



Case No: KA-2023-LDS-000009

IN THE HIGH COURT OF JUSTICE
SITTING AT LEEDS DISTRICT REGISTRY

On appeal from Recorder Davies

Claim No: E79YJ801

Neutral Citation Number: [2024] EWHC 2426 (KB)

Leeds Combined Court Centre
The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Date: 8 February 2024

Before:

THE HONOURABLE MRS JUSTICE LAMBERT DBE

Between:

WAYNE LEIGHTON

Applicant

- and -

**CHIEF CONSTABLE OF
NORTH YORKSHIRE POLICE**

Respondent

The **Applicant** appeared **In Person**
MR THOMAS appeared for the **Respondent**

Hearing: 7 and 8 February 2024

JUDGMENT

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MRS JUSTICE LAMBERT DBE:

1. This is an application for permission to appeal against the order of Ms Recorder Davies of 26 April 2023 in which she dismissed the applicant/claimant's claims for damages for false imprisonment, malicious prosecution, misfeasance in public office, trespass to goods, harassment, and for infringement of the claimant's rights under the European Convention on Human Rights. Her order followed a four-day trial of the issues in which the Recorder heard evidence from the claimant and read evidence from the claimant's mother and father. She heard oral evidence from four witnesses on behalf of the defendant. In this two-day application I have heard detailed submissions from the claimant who represents himself and from Mr Thomas on behalf of the defendant.

Background

2. The claims arise from two incidents involving the claimant and officers of the North Yorkshire Police. Those incidents took place 11 October and 29 October 2014. During the course of those incidents, it is the claimant's case that he was detained unlawfully and that the subsequent criminal proceedings instituted against him were malicious. The motivation for his treatment by the police is set out in paragraph 18 of the Particulars of Claim and amplified in the judgment of the court below following evidence from the claimant on the point. The claimant claims that the police have repeatedly and deliberately abused their powers to his detriment in retaliation for his providing assistance to his friend Mr Burns in respect of a complaint lodged against the North Yorkshire Police with the Independent Police Complaints Commission (IPCC). The Burns complaint related to damage from repeated police raids on Mr Burns' property, damage caused to Mr Burns' property and the return of property belonging to Mr Burns' father. In the Particulars of Claim, the claimant states that the defendant has attempted to shut down the claimant's complaint by various unlawful means which were instigated by the same officer, DCI Fincham. The abuse included unlawful local investigations all of which heavily involved DCI Fincham. The claimant has been successful in a number of challenges arising from this abuse and he has instituted separate civil proceedings in which he is claiming just under £100,000. The claimant asserts that the motive for the incidents which are central to this claim

was the defendant's intention to intimidate him generally and prevent him from pursuing his civil litigation. At the centre of the abuse is DCI Fincham who has featured heavily in the claimant's submissions over the past two days.

3. The claimant informed the Recorder that he believed that the defendant had subjected him to covert surveillance which had extended to the monitoring of his own and his parents' communication suppliers. Again, the person underlying this process is DCI Fincham. The extent of the operation has taken such a toll upon the claimant that he was forced to leave this country and claim asylum in Sweden. He told the Recorder that he spent a period of time detained in refugee camp in Sweden. The claimant has exhausted his remedies in respect of this surveillance although he remains dissatisfied with the outcome.
4. As the claimant has been reminded, for the grant of permission, I must be satisfied that the ground has a real prospect of success or that there is some other compelling reason for my granting permission. At the outset of the hearing, I reminded the claimant that an appeal was a review of the hearing below and not a rehearing, and an appeal will only be allowed if the judge is satisfied that it is wrong or unjust because of some serious procedural or other irregularity.

The Judgment Below

5. Before dealing with the grounds of appeal, I set out below the central conclusions of the Recorder and her reasoning. At paragraph 22 of her judgment, she set out the issues which she had to determine, and it is not suggested by the applicant that her list was anything other than accurate and comprehensive. She identified the issues for her determination as follows:
 - i) Was the claimant falsely imprisoned on 11 October 2014?
 - ii) Has the claimant proved trespass or conversion in respect of the events of 11 October 2014?
 - iii) Has the claimant proved that he was maliciously prosecuted following the incidents on 11 October and 29 October 2014?

- iv) Has the claimant proved misfeasance in public office in respect of the events of 29 October 2014?
 - v) Has the claimant proved that the defendant has engaged in a course of conduct that amounts to harassment under s.2 of the Protection of Harassment Act 1997?
 - vi) Finally, has the claimant established any breach of his rights under the European Convention on Human Rights/the Human Rights Act?
6. In her comprehensive judgment, the Recorder set out the elements of each of the causes of action in respect of which she had to be satisfied. I pause to note that the claimant accepts that the Recorder directed herself correctly as to the legal ingredients of each cause of action.
7. The first incident giving rise to this claim took place on 11 October 2014 when the claimant was stopped whilst driving his private hire vehicle, a blue Vauxhall Astra. The Recorder set out the facts as she found them to be at paragraph 17 of her judgment, noting that there was very little dispute concerning what happened. 11 October 2014 was a York Race Day and so a temporary “Road Closed” sign had been positioned from 4pm creating a one-way system near the entrance to the racecourse and preventing traffic from entering Campleshon Road at the junction with the County Stand. PC Gatecliffe was on uniformed duty at the closure sign on a bicycle. The claimant was seen by PC Gatecliffe to drive his car down the road which had been closed and PC Gatecliffe followed him on his bicycle. The interaction between the claimant and PC Gatecliffe was captured on body worn footage. The claimant was questioned about why he had not observed the road closed sign, he was cautioned and told that he was not under arrest. The claimant then drove off. PC Gatecliffe followed the claimant and removed the keys from the ignition, informing the claimant that he should pull up further down the road so that he could speak with him about motoring offences and to provide details. His keys having been returned and having pulled over in a safe place, the claimant was asked to provide his name, address, and date of birth. The claimant was later informed that he would be the subject of proceedings for failure to comply with a traffic sign.

8. The Recorder heard evidence from PC Gatecliffe who she found to be a “straightforward, no-nonsense witness” She found him to be an obviously experienced officer who was “clearly doing his best to remember events and report them accurately.” She accepted his evidence that he had removed the ignition keys because he was concerned that the claimant would try to drive away again and that if he did so he may risk the safety of road users, in particular pedestrians, given the road conditions on a race day. She accepted his evidence that the claimant’s behaviour in driving off had made him suspicious that the car may have been stolen or not licensed and that that such conversation as had taken place before the removal of the keys had been too short for PC Gatecliffe to have obtained the necessary identification details. She found that PC Gatecliffe’s action in removing the ignition keys was reasonable in the circumstances in the prevention of the commission of crime and in the exercise of his powers under section 3 Criminal Law Act 1967. She found that there had been no unlawful detention and no unlawful interference with goods.

9. In respect of the claim for malicious prosecution arising from the incident on 11 October 2014, the Recorder heard evidence from John Halstead, a retired Detective Chief Inspector who was the civilian member of staff who made the decision to prosecute the claimant for the offence of failing to observe and comply with a road traffic signal. She found Mr Halstead to be a “credible and straightforward” witness whose evidence she accepted in its entirety. She accepted that he was working as the Dedicated Decision Maker and Court Presentation Officer, that he had reviewed the evidence including the body worn footage and had applied the two-stage test for prosecution. She accepted that he was following an expedited process whereby he might be required to review up to 60 or more decisions in one day. Mr Halstead had agreed that the charge sheet did not bear his name but that of the head of department, Ms Jane Took. However, he said that Ms Took had taken no part in the decision to prosecute and that all documents which resulted in a postal requisition bore her name and signature. The Recorder accepted that Mr Halstead was the person who made the decision to prosecute the claimant and that the different signature on the postal requisition was a matter of to do with administration and not substance. The Recorder found no evidence that Mr Halstead was part of any orchestrated campaign against the claimant. She accepted that he did not know the claimant, or PC Gatecliffe or DCI Fincham.

10. The Recorder found that there was reasonable and probable cause to prosecute the claimant and that there was no evidence of malice or bad faith on the part of Mr Halstead. She accepted his evidence that he did not know DCI Fincham and that he made the decision to prosecute on the basis of the material which was before him and applying his training. On this basis she dismissed the claim for malicious prosecution.
11. The second incident took place on 29 October 2014. On this occasion, the claimant was seen by PC Marshall to be driving at a speed of 40 or 50 mph on his approach to a roundabout at Heslington Lane. PC Marshall became suspicious and followed the car. As the car slowed down through a chicane, PC Marshall could see that the driver was not wearing a seatbelt. When questioned about the seatbelt, the claimant became argumentative and defensive and aggressive. It was common ground between the parties that the claimant was then unlawfully detained in the back of PC Marshall's police van and wrongly subjected to an interview.
12. The Recorder found that PC Marshall had no prior knowledge of the claimant or his car and that the only reason why PC Marshall had stopped the claimant's car was because of the speed at which he had seen it travelling. She accepted that PC Marshall genuinely believed that the claimant was not wearing a seat belt and that this belief was both honest and reasonably held. She found that the conversation between PC Marshall and the claimant became heated when the claimant insisted that he was exempt from wearing a seatbelt and that the motivation for detaining the claimant in the van was because of a threatened breach of the peace. She found no ulterior motive for PC Marshall's actions and that the only discussion which took place in the van concerned the wearing of a seatbelt. She concluded that whilst PC Marshall was an experienced officer he had not known that, by escorting the claimant to the van and interviewing him there, he was doing anything unlawful. She found that he was dealing with a dynamic situation and that the claimant's response to the situation was challenging. She found that PC Marshall acted in the honest but mistaken belief that he had the power to detain the claimant in the circumstances. She went on: "*There is no evidence before me from which I could reach the conclusion that PC Marshall acted in bad faith in the sense of the exercise of public power for an improper or ulterior motive or that he acted knowing that he had no power to do the act*

complained of and that the act would probably injure the claimant.” She rejected the claim for misfeasance in public office on the part of PC Marshall.

13. She rejected the claim for malicious prosecution arising from the events of 29 October 2014. She heard evidence from Ms Hayley Jameson who was the Dedicated Decision Maker and Court Presentation Officer. The Recorder found her to be a straightforward, consistent, and credible witness. She gave considered answers to all the questions put to her and had been prepared to agree with Mr Leighton on some points. Ms Jameson said that she made the decision to prosecute the Claimant for not wearing a seatbelt as required under Regulation 5(1) (a) of the Motor Vehicles (wearing seatbelts) Regulations 1993 contrary to the provisions of the Road Traffic Act and Road Traffic Offenders Act on 29 October 2014. The Recorder found that Ms Jameson appeared to her to be very straightforward in accepting that she did not remember making the decision. She confirmed that she did not know PC Marshall or Mr Leighton. A number of points had been put to Ms Jameson in cross examination by the claimant and the responses provided by Ms Jameson were set out in the judgment.
14. The Recorder concluded at paragraphs 131, 133 and 134 of the judgment that she did not accept the claimant’s case that Ms Jameson was a dishonest and unreliable witness. The Recorder stated her conclusion that Mrs Jameson was “*being asked to recall one charging decision, made over eight years ago when she was relatively new to her role. I find that Ms Jameson gave her evidence in an honest and very straightforward way and did her best to answer Mr Leighton’s questions. Mr Leighton referred Ms Jameson to documentation and codes that she had not seen before. I accept her evidence that she had not been trained that they applied to her decision making. I accept the entirety of Ms Jameson’s evidence.*” The Recorder was satisfied that Ms Jameson had no knowledge of DCI Fincham and was acting alone when she made her decision to prosecute the claimant. She accepted Ms Jameson’s evidence as to how she was trained to take decisions and which codes of practice she had been trained to follow. She said that the claimant had not satisfied her that there was no reasonable and probable cause for his prosecution. She found that there were sufficient grounds on the information before Ms Jameson to believe that the claimant was probably guilty of an offence and that this was sufficient. Ms Jameson had not

tested the full strength of the defence, but she was not required to do so. She accepted that Ms Jameson had no knowledge of the contents of the complaint against PC Marshall and that Ms Jameson had been entitled to accept the evidence before her at face value.

15. The Recorder went on to consider the claimant's case on malice. She found no evidence to support the claimant's case that there was either a direct or indirect link between DCI Fincham and Ms Jameson. She referred to the circumstantial evidence relied upon by the claimant but concluded that it was too remote for her to be able to infer that the motive underlying the decision to prosecute the claimant was to intimidate him. She set out that she remained "*unclear how Mr Leighton suggests that DCI Fincham being the real actor behind the decision to maliciously prosecute him, exerted any influence over Mrs Jameson whom I have found to be the decision maker.*"
16. The Recorder addressed the claim in harassment in paragraphs 137 to 154 of her judgment. She found the claim to be fundamentally misconceived for a number of reasons, stating that the actions said to amount to harassment (including those involving PC Gatecliffe, PC Marshall, Mr Halstead, and Ms Jameson) had been taken for the purpose of preventing or detecting crime. She dismissed the claim for damages under the ECHR on the basis that they had not been sufficiently articulated by the claimant. The claimant had informed her that he had had insufficient time to formulate his claim but had declined to take the additional time offered him in order to explain his arguments.

The Appeal

17. There are four overlapping grounds of appeal. The claimant alleges that the Recorder failed to give sufficient reasons (or any reasons) in respect of a number of aspects of his claims. He alleges that the Recorder made a number of errors of law and a number of errors of fact and that her conduct of the trial was unfair. He also appeals against the costs order which was made following the trial.
18. I deal with the claimant's major grounds of appeal below. For the avoidance of doubt I have considered all of his grounds and points (those made in writing and in his oral submissions) and find that none of those grounds or points carry a realistic prospect of

success or demonstrate a proper basis for the grant of permission. I start by considering the alleged failure by the Recorder to give reasons, or sufficient reasons for her findings. I pause to note however that it is difficult to deal with the grounds discretely and under particular labels. The grounds at times merge and allegations of insufficiency of reasons morph into errors of law or fact: what are labelled by the claimant as reasons failures may be better described as an alleged error of law or fact.

Ground One: Reasons

19. It is common ground between the parties that the Recorder had a duty to give reasons for reaching her decisions in relation to disputed matters of fact and law and that the extent of the duty or the “reach of what is required to fulfil it” depends upon the subject matter. As the court stated in *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, in giving reasons the judge does not have to deal with every argument presented by either side nor does the judge need to explain every factor relevant to the appraisal of the evidence.
20. The claimant is correct in stating that, in respect of some of the points which were advanced at trial, the Recorder declined to make findings one way or the other. However, as she stated, this was because those findings would not have been material to the issues before her. For example, in respect of the claims for malicious prosecution, the Recorder focussed upon the salient elements of the tort and correctly identified that a large number of the points made by the claimant alleged procedural irregularities, but that procedural irregularity was not an element of the tort. Those asserted irregularities included (for example) the alleged failure to obtain written consent for the prosecution; an alleged breach of CPR 7.4(3)(c) requiring the person who authorised the prosecution to identify themselves on the postal requisition; a failure by the prosecution to certify that the disclosure obligations had been adhered to and the incomplete nature of, and the question mark over the authorship of, the MG6 forms.
21. The Recorder declined to make findings as to whether there had been procedural irregularities. She explained that this was because they were not material to the decision which she had to make as to whether there was reasonable and probable cause for the prosecutions and, if so, whether there was any evidence that either of the

prosecutions were motivated by malice. She set out at paragraph 91 that she had accepted the evidence of Mr Halstead and that she was entirely satisfied that he was not part of any campaign orchestrated by DCI Fincham against the claimant. She set out in paragraph 131 to 135 why she rejected the claim for malicious prosecution arising from the second incident. She accepted the evidence of Ms Jameson in its entirety noting that Mrs Jameson was being referred to documents which she had not seen before and that she had not been trained that they applied to her decision-making.

22. Having reviewed the judgment and considered the claimant's submissions I am satisfied that the judge reached conclusions on the salient issues and provided sufficient explanation for her underlying reasoning. I make the following observations.

- i) The Recorder set out the reasons for her findings that there had been no unlawful detention of the claimant by PC Gatecliffe on 11 October 2014. She accepted his evidence that the keys were removed from the ignition because, on the basis of the claimant's previous conduct, he honestly believed that the claimant's actions may risk the safety of pedestrians. She addressed and dismissed the claimant's submission that PC Gatecliffe's questions amounted to a voluntary interview requiring compliance with Code C of the Police and Criminal Evidence Act 1984 at paragraph 44 of her judgment. Even if the Recorder was wrong to categorise the preliminary questions of PC Gatecliffe as something other than an interview, I accept Mr Thomas's point that it would have had no bearing on the rest of her judgment. The failure to caution the claimant may have given the appellant the opportunity to submit in subsequent criminal proceedings that the evidence should have been excluded and a decision might have to be made by the court under s.78 of PACE, but I accept that such matters would not have materially affected Mr Halstead's decision.
- ii) The Recorder set out the reasons for her finding that PC Marshall had not acted in the knowledge that he had no power to detain and/or interview the claimant. She accepted his evidence. She found that it was a dynamic situation; the claimant had been argumentative and challenging, and that PC

Marshall honestly feared that there may be a breach of the peace by the claimant.

- iii) Central to the appeal from the Recorder's findings on malicious prosecution is the claimant's contention that the Recorder had been wrong to find that Mr Halstead and Ms Jameson were the prosecutors who had initiated the two sets of proceedings that the claimant submits were malicious. There is however no merit in the submission. The judge was correct to find, on the evidence before her, that Mr Halstead and Ms Jameson were the prosecutors in the sense that they "set the law in motion against the claimant." They both gave evidence that they made the decisions to prosecute the claimant and the judge accepted that evidence. Although the postal requisitions may have been authorised by another officer, the decision to charge an individual and the authorisation of the postal requisitions are distinct aspects of the charging process in s. 29 Criminal Justice Act 2003 (as it was then in force) and *Brown v DPP* [2019] 1WLR 4194 provides confirmation that it is the written charge which represents the commencement of criminal proceedings, not the postal requisition. There was therefore no error of law by the Recorder. Nor was there any failure to provide reasons nor error of law arising from the operation of s. 55 Road Traffic Offenders Act 1988 which only applies in circumstances in which a fixed penalty notice has been given to a person pursuant to s 54 of that Act. No such fixed penalty had been issued by PC Gatecliffe and, as the Recorder stated, the correct point in time at which to assess the commencement of proceedings is when that decision is taken. Therefore, as the Recorder remarked, "... *the steps PC Gatecliffe ought or ought not have taken do not assist me.*"
- iv) Nor do I find that there is any insufficiency of reasoning or other error by the Recorder in her conclusion that neither Mr Halstead nor Ms Jameson were influenced in their decision making by DCI Fincham. Both Mr Halstead and Ms Jameson stated that they did not know DCI Fincham (let alone that he had been involved directly or indirectly in their decision making). The Recorder heard the evidence of both witnesses and her conclusion that their evidence was reliable was a conclusion which she was entitled to reach. The MG6 form

for the offence of 11 October 2014 recorded that the claimant had instituted a complaint about the manner in which he had been dealt with by the police. Ms Jameson was asked about this entry but said that even if she had read that part of the MG6 it would not have influenced her approach. The Recorder accepted this evidence.

- v) The claimant submits that the judge ought to have dealt with his assertion that there had been a failure to comply with the disclosure certification regime required by the Criminal Procedure Investigations Act 1999 and the relevant code of practice. However, I accept the defendant's submission that this would not have had any material bearing on the approach by Mr Halstead and Ms Jameson when they were considering the twin questions of sufficiency of evidence to place before the court and the public interest in the prosecution.
- vi) The claimant submits that the Recorder ought to have grappled with question of the authorship of the two MG6 forms. The claimant submitted at trial that the second form could not have been written by PC Marshall because he asserted that he had not known of any complaint made by the claimant until 2019. This demonstrated, he argued, that PC Marshall must have been lying. It was his case that DCI Fincham had written up the entries on the MG6 forms. The Recorder dealt with this point finding that the circumstantial evidence that DCI Fincham was involved in the prosecution process was "far too vague" to support the allegations made by the claimant.
- vii) Part of the harassment claim concerned the allegation that in July 2012, Mr Brownridge, an investigator in the defendant's Professional Standards Unit, visited the claimant at his home and was threatening. The claimant has made a complaint to the IPCC concerning his conduct. The Recorder is criticised for failing to make a finding that Mr Brownridge and DCI Fincham knew each other and for failing to make findings concerning Mr Brownridge's conduct on that day. I find that the judge was perfectly entitled to reach the conclusion that she could not make a finding whether or not Mr Brownridge and Mr Fincham knew each other. Mr Brownridge's statement was served with a Civil Evidence Act Notice, and he had not addressed the question of his knowledge of DCI Fincham. The fact that they may have worked in the same department

does not in itself demonstrate that they knew or must have known each other. Nor was the Recorder required to make a finding concerning his conduct in July 2012. She did not hear from Mr Brownridge and was not required to accept any conclusions reached by the IPCC (or successor body) concerning the events of July 2012. She was therefore entitled to decline to make findings.

viii) I finally deal with the issue raised by the claimant in his oral submissions concerning the alleged failure by the police to review the merits of the first prosecution following the hearing at Northallerton Magistrates' Court. I accept the position adopted by the defendant that following that hearing any review of the prosecution would have had to have been undertaken by the Crown Prosecution Service and not by Mr Halstead. It may well have been the case that such a review would have been undertaken in conjunction with the police, but I accept Mr Thomas's submission in this regard that the decision would have been effectively one for the CPS and not for Mr Halstead.

23. In summary, there is no real prospect of the claimant succeeding on ground one. It was not incumbent on the Recorder to make findings on every alleged procedural irregularity, only those which were relevant to the issues which she had to determine. The findings which she made were sufficient.

Ground 2: Errors of Law

24. As to the alleged errors of law made by the Recorder, I can deal with them succinctly.

i) There was no error by the Recorder in her conclusion that the detention by PC Gatecliffe was a lawful exercise of his powers under s. 3 Criminal Law Act 1967 in circumstances in which he already believed that one offence had been committed and that pedestrians may be endangers in the event of the claimant driving off again. The common law power under s.3 is available even though no arrest has been made. The Recorder found that the provision of the claimant's taxi badge alone was insufficient evidence of the claimant's identity. In any event, it was plain from the transcript of the interaction between PC Gatecliffe and the claimant that he did not have the opportunity to examine the claimant's badge until after the claimant had pulled up in a safe

place at the side of the road. It was only at that point that the necessary details were provided by the claimant,

- ii) The Recorder did not make an error of law in failing to find that there was a second unlawful detention by PC Gatecliffe. The claimant was required to remain with the car whilst the police officer had a reasonable opportunity to exercise his powers to check the details. The claimant was not detained by reason of his voluntary compliance with an instruction.
- iii) The Recorder was not wrong in concluding that the issuing of a postal requisition was an administrative rather than a judicial act. I accept the defendant's submission that the issuing of a postal requisition is an administrative process and different in nature from, for example, the issuing of a summons by a magistrate.
- iv) There was no error by the Recorder in her approach to the evidence of PC Marshall who stated that he detained the claimant because he feared that he may cause a breach of the peace. The Recorder accepted his account of the situation, and he described the claimant as being agitated and angry. The Recorder was entitled to find that his assessment of the situation was reasonable.
- v) The Recorder did not adopt a wrong approach to the body of material which the claimant referred to as secondary legislation. By secondary legislation, the claimant in fact meant the various Codes and Guidance available for those involved in the prosecution process. The Recorder considered the various alleged breaches of procedure and found that, even if made out, they did not demonstrate a lack of reasonable and probable cause in this case and I accept the defendant's submission that there was nothing in the alleged breaches of procedure which would have required the Recorder to find that the evidence of Mr Halstead and Ms Jameson was not reliable and honest.

Ground 3: Errors of Fact

- 25. The appellate court will only interfere with a finding on the facts where, based on the totality the evidence, the appellate court is satisfied that the finding is plainly wrong

based on the totality of the evidence. A summary of the relevant principles is set out in *Staechelin & Ors v ACLBDD Holdings Ltd & Ors* [2019] EWCA Civ 817 at [29]-[39]. This application is not a rehearing. It is not an opportunity for the claimant to re-argue points that were argued at length before the trial judge. I am not satisfied that any of the challenges to findings of fact made by the Recorder have any prospect of success. Notwithstanding the claimant's detailed attention to the transcripts of the evidence and other documents, I find that his challenges do not undermine the Recorder's conclusions or reasoning. In particular they do not undermine her assessment of the credibility of Mr Halstead and Ms Jameson, nor do they undermine her acceptance of the evidence of PC Gatecliffe or PC Marshall's evidence. The judge had the benefit of seeing and hearing the witnesses, including searching cross examination. She found the defence witnesses to be truthful and honest if at times mistaken in their understanding of various procedures.

Ground 4: Fairness of the Trial

26. The Recorder was conspicuously fair in her treatment of the claimant at trial. The claimant made a lengthy opening address which formed part of his evidence in chief (in conjunction with his witness statement). The suggestion that there was an inequality of arms because the claimant's parents were unable to amplify their witness statements is quite wrong. The parents had provided witness statements which stood as their evidence, and they were not cross-examined. The officers were subjected to substantial challenge and the Recorder was generous in the amount of time she allowed the claimant in cross-examination. I accept that there the claimant was asked to move on in his questioning after it became clear that the witness was unable to provide a response, but this trial management was reasonable, particularly as I am informed that the matters were then dealt with in re-examination. I also accept that during the course of cross-examination some evidence emerged which had not been foreshadowed in witness statements. But this is not unusual. There are bound to be some details which emerge for the first-time during cross-examination. If the claimant had required time to deal with any new points, then he could have asked for time. I am not aware that any such request was made.
27. I am not satisfied that the claimant was placed at any disadvantage by reason of the defendant's pleadings. The claimant knew the nature of the defendant's case in

respect of each cause of action. He was aware, or ought to have been so, that he was required to prove (in respect of the claim for malicious prosecution) that there was no reasonable and probable cause for both prosecutions and that the prosecutions were malicious. He could not have been taken by surprise that he was required to prove these elements given the clear denial of liability in the Amended Defence.

28. I deal finally with the Recorder's decision on costs. Putting it shortly the determination on costs was if anything generous to the claimant. The Recorder required the claimant to bear only 85% of the trial costs in spite of the fact that he lost on every point which was in issue at the trial. Any arguments concerning the quantum of costs can be taken up by the claimant on detailed assessment. But it seems to me that the order for costs which was made by the judge was just and proportionate and, in the circumstances, generous to the claimant.
29. For the reasons set out above the application for permission to appeal is refused.

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