

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

BETWEEN:

MAURICE JOHN KIRK

Claimant

-and-

(1) SECRETARY OF STATE FOR JUSTICE

(2) PAROLE BOARD FOR ENGLAND AND WALES

(3) CHIEF CONSTABLE OF SOUTH WALES POLICE

Defendants

**DEFENCE OF THE FIRST DEFENDANT
TO THE AMENDED PARTICULARS OF CLAIM
DATED 7th SEPTEMBER 2016**

Preamble

HHJ Keyser QC, sitting as a Judge of the High Court, ordered on 31st July 2017 that:

1. The Particulars of Claim in this case shall henceforth be only those headed "Amended Particulars of Claim" and dated 7th September 2016.
2. For the avoidance of doubt, all other actual or purported Particulars of Claim in this case, including the document dated 7th September 2016 and headed "Particulars of Claim" be and are struck out.

This Defence is therefore drafted in response to the 'Amended Particulars of Claim' dated 7th September 2016.

DEFENCE

1. Paragraph 1 is admitted save that the First Defendant has no actual knowledge of the state of health of the Claimant and he is put to strict proof that his alleged poor health arises from any conduct on the part of the First Defendant.
2. Paragraph 2 is admitted.
3. Paragraphs 3 & 4 appear not to be directed to the First Defendant, as a result thereof, the First Defendant does not plead to the same. If contrary to the First Defendant's understanding of paragraphs 3 & 4 they are directed towards the First Defendant, whether in part or in whole, then the First Defendant makes no admissions in respect thereof.
4. As to paragraph 5 the First Defendant pleads as follows;
 - a. The Claimant is put to strict proof that the Licence Conditions imposed were unlawful and/or that his subsequent recall to prison amounted to false imprisonment.
 - b. The licence was approved and was therefore valid and lawfully issued and the Claimant was fully aware of the existence of the licence and the Licence Conditions. The Claimant was required to be released on licence and that is what occurred. The Claimant is put to strict proof that the licence was not lawfully issued.

- c. The Licence Conditions were preventative, proportionate, reasonable and necessary and were therefore not unlawful and/or did not breach any of the Claimant's human rights as alleged and he is put to strict proof.
 - d. It is denied that the License Conditions were unworkable and the Claimant is put to strict proof. As stated above, the Licence Conditions were reasonable, preventative, proportionate and necessary.
 - e. The matters pleaded in paragraph 5 sub-paragraphs (i) to (v) are vague and un-particularised. Insofar as the matters contained in the above sub-paragraphs identify any cause of action against the First Defendant they are denied.
5. Paragraph 6 does not appear to be directed to the First Defendant, as a result thereof, the First Defendant does not plead to the same. If contrary to the First Defendant's understanding of paragraph 6 it is directed towards the First Defendant, whether in part or in whole, then the First Defendant makes no admissions in respect thereof.
6. Paragraph 7 does not appear to be directed to the First Defendant save that it is alleged that the Third Defendant "presented highly exaggerated accounts to the Secretary of State (The First Defendant)" it is not pleaded that this gives rise to a cause of action against the First Defendant and as a result thereof, the First Defendant does not plead to the same. If contrary to the First Defendant's understanding of paragraph 7 it is directed towards the First Defendant, whether in part or in whole, then the First Defendant makes no admissions in respect thereof.

7. In respect of paragraph 8. The allegation therein that the Claimant's return to prison was unlawful because the "licence revocation notice contained nebulous reasons unsupported by cogent evidence" is not particularised nor pleaded against any of the Defendants. In any event, paragraph 8 does not appear to be directed towards the First Defendant and as a result thereof the First Defendant does not plead to the same. If contrary to the First Defendant's understanding of paragraph 8 it is directed towards the First Defendant, whether in part or in whole, then the First Defendant makes no admissions in respect thereof.
8. The First Defendant can neither admit nor deny paragraph 9 and the Claimant is put to strict proof.
9. In respect of paragraphs 10 & 11. The Claimant has not identified any cause of action against the First Defendant. If, which is denied, the Claimant is asserting that his request for an oral hearing, none being admitted, was unreasonably denied as a consequence of the actions of the First Defendant then he has failed to particularise the facts and matters which caused such a refusal to be unreasonable. Further, the Claimant has not particularised, in any event, why he was entitled to an oral hearing and he is put to strict proof. The First Defendant denies that the Claimant, as a consequence of the actions of the First Defendant, was unlawfully detained as alleged, or at all, and the Claimant is put to strict proof that his human rights were breached as alleged.
10. In respect of paragraph 12. The Claimant is put to strict proof of the matters therein alleged. Specifically the Claimant has not particularised his allegation that the prison evaluation of him undertaken by Dr. Rose Marnell dated 3rd March 2014

was in some way flawed and did not represent her professionally held opinion of the Claimant's health.

11. In respect of paragraph 13. The First Defendant denies that the Claimant was unlawfully detained and/or that his human rights were breached as alleged or at all. The Claimant has not particularised his allegations that he was deprived of the right to a Doctor and/or a wheelchair and/or adequate medical attention and it is not known whether those allegations are directed at the First Defendant. If the allegations are directed against the First Defendant then they are denied in their entirety.
12. In respect of paragraph 14. The First Defendant denies that the Claimant is entitled to aggravated and/or exemplary damages as claimed or at all.
13. It is admitted that the Claimant is entitled to interest on any award of damages that he may receive from the Court. The Defendant makes no admissions as to the rate or duration of such interest that may apply.
14. The Defendant makes no admissions as to the value of this claim and puts the Claimant to strict proof as to the appropriate amount of damages.

DAVID GRIFFITHS

DATED this 31 day of August 2017

STATEMENT OF TRUTH