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

Civil Court of Appeal

Maurice J Kirk

Appellant

v

Chief Constable of South Wales Police

Respondent

Case Law

- **Waters (A.P.) v Commissioner of Police For The Metropolis (July 2000)**
- **Cornellus v Hackney LBC 2002 (Court of Appeal)**
- **Adorian v Commissioner of Police of the Metropolis [2009] EWCA Civ 18; WLR (D) 23**
- **Armstrong v UK 48521/99 (Judgement July 2002)**

Skeleton Argument

Medical reasons for any delay in this application for permission at the Court if Appeal, are below. This Skeleton argument is written by lay persons attempting to assist the unwell Claimant, now Appellant, which may also help the Court by giving a quite independent view. The writers have no personal interest in bringing an action against the Defendant. To comply with time limits, this submission is unfinished.

Skeleton Argument Contents:

- **What is asked of the Court of Appeal**
- **Permission Sought for Court of Appeal to receive New Information** (Disclosure that is pending)
- **Medical Reasons & Proceedings went ahead without the Claimant Able to take part.**
- **About this case (from 1992 and still ongoing)**
- **Principles and issues for Appeal**
- **Some Closer Detail from the Claimant/Appellant**
- **Appendices**

What is Asked of the Court of Appeal

1. The Claimant/Appellant requests for a set aside, and rehearing of the preliminary stage –

2. And/Or for the Court of Appeal to clarify the fine balance of conflicting principles, and reinstate some or all incidents struck out, sufficient to restore fairness.

Other Details for the Court of Appeal to be Aware

Consolidation

3. The Claimant believed Consolidation should have been the natural outcome of the preliminary stage. The lower Court shows an avoidance of consolidation, by excluding the fourth action and trying to whittle down the Claim. Therefore an application to Consolidate twenty years and ongoing, is presently before the lower Court. The Appellant asks the Court of Appeal to add the issue of consolidation, should that become necessary.

4. When first submitting claims to the lower Court as from 1996, the Claimant did not know, and could not have known that the Defendant's intentions were that deeply malicious and dishonest as to intend to manufacture so many incidents to cause the Claimant to be struck off. Or that, as the Claimant would try to sue police in the civil courts, that a second stage of even more sinister and chilling dealings to manufacture and manipulate frivolous reasons to put the Claimant in prison for very long term.

Consolidation as a means to genuinely needed protection & restore Human Rights

5. By Consolidation the court can see how extreme the manipulation and bullying is, and so to allow the Court opportunity to offer the Claimant needed protection and restore human rights.

Transfer to High Court and out of Wales

6. The Claimant seeks his case to be in the High Court and transferred out of Wales, to avoid the significant interference by the Defendant. This application is before the lower Court as part of the consolidation application, and so may soon be an issue for the Court of Appeal.

Jury Trial Essential for the Substantive Hearing

7. The Claimant started this case, and still believes that a jury trial is essential for the substantive hearing into the Claim. The Claimant's team believe this is a reasonable view, given the specific facts of this unusual case.

Permission Sought for Court of Appeal to receive New Information

8. Permission is asked for the Court of Appeal to receive new information presently awaiting an Order for Disclosure to release the information by the lower Court, (or if not on Appeal to the High Court or the Court of Appeal).

9. Permission sought, includes receiving comment and analysis from the Claimant/Appellant after reading the information when disclosed.

10. The lower Court "eventually" disclosed the multi agency "MAPPA Executive Summary" a document written by multi agency MAPPA leaders specifically for Disclosure, showing the Defendant seeking the support of Multi Agencies, and so a revealing account that exposes the Defendant's intentions regards the Claimant.

11. The minutes of those multi agency meetings are much more detailed, and could allow witnesses, and possibly the ***Norwich Pharmacal Principle*** of people innocently caught up in a tortuous act, being under a duty to assist the person who is wronged.

12. The Defendant's lawyer Mr Oliver personally opposes Disclosure. As did that lawyer Mr Oliver totally oppose Disclosure of the Executive Summary when MAPPA leaders had decided and prepared that Summary, so that it was entirely suitable for Disclosure.

13. The Claimant believes that the MAPPA Executive Summary when compared to the facts, shows such determined malice, dishonesty and wrongdoing in around 2009, that it is seemingly relevant to all twenty years of facts from 1992, and also what legal argument may apply from 1992 onwards.

14. The Disclosure, and especially the fuller Disclosure of the Defendant being so thorough and determined over approaching public bodies to prejudice and harm the Claimant, is expected to show that the lower Court preliminary stage judgement may be ***unfairly premature, or in part, or wholly wrong.***

15. Therefore the new information disclosed after the preliminary judgement and yet to be disclosed, may strongly support the need for a set aside, and then to re-hear the preliminary stage as a consolidated case.

16. Disclosure is also an essential part of the evidence to demonstrate the need for incremental change to case law, and public policy. And to deal with how either Parliament could not have known the effect its measures would have, and/or that the electorate would not approve. Disclosure is also important to consider EU proportionality of not necessary in a democratic society, and the emerging imbalance in the power of the one element of the state over the individual

17. The Claimant/Appellant asks for a stay of proceedings at the Court of Appeal so to be able to recover either Disclosure of the evidence as part of the core papers for appeal, or for the Court of Appeal to take over and deal with non disclosure.

Medical Reasons & Proceedings went ahead without the Claimant Able to take part

18. That the lower Court was wrong to issue Preliminary Judgement as the Claimant was too unwell to prepare for or be at the preliminary stage, (as supported by the Defendant's four Forensic Psychiatry Reports on Claimant and Claimant's three medical reports).

19. There are many more doctors' letters since then. The latest of which 17 February 2011 by the Claimant's GP in Barry applies now, as it did during the preliminary stage.

> "…….he (Claimant/Appellant) is still awaiting surgery and is therefore still using strong analgesia to control the pain, which is being supplied to him in France.

> I would therefore be grateful if you would consider a further adjournment as Mr Kirk is not able to defend himself whilst using such strong analgesia".
>
> Yours faithfully
> **Dr Benjamin Roper**

20. A Judgement on August 2010 refused a postponement without more detailed medical evidence. When more detailed medical evidence was supplied, the situation became most confusing as considerable delays and change occurred, but there was no clear order or direction from the Court for the Claimant to understand what was happening, or so he could respond or appeal.

21. The Claimant thought he was waiting for postponement, and thought the intermittent hearings were for directions, but was then given a preliminary Judgement. The Claimant was not well enough to prepare or be at those intermittent hearings of lengthy legal argument, and had to walk out.

22. On 30 November 2010 the Claimant could not be present due to medical grounds.

Unfairness and disadvantaged

23. The Claimant is not a lawyer and cannot get a lawyer.

24. The lower Court is failing to protect the Claimant, from the Defendant's lawyers using esoteric games to run up quite unnecessary and high costs.

25. The Claimant wanted to amend but had no advice to know how to, and was not well. So to comply with unfair pressure from the Court to keep up, he submitted skeleton argument marked "interim" or "preliminary". This protest was ignored by the Court.

26. While the Claimant is too unwell, the Preliminary Judgement either wrongly decides facts or assumes a wrong set of facts in the preliminary stage, where the Claimant entirely disagrees with the assumed version of facts, yet has had no opportunity to rebut or challenge the assumed or decided facts.

About the Case (from 1992 and still ongoing)

The Defendant/Respondent

27. The Defendant is the Chief Constable of South Wales Police who has employed around three thousand officers to police a geographical area from Cardiff to Swansea and an adjacent area of the South Wales Valleys, with a population of around 1.2 million.

28. It may become relevant to legal argument on constitutional issues and public policy in this case, to mention that the UK media does not seem to pointedly report that whereas one police force had the Birmingham six, and another the Guilford Four. The South Wales Police Force, according to reports in the local media, has an unusually high level of miscarriages of justice. There is the case of the 'Cardiff Three' with a dozen or so officers presently facing criminal trial. There is also the 'Cardiff Newsagent Three' where a Chief Superintendant from Norfolk is now investigating South Wales Police Officers conduct. The Claimant's lay team (although have no interest in suing police),

believe from local media reports that there are seemingly even around a dozen or more similar cases.

The Claimant/Appellant

29. This case is about a vet and pilot, now 66 years old, who owned and used small WW1 & WW2 short take off and landing aeroplanes. Just like his father, he naively lived an existence from a bygone era, of flying unchecked unsupervised between the backyards and fields of his rural and farming community. The Claimant's flying included travelling between the UK and other countries. As these small aeroplanes could carry people or a cargo, the wider UK security services obviously needed to take an interest.

The Claim

30. The Claim is around whether the actions and inactions of local police in South Wales since 1992 and for nearly twenty years and still ongoing, was, and is excessive, disproportionate or in bad faith (malicious and or dishonest). The sheer volume of incidents makes the case unusual.

31. The outcome of nearly twenty years is that after many prosecutions by police, the Claimant has no serious convictions.

32. It is ***most relevant*** to how the case develops to say that at no time has there been reliable evidence of the Claimant as a risk, and after three formal assessments is deemed no more a risk than any average persons.

33. The lower Court says that the number of incidents merit investigating by the court.

34. The pattern of an intense level of incidents, and then almost no incidents is a telling picture.

35. It may help to say a Judge at the Queens Bench Division very slowly emphasised. "So many incidents. What is going on?"

36. Almost all incidents or prosecutions were instigated by, or relied on the subjective opinions of local police and/or their associates. Almost always it is not the public being either the complainant, or as a witness.

37. Once the Claimant was struck off as a veterinary surgeon, in 2002, incidents and prosecutions stopped.

38. The Claimant's team believes the evidence from the Claimant is credible and seemingly consistent with the view that errant elements in South Wales Police manipulated the existence of this dispute of endless cases/incidents between 1992 to 2002, with the intention to strike off the Claimant from being a veterinary surgeon.

39. Is it normal that the Claimant, a professional man, was asked to produce insurance thirty-four times at the road side, between 1992 and 2002?

40. With so very many incidents, it can help just to say that there are endless arrests and other incidents, all of which are police using discretion, that *'at first glance'* could be either

reasonable and probable cause, or police using well known excuse to arrest and be entirely unaccountable.

41. The Claimant and his team believe opportunity should exist to go into the detail of each incident at the same time as looking into the trends that emerge from the consolidated case.

42. There would seem to be very many 'acts of omission' at least some of which seem to be omissions done in bad faith.

In Bullying cases there is subtle and hidden detail

43. In all of the individual interferences, there is always more detail, so much relevant detail that the Claimant needs to explain, in person, at the Court.

44. As but one example of the many types of interferences in the 34 incidents at court regards having to produce proof of car insurance, "just some" of the hidden detail is how police were making telephone calls to insurers (which is normal for a single incident), but it is not normal for police to telephone in ways the Claimant believes to attempt to damage opportunity to be insured by those insurers.

45. One of the quirks of car insurance being that of police had achieved a refusal to insure at one firm, that refusal status ripples through so that other insurers also can refuse to insure, as the question of past refusal is on most insurance forms.

46. Therefore, the issue of the Claimant being prosecuted over whether he was insured, although may or may not be an example of malicious prosecution, but is also far more along the lines of bullying, that is intended to make it impossible to carry out his livelihood, business or live normally.

47. In the roundabout case, it sounds simple to say a police officer is entitled to allege a lack of due care. However, the Claimant can give account that the officers were not following him in the course of their duty, but stalking him, aggressively, as would a group of thugs.

48. Does it matter that in 1992 the Claimant's veterinary nurse, by affidavit and independent, hears the police tell CPS, at the Magistrates Court, "We are going to get the bastard?

49. In ***Waters***, where the issues are similar, the House of Lords ruled that the Appellant was allowed to use both a duty of care and misfeasance. Although that needs further discussion, such as issues mentioned in the Claimant's submission 22 December 2010 Permission to Appeal (2).

50. Is it normal that most months in ten years the Claimant's time is taken fighting or appealing a petty offence, that is usually only motoring offences?

51. Most of the time the Claimant wins. The Claimant still has a driving license. But the toll of such effort every month in Court cases is too draining for normal lay people.

52. The Claimant and his team believe it may help to consider whether right minded people of a Jury would think that all these arrests and prosecutions can be just coincidence or normal?

Vale of Glamorgan (Cowbridge) Show

53. Regards the prestigious Vale of Glamorgan Agricultural Show (Cowbridge Show) should right minded people of a Jury accept that the Claimant, when attending as the Honorary Veterinary Surgeon and with his ten year old son, that a retired police inspector is believable to say he lawfully took the initiative to slap the Claimant, as if it would be good for him?

54. Or would right minded persons of a Jury want to re-examine the whole issues and the detailed and complex allegations of the Claimant, in line with principles in ***Adorian***? (Convicted but has the right to sue over police or other's conduct).

55. And would right minded people of a Jury also want to explore the seemingly unlawful manipulations in the prosecution where the senior crown prosecutor is saying "No comment, for fear of incriminating myself" in the witness box on Abuse Application?

56. Given the tone of the above, the Claimant still has his driving licence after even ten years of intense police prosecutions, is this an indication that Police have viewed the Claimant as a risk to people?

57. Given excuses to produce insurance at court thirty-four times, and much more bullying intentions behind that, to get the Claimant closer to being refused any car insurance at all, and also the many other prosecutions that the Claimant successfully defended, is it at all possible for a Jury to decide that the roundabout incident was not reasonable and probable cause, but a use of subjective decision making as an act of bullying?

58. Because the Claimant believes and Claims bullying, and that a Jury could decide the roundabout incident, Cowbridge show, Newport road, stolen cheques were from an abuse of power and bullying, then surely none should be struck out at the preliminary stage. (Fact sensitive in ***Cornellus*** and as House of Lords in ***Waters*** as discussed later.)

The Case from 2009 – (yet to be Consolidated)

59. A later most important stage of the case occurs from 2009 when the Claimant is making progress with civil claims against the Defendant. What occurs may be an unusually sinister and chilling misuse of the very modern types of police powers, including to even deem the Claimant a "critical risk", (which can give an authorisation to interfere excessively) where there is the question of whether powers were and are still being misused, to try to thwart the Claimant's progress in a civil case against errant police.

60. Three useful sources of information are:-

    a) A leaked Caswell Clinic report of social worker being at a 'multi agency' MAPPA meeting, who made notes marked not for the attention of the patient.

    b) The MAPPA Executive Summary, prepared for the Claimant to read.

    c) The MAPPA minutes awaiting Disclosure by Order of the Court, and is still in the possession of the Defendant's lawyers

61. When the Claimant is succeeding to uphold his good name by evidence such as at the Courts, elements of police now decide a different approach to essentially convict the Claimant via their modern confidential information systems, such as ViSOR and multi agency meetings.

62. In the information systems, meeting and communications with public bodies the Defendant even deems the Claimant a firearms risk & also a "critical risk" (that means one of the most dangerous people in the UK), and so potentially seek excuse for long term or indeterminate detention in custody, and a genuine indefinite risk of Claimant being shot during any of the many petty incidents.

63. They tell the Claimant's wife that any ongoing support for the Claimant would mean a multi agency risk assessment, where children would be removed from the home.

64. This is done by an assertion of risk that police knew or should have known not to be true.

65. From that malicious interference the Claimant has the disruption and stress of a divorce – given few wives can be subject to such intimidation by police such as police using false assertion to take away their 10 year old daughter.

66. Elements of police also say they are to contact many key organisations, (even the administration of civil and criminal Courts), and to seek cooperation with the police agenda, that is highly prejudicial and defamatory to the Claimant.

67. They manufacture prosecutions, including for most serious offences (eg was a sold Lewis WW1 aeroplane machine gun adequately deactivated - potential mandatory ten years), that later proved to be frivolous.

68. Police showed no interest in the respectable married couple (who are also WW1 aeroplane enthusiasts) who bought the large old gun. The Claimant was found not guilty without evidence being heard.

69. They assert (and succeed) that they will take steps to see that the Claimant will lose his liberty when facing trial, only for the Claimant to be proved innocent in due course.

70. It appears to the Claimant and his team that from the evidence that the Defendant use specifically level 3 of multi agency that is a procedure to oblige involvement by heads of agencies, such as that the Claimant be sectioned under the mental health act for assessment for indeterminate custody in a high secure hospital such as Broadmoor.

Venues of meetings: Initial - Barry Police Station
All subsequent meetings at Caswell Clinic

MAPPA Executive Summary

71. It has not helped that a Dr Tegwyn Williams sectioned the Claimant while on remand in 2009 by three consecutive one month section 35 to Caswell Clinic, on the grounds that Dr Tegwyn Williams said the Claimant was delusional about the specific issue of being harassed by police, where of course the science is that no one can be seen as delusional about just one specific fact, where a rational person is entitled to rightly or wrongly have a view that the hundreds of incidents in this case are harassment.

72. It appears to the Claimant that Dr Tegwyn Williams, the lead clinician of the Caswell Clinic, seemed overly keen to cooperate with the police agenda, where most clinical staff were not. The enormous gulf between the seemingly contrived and inept opinions of Dr Tegwyn Williams, and opinions of average clinicians is a stark and telling one.

73. Again the Defendant's agenda caused enormous disruption and distress, but failed to achieve a credible end.

74. Dr Tegwyn Williams repeated the section 35 each month up to the maximum three, and then wrote a report to say clear evidence of brain damage and raises issue to CPS to convey to the Court about brain cancer. It would appear that neither Dr Tegwyn Williams nor his neuropsychologist (a psychologist with interest in, but not medically qualified in brain scans) are actually medically qualified to make such a leap from the 'all clear' opinion of a brain scan by properly qualified doctors, to Dr Tegwyn Williams' opinion of brain damage and / or brain cancer.

75. However Dr Tegwyn Williams then writes a medical report as part of a way to describe the Claimant as potentially needing to be locked up indeterminately, when as of yet no evidence or clarification of brain damage, or brain cancer, or any evidence of risk can be found.

76. This has meant that the Claimant cannot have a hip operation until clarified, and could be permanently crippled (from nerve damage by excessive long term pain during the delay) by it seems bad faith by Dr Tegwyn Williams and the red tape of the NHS, with managers not wanting to examine Dr Tegwyn Williams' conduct.

77. Also in multi agency meetings police said at one point that they wish the Claimant to be an outpatient at the Caswell Clinic as one future outcome.

> "Caswell will continue to offer support to Mr Kirk when he returns to the community."
> MAPPA Executive Summary 22/10/09

78. But in 2010 when the Claimant four times tried enter the Caswell Clinic to collect copies of what the Claimant believed was medical evidence that Dr Tegwyn Williams should have known was not true, Dr Williams twice arranged the Claimant be arrested and twice tried to commence a prosecution. The CPS felt it appropriate to stop both prosecutions.

79. In 2010 yet another frivolous Cardiff arrest and prosecution occurred. The CPS felt it appropriate to end the case, especially when police witnesses did not attend.

80. Police say in multi agency records that they will contact the administration of both civil and criminal courts.

81. It now appears that some local court staff are also overly keen to cooperate with the police agenda so that local Court staff (at civil and criminal courts) now operate one set of rules for people, and an entirely unique and highly prejudicial set of rules for the Claimant.

82. Judges seem not to receive papers that the Court has received.

83. And emails from the Claimant to the Court are blocked.

84. Local Court staff use a unique and coordinated way to get South Wales Courts to say they will ignore medical evidence and hear cases in the Claimant's absence, when the same medical evidence is accepted by the Criminal Court of Appeal.

85. Local staff arranged to convict the Claimant in his absence over whether passing court papers to ex-police, now court staff, was common assault. They issue an arrest warrant that they would not allow to go before Magistrates to have set aside.

86. By Court staff refusing to put the case before Magistrates to consider a set aside, that is how South Wales Police were at the Court trying to arrest the Claimant, so if he had been well enough, he still could not have taken part in the 30 November 2010 preliminary hearing.

87. Can all this be coincidence? Especially as the multi agency documents indicate as part of risk assessment implementation, it follows police intend to contact the court administration.

> Court Staff in both the County Court and Royal Courts of Justice
>
> …..was discussed and agreed as was referral to the Ministry of Justice Public Protection Unit as a Critical Public Protection Case
>
> MAPPA Executive Summary 8/6/09

88. The Claimant believes that all of what they do, is only intended as a way to stop the Claimant having fair opportunity to state his grievances in the civil court regards nearly twenty years of bullying by some officers of South Wales Police.

89. The Claimant's belief is supported by the MAPPA Executive Summary which states that when the MAPPA multi agency team deemed no reason for the Claimant to be on MAPPA, Police decided:-

> MAPPA Meeting at 17/11/09
>
> outstanding legal actions clarified.
>
> Risk Management Plan of 17/11/09.
> - Refer to Social Services in the event of Mr Kirk being released or bailed.
> - Take advice on whether Mr Kirk's litigation should / could be treated as vexatious.

90. Is it the work of Police to police civil litigation? What is their interest?

91. Why do Police wish to declare the Claimant vexatious when below is a quote that Police say the Claimant will become more of a risk, if he cannot take proceedings?

> "The initial risk assessment summary was that Mr Kirk poses a risk of serious harm to numerous individuals and the likelihood of this will increase at times of high stress but will be greatest when his legal avenues available to him are exhausted."
>
> MAPPA Executive Summary 8/6/09

Claimant as One of the Most Dangerous in UK, risking an indeterminate sentence?

92. Public bodies are to be approached to prejudice the Claimant as a critical risk.

Court Staff in both the County Court and Royal Courts of Justice

…..was discussed and agreed as was referral to the Ministry of Justice Public Protection Unit as a Critical Public Protection Case

MAPPA Executive Summary 8/6/09

93. Some would say that it is not unreasonable to believe referral as a Critical Public Protection Case, without conviction of any wrong doing, (deemed one of the most dangerous people in UK) leads to a genuine risk of officials closing ranks to find excuses to a backdoor route to bending procedure for an indeterminate sentence.

94. Some facts in this case support that view.

95. Dr Tegwyn Williams says clear evidence of brain damage from an all clear brain scan, and writes about the only option he can suggest is of referral to high security, (eg Broadmoor/Ashworth).

96. Was the quibble over a deactivated WW1 Lewis machine gun case, (bought by a very respectable married couple who are also WW1 aeroplane enthusiasts and police were very happy with) a correct use of police time, where it would have resulted in the Claimant in a prison cell for a mandatory ten years?

97. And the present (2010 & 2011) an overt desperation to get the Claimant in custody for common assault, - this time over how he hands papers to court staff.

98. Whatever, when the Defendant without any evidence is deeming the Claimant a 'critical risk', and a clear wish to achieve longer term custodial sentences for frivolous reasons, the Claimant has become the first person since the French Revolution to gain initial asylum in France.

99. All of the Claimant's business fell apart by being in custody. There is complex evidence from parties and litigation to recover losses, from those who tried to take advantage.

100. Defendant's lawyers are seen as doing exactly as the Defendants and are trying to needlessly run up costs, as a way to ruin the Claimant, as opposed to genuinely deal with the case, as should servants of the public sector.

101. Of concern is that the lower Court does not seem to even wish recognise the difficulties that the Defendant can cause the Claimant and so how to discuss what principles may apply.

102. Various members of the Claimant's team made submission to the lower Court, to avoid risk of the unwell Claimant being penalised for no submission at all. The lower Court writes:-

> His written grounds state, as one reason for granting permission to appeal, "MAPPA meant bullying tactics for indefinite harassment and political asylum". I do not follow how that can alter the legal principles which I have attempted to state or their application to those claims which the court has struck out; nor how the alleged withholding of medical records can do so.

103. The lower Court does not seem to realise the debate in the public domain that different principles either can or should apply, where the Defendant's conduct is unusual, excessive, oppressive, dishonest or malicious.

104. Also the lower Court is supposed to at least recognise what the Claimant wants to Claim, the lower Court does not seem to wish to realise that the facts of the case have not yet settled. Events are still occurring. That as suggested in the multi agency records, the Defendant tries to recruit people to be difficult with the Claimant. And that Dr Tegwyn Williams has his own way of being a part of that agenda, has ended up refusing to clarify issues around brain damage or brain cancer, so that the Claimant's hip operation cannot proceed. The Claimant remains on the pain killer as in Dr Roper's letter (page four of this skeleton argument), and so the Claimant will not be well enough to take part in this case, - until he can have his operation.

105. The lower Court also does not seem to be ready to accept that the MAPPA documentation shows a sinister level of intent to interfere, such as mentioned in the Claimant's submission Permission to Appeal 22 December 2010, which was accepted and before the lower Court when writing the above section of the Judgement 28 January 2011.

The Lower Court's Failure to respect Claimant's well being - could not take part in proceedings and / or make amendments

106. During preliminary proceedings at the Cardiff Civil Justice Centre under HHJ Seys Llewellyn QC, the Claimant's team noted that the Claimant could not take in more than one sentence of legal argument from being so worn down by twenty years of bullying.

107. Yet the case went ahead with Claimant far too dazed to know much at all, as in Dr Roper's letter earlier (page three/four) in this skeleton argument.

108. A team therefore formed to try to start helping, from being so appalled at the obvious injustice, and relentless seemingly barbaric bullying.

109. The Claimant's team wrote about ignoring of the Claimant's well being and worn down state in the Permission to Appeal submission of 22 December 2010. Protests were again ignored by the lower Court.

110. The Claimant's team can report that papers of 1992 onwards by the Claimant are intelligent and able. What the Claimant has written in past years (often being not clear enough, sometimes unusable) is evidence that the Claimant was too worn down or in no state to amend his papers, - contrary to what the lower Court says.

111. It would seem that the Claimant's writings are well known to have deteriorated into less coherent lengthy ramblings, to be clear proof that the Claimant by himself cannot make amendments.

112. The Claimant has no access to a lawyer.

About the Case from 2002 onwards (opportunity to amend the Claim papers)

113. It may help to say that it appears to the Claimant's team that following being struck off from the veterinary register, seemingly due to ten years highly questionable police interference, that the Claimant may have seemingly suffered a kind of stress reaction, and frantically issued endless legal proceedings with excessive documentation, that usually seem quite incoherent. The background of the Claimant's team is to be familiar with professional people being in work related disputes often becoming less coherent and use long rambling writings as stress levels increase.

114. The Claimant is described in psychological reports as of superior ability, and with the right kind of people to associate with, would improve.

115. It may help also to say the Claimant's team note, that early on in the case, the Royal College felt that the Claimant had developed a formidable ability in the court room. So that given all, it would seem to the Claimant's team that once the operation is done and the Claimant recovers, and legal arguments are addressed, the Claimant would be good at presenting the facts of this case, and for a lay person would deal quite admirably with cross examination.

Principles and Issues for Appeal:-

Facts should not be determined in the preliminary stage

116. The Claimant believes the lower Court is wrong to try to determine facts at the preliminary stage.

117. The Claimant has an immense amount of detail and evidence to show how what the lower Court says of facts or Court outcomes is wrong, but no way to rebut the highly erroneous examination of the fact that occurred.

118. The Claimant very strongly believes the lower Court is wrong to assume or argue full credibility of past hearing in a police bullying case, where the Claimant has an immense amount of detail to go into. For example the lower Court erroneously says the Claimant had a fair appeal hearing, when the Claimant did not take part in the appeal hearing, current trial judge presiding. In another example the lower Court erroneously says the evidence about the video was explored, when the video, unadulterated evidence, was not available and is yet to be closed, despite Crown Court Order so to do.

Fact Sensitive

119. The Claimant believes this case is fact sensitive. The Claimant understands from Court of Appeal case law (*Cornellus v Hackney LBC 2002)*, that it is not possible for a lower Court to strike out matters that are fact sensitive.

120. The Claimant believes that especially as a consolidated bullying case all of the incidents that the lower Court strikes out have their place as facts, as a part of a cumulative effect.

121. In ***Waters*** the House of Lords said:

> 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.

122. Also in ***Waters***:-

> 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.

123. The lower Court by saying abuse of process or no cause of actions, is actually basing that on saying what the Claimant says is not true.

124. The Claimant's version of events is, detailed, for example that the lower Court is quite wrong and that evidence was not available and still not, so that no Court has adequately and fairly explored his concerns. The lower Court decides that is not true and erroneously says past Courts heard cases fairly.

125. The Claimant and his team believe the lower Court unfairly determines and/or assumes facts. And that no incidents should be struck out for the erroneous reason given, and when the Claimant's evidence has not even been explored by the lower Court.

126. It occurs to the Claimant that if the case is consolidated and a bullying case to explore incremental change, there will be no abuse of process in the way suggested by the lower Court.

In Bullying cases there is Hidden Detail – Claimant believes lower Court

New Evidence: Later and more recent events 2009 to 2011 as 'New Evidence' and possibly Circumstantial evidence to understand 1992 to 2002

127. The Claimant believes the lower Court is wrong to say there is no new evidence, to allow any reconsiderations.

128. The Claimant believes the lower Court is especially wrong to say there is no new evidence while the lower Court tries to whittle down the Claim so it cannot be understood, as opposed to consolidation to show the mindset and manipulations of the Defendant.

129. Some of the new evidence is that the mindset and acts of the Defendant in the events of 2009 and following is recorded by legal proceedings and transcripts, but also by more than one agency summary and minutes of modern multi agency meetings.

130. The Claimant's team believe that the presently available evidence of an executive summary shows an unusually thorough attempt at manipulations, by elements of police and their associates, so to allow a Court to have a completely new understanding of what has occurred in the ten years of incidents 1992 to 2002.

131. Therefore within the civil burden of proof, it occurs to the Claimant and his team that it can be reasonable that a Court particularly via right minded persons of a Jury, would view early incidents 1992 to 2002, as unlikely to have been from 'reasonable and probable cause' for police to interfere. And that prosecutions and trials at a Court that rely only on the evidence of police who were bullying the Claimant, were at least unfair.

Consolidation from 1992 to present:- a bullying case hear all the facts

132. It is understood that a primary duty of the Court is to provide a fair starting point that meets the needs of the specific facts of the case.

133. When first submitting claims to the lower Court as from 1996, the Claimant did not know that the Defendant's intentions were that deeply malicious and dishonest as to intend to manufacture so many incidents to cause the Claimant to be struck off. Or that, as he would try to sue police in the civil courts, that a second stage of even more sinister and chilling dealings would seem to occur by errant elements of South Wales Police.

134. Although the Claim is around the twenty years from 1992 and still ongoing, the lower Court is trying to whittle down the claim so that it cannot be properly understood.

135. By whittling down the case, the circumstantial evidence does not emerge, so removing the greater or more important evidence from the claim.

136. By whittling down the case, it gives the Court less grounds to agree misfeasance and/or agree there be a duty of care.

137. By whittling down the case, the Claimant faces being return to Court for continual stages as they emerge and in never ending litigation, as opposed to the Court addressing matters promptly.

138. The view of the Claimant and his lay team is that this is a bullying case. In bullying cases (as in Waters v Police) all the facts need to be heard as one case. Bullying cases can involve severe incidents, but also have a cumulative effect of less severe, sometimes seemingly insignificant incidents alongside the severe, that gives the cumulative effect. The Claimant believes that all of the facts need to be heard in one consolidated case.

Duty of Care

139. The Claimant understands that there is no blanket immunity for police.

140. The Claimant believes the lower Court was wrong to avoid adequately exploring the potential of a duty of care. In ***Waters*** the House of Lords said:-

> "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."

141. The Claimant believes that because of the facts and nature of his case that can be viewed as unusual, and/or extreme and/or indefinite, that a duty of care should exist.

142. The Claimant believes the argument for a duty of care is stronger and easier in the consolidated case. And that the lower Court was wrong not to consolidate and seek to explore that there should be a duty of care in a consolidated case.

143. Because a duty of care will exist subject to the facts, a duty of care in this quite unusual case would not open the flood gates to other claims.

144. In short, because this is a case against very long term police bullying, the barriers that prevent a duty of care in other case law do not apply.

145. If there are any kind of barriers to that decision to rule a duty of care, the Claimant seeks that incremental change occurs to negligence, so that a duty of care exists subject to the facts for reason of this being an unusual, extreme and indefinite case of twenty years of bullying and still ongoing, where Parliament could not have known, nor would the electorate approve of such a misuse of an imbalance on power between an aspect of the power of the state maliciously targeting an individual so vigorously and for so long. Where a wider call for change and review is also relevant to exploring incremental change.

146. In ***Waters*** there is emphasis on the incremental change:-

> It has been said many times that the law of negligence develops incrementally so that <u>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.</u>

147. Regards issues relevant to a duty of care and incremental change, the Claimant sent to the Court two submissions 30 October 2010 SWP Video Submission (Claimant's submissions in response to Defendant's submissions concerning Action 2, paragraph 11) and 22 December 2010 Permission to Appeal (2) (19 pages/84 points).

148. Barrister Mr Challenger (see appendices) gives a Counsel opinion to the media by his experience at the Royal Courts of Justice

> 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."

149. The lower Court did not respond to issues raised in the above two submissions on a duty of care. The Claimant believes the lower Court was wrong and that there should be a duty of care, subject to the unusual facts.

Lawyers' costs should not be a barrier to a duty of care

150. Clarifying subject to the facts of this case and the wider public debate seeking an incremental change in public policy on duty of care affected by lawyers costs being the greater barrier, as barrister Mr Challenger says (see appendices).

> "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.

151. Also incremental change as above regards lawyers acting for the public sector in ways they use their costs to prevent access to justice, and also even maliciously or to harm the Claimant.

Lawyers and Disclosure

152. In case it may become relevant, then the Claimant seeks incremental change by clarifying the principle for the UK public sector on Disclosure and lawyers hiding even considerable wrongdoing and similar that may prejudice a claim.

153. In this case Mr Adrian Oliver, solicitor for the Defendant caused delay and aggressively opposed Disclosure of the MAPPA Executive Summary, that leaders of MAPPA had prepared because they were happy for the Claimant to receive it. If there were no proceedings, we can imagine that the MAPPA Executive Summary would have been posted direct to the Claimant.

154. If it becomes relevant the Claimant believes it is important that the Higher Courts clarify how lawyers should behave, to help protect people and the public sector from the kind of standards Mr Adrian Oliver and like lawyers introduce.

155. Issues can include the wider debate on standards in the public sector which are not reflected in the adversarial system that allows lawyers to cover up serious wrongdoing.

156. Also fair trial according to UK law and EU human rights and proportionality may now signal a time for a change to the old principle that seems to have arisen in the private sector that now allows lawyers of public bodies to cover up wrongdoing and prevent accountability.

157. If it becomes relevant, the Claimant would seek incremental change more in keeping with openness and accountability and UK and EU human rights, balance, reasonableness and proportionality. Such as the lawyer acting or the corporate body of a public sector should not cover up the misconduct of its employees so to work against Parliament's quest to improve public sector services. And also where facts are that police have been dishonest and malicious and perjurous.

Pace of Proceedings to Exclude the lay Claimant

158. If it becomes relevant the Claimant seeks incremental change by clarifying the pace of case for lay persons and for worn down or unwell lay persons.

159. Expeditiously by a military pace is one of no choice but to run and keep up with faster soliders. In a civilian expedition expeditiously includes respect and a pace that all can manage fairly.

160. The Claimant could not manage to take part in the preliminary stage, and would like to take part in the remainder of his case.

Fairness that matches the Facts of the case – managing a fine balance of conflicting principles

Be Allowed to Amend

161. The Claimant believes the lower Court was wrong to not allow opportunity to amend his claim. The Claimant seeks opportunity to amend, and also amend as a part of consolidation.

Whether Stated Malice: In *Waters* a claim for malice is allowed by House of Lords

162. The Claimant believes the lower Court was wrong and erred in law such as unfair to say:-

> "As to the claim made in negligence for failure to investigate theft of cheques, it is a claim framed purely in negligence without allegation of malice."

163. In ***Waters*** the House of Lords decided malice can be included. The Claimant believes that in a bullying and harassment case the Claimant placed the matters before the Court because actions and inactions were in bad faith:

> "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".

164. The Claimant believes the lower Court is wrong and unfair and asks that he be allowed to claim misfeasance, and in a consolidated case.

Hill does not apply

165. Also that this is a bullying case, and as in ***Waters*** the ***Hill*** principle does not apply. In a bullying case even subtle omissions are listed as a part of the case because they are deliberate acts. From ***Waters*****:-**

> "Even the failure to investigate is part of her complaint as to that. Entirely different factors to those considered in *Hill* arise."

Guilty Plea under duress and oppression in a bullying case

166. To allow that ***Hunter*** does not rigidly apply in this situation, and for the Court to manage a fine balance of conflicting principles to allow a review of a guilty plea to decide whether it was during the duress and oppression of a bullying case.

167. Also relevant to shape new change in policy Professor Michael Zander QC writes:-

> Perjury
>
> 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

168. The Claimant believes the Courts need to re-determine a fine balance in conflicting principles to deal with the specific and unusual facts of the case.

169. A new approach is needed. As in Waters, just because it has not been done before does not mean it cannot be done.

Does Police conduct require the Court to manage a fine balance of Conflicting Principles?

170. A Claimant with no serious convictions and had by this time two formal assessment that means he poses no risk, but the Claimant, when doing no wrong wants to take police before a civil court for bullying him. How should UK police respond? Is the police response below honest and proportionate?

> …..The meeting was informed that in recent discussions with the CPS, it has been clarified that several of Mr Kirk's recent actions do not constitute an offence. Even his approach to the Chief Constable could be seen as his right to request an interview with her, necessary for the procedure of his civil court case…….. social worker Page one:
>
> ….It was also reviewed that South Wales Police have a firearms response which could mean that the MAPPA subject would be shot if he attempted to make any approach to the Chief Constable….. social worker Page one:

…..It was reviewed that Mr Kirk has a criminal history - mostly minor offences. Does not (*the underline is by the social worker*) have a criminal history which includes previous use of firearms…. Social worker Page one:

At the meeting, it was reviewed that the police intend to take certain action which they anticipate will result in a remand into custody. (Social worker page two first MAPPA meeting)

I am not absolutely clear on the sequence of events but I understand that on 24 June 2009, Maurice was granted unconditional bail in the Magistrates Court **(query offences).** Mrs Kirk has informed that, on the following day, Maurice was in the Crown Court when the CPS opposed bail and has been remanded in custody ever since. (social worker page 6 SECOND MAPPA MEETING 20.08.09)

One democratic method of accountability is press freedom, but…..

It was explained that the subject of the MAPPA was deemed to be Level 3 - partly because of the risk of attracting media attention (Social worker P 1)

The risk of media attention on these occasions was also discussed - police will be the lead agency in management of that risk. (Social worker Page 6, SECOND MAPPA MEETING 20.08.09)

171. The Claimant believes close consideration is needed for incremental change in case law and public policy to deal with the meaning of police having become judge, jury and executioner, that even controls the media.

172. Especially when elements police can target and bully an individual for twenty years and indefinitely.

Revisiting Convictions and More on New Evidence (Quotes from MAPPA social worker).

173. Totally in keeping with UK case law and EU subsidiary on local decision making, the local Magistrates Court knew the Claimant (Mr Kirk) well. The Magistrates Court knew he did not need to be in custody and granted bail. Police have been given the powers and wide ranging discretion to put irresistible pressure on person, officials or organisations to do as Police say and want. A magistrate or judge has duty to take police seriously. Police took the case to a judge at Crown Court, said a situation police has reason to know was not true, and placed Mr Kirk on remand until he was found not guilty many months later.

174. The new evidence on this occasion is that four or more Crown Court decisions to remand the Claimant are now believed to have been the wrong decisions, that denied a man found not guilty of wrongdoing lost his liberty.

"At the meeting, it was reviewed that the police intend to take certain action which they anticipate will result in a remand into custody". (Social worker page two first MAPPA meeting)

175. If police could with confidence foretell in MAPPA meetings how they would manipulate four or more hearings at the Crown Court, then police could easily have manipulated past hearings against the lone Claimant 1992 to 2002.

Revisiting what has been before a Criminal Court

176. The Claimant believes the lower Court was not to view dealing with bullying where the bullies gained a conviction was decided wrong and unfair and not consistent with case law or civil procedure rules. The lower Court said:-

> "As to those claims which have been struck out because they amount to an attempt to re-litigate matters which are the subject of prior court findings, (i) each has been individually considered (ii) I adopt paragraphs 52 and 53 of my written judgment on preliminary issues."

177. Yet civil procedure rules allow for a court to hear a case about an incident where the Claimant was convicted.

178. Also Professor Michael Zander QC (see appendices) writes:

> Perjury
>
> 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
>
> Cases and Materials on the English Legal System

179. Especially now the Claimant is older and around retirement age, although bullying may have occurred as a part of gaining the Claimant a conviction, there are occasions in this case where it is of little gain to dispute a conviction.

180. But the Claimant believes he should be allowed to have the Court examine the bullying by excessive or disproportionate conduct or simply wrongdoing around events, when the Claimant was convicted. Without challenging a conviction, it is understood case law allows for this principle.

181. In Adorian, he was convicted but also allowed to sue police over their conduct.

182. The Claimant believes he should be allowed to re-visit where he does not challenge a conviction.

183. Additionally the Claimant understands especially with incremental change to case law, because of this unusual case that full review of past incidents and convictions can occur.

184. The Claimant understands that as no criminal action has yet been taken against police, he can re-visit issues in a court to examine police conduct. If police had been tried in a civil or criminal court and been found not guilty of the bullying related behaviour in the criminal court, that is then the case law that can prevent re-visiting issues. But as the detail is that the Claimant has not had opportunity to explore police conduct with all the new multi agency evidence of 2009 to 2011 in any court, that it is fair and just, to revisit the incidents in the light of an unusual, extreme and indefinite bullying case

185. The Claimant believes the lower Court wrong, too unfair and erred in law because in the interest of justice in such an unusual and extreme case to allow incremental change especially given the new facts that emerge from a consolidated case.

More on why lower Court was wrong to strike out incidents

186. In the Roundabout case it is possible for a court to view that incident as a part of a bullying case under either misfeasance or a duty of care, not to bully. If it is possible, then it is wrong to strike out. If it is possible, then the Claimant should not be prejudiced at the preliminary stage. The Court should not prejudge facts at the preliminary stage.

187. Vale of Glamorgan Show/Cowbridge Show case is a most complex incident of what happened on the day but also the manipulations around charging the Claimant, on new charges months after, in a way wholly consistent with Bullying.

188. The lower Court explores facts, but unfairly, these different set of facts have not been explored by the lower Court in the preliminary stage. Instead the lower Court assumes facts that the Claimant wishes to dispute. The Claimant believes the lower Court is wrong to behave like that and that it is unfair.

189. Similar occurs in both Newport Road, Video case and similar incident, Llantwit Major, 'refusal breath test'. The lower Court assumes facts from past court details. When the Claimant brings the case to show the source of past court details is not true. The lower Court is assuming facts that the Claimant wishes to show are not true. The Claimant believes the lower Court is wrong to assume facts and that it is unfair.

190. The Claimant believes he can prove that the video evidence was not available at original courts, where the lower Court relies on outcomes that are erroneous. The lower Court yet again gets into dispute with the Claimant over facts, during the preliminary stage, yet also offers no fair means to explore those facts. The Claimant believes the lower Court is wrong to do that and is unfair.

Can twenty years of unwarranted irresistible pressure by Defendant with high powers change what principles apply?

191. Of enormous concern is that dated around 2009 and 2010 it is disclosed by a number of comments in multi agency summary and minutes, that elements of police have been making subjective decisions to manipulate, influence and control the Courts, seemingly maliciously as a way to harm the Claimant.

192. The question is whether this manipulation of cases, of bringing of cases that do not need to be brought, and then police and their associates using irresistible pressure and giving evidence which is not adequately truthful, has been happening at an unusually

intense level on the Claimant as a part of a bullying spanning twenty years, and is still ongoing.

Subject to the Facts, - and the overriding interests of justice

193. Given one of the first duties of the Court is to find a starting point that offers a fairness and level playing field to the claim, then if this case is over Police and their associates have manipulated bringing many cases and improperly controlled the outcomes of courts, then it follows normally used case law and principles regards previously heard cases and the immunity of public bodies will not match the facts of this case and the overriding interests of justice.

Failure of lower Court to use the Defendant's mindset as evidence in the preliminary stage

194. It can be said that the events and facts of the case have not yet even settled for the Court to give the kind of Preliminary Judgement as has occurred. The events in this case are ongoing and substantially interfere with the Claimant's ability to prepare and conduct his case, the wish to only hear part of the case, as opposed to all of the case.

Set aside, and re-hear consolidated case in High Court

195. There is an onus on the court to manage cases so Claimant does not need to keep returning, yet the lower Court organises so the need will remain to return endlessly, for years when it could be just one case.

196. The Claimant and his team believe the only real way to deal with such far reaching failure in such a large case, is to set aside and order a re-hearing, - which the Claimant ultimately seeks to be in the High Court.

197. A court exhibit reads as follows, partly hand written by His Honour Judge Jack QC who, incidentally, much later, on the 22nd November 2004, refused a 'jury trial' by overturning his Honour Nicholas Chambers QC's decision to have a jury for a selection of incidents from the first 3 Actions.

198. The Court of Appeal, with Lord Thomas sitting alone, did not deal with the Claimant's Appeal for 17 months, when it was refused, despite the Claimant having his Appeal papers officially sealed within a few days of the Swansea High Court refusal.

IN THE HIGH COURT OF JUSTICE

QUEEN BENCH DIVISION

APPLICATION FOR LEAVE TO APPEAL

Title of Action: **Action no.**

Kirk v South Wales Constabulary **BS614159**

Heard

HHJ Ray S Jack QC **Bristol Crown Court**

Nature of hearing

Application to amend p/c

Date of hearing or judgment **28.1.00**

Result of hearing

Application refused

199. His Honour wrote refusing the Claimant's Application to join the 2nd Action as the Application had already delayed the trial scheduled for 22 November 1999.
In point 3 of his hand written judgment, giving reasons for refusal, he wrote:

"*If there was a course of harassment by the police this would be sufficiently clear from the many incidents already pleaded*."

200. His Honour Judge Chambers QC gave exactly the same view in the Autumn of 2004 hearing when speculating as what would to be the fate of the outstanding twenty odd incidents, not before a jury, it being dependant on the outcome of the trial.

His Honour Judge Jack had more to say, in the hearing, see transcript:

"It is a pretty remarkable tale if there is any truth in it,
I am voicing little disquiet,
Just look at the number of incidents,
One asks what is going on?"

201. Around 2006 the Claimant employed a Birmingham barrister, at huge expense, simply to fight for a jury trial but he needed further briefing from the court files.

202. Contrary to His Honour's written permission, for the Claimant to be allowed to examine the Cardiff court files, see HMCS (Cardiff) 21st April 2006 letter (exhibit), the court manager, the very same that has caused such havoc for the Claimant ever since, especially in five parallel actions fighting for relevant disclosure, overruled His Honour's

permission meaning the Claimant was left on his own, when the appeal was moved part heard to London.

‘

203. Lord Thomas, sitting alone, ruled it was all ‘too late for a jury trial’ which would cause even further delay in the trial.

204. 16th July 2007 HMCS (Cardiff) letter (exhibit) confirms that on the 16th May 2007 one of the files for this case (3rd Action CF204141 could not be found by court staff.

205. The 4th Action’s Particulars of Claim show a similar incident, by photograph, when the Claimant did at least get the chance to see what files were left in Cardiff court, no one telling the Claimant where they had all been going since 2003.

206. Once the Claimant had a whiff of these unusual tactics, some six or so years ago, he trumped it by serving on the Defendant all he could find, at the time, of his own prosecution papers with the hope that there would now be a settlement out of court..

207. The Claimant records included note taking from some 20 or so Cardiff and Newport Crown Court hearings and well over 70 odd magistrates hearings, all stuffed into 50 odd leaver arch files, ‘warts and all’.

208. Leaked Minutes 23rd July 2003 (exhibit) and other such HM internal memos from HM Treasury Solicitor’s Office, Whitehall and the Cardiff County Court manager, generally came into the Plaintiff’s possession by way of angered members of HM court staff, but it explained why files have been lost.. The six year ‘Vexatious Litigant enquiry’ eventually failed as Claimant files of well over 100 cases,(mainly veterinary bad debts) obtained a success rate of over 85%.

209. As late as 1st March 2011 the Defendant sent to the Claimant, only by request, the significantly omitted page 47, of the Defence’s 18th August 2010 Skeleton Argument, to strike out 36 incidents indicating, by e-mail, the Trial judge had not seen it either. More later.

210. Only 4 were eventually struck out with just 2 others being partially struck out, well below 10% of the incidents that had been before the court for nearly ten years, **1st Action Para 8.12** for 15 years, currently struck out.

211. In around 1996, in the Bristol Court, the Defendant, with the same defence barrister, had already attempted to rule out most of Action One but the court ruled **1st Action 8.12** was to remain in the Particulars of Claim.

212. HHJ Jack QC was to be allowed to sit in the Swansea court, as the Appeal judge again, to overturn his HHJ Nicholas Chambers QC’s granting the Claimant a jury trial. The Claimant, on appeal, long before this in the same Bristol court, had obtained several incidents, already struck out, to be reinstated by HHJ Jack QC.

213. But here we are again with the South Wales Police using their unusual, extreme and indefinite tactics of being allowed to manipulate their local judiciary (see 4th section of Bundle, ‘machine gun case’ and see MAPPA in 6th Section of the Bundle, police

arranging, long in advance, for not just the Claimant to be arrested or shot but for his incarceration for an unlimited period).

214. If the same local barrister, given a second chance, 11 years later has obtained a 'strike out' in a most significant motoring incident, leading to the Claimant being struck off the veterinary register, then the Defendant should be allowed the right to re-present the one or two incidents that were struck out by the 1999 Bristol Court, BECAUSE Section A of this Skeleton Argument argues the reasons why there should be no strike-outs and Consolidation, instead, of all 4 Actions to expedite the matter.

215. Returning to the issue of **page 47** it is pleaded that it was no mistake by the Defendant to withhold the page from the trial judge who was deliberating his 30th November 2010 Judgment on the very issue of the long term picture.

216. Why?

217. The pattern of motoring and refusing to properly investigate crime altered over the 9 years, when these incidents occurred, until finally leaving the criminal court arena, but making **page 47** very relevant.

Claimant stopped whilst going about his business as a veterinary surgeon

218. First the Defendant, by covert surveillance, would stop the Claimant on the pretext of no tax and/or the un-roadworthiness of his vehicles.

219. Then, following ignominious defeats in the local law courts, the Defendant moved to the repetitive stopping on the pretext the Claimant was driving whilst uninsured and/or without a driving licence, his being arrested with the hope he would retaliate.

220. Then, when failure to prosecute on each and every occasion, of no licence or no insurance moved on to more sinister tactics.

221. The Defendant now resorted to stopping the Claimant for fictitious reasons to demand a breath test with positive ones on at least 3 occasions, see **2nd Action Para 9** (**page 47** of Defendant's Skeleton Argument), **Para 8** and **Para12**, a zero, zero reading within the hour on the definitive reading at the police station.

222. Then, following rebuke from HHJ Jacobs and another judge, back in the 90s , after the Defendant again losing yet another Crown Court hearing moved, by orders from Central Control , to one of stopping the Claimant on some pretext, lost in court on every occasion, see " 2nd Action **Paras 9,11** (both currently struck out) using the excuse for arrest of "failing to supply a specimen of breath", never giving the Claimant a chance to provide it, knowing full well it is an 'absolute offence' and had not been drinking, expecting by now, to be regularly stopped for no just reason.

223. He eventually was stopped at least thirty-four times to produce his insurance company details. The real reason for the stopping was to bring pressure on insurers. This had been partially achieved in Guernsey, where the police used the same tactics: from defective car to a positive alcohol test (picking up coins), 'refusing' and beating up the

Claimant, before he had had enough bullying and had to leave the island for fear of yet further imprisonment without conviction.

224. Getting back to the significance of why the Defendant left out **page 47**, it is because a) conflict of policemen note book accounts, one saying the breath test was negative, the other saying it was refused when in truth, the road side test was deemed 'positive' but zero, zero, back at the police station. Any other motorist, following a zero police station reading, would not normally be charged for an alleged road side refusal.

225. But things are different in South Wales, where this Claimant is concerned, separated out for 'special treatment' by senior police officers such as Inspector Howard Davis who instigated the **3rd Action Para 2** currently struck out and other incidents, by first striking the Claimant, with significant force, as described by the CPS barrister's letter to the RCVS (see Bundle 4th Section, first page).

226. When this trick of failing to give a breath test started going pear shaped, violence on the Claimant was increased with the hope he would retaliate for an assault charge, as the Guernsey police relied upon. This was either at the road side or in the custody cells where there would be no independent witnesses and where videos could be deliberately tampered with (see **2nd Action Para 9** caught on overhead camera and in Roath and Rumney police stations) while the Defendant STILL IGNORES JUDGES' ORDERS TO DISCLOSE, see (4th Section 4 court logs released as exhibits for this trial).

227. The Defendant failed in thirty-four attempts to have his insurance withdrawn by pressure on the relevant ever changing insurance companies, meant, to keep one step ahead and to be able to do his work, at the height of the harassment, the Claimant was using 8 different vehicles with not one in his name, all perfectly proved legal following around 125 allegations lost by the Defendant.

The Incidents that the 30th Nov 2010 Draft Order Struck Off

228. Paragraph 11 of 2nd Action CF101741 [Newport/Albany road 'high speed car chase and Refused Breath Test] 'to the extent that the Claimant alleges that he was wrongfully arrested and maliciously prosecuted for the offence of failing to provide a specimen of breath'.

Summary – from the Claimant's perspective:

229. No moving traffic offence was ever substantiated with the Crown Prosecution Service withdrawing four of the five initial police charges.

230. The only conviction, '**failure to supply a specimen of breath test**', was obtained under severe duress of a very frightened prisoner by the unlawful assault on him, before anyone had time either to ask or to receive a refusal of breath test.

231. No evidence was put to proof other than the 2002 Royal College of Veterinary Surgeons hearing whose vast legal team, smelling the conspiracy the Claimant was about to reveal, withdrew the charge, part heard but letting it run on long enough to cause the very real risk of prejudicing the Disciplinary Committee to refuse the Claimant any defence witnesses.

232. The Claimant was arrested in his car and detained unnecessarily long, as one police officer 'believed' the Claimant was 'under the influence of drugs' for which no examination was made.

Videos (court log exhibits detail, see 4th Section of bundle)

233. Contrary to the Defendant's Skeleton Argument, the mistake copied into the Judgment, under appeal, the doctored police videos were not disclosed until fourteen months after the incident, while the request for originals, for this hearing, was ignored.

234. No court viewed the videos except the Royal College of Veterinary Surgeons court, in 2002, causing the prosecution to immediately withdraw the charge relating to 'refusal to give a specimen of breath' suggesting the Claimant was no longer 'fit to practice veterinary surgery'. They achieved that by other prosecutions of the Defendant.

235. The video was deliberately redacted to hide the full attacks and identification of the attackers on the Claimant, both in his car and in the police cells.

236. Despite request, by registered post, within 48 hours of the Claimant's release, to relevant police stations and early pointless complaint to the usual authorities and his MP, the copies of originals have never been released, contrary to Crown Court Orders.

237. Having sufficiently recovered from his injuries with less risk to his life, now out of police custody, the Claimant applied to a differently constituted court, a different clerk, CPS and magistrates, contrary to his wishes, to attempt to withdraw his guilty plea, when, in England, a procedure he had often witnessed, would have been allowed in the interests of justice, after no evidence had been heard.

238. The Defendant acted maliciously to attempt to obtain five charges, any one of them could have the Claimant struck off the veterinary register. Four of the five were later withdrawn, showing no merit of their possible likelihood of obtaining a conviction.

239. Despite a zero breath test result, on the definitive test at the police station, when elsewhere, the allegation at the road side would have been, most likely, dropped, the only conviction was obtained by motivated and repeated violent assaults, proved by the identification of all police officers involved and the Defendant's disclosure of:

i. Original Crown Court audio/video
ii. All un redacted road audio/video
iii. Original Roath Police Station audio/video
iv. Original un redacted Rumney Police Station custody audio/video

.

240. The Claimant relies on the Defendant's falsified 25th February 2009 Sworn Affidavit and his letter of 4th October 2008 listing some of the yet undisclosed incident numbers, to obtain witnesses, so far also refused by the Defendant.

241. Paragraph 2 of 3rd Action CF204141 [Cowbridge Show] [See 4th Section exhibits in court bundle]

Summary – from the Claimant's perspective:

242. The 'Breach of the Peace' allegation was a separate police incident to the convictions referred to by Claimant. Hence it cannot be a 'collateral attack' on some other conviction(s), month later introduced, not part of this Appeal.

243. The 'Breach of the Peace allegation' was never knowingly put to the Claimant, in custody or placed before any Magistrates before it was withdrawn, months later, by the CPS following the order or obviously needed legal advice of the court clerk, recorded in exhibits of Bridgend Magistrates' records.

244. The Claimant witnessed the five criteria of a malicious prosecution, namely:

i. there has been a prosecution that has caused the Claimant damage: seven months imprisonment
ii. that the prosecution was instituted or continued by the Defendant
iii. that the prosecution was terminated in his favour
iv. that the Defendant acted without reasonable and probable cause and
v. that the Defendant acted maliciously.

245. Paragraph 9 of Action CF101741, [Llantwit Major refused Breath Test] 'save that the Claimant be entitled to pursue his claim for wrongful detention of his motorcar'.

Summary – from the Claimant's perspective:

246. See references in above Newport /Albany road refused breath test Summary

247. Fact sensitive.....not collateral attack etc (see claimant legal submissions)

248. Modus operandi, now implemented, refused the chance to tender a breath test

249. Trial judge refused to recuse himself having dismissed the appeal without evidence given when the CPS have evidence from the Claimant's specialist and his GP the inability of the Claimant unable to prosecute his appeal due to his medication.

250. Paragraph 3 of 3rd Action CF204141, [Stolen cheques] 'be struck out as disclosing no reasonable cause of action.'[see exhibit Claimant's statement of sighting thief in late 2010 and still Defendant refuse to interview already identified, on camera, cashing the Claimant's cheque(s)]

Summary – from the Claimant's perspective:

251. The Defendant maliciously, with clear intent, refused to investigate the theft of the Claimant's cheques, to the value of around £1,500.

252. The Defendant, in 2001, failed to interview either thief, both previously in the Claimant's employ, despite both being identified and the Defendant in possession of their full names and home addresses.

253. The Defendant, upon receiving a statement of complaint, from the Claimant, stating a sighting of one of the thieves, in Barry Post office, in 2010, identifiable also by the cashier, did not interview the Claimant or any members of the post office whom the Claimant had seen handling documents containing his current address.

254. The fact that the particulars of claim do not contain the word malicious, together with all the incidents in the claim or three claims, indicates 'negligence' based on malice.

255. Paragraph 3 of 2nd Action CF101741, 'save that the Claimant be entitled to pursue his claim for malicious prosecution in respect of the offence of driving without insurance'

Summary – from the Claimant's perspective:

256. Pleading guilty to crossing a single white line, at 4 mph, to avoid a wobbling cyclist with a police motor bike on his back bumper, carrying no penalty points or fine, accepted by the Crown Court, when dismissing all other charges, as not a danger to other road users, is not a collateral attack as, this time, the malicious prosecution on all five elements again were in the Claimant's favour.

257. This incident, again, surrounding attempts by the police to prejudice his getting insurance cover is what the Defendant was all about.

258. 8.12 of 1st Action, The Roundabout Case, "We will get the bastard"

259. This incident was not challenged in 1996, before the Bristol court or at the subsequent appeal, when the Claimant was, for the first time, without legal representation. Clearly the Defendant accepted it in law and to have opposed it now, 15 years later, is an abuse of process.

260. If the Defendant is, at this late stage, in law, entitled for 1st Action 8.12 to be considered for 'strike out', the Claimant having been found guilty in his absence, due to a motorcycle accident, the defendant bringing fresh evidence of a PC Basset at the Appeal, 'seeing an imaginary vehicle inconvenienced whilst arriving at an empty 5 lane roundabout, except for two vehicles hugging the centre reservation at agreed no more than 4mph,the claimant applies to do same.

261. When there has been at least two previous pre trial hearings for 'strike out' possibilities the Claimant therefore appeals to the Court of Appeal for the re insertion, into the 1st Action a few of the 'strike outs of, circa1999, to include 8.4 as an example (Claimant caught a burglar in his surgery, he having broken in, causing criminal damage, to steal, with the Defendant refusing, yet again (see 4th Action) to properly investigate or even provide the name of the criminal and his associates, for alternative remedy.

262. AND or in the alternative, in the light of the conduct of the Defendant and the relentless bullying and harassment that has caused the subsequent 2nd, 3rd,4th, 5th, 6th and shortly, 7th Action, to be served in court, the malicious 'machine gun' case [see bundle 5th section 2nd page] with the hope the bullying will finally be ordered to be stopped and criminal proceedings instigated by an outside police force.

Human Rights

263. The lower Court fails to explore submissions on human rights.

264. The lower Court does not explore the meaning of Armstrong and should the UK courts try to place a duty of care an misfeasance as a means to provide Remedy, for events prior to the UK Human Rights Act given Armstrong gained an EU award because the UK failed to provide remedy for police interference in around 1994.

265. Another side issue from Armstrong is that Armstrong was convicted yet still allowed to sue. Whereas the lower Court takes a rigid approach to not allowing a convicted person to sue.

266. It could be said that the Claimant's Human Rights breached throughout the 1990s (before the Human rights act/HRA) but that they were further breached in 2002 (during the HRA) when by police interference that predated HRA was presented at the Royal College.

267. The Claimant hopes transfer of his case to the High Court can clarify whether he can sue under HRA for the 2002 events at the Royal College where some of the content dates to pre HRA. But the Claimant mentions now what he may raise.

268. The Claimant is entitled to a realistic and early remedy.

Maurice Kirk BVsc

Claimant

4th March 2011

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' (p183). 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

37 The disparity between the information held by the service provider and that held by the consumer cold 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 FIVE

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.