosed and he needn't have done this in advance of the trial, we have agreed can be addressed by other methods.

In other words, we haven't said no, no you can't refer to transcripts, no you can't to do this, you can, but in the proper way, and we have saved enormous time and resources of the Honourable Court by deciding how we're going to present this. These are not easy issues and when Mr Kirk embarked upon this he was a litigant-in-person and ergo I say that he should not be penalised for what are very, very difficult points because I've only picked up this case towards the final phase. I helped Mr Kirk draft the particulars and then he vanished.

I'm back on the case but these are things he's had to marshal largely off his own bat while serving as a prisoner and I therefore submit that costs should be in the cause and he shouldn't be penalised for the fact that, on somewhat esoteric points, his applications may have

technically failed but they've assisted the Court in identifying issues, and a lot of the material can come back in through another route.

His Honour Judge Petts: Thank you.

(judgment given)

His Honour Judge Petts: Anything further?

Mr Leathley: I'm obliged. No, not for my part.

His Honour Judge Petts: Mr Williams?

Mr Williams: No.

His Honour Judge Petts: Mr Howells, I haven't called on you all day. Is there anything succinct that you, you wish to say at this stage?

Mr Howells: Your Honour, no.

His Honour Judge Petts: No. Can I leave it between you to liaise as to preparation of the, the orders and submit them in the usual way for my approval? I see, see Mr Williams already looking over at his junior and his junior trying to avoid his gaze. I'm here next, well, I was going to say, I, I am here next week. In fact I have been rostered to sit in family law in Wrexham next week, lucky me, but emails will reach me with the proposed draft order and then I'll process them as soon as I can.

Mr Williams: Thank you, Your Honour.

His Honour Judge Petts: Thank you all very much for your assistance today.

Mr Leathley: Thank you, Your Honour.

Court Clerk: Court rise.

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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)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

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);
>
> 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

[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.

Mr Williams: I'd only say that the statement didn't have attached to it the minutes that we're talking about, so it wasn't --

Mr Leathley: Well, it, it, it, it, with respect, I remember personally, I, I, I, it took me all of a Sunday to scan and email all the documents and I know this Honourable Court had the documents and the Defendant had, on 9 October, which I recall was a Sunday, they had the particulars of claim. They had the statement of Maurice Kirk dated 9 October 2020. They had a Home Office document entitled, grounds on, sorry, controls on deactivated firearms, a consultation paper, May 2009. They had the Claimant's reply to requests for further and better particulars.

They had a transcript of the evidence of *Huxtable*, *Ridyard* and *Powell*, a transcript of undercover officer Foxy, DC Parker, SJ Williams, DC Dixon, DC Robin. Most of these Defendant-produced documents and/or transcripts which we're not arguing about, with the deepest of respect, transcript, transcript, jury empanelling. Yes, psychiatric reports of Dr Tegwyn Williams. They, they were sent. Spec scans and X-rays, Dr Rose Marnell, Civil Aviation letter, letter to Horsey Lightly Solicitors, MAPPA social work minutes, statement of John Davison, Dr James dated 14 January, prison medical records on Claimant, three photographs of the machine gun and the Claimant's home, Claimant's defence statement, witness statement of Casper Kirk.

I, I, I just respectfully submit on behalf of Mr Kirk that there might be some ambiguity about HHJ Keyser's order:

> **"It is recorded, for the avoidance of doubt, that the combined effect of orders of 30 May '19 and 24 January 2020 is that, subject to compliance with any subsequent orders, the Claimant is not entitled to rely on any documentary evidence other than that that has been disclosed by the Defendant, but is entitled to rely on any document that has been disclosed by the Defendant and any evidence of any witness whose statement has been served in accordance with the orders of the court."**

Now, on 9 October, all of that was actually was within time served in accordance with orders of the court. So I, I'm just respectfully submitting that maybe some latitude to the fact that the guillotining of Miss Pauls' minutes did not necessarily redact that from the time limit. Mr Kirk was attempting to be obsequious to the orders. I'm just concerned how we get it in.

Mr Williams: You can't.

His Honour Judge Petts: Well, if, if, if --

Mr Leathley: Well, that's the point. We can't. Mr Lloyd Williams QC is correct.

His Honour Judge Petts: It, it --

Mr Leathley: Although, although it's allowed in, and I, I'm deeply grateful that it's allowed in as part of the particulars, when it comes to Mr Kirk proving his case, even on the balance of probability, the civil standard, I don't see how he, he, he can visit MAPPA. He's, he's been given the permission but not the tools of the job.

His Honour Judge Petts: Well, if he, if he hasn't served evidence to, in accordance with the order, the orders that have previously been given, that will substantiate the allegation, the, the, then the allegation will fail, but I'm not letting the fact that I didn't strike out that passage in the particulars of claim as a back door to get around the effect of previous orders that have debarred him from relying on evidence not served in accordance with previous orders. That's not what I was being asked to do, nor is it what I would want to do.

If he's been debarred from relying on a particular document because it wasn't served in time then nothing I have said today is a mechanism for him to have a second bite at that cherry.

Mr Leathley: But it all came in under the umbrella of his witness statement. For example, when a witness makes a statement, he says and here is my exhibit, and that, those MAPPA minutes are part of his 9 October statement, referred to therein.

His Honour Judge Petts: Well, I, I'm not sure I, I think we're going round in circles. He's either disclosed something in accordance with orders --

Mr Leathley: Which I say he has because what, it's implicit that anything on 9 October that he sent, bar, bar anything inadmissible in law, escaped the guillotine.

A

His Honour Judge Petts: No, there's disclosure of documents and then there's service of witness statements.

B

Mr Leathley: Yeah.

His Honour Judge Petts: And if he didn't disclose a document in accordance with the provisions for serving documents then he cannot rely on it, even if he then subsequently attached it and/or served it alongside his witness statement.

C

Mr Leathley: He served --

D

His Honour Judge Petts: Because the process is different. You, you don't get round a debarring order in relation to documents by attaching or referring to, or certainly not --

Mr Leathley: I'm sure I can get round it another way, Your Honour. I've got, I, I can think a way round this. I, I do apologise for detaining you. I, I'll find another route.

E

His Honour Judge Petts: Fine. Costs.

Mr Williams: Yes.

F

Mr Leathley: In the case?

His Honour Judge Petts: Well, Mr Williams was about to disagree with you and then we got side-tracked.

G

Mr Williams: Yes, won't take very long. The Claimant should pay the Defendant's costs on the Defendant's application, since he has for the most part been successful. The Claimant should pay the Defendant's costs on the Claimant's application because he's failed on all of his applications. Other than that, so we're only dealing the costs of the application, but other than that the costs should be costs in the case.

H

His Honour Judge Petts: So there's the application to, for relief from sanctions by the Claimant, and for jury trial by the Claimant, both of which failed. There's your application to strike out passages of the witness statement, which was successful. The particulars of claim, which was a score draw, and the application of, in relation to Foxy, which wasn't resisted but had to be brought before me --

Mr Williams: Yes.

His Honour Judge Petts: Anyway.

Mr Leathley: What I would submit, as regards these costs, is that the interpretation of statute is a very fine point, that the application for a jury trial was not brought frivolously and the Claimant marshalled comprehensive and coherent argument that, on one interpretation of the statute, he is entitled. It is not, therefore, the case that the Claimant brought an application that was preposterous ab initio and therefore, as regards his failure to secure jury trial, he should not be penalised for costs.

As regards his application to allow witness statements two, three and four, and be, revisit the question of sanctions, he already has to pay costs of his application to be relieved of sanctions on 18 December. We are now before the trial judge, we hope, and case management bites and has more effect. What, in fact, the Claimant has done by this process is put the Defendant on notice as regards how a lot of his case will be put and argued, and the fact of, of the matter is that the materials in those statements, which he's disclosed and he needn't have done this in advance of the trial, we have agreed can be addressed by other methods.

In other words, we haven't said no, no you can't refer to transcripts, no you can't to do this, you can, but in the proper way, and we have saved enormous time and resources of the Honourable Court by deciding how we're going to present this. These are not easy issues and when Mr Kirk embarked upon this he was a litigant-in-person and ergo I say that he should not be penalised for what are very, very difficult points because I've only picked up this case towards the final phase. I helped Mr Kirk draft the particulars and then he vanished.

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technically failed but they've assisted the Court in identifying issues, and a lot of the material can come back in through another route.

A

His Honour Judge Petts: Thank you.

(judgment given)

B

His Honour Judge Petts: Anything further?

Mr Leathley: I'm obliged. No, not for my part.

C

His Honour Judge Petts: Mr Williams?

Mr Williams: No.

D

His Honour Judge Petts: Mr Howells, I haven't called on you all day. Is there anything succinct that you, you wish to say at this stage?

Mr Howells: Your Honour, no.

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His Honour Judge Petts: No. Can I leave it between you to liaise as to preparation of the, the orders and submit them in the usual way for my approval? I see, see Mr Williams already looking over at his junior and his junior trying to avoid his gaze. I'm here next, well, I was going to say, I, I am here next week. In fact I have been rostered to sit in family law in Wrexham next week, lucky me, but emails will reach me with the proposed draft order and then I'll process them as soon as I can.

F

G **Mr Williams:** Thank you, Your Honour.

His Honour Judge Petts: Thank you all very much for your assistance today.

Mr Leathley: Thank you, Your Honour.

H

Court Clerk: Court rise.

A

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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);
>
> 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

[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.

Mr Williams: I'd only say that the statement didn't have attached to it the minutes that we're talking about, so it wasn't --

Mr Leathley: Well, it, it, it, it, with respect, I remember personally, I, I, I, it took me all of a Sunday to scan and email all the documents and I know this Honourable Court had the documents and the Defendant had, on 9 October, which I recall was a Sunday, they had the particulars of claim. They had the statement of Maurice Kirk dated 9 October 2020. They had a Home Office document entitled, grounds on, sorry, controls on deactivated firearms, a consultation paper, May 2009. They had the Claimant's reply to requests for further and better particulars.

They had a transcript of the evidence of *Huxtable*, *Ridyard* and *Powell*, a transcript of undercover officer Foxy, DC Parker, SJ Williams, DC Dixon, DC Robin. Most of these Defendant-produced documents and/or transcripts which we're not arguing about, with the deepest of respect, transcript, transcript, jury empanelling. Yes, psychiatric reports of Dr Tegwyn Williams. They, they were sent. Spec scans and X-rays, Dr Rose Marnell, Civil Aviation letter, letter to Horsey Lightly Solicitors, MAPPA social work minutes, statement of John Davison, Dr James dated 14 January, prison medical records on Claimant, three photographs of the machine gun and the Claimant's home, Claimant's defence statement, witness statement of Casper Kirk.

I, I, I just respectfully submit on behalf of Mr Kirk that there might be some ambiguity about HHJ Keyser's order:

> **"It is recorded, for the avoidance of doubt, that the combined effect of orders of 30 May '19 and 24 January 2020 is that, subject to compliance with any subsequent orders, the Claimant is not entitled to rely on any documentary evidence other than that that has been disclosed by the Defendant, but is entitled to rely on any document that has been disclosed by the Defendant and any evidence of any witness whose statement has been served in accordance with the orders of the court."**

Now, on 9 October, all of that was actually was within time served in accordance with orders of the court. So I, I'm just respectfully submitting that maybe some latitude to the fact that the guillotining of Miss Pauls' minutes did not necessarily redact that from the time limit. Mr Kirk was attempting to be obsequious to the orders. I'm just concerned how we get it in.

Mr Williams: You can't.

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His Honour Judge Petts: No, there's disclosure of documents and then there's service of witness statements.

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Mr Leathley: Yeah.

His Honour Judge Petts: And if he didn't disclose a document in accordance with the provisions for serving documents then he cannot rely on it, even if he then subsequently attached it and/or served it alongside his witness statement.

C

Mr Leathley: He served --

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His Honour Judge Petts: Because the process is different. You, you don't get round a debarring order in relation to documents by attaching or referring to, or certainly not --

Mr Leathley: I'm sure I can get round it another way, Your Honour. I've got, I, I can think a way round this. I, I do apologise for detaining you. I, I'll find another route.

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His Honour Judge Petts: Fine. Costs.

Mr Williams: Yes.

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His Honour Judge Petts: Well, Mr Williams was about to disagree with you and then we got side-tracked.

G

Mr Williams: Yes, won't take very long. The Claimant should pay the Defendant's costs on the Defendant's application, since he has for the most part been successful. The Claimant should pay the Defendant's costs on the Claimant's application because he's failed on all of his applications. Other than that, so we're only dealing the costs of the application, but other than that the costs should be costs in the case.

H

His Honour Judge Petts: So there's the application to, for relief from sanctions by the Claimant, and for jury trial by the Claimant, both of which failed. There's your application to strike out passages of the witness statement, which was successful. The particulars of claim, which was a score draw, and the application of, in relation to Foxy, which wasn't resisted but had to be brought before me --

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technically failed but they've assisted the Court in identifying issues, and a lot of the material can come back in through another route.

A

His Honour Judge Petts: Thank you.

(judgment given)

B

His Honour Judge Petts: Anything further?

Mr Leathley: I'm obliged. No, not for my part.

C

His Honour Judge Petts: Mr Williams?

Mr Williams: No.

D

His Honour Judge Petts: Mr Howells, I haven't called on you all day. Is there anything succinct that you, you wish to say at this stage?

Mr Howells: Your Honour, no.

E

His Honour Judge Petts: No. Can I leave it between you to liaise as to preparation of the, the orders and submit them in the usual way for my approval? I see, see Mr Williams already looking over at his junior and his junior trying to avoid his gaze. I'm here next, well, I was going to say, I, I am here next week. In fact I have been rostered to sit in family law in Wrexham next week, lucky me, but emails will reach me with the proposed draft order and then I'll process them as soon as I can.

F

G **Mr Williams:** Thank you, Your Honour.

His Honour Judge Petts: Thank you all very much for your assistance today.

Mr Leathley: Thank you, Your Honour.

H

Court Clerk: Court rise.

A

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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

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

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

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);
>
> 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

[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;
>
> (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
>
> (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

[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

dereliction of duty if SWP had not investigated the case of someone who appeared to have a machine gun making attempts to trace witnesses against him in such a way, and I agree.

113. After the Claimant was arrested, there was ample evidence to justify charge and prosecution for offences under section 5(1)(a). The first independent person to see the gun, Mr Scott, did not think that it had been deactivated and that was confirmed by everyone who looked at it subsequently, including an independent forensic scientist of whom no criticism was made. The gun was not tampered with. That allegation rests primarily on the comments of Mr Cooper via his solicitor in January 2009. The Claimant did not call Mr Cooper to give evidence at this trial when one might have expected that he would have been a star witness. In fact, Mr Cooper gave very little evidence during the criminal trial about the state of the gun and made no allegation at that stage that the gun had been tampered with after he had parted with it. That he said that the barrel was blocked when he had it (preventing him from putting a wire rod down the barrel) is entirely consistent with the screw having been screwed down, which is not a permanent blockage let alone a method of deactivating the gun. The allegation of tampering is also made based on the alleged time that the gun spent in Chepstow before going to Mr Rydeard, but I have already explained why the supposed evidence for this does not stand up to scrutiny. In any event, by that stage SWP already had what they wanted, which was the supportive views of Mr Huxtable based on his preliminary examination, and there would be no need to alter the gun further. Insofar as it was suggested that the gun might have been tampered with by Nottinghamshire Police on the instructions of SWP before it even made it into the hands of SWP, that would be ludicrous. There is simply no evidence for it, nor any real opportunity for such an undertaking in the limited time between it being collected from Mr Scott – who, after all, had said that on a preliminary examination it was not deactivated, thus meaning that the gun did not need tampering with to make it into an illegal weapon – and being passed a few hours later to Mr Brown. The allegation of tampering also rests on the theory that the gun had changed colour before trial, but again there is no good evidence of this and no reason for it to have been repainted. The suggestion that it had been stripped for a fingerprint examination runs headlong firstly into the evidence (which I accept) that this investigation was not going to be carried out, for good reason, and secondly the lack of evidence that it was so examined nevertheless. It was said in closing submissions that the provenance of the gun was nebulous and the integrity of it as an exhibit was corrupted, but that is far from the case.

114. The decision to charge was made by the CPS not the police, and this is not one of those cases where police misfeasance or dishonesty made it impossible or virtually impossible for the CPS to exercise their discretion independently. The MG3 is a balanced and accurate reflection of the evidence obtained at that stage. I reject any suggestion that the police improperly obtained a remand in custody. On the evidence at that stage (and as a judge who sits in both the criminal and civil jurisdictions) I can see ample reasons why the crown court would be justified in refusing bail and so even without seeing a transcript of the ruling of HHJ Merfyn Hughes QC on the bail application, I am not at all surprised that the CPS appealed the decision of the magistrates and did so successfully.

115. Based on my findings and the law, the claims for false imprisonment and malicious prosecution fail, as does the claim for misfeasance in public office, so the claim will be

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

Gmail David Leathley Barrister at Coal Lex Chambers <coalxlex@gmail.com>

RE: APPEAL CF036/2021 CA MAURICE JOHN KIRK V CHIEF CONSTABLE OF SOUTH WALES CONSTABULARYW

1 message

Civil Appeals - Registry <civilappeals.registry@justice.gov.uk> 16 November 2021 at 13:37
To: David Leathley Barrister at Coal Lex Chambers <coalxlex@gmail.com>
Cc: QB Judges Listing Office <QBJudgesListingOffice@justice.gov.uk>

Good afternoon,

Your email was referred to the Jurisdiction Lawyer of the Court of Appeal who has asked me to inform you of the following:

On 1 September 2021 Mr David Leathley filed an appellant's notice at the Court of Appeal seeking (effectively) permission to renew the application for permission to appeal the order made by HHJ Petts dated 7 May 2021, permission to appeal having been refused on the papers by Mrs Justice Stacey in an order made on the papers dated 25 August 2021.

The order made by Mrs Justice Stacey dated 25 August 2021 contained a liberty to apply to renew the application to an oral hearing within 7 days of service of the order. As I understand it, Mr Leathley did apply under that liberty to apply for an oral hearing to the Queen's Bench Division of the High Court. Unfortunately, in error, he was directed to the Court of Appeal. It may have been because colleagues at the High Court saw the appellant's notice filed with the renewal application, which was an application for permission to appeal the order made by Mrs Justice Stacey. This appellant's notice was unnecessary and does not accurately reflect the nature of the oral hearing sought. It is not possible to appeal the order made by Mrs Justice Stacey – the oral renewal of the permission application is the only avenue available (see s54(4) Access to Justice Act 1999). It is extremely unfortunate that our colleagues in the High Court directed Mr Leathley to the Court of Appeal, and we apologise for our delay in addressing these papers.

We suggest that Mr Leathley now seek to pursue the application for an oral hearing before a High Court Judge in the High Court, on the basis that the oral renewal request was properly filed at the High Court within the 7 day window.

The case will be closed for lack of jurisdiction in the Court of Appeal. Please advise if any fee has been paid and we can arrange for a refund.

We trust that this assists.

Regards

HM Courts & Tribunals Service

Mrs Sharon Walker - Delivery Manager - Civil Appeals
Registry & In Court Support | Rm. E311

Royal Courts of Justice|Strand|London|WC2A 2LL|DX 44456 Strand

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155.

In The Taunton Crown Court

MAURICE JOHN KIRK

-and-

SOUTH WALES CONSTABULARY

CHRONOLOGY OF BACKGROUND EVENTS

SUPPLEMENTAL TO BAIL APPLICATION

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1. Between **1992-2002** Maurice John Kirk, Veterinary Surgeon, was prosecuted a total of 33 times by South Wales Police. All the aforesaid prosecutions were concluded in Mr. Kirk's favour. Between 2013-2015 Mr. Kirk litigated in court against South Wales Police for malicious prosecution and was granted judgment in his favour in three of the aforesaid actions. The civil case bore the case number **BS 614159.**
He pleaded the sheer number of incidents (33) made for the irresistible inference of an agreement between two or more persons to either maliciously prosecute him or do him injury. At paragraph 1151 of a judgment in that case His Honour Judge Seys Llewellyn QC stated he was not convinced the Claimant was universally known ***outside his own geographical area*** in addressing the inference of conspiracy. All the incidents occurred in The Vale of Glamorgan or that part of Cardiff closest to The Vale.
If one looks at **The A-Z Atlas of Wales Edition 11** all the incidents occurred at **pages 64-65:**

Action 1 Claim 8.3 21.9.93 Cowbridge

Action 1 Claim 8.5 24.3.93 Barry

Action 1 Claim 8.6 20.5.93 Grand Avenue, Ely.

Action 1 8.7 M4 (Barry)

Action 1 Claim 8.9 22.9.93 Barry Police Station

Action 1 Claim 8.11 3.10.93 St. Athan

Action 1 8.12 4.10.93 (Struck Out)

Action 1 8.13 Barry Surgery

Action 1 8.14 15.12.93 Barry Police Station

Action 1 8.15 Barry

Action 1 Claim 8.16 9.8.94 Barry

Action 1 8.17 10.8.94 Barry

Action 1 8.23 May 1995 Barry

Action 1 8.18, 8.19, 8.20 & 8.21 The Vale of Glamorgan

Action 1 8.26 (Gafael incident) Evicted Tenant Vale of Glamorgan

Action 2 9.2.96 Flight to Ireland Cardiff Rhoose Airport

Action 2.3 12.5.96 Canton Cardiff

Action 2.4 21.1.97 Link Rd. Barry

Action 2.5 St. Nicholas

Action 2 para 6 Southey Street Barry

Action 2 para 7 4.7.19 St. Donats (police helicopter)

Action 2.8 Pontypridd Road Barry

Action 2.9 1.12.99 Llantwit Major

Action 2.10 23.1.00 A4232 near Welsh Folk Museum

Action 2.11 5.4.00 Newport Road/ Albany Road Cardiff

Action 2.12 16.8.00 Bridgend.

Action 2 13-8 8.9.00 Church St. Llantwit Major

Action 2 14.3 20.12.00 Cowbridge Road West Surgery

Action 3 4.1 13.12.01 Merthyr Mawr Rd Bridgend

Action 3 5 1-3 21.5.02 The Hayes Cardiff

Action 3 6.1 West Gate Cowbridge.

The incidents occurred in Maurice John Kirk's own 'back garden'.

The third listed prosecution (20th May 1993) concerned Mr. Kirk being arrested outside his own veterinary surgery for possession of offensive weapons namely 'garrotte' wire, a common veterinary tool, on the premise that the 'general arrest provisions' of The Police and Criminal Evidence Act 1984 applied. That is to say the police had no idea who he was or where he could be found. They therefore had no address for service of a summons. Mr. Kirk spent 4 days in prison, being 'unidentifiable'.

Additionally, Maurice John Kirk commenced **7CF07345** accusing South Wales Police of a systematic failure to investigate 24 criminal actions by third parties against Mr. Kirk. The case still subsists under case reference **D00CF279**.

On **28.1.00** at Bristol Crown Court HHJ Ray S Jack, QC, said ***It is a pretty remarkable tale if there is any truth in it. I am voicing a little disquiet. Just look at the number of incidents. One asks, 'What is going on?'***

7CF07345 concerned crimes committed against Mr. Kirk between 1993 and 2003.

2. Towards the end of the above chronology **on 6th January 2001** the police complained to The Royal College of Veterinary Surgeons and Mr. Kirk's name was removed from the veterinary register on the 19th January 2004.

   This complaint had the consequence of curtailing Mr. Kirk's income in his fight with

the police through the civil courts. By **2008** a civil jury trial was ordered by HHJ Chambers, Queen's Counsel.

3. On the **8th day of June 2009** a meeting took place at Barry police station of **The Multi Agency Public Protection Arrangement (MAPPA)**. These events concern another civil case **ICF03361.** That case, argues Mr. Kirk, is the apex of his argument (the ultimate proof) that South Wales police were driven by what lawyers term *'an animus'*, a hostile intent, behind all their arrests and prosecutions of him. Mr. Kirk requests the pleadings in **1CF03361** be read in their entirety to fully understand what he avers was the absurdity of the prosecution that lay behind it. The **MAPPA** Referral information stated '***Maurice John Kirk has a long history with law enforcement agencies with a number of criminal convictions together with a large number of civil actions and complaints being instigated. At present Kirk has just over 100 civil actions pending against South Wales Police focused on a variety of individuals.***'

   On the **22nd June 2009** Maurice John Kirk was arrested for the possession of a de-commissioned Lewis machine gun attached to a vintage aircraft used, inter alia, for filming and airshows. Maurice John Kirk has evidence that **Dr. Tegwyn Mal Williams** caused members of his staff to attend Barry police station for the MAPPA meeting that led to Dr. Williams's knowledge that Mr. Kirk was to be arrested, remanded in custody and, should Mr. Kirk 'approach the Chief Constable of Wales', on the pretext of 'mutual exchange of witness statements', in the civil action, 'he was likely to be shot' by an armed police unit.

4. On the **9th February 2010** a jury at Cardiff Crown Court acquitted

Maurice John Kirk of all charges connected with the Lewis gun without even the need of his having to call evidence in his defence.

Mr. Maurice John Kirk was remanded in custody with regard to the Lewis gun.

A police psychiatrist found Mr. Kirk had no relevant medical abnormality with her patient (Mr. Kirk) to require detention or treatment. As a consequence Barry magistrates had granted Mr. Kirk unconditional bail. The Prosecution appealed. On the **3rd August 2009 Dr. Tegwyn Mal Williams** wrote a psychiatric report, without even examining **Mr. Kirk,** recommending he serve a further period of remand whilst unconvicted in his experimental unit at Caswell Clinic, Bridgend. On or about **28th August 2009.** Dr. Williams caused Mr. Kirk to undergo a SPEC scan requiring the infusion of radioactive isotopes into Mr. Kirk's brain. As a consequence Dr. Williams gave further reports: '***Maurice Kirk has evidence of significant brain damage to an area of brain significantly related to self-awareness, judgment, decision making, self regulation of behaviour and control of emotions***'

and '***Maurice Kirk presents with symptoms entirely consistent with a mental illness namely Paranoid Delusional Disorder (fixed false beliefs unamenable to reason).***

In consequence Mr. Kirk suffered 8 months' imprisonment for a crime of which he was not guilty and was nearly placed in Ashworth High Security Psychiatric Hospital. A number of psychiatrists and a leading Neurologist, a **Dr. Kemp,** opined that Mr. Kirk was not mentally ill.

On the **28th November 2013** further brain scans were carried out on Mr. Kirk and, as a consequence, **Dr. Rose Marnell** wrote in a letter '**There is no evidence (Mr. Kirk) The Accused suffers from Paranoid Delusional Disorder..there is no evidence to indicate he suffers from significant brain damage and there is no evidence he has cancer**'

5. In **2011** Maurice John Kirk posted a WANTED poster of Dr. Williams on his KIRK: FLYING VET website, publishing a direct quote from Dr. Williams's misleading psychiatric report. Mr. Kirk knew that unless corrected the existence of such a damning report it would lead to revocation of his pilot's licence.

6. In **December 2011** Mr. Kirk was made the subject of a Cardiff Magistrates' Court prosecution for that he carried out a course of harassment against Dr. Tegwyn Williams. He was convicted. Mr. Kirk maintains that a Restraining Order was never served upon him as he was hastily bundled out of court on crutches. A tireless campaign by Mr. Kirk to dispute the integrity of the Restraining Order and assert that it was *ultra vires* has taken up much of Mr. Kirk's life since, exercising his democratic right to freedom of expression and to challenge the 2011 conviction through all proper legal channels. Between **2011-2012** Maurice John Kirk has been prosecuted for no less four alleged Breaches of The Restraining Order. He has referred the 2011 conviction to The Court of Appeal (Criminal Division) and The Criminal Cases Review Commission.

7. The Second Complaint by Dr Tegwyn Williams was discontinued by The Crown Prosecution Service. In **2013 Tony Dicken of CPS** agreed to disclose the said file to **David Leathley, Barrister** as Maurice John Kirk was making application to The Court of Appeal in person. To date no such disclosure has taken place. Mr. Kirk contends it goes to an issue of the ***mala fides*** of Dr. Tegwyn Williams towards him.

8. In **2013** Mr. Kirk commenced the exhausting civil claim **BS 614 159** at Cardiff Civil Justice Centre in person. Despite winning three claims of malicious prosecution Mr. Kirk maintains that his victimisation by South Wales Police continues and

the prosecutions are, once again, motivated by a desire by police to thwart his litigation.

9. In **July 2013** the Police prosecuted Maurice John Kirk for the spurious accusation by a Mark Davenport, a squatter on property lawfully occupied by Mr. Kirk, that Mr. Kirk had both assaulted and threatened him. This resulted in the Police seeking, and obtaining, another long remand in custody interfering with Mr. Kirk's ability to litigate, until **October 2013** when HHJ Neil Bidder, Queen's Counsel, dismissed the Davenport allegations, expressing the view that there was no merit in them.

10. Following his conviction for a fourth posting on social media about repeated Non-Disclosure of documents pertaining to the service of the Tegwyn Williams Restraining order Mr. Kirk was ordered to serve two years' imprisonment.
His sister Celia Jeune (a former JP) can attest to the fact that her brother's criminal records were wilfully corrupted falsely branding Mr. Kirk, inter alia, a paedophile.
She attended parole hearings. Mr. Kirk claims he has been repeatedly denied access to his legal papers whilst in prison.

David Leathley
Coal Lex Chambers
1st Floor, Portland House
113-116, Bute Street
Cardiff
CF 10 5EQ
20th June 2020

In The Cardiff Civil Justice Centre **Appeal CF057/2021 CA**

On Appeal

MAURICE JOHN KIRK

Appellant

v

THE CHIEF CONSTABLE OF SOUTH WALES CONSTABULARY

Respondent

APPELLANT'S APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A FULL APPEAL BUNDLE/ PROVISIONAL BUNDLE & SUBMISSIONS FOR THE ATTENTION OF THE SINGLE JUDGE ON 20TH DECEMBER 2021

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1. The Appellant relies on his Opening Note for the trial commencing the 6th day of September 2021 for the factual background to these claims and the Firearms law. With the deepest of respect to the Honourable Court the Provisional Grounds of Appeal dated the 6th October 2021 are detailed and if read in conjunction with the Opening Note provide the factual and legal matrix of the Appellant's claims. In addition the Appellant respectfully directs the Honourable Court to the document marked 'Claimant's closing submissions' for further analysis of the evidence. **(pages 1-17).**

2. Since filing the Notice of Appeal the Appellant has investigated the Birmingham Proof House Certificate of Deactivation only disclosed as recently as 2020. Enquiries at Sportsman Gun Centre have resulted in correspondence marked 'WITHOUT PREJUDICE' and the denial that deactivation work was carried out by their employees. The exhibit was sent to a third party for deactivation it has been claimed. Sportsman have claimed the contractor was Patrick Croft of Exeter. Enquiries have been made and Patrick Croft has denied any such involvement. The exhibit **AJR/1** was returned to Jerry Cooper (the witness to whom the Appellant sold the exhibit) by South Wales Police. The Appellant has failed to procure Mr. Cooper's cooperation in attesting to the state of the gun. The relevance is clear. At trial Mr. Rydeard attested that an automatic weapon or machine gun cannot be down-graded by subsequent

modification. In 2010 the Home Office issued Revised Specifications for The Deactivation of Firearms. The requirements relating to machine guns are far more exacting than the invoice 13405 'Not Paid' reflects. The Appellant's case is that it flies in the face of all logic and reason, particularly in the light of pages **18-20** and the finely balanced issues at trial for His Honour Judge Petts to have concluded that **AJR/1** was anything other than a single barrel shotgun and therefore deserving of the mandatory minimum five year jail sentence . His judgment was, with the deepest of respect to the Learned Judge, *Wednesbury* unreasonable.

3. On the 25th October 2021 the Appellant instructed Phillip Boyce, a firearms expert at Forensic Equity to provide the sort of evidence the Appellant was prevented from calling by His Honour Judge Keyser QC, exercising his powers of case management which prevented any evidence being called in support of the appellant. Despite the time constraints of this appeal Mr. Boyce has instructed that his report cannot be ready before noon on the 17th December 2021. It is anticipated the report will counter Mr. Rydeard's analysis that **AJR/1** was a machine gun by virtue of its 'component parts'.

4. The Appellant appealed the Case Management decision of His Honour Judge Petts dated the 7th May 2021 at which the decisions of HHJ Keyser Qc were upheld **(pages 21-126)**. The Respondents opposed the statutory entitlement for the Appellant to be tried by jury. They cited the fact that the case was document heavy. It was not. It involved five of the original Crown Court trial prosecution witnesses and only a handful of documents disclosed by The Respondent. In the ultimate paragraph of the judgment **(127-154)** subject to appeal His Honour Judge Petts is able to commend the writer for delivering his case ahead of schedule.

5. The Honourable Mrs Justice Stacey by her order dated 25th August 2021 refused the Appellant his appeal against that order but granted him liberty to apply for an oral hearing. New evidence in the form of an email dated 16th November 2021 has shown the appellant was again denied his oral hearing due to an administrative error and the matter was wrongly directed to the Court of Appeal **(page 155)**.

6. The Appellant was a litigant in person and although civil procedure rules afford a litigant in person no 'extra favours' it is expected that from time to time one or other parties to the proceedings will be unable to keep to the directions. The transcript of the 7th May 2021 reveals that the Appellant suffered sanctions of being unable to properly present his case because of events outside his control. He had been incarcerated and all his legal papers stolen by G4S. This can be proved by reference to the live case G00TA1220 at Bristol County Court.

7. The Appellant states he has been systematically persecuted by South Wales Police. Their motive was to prevent his bringing civil claim **BS614159** hence the present matter in which spurious allegations of having a machine gun were brought **(see Chronology pages 156-162).** A remand to custody was procured contrary to the decision of local justices in order to have the Appellant certified MAPPA Level 3 (At trial former Detective Superintendent McKenzie admitted he instigated the MAPPA process but His Honour Judge Petts attributed this to his having 'misspoke'). The Appellant was very nearly remanded to Ashcroft High Security Unit. Here was a determined effort by The Respondent to put the Appellant out of circulation for good, it is averred.

8. Over the years there have been further spurious prosecutions of the Appellant (the latest being at Exeter Crown Court) and the irresistible inference is that the intention is to hobble the Appellant with regard to these civil claims.

9. An extension of time in which to prepare a full bundle in support of leave to appeal is therefore sought as there is a real prospect that the Appellant can demonstrate he was maliciously prosecuted and the decision to refuse him relief from Judge Keyser's sanctions effectively prevented a fair trial.

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