

Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

For Court use only	
Appeal Court Ref. No.	2017/2747
Date filed	09 OCT 2017



Section 1 Details of the claim or case you are appealing against

Claim or Case no.	C90CF012	Fee Account no. (if applicable)	
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Help with Fees - Ref no. (if applicable)	H W F - - - - -
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Name(s) of the	<input checked="" type="checkbox"/> Claimant(s) <input type="checkbox"/> Applicant(s) <input type="checkbox"/> Petitioner(s)
	MAURICE JOHN KIRK

Name(s) of the	<input checked="" type="checkbox"/> Defendant(s) <input type="checkbox"/> Respondent(s)
	(1) SECRETARY OF STATE FOR JUSTICE (2) PAROLE BOARD FOR ENGLAND AND WALES (3) CHIEF CONSTABLE OF SOUTH WALES POLICE

Details of the party appealing ('The Appellant')

Name	MAURICE JOHN KIRK
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Address (including postcode)	8 Frederick Place, Bristol, BS8 1AS
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Tel No.	07708 586202
Fax	
E-mail	maurice@kirkflyingvet.com

Details of the 1st Respondent to the appeal

Name	SECRETARY OF STATE FOR JUSTICE
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Address (including postcode)	102 Petty France, London SW1H 9AJ
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Tel No.	020 3334 3555
Fax	
E-mail	general.queries@justice.gsi.gov.uk

Details of the 2nd Respondent to the appeal

Name

PAROLE BOARD FOR ENGLAND AND WALES

Address (including postcode)

52 Queen Anne's Gate,
London
SW1H 9AG

Tel No.	020 3334 4402
Fax	
E-mail	info@paroleboard.gsi.gov.uk

Details of the 3rd Respondent to the appeal

Name

CHIEF CONSTABLE OF SOUTH WALES POLICE

Address (including postcode)

South Wales Police Headquarters,
Cowbridge Road,
Bridgend
CF31 3SU

Tel No.	01656 655555
Fax	
E-mail	southwales@south-wales.pnn.police.uk

Details of additional parties (if any) are attached

Yes No

Section 2 Details of the appeal

From which court is the appeal being brought?

~~The County Court at~~

~~The Family Court at~~

- High Court
 - Queen's Bench Division
 - Chancery Division
 - Family Division
 - Other (please specify) Cardiff District Registry

Other (please specify)

What is the name of the Judge whose decision you want to appeal?

His Honour Judge Keyser Q.C. sitting as a judge of the High Court

What is the status of the Judge whose decision you want to appeal?

- District Judge or Deputy Circuit Judge or Recorder Tribunal Judge
 Master or Deputy High Court Judge or Deputy Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

18th September 2017

To which track, if any, was the claim or case allocated? Yes No

Section 3 Legal representation

Are you legally represented? Yes No

If 'Yes', please give details of your solicitor below

- a solicitor
 direct access counsel instructed to conduct litigation on your behalf
 direct access counsel instructed to represent you at hearings only

Name of your legal representative

The address (including postcode) of the firm of solicitors representing you

	Tel No.	
	Fax	
	E-mail	
	DX	
	Ref.	

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate? Yes No

Are the respondents legally represented? Yes No

If 'Yes', please give details of the respondent's legal representative below

Name and address (including postcode) of the 1st respondent's legal representative

Ciaran McQuade,
Government Legal Department,
Litigation Group,
One Kemble Street,
London
WC2B 4TS

Tel No.	020 7210 6195
Fax	020 7210 3250
E-mail	ciarar.mcquade@governmentlegal.gov.uk
DX	123242 KINGSWAY 6
Ref.	Z1717003/NAK/A4

Name and address (including postcode) of the 2nd respondent's legal representative

Narjis Khan,
Government Legal Department,
One Kemble Street,
London
WC2B 4TS

Tel No.	020 7210 8532
Fax	020 7210 3260
E-mail	Narjis.Khan@governmentlegal.gov.uk
DX	DX 123242 KINGSWAY
Ref.	Z1717003/NAK/A4

Name and address (including postcode) of the 3rd respondent's legal representative

Adrian Oliver,
Dolmans Solicitors,
One Kingsway,
Cardiff
CF10 3DS

Tel No.	02920345531
Fax	02920398206
E-mail	adriano@dolmans.co.uk
DX	122723 CARDIFF 12
Ref.	APO.SWP1-511

Section 4 Permission to appeal

Do you need permission to appeal?

Yes No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

Box A

Date of order granting permission <input type="text"/>
Name of Judge granting permission <input type="text"/>

Box B

I Maurice John Kirk
the Appellant('s solicitor) seeks permission to appeal.

If permission to appeal has been granted in part by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

IT IS ORDERED that:

1. The claims against the Defendants and each of them be and are dismissed.
2. The Claimant do pay to each Defendant its costs of the case, which are to be subject of summary assessment on the standard basis if not agreed.
3. The summary assessment of costs shall be heard by H.H. Judge Keyser Q.C. on the first available date after 6 October 2017. Time allowed 2 ½ hours.

Have you lodged this notice with the court in time?
(There are different types of appeal -
see Guidance Notes N161A)

Yes No

If 'No' you must also complete
Part B of Section 9 and Section 10

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

- I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

- I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out on a separate sheet and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

- ~~I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.~~

Section 8 Aarhus Convention Claim

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim Yes No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarhus claim set out the grounds below

Section 9 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

1. To dismiss the 1st, 2nd and 3rd Defendant's strike out applications.
 2. Alternatively, to remit the 1st, 2nd and 3rd Defendant's strike out application for rehearing.
 3. To remit the Claim to the Cardiff District Registry for Case Management.

- order a new trial

Section 10 Other applications

Complete this section **only** if you are making any additional applications.

Part A

- I apply for a stay of execution. (You must set out in Section 10 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 10 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

✓ I apply for an order that:

Recoverable Costs Limitation Order

1. There be a Recoverable Costs Limitation Order made in the appeal under CPR Part 52.19(1).

Appointment of an Advocate to the Court

2. That the court request HM Attorney-General to appoint an Advocate to the Court.

Lawfulness of CPR 52.5(1)

1. A Declaration that CPR 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and in breach of the principle of the constitutional right of access to the court, not having been authorised by a substantive statute approved of by Parliament.

Further or in the alternative:

2. A Declaration that CPR 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and/or *ultra vires* of section 1 and/or 2 of the Civil Procedure Act 1997 and/or section 54(1)(a)-(c) and (3)(a)-(d) of the Access to Justice Act 1999.

Further or in the alternative:

3. A Declaration that CPR 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and/or in breach of the principle of *audi alteram partem*, the right to be heard under the Common Law principles of Natural Justice.

Further or in the alternative:

4. A Declaration that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only is in breach of the implied right to a court where there is a determination of “civil rights or obligations” under article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998, or any other “convention rights” under schedule 1 of that Act.

(You must set out in Section 10 your reasons and your evidence in support of your application.)

In support of my application(s) in Section 9, I wish to rely upon the following reasons and evidence:

Stay of Execution of the Order of the High Court

1. It is just and equitable that the orders for costs made against the Claimant be stayed pending the outcome of the appeal pending its determination by the Court of Appeal.

Recoverable Costs Limitation Order

1. The claim further raises issues of “general public importance” regarding the relevant principles that the 1st Defendant should apply before determining to revoke a Parole Licence under section 254(1) of the Criminal Justice Act 2003.
2. The claim further raises an issue of “general public importance” regarding the liabilities for detention in custody after the revocation of a Parole Licence under article 5 ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
3. The Claim also raises an issue of “general public importance” concerning the interpretation and scope of liability under section 9(1) and (5) of the Human Rights Act 1998 regarding the definition of “a judicial act” and “a court”, in relation to administrative decisions whether to hold an oral hearing for parole of prisoners held in custody after the revocation of a Parole License.
4. The Claim also raises an issue of “general public importance” concerning whether “reasonable grounds” are required for a constable to arrest a person as allegedly being “unlawfully at large”, under section 49(1) of the Prison Act 1952.
5. The Claimant would be unable to continue the application for permission to appeal unless a Protective Costs Order is made.
6. The Claimant estimates his costs of the proceedings as £4,000 and that of each of the respective defendants as £40,000.

Appointment of an Advocate to the Court

1. The Appellant is unrepresented, and the court may take the view that it would benefit from submissions from an Advocate to the Court.
2. The claim raises issues of “general public importance” regarding the relevant principles that the 1st Defendant should apply before determining to revoke a Parole Licence under section 254(1) of the Criminal Justice Act 2003.

3. The claim further raises an issue of “general public importance” regarding the liabilities for detention in custody after the revocation of a Parole Licence under article 5 ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
4. The Claim also raises an issue of “general public importance” concerning the interpretation and scope of liability under section 9(1) and (5) of the Human Rights Act 1998 regarding the definition of “a judicial act” and “a court”, in relation to administrative decisions whether to hold an oral hearing for parole of prisoners held in custody after the revocation of a Parole License.
5. The Claim also raises an issue of “general public importance” concerning whether “reasonable grounds” are required for a constable to arrest a person as allegedly being “unlawfully at large”, under section 49(1) of the Prison Act 1952.

Lawfulness of CPR 52.5(1)

1. The basis of the legal challenge to the lawfulness of CPR 52.5(1) is set out in the Claimant’s Skeleton Argument relating to that issue to be filed with the court.

Statement of Truth – This must be completed in support of the evidence in Section 10

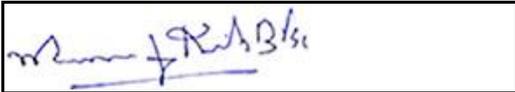
I believe (~~The appellant believes~~) that the facts stated in this section are true.

Full name

MAURICE JOHN KIRK

Name of appellant’s legal representative firm

signed



position or office held



Appellant (’s legal representative)

(if signing on behalf of firm or company)

Section 12 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

~~In the County Court or High Court:~~

- ~~three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;~~
- ~~one additional copy of the appellant's notice and grounds of appeal for each of the respondents;~~
- ~~one copy of the sealed (stamped by the court) order being appealed;~~
- ~~a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and~~
- ~~a copy of the Civil Legal Aid Agency Certificate (if legally represented).~~

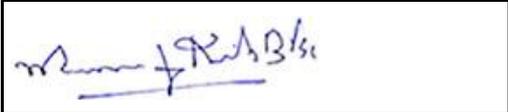
In the Court of Appeal:

- ✓ three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- ✓ one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- ✓ one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- ~~one copy of any witness statement or affidavit in support of any application included in the appellant's notice;~~
- ~~where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;~~
- ~~in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;~~
- ✓ one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- ✓ a copy of the approved transcript of judgment; and
- a copy of the Civil Legal Aid Certificate (if applicable)
- ~~where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources~~

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied
Transcript of the judgment of His Honour Judge Keyser QC has been ordered.	When available from the shorthand writers to the court
Skeleton Argument in support of application for permission to appeal.	When perfected after the supply of the transcript from the shorthand writers to the court

Section 13 The notice of appeal must be signed here

Signed 

Appellant(’s legal representative)

IN THE COURT OF APPEAL

Claim No. C90CF012

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

**(HIS HONOUR JUDGE KEYSER QC SITTING AS
A HIGH COURT JUDGE)**

B E T W E E N : MAURICE JOHN KIRK

Appellant

- and -

SECRETARY OF STATE FOR JUSTICE

1st Respondent

and

PAROLE BOARD FOR ENGLAND AND WALES

2nd Respondent

and

CHIEF CONSTABLE OF SOUTH WALES POLICE

3rd Respondent

GROUNDS OF APPEAL

ACCESS TO JUSTICE UNDER SECTION 8(1) OF THE HUMAN RIGHTS ACT 1998

1. The Appellant pursues the Appeal in order to obtain access to justice under section 8(1) of the Human Rights Act 1998.
2. Such access to justice and appropriate “relief or remedy” is guaranteed under section 8(1) of the Human Rights Act 1998.

3. Section 8(1) of the Human Rights Act 1998 is the statutory domestic equivalent of article 13 ECHR, which guarantees the right to “an affective remedy” for a breach of a “Convention Right” as defined under section 2(1) and schedule 1 of the Human Rights Act 1998.
4. Although article 13 ECHR was not directly incorporated into domestic law in the Human Rights Act 1998, it is given practical statutory effect by section 8(1) of the Human Rights Act 1998.

APPLICATIONS FOR STRIKE OUT AND/OR SUMMARY JUDGEMENT BEING SUPPORTED BY WITNESS STATEMENTS BY THE INSTRUCTING SOLICITORS FOR THE RESPONDENTS

1. The learned Judge failed to rule on whether all 3 Respondents’ Notices of Applications were properly supported by their respective instructing solicitors’ Witness Statements, as they had no personal knowledge of the matters referred to in those respective Witness Statements.
2. The Appellant contends that the 3 instructing solicitors’ Witness Statements were insufficient for the purpose of the respective Respondent’s respective applications to strike out and/or for summary judgment as a result of the fact that they did not have personal knowledge of the matters dealt with.

FAILURE TO DEAL WITH THE APPELLANT’S ISSUES REGARDING THE ORIGINAL ISSUE OF HIS PAROLE LICENCE

1. The learned Judge erred in law and/or fact in declining to rule on whether or not the conditions imposed by the 1st Defendant in respect of the Appellant’s Parole Licence had been unlawful, and/or in breach of article 8(1) and/or 10(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
2. The learned Judge had conceded that such conditions would be open to “Wednesbury” reasonable challenges in respect of the reporting and restrictions on contact conditions, conditions 5 ix, x (apart from that pertaining to the person subject of the restraining order) , xi and xii of the Parole Licence undated.
3. The Appellant contends that the conditions referred to were beyond the powers for the granting of such conditions under rule 2(2)(a)-(g) of the Criminal Justice (Sentencing)

(Licence Conditions) Order 2000, made under section 250(1)(a)(b) of the Criminal Justice Act 2003, and were thereby *ultra vires* in any event.

4. In so far as condition 5 vi is concerned, the Appellant contends that although authorised by rule 2(2)(e) of the Criminal Justice (Sentencing) (Licence Conditions) Order 2000, that provision is in breach of European Union law and articles 45 to 55 of the Treaty on the Functioning of the European Union and/or EU Directive 2004/38/E relating to the right to freedom of movement within the European Union.
5. In the premises, the learned Judge declined jurisdiction to consider the issues raised by the Appellant regarding the issue of his Parole Licence accordingly.

REVOCAION OF THE APPELLANT'S PAROLE LICENCE BY THE 1ST RESPONDENT

1. The learned Judge erred in law and/or fact in holding that the 1st Respondent's revocation of the Appellant's Parole Licence dated 11th July 2014 was lawful.
2. The learned Judge further erred in law and/or in fact in holding that the 1st Respondent's revocation of the Appellant's Parole Licence dated 11th July 2014 was lawful when the only evidence that appeared to have been before the 1st Defendant was a Public Protection Casework Section revocation report regarding him dated 11th July 2014 which contained unsubstantiated and hearsay allegations against the Appellant without any proper verification.
3. The learned Judge further erred in law in failing to elaborate on his reasons for so holding that the 1st Respondent's revocation of the Appellant's Parole Licence dated 4th July 2014 was lawful.
4. The learned Judge further erred in law in holding that the burden of proving that there was an arguable claim with real prospects of success lay on the Appellant.
5. The Appellant contends that as the 1st Respondent was applying to strike out the Appellant's Claim, the burden of proving that it had no reasonable prospects of success fell upon the 1st Respondent and not the Claimant.
6. The Appellant contents that there was no credible evidence before the 1st Defendant that would have justified the revocation of his Parole Licence as a breach of condition 5 i,

and certainly no evidence that he had committed or had been accused of committing any criminal offence.

7. As regards the alleged postings on the Appellant's internet site alleged in the Public Protection Casework Section revocation report dated 11th July 2014, the Appellant was not prohibited from making such postings by any of the conditions of his Parole Licence, and in so far as photographs of other inmates were published, the Appellant claims that they fully consented, and he was exercising his rights to "freedom of expression" to "impart information and ideas without interference by public authority" under article 10(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
8. As regards the alleged incidents at the Kingsway Medical Centre alleged in the Public Protection Casework Section revocation report dated 11th July 2014, the Appellant contends that any allegations made were unsubstantiated and hearsay and do not appear to have been verified by the taking of any statements from any of the persons unknown, making the allegations by officials of the 1st Defendant completely unsubstantiated.
9. There was further no evidence that any of the alleged threats amounted to any criminal offences in breach of the Public Order Act 1986, and no complaints were ever received by any officers of the 3rd Defendant in respect of the alleged threats from any employees at the Kingsway Medical Centre.
10. In the premises, there was no breach of condition 5 i either in law and/or fact and the 1st Defendant unlawfully and "Wednesbury" unreasonably revoked the Appellant's Parole Licence on 4th July 2014, purportedly under section 250(1) of the Criminal Justice Act 2003.

APPLICATION OF SECTION 9(1)(A) AND (5) OF THE HUMAN RIGHTS ACT 1998 TO THE 2ND RESPONDENT

1. The learned Judge erred in law in holding that the various officials and officers of the 2nd Respondent were subject to the avenues of legal challenge set out in section 9(1)(c) of the Human Rights Act 1998, and that as a result, their various actions could only be challenged by way of Judicial Review as so provided.

2. The learned Judge further failed to take into account or consider whether the various officials and officers of the 2nd Respondent were acting merely administratively, or were carrying out “judicial acts” on “the instructions, or on behalf, of a judge” as defined under section 9(5) of the Human Rights Act 1998.
3. The learned Judge further failed to consider whether any of the functions of the various officials and officers of the 2nd Respondent were in fact carried out under the instructions of the Chair of the Parole Board, or on his behalf, and/or whether any evidence had been adduced by the 2nd Respondent to support the giving of any such instructions.
4. The Appellant was not in fact challenging the decisions of the Parole Board dated 19th August 2014 and 7th January 2017, only the failure by the various officials of the 2nd Respondent to arrange an oral hearing of his Parole application.
5. The learned Judge further erred in failing to consider, notwithstanding that the Parole Board may constitute a court for the purposes of hearing and adjudicating on parole applications, whether the actions or lack of them of the various officials and officers of the 2nd Respondent constituted a court, or could be said to have the “characteristics of a court”.
6. The learned Judge further failed to consider whether the administrative functions of the various officials and officers of the 2nd Respondent could be differentiated from any court function of the Parole Board *per se*, in hearing and adjudicating on parole applications.
7. The Appellant contends that the functions of the various officials and officers of the 2nd Respondent in purporting to arrange an oral Parole hearing for the Appellant were not judicial acts, nor were they perpetrated as an inferior tribunal with “the characteristics of a court” at the time of the carrying out of the respective functions at the time for failing to arrange the Appellant’s oral Parole hearing.
8. In so far as the Parole Board decision letter dated 19th January 2015 is concerned, the learned Judge further failed to consider whether the issue of such a letter could be said to have been made by a tribunal having “the characteristics of a court”, which it is contended it did not.

9. The Appellant further contends that the provisions of section 9(1) and (5) of the Human Rights Act 1998 should be interpreted in accordance with the Appellant's Convention rights under section 3(1) of the Human Rights Act 1998, and if necessary read down accordingly.
10. In support, the Appellant further contends that the subject matter of the various officials and officers of the 2nd Respondent in purporting to arrange an oral Parole hearing for the Appellant raised both issues of mixed law and fact, rendering Judicial Review an unsuitable *forum* for determining them accordingly.
11. Alternatively, if section 9(1) and (5) of the Human Rights Act 1998 is to be interpreted as precluding the Appellant's claim against the 2nd Respondent, the Appellant seeks a Declaration of Incompatibility that section 9 of the Human Rights Act 1998 is incompatible with article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998 under section 4(2) of the Human Rights Act 1998.
12. In the premises, the functions of the various officials and officers of the 2nd Respondent were not subject to the restrictions imposed by section 9(1) and (5) of the Human Rights Act 1998, in that any legal challenge was required to be brought exclusively by way of Judicial Review.

DETERMINATION OF THE CLAIM AGAINST THE 2ND RESPONDENT ON THE MERITS

1. The learned Judge erred in law in holding that the acts or lack of them of the various officials and officers of the 2nd Respondent were reasonable and lawful without their evidence being subject to live evidence and cross examination.
2. The Appellant contends that the real reason as to why his oral Parole hearing was never heard was because both the various officials and officers of the 1st and/or 2nd Respondent did not want the issues that the Appellant had raised in his written representations filed under section 254(2)(a) of the Criminal Justice Act 2003 to ever be determined.
3. The evidence filed on behalf of the 2nd Respondent raised serious disputed factual issues that could only have been resolved at a full trial for the determination of the Appellant's "civil rights and obligations" under article 6(1) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.

TIME LIMIT APPLICABLE UNDER SECTION 7(5)(A) OF THE HUMAN RIGHTS ACT 1998 RELATING TO THE APPELLANT'S DETENTION IN LEGAL CUSTODY AFTER REVOKATION OF HIS PAROLE LICENSE

1. The learned Judge erred in law and/or fact in holding that time ran under section 7(5)(a) of the Human Rights Act 1998 relating to his detention in prison custody after the recall of his Parole Licence from the letter dated 4th February 2015, informing him that the 2nd Defendant would not hold an oral hearing of his parole application in view of his then impending release from his sentence on 7th March 2015.
2. The Appellant contends that time in fact ran from the date of his release from prison custody, on the basis that any alleged breach of article 5(1)(a) ECHR as incorporated under schedule 1 of the Human Rights Act 1998 would be continuous, commencing from 11th July 2014 when he was taken back into prison custody until his eventual release after the expiration of his sentence on 7th March 2015.
3. The learned Judge further erred in law and/or fact in holding that as a result, his claim for damages under article 5(1)(a) ECHR as incorporated under schedule 1 of the Human Rights Act 1998 was time barred.
4. Alternatively, the learned Judge failed to apply his mind to whether it would be just and equitable to have extended the relevant time limit in respect of this part of the Appellant's claim under section 7(5)(a) of the Human Rights Act 1998 and/or the "overriding objective" to do "justice" in the case.

LIABILITY FOR DAMAGES OF THE 3RD RESPONDENT

1. The learned Judge did not rule on whether the 3rd Respondent would be liable for wrongful arrest and imprisonment if the court had found that the Appellant had been "unlawfully at large", thereby giving the right of arrest under section 49(1) of the Prison Act 1952.
2. The learned Judge held that such a ruling would be rendered unnecessary in the light of his ruling that the 1st Defendant had lawfully revoked the Appellant's Parole Licence.
3. The possible liability of the 3rd Respondent would however have to be reconsidered in the event that the learned Judge's findings in relation to the lawfulness of the 1st Defendant's revocation of his Parole Licence was overturned.

4. The Appellant would contend that in the event that a court was to find that the 1st Defendant had unlawfully revoked the Appellant's Parole Licence, then "reasonable grounds" were not required in respect of the Appellant's arrest by PC Mitcham on 11th July 2014 on behalf of the 3rd Respondent, and that there would be liability for a false arrest in such circumstances.
5. Such liability would certainly consist of Common law damages for wrongful arrest and false imprisonment.
6. The learned Judge also did not apply his mind to the issue of whether any claim for damages under article 5(1)(c) ECHR as incorporated under schedule 1 of the Human Rights Act 1998 was a separate claim or a continuing one dependant on his subsequent detention in legal custody, as a result of his ruling in relation to the 1st Defendant's revocation of the Appellant's Parole Licence.
7. Such issues would of course fall to then be determined, including any issues of an extension of time for claiming such damages under section 7(5)(b) of the Human Rights Act 1998 in the event that the Appellant's claim against the 3rd Respondent was restored.

CLAIM NOT HAVING "REAL PROSPECTS OF SUCCESS"

1. As a result of the various rulings given by the learned Judge in the above issues, he misapplied his mind as to whether or not the Appellant's Claim had "real prospects of success" and in making his order striking out the Appellant's Claim as a result.

JUDICIAL REVIEW AND/OR CPR 7.2 CLAIM

USE OF ALTERNATIVE REMEDIES TO JUDICIAL REVIEW

1. The Appellant had used the alternative statutory remedy under section 254(2)(a) of the Criminal Justice Act 2003 to lodge written representations regarding the original issue and subsequent revocation of his Parole Licence and his continued detention in custody as a result, both in relation to domestic law and any claimed breaches of any "Convention right".
3. His representations regarding the initial issue of his Parole Licence and its subsequent revocation raised issues of both fact and law and was an effective alternative remedy to

Judicial Review at the time, which would have been totally unsuitable as a remedy regarding the issues that he had raised.

4. As a result of the Parole Board failing to arrange an oral hearing of his Parole application, the Appellant in any event lost any opportunity of challenging the original grant of his Parole Licence or its subsequent revocation, as by the time he was finally notified that no oral hearing was going to be listed, due to the imminent expiration of his sentence, the relevant time limits had by then passed.
5. The Appellant only had recourse to a CPR 7.2 claim thereafter in order to raise all of his issues regarding the original issue and subsequent revocation of his Parole License and his continued detention in custody as a result, as he claimed in breach of article 5(1)(a) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
6. In the premises, the issue of the CPR 7.2 was not as such as to constitute “an abuse of the court’s process” in breach of CPR 3.4(2)(b).

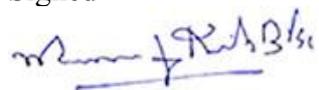
EFFECTIVENESS OF JUDICIAL REVIEW AS A REMEDY

7. Although the learned Judge did not specifically address the arguments of the Respondents advanced that any challenge to the validity of the original grant of the Appellant’s Parole Licence and its subsequent revocation could only have been pursued by a Claim for Judicial Review, the Appellant nevertheless advances his arguments as to why these submissions were in applicable to the present case, in the event that the same issues are raised by the Respondents in this appeal, in the event that permission to appeal is granted.
8. It is contended that Judicial Review was an inappropriate remedy in the circumstances of this particular case in any event, as the issues relating to the original grant of the Appellant’s Parole Licence and its subsequent revocation raised issues of both mixed law and fact.
9. It is further contended that the Appellant had a private law remedy regarding a damages claim under article 5(1)(a) ECHR as incorporated under schedule 1 of the Human Rights Act 1998 for his detention from the date he was taken back into legal custody on 11th July 2014 until his release from prison at the expiration of his sentence on 7th March 2015.

10. Any public law issues relating to this were ancillary to the claim for damages for the Appellant's detention under article 5(1)(a) ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
11. In the premises, the issue of the CPR 7.2 was not as such as to constitute "an abuse of the court's process" in breach of CPR 3.4(2)(b).

Dated 9th October 2017

Signed

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

MAURICE JOHN KIRK
Appellant

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

(HIS HONOUR JUDGE KEYSER QC SITTING AS A HIGH COURT JUDGE)

Claim No. C90CF012

B E T W E E N:

MAURICE JOHN KIRK

Appellant

- and -

SECRETARY OF STATE FOR JUSTICE

1st Respondent

and

PAROLE BOARD FOR ENGLAND AND WALES

2nd Respondent

and

CHIEF CONSTABLE OF SOUTH WALES POLICE

3rd Respondent

GROUND OF APPEAL

Maurice John Kirk,
8 Frederick Place,
Bristol,
BS8 1AS
Appellant