# In the High Court of Justice
# Queen's Bench Division
# Administrative Court

CO Ref: CO/4298/2011

In the matter of an application for Judicial Review

The Queen on the application of **MAURICE J KIRK**

versus **CARDIFF MAGISTRATES COURT**

**Application for permission to apply for Judicial Review**
**NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by the Honourable Mr Justice Beatson

1. **Permission is hereby refused.**
2. **Application to transfer these proceedings to the Administrative Court in London refused.**
3. **Should this application be renewed, the proceedings should be served on the Crown Prosecution Service as an Interested Party.**

Reasons:

1. The District Judge did not arguably err in refusing, on 22 February 2011, to set aside the conviction and arrest warrant pursuant to section 142 of the Magistrates Court Act 1980. The District Judge accepted that he had power to act under section 142 but declined to do so. His reasons were that on 2 November 2010 (a) the Deputy District Judge had reconsidered the application to adjourn that he received after making the finding of guilt, considered the medical evidence, and maintained his decision, and (b) the claimant was represented by a solicitor at the hearing. The power to re-open a case under section 142 of the 1980 Act is essentially a power to rectify mistakes and in these circumstances the Deputy District Judge's decision on 2 November 2010 was not arguably made under a mistake. The mere fact that applications to adjourn were successfully made in the civil case against the South Wales Police and the appeal against the finding of contempt does not mean that an application to adjourn the trial of the charge of assault was arguably outwith the discretion of the judge considering it. It was certainly not outwith the discretion of the District Judge considering the application to set aside the conviction to conclude that the application was to be rejected.
2. The claimant has failed to pursue an alternative remedy – an appeal to the Crown Court pursuant to section 108 of the Magistrates Court Act 1980. Judicial Review is a remedy of last resort and will generally not be available to a claimant who has an alternative and adequate remedy. An appeal to the Crown Court would have been by way of a re-hearing and thus an adequate remedy.
3. It appears from the grounds that the basis of the application to transfer this matter to the Administrative Court in London is that the claimant considers this case "to be part of a more serious and wider civil dispute between himself and staff at Cardiff Courts": grounds, paragraph 12. Notwithstanding that, the claimant chose to file and lodge this claim in the Administrative Court Office at Cardiff. Wales appears to be the area with which the claimant and the defendant have the closest connection. There was nothing to prevent the claimant filing these proceedings in London but he chose not to do so and has given no explanation of why, notwithstanding his desire for the case to be heard in London, these proceedings were lodged in Cardiff.

Signed J Beatson

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

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Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:
Ref No.