



Gwasanaeth Llysoedd  
a Thribiwnlysoedd EM

HM Courts &  
Tribunals Service

Llys Ynadon Caerdydd a  
Bro Morgannwg  
Plas Fitzalan  
Caerdydd  
De Cymru  
CF24 0RZ

Cardiff and the Vale of Glamorgan Magistrates'  
Court  
Fitzalan Place  
Cardiff  
South Wales  
CF24 0RZ

**PROTECTED-PERSONAL**

MR MAURICE KIRK  
49 TYNEWYDD ROAD  
BARRY  
CF62 8AZ

Ffôn / T 029 20474383  
Ffacs / F 029 2046 0264  
E-bost / E [sw-cardiffmceng@hmcts.gsi.gov.uk](mailto:sw-cardiffmceng@hmcts.gsi.gov.uk)  
hmcts.gsi.gov.uk  
Llinell Gymorth i Bobl Anabl  
Disability helpline: 0800 358 3506  
[www.gwasanaeth-llysoeddem.gov.uk](http://www.gwasanaeth-llysoeddem.gov.uk)  
[www.hmcts.gsi.gov.uk](http://www.hmcts.gsi.gov.uk)

28<sup>th</sup> March 2013

Ein cyf/Our ref: TG/MK  
Eich cyf/Your ref:

Dear Sir,

**Re: - Police Property Act, 1897 – Application for Case Stated.**

Please find attached the final case stated. The delay in finalising the case and serving the final case has been occasioned by the file being overlooked and the mislaying of the correspondence from South Wales police making representations as to the draft case.

Yours faithfully

Legal Adviser Cardiff and the Vale of Glamorgan Magistrates' Court  
Cynghorydd Cyfreithiol Llys Ynadon Caerdydd a Bro Morgannwg



Gwasanaeth Llysoedd  
a Thribiwnlysoedd EM

HM Courts &  
Tribunals Service

Llys Ynadon Caerdydd a  
Bro Morgannwg  
Plas Fitzalan  
Caerdydd  
De Cymru  
CF24 0RZ

Cardiff and the Vale of Glamorgan Magistrates'  
Court  
Fitzalan Place  
Cardiff  
South Wales  
CF24 0RZ

**PROTECTED-PERSONAL**

MR MAURICE KIRK  
49 TYNEWYDD ROAD  
BARRY  
CF62 8AZ

Ffôn / T 029 20474383  
Ffacs / F 029 2046 0264  
E-bost / E [sw-cardiffmceng@hmcts.gsi.gov.uk](mailto:sw-cardiffmceng@hmcts.gsi.gov.uk)  
hmcts.gsi.gov.uk  
Llinell Gymorth i Bobl Anabl  
Disability helpline: 0800 358 3506  
[www.gwasanaeth-llysoeddem.gov.uk](http://www.gwasanaeth-llysoeddem.gov.uk)  
[www.hmcts.gsi.gov.uk](http://www.hmcts.gsi.gov.uk)

28<sup>th</sup> March 2013

Ein cyf/Our ref: TG/MK

Eich cyf/Your ref:

Dear Sir,

**Re: - Police Property Act, 1897 – Application for Case Stated.**

Please find attached the final case stated. The delay in finalising the case and serving the final case has been occasioned by the file being overlooked and the mislaying of the correspondence from South Wales police making representations as to the draft case.

Yours faithfully

Legal Adviser Cardiff and the Vale of Glamorgan Magistrates' Court  
Cynghorydd Cyfreithiol Llys Ynadon Caerdydd a Bro Morgannwg

Case stated by Cardiff and Vale Magistrates' Court of Fitzalan Place, Cardiff, CF24 0RZ in the matter of an application by Maurice Kirk to Magistrates' Court to state a case for an appeal to the High Court regarding the hearing of a complaint brought by Maurice Kirk under the Police Property Act, 1897.

1. The case before me was a complaint brought by Maurice Kirk against South Wales Police under the Police Property Act, 1897 for the return to him of property seized from him by South Wales Police on a number of dates.
2. The complaint was instigated by a letter from Mr. Kirk to the court, dated the 22<sup>nd</sup> 11 '11 but redated 1<sup>st</sup> 12 '11, in which Mr. Kirk stated, " I apply for an order under 1984 PACE Act Sect. 22 and Police (Property Act) 1897 for police to release:

my machine gun ammunition, antique firearms, both Aya and Laurona 12 bore shotguns, legal papers and other property seized on or about 22<sup>th</sup> June 2009

also legal papers, computer and other personalty of mine seized on 24<sup>th</sup> August 2011

also legal papers, cameras, mobile phones and briefcase seized on 17<sup>th</sup> and 21<sup>st</sup> September 2011, respectively."

3. After a number of adjournments the case was finally heard, in the absence of Mr. Kirk, on the 25<sup>th</sup> September '12, the matter having been set down for trial on that day and I having acceded to a request made that day by South Wales Police to proceed (in all the circumstances of the case) in Mr. Kirk's absence and, further, to do so by hearing evidence in the matter, as opposed to dismissing the matter for want of prosecution.
4. In the light of the evidence that I heard I formed the view that it was either not possible or not appropriate to make any order for the "release" or delivery of any of the property in question to Mr Kirk or to anyone else.
5. Mr. Kirk has, in his application, raised the following questions for the High Court:

whether I was correct to proceed in his absence on 25<sup>th</sup> 9 '12 under S56 Magistrates' Courts Act when I knew he was in prison and

whether, in doing so, I denied him "natural justice" in domestic law and/or effective access to the court for the "determination of his civil rights and obligations" under article 6(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act, 1998.

6. I will, in the circumstances of this matter, treat those questions as raising the question that my decision to proceed in his absence was an exercise of my discretion as to so proceeding that was one to which no reasonable bench of magistrates could come and therefore being wrong in law, thereby depriving him natural justice in domestic law and/or effective access to the court for the "determination of his civil rights and obligations" under article 6(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act, 1998.
7. The facts on which I based my decision stem from the history of the matter, which I now set out.

8. Those matters referred to in paragraph 2 above.
9. The first hearing was listed on 9<sup>th</sup> 2 '12.
10. During that hearing nothing said or done by Mr. Kirk assisted me in relation to making any progress with his application. He did state, as I was trying to ascertain details of precisely what had been seized from him and when, that there was a "second list" with the police and that he had a copy of it. I directed that Mr. Kirk serve copies of that list within 28 days on the court and South Wales Police. I was told that there were a large number of civil actions brought by Mr. Kirk against South Wales Police (hereafter referred to as SWP) outstanding. I made directions that SWP were to serve on Mr. Kirk and the court details of those civil claims within 28 days in order that I could consider any issues which might have arisen out of those claims which may have affected this proceeding. I further directed SWP to detail all property seized from Mr. Kirk on the dates set out in his letter of 1<sup>st</sup> 12 '11 and to serve such details within 28 days upon Mr. Kirk and the court. The case was adjourned to 15<sup>th</sup> 3 '12 for a mention hearing so that I could assess what issues existed in the matter in the light of such information. Mr. Kirk was, on 9<sup>th</sup> 2 '12 produced in court from custody.
11. On the 8<sup>th</sup> 3 '12 a SWP response to Mr. Kirk's application was received at court. That response set out all property seized from Mr. Kirk on the relevant days; that Mrs. Kirk caused SWP to be handed a .410 walking stick shotgun subsequent to the 22<sup>nd</sup> 6 '09 search of Mr. Kirk's home; what property was retained by SWP; what had happened to property no longer in their possession (including detailing the return of many items seized to Mr. and Mrs. Kirk {and enclosing copies of documents acknowledging receipt of such items by signatures of Mr. and Mrs. Kirk next to descriptions of the returned items}) that no machine gun ammunition had ever been seized from Mr. Kirk; that he no longer held a firearm or shotgun certificate; that Mrs. Kirk no longer did either; that certain property was retained by SWP and that those items were able to be categorised in 3 ways, namely:

4 items (3 antique muskets and a muzzle loader) which did not require a licence to be possessed. These had been the subject of attempts to return them to Mr. Kirk (such attempts being unsuccessful due to lack of cooperation by Mr. Kirk) and that SWP would arrange for those 4 items to be released upon Mr. Kirk nominating a suitable firearms dealer or other person to collect them.

that the .410 walking stick shotgun is subject of a general prohibition on retention of such an item and anyone in possession of it would be committing an offence by such possession, meaning that SWP could not deliver it to Mr. Kirk

other items where a person's possession of them required a shotgun or firearm licence and they could not be returned to Mrs. or Mr. Kirk and that Mrs. Kirk (under whose certificates they had been held) had, at the date of the response, not nominated anyone to whom they could be given.

12. At the 15<sup>th</sup> 3 '12 hearing Mr. Kirk was in attendance, having been produced from prison. I made attempts to ascertain his response to the matters raised in the SWP response and to progress the matter. Those attempts were in vain given the attitude, approach and behaviour of Mr. Kirk, who indicated that he did not know if he had received a copy of the SWP response and that he would not at that stage nominate anyone to whom the returnable items could be returned.

13. I decided that I had no choice but to list the matter for trial in due course but not before another mention hearing. I directed (in order to be sure that Mr. Kirk would have the SWP response) that it be served on him within 7 days if it had not been already and that evidence on which SWP sought to rely also be served on Mr. Kirk and the court within 21 days. I further directed Mr. Kirk to serve on SWP and the court within 42 days his response to those documents.
14. The next (mention) hearing was set for 12<sup>th</sup> 4 '12.
15. On 12<sup>th</sup> 4 '12 Mr. Kirk was produced from prison for the hearing. At one point he refused to attend the hearing but eventually did so after my legal advisor had, at my request, been to see him in the cell area. SWP told me that he had been served, the day before the hearing, with a bundle of documents but that a further bundle was also to be served on him that day and was so while he was in the dock. Mr. Kirk had, therefore, all the documentation, including witness statements on which SWP intended to rely with the exception of evidence in relation to 3 items, in regard to which the police officer who had dealt with them could not be identified. In relation to those items SWP said they might call Mrs. Kirk. I adjourned the case for trial to 10<sup>th</sup> 5 '12 and, in view of the fact that Mr. Kirk had not complied with any court direction, I made a further direction that Mr. Kirk:

“serve on the respondent and the court in writing within 21 days of today's date his answer to all points raised by the respondent in the response responding to the applicant's claim and the respondent's 2<sup>nd</sup> court bundle served in response to the applicant's claim. If the applicant does not so respond the court will decide what course to adopt in relation to his claim including the issue of whether dismissal of the claim for want of prosecution would be appropriate.”

That direction was made in Mr. Kirk's presence in court and a written copy of it was served upon him.

16. A letter, dated 27<sup>th</sup> 4 '12, was received from Mr. Kirk. It requested a further adjournment of this case, “in the light of current circumstances and in the absence of proof that my property is still in the condition it was in when confiscated”. The adjournment was requested “until such time further and better explanation can be given concerning allegations of a criminal nature, as a damages claim in the County Court already exists.”
17. SWP had already confirmed in their response that the civil actions against them by Mr. Kirk did not relate to any of the property referred to in this complaint.
18. No criminal proceedings in which Mr. Kirk may then have been involved related to any of the matters subject to this complaint.
19. I had intended to deal with that application to adjourn (see paragraph 16) at the next court hearing but prior to it information was received from the County Court that, partly because of possible difficulties that may have existed in Mr. Kirk preparing for those lengthy proceedings due to his having been in custody, they were to be adjourned. On the 8<sup>th</sup> 5 '12, in the light of that information, I directed that the next hearing of this case be a mention only.
20. At the 10<sup>th</sup> 5 '12 hearing Mr. Kirk was not present. SWP were. I was told that he had been released from custody the day before. There was no explanation from Mr. Kirk, who knew of the hearing date, for his non attendance. I adjourned the case for a mention hearing to the 12<sup>th</sup> 7 '12, doing so in order to be utterly fair to Mr. Kirk in view of the County Court's concerns as to his possible difficulties in preparing for

trial in that matter. I did not want any such difficulties that may have existed to adversely affect Mr. Kirk's position in this case. Whilst the next hearing was to be a mention, I indicated that consideration may be given at that hearing to whether this complaint should be struck out.

21. Notice of that adjournment was sent to both of the possible addresses the court had for Mr. Kirk.
22. Other than the letter of 27<sup>th</sup> 4 '12, referred to in paragraph 16 above no contact had been made with the court by Mr. Kirk since his last production from prison at a hearing until he requested a 7 day adjournment of the 12<sup>th</sup> 7 '12 hearing. The case was administratively ordered to be adjourned to the 18<sup>th</sup> 7 '12 and letters were sent to Mr. Kirk at the same two addresses telling him of that and informing him that if he did not attend the case could proceed in his absence.
23. Mr. Kirk did not attend the 18<sup>th</sup> 7 '12 hearing and the case was set down for an all day trial listing on 25<sup>th</sup> 9 '12.
24. On 19<sup>th</sup> 7 '12 the court received a letter from Mr. Kirk, dated either 18<sup>th</sup> or 19<sup>th</sup> 7 '12 (the date put on the letter by Mr. Kirk is unclear) referring in its heading to the listing of this matter on 25<sup>th</sup> 9 '12 and requesting witness summonses be issued against 3 people, who did not appear to be relevant to this application.
25. On the 6<sup>th</sup> 8 '12 the court wrote to Mr. Kirk, at the same two addresses, confirming the listing of the matter for trial on 25<sup>th</sup> 9 '12, directing him to file written submissions regarding his request for witness summonses by 4pm on 31<sup>st</sup> 8 '12 and inviting him to comply with the court's direction of 12<sup>th</sup> 4 '12, which had been served personally upon him at HMP Cardiff on 17<sup>th</sup> 4 '12.
26. At no time during this case has Mr. Kirk complied with any direction or order or request of the court.
27. In early September I became aware that Mr. Kirk was again in custody. Accordingly I arranged for a production order to be obtained for his production at the 25<sup>th</sup> 9 '12 hearing.
28. On the 25<sup>th</sup> 9 '12 the court was informed by cell staff at the magistrates' court that Mr Kirk had refused to be transported to the court (under the authority of the production order) from Bristol prison so that he could take part in the proceedings, saying, at one stage, that as it was a civil case he did not have to attend.
29. Mr. Kirk did not appear at the 25<sup>th</sup> 9 '12 hearing.
30. In paragraph 2 of his grounds of appeal Mr. Kirk raises the issue that the court would not have been aware if he knew of the hearing date and implies that he could not attend the hearing as he was in custody and there was no arrangement for his production to court. Paragraphs 24, 27 and 28 above establish the contrary.
31. At the hearing on 25<sup>th</sup> 9 '12 SWP, represented by counsel, as it had been throughout, applied for the case to proceed in the absence of the complainant and that, if I acceded to that application, that I do so by hearing all available evidence instead of dismissing the complaint for want of prosecution.
32. S. 56, Magistrates' Courts Act, 1980 contains a power (in the exercise of the court's discretion) to proceed in the absence of the complainant and the matter generally is governed by the Magistrates' Courts Rules, 1981. (Hereafter, "MCR") I also took into account the spirit of the provisions of the Civil Procedure Rules.
33. In dealing with the case throughout and coming to my decision on 25<sup>th</sup> 9 '12 that the case should proceed in Mr. Kirk's absence I linked the matters set out above with the following, specific provisions of the MCR:

Rule 3A(1): the court must actively manage the case. That includes

(a) the early identification of the real issues

(b) the early identification of the needs of witnesses (SWP witnesses were in attendance and ready to give evidence on 25<sup>th</sup> 9 '12)

(c) achieving certainty as to what must be done, by whom and when, in particular by the early setting of a timetable for the progress of the case

(d) monitoring the progress of the case and compliance with directions

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings

(g) encouraging the participants to co-operate in the progression of the case

Rule 3A(3): each party must-

(a) actively assist the court in managing the case without, or if necessary with, a direction

Rule3A(7): in fulfilling its duty under paragraph (2) actively to manage the case the court may give any direction and take any step unless that direction or step would be inconsistent with legislation, including these rules. In particular, the court may-

(b) give a direction on its own initiative or on an application by a party

i. specify the consequences of failing to comply with a directions

Rule3A(14): At every hearing the court must, where relevant-

(a)if a party is absent, decide whether to proceed nonetheless

d. where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action

Rule3A(15): In fulfilling his duty under paragraph (3) actively to assist the court in managing the case, each party must-

(a) comply with directions given by the court;

c. make appropriate arrangements to present any written or other material

Rule 3A (17): In order to manage the case-

(a) the court must establish, with the active assistance of the parties, what disputed issues they intend to explore; and

(b) the court may require a party to identify-

i. which witnesses will give oral evidence,

(vi) what written evidence that party intends to introduce;

(vii) what other material, if any, that party intends to make available to the court in the presentation of the case

Rule 3A (18) the court must make available to the parties a record of directions given.

34. I also considered the spirit of the Civil Procedure Rules and in particular:

the overriding objective of enabling the court to deal with cases justly;

saving expense;

dealing with the case in ways which are proportionate- to the amount of money involved; to the importance of the case; to the complexity of the issues and to the financial position of each party;

ensuring that the case is dealt with expeditiously and fairly;

allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;

the requirement for parties to help the court to further the overriding objective;

the court's duty to actively manage cases, including deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others; fixing timetables or otherwise controlling the progress of the case;

the court's case management powers including whether or not to strike out the claim;

the court's ability to strike out if no reasonable grounds for the bringing of the claim are disclosed or if there has been a failure to comply with a rule or court directions;


the court's power to give summary judgement if it considers that the complainant has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a trial.

35. At the hearing on the 25<sup>th</sup> 9 '12 SWP submitted to me that it had provided a complete answer to Mr. Kirk's claim; that no response or allegation to the contrary had been provided by Mr. Kirk; that he had utterly failed to comply with any direction made by the court or to assist the court in any other way; that the case was a substantial expense to SWP and the public generally and that any further adjournment of the case would inappropriately add to such expense; that Mr. Kirk was aware of the hearing and had chosen not to attend it and that the time had come in the case to say that enough was enough. In addition it submitted as set out in paragraph 31 above.



36. In deciding whether to proceed with the case in the absence of the complainant I considered all of the history set out above as well as the matters set out in paragraph 32 above and the issues set out in the MCR as detailed in paragraph 33 above. I came to the conclusion that the responses of SWP appeared to establish that the complainant had no real prospect of succeeding in his complaint; that the history of the case amounted to a complete failure by the complainant to assist the court, by failing to respond, in any way, to any requests, cajolings, directions, orders, reminders and opportunities, including the failure of the complainant to attend any hearing when he was at liberty to do so and able to do so (including the opportunity to attend court on the 25<sup>th</sup> 9 '12) and amounted to an equally complete failure to prosecute his complaint let alone establish or even hint at any basis on which his claim could succeed, despite the opportunity to have done so throughout the many months that had passed since he first lodged his complaint with the court. I further concluded that those failures meant that Mr. Kirk had failed, during the pre trial phase of the case, to present any answer to the immensely strong case presented by SWP as to why the application was either flawed or, where property of the complainant's remained in the possession of SWP, was one where it would be inappropriate or impossible for a court to make the order that Mr. Kirk sought. I further concluded that the additional cost in public time and expense of any further adjournment of the case was not merited; that the complainant was aware of the possible consequences of non compliance with court directions and that he was aware of the hearing and its purpose. I concluded that Mr. Kirk had chosen not to attend the trial to prosecute his complaint when facilities existed for him to do so.
37. I decided to exercise my discretion in favour of SWP's application to proceed in the complainant's absence and, in all the circumstances, to do so by hearing evidence regarding the complaint as opposed to striking out the complaint. On the evidence I heard I came to the conclusions set out in paragraph 4 above.
38. The question for decision by the High Court is whether that decision to proceed in the complainant's absence, in the light of all the foregoing, was unreasonable and therefore unlawful as set out in paragraph 6 above and whether it led to the deprivation referred to in paragraph 6 above.

Dated 29<sup>th</sup> MARCH 2013

  
Legal Adviser  
on behalf of  
District Judge Gordon Jenkins  
(mz)