IN THE CARDIFF COURT **Case no. BS614159-MC85**
CF101741
CF204141
7CF0734S

Between

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

PERMISSION to APPEAL
the JUDGEMENT and DRAFT ORDER
of 30th November, 2010, by HHJ Seys Llewellyn QC

Additional Document from the McKenzie Team

Introduction

1. His Honour has said he will hear the case as a way to investigate so many incidents.

2. Some pruning has occurred, which is expected, though nevertheless the Claimant seeks His Honour's permission to appeal in the Higher Courts, some points, as well as a greater recognition over exactly what the case is about, so dealing with the bigger picture of what should be included, and clarify principles and issues

3. We do not have time from the court to properly prepare these papers so there will be omissions and errors.

4. The Claimant's grievances are around his belief that elements of South Wales Police treat him maliciously by acts and omissions. That includes from abuse of power and discretion, bearing false witness, to physical bullying. The Chief Constable knew of the problem early on, and failed to take appropriate action, when there was foresight of the obvious harm that would occur.

5. This is a bullying case, where the ***cumulative effect*** of the sheer volume of incidents makes the case unusual, extreme and indefinite, because normal average people could not cope with both the stressful disruption and substantive harm of having to fight endless Court cases, and the stress, distress and substantive harm from the acts and omissions that the Claimant has experienced.

6. His Honour asked for two sections. We add an independent summary and analysis.

Section One: What areas to Appeal

Section Two: Some reasons and detail for appeal

Appendices

Appendix one: Prof Micheal Zander QC on Perjury by Police being common place.
Appendix two: Office for Fair Trading - Review of legal Services competition in professions
Appendix three: BBC news on Lamb Chambers' Colin Challenger (challenger v police)
Appendix four: BBC news on barrister Mark Saunders shot to death by police.
Appendix five: Extracts of (WPC) Waters v Commissioner of police for the metropolis (2000)

Section One: What Areas to Appeal

7. **A quick summary of points for Appeal (not exhaustive):**

8. Appeal to be allowed to include malice (as Waters v Commissioner of the Police of the Metropolis) and be allowed to amend due to unwell, facts and protesting outside with sign about unhappy with past lawyers' work, no legal advice to give opportunity to amend, Court failed to actually postpone and case law, - obvious intended meaning - overriding interest of justice – imbalance in power between participants.

9. There is no blanket immunity for Police. It is possible to design reason for a duty of care around this case being unusual and indefinite so that none, or few will follow. A duty of care (eg close proximity - control brings responsibility) is needed, for many reasons, but for example Parliament cannot have intended the consequences for police to be immune and so have as good as have permission to substantially bully any individual with many incidents and targeted malice for 18 years. Where there is the added public interest issue of 2009 to 2011 from Police postulating a potential long term loss of liberty (malicious use of Critical Public Protection) or threat to life, as well as access to Courts, (very unusual that normal representations from Claimant in a case, cannot go before a Magistrate at present) where Police have put in writing in the MAPPA executive summary, that they are contacting Courts' leaders and admin to describe the Claimant in most unfavourable and prejudicial ways.

10. This is a bullying case although some pruning, normal in a bullying case, must hear all the facts where that means from 1992 to present and ongoing, at a substantive hearing, and the preliminary hearing should not aim to determine facts.

11. Outcome of various cases quoted in the preliminary Judgement are "disputed facts" as for example the Claimant was not always present, and the Officers and associates were the only complainant and so only witnesses, and they are accused of wrong doing and bullying by what they say and do. The preliminary Judgement therefore "assumes facts", where the Claimant and his lay support team are still denied needed the opportunity to go through the case and list the facts. It could take a lawyer months to review the enormous detail and files. Yet lay people are given days and no proper opportunity to respond.

12. Claimant has no access to legal advice. The Claimant is and has been too unwell, worn down to understand the case or make decisions, and needs to be allowed amend and combine fourth action and the entire 18 year experience (1992 to the fourth action, the present and ongoing).

13. Principle that action can occur when convicted, as just because one person (such as the Claimant does some wrong), does not mean the others are innocent of wrong doing.

14. To Appeal that the strike out should not include what other parties did wrong at the Vale of Glamorgan Agricultural show and also be allowed to explore the meaning of why a senior crown prosecutor was saying "No Comment" in the Crown Court witness box suggesting strongly that wrong doing was occurring by Police and their associates to justify the Claimant's concerns.

15. To Appeal such as that the Court should be able to compare the video with no blue flashing light with PC Osborne going to the Royal College, and saying 'under oath' at the Royal College that there was a blue light chase, to try to ruin the Claimant's reputation, as an example of Police bullying, malice and dishonesty. It is not relevant whether the evidence was used, it is relevant that the intention and acts of dishonesty, bullying and malice took place. PC Osborne's testimony was heard and caused the Claimant distress, to adversely affect his ability to defend himself at the hearing.

16. Re-think and re-balance for people acting 'in person.' Postponements and pace of case, where defendant's lawyers knew or should have known from Police information that Claimant was not well enough for the pace they choose, and try to impose. Help offer by Court was welcome but often regards big important issues, as useful as half a bridge, as Claimant could not rest and recover to work on case, an learn to amend etc.

17. Events since and including the June 2009 to February 2010 failed WW1 aeroplane Machine Gun case should be included, along with at least three arrests and three 'sets' of charges, that have all since been dropped, and one case heard in absence, during health difficulties, where staff are being very difficult by not even letting a normal request for setting aside (and withdrawal of arrest warrant and like) request go before Magistrates for them to decide, when CPS have marked their file that a set aside/retrial should/will occur. We are told this is all highly unusual. The pending case is around whether lodging papers with an ex-police court official as common assault. They also refused to transfer the case to another area to avoid a conflict of interest. When will all this stop? How can the Claimant live normally? Surely he needs a duty of care and remedy to be imposed by the Courts?

Section Two: Some reasons and detail for appeal

Some Explanations on areas to Appeal

18. We have two sides in dispute, where much is down to who to believe. It is essential to hear all the facts or the Claimant to show the trend. The Claimant wishes to appeal that which stifles and prevents the case being fairly heard, such as the full trend of malice and dishonesty by Police or their associates The summary of Adorian v Commissioner of the Police of the Metropolis in ICLR and the WLR writes:

> "Sedley LJ, giving Judgement of the Court, said that in literal terms s 329 referred to proceedings being brought, not simply being pursued or prosecuted. The purpose of the section was to protect people from being baselessly sued by criminals for doing no more than trying to arrest them or stop them offending. Such offenders were not barred from suing in a proper

case but as a matter of legislative and public policy they were debarred unless and until a suitably strong case was shown…."

19. This case is clearly a strong case for proceedings when all eighteen years (including the fourth action) are considered.

20. Fairness is asked for to hear all the issues. Below is a concise response to the MAPPA executive summary. Are these police officer described in the MAPPA executive summary fair and to be believed? Or should a Court apply a duty of care to examine all issues? Is below touching on a change in the balance of power over the electorate that makes issues of public interest and EU Human Rights?

A bullying case – to allow a fair trial and by case law - essential to hear all the facts.

21. This is a bullying case. (Please see appendix Waters (AP) v Commissioner of Police for the Metropolis). As in case law we understand that it is not possible in a bullying case, for a fair assessment of even a duty of care, or to grasp the issues at a substantive hearing, without all of the issues, (including fourth action, and as far beyond as possible), being before the Court. Of greatest concern are aspects of how this case has developed by 2009 to 2011 onwards. From 1992 the Claimant says he was and is bullied by police taking his time in petty motoring offences and dishonest excuses for arrest. By 2009 onwards the Claimant is being convicted within the subjective unsubstantiated covert information systems, as one of the more or most dangerous people in the UK, so to risk loosing longer term liberty and/or life without trial. From case law Parliament would not have known the effect of its measures, and the case needs to be heard in full, for both its immediate effect on the Claimant, and the alarming serious wider ramifications for the UK in general. This case needs to be assessed for EU human rights and EU Proportionality of facts of case from 1992 to 2010 and ongoing for police conduct and public policy.

22. We believe that this is a bullying case similar to as said in Waters, - except a close proximity negligence and misfeasance from implied malice, (in contrast, Waters used her employment relationship and misfeasance). Some comments from Waters that we believe are relevant are below, (fuller version in appendix), but we are not allowed time by the Court to adequately explain why:-

> In the appellant's case before your Lordships some 89 allegations of hostile treatment are listed as taken from the statement of claim. They are summarised in the appellant's case as being repeated acts of "1. Ostracism including refusal or failures... 2. Being 'advised' or told to leave the police force. 3. Harassment and victimisation and 4. Repeated breaches of procedure". Some of these allegations taken alone may seem relatively minor. Others are much more serious…
> …….. At the heart of her claim lies the belief that the other officers reviled her and failed to take care of her because she had broken the team rules by complaining of sexual acts by a fellow police officer.
>
> The Court of Appeal in particular took the view in the present case that the decisions of the House in *Hill v. Chief Constable of West Yorkshire* [1989] A.C. 53 and *Calveley v. Chief Constable of the Merseyside Police* [1989] A.C. 1228 precluded a duty of care for policy reasons.
>
> I do not consider that either of these cases (Hill & Calveley) is conclusive against the appellant in the present case…..Entirely different factors to those considered in *Hill* arise…..

….Some pruning may be possible or advantageous…. but that does not make it an abuse of process…..

…..the law of negligence develops incrementally so that the fact that there is no reported case succeeding against the police similar to the present one is not necessarily a sufficient reason for striking out…..

……caution in striking out **on the basis of assumed facts** in an area where the law is developing as it is in negligence in relation to public authorities, if not specifically in relation to the police.

Contrary to what the Court of Appeal thought **the appellant does allege malice** so that the claim for misfeasance in a public office is not barred on the ground that malice is not alleged.

Lord Hutton:

Where the defendant brings an application to strike out before the facts of the case have been investigated, it is necessary to proceed on the basis that the facts alleged in the Statement of Claim are true……..

…….But on the basis that the allegations contained in the Statement of Claim are true, I am of opinion that this was not a case in which the Statement of Claim should have been struck out as disclosing no reasonable cause of action or as being frivolous or vexatious or an abuse of the process of the Court.

23. The emphasis by underlining the word Malice above is by the Claimant's lay team to emphasise that amendments and malice can be included at the discretion of the Courts for reason that will follow.

Convicted person can sue, without challenging the conviction.

24. As we are aware, that with permission of the Court, a convicted person can sue, without questioning the conviction, by bringing an action over the excessive response by victim or other. Or from the principle being established that excessive conduct in arrest can be challenged, that also other conduct of a victim or other involved parties, can be he subject of an action by the convicted person, as a wrong or as unlawful. (Adorian v Commissioner of Police of the Metropolis Judgment January 23, 2009 report The Times 23 February 2009 as – Police lose appeal to strike out damages claim).

Duty of Care & also potential incremental change to Negligence and Public Policy

25. As we are aware where there are excessive responses by police, then police can be sued and are sued even when the person is convicted eg Adorian.

26. As stated earlier, outcome of various cases quoted in the preliminary Judgement are "disputed facts" as for example the Claimant was not always present, and the Officers and associates were the only complainant and so only witnesses, and they are accused of wrong doing and bullying by what they say and do. The preliminary Judgement therefore "assumes facts", where the Claimant and his lay support team are still denied needed opportunity to go through the case and list the facts. It could take a

lawyer months to review the enormous detail and files. Yet lay people are given days and no proper opportunity to respond.

27. The case is unusual and unique and the needs of the case, for genuine reason, takes the direction to revisiting cases that have supposedly been heard.

28. The police officers who are accused by the Claimant of bullying him are the main complainant, opposed to genuine members of the public need to raise issue with police.

29. Professor Michael Zander QC comments about perjury by Police. As below there is Counsel's opinion that prolific perjury exists amongst police, so that there are now grounds to believe the Claimant's claims, where there is no blanket immunity on Police or like public sector. As police have not been investigated or prosecuted for perjury, that keeps the door to revisit the degree to which the Claimant has been bullied by police abusing their power outside of court and in Court testimony.

> Two thought it (perjury by Police) happened in as many as 50% of their cases (one of these did more prosecution than defence work). Averaged out roughly, this would mean that police perjury was observed to occur in a little over a quarter of all trials.
>
> Mr Wolchover observes that this figure relates only to perceptible lying under oath. There would be many other cases (possibly more) where the police officers lied in ways not perceptible to the barristers in the case or where the issue of police perjury never became relevant because the defendants pleaded guilty. There would almost certainly be cases where innocent defendants pleaded guilty to trumped-up charges (see p 302) or where some of the prospective evidence was invented- the gilding of the lily."
>
> Cases and Materials on the English Legal System
> Prof Michael Zander QC (2003)
> page 396 – 397

Barrister's Media Opinion (fuller version, - see Appendix Two):

> The 57-year-old barrister has previously represented the Metropolitan Police in several high-profile cases. He said: "Regarding Sir Paul Stephenson's idea that police should have a level of immunity – once upon a time I was in favour of this.
>
> "At that time I was well aware of some unmeritorious claims by villains who would sometimes sue on the back of a miscarriage of justice in a criminal court which had led to an undeserved acquittal or two.
>
> "As a result of my experience I have revised my view. If people like the officers involved were to achieve some form of immunity, behaviour of police, which sometimes is not beyond reproach, will deteriorate still further."

Higher Courts can offer a Duty of Care as the UK's obligation to give Remedy for contravention of EU Human Rights, before the UK Human Rights Act.

30. No Blanket immunity for Police. Appeal to Discretion of Higher Courts to impose duty of care for reason to give Remedy for EU Human Rights that existed prior to UK

human rights. Mark Armstrong v UK (Application no 48521/99) – pleaded guilty on 27 January 1997 (conspiracy to supply class A & B drugs) when evidence was ruled admissible, and leave to appeal refused. He successfully claimed no Remedy (ECHR 13) in UK for unlawful interference and surveillance regards events in 1994 and 1995. The Claimant, for genuine reason of avoiding unnecessary litigation, asks the Higher Court to use their Discretion to provide Remedy (ECHR Article 13) to save need for Claimant to need to remain a litigant to visit EU Courts. Also relevant, His Honour indicates that the case that will proceed will, in part, seek to explore surveillance and interference by defendant, for same time period (pre HRA), as the EU case law of Armstrong.

31. ECHR Article 3 & 8 are not to directly establish a duty of care, but can help give reason to offer Remedy (ECHR 13) by establishing a duty of care. Also Armstrong pleaded guilty to the related offences in a UK Court.

Comments by the Leaders of the UK Judiciary

32. The senior Judiciary of the UK expressed the strongest concern that the New Labour administration of 1997 to 2010 was passing new laws so fast that the UK senior Judiciary could not advise Parliament and other on their effect and implications.

Previous Unnatural Swelling of police numbers

33. It was predicted that when New Labour, (after 1997) tried to suddenly swell police numbers, for political purposes, that it was said the selection and training of police could not cope as great care is needed to choose and train police officers, (as they gain so much power). It was said we would have problems from officers conduct surface from around now onwards.

Police and Information systems

34. To what extent the UK has or will slide into having new information and communication systems, and also multi agency working that allow mere suspicion, or malicious use of suspicion, to categorise a person as good as convict that person as if guilty of the most serious offences on a person's record, to in turn allow draconian interferences, without even allegations being put to a suspect in ways where there is opportunity to rebut them. No pre-trial charge, to 'conviction by information or multi agency systems'.

35. As of the present No trial will ever occur to allow someone as good as convicted on information systems by being under suspicion by eg ViSOR or MAPPA (or a Forensic Doctor) to clear their name.

Parliament Helped by Duty of Care in this case

36. It can be argued that Parliament cannot have foreseen the problems which now occur and a duty of care in this case will help Parliament have detail to help in its deliberations.

Duty of care – parallel with case law in employment law

37. There is a parallel with the Claimant and police officer being like two sets of employees (police and vet's surgery and visiting farms working together in the community).

38. In employment law there is case law of bullying case where the victim was bullied by another employer's staff, who worked alongside. If the writer understands issues correctly, the case law apportioned a duty of care on the other employer whose staff did the bullying, for seventy percent of the claim, and thirty percent to the employer. So it's important to raise the question of whether the principle of a duty of care on another employer for bullying by its staff at example can open up a duty of care on police for bullying the Claimant.

Why a duty of care is justified & also in the public interest - Multi Agency MAPPA Executive Summary

39. The Claimant is a vet, an around the world pilot and adventurer using WW1 and WW2 aeroplanes. The Claimant met with the Prime Minister of Australia as a part of his around the world trip. In the USA and UK due to a heightened security level, the otherwise normal communication by the Claimant triggered a formal assessment as to whether the Claimant was a risk. After formal assessment and psychiatric assessment in both US and UK, no evidence was found that the Claimant was a risk.

40. When Police arranged the Claimant's arrest as a part of the failed 2009 WW1 aeroplane machine gun case, the Claimant has been in Caswell medium secure clinic for three months intensive assessment. No evidence of risk was found. The Claimant has convictions, but in keeping with medical risk assessment, they seem to view his convictions as not relevant, or petty.

41. Assessment of risk in the community tends very much to rely on a change of behaviour and the accumulation of means to cause harm (acquiring weapons). Yet Police admit the Claimant puts effort into redress for his grievances via the legal system. Police admit the Claimant had a shot gun certificate, but inadvertently admit that the Claimant has made no attempt to buy or acquire guns. Police did not rescind the shotgun certificate until 20/8/09 after his arrest. Police admit the Claimant had a WW1 aeroplane machine gun (for his WW1 aeroplane), that came to their attention when the Claimant put it up for sale, and then sold it. Police chose not to take any action or express any like concern over the people purchasing and then possessing the WW1 Lewis machine gun.

42. Yet when the Claimant has no relevant serious convictions, and he has a number of highly specialised assessments that did not find risk, SW Police use their power of discretion to categories the Claimant as ViSOR (violent and sexual offender register) and report the Claimant as a Critical Public Protection Case to the Ministry of Justice Public Protection Unit. That can mean in reality a message to agencies requesting they find excuses to lock up the Claimant for life.

43. The Claimant has reason to be concerned. There has been a past TV programme of a case where excuses were found to keep a petty criminal in prison for long term beyond his sentence. The files had errors. Good staff found excuses not to release him. It was not known whether the errors inserted in the file were malicious or not.

44. It is rare for a person to be put on ViSOR when not having any relevant serious conviction. For example four people (who do not have relevant convictions) are on ViSOR in Manchester, which has a population of eight million. That is one per two million people.

45. Given South Wales only has around a million people, that means SW Police have labelled the Claimant one of their most dangerous people.

46. Despite the Claimant not having a gun, or even attempting to get himself relevant weapons, the Claimant is labelled a firearms risk by police, where in reality with arm police on our streets as a normal, (and now responding to the kind of incidents in this case since 1992), that means a real and immediate risk that the Claimant will be shot.

47. The Claimant seeks protection from the Courts regards SW Police. Yet SW Police are circulating their above view of the Claimant (as a "Critical" risk), to the very Courts that the Claimant seeks help from, to gain protection remedy for Police interference and harassment.

48. When Police assert the Claimant will be at greatest risk at the point when he is not able to proceed with litigation, SW Police say they are to take civil law advice on the Claimant being viewed as a vexatious litigant (in the civil courts), where vexatious litigant is the system used to stop the Claimant also having access to help from the civil court system.

49. While all this occurs, the CPS confirm (as disclosed in the MAPPA summary from Caswell Clinic) that the Claimant is doing nothing wrong regards the Police only remaining concern, of The Claimant's wish to speak with the Chief Constable about her affidavit.

50. The SW Police plan says a main help for The Claimant was supposed to be that The Claimant receive care as an out patient at Caswell Clinic, but in 2010 The Claimant was twice arrested and charged for going there. Where the CPS then later dropped the charges.

51. What is The Claimant to do? SW Police deem him a Critical risk and a fire arms risk, when evidence does not even suggest let alone match the normal use of those measures. The Claimant is twice arrested and charged for going to the NHS Caswell Clinic that exists for people who are a risk. SW Police aim to make it difficult to attend a civil Court and seek advice about having him declared a vexatious litigant in the civil courts.

52. The WW1 Machine gun trial was before a jury, who quickly found The Claimant not guilty on all charges, by believing The Claimant and not Police, in a way to suggest all of the above by SW Police may be dishonest and malicious.

53. What is most telling is that The Claimant has had shotgun licence and access to guns for years. The only changes in The Claimant's circumstances are that he feels he is winning in his civil dispute particularly regards the 'fourth action'.

54. Why cannot The Claimant pursue his belief that they deem him a risk purely because he is ahead in his fourth action, and now the civil court will not allow it to be heard?

Defendant's intent to Shoot Claimant & Claimant's Right to Life

55. There is the public interest aspect of reintroducing the death penalty not via Courts, but by Police discretion that may be malicious or dishonest.

56. In the recent London case of barrister Mark Saunders, who was shot dead at his home by a hail of police bullets, a point of detail is that one armed officer present testified at the inquest, that he would not have opened fire. Yet Mark Saunders dies in a hail of bullets. So ending life in the UK as from 2010 is now in the hands of the discretion of Police Constables, and that their use of discretion is difficult to challenge.

57. The Claimant believes His Honour should act to protect the Claimant. In R. v Lord Saville, ex parte (1) 28 Widgery Soldiers (2) 8 Inquiry Soldiers. UK Soldiers did not want to give evidence in Londonderry. A simple summary in the first edition of Human Rights by Nutcases p 36 says that it was held.

> "It was not open to the Tribunal to conclude that soldiers had no reasonable fears for their own safety. The Test of "real and immediate" danger to life was not the appropriate test to invoke in the present circumstances. The appropriate course was to consider the nature of the witness fear, the extent to which they were objectively founded and then to consider the extent to which those fears would be reduced if the soldier's evidence were taken elsewhere in the UK".

58. When the Claimant's team of non-lawyer onlookers were trying to assess how to explain what seemed a genuine intent to shoot the Claimant, we did not know how to present a real and immediate danger. Now there is evidence in the MAPPA Executive summary that the Claimant is deemed (without foundation) "a firearms risk" and that means the Claimant can be shot at the discretion of armed officers any time they wish. The history of discretion to shoot and kill can be carrying a wood saw wrapped in newspaper.

59. The opportunity for contact with armed police in Wales has very substantially increased. Europe and particularly Cardiff is on high alert for a repeat of the Mumbai jihadist armed gang shoot civilians. Cardiff has constant armed patrols in Audi and Lexus 4x4 police vehicles. When those armed Police take a break, they walk around Tesco with waist holsters and guns like something out of the wild west. Armed police attend routine incidents in Cardiff. From the executive summary at this moment, it is reasonable to suspect that Police have put the Claimant on ViSOR (See top of page 1 Offender Information ViSOR reference: 09/0189441). Given ViSOR, that can only mean wrongly portrayed as violent, and seemingly a fire arms risk (see 3 Summary of Meetings fourth bullet point). The Claimant believes that it is foreseeable that the Claimant in a repeat of any one of the hundreds of incidents of bullying and harassment by police will be met by a response from armed police at least wrongly led to believe from ViSOR or other police information systems that they need to be ready to shoot the Claimant for the risk police using ViSOR (or like) are wrongly told he poses. In Cardiff armed police units can frequently and routinely attend the most minor incidents.

Duty of Care, public policy and improving access to justice by restricting lawyer costs to one in house lawyer's salary eg 50k per annum, (90% saving on costs)

60. The Claimant is a litigant in person. Yet lawyers' costs are the greater expense to prevent a general duty of care. Do Courts 'ultimately and on reflection' have the right to substantially harm Claimants, because the Defendant's lawyers imposes on all, that they be the main expense, by wanting to make needless and excessive profit? Should Courts and Parliament review the parasite external lawyer element in public policy and impose fairness, access to justice and other reason, that public sector lawyers cost recovery should be restricted for example to one lawyer's salary to employ a lawyer in house, - as recommended as good practice for business by the Chartered Management Institute? A case may even be heard at 10% of costs For incremental can this rule at first occur for lawyers fighting only litigant in persons, to see how it works.

Claimant has Not been and is not well enough (& Defendant's lawyers)

61. If the MAPPA executive summary and any like background (where that kind of detail was available to the Court and the Defendants' lawyers for sometime) describe the Claimant as needing a psychiatrist with comments consistent with that the Claimant could not be well enough for legal proceedings, why did the Defendant's lawyers want to speed ahead with a strike out application, when they knew, or should have known, that the Claimant was too ill for that fast pace?

62. The writer's observations are that the Claimant has no access to a lawyer or legal advice. He has become unwell and not able to adequately respond to the stages in this case, including to either know what to amend from advice, or to do research and decide.

63. The Claimant has become so unwell that his intellectual function is down to struggle to understand about one sentence of new information or principle, - a feature which can often occur when a clinical condition seeps in where a normal person is mentally, physically or both worn down. Caution is needed that it is normal for a person too unwell to talk and ramble on issues that they are familiar with. So the Claimant will talk of blow by blow issue or MAPPA, but that person while rambling will not be able to deal with new information such as how to bring a complex legal case, within the complexities of the UK legal system, and when no reliable source of advice is available. When at the height of stress from the above, the Claimant seems not well enough to control and organise as is needed for a simple hearing. And he will be too stressed to present himself well.

64. The writer comments when not a lawyer or clinician, but has a potential of quasi expert status from a broad experience. The Court will not need a weatherman to confirm which way the wind blows, nor an aviation expert to describe an aeroplane falling from the sky and whether it lands fairly safely, or is heavily damaged. Having received obviously well informed indication, the Court can fairly appropriately review the potential meaning.

Amendments, not been well enough, no advice in complex case, and appeal for clarification the meaning of expeditious and fairness in an adversarial system. Expeditiously?

65. But in a military expedition, it can often be that each is under an obligation to walk and run to keep up with the fastest person. In a civilian expedition, 'respect' for each member and their abilities, so to walk at the pace of the slowest person, and to give respect to their needs. Which pace does the higher court think expeditiously should mean? What are the practical interpretations of that?

Fairness and unfair within Adversarial?

66. We are aware Lord Denning wanted fairness within the adversarial system, but was vetoed by his peers. Although fairness was a duty under administrative law, under our newer Human Rights (fair trial and much more) surely we now have a duty to now move on, from an out-of-date approach of the 1970s style of UK being limited to mostly an adversarial system, but we have an unfair adversarial system.

67. (By limited we mean the UK is arguably too lethargic in the real use of the EU Directive on alternative access to justice including arbitration and mediation, which was supposed to be implemented as from Sept 2007).

Adversarial balance in power and fairness?

68. Would we organise a boxing match as a way for a person still suffering from injuries from an attack, to punch back his attacker as a way to justice? We would not because the victim is not recovered and that contest would merely give a malicious attacker the chance to inflict more harm. Why therefore is this case being organised in ways where the Claimant cannot manage? The Claimant cannot amend, he cannot have his grievances of the fourth action and more, he cannot have time needed to prepare papers, he cannot have time to recover to understand legal argument, and why is it all so unfair to give him so little chance at needed justice?

69. The measure of help from the Court was welcomed, but can accurately be described as half a bridge, because the Claimant was not well enough to follow or understand proceedings and report back to his team. He could not rest up, so we could prepare, convey to the Claimant and amend.

Amend? If the Claimant stands outside the Court with a very big protest sign 'ever trusted a lawyer?' does that mean he was content with the wording and not wishing to amend what lawyers wrote? (But he had no advice of how to amend).

70. The preliminary Judgement says the Claimant is happy with his papers and not indicated otherwise, whereas this seems to be contradicting that the Claimant walked out of the hearing and stood outside waving a big banner "ever trusted lawyer?" And the Claimant wishes to amend and draw in the fourth action and more.

Principle in Equality Act 2010 that allows a change to Preliminary Judgement

71. The legal principles that people have reason for having no confidence in lawyers, is emerging in the Equality Act 2010. When represented by a lawyer, to use a compromise agreement, an aggrieved employee must get another suitable person to advise them on the issues and meaning of the outcome, (eg CAB non lawyer) before the agreement can be made valid.

72. In the provisions of the Act, in order to have a qualifying compromise agreement, the complainant must receive advice from an "independent adviser" about its terms and effect. Section 147 sets out the requirements for an independent adviser. The Equality Act, in force as of 1 October, provides in Section 147(5)(d) that:

> ". . . none of the following is an independent adviser in relation to a qualifying compromise contract:
>
> (a) a person who is a party to the contract or the complaint; and
>
> (d) a person who is acting for a person within paragraph (a) in
>
> relation to the contract or the complaint . . ."

Office for Fair Trading predicts the present 'no legal advice for lay people'

73. The Legal Services Act 2007 is known for being deeply flawed (Parliament could not have known the adverse effect) because it was designed by the same team who designed the *Financial Services Authority* that was a part of weak measures that led to the credit crunch. As a part of the review of legal services, the *Office for Fair Trading* commissioned their report competition in the professions, that predicts the present situation that, even if you get a lawyer, they cannot give the case the attention it needs, where that leads to "Market Failure" and no access to advice at all.

Market Failure - Consequences of information asymmetry

Thus there could be market failure which leads to an inadequate supply

of quality services or, in the extreme, no services are provided at all.

"competition in the professions"

Office for Fair Trading

74. We report that finding a lawyer is extremely difficult. And that law centres or CAB can only deal with very simple cases.

75. On one occasion there was a person with a current legal aid certificate and no lawyer. A London barristers chambers were willing to help, but all of the chambers solicitors contacts in London said that they always only assign a very young junior to a lay person's legal case, which was unacceptable because juniors and those with a little more experience would not cope with cases that require deep and broad general experience.

Defendant's lawyers and His Honour had the MAPPA Executive Summary describing a Claimant who would not cope with their proposed speed of complex legal proceedings.

76. Unless the Defendant's lawyers wish to say that the MAPPA executive summary is not true, the Defendant's lawyers (especially as officers of the Court) should have planned and assisted for a man needing a psychiatrist and not able to manage with the pace of complex legal proceedings, to go much slower and to have opportunity to amend.

Amendments, and combining fourth action up to present: Obvious intended meaning, overriding interest of justice and redress the imbalance in power.

77. The writer understands there is a host of case law to allow amendments such as the 'obvious intended meaning and the overriding interests of justice' as well as case law of Waters.

What does the lay expression of conspiracy mean? There is good faith or bad faith?

78. Regards obvious intended meaning, the Claimant is taunted by the Defendant for saying conspiracy very much. Has anyone ever heard a lay person like the Claimant claim a conspiracy of good will is vented on them?

79. Or can we assume the Claimant has always repeated his expression of conspiracy to say in a brief single word that he always has been alleging bad faith, (which as we know means dishonesty and malice).

80. The imbalance in power is so huge (Claimant has no lawyer, is very unwell, Defendants arresting him, or trying to arrest him very many times since 2009 in ways the Claimant believes is to thwart the civil case), that allowing his grievances to be shown via being able to amend can help redress the imbalance in power.

Fairness overrides Finality. Hearing a case where convicted. - Why Criminal Judgements in Preliminary Judgements are not credible in law.

81. What the Judgement may have left out, (we were unable to double check detail with the Claimant at this time) is that on the occasion where the quoted Court findings that appear damming regards the Claimant supposedly having lots of opportunity, that the Claimant may not have been at the trial, particularly in one of more of the strike out points.

82. Also contrary to what was said, the Claimant did not have the evidence he needed at that time, so to mean the preliminary Judgment may be 'assumed facts'. If the hearing was in the absence of the Claimant, and the Police officers were bearing false witness, where are the opportunities of credible fair trials?

83. The preliminary Judgement avoids these above issues, and talks of finality, before allowing fairness

Appendices

Appendix One

Regards Police and perjury, Professor Michael Zander QC in his book *Cases and Materials on the English Legal System*, page 396, (2003) explores as follows:

> (a) Perjury
>
> This is an area where little is known - though everyone connected with the justice business would agree that perjury is quite common. The number of prosecutions is tiny – usually 200-300 cases a year. These obviously represent only the tip of the iceberg. An attempt to get some kind of line on the problem was reported be a practicing barrister in 1986 (New Law Journal, 28 February 1986 p181). David Wolchover had been at the Bar since 1971. His aim was to discover how much perjury was committed by police officers. His method was to inquire of his fellow barristers. He accepted that it was far from ideal as a basis for an assessment, but said he thought that there was none better and that it might not be wildly wrong.
>
> He considered that having practiced for many years, he 'had sufficient experience and acumen to be capable of making a reasonably confident judgement from details of facts and circumstances in a given case whether police officers were committing perjury'. It had become apparent to him that 'police perjury occurs with great frequency in London' where he practiced. His belief that this was so, 'was reinforced by hearing in chambers, in the

robbing room and Bar mess, the casual matter of fact way in which the Bar tends to refer to police perjury. It was regarded as commonplace (p 183). Over a two-year period he conducted an informal and statistically haphazard poll of fellow barristers to ask how many shared that view. In the large majority it was shared. Most were between five and twenty years since call to the Bar and took part in prosecution and defence work in about equal proportions.

In Mr Wolchover's estimation, perjury took place in as many as three out of every 10 criminal trials both summary and on indictment. Forty-one of the 55 barristers (75%) he asked thought that this was 'a reasonable estimate with which they could readily concur'. Eight thought it occurred in only ten. Two thought it happened in as many as 50% of their cases (one of these did more prosecution than defence work). Averaged out roughly, this would mean that police perjury was observed to occur in a little over a quarter of all trials.

Mr Wolchover observes that this figure relates only to perceptible lying under oath. There would be many other cases (possibly more) where the police officers lied in ways not perceptible to the barristers in the case or where the issue of police perjury never became relevant because the defendants pleaded guilty. There would almost certainly be cases where innocent defendants pleaded guilty to trumped-up charges (see p302) or where some of the prospective evidence was invented- the gilding of the lily."

Cases and Materials on the English
Legal System
Prof Michael Zander QC (2003)
page 396 - 397

Appendix Two

Used by OFT to Review Legal Services

Market Failure. Consequences of information asymmetry

The disparity between the information held by the service provider and that held by the consumer could lead to market failure where the former has strong incentives to cut quality (it is costly to provide) without a corresponding reduction in price. Consumers are unable to observe whether individual firms have behaved in this way and have therefore to base their purchasing decisions on the average price charged for the market. If many service providers are tempted to degrade quality in this way, the average quality of services in the Market will fall. Economic theory suggests that fewer consumers will then purchase services and that, in the extreme, those firms still providing high quality services may go out of business. Conversely, and perversely, a high quality firm that cuts its price in order to compete with lower-quality rivals may only hasten its own demise, if consumers interpret such action as evidence of poor quality. In the absence of reliable information on a service provider, consumers will often reply on "signals", that is to say incomplete or possibly inconclusive indications. Thus there could be market failure which leads to an inadequate supply of quality services or, in the extreme, no services are provided at all.

"competition in the professions" (p 11)

Office for Fair Trading

Appendix Three

As Reported by *BBC News Website*:

> Lamb Chambers' Colin Challenger, who has donated the cash to charity, mounted civil and criminal cases against the Metropolitan Police after his wrongful arrest in court last year.
>
> "Legal costs are likely to exceed the damages by some three times," said Challenger, adding: "The loser is not the police force but the taxpayer and me.
>
> "I could not ever be compensated for the indignities that I suffered – even had I kept the damages rather than given them away."
>
> Challenger, who described his views of the ordeal as "unprintable", was escorted out of the RCJ in handcuffs after a scuffle broke out among court protestors in July 2009. He fell into a diabetic coma while in custody after police officers confiscated his insulin and had to be whisked from Belgravia Police Station to Chelsea and Westminster Hospital for treatment.
>
> During bankruptcy proceedings, critics of Challenger's client lashed out, accusing the experienced barrister of delay tactics.
>
> The four court protestors were evicted from court by Registrar Barber for causing a disturbance, after which it was claimed Challenger had shoved one of them out of a door before locking it. Challenger was arrested for common assault despite protestations from a throng of bystanders that the barrister was in fact the victim of a physical attack.
>
> Challenger explained: "[Police] arrested and handcuffed me. It took police almost six months to decide that they had no evidence.
>
> The 57-year-old barrister has previously represented the Metropolitan Police in several high-profile cases. He said: "Regarding Sir Paul Stephenson's idea that police should have a level of immunity – once upon a time I was in favour of this.
>
> "At that time I was well aware of some unmeritorious claims by villains who would sometimes sue on the back of a miscarriage of justice in a criminal court which had led to an undeserved acquittal or two.
>
> "As a result of my experience I have revised my view. If people like the officers involved were to achieve some form of immunity, behaviour of police, which sometimes is not beyond reproach, will deteriorate still further."

Appendix Four

No police charges over barrister Mark Saunders' death

Mark Saunders died after a five-hour stand-off at his home in Chelsea in May 2008

No police officers will be charged over the death of a barrister shot by police marksmen in West London, the Crown Prosecution Service (CPS) has said.

An inquest jury ruled Scotland Yard firearms officers acted lawfully, when they killed Mark Saunders, 32, during an armed siege at his Chelsea home.

The CPS said it would review the inquest proceedings to see if significant new evidence emerged.

But after studying a full transcript, it said no action was needed.

Mr Saunders died in a hail of police bullets after a five-hour armed stand-off at his West London home on 6 May 2008.

The siege began after the high-flying divorce specialist fired shots from his home in Markham Square.

In October, a Westminster Coroner's Court jury found the actions of the officers were lawful, proportionate and reasonable.

'Insufficient evidence'

"Following the verdict at the inquest into the death of Mark Saunders, I have been considering whether any significant new evidence arose which would be capable of affecting my original decision," said Sally Walsh, of the Crown Prosecution Service (CPS).

"Having considered a full transcript of the inquest hearing, and a report of the inquest submitted by the IPCC, I have concluded that my decision remains the same.

"There remains insufficient evidence to charge any officer in relation to the tragic death of Mark Saunders."

Prosecutors have also decided not to bring charges against more senior officers for negligence, misconduct or breaches of health and safety laws.

One CO19 officer, known only as Alpha Zulu 8 (AZ8), faces a police inquiry into claims he inserted song lyrics into his testimony.

The officer is accused of littering his testimony with song titles by acts such as Duran Duran and George Michael.

The Independent Police Complaints Commission (IPCC) launched a fresh investigation after senior officers referred the allegations to the watchdog.

The IPCC said the inquiry was "progressing well" and the findings will be made public "early next year."

Appendix Four

In Waters:-

> In the appellant's case before your Lordships some 89 allegations of hostile treatment are listed as taken from the statement of claim. They are summarised in the appellant's case as being repeated acts of "1. Ostracism including refusal or failures to support her whilst on duty and in emergency situations, 2. Being 'advised' or told to leave the police force, 3. Harassment and victimisation, and 4. Repeated breaches of procedure". Some of these allegations taken alone may seem relatively minor. Others are much more serious. There are, moreover, complaints that more senior officers reporting on her wrote unfair reports sometimes with the purpose of pushing her out of, or persuading her to leave, the police force. She says that she was excluded from duties she could and should have carried out. Evans LJ in his judgment

in the Court of Appeal has summarised the main events at the various police stations where she served. I gratefully adopt and therefore do not repeat his summary. At the heart of her claim lies the belief that the other officers reviled her and failed to take care of her because she had broken the team rules by complaining of sexual acts by a fellow police officer.

The Court of Appeal in particular took the view in the present case that the decisions of the House in *Hill v. Chief Constable of West Yorkshire* [1989] A.C. 53 and *Calveley v. Chief Constable of the Merseyside Police* [1989] A.C. 1228 precluded a duty of care for policy reasons.

...I do not consider that either of these cases is conclusive against the appellant in the present case. It is true that one of her complaints is the failure to investigate the assault on her and that if taken alone would not constitute a viable cause of action. But the complaints she makes go much wider than this and she is in any event not suing as a member of the public but as someone in an "employment" relationship with the respondent. Even the failure to investigate is part of her complaint as to that. Entirely different factors to those considered in *Hill* arise.

She is not as in *Calveley* complaining of delays in the investigation or procedural irregularities. It does not seem to me that it is an answer here as it was in *Calveley* to say that the appellant should proceed by way of judicial review. Here there is a need to investigate detailed allegations of fact. It has to be accepted of course that this detailed investigation would take time and that police officers would be taken off other duties to prepare the case and give evidence. But this is so whenever proceedings are brought against the police or which involve the police. Sometimes that has to be accepted. Here the allegations of the systematic failure to protect her are complex (and some pruning may be possible, indeed advantageous) but that in itself does not make the claims frivolous or vexatious or an abuse of the process of the court.

It has been said many times that the law of negligence develops incrementally so that the fact that there is no reported case succeeding against the police similar to the present one is not necessarily a sufficient reason for striking out.

It is very important to bear in mind what was said in *X v. Bedfordshire County Council* [1995] 2 A.C. 633, in *Barrett v. Enfield London Borough Council* [1999] 3 W.L.R. 79 and in *W. v. Essex County Council* [2000] 2 W.L.R. 601 (H.L.) as to the need for caution in striking out on the basis of assumed fact in an area where the law is developing as it is in negligence in relation to public authorities if not specifically in relation to the police.

I would accordingly accept that the main claim against the Commissioner for breach of personal duty (although the acts were done by those engaged in performing his duty) should not be struck out. The plaintiff's case on vicarious liability is more tenuous since it is difficult to see how many of the acts could have caused the psychiatric injury alleged. Contrary to what the Court of Appeal thought the appellant does allege malice so that the claim for misfeasance in a public office is not barred on the ground that malice is not alleged.

Lord Hutton.

Where the defendant brings an application to strike out before the facts of the case have been investigated it is necessary to proceed on the basis that the facts alleged in the Statement of Claim are true. If the facts alleged by the plaintiff in her Statement of Claim are true they disclose a situation of gravity which should give rise to serious concern that a young policewoman should be treated in the way she alleges and that no adequate steps were taken by senior officers to protect her against victimisation and harassment. However it is important to emphasise that at this stage the truth of her allegations is only an assumption. It may be that on full investigation at a trial the allegations will be shown to be groundless or exaggerated. But on the basis that the allegations contained in the Statement of Claim are true I am of opinion that this was not a case in which the Statement of Claim should have been struck out as disclosing no reasonable cause of action or as being frivolous or vexatious or an abuse of the process of the Court.

It is not every course of victimisation or bullying by fellow employees which would give rise to a cause of action against the employer, and an employee may have to accept some degree of unpleasantness from fellow workers. Moreover the employer will not be liable unless he knows or ought to know that the harassment is taking place and fails to take reasonable steps to prevent it. But the allegations made by the plaintiff were serious and were known to senior officers in the chain of command leading up to the Commissioner, and if the claim brought by the plaintiff had been brought against an ordinary employer I consider that it could not have been struck out on the ground that it disclosed no cause of action or was frivolous or vexatious.

84. We ask the court to offer the Claimant a true Remedy, to explore all the facts, issues and proportionality, and so to deal fairly with this unusual and indefinite case.