

IN THE HIGH COURT OF JUSTICE

Claim No:C90CF012

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

BETWEEN: MAURICE JOHN KIRK

Claimant

- and -

SECRETARY OF STATE FOR JUSTICE

1st Defendant

PAROLE BOARD FOR ENGLAND AND WALES

2nd Defendant

CHIEF CONSTABLE OF SOUTH WALES POLICE

3rd Defendant

REPLY TO AMENDED DEFENCE OF 2nd DEFENDANT

1. The Claimant joins issue with the 2nd Defendant on its Amended Defence, save and in so far as the same consists of admissions.
2. So far as paragraph 4 of the 2nd Defendant's Amended Defence is concerned, the Claimant admits that the 2nd Defendant should be properly described as the Parole Board for England and Wales and not the National Probation Service.
3. Paragraph 5 of the 2nd Defendant's Amended Amended Defence is admitted, save that it is denied that it is a court in respect of all of its functions.
4. Irrespective of whether it may constitute a court with the characteristics of a court when formally adjudicating on Parole hearings, the Claimant alleges and *avers* that all of its administrative functions in making arrangements for such hearings do not constitute what could recognizably be described as a court, with the characteristics of a court.

5. The Defendant further alleges and *avers* that the Parole Board being constituted as an inferior tribunal is carrying out quasi-administrative functions in making preliminary arrangements for the holding of a substantive Parole hearing.
6. Further, the Claimant does not concede that even substantive Parole Board hearings have the characteristics of a court or constitute judicial decisions for the purposes of article 5(4) of the ECHR, as incorporated under schedule 1 of the Human Rights Act 1998 and section 9(1) and (5) of the Human Rights Act 1998, being an inferior tribunal, the hearings of which are not open to the general public, and the respective decisions which are not delivered in public, are neither published or accessible to the general public at large and the Parole Board is classed as an inferior tribunal in any event.
7. The Claimant alleges and *avers* that the status of the Parole Board in its determination of substantive Parole Board hearings is in any event irrelevant to the present claim and the administrative actions of its servants and/or agents in respect of arranging or purporting to arrange and/or not arranging the Claimant's Parole Board hearing, as an issue of both mixed fact and law to be determined by this Honourable Court.
8. Paragraphs 6, 7, 8, 9, 10, 11 of the of the 2nd Defendant's Amended Defence are admitted.
9. The Claimant denies paragraph 12 of the 2nd Defendant's Amended Defence.
10. Paragraph 13 of the 2nd Defendant's Amended Defence is admitted.
11. Paragraph 13 of the 2nd Defendant's Amended Defence is admitted.
12. Paragraph 13 of the 2nd Defendant's Amended Defence is admitted, save that the Claimant alleges and *avers* that the 2nd Defendant acquiesced in the flawed process in breach of their statutory duty to the Claimant as alleged in paragraph 7 of the Claimant's Amended Particulars of Claim.
13. Paragraph 15 of the 2nd Defendant's Amended Defence is admitted.
14. The Claimant makes no admissions in relation to Paragraph 16 of the 2nd Defendant's Amended Defence as he is unable to do so until after disclosure herein.

15. The Claimant makes no admissions in relation to Paragraph 17 of the 2nd Defendant's Amended Defence and the alleged particulars (i)-(ix) set out therein, as he is unable to do so until after disclosure herein, save that it is not admitted that any of the excuses set out therein were valid reasons for not holding a Parole hearing in respect of the Claimant who continued to be denied a Parole hearing, resulting in his continued detention in breach of article 5(1) and/or (4) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
16. The Claimant admits receiving the decision letter dated 19th January 2015 as alleged in paragraph 17, save that it is denied that this was issued as a result of any quasi-judicial process by a tribunal with the characteristics of a court when it was issued, there having been no oral hearing held in the presence of the Claimant and no judgment publicly issued and accessible that satisfied the requirements of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
17. The Claimant further alleges and *avers* that all of the other alleged particulars (i)-(ix) set out therein in paragraph 17 of the 2nd Defendant's Amended Defence took place in secret behind closed doors without any participation, or opportunity for participation and engagement with the Claimant.
18. Paragraph 18 of the 2nd Defendant's Amended Defence is denied, and the Claimant alleges and *avers* that at all material times the 2nd Defendant and its servants and/or agents acted in a manner incompatible with the Claimant's convention rights under article 5(1) and/or (4) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
19. Paragraph 19 of the 2nd Defendant's Amended Defence is denied.
20. Paragraph 20 of the of the 2nd Defendant's Amended Defence is denied, and the Claimant alleges and *avers* that at all material times, the actions of the 2nd Defendant and its servants or agents resulted in the Claimant's continued detention in HM Prison Swansea in breach of the Claimant's convention rights under article 5(1) and/or (4) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.

21. So far as Paragraph 21 of the of the 2nd Defendant's Amended Defence is concerned, it is admitted that the right to bring a claim for damages for a breach of a convention rights is provided for in section 7(1)(a) of the Human Rights Act 1998.
22. So far as the application of section 9 of the Human Rights Act 1998 regarding the Claimant's continued detention in HM Prison Swansea and the failure of the 2nd Defendant via its servants and/or agents to arrange a Parole hearing in his particular case is concerned, it is denied that section 9 of the Human Rights Act 1998 is applicable therein as alleged or at all.
23. The Claimant alleges and *avers* that the pre-hearing arrangements for the Claimant's Parole hearing by the servants and/or agents of the 2nd Defendant were not carried out in a quasi-court function and the various arrangements or non-arrangements of the 2nd Defendant as the case may be, being an inferior tribunal and not a formal court in any event, did not have the characteristics of a court, there having been no oral hearing held in the presence of the Claimant and no judgment publicly issued and accessible that satisfied the requirements of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
24. In the premises, the quasi-administrative functions of the 2nd Defendant thereby qualified as either "a judicial act" or "a court" for the purposes of section 9(1) and (5) of the Human Rights Act 1998, nor did they satisfy the procedural guarantees of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
25. So far as Paragraph 22 of the of the 2nd Defendant's Amended Defence is concerned, it is admitted that the Claimant's Claim is neither an appeal or Judicial Review proceedings, save that it is denied that the acts alleged by the Claimant were "judicial acts" of the Parole Board that were made by a tribunal having the characteristics of a court that satisfied the procedural guarantees of article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
26. So far as Paragraph 23 of the of the 2nd Defendant's Amended Defence is concerned, the Defendant alleges and *avers* that the 2nd Defendant and its servants and agents were under a duty to have arranged an early and prompt Parole hearing in respect of his case, as a result of his purported recall to prison, and they failed to do so, whether

intentionally or otherwise, resulting in his continual detention in HM Prison Swansea, in breach of article 5(1) and/or (4) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.

27. The Claimant denies paragraph 24 of the 2nd Defendant's Amended Defence and alleges and *avers* that the reason given therein are insufficient to have failed to arrange the Claimant's Parole hearing that he had been entitled to.
28. Paragraph 25 of the 2nd Defendant's Amended Defence is denied, and the Claimant alleges and *avers* that the present Claim is properly brought under CPR.7 of the Civil Procedure Rules rather than by Judicial Review under CPR.54, as the claim involves both mixed fact and law regarding evidence and disputed facts, and proceedings by way of Judicial Review in this context would have been wholly inappropriate.
29. The Claimant further alleges and *avers* that the present Claim also involves both issues of private and public law, and as a result, the Claim issued under CPR.7 is both permissible and desirable in the overall interests of justice relating to the Claimant's case.
30. The Claimant denies paragraph 27 of the 2nd Defendant's Amended Defence and alleges and *avers* that time runs for the purposes of section 7(5)(a) of the Human Rights Act 1998, from the last date of his continued and unnecessary detention at HMP Swansea thereby in breach of article 5(1) and (4) ECHR as incorporated under schedule 1 of the Human Rights Act 1998, as a result of the 2nd Defendant, by its servants and agents failing to arrange a Parole hearing for him.
31. Alternatively, if the Claimant's interpretation of the effect of section 7(5)(a) of the Human Rights Act 1998 is found by this Honourable Court to be wrong, the Claimant seeks extensions of time under section 7(5)(b) of the Human Rights Act 1998 as is deemed appropriate and in the overall interests of justice thereby.
32. The Claimant denies paragraph 28 of the 2nd Defendant's Amended Defence.
33. Save for any matters expressly stated herein to be admissions, the Claimant denies each and every allegation contained in the 2nd Defendant's Amended Particulars of Claim as though the same were set forth and denied individually.

Maurice J Kirk BVSc
Dated: 1st September 2017

I believe that the facts stated in this Reply are true.

Signed

A handwritten signature in blue ink, appearing to read 'Maurice J Kirk BVSc', written over a horizontal line.

Maurice John Kirk BVSc
Claimant

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