

In the High Court of Justice of the Isle of Man
Civil Division – Ordinary Procedure

Between:

IAN CHRISTOPHER KIRK

Claimant

and

CHIEF CONSTABLE OF THE ISLE OF MAN

HIS MAJESTY'S ATTORNEY GENERAL

Defendants

**Approved Transcript of ex tempore Judgment delivered by
His Honour The Deemster Corlett
on 04 December 2025**

Introduction

1. I am going to give a decision now on the issues I dealt with yesterday. I record that the Claimant is a litigant in person and that the Defendants were represented by Charles Davies.

Procedural Background

2. So, this judgment concerns the strike out and summary judgment application which I heard yesterday. Just to give some procedural background, on 15 August 2024 the Defendants' original strike out application was before the court. That was dated 20 June 2024. The Claimant, that is Mr Kirk, was given permission to amend his Claim Form and his Particulars of Claim at the court on 15 August. The matter then came back before me on 10 December 2024 when permission was given to amend the claim and Particulars of Claim again. The Defendants were given permission to amend their Defence and their strike out application. That application was to be listed for the first available date after 7 April 2025. Following that the strike out application was listed for 11 and 12 June 2025. Those dates were vacated, principally because the Claimant, Mr Kirk, sought to re-amend his case. On 11 June 2025 I gave permission for Mr Kirk to re-amend his Claim Form and the Particulars of Claim and just for the record, the relevant paragraph of the Order of 11 June, it is quite a long order, but the first paragraph is the important one for these purposes. The Claimant, that's Mr Kirk, and I will quote from it:-

"... is thus permitted to re-amend his Amended Claim Form and Particulars of Claim dated 31 October 2024 in the form of (a) the 41-page Re-Amended Claim Form and Particulars of Claim on Form HC1 which was filed on 17 March 2025 and (b) the 5-page document entitled "Amended Particulars of Claim" filed on 17 March 2025. The 2 aforesaid amended documents shall together constitute the Claimant's Re-Amended Claim Form and Particulars of Claim."

3. That Order also provided that skeleton arguments were to be filed by both sides. In relation to Mr Kirk he had permission to file and serve a supplementary skeleton argument with any further legal authorities relied upon in relation to the strike out application by 4pm on 1 August 2025.

4. I report that Mr Kirk did not comply with that order, although he did attempt to file a skeleton argument very late in the day, I think it was actually on the day or the day before the present hearing. That invitation to accept that document was declined by the Court. However, I have given attention to Mr Kirk's skeleton argument of 14 March 2025.

5. The strike out application was once again listed, this time for 12 August 2025, but that had to be vacated due to Mr Kirk's unfortunate illness. There was no opposition to the vacation of that hearing. That was a perfectly sensible decision by the Defendants. Essentially then, the matter was re-listed for hearing by an Order of 10 September 2025. So the matter eventually comes before me for contested adjudication.

The Statements of Case

6. The Claim Form is, as indicated earlier, rather a lengthy document. It claims now a total of three million pounds. Previously there was a claim for thirty three million pounds, but the current claim is for three million pounds and there are twenty seven claims. I will have to read out, the heading anyway, to each of those twenty seven claims because that is necessary. They are each called Statement of Case, and then they are numbered:

"Statement of Case 1 – Unlawful threat of Arrest by PC Mealin

Statement of Case 2 – Counselling and Procuring, Aiding and Abetting by PCs Mealin and Whiting

Statement of Case 3 – Admitted Failure to Prevent an Alleged Gathering by PCs Mealin and Whiting

Statement of Case 4 – Discrimination Against the Claimant by PC Whiting

Statement of Case 5 – Breach of the Public Peace

Statement of Case 6 – Unlawful Arrest, False Imprisonment, and Loss of Freedom

Statement of Case 7 – Inhumane Treatment of the Claimant

Statement of Case 8 – Violation of Medical Privacy by Custody Sergeant Kerr, PCs Mealin, and Whiting

Statement of Case 9 – Unauthorised Medical Action by Custody Officers

Statement of Case 10 – Coercion, Torture, Inhumane, and Degrading Treatment of the Claimant

Statement of Case 11 – Spreading False News, Defamation, Libel and Destruction of Evidence by the IOM Constabulary

Statement of Case 12 – Submitting False and Fraudulent Evidence by PCs Mealin and Whiting

Statement of Case 13 – Failure to Record Evidence and Withholding Evidence by PC Mealin

Statement of Case 14 – Fabricated and Forged Evidence and Fraud by PC Mealin

Statement of Case 15 – Discrimination, Victimization, and Conspiracy by PCs Mealin, Whiting, and Supervising Sergeants Cubbon and Hastie

Statement of Case 16 – Perjury by Constables Mealin and Whiting

Statement of Case 17 – Continued Harassment Post-Acquittal

Statement of Case 18 – Vicarious Liability of the Chief Constable

Statement of Case 19 – Failure to Disclose Evidence Leading to Destruction of Evidence

Statement of Case 20 – Failure to Produce Evidence of the Alleged Formal Warning

Statement of Case 21 – Misleading the Court About the Existence of Evidence

Statement of Case 22 – Delayed Production of Notebook Evidence

Statement of Case 23 – Fabricated Evidence of the Formal Warning, Fraud

Statement of Case 24 – Refusal to Provide Computer Logs of the Formal Warning

Statement of Case 25 – Failure to Provide the Direction Notice

Statement of Case 26 – Withholding Evidence of the Direction Notice to Pervert Justice

Statement of Case 27 – Vicarious Liability of the Attorney General's Chambers."

7. And then there are claims for the extension of the limitation period in the defamation claim and a claim for the extension of the limitation period in the human rights violation claim. And there is then pleading of the claim in respect of damages.

8. In addition to that we have the document entitled "Amended Particulars of Claim" which is dated 14 March 2025, and this essentially adds the claim of misfeasance to the claims against the two remaining Defendants. Earlier, Defendants 1 to 6 had been taken out of the proceedings. They were the individual police constables and sergeants and also Mr Kane of the Attorney General's Chambers.

9. The application to strike out is based on Rule 7.3 of the Rules of Court which provides that the court may strike out a statement of case if it appears to the court that the statement of case discloses no reasonable grounds for bringing or defending a claim or that the statement of case is an abuse of the court's process.

10. So far as summary judgment is concerned that is Rule 10.46 and this provides that summary judgment may be granted against a claimant if the court considers that the claimant

has no real prospect of succeeding on the claim and that there is no other compelling reason why the case should be disposed of at a trial.

Immunity from Civil Claims

11. I had before me yesterday some eleven lever arch files. Hundreds and hundreds of documents. But essentially the matter comes down to the consideration of only a few documents. The issue of immunity from civil claims in relation to prosecutions has fortunately been recently considered by the English Court of Appeal. The Lady Chief Justice sitting with Dame Victoria Sharp and Lord Justice Coulson in a judgment dated 08 October 2025 entitled Chief Constable of Sussex Police & The Crown Prosecution Service v XGY [2025] EWCA Civ 1230. I will call this case the Sussex Police case. This related to a situation where words spoken by an advocate for the Crown Prosecution Service during the course of a bail hearing in a magistrates' court revealed XGY's address and this caused a great deal of anxiety and distress to XGY. For these purposes the important paragraph is paragraph 30:

"To summarise:

i) It is a general principle that every wrong should have a remedy. Nonetheless, it is necessary for the proper administration of justice that advocates, parties, witnesses, judges, and jurors are immune from suit for statements made in court whatever the cause of action, regardless of whether the statement was made maliciously or was irrelevant to the court proceedings. This is known as the core immunity. It is founded on public policy and is intended to encourage freedom of expression and communication in court proceedings in order to protect the proper administration of justice and the interests of justice.

ii) The core immunity can be extended if the extension is necessary for the proper administration of justice, which is a strict test. There are two established extensions: witnesses and potential witnesses are immune from suit for statements made outside of court with a view to giving evidence. This extends to the preparation of evidence they are likely to give in court proceedings, including their preliminary examination to ascertain what they could prove. And investigators are immune from suit for statements made as part of the process of investigation.

iii) The police may claim an extended immunity either as potential witnesses or for statements or conduct which can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution in respect of the matter being investigated. Investigators are not immune with regard to statements which are wholly extraneous to the investigation."

12. Paragraph 24 of that judgment:

"In Darker, the House of Lords considered the limits of these two extensions to the core immunity. It was held that neither extension barred claims against the police for conspiracy to fabricate false evidence. The act of fabricating evidence was not the same as preparing to give evidence. Lord Hope explained that there was a distinction "between the act itself and the evidence that may be given about the act or its consequences. This distinction rests upon the fact that acts which are calculated to

create or procure false evidence or to destroy evidence have an independent existence from, and are extraneous to, the evidence that may be given as to the consequences of those acts" (see 449B). Similarly, procuring false evidence is not "exchang[ing] information, theories and hypotheses" (see Lord Cooke at 454F)."

Mr Kirk's Letter Before Action

13. The essence of the case in many respects it seems to me can be derived from Mr Kirk's pre-action letter dated 04 July 2023. It sets out in full, in my view, exactly what Mr Kirk was essentially complaining of:-

"This is a pre-action letter to inform all parties that I am filing a complaint for money damages.

On the 24th March 2021 at approximately 06:44 I was approached by PC Alexander Mealin on Laxey beach promenade and was falsely accused of taking part in an illegal gathering.

PC Alexander Mealin threatened that I would be locked up if I didn't get in my van and go home.

PC Alexander Mealin also falsely claimed that he gave me an official "covid" warning before I got into my van and drove home.

On the 25th March 2021 I was supervised by the Isle of Man constabulary entering the sea. I was never prevented from entering the sea for my morning dip nor was I even approached or spoken to by any Police officer before entering.

On the 25th March 2021 after leaving the sea, at approximately 06:33 on Laxey beach promenade I was falsely arrested by PC Alexander Mealin on the orders of PC Richard Cubbon and accused of "inciting" a gathering in violation of the coronavirus act 2020.

On the 25th March 2021 I was arrested by PC Alexander Mealin soaking wet, freezing cold, while only wearing swimming shorts. I was prevented from getting dry and changed into my warm clothing.

On the 25th March 2021 I was put at severe risk of hypothermia by the actions of PC Alexander Mealin and the Isle of Man police constabulary in clear violation of my fundamental human rights.

On 25th March 2021 when arriving at Douglas police headquarters at approximately 07:00 I was prevented from entering the police station at the airlock door by PC Alexander Mealin, PC David Whiting, and custody desk sergeant Kerr until I put a face mask on.

I informed PC Mealin, PC Whiting and PC Kerr that I was medically exempt from wearing a face mask.

Custody desk sergeant Kerr then asked me what my medical exemption was. I informed sergeant Kerr that I was not at liberty to divulge my private medical history

to someone who is not my doctor and is not a trained medical professional. PC Kerr shouted that I do not dictate to them and demanded I tell them what my medical exemption was.

As I was still soaking wet, dripping water all over the floor and uncontrollably shaking in the early stages of hypothermia, I felt very intimidated and eventually told desk sergeant Kerr, PC Mealin and PC Whiting that I was asthmatic and had childhood trauma from covering my face. This was a blatant violation of my medical privacy rights.

It was demanded by desk sergeant Kerr that I will wear the mask. I was threatened by desk Sergeant Kerr that if I refused to put the mask on, I would be re-handcuffed, and the mask would be forced upon me without my consent.

Under complete duress, fear for my life and overall safety I eventually agreed to put the mask on.

I was then allowed into the police station where I could finally get dry and changed into some clothing before being booked in.

I was later charged with "participating" in an illegal gathering in violation of the coronavirus regulation 2020.

On the 31st March 2022 after a three day trial, I was acquitted of all essential elements of the prosecution case.

Deputy High Bailiff Jayne Hughes stated in her judgment and acquittal that what took place on Laxey beach on the 24th and 25th March 2021 did not meet the definition of a gathering.

Her Honour Jayne Hughes was also not convinced that a warning was ever given out by PC Alexander Mealin the day before my arrest on 24th March 2021.

Conclusion

In conclusion it is my understanding that:

- 1. I was falsely arrested.*
- 2. I was assaulted by the manner of my arrest in clear violation of my human rights.*
- 3. I was unlawfully detained.*

I Ian Christopher Kirk am writing this Pre-Action letter with honor to inform all parties that I will be filing a civil lawsuit against all those involved with my unlawful arrest, unnecessary assault, and detention on the 25th March 2021. I will also be requesting an independent investigation into this matter as I believe my arrest was authorised and sanctioned by senior members of the Isle of Man constabulary with whom I have lost confidence."

Mr Kirk's Acquittal

14. Following the events on Laxey beach on 25th March 2021, Mr Kirk was prosecuted for breach of the Covid Regulations. He appeared before Her Worship the High Bailiff on quite a few occasions but eventually the matter was dealt with at a three day hearing. By a judgment of 31 March 2022 the High Bailiff acquitted Mr Kirk of the alleged offence. She also awarded, at a subsequent court on 8 June 2022, costs to Mr Kirk in the sum of £638.10. Throughout that particular matter, or certainly for the trial, Mr Kirk represented himself although he had been represented by an advocate previously.

Collateral Attack

15. Now one of the grounds put forward by the Defendants is that of abuse of process, namely that this civil claim represents a collateral attack on the findings of Her Worship the High Bailiff. This concept of abuse of process by way of a collateral challenge to findings by another court is set out in amongst other cases, my judgment of 21 February 2024 in the case of John Henry Griffin & Chief Constable of the Isle of Man. In that case I quoted from the well known case of Hunter . I will quote from paragraph 13 of my judgment:

"The principle is set out in the England and Wales White Book. Particularly at paragraph 3.4.9 under the heading "Collateral attack upon earlier decisions", the learned authors state there :-

"In Hunter v Chief Constable of the West Midlands Police [1982] AC 529 the House of Lords defined as a further example of abuse of process:

"... the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which had been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had full opportunity of contesting the decision in the court in which it was made.""

16. At paragraph 16, I quoted:

"At page 542 paragraphs B to C, the House of Lords said this. This is Lord Diplock's speech and he is quoting from an earlier case:-

""... the court ought to be slow to strike out a statement of claim or defence, and to dismiss an action as frivolous and vexatious, yet it ought to do so when, as here, it has been shewn that the identical question sought to be raised has already been decided by a competent court."

The passage from Lord Halsbury's speech deserves repetition here in full:

"... I think it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again.""

17. So that is the essence of the concept of abuse of process by way of collateral attack. It therefore seems to me that any allegations brought in these civil proceedings by Mr Kirk

which seek to undermine or have the effect of undermining or challenging the High Bailiff's findings must be struck out. This it seems to me relates to four particular matters. First of all the issue of the arrest of Mr Kirk. Secondly, the conduct of the officers of the Isle of Man Constabulary on 24 and 25 March 2021 at Laxey beach. Thirdly, the issue of an alleged warning which it is said was given to Mr Kirk on 24 March 2021. And fourthly, the issue of notebook evidence which in itself relates to the giving of this alleged warning.

The High Bailiff's Judgment

18. I need to quote from certain passages in the High Bailiff's judgment. She deals with the issue of the warning at page 596 in the bundle and she says this:-

"The warning if any was not recorded on bodyworn footage. There is of course no legal requirement for it to have been recorded."

She continues:-

"The Isle of Man Constabulary adopted the commendable practice of warning people that they are liable to prosecution for an offence under the Regulations or other legislation introduced during the pandemic rather than to prosecute or issue a fixed penalty notice on the first alleged breach. For the record and for the benefit of those who have been present during this trial and who believe otherwise, neither is the consent of any person warned, arrested or charged with an offence necessary."

And then there is this important passage:

"The application is made on the basis of the warning given to the Defendant on the 24th March and other than shouting generally 'this is a gathering' I'm not satisfied so that I am sure that those words would constitute a warning or that a warning was in fact personally given to the Defendant or that such a warning would fall within the provisions of part 2 of The Criminal Evidence Act of 2009."

19. She also referred to the issue of the warning at page 598, and all she says there is:

"Prior warning is not a pre-condition of a prosecution."

20. But what is clear from that is that the High Bailiff found as a fact that she was not satisfied that there was a warning given to Mr Kirk. And that seems pretty clear to me and is conclusive so far as I am concerned.

21. So far as the issue of the arrest is concerned, that is addressed at page 600 and I quote:-

"I am sure that the Defendant was the focus of the police attention because of the Facebook posts and in the circumstances the police were justified in focussing their attention on him."

She continues:-

"I do find however that once away from the promenade and other people present the handcuffs were removed, the Defendant was able to put on his towelling robe and

offered a foil blanket which he refused. In the circumstances I make no criticism of the arrest which I'm sure was necessary to remove the Defendant from what from the officer's perspective was becoming a hostile situation."

22. She also addressed this at 602, having found, it should be noted, crucially for Mr Kirk, that she could not be sure from the evidence that there was "an assembly and therefore a gathering prohibited by the Regulations". She then went on to say:-

"I am satisfied that there was evidence to meet the lower threshold to justify the Defendant's arrest but in order to convict the Defendant I have to be sure, in other words satisfied beyond reasonable doubt."

23. On page 603 she deals with the conduct of the officers generally, and I quote from her judgment as follows:-

"I would say at this stage something of the role of the police officers present on the 25th March. I do not accept the criticism that they in particular PC Mealin were heavy handed or intimidating. Certainly no one on the CCTV looks intimidated by their actions; righteous indignation might better describe their reactions. The police were surrounded by individuals some of whom were specifically on the beach to support their partners who were angry, indignant and vociferous. I found PC Whiting and PC Mealin to be tolerant and patient, as they both said they did not want to arrest anyone on either the 24th March or the 25th March and I accept that they did not. They were as were other officers doing an extremely difficult job in maintaining law and order and keeping people safe, not only on the 24th and 25th March but throughout the three lockdown periods. Their efforts should be applauded not condemned. My acquittal of the Defendant should not in any way be read as a criticism or condemnation of the actions of the police officers involved or the prosecution generally."

24. Finally, in relation to the costs judgment, the High Bailiff said this at paragraph 21, which is at page 612:-

"In considering the Costs Application and having dealt with preliminary hearings as well as the Trial I found no evidence on the part of Mr Kane or the prosecution generally of the "serious dereliction of duty or negligence at a sufficiently high level", as alleged by the Applicant in the Costs Application..."

She went on to say in that paragraph:-

"... I made it clear when delivering my decision at the conclusion of the Trial that the Applicant's acquittal should not be taken as a criticism of the bringing of the Complaint or the manner in which the Complaint was prosecuted."

25. When dealing with the issue of abuse of process I am satisfied by reference to the authorities quoted by Mr Davis, particularly Amin v Director General of the Security Service [2015] EWCA Civ 653 a decision of the Court of Appeal in England and also the case of McLoughlin v Chief Constable of Kent Police [2024] EWHC 990 (KB) a decision of Kerr J, that the court should adopt what is called a broad merits based approach and I quote in particular from paragraph 34 of the McLoughlin judgment:-

"These cases show that the categories of abuse of the court's process are not closed and that a broad merits based approach must be adopted, taking into account all the public and private interests involved and all the facts. The editors of the White Book (2023) state that an abuse is, broadly, a use of the court's process for a purpose or in a way significantly different from its ordinary and proper use."

26. So that is the approach to be adopted in relation to abuse of process.

Extensions of Time

27. So far as the issue of extensions of time are concerned, the leading case, as Mr Davies points out, is that of Adenaike v Department of Home Affairs an Appeal Division judgment of 13 April 2018 reported in the Manx Law Reports 2018 MLR 155.

28. So far as claims under the Human Rights Act 2001 of Tynwald are concerned, these must generally be commenced within one year, beginning with the date on which the act complained of took place. The proceedings in this claim began, or were issued by the court, on 26 March 2024. The one year period may be extended in circumstances where the court judges that to be equitable having regard to all the circumstances. Paragraph 61 of the Adenaike case sets out the essence of the matter which is that the court has an untrammelled discretion to extend time. The court must have regard to all the circumstances, all relevant factors (objective and subjective) and proportionality. As the court made clear at paragraph 61:-

"It is clearly the policy of the legislation that Human Rights Act claims should be dealt with both swiftly and economically as there is no public interest in public authorities being burdened by expensive, time consuming and tardy claims brought years after the event."

29. It should be noted, by the way, on the facts of Adenaike, that the extension was refused, despite the fact as set out at paragraph 64 Mr Adenaike himself seems to have been suffering from certain difficulties, most particularly one has to note that he was sectioned under the Mental Health Act during the particular period. But in any event he was refused his extension of time under the Human Rights Act.

30. I look at the chronology of this matter. As I say, proceedings began on 26 March 2024. The act which you might say gave rise to the primary liability as I have just said took place on 25 March 2021, so proceedings ought to have been commenced by March 2022. Thus it seems to me that so far as the events of 25 March 2021 are concerned, proceedings were commenced some 2 years out of time. It seems it is alleged that there was a breach of Article 6 in relation to the failure to give Mr Kirk a fair hearing before the High Bailiff. The limitation period therefore commenced in March 2022 and proceedings ought to have been commenced, if at all, by March 2023, therefore at the very least that claim is one year out of date.

31. The case law makes it clear that ignorance of the limitation period is no excuse for starting claims late. It is clear from all I know of this case and indeed how it is pleaded by Mr Kirk that he was aware of the concept of limitation periods but thought that he had three years in which to start proceedings. That unfortunately was wholly wrong. The fact that he is a litigant in person is, regrettably for him, no excuse. As the case law makes very clear,

there are no special rules for litigants in person. Everyone must comply with the law of the land which is set out by Tynwald in the Human Rights Act 2001.

32. There is no medical evidence before me to support the extension of time. In simple terms and in summary I am perfectly satisfied that Mr Kirk has not satisfied the burden of persuading me that his belated claim for damages for breach of the Human Rights Act 2001 should be allowed to proceed.

33. Similar arguments apply in relation to defamation. Under section 4A of the Limitation Act 1984 proceedings for defamation must be commenced within one year from the date on which the cause of action accrued. Under section 30A of the Limitation Act 1984 the court is empowered to grant a discretionary extension if that would be equitable. The section talks of prejudice to the Claimant and the Defendant. It seems to me that the cause of action in this case, and this is Statement of Case 11, which relates to defamation, accrued on 25 March 2021 when it is said a false press release or social media release was issued by the police. It may be argued it was not until 31 March 2022 when the High Bailiff's judgment was issued that the falsity according to Mr Kirk was actually established. And it may be said therefore that time does not begin to run until 31 March 2022. But on any argument time had by 26 March 2024 well expired, so the filing of the claim was out of time by 1, probably 2 years.

34. The Section 30A checklist talks of the court considering the length of the delay, whether there was a good reason for the delay and whether the Claimant had full knowledge of all the relevant facts. In this case I am perfectly satisfied that the delay is very long. There is no good reason for the delay which has been provided by the Claimant. The Claimant in particular had full knowledge of all the relevant facts and similarly, as with the Human Rights Act claim, Mr Kirk has not discharged the burden which rests on him to justify the very late commencement of the claim for defamation.

Misfeasance

35. I turn then to deal with the misfeasance claim which is set out in the Amended Particulars of Claim document dated 14 March 2025 which is at page 43 of the bundle. I agree with Mr Davies that the pleading of this cause of action is wholly inadequate. All that really has happened is that Mr Kirk has added the words, for example, "supporting misfeasance" in several of the paragraphs set out in that document. The elements of misfeasance are set out by Mr Davies in the Defendants' Supplemental skeleton argument dated 18 July 2025 and I agree with him that the key points of the tort of misfeasance in public office are:-

- "
 - a) *the defendant is a public officer*
 - b) *exercise of power as a public officer*
 - c) *targeted malice (conduct specifically intended to injure someone) or knowledge that he has no power to do the act and that it will probably injure the claimant (untargeted malice)*
 - d) *the claimant has sufficient interest to found legal standing to sue*
 - e) *causation*

f) the claimant suffers loss which the defendant actually foresaw as a probable consequence."

36. The key points are targeted malice and untargeted malice. There is simply no pleading of that element (malice) and in any event as I have sought to show by reference to the High Bailiff's judgment, any finding of malice would amount to a collateral attack on the High Bailiff's judgment. It would be entirely inconsistent with the High Bailiff's very clear and thorough judgment on the conduct of the police on the day in question.

37. The essence of the tort relates to the issue of malice and bad faith and as Mr Davies points out in his skeleton argument the court must be very clear not only to make sure that allegations of bad faith must be properly particularised but also, and the quote is from Carter v Chief Constable of Cumbria Constabulary [2008] All ER (D) 188:-

"It is essential that before this action for misfeasance is allowed to be pursued through the courts, anxious scrutiny should be made of it to ensure that the Defendant's immunity against actions for negligence is not circumvented by the pleading device of converting what is in reality no more than allegations of negligence into claims for misfeasance in public office."

38. It is clear from the study of the relevant case law which Mr Davies has provided to me, that the immunity of participants in criminal proceedings extends to the prosecutor and extends to the police and it extends also to cover allegations of misfeasance in so far as they concern participation in criminal proceedings.

39. I am also perfectly satisfied that the High Bailiff made a very clear finding concerning the issue of discrimination or singling out for treatment and I referred earlier on to the High Bailiff's findings about that at page 600. I once again reiterate, that the arrest of Mr Kirk was justified.

Summary on Strike Out/Summary Judgment

40. So, summing matters up at this stage I am satisfied that very many paragraphs of the Statement of Case must be struck out and/or summary judgment awarded in favour of the Defendant. In my view there is no reasonable ground for bringing many of these claims. The relevant claims are an abuse of process in light of the High Bailiff's findings. The matter is summed up rather well I think in Mr Davies' skeleton argument of 28 February 2025, paragraph 2(a):-

"The Claimant's claims are an abuse of process in so far as the issues have already been the subject of judicial consideration and determination in the criminal proceedings and represent a collateral attack thereon and/or should have been raised in the context of the criminal proceedings."

41. So just for the record the relevant paragraphs of the Statement of Case which are struck out or summary judgment is awarded in respect of them in favour of the Defendant are: 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25 and 26.

Harassment Claims

42. I turn now to the matters where I consider there is some basis for Mr Kirk's claims. The first one is his claim that he has been harassed by the police, in simple terms, post the judgment. This is 17 in the list of Statements of Case. The Protection from Harassment Act 2000 does provide not only for harassment to constitute a criminal offence but there is also a civil remedy provided by the statute. This was clearly a matter which was not before the High Bailiff and could not possibly have been a matter which she considered because of course it all post dates what she was considering. I do not therefore need to go into this in any great detail. Mr Davies submitted that on any basis the alleged acts of harassment could not constitute harassment in the legal sense and he referred to Phipson on Evidence paragraph 14-21 and he referred to Dowson v Chief Constable of Northumbria where the court offered a summary of what must be proved in order for a claim of harassment to succeed. There must be conduct which occurs on at least two occasions which is targeted at the claimant, which is calculated in an objective sense to cause alarm or distress, and which is objectively judged to be oppressive and unacceptable. And there are a couple of other factors but those are the main points which must be satisfied.

43. Now looking at the claims as pleaded by Mr Kirk, he says that he has been subjected to random, unjustified stops by the police when he has been travelling to the UK, and when he has been returning to the Isle of Man, and this has continued over the period 2022 to 2024. I cannot see any basis on which the court could strike this claim out. The conduct is alleged to have occurred on at least two occasions and certainly it is quite possible for a court to conclude at the end of the day that the actions of the police caused alarm or distress to Mr Kirk and might be regarded as being oppressive and unacceptable. So that claim must be allowed to proceed.

Breach of Data Protection Principles

44. The other matter which concerned me, and this is rather more difficult to consider, is the claim under paragraphs 8 and 9 of the Particulars of Claim which allege a breach of Data Protection. The actual document that Mr Kirk has produced I think refers to the Data Protection Act 2002 or perhaps a later document, maybe 2018. There is no such thing as the Data Protection Act in the true sense of the matter. What we know have is the Data Protection (Application of GDPR) Order 2018, but I do not think the misstatement of the actual legislation makes any difference. The point here is that there is no ruling by the High Bailiff about events at Police Headquarters which form the basis of this claim. Paragraphs 8 and 9 or I will call them more accurately Statements of Case 8 and 9 relate to violation of medical privacy by the relevant officers and unauthorised medical action by the custody officers. There is no ruling by the High Bailiff about the events at Police Headquarters. The events are set out in some detail in the pleadings. Essentially what is said is that Mr Kirk was forced to put on a face mask, he was forced to disclose certain personal medical data which was sensitive health information which the police had no right to demand and therefore his rights under the Data Protection Act were breached. I assume, although I have had no submissions on this, that a claim for damages under the Data Protection Act, I will call it the Data Protection Act but it is really the Order and the Regulations, would have a limitation period of some 6 years in the normal way. Mr Davies very helpfully referred me to the Right to Compensation and Liability under the Data Protection (Application of GDPR) Order 2018, Article 82. In addition he referred me to Regulation 125 of the GDPR and LED Implementing Regulations 2018. So

these combined provisions seem to give a right to damages for breach of the data protection rights.

45. One point that is referred to in the Sussex Police case to which I referred earlier, at paragraph 75, is that the court there considered that the immunity to which the court referred throughout that judgment also covered a claim for a breach of the Data Protection Act. But it has to be said that that statement is in the context of a claim which concerned statements made in court. That is not the case in Mr Kirk's particular case.

46. As to whether the claim set out in paragraphs 8 and 9 could be read reasonably as constituting a claim for assault concerning the facemask, this is certainly possible, in which case the claim presumably should have been made within 3 years, it being a claim for damages for personal injury. So there may be some argument that, because the claim was only commenced on 26 March 2024, the events having happened on 25 March 2021, the proceedings were started 1 day late. But on that basis the court would be very reluctant to strike out such a claim because of course there is always the possibility of an extension of time being granted in a personal injury claim. What is perhaps important for these current purposes is that the Defence of the Defendants joins issue with the facts as to what happened on 25 March 2021 at Police Headquarters but does not appear to allege any fundamental flaw in the proceedings or the nature of the claim so as to justify strike out or summary judgment. The matter is addressed in some detail in paragraphs 52 to 63 of the Defence, but as I say there is nothing there which would justify the court striking out the Data Protection Act claim on the basis of it not constituting any viable form of action.

Conclusion

47. So in essence it seems to me that the claim for violation of medical privacy and unauthorised medical action i.e. cases 8 and 9, do survive the challenge brought by the Defendants by way of strike out and summary judgment. There is of course a caveat to that because any part of those claims which constitute a claim for breach of the Human Rights Act 2001 cannot survive because they are statute barred.

48. Statement of Case 17 concerning harassment post acquittal must of course survive as I have said.

49. And the claims, in so far as they are claims, that either the Attorney General or the Chief Constable are vicariously liable, that is cases 18 and 27, are not separate causes of action but they are elements of Mr Kirk's pleading. They survive also.

50. Just to reiterate that both extensions of time in relation to both the Human Rights Act 2001 and defamation are denied, so those claims are also struck out. And the misfeasance claim set out in the Amended Particulars of Claim is also struck out on the basis that it has been pleaded entirely inadequately and in any event for the reasons I have set out earlier there is no cause of action in misfeasance in this case.

51. Where this case goes next is a matter of some conjecture. No doubt Mr Kirk will carefully consider his position. He is left with, in my view anyway, two minor parts of his claim, that is the medical privacy issue and the harassment issue. Quite how these will give

rise to very substantial claims for damages, I must say escapes me at the moment but he must be entitled I think to continue with those claims.

52. That concludes my judgment.

53. The form of Order made as a result of this judgment is attached.

His Honour The Deemster Corlett

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
ORDINARY PROCEDURE**

Between:

IAN CHRISTOPHER KIRK

Claimant

And

(1) CHIEF CONSTABLE OF THE ISLE OF MAN

(2) HIS MAJESTY'S ATTORNEY GENERAL

Defendants

and

IN THE MATTER of the Defendants' Re-Amended Application dated 27 June 2025 (the "**Strike Out Application**") seeking an order for strike out and/or summary judgment in respect of a) the Reamended Claim Form and Particulars of Claim on form HC1 filed on 17 March 2025 (the "**RAPOC**") and b) the 5-page document entitled "Amended Particulars of Claim" filed on 17 March 2025 (the "**Shortform APOC**").

At a court in Douglas
On 4 December 2025

**HIS HONOUR
DEEMSTER CORLETT**

UPON the delivery of an extempore judgment on the Strike Out Application on 4 December 2025 in the presence of and having heard from counsel for the Defendants and the Claimant in person, following trial thereof on 3 December 2025 in the presence of the same parties, **IT IS ORDERED THAT:**

- 1) The following numbered "Statements of Case" set out in the RAPOC and the Shortform APOC are struck out as an abuse of process in so far as the issues have already been the subject of judicial consideration and determination in the criminal proceedings and represent a collateral attack thereon and/or should have been raised in the context of the criminal proceedings and/or by reason of the Defendants' immunity: Statements of Case 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25 and 26.
- 2) All of the Claimant's claims in misfeasance, as set out in the Shortform APOC, are struck out under Rules 7.3(2)(a)-(c).
- 3) The Claimant's applications for an extension of time in relation to his Human Rights Act 2001 and defamation (libel) claims, as set out in the RAPOC and the Shortform APOC, are rejected. All such claims are barred by reason of time limitation.
- 4) Statements of Case 8, 9, 17, 18 and 27 are not struck out.
- 5) The Claimant shall pay to the Defendants 90% of the Defendants' total costs of and occasioned by the Claim subject to detailed assessment on the standard basis if not agreed. For the avoidance of doubt, if the costs are assessed, the 90% shall be applied to the assessed total of all of the Defendants' costs of and occasioned by the Claim (not limited to the Strike Out Application).

