

## **Claim No.**

We wish to rely on the following evidence in support of this application:

### **Exchange of witness evidence - the prior application, the court hearing of 24 April 2009 and the background exchange**

Previously the Defendant has issued an application to seek exchange of witness evidence and to seek to compel the Claimant to effect exchange on a mutual basis. Previously the Claimant has persistently sought "further disclosure" from the Defendant by means of a number of applications for "specific disclosure" on Actions BS614159-MC65, CF101741 and CF204141. At a case management conference on 25 November 2008 the Claimant requested an affidavit from the Defendant in respect of disclosure. His Honour Judge Chambers QC advised the Claimant that if the Defendant provide such an affidavit the Claimant could not go behind that document by seeking to make further requests for documents on the trial itself. His Honour Judge Chambers QC emphasised to the Claimant that he could not make any further request for disclosure once he had received the affidavit.

By way of letter dated 25 February 2009 the Claimant was served with a copy of the affidavit.

On 27 February 2009 the Claimant attended Police Headquarters seeking to arrest the Chief Constable in respect of the affidavit. The Claimant further attended Police Headquarters seeking to arrest the Chief Constable again on 18 June 2009.

On 8 April 2009 the Claimant sent an email to Cardiff County Court, Dolmans and others in which he applied to His Attorney General and Cardiff County Court "for the arrest of the Chief Constable of the South Wales Police for the indictable offence of Contempt of Court. If neither instruct or orders someone to do it, I will do it myself without further notice." In the same email the Claimant made a further "Applications for Specific Disclosure" and indicated that he could not proceed to obtain witness statements without further disclosure being made.

The Court dealt with the Claimant's application (insofar as one had been issued) by paragraph 5 of the order of 24 April 2009. The Defendant intended that the parties should proceed to exchange of witness evidence as advised in prior correspondence between the parties by effecting simultaneous exchange of witness evidence. Previously dates ordered for exchange have elapsed with the Claimant identifying that he was unable to proceed due to the unwillingness of the police to comply with his continued requests for disclosure.

### **The approach to exchange of witness statements on 19 June 2009**

As at the close of business 18 June 2009 the Claimant had not sought to make any arrangements to effect disclosure of witness evidence. The Claimant has previously requested that all correspondence with him be sent by email. There has been regular correspondence by email between the parties. By 18 June 2009 there had been no indication from the Claimant by email that he intended to proceed by way of exchange of witness statements and no arrangements were in place between the parties to effect a mutual exchange. The Claimant first raised the issue of exchange of witness statements shortly after 3 pm on 19 June 2009 when the court had ordered compliance with the terms of the order of 2 April 2009 by 4 pm on 19 June 2009.

### **The conduct of the claimant prior to 19 June 2009**

Subsequent to the hearing of 24 April 2009 the claimant sent a letter to the Defendant's solicitors headed "Failed Disclosure CPR Part 31". This letter was in fact addressed to the Chief Constable and copied to (amongst others) the Cardiff County Court. As is the conduct of the Claimant, this letter was pasted onto his website.

In this letter the Claimant offered a reward for disclosure of personal details of individuals and identified that he would seek to expand the list. The Claimant appeared to be pursuing requests for disclosure and made no reference to exchange of witness evidence. The email directing it to the Defendant's solicitors (and others) was headed: "£10,000 Reward For Information".

On 8 May 2009 the Claimant directed an unsolicited email to the Defendant's solicitor headed "Rough Copy" in which he acknowledged compliance by the Defendant with paragraph 1 of the order of 24 April 2009 and added: "I enclose a rough copy of the commencement of my witness statement identifying witnesses needed". The draft statement runs to 26 pages and contains 326 paragraphs. The statement is not exhibited to this application nor is its detail revealed to the court at this point but the document, whilst not considered in detail seems to deal almost exclusively with matters not related to these proceedings dealing with issues relating to Avon & Somerset Police and the Claimant's experiences when he resided in Guernsey.

The very fact that the Claimant has produced and disclosed a "Rough Copy" of his proposed evidence on a unilateral basis causes the Defendant to have concern as to the prospect of achieving a mutual exchange of relevant witness evidence.

On 15 May 2009 the Claimant directed an email to the Defendant's Solicitor entitled "Police Surveillance" the Claimant refers at paragraph 69 of the same to "applying for the continuance of the management of the 4 Action for damages". At paragraph 70 of that letter, the Claimant indicates "I need the whereabouts of Barbara Wilding for her arrest". At paragraph 92 of his letter the Claimant hat he needs further documents as "I wish to present them also to the magistrate for my private criminal prosecution against Wilding and others you know". At paragraph 119 of that letter the Claimant states: "I am unsure of my legal position but I put on notice you and others in your firm may receive witness summons, if not join the list for a private prosecution in the light of this flagrant criminal conspiracy".

On 17 June 2009 the Claimant directed a letter to the Defendant's Solicitor entitled "Hairy Students". In that letter the Claimant stated: "I was therefore at Barry magistrates yesterday putting the finishing touches on my private criminal prosecution of both you and Ms Wilding my intention being to produce tape recordings, gathered over the years depicting, in particular, the demeanor of presiding judges when I have dared suggest that lawyers and police in UK courtrooms have a signed and sealed arrangement to act with impunity should any past indiscretion come to the surface of their gutter during any subsequent court proceedings." The letter concluded: "I have a set of hand cuffs and I will be around to your offices later this week."

In response to this letter the Defendant's Solicitor wrote a letter dated 19 June 2009 which indicated that the Defendant's Solicitor was intending to revoke the implied licence of the Claimant to enter the offices of Dolmans Solicitors. In that letter the writer indicated that all matters would now need to be dealt with by correspondence or attendance at court.

In addition to the above correspondence, the Claimant has exhibited various items on his website [www.kirkflyingvet.com](http://www.kirkflyingvet.com). These include items headed "Warrant for Adrian Oliver's arrest" amongst other references to matters relating to these civil proceedings.

### **Suggested methodology for effecting exchange of witness statements**

I have a real concern that the process of exchange of witness statements in this case is likely to be subject to abuse by the Claimant. The Claimant has created practical difficulties in respect of exchange of evidence in this matter, not least is the risk of a lack of mutual exchange, or that the prospect of exchange is a means by which the Claimant will seek to commit the tort of false arrest upon the deponent. These concerns are heightened by the actions of the Claimant coupled with the late notification of willingness to exchange witness statements

As both parties have now indicated an intention to exchange witness evidence in this matter, progress has been achieved in progressing this case to trial. All that remains are the mechanics of effecting exchange. In view of the conduct of the Claimant I seek an order that the time for exchange of witness statements be extended to the date of the case management hearing on 23 July 2009 and that the parties effect mutual exchange on that date by providing copy statements and filing the same at court at the same time as effecting exchange.

By this method there can be no doubt as to the documents being used by either party at the trial and the parties can benefit from the Court's involvement in the process of effecting exchange. In addition, in view of the Claimant's often voiced concerns as to "suppression" or "falsification" of documents, there can be no doubt as to that which is given to the Claimant and that which is exchanged from him. This should avoid the Court becoming embroiled in any satellite litigation as to the nature of exchange.

In the circumstances, the Court is requested to make an order in the terms set out in the Defendant's draft order as to exchange of witness evidence.

**Paragraph 4 of the Order of 24 April 2009**

The Court has also ordered that the Defendant advise the Claimant by 29 May 2009 as to those witnesses that the Defendant will make available at trial. This matter has been the subject of investigation by the Defendant and is a matter under consideration by Leading Counsel as to the form of response that will be provided to the Court and the Claimant so as to properly discharge the burden on the Defendant but also so as to advance this aspect of the case with the intention if the Court in mind as expressed at the last hearing. Again, the Defendant would seek an extension of time to 23 July 2009 to enable the Court to deal with this matter at the next case management hearing.