

IN THE CARDIFF COUNTY COURT

Case No: BS614159-MC65

CF101741

CF204141

BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

DEFENDANT'S POSITION STATEMENT

INTRODUCTION

1. This position statement is produced by the Defendant in respect of various matters which have to be considered on the 21st January 2016. These matters relate to both the first three actions brought by Mr Kirk against the South Wales Police and the further four actions commenced by Mr Kirk against the South Wales Police, three of which have been stayed pending the resolution of the first three actions.

FIRST THREE ACTIONS

2. There appear to be three matters which need to be resolved in respect of the three ongoing actions, namely;
 - (a) In the course of the judgement on liability which has been handed down by this Court, there is, at paragraph 1000 an indication that the Court

may require further assistance as to whether or not there is a valid claim for malicious prosecution. If this is still an outstanding issue, which of course must be a matter for the Court, then submissions will be required. We assume that the Court will adopt the process which has been used so far, namely that the Defendant should prepare and serve written submissions and that Mr Kirk should then prepare and serve his own written submissions, and thereafter the matter will be listed for hearing before this Court when any supplementary submissions can be made. If this is still an outstanding issue upon which the Court requires assistance, we respectfully suggest that directions be given for the Defendant to file submissions within three weeks of this hearing, and that Mr Kirk be allowed a further three weeks to respond, following which this matter be listed for hearing. It is likely that the Court will be able to give judgement on the date when the matter is listed.

- (b) Out of the numerous claims made by Mr Kirk in the first three actions, he has succeeded only to a very limited extent. Damages will need to be assessed in respect of those matters. Once again, we respectfully invite this Court to adopt the previous procedure, namely the Defendant should prepare and serve a Skeleton Argument, following which Mr Kirk prepare and serve his Skeleton Argument. Thereafter the matter can be listed for a hearing before this Court. Given the complexity of the various issues involved, we respectfully invite this Court to allow the Defendant six weeks to serve a Skeleton Argument and that Mr Kirk thereafter be allowed a similar period of time. The matter can then be listed for a hearing. We are unsure as to whether the Court can give judgement on that occasion, or whether the Court would seek to reserve judgement. For the avoidance of doubt, we would submit that the six week period should run from the date when the Court gives judgement in respect of the matter set out above;

(c) Once the quantum of damages has been assessed, the Court will need to go on to consider the question of costs. In view of the fact that the Court found no evidence of there being an overarching conspiracy by the Defendant against Mr Kirk, and that there are only a few discreet matters upon which Mr Kirk succeeded, the Defendant would submit that the Court should go on to consider the question of costs in respect of the first three actions. The issue of costs not only relates to the matters upon which judgement was recently handed down, but also in respect of the legal issues which were considered in September 2010. In light of the fact that the first three actions were thought by the Court as being matters which could be separated from the following four actions, and having regard to the fact that Mr Kirk's success was so limited, the Defendant would submit that there is no reason whatsoever for the issue of costs to be adjourned or delayed. Given the numerous issues which would have to be considered on the issue of costs, we would respectfully invite the Court to direct that the Defendant be given ten weeks in order to prepare and serve its Skeleton Argument, with a similar period being allowed for Mr Kirk to reply. The matter would then need to be listed before this Court. For the avoidance of doubt, we respectfully submit that the ten week period should run from when judgement is given on the issue of quantum.

THE FURTHER FOUR ACTIONS

3. (a) Action 4 - 7CF07345
 - i. The Court may find it helpful to be reminded of the various developments which have taken place in this case. Mr Kirk issued a Part 8 Claim Form, together with the Particulars of Claim, which were served on the Defendant in November 2007. The Defendant filed an acknowledgement of service on 28th November 2007. On 17th December 2007 a case management conference took place when the first three actions and this action were adjourned to a case management conference which took place on 18th March 2008. At that further case management conference the Defendant was

ordered to file a Defence, which was done by 23rd May 2008. At that time no disclosure had taken place, and for the most part, the Defendant had not obtained witness statements in respect of the matters raised in the Particulars of Claim.

- ii. The Particulars of Claim raised some 60 allegations against the Defendant, some of which raised multiple issues. Thus, paragraph 59 referred to a further 41 matters which Mr Kirk appeared to want to include within the fourth action. The Defence filed by the Defendant raised a number of generic issues which arose from the Particulars of Claim. These primarily related to limitation, whether or not the facts pleaded by Mr Kirk gave rise to any private law right of action, duplication in respect of incidents pleaded in the first three actions and the inability of the Defendant to identify particular matters pleaded in the fourth action. On 30th July 2008 the Defendant was ordered to file a Position Statement, which was served on the 24th September 2008. The Court is respectfully referred to that document which sets out in detail the Defendant's position in respect of the fourth action.
- iii. On the 3rd October 2008 a further case management conference took place and the Defendant was ordered to file a Statement setting out its position and a Skeleton Argument. The Statement, which was made by Adrian Paul Oliver of Dolmans, was filed on 17th November 2008. In this lengthy document the Defendant's response to the matters raised in the Particulars of Claim was set out in detail. The Skeleton Argument on behalf of the Defendant was filed on 24th November 2008. These documents had been ordered with a view to resolving the issues submitted for consideration by the Defendant on 25th November 2008. On the 25th the fourth action was stayed pending resolution of the first three actions.
- iv. Following an oral application made by Mr Kirk, the Defendant was ordered to provide documentation in respect of the allegations set out in paragraph 39 of the Particulars of Claim. This was done so by letter of 6th January 2009.
- v. Given the number of allegations contained in the fourth action, which significantly exceed the total number of allegations contained in the first three actions the Defendant would respectively submit that the fourth action, should be dealt with as a discreet matter, after complete determination of the first three actions but before the last three actions, hereinafter set out, be

considered. It may be appropriate that the issues of law raised by the Defendant in the Statement and Skeleton Argument that have been filed should be dealt with as preliminary issues, before the Court turns to full disclosure and exchange of witness statements. This, broadly speaking, would be in accordance with the procedure adopted in respect of the first three actions. There are some matters which may need to be reconsidered before the matter comes on for hearing on the preliminary issues, since some of the information which emerged in respect of the first three actions suggest that there is greater duplication in the fourth action than had originally been identified. To that extent, there may have to be some amendment or further clarification in both the Statement which was prepared by Mr Oliver and the Skeleton Argument which has been filed.

(b) Action Five – 9CF02983

This action appears to relate to a period or periods when Mr Kirk was detained in respect of non payment of fines and / or a costs order, imposed by the Barry Magistrates Court. The action is against the South Wales Police and “HM Prison Governor”. On 23rd October 2009, as amended by a further order on 11th February 2011, the action was stayed as against the Police pending a determination of the first three actions. No Defence has been filed by the Police. The Police are wholly unaware as to what took place in respect of the action against HM Prison Governor.

(c) Action Six – 1CF03361

This claim, which was issued in May 2011, relates to a number of separate incidents, including in particular the “machine gun matter”. The machine gun matter involves numerous allegations of unlawful conduct made against the South Wales Police. The Defendant has filed an Amended Defence. No disclosure or exchange of witness statements has taken place. The action was stayed by order of 12th July 2011, pending the determination of the first three actions. In light of the numerous allegations of misconduct, both in respect of the machine gun matter and the other incidents relied upon, the Defendant would contend that the sixth action should be considered after determination of the fourth action, which itself should be considered after

complete determination of the first three actions.

(d) Seventh Action – OCF03921

This claim, which was issued on 8th June 2010, relates to the Claimant's alleged loss of use of his shot gun arising by way of a failure to renew his shot gun licence. The claim was struck out pursuant to an order of 22nd June 2010 as amended by Court order of 30th September 2010.

CONCLUSION

4. Given the number of discreet matters raised in respect of both the fourth action and the sixth action, the Defendant would contend that actions one to three have to be fully resolved before turning to the other actions. As well as the matters already identified in the fourth and sixth actions, there are outstanding applications for Jury Trial in respect of those actions. The Defendant would respectfully submit that the Court will have to give detailed consideration to those applications after having resolved any matters of law which arise in respect of those actions.

**Mr. Lloyd Williams QC,
Natalie Sandercock
13 January 2016**

IN THE CARDIFF COUNTY COURT

Case No: BS614159-MC65

CF101741

CF204141

BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

DEFENDANT'S POSITION STATEMENT

Messrs Dolmans

One Kingsway

CARDIFF

CF10 3DS

DX: 122723 CARDIFF 12

Sol Ref: APO.MS.SWP001-138

Our Ref: 556202