

**IN THE CARDIFF COUNTY COURT**

**BETWEEN:**

**MAURICE JOHN KIRK**

**Claimant**

**AND**

**THE CHIEF CONSTABLE OF THE  
SOUTH WALES CONSTABULARY**

**Defendant**

**DEFENDANT'S POSITION STATEMENT IN  
RESPECT OF ACTION 7CF07345 (THE FOURTH  
ACTION) AND ACTION 1CF03361 (THE SIXTH  
ACTION)**

1. **INTRODUCTION**

Save that the Court, at a date to be fixed, intends to consider what further Directions should be made in these actions, they presently remained stayed.

2. There are a number of issues which touch upon both actions, in particular in which order the actions should be dealt with and whether they should be tried by jury or by Judge alone.

3. Each action, however, has a number of issues that are particular to that action, that need to be addressed before the Court can go on to consider the general matters which impact on both actions. The purpose of this Position Statement is to identify the particular issues which affect the individual actions and how those particular matters feed into the way that the Court may need to address the matters set out in paragraph 2 hereof. This Position Statement will not set out at length the various arguments or legal propositions upon which the Defendant will seek to rely when the Court comes to consider the

particular issues in respect of each action.

4. **ACTION 7CF07345 (THE FOURTH ACTION)**

This action consists of sixty separate claims, some of which break down to other individual claims. The clearest example of this, is in paragraph 59, which appears to identify forty-one other matters that the Claimant wishes to pursue in this case. The total number of individual claims are therefore well over one hundred, considerably in excess of the total number of claims made in the first three actions. The claims appear to cover a period from 1993 to 2007. It seems that the Claimant will contend that a number of these claims are linked to disciplinary proceedings taken by the Royal College of Veterinary Surgeons which resulted in the Claimant's name being taken off the Register of Practising Veterinary Surgeons. The Claimant alleges that the Defendant's officers and others were in conspiracy with the RCVS and their lawyers, to have his name removed from the Register. It is further alleged that those parties and others, perhaps including members or former members of the judiciary, conspired with each other to prevent the Claimant from successfully appealing against the decision of the RCVS. In this regard, it is said by the Claimant that there have been seven Hearings before the Privy Council which were materially affected by this conspiracy.

5. Quite what implications these allegations have in terms of the number of witnesses to be called and the number of documents there may need to be considered, is, as yet, unclear. It is apparent, however, that this action has the potential to require many more witnesses and documents than were required in the first three actions, so that the Trial of this action will last considerably longer than that of the first three actions.

6. The chronology of the action is as follows:

- 24/10/07                      The Claimant issued a Part 8 Claim Form which, together with the Particulars of Claim, were served on the Defendant in November 2007.
- 28/11/07                      The Defendant filed an Acknowledgement of Service.
- 17/12/07                      A CMC took place, when further consideration of the first three actions, together with this action, was adjourned to 18/03/08.

- 18/03/08 The Defendant was ordered to file and serve a Defence.
- 24/05/08 The Defendant's Defence was filed and served. This document, which was of some twenty-seven pages, raised a number of generic issues in respect of the Claimant's claim, namely: limitation; whether the facts pleaded by the Claimant gave rise to a private law right of action; duplication of matters pleaded in Actions 1 to 3; the extent to which the Claimant was seeking to mount an attack on existing convictions and/or disciplinary findings and the extent to which the Claimant had failed to provide sufficient particulars in his Particulars of Claim.
- 30/07/08 A CMC took place when the Defendant was ordered to file a Position Statement. That was done by 24/09/08. It identified, in general terms, the generic issues which arose in respect of the fourth action.
- 03/10/08 A CMC took place when the Claimant and the Defendant were ordered to serve and file witness statements and Skeleton Arguments setting out their respective positions.
- 17/11/08 A witness statement from Mr. Adrian Paul Oliver was filed and served on behalf of the Defendant. This statement dealt in detail with all the matters raised in the Defence, particularly the issue of limitation, especially the suggestion made in the first paragraph of the Particulars of Claim that there was a "mutual agreement" between the parties to "delay (pursuing) the substantive claim against the Defendant". The Claimant was therefore making the allegation that there was an agreement that time would not run in respect of limitation.
- 24/11/08 The Defendant filed and served a Skeleton Argument setting out the legal propositions on which the Defendant sought to rely.
- 25/11/08 A CMC took place at which His Honour Judge Chambers, Q.C. stayed the fourth action "pending the determination ...."

.of Actions 1 to 3. The Learned Judge also gave detailed Directions in respect of Actions 1 to 3 identifying all the steps that would need to be taken up to the Hearing of the first three actions.

- 21/01/16 A CMC took place. The Defendant served a Position Statement highlighting the issues which arose in this particular action. At paragraph 1 of the Order, the Defendant was required by 04/02/16 to serve a list of those allegations contained within the Particulars of Claim in respect of which full particulars were required. By paragraph 2, the Claimant was ordered to serve a Response to that Request by 18/03/16. By paragraph 3 the Claimant was required to provide full particulars of the allegation that there was a mutual agreement on the issue of limitation. The Defendant served the Claimant with a Request within the specified time. Notwithstanding there being evidence that both the Court and the Defendant served the Claimant with a copy of this Order, the Claimant has contended that he did not receive the Order in good time. There was no compliance on his part with paragraphs 2 and 3 of the Order.
- 15/04/16 A CMC took place, following which an Order was made which repeated the previous Order of 21/01/16, save that the previous paragraph 2 became paragraph 1 and the previous paragraph 3 became paragraph 2. The Claimant had until 27/05/16 to comply with the Order. The Claimant was provided with a hand amended Order on the day of the Hearing and has subsequently been served with the final copy of the Order. The Claimant has served a Response in accordance with paragraph 1 but has failed to comply with paragraph 2.

7. The Defendant has always taken the view that the Court will need to resolve the various generic issues referred to above before going on to consider the other issues which will need to be considered in this case, e.g. disclosure and exchange of witness statements. Thereafter the Court will need to consider the extent to which this action inter-relates with the sixth action and resolve the issues as to whether one or both should be tried by a jury and, in any event, which action is to be brought on first.
8. The Defendant, therefore, invites the Court to order that a Preliminary Hearing should be listed where the generic issues of limitation, cause of action, duplication, collateral attacks on existing convictions/findings into disciplinary proceedings, and lack of particulars, can be adjudicated upon.
9. In view of the fact that many of the issues raised in action four are intertwined with Actions 1 to 3, it might be thought appropriate that these preliminary issues are decided by the Judge who heard Actions 1 to 3. Once those matters have been resolved, further Directions can then be given, in particular for disclosure, exchange of witness statements and the Claimant's wish for trial by jury; these matters can be dealt with by whichever Judge takes on responsibility for the future conduct of those actions.
10. The question as to whether there should be jury trial is, to a great extent, dependant on how many witnesses there will be and how much documentation will be required. These matters can only be addressed once the preliminary issues have been resolved. Given the Claimant's occasional confusion as to which case he is dealing with and which action deals with any particular allegation, it might be thought appropriate that consideration of these further Directions should be given after the final conclusion of Actions 1 to 3.
11. **ACTION 1CF03361 (THE SIXTH ACTION)**

This matter has regularly been referred to as the "machine gun case", however, it covers more than just the Claimant's arrest and trial for his possession of an offensive weapon. Including the machine gun case, there are a total of five separate allegations. The machine gun claim itself appears to include within it various sub-claims including placing the Claimant on the MAPPA Register and a conspiracy between the Defendant and Dr. Williams, Consultant Psychiatrist, to have the Claimant certified as being unfit to

stand for Trial. There is much within the Particulars of Claim which is unclear and which may require the Defendant to serve upon the Claimant a Request for Further Particulars. Without such clarification, it will remain unclear whether much of what has been pleaded is merely the background to the specific allegations made against the Defendant, or whether these background matters also form part of the allegations made against the Defendant. If the latter were so, then it is likely that there are far more allegations than the five which have so far been identified in the pleading.

12. The history of the sixth action is relatively straightforward. The Claimant served Particulars of Claim dated 26<sup>th</sup> May 2011. Thereafter the Defendant served and filed a Defence, followed thereafter by an Amended Defence in October 2011. The matter was then stayed by Order of the Court on 12<sup>th</sup> July 2011. At that same time the Claimant's Application to have the sixth action consolidated with the first three actions was dismissed.
13. As the Court has been informed on previous occasions, following the stay which was put on the case at an early stage, there has been no attempt to bring together all the witness statements required for this matter to proceed to Trial, nor has there been a gathering together of the documentation. At the time when the Amended Defence was prepared, a preliminary view suggested that there were likely to be very many documents which might have some relevance to the sixth action. Before a considered view can be reached on the number of witnesses likely to be called and the amount of documentation that will be required, the case will have to go through further revision by way of particulars being sought from the Claimant, and, if necessary, the matter being listed for a Preliminary Hearing in respect of some of the claims being advanced by the Claimant. In the sixth action the matter is not quite so acute as it is in the fourth action, but, nonetheless, there appears to be some alleged causes of action which may, on close examination, reveal no right of action against the Defendant. It would be as well that these matters are weeded out at an early stage in order to avoid unnecessary work by way of the obtaining of witness statements or the collection of documents.
14. It is clearly the case that the Claimant will contend that the matters contained in the sixth action, in particular the machine gun case, is the culmination of the misbehaviour of the Defendant and his officers over the last twenty-three years. To that extent, the events

surrounding the machine gun case and the other allegations contained in action six are necessarily intertwined with the previous history contained in Actions 1 to 4. Nonetheless, although this may be relevant as to whether or not there is a jury trial, it can be argued that the sixth action can be treated as a discreet matter, in which case, there is no pressing need for the Trial Judge in the first and third actions to be the Judge who deals with either Preliminary Hearings or Final Directions in the sixth action. The Defendant would contend that these matters can be considered once there has been a final resolution of Actions 1 to 3 and, at least, the resolution of the preliminary issues in action four.

15. **CONCLUSION**

In a case of this nature, there is no easy way forward in resolving the various issues which arise either in respect of the individual cases themselves, or in regard to the complaints made by the Claimant as a whole. The Defendant's tentative suggestions are advanced with a view to clarifying what matters raised by the Claimant can properly proceed to Trial, and what can be struck out at an early stage. Thereafter, once the matters which are justiciable have been identified, further Directions can be given for the future conduct of both the fourth and sixth actions.

16. In view of the history of these actions, and in particular the time covered by them, it seems eminently sensible for the fourth action to be dealt with before considerations turn to the sixth action. Given the time constraints which now exist, the Defendant would contend that the preliminary generic issues which arise in the fourth action can proceed with appropriate Directions for the filing of Skeleton Arguments, with the matter being listed sometime in the autumn. Once those matters have been resolved, further Directions can be given in 2017. Thereafter, once the total number of witnesses and the amount of documentation likely to be required in the case are known, the matter of jury trial can be considered perhaps in the summer of 2017.

17. In regard to the sixth action, there remains a lot to be done before the Court will be able to identify precisely what allegations the Claimant is making and which of those allegations form a legitimate basis of complaint against the Defendant which should be allowed to go to Trial. Given the already full diary of matters which need resolving in

this case in the period leading up to December 2016, it may be thought appropriate to put the sixth action back for consideration in 2017. At that stage Directions can be given for the Defendant to serve a Request for Further Particulars and thereafter, if appropriate, a Direction for trial of preliminary issues. Directions can then be given for disclosure and exchange of witness statements. It is only thereafter that the Court will be in a position to resolve the issue of jury trial in respect of the sixth action.

18. Although the Court may be concerned at the speed at which the fourth and sixth actions are making their way to Trial, this necessarily arises as a result of the involved nature of both actions and the way in which they are intertwined with Actions 1 to 3. Further, Actions 1 to 3 have not yet finally been resolved, and with the prospect of the Claimant seeking to appeal against the Judgment on liability in those actions, there seems little prospect of being able to advance actions four to six, save in respect of the resolution of the preliminary generic issues in action four.

**30 Park Place  
Cardiff**

**Lloyd Williams, Q.C.**

**1 June 2016**

**Case Nos: 7CF07345**  
**1CF03361**

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**DEFENDANT'S POSTION**  
**STATEMENT IN RESPECT OF**  
**ACTION 7CF07345 (THE FOURTH**  
**ACTION) AND ACTION 1CF03361**  
**(THE SIXTH ACTION)**

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