

IN THE CARDIFF COUNTY COURT

**CASE NO.BS 614159-MC65
CF101741
CF204141**

BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF SOUTH WALES POLICE

Defendant

DEFENDANT'S SKELETON ARGUMENT

INTRODUCTION

1. The purpose of this Skeleton Argument is two-fold, namely;
 - a. to identify the relevant law in respect of some of the more common heads of claim advanced by Mr Kirk¹, and at the same time bringing to the Court's attention some of the more recent authorities in respect of those matters; and
 - b. to set out, in general terms, the Defendant's response to the particular allegations made by Mr Kirk, where possible, identifying some of the more relevant documents which may assist the Court in reading into this case.

2. Necessarily, in view of the fact that Mr Kirk is pursuing allegations in respect of so many different incidents, and where some of those incidents raise more than one cause of action, the Defendant in this Skeleton Argument cannot hope to cover all the points of law which might arise during the course of the trial. We intend to do no more than

¹ The Claimant will be referred to as "Mr Kirk" in this Skeleton Argument for ease of reference.

highlight the more important points, leaving our final submissions until after all the evidence is in. Further, whilst we would hope to identify the more important pieces of evidence and the documents of the greatest relevance, we do not purport to identify every piece of evidence which supports the Defendant's case, nor to go through and highlight each document or each part of the document which may be considered during the course of the evidence. All these matters must necessarily wait until the evidence is given.

3. Further, we do not intend to deal with the issue of damages. There are so many different permutations as regards the decisions the Court may make on the issues of liability in respect of the individual claims made by Mr Kirk, that no meaningful submissions can be made on quantum until after the judgment on liability.
4. Subject to these limitations, we intend to deal with unlawful arrest and false imprisonment, malicious prosecution and misfeasance in a public office. This Skeleton Argument must be read with the Skeleton Argument already filed on behalf of the Defendant which deals with the preliminary points of law, insofar as those matters have not already been resolved in favour of the Defendant.

FALSE ARREST

5. It is for Mr Kirk to establish that, on the date and in the circumstances pleaded in the Particulars of Claim, he was in fact detained by the police. Once that is established to the Court's satisfaction, it is for the police to justify that detention, both in terms of the initial arrest, and thereafter any continued detention which takes place.
6. For the most part, the arrests complained of by Mr Kirk are said by the various police officers to have been carried out by virtue of their powers under Section 24 of the **Police and Criminal Evidence Act 1984** ("**PACE**"), namely in respect of arrestable offences where the arresting officer has reasonable cause to suspect that an arrestable offence had

been committed, and further, he had reasonable cause to suspect that Mr Kirk had committed that offence. The exceptions to this are where the officer has exercised his power under Section 25 of PACE. In this part of the Skeleton Argument we intend to deal with the exercise of powers of arrest under Section 24.

7. It is trite law that the burden of establishing a reasonable suspicion involves a very low threshold, see Hussein v Chong Fook Kam (1970) AC 942, where Lord Devlin stated that:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: ‘I suspect but I cannot prove’. Suspicion arises at or near the starting point of the investigation of which the obtaining of prima facie proof is at the end. When such proof is obtained, the police case is complete; it is ready for trial and passes on to the next stage”.

8. For examples of the very limited burden placed upon the police in this regard, see the cases of Chief Constable of West Yorkshire v Armstrong [2008] EWCA Civ 1582 and Alford v Chief Constable of Cambridgeshire [2009] EWCA Civ 100, together with the decisions set out at paragraphs 5-071 to 5-074 of **Civil Actions against the Police** (3rd edition), in particular, the cases of Ward v Chief Constable of Avon and Somerset, Mulvaney v Chief Constable of Cheshire and Ball v Chief Constable of Sussex and Castorina v Chief Constable of Surrey.
9. In considering the reasonableness of the suspicion, once there is sufficient material to support such a suspicion, there is no obligation on the arresting officer to carry out any further enquiries at that stage, see the cases of Mulvaney and Castorina. Thus, even though further enquiries could have been made, which might have suggested to the officer that no offence had been committed, that does not of itself undermine the reasonableness of the suspicion as at that time.

10. Further, arresting a person with a view to interviewing them, even before any investigation has been fully carried out, is a perfectly legitimate tool for the police to use, see **Mohammed-Holgate v Duke** (1984) GB 209, followed and applied in **Cumming v Chief Constable of Northumbria Police** [2003] EWCA Civ 1844.
11. In considering whether or not the arresting officer had reasonable grounds to suspect, both in relation to whether or not an offence has been committed or as to the person who may have committed that offence, the Court has to have regard as to what was in the mind of that particular officer. What may have been known by some other officer is, for the most part, irrelevant. Further, the Court is concerned with what that officer suspected, not what was in fact the truth. The fact subsequently, that what the officer suspected is shown to have been untrue, or not capable of proof, does not in any way invalidate the decision as at the time of the arrest. Finally, the arresting officer is entitled to rely upon what he/she has been told by another officer. The fact that that information is wrong or mistaken does not necessarily invalidate the arresting officer's decision. These propositions can be found in **O'Hara v Chief Constable of The Royal Ulster Constabulary** (1997) AC 286 and **Alford v Chief Constable of Cambridgeshire** [2009] EWCA Civ 100.
12. It is difficult at present to know what, if any, points will be taken in regard to the decisions or judgment of the various custody officers and any reviewing officers. The matter will have to be considered in the light of the evidence given and such challenges as are made by Mr Kirk. For the present, it is sufficient to note that for the decision of a custody sergeant to detain Mr Kirk in custody to be shown to be incorrect, or for the decision of the reviewing officer to be challenged, the Claimant would have to establish that the custody officer/reviewing officer's decision was "Wednesbury" unreasonable, see **Wilding v Chief Constable of Lancashire**, noted at paragraph 5-145 of **Civil Actions Against the Police**, a decision followed and applied in **Taylor v Chief Constable of**

Thames Valley Police (2004) 1 WLR 3155 and then again Al-Fayed v Commissioner of Police for the Metropolis (2004) EWCA Civ 1579.

MALICIOUS PROSECUTION

13. There are five elements to this Tort, the burden of establishing which all fall upon the claimant, namely;
- a. there has been a prosecution which has caused him damage;
 - b. that the prosecution was instituted or continued by the defendant;
 - c. that the prosecution was terminated in his favour;
 - d. that the defendant acted without reasonable and probable cause;
 - and
 - e. that the defendant acted maliciously.

The authorities make it clear that the burden upon a claimant is a heavy and onerous one, not easily discharged. We do not intend to set out at length the law in relation to the first three elements, the issues thereby arising being relatively straightforward, but rather concentrate on the last two elements.

14. The usual explanation of "reasonable and probable cause", is that given by Hawkins J in Hicks v Faulkner (1881) 8 QBD 167 at 171 (approved by the House of Lords in Herniman v Smith (1938) AC 305;

"An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed".

15. This in turn appears to break down into four separate questions, not all of which will necessarily arise in each individual case. The first two questions are subjective and the second two are objective. The questions are:-

- a. Did the prosecutor have an honest belief in the guilt of the accused?
- b. Did the prosecutor have an honest conviction of the existence of the circumstances relied upon?
- c. Was this conviction based on reasonable grounds?
- d. Did the matters relied upon constitute reasonable and probable cause for the belief in the accused's guilt?

The first two questions are of course issues of fact to be decided on the evidence, whilst the last two questions are matters of law to be decided by the Judge upon that evidence.

16. It is clear that, in considering the strength of belief on the part of the prosecutor, it is not necessary for him to believe that the accused is guilty, or that he would probably be convicted. Rather, what has to be shown is that he believes that there is a *prima facie* case against the accused. As was stated by Dixon J, in the Australian case of **Commonwealth Life Assurance Society v Brain** (1935) 53 CLR 343 at 382, approved in **Glinski v Mclver** (1962) AC 726 at 766-767, the prosecutor must believe that "*...the probability of the accused's guilt is such that upon general grounds of justice a charge against him is warranted*". Clearly, the Court is concerned not with the facts as they actually existed at the time when the charge was preferred, but rather those "facts", which are actually known to the defendant, see **Herniman v Smith** at 315. Facts unknown to him at the time when the charges were preferred do not prevent the facts known to him constituting a reasonable and probable cause.
17. It is well established that want of reasonable and probable cause can never be inferred from malice. Thus, as was stated by Viscount Simonds in **Glinski v Mclver**, that "*even from the most express malice, want of probable cause, of which honest belief is an ingredient, is not to be inferred*". He went on to state that "*the importance of observing this rule cannot be exaggerated*".

18. When considering whether or not a claimant has established malice, the Court is not concerned with whether the proceedings were initiated because of spite or hatred, but merely whether there was a "wrongful motive" in pursuing the matter. It is wrongful to intend to use legal process for something other than its legally appointed and appropriate purpose. As was stated by Alderson B in **Stevens v Midland Counties Railway** (1854) 10 EX 352 at 356:

"Any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice, is a malicious motive on the part of the person who acts in that way".

19. Insofar as the Court has to consider a prosecutor whose motives are mixed, then the prosecution will not be malicious unless the prosecutor's predominant motive is something other than the interests of justice. Thus, the mere fact that a prosecutor may personally dislike the claimant will only render the prosecution malicious if the claimant can show that this was his main motive for bringing the prosecution.
20. If the evidence was equally consistent with malice and with the absence of malice, then the matter should be resolved in favour of the defendant. Further, negligence in the investigation of the material leading up to the preferring of the charge, cannot justify an inference of malice, see **Thacker v Crown Prosecution Service** The Times, December 29, 1997.

MISFEASANCE IN A PUBLIC OFFICE

21. The leading case on this area of the law is still **Three Rivers District Council v Bank of England (No.3)** (2003) 23 AC 1. In order to succeed in an action for misfeasance, a claimant must establish that:
- a. A public officer;
 - b. Has exercised or failed to exercise a power as a public officer;
 - c. Maliciously;

- d. Causing damage to the claimant of a type which was foreseen by the defendant.
22. This matter is only relevant to the second action, since it is only in respect of that action that claims in misfeasance in a public office have been advanced.
23. Clearly, a police officer is a public officer for the purposes of this tort.
24. The exercise or non-exercise of a power must involve an actual decision on the officer's part, liability does not arise simply if injury suffered by mere inadvertence or oversight, see **Three Rivers** at 228 and 230. It has been held that misfeasance by omission requires a prior duty to act, thus Lord Millett in **Three Rivers**, at page 237 stated:

"Failure to act can amount to misfeasance in a public office only where

- i) the circumstances are such that the decision whether to act can only be exercised in one way so that there is effectively a duty to act;*
- ii) the official appreciates this but nevertheless makes a conscious decision not to act; and*
- iii) he does so with intent to injure the plaintiff or in the knowledge that such injury will be the natural and probable consequence of his failure to act".*

In any event, the relevant act or omission must itself be unlawful either because there is no power to act or because the officer has acted in excess of his powers or because he has acted for an improper purpose, see **Three Rivers** at 230.

25. It appears to be clear that malice for the purposes of misfeasance, is not necessarily the same as malice for the purposes of malicious prosecution. Thus, it is clear that a claim for misfeasance cannot be founded on an allegation amounting merely to negligence or, in administrative law, to irrationality. It has been suggested that the issue of

malice is best considered in one of two ways, namely as either "targeted malice" or "untargeted malice". There is considerable law as to how these two approaches are to be adopted, and the requisite elements established. It is perhaps best not to consider this until after the evidence of Mr Kirk has been given. It is a matter to which the Defendant may have to return in final submissions. The point can legitimately be made however, that the authorities and various commentaries on this cause of action emphasise the great difficulty of establishing malice. According to the authors of **Civil Actions against the Police**, Sweet & Maxwell, 3rd edition, they know of no such action which has ever succeeded against the police.

26. Finally, the claimant must establish that he has suffered damage. Specifically, he must show special damage, in the sense of loss or injury, which is specific to him and which has not been suffered in common with the public in general.
27. Further, it is not sufficient that the damage is reasonably foreseeable, the officer must himself have foreseen the probability of damage, or was reckless as to the likely harm to ensue, see **Three Rivers** at 195-196. It is thus necessary to prove actual foresight, it is not enough that he ought to have foreseen it, if he did not do so in fact.

ACTION 1 – PARAGRAPH 8.3

28. Mr Kirk's allegations and the Defendant's response are contained in Action 1, Vol 1, pages 1 to 3. This appears to be a claim for "unlawful stopping" (insofar as there is such an action) and malicious prosecution.
29. On the 2nd January 1993, PC Phillips was on motor patrol duty when he observed a Ford Escort motor car with a defective rear light. He required the vehicle to come to a halt using his powers under **s.163 of the Road Traffic Act 1988**. PC Phillips then issued Mr Kirk with a Vehicle Defect Rectification document in respect of the defective light, and in the absence of Mr Kirk being able to produce his driving documents, he

issued him with a HORT1 (see the Officer's statement and notebook at A1, Vol.1, pages 4 and 39). Subsequently, Mr Kirk produced his driving license to the Barry Police Station on 9th January 1993 (see statement of Clare Willis at A1, Vol.1, page 9 and HORT2 at page 15). Mr Kirk did not produce a certificate of insurance in respect of the vehicle nor an MOT certificate. Subsequently, on the 11th January 1993, Mr Kirk purported to produce an Insurance document in respect of the HORT1 issued by PC Phillips. The officer who noted the production of that document, PC Kirkpatrick, appears to have assumed it was an appropriate insurance document, although the HORT2 which he completed was in fact in respect of index number 43083, whereas, the HORT1 issued by PC Phillips was in respect of a vehicle, index number 54925 (see the HORT2 completed by Mr Kirkpatrick at A1. Vol.1, page 34). It might appear therefore, that Mr Kirk had not produced a relevant MOT certificate, nor insurance for the relevant vehicles. He was then summonsed in relation to those two offences, those summons having been issued on 17th February 1993 (see A1, Vol. 1, page 53).

30. It appears that Mr Kirk was served with the statements relied upon by the Prosecution (see A1. Vol.1, page 40), but that he subsequently failed to attend the Magistrates Court. He was then convicted in his absence on the 19th April 1993 (see various pages at A1. Vol. 1, pages 42, 43, 44). He was sentenced on 17th May 1993, when he was disqualified from driving.
31. It appears that Mr Kirk then made contact with the Clerks to the Justices, when he queried either his conviction and/or the disqualification (see the letter from the Clerk to the Justices, A1. Vol. 1, page 58 on 20th May 1993). He then put in a Notice of Appeal (A1. Vol.1, page 46).
32. It seems likely that Mr Kirk then in fact produced an insurance certificate which allowed him to drive the vehicle and that, having considered the matter, the CPS concluded that since the vehicle was registered in Guernsey, the MOT offence could "not be proved", (see the letter from

CPS on 2nd June 1993 at A1. Vol.1, page 60). The appeal was therefore not opposed. His convictions were overturned.

33. In the circumstances, the power to stop the vehicle was lawfully exercised and thereafter, on the information then known, there was not an absence of reasonable and probable cause. Further, there is no evidence of malice on the part of the Defendant's officers.

ACTION 1 – PARAGRAPH 8.5

34. Mr Kirk's allegations and the Defendant's response are contained in A1, Vol.1, pages 61 and 62. This appears to be an allegation of maliciously stopping Mr Kirk's motor vehicle and thereafter maliciously prosecuting him for driving with a bald tyre. The Defendant's case is that on the 24th March 1993, PS Lott was driving her police motorcar in Barry when she observed another car which appeared not to be displaying a vehicle excise license. She followed the car and then, when it came to a halt, went to speak to the driver, who subsequently was identified as Mr Kirk, (see the officer's statements, including Section 9 statement at A1. Vol.1, pages 64, 70 and 94). The officer observed that one of the tyres on the vehicle had insufficient tread. She issued an HORT1 (see the two versions of this document at pages 87 and 88). It appears that Mr Kirk subsequently produced his motoring documents (HORT2 at page 89), and that he was then prosecuted in respect of the offence in relation to the tyre (see the summons at page 96).
35. Mr Kirk appeared before the Vale of Glamorgan Magistrates Court where, having given evidence, he was convicted of the offence. He was subsequently sentenced on the 11th October 1993 when the Magistrates Court disqualified him from driving for 6 months (see page 110). It seems that subsequently the Magistrates set aside this sentence and adjourned the hearing to the 25th October 1993 (see page 114). In any event, Mr Kirk had already appealed conviction and sentence (see page 113). He was sentenced on 25th October 1993 (see page 110). His appeal came

on in the Crown Court, where he called a witness, Mr Scott. His appeal was allowed.

36. The Defendant denies the absence of reasonable and probable cause. In any event, there is no evidence to suggest malice on the part of the officer. It is noted that Mr Kirk has made numerous complaints about this incident (see the letters at pages 92, 93, 105 and 106) but has produced no evidence in support of his allegations.

ACTION 1 – PARAGRAPH 8.6

37. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol. 1, pages 119 to 121. The allegation appears to be that on a date in May 1993, the Defendant's officers unlawfully arrested Mr Kirk at Grand Avenue, Cardiff, and thereafter maliciously prosecuted him for various offences. The matters started when PS Thomas received a report of a fight occurring in Grand Avenue, Ely, Cardiff. Together with PC Beer, they made their way to Grand Avenue, but by the time they had arrived, any incident that had been taking place had come to an end. Whilst there however, they observed a large BMW motorcycle which had an unusual number plate and, apparently, no relevant vehicle excise license. PS Thomas was suspicious as to what that vehicle was doing parked on the street in Grand Avenue, particularly given its general condition.
38. The vehicle had panniers attached to it, and on a cursory examination, the officer noted a quantity of white powder within the panniers together with needles and syringes as well as an item, which the officer subsequently described as a garrotte, namely a length of wire attached at either end to wooden handles. Whilst the officer was investigating this motorcycle, he became aware of a man, subsequently identified as Mr Kirk, wearing a set of motorcycle leathers, who appeared to be watching what the officer was doing. In order to further his enquiries in relation to the vehicle, the officer approached Mr Kirk who then started to walk away from him.

39. The rather bizarre behaviour of Mr Kirk is described in detail in PS Thomas' first statement (statement commences at page 123, and the relevant parts at pages 125 to 128). At this time, all the officer wished to do was to make enquiries as to whether Mr Kirk was connected to the motorcycle, and if so, the background to the vehicle. Mr Kirk refused to answer any questions that were addressed to him, and indeed, failed to communicate at all to the officer. This increased the officer's suspicion that the vehicle was stolen. Eventually, after Mr Kirk tried to make off, there was a short struggle, following which the officer arrested Mr Kirk. He could have arrested him on suspicion of having committed an arrestable offence, namely theft, but he arrested him under the alternative powers of the general arrest condition under Section 25 of PACE, in that he had been unable to identify either a name or the address of the person he was dealing with.
40. Whilst this incident was taking place, a member of the public informed the officer that he thought Mr Kirk was connected with the nearby veterinary surgery. The officer had been unaware that there was such a veterinary surgery close by, and as a result of that information, he then went into the surgery and made enquiries. The woman within the surgery refused to answer any questions.
41. In any event, Mr Kirk and the motorcycle were taken to Fairwater Police Station. Once at the police station, Mr Kirk continued in his campaign of non-communication, refusing to disclose his name and address, and refusing to communicate in any way with the police (see the custody record, which commences at page 210).
42. Following enquiries carried out by PS Thomas, it became known to the police that the registration number of the motorcycle was most probably a Guernsey registration. Enquiries were therefore made with the island to identify the registered keeper of the vehicle. That person was identified as being a person living on Guernsey. Further enquiries were carried out, which culminated in Mr Kirk being interviewed by PS Thomas and DC Griffiths (notes of interview at page 158). Once again, during the

course of that interview, the officers were attempting to confirm whether or not Mr Kirk owned the motorcycle, if so, whether the vehicle was registered and as to the precise identity of Mr Kirk, including his residential address. The Duty Solicitor, who had been called to represent Mr Kirk, also appears to have attempted to persuade Mr Kirk to give the relevant information. The Court will need to consider the transcript since this identifies Mr Kirk's main complaint about the police, namely that he had been set up for this arrest, he having already made a complaint to the Barry Police Station that morning about police harassment. In addition it shows the rather convoluted way in which Mr Kirk responded to perfectly reasonable enquiries regarding the vehicle and himself.

43. Mr Kirk was detained in custody until he was charged, following which he was eventually produced before the Cardiff Magistrates the following day. They, having considered representations, including a lengthy speech from Mr Kirk, were themselves not satisfied as to his identity, as a result whereof, he was remanded in custody (see the letter of complaint of 9th September 1993 by Mr Kirk regarding the "conduct" of the Magistrates, page 289).
44. The charges that Mr Kirk had to face related to an assault on a police officer, namely the scuffle that had taken place between Mr Kirk and PS Thomas at the scene of his arrest and his possession of the garrotte (see the charges at pages 254/5). Eventually, the CPS decided not to pursue the matter.
45. Mr Kirk's conduct on this occasion was bizarre, both at the scene and subsequently at the police station. It is noteworthy that subsequently, when Mr Kirk was called upon to describe what had happened, he simply explained that he had been "walking through the park", when the police jumped on him (see, by way of example, the newspaper article at page 300). This hardly does justice to Mr Kirk's conduct which almost seems to have been designed to cause the police officer to become suspicious as to what he was doing. As can be seen at his interview, he refused to give

his name and address, and refused to answer any questions directed to him by the police officer.

46. In the circumstances, the Defendant would contend that PS Thomas was perfectly entitled to have a suspicion that the motorcycle had been stolen. He had attempted to explore that suspicion by questioning a man who seemed to be connected with the vehicle, and indeed was so connected, but Mr Kirk refused to answer any questions, and indeed continued to behave in a way almost designed to increase that suspicion. The arrest was lawful. Thereafter, his detention in custody was due to his own conduct in failing to answer relatively straightforward matters such as his name, address, ownership of the vehicle and whether or not the vehicle was properly taxed and insured. In any event, it is denied that the actions of the police were motivated by malice.

ACTION 1 – PARAGRAPH 8.7

47. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.2, pages 1 and 2. The allegation appears to be one of unlawful arrest together with malicious prosecution for failing to produce documents. Mr Kirk was stopped by PC Rogers, at about 11pm on 23rd June 1993, whilst he was driving a Ford Escort motor car. The officer stopped him because he was not displaying a rear light (see the officer's statement at A1. Vol. 2, page 4 and his notebook at page 24). Mr Kirk identified the owner/keeper of the vehicle as Kirsty Webb. The officer did not arrest Mr Kirk. He was issued with a HORT1, and told that he might be reported if he failed to produce the documents. Mr Kirk did produce the relevant documents on 21st July 1993, which was outside the relevant period.
48. So far as the Defendant is aware, there was thereafter no prosecution of Mr Kirk. On the 21st September 1993, the Administrative Support Unit wrote to Mr Kirk querying the existence of a driving license in respect of that same incident (see page 23). The Defendant can find no evidence of

any summons or charges issued against Mr Kirk. He has produced no documents to establish that a prosecution had taken place.

49. In the circumstances, there was no arrest and, so it would appear, no prosecution. If there was a prosecution, and it was withdrawn as alleged, then it is denied that there was any malice.

ACTION 1 – PARAGRAPH 8.9

50. Mr Kirk's allegations and the Defendant's response are set out in A1, Vol. 2, pages 28 and 29. The claim appears to be one of "unlawful stopping", and malicious prosecution. The charge is said to have been one of driving "without a license".
51. On the evening of 22nd September 1993, PC Hillman was on motor patrol duty in the village of St. Nicholas, Vale of Glamorgan, when he observed a Triumph Spitfire motor car being driven along the A48. It appeared not to be displaying a tax disc.
52. The officer caused the vehicle to come to a halt and spoke to the driver, Mr Kirk. Mr Kirk informed him, by way of explanation, that he had just purchased the vehicle. The officer issued him with an HORT1 and required him to produce his documents. Mr Kirk did produce his documents, but not within the 7 days required. It appears that Mr Kirk deliberately produces his documents late (see top of page 50).
53. Subsequently, in circumstances which will be considered in regard to other incidents, Mr Kirk attended Barry Police Station on 4th October 1993. Whilst there he was seen by PC Hillman, who had been informed that Mr Kirk was a disqualified driver and that he had been disqualified at the time when PC Hillman had stopped him on 22nd September 1993. The information regarding the fact that Mr Kirk was disqualified was apparently given by another officer and was confirmed by the Police National Computer, PNC.

54. This disqualification related to an appearance at the Barry Magistrates Court on 24th May 1993, when he had been disqualified for 6 months. The fact of the disqualification was recorded on the PNC (page 108). It appears however, that having been disqualified, Mr Kirk put in a Notice of Appeal and had the disqualification suspended (see page 71). Thereafter his appeal was successful. The suspension and appeal was only brought to the attention of the PNC on 5th October 1993 (see page 116). The PNC was then amended (see page A1, Vol 3, page 113). PC Hillman did not know that the disqualification had been suspended and then overturned on appeal. He was relying upon, and was entitled to rely upon, the information given to him by the other officer, supported as it was by the entry on the PNC.
55. In any event, having received this information, PC Hillman informed Mr Kirk that he would be reported for the offence of driving whilst disqualified. If, contrary to his recollection, PC Hillman did charge Mr Kirk, then the Defendant will contend that the officer was entitled to rely on information which had been given to him by another officer, namely that at the material time Mr Kirk had been disqualified from driving, that information apparently having been confirmed by the PNC. We deal later with the evidence as to whether, notwithstanding the entry on the PNC, the police, ought to have known that the disqualification had been suspended and then overturned. Mr Kirk was not prosecuted for the late disclosure of his driving documents (see page 42).

ACTION 1 – PARAGRAPH 8.11

56. Mr Kirk's allegations and the Defendant's defence are set out at A1. Vol.2, pages 55 and 66. This appears to be an allegation of unlawful arrest, and malicious prosecution for the offence of driving whilst disqualified. The background to this matter is set out in the lengthy statement of PS Booker (in particular in his statement at page 58, thereafter his additional statement at page 68 and his notebook at page 87). PS Booker was aware of Mr Kirk, having previously dealt with him

as a complainant regarding persons squatting at his property in Llantwit Major. Subsequently, as a result of receiving other information regarding Mr Kirk, he looked up his entry on the PNC. He there discovered that Mr Kirk was a disqualified driver, having apparently been disqualified from driving for 6 months on the 24th May 1993 by the Barry Magistrates Court (see the relevant entry on the PNC at page 108).

57. So it was that when PS Booker saw Mr Kirk riding his motorcycle on the afternoon of 3rd October 1993, he concluded that Mr Kirk was driving whilst disqualified. He tried to pursue Mr Kirk and although he had some difficulty, he eventually managed to bring him to a halt. A discussion took place when PS Booker told Mr Kirk that he believed he was disqualified from driving. Mr Kirk denied being a disqualified driver and denied having ever attended Barry Magistrates Court. The officer tried to do another check on the PNC, but whilst he was doing so, Mr Kirk attempted to walk off. The officer then arrested Mr Kirk.
58. After some difficulty, Mr Kirk was taken to Barry Police Station where his detention was authorised to enable him to be charged. In the light of Mr Kirk's denial that he had been disqualified from driving, the officer made checks at the Collator's office in Barry (see paragraph 17 and 18 at page 65). There was nothing there to suggest that Mr Kirk was not disqualified from driving. Eventually, the officer charged Mr Kirk in respect of driving whilst disqualified in relation to that incident on the 3rd October 1993, together with a previous incident on 1st October 1993. At the material time, the entry on the PNC recorded the fact of the disqualification (see page 108).
59. It subsequently transpired, that the disqualification imposed on the 24th May 1993 had initially been suspended (see page 71 for the conviction and the sentence of disqualification as well as its subsequent suspension), and thereafter had been the subject of a successful appeal on 3rd June 1993. This was eventually notified to the PNC on 5th October 1993 (see page 116). The PNC was then amended (see A1, Vol.3, page 113). The conviction and disqualification were in fact imposed in respect

of the matter at paragraph 8.3 hereof. The Court is referred again to the statement of PS Booker regarding his enquiries and the statement from Inspector Rice (at page 82). It appears that the fact of disqualification was passed on to the police so that the appropriate entry could be made in the PNC, but there is no evidence that either the suspension of disqualification or the subsequent successful appeal were notified to the police or to the PNC so as to allow appropriate entries to be made on the PNC. It will be recollected that the CPS decided not to oppose the Appeal. There is no record that they notified the police of that fact.

60. In the circumstances, the Court is concerned with the state of mind of the arresting officer, in this case PS Booker; the Defendant contends that the officer was entitled to rely upon the information available to him and on that basis, he had reasonable cause to suspect, and did suspect, that an arrestable offence had been committed. Thereafter, he had sufficient justification to prefer charges against Mr Kirk (contained at page 126). In any event, the Defendant will contend that the Claimant will fail to establish malice on the part of PS Booker.

ACTION 1 – PARAGRAPH 8.12

61. Mr Kirk's complaints and the Defendant's response are set out in A1. Vol.3, pages 1 to 3. Although Mr Kirk's pleading refers to a number of malicious prosecutions, two of them are actually dealt with elsewhere in the pleadings, namely at paragraphs 8.9 and 8.10. The particular matter that the Court is concerned with relates to Mr Kirk's arrest and detention on 4th October 1993. In respect of that matter, there is an allegation that, firstly he was unlawfully arrested for "driving" (which is understood to mean an allegation of driving whilst disqualified), along with other offences, and that secondly, he was then maliciously prosecuted for driving whilst disqualified and driving without due care and attention.
62. This matter starts on the morning of the 4th October 1993, when Mr Kirk attended the Barry Police Station to present his motoring documents, having previously been issued with a HORT1. He did produce an MOT

certificate, but, as noted by PC Reid in the HORT2 (page 109), he failed to produce his driving license or any evidence of insurance. As he was leaving the police station, he specifically drew the officer's attention to the fact that he was about to go out of the police station and get into a motor van and drive off. The fact that he used those words was confirmed by Mr Kirk when his appeal against conviction in the Magistrates was heard by His Honour Judge Evans QC, together with Justices, on the 24th May 1995 (transcript of the judgment is on page 325, with the Judge's references to the evidence at pages 330 and 331). The transcript merits careful consideration by this Court.

63. At this time, the police at Barry Police Station believed that Mr Kirk was disqualified from driving, having been disqualified for 6 months from 24th May 1993. The officers on duty that morning, including in particular, PC Kerslake, were also aware that Mr Kirk had been dealt with the previous day by PS Booker for driving whilst disqualified. This information, coupled with the rather cryptic comment made by Mr Kirk as he left the police station raised a suspicion (and in the judgment of HH Judge Evans QC, was entitled to raise a suspicion – see page 330 at letters E-H), that Mr Kirk was a disqualified driver. That being so, Officers Kerslake and Hill got into a police vehicle and started to follow Mr Kirk, with a view to bringing him to a halt.
64. What then happened is described in detail by PC Kerslake (see pages 24 to 26). In effect, Mr Kirk drove round and round a roundabout stopping and starting, carrying out U-turns in the road and generally causing considerable inconvenience and hazard to other road traffic. Eventually, his motor car was brought to a halt, whereupon he was arrested by PC Hill for driving whilst disqualified. He was taken to the police station where his detention was authorised. Checks were made at the station which confirmed he was recorded on the PNC as disqualified (see PC Kerslake's letter at 110). Having been charged with the offence of driving whilst disqualified, driving without due care and attention and failing to stop, he was remanded in custody to be produced at the Barry

Magistrates Court, the relevant Custody Sergeant, PS Howley, being concerned that if he was released on bail by the police, there was a risk to the public that he would attempt to drive whilst disqualified and therefore uninsured. Eventually, he was granted bail by the Magistrates later that day.

65. Subsequently, it was discovered that the entry on the PNC had not been amended to record the fact that the disqualification had initially been suspended and thereafter overturned. When it was discovered, the charge of driving whilst disqualified was not pursued. The charges of driving without due care and attention and of failing to stop were however pursued to the Magistrates Court. The memorandum of conviction records the fact that Mr Kirk was convicted of those two offences, and subsequently he was disqualified from driving for 6 months, although once again Mr Kirk had the disqualification suspended pending appeal, (see page 129). Mr Kirk sought to challenge those convictions, firstly by way of judicial review, on the basis that he was not present at the time of that hearing and the hearing should therefore have been adjourned and then by way of appeal to the Crown Court. The application for judicial review failed. The appeal to the Crown Court eventually came on for hearing before HH Judge Evans QC and Justices on 24th May 1995. The appeal was unsuccessful both as to conviction and sentence (see a copy of the Order at page 376).
66. In relation to this particular matter therefore, insofar as Mr Kirk makes any complaint regarding being arrested for and thereafter charged with, the offence of driving without due care and attention, then he has no ground for complaint, since he has been convicted of that offence, and notwithstanding an appeal, he remains convicted of that offence. In relation to the arrest for driving whilst disqualified and the initial charge in respect of that offence, the Defendant will say that on the basis of the information known to the officers at the time, there were reasonable grounds to suspect that he had committed the relevant offence. In the alternative, there is no evidence of malice on the part of the officers.

ACTION 1 – PARAGRAPH 8.13

67. Mr Kirk's allegations and the Defendant's response are set out at A1. Vol.4, pages 1 and 2. The allegation is that, having reported his motorcycle stolen, the police at some unidentified time recovered the motorcycle and thereafter failed to notify him of that fact. He then discovered it had been recovered by a third party, who, in his further and better particulars (page 37), he identifies as a policeman. He says that he was eventually able to trace the vehicle to a recovery garage at Cardiff Road, Barry.
68. The Defendant accepts that a complaint was made by Mr Kirk that his motorcycle had been stolen, to PC Driscoll on the morning of 16th October 1993 (see his statement and notebook at pages 4 and 16). PC Driscoll carried out an appropriate investigation, calling for the Scenes of Crime officers to attend and thereafter making an appropriate entry on the PNC by way of a report to the PNC (see page 24). In addition, an entry was made in a book kept at Barry Police Station, known as the stolen vehicles book (see page 22). Finally, PC Driscoll prepared a crime report (see page 19).
69. The Defendant has no evidence that the motorcycle was ever recovered, whether by the police or by anyone else. No entry has been made in the stolen vehicles book to record the fact that the motorcycle was recovered. Inspector Griffiths, who, in 1996 was called upon to investigate some of the allegations made by Mr Kirk, found that the PNC still listed the motorcycle as a stolen vehicle. In the circumstances, the Defendant does not accept the factual basis of this claim.
70. In any event, it is denied that on the facts alone, even if established, there would be any duty of care owed by the Defendant to the Claimant. It is denied that the police can be treated as a bailee, properly so called since, if they had recovered the vehicle, they would not be voluntarily accepting the duty of any bailee, but rather acting upon a statutory

obligation to recover the vehicle. Insofar as they were acting as bailees, it is denied that they had any duty of care to inform Mr Kirk of the recovery of that vehicle, or at least, any duty that was susceptible to a claim of negligence.

ACTION 1 – PARAGRAPH 8.14

71. Mr Kirk's allegations and the Defendant's response are set out at A1.Vol 4 pages 26 and 27. The allegation appears to be one that, having been lawfully stopped, he was then required to produce his motoring documents, which he did at Barry Police Station (according to the Further and Better Particulars, possibly at Canton Police Station), and that notwithstanding the production of those documents, he was charged with failing to produce documents. The Further and Better Particulars suggest he was not charged, but was rather dealt with by way of a summons. The information provided by Mr Kirk is contradictory as to the circumstances in which he was stopped, the officer who was alleged to have stopped him, where documents were produced and how his case was dealt with.
72. The Defendant has no record at all relating to this incident. Inspector Griffiths, who has attempted to carry out an investigation in this matter, has found no record of production of documents during the relevant period of time, nor has he found any evidence of any summons having been issued in respect of this matter.
73. The burden is upon Mr Kirk to establish that this incident took place. Insofar as he does satisfy the Court, then the Defendant would contend that there is no evidence of any malice in respect of the issue of summonses in this case.

ACTION 1 – PARAGRAPH 8.15

74. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.4, pages 34 and 35. The allegation is one of unlawful arrest and

malicious prosecution. The background to this matter is that Mr Kirk appeared before the Barry Magistrates Court on 13th June 1994 when he was disqualified from driving for 6 months. It appears that, as frequently happens when Mr Kirk appears before the Magistrates and is convicted of a motoring offence, he sought to have the disqualification suspended, pending an appeal. The fact of the conviction and disqualification were entered on the PNC. At the material time, there was no entry on the PNC to indicate that the disqualification had been suspended. Nor, as the Court will observe hereafter, did Mr Kirk inform any of the officers that such disqualification as had been imposed, was suspended.

75. In any event, PC Kerslake was on duty at 8am on 9th August 1994, when he observed Mr Kirk driving a Spitfire Motorcar. The officer had previously been informed that Mr Kirk was disqualified from driving. He did a check on the PNC which confirmed the disqualification. He therefore activated a blue light and pursued Mr Kirk with a view to getting him to come to a halt. It took some time before Mr Kirk came to a halt, and when he did so, he got out of his car and walked away. Eventually, PC Kerslake arrested Mr Kirk for driving whilst disqualified. Mr Kirk was taken to Barry Police Station where he was presented to the then Custody Sergeant, Inspector Smith. What should have been a relatively short period of incarceration, whilst his charges were prepared and then preferred against him, turned into a detention of about 4 hours or so. When presented to the Custody Sergeant, Mr Kirk indicated that he wished to have the assistance of a Solicitor. He then stated that he wished to see a doctor, although he was unwilling to indicate precisely why. Thereafter, he went on to require sight of the Codes of Practice. All of these matters were dealt with, and the Duty Solicitor attended (see his attendance note at page 91), a doctor was called to examine him (see his statement at page 61) and the Codes of Practice were also provided to Mr Kirk.
76. Unfortunately, Mr Kirk was not co-operative with the Custody Sergeant, failing to provide him with various details, including in particular, his

address. His position appears to have been that, having provided his name and address on previous occasions, he was unwilling to do so again (see attendance note prepared by his own Solicitor). Various attempts were made to persuade him to provide his address, a necessary requirement for the Custody Sergeant before releasing Mr Kirk, if, for no other reason, so as to ensure that any summonses were properly served upon him. Inspector Smith attempted to persuade him to give his details, as did Acting Chief Inspector Davies and his own Solicitor. Eventually, after confirmation being received from his surgery, at Tynwydd Road, Barry, that documents could be served upon Mr Kirk at that address, and in light of the fact that Dr. Baig, Police Surgeon, indicated that Mr Kirk should attend hospital to have a twisted ankle treated, the Custody Sergeant eventually decided to bail him to his business address, rather than, as is usually the practice, his home address. During the course of his detention a further check was made on the PNC, which confirmed his disqualification. There was no record of the disqualification having been suspended. Additionally, when Mr Kirk was granted bail, he refused to leave his cell, as a result whereof officers had to forcibly remove him from his cell.

77. In the premises, the Defendant will contend that PC Kerslake was entitled to act upon the information that he had at the material time, namely that Mr Kirk was a disqualified driver. Nothing was said and produced at the time to undermine that belief in any way. Further, there was reasonable and probable cause to prefer a charge against Mr Kirk. In the alternative, there is no evidence of malice on the part of the various officers. On the contrary, as their statements and the custody record confirm, they made various attempts to comply with Mr Kirk's various requests as well as attempting to persuade him to provide details so that he could be bailed as soon as possible.

ACTION 1 – PARAGRAPH 8.16

78. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.4, pages 101 and 102. The allegation here is that on the 9th August 1994, Mr Kirk was unlawfully arrested and thereafter maliciously prosecuted for criminal damage. This incident follows on immediately from that contained in Paragraph 8.15. Having been released from custody, Mr Kirk set about retrieving his dog, which had been with him at the time of his initial arrest for driving whilst disqualified. He was apparently referred to the foyer to speak to the enquiry clerks, but he got tired of waiting to speak to one of them and therefore went to look for the dog himself (see his statement at page 147). It appears Mr Kirk made his way into the police car park at the rear of the police station, and then, as Inspector Davies was making his way out of a security door into the back yard, Mr Kirk barged past him and tried to make his way into the police station that way. He was warned by Inspector Davies that he was not allowed to come into that entrance, and that it was not a public entrance, and that area was to be kept secure. He was asked to leave. Mr Kirk demanded the return of his dog. He was told to go around to the front foyer where the matter would be sorted out. Mr Kirk refused to leave. Mr Kirk's conduct is described by Inspector Davies in his statement (see pages 106 to 108). Whilst this confrontation took place, PC Venners, who happened to be in the area, came to Inspector Davies' assistance, and together, after much difficulty, they were able to take Mr Kirk out of the corridor through the security doors and into the yard. Thereafter Mr Kirk continued to struggle; during the course of that struggle, he came into contact with a motorcar, causing the wing mirror to break and fall to the ground. At that point, he was arrested by Inspector Davies for criminal damage. In the premises, the arrest was entirely justified.

79. Mr Kirk was then taken back to the custody desk where he was detained in custody by the Custody Sergeant, Inspector Smith, who within a short time handed over to the following Custody Sergeant, now DI Kendall. In view of the fact that Mr Kirk had originally been released so as to enable him to go to hospital for treatment upon a twisted ankle, and the fact that, when contacted, Dr. Baig advised that Mr Kirk should receive treatment

as soon as possible, arrangements were made to take Mr Kirk to hospital in Barry. He was then returned to the police station. At about that same time, an examination of the wing mirror took place, which revealed that it could be put back together. This was therefore done, following which Mr Kirk was released from custody. Mr Kirk was not charged in relation to this matter, there is accordingly no possible claim for malicious prosecution.

ACTION 1 – PARAGRAPH 8.17

80. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.4, pages 152 and 153. Mr Kirk alleges that he was unlawfully arrested on 10th August 1994 and was thereafter maliciously charged with driving without insurance. This incident is connected to the events of the previous day, which are dealt with at Action 1, paragraph 8.15. On that day the custody officer had been Inspector Smith. On 10th August 1994, Inspector Smith was on motor patrol duty when he observed Mr Kirk driving his Spitfire motorcar. He had been informed the previous day that Mr Kirk was a disqualified driver. He therefore assumed that he was still a disqualified driver, and that he was committing an offence. He was accompanied by DC Francis who attempted to get Mr Kirk to stop. Notwithstanding the fact that Mr Kirk was apparently aware that a policeman was following him, and that the driver wanted him to stop, he drove off and played cat and mouse with the police, eventually coming to a halt outside his veterinary surgery. At that moment he was arrested by Inspector Smith for driving whilst disqualified. Mr Kirk was taken to the Barry Police Station where his detention was authorised by the Custody Officer, PS Goodman. On the front of the custody record PS Goodman records that a search was made on the PNC which confirmed that at that time Mr Kirk was a disqualified driver (see page 196). Arrangements were then made for Mr Kirk to be charged. During that period, however, DC Francis checked with the Barry Magistrates Court to confirm that Mr Kirk was in fact a disqualified driver. He obtained a certified copy of the conviction, which confirmed the conviction, but which also recorded the

fact that there had been an appeal against that conviction/sentence, as a result whereof, the sentence was suspended. DC Francis immediately arranged for Mr Kirk to be released.

81. At that stage he was released on bail whilst further enquiries could be made in relation to the disqualification. He was not charged with any offence in respect of this matter.
82. In the circumstances, the Defendant would contend that the officers were entitled to rely upon information they had received, including information contained on the PNC. Insofar as an error had been made, in that the PNC had not been altered to reflect the fact that the sentence had been suspended, there is no evidence that that was the fault of the police, as opposed to the fault of the Court Service or anyone else. In any event, there is no suggestion on the evidence that the relevant police officers who were involved in this incident were in any way at fault.

ACTION 1 – PARAGRAPH 8.18

83. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.5, pages 1 and 2. Mr Kirk alleges that the police failed to respond to complaints made to them on the 21st July 1995 to the effect that a Mr Stringer had attacked him and damaged his property at Tynewydd Road, Barry. It is agreed that PC Johnson attended the property in response to a radio call. When he arrived at the property, Mr Kirk complained to him that one of his tenants, a Mr Stringer - a man who was known to the police officer, having previously arrested him for being drunk and disorderly - had damaged his property. There was no complaint at that time of Mr Kirk having been assaulted. The officer, together with Mr Kirk, searched the property but were unable to find Mr Stringer. The impression gained by the officer was that Mr Kirk was more interested in Mr Stringer being removed from the property, rather than initiating any criminal proceedings. Later that day, the officer re-attended at Mr Kirk's surgery at 51 Tynewydd Road, Barry, but Mr Kirk was not present. The

officer left a message for Mr Kirk to contact him, but there was no further contact between Mr Kirk and the officer.

84. This is a case where the Defendant denies that any duty of care arises. If however, contrary to that assertion, the Court were to find that there was a duty of care, the Defendant will contend that the actions of PC Johnson were reasonable and appropriate in the circumstances.

ACTION 1 – PARAGRAPH 8.19

85. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.5, pages 34 and 35. Again this is an allegation that the police failed to take appropriate action, they having witnessed an assault by Mr Stringer on Mr Kirk on 23rd July 1995. It is agreed that PC James received a radio message to attend 52 Tynwydd Road, Barry on 23rd July 1995. When he attended he found signs of damage to the property. The officer saw Mr Stringer, a man known to him as a violent alcoholic, lying down on the settee. There were other people present, but not at that stage, Mr Kirk. After a brief conversation with Mr Stringer, the officer decided to search the property. He did so, finding signs of further damage, as well as observing the presence of a female who was also known to be an alcoholic.
86. Whilst present in the building, the officer heard Mr Kirk enter the property and start shouting at Mr Stringer. At this stage, the officer and Mr Stringer were upstairs. Mr Kirk came upstairs and continued shouting at Mr Stringer. The officer observed Mr Stringer lift a hand up to push Mr Kirk away, but as he did so, Mr Kirk stumbled backwards, hitting a wall and then falling down a short flight of steps. The officer pulled Mr Stringer away from Mr Kirk. The officer arranged for an ambulance to attend to take Mr Kirk to hospital. The officer then arrested Mr Stringer for assault, whereupon he was taken to Barry Police Station and detained in custody.
87. A Police Surgeon attended to examine Mr Stringer, who seemed to have a number of fresh wounds to his neck and hands. The surgeon advised

that Mr Stringer was not fit to be detained. Subsequently, Mr Stringer was interviewed about this matter on 13th December 1995.

88. As the Court will observe from PC James' statement, he made a number of attempts to try and obtain a statement from Mr Kirk, so that the prosecution of Mr Stringer could be taken further. Notwithstanding numerous attempts, he was unable to contact Mr Kirk, and Mr Kirk did not call into the police station to enable a statement to be made (see page 41 of the statement).
89. The Defendant denies that any duty of care arose in this particular case. In the alternative, insofar as the Court may conclude that there was a duty of care, the Defendant will contend that the officer acted in a reasonable and appropriate manner throughout.

ACTION 1 – PARAGRAPH 8.20

90. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.5, pages 62 and 63. Mr Kirk alleges that on the 24th July 1995 Mr Stringer attempted to gain access to his veterinary hospital by using a lump of wood. He says that the police refused to take any action to provide protection for Mr Kirk and his property. In his Further Particulars of the allegation, it is suggested that the staff had been told to call the police about the actions of Mr Stringer, they had done so, but there was no response. The police have no record of this incident. Inspector Griffiths carried out an investigation into this and other complaints, shortly after these allegations arose. He found no evidence of Mr Kirk reporting such an incident, whether on the police computer network, from the IRIS messenger service or by speaking to officers who were serving at the material time (see his statement at page 68, paragraph 9, although note typographical error, where he refers to 24.9.95, rather than 24.7.95). Statements have been obtained from PC Johnson and PC James, who previously dealt with Mr Kirk and Mr Stringer, but who say that they were not involved in any such incident on this date.

91. In the circumstances, it is for Mr Kirk to prove that the incident took place. The Defendant denies that any duty of care arises in this case. In any event, it is denied that there was any breach of such a duty.

ACTION 1 – PARAGRAPH 8.21

92. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol.5, pages 77 and 78. This paragraph contains two separate allegations, namely that on the 6th August 1995, Mr Stringer attacked an unidentified person and then on the following day he broke windows. It is said that the police were called but that they refused to take any action. The Court is referred to the two statements provided by Inspector Griffiths, which confirm that the police have no record in relation to these alleged incidents (pages 80 and 85). Statements have also been obtained from PC Johnson and PC James, the officers previously involved in disputes with Mr Kirk and Mr Stringer but who say that they were not involved in any such incident on this date.
93. The burden is upon Mr Kirk to satisfy the Court that these incidents took place in the way that he alleges. If the Court is so satisfied, then the Defendant will deny that in either case, a private duty of care arose which is susceptible to a claim for damages. In any event, it is denied that there was any breach of duty.

ACTION 1 – PARAGRAPH 8.23

94. Mr Kirk's complaints and the Defendant's response are set out at A1, Vol.5, at pages 97 to 99. In this matter, Mr Kirk alleges that he was stopped and detained by police officers in May 1995 and thereafter required to produce his driving documents. It is alleged that he did produce those documents, but that the Defendant nonetheless maliciously charged Mr Kirk for failing to produce his documents. He says he was found not guilty. In his Further and Better Particulars, Mr Kirk states that the officer who stopped him had an Irish name and that he was stopped on Llantwit Street.

95. Initially, the police could find no material in relation to this matter. The Court is referred to the statement of Inspector Griffiths, where he details the various enquiries he made, including examining the HORT2 books, computer records and the Barry Magistrates records (see page 101).
96. Subsequently, Mr Kirk produced a number of photographs taken of his vehicle, which he appeared to suggest were in some way connected with the incident when he was stopped and detained. A reference number on those photographs failed to advance Inspector Griffiths' enquiries, but a booking in receipt dated 15th May 1995, does identify two police officers, namely the officer in the case, SC Martin and the photographer, PC Wilson (the receipt is at page 110). On the basis of that document, the police were able to trace SC Martin and PC Wilson. The Court is invited to consider the statement of SC Martin, but in effect, she describes how she saw Mr Kirk's ambulance on the road, and noted that it had no tax disc. She entered Mr Kirk's veterinary surgery to speak to him, in order to question him about the vehicle. Mr Kirk refused to answer any questions, as a result whereof, she issued a HORT1. In order to avoid any suggestion that there was a tax disc attached to the vehicle or that Mr Kirk was not the owner of the vehicle, she arranged for the vehicle to be photographed. Photographs were taken by PC Wilson. The Court is referred to the statements made by those two officers (pages 113 and 121).
97. It will be noted by the Court that the incident described by SC Martin does not in fact correspond exactly to the allegation made by Mr Kirk. Either Mr Kirk's allegation is incorrect, and SC Martin is correct in her recollection as to what she did, in which case there was no stopping, no detaining and simply a request for documents, or alternatively, Mr Kirk is describing a completely different incident. In any event, Mr Kirk has not produced any documents to establish that he was in fact prosecuted for failing to produce his motoring documents.

98. In the premises, the Defendant contends that - the burden being upon Mr Kirk to establish the factual matrix in support of this claim - he has failed to do so. In the alternative, insofar as the incident is as described by SC Martin, then she was entitled to issue a HORT1. Further there is no evidence of any malice on the part of any police officer.

ACTION 1 – PARAGRAPH 8.26

99. Mr Kirk's allegations and the Defendant's response are set out at A1, Vol. 5 at pages 127 to 129. Mr Kirk alleges that he was arrested in June 1995 for an offence contrary to the **Protection Against Eviction Act 1977**. This is a claim solely for wrongful arrest. This is an interesting claim, since it amply illustrates how inaccurate Mr Kirk can be in his recollection of events. The Defendant had no record of any such incident. Inspector Griffiths was instructed to investigate this allegation, but found no evidence that there had been such an incident (see his statement at page 176). As the Court may recollect however, just before Christmas 2009, Mr Kirk produced a statement from Mr Gafael concerning an incident which took place in June 1995. This was not a document which had been disclosed by Mr Kirk previously, whether in his 52 lever arch files of disclosure, or in any other way. As a result of him disclosing this statement, the police were able to trace officers who had been involved with Mr Kirk in June 1995, as a result of which he was subsequently arrested in July 1995.
100. It appears Mr Gafael was a tenant of one of Mr Kirk's properties, when, as a result of a dispute between them, Mr Kirk barred the door to the flat, having already removed the possessions of Mr Gafael and his then girlfriend, Miss Genner, placing them outside the property. The overall effect of the statement from Mr Gafael, is that he subsequently discovered that items in his property were broken and/or missing, and that he was holding Mr Kirk responsible for this (see Mr Gafael's statement at page 137). As a result of receiving this statement, PC Roche, the officer in the case, decided that there was sufficient to raise a

suspicion of criminal damage. Arrangements were therefore made for Mr Kirk to surrender himself to Barry Police Station on the 3rd July 1995, where he was arrested by PC Manders, who had received information in relation to the offence from Cardiff Officers, most likely PC Roche. PC Roche then immediately attended Barry Police Station where, following an interview, Mr Kirk was released. In total, he was in custody from 3.40pm until 5.28pm.

101. The Defendant would contend that if this is the incident about which Mr Kirk is making complaint in his pleadings, then there was more than reasonable suspicion to justify his arrest. He was dealt with speedily by the Custody Sergeant and thereafter by PC Roche.
102. As noted already, this incident is significant, in that firstly, it confirms the accuracy of Inspector Griffiths' statements when he records the efforts he made to trace some of the untraced incidents complained of by Mr Kirk. Further, it may assist the Court in assessing the accuracy of Mr Kirk's other complaints in relation to matters which are as yet untraced. It suggests that, at the very least, Mr Kirk's recollection of events can be materially inaccurate. Mr Kirk identified the wrong date, the wrong offence and that he was arrested by CID Officers or plain clothed officers. These various matters were repeated, not only in his original Particulars of Claim, but also in two sets of Further and Better Particulars.
103. Finally, although not formally part of the pleading, Mr Kirk has suggested that in some way, the actions of the police in relation to this were prompted by the fact that Mr Genner's father was a senior and then serving police officer. There is a statement from the former Chief Inspector Genner, dealing with his very limited involvement in this matter, such involvement being purely as a father, rather than as a serving police officer (see page 143).

ACTION 2

104. In Action 2, unlike in Actions 1 and 3, Mr Kirk makes an additional claim under the Protection from Harassment Act 1997. He appears to rely upon the same particulars to establish this cause of action as he does to establish the individual causes of action eg. false arrest, malicious prosecution etc. At present, it is unclear as to the extent to which, if at all, the pleading of a cause of action under the 1997 Act advances Mr Kirk's case. This matter will need to be considered after Mr Kirk has given his evidence. We do not intend to set out the law in relation to this element of the claim, in the light of these unfocussed allegations.

ACTION 2 – PARAGRAPH 2

105. Mr Kirk's allegations and the Defendant's response are contained in A2, vol.1 pages 1-4. Mr Kirk alleges that he was maliciously prosecuted for an offence under the **Prevention of Terrorism (Temporary Provisions) Act 1989** in respect of an incident said to have taken place in January/February 1995. Subsequently, Mr Kirk provided Further Particulars together with the Defendant's investigations indicated that this should have been a reference to matters which commenced in February 1996. Thereafter Mr Kirk, for the purposes of a case management conference, produced a document in which he summarised the incident and provided the date of 8th February 1996.
106. On 11th February 1996, DC Murphy, a Special Branch officer, received an anonymous telephone call that Mr Kirk had flown to Ireland in a private aeroplane without adhering to the appropriate procedures necessary for the flight. The officer made enquiries and found that no Special Branch light aircraft form had been submitted, that no flight plan had been submitted to Cardiff International Airport Air Traffic Control, and that, so far as he could tell, no permission had been given by a Special Branch officer for the flight to take place.

107. Enquiries appear to have been made with HM Customs officers, Immigration Control officers and Air Traffic Control as well as Special Branch officers. Statements were eventually obtained from these various persons, some of which are contained within the bundle (DC Gibbs, page 69; DC Cotter, page 90; DS McBride, page 91; Mr K. Howley, Senior Customs and Excise Officer, page 114; Mr R Sullivan, Immigration Officer, page 115; Mr S. Whitmarsh-Knight, Immigration Officer, page 118). In addition, although their statements are no longer available, it appears that other persons were also spoken to and eventually gave evidence in respect of this matter, including a Miss Benstead and a Mr Walsh of National Air Traffic Services Ltd (see letter at page 133) and a Mr Meakin of that organisation, who checked the log books for any relevant entries for 8th and 9th February 1996 and discovered that there were none (see page 107).
108. DC Murphy interviewed Mr Kirk on 13th April 1996 when, apart from admitting that he was the owner of the aircraft G-ARSW, Mr Kirk declined to answer any questions until he had had legal advice. He was re-interviewed on 16th April 1996, when he admitted that he had flown from a field at Colwinstone to an airfield near Dublin on 9th February 1996 (Summary of Interview at page 17). He claimed that he had obtained permission from a Special Branch officer on the day before he flew, but was unable to identify the officer that he spoke to or the time that the call was made. Subsequently DC Murphy prepared a file which was sent to the Crown Prosecution Service in London, following which an information was laid at the Vale of Glamorgan Magistrates Court in respect of an offence contrary to Schedule 5 of the **Prevention of Terrorism (Temporary Provisions) Act 1989**, although it appears to have been amended slightly (see page 85).
109. The matter came on for trial in May 1997, when a number of witnesses were called on behalf of the prosecution. DC Murphy was called to give evidence on behalf of the prosecution, but before he completed his evidence, the case had to be adjourned; it appears that during the

adjournment DC Murphy found a piece of paper upon which he had recorded the details and the name of the caller who had provided the “anonymous” information. Following the re-commencement of the trial, this was disclosed to the prosecutor, who appears to have disclosed a redacted version to the Court having blanked out the name of the caller. Mr Kirk sought to have sight of the original piece of paper. The Court was minded to grant that application, as a result whereof, the prosecutor, in order to protect the identity of the caller, discontinued the proceedings (see letter from Court Clerk of 13th May 1997 confirming this outcome at page 137).

110. In the premises, the police had reasonable and probable cause in respect of the offence, and/or in the alternative, there was an absence of malice.

ACTION 2 – PARAGRAPH 3

111. Mr Kirk’s allegations and the Defendant’s response are contained at A2, vol. 1, pages 138 to 140. Mr Kirk alleges that he was maliciously prosecuted. This matter relates to an incident which took place on 12th May 1996. On that date, PC Stephens was on motorcycle duty, shepherding a group of cyclists taking part in a charity cycle run along the B4265 road near Gilestone Cross, Vale of Glamorgan. Whilst carrying out his duties, he observed a Maestro motorcar following the cyclists, which overtook them in an impatient manner, and in so doing, crossed the solid white central line in the road, causing apparent difficulty both to a cyclist and to an oncoming vehicle.
112. The officer stopped the driver of the Maestro, who he discovered was Mr Kirk. The officer spoke to Mr Kirk regarding his driving, warned him that he would be reported for driving without due care and attention and issued him with an HORT1.
113. Subsequently, on 20th May 1996, Mr Kirk produced his driving license and MOT certificate at Canton Police Station (see HORT2 at page 159). Thereafter, and outside the 7 days allowed for the production of such

documents, Mr Kirk purported to produce the insurance certificate in respect of the Maestro vehicle at Canton Police Station, (see HORT2 at page 160). It is to be noted that it has been recorded that the insurance certificate was issued in respect of a vehicle index no. F118 NTP and not for the Maestro, which had an index no. D821 LNY. It is probable that the insurance certificate produced was similar to that contained in the bundle (at page 200), which names Mr Kirk as a policyholder in respect of vehicle index no. F118 NTP, but which also covers him for driving a motorcar "not belonging to him".

114. Subsequently, Mr Kirk was charged with an offence of driving without due care and attention, crossing a continuous white line, and driving without insurance. (The summonses are contained within the bundle at page 174, 176, and 177). Mr Kirk appeared at the Vale of Glamorgan Magistrates Court, Barry, on 13th September 1996, when he pleaded guilty to crossing the solid white line. He was convicted of the remaining two charges on 2nd December 1996 following a trial, and sentenced in respect of all three offences on that date. He sought to appeal his conviction and sentence in respect of the offence of driving with no insurance and driving without due care and attention. Further, although not formally part of his appeal, as will be detailed below, the Crown Court also allowed him to vacate his plea of guilty to crossing the solid white line.
115. Mr Kirk's appeal had a long and chequered history; eventually the matter came before His Honour Judge Jacobs on 4th and 5th November 1997. At that time, this appeal was joined with another appeal which forms the substance of the allegation at Action 2 paragraph 4. It appears that on 4th November 1997, Judge Jacobs considered the efficacy of Mr Kirk's arrangements for insurance, because on the following day (5th November), Mr Kirk's insurance brokers wrote to the Judge seeking to clarify the terms of Mr Kirk's insurance (see the letters at page 199 and 330). Presumably on the basis of these letters, when the matter came back before His Honour Judge Jacobs on 20th November 1997, probably

in the absence of Mr Kirk, the Judge allowed the appeal in part, in respect of the offence of driving with no insurance (see page 161), the prosecution having offered no evidence.

116. It may be that at that time, Mr Kirk produced the vehicle registration document in respect of the Maestro motorcar which revealed that the registered keeper was a "Janet Mary Kirk"; presumably the CPS equated "registered keeper" with "legal owner" and therefore accepted that Mr Kirk was insured to drive the vehicle under the terms of his policy.
117. The appeal in respect of the conviction for driving without due care and attention was eventually heard before His Honour Judge Gaskell on 6th February 1998, when that appeal was allowed. Further, although the Court had already determined the appeal in respect of driving with no insurance in Mr Kirk's favour on 20th November 1997, Judge Gaskell reconsidered that matter once again, allowing the appeal! (See the document at page 216 and in particular the "Reasons for Decision" at page 225.)
118. Further, having already permitted Mr Kirk to vacate his guilty plea (on a date unknown), the Court allowed consideration of the offence of crossing the solid white line. It is recorded (on pages 216 and 226) that Mr Kirk's appeal in respect of this offence was dismissed.
119. His Honour Judge Gaskell refused to award Mr Kirk the costs of the appeal, as a result whereof, Mr Kirk sought to require the Crown Court to state a case to the High Court. Judge Gaskell's response is contained in the bundle (at pages 220-222); this judgment merits careful consideration as it analyses the evidence which was given and the Court's findings of fact. In particular, having noted that the prosecution case was that Mr Kirk's driving had caused a hazard to an oncoming vehicle, as well as inconveniencing the cyclists, Judge Gaskell rejected that evidence, but nonetheless concluded that "...the police officer honestly believed that cyclists had been inconvenienced but was unsighted and could not see

around the vehicle which had been overtaken..." (page 221, at finding number 4).

120. In the premises, in respect of the offence of driving without due care and attention, the police, on the basis of PC Stephens' evidence (as contained within his section 9 statement at page 171) had reasonable and probable cause to lay the information. In the alternative, as found by Judge Gaskell, there was an absence of malice.
121. In respect of the offence of crossing the white line, insofar that it forms part of Mr Kirk's case, there is an extant conviction, by reason of which he is therefore prevented from seeking to go behind.²
122. The position in respect of the charge of driving without insurance is interesting; indeed, insurance, or the intricacies thereof, forms something of a recurring theme throughout Action 2. As the Court will see, the Crown Court on appeal, has queried the nature of the arrangements made by Mr Kirk for insuring himself when driving, and indeed, as Mr Kirk has conceded, he has deliberately obfuscated the true position. In respect of this particular offence, it is perhaps not surprising that the police were concerned as to whether Mr Kirk was in fact insured to drive this vehicle; a concern apparently shared by His Honour Judge Jacobs, and only resolved once Mr Kirk had produced letters from his insurance brokers, referred to above. In the circumstances, the police had reasonable and probable cause to lay the information and in the alternative, there was an absence of malice.

ACTION 2 – PARAGRAPH 4

123. Mr Kirk's allegations and the Defendant's response are contained in A2, vol.1 pages 236 – 239. Mr Kirk alleges that he was maliciously prosecuted in respect of a number of motoring offences, including driving without insurance, driving without an MOT certificate, failing to produce documents, driving without a seatbelt and defects in the vehicle.

² See our submissions on the preliminary issues of law in the skeleton argument.

124. This matter starts on 21st January 1997 when PC Roche, who was on motor patrol duty in Barry, observed a Ford Orion motorcar, index no. D535 MKR, the driver of which was not wearing a seatbelt. The officer stopped the vehicle and spoke to the driver, who was identified as Mr Kirk. The officer asked Mr Kirk whether the vehicle was his, to which he replied that it was. He also asked Mr Kirk whether the vehicle was registered to him, to which he replied "I've had it for 6 months". The officer carried out an examination of the vehicle and noted a number of defects, namely, a large crack in the windscreen, a broken rear bumper and a broken rear offside indicator lens. The officer informed Mr Kirk that these offences would be dealt with under the Vehicle Defect Rectification Scheme. The officer began to complete an HORT1/VDRS form. When asked for his date of birth, Mr Kirk simply replied "1, 2, 3, 4, 5". The officer was not happy that Mr Kirk was providing him with the necessary information, as a result whereof, he informed him that he would be reported in respect of various offences.
125. Summonses were issued in respect of 9 road traffic offences (the summonses are set out at pages 284 – 300). The proceedings were transferred from the Vale of Glamorgan Magistrates Court, Barry, to the Bridgend Magistrates Court, following an allegation by Mr Kirk that the Lay Justices were racists and therefore biased against English people.
126. Mr Kirk pleaded guilty on 19th September 1997 to the offences of failing to produce a certificate of insurance and driving a vehicle without an MOT certificate (see memoranda at pages 260-261).
127. Subsequently, he was convicted of a number of offences and then sentenced on 28th October 1997. The records reveal that he was found guilty of failing to produce his driving license, driving without insurance and three offences in respect of defects in the vehicle. The offence of not wearing a seatbelt was dismissed, no evidence having been offered. It appears that Mr Kirk produced a report from a Consultant Orthopaedic Surgeon justifying his failure to wear a seatbelt on medical grounds (see

page 280). (See copies of the records at pages 257-259; please note however, that there may have been further offences of which Mr Kirk was convicted, as the sheet containing offences nos. 3 and 4 is missing).

128. The most significant sentence which was passed was that in respect of driving without insurance, for which he was disqualified from driving for a period of 6 months. Mr Kirk sought to suspend that disqualification, but the Bridgend Magistrates Court refused (see page 257). Mr Kirk then sought to appeal/challenge the refusal of the magistrates to suspend the disqualification pending his appeal (See Mr Kirk's letter of 28th October 1997 at page 322).
129. Mr Kirk's position at that time was clarified in a letter from him to the Cardiff Crown Court on 29th October 1997 (page 324). At the same time, he made a vociferous complaint about the conduct of the Bridgend Magistrates, the Clerk to the Court and the prosecutor, in a letter of 30th October 1997 (page 327), alleging, *inter alia*, racial bias.
130. The application for suspension of the disqualification/appeal conviction was listed before His Honour Judge Jacobs on 4th and 5th November 1997, (see the Court list at page 353). It will be recollected that at the same time, Judge Jacobs was seized of the appeal in Action 2 – Paragraph 3, above.
131. The letters from the insurance brokers in respect of Mr Kirk's insurance arrangements were produced to the Court (see the documents at pages 199 and 330), following which, the CPS. decided not to oppose Mr Kirk's appeal in respect of that particular offence (see their letter of 18th November 1997 at page 350 – nb it refers to a hearing of 21st November 1997, this is a typographical error).
132. On the 20th November 1997 the appeal against conviction in respect of driving without insurance was allowed (page 357).
133. It appears that there was then a telephone conversation between Mr Kirk and Mr Williamson, Clerk to the Cardiff Crown Court, in which Mr Kirk

suggested that he had also appealed against his other convictions of 28th October 1997 (see page 359). Mr Williamson then wrote to Mr Kirk by letter of 25th November 1997 (page 360); Mr Kirk then sought to appeal out of time in respect of the offences of failing to produce his driving license, failing to produce an insurance certificate and the offences in respect of the vehicle defects (see pages 362-363).

134. Initially, the Recorder of the Crown Court was unwilling to make a decision on that issue, because at the same time as pursuing that appeal, Mr Kirk was also seeking to challenge the Magistrates' decisions by way of case stated (see letters from Mr Williamson of 27th November 1997 at page 364; 2nd December 1997 at page 367; 9th December 1997 at page 370 and 9th January 1998 at page 375.)
135. The application to state the case to the High Court is contained in the bundle at pages 377 – 378. That application was unsuccessful (see order sent to Mr Kirk on 13th February 1998, at page 383). Thereafter, on 18th February 1998, the Recorder permitted Mr Kirk to serve a Notice of Appeal out of time in respect of the three offences of defects on a vehicle and failing to produce a driving license (page 304). In that same letter, it was pointed out to Mr Kirk that he could only appeal the offences to which he had pleaded guilty, if he could establish that his pleas were equivocal.
136. The appeals came on for hearing before Mr Recorder Seys-Llewellyn, as he then was, on 14th May 1998 (see the letter of 19th May 1998 at page 394). The appeal being allowed in respect of the offences of failing to produce a driving license and the three offences of defects on a vehicle. It appears that Mr Kirk attempted to persuade the Court that his plea to failing to produce a certificate of insurance was equivocal, but this submission failed (see letter of 5th June 1998 at page 401).
137. It is unclear whether Mr Kirk sought to vacate his plea to the offence of driving without an MOT certificate; although it seems that this was not pursued by him.

138. In the premises, in respect of those matters for which Mr Kirk pleaded guilty, the Defendant relies upon those extant convictions. In respect of the offence of failing to wear a seatbelt, there seems to be little doubt that he was in fact not wearing a seatbelt, as he later produced medical justification for this.
139. In respect of the remaining four offences, which were the subject of a successful appeal, the Defendant relies upon the evidence of PC Roche (see his statement of evidence at page 241, and his section 9 statement at page 254). The Defendant contends that there was reasonable and probable cause to lay the information and/or that there was an absence of malice.

ACTION 2 – PARAGRAPH 5

140. Mr Kirk's allegations and the Defendant's response are at A2, vol. 2 pages 1 – 2. Mr Kirk alleges that having been served with a notice requiring him to identify a person driving a vehicle whilst exceeding the speed limit, he supplied that information and was thereafter prosecuted, notwithstanding the fact that the officers knew he was not the driver. The summons was then withdrawn.
141. In his Further and Better Particulars, Mr Kirk alleges that he identified the actual driver on 10th February 1998 by way of a "yellow form" sent to the Defendant's Central Ticket Office (Pleadings Bundle page 105).
142. By way of an aside, although not formally part of his complaint, when the summons was withdrawn on 1st June 1998, Mr Kirk alleges that he "arrested" the CPS representative for conspiracy, at the Vale of Glamorgan Magistrates Court, Barry.
143. Initially, the Defendant was unable to identify this incident (see statements of evidence of Inspectors Rice and Griffiths, pages 4 and 10 respectively); subsequently a statement has been obtained from PC Lovell, a traffic officer, who on 2nd October 1997 set up a speed detection

device at St Nicholas, Vale of Glamorgan at 12:50pm, the device registered a Maestro motorcar index no. D821 LNY, travelling at a speed of 44mph in a 30mph area (PC Lovell's statement of evidence is at page 13 and his proforma section 9 statement is at page 17). At the material time, Mr Kirk was the registered keeper of this vehicle.

144. Mr Kirk has consistently alleged that he informed the police on a number of occasions of the name and address of the driver (see by way of example, his unsigned and undated statement at page 19). The documents disclosed by Mr Kirk himself however, reveal a somewhat different picture. A Notice of Intended Prosecution was issued (see page 20) because there was then a conversation between Mr Kirk and a Mrs Morse of the Central Ticket Office, when Mr Kirk requested a copy of the photograph taken by the speed detection device (see letter confirming this conversation at page 21). A copy of the photograph was sent to Mr Kirk, who confirmed that he was not the driver, but stated that he was unable to confirm who the driver was.
145. By a letter of 21st January 1998, the officer in charge of the Central Ticket Office wrote to Mr Kirk informing him that the obligation was upon him to identify the driver. He was however, invited to attend the office to view the original photograph (see page 25). By a letter of 10th February 1998, Mr Kirk's Office Manager wrote to the police asking them to transfer the original to Barry Police Station for Mr Kirk to view it (page 26).
146. By a letter of 9th March 1998, the Office Manager was informed by the officer in charge that the photograph would not be transferred to Barry Police Station and that in the circumstances, Mr Kirk would be reported for failing to supply the name and address of the person suspected of committing the offence (page 27). By a letter of 10th March 1988 Mr Kirk informed the officer in charge that: "*One of my staff has suggested that the driver may have been a Mr K. Fairman of 52, Tynewydd Road, Barry*" (page 28). He once again asked for sight of the original photograph. By a letter of 25th March 1998 the officer in charge again notified Mr Kirk that

the burden was upon him to provide the name and address of the driver of the vehicle (page 34).

147. The following day, summonses were issued against Mr Kirk for speeding and alternatively, for failing to identify the driver of the vehicle (see pages 29 - 32).
148. Somewhat bizarrely, it appears that Mr Kirk attended Court on 27th April 1998 and pleaded guilty to the charge of speeding, but then mitigated on the basis that he was not the driver (pages 38 and 41). He was allowed to vacate his plea and the matter was set down for trial on 1st June 1998.
149. Following the adjournment the CPS. considered the evidence in the case and in view of the poor quality photograph, decided not to proceed with either charge (see letter pages 41 - 42). Mr Kirk was informed on the morning of 1st June 1998 that the charge was to be withdrawn.
150. In the circumstances, the Defendant's officers had reasonable and probable cause to prefer the two charges and/or there was a lack of malice.

ACTION 2 – PARAGRAPH 6

151. Mr Kirk's allegations and the Defendant's response are set out at A2, vol. 2, pages 43 and 44. Mr Kirk alleges that on 16th March 1998, having been stopped by PC Holmes in Southey Street, Barry, he was required to provide a breath sample, in respect of which, on proving positive, he was arrested. He claims that he was taken to Barry Police Station, where a further breath test proved negative, whereupon he was released. These events are said to have taken place at 1pm. He claims that his arrest was unlawful.
152. The Defendant has no evidence in relation to such an incident taking place at 1pm in the afternoon. There is however, material concerning an incident which took place at around midnight on the same date. Shortly before that time PS Greaves had observed Mr Kirk driving his Ford

ACTION 2 – PARAGRAPH 7

157. Mr Kirk's allegations and the Defendant's response are set out at A2, vol.2 pages 79-80. Mr Kirk alleges that on 4th July 1999 he was a passenger in his own light aircraft which was being piloted by a Mr Ashe, when he was harassed by a police helicopter which flew around it for a distance of some 5 miles.
158. The Defendant's primary case on this issue is that this allegation discloses no cause of action.
159. On 4th July 1999 PC Bracegirdle of the South and East Wales Air Support Unit, for whom the Defendant supplies some staff, received a call from Air Traffic Control ("ATC") at Cardiff International Airport requesting assistance in monitoring a light aircraft. ATC suspected that the aircraft, registered as G-KIRK, which was being flown in the Wenvoe area, and which was making its way towards St Donats, was being piloted by Mr Kirk. At the time they suspected that Mr Kirk had had his pilot's license revoked by the Civil Aviation Authority.
160. The police helicopter, piloted by Captain Moseley, accompanied by observers PC Walters and PC Hayes, responded at 5:30pm. By this time, ATC had directed the aircraft G-KIRK to fly round and round the Wenvoe mast. The observers noted that there were two occupants of the aircraft, namely the pilot (as yet unidentified) and a person sitting immediately behind him. The observers were unable to identify either the pilot or the passenger at that time. They used the helicopter-mounted video camera to attempt to film the occupants. At all times, Captain Moseley kept a safe distance between himself and the light aircraft, and in addition, the movements of the two aircraft were at all times monitored by ATC.
161. The light aircraft then made its way to its intended destination, namely a field at St Donats, Vale of Glamorgan, where it was seen to land and the two occupants alighted therefrom.

162. At about 4pm on 5th July 1999, Mr Kirk attended at the Cardiff heliport where he identified himself to PC Hayes as Mr Kirk and stated that he had been the passenger in the light aircraft the previous day. PC Hayes was able to confirm this fact from his observations.
163. Subsequently PC Hayes prepared a written report dated 21st July 1999 which he submitted to the Civil Aviation Authority (pages 97 – 98). Other contemporaneous documents are a flight log and incident log which commence at pages 88 and 90 respectively.
164. The Defendant contends that his officers acted reasonably and proportionately in dealing with a request for assistance from ATC concerning a matter of importance.

ACTION 2 – Paragraph 8

165. Mr Kirk's allegations and the Defendant's response are set out at A2, vol. 2 pages 112 – 116. Mr Kirk alleges that on 8th August 1999 he was unlawfully arrested for motoring offences and thereafter maliciously prosecuted in respect of those matters.
166. Just after 6pm on 8th August 1999, DS Biddle (née Brown) and SC Lewis were on motor patrol duty in Pontypridd Road, Barry, when they observed a Ford Escort motorcar, index no. J755 KGA accelerate through a red traffic light. They brought this vehicle to a halt, whereupon DS Biddle approached the vehicle to speak to the driver, who was Mr Kirk. As she was speaking to him, she noticed a smell of alcohol. As he got out of the vehicle he tripped, dropping his spectacles on the pavement. The officer told him that he had been stopped because he was driving in excess of the speed limit and that he had driven through a red traffic signal. Mr Kirk replied that he had not noticed the red traffic signal. The officer told him that because she suspected that he had committed those road traffic offences, she had power to require him to provide a specimen of breath. She asked him when he had last had a drink of alcohol, to which he replied "lunchtime". Mr Kirk provided a

specimen of breath which was positive. The officer arrested him on suspicion of driving a motor vehicle on a road when the proportion of alcohol in his breath exceeded the prescribed limit. He was then taken to Barry Police Station, arriving at 6:29pm. Having been told of the reasons for his arrest, PS Lott, the Custody Sergeant, authorised Mr Kirk's detention for the purposes of securing/preserving evidence, namely, for the carrying out of the breathalyser procedure.

167. The procedure was performed by PS Lott with Mr Kirk providing negative breath samples, ie. a zero alcohol reading, taken at 6:47pm. According to the proforma breathalyser procedure document prepared by PS Lott, the procedure commenced at 6:44pm and was completed shortly thereafter (see the readings and documents at pages 197 - 214).
168. DS Biddle then informed Mr Kirk that she intended to issue him with a HORT1 for him to produce his documents. Mr Kirk informed her that he would not be producing any documents. She informed him that he would be reported in respect of road traffic offences.
169. Subsequently, summonses were issued to Mr Kirk for the offences of failing to comply with a red traffic signal, using a motor vehicle when there was no certificate of insurance in force, using a motor vehicle when there was no MOT in force, and failing to produce an MOT certificate. He was convicted and sentenced in respect of all four matters by the Bridgend Magistrates Court on 23rd March 2000 (see pages 238 – 239).
170. Following his conviction, Mr Kirk wrote to the CPS. on 24th March 2000 (page 228) asking whether if he were now "to produce to you satisfactory proof of insurance and MOT for the day of the alleged offence" whether they would be minded to "*settle the matter in my favour without the need for lodging an appeal*".
171. This suggests that although Mr Kirk had evidence regarding the existence of an MOT certificate for the car and that he was insured to drive the vehicle, he had not produced them at the Magistrates' Court

hearing and had only offered to produce them to the prosecution after his conviction.

172. That offer presumably not being acceptable to the prosecution, by a letter of 6th April 2000, Mr Kirk sought to appeal against his convictions (see page 233). By a letter of 5th June 2000, Mr Kirk served upon the CPS. the MOT certificate and his insurance details in respect of the vehicle (page 242). It is to be noted that the insurance policy relied upon by Mr Kirk had been issued in respect of another vehicle index no. D816 BRF (page 255).
173. The appeal initially came on for hearing on 9th June 2000 before His Honour Judge Jacobs. Contained within the bundle is an attendance note most probably prepared by a representative of the CPS (at pages 260 – 261). As the Court will observe from the top of page 261, Mr Kirk was asserting that his mother owned the vehicle and that since this insurance policy, in line with other policies held by him, allowed him to drive other vehicles so long as he did not own them, he was therefore insured to drive this vehicle. The matter was adjourned apparently to allow further enquiries to be made regarding ownership of the vehicle. The CPS. presumably being satisfied on this point, decided not to resist the appeals in respect of no insurance and no MOT certificate, and offered no evidence in relation to the road traffic signal offence. This appears to have taken place on 8th September 2000 (see the Result Sheet and notification of fees at pages 262 and 263).
174. In the circumstances, the Defendant contends that DS Biddle had reasonable grounds to suspect that an arrestable offence had been committed by Mr Kirk. Thereafter, he was only detained in custody for such time as was necessary as to allow for the breathalyser procedure to be performed. Such procedure was carried out promptly following the authorisation of his detention.
175. Mr Kirk was then issued with a HORT1, but it seems that he failed to produce his certificate of insurance and MOT certificate, notwithstanding

the fact that those documents were available to him. The laying of the information by the Defendant's officers was entirely appropriate, there not being an absence of reasonable and probable cause.

176. In the alternative there was no malice on the part of the officers.

ACTION 2 – PARAGRAPH 9

177. Mr Kirk's allegations and the Defendant's response are set out at A2, Vol.3, pages 1 – 4. Mr Kirk alleges that on 1st December 1999, he was driving his BMW motorcar when he was required to stop by police officers who, having smashed one of his car windows, arrested him for failing to provide a breath sample. Mr Kirk alleges that there was "no good reason" for these actions, which is the nearest he comes to identifying a cause of action. It will be assumed that this is a claim for unlawful arrest. In addition, he alleges that he was wrongfully deprived of his car for a period of about 6 weeks.

178. In the late evening of the 1st December 1999 PC Kihlberg and PC Humphries were on motor patrol duty at Gilestone, Vale of Glamorgan, when they observed a BMW motorcar index no. FRU 206Y being driven along a road at speeds which they estimated to be well in excess of the speed limit. They pursued the car and eventually brought it to a halt. The driver of the BMW motorcar was Mr Kirk. The officers approached the car and attempted to speak to Mr Kirk, but he remained sitting in his car, ignoring the officers. The windows on the car were closed and all four doors were locked. PC Kihlberg banged on the windows in an attempt to gain the attention of Mr Kirk. After a few minutes, Mr Kirk reclined his seat a little and began to eat a sandwich. Thereafter, he closed his eyes and appeared to go to sleep. PC Humphries attempted to gain Mr Kirk's attention but was also unsuccessful.

179. The officers were concerned,, in view of the manner of his driving and his conduct at the scene, that he might have been driving under the influence of alcohol. They requested assistance from PS Bohun, who arrived

shortly afterwards with PC Holmes. Once again they attempted to gain Mr Kirk's attention, but he gave the appearance of being asleep.

180. PS Bohun then gave authority for one of the windows to be broken; Mr Kirk was warned that this would be done, but there was no response from him. The rear passenger door quarter-light was then broken eventually allowing PC Kihlberg to gain access to the front passenger seat. Once the officers had gained entry to the vehicle they could smell intoxicants. PC Kihlberg informed Mr Kirk that as a result of the manner of his driving and his subsequent behaviour, he suspected that he may have consumed alcohol. He required him to provide a specimen of breath.
181. Apart from shining a torch directly into the officer's face, Mr Kirk made no response. Further requests were made to provide a specimen of breath, to which he also made no response. He was then arrested by PC Kihlberg for failing to provide a roadside breath specimen. PS Bohun asked Mr Kirk for the keys to the motorcar so that it could be rendered safe; he also asked him what he would like done with the vehicle. Mr Kirk refused to answer. He was told that his car would be removed by a recovery company, for which Mr Kirk would have to pay.
182. He was taken to Fairwater Police Station, where his detention was authorised by PS Faulkener, in order to allow the breathalyser procedure to be completed. He arrived at the police station at 12:02 am; once again he failed to respond to any questions asked of him by the Custody Sergeant. The breathalyser procedure was then promptly conducted by PC Crabtree, having been completed by 12:41am. The readings on the machine were zero. During the course of this procedure, Mr Kirk told the officer that during the day he had been working with methylated spirits.
183. Mr Kirk was released from custody at 00:59 am, at which time he was informed by PC Kihlberg that his vehicle had been recovered by Tudor Motors of Ystradowen. Subsequently PC Kihlberg visited Mr Kirk and told him that he would be reported for the offence of failing to provide a specimen of breath.

184. We note that Mr Kirk makes no complaint of malicious prosecution in relation to the charge of failing to provide a specimen of breath. The allegation of unlawful arrest, however, necessarily is an attack upon the basis of the arrest, that being part and parcel of the matter for which he was charged, namely refusing to provide a specimen of breath.
185. For that reason, we will set out a brief history of the trials in relation to the charge; Mr Kirk was convicted of the charge by the Vale of Glamorgan magistrates on 4th December 2000. The magistrates produced written Justices' Reasons for their findings of guilt (see page 295). He was sentenced on 2nd January 2001, when he was disqualified for 6 months under the "totting-up" procedure, although the disqualification was suspended pending his appeal.
186. The history of the appeal in the Crown Court is long and convoluted (see the Court log at A2, Vol. 4, pages 78 - 79). In addition, there were a number of inter-related proceedings in the Administrative Court, challenging various decisions made by both the Magistrates' Court and the Crown Court. We will set out here a very brief synopsis, primarily dealing with matters in the Crown Court.
187. The Appeal came on for hearing before His Honour Judge Richards on 21st September 2001, when the Judge dismissed various applications/witness summonses issued by Mr Kirk. The matter then came on for trial before Mr Recorder Seys-Llewellyn, as he then was, on 24th September 2001, when Mr Kirk failed to attend. The Recorder dismissed the appeal (see the transcript of those proceedings at A2, Vol. 3, pages 160-166). Thereafter, the matter came back before Mr Recorder Seys-Llewellyn on 27th September 2001, when the Court considered letters written by Mr Kirk regarding the earlier dismissal of his appeal. Mr Kirk failed to attend this hearing. As will be apparent from the transcript of that hearing (at Vol.4, pages 1 – 18) the Recorder was concerned as to the manner in which the magistrates had sentenced Mr Kirk on 2nd January 2001, in that it appeared that errors may have been made by

that Court and other Courts in relation to the calculation of penalty points. He therefore gave Mr Kirk further time to apply to reinstate his appeal, as well as further suspending the disqualification until 4th October 2001.

188. The matter came on for hearing before His Honour Judge Jacobs on 4th October 2001, when further comments were made in relation to the calculation of penalty points. The Judge permitted Mr Kirk to reinstate his appeal in respect of sentence only (see transcript at A2., Vol.3, pages 167-170). The matter was adjourned to enable enquiries in relation to the penalty points calculations to be made. Eventually the matter came on for hearing before His Honour Judge Hickinbottom, as he was then, on 15th March 2002. His judgment, which dealt with appeals against sentence in both this case and another matter (which forms the substance of Action 2 – Paragraph 11), merits careful consideration (transcript of judgment, Vol. 4, page 81 - 92). In particular, this Court will note that when the matter came on for hearing before Mr Recorder Seys-Llewellyn on 24th and 27th September 2001, and again before His Honour Judge Jacobs on 24th October 2001, Mr Kirk had available to him a medical certificate which may have been sufficient to have excused his absence on 24th September 2001, but had consciously decided not to reveal it. Instead, he disclosed that document in February 2002, apparently as a device to force the Administrative Court to allow his conviction to be reviewed (see transcript of judgment at Vol. 4, pages 88 – 89).
189. This appears to be yet another example of Mr Kirk "playing games" with the legal system and either intentionally or coincidentally prolonging the proceedings. The conduct of Mr Kirk generally was the subject of adverse comment by His Honour Judge Jacobs at a hearing on 19th March 2002 (a part of the transcript of which is contained at Vol 4, page 62, paragraphs C – G). It will be noted that the Judge was concerned that the way in which Mr Kirk uses and/or insures vehicles was a device employed to avoid him insuring vehicles which he owned.
190. His Honour Judge Hickinbottom eventually allowed the appeal against sentence, albeit that, having re-calculated the penalty points on a correct

basis, he then disqualified him from driving for a period of 6 months (see order at Vol. 4 pages 94 – 95). It almost goes without saying that Mr Kirk attempted to judicially review the decision of Judge Hickinbottom, but that was unsuccessful.

191. In the circumstances, the Defendant contends that Mr Kirk is not allowed to challenge the lawfulness of his arrest, there being an existing conviction in respect of an offence which formed the basis for the officer's decision to arrest. That is, in order for the Court to find the offence proved, it had to be satisfied that the officer was reasonably entitled to request a specimen of breath and that that request had been refused without reasonable excuse. This is an instance therefore, where a lawful request and an unreasonable refusal form both the ingredients of the offence, and the enabling power to arrest. Accordingly, it follows that in challenging the lawfulness of the arrest Mr Kirk is in reality attempting to attack the conviction and thus go behind the judgment of the Lay Magistrates of 4th December 2000, which has been upheld by all subsequent Courts.
192. The Defendant's primary submission, therefore, is that this allegation by Mr Kirk should be summarily dismissed. In the alternative, insofar as the Court is persuaded that there are factual issues to be considered, the Defendant relies upon the statements of the various police officers and contends that the arrest was lawful.
193. In relation to the allegations concerning the motorcar (deprivation of use), the Defendant's primary submission is that no duty of care arises. In the alternative, the Defendant relies upon the evidence of PC Kihlberg, who made arrangements for the vehicle to be safely recovered and then notified Mr Kirk of its whereabouts.
194. In the further alternative, if the Court were to find that such a duty of care existed, there is no evidence of special damage in support of this head of claim.

ACTION 2 – PARAGRAPH 10

195. Mr Kirk's allegations and the Defendant's response are contained at A2, Vol. 5, pages 1 – 2. Mr Kirk alleges that he was unlawfully stopped whilst driving his motorcar and thereafter required to provide a breath sample.
196. In the late afternoon/evening of 23rd January 2000, PC Guest, was driving a marked police car along the A4232 road, when he saw a vehicle which was weaving in the road. He brought the vehicle to a halt with the intention of speaking to the driver. It was not his intention at that time to breathalyse him. The officer was entitled to bring the vehicle to a halt pursuant to his powers under s.163 of the **Road Traffic Act 1988**.
197. The officer approached the car and discovered the occupant to be Mr Kirk. Mr Kirk refused to get out of the vehicle and refused to lower his window to enable a conversation to take place. The officer noted however, that the rear nearside quarter-light of the car was broken. We can therefore surmise that this was the BMW motorcar that Mr Kirk had been driving at the time of the incident set out in Action 2 – Paragraph 9 above.
198. The officer tried to speak to Mr Kirk through the broken window, and at that time, he noticed a strong smell of intoxicants from within. The officer concluded that it would be appropriate to breathalyse Mr Kirk. He called for assistance, whereupon PC Wellbeloved attended. He was able to persuade Mr Kirk to get out of the vehicle and provide a specimen of breath. Mr Kirk provided a specimen which was negative, whereupon he was allowed to go on his way.
199. In the premises, Mr Kirk was neither arrested, detained nor charged in relation to any matter. He was required to halt in a lawful exercise of the officer's powers, thereafter he was lawfully required to provide a specimen of breath, the officer having a reasonable suspicion based upon the manner of driving taken together with the smell of intoxicants, pursuant to s.6 of the **Road Traffic Act 1988**.

ACTION 2 – PARAGRAPH 11

200. Mr Kirk's allegations and the Defendant's response are set out at A2, Vol. 5, pages 15 – 18. Mr Kirk alleges that on 5th April 2000 he was unlawfully arrested for failing to provide a specimen of breath and thereafter was maliciously prosecuted for driving without insurance, without an MOT certificate and failing to wear a seatbelt.
201. On the morning of 5th April 2000, Police Constables Osborne and Price were on duty in a marked police vehicle driving along Park Place, Cardiff, when they saw a motorcar coming towards them, index no. D793 TAV, in which the driver appeared not to be wearing a seat belt and also appeared to be using a mobile telephone. The officers turned their vehicle around and followed the car as it turned left into Stuttgarter Strasse. When the car came to a halt at a set of traffic lights, PC Price, who was in uniform, went up to the passenger side of the vehicle and knocked upon the passenger window in order to draw the attention of the driver, who was Mr Kirk. Mr Kirk looked at PC Price and then looked away. PC Price then walked around to the driver's window and knocked upon the same, whereupon Mr Kirk again looked at PC Price and again looked away. The traffic lights at the junction turned to green, at which point Mr Kirk drove off.
202. The horns on the marked police vehicle were activated and the headlights were flashed in order to get Mr Kirk to come to a halt, but he refused to do so. Mr Kirk continued to drive until he was held up by stationary traffic at another set of traffic lights; then with the assistance of another police vehicle, Mr Kirk's motorcar was blocked in.
203. PC Osborne approached the vehicle and attempted to open the driver's door, but it was locked. The officer knocked on the window to try to attract Mr Kirk's attention but he ignored him. The officer asked Mr Kirk to open the door, but he refused to do so. By this time, the officer suspected that Mr Kirk was under the influence of drink or drugs. He therefore used

his baton to break the rear passenger window on the vehicle and then opened the driver's door. Mr Kirk was then removed from the car and requested to provide a specimen of breath. Mr Kirk refused to acknowledge that request. He was then taken to the police vehicle, where a second request was made for him to provide a specimen of breath. He refused to comply and was therefore arrested for the offence of failing to provide a specimen of breath contrary to section 6 of the **Road Traffic Act 1988**.

204. Subsequently Mr Kirk pleaded guilty to the offence of failing to provide a specimen of breath. Notwithstanding numerous later attempts by Mr Kirk to vacate that plea, that conviction is extant. The Defendant therefore adopts the submissions in relation to the lawfulness of the arrest as have been advanced in regard to his previous arrest for failing to provide a specimen of breath on 1st December 1999, contained in Action 2 – Paragraph 9 above.
205. Briefly, the ingredients of the offence for which Mr Kirk was arrested, form the substance of the offence to which he has pleaded guilty. In the circumstances, the particulars of unlawfulness contained in paragraph 11.3 of the Particulars of Claim cannot be sustained.
206. To revert to the facts of this case; Mr Kirk was taken to Roath Police Station, and then, since he wished at that point to provide a specimen of breath, to Rhymney Police Station, to enable the breathalyser procedure to be carried out. As noted in the Custody Record, upon being transferred to Rhymney Police Station, Mr Kirk's behaviour was somewhat bizarre; sitting on the floor of the Custody Unit and refusing to answer any questions (see Vol.5 page 48). The breathalyser procedure was completed with a negative result. Thereafter, the Custody Officer, PS Pickett, authorised Mr Kirk's continued detention, suspecting that he was unfit to drive by reason of drugs, and wishing to have Mr Kirk examined by a medical practitioner.

207. Dr Lush, Police Surgeon, attended the police station, but Mr Kirk refused to be examined by him until he had produced written proof of his identity/position, which at that time he was unable to do. The examination did not take place.
208. Eventually, Mr Kirk was bailed, having been detained at Rhymney Police Station from 11:54am until 2:02pm. Prior to his release, he was charged with the offences of failing to provide a specimen of breath, failing to wear a seatbelt, failing to have proper control over a vehicle, using a motor vehicle without third party insurance and using a motor vehicle without an MOT test certificate (A2, Vol. 5, page 140).
209. The matter came on for hearing before the Cardiff Magistrates Court on 11th April 2000, at which time he pleaded guilty to all of the offences, save for not having proper control of the vehicle, no evidence having been offered in respect of that matter. He was subsequently sentenced in respect of those matters to which he had pleaded guilty (see copy of the Court Register at Vol. 6, pages 139 – 146).
210. Notwithstanding the fact that he had pleaded guilty to the offences, Mr Kirk attempted to vacate his guilty pleas and enter not guilty pleas. On the 18th September 2000, the Cardiff magistrates refused to allow Mr Kirk to re-open his pleas, whereupon Mr Kirk issued an application for judicial review (see Vol 5, page 145). Mr Kirk's application for judicial review was dismissed by the single Judge, (see the judgment of Scott-Baker J, at Vol. 6, page 172). He renewed his application and the matter was considered by the Administrative Court on 13th March 2001 by Brooke LJ and Morison J, when the Court refused to allow him to re-open his pleas of guilty (see the relevant part of the judgment at Vol. 6 page 177, paragraph 11). It appears that Mr Kirk made a third attempt at judicial review, see his letter of 15th February 2002 (at Vol. 6, page 262).
211. Mr Kirk sought to "appeal" his convictions in relation to this matter as well as appealing sentence. His appeals against sentence became linked to his appeal against conviction/sentence in respect of the matter of 1st

December 1999, see Action 2 – paragraph 9 above. Many of the comments made by the various Judges in their judgments in respect of that appeal are equally relevant to this appeal. Of particular interest is the decision of His Honour Judge Jacobs of 15th March 2002, (at Vol. 6, pages 65 – 68). Notwithstanding the fact that Mr Kirk wished to re-visit his pleas of guilty, there can be no doubt that the matter was only being dealt with by way of appeal sentence (see the judgment of His Honour Judge Hickinbottom of 15th March 2002, at Vol. 5, pages 166 – 177, and in particular at pages 168 to 171). Judge Hickinbottom allowed the appeal against sentence in respect of the charge of driving without insurance, (see his order of 11th April 2002 at Vol. 6, page 119). Thereafter, Mr Kirk sought to persuade Judge Hickinbottom to reconsider an application to appeal out of time, but he refused to do so (see letter from the Court of 18th April 2002, at Vol. 6, page 277).

212. Notwithstanding the failed judicial reviews and appeals, Mr Kirk wrote to the Cardiff Magistrates Court and sought to persuade it to re-open his pleas of guilty to these offences. It appears that on 20th May 2002, District Judge Watkins decided to set aside the conviction for no insurance and allowed Mr Kirk to change his plea, following which, presumably having produced a certificate of insurance, a not guilty verdict was entered. Although Mr Kirk told the Magistrates' Court that the prosecution accepted that he had valid insurance on the day of the offence (see his letter of 15th April 2002, Vol. 6, page 275), there is nothing to suggest that the District Judge was made aware that:
- a) Mr Kirk had on 3 occasions sought judicial review of the magistrates' original refusal to re-open his pleas, all three such applications having failed;
 - b) That the issue as to whether Mr Kirk was permitted to appeal those convictions had been considered by the Crown Court in early 2002 and he had only been permitted to appeal on the issue of sentence;

- c) That following his successful appeal on sentence, the Crown Court had once again refused to allow him to re-open his pleas of guilty.
213. Confirmation of the action of the Stipendiary Magistrate can be found in a letter of 20th May 2002 (to be found at Action 3, Vol. 6 at page 186). Having successfully re-opened his plea on that matter, he then sought to set aside his pleas in respect of the remaining three matters (those being failing to provide a specimen of breath, driving a vehicle without an MOT certificate and failing to wear a seatbelt); he was unsuccessful in respect of the offence of failing to provide a specimen of breath (see the order at Vol. 6 page 288). On 21st May 2002, Mr Kirk finally produced to the CPS. a valid MOT certificate in respect of the vehicle he drove on 5th April 2000. Further, Mr Kirk confirmed to the CPS. that he had previously produced a medical certificate which purported to excuse his wearing of a seat belt. The CPS. having considered the matter, took the decision not to resist the matter being reconsidered by the Magistrates Court, (see their letter of 22nd May 2002, Vol. 6, page 283). We can find no orders specifically setting aside those convictions, but assume that this was done in either May or June 2002.
214. In the circumstances, the major element of this part of the claim, namely his false arrest and detention is, for the reasons set out above at paragraphs 204 and 205 of this Skeleton Argument, wholly without merit. Insofar as the Court needs to consider the factual basis of his arrest, then the Defendant relies upon the evidence of the various witnesses and contends that there were reasonable grounds to suspect that Mr Kirk had committed an arrestable offence, namely the offence in respect of which he subsequently pleaded guilty.
215. In regard to the three matters in respect of which he complains of malicious prosecution, the Defendant contends that in the circumstances revealed above, it was entirely appropriate to lay information before the Magistrates' Court in relation to those charges. There was accordingly reasonable and probable cause in relation to all three matters.

216. In the alternative, there was an absence of malice.

ACTION 2 – PARAGRAPH 12

217. Mr Kirk's allegations and the Defendant's response are set out at A2, Vol. 7, pages 1 – 3. Mr Kirk alleges that on 16th August 2000, he was required to produce a breath sample and was then unlawfully arrested and thereafter maliciously prosecuted for dangerous driving and failing to produce a valid insurance document. The prosecution was determined in his favour at Cardiff Crown Court on 11th July 2001.
218. This matter started in the late evening of 16th August 2000, when PC Rewbridge and PC Smith were on motor patrol duty travelling in a marked police car along the A473 road close to the Pencoed junction with the M4. At this point the A473 road consists of a dual carriageway, with a grass central reservation. The road down which the officers were travelling is joined by a slip road which leaves the M4 westbound. As they travelled along, they saw a Ford Escort motorcar, the rear of which was on the central reservation, and the front of which was facing the officers' nearside lane, and which appeared to be attempting to carry out a 3-point turn.
219. As they approached, the vehicle drove forward off the central reservation into the nearside lane, driving towards them against the flow of traffic on the dual carriageway. The officers brought the Escort to a halt and attempted to question Mr Kirk, who was driving the Escort, regarding his driving. Mr Kirk replied that he had taken the wrong turning and that he wanted to get up to the motorway.
220. The officers could smell intoxicants coming from within the car. They asked him where he had come from, and he replied that he had travelled from London, that he had reversed onto the grass and turned around, in order to go back down the road. Mr Kirk appeared unable to comprehend that he was carrying out a potentially hazardous manoeuvre.

221. Due to the manner of driving, and in particular, in view of the fact that the officers suspected that he had committed a moving road traffic offence, Mr Kirk was asked to provide a specimen of breath. He was asked if he had had any alcohol to drink, and he replied that he had had a couple of lagers at lunchtime.
222. The specimen of breath was positive. He was arrested and taken to Bridgend Police Station. He arrived at the station at 10:50pm where the Custody Sergeant PS Evans authorised his detention for the purpose of securing evidence. The breathalyser procedure was then carried out, the reading being below the threshold prescribed for the offence of driving with excess alcohol.
223. Mr Kirk was then released from custody, having first been warned that he would be reported for the offences of dangerous driving/driving without due care and attention, and having been issued with an HORT1 in respect of his insurance documents and MOT certificate (see page 38).
224. Subsequently, PC Rewbridge produced a Case Summary (page 137). The CPS., having considered the case file, including presumably the s.9 statements from PC Rewbridge and PC Smith (at pages 102 and 106 respectively), decided to prosecute Mr Kirk for dangerous driving (see letter of 9th January 2001, at pages 155-6, and a copy of the indictment at page 166).
225. The Bridgend Magistrates committed Mr Kirk for trial on the charge to the Crown Court and in addition, committed him for trial for the summary offence of driving without due care and attention.
226. As well as having been issued with a HORT1 in respect of his driving documents, Mr Kirk was written to by letter of 5th October 2000, and asked to produce those documents (page 146). There is nothing to indicate that those documents were produced prior to trial. It appears that at some stage prior to the commencement of the Crown Court trial,

charges in relation to driving without insurance and an MOT certificate were withdrawn (see page 208).

227. For the purposes of the Crown Court trial, Mr Kirk filed a Defence Statement (at page 169-170) in which he describes his movements that day. It appears that he accepted that he was straddling, or on the central reservation when the police arrived; for reasons explained in that statement, Mr Kirk appears to be suggesting that he was reversing across the road in order to get to a garage on the other side. He had then driven forward when the police arrived.
228. The trial on indictment took three days, concluding on 11th July 2001. The sequence of events in the Crown Court appears to be that, having heard the officers give evidence, Mr Recorder Cooke QC, as he then was, indicated to the Crown that in the event of a submission of no case being made, he would uphold such a submission, but in any event, he felt it was his duty to stop the case on the basis that the dangerous driving was not proved beyond reasonable doubt (see the transcript at pages 73-74).
229. It appears that the Crown decided, for reasons of cost, not to proceed with the alternative charge of driving without due care and attention. The Recorder directed the jury to enter not guilty verdicts, a verdict to which Mr Kirk objected! (See transcript at page 80). Mr Kirk accused the Recorder of conspiracy, whereupon the Recorder found Mr Kirk guilty of contempt (see the transcript at pages 74 – 77 and 87 – 96).
230. In the circumstances, the officers were entitled to exercise their powers pursuant to s.163 of the **Road Traffic Act 1988** to bring a vehicle to a halt when in uniform; indeed, in view of the concessions made by Mr Kirk in his Defence Statement as to his manner of driving, it would be surprising if they had not. Further in the light of the information then known to them, it was reasonable for them to require him to provide a specimen of breath. Thereafter, since the specimen was positive, they had reasonable grounds to suspect, and did suspect, that an arrestable

offence had been committed. He was therefore arrested, and dealt with expeditiously at the police station.

231. Subsequently the officers produced statements which recorded their observations and the conversations which they had with Mr Kirk. The CPS decided to prosecute Mr Kirk for dangerous driving/driving without due care and attention. In relation to the prosecution, insofar as any decision was made on the basis of the statements made by the officers, then it is denied that such prosecution lacked reasonable and probable cause. In the alternative, there was an absence of malice on the part of the officers.

ACTION 2 – PARAGRAPH 13

232. Mr Kirk's allegations and the Defendant's response are set out at A2, Vol. 8 pages 1-3. Mr Kirk alleges that on 8th September 2000, he was unlawfully arrested by PC Kihlberg, and was thereafter maliciously prosecuted for an offence contrary to s.5 of the **Public Order Act 1986**.
233. On the evening of 8th September 2000, Constables Kihlberg and Holmes were on motor patrol duty in a marked police vehicle, driving slowly along Church Street, Llantwit Major, when, as they passed Mr Kirk, who was standing on the pavement, he made a V-sign gesture at PC Kihlberg.
234. The officer stopped the car and warned Mr Kirk about his conduct. Mr Kirk then shouted that the officer was "a skunk". The officer then arrested Mr Kirk for a public order offence. After caution, Mr Kirk said "you're a fucking bastard". Mr Kirk resisted being taken into custody, whereupon a struggle took place; Mr Kirk was eventually handcuffed and placed into a police van.
235. He was taken to Barry Police Station where his detention was authorised by PS McCarthy for the purpose of charging him. Mr Kirk was unresponsive to the Custody Sergeant and when eventually called upon to the Charge Room to be charged, he refused to go, saying that he wished to make a statement. There were no officers immediately

available for the taking of a statement, but when one became available, Mr Kirk refused to make a statement.

236. Thereafter, he was non-compliant, including refusing to allow his fingerprints to be taken. Subsequently, he did allow his fingerprints to be taken, following which he was granted police bail.
237. Mr Kirk had been charged with using threatening or insulting words and behaviour (see charge sheet at page 71). The charge was discontinued on 19th October 2000 (see page 93); the reason for the discontinuance was that it would not be in the public interest to proceed (see pages 120 - 121). PC Kihlberg had been led to believe that the reasoning behind such decision was that it was a relatively minor offence and to prosecute the same would take up too much in time and resources (paragraph 63, page 28).
238. Mr Kirk attempted to have PC Kihlberg prosecuted for perjury, but the CPS declined to prosecute PC Kihlberg (see their letters at page 133, 141 and 142).
239. In the premises, the officer had reasonable grounds to suspect that an arrestable offence had been committed and did so suspect. The arrest was therefore lawful. Thereafter, Mr Kirk's detention at the police station was for no longer than was reasonable in the circumstances; the charge did not lack reasonable and probable cause.
240. In the alternative, there was an absence of malice.

ACTION 2 – PARAGRAPH 14.1 & 14.2

241. Mr Kirk's allegations and the Defendant's response are set out at A2, Vol. 8 pages 155 – 156. Mr Kirk alleges that he was unlawfully arrested and detained on 13th December 2000. On the morning of 13th December 2000, Police Constables Gunstone and Stone were on foot patrol when they went to Park Street, Cardiff, where they observed a VW Camper van parked so as to cause an obstruction to motor vehicles travelling in the

area of Park Street/Havelock Street. PC Gunstone identified Mr Kirk as the owner of the vehicle. He asked Mr Kirk, who was present, to move the vehicle, but he failed to comply with that request, and therefore the officer informed him that he would be issued with a fixed penalty notice, and an HORT1.

242. During this time, a conversation took place between Mr Kirk and the officer which left the officer in some considerable doubt as to whether the information given by Mr Kirk concerning his address was genuine or accurate (see the officer's statement at pages 169 – 170). Due to his evasive behaviour, the officer arrested Mr Kirk under the provisions of s.25 of the **Police and Criminal Evidence Act 1984**. He was then taken to Fairwater Police Station where the Custody officer, PS Fahey recognised Mr Kirk, and once his business address had been confirmed, authorised Mr Kirk's release.
243. In the circumstances, PC Gunstone had reasonable grounds to suspect, and did suspect, that the offence of obstruction of the highway pursuant to **s.137 of the Highways Act 1980** had been committed, and that the general arrest conditions in s.25(3) of PACE 1984 had been satisfied. There is no claim for malicious prosecution.

ACTION 2 PARAGRAPH 14.3

244. Mr Kirk's allegations and the Defendant's response are set out in Action 2 Vol. 8 pages 180 - 181. Mr Kirk alleges that on 20th December 2000 he was required to provide a breath sample which proved to be negative. It is unclear what, if any cause of action, the Claimant is alleging here.
245. Insofar as the background to this matter is relevant, it appears that PCs Mader and Chick attended Mr Kirk's veterinary surgery at Cowbridge Road West, Ely, in order to investigate a complaint of a road traffic accident involving one of Mr Kirk's vehicles. They questioned Mr Kirk, and believing him to have been the driver of a vehicle involved in an accident, requested him to provide a specimen of breath. He did provide

the specimen, which, as noted already, was negative. There was no arrest and no detention and therefore the Defendant contends that no cause of action arises.

ACTION 3

ACTION 3 – PARAGRAPH 2

246. Mr Kirk's complaints and the Defendant's response are contained at A3, Vol.1, pages 1 to 6. The allegation appears to be one of wrongful arrest and, possibly, malicious prosecution. This is a matter which has already been addressed in the Defendant's Skeleton Argument dealing with preliminary legal issues. If this matter still needs to be considered, then presumably the Court will either have rejected the Defendant's legal argument, or alternatively, will be allowing the matter to proceed on a limited basis. Whilst we will touch upon some of these legal issues in this skeleton argument, we are here primarily concerned with the factual background to the matter.
247. On the 19th August 1998, the Vale of Glamorgan show took place at Fonmon Castle, Vale of Glamorgan. It appears that Mr Kirk was the official vet at the show. During that day, Retired Inspector Howard Davies, was subjected to unpleasant abuse from Mr Kirk (see Mr Davies' statement at page 91, which exhibits his Section 9 statement at page 101). As a result of Mr Kirk's behaviour, two security guards, namely Mr Simon Turner and Mr Byran Williams intervened to attempt to calm Mr Kirk down. They were unsuccessful. Mr Kirk continued behaving in an aggressive, belligerent and abusive fashion (see in particular, Mr Turner's statement at pages 115 to 117, together with his Section 9 statement at page 140, and Mr Williams' statement at 109 to 111, together with his Section 9 statement at page 147). Mr Kirk showed every sign of attempting to follow Mr Davies as the latter walked away from the confrontation, but was prevented from doing so by Mr Turner. A member of the public, a Mr Dwek, who observed what was going on, commended Mr Turner for his restraint and common sense (see Mr Dwek's statement page 128, together with his Section 9 statement at page 132).

248. As a result of Mr Kirk's continuing behaviour, police officers, namely Inspector Patterson and PC Walters, who were on duty at the show, attended the scene. They received a complaint from Mr Turner that he had been assaulted by Mr Kirk. PC Walters warned Mr Kirk about his conduct and asked him to leave the show. He refused to do so. After receiving a further warning, he was arrested in order to prevent a further breach of the peace. He continued being abusive towards the police officers. At that time, the police had discovered that Mr Kirk had been in the company of his son, together with two dogs. A divisional van was therefore called to take them all to Barry Police Station. Whilst they awaited the arrival of the van, Mr Kirk, together with his son and some of the police officers, sat in the police car. Once the van arrived, Mr Kirk refused to get out of the police car. There then followed a struggle as the officers attempted to get Mr Kirk out of the car and he attempted to prevent them from doing so, during the course of which he delivered various blows and kicks to the officers. Having eventually got him out of the car, Mr Kirk then continued to be aggressive, so that they had to use CS Spray. Eventually, he was put into the divisional van and taken to Barry Police Station. In view of his conduct, the custody officer authorised his detention, fearing that his release would result in a further breach of the peace (see the custody record at page 71).
249. Mr Kirk was detained in custody overnight, to be presented at Barry Magistrates Court the following morning. Whilst it was initially thought that he would be dealt with by way of breach of the peace, eventually, that matter was withdrawn and he was prosecuted on the three substantive offences of using threatening, abusive or insulting words of behaviour, common assault on Mr Turner and resisting an arrest by PC Walters in the execution of his duties (see the charges at A3, Vol.2, pages 51 - 53).
250. Eventually, Mr Kirk was convicted of those offences (see A3, Vol.2, page 345). Mr Kirk sought to appeal against those convictions. During the course of proceedings in relation to that appeal, Mr Kirk raised an abuse

of process argument against the Crown, apparently based upon the way in which he had originally been arrested for breach of the peace, but subsequently faced three substantive charges. That matter was dealt with by His Honour Judge Gaskell, who dismissed his abuse of process argument (see the Judgment of His Honour Judge Gaskell at A3, Vol.3, pages 23 - 55). During the course of that hearing, Mr Kirk had alleged a conspiracy on the part of representatives of the CPS, as well as Clerks to the various Magistrates courts. Evidence was heard in that matter. Subsequently, Mr Kirk sought to issue summonses against representatives of the CPS, for their alleged attempt to pervert the course of justice/conspiracy. Those matters were considered by District Judge Watkins, who dismissed the summonses which Mr Kirk sought to issue (see A3, Vol.2, pages 3 to 5 together with A3, Vol. 3, pages 73 - 76). Mr Kirk sought to judicially review the decision of His Honour Judge Gaskell, but that application was dismissed on 17th December 1999 (see the Judgment of Latham J, at A3, Vol.3, pages 78 - 82). It appears that Mr Kirk sought to take that matter further, and the matter was considered again by the Divisional Court on 13th March 2001, when, once again Mr Kirk's applications were dismissed (see the judgment of Morison J, at A3, Vol.3, pages 318 to 321).

251. Having resolved the abuse of process argument, the appeal was then heard by the Recorder of Cardiff, over a number of days, culminating in a Judgment given by him on 3rd July 2000 (see A3, Vol.3, pages 292 - 308). The appeal in respect of both conviction and sentence was dismissed. Insofar as the Cardiff Crown Court had to consider the lawfulness of the arrest by PC Walters, when deciding whether or not he had been acting in the course of his duty, then the Court found that the officer had been acting in the course of his duty (see the relevant part of the Recorder's Judgment at pages 306 to 307). This of course is significant. The officer was purporting to arrest Mr Kirk in order to prevent a further breach of the peace. In considering whether or not Mr Kirk was guilty of a substantive offence, the Court would necessarily have to decide whether or not PC Walters was in fact acting in the course of

his duty, which would therefore require consideration as to whether the arrest in order to prevent a breach of the peace was lawful. The Court having concluded that the officer was in fact acting in the course of his duty, this necessarily involved the finding that the officer had lawfully arrested him in order to prevent a further breach of the peace. Indeed, this is expressly stated as so by the Recorder in his Judgment. That being so, Mr Kirk cannot in these proceedings, seek to attack the findings of guilt on the substantive offence by seeking to attack the basis upon which he was arrested by PC Walters. The Defendant relies further upon those matters set out in the argument on the preliminary legal points.

252. Insofar as there are any factual issues that the Court has to resolve in this matter, the Defendant's case being that there are no such factual issues, then the Defendant relies upon the evidence of the witnesses, both police and lay, which are included in the bundle.
253. There are three lever arch files full of documents which relate to this particular incident. Many of them are letters of complaint from Mr Kirk, together with various extracts from his website. In addition, there is a lengthy transcript of at least some of the evidence heard by the Recorder when considering Mr Kirk's appeal. The Defendant would contend that these documents are, for the most part, wholly irrelevant to the issues which arise in this case, which are primarily, if not entirely, legal issues to be decided on the basis of the extant convictions. In effect, Mr Kirk is trying to challenge those convictions, notwithstanding the hearings which have taken place in the Bridgend Magistrates Court, the Cardiff Crown Court and the Divisional Court, in respect of which all have found against Mr Kirk.

ACTION 3 – PARAGRAPH 3

254. Mr Kirk's allegations and the Defendant's response are set out at A3, Vol.4, pages 1 to 4. This is a claim in respect of an allegation that the police failed to properly investigate a complaint of crime made by Mr Kirk. The legal aspects of this claim are dealt with in the skeleton argument on

the preliminary points of law. It is contended on behalf of the Defendant that he was not subject to any duty of care, the breach of which, gives rise to a common law action for damages.

255. On the 19th September 2001, the police received a complaint from Mr Kirk that cheques belonging to his veterinary practice had been stolen and then cashed at Cash Generators, a type of pawn shop based at Holton Road, Barry. Mr Kirk stated that he believed that the culprit was one of his former employees, one Christian Harrison. The task of investigating this crime was given to PC Dilworth, although she was, on various occasions, assisted by PC Walker, PC Wintle and PC Bradbury. Having received the complaint, PC Dilworth went to speak to Mr Kirk at his veterinary surgery. He informed her that his cheque had been cashed at Cash Generators, and that the cheque had been made out to one Adam Baker, who had also been a former employee of Mr Kirk's. The officer asked Mr Kirk to check his cheque books, to see if any other cheques were missing. He informed her that there were some 5 cheques that were missing. They had all been made out in the name of Baker. The officer, having obtained information as to where the cheque books were kept, and who had access to them, made her way to Cash Generators. The manager of the shop was not available, she therefore made arrangements to meet him again. Meanwhile another officer collected a CCTV video film from Cash Generators, which was said to record the person who had cashed the last cheque.
256. On 28th September 2001, PC Dilworth spoke to Mr Shaft, the manager of the shop. They watched the video, at which time Mr Shaft made a positive identification that the person cashing the cheque was Mr Baker. Mr Baker was known to Mr Shaft as Mr Baker had an account at Cash Generators.
257. PC Dilworth took the film to the police CCTV officers in Barry, where she obtained still photographs of the person cashing the cheque.

258. Later that day, PC Dilworth saw Mr Kirk at his surgery, and showed the photographs to Mr Kirk and other members of staff. Somewhat surprisingly, in light of Mr Shaft's very positive identification of Mr Baker, neither Mr Kirk nor his staff were able to make a positive identification of the person cashing the cheque.
259. On 29th September 2001, PC Dilworth checked the police intelligence system and obtained an address for Mr Baker at Jewell Street, Barry. She attended on that address but received no reply. She tried to trace Mr Baker by an address search facility on the computer, but drew a negative result.
260. On 13th October 2001, the officer re-attended Cash Generators where she spoke to Mr Shaft and obtained an address for Mr Baker at Windsor Road, Barry. She called at that address on a number of occasions, but received no reply. Eventually, she was able to speak to Mr Baker's father, who told her that he had thrown him out of the premises some weeks before. Checks were made for Mr Baker on a benefits/housing list, but no address was revealed over and above that at Windsor Road.
261. On 31st October 2001, the officer obtained a statement from Mr Kirk's Practice Manager. On 6th November 2001 the officer circulated Mr Baker on the PNC as wanted in relation to these matters.
262. The Court is invited to consider the statement from PC Dilworth, together with her notebook which sets out in detail the enquiries carried out by her (see pages 31 and 39). In the circumstances, the officer had done everything that could reasonably be expected to have been done.

ACTION 3 – PARAGRAPH 4

263. Mr Kirk's allegations and the Defendant's response are set out in A3, Vol.4, pages 127 and 128. This is an allegation of unlawful arrest. There is no allegation of malicious prosecution, although in his pleadings, Mr Kirk notes that there were charges which were subsequently withdrawn.

264. On the 13th December 2001, PC Barber was driving a patrol vehicle, accompanied by members of the Local Authority Trading Standards Department, when he observed an Audi motorcar, the front and rear bumpers of which were held on by some strapping. The officer followed the motorcar and eventually pulled up behind it when it stopped at Ashfield Surgery, Bridgend. The officer there spoke to the driver of the vehicle, later identified as Mr Kirk, asking him if the vehicle was his. Mr Kirk's response was to simply say "I don't know". In response to further questions, Mr Kirk was brusque and unhelpful. Eventually, he got into his car and started the engine. At that time the officer thought he could smell alcohol on his breath. He therefore asked whether he had been drinking and whether Mr Kirk would provide a specimen of breath for a breath test. Mr Kirk said he was not willing to provide a specimen of breath. The officer then arrested him for failing to provide a roadside specimen. Having handcuffed Mr Kirk, he walked him to the patrol car, where Mr Kirk then asked if he could provide a specimen of breath. The officer agreed to this, following which Mr Kirk did provide a specimen of breath, which was negative.
265. The officer told Mr Kirk that he wished him to provide his driving documents and that he intended to issue him with a HORT1. Mr Kirk failed to reply. The officer then asked for his name, but Mr Kirk refused to give him his name, insisting that the officer already had his name. In order to ensure that summonses could be issued if appropriate, the officer needed Mr Kirk's name and address, in default of which, he was entitled to arrest him under Section 25 of **PACE**. The officer informed Mr Kirk of this fact, but Mr Kirk refused to supply any details. The officer therefore arrested him.
266. Mr Kirk was taken to Bridgend Police Station, where his detention was authorised by PS Davies. Fortunately, PS Davies believed he recognised Mr Kirk, so checks were made which eventually confirmed his identity. Mr Kirk was given a HORT1 by PC Barber, but he threw the documents back onto the desk. Mr Kirk was told that he would be reported for failing

to provide his driving documents and for driving a vehicle, the bumpers of which were held on by straps.

267. It appears that summonses were issued in this case (see page 165), but that within a very short time, those summonses were withdrawn by the CPS. It is unknown to the police why they were withdrawn, although it is assumed that it was because Mr Kirk was eventually able to produce the relevant documents.

ACTION 3 – PARAGRAPH 5

268. Mr Kirk's allegations and the Defendant's response can be found at A3, Vol. 4, pages 170 to 172. This is a claim for wrongful arrest and for malicious prosecution in respect of driving whilst disqualified and failing to produce a driving license. This case is an interesting example of Mr Kirk's general behaviour, both towards the police and the Courts. The matters started on 21st May 2002; PC Cocksey and PC Osborne were on duty in the Central Police Station when they became aware of Mr Kirk driving his Volkswagen Camper Van down the side of the police station. PC Osborne recollected that Mr Kirk was a disqualified driver. He subsequently picked up Mr Kirk's vehicle on the CCTV system as he drove it round and round the monument at the Hayes. As Mr Kirk admitted in a subsequent document, he drove it around the monument at least 30 to 40 times (see page 240). The officers drove to the scene, where, eventually, they were able to bring Mr Kirk's vehicle to a halt. PC Cocksey then arrested Mr Kirk for driving whilst disqualified. Mr Kirk made no response. Mr Kirk was then taken to the Cardiff Central Police Station, where PS Canterbury authorised his detention for the purposes of questioning (see the custody record at page 204). Thereafter, Mr Kirk was questioned by PC James, during the course of which interview, Mr Kirk asserted that the records were wrong, and that he had had an appeal allowed. This was later checked by another custody officer, PS Roberts, who double-checked the entry on the PNC, only to discover that Mr Kirk was still disqualified (see his statement at page 222).

269. In any event, Mr Kirk was charged with a number of motoring offences, which are set out in the list of charges (at page 245). Unfortunately, although the custody officer wished to bail Mr Kirk, he refused to acknowledge bail, as a result whereof, the officer being concerned that Mr Kirk, as a disqualified driver might seek to drive again, and in view of the fact that he failed to acknowledge his bail, kept him in custody. He was then produced at Court the following day.
270. Subsequently, for reasons which will be explored shortly, no charges were continued against Mr Kirk, save for one of driving without insurance. That matter went to Court. There were a number of hearings before the matter came on for a final hearing on 13th August 2002 (a short transcript produced by the Court Clerk, Mr Dodson, is contained at pages 265 to 267). During the course of that hearing, Mr Kirk declined to give evidence, and did not in fact produce his insurance certificate. His position appears to have been that since he had previously been arrested for driving without insurance but the charges were then withdrawn and he was found not guilty, the Magistrates must have had a reasonable doubt as to whether he was guilty of this charge. Mr Kirk was found not guilty. He then sought to have his costs paid, but, it appears, the Magistrates declined to make such an order. Mr Kirk then sought to judicially review their decision not to order him costs. The response of the Justices to the application to state a case, is interesting, insofar as they were highly critical of the fact that notwithstanding that Mr Kirk, on their findings, was insured, and therefore did have a valid certificate of insurance, he nonetheless declined to produce his certificate of insurance to the Prosecuting authorities, either on the previous two occasions when the case has been listed or indeed on any other occasion. They concluded that:-

"He had chosen not to because of his antipathy to the police whom he wished to inconvenience by making them come to court and give evidence. Through his actions, he had forced the hand of the Crown

Prosecution Service into prosecuting the case and he had acted unreasonably in all the circumstances”.

The case stated bears careful consideration (see pages 283 to 285).

271. We now seek to return to the issue of whether or not Mr Kirk was disqualified at the relevant time. The short answer to this appears to be that, yes, he was disqualified at the time that he was stopped by PC Cocksley, but that the following day, that disqualification was set aside. The history appears to be that on 11th April 2002, Mr Kirk appeared before the Cardiff Crown Court to be dealt with in respect of road traffic matters. At that time, in sentencing him, the Crown Court took into account 6 penalty points which had been imposed by the Cardiff Magistrates Court on 11th April 2000, in respect of an offence of having no insurance. On the 20th May 2002, Mr Kirk, having persuaded the CPS that he had in fact had insurance in 2000, a District Judge sitting at the Cardiff Magistrates Court allowed Mr Kirk to vacate an earlier guilty plea in respect of that other matter, and record a verdict of not guilty. Quite how Mr Kirk had come to enter a plea of guilty to an offence of having no insurance, when two years later he recollected and was able to prove that he did have insurance, is unclear, although once again, this may be a reflection of Mr Kirk playing games. In any event, the fact that a not guilty verdict was entered is recorded in a letter from the Magistrates Court to the DVLA and to Mr Kirk, which, as the Court will note, was sent by fax (see page 186). It seems that Mr Kirk, having received this letter, then decided to go out and drive around in such a way as to draw the attention of the police to him (see his statement/document at page 240, the first four paragraphs).
272. However, notwithstanding the setting aside of the previous guilty verdict, he was in fact still disqualified, since the order of the Crown Court had not been set aside. It will be recollected that having been arrested on 21st May 2002, Mr Kirk was kept in custody overnight, and was then produced at the Cardiff Magistrates Court on 22nd May 2002. On that

date, it appears Mr Kirk brought to the Court's attention the fact that although the previous plea had been vacated, he was still nonetheless subject to an order for disqualification. That matter was dealt with on that day when District Judge Morgan exercised his powers to remove the disqualification imposed by the Crown Court (see the letter of Magistrates Court to CPS and the Crown Court at page 188).

273. It appears therefore, that not only did the officers have reasonable cause to suspect that he was a disqualified driver, but that he was in fact technically disqualified at the time when they arrested him. The arrest was therefore entirely lawful, and the preferring of charges against him was also lawful. It is interesting to note however, that as soon as Mr Kirk believed that he had set aside the disqualification on 20th May 2002, he sought to bait the police into acting, by drawing their attention to him. Further, although in these proceedings Mr Kirk makes no complaint in relation to the continuation of the charge of driving without insurance, as noted by the Magistrates in their response to the case stated, he deliberately acted in such a way as to invite the prosecution to be continued, even though he may have been insured at the material time. Rather than clear the matter up prior to trial, he acted in such a way as to ensure the prosecution proceeded, and then, at the last moment sought to establish that he had insurance. When considered in this light, Mr Kirk's conduct in respect of many of the other occasions when he has been arrested, detained and prosecuted, becomes more explicable. For whatever reason, Mr Kirk appears to take delight in baiting authority in general, and the police in particular.

ACTION 3 – PARAGRAPH 6

274. Mr Kirk's allegations and the Defendant's response are contained in A3, Vol. 5, pages 1 to 4. Mr Kirk claims that he was, on 23rd May 2002, unlawfully arrested for driving whilst disqualified. He suggests that the "allegation" was withdrawn the following day at the Barry Magistrates Court. The Court will note that this incident took place two days after his

arrest on 21st May 2002, which formed the substance of the allegation contained in paragraph 5 of this action, and one day after the District Judge had lifted the disqualification which had been imposed by the Crown Court at Cardiff on 11th April 2000. The relevant documents are contained within the papers dealing with Action 3, paragraph 5, but the relevant letters are also included in this bundle (see pages 26 and 28).

275. On the 23rd May 2002, Officers Bickerstaff and Holehouse were on duty in Cowbridge, when they both observed Mr Kirk driving a Volkswagen campervan down the High Street in Cowbridge. It was PC Holehouse who first observed Mr Kirk, and then alerted PC Bickerstaff to the fact that Mr Kirk was driving through Cowbridge. Both officers believed that Mr Kirk was a disqualified driver. This was because they had seen his name on a list of disqualified drivers on their divisional website. Of course, up until the morning of the previous day, Mr Kirk had been a disqualified driver, and had been subject to a period of disqualification which would have rendered him still disqualified on the 23rd May 2002, if the District Judge had not set aside that disqualification. Mr Kirk's motorcar was brought to a halt. He was approached by PC Bickerstaff who attempted to speak to Mr Kirk. Initially, Mr Kirk wholly ignored the officer, until the officer asked him whether he was disqualified from driving. Mr Kirk shouted that he was legally entitled to drive, although he failed to inform the officer that he had been subject to a disqualification which had been set aside the previous day. The officer asked Mr Kirk for his date of birth, so as to enable him to carry out a check on the PNC. Having obtained that date, the officer was in the process of using his personal radio to check with the PNC as to whether Mr Kirk was disqualified, when Mr Kirk suddenly started to make his way off down the road.
276. There appears to be no sensible or reasonable explanation for his behaviour, and both PC Bickerstaff and PC Holehouse, thought that his behaviour tended to confirm their suspicion that he was in fact a disqualified driver. The officers pursued Mr Kirk, and, because of his

aggressive behaviour, they were forced to restrain him and then handcuff him. Mr Kirk was then taken back to PC Bickerstaff's police motor vehicle so as to enable the enquiry with the PNC to be completed. Eventually, PC Bickerstaff received information to the effect that Mr Kirk was not disqualified at that time. He therefore informed Mr Kirk that he was de-arresting him. Thereafter, Mr Kirk was not detained for driving whilst disqualified, nor was he charged with that offence. Although presented at the Magistrates Court the following day, the "allegation" of driving whilst disqualified was not before the Court, nor was it withdrawn. Following PC Bickerstaff obtaining the information that Mr Kirk was no longer disqualified, and having de-arrested him, that matter came to an end.

277. Although not the subject of any complaint within this action, because of his conduct at the scene when the officers tried to present him with a HORT1, Mr Kirk was arrested for threatening abusive and insulting words or behaviour contrary to **Section 5 of the Public Order Act 1986**. He was eventually prosecuted for the offence contrary to Section 5 as well as the offence of obstructing a police officer. These charges have the usual chequered history, with Mr Kirk initially pleading guilty to the offences, and thereafter attempting to treat his plea as a conditional plea, following which he withdrew his plea and a not guilty verdict was entered. He was tried at the Magistrates Court where he was convicted and then appealed to the Crown Court where his appeal was allowed. As noted already however, these matters do not form part of the complaints contained within this action.

Lloyd Williams QC
Natalie Sandercock
30 Park Place, Cardiff
18th August 2010

Case No:
IN THE CARDIFF COUNTY COURT
BETWEEN:

MAURICE JOHN KIRK
Claimant

and

THE CHIEF CONSTABLE OF SOUTH WALES POLICE
Defendant

DEFENDANT'S SKELETON ARGUMENT

Messrs Dolmans
17 Windsor Place
Cardiff
CF10 3DS
DX: 33005 CARDIFF 1
Ref: APO.MS.SWP1-138
Our Ref: 556202