IN THE CARDIFF COUNTY COURT

CASE NO.
BS 614159-MC65 ("Action 1")
CF101741 ("Action 2")
CF204141 ("Action 3")

BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF SOUTH WALES POLICE

Defendant

DEFENDANT'S CLOSING SUBMISSIONS

1. We make these written closing submissions pursuant to the Court order of 28th May 2013, namely that the Defendant should file and serve its Closing Submissions in writing by 24th June 2013.

2. For the reasons identified in paragraph 2 of the Defendant's Extended Skeleton Argument dated 21st March 2012, we do not intend to deal with the quantum of damages in these closing submissions, although we have made submissions as to the absence of evidence of loss or damage, where the existence of loss or damage is a constituent element of any particular cause of action. We intend to approach these closing submissions on the basis that we will firstly deal with matters of law, then make some observations on the context of these claims as a whole, before turning to deal with the individual incidents themselves in the order in which they have been pleaded. To that end, and to assist the Court, we propose broadly to follow the structure adopted in the Defendant's Extended Skeleton Argument referred to above.

3. When dealing with the law, we will set out the broad structure of the causes of action pleaded by the Claimant. Given the largely unfocussed nature of the Claimant's cross-examination, it is difficult to know precisely what points he will seek to argue in closing, and therefore which particular points need to be covered

in depth in these closing submissions. If the Court requires any further assistance in relation to the law, then we will of course provide such assistance as may be necessary. In any event, we apprehend that the issues in this case will primarily be resolved by the Court's findings on the issues of fact, rather than on any detailed analysis of the law, since it appears to be the Claimant's case that all of the police actions were motivated by some grand conspiracy. Whilst we accept that in many cases the burden will be on the police to establish the lawfulness of their actions, nonetheless the resolution of this central factual issue is likely to determine the claims made by the Claimant.

4. We of course do not intend to comment upon every single witness, or every piece of evidence, but only upon those matters which appear relevant to the issues which the Court has to consider. Further, we are aware that the Court has its own detailed record of the evidence given by the various witnesses, and so we do not intend to set out at length all of the evidence given by the witnesses.

THE LAW

5. The Court of course has the Defendant's Bundle of Legal Authorities which was filed in conjunction with the Defendant's Extended Skeleton Argument dated 21st March 2012 (this is a separate bundle to those authorities which were filed in support of the Defendant's Skeleton Argument on the Preliminary Issues argued in September 2010). Insofar as we refer to any additional authorities in these closing submissions, these will be submitted in conjunction with this document.

FALSE ARREST

6. It is for the Claimant 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 took place. In order to establish a lawful justification for an arrest, the Defendant has to establish:
    i. That the relevant police officer did in fact honestly suspect that an offence had been committed by the Claimant; and
    ii. That there were reasonable grounds to support that suspicion.

7. In some cases, a claimant may seek to establish that, notwithstanding the existence of reasonable grounds to suspect, a police officer – who of course has a discretion whether to exercise a power of arrest – has exercised that power *Wednesbury* unreasonably, *ie*. in a highly irrational manner. There are numerous authorities regarding a police officer's discretion as to whether to exercise a power of arrest – for example, see Lord Diplock's opinion in **Mohammed-Holgate v Duke** [1998] QB 209.

8. Whilst trite law, it is useful at this juncture simply to note the definition of "*Wednesbury* unreasonableness", in the case of **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation** [1947] EWCA Civ 1. Per Lord Greene MR:

   "*I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it*."

9. The burden is upon the Claimant to plead and prove that notwithstanding the existence of reasonable grounds to suspect, the officer wrongfully exercised his discretion. For the most part, there is no challenge raised by the Claimant as to the exercise of the discretion to arrest, although the question of discretion does appear to be raised in relation to the decisions of custody officers regarding the authorisation and continuation of his detention.

10. For the most part, the arrests complained of by the Claimant 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 the person had committed that offence. The concept of "reasonable suspicion" also forms the foundation of most other powers of arrest which the Court has to consider in relation to this case, eg. section 25 PACE (at that point in time), and pursuant to section 6 of the Road Traffic Act 1988.

11. 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"*.

12. For examples of the very limited burden placed upon the police in this regard, see the cases of **O'Hara v Chief Constable of The Royal Ulster Constabulary** (1997) AC 286; **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**.

13. 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, or civil employee, or some other third party organisation (such as CPS, DVLA, HM Court Service) 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 that subsequently, 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.

14. Further, the arresting officer is entitled to rely upon what he/she has been told by another officer, whether that information is contained in documents, or on a computer. These propositions can be found in **O'Hara v Chief Constable of The Royal Ulster Constabulary** (1997) AC 286, at page 293 paras. C–H and at page 298 A-H, and **Alford v Chief Constable of Cambridgeshire** [2009] EWCA Civ 100, at paragraphs 28 – 34,

15. The issue of information on the PNC was dealt with in the case of **Hough v Chief Constable of Staffordshire** [2001] EWCA Civ 39, and in particular we invite the Court to consider paragraphs 16 and 17 of that judgment. This is an issue which arises acutely in relation to the Claimant's arrests for driving whilst disqualified. In considering paragraphs 16 and 17 of **Hough**, we respectfully remind the Court that these incidents were always situations of urgency, as the Claimant was driving, and thus needed to be stopped, and unless stopped and arrested, it was clear that the Claimant intended to continue driving. Indeed, in several instances, he indicated an intention to drive off or otherwise make off from the scene. Further, overall, his general conduct tended to reinforce the suspicion that the officers had garnered from the information supplied to them by the PNC. In addition, in some instances, the officers also had information as to disqualification from other police intelligence sources (eg. Police divisional website; Crown Court record).

16. In considering **Hough**, regard must be had to the decisions in **Mulvaney** and **Castorina**, neither of which were referred to in **Hough**, which support the general proposition that in considering the reasonableness of an officer's 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.

17. In any event, both in relation to information provided on the PNC, or otherwise, 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.

18. In **Hough**, the Court, *obiter*, suggested that an incorrect entry on the PNC could be the subject of a claim in negligence; it is of course the Claimant's case that any

errors on the PNC were not there accidentally, but had been deliberately made as part of the conspiracy against him. There is thus no pleaded case in negligence in respect of those errors, and indeed, any such claim in respect of those matters would probably have been statute-barred by the time those proceedings were commenced. In the present case, as we shall see, not only is there no evidence that the errors on the records were the fault of the Police, there is in some cases, positive evidence that it was the fault of some other party, be it the Magistrates' Court or the DVLA.

19. 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) QB 209, followed and applied in **Cumming v Chief Constable of Northumbria Police** [2003] EWCA Civ 1844, and several other cases.

20. In respect of the decisions made by the various Custody Officers and Reviewing Officers, it appears that the Claimant's main complaint, albeit not usually formulated in this way, is that he should either not have been detained, or if he was lawfully detained, then he should have been released earlier. The duties/powers of a Custody Officer prior to charge are set out in section 37 of PACE 1984. The duties/powers of a Custody Officer following charge are set out in section 38. Given the varying "custody" situations in which the Claimant found himself during these three actions, we will address the exercise of these duties and powers by each of the relevant officers as we traverse the factual issues in submissions on each of the incidents. It is important to note however, that for the decision of a Custody Sergeant to detain the Claimant 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**, where the Court formulated the following test for deciding whether a decision that detention was necessary under PACE was lawful:-

"*whether the decision of the custody officer was unreasonable in the sense that no custody officer, acquainted with the ordinary use of language and*

applying his common sense to the competing considerations could reasonably have reached that decision."

This was followed and applied in **Taylor v Chief Constable of Thames Valley Police** (2004) 1 WLR 3155 and then again in **Al-Fayed v Commissioner of Police for the Metropolis** (2004) EWCA Civ 1579.

MALICIOUS PROSECUTION

21. There are five elements to this tort, the burden of establishing which all fall upon a claimant, namely;

    a. that 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.

22. 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".

23. 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 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.

24. 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 McIver** (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.

25. 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 McIver**, 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"*.

26. 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".

27. 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.

28. 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.

HARASSMENT – CLAIM UNDER THE PROTECTION FROM HARASSMENT ACT 1997

29. This is a claim pleaded only in Action 2. Having now heard the Claimant's evidence, we intend to deal with this aspect by way of brief "bullet point" submissions:-

    a. The test for harassment is both objective (the conduct must amount to harassment, s.1(1)(a) of the Act) and subjective (the Defendant must know or ought to know that it amounts to harassment, s.1(1)(b)). Therefore, the conduct of the Defendant's officers has to be viewed not from the Claimant's perspective, but either on the basis that they intended to cause harassment, or alternatively, that their conduct so obviously amounted to harassment that they ought to have been aware of the same.

    b. To amount to harassment, there must be a course of conduct on at least two occasions. Clearly, in a case where we are dealing with a number of incidents involving a large number of officers, to amount to harassment, the incidents must be connected, in that either an individual must be involved in more than one incident, or, insofar as we are dealing with individual officers who are involved in separate

incidents, they must be connected in some way, in the sense that they are being directed by senior officers to behave as they did. To that extent, this allegation mirrors the Claimant's existing case in respect of conspiracy.

c. As was noted by the Court of Appeal in **Thomas v News Group**, The Times July 25, 2001, " "*Harassment" is … a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable*." Obviously, even if it can be established that the officers have made the wrong decision in any particular incidents, that of itself would not establish harassment in the absence of conduct which is "targeted" and which is "calculated" to produce certain consequences, and which in itself is "oppressive or unreasonable".

d. By virtue of section 1(3) of the Act, subsection 1(1) does not apply to a course of conduct if the person who pursued it shows –

   (a) That it was pursued for the purpose of preventing or detecting crime;

   (b) That it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

   (c) That in the particular circumstances the pursuit of the course of conduct was reasonable.

e. As was held by the Supreme Court in the recent case of **Hayes v Willoughby** [2013] UKSC 17, and in particular at paragraphs 14 and 15 of the speech of Lord Sumption, and at paragraph 22 in the speech of Lord Mance, their Lordships interpreted s.1(3)(a) with reference to the concept of rationality. Per Lord Sumption:-

   "*Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose*

of preventing or detecting it. If he has done these things, then he has the relevant purpose."

f. We would contend that the actions of the individual officers against whom harassment is alleged in Action 2, do indeed fall within s.1(3) of the Act and thus the Claimant's claim for harassment must fail.

MISFEASANCE IN A PUBLIC OFFICE

30. 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.

31. 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. Clearly, a police officer is a public officer for the purposes of this tort.

32. 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 is 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.

33. 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". It appears, having now heard the Claimant's evidence, and notwithstanding his unfocussed approach, that he is nonetheless alleging "targeted malice", that is to say, the exercise of power by a public officer with the specific intention of injuring him.

34. As noted at paragraph 11-016 of **Civil Actions Against the Police,** 3rd edition, cases of targeted malice are rare, and this form of tort has not been explored in recent caselaw. 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,** they know of no such action which has ever succeeded against the police.

35. A 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.

36. 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.

37. We submit, in the context of the factual allegations made by the Claimant, this cause of action, insofar as it is raised in the 2nd Action, adds very little to the claim. If the Claimant establishes that there was an over-arching conspiracy, between a number of senior officers, either acting in concert with, or at the behest of, other institutions (such as local Judges, CPS, Royal College of Veterinary Surgeons, Guernsey Police, the Avon & Somerset Constabulary, or Freemasonry), then the Court may well conclude that someone has been guilty of

misfeasance in a public office. If, on the other hand, what the Court is really dealing with is a number of individual decisions taken by individual officers who were attempting to do their best in somewhat trying circumstances, then, whether or not they made the right decision, this would clearly fall far short of misfeasance in a public office.

GENERAL SUBMISSIONS CONCERNING THE CLAIMANT'S CASE

38. The Claimant believes that he is a victim of a conspiracy. Not one which started in South Wales in 1992, but rather one which started in the 1970's, when he fell into dispute with a police officer in the Avon and Somerset Constabulary, a Mr Hawkins. The Claimant apparently believes that as a result of this dispute, various groups or institutions have conspired against him for the last 30 to 40 years. These groups appear to include various police forces, the court system, including High Court Judges (see page 3, paragraph 27 of the Claimant's statement in the Claimant's Witness Evidence bundle), Circuit Judges, Magistrates and their Clerks, together with the Crown Prosecution Service, the Attorney General (page 2 paragraph 12), the Press (page 3 paragraph 23), his former Solicitors in Bristol (page 47 paragraph 605), the Royal College of Veterinary Surgeons, the Civil Aviation Authority, various Air Traffic Controls and the Freemasons. How and why this conspiracy has developed following his falling out with a single officer is not explained either in his statement or in his oral evidence. It is clear that he believes that this conspiracy spread to Guernsey and from there to South Wales when he came here initially as a locum and thereafter when he bought his first surgery in Barry in 1992.

39. We know from the list of the Claimant's previous convictions contained in the bundles that throughout the period from 1970 until 1991, the Claimant was regularly involved with incidents involving the police. If his evidence is to be believed, there were numerous other incidents involving the police which did not result in him being convicted of any offence. The Claimant told the Court that he believed that he had won so many cases during this period that he was, *"….on the Police National Computer for daily surveillance*", (page 1 paragraph 4). He believes that this surveillance developed whilst he was living in Taunton, being carried out by officers of the Avon and Somerset Constabulary (page 3 paragraph

21), thereafter passed on by that constabulary to the Guernsey police when he moved there in about 1980 and thereafter passed on by them to the South Wales Police in 1992 (page 4 paragraph 45). In essence therefore, the Claimant believes that he has been the subject of 30 years of surveillance (page 10 paragraph 118).

40. It appears that the Claimant believes that the surveillance took the form of keeping him under observation, listening into his telephone calls, attaching tracking devices to his vehicles and opening his mail.

41. The Claimant told the Court that he had developed various tactics to deal with this conspiracy and the covert surveillance which flowed from it. These tactics included the following:-

    (a) Having access to a large pool of motor vehicles, which, for the most part, were not registered in his name and so could not be traced back to him. The vehicles in the pool were ever changing, with some being sold on to other people and then bought back by the Claimant. The purpose of this was to keep him “below the radar” so that no-one could be sure precisely what vehicle he was using.
    (b) He would use a number of passports and driving licences.
    (c) He would use motor vehicles with foreign registration.
    (d) When engaged on a single journey, he would use a number of different vehicles, one to travel out and one to travel back.
    (e) He would use a blow up doll to make it appear that he was being accompanied.
    (f) When stopped by the police, he would deliberately not produce his driving documents when lawfully requested to do so, or if he did so, he would produce them late.
    (g) When, as inevitably happened following his failure to produce documents, he was charged with various motoring offences, he would fail to turn up to the Court hearings or, would occasionally plead guilty to the charges, thus resulting in his conviction, so that he could thereafter appeal and so have the convictions overturned.

(h) He would fail to provide any information requested by police officers, or if he did so, he would do it in a manner that was likely to be confusing to them.

(i) He would, as he freely admitted, when arrested, engage in passive resistance, stiffening his limbs and body so as to cause maximum difficulty to the officers attempting to arrest him. This would necessarily result in an escalation in the amount of physical force needed to be used to effect a lawful arrest.

42. This conspiracy, which he believes existed, was a pure fantasy. In respect of these particular actions against the South Wales Police, there is not a shred of evidence to support the allegation. Nonetheless, it is clear that he continued to behave in the manner described above and continued to employ the tactics he developed in Taunton and thereafter in Guernsey following his moving to South Wales.

43. The Claimant's history during the 1970's and 1980's has had a direct impact on the events covered by these claims, in that:-

(a) What occurred in South Wales from 1993 until 2002, cannot be seen as an isolated, wholly inexplicable, series of events, but rather is a continuation of how the Claimant has always lived his life and how he has always dealt with authority.

(b) The Claimant arrived in South Wales, not as an ordinary veterinary surgeon intent on getting on with his practice, but rather as an individual, who, from the outset, viewed all figures of authority, but in particular the police, with undisguised suspicion. Thus, almost straight away, ordinary enquiries made by the police were rebuffed in an aggressive and/or evasive manner such as was likely to increase any suspicion that a police officer might have had as to precisely what the Claimant was about. Even the most simple of enquiries, for example, whether he owned a particular vehicle or in whose name the vehicle was registered, was likely to be met either by no answer, or by an answer which was deliberately evasive.

(c) From the outset, he employed his "defensive tactics"; for example, using a number of vehicles, some with foreign registrations, which were registered

in other names, some clearly fictitious and where the insurance arrangements were somewhat questionable. It is not surprising that such tactics would start to raise suspicions on the part of the police, and indeed the Courts. It is a curious feature of the Claimant's character that he consistently complains about the attention the police gave him and his vehicles, yet he drove vehicles which were run down and, at least in their exterior, badly maintained, almost inviting the police to stop the vehicle. Then, when stopped, he would be unnecessarily awkward and sometimes offensive. Thereafter, he would refuse to produce his documents or if he did so, would produce them late or at the wrong police station. His conduct seems to have been designed to have produced the result about which he now complains.

(d) It is clear that every contact he had with the police, or indeed any other authority, was viewed by the Claimant as refracted through this prism of conspiracy. Thus, an individual officer was never simply asking him his name or address or trying to identify the registered keeper of the vehicle or trying to find out whether the Claimant was insured to drive the particular vehicle, but rather, as the Claimant saw it, they were all part of a general conspiracy against him, either as prime movers or as foot-soldiers. So it was, that for reasons that were clearly inexplicable to the relevant officers, he would refuse to give his name or address or otherwise confirm his identity, refuse to wait in a queue behind other members of the public to collect his dog, or refuse to accept the terms of his bail.

(e) This may be an explanation why, when challenged about important matters, such as whether he was disqualified from driving, the Claimant would refuse to give a simple clear explanation as to whether he was lawfully entitled to drive, either giving no explanation, or giving a vague, incomplete or sometimes misleading explanation.

(f) It may be that, from the Claimant's perspective, this explains his general conduct when stopped by the police which looked at objectively, was only likely to increase any suspicion they might have had of him. Thus it was that he would keep his door locked, pretend to be asleep when in his car or when questioned in custody, or walk off when a police officer was in the middle of questioning him or making a check on the PNC.

(g) Overall, the Claimant's view appears to have been either that he was under no obligation whatsoever to help the police in carrying out the investigations, or that there was little point in helping them since they already knew the answers to all the questions they were asking him.

44. The Court has heard a considerable body of evidence from present and retired police officers regarding their knowledge of the Claimant at the time when these incidents took place or their knowledge regarding any comments made by other officers regarding the Claimant during the relevant period of time. We do not intend to repeat that evidence in these submissions. It is clear however, that the evidence of the witnesses fell into two parts, firstly, there were those witnesses who had had no previous contact with the Claimant and who knew very little about him, either before or after. It is clear that the Claimant did not accept this evidence, but that insofar as they might have been telling the truth, it was noticeable that the Claimant expressed surprise and some disappointment that he was not as famous as he thought himself to be. Secondly, in regard to those witnesses who were aware of the Claimant, or who subsequently became aware of matters concerning the Claimant, their evidence appeared generally to be that either from their direct observation or from things they had heard, they regarded the Claimant as an extremely competent and skilled veterinary surgeon, but equally that they regarded the Claimant as an eccentric, awkward, belligerent, evasive and difficult man to deal with.

45. Overall, when cross-examining these witnesses, it appeared that the Claimant was attempting to suggest that some or all of these officers deliberately went out of their way to stop, detain, arrest and harass him. We invite the Court to conclude that in fact, the contrary was true. It was apparent that both by direct contact and by reputation, the officers who had knowledge of the Claimant, believed him to be very difficult and awkward to deal with. Indeed, the general view appeared to be that any involvement with the Claimant was likely to be difficult, prolonged, tangled and generally unpleasant. No doubt the Court will have detailed notes regarding comments made by the various witnesses, and we invite the Court to consider in particular the evidence of PC Manders and PC Wilson, both of whom appear to have regarded the Claimant as a competent

and interesting man, but also one who when the mood took him, could be completely impossible to deal with. Indeed, in that regard, the Court may recollect the evidence given by some of the Claimant's own witnesses, such as Mr Parry, Mr Aishe and Mr Gafael, all of whom acknowledged the Claimant's difficult behaviour, and in respect of the latter witness, the fact that the Claimant could be aggressive, belligerent and extremely unpleasant.

46. The Court may recollect that it was the evidence of a number of officers, primarily in relation to charging at the police station regarding the production of driving documents, that in respect of those members of the public who were innocent of those offences, the police would expect, and would usually receive, the fullest of co-operation from those persons by the production of their documents, either at the police station or at the Magistrates Court, but in any event as soon as possible. The police seem to have been taken by surprise by an individual who may have been innocent of the offences, and who possessed documents which could establish the lawfulness of his driving, but who would choose not to produce any documentation until after he had been convicted.

47. Finally, the Court may wish to consider the evidence of Chief Inspector Fahey, who, in answer to a question put to him by the Claimant stated:-
"I knew of your reputation, that you were prone to become embroiled in a battle of wills with the police or criminal justice system, that's what I knew at the time."
The Claimant himself seemed to regard Chief Inspector Fahey as one of the decent police officers which he occasionally came across, and shook his hand as he left Court. Having regard to that evidence, one may reflect there is an element of the Claimant being a latter day Don Quixote, save that in his case it is not windmills, but figures of authority, that he cannot prevent himself tilting at.

ACTION 1 – PARAGRAPH 8.3

48. The Claimant's allegations and the Defendant's response are contained in A1, 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. The Court heard evidence for the Defendant from retired PS 2148 Huw Phillips, Clare Willis (nee Reohorn), retired Inspector 913 Sidney Griffiths, Deanna Lynda Young, and retired PC 1289 John Kirkpatrick, whose statements are at A1, vol. 1, pages 4 – 38. All the

witnesses gave evidence which confirmed the contents of their statements. The Claimant cross-examined the witnesses at length, some of which was relevant to the pleaded cause of action, but at the end of cross-examination, the evidence remained as it had been.

49. On 2nd January 1993, PC Phillips was on motor patrol duty when he observed a Ford Escort motor car with defective front and rear lights. 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 the Claimant with a Vehicle Defect Rectification document in respect of the defective light and, in the absence of the Claimant 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, the Claimant produced his driving licence 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). The Claimant did not produce a certificate of insurance in respect of the vehicle nor an MOT certificate. Subsequently, on 11th January 1993, the Claimant purported to produce an insurance document in respect of the HORT1 issued by PC Phillips.

50. 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, p.34). It might appear therefore, that the Claimant 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).

51. It appears that the Claimant 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. At one point in his evidence the Claimant appeared to concede that he had deliberately failed to attend so that he would be convicted, thus allowing him to appeal and thereby expose the "conspiracy". He was then

convicted in his absence on 19th April 1993 (see A1, vol. 1, pages 49-52), and the case was adjourned to 17th May 1993 for sentence (see Notice at page 41).

52. It would then appear that the Police in Cardiff (probably the Administrative Support Unit or the Prosecution Department) became aware, presumably because of the processing of the second HORT2, that the Claimant possibly held valid insurance, since, on or before 10th May 1993, a Sergeant Grabham of "Cardiff Police" informed the Claimant that the Police wished to withdraw the summonses against him (see Claimant's letter to Barry Police at A1, vol. 1, page 92). Interestingly, and in accordance with the Claimant's usual approach to such matters, he did not want the summonses withdrawn, but wanted the matter to proceed against him. The telephone call from Sergeant Grabham was later confirmed by letter of 11th May 1993 from Chief Inspector Rodden, of the Prosecutions Department (A1, vol. 1, page 56).

53. It appears that, unbeknownst to the Police, it was too late for the summonses to be withdrawn as the Claimant had already been convicted, see letter of 13th May 1993 (see A1, vol. 1, page 57). He was due to be sentenced on 17th May 1993, but it appears this was adjourned until 24th May 1993, for him to produce his driving licence, when he was disqualified from driving for a period of 6 months (see A1, vol. 1, pages 42 – 44). See also the police "message switch" document at A1, vol. 1, page 98 which records that the Claimant was disqualified from 24.5.1993 until 23.11.1993, and the Magistrates Court memorandum of proceedings on 24th May 1993 (although the date appears to be partly obscured by the photocopying process) at A1, vol. 2, page 71, which indicates that the Claimant was disqualified for 6 months, and that the disqualification was suspended pending appeal.

54. There is little doubt that the fact of the Claimant's disqualification was passed on to the relevant authorities – presumably the DVLC/DVLA - who would have sent the information for updating onto the PNC, and it also appears to have been disseminated via the police message switch referred to above. It appears, however, that the fact of the suspension of the disqualification was not communicated to the DVLA/PNC/Collator's Office. Given the usual chaotic manner in which the Claimant conducts himself in Court, it may be that the

somewhat tangled way in which the matter was dealt with resulted in the suspension not being passed on to the Collator or the DVLA/PNC. This is of course the disqualification which led to police action against the Claimant for driving whilst disqualified in the incidents pleaded at A1, paras. 8.9 and 8.11. There is no evidence from any source to confirm that the Court or the CPS notified the Police/DVLA/PNC of the suspension of the disqualification. Moreover, there is no evidence that the police were in attendance at the hearing on 24th May 1993, and, particularly given that this was the second time the case had been adjourned for the Claimant to be sentenced, it is very unlikely they would have been.

55. In relation to the appeal, it appears that the Claimant had made contact with the Clerk 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). Rather than taking the straightforward approach of swearing a statutory declaration, which would have brought the matter to an end, the Claimant put in a Notice of Appeal (A1, vol.1, page 46). Presumably it was the Claimant's intention to expose the "conspiracy".

56. The CPS acknowledge, by letter of 2nd June 1993, that there was a note on their file that an insurance certificate had been produced and that, having considered the matter, the CPS concluded that since the vehicle was registered in Jersey, the MOT offence could "not be proved", (see A1, vol.1, page 60). The appeal was therefore not opposed. The Claimant's convictions were overturned. The result is at A1, vol. 1, page 47.

57. The Claimant gave evidence about this incident. He had little, if any, recollection of the events, but was prepared to accept that his lights were not working, accepted that they were defective (albeit that he thought this had been deliberately caused by undercover officers), and he accepted that the conversation took place in the terms described by PC Phillips. He accepted that he had failed to produce his insurance document at the time of the first HORT2 on 9th January 1993, and that thereafter he produced his certificate of insurance for a different vehicle on 11th January 1993. His evidence was that that insurance was effective, in that although it was for a different vehicle, the terms of the policy

were such that he could drive this vehicle, so long as he was not an owner. Although no longer of any relevance to the issues which arise in this case (the Court not being concerned with whether he was in fact guilty of not having insurance), the Claimant's vague evidence as to who precisely owned the vehicle at the time, and his buying and selling of the same vehicle back and forth to various parties, leaves one with a lurking suspicion that the Claimant may indeed have been the owner of the vehicle at the relevant time.

58. 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

59. The Claimant'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 the Claimant's motor vehicle and thereafter maliciously prosecuting him for driving with a bald tyre. The Defendant's witness evidence is at A1, vol. 1, page 64ff, in the witness statement of DS 4059 Jane Lott, who gave evidence to the Court.

60. On 24th March 1993, Mrs Lott was driving her marked police car in Barry when she observed another car which appeared not to be displaying a vehicle excise licence. She followed the car and then, when it came to a halt, went to speak to the driver in the terms set out in her section 9 statement at pages 94 - 95, who subsequently was identified as the Claimant. The terms of the conversation appear to be in accordance with the way the Claimant usually dealt with the Police, namely terse and unhelpful.

61. The officer examined the vehicle by walking around it, and observed that one of the tyres on the vehicle had insufficient tread. It was in fact bald. She issued an HORT1 (see A1, vol. 1, page 87). It appears that the Claimant subsequently produced a certificate of insurance for another vehicle (see HORT2 at page 89), and that he was then prosecuted in respect of the offence in relation to the tyre (see the summons issued on 28.6.1993 at page 96). The Justices decided to

amend the section under which he was charged of their own volition (see page114).

62. The Claimant 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, the Claimant had already appealed conviction and sentence (see page 113). He was sentenced on 25th October 1993 (see page 110).

63. The Appeal to the Crown Court was heard on 17th December 1993 (see record sheet from the Crown Court at page 100) when the Claimant called a witness, namely his veterinary nurse, Mr Scott Parry. The Claimant had deliberately not called Mr Parry in the Magistrates Court in order to allow him to call him in the Crown Court; for, as the Claimant put it in cross-examination to Mrs Lott:
"He didn't give evidence at the magistrates as I wanted to lose so I could have you. I keep my witnesses for appeal cases to show the deceitfulness of people like you." It is useful to bear in mind that Mrs Lott's evidence was that, at the date of this incident, she had never met the Claimant before, nor had she heard of him.

64. At the Crown Court, the Claimant produced his top copy of the HORT1, (see A1, vol. 1, page 88), which did not have upon it two entries made upon Mrs Lott's retained HORT1, namely "No Markings" which ran vertically along the left hand edge of the page, and "Def tyre no VEL" on the top of the page. The Claimant relies upon this as evidence of conspiracy and perjury on the part of the officer; Mrs Lott explained that it was her common practice, both before and after this incident to make for her own benefit, such notes as were required to remind her about the incident when she made up her full notebook. Clearly, there is nothing in and of itself wrong with this course of conduct, and it certainly does not render void the HORT1.

65. In cross-examination, the Claimant sought to draw a distinction between the summons which referred to an absence of tread (a bald tyre) and the entry on the

officer's HORT1, (page 87) which referred to a defective tyre, the suggestion being that Mrs Lott had subsequently made up or exaggerated the evidence about a bald tyre. In fact there seems little doubt that from the outset, Mrs Lott informed the Claimant that, so far as she was concerned, the tyre was bald, not merely "defective", see the Claimant's letter of 20th May 1993, (at A1, vol. 1, page 93), at paragraph 2, and his reference to "bald tyre" - produced at a time before the summons was issued. This therefore must have been based upon what the officer told the Claimant at the scene.

66. The Claimant gave evidence in respect of this matter, when for the most part, he accepted that the conversation recorded by Mrs Lott could have taken place in the way recorded by her. The only issues between them appear to be whether the officer had any opportunity to observe the absence of a vehicle excise licence before speaking to the Claimant and whether she had in fact seen the tyre before raising this with the Claimant. It is interesting to note that the Claimant does not assert that he was displaying a vehicle excise licence. Indeed, the general thrust of his evidence appears to be that since the vehicle was registered in the Channel Islands he didn't need to display a UK vehicle excise licence. The officer's evidence therefore, that the vehicle was not displaying a vehicle excise licence is correct. As to the observation relating to the tyre, the court will recollect Mrs Lott's description as to how she observed, when she went around the vehicle and bent or leant forward to see its condition, that she was unable to make out the name of the manufacturer.

67. We submit that the evidence of Mr Parry is not particularly persuasive, since, as he conceded in cross-examination, he doesn't really know whether Mrs Lott had the opportunity of observing the absence of a vehicle excise licence as the vehicles passed, nor, since it appears to be generally accepted that he was moving back and fore from the vehicle carrying items into the surgery, was he in a position to overhear all of the conversation between the Claimant and the officer or to observe the officer's movements around the vehicle. His statement at page 63F, although referring to a conversation regarding the Claimant "having no tax" does not specifically refer to any conversation about having a damaged tyre and it

appears more likely than not that he was absent when that conversation took place.

68. The Claimant's view is apparently to the effect that this incident had been set up, most likely by the officer's husband, Inspector Jonathan Lott, see page 63C, paragraph 453. Yet in evidence, the Claimant did not pursue this allegation, and generally put the blame onto her and in general terms treated Inspector Lott as a "nice man", to use the Claimant's own words.

69. The evidence, both in writing and orally from one or other of the Mr Holmes' brothers and the letter from Watts Tyres (page 63G) do not materially advance the Claimant's case. None of them purport to address the particular tyres on this particular car at this particular time. Interestingly, given that, even in 1993, the Claimant was much given to taking photographs of things that he thought were relevant, in particular if they confirmed a conspiracy on the part of the police, he failed to take any photographs of the tyre or tyres in question.

70. Therefore, insofar as there is any cause of action of "malicious stop", which is denied, there was clearly no "stop" in this case, since the Claimant had actually parked his vehicle outside his own premises before being approached by former PS Lott. In respect of the allegation of malicious prosecution, the Defendant denies the absence of reasonable and probable cause (the burden being on the Claimant to prove that there was). In the alternative, the Claimant has failed to prove malice.

ACTION 1 – PARAGRAPH 8.6

71. The Claimant'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 the Claimant at Grand Avenue, Cardiff, and thereafter maliciously prosecuted him for various offences.

72. The Court heard evidence from PS 3052 Phillip Lewis Thomas, PC 3174 Philip Beer, retired DC 2784 David Griffiths, retired DS 1978 Robert Powell, PC 3202 Richard Stanley Paines, retired PS 202 Alexander Huckfield, retired PS 594

Dennis Crutcher, PC 881 Vincent Stephen Donovan, and retired PS 1846 Brown. Their witness statements are to be found at A1, vol. 1, pages 123 – 241.

73. The matters started when PS Thomas received a report of a fight occurring in Grand Avenue, Ely, Cardiff. Together with PC Beer, he made his 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 licence. PS Thomas was suspicious as to what that vehicle was doing parked on the street in Grand Avenue, particularly given its general condition. The officer carried out a PNC check upon the motorcycle, using its index number. It came back as "no trace", which the officer found highly suspicious, particularly in light of the absence of a valid tax disc. Further, he carried out a second PNC check on the frame number, which also came back as "no trace". As he indicates in paragraph 7 of his statement at page 124, by that stage he was certain that the motorcycle was stolen.

74. 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 the Claimant, 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 the Claimant, who then started to walk away from him. PS Thomas gave evidence that he had never met the Claimant prior to this incident, nor heard of him.

75. As the Claimant confirmed in his evidence during cross-examination, he had overheard the officer conduct the PNC check on the motorcycle, so was aware that the officer was likely to want to speak with him. It is apparent that his subsequent behaviour was based upon an assumption that the police knew his identity. As the Claimant stated in evidence, he began to walk off away from the officer to give himself "time to think". Of course, this rationale for the Claimant's behaviour was not known to the officer at the time. It is apparent from the

Claimant's evidence that he had assumed the police knew who he was and that they were "up to" something:-

"I was sitting there and they opened the panniers and I thought "what am I going to do about this?". I assumed they knew who I was, and I thought "what are they up to, I need time to think". I am guessing that is most likely why I crossed the road." It may be that the Claimant had already formed the view at this time that the police interest in him was part of some deliberately orchestrated plot.

76. The rather bizarre behaviour of the Claimant is described in detail in PS Thomas' first statement (the statement commences at page 123, and the relevant parts are at pages 125 to 128) and confirmed by him when he gave evidence. For the most part, the Claimant, both when cross-examining and when giving evidence, did not deny PS Thomas' and PC Beer's description of events. An indication of exactly how strangely he behaved was alluded to by the Claimant in his cross-examination of PS Thomas, where he described his own behaviour in walking away thus:-

"I walked backwards, and then turned and made great steps similar to an actor in Fawlty Towers?

- *Your behaviour was very strange, yes, very theatrical."*

77. The Claimant's general conduct understandably increased the officer's suspicion that the vehicle was stolen. Such was the odd nature of the behaviour, that the officer became concerned as to whether the Claimant was mentally ill. The Court will recollect at the outset of the officer's evidence, the Claimant was extremely hostile towards him, however, by the end of his cross-examination, the Claimant appeared to accept that the officer was acting in the Claimant's best interests, and was acting as one "human being" concerned for another. Indeed, by the end of the case, the Claimant was very complimentary about PS Thomas.

78. Initially, PS Thomas wished to make enquiries as to the ownership of the motorcycle, whether the Claimant was connected to the motorcycle, and if so, the background to the vehicle, including whether or not it was stolen, and whether it was taxed. The Claimant refused to answer any questions that were addressed to him and indeed, failed to communicate at all with the officer. It is clear from the question put to the Claimant and his answer, that, at the scene, the officer had

asked the Claimant for his name and address – see the entry in the Notes of Interview between 1358 hours and 1437 hours on page 165. Indeed, the Court will recollect that a specific question was put to PS Thomas by the Court to clarify this and he confirmed that he had requested this information at the scene:

"It's simpler than that, page165, that is a reference to a request by the officer for your [sic] *name and address, where or when?*

- *It was at the scene."*

79. We would contend it is likely, on the balance of probabilities, that given the various questions that the officer was putting to the Claimant concerning who he was and whether the motorcycle belonged to him, that he would have asked the Claimant to identify himself and for his address prior to the arrest, or certainly asked questions pertaining to those matters. The Claimant simply refused to communicate whatsoever with the officer and continued to engage in his bizarre conduct. Alternatively, we contend that if no direct questions as to the Claimant's identity or address had been put, the Claimant, by virtue of his failure to engage with the officer in any way whatsoever, had indicated a clear intention not to provide any information to the officer.

80. As described by PS Thomas, there came a time when the officer believed that, given his suspicions and in order to allow summonses to be issued, and to further his enquiries about the vehicle, he needed to arrest the Claimant, so as to allow his identity, including name and address, to be established. In view of his suspicions regarding whether or not the motorcycle had been stolen, he could have arrested him on suspicion of having committed an arrestable offence, namely theft. Indeed, the Court will recollect that subsequently, he was given advice by his supervising sergeant that that would have been the preferred approach. However, it is an indication of the honesty of the officer that, as he told the Court, although he had a residual suspicion that the motorcycle might be stolen, that suspicion had been lessened as this incident had developed. It is for this reason that, since it was clear that the motorcycle was not properly taxed in this country, and because he also had suspicion concerning whether it had valid insurance, he decided to exercise his powers under Section 25 of PACE in relation to the likely "document offences", since, insofar as summonses would

have to be issued in respect of failure to tax and insure the vehicle, and in the absence of any information from the Claimant regarding his name and address – indeed, in the absence of any co-operation from the Claimant whatsoever – the only way the matter could be taken forward was by a s.25 arrest. As the officer explained when he was asked what it was he had in mind when deciding whether to effect a s.25 PACE arrest:

"The vehicle document offences, specifically the motor insurance. I believe also I was considering the vehicle excise offence and it was pointed out to me in management action afterwards by my sergeant that it was not appropriate to deal with that under s.25, so I received some action after that."

The officer went on to say:

"*I was applying the general power of arrest or considering it, in circumstances where one of six criteria were met, a summons matter became arrestable. So I sought to deal with Mr Kirk by investigating a summons only offence of no insurance, he wouldn't communicate with me, so I wasn't aware, and it's not only that I wasn't aware, I wasn't able to evidence to a Court his identity and his name and address for the service of the summons."*

81. Objectively, in view of the Claimant's intransigence, we contend it is hard to see what else the officer could have done in the circumstances, in order to ensure that any motoring offences disclosed by the absence of a valid excise licence upon the vehicle could be the subject of further action by way of summons. It is clear that the officer also had weighed up his discretion to arrest in his own mind, when asked the following:

"Back at the scene, if Mr Kirk had given an explanation as to the background facts, would you have arrested him?

- *I would categorically say no, we are under a duty to be proportional."* [sic]

82. PS Thomas therefore arrested the Claimant in the circumstances described in paragraphs 16 to 17 of his statement at pages 127-128, supported as it is by his oral evidence.

83. In his evidence, PS Thomas also recollected asking the Claimant for his name and address when he was placed into the back of the police van after arrest. We would contend it is highly likely that this was a repetition of the initial request for

the Claimant's details. However, if this happened to be the first direct request for the Claimant's name and address, there can be no doubt that the Claimant, by his conduct up until this point, had indicated a refusal to answer any such question, such that the criteria under s.25 PACE were satisfied. In any event, an "arrest" is a continuing act, so that the arrest would have been lawful from the moment when the request was made. Even if there had been a failure to communicate to the Claimant the grounds of the arrest at that stage, there can be no doubt that the Claimant was fully aware of it when the Claimant was presented to the Custody Sergeant, since the custody record records this information (see from A1, vol. 1, page 236ff.). The authority in respect of an arrest being a continuing act is **Mohammed-Holgate v Duke** [1998] QB 209, as confirmed in **Lewis v Chief Constable of South Wales Constabulary** [1991] 1 All ER 206.

84. During his cross-examination of the Custody Officers involved in this incident, the Claimant appeared to suggest that he may have given his name and address at an early stage in this incident. The time when he was alleged to have given this information varied from time to time, viz. at one point he was suggesting that he had said it after he had been arrested but when he was outside the police vehicle, then it was suggested it was when he was within the police vehicle, but with another prisoner, then it was suggested that he had given his name and address to the Custody Sergeant. In view of the entries on the Custody Record (from A1, vol. 1, pages 236 – 238), and the comment already referred to above, made by the Claimant at page 165 (see the Notes of Interview), there seems little doubt that at no stage prior to the interview did the Claimant make any attempt to give or confirm his name, and at no stage during the period of his detention did he give or confirm his address.

85. Both in cross-examination, and when giving his own evidence, the Claimant asserted that the bystanders were telling the officer that the Claimant was a veterinary surgeon, whose surgery was located nearby. Leaving aside the obvious point that the officer should not have to rely upon information given by bystanders, rather than information as to his own identity given by the Claimant himself, the officer explained that he had gone to the surgery nearby – which was not a premises he was aware of prior to this incident - and attempted to make

enquiries there, but was rebuffed by a blonde lady who he took to be an employee. During the course of cross-examination of the Claimant, he identified that woman as being Kirstie Kirk (later to become the Claimant's wife), and he accepted that she may have acted in the way described by the officer.

86. In any event, the Claimant and the motorcycle were taken to Fairwater Police Station. What happened at the Police Station up until the time of the review at 2100 hours is recorded in the Custody Record at pages 236 – 238. In essence, throughout the period of his detention, the Claimant refused to speak to the Custody Sergeant, refused to provide or to confirm his name and address, refused to sign any documents, and refused to assist in the enquiries taking place. There can be no doubt that, by the time of his presentation to the Custody Officer, the Claimant had been requested specifically to give his name and address by the arresting officer.

87. PS Huckfield, the Custody Sergeant, was given an explanation of the circumstances of the arrest, which confirms that the arrest was carried out under s.25 of PACE, and that the arrest was based upon the fact that the officer had observed that the vehicle excise licence had expired in 1986, and that on attempting to question the Claimant, he had run away.

88. The Claimant was then detained in custody in order to allow evidence to be obtained by questioning, and also specifically in relation to section 25 of PACE. The police officers needed the Claimant to confirm that the address(es) shown on the documents were his. Clearly it was envisaged that questioning would be used to establish the Claimant's identity, which in fact later took place.

89. Some documents were found on the Claimant, which may well have been those documents contained in the bundle at pages 242 – 245. The documents don't prove themselves, in that they would only have been of relevance had the Claimant confirmed that they were in fact his documents. These of course were subject to questions during the course of the later interview, to which the Claimant refused to respond.

90. Following presentation of the Claimant to the Custody Sergeant, enquiries were made by PS Thomas in an attempt to establish the history and ownership of the motorcycle, together with, if possible, information regarding the Claimant. Thus, we know that PS Thomas spoke to former DS Powell of the stolen vehicle squad, who, having examined the motorcycle, was able to confirm that it was a Guernsey vehicle. Thereafter, as one might expect, PS Thomas made enquiries with the Guernsey police to attempt to identify the registered keeper of the vehicle. The result of those enquiries were put to the Claimant during the course of his later interview with PS Thomas and DC Griffiths, see page 173. Although the Claimant regards these enquiries as most suspicious, even evidence of a conspiracy, we invite the Court to conclude that these were perfectly legitimate enquiries for the officer to carry out, in circumstances where no information whatsoever had been provided by the person whom he had concluded was connected with the vehicle.

91. A review was carried out by Acting Inspector Crutcher at 2100 hours, recorded at A1, vol. 1 - pages 238 – 239. To an extent, the entry made by the officer speaks for itself. The Court will recollect that the officer gave evidence to the effect that his review was supposed to be a two-way process, thus allowing the Claimant to make any representations he wished. In fact, as recorded by the officer, the Claimant not only did not make representations, but was sitting down with his head dropped forward as if he was asleep. He did not utter a word throughout the review procedure.

92. Thereafter, arrangements having been made previously, he was examined by Dr Watson, the Police Surgeon, and at 2150 hours, he consulted with the Duty Solicitor, Mr Ian Williams of Robertsons Solicitors. At 2245 hours, the Claimant was taken, with his solicitor, to be interviewed by PS Thomas and DC Griffiths. At some time prior to this interview, the Claimant contends that an officer came to his cell door, looked in through the aperture, and purported to confirm to another officer that the Claimant was indeed Maurice Kirk. There is no independent evidence to confirm that this event occurred. Even if it had occurred, it would not deal with the conundrum faced by the officers at interview, namely, what was the Claimant's address. Indeed, as the Court may recollect, PS Thomas gave evidence that during the course of the interview, he was becoming more satisfied

that the man whom he was interviewing was Maurice Kirk, and indeed, that was referred to obliquely at the beginning of the interview, see page 158.

93. The Claimant also contends that, as he was being taken to the interview, and therefore presumably in the presence of the Duty Solicitor, he had seen a slip of paper attached to the Custody Record, which had upon it his name and the words "believed to be extremely dangerous". When the Claimant gave evidence, it was unclear whether he was alleging that the slip of paper had his address written on it. Although the Claimant refers to the slip of paper during the course of the interview, at one point, when talking about it, he appears to suggest it simply had his name upon it, see page 166. Indeed, this appears to be the purport of the evidence not called by the Claimant, but contained in the witness statement at page 122F. Interestingly, in his own statement, at paragraph 504 at page 122C, he alleges that this piece of paper was seen by the Duty Solicitor, which of course contrasts to what he said in interview at page 177, to the effect that the Sergeant at the desk would not allow the Duty Solicitor to see it. Whichever version of events the Claimant wishes to advance, neither is confirmed by the Duty Solicitor himself; when the Claimant raised the issue of the slip of paper during the course of the interview, at no time did the Duty Solicitor confirm that he had either had sight of it, or was refused sight of it. This is most peculiar, in circumstances where the Duty Solicitor was himself trying to get the Claimant to confirm his name and address, see reference to this at page 179 – 180.

94. There is no evidence to support the Claimant's assertion regarding this slip of paper. If the Court were to conclude that there was some slip of paper with some information upon it, then bearing in mind the numerous examples contained within these final submissions of the Claimant's inaccuracy, even in respect of relatively straightforward things, we would contend that the Court cannot be confident it might have contained the information alleged by the Claimant. In any event, leaving aside the address, the fact that the Police had additional information regarding the Claimant is not in the least surprising when they had been making additional enquiries with the Guernsey Police.

95. It is difficult to do justice in a few sentences to the rather peculiar form in which the interview was conducted. Although the police officers enquired about a

number of things, such as ownership of the motorcycle and the use of the "garrotte", the main part of the interview was taken up in attempting to get the Claimant simply to confirm his name and in particular his address, and as to whether the motorcycle was taxed. The Claimant was given many opportunities in respect to his identity and address. The Duty Solicitor, who had been called to represent the Claimant, also appears to have attempted to persuade him to give the relevant information, without success. At no time during the course of the interview, as noted by the Court, was the Claimant prepared to take the very simple step of confirming that the addresses on the correspondence found upon him (eg. page 242, 245) were his addresses. Further, the actions of the Duty Solicitor have to be considered in the context that the Claimant himself had requested his attendance.

96. Following the interview, the Claimant was charged at 0140 hours with the offences recorded at page 254 and page 256. The Court will note that the charge at page 256, which is contrary to section 165(3) of the Road Traffic Act 1988 concerned the failure of the Claimant to provide his name and address and the name and address of the owner of the vehicle when lawfully requested to do so by a constable.

97. The Claimant's custody was then reviewed by PS Brown, who authorised his continued detention as the same was "considered necessary as the accused persistently refused to provide details of home address and it is believed that if granted bail he will fail to appear". As the Court will note, the Duty Solicitor was present when that decision was made, and he made no representations in relation to that decision. If indeed he had witnessed a slip of paper confirming the Claimant's address, it would be quite bizarre for the solicitor to have allowed continued detention without making some sort of representation about it. As all the Custody Sergeants and the Acting Inspector confirmed, it was not for them to investigate the Claimant's identity. They could only make decisions on the basis of the information known to them, provided as it would have been by the investigating officer, namely PS Thomas. We invite the Court to conclude that the Claimant's behaviour during the course of the interview, and whilst in custody, seems almost designed to frustrate the attempts by the officers to investigate and

confirm the identity and address of the Claimant, as well as their enquiries about the motorcycle. As the Custody Officer confirmed, the results of the interview would have been relayed to him. On the basis of the information then known to the Custody Officer, including the results of the enquiries conducted by the investigating officer, and the conduct and behaviour of the Claimant as recorded in the custody record itself, we contend that it was not *Wednesbury* unreasonable for the Custody Officer to have further authorised the Claimant's detention until he was presented to the Magistrates' Court.

98. Indeed, it is interesting to note by way of context that the Magistrates, notwithstanding that they had the benefit of being addressed for some 15 minutes by the Claimant, remanded him in custody (see the Court record at page 257, and the Claimant's letter of complaint of 9th September 1993 regarding the "conduct" of the Magistrates, page 289).

99. The Claimant was discharged from Police Custody at Fairwater Police Station at 0820 hours and arrived at the Magistrates' cells at 0845 hours on 21st May 1993, where, as already noted, he was remanded in custody.

100. The charges that the Claimant had to face related to an assault on a police officer, namely the scuffle that had taken place between the Claimant and PS Thomas at the scene of his arrest and his possession of the garrotte (see the charges at pages 254 - 256). The charges were later discontinued by the CPS, apparently in two phases, firstly, the charge in respect of the garrotte, and the remaining charge being discontinued by notice, see page 285.

101. In light of the Claimant's apparent acceptance that the officer on whose evidence the charges were based, and who in fact charged him, namely PS Thomas, was at all times acting in good faith, and indeed, in the Claimant's own best interests, it is unclear whether the Claimant is still pursuing a claim for malicious prosecution in respect of this incident; indeed, the Court may recall that the Claimant shook PS Thomas' hand and thanked him as he left Court after giving his evidence.

102. Assuming, however, that the allegation of malicious prosecution is still being pursued, we would contend that, in the context of the information then known to the officer, the Claimant has failed to show an absence of reasonable and probable cause, and alternatively has failed to show malice. Additionally, whilst the Claimant has pleaded that there was damage caused to his motorcycle, there is no evidence that the Claimant was the owner or registered keeper of the motorcycle at the relevant time, and therefore had an interest capable of supporting a claim for damage to this property. Even if the Claimant has adduced sufficient evidence to establish a proprietary interest in the vehicle, there was little, if any, persuasive evidence of damage in the way alleged by the Claimant. Finally, there is no evidence of actual loss suffered by the Claimant.

ACTION 1 – PARAGRAPH 8.7

103. The Claimant'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. The witness evidence for the Defendant is at A1, vol. 2, pages 4 – 23, in the statements of retired PC 520 Simon Rogers, and Inspector Andrew John Rice. Both Mr Rogers and Inspector Rice gave evidence in accordance with their statements.

104. The Claimant 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 the Claimant's car was not displaying rear lights (see the officer's statement at A1, vol. 2, page 4, and his notebook at page 24). The Claimant was asked for the identity and the address of the owner of the vehicle, which was given by the Claimant. A request was made for the production of documents which the Claimant did not produce at that time. The Claimant identified the owner/keeper of the vehicle as Kirstie Webb. The officer did not arrest the Claimant. He was issued with a HORT1 (A1, Vol 2, p.20), and told that he might be reported if he failed to produce the documents, but that if he produced his documents within the time limit then no action would be taken. The full conversation is set out in the evidence of PC Rogers. The Claimant produced his documents, save for his driving licence, on 1st July 1993, which was just outside the relevant period (see HORT2, at p.21).

105. On the 21st September 1993, the Administrative Support Unit wrote to the Claimant querying the existence of a driving licence in respect of that same incident (see page 23).

106. There is no documentary evidence, either from the Claimant or the Defendant, that any summons was issued, or charge laid against the Claimant, the burden being of course upon the Claimant to establish that there was a prosecution. When he gave evidence, the Claimant, for the most part, accepted the version of events provided by Mr Rogers, or at the very least, did not suggest that Mr Rogers' recollection was incorrect. The Claimant appeared to accept in cross-examination that he had not been prosecuted.

107. In the circumstances, there was no arrest and no prosecution, and therefore no cause of action. Insofar as it may be necessary for the Court to consider this issue, there is no evidence of malice.

ACTION 1 – PARAGRAPH 8.9

108. The Claimant'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 licence". The Defendant's witness evidence is at A1, vol. 2, pages 31 – 38, from PC 2483 Ivor Hillman. Mr Hillman gave evidence in accordance with his witness statement.

109. 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. One issue which arose during the course of evidence was whether the Claimant was stopped simply as part of a stop check or whether that the officer had observed that no tax disc was displayed. At the beginning of his oral evidence, Mr Hillman thought he was carrying out a routine stop check, although later he appeared to think that he had observed the absence of a tax disc as he was parked on the roadside and it was that observation which had caused him to stop the Claimant. At one time the Court appeared to believe that this observation

took place at 10.20pm, although later it was confirmed as 8.20pm ("20:20 vision"). Subsequently, after Mr Hillman had completed his evidence, a report prepared by him, dated 4th December 1996 was disclosed, attached to the statement of Richard Leighton Hill, of 1st March 2013 (at page 74 of that file). In the second paragraph of that report, Mr Hillman states that he stopped the Claimant's vehicle on "a routine stop check" and found that the vehicle was not displaying a vehicle excise licence. Given the fact that the report appears to have been produced as the result of a specific enquiry by Superintendent Jones, and was somewhat closer to the events described, it is perhaps more likely that this is the more accurate recollection.

110. The officer caused the vehicle to come to a halt and spoke to the driver, the Claimant. The Claimant 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. There is no doubt that Mr Hillman issued the Claimant with an HORT1 as the Claimant did produce his documents in answer to an HORT1 said to have been issued by that officer, see HORT2 at page 36, but, as noted on the HORT2, the Claimant deliberately produced his documents late, outside of the 7 day period, in order to make a point. It appears that the Claimant deliberately produces his documents late, a practice confirmed by him when in custody on 4th October 1993 (see the top of the custody record at page 50). The Claimant was not prosecuted for the late disclosure of his driving licence (see page 42).

111. Notwithstanding his late production of documents, there is no evidence that the Claimant was either summonsed or charged in relation to his stop by Mr Hillman.

112. Subsequently, on the morning of 4th October 1993, when Mr Hillman "booked in" - at the start of his shift at St Nicholas Police Station - with his supervisory Sergeant at either Barry or Cowbridge Police Station, he was informed that the Claimant was in custody in Barry Police Station, having been arrested for driving whilst disqualified, in respect of a period of disqualification which covered his stop on 22nd September 1993. Mr Hillman then travelled to Barry Police Station where at 10.27am Mr Hillman reported the Claimant for "traffic offences on 22nd

September 1993", which appears to be a reference to driving whilst disqualified on that date.

113. Although the Claimant was reported in relation to those matters, he was not charged, nor was he summonsed or arrested in relation to those matters. The Court will recollect the evidence of Mr Hillman and others, that "to report" someone is a two-stage process involving; (i) informing the suspect that it is believed that they have committed an offence and will be reported to the Defendant's Prosecution Department and/or CPS with a view to a summons being issued or charges being laid, and (ii) the making of an actual report to the Prosecution Department or the CPS, usually in writing. Although in any individual case, the eventual result of making that report may be the issuing of a summons or the laying of a charge, that is not inevitable and the mere act of reporting someone is not a charge or a summons, or an arrest.

114. The circumstances in which Mr Hillman was told, and thereafter suspected, that the Claimant was disqualified from driving at the relevant time is a matter which will be considered in detail in the next incident, Action 1, paragraph 8.11, but for present purposes, insofar as the Court needs to consider the honesty of Mr Hillman's belief, we would contend that he was entitled to rely upon the information that he was provided with at that time.

115. The Claimant gave evidence in relation to this matter, when, for the most part, he did not dispute the evidence given by Mr Hillman, either in relation to the absence of a vehicle excise licence, or the conversation that had taken place at the roadside. In addition, he appeared to accept that at no time was he arrested, charged or summonsed in relation to any matter arising from this stop.

116. In the circumstances, Mr Hillman was entitled to stop the Claimant, and thereafter, there was no arrest, charge or summons, and therefore no grounds for maintaining a claim for wrongful arrest or malicious prosecution. Insofar as it may be necessary for the Court to consider this issue, we contend that the Claimant has failed to establish malice on the part of Mr Hillman.

ACTION 1 – PARAGRAPH 8.11

117. The Claimant's allegations and the Defendant's Defence are set out at A1, vol. 2, pages 55 and 56. This appears to be an allegation of unlawful arrest, and malicious prosecution for the offence of driving whilst disqualified. The Defendant's witness evidence is at A1, Vol. 2, pages 58 – 86, from retired PS 2602 Stephen Booker, retired PS 2148 Huw Phillips, retired PS 1301 Roy Goodman, and Inspector Andrew John Rice. All these witnesses gave oral evidence.

118. The background to this matter is set out in the lengthy statement of former PS Booker (in particular in his statement at page 58, thereafter, his additional statement at page 68 and his notebook at page 87), together with his letter of 8th November 1993 at page 109 which appears to have been produced in response to an enquiry by Superintendent Francis. As is clear from his statement, at page 59, and the letter to Superintendent Francis, Mr Booker was aware of the Claimant before this incident took place. This was partly as a result of an incident in which the Claimant was a complainant, and partly as the result of him receiving information from other sources, in particular, intelligence bulletins, articles in the Press, and viewing the Claimant's previous convictions received from Guernsey Police.

119. We submit that given the Claimant's involvement with the Police, both locally and elsewhere, there was nothing sinister about Mr Booker receiving this information. Prior to Mr Booker giving evidence, the Claimant (during the course of his cross-examination of other witnesses) appeared to suggest that Mr Booker was one of the main "players" in the conspiracy against him. However, when he actually came to cross-examine Mr Booker, he moderated his criticism of Mr Booker, in effect suggesting that Mr Booker was an unwitting pawn in the conspiracy. As is apparent from the letter of 8th November 1993, at no time has Mr Booker sought to play down his knowledge of the Claimant, nor conceal the sources of his knowledge. The passing of information between officers, and indeed, between constabularies, is a perfectly legitimate practice, and is necessary for the effective functioning of the police and the legitimate aim of crime prevention.

120. In any event, since the Claimant was now a resident, or occasional resident, in Llantwit Major, Mr Booker decided to view the Claimant's previous convictions on the PNC. This included information to the effect that the Claimant had been disqualified from driving by the Barry Magistrates Court for a period of 6 months commencing 24th May 1993. Although the document he viewed would not have been in this particular form, the information he viewed would have been similar to the "message switch" document at page p.108.

121. We now know that the information contained on the PNC was inaccurate, in that, at the material time, the Claimant was in fact not disqualified from driving. The disqualification recorded on the PNC relates to incident A1, para. 8.3 above. It will be recollected that having been convicted on an earlier date, the Magistrates imposed a disqualification on 24th May 1993, which was to expire on 23rd November 1993, but that thereafter, following the production of a handwritten Notice of Appeal by the Claimant, the Magistrates suspended the disqualification pending the appeal.

122. It subsequently transpired, that the disqualification imposed on the 24th May 1993 had thus been suspended (see page 71 for the conviction and the sentence of disqualification as well as its 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 A1, 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.

123. As is clear from the statement of Inspector Rice at A1, vol. 2, pages 83-85, there is now no direct documentary evidence regarding the actual system by

which disqualifications, suspensions and successful appeals were obtained from the relevant Courts and then entered on the PNC. There is some witness evidence as to the system as it was at the time, as per the statement of Mr Booker at paragraphs 17 – 18, page 65, which suggests that the Court would send forms containing information to the Collator's Office, one of which was in Barry Police Station. The Collator's Office would then use pre-defined forms which would go to the DVLC (as it was then) to advise them of the conviction, any cancellation or amendments to the disqualification should remain on file at the Collator's Office. Mr Booker believed at the time the Barry Collator's Office could not make direct entries onto the PNC, but would have to transfer the information using the IRIS machine to Cardiff, for them to put information onto the PNC.

124. There is no evidence that the Police/PNC were notified about the suspension of the disqualification or the successful appeal by the Claimant. The evidence is that the PNC recorded the Claimant as being disqualified, (page 108) and it was only after this incident that the error was identified (p.116) and the corrected entry on the PNC made, see A1, Vol 3, p.113.

125. In any event, when PS Booker saw the Claimant riding his motorcycle on the afternoon of 3rd October 1993, he suspected that the Claimant was driving whilst disqualified. His pursuit of the Claimant is dealt with in his witness statement and in his notebook. The movements of the Claimant, in particular him travelling up and then down a "dead-end" road for no particular purpose, had the effect of reinforcing the suspicion. Mr Booker eventually managed to bring the Claimant to a halt. A discussion took place when PS Booker told the Claimant that he believed he was disqualified from driving. The Claimant denied being a disqualified driver and denied having ever attended Barry Magistrates Court. The Claimant was asking why he had been disqualified. The officer tried to do another check on the PNC, details were unavailable, but the PNC operator confirmed disqualification at the Barry Magistrates Court on 24.5.1993 expiring on 23.11.1993. The Claimant was not accepting that Mr Booker or the PNC operator were unable to provide him with any information as to why he had been disqualified. It was whilst Mr Booker was in the process of checking the PNC, that the Claimant attempted to walk off. The officer then arrested the Claimant on

suspicion of driving whilst disqualified. In the circumstances he was justified in taking the action he did. If he had not arrested the Claimant then he would have continued on his motorcycle, which as far as the officer was concerned, would have been unlawful; urgent action was required.

126. After some difficulty, the Claimant was taken to Barry Police Station where the Claimant was presented to Mr Goodman the Custody Officer, (see custody record at A1, vol. 2, page 103). The Claimant's detention was authorised to enable him to be charged. In the light of the Claimant'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). The results of the checks are set out on the front page of the custody record at page 103. There was nothing there to suggest that the Claimant was not disqualified from driving.

127. Mr Goodman's evidence was to the effect that the Claimant was belligerent and unhelpful, and that he was distressed and shouting, demanding to be allowed to contact his surgery, which he was allowed to do. He was eventually charged at 1920 hours, (see page 104), thereafter, Mr Goodman intended to bail the Claimant, but bail was delayed because the Claimant refused to sign the bail form or enter into recognizance for his bail, indicating that he did not recognise anything to do with this matter (see pages 104 – 5). Subsequently, once the Claimant had spoken to Mr Hackett, the Duty Solicitor, it appears that the Claimant accepted bail, and he was bailed forthwith.

128. Mr Booker, both in his statement and during his oral evidence, stated that once at the Police Station he attempted to make further enquiries into the nature of the disqualification. The arrest took place on a Sunday, so that the Courts were not available for enquiries to be carried out with them. He also stated in his evidence that he had gone into the Collator's Office to see if he could find any more information, but was unable to find any confirmation that any disqualification had been suspended or set aside. He stated that he was unable to carry out a PNC check at the time, as the line of the PNC was not working at the time. Mr Goodman gave evidence that if he had been informed that the PNC link was not operating, that he would have made a note of that on the custody record. Whatever the position in respect of the PNC link, there seems little doubt that if a

check had been made on the PNC, the result that would have been received was that the Claimant was still disqualified.

129. It was the evidence of both Mr Booker and Mr Goodman that at no time did the Claimant inform them that the disqualification had been suspended pending appeal, or that the hearing of the appeal had taken place and the disqualification set aside. Mr Booker returned to this issue on a number of occasions during the course of cross-examination, where he said in terms that if he'd had any information from the Claimant that the disqualification had been suspended or set aside, then he would have made representations to Mr Goodman for the Claimant to be given deferred bail.

130. As it is, not only did the Claimant not give him this information, he also told Mr Booker that he had never been to Barry Magistrates Court, although as noted by Mr Booker, this would not in itself have prevented a conviction and subsequent disqualification. What the Claimant did not tell Mr Booker or Mr Goodman was that he did attend Barry Magistrates Court on 24th May 1993, when he filed his Notice of Appeal and his disqualification was suspended.

131. The Claimant gave evidence in relation to this matter, and when cross-examined, he, for the most part, did not disagree with Mr Booker's record of the circumstances of the arrest, or with Mr Goodman's record of the circumstances of his detention. The evidence of the Claimant in relation to the route taken by him prior to his arrest was odd and may well have left the Court with the suspicion that he was indeed deliberately attempting to evade the officer, which, as one might expect, did in fact increase the officer's suspicion.

132. Both when the Claimant cross-examined Mr Booker and when he gave evidence himself, he recollected that the woman who was operating the PNC and who was speaking to Mr Booker at the scene, was unhelpful, in that whilst she was able to confirm the fact of the conviction and the dates, she was unable to confirm the offence for which the disqualification had been imposed. This evidence from the Claimant confirms both the accuracy of Mr Booker's evidence, and most particularly that Mr Booker had been told that the Claimant was disqualified.

133. As noted previously, the Court is concerned with the actual state of mind of the arresting officer, in this case PS Booker; we contend that the officer was entitled to rely upon the information available to him, namely his previous sight of the PNC record of the disqualification; the confirmation of that disqualification at the time of the arrest, and the absence of any note in the Collator's Office indicating that that disqualification had been suspended or set aside. On that basis, he did in fact suspect, and he had reasonable cause to suspect, that an arrestable offence had been committed. Thereafter, the Claimant's detention at the police station was dealt with speedily, notwithstanding the fact that the Claimant prolonged matters by failing to properly enter into his bail. In regard to the charges preferred against the Claimant at the time, we contend that the Claimant cannot establish that there was a lack of reasonable and probable cause, and in any event the Court heard from Mr Booker, and the Claimant's treatment of him in evidence, which leads to the obvious conclusion that there was an absence of malice, the Claimant ultimately describing Mr Booker as a "fairly straight officer".

134. Although no longer part of this claim, the same having been struck out by the Judgment on Preliminary Issues of 30th November 2010, we would contend that the Court needs to consider the judgment of HHJ Evans QC in the incident at A1, paragraph 8.12, namely when the Claimant drove his van several times around a roundabout in Barry. As this Court will recollect, one of the issues the Court had to consider in dealing with the lawfulness of the attempt to stop the Claimant, and therefore whether he had committed the offence of driving whilst disqualified, was the information as to whether the officers honestly believed that the Claimant was disqualified from driving, see the comments of the Learned Judge at A1, vol. 3, page 325. The information available to those officers was no greater than the information available to Mr Booker and Mr Goodman the previous day. Although the fact that His Honour Judge Evans QC concluded that those officers were honest does not preclude a contrary finding by this Court as to the incident at paragraph 8.11, it is nonetheless of some relevance that other officers, acting upon the same source of information ie. the PNC, reached the same conclusion as Mr Booker and took the same action.

ACTION 1 – PARAGRAPH 8.13

135. The Claimant's allegations and the Defendant's response are set out at A1, vol. 4, pages 1 and 2. The allegation as pleaded is that the Defendant's officers acted in breach of an alleged bailment, namely, that having reported his motorcycle stolen, the police at some unidentified time recovered it and thereafter failed to notify the Claimant of that fact. Clearly, insofar as the case is based in bailment, it is akin to a claim in negligence. As the case has developed the nature of the Claimant's case has changed, in that he is not just alleging a deliberate failure to notify him of the recovery of the vehicle, but rather that the Defendant's officers played a part in arranging the theft and/or in deliberately rendering the motorcycle unidentifiable by removing its number-plate.

136. The Defendant's witness evidence is at A1, vol. 4, pages 4 – 15, in the statements of retired PC 3126 Lee Driscoll, retired Inspector 913 Sidney Griffiths, and retired PC 566 Robin Wilson. The Defendant's witnesses, in particular, PC Driscoll, gave evidence to the effect that the Claimant made a complaint to him on 16th October 1993 that his motorcycle had been stolen (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).

137. In his evidence, PC Wilson accepted, having seen the entry from Mr Clode's stolen vehicles book, that he may have been the officer who assisted in the recovery, since his number appeared in the book, but he had no recollection of attending himself. The Court may recollect the evidence of Mr Wilson about the prevalence of vehicle crime in Barry at that time, which Mr Wilson likened to the "Wild West", with dedicated car thieves such as the "Barry Menace" in operation, who, according to PC Wilson, would steal up to 30 vehicles per week. It is perhaps then, not surprising, that PC Wilson had no recollection of this matter.

138. There is nothing on the police records to indicate that they were notified of sufficient information concerning the recovery of the Claimant's vehicle as would have enabled them to notify the Claimant of the same. Indeed, the open entry in the stolen vehicles book and the absence of an entry on the PNC suggests they did not receive such information. Inspector Griffiths, who, in 1996 was called upon to investigate some of the allegations made by the Claimant, found that the PNC still listed the motorcycle as a stolen vehicle. Apart from making wild allegations of conspiracy, the Claimant was unable to provide any evidence which directly touched upon this allegation.

139. With regard to the evidence of Mr Clode, it may well be that he recovered the motorcycle in a condition where the number plate had been removed but he is unable to provide any evidence linking the Defendant's officers with that. The "evidence" of Mr Gerald Thomas was not supported by his presence in Court and is not accepted as either being accurate or truthful by the Defendant. Further, Mr Thomas does appear to suggest that the motorcycle had sustained significant damage, so that it would not be surprising if, during the course of recovery, the registration plate became dislodged.

140. During the course of evidence given by Mr Booker, he referred to seeing a motorcycle which he knew belonged to the Claimant, being driven down the "back lanes" near Barry Magistrates Court. There was no evidence of the number plate of the motorcycle or that it was the same motorcycle as is the subject of this pleaded claim. Further, the 16th October was a Saturday, and one must wonder whether in fact Mr Booker would have been in Court on a Saturday. Further, the picture presented by the Claimant was that the motorcycle had crashed very shortly after it had been stolen, perhaps an hour or two, which would have been in the very early hours of Saturday morning, when it is most unlikely that even the Barry Magistrates Court would have been sitting. Thus, even if Mr Booker did correctly identify the motorcycle as belonging to the Claimant, and if it should happen that it was indeed this particular motorcycle, there is little or no evidence to suggest that he was witnessing the theft, or thief, involved in this pleaded incident.

141. We contend, on the facts alleged by the Claimant, that the police cannot be treated as bailees since they did not in fact physically recover the motorcycle, the same being carried out by Mr Clode. 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 the Claimant of the recovery of that vehicle, or at least, any duty that was susceptible to a claim of negligence. It should be noted that the Claimant is not alleging "simple" negligence in any event, but, on his case, a deliberate non-notification of him, in accordance with the general conspiracy against him.

142. The Defendant would contend in any event that the evidence heard upon this matter tends to show that there is no evidence that the police knew that the motorcycle recovered belonged to the Claimant, and therefore no duty of care arose by which they would have been obliged to inform him.

143. Moreover, the Claimant has failed to adduce any evidence of loss or damage suffered by him as a result of any delay or loss of use of his vehicle. We know from his evidence (and his "Schedule") that the Claimant had many vehicles available to him for his use, therefore the fact that he could not use the motorcycle would not necessarily have created inconvenience or loss to the Claimant. As breach of a duty of bailment (if one existed) is not actionable *per se*, but requires proof of actual loss, then, that being so, this head of claim is simply without foundation.

ACTION 1 – PARAGRAPH 8.14

144. The Claimant's allegations and the Defendant's response are set out at A1, vol. 4, pages 26 and 27. The Defendant's witness evidence is at A1, vol. 4, pages 29 – 33, from retired Inspector 913 Sidney Griffiths. The allegation appears to be one that, on 15th December 1993, having been lawfully stopped in Cardiff, 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 the Claimant 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.

145. 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.

146. There is now some evidence from the Claimant, and now Mrs Kirk, that the Claimant was stopped and presumably therefore may have been issued with an HORT1. The Claimant himself gave evidence that the stop was entirely legitimate, since according to his evidence, so far as he could recall, he had failed to signal whilst turning left or right, or had turned the wrong way for the direction of traffic, or according to the evidence of Mrs Kirk, he was in the wrong lane when he turned.

147. Although, in the above circumstances, it would not be surprising if an HORT1 were to be issued, there is in fact no evidence that any HORT1 was issued. Further there is no evidence that any summonses were issued. The paucity of the evidence brought by the Claimant at page 28B (A1, vol. 4) suggests that the Claimant has very little, if any, real recollection of these events. Caution needs to be exercised when accepting the Claimant's broad assertions of arrest, charge, and prosecution. We know from the incidents at Action 1, 8.3 and 8.9, that he mis-recollects the events following these various incidents and sometimes purports to recollect being arrested, charged and prosecuted when clearly he was not. In the absence of any documentary evidence confirming the fact he was charged, we invite the Court to conclude he was not arrested, charged or prosecuted, the burden of course being upon the Claimant to establish the occurrence of these things. In any event, we contend that the Claimant has failed to establish malice.

ACTION 1 – PARAGRAPH 8.15

148. The Claimant'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 pleadings do not include a separate claim for assault. The Court heard evidence for the Defendant from PC 1324 Julian Kerslake, retired Inspector 1419 David Smith, retired Inspector 1909 Howard Davies, and Inspector Andrew John Rice, whose statements are at A1, Vol. 4, pages 37 – 84.

149. The background to this matter is that the Claimant 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 the Claimant appeared before the Magistrates and was 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 is confirmed by the document at page 87 (A1, vol. 4), an IRIS log in respect of this incident, which confirms at 0805 hours that the Claimant was recorded on the PNC as having been disqualified from driving.

150. At the material time, there was no entry on the PNC to indicate that the disqualification had been suspended. As we know from the evidence that was given by DC Dinlle Francis in respect of the incident at A1, para. 8.17 (which was unchallenged by the Claimant in this respect), when, on the following day, having checked on the PNC, which confirmed a disqualification, he then went on to make enquiries with the Barry Magistrates Court, he discovered that the disqualification had been suspended, the Court having failed to pass the information on to the Police for entry onto the PNC. Former Inspector David Smith also confirmed that, having been notified by DC Francis that the Claimant was not disqualified, he telephoned the Administrative Department of Barry Magistrates Court to clarify this, and was informed that the Court had made an error in failing to notify the police or take the necessary steps for the "system" (presumably he was referring to the PNC) to be updated in relation to the suspension of the disqualification pending the Claimant's appeal.

151. The evidence given by the Defendant's officers was as follows: PC Kerslake was on duty at 8am on 9th August 1994, when he observed the Claimant driving a

Spitfire motorcar. The officer had previously been informed that the Claimant was disqualified from driving via the regularly published "hot list" of 100 or so disqualified drivers circulated by Barry Police Intelligence. The fact of his belief is also recorded in the IRIS log at page 87, at the entry at 0758 hours. Subsequently, the officer made a request for the PNC to be checked at 0802 hours, and, as noted already, the reply was given at 0805, which confirmed the disqualification.

152. He therefore activated a blue light and brought the Claimant to a halt, and when he did so, the Claimant got out of his car and walked away, leaving his dog and his veterinary drugs and equipment within the car. The unchallenged evidence of PC Kerslake was to the effect that he attempted to engage the Claimant in conversation regarding the disqualification, but apart from confirming that his limp was caused by a hang-gliding accident (a fact which the Claimant accepted in evidence it was "quite possible" he had imparted to the officer), the Claimant refused to speak to the officer. At no time did the Claimant inform PC Kerslake that his disqualification had been suspended.

153. As a result of his belief, and the conduct of the Claimant, which rather gave support to PC Kerslake's belief that he was disqualified, PC Kerslake arrested the Claimant for driving whilst disqualified.

154. Although not pleaded, the Claimant alleges that he suffered injury at the time of the arrest; it is unclear whether he is in fact alleging that this constituted "an assault". When cross-examining PC Kerslake, and in his own evidence, the Claimant had difficulty in recollecting any misconduct by the officer at the time of the arrest, although eventually he plumped for the fact that he had been pushed over a low wall, which he thought had caused the injury to his ankle, and that there had indeed been no trip over a kerb. Indeed the Claimant, in answer to a question from the Court, insisted that at all times he had been on the pavement, and agreed when the Court sought to clarify the matter, that it was "nothing to do with" the kerb of the pavement, but the wall of the garden that had caused injury to him.

155. The injury to the ankle was of course the reason why the Claimant subsequently required the attendance of the doctor and the visit to hospital. This evidence was contrary to the statement he made on 15.11.1994, (at A1, vol. 4, page 92), where he described in detail the incident, suggesting that the incident involving the low wall caused little, if any, injury, whereas the more significant right ankle injury had been caused by him stumbling into the road. Although the Claimant describes realising that he had twisted his ankle, but states (at page 95) he didn't "know if the officer realised it was injured", the implication being that the twist to the ankle was a mere incidental part of the arrest and the movement across the pavement, rather than caused by a deliberate or reckless act on the part of the officer.

156. We contend that a specific assault has not been pleaded and therefore this should not be considered by the Court. Action 1 was settled by the Claimant's then solicitors, and if it had been thought that a specific assault had been inflicted, then no doubt it would have been pleaded. Insofar as the Court feels it necessary to consider this part of the incident, then we contend that even taken at its highest, the evidence does not support an allegation of assault. In any event, the officer's evidence was that it was not necessary for there to be anything by way of significant physical contact between himself and the Claimant, as once he had stood in front of the Claimant, he was compliant. Considering the totality of the evidence as to the circumstances of the arrest of the Claimant, we submit that the account given by the Defendant's witness should be preferred to that of the Claimant.

157. The Claimant was taken to Barry Police Station where he was presented to the Custody Sergeant, Inspector Smith. The Custody Sergeant and other officers gave evidence regarding the period of detention, and the Court will no doubt wish to consider the custody record at A1, vol. 4, page 64. The evidence of former Inspector Smith was that, in the usual course of events, processing a suspect for this type of offence should take around an hour. Therefore what should have been a relatively short period of incarceration, whilst his charges were prepared and then preferred against him, was prolonged to last from 0815 hours until 1256 hours.

158. On presentation to the Custody Sergeant, apart from requesting that he be allowed to make a telephone call to his veterinary practice (which was permitted immediately), the Claimant adopted his usual approach of failing to provide information regarding his name and address and failing to sign in respect of his rights. On the initial presentation, the circumstances of the arrest were described to the Custody Sergeant by the arresting officer, namely driving a motor vehicle whilst disqualified, but the Claimant failed to notify either the Custody Officer on initial presentation, or at any time thereafter, that his disqualification had been suspended.

159. The Claimant 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. The Duty Solicitor attended; see his attendance note at page 91. Interestingly the Claimant failed to advise the Duty Solicitor, who was there to advise him and represent his interests, that his disqualification had been suspended. It seems that the Claimant was mistrustful of the Duty Solicitor, despite having had no apparent previous involvement with him. A doctor was called to examine the Claimant (see his statement at page 61) and the Codes of Practice were also provided to him.

160. Various attempts were made to persuade the Claimant to provide his address, a necessary requirement for the Custody Sergeant before releasing him, if, for no other reason, so as to ensure that any summonses were properly served upon him. Former Inspector Smith attempted to persuade him to give his details, as did Acting Chief Inspector Davies and his own Duty Solicitor (see attendance note referred to above). The Claimant's attitude towards Acting Chief Inspector Davies is interesting, as providing an example of his conduct towards persons he considers to be inimical to his interests. It is clear from the Claimant's cross-examination and from his own evidence, wherein he insisted on describing Mr Davies as "evil", that he adopted a hostile attitude to him from the outset, notwithstanding the fact that at this time, Mr Davies had had no prior involvement with the Claimant, and had in fact stopped undertaking his own duties in order to

come down to the Custody Unit to attempt to facilitate the Claimant's release from custody.

161. Eventually, the only thing preventing the Claimant's release was his failure to provide a home address, namely an address which could be used for the service of a summons. Section 38(1)(a)(i) of PACE provides as follows:-

"(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall, subject to section 25 of the Criminal Justice and Public Order Act 1994, order his release from police detention, either on bail or without bail, unless –

(a) if the person arrested is not an arrested juvenile –

(i) his name and address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name and address."

Eventually, after confirmation was received from his surgery, at Tynewydd Road, Barry, that documents could be served upon the Claimant at that address, and in light of the fact that Dr. Baig, Police Surgeon, indicated that the Claimant should attend hospital to have a twisted ankle treated, the Custody Sergeant eventually – after discussions with Acting Chief Inspector Howard Davies - decided to bail him to his business address, rather than, as is usually the practice, his home address. Additionally, when the Claimant was granted bail, he, somewhat bizarrely, refused to leave his cell, as a result whereof officers had to forcibly remove him from his cell.

162. In the premises, we contend that PC Kerslake was entitled to act upon the information that he had at the material time, provided as it was to him from various sources, namely the "hot list" of disqualified drivers and the PNC. Nothing was said by the Claimant at that time, either to PC Kerslake, to the Custody Sergeant, to the Duty Solicitor or to Acting Chief Inspector Davies, which would have alerted any of them to the suspension of the disqualification. The period of detention in Barry Police Station was much longer than ought to have been necessary, and this was due to the Claimant's deliberately obstructive behaviour. He will no doubt contend that he was perfectly entitled to refuse to give any

information, to sign any documents, to request the attendance of a doctor, a duty solicitor, and the production of the Codes of Practice. Whether or not that is so, these will necessarily prolong any detention. Whilst it may be that other Custody Sergeants would have bailed the Claimant to his business address, we contend that the decision of the Custody Sergeant to detain the Claimant in an attempt to find out his personal address, was a reasonable one, or to put it into its proper context was not so unreasonable as to fall foul of the *Wednesbury* principles.

163. As we now know, Mr Smith and Mr Davies received words of advice regarding their failure to ensure that the Claimant was taken to hospital following Dr Baig's attendance. Clearly, the mere fact of failure to comply with the PACE Codes of Practice does not of itself give rise to a claim in damages – see s.67(10) of the Act. Obviously, a failure to attend hospital at that time did not prolong his detention, on the contrary, if arrangements had been made to take the Claimant to hospital at that point, it would have prolonged the detention in respect of this arrest (as in fact happened later that afternoon, see incident Action 1, para. 8.16 below). Most importantly, the failure to attend hospital at that time did not deprive him of any necessary treatment, as when he subsequently attended hospital, he was simply x-rayed and advised.

164. In respect of the charge, we contend that the Claimant has failed to establish an absence of reasonable and probable cause. In the alternative, there is no evidence of malice on the part of the various officers. On the contrary, looking at the incident as a whole, and the general attitude of the various officers, they went out of their way to assist the Claimant in trying to get him processed and released as soon as possible.

ACTION 1 – PARAGRAPH 8.16

165. The Claimant'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, the Claimant was unlawfully arrested and thereafter maliciously prosecuted for criminal damage.

166. This incident is, once again, a useful illustration as to how the Claimant considers that the ordinary norms of society, including for example, standing in a

queue, do not apply to him. So it is, that having been released from custody at 1256 hours, and been advised to enquire at the Front Desk of the Police Station to retrieve his dog, he thereafter stood in a queue for a minimal amount of time before losing patience and trying to force his way into a secure area of the Police Station, engaged in a struggle, caused damage, was arrested, and was back before the Custody Sergeant at 1302 hours (page 129); all within 6 minutes.

167. The Defendant's witness evidence is at A1, vol. 4, pages 104 – 133, in the statements of retired Inspector 1909 Howard Davies, retired DC 2568 Jonathan Venners, retired Inspector 1419 David Smith, and retired Detective Inspector 2858 Herbert Kendall, all of whom the Court heard from in evidence.

168. This incident follows on immediately from that contained in Action 1, paragraph 8.15. Having been released from custody, the Claimant 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 the Claimant made his way into the police car park at the rear of the police station, and then, as former Inspector Davies was making his way out of a security door into the back yard, barged past him and tried to make his way into the police station that way. He was warned by Mr 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. The Claimant demanded the return of his dog. He was told to go around to the front foyer where the matter would be sorted out. The Claimant refused to leave. The Claimant's conduct is described by Mr Davies in his statement (see pages 106 to 108).

169. Whilst this confrontation took place, PC Venners, who happened to be in the area, came to Mr Davies' assistance, and together, after much difficulty, they were able to take the Claimant out of the corridor through the security doors and into the yard. Thereafter the Claimant 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 Mr Davies for criminal damage. In the premises, the arrest was entirely justified. This was

clearly done so on the basis not that the Claimant had deliberately caused criminal damage, but rather that he had caused the damage by his reckless conduct, in attempting to force his way back past Mr Davies into the secure area. It may be that the arrest can be seen as a "sledge hammer to crack a nut" but ultimately, in view of the state of mind and conduct of the Claimant, it is difficult to see how this incident would have concluded in any other fashion. Indeed, as commented upon by Mr Davies, one is left with a strong suspicion that the Claimant was intent on being arrested.

170. For the most part, in his evidence, the Claimant did not dispute the evidence given by Mr Davies, or DC Venners about the incident or his own behaviour; for example, in cross-examination he answered as follows:-

"*Do you remember putting your feet against the doorframe?*

- *Oh I would have resisted the way I was handled, I just hung onto the rail, I wouldn't have done anything else.*

Against the doorframe, is that the sort of thing you would have done?

- *I can't deny it, I can't envisage it.*

You kept trying to push your way back towards the corridor?

- *That's quite feasible."*

171. The Claimant was then taken back to the custody desk where he was detained in custody by the Custody Sergeant, former Inspector Smith, who within a short time handed over to the following Custody Sergeant, now DI Kendall. In view of the fact that the Claimant 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 the Claimant should receive treatment as soon as possible, arrangements were made to take the Claimant to hospital in Barry. He was then returned to the police station. At about the same time, an examination of the wing mirror took place, which revealed that it could be put back together. Once it became apparent the mirror could be re-assembled without having sustained damage, the Claimant was released from custody.

172. The Claimant was not charged in relation to this matter, there is accordingly no possible claim for malicious prosecution.

ACTION 1 – PARAGRAPH 8.17

173. The Claimant's allegations and the Defendant's response are set out at A1, vol. 4, pages 152 and 153. The Claimant alleges that he was unlawfully arrested on 10th August 1994 and was thereafter maliciously charged with driving without insurance. The Defendant's witness evidence is at A1, vol. 4, pages 155 – 188, in the statements of retired Inspector 1419 David Smith, Detective Constable 1694 Dinlle Francis, retired PS 1301 Roy Goodman, and Inspector Andrew John Rice. The witnesses gave evidence in accordance with their statements.

174. 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 former Inspector Smith. On 10th August 1994, former Inspector Smith (or as he was then, Police Sergeant Smith) was on duty and observed the Claimant driving his Spitfire motorcar. He had been informed the previous day that the Claimant was a disqualified driver. He therefore suspected that he was still a disqualified driver. He was accompanied by DC Francis who attempted to get the Claimant to stop. Notwithstanding the fact that the Claimant 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 Mr Smith for driving whilst disqualified. The Claimant 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 the Claimant was a disqualified driver (see page 196). Arrangements were then made for the Claimant to be charged.

175. During that period, however, DC Francis checked with the Barry Magistrates Court to confirm that the Claimant 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 the Claimant to be released. 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.

176. In cross-examination the Claimant did not dispute any of the above facts. In the circumstances, we 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 clear evidence from DC Francis and Mr Smith that this was accepted by the Magistrates Court as being their fault in not notifying the Police for the appropriate updating of the PNC.

177. Notwithstanding the fact that it was reasonable for the officers to rely upon the information upon the PNC, the motivation for DC Francis to seek to verify that information was explored in answer to questions from the Court, in that DC Francis indicated that it was the Claimant's conduct, in being so quiet, that he found a little unnerving, and thus felt he had to enquire further into the circumstances of the Claimant's disqualification with the Court. He also stated that it was frequently his practice to obtain memoranda of convictions when investigating various types of offences. Further, on refreshing his memory from the custody record, he also noted the fact that the Claimant had indicated he wanted to make a complaint (see pages 197 - 198) and that Acting Inspector Merrett had consulted with the Claimant during his time in custody. Doing his best to recall those events, he stated that it may well have been his knowledge of this fact that caused him to think something was a little odd, and to seek to clarify the disqualification with the Court.

178. It is clear, that notwithstanding the Claimant's allegation of malicious prosecution, he was not in fact charged, and therefore this allegation must fail. As referred to above, the Claimant was in fact granted deferred bail, so that further enquiries could be carried out, and thereafter the matter was not proceeded with.

ACTION 1 – PARAGRAPHS 8.18 – 8.21 INCLUSIVE

179. There are two main issues which fall for consideration. The first is whether the Defendant owed the Claimant a private law duty of care in respect of the matters alleged in these claims, and secondly, if there was such a duty, whether there was any breach of the same. As to the former, the Court will recollect that

submissions were made upon the question of private law duties of care in general, in September 2010, which were considered by the Court in its judgment of 30th November 2010. Although at the outset of those submissions, these particular incidents were included within those submissions, it will be recollected that during the course of that hearing, it transpired that these claims had been struck out in the Bristol County Court, but thereafter reinstated by consent. The Court is referred to paragraphs 28 and 29 of the Judgment of 30th November 2010 in respect of its approach to these claims. Although reinstated by consent, this of course does not amount to an admission by the Defendant that such a duty of care exists. We submit the Court will need to consider, on the evidence adduced by the Claimant, whether a privately actionable duty of care arises.

180. The Court will recall that these paragraphs concern the Defendant's response to, and consequential actions arising from, reported complaints involving the Claimant and a Mr Ian Stringer which took place in 1995. It is useful at this point for the Defendant to re-state its submissions on the law rehearsed in its Skeleton Argument on the Preliminary Issues, which the Court summarised in paragraphs 7 – 18 of its judgment of 30th November 2010. We respectfully remind the Court of the case of **Cowan v Chief Constable of Avon & Somerset Constabulary** [2001] EWCA Civ 1699, that in considering the question of proximity – in a legal sense – that physical proximity at the scene, does not of itself establish a sufficiently close relationship or special circumstance so as to create a duty of care, per Keene LJ at paragraphs 10 – 15 and 23 – 45. Even if the Court finds the Claimant's version of events in A1, paras. 8.18 – 21 proved, we would contend that that is still not sufficient to establish a private law duty of care in this case.

181. We will shortly turn to the facts of the individual incidents, but before doing so, we would wish to make the following points:

a. The Claimant described his own tenants, in his typically dismissive fashion, as "pond life". There can be no doubt that it was in the very nature of the tenants sought by the Claimant that there were likely to be inherent problems with their behaviour. The Claimant appears to have been well aware that at least three of his tenants, namely Mr Stringer, Mr Burns, and Miss Miller, had alcohol misuse issues, therefore, the

recurrence of problems with these tenants was clearly not the result of any failures on the part of the Police, but rather was incidental to their mode of living.

b. There is little doubt that in general terms, the Claimant felt himself well able to deal with these tenants as and when he chose: viz. the evidence of Mrs Kirk in relation to the Claimant's "provocative" conduct towards Mr Stringer (supporting as it does the direct evidence of DC Martyn James), further, the evidence of Mr Gafael, another tenant, who clearly thought that the Claimant was a "nasty piece of work".

c. One is left with a strong suspicion that the Claimant used the Police as a tool to control his tenants, calling them when he wanted his tenants "dealt with", and thereafter, failing to support consequential actions by the Police. For example, in relation to Mr Stringer, the Claimant stated in evidence in cross-examination:-

"*You didn't want to make an official complaint, you just wanted him out?*

- *I know I was always reluctant to make an official complaint as by then you've lost control of the situation, by then my attitude to the police had hardened to the extent that any involvement with the police was leading to trouble for me. I know by that time, July 1995, I had so much trouble with the South Wales Police especially lying in court, that I would be reluctant to ask for police assistance. I could see that this man was violent, and potentially very dangerous and if he wasn't properly handled by the relevant authority. The authorities had to step in.*

So your approach was to ask the police for assistance, but you wouldn't necessarily want to get involved in a prosecution?

- *Yes, I didn't trust the police for a minute, and also causing someone to have a criminal record can destroy the future of a person in ways one cannot imagine, even the most minor offence. I have lived in Guernsey and in Taunton…"*

d. Although the Court is only directly concerned with the pleaded case, it is nonetheless instructive to consider four other incidents, disclosed in Mr Sidney Griffiths' letter of 6th December 1996, which is exhibited to the statement of Richard Leighton Hill at page 103. The crime reports

which follow thereafter reveal that the Police responded to complaints made by the Claimant and/or his staff regarding the Claimant's tenants, interviewing both the Claimant, staff and neighbours where appropriate (see by way of example page 109, and the arson at page 115).

ACTION 1 – PARAGRAPH 8.18

182. The Claimant's allegations and the Defendant's response are set out at A1, vol. 5, pages 1 and 2. The Claimant 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. The Defendant's witness evidence is contained in the statement of DC 972 Jonathan Johnson, at A1, vol. 5, pages 4 – 6.

183. PC Johnson attended the property in response to a radio call. When he arrived at the property, the Claimant complained to him that 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 the Claimant having been assaulted. The officer, together with the Claimant, searched the property but were unable to find Mr Stringer. As the Claimant confirmed in his evidence in cross-examination at that time, he 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 the Claimant's surgery at 51 Tynewydd Road, Barry, but the Claimant was not present. The officer left a message for the Claimant to contact him, but there was no further contact between him and the officer.

184. The Court will need to consider the Claimant's letter at A1, vol. 5, page 9. The Defendant respectfully invites the Court to prefer the evidence of its witness PC Johnson, who had no prior knowledge of, or involvement with the Claimant, and therefore no reason not to act in accordance with his duties. Indeed, the fact that PC Johnson later returned to the Claimant's surgery, to continue to pursue the matter, confirms this.

185. This is a case where the Defendant denies that any duty of care arises. There are no features which would take this incident beyond the usual day to day

interaction between a police officer and a member of the public making a complaint, as the Claimant was at the relevant time. It is clear, more generally, when considering the Claimant's evidence, that his recollection of events, even a recollection quite close to the event itself, can be wholly inaccurate, influenced as it is by his belief that he is the victim of a conspiracy. 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

186. The Claimant's allegations and the Defendant's response are set out at A1, Vol.5, p. 34 and 35. This is an allegation that the police failed to take appropriate action, having witnessed an assault by Mr Stringer on the Claimant on 23rd July 1995. The Defendant's witness evidence, comprised in the statement of DC 1623 Martyn James (then PC James), is at A1, vol. 5, pages 37 – 41. DC James gave evidence in accordance with his statement.

187. DC James received a radio message to attend 52 Tynewydd 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, the Claimant. 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 (identified as Miss Mandy Miller).

188. Whilst present in the building, the officer heard the Claimant enter the property and start shouting at Mr Stringer. At this stage, the officer and Mr Stringer were upstairs. The Claimant came upstairs and continued shouting at Mr Stringer, who came out of the bedroom. The officer described how the Claimant continued "shouting into the face" of Mr Stringer (page 39, paragraph 8); this appears to have been entirely confirmed by Mrs Kirk who considered that the Claimant's behaviour towards Mr Stringer was "provocative". This evidence from Mrs Kirk is very interesting, as she formed that view, notwithstanding that she knew

something of the background of Mr Stringer and doubtless would have known that he was a troublesome character.

189. The officer observed Mr Stringer lift a hand up to push the Claimant away; but before the officer could intervene, Mr Stringer pushed the Claimant, who stumbled backwards, hitting a wall and then falling down a short flight of steps. The officer pulled Mr Stringer back into the bedroom away from the Claimant. The officer arranged for an ambulance to attend to take the Claimant to hospital. DC James then arrested Mr Stringer for assault, whereupon he was taken to Barry Police Station and detained in custody.

190. 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.

191. As the Court will observe from DC James' evidence, he made a number of attempts to try and obtain a statement from the Claimant, so that the prosecution of Mr Stringer could be taken further. Notwithstanding several attempts, he was unable to contact the Claimant, even to the extent of personally visiting the Claimant at his surgery, and the Claimant did not call into the police station to enable a statement to be made (see page 41 of the statement). None of this evidence was denied by the Claimant in his own evidence, save that the Claimant maintained that he had tried to contact the police himself concerning the matter, and felt that DC James' alleged inaction was motivated by a "vendetta" against him. Further, the Claimant suggested that DC James should have contacted his wife for the purposes of a statement, but, as we now know, she would have been a reluctant and probably unhelpful witness in any event.

192. In the circumstances, the Defendant denies that any duty of care arose in this particular case. Further, there is no evidence of any loss caused by the alleged negligence. The significance of this incident is that, apart from a few other cases, this is a rare incident where there is a witness (not a police officer) who can comment upon what occurred. On the relevant issues in this case, it is apparent

that the witness called by the Claimant, Mrs Kirk, does not support his factual case.

193. 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

194. The Claimant's allegations and the Defendant's response are set out at A1, vol. 5, pages 62 and 63. The Defendant's witness evidence is at A1, vol. 5, pages 65 – 76, in the statements of retired Inspector 913 Sidney Griffiths, PC 792 Jonathan Johnson, and DC 1623 Martyn James.

195. The Claimant alleges that on 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 the Claimant 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 the Claimant 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 the Claimant and Mr Stringer, but who say that they were not involved in any such incident on this date.

196. In the circumstances, there is obviously a factual issue as between the Claimant and the Defendant as to whether any incident occurred as the Claimant contends, and it is for him to prove that the incident took place. Were he to establish that the above incident had taken place, the Defendant denies that any duty of care arises on those facts, in accordance with the principles in **Cowan**, above. Alternatively, if a duty of care is established, it is denied that there was any breach of such a duty.

ACTION 1 – PARAGRAPH 8.21

197. The Claimant's allegations and the Defendant's response are set out at A1, vol. 5, pages 77 and 78. The Defendant's witness evidence is at A1, vol. 5, pages 80 – 94, in the statements of retired Inspector 913 Sidney Griffiths, PC 792 Jonathan Johnson, and PC 1623 Martyn James.

198. 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 they say that they were not involved in any such incident on this date.

199. Again, so far as the factual position is concerned, the burden is upon the Claimant 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, 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. Finally, there is no evidence of any loss caused by the alleged negligence.

ACTION 1 – PARAGRAPH 8.23

200. The Claimant's complaints and the Defendant's response are set out at A1, vol. 5, at pages 97 to 99. In this matter, the Claimant 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 the Claimant for failing to produce his documents. He says he was found not guilty.

201. The Defendant's witness evidence is found at A1, vol. 5, pages 101 – 126, in the statements of retired Inspector 913 Sidney Griffiths, Hannah Woods (whose

evidence was agreed by the Claimant), former SPC 7781 Deryn Martin, and retired PC 566 Robin Wilson.

202. Initially, the police could find no material in relation to this matter. The Court is referred to the evidence of Former Inspector Sidney Griffiths, where he details the various enquiries he made, including examining the HORT2 books, computer records and the Barry Magistrates records (see page 101).

203. Subsequently, the Claimant 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.

204. During the course of cross-examining Mrs Martin, the Claimant appeared to recollect some other road traffic related incident possibly concerning her and another officer, namely, SC Frank O'Brien, outside the RBS bank in Llantwit Street, Barry, but in spite of some encouragement from the Court, the Claimant was unable to bring to mind any other particularity, save that, when he came to cross-examine PC Wilson, the Claimant suggested that the incident had led to a trial before the Magistrates Court which had ended in a "very spectacular fashion". The Claimant also suggested he had been arrested and prosecuted in May 1995. Such documents that the Claimant has produced, which were pre-empted by additional disclosure by the Defendant, reveal that the Claimant was involved in another incident in March 1995, where he was subsequently summonsed and thereafter appeared on trial in March 1996. Clearly, this is not the incident which has been pleaded. It may be that the Claimant has confused or conflated a number of incidents, but as the case presently stands, the Defendant has to meet the case that has been pleaded. It may be that the photographs that were taken by PC Wilson (referred to below) were subsequently used in another matter, but that is of no relevance to this pleaded incident.

205. Mrs Martin described how she saw the Claimant's ambulance on the road, and noted that it had no tax disc. She entered his veterinary surgery to speak to him, in order to question him about the vehicle. The Claimant refused to answer any questions, as a result whereof, she issued an HORT1. In order to avoid any suggestion that there was a tax disc attached to the vehicle or that the Claimant was not the owner of the vehicle, she arranged for the vehicle to be photographed. Photographs were taken by PC Wilson. Although the Claimant had no specific recollection of the facts of this incident, we invite the Court to find that the description of the incident given by Mrs Martin is totally in keeping with the behaviour of the Claimant towards authority.

206. Insofar as the pleaded incident is concerned, there was no arrest, and in the circumstances Mrs Martin was entitled to issue an HORT1. The only particular matter raised by the Claimant in respect of this incident was to query the legality of Mrs Martin entering his premises to make enquiries with him about the vehicle. Clearly there is nothing unlawful about a police officer visiting the Claimant at his place of work to make enquiries.

207. If, which is denied, there were any charges flowing from this particular matter, the Claimant has failed to establish a lack of reasonable and probable cause or any evidence of any malice on the part of the officer.

ACTION 1 – PARAGRAPH 8.26

208. The Claimant's allegations and the Defendant's response are set out at A1, vol. 5 at pages 127 to 129. The Claimant's originally pleaded case was that there was a single wrongful arrest in June 1995 for an offence contrary to the **Protection Against Eviction Act 1977**. It is to be noted that there is no claim for malicious prosecution. Nor is there any claim for loss or damage for forcible entry into the Claimant's premises. Indeed, since the Claimant appears to concede he was not the owner of the premises at the material time, it is hard to see how such a claim could be maintained. Subsequently, during the course of his second cross-examination of Mr Roe, when the Claimant appeared to be putting a different case, he was required to reduce his case to writing, which can now be found at A1, vol. 5, page 130K and 130L (dated "29th April 2013, 12:16 local time").

209. The Defendant's witness evidence is at A1, vol. 5, pages 131 – 177, in the statements of retired PS 1815 Robert Roe, retired Inspector Brian Genner, retired PC 3100 Phillip Roche, PC 808 John Manders, retired officer K. L. Jones (by letter, admitted under the Civil Evidence Act), retired Inspector 913 Sidney Griffiths. The additional "section 9" statement of Mr Roe of 22nd July 1995, produced by the Claimant during the trial, has also been inserted into the trial bundle at A1, Vol 5, page 179A –B.

210. The Court is well aware of the history of this incident, and how it is that it has taken so long to actually identify the relevant issues and documents. There is little point in rehearsing these matters or in seeking to apportion blame, but there is little doubt that the Claimant has sought to deliberately manipulate disclosure and his presentation of his case, in particular, by way of cross-examination, so as to cause the maximum difficulty to the Court. Additionally, we refer the Court back to paragraph 149 of the Defendant's Extended Skeleton Argument dated 21st March 2012 concerning the manner in which this matter was originally pleaded, and the reference to late disclosure of the statement of Mr Gafael in 2009.

211. Bearing in mind that the Claimant places considerable importance upon this claim, both because he thinks it is one of the reasons which caused the Defendant, or its officers, to act improperly over the last 18 years and because he thinks it shows the affidavit filed in 2009 by the then Chief Constable was inaccurate, it is somewhat extraordinary that the Claimant's case is firstly, still unclear, and secondly, insofar as there is any clarity to his case, it only emerged when he was cross-examining Mr Roe for the second occasion, by which time he had already cross-examined Mr Manders, Mr Genner, Mr Roche and Mr Roe for the first occasion. Indeed, we contend that one is left with the uncomfortable feeling that the Claimant was making his case up as he went along, particularly, although not limited to, the "two arrests scenario".

212. As to the facts of this case, it seems relatively clear that, so far as the Police were concerned (in particular Mr Roe, who, it appears, was the first officer to be involved in this incident) that from mid-May until 6th June 1995, Anthony Gafael and Alison Genner were lawful tenants of the Claimant at a flat at 175, Cowbridge

Road West, Cardiff. On the basis of the statement subsequently provided by Mr Gafael on 11th June 1995 (page 137ff) the Police were told that the Claimant had engaged in a course of conduct, the purpose of which appears to have been to drive those two young persons out of their home. Although not of direct relevance, there appears to be an issue as to who took the statement from Mr Gafael with both Mr Roe and Mr Roche claiming to be the writer – probably accounted for by (i) the longevity of the incident and (ii) the fact that their handwriting is similar. That issue appears to have been resolved by the evidence of Mr Gafael who confirmed it was Mr Roche who had taken the statement from him.

213. In any event, when Mr Gafael returned to the property on 6th June 1995, there seems little doubt that he found a quantity of his and Miss Genner's possessions dumped outside the locked door of the premises. He then attended Ely Police Station where he spoke to Mr Roe, who thereafter returned with him to the premises. As one might expect, the concerned parents attended, these being Mr and Mrs Gafael, and certainly Mr Genner, perhaps also Mrs Genner. It may be that other officers attended, but there is no evidence that those other officers played any part in this incident, then or thereafter.

214. No doubt, in investigating the Claimant's allegation that there was a general conspiracy amongst the Police against him, the Court will wish to consider the role that Mr Genner - who was then Chief Inspector, engaged as an Emergency Planning Officer for the South Wales region - played in this incident, whether officially or unofficially. Mr Genner's evidence was that his daughter was upset (for reasons which we now know may not solely be because of the incident), and that he wished Alison to have no involvement with any subsequent prosecution in relation to this matter, and gave her advice to that effect. His evidence was that "*it was not in my daughter's interest to have things dragged through the Courts…*"… *"I just was not involved, I wasn't interested, I didn't want it to go anywhere, I didn't want to involve my daughter, if it was you Mr Kirk, you wouldn't want to involve your daughter."*

215. Mr Genner's evidence was also to the effect that this incident took place very shortly before his own retirement on 25th July 1995, and at the material time, he was on sick leave and failed to return to active duty at any time thereafter prior to

his retirement. He said that he played no role whatsoever in the investigation of this matter. This was confirmed by Mr Roe. Mr Gafael stated that he saw Mr Genner speaking to a Police Officer, but there is no evidence to suggest that he was seeking to direct or influence the investigation going ahead. The Claimant, apart from his wholly unsupported speculation, can adduce no evidence to suggest that Mr Genner played an active role in this matter. Indeed, in the absence of any statement specifically concerning Miss Alison Genner, it would appear that she too did not take any active role in the complaint. This is supported by the fact that all four charges identify only Mr Gafael as the victim of the offences (see pages 164A, 164B, and 164F).

216. On the evidence, most probably in the evening of 6th June 1995, Mr Roe returned to the property with Mr Gafael. The purpose of this visit, was, as had been discussed at Ely Police Station, to allow Mr Gafael to effect entry into his home so that he could recover the remainder of his possessions, such as were able to be removed. We invite the Court to conclude that firstly, Mr Gafael was perfectly entitled to use reasonable force to regain entry to his home and his possessions therein, therefore, in the pejorative sense of the term this was not a "break-in"; secondly, that notwithstanding the Claimant's constant repetition of this allegation, there were only two persons present when entry was regained, namely Mr Gafael and Mr Roe, and that it was not effected by a "vanload" of police officers with a sledge hammer and a crow bar. There is no evidence whatsoever to suggest otherwise.

217. Although not part of the pleaded case, the Court will no doubt wish to consider the role of Mr Roe as to the manner in which re-entry to the property was effected. Mr Roe's evidence, doing the best he could to recollect events which transpired 18 years ago, was to the effect that he was certainly present when entry was effected but that it was done so by Mr Gafael. When confronted with his section 9 statement during his second attendance to give evidence, he openly and frankly conceded that he had simply had no recollection when first giving evidence of the entry to the property at all, which is not surprising given the passage of time since this relatively unremarkable event.

218. On this issue, Mr Gafael's evidence was not wholly satisfactory; in the unsigned statement apparently obtained by the Claimant on about 1st May 2013, Mr Gafael indicated that it was he who had gained entry to the flat (page 130M). Subsequently, in the handwritten notes taken by the Claimant, countersigned by Mr Gafael on 6th May 2013, (commencing at page 130N), Mr Gafael seems to have told the Claimant that it was he who had used the sledge hammer and crow bar to break in – see page 130P. Thereafter, paragraph 23 of the statement signed by Mr Gafael at p.130S, he confirmed he had used the sledge hammer and crow bar to break in. However, when giving evidence, Mr Gafael said, notwithstanding his signed statements, that it was Mr Roe who had used the crow bar to effect entry.

219. The Court will undoubtedly recollect that Mr Gafael explained that Mr Roe had intervened because he, Mr Gafael, had wanted to smash a window giving access into the veterinary surgery and "cause mayhem" to the Claimant's property. On this version of events therefore, Mr Roe was seeking to prevent unnecessary damage being caused to the Claimant's property and possessions, and to prevent Mr Gafael committing a criminal offence, whilst still allowing the lawful retrieval of his property.

220. Insofar as this is a relevant issue, we would contend that the Court should prefer the evidence of Mr Roe. If, on the other hand, the Court prefers the evidence of Mr Gafael, then this does not reflect badly upon Mr Roe, since he was acting to prevent the incident escalating, and in particular to stop unnecessary damage being caused to the Claimant's property and possessions. Further, we would contend it negates any allegation of malice on the part of Mr Roe. In any event, it is wholly contrary to the Claimant's un-pleaded, but vociferously advanced, case regarding how entry was effected.

221. Thereafter, Mr Gafael, as we know, was interviewed, probably by PC Roche, on 11th June 1995, on the basis of the section 9 statement then obtained. The evidence of Mr Roe was that, thereafter, a file, most probably containing the statement of Mr Gafael, would have been sent to a more senior officer "through the normal channels", who thereafter would have sent the file on, and sought advice from the CPS, and perhaps, the Local Authority. His evidence was that

advice would have been received thereafter as to the appropriate charges to be laid, if any. In the light of the somewhat technical nature of some of the charges that were laid pursuant to the Protection Against Eviction Act 1977, eg. in particular the refusal to identify the landlord (see page 164B), it seems likely that such advice was provided by one institution or the other. Mr Roe told the Court that, because of the unusual nature of the charges so far as he was concerned, it was probable that those particular charges would have been prepared in writing by him prior to the pre-arranged arrest and interview of the Claimant on 3rd July 1995, so that, if appropriate, they could be put to him without undue delay.

222. The events thereafter are recorded primarily in the custody record at A1, vol. 5, page 155. Arrangements were made for the Claimant to surrender himself to Barry Police Station on the 3rd July 1995, where he was arrested by PC Manders for criminal damage. The evidence of Mr Manders is that although he has little recollection of this incident, he believes that he would have been informed as to the background of this matter by one of the officers from Cardiff (see his witness statement at pages 166 – 167, at paragraphs 8 and 11 in particular). Insofar as that information is likely to have been gained from Mr Gafael's statement, or a verbal summary of the same, there is certainly material within that statement to support a reasonable suspicion of criminal damage on the part of the Claimant, either directly by him, or through his agents (the builders). Given his course of conduct, the only person who stood to gain from eviction of the tenants and their belongings was the Claimant.

223. Further, as to the reasonableness of the suspicion that criminal damage had been caused, the Court may recollect that, in his statement, Mr Gafael stated that, although he did not open the white plastic bags containing his belongings on 6th June, he nonetheless identified broken items of furniture with the plastic bags (eg. porcelain figurines, a table lamp, a picture frame, a stereo speaker) - damage which had been caused since he had left his flat that morning.

224. The Claimant was interviewed by Mr Roche and Mr Roe at Barry Police Station between 1609 and 1634 hours (see page 157), following which he was charged, at 1724/1725 hours. We now know, following late disclosure from the Claimant, that those charges included three offences pursuant to the Protection

Against Eviction Act 1977 page 164A and B, and that of criminal damage, page 164F. The charges themselves give some indication as to the Claimant's attitude in interview, since it is clear that Mr Roe must have asked him for details of the landlord of the flat, but the Claimant failed to reveal this information. This echoes the evidence given elsewhere in these claims, for example, that of PS Kihlberg when he was investigating a complaint by one of the Claimant's Barry tenants regarding the removal of the door to his flat and the removal of his possessions; on that occasion, the Claimant refused to provide any information as to his interest in the property.

225. Although not part of the pleaded case, in the sense that there is no claim for malicious prosecution, there is an interesting, although wholly otiose legal issue, as to whether the police could charge someone with offences under the **Protection Against Eviction Act 1977**, this being an offence in respect of which a Local Authority instigates proceedings (see the Act itself at s.6, and the cases of **Cowan**, cited above, at paragraph 8 of the judgment, and **Dacorum Borough Council v El-Kalyoubi** [2001] EWHC Admin 1052 at paras. 1.7 and 1.8, where the entitlement of the police to bring proceedings under the Act was doubted, but not fully decided). If this were at issue, and if the Court were to conclude that the police could not, of their own volition, charge someone with offences under the 1977 Act, then we would contend that their purported charging would be a nullity, which, since it would never have exposed the Claimant to any effective prosecution and conviction, would not support a claim for malicious prosecution. Further, since there is some evidence that the advice of the Local Authority may have been sought prior to the Claimant being charged, insofar as the Local Authority gave advice concerning the appropriate charges, it might have been the case that the Police were acting as agents of the Local Authority when they did so charge the Claimant. However, as noted above, the Court is not seized of this matter, given that there is no pleaded claim for malicious prosecution in respect of this incident.

226. Following the granting of bail to the Claimant at 1741 hours on 3rd July 1995, page 164, it appears that this prosecution simply "petered out" as there is no record of attendance at Court thereafter. We know that Mr Roe prepared a

section 9 statement of his own, dated 23rd July 1995, (page 179A - B), which presumably was submitted to the CPS and/or Local Authority, but it does not appear that the matter was proceeded with any further.

227. It seems that it is the Claimant's case that when he attended Barry Police Station, he was arrested for offences pursuant to the Protection Against Eviction Act 1977, and thereafter, without being properly processed, he had an unrecorded, un-transcribed "chat" with the officers, which may have taken place in a corridor or a room, the location of which the Claimant has been unable to identify, notwithstanding his otherwise intimate knowledge of Barry Police Station, viz. the "broken wing mirror" incident when the Claimant went to retrieve his dog. It is unclear whether the Claimant is suggesting this is the only arrest that occurred, or whether this arrest took place sometime prior to his arrest on 3rd July 1995. It is a matter for the Court to resolve this issue on the evidence, but we would contend that given the Claimant's character, the way he normally behaves when dealt with by the Police, and his knowledge of Police practice and procedure, that it is inconceivable that the Claimant would have permitted himself to be arrested, not taken to the Custody Unit, not presented to a Custody Sergeant with an explanation for the grounds of his arrest, not require the Codes of Practice and/or the Duty Solicitor, and thereafter take part in an unrecorded, un-noted interview which he alleges took place in a corridor or room. It is also notable that in the additional undated "landscape" formatted statement of Mrs Kirk, presumably made in 2000, disclosed by the Claimant during her evidence under cover of a letter dated 15th June 2000, that in commenting upon this incident, she refers simply to a single arrest and detention of the Claimant, and not two instances. We therefore invite the Court to reject the Claimant's evidence.

ACTION 2

ACTION 2 – PARAGRAPH 2

228. The Claimant's allegations and the Defendant's response are contained in A2, vol. 1, pages 1 - 4. The Claimant alleges that he was maliciously prosecuted for an offence under the **Prevention of Terrorism (Temporary Provisions) Act 1989**. Initially there was an issue as to the date upon which the incident was said to have taken place – the Claimant clearly identified the wrong date – see paragraph 159 of the Defendant's Extended Skeleton Argument of 21st March 2012. It is now clear that the incident took place on the weekend of 9th/10th February 1996.

229. As the Court will be aware, in considering this particular incident, we are not concerned with the guilt or otherwise of the Claimant in this matter, but whether he can prove an absence of reasonable and probable cause in relation to the issue of the summons, and in addition, as a separate issue, whether the Claimant has established malice.

230. The Defendant's witness evidence is set out at A2, vol. 1, pages 6 – 43 in the statements of retired DC 673 Stephen Murphy, and retired DC 787 Philip Gibbs, both of whom gave evidence to the Court.

231. On 11th February 1996, DC Murphy, a Special Branch officer, received a telephone call, which he later, with the assistance of his re-discovered note, identified as having been made by Mr Christopher Ebbs (now known as Mr Christopher Alexander-Ebbs). Interestingly, although not central to the issues involved in this matter, when he was called to give evidence on behalf of the Claimant, it was not suggested by the Claimant that this telephone call had not been made.

232. The Court heard that the telephone call was to the effect that the Claimant 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. As the Court now knows, from the evidence of Mr Gibbs, confirming as he did the evidence he gave in the Magistrates Court (see the last page of the notes of the Magistrates Court hearing, which were inserted into the trial bundle at page 137e onwards), Mr Murphy appears to have made enquiries with the relevant Special Branch officers within a week of the initial telephone call from Mr Alexander-Ebbs.

233. DC Murphy and DC Gibbs interviewed the Claimant on 13th April 1996 when, apart from admitting that he was the owner of the aircraft G-ARSW, the Claimant declined to answer any questions until he had had legal advice, see A2, vol. 1, page 14.

234. 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 (see A2, vol. 1, page 17). Whilst he claimed that he had "authority" to take off from the site, he was unable to remember who gave him such authority, the name of the person who gave him authority, the time when the authority was given, and mis-recollected the date when he sought such authority. He was unable to remember whether he had given the Special Branch officer who it was alleged he had spoken to, any details about where he was flying from and where he was flying to. For reasons which are still unclear, he was unhelpful as to the location of the aircraft's log book.

235. The Court has heard evidence from Mrs Susan Jenkins, a witness the Court will no doubt conclude was doing her best to assist the Court. It is interesting to note that neither at the time of this interview, nor, it seems, at any time prior to the Magistrates Court hearing, did the Claimant inform the police or the CPS that he apparently had a witness from the airport who could confirm the making of a telephone call. When questioned in cross-examination as to why he gave "no comment" in interview, the Claimant replied that he was not obliged to. Overall, it is clear from the interview that the Police were attempting to establish whether or not the Claimant had permission from the relevant authorities to fly from the Cardiff area to Ireland. His answers were vague, incomplete and, in some instances inaccurate, so that, both at the time and subsequently, his behaviour in interview - on any objective analysis – would only have served to increase

suspicion, rather than to have allayed it. One can only speculate now, but it seems likely that if the Claimant had been frank during the course of this interview, in particular, identifying that he had a witness, then this matter is unlikely to have proceeded any further.

236. Subsequently DC Murphy prepared a file which he sent to the Crown Prosecution Service, and which appears eventually to have been transferred to the Crown Prosecution Service, in London, presumably as it involved the Terrorism Act. On their advice, an information, which led to the issue of a summons, 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.** The summons is dated 25th July 1996 at page 75. This was subsequently amended in December 1997 (see letter from CPS at page 85).

237. Presumably on the instruction of the CPS, DC Murphy, as the officer in the case, set about obtaining evidence initially from Special Branch officers who were on duty, PS Butt (page 89), DC Cotter (page 90), DS McBride (page 91), as well as DC Gibbs (page 69), and DC Murphy (page 24). Those statements were sent to the Claimant on 5th February 1997 (page 94). There is a second statement from DC Murphy of 10th March 1997 (see page 104). A detailed letter was sent from the CPS dealing with procedure on 10th March 1997 (page 99).

238. It appears that the Claimant was carrying out enquiries in relation to these matters, see the response from NATS of 26th March 1997 (page 107), although he did not reveal either the existence of, or the actual, witness statement, which he had obtained from Mrs Jenkins in September 1996. Thereafter, DC Murphy obtained further witness statements, from Customs and Excise and Immigration officers, (see pages 114, 115, 116, and 118). These statements were apparently prepared to deal with any suggestion that authority for the flight had been given by another official based at the airport. As we know from the evidence of DC Murphy and DC Gibbs, there was some role for other parties to give authority. The Claimant himself appears to have introduced some doubt as to what his case was in relation to the authority that had given him permission, see his letter of 27th April 1997, at page 120, at the central section of page 121. Another statement was obtained from DC Bailey, dealing with enquiries made by the Claimant, see

page 111. These additional statements were served on the Claimant by letter of 28th April 1997, pages 126 – 127.

239. As late as 30th April 1997, the day before the trial was due to commence, the Claimant was identifying other authorities who may have given him clearance for his flight, see his letter of p.129.

240. It appears that the trial commenced on 1st May 1997, with both Mr Gibbs and Mr Murphy giving evidence. There was then an adjournment over the weekend, it was at this stage that Mr Murphy re-discovered the note, which recorded the identity of the person who had made the original telephone call. As this Court is aware, the prosecution attempted to serve a "redacted" version of that note, in order to protect the identity of Mr Alexander-Ebbs, since they had information that Mr Alexander-Ebbs had previously been threatened or assaulted by the Claimant, but that application, presumably in accordance with the law as it then stood, was refused. See the letter of 13th May 1997 from the Clerk to the Magistrates to the Claimant, page 137. The evidence in relation to the discovery of that is contained in the statement of Mr Murphy at page 122. At that stage, their application having failed, the CPS decided not to pursue the matter and offered no further evidence. A not guilty verdict was entered.

241. The Court has heard from Mrs Jenkins, and will no doubt have concluded that she was an honest witness who was trying to assist the Court in this matter. On the basis of that evidence, it seems likely that the Claimant attempted to obtain clearance from someone, although in view of his later vacillation regarding the recipient of that telephone call, there may be some doubt as to whether it was a Special Branch officer he spoke to. In any event, his deliberate failure to pass on the information as to the existence or identity of this witness prevented the Police from making appropriate enquiries. On the information then available to Mr Murphy, a full and proper investigation had been made. The charges which were subsequently laid, were done so on the basis of the information then known to Mr Murphy, and in the light of advice received from the CPS.

242. We contend therefore, that the Claimant has failed to establish a want of reasonable and probable cause in the laying of those charges, and has failed to establish malice.

ACTION 2 – PARAGRAPH 3

243. This paragraph has been struck out by the Court in its judgment of 30th November 2010, as being an abuse of process, save that the Claimant is entitled to pursue his claim for malicious prosecution in respect of the offence of driving without insurance.

244. The Claimant's allegations and the Defendant's response are contained at A2, vol. 1, pages 138 to 140. The Defendant's witness evidence is at A2, vol. 1 pages 142 – 152 in the witness statements of retired PC 520 Rogers and PC 2727 Stephens.

245. 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.

246. The officer stopped the driver of the Maestro, who he discovered was the Claimant. The officer spoke to the Claimant regarding his driving, and warned him that he would be reported for driving without due care and attention, and issued him with an HORT1, which the officer explained in his evidence was standard procedure at that time (there being no facility to check insurance via the PNC at that date). There is no dispute by the Claimant as to the brusque and impatient manner in which he responded to the officer, when he was being spoken to at the side of the road.

247. Subsequently, on 20th May 1996, the Claimant produced his driving licence 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,

the Claimant 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 the Claimant as a policyholder in respect of vehicle index no. F118 NTP, but which also covers him for driving a motorcar "not belonging to him".

248. Subsequently, the Claimant 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 A2, Vol 1, page 174, 176, and 177). The Claimant 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.

249. The Claimant'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 the Claimant's arrangements for insurance, because on the following day (5th November), his insurance brokers wrote to the Judge seeking to clarify the terms of the Claimant's insurance (see the letters and documents at page 199, 200 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 the Claimant, 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.

250. It may be that at that time, the Claimant 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 the Claimant was insured to drive the vehicle under the terms of his policy.

251. 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 the Claimant'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.)

252. Further, having already permitted the Claimant 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 the Claimant's appeal in respect of this offence was dismissed.

253. His Honour Judge Gaskell refused to award the Claimant the costs of the appeal, as a result whereof, the Claimant 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 the Claimant'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).

254. 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 the Claimant for insuring himself

when driving, and indeed, as he 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 the Claimant was in fact insured to drive this vehicle; a concern apparently shared by His Honour Judge Jacobs, and only resolved once the Claimant had produced letters from his insurance brokers, referred to above.

255. In the circumstances, the Claimant has failed to establish an absence of reasonable and probable cause for the issuing of the summonses, and/or has failed to establish malice.

ACTION 2 – PARAGRAPH 4

256. The Claimant's allegations and the Defendant's response are contained in A2, vol. 1, pages 236 – 239. The Claimant 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 to the vehicle. The Defendant's evidence is set out in A2, vol. 1, pages 241 – 251, in the statement of PC 680 Andrew Roch, who gave evidence to the Court.

257. This matter starts on 21st January 1997 when PC Roch, who was on motor patrol duty in Barry, observed a Ford Orion motorcar, index no. D535 MKR, being driven along Coldbrook Road into the Docks Link Road, Barry. The driver was not wearing a seatbelt. The officer stopped the vehicle and spoke to the driver, who was identified as the Claimant. In evidence the officer stated that he was unaware that the driver was the Claimant until the Claimant emerged from the vehicle following the stop. Indeed, he stated that he was "surprised and shocked" that a professional gentleman such as the Claimant would be driving a car in the state it was. He gave oral evidence concerning the conversation with the Claimant, which confirmed his statement at A2, vol. 1, page 243, and his s.9 statement at page 254.

258. The substance of the conversation was that the officer asked the Claimant whether the vehicle was his, to which he replied that it was. He also asked the Claimant 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 crack in the windscreen, a broken rear bumper and a broken rear offside indicator lens. The officer informed the Claimant 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, the Claimant simply replied "1, 2, 3, 4, 5". The officer was not happy that the Claimant was providing him with the necessary information, as a result whereof, he informed him that he would be reported in respect of various offences. In the event, the HORT1/VDR form was issued to the Claimant, and can be found at page 252.

259. When he gave evidence, the Claimant, in effect, agreed, or did not dispute, Mr Roch's recollection and note of the conversation which took place. In addition, although the Claimant disputed as to whether they amounted to an offence, he nonetheless accepted that the three defects identified by Mr Roch were present.

260. Summonses were issued in respect of 9 road traffic offences (the summonses are set out at pages 284 – 300) with the pleas to those summonses annotated thereon in handwriting. The Claimant 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). The proceedings, started in the Vale of Glamorgan Magistrates Court, Barry, were then transferred to the Bridgend Magistrates Court, following an allegation by the Claimant that the Lay Justices were racists and biased against English people - see the Claimant's complaint at page 327. The veracity of Mr Roch, and the contrasting want of accuracy of recall on the part of the Claimant, was illustrated in cross-examination of Mr Roch by the Claimant in these proceedings, when the Claimant asserted that he had produced his insurance certificate to Ely Police Station by posting a copy through the letterbox, and that this had been known to Mr Roch, who had deliberately covered up this matter when he gave evidence in both Magistrates' courts. It was pointed out that, in a letter from the Claimant to the Barry Magistrates Court of 29th September 1997, at page 308, he had conceded that Mr Roch had stated during the course of his evidence that he had knowledge of another police officer receiving the documents. See also a further letter from the

Claimant, dated 29th October 1997 at page 324. Thereafter, in circumstances which reveal the Claimant's accuracy/honesty, he then accepted that this evidence may have been revealed in the Barry Magistrates Court but asserted that the officer had deliberately withheld this evidence in the Bridgend Magistrates Court. As the Court will recollect, with the assistance of the notes of the Bridgend Magistrates Court clerk, which were sent to the Claimant by covering letter of 10th November 1997, page 331ff, it was established that Mr Roch had given evidence to the Bridgend Magistrates Court of this fact, see page 338 within those notes.

261. When the Claimant himself gave evidence, he once again sought to assert that the officer had failed to reveal this when giving evidence in the Magistrates' Court, which he relied upon as establishing the officer's dishonesty. It was only when he was taken to the above-mentioned documents that he somewhat reluctantly conceded that the evidence in question had indeed been given by the officer.

262. Not surprisingly, given the fact that he appears not to have given evidence (see page 345), the Claimant 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 the defects in the vehicle. The offence of not wearing a seatbelt was dismissed, no evidence having been offered. It appears that the Claimant produced a report from a Consultant Orthopaedic Surgeon justifying his failure to wear a seatbelt on medical grounds (see page 280).

263. 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. The Claimant sought to suspend that disqualification, but the Bridgend Magistrates Court refused (see page 257). The Claimant then sought to appeal/challenge the refusal of the Magistrates to suspend the disqualification pending his appeal (see the Claimant's letter of 28th October 1997 at page 322).

264. 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. The letters from the insurance brokers in respect of the Claimant's insurance arrangements were produced to the Court (see the documents at pages 199, 200 and 330), following which, the CPS decided not to oppose the Claimant'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). On the 20th November 1997 the appeal against conviction in respect of driving without insurance was allowed (page 357).

265. It appears that there was then a telephone conversation between the Claimant and Mr Williamson, Clerk to the Cardiff Crown Court, in which the Claimant suggested that he had also appealed against his other convictions of 28th October 1997 (see page 359). Mr Williamson then wrote to the Claimant by letter of 25th November 1997 (page 360); the Claimant 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).

266. 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, the Claimant 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.)

267. 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 the Claimant on 13th February 1998, at page 383). Thereafter, on 18th February 1998, the Recorder permitted the Claimant 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 the Claimant that he could only appeal the offences to which he had pleaded guilty, if he could establish that his pleas were equivocal.

268. 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.

269. It appears (although the Court may be in a better position in respect of this matter) that at the trial in the Crown Court, the Claimant sought to allege that Mr Roch was lying, in that, the copy of the HORT1 retained by the Claimant had apparently not been signed, whereas the carbon copy relied upon by the officer had been signed. During the course of his evidence, Mr Roch recollected that the point had been put to him, but recalled that the document produced by the Claimant was not the original carbon copy, but a photocopy of the carbon copy. He told this Court that during the course of his evidence in the Crown Court he had said that since it was only a photocopy one could not preclude the carbon copy having been tampered with by someone "tippexing" out his signature. We would contend that this is very much of a tangential issue in this case, but insofar as it is of relevance, we aver that the Claimant had failed to establish (the burden being upon him in a claim for malicious prosecution) that the officer was lying. More generally in relation to the appeal, it was a matter for the Court to decide whether or not the Claimant was guilty of the relevant offences. Insofar as the Court allowed the appeals, this may of course have been on the basis that the prosecution had not established the charges beyond reasonable doubt. For what it is worth, the Court may recollect that the officer felt that the wrong charges had been laid by the CPS.

270. In respect of the offence of failing to wear a seatbelt, there seems to be little doubt that the Claimant was in fact not wearing a seatbelt, as he later produced medical justification for this. In respect of the remaining four offences, which were the subject of a successful appeal, the Defendant contends that the Claimant has failed to establish that was an absence of reasonable and probable cause to lay the information and/or that there was an absence of malice.

ACTION 2 – PARAGRAPH 5

271. The Claimant's allegations and the Defendant's response are at A2, vol. 2 pages 1 – 2. The Claimant alleges he was maliciously prosecuted, in that, having

been served with a Notice to supply details of the driver of a vehicle exceeding the speed limit, he was prosecuted notwithstanding the fact that the CPS knew he was not the driver. In his Further and Better Particulars, the Claimant 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).

272. The Defendant's witness evidence is at A2, vol. 2, pages 4 – 18, in the statements of Inspector 1581 Andrew Rice, retired Inspector Sidney Griffiths, and retired PC 1532 Keith Lovell.

273. In respect of this incident, the Claimant accepted the evidence of PC Lovell, whose statement is at A2, vol. 2, page 13, which in turn, exhibited his pro-forma section 9 statement at page 17. It follows therefore, that the evidence before the Court is that a properly constituted speed check was set up on the morning of 2nd October 1997, following which, at about 12:50 hours, an Austin van registration D821 LNY passed through the speed check at a speed of some 44 mph. Mr Lovell subsequently checked the machine to confirm it was still operating in a satisfactory manner.

274. Thereafter, a Notice of Intended Prosecution was issued on 13th October 1997 and was served on the registered keeper, who appears to have been the Veterinary Hospital, at Tynewydd Road, Barry, which seems to have been treated by both the prosecution and the Claimant as a specific reference to the Claimant himself. It appears that following service of that document, there was a discussion between the Claimant and a Mrs Morse of the Central Ticket Office ("C.T.O.") of South Wales Police, during which the Claimant requested a copy of the photograph that had been taken; this is confirmed by a letter from the Claimant of 11th November 1997 at page 21.

275. The C.T.O. replied with a Compliments Slip (page 22) which appears to have accompanied the photograph which can be found at page 24. We assume that although the photocopy of the photograph at page 24 is "unhelpful", in its original state, it was of some use, since by letter of 9th December 1997 from the Claimant to the C.T.O., he was able to confirm that the driver shown in the photograph was not him (page 23). In that same letter, the Claimant makes it clear that he is

unable to confirm/identify the driver, nor indeed was he able to confirm whether it was a man or a woman.

276. By a letter of 21st January 1998, the C.T.O. wrote to the Claimant 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, the Claimant's Office Manager wrote to the C.T.O. asking them to transfer the original to Barry Police Station for the Claimant to view it (page 26).

277. By a letter of 9th March 1998, the C.T.O. wrote to the Claimant's Office Manager, informing her that a "photo-print" (NB. not merely a photocopy) had been supplied, and that the photograph would not be transferred to Barry Police Station. He was warned that there was a possibility that the registered keeper, which as noted already, appears to have been treated by both parties as the Claimant, would be reported for failing to supply the name and address of the person suspected of committing the offence (page 27).

278. By a letter of 10th March 1998, the Claimant 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 C.T.O. again notified the Claimant that the burden was upon him to provide the name and address of the driver of the vehicle (page 34).

279. The following day, summonses were issued against the Claimant for speeding and alternatively, for failing to identify the driver of the vehicle (see pages 29 - 32). Somewhat bizarrely, it appears that the Claimant 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. The Defendant has no direct knowledge as to what transpired on 1st June 1998, but in light of the fax from the Magistrates Court to the Claimant, at page 36, it appears that on the morning of trial, and presumably before they attended at Court (see the detail of the facsimile message) the CPS had decided to withdraw the case against the

Claimant. It would appear that the message was sent to the Claimant by fax prior to his actual attendance at Court. These events are confirmed by the CPS in their letter of 28th September 1998, at pages 41 and 42.

280. In the circumstances, we contend that the Claimant has not established that the Defendant's officers lacked reasonable and probable cause to prefer the two charges or that they were guilty of malice. Indeed, as noted by the Claimant himself, in his statement at page 3D, para. 24, the Claimant openly accepts that the "man in the department" (clearly a reference to the C.T.O.) "wouldn't have a clue" as to the identity of the man in the picture.

281. Although not relevant at all to the merits of this incident, much time was taken by the Claimant in these proceedings in ventilating two matters; firstly, the "arrest" of Stan Soffa by the Claimant, on the discontinuance of the prosecution, and the involvement (or not) of Inspector Andrew Rice, with other officers, attending at Court to deal with the incident, and secondly, the extent to which this might support the suggestion that Sergeant Rice, as he was then, was a "king pin" in the conspiracy to "get Kirk".

282. This of itself touches upon the interesting evidence of Mr Ebbs (also known as Mr Alexander, or Mr Alexander-Ebbs). It is difficult to know where to start when considering the evidence of Mr Alexander-Ebbs, but it is perhaps worth bearing in mind that prior to his dramatic appearance at Court, and his purported "identification" of Inspector Rice (not quite a dock I.D.), the Claimant wished to present Mr Alexander-Ebbs as a congenital liar, fraudster, and/or fantasist, thus, the Court will recollect the two letters produced by the Claimant in his witness bundle at pages 213 and 214, which although the Claimant now seeks to suggest were there to provide background information, were clearly intended to suggest Mr Alexander-Ebbs was not reliable, to say the least. The Court will no doubt also recollect the additional bundle of documents put to the Claimant during the course of cross-examination, the first document being a letter dated 22nd October 2002, and the bulk of the bundle being an application for judicial review by the Claimant, for "abuse of process" dated 25th July 2007. In the letter, the Claimant was anxious to emphasise that information given by Mr Alexander-Ebbs was "totally false", and that in addition, he was a "mentally sick member of the public". We do

not intend to quote at length from the abuse of process argument, but simply refer the Court to internal pages 18 – 25.

283. The Claimant now, it would appear, wishes to rely upon Mr Alexander-Ebbs' testimony as a witness of truth, to support an allegation of a conspiracy against the Claimant, which was acted out at Aust Motorway Services.

284. It is difficult to consider the evidence of Mr Alexander-Ebbs without some consideration of his somewhat tangled relationship with the Claimant. We do know that the Claimant was prosecuted for assault in respect of Mr Alexander-Ebbs and threats to kill in respect of his parents. The assault took place in the Plume of Feathers public house, Bristol, and thereafter, once the Claimant had been arrested in respect of that matter, it would appear from the Claimant's documentation and evidence, that there was either another incident of assault by the Claimant upon Mr Alexander-Ebbs, or alternatively, a wholly made-up allegation of assault by Mr Alexander-Ebbs, when the Claimant "arranged for him to be beaten up by Welsh rugby players" which resulted in the Claimant being remanded in custody. Of course the evidence of Mr Alexander-Ebbs on this point was that he did not initially make a complaint about being beaten up in the Plume of Feathers – that the police had attended at the incident and that a male officer with dark hair from the Avon and Somerset Constabulary had decided to pursue it, and that by some not fully explained sequence of events, prior to him having made a statement of complaint, he happened to find himself in the Magistrates Court in Bristol when the Claimant's bail in respect of that same assault was being considered.

285. The Court may conclude that the evidence given by Mr Alexander-Ebbs' evidence in relation to the making of his statement was bizarre. His evidence was that, in respect of an assault which took place in Bristol, he was requested by South Wales Police officers to have a meeting, whereupon he nominated Aust motorway services as an appropriate venue. During the course of the meeting he states that pressure was applied on him by Mr Rice, amongst other officers from South Wales Police, to "sex up" his allegations against the Claimant. Thereafter, his evidence as to what occurred in the Crown Court is inherently improbable, in that, as the Court will recollect, he contends that the Judge indicated that he and

the Magistrates were going to convict the Claimant, and that he would produce a reserved judgment in written form. He states that it was in this judgment that the Judge congratulated Mr Alexander-Ebbs on his truthfulness and his mild-mannered nature. This appears to be contrary to the sequence of events as recollected by the Claimant. The Court may agree with the Claimant; that Mr Alexander-Ebbs is either a liar or a fantasist.

286. In addition, the Court will recollect that on the afternoon that Mr Alexander-Ebbs gave evidence, he produced a statement that he had written shortly before 2pm where he set out additional "facts", yet in that statement, he failed to refer to the fact that he had apparently received two, or maybe three, threatening telephone calls that morning which he alleged were from the C.A.A..

ACTION 2 – PARAGRAPH 6

287. The Claimant's allegations and the Defendant's response are set out at A2, vol. 2, pages 43 and 44. This is an allegation of wrongful arrest. There is no claim for malicious prosecution.

288. This is an interesting incident where there appear to be at least three different versions of events before the Court. What does seem clear, however, is that the incident as a whole started shortly before 12 midnight on 16th March 1998, when PS Greaves (as he then was) attended a road traffic accident which had occurred outside the Cwm Ciddy Public House, Port Road, Barry. He gave evidence to this Court that as he was dealing with this incident, a line of stationary vehicles had built up on the Rhoose side of the incident, when the Claimant came along the road, travelling from Rhoose, and instead of stopping and waiting in the queue of traffic, he simply overtook them. PS Greaves concluded that that driving was careless, and sent a radio message out in respect of the Claimant's motorcar. For the most part, the Claimant did not disagree with this version of events, in respect of the incident outside the Cwm Ciddy Public House.

289. Thereafter, in respect of the incident in Southey Street, the evidence starts to diverge. We contend that the most likely version of events is that contained in the pocket note book of DC Barrie McGregor (now DS McGregor), at page 50, in that not only is it the fuller note as compared with that of PC Holmes at page 68, but

also it was he who made the arrest, as confirmed in the document produced in the course of trial at page 50A. In that notebook entry, which was a list of arrests actually carried out by him, he has recorded the offence for which the Claimant was arrested as “FTPBT” (“failure to provide breath test”) which conforms with the main entry in his notebook at page 50.

290. DS McGregor gave evidence that the circumstances of the arrest were that he was on mobile patrol with PC Gareth Holmes, when they heard a call over the radio from Acting Sergeant Greaves, saying that the Claimant was driving past in an erratic manner. The officers did an area search and encountered the Claimant and followed him to an address in Southey Street. The Claimant informed them he was attending to a sick animal, where they followed him inside and he tended to the animal. Once the Claimant had attended to the animal, the officers asked him to provide a specimen of breath. DS McGregor recalled that he failed to do so on two occasions, and so he arrested him for failing to do so. DS McGregor also stated that they had explained the breath test procedure to the Claimant, to take a deep breath and blow into the device until the lights on it were illuminated and it made a sound. DS McGregor recalled that, in the Claimant’s case, the lights did not illuminate.

291. So far as the Claimant is concerned, it is noticeable that in the statement he produced which is closest in time to the events themselves, at page 45F, he makes no specific assertion as to the reason for his arrest. In his evidence in cross-examination, the Claimant was rather vague about the incident, but recalled that at least one of the attempts he made to provide a breath sample was not effective. The Claimant’s evidence was also rather contradictory: when asked if he remembered that DS McGregor arrested him for failing to provide a breath sample he remarked “I don’t think I took him up on that”, but equally he stated, when he recalled that it was PC Gareth Holmes who was in attendance at the scene, that he would not have done anything which would have undermined him, such as refusing a breath test, as he had watched him grow up in the streets of Barry.

292. DS McGregor’s evidence finds some support in the letter from the Claimant to Superintendent Jones, of 23rd August 1999, page 117F, where the Claimant

refers to being arrested for failing to give a breath test around midnight and being reported for careless driving on an occasion when he was carrying out a round of emergency work. The incident in Southey Street, at least as described by DS McGregor, is the only one about which the Court has heard, which remotely fits in with that set of facts.

293. If the Court accepts this evidence, then the arrest of the Claimant and his subsequent presentation to the Custody Sergeant, presumably for provision of a sample on the intoxilyser machine, would be entirely lawful.

294. As stated above, DS McGregor's notebook entry and recollection of going to the Barry Police Station does fit in with the Claimant's assertion that he was taken to Barry Police Station. Alternatively, however, if the Court prefers the evidence of PC Holmes, to the effect that there was no arrest, and there was simply a request to provide a specimen of breath by the roadside, which was provided and was negative, whereupon no further action was taken, save that an HORT1/VDR (page 76) was issued, then there was no arrest in any event and the claim must fail.

ACTION 2 – PARAGRAPH 7

295. The Claimant's allegations and the Defendant's response are set out at A2, vol. 2, pages 79 - 80. The Claimant alleges that on 4th July 1999 he was a passenger in his own light aircraft which was being piloted by a Mr Aishe, when he was harassed by a police helicopter which flew around it for a distance of some 5 miles. The Court heard evidence for the Defendant from retired PC 949 Pauline Walters of Gwent Police, retired PC 122 Paul Hayes, and retired PC 823 Philip Bracegirdle of Gwent Police, whose witness statements are at A2, vol. 2, pages 82 – 107.

296. The Defendant's primary case on this issue is that this allegation discloses no cause of action. In examining the evidence, however, the Defendant would say that there are two issues in relation to this incident, firstly, how did the police become involved in this matter, and secondly, what happened as both aircraft circled the mast at St Hilary?

297. As to the former, the following now seems to be clear; at the material time the Claimant was disqualified from flying aircraft. Notwithstanding that disqualification, he was clearly, to a very great extent, piloting his aircraft on 4th July 1999, with Mr Aishe, a novice pilot who had only just received his licence, acting as a "cover". Although the Claimant has always sought to allege there was some great mystery as to how the South Wales Police/Gwent helicopter became involved in this matter, it is now abundantly clear that it became involved because of the Claimant's own antics.

298. There is little doubt that the Claimant was piloting this aircraft, in particular, although not limited to, the time when it landed at Gloucester airport. Such is the Claimant's character, that, notwithstanding the fact that he was disqualified from flying, he found it irresistible to show off by landing the aircraft flamboyantly, if not dangerously, as described at the end of Mr Aishe's evidence to the Court, which doubtless drew the attention of Gloucester Air Traffic Control to both the presence of the Claimant's aircraft and the likelihood that the Claimant was flying it.

299. Thereafter, it appears that the Claimant's aircraft was registered at Gloucester Air Traffic Control in the name of the Claimant himself, when both the Claimant and Mr Aishe went to Air Traffic Control to pay the landing fee. As was noted by Mrs Jenkins in respect of the general practice, Gloucester Air Traffic Control would have found out from either Mr Aishe or the Claimant as to the direction in which they were travelling so that they could "hand over" control to the relevant Air Traffic Control, in this case, Cardiff. Although the Claimant thought it was a matter of great mystery as to how it was that Cardiff Air Traffic Control were able to call him up when he was below their radar level, and without having had previous radio contact with them, the answer, if it wasn't already apparent to the Claimant, is now clear; Gloucester Air Traffic Control, in all likelihood, who no doubt believed or suspected that the Claimant was piloting an aircraft, and as Mr Aishe confirmed, knowing or believing that the Claimant was disqualified from flying, alerted Cardiff Air Traffic Control to the route likely to be taken by the Claimant and his estimated time of arrival.

300. The Defendant relies upon the documentation produced by the officers, namely the flight log and incident log at pages 88 and 90 respectively and the

written report of former PC Paul Hayes of 21st July 1999 (see pages 97 – 98) which, together with the evidence given by the police officers, confirm that the staff at the South and East Wales Air Support Unit received information from the Eastern Area Control Room, who had in turn received information from Cardiff Air Traffic Control. Air Traffic Control suspected that the Claimant's aircraft, which was being flown in the Wenvoe area, and which was making its way towards St Donats, was being piloted by the Claimant. At the time they suspected that the Claimant had had his pilot's licence revoked by the Civil Aviation Authority.

301. In respect of the second question posed above - as to what then transpired after the police helicopter was scrambled at 5.30pm, the Court heard that by this time, Air Traffic Control had directed the aircraft to "orbit" *ie*. circle, the Wenvoe mast. The observers, former PC Paul Hayes and former PC Pauline Walters, 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. Their evidence was that at all times, Captain Moseley who was piloting the police helicopter, kept a safe distance between himself and the light aircraft, and in addition, the movements of the two aircraft were monitored by Air Traffic Control.

302. Additionally, both observers gave evidence to the effect that Air Traffic Control would have remained in radio contact with Captain Moseley whilst they monitored police frequencies. 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.

303. Insofar as the Court considers it relevant to do so, we invite the Court to prefer the evidence of the police observers over that of the Claimant and Mr Aishe as to the respective positions of the two aircraft, and whether a safe distance was maintained. It is most unlikely that a professional pilot would endanger both himself and the two police officer observers by coming within a dangerous distance of the Claimant's aircraft. Further, although Mr Aishe now recollects it as an incident which caused some concern to him, at the time, the Claimant, who appears to have been in control of his aircraft at the material time, clearly

regarded the incident with some bemusement, since he felt sufficiently confident of his own abilities to bring his aircraft around behind the helicopter, imitating the "Hun in the sun". In addition we would contend that Mr Aishe's evidence about his level of concern needs to be viewed in the context of the inexperienced pilot that he was at the time, and as a person who was being flown by someone who he knew to be disqualified (which can only have served to increase his levels of anxiety).

304. At about 4pm on the following day, 5th July 1999, the Claimant 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 believed that he was able to confirm the Claimant had been the passenger as he had been seated in the rear seat, although, as we now know from the Claimant's evidence, he was in fact able to pilot the aircraft from that position.

305. The Defendant contends that his officers acted reasonably and proportionately in dealing with a request for assistance from Air Traffic Control concerning a matter of some considerable importance, namely the flying of an aircraft by a disqualified pilot.

306. In addition, insofar as this incident gives rise to any cause of action, it must be a claim in negligence (which in any event is probably statute-barred), and if so, would only be actionable upon establishing actual physical harm, damage to the aircraft, or the suffering of a diagnosed and medically recognised psychiatric condition. There is no evidence of any such harm being suffered; mere anxiety would clearly not be sufficient. Nor, in view of the above, could this constitute an act of harassment.

ACTION 2 – Paragraph 8

307. The Claimant's allegations and the Defendant's response are set out at A2, vol. 2 pages 112 – 116. The Claimant alleges that on 8th August 1999 he was unlawfully arrested for motoring offences and thereafter maliciously prosecuted in respect of those matters. The Court heard evidence for the Defendant from PC 3829 Abigail Biddle (née Brown), retired Inspector 526 Jonathan Lott, and retired

civilian Dianne Griffiths, whose witness statements are at A2, vol. 2, pages 118 – 162.

308. The Court heard from DS Biddle that just after 6pm on 8th August 1999, she 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 the Claimant. At this time, the officer was still in her probationary period of service, and had only been in Barry for 6 weeks. She had no prior knowledge of the Claimant.

309. As she was speaking to him, she noticed a smell of alcohol. As we now know, both in relation to this incident and in relation to other incidents, in his general practice the Claimant would use ethyl alcohol, which would smell of alcohol, and which he would carry within his car, so that there might at any particular time be a smell of alcohol upon him, or in his car. On this occasion, the Claimant appeared to accept in his evidence that he may have smelled of alcohol, depending on what work he had carried out that day.

310. As the Claimant 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. The Claimant 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”.

311. The Claimant provided a specimen of breath which was positive. Both in her statement and in her oral evidence, the officer told the Court that she showed the Claimant the roadside breathalyser device, indicating a positive result to the Claimant. Indeed, it would have been directly in front of him at the time.

312. 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 the Claimant's detention for the purposes of securing/preserving evidence, namely, for the carrying out of the breathalyser procedure.

313. In his statement at page 117D, paragraph 50, the Claimant appeared to accept that the lights had changed prior to him going through them, although he contended that it was not red when he crossed through them. In his evidence, he appeared at one point to deny that the lights were against him at any time, although later he stated that the lights were in the process of changing. It may be that there is not very much difference between the accounts of DS Biddle and the Claimant in this regard.

314. In relation to his acceleration at Pontypridd Road, in cross-examination, the Claimant accepted that he may have been driving in excess of 30 mph and may have been accelerating away, although he contended that this was not because of the presence of the police car behind him. In general terms, the Claimant either accepted, or did not deny, the events which took place once the vehicles had come to a halt, save that he denied that he had been shown that the roadside breathalyser device was positive. He, however, did not in fact challenge this when the officer gave evidence.

315. The Station breath test procedure was performed by PS Jonathan Lott with the Claimant providing negative breath samples, ie. a zero alcohol reading, taken at 1847 hours. According to the pro-forma breathalyser procedure document prepared by PS Lott, the procedure commenced at 1844 and was completed shortly thereafter (see the readings and documents at pages 197 - 214). The procedure is recorded in the custody record at page 126 – 129, at page 128. As will be noted, the Claimant was arrested at the scene at 1820 hours, it took 9 minutes to get to the Police station, his arrival is recorded at 1829, and no doubt given the time of day, he was immediately presented to the custody officer. The whole procedure is completed by 1900 hours, when according to both DC Biddle and PS Lott, the Claimant would have been released not only from the custody unit, but from any actual custody at that time.

316. DS Biddle informed the Claimant that she intended to issue him with a HORT1 for him to produce his documents. The Claimant informed her that he would not be producing any documents. She informed him that he would be reported in respect of road traffic offences. The officer's evidence was that this was done prior to his release from custody at 1900 hours.

317. It appears to be the Claimant's case that following his formal release from the custody unit he was in some way further detained whilst the HORT procedure was completed by DS Biddle, and perhaps whilst officers returned to his vehicle to find out the index number. It was unclear from his evidence where the Claimant was alleging he was detained following his formal release from custody; at one point he appeared to be saying that this detention took place outside the secure custody area, whilst at another point he seemed to be saying it might have been in the custody suite. Bearing in mind DS Biddle's evidence that either she, or her fellow officer SC Lewis, carried out a PNC check at the scene, travelling back to the vehicle to find out the index number would have been wholly unnecessary, as she could have communicated with the Control Room in order to verify the index number she had checked earlier. Bearing in mind the Claimant's conduct towards authorities in general and the police in particular, it is inconceivable that he would have simply waited around following his formal release from custody or allowed himself to be detained without formal procedure being followed. We invite the Court to the conclusion that either the HORT1 procedure was completed prior to the Claimant's release from the custody unit or alternatively, the Claimant remained of his own free will at the invitation of DS Biddle whilst she completed the HORT1 in his presence.

318. Subsequently, summonses were issued to the Claimant 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).

319. Following his conviction, the Claimant 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*". Once again, this suggests that although the Claimant had evidence of the existence of an MOT certificate for the car, and that he had insurance for the vehicle, he had elected not to produce them at the Magistrates Court. This would have resulted in a conviction, which he appears to have deliberately set out to achieve, so that he could thereafter produce evidence leading to a successful appeal – and presumably grounds for a complaint thereafter. Thus it is that, for whatever reason, the Claimant builds up his list of not guilty verdicts in respect of motoring matters.

320. By a letter of 6th April 2000, the Claimant sought to appeal against his convictions (see page 233). By a letter of 5th June 2000, the Claimant, having not done so previously, 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 the Claimant had been issued in respect of another vehicle index no. D816 BRF (page 255).

321. 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, the Claimant 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).

321. In the circumstances, the Defendant contends that DS Biddle had reasonable grounds to suspect that an arrestable offence had been committed by the

Claimant. 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. The Claimant was then issued with an 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 in those circumstances was entirely appropriate, the Claimant has therefore failed to show that there was an absence of reasonable and probable cause, and/or that there was malice.

ACTION 2 – PARAGRAPH 9

322. This head of claim was struck out as an abuse of process in the Court's judgment of 30th November 2010, save that the Claimant was ruled entitled to pursue his claim for wrongful detention of his motorcar. The Claimant's allegations and the Defendant's response are set out at A2, vol.3, pages 1 – 4.

323. The Defendant's witness evidence is at A2, vol. 3, pages 6 – 84, in the statements of former PC 3583 Richard Humphreys, PS 250 Mark Faulkner, PC 3444 Nicholas Kihlberg, PC 3546 Gareth Holmes, retired Inspector Gary Bohun, PS 1831 John Uprichard and lastly, the statement of Vivienne Davies, deceased, which was subject to a Civil Evidence Act notice.

324. The Claimant alleges that on 1st December 1999, having been lawfully arrested for failing to provide a breath sample, he was thereafter wrongfully deprived of his car for a period of about 6 weeks. The history of the matter, which is no longer the subject of this claim, namely his arrest, is dealt with at paragraphs 253 – 255 of the Defendant's Extended Skeleton Argument of 21st March 2012.

325. Having been arrested, PS Bohun asked the Claimant 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. The Claimant refused to answer. He was told that his car would be removed by a recovery company, for which the Claimant would have to pay. The Claimant did not dispute this evidence and stated it was for the purpose of his humiliation: "…*that was the fun they got out of it at the expense of the motorist, to humiliate you a little more whilst they laughed over their cups of tea at*

the station." He stated he made no response to PS Bohun. In addition, although the Claimant now complains bitterly about the police failing to secure the dangerous veterinary drugs which were within the car, it is clear, as the Claimant conceded, that he failed to alert any of the officers to the presence of the drugs within his vehicle, both at the scene, and subsequently.

326. The Claimant 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 0002 hours; 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 0041 hours. The readings on the machine were zero. During the course of this procedure, the Claimant told the officer that during the day he had been working with methylated spirits.

327. The Claimant was released from custody at 0059 am, at which time he was informed by PC Kihlberg that his vehicle had been recovered by Tudor Motors of Ystradowen. As the Court will recollect, PC Kihlberg gave evidence that he spoke to the Claimant as he was leaving the Police Station. He issued him with an HORT1, requiring the production of insurance and MOT, to which the Claimant replied that he would not be doing that. He was asked which station he wished to elect to produce his documents, but would not reply. PC Kihlberg inserted the name of Llantwit Major Police Station. PC Kihlberg attempted to give the Claimant the document, but he refused to accept it, as the result of which the officer put it into his (the Claimant's) pocket. It was at this point that PC Kihlberg told the Claimant that the vehicle had been recovered by Tudor Motors of Ystradowen. As the Court will be aware, PC Kihlberg declined to give the Claimant a lift, for the reasons given in his evidence. Whether another officer would have given him a lift is not relevant, PC Kihlberg was not acting illegally, and in any event, in view of the Claimant's bizarre and unhelpful conduct that night, PC Kihlberg's decision may be well understood.

328. In his statement and in the course of his evidence, PC Kihlberg informed the Court that he subsequently realised that he had failed to warn the Claimant that

he intended to report him for the offence of failing to provide a specimen of breath; so, on 13th December 1999, he called at, and spoke to the Claimant, at his Llantwit Major surgery, when he informed him that he would be reported, as well as returning his torch. This was his fourth attempt to speak to the Claimant following the incident of 1st December 1999.

329. The manner in which the Claimant came to recover his vehicle, and in particular, his recollection of these events, provides an interesting insight into the accuracy of the Claimant's evidence in relation to this incident. Although the Claimant was addressing correspondence to Superintendent Jones concerning the removal of his vehicle by the police, and demanding its return by them, (see letter of 21st December 1999, at A2, vol. 4, page 119), he nonetheless reported the vehicle stolen soon after the incident, something he knew to be untrue. In addition, the fact that he was writing to Superintendent Jones, demanding the return of the vehicle, tends to support the evidence of PC Kihlberg and PS Bohun that they had informed him it was being recovered on behalf of the Police. Further, the IRIS log detailing the arrangements for secure removal and storage as between PS Uprichard and Tudor Motors, (see A2, vol. 3, pages 77 - 78) supports the Defendant's assertion that every care was taken for the vehicle to be stored securely, by a reputable third party garage, and that it was not "dumped on the side of a road" in the Valleys, as contended by the Claimant.

330. It appears that the Claimant recovered his vehicle on 18th January 2000, the receipt, which is at A2, vol. 4, page 122. By a letter from the Claimant to Tudor Garage, at page 123, the Claimant raises the issue as to why the owner of the garage did not notify him that the garage was storing his vehicle. The garage replied by letter of 21st January 2000, at page 124, where they confirm that they had recovered the vehicle and that (in the usual way) the police had given them the incident number. By his response to Mrs Davies of 24th January 2000, at page 125, the Claimant questioned them as to who gave them the information as to ownership which "*prompted you on the 18th January at 10.30am to telephone this office and ask why Mr Kirk had not collected his car which had been with your garage since 1st Decembe*r". There was further correspondence on 10th February 2000 from Tudor Garage to the Claimant, (see page 135), when Mrs Davies

informed the Claimant, that shortly after carrying out their enquiries as to the owner of the vehicle, which were done in mid-January, they had tried to contact the Claimant by telephone at a number of veterinary practices until they had found the correct one. This contemporaneous correspondence materially supports the statement produced by Mrs Vivienne Teresa Davies, deceased, at page 79, which itself exhibits a section 9 statement of 5th July 2001 at page 82. This makes it clear that it was she who contacted the Claimant, not the Claimant discovering the whereabouts of his vehicle from a third party. Notwithstanding this correspondence, most of which was disclosed by the Claimant himself, the Claimant, up to the commencement of the trial, has always insisted that he had been informed of the whereabouts of the vehicle by an unnamed third party. During the course of the trial, presumably when the Claimant had finally read the papers, he appeared to accept that he was mistaken in his recollection. Thereafter, however, towards the end of the trial, he reverted to his earlier position, that the garage had played no part in returning his vehicle to him. We contend that the correspondence, supporting as it does the statement from Mrs Davies deceased, clearly evidences that the Claimant's recollection as to how he recovered his vehicle is wholly incorrect. We further contend that this is likely to provide the Court with some assistance in determining whose recollection of the conversation at the Police Station is correct, PC Kihlberg, or the Claimant.

331. The Defendant's primary submission is that no duty of care arises in respect of the allegations of deprivation of use of the motorcar. In the alternative, although the Claimant at one point appears to allege he was put to expense by hiring an alternative vehicle, no evidence of this has been produced. Further, it is clear that the Claimant had alternative vehicles which he could use, and therefore he was not put to any financial loss or inconvenience. There is therefore no loss in this case. If there is any duty, then a claim for breach of that duty would only be maintainable on proof of loss. In the absence of any loss, then the claim would fail.

332. Finally, the Defendant relies upon the evidence of PS Bohun, who informed the Claimant that the vehicle had been recovered, and PC Kihlberg, who notified the Claimant of the recovery firm.

ACTION 2 – PARAGRAPH 10

333. The Claimant's allegations and the Defendant's response are contained at A2, vol. 5, pages 1 – 2. The Claimant alleges that he was unlawfully stopped whilst driving his motorcar and thereafter required to provide a breath sample. The Defendant's witness evidence is at A2, vol. 5, pages 4 – 10, in the statements of PC 1696 Robert Guest, and retired PC 485 John Wellbeloved. Both of those witnesses gave evidence in accordance with their statements.

334. 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 appeared to be weaving in the road. We know from the Claimant's own evidence that his exhaust was "blowing", which would have attracted attention to his vehicle. PC Guest 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**. Even if the vehicle had not been weaving, the officer would have been entitled to bring the vehicle to a halt under this provision.

335. The events as described by the officers are not seriously disputed by the Claimant. They are, for the most part, also recorded in the IRIS log at A2, vol. 5, pages 13 – 14, which is a broadly contemporaneous record of the incident. The officer approached the car and discovered the occupant to be the Claimant. The Claimant 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. This was of course the BMW motorcar that was involved in the incident set out in Action 2 – Paragraph 9 above.

336. The officer tried to speak to the Claimant through the broken window, and at that time, he noticed a strong smell of intoxicants from within. In view of what we now know about the chemicals used in the Claimant's profession, this is not in the least surprising.

337. The officer concluded that it would be appropriate to breathalyse the Claimant. He called for assistance, whereupon Acting Police Sergeant Wellbeloved attended. Although the Claimant was very suspicious as to why it was that Acting PS Wellbeloved attended, it is now clear that he would have been PC Guest's supervisory sergeant at the material time, and therefore would have been the person called upon by PC Guest to provide him with any assistance or advice.

338. Acting PS Wellbeloved was able to persuade the Claimant to get out of the vehicle and provide a specimen of breath. The Claimant provided a specimen which was negative, whereupon he was allowed to go on his way.

339. The Claimant's present case is that he had been targeted by officers of the South Wales Police, having previously been stopped by officers of the same force on the M4 motorway, who had, according to the Claimant failed to breathalyse him when they should have. It is interesting to note that, although the Claimant has consistently complained about a previous stop in the Bristol/Severn Bridge area, in his earliest statements, he was not complaining of a stop in between the Bristol stop and the stop by PC Guest on the A4232, see A2, vol. 5, page 12, and the Claimant's witness bundle at page 85.

340. The Claimant's recollection of these various stops is clearly unsatisfactory, since in his oral evidence, he claimed that the stop by the Bristol Police had been entirely satisfactory, whereas in his statement at page 85 of the Claimant's Witness Evidence Bundle, he was quite vociferous in his complaints regarding the conduct of the Bristol officers. In addition, he appears to be confused as to where the stop by the Bristol officers took place. In what may be the statement most contemporaneous to these events, namely at page 12 of A2, vol. 5 (extract from his then website, which he usually maintains contemporaneously with events), he describes the Bristol officers' stop as taking place near Chepstow. It may be that he is now confusing that stop with what he believes to be another stop somewhere near the Brynglas Tunnels on the M4. The likelihood therefore, is that there was no earlier stop by officers on the Welsh side of the M4, or if there was, it was probably carried out by officers of the Gwent Constabulary. It is notable that, as the Claimant's evidence on this point developed, the point of this alleged

stop moved further west down the motorway and in doing so, into the South Wales Police force area.

341. This is clearly a case of an officer lawfully exercising his powers to stop a vehicle under s.163 of the Road Traffic Act 1988. The Claimant himself accepted in evidence there was no arrest, no detention and no charge. Following the stop, there was a request to provide a specimen of breath pursuant to section 6 of the Road Traffic Act 1988, which, in light of the Claimant's conduct, not just in the manner of his driving, and his initial responses to PC Guest, together with the smell of alcohol, was entirely justified.

ACTION 2 – PARAGRAPH 11

342. The Claimant's allegations and the Defendant's response are set out at A2, vol. 5, pages 15 – 18. This head of claim was struck out as being an abuse of process in the Court's judgment of 30th November 2010, to the extent that the Claimant alleges that he was wrongfully arrested and maliciously prosecuted for the offence of failing to provide a specimen of breath. The remainder of the allegations under paragraph 11 stand. The Court is respectfully referred to its Judgment of 30th November 2010 in regard to that matter, in particular at paragraphs 94 to 114 inclusive.

343. The Defendant's witness evidence is at A2, vol. 5, pages 20-88, in the statements of retired PC 1215 Robert Osbourne, retired PS 2788 Geoffrey Roberts, retired PS 2244 Raymond Pickett, retired PS 32 John Mahony, Dr Stephen Lush, PC 3689 Gareth Price and PC 1417 Stephen Coles. All of these witnesses gave evidence to the Court.

344. The evidence, primarily of PC Osbourne, and also PC Price, so far as his recollection would allow, was that on the morning of 5th April 2000, they were on duty in a marked police vehicle driving along Park Place, Cardiff, when they saw a motorcar coming towards them, index no. D793 TAU, 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 the Claimant. The Claimant looked at PC Price and then looked away. PC Price then walked around to the driver's window and knocked upon the same, whereupon the Claimant again looked at PC Price and again looked away. It was at that point that PC Osbourne saw the Claimant lock the door of his car.

345. The Claimant's evidence on this point was inherently unlikely. He claimed that whilst "something" caught his attention, which he accepted might have been PC Price knocking on his car, and notwithstanding he could see the "middle part of a person" behind his car, whom he assumed had "something to do with" the police van which he saw directly behind him, he was wholly unaware that the police were trying to attract his attention with a view to stopping his vehicle to speak to him. This account given by the Claimant, of him being wholly unsure as to what was taking place, and being unaware that the police were attempting to attract his attention, seems bizarre in the light of the evidence that he introduced during the course of cross-examination, that slightly further down the road (it would appear at the next junction) he took a photograph of a Volvo police car. If that photograph was indeed taken on this occasion, then it could only have been done because the Claimant was aware that the police were following him and trying to stop him.

346. Having earlier activated the horns and the headlights of the vehicle, the officers decided to switch the horns off, as otherwise vehicles in front of the Claimant would move to one side out of their way, which would also allow the Claimant to continue to drive away from them. The Claimant was then held up by stationary traffic at the traffic lights at the junction of Albany Road and Newport Road by the "white wash wall", at which point another police vehicle (driven by PC Steven Coles) was deployed to halt the traffic and stop the Claimant driving off.

347. PC Osbourne approached the vehicle and attempted to open the driver's door, but it was locked. Thereafter, PC Osbourne eventually carried out an arrest under s.6 of the Road Traffic Act 1988, an arrest which, in the light of the Claimant's plea of guilty, the various judgments in relation to the criminal proceedings, and this Court's judgment of 30th November 2010, was a lawful arrest. Whatever happened at the scene of the arrest, about which we do not intend to comment further in the light of those rulings, has to be viewed in the context of the attempts

to stop the Claimant and his wilful refusal to do so. There is no claim advanced for assault in respect of the Claimant's removal from the car, or treatment of the Claimant at the roadside. Insofar as the Court feels obliged to consider this matter, we contend that, in the circumstances, the officer used no more force than was reasonably necessary in pursuit of his powers under s.6 to require a breath test, and thereafter, his arrest of the Claimant. It can be noted from the custody record at Roath Police Station, A2, vol. 5, page 59, that on initial presentation at 1128 hours, there were no visible injuries noted.

348. The Claimant was taken to Roath Police Station, and then, since he wished at that point to provide a specimen of breath, was taken on to Rhymney Police Station, to enable the breathalyser procedure to be carried out. At Roath Police Station, apart from requiring the opportunity of speaking to his surgery, the Claimant was unhelpful, refusing to speak to PS Roberts the Custody Sergeant. The Claimant, during the cross-examination of PS Roberts, but not during his earlier cross-examinations of PC Osbourne or PC Price, suggested that he had been assaulted by being "dragged about" by his feet as he was sitting on the floor. The Court required the Claimant to reduce this allegation to writing, and it can be found at A2, vol. 5, page 19Q. Notwithstanding his failure to raise this with PC Osbourne, he identified PC Osbourne as having been present for at least some of the time that he was being mis-treated. The Court may recollect that initially the Claimant did not want the video in respect of Roath Police Station played to the Court. Having eventually served the video footage on the Defendant, it can be appreciated why the Claimant did not want the footage played. Despite his best endeavours, and a number of viewings of the film, the Claimant was unable to identify where the mistreatment had taken place, save to say that he thought it was before his presentation to the custody sergeant at Roath. The Custody Sergeant can in fact be seen behind the custody desk at the other end of the corridor in which the Claimant was waiting, throughout this period of time; undoubtedly within earshot, and most probably, within sight of the Claimant for this time.

349. The Claimant's case, so far as can be discerned from his questions in cross-examination and his own evidence, is that this mistreatment occurred in a cell

where he had sat on the floor as the result of the absence of any seating. As we know from the evidence given by PS Roberts, the only cell which did not have a bench within it or any seating was the so-called “drunk” cell, which had a camera trained upon it continuously which could be viewed by the Custody Sergeant. As it is, the Court can view the footage again if it considers necessary, we contend that a careful viewing of the footage reveals that apart from periods of a few seconds here and there, the only officers who were at that end of the corridor, were PC Osbourne and Price, and that they remained in sight, even if it was only the top of their heads or their hand or hands on the wall.

350. Thereafter, on presentation to the Custody Sergeant, the Claimant failed to raise this mistreatment either with Mr Roberts at Roath, or with the Custody Officer at Rhymney. In addition, in his statement made the following day, (see Claimant’s witness bundle at pages 231 - 232), he makes no reference whatsoever to being mistreated at the Police Station. Following his pleas of guilty, his Notice of Appeal at A2, vol 5, page 142, of 12th April 2000, makes no mention of mistreatment at the police station. It was only after his application to set aside his guilty pleas had been refused that he sought to raise mistreatment at the hands of the police, but with no particularity in the allegation: see (at A2, vol. 5, page 19C at paragraph 692) the Claimant’s reference to being “knocked about” – it is equally unclear whether this refers to his alleged treatment by the roadside at the time of arrest or in either of the police station(s).

351. As noted in the Custody Record, the Claimant was transferred to Rhymney Police Station, where he was placed into the Custody of PS Raymond Pickett, see A2, vol. 5, page 49. Both he and Mr Roberts told the Court that prior to transfer, information would have been given to the receiving custody sergeant concerning the incident, and in particular the Claimant’s conduct. We know that his conduct at Roath Police Station had been surprising, in that after presentation to the Custody Sergeant, the Claimant had sat down upon the floor of the Custody Unit. Although the Claimant now contends that he sat upon the floor because his ankle was hurting, there is nothing to suggest that Mr Roberts was given that explanation for his somewhat unusual conduct.

352. Thereafter, on presentation at Rhymney Police Station, Mr Pickett would have had the opportunity of discussing what had occurred on the road with Mr Osbourne. He arranged for the station breath test procedure to be undertaken by the Claimant, which was administered shortly before 12 noon, the breath sample reading was nil (see custody record, A2, vol. 5, page 49).

353. It is clear that from the outset, Mr Osbourne was suspicious that the Claimant's strange conduct was precipitated by either alcohol or drugs; this information was passed on to Mr Pickett. Following the negative breath test result, Mr Pickett, who had no prior knowledge of the Claimant, was clearly concerned that in the light of the Claimant's conduct and demeanour, and in view of the negative breath reading, consideration had to be given as to whether the Claimant was under the influence of drugs, a concern which would have been increased by the fact that at 1219 hours the Claimant is recorded as sitting on the floor as he was being booked in, see page 50. Mr Pickett accordingly called for the Police Surgeon, Dr Lush, to attend, but the Claimant 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. At Court, Dr Lush was able to produce his broadly contemporaneous notes of his encounter with the Claimant. It appears that Dr Lush formed the view that the Claimant was not under the influence of drugs (see entry at 1311 hours, page 50).

354. At 1315 hours PS Pickett determined that the Claimant should be charged with the motoring matters arising out of this incident, shortly thereafter he handed over custody of the Claimant to PS Mahoney. The Claimant 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 (see charge sheet at A2, vol. 5, page 140). These charges are slightly different from the charges originally considered by Mr Osbourne and set out in his Incident Book, which commences at page 27, see relevant entry at page 30. The Court may recollect that PC Osbourne explained that the nature of the actual charges would be reviewed during the course of the detention up to the point where the charge sheet was prepared. As to the charges in relation to no insurance and no

MOT certificate, Mr Osbourne told the Court that it was his practice to charge those offences at that stage, thereafter relying upon the common sense of the person charged to produce their documents as soon as possible if they had them, whereupon the matter would be discontinued.

355. The Claimant refused to sign the charge sheet unless he saw the length of the fingers of the officer's hand (see page 51). He was then un-cooperative in the taking of his fingerprints. Eventually, he was bailed at 1402 hours, when he refused to sign for his property or the granting of bail. In the circumstances, and in the light of the Claimant's wholly un-cooperative, awkward and difficult behaviour, we would contend that he was dealt with expeditiously, or to put it in its correct way, no decision of any of the three custody officers was so unreasonable as to fall foul of the *Wednesbury* principle.

356. 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 A2, vol. 6, pages 139 – 146).

357. Notwithstanding the fact that he had pleaded guilty to the offences, the Claimant attempted to vacate his guilty pleas and enter not guilty pleas. On the 18th September 2000, the Cardiff Magistrates refused to allow the Claimant to re-open his pleas, whereupon the Claimant issued an application for judicial review (see A2, vol. 5, page 145). The Claimant'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 A2, vol. 6 page 177, paragraph 11). It appears that the Claimant made a third attempt at judicial review, see his letter of 15th February 2002 (at A2, vol. 6, page 262).

358. The Claimant 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, para. 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 A2, vol. 6, pages 65 – 68). Notwithstanding the fact that the Claimant 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 against sentence (see the judgment of His Honour Judge Hickinbottom of 15th March 2002, at A2, 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, the Claimant 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).

359. Insofar as these various appeals, hearings, re-hearings and reconsiderations are of importance, we respectfully refer the Court to the evidence adduced in chief from Mr Osbourne, where the chronology of the various proceedings was traversed at length.

360. Notwithstanding the failed judicial reviews and appeals, the Claimant 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 the Claimant to change his plea, following which, presumably having produced a certificate of insurance, a not guilty verdict was entered. Although the Claimant 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) The Claimant 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 the Claimant 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.

361. Confirmation of the action of the Stipendiary Magistrate can be found in a letter of 20th May 2002 (to be found at Action 2, 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, the Claimant finally produced to the CPS a valid MOT certificate in respect of the vehicle he drove on 5th April 2000. Further, the Claimant 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.

362. In regard to the remaining matters in respect of which the Claimant 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. He has therefore failed to show an absence of reasonable and probable cause. In the alternative, there was an absence of malice. Further, in respect of the period of detention, in the light of the matters set out above, and in particular in view of the conduct of the Claimant himself, we contend that the period of detention was not unlawful.

ACTION 2 – PARAGRAPH 12

363. The Claimant's allegations and the Defendant's response are set out at A2, vol. 7, pages 1 – 3. The Claimant 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.

364. The Defendant's evidence is set out at A2, vol. 7, pages 5 – 34, in the statements of Inspector 1973 Steven Evans, former PC 3983 Linda Rewbridge, retired PC 389 Stephen Smith, and retired PC 620 Peter Bowers.

365. The Court has heard that this matter started in the late evening of 16th August 2000, when PC Rewbridge (then a Probationer with no previous knowledge of the Claimant) 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.

366. 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 two vehicles met nose to nose, following which the officers attempted to question the Claimant, who was driving the Escort, regarding his driving. When questioned, the Claimant said "I've taken the wrong turning, I wanted to go up there" at which point he was indicating to the westbound carriageway of the motorway. At one point in his evidence it appeared the Claimant was denying he had said this, but thereafter he appeared to accept that he might have made these remarks and given this indication, on the basis that he would not have wanted the officers to know exactly what he had been doing (that he had put the wrong fuel into his car by mistake).

367. The officers described smelling intoxicants once the Claimant had opened his car door. As we now know, this could have been either due to the fact that he had consumed alcohol at lunchtime, or the smell of chemicals which could have been used by the Claimant in the course of his practice.

368. 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. The Claimant appeared unable to comprehend that he was carrying out a potentially hazardous manoeuvre. There was some issue as to how this evidence had made its way into PC Rewbridge's statement of evidence, when it was not noted in her pocket book, however, in evidence she stated she did recall thinking it at the time: *"I don't know how this particular part come about, but I do recall, Mr Kirk was almost oblivious to the danger we were in, so they are words I would use, because that was the situation."*

369. 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, the Claimant 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.

370. The officers described the roadside breathalyser as producing a positive result. The Court has heard some evidence in relation to rumours that the Claimant would use a mouthwash containing alcohol, the purpose of which it was believed, was to provide a positive sample, which would then prove negative when the full breathalyser procedure was carried out at the police station. It is unnecessary for the purpose of this litigation to decide whether there was any substance to those rumours or whether in fact it occurred on this occasion. We invite the Court to prefer the evidence of PC Rewbridge and PC Smith to the effect that the roadside breath test was positive. Since the machine produces an obvious indication that the sample is positive, it appears inherently unlikely that they would have sought to mislead the Claimant as to whether the sample was positive or negative when he himself had seen the result. In any event, the Claimant 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.

371. The Claimant 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). It was unclear whether the Claimant was alleging that he was unlawfully detained following his formal release from custody in order to carry out the reporting procedure. The custody record, which commences at page 10 reveals that the Claimant was dealt with expeditiously at the Police Station, since he was presented to the Custody Sergeant at 2259, and was released having been "booked into" custody, the breathalyser procedure having been carried out, and the HORT1 and reporting procedure completed, resulting in his release from detention at 2329. In the circumstances, we contend that the decisions made by the Custody Sergeant cannot be shown to have been unreasonable in relation to the Claimant's detention.

372. PC Rewbridge then made an application for Notice of Intended Prosecution on 18th August 2000, see page 133. This was in relation to alternative charges of dangerous driving/driving without due care and attention, as well as other motoring offences set out on page 136. As was confirmed by PC Rewbridge, and as appears to be supported by the entry at the bottom of page 134, the application would be sent to the CPS for them to consider the appropriateness of the charges in the case. This Notice may have been accompanied by the statements from PC Rewbridge and PC Smith (which are at page 102 and 106). Written notice of an intention to institute proceedings was served upon the Claimant by notice dated 21st August 2000 (see page 145). Thereafter, and presumably on the advice of the CPS, summonses were issued in respect of those road traffic offences. At some stage, PC Rewbridge also produced a Case Summary which can be found at page 137. Subsequently, the CPS decided to withdraw the charges in respect of failure to produce insurance certificate and an MOT certificate, see letter of 9th January 2001 at page 155. The matter was committed to trial at the Crown Court, with the Claimant facing a single charge of dangerous driving, together with an alternative summary-only offence of driving without due care and attention (page 99).

373. As well as having been issued with an HORT1 in respect of his driving documents, the Claimant 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 may be that at some stage prior to the commencement of the Crown Court trial those charges were withdrawn, alternatively, they may be the charges that were referred to in the transcript produced from the Crown Court trial at page 81D, in which case there was a conviction with a subsequent appeal. The papers are unclear on this point.

374. For the purposes of the Crown Court trial, the Claimant filed a Defence Statement (at pages 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, the Claimant 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. For the most part, in this trial, the Claimant gave evidence in accordance with his Defence Statement.

375. The trial on indictment in the Crown Court took three days, concluding on 11th July 2001. During the course of the trial, an issue arose regarding the presence of another officer, who was sitting in the well of the Court. The officer was observed to be nodding his head when PC Rewbridge was answering questions. Although it is difficult to be precise about this, it does not appear that this other officer was indicating to PC Rewbridge what she should be saying, but that he was nodding his head in agreement with what she had said. In any event, as was stated by the officer, this was a distraction both to her and to the jury, see the jury's note at page 265. This other officer was asked to leave the Court. The Claimant believes that the presence of this officer was a sign of a conspiracy against him. It is clear that the Recorder did not form that view, (see pages 87 and 88). It appears to have been the opinion of the Recorder that this was an unfortunate occurrence but not one which prevented justice being done in the case. It is clear that he rejected any suggestion that this was evidence of a conspiracy against the Claimant. It may be that this other officer was present as a result of complaints made by the Claimant regarding the conduct of PC Rewbridge, or other officers,

on the night of his arrest, so that he was there to observe what was taking place. Whether that is so is now impossible to tell.

376. The sequence of events in the Crown Court appears to be that, having heard two officers give evidence, namely PC Rewbridge and PC Smith, 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, and page 79 - 80).

377. 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 a not guilty verdict, a verdict to which the Claimant objected (see transcript at page 80). The Claimant accused the Recorder of conspiracy, whereupon the Recorder found the Claimant guilty of contempt (see the transcript at pages 74 – 77 and 87 – 96).

378. 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 the Claimant 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.

379. Subsequently the officers produced statements which recorded their observations and the conversations which they had with the Claimant. The CPS decided to prosecute the Claimant 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

380. The Claimant's allegations and the Defendant's response are set out at A2, vol. 8 pages 1-3. The Claimant 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**.

381. The Defendant's witness evidence is at A2, vol. 8, pages 5 – 76, in the statements of retired PC 1590 Robert Morgan, PS 3444 Nicholas Kihlberg (then PC Kihlberg), PC 3546 Gareth Holmes, PC 332 David Barrett, retired Inspector 2837 Timothy Hubbard, PS 651 Paul McCarthy, PC 2 Gary Hayes, and retired PS 585 Nigel Streeter.

382. The incident took place on the evening of 8th September 2000 - apparently during a period of adjournment in the Magistrates Court trial in respect of failing to provide a specimen of breath arising from the Gilestone Stop incident at Action 2, para. 9. Indeed, the Claimant raised this public order incident in the Gilestone stop Magistrates' trial, see the Claimant's Witness Evidence Bundle at page 86ff, and in particular two paragraphs in bold type on page 88. It appears that the Claimant used this incident in order to attack the integrity of PC Kihlberg in the Gilestone stop case. This Court will have to consider whether the Claimant deliberately created a confrontation between him and PC Kihlberg on 8th September 2000, which he could then use in the continuing Magistrates Court trial on the Gilestone stop case.

383. The Court heard evidence from Constables Kihlberg and Holmes to the effect that they were on motor patrol duty in a marked police vehicle, driving slowly along Church Street, Llantwit Major, when, as they passed the Claimant, who was standing on the pavement, he made a V-sign gesture at PC Kihlberg. Although in cross-examining the two officers, the Claimant did not deny doing this, during his own evidence, he was a little coy about his actions, merely saying that he had made some sort of gesture to the officer which could have appeared as if he was making a V sign to the officer.

384. PC Kihlberg who was driving the car, brought it to a halt and then reversed a short distance back to the Claimant, where he warned him about his conduct. The Claimant then shouted out that the officer was a “skunk”. He was then arrested for a public order offence. After caution, the Claimant said “you’re a fucking bastard”. The Claimant resisted being taken into custody, whereupon a struggle took place; he was eventually handcuffed and placed into a police van.

385. In cross-examining the officers, the Claimant accepted that he had used the word “skunk”, but suggested that the word had been whispered to PC Kihlberg. Both officers denied this, they being adamant that the words had been shouted. Strong support for the officers’ evidence is given by Mrs Kirk, who, as the Court will no doubt recollect, stated that, whilst standing on the other side of the road from her then husband, she had heard the Claimant use those words. It is clear therefore, that the Claimant had used those words and that in all probability, they were clearly audible to other persons stood in the street.

386. Clearly, the words used by the Claimant prior to his arrest were not of the worst sort used towards the Police, and it may be that some officers would have decided not to exercise their discretion to arrest the Claimant. Although there has been no attack upon PC Kihlberg’s exercise of his discretion, the Court may nonetheless be drawn to consider this as an issue. It has to be borne in mind however, that insofar as this is an issue to be considered, the burden is on the Claimant to establish that the officers’ discretion was unlawfully exercised. In this regard, we invite the Court to consider carefully the evidence given by PC Kihlberg as to why he decided to arrest the Claimant. Thus, at any particular time there would only be a very small number of officers on duty in Llantwit Major who might have to deal with a large number of persons using the three public houses in the main square.

387. He described how, in dealing with the occasional disturbance, it was necessary for members of the public to be aware that infringements of the law would be dealt with appropriately by the Police. His rationale, which we contend was entirely reasonable, was that if it became clear to the persons gathered in that area, that the police would not intervene when a public order offence had

been committed, then this might invite others to commit similar offences with the potential for some incidents to get out of hand. Therefore, in considering whether or not the officer acted unreasonably in not "turning a blind eye" to the Claimant's actions, his decision has to be considered not simply in relation to what was going ahead at the time but also in the context that PC Kihlberg and a very small number of other officers were responsible for the policing of that area, not simply on that night, but on a day-to-day basis.

388. If the Court were to find the facts as spoken to by the officers and Mrs Kirk, then we contend that there was a breach of the Public Order Act.

389. As regards the "struggle" at the scene, both officers described that once the arrest had taken place, PC Kihlberg took hold of the Claimant, as was the usual practice, in order to indicate to him that he was under arrest. They intended to transport him to Barry Police Station, but the Claimant made it as difficult as possible by passively resisting them, in particular, by tensing his arms, legs and body, so as to make it very difficult for them to get him into a police vehicle. They attempted to handcuff him, but he deliberately attempted to keep his arms and wrists apart, so as to prevent handcuffs being applied. It was for that reason that the officers put him by the bonnet of a car and bent him forward so as to enable the two of them to bring his wrists together, and therefore allow handcuffs to be applied. The Court may recollect that in cross-examining PC Holmes, the Claimant demonstrated what he had done by showing the posture he had adopted, and how he would tense his arms and body. Indeed, he stated that this was the usual posture he adopted when being arrested. He did not suggest to the officers any specific mistreatment by them of him, whether by way of throwing him about unnecessarily, or throwing him or any part of his body against the car bonnet or the nearby wall.

390. During his own evidence, the Claimant failed to make any specific allegations of mistreatment against the officers over and above the actual arrest, although he did appear to be deliberately vague on these issues, presumably waiting to hear what any of his witnesses might say, so that he could then adopt their evidence if appropriate. Once again, there was interesting evidence provided by Mrs Kirk; although in her statement at page 243 (Claimant's Witness Evidence Bundle), she

could recollect an issue in relation to the handcuffs, she did not specifically allege mistreatment against the officers towards her then husband, nor did she seek to differentiate between one officer and the other. Thus, unlike the Claimant, whose major complaints were against PC Kihlberg, even in her broadly contemporaneous statement, Mrs Kirk failed to support this allegation.

391. Although only dealing with a small aspect of this incident, the issue which arises in relation to the application of the handcuffs may give the Court considerable insight into which witnesses are telling the truth, and perhaps equally as important, the manner and demeanour of the various parties at the time. Both PCs Kihlberg and Holmes recollected that once the handcuffs had been applied, the same having been done during the course of the struggle, they became aware that one or both of the cuffs was too tight. PC Holmes attempted to loosen the handcuffs by using the small key which needs to be inserted into and turned in each cuff. Their actions in attempting to do so suggests that they were not acting in an overly aggressive or belligerent fashion. Thereafter, by accident, PC Holmes dropped the key and when he attempted to retrieve it, it was stamped on by the Claimant, and perhaps kicked under the car by him. This action was sufficiently violent as to leave PC Holmes in some doubt as to whether the Claimant was attempting to kick him. It was of course an action, which although initially forgotten by Mrs Kirk, she vividly remembered during her cross-examination. The Claimant also recollected this part of the incident, and the impression given was that notwithstanding the tightness of the handcuffs on his wrists, he nonetheless found it amusing to prevent the officer having access to the key and indeed may have been doing it in order to entertain the crowd which had gathered.

392. Notably, Mrs Kirk gave further evidence in relation to the handcuffs, stating, and indeed demonstrating, that although her then husband's hands were turning "blue", she felt that this was entirely due to his own actions in deliberately attempting to force his wrists apart and thereby trapping them against the handcuffs. Once again, this amply demonstrates the Claimant's deliberately belligerent behaviour and his apparent desire to escalate this particular incident into a more violent confrontation.

393. The Court will also have to consider the evidence of Mrs Dorothy Hutchinson, whose handwritten evidence was produced during the course of the trial. Although the Court may conclude that she was attempting to do her best - albeit that she was clearly stood, and stands, in awe of the Claimant's veterinary ability – nonetheless, her recollection of events, both in her statement and in her oral evidence, was confused, and seems most unlikely. In her statement, (inserted at page 270 of the Claimant's Witness Evidence Bundle), she describes how one police officer threw the Claimant onto the police car bonnet, and then apparently deliberately banged the Claimant's head on the bonnet. This is noticeable by its absence from Mrs Kirk's broadly contemporaneous statement, nor does the Claimant himself describe such violence. Thereafter, when giving evidence, Mrs Hutchinson was able to recollect the Claimant being thrown violently against a wall, not something described by any other witness. Further, during the course of cross-examination, she was confused as to which officer had been the violent one: at one point describing the "violent" officer as the old one, which could be a reference to PC Kihlberg, whilst at another point also describing the "violent" officer as the tall "all-in wrestler", which is clearly a reference to PC Holmes.

394. From Mrs Hutchinson's perspective, this was clearly a shocking and unpleasant incident to witness, involving as it did, someone she respected and greatly admired. It is apparent she did not witness the beginning of this incident, and notwithstanding her florid description of events, she did not witness the one matter upon which the witnesses all agree, namely the dropping of the key to the handcuffs.

395. We invite the Court to accept the evidence of PCs Kihlberg and Holmes, supported as it is by the evidence of Mrs Kirk, and not contradicted by the evidence of the Claimant himself.

396. The Claimant was taken to Barry Police Station where his detention was authorised by PS McCarthy for the purpose of charging him (see the Custody Record beginning at A2, vol. 8, page 9). There is an issue as to the accuracy of the note made by PS McCarthy, thus in the custody record, the Custody Sergeant has recorded PS Kihlberg as stating that the Claimant's last words before the

arrest were “you’re a fucking skunk”, whereas the evidence of the officers as to what was said at the scene was that simply “you’re a skunk”. PC Kihlberg had recollected that when he spoke to the Custody Sergeant he had used the words “you’re a skunk”. We do know that within a very short time after presenting the Claimant to the Custody Sergeant, PC Kihlberg, and indeed PC Holmes, made their s.9 statements regarding the events; the statements are timed and dated, in the case of PC Kihlberg, it is recorded in his notebook that the statement (MG11) was made at 2020 hours, and was then time-stamped at 2028 (this can just about be made out on page 81, at the fourth line from the bottom of the page). That PC Holmes’ statement is also time-stamped, can be seen on page 46, just at the bottom left hand side of the page.

397. It is clear that there is an issue as to whether the Custody Sergeant was given the words “fucking skunk” or whether he simply mis-heard the words, which lead him to record “fucking skunk” on the custody record. It may be, given the contemporaneous notes made by PC Kihlberg and PC Holmes, that the precise record that he made is not in fact of much importance. The Custody Sergeant said that although he was content that he had been told it was “fucking skunk” he would in fact have made a decision to authorise the Claimant’s detention even on the basis of the use of the word “skunk” without the accompanying swear word, since that could equally be a breach of the Public Order Act. It seems clear therefore that if the Custody Sergeant PS McCarthy had been told that the Claimant had simply used the word “skunk” towards the officers, he would have authorised his detention, and that was the view of all the custody officers in this matter.

398. As is usual, when in custody, the Claimant was unhelpful in identifying himself to the Custody Sergeant. Interestingly, on presentation to the Custody Sergeant, although there was some reddening to his wrists, there were no other injuries observed by the Custody Sergeant. Certainly, none to support any injuries suggesting that his head had been struck against the bonnet of a car, or a wall, see page 11, and the entry at 2014 hours. The Claimant was detained in custody in order to allow him to be charged, see page 11, at 2011 hours. The evidence from the Custody Sergeant is that the presentation to the Custody desk, the

preparation of charges, and thereafter the eventual charge, would have been a matter that could be dealt with within a relatively short space of time. The Court heard that the 2135 entry on page 11, when PC Morgan attended at the Claimant's cell, that the purpose of that attendance was to take the Claimant to be charged, following which he would have been released within a very short space of time.

399. At this juncture, the Claimant refused to go, saying that he wished to make a statement. Both PC Morgan and PS McCarthy believed that the statement the Claimant wanted to make was a statement in relation to the incident for which he had been arrested, and not a statement of complaint more generally. The Court will recollect their evidence, and indeed the evidence of the next Custody Sergeant, Nigel Streeter, that if they had thought this was a statement in relation to a complaint, they would have arranged for the Claimant to be charged, bailed, and then a statement of complaint would be taken. Whereas, if he wished to make a statement in relation to this particular incident, then it would have to have been done before he was charged. Although unusual, it appears not to have been wholly unique for someone refusing to leave their cells, and wishing to make a statement within the cells. For reasons explained by PS McCarthy, he decided that such statement should be made on tape. The Custody officer decided there would have to be two officers present when the statement was given. Clearly the officers, who were going to be taking a statement from the Claimant in relation to the offence, could not be the custody officers, as these are not to play a role in the investigation of the offence for which the Claimant was arrested. This therefore led to some delay whilst the recording equipment and two suitable officers were made available for the taking of a statement. At this point, the Claimant refused to make a statement, see entry in the Custody Record at p11, 0050 hours.

400. Thereafter, the Claimant was non-compliant, including refusing to allow his fingerprints to be taken, and refusing to sign the charges put to him (See Custody Record at pages 11 and 12, and the charge sheet at page 71, the time of which had to be altered to 0052 from 2049). Inspector Hubbard eventually persuaded the Claimant to co-operate and provide finger prints and photographs, see entry

at 0134 hours on page 12. The Claimant then refused to sign the PNC1 Form or the fingerprint forms, and was granted police bail at 0141 hours (page 12).

401. The Claimant had been charged with using threatening or insulting words and behaviour (see charge sheet, as above, 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 stated, both in his evidence and in his statement (see page 28, para. 63), that he 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). Interestingly, this is supported by a letter in the additional bundle of disclosure, of 28th September 2000 from the CPS to Barry Police File Preparation Unit, where it is recorded that:

"*The Defendant is well known to the Police and Courts as a result of his frequent offending. He has numerous convictions for various offences involving violence, public disorder, road traffic and air traffic control laws. Each of his cases is blown up out of all proportion by the Defendant who claims on each occasion to be the victim of persecution by the authorities responsible for preserving law and order. It appears obvious that the Defendant actively seeks conflict with authority, in this case the Police, in order to provide himself with a forum (the Criminal Courts) from which to rant at length on the inequity of his treatment.*

…

The fact that the Courts have, to my knowledge, always convicted the Defendant in the past shows plainly that his allegations of Police harassment are untrue and have never been accepted.

I believe that the present case, if proceeded with, would result in the same outcome. However, that outcome would be achieved only after a significant use of resources in terms of case preparation and man-hours expended at Court.

The sentence which the Court could impose is limited to a fine and a conviction itself would add little to the Defendant's list of convictions.

I appreciate that the Police Officers involved should not have to tolerate the sort of abuse they suffered in this case and I am certainly not advising that Mr Kirk

should be allowed to abuse Police Officers with impunity. Each case should be looked at in light of its own particular facts and circumstances.
I advise that in this particular case it would not be in the public interest to proceed."

402. The Claimant 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).

403. In the premises, we contend that, objectively speaking, on the basis of the information known to PC Kihlberg at the material time, there were reasonable grounds to suspect that an arrestable offence had been committed. There is little doubt that he did so suspect that an arrestable offence had been committed. Although not pleaded, we contend that the Claimant has failed to produce any evidence that the officer's exercise of his discretion in deciding to arrest the Claimant was unreasonable. Thereafter, the Claimant's detention in custody at the police station was lawful, initially to allow him to be charged, thereafter, to enable a statement to be obtained from him, and eventually to allow him to be properly processed. The Claimant has failed to establish that the Custody and ancillary officers, in making the decisions that they made, were unreasonable.

404. In regard to the charge, we contend that the Claimant has failed to establish an absence of reasonable and probable cause, and in the alternative, has failed to establish malice.

ACTION 2 – PARAGRAPH 14.1 & 14.2

405. The Claimant's allegations and the Defendant's response are set out at A2, Vol. 8 pages 155 – 156. The Claimant alleges that he was unlawfully arrested and detained on 13th December 2000 outside the Cardiff Civil Justice Centre. The Court heard evidence from PS 2282 Daryl Fahey, PC 3487 Robert Gunstone, and PC 1290 Michael Stone, of Avon and Somerset Constabulary, whose statements of evidence can be found at A2, vol. 8, pages 158 – 175.

406. The Court heard that on the above date, which was a Saturday morning, 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 vehicles travelling in the area of Park Street/Havelock Street. PC Gunstone approached the Claimant, who appeared to be the owner of the vehicle. The officer gave evidence that he initially was looking to resolve the situation "at the lowest level" he possibly could. He therefore asked the Claimant to move the vehicle, but despite attempts to appeal to the Claimant's sense of reason by pointing out the offence and requesting the Claimant move his vehicle, the Claimant failed to comply with those request, and therefore the officer informed him that he would be issued with a fixed penalty notice, and an HORT1. The officer then began to fill out the necessary forms for their issue. To do this, the officer needed to confirm the Claimant's name and his address for the service of a summons.

407. At this juncture, it would appear that the Claimant began a tactic of obfuscation, supplying PC Gunstone with details which would leave him in some considerable doubt as to whether the information given by him was genuine or accurate (see the officer's statement at pages 169 – 170). For example, the Claimant offered to supply some 6 or 8 addresses to the officer, and at one point it appears either stated he frequented John O'Groats or presumably offered to produce his documents at the Police Station there (see the custody record at page 163). At the same time, the Claimant caused the situation to become chaotic by letting his spaniels out onto the road in Park Street. As the Claimant himself put it in his cross-examination of PC Gunstone:

"*Was it awkward, evasive behaviour?*

- *Yes, I felt that reasonable doubt I had been furnished with an address at which a summons could be served."*

408. PC Stone, in his evidence, also suggested - when the Claimant put to him that PC Gunstone was communicating by radio to the control room about him - that it was likely that PC Gunstone was undertaking the standard practice of attempting to verify the Claimant's address, and had been unable to do so, hence the need for the arrest under s.25 PACE. PC Gunstone did not recall doing this in his statement of evidence, but it is clear that the extent of what

took place must have gone beyond the limit of his present recollection, for example, the reference to John O'Groats in the custody record, which the officer did not recall in his evidence. It may well be the case that he did in fact attempt to verify the Claimant's address by radio, as PC Stone suggests.

409. In any event, due to the Claimant's evasive behaviour, and because there was real doubt cast as to an address suitable for the service of a summons, PC Gunstone arrested the Claimant 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 the Claimant, and once his business address had been confirmed, authorised his release.

410. 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 pleaded for malicious prosecution.

ACTION 2 - PARAGRAPH 14.3

411. The Claimant's allegations and the Defendant's response are set out in Action 2, vol. 8, pages 180 - 181. The Claimant 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. There is no claim for malicious prosecution.

412. The Court heard evidence from PC 301 Zachary Mader, (whose statement of evidence is at A2, vol. 8, pages 183 – 190), from which, it seems clear, following a complaint, most probably by one of the Claimant's tenants (who he insists on calling a squatter) PC Mader and PC Chick attended the Claimant's veterinary surgery at Cowbridge Road West, Ely, at 1pm on 20th December 2000, in order to investigate a complaint of a moving road traffic accident involving one of the vehicles used by the Claimant.

413. They spoke to the Claimant, and appear to have satisfied themselves that the Claimant was the driver of the relevant vehicle. Thus, believing him to have been

the driver of a vehicle involved in a moving road traffic accident, were therefore entitled to request him to provide a specimen of breath. The Claimant did provide the specimen, which, as noted already, was negative. There was no arrest and no detention.

414. PC Mader asked the Claimant to produce his driving licence, certificate of insurance and MOT test certificate, he failed to do so. He was therefore told that he had committed an offence by his failure to produce the required documents, but no proceedings would be taken if they were produced within 7 days. He refused to produce his certificate of insurance and test certificate and refused to produce them at a police station, see the proforma statement at page 190, where in respect of the request to produce his documents then, PC Mader has recorded that the Claimant refused to produce his certificate of insurance and MOT test certificate, and in respect of the cautioning him in respect of the offence he had committed, he has recorded the Claimant as saying, “well your involvement with this finishes now and it will go to your department that deals with documents”.

415. A HORT1 was issued, (see page 188), which records that the Claimant had told the officer that he would not attend a police station.

416. Although not relevant to the pleaded case, it appears that the officer submitted a report, part of which appears to be set out at page 195, and that thereafter, summonses were issued, one of which is set out at page 197, with the remainder identified on a CPS document at page 193. This document, which was produced by the Claimant via his disclosure from the CPS, reveals that 4 summonses were issued which were then withdrawn – see endorsement “W/D”, although it is unclear precisely why that was done. In any event, although not part of the pleaded case, there is clearly justification for the summonses, since, from the outset, the Claimant indicated that he was not going to produce his documents.

417. In the circumstances then known to the officer, namely a complaint of a moving road traffic offence, and reasonably suspecting that the Claimant was the driver of one of the vehicles involved, he was lawfully entitled to request a specimen of breath.

418. It is denied that in respect of the requirement to produce a specimen of breath or to produce his documents, there is any cause of action, but insofar as the Court concludes otherwise, we contend that the officer, for the reasons set out above, was acting lawfully.

ACTION 3

ACTION 3 – PARAGRAPH 4

419. The Claimant'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. The Defendant's witness evidence is at A3, vol. 4, pages 130 – 149, in the statements of retired PC 2866 Clive Barber and DS 732 Simon Davies, who both gave evidence.

420. The Court heard that on the 13th December 2001, PC Barber was driving a marked patrol vehicle in Bridgend, 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. In cross-examination, the Claimant conceded that his bumpers may have been held on by strapping, although he did assert that he felt this to be within the terms of the law.

421. The officer, who did not know the Claimant and who had had no involvement with him prior to this incident, wished to stop the driver of the car, but was unable to bring it to a halt due to traffic conditions prior to the Claimant himself stopping at Ashfield Surgery, Bridgend. The officer spoke to the driver of the vehicle, later identified as the Claimant, asking him if the vehicle was his. The Claimant's response was to simply say "I don't know". In response to further questions, the Claimant was brusque and unhelpful. The officer gave evidence regarding this conversation, set out at A3, vol.4, pages 142 – 144. In cross-examination, the Claimant was taken through in detail the statement made by Mr Barber, (which was confirmed by him in evidence), and the Claimant accepted that what was recorded there was probably what was said.

422. The officer described how the Claimant eventually got into his car and started the engine. At that time the officer thought he could smell alcohol. He therefore asked the Claimant whether he had been drinking and whether he would provide a specimen of breath for a breath test. The Claimant 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 the Claimant, he walked him to the patrol car, where the Claimant then asked if he could provide a specimen of breath. The

officer agreed to this, following which the Claimant did provide a specimen of breath, which was negative.

423. The officer then de-arrested the Claimant. He informed him that he wished him to provide his driving documents and that he intended to issue him with an HORT1. The Claimant failed to reply. The officer then asked for his name, but the Claimant 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 the Claimant's name and address, in default of which, he was entitled to arrest him under Section 25 of **PACE**. The officer informed the Claimant of this fact, but the Claimant refused to supply any details. The officer therefore arrested him pursuant to s.25 of PACE. In the course of oral evidence, the officer stated that if the Claimant had given him his name and address, he would not have arrested him.

424. The Claimant was taken to Bridgend Police Station, where his detention was authorised by PS Davies (see custody record at page 149Aff). PS Davies gave evidence and stated he believed he had recognised the Claimant from a previous attendance at the Police Station, as a result of which he carried out various checks, including bringing up a photograph on the computer, as a result of which he was able to confirm his identity as the Claimant. In his statement, dated 2nd February 2004, at page 148, paragraph 13, PS Davies confirmed that he had been able to verify the Claimant's identification as he had recognised him from a previous matter. In both cross-examining the officers, and in giving evidence himself, the Claimant insisted that the fact the Custody Sergeant recognised him had somehow slipped out with the Custody Sergeant "accidentally" referring to the fact that he knew the Claimant. Although his evidence varied, as to whether the Sergeant had recognised him and acknowledged him as he walked through the doors, and/or whether the Custody Sergeant had made a reference to "Mr Kirk "knowing the procedure"". This once again appears to be an example of the Claimant misconstruing the events as they were taking place, and reading into a relatively straightforward event of an officer recognising him and interpreting it in a sinister manner.

425. Prior to his release from the Police Station, PC Barber issued an HORT1 and VDR to the Claimant for the production of his documents and a repair to the bumper (see pages 158 - 159). He requested the Claimant to nominate a police station, but he refused to name one. The officer requested the Claimant to sign the HORT1, but he refused to do so. The officer then handed the top copy of the HORT1 to the Claimant, who then threw it back onto the desk. The Claimant was told that he would be reported for failing to provide his driving documents and for driving a vehicle, which, by view of the bumpers being held on by straps, was in a poor and dangerous condition.

426. This appears to be a case where the Claimant contends that he was unlawfully detained in the Police Station after having been discharged from custody by the Custody Sergeant. The custody record, however, reveals that he was dealt with expeditiously. His time of arrival at the Police Station, being 1221 hours and his release following the HORT1 procedure, being 1236 hours. The custody record reveals that these procedures were carried out whilst still lawfully detained.

427. Although it appears that there is no claim for malicious prosecution, the history in relation to the charges is that PC Barber completed a summons report, page 165, following which summonses were issued by the Bridgend Magistrates Court, see pages 160 – 162. Thereafter, Mr Topping, of the CPS, notified the Magistrates that they did not intend to pursue these summonses, by letter dated 29th May 2002, page 163, the matter having already been discussed between Mr Topping and an Inspector Stroud on 20th May 2002, see page 167. We contend for the reasons set out above, that the officer's requirement that the Claimant produce a specimen of breath, and thereafter, his arrest of the Claimant under s.25 of PACE for failing to provide his address, was lawful. Insofar as the issuing of summonses against the Claimant is a matter that the Court needs to consider, we contend that the Claimant has failed to establish a lack of reasonable and probable cause and has failed to establish malice.

428. 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 the Claimant was eventually able to produce the relevant documents.

ACTION 3 – PARAGRAPH 5

429. The Claimant'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 in respect of driving whilst disqualified and failing to produce a driving licence. The Court heard evidence from PC 3619 Mark Cocksey, retired PC 1215 Robert Osbourne, retired PS 4008 Linda Canterbury, retired PS 2788 Geoffrey Roberts, retired PC 1953 William Roberts, PC 3227 Adrian Williams, and PC 450 Tracey Selleck. The statement of PC 1060 Andrew James, deceased, was admitted under the Civil Evidence Act.

430. PC Cocksey was on duty on 21st May 2002 in the parade room at Cardiff Central Police Station, when he saw the Claimant driving his Volkswagen Camper Van down the side of the police station, drawing attention to himself, due to the large signs fitted to his VW van. PC Osbourne, who was standing at the entrance to the parade room, also saw the Claimant and alerted PC Cocksey to the fact he recognised the Claimant and believed he was disqualified from driving. PC Osbourne then checked this on the PNC, which indeed confirmed that the Claimant was disqualified.

431. Subsequently, whilst still at Cardiff Central Police Station, PC Osbourne observed the Claimant via the CCTV system - which had a display screen in the parade room of the police station, driving his van round and round the Hayes monument.

432. As the Claimant admitted in a subsequent document, he drove it around the monument at least 30 to 40 times (see A3, vol. 4, page 240). PC Osbourne and PC Cocksey therefore drove a marked police vehicle to the scene, where they observed the Claimant driving around the monument at 2 to 5 mph. PC Cocksey offered the stop signal, but the Claimant failed to come to a halt, as a result of which, PC Cocksey stepped to one side, reached through the open window and switched the ignition off, as a result of which the vehicle came to

a stop. PC Cocksey then arrested the Claimant, informing him that he was being arrested for driving whilst disqualified.

433. PC Cocksey did not allege that the Claimant was deliberately try to run him down, since the speed at which the Claimant was travelling meant that the officer could easily move out of the way, but it does indicate that the Claimant was not prepared to come to a halt of his own volition.

434. Neither in his pleaded case at page 170, nor in his statement at page 173B onwards, did the Claimant allege that he had been mis-handled at the time of his arrest. However, in the course of cross-examining PC Cocksey, he appeared to suggest that he had been in some way mis-handled. It is not entirely clear, either from the cross-examination, or from his own evidence, what the Claimant was alleging, save that it appeared that he may have been saying that he was pulled out of his seat from the vehicle, however, he accepted that his body had not fallen onto the ground following his removal from the vehicle. Ultimately therefore, the Claimant's case, taken at its height (not wholly supported by his own evidence on this) was that he had been pulled out of the van and had landed on his feet. Insofar as the Court feels it necessary to explore this, given that it is not a pleaded issue, we contend that PC Cocksey was entitled to take some direct action in effecting the arrest and detention of the Claimant, in the light of his unwillingness to bring his vehicle to a halt voluntarily. Such force that was used was reasonable in all the circumstances, pursuant to s. 117 of PACE.

435. The Claimant was taken to Cardiff Central Police Station, where PS Canterbury authorised his detention for the purposes of questioning (see the custody record at page 204). Although the Claimant told the Custody Sergeant that he was taking medication for some undisclosed medical condition, he did not allege that he had been the subject of mis-handling by the arresting officers, nor did the Custody Sergeant observe any injuries upon him (see top of page 206).

436. PC Osbourne informed the Court that on his return to the Police Station following the arrest, he carried out further enquiries as to the Claimant's

disqualification. He told the Court that he probably did this in response to some remark made by the Claimant during the course of the arrest or shortly thereafter to the effect that he had been to the Crown Court and was not disqualified. When considering the character of PC Osbourne, both in respect of this incident and the Newport Road incident, that he did make this additional enquiry in order to discover whether or not what the Claimant was saying was accurate, tends to show a complete absence of malice on his part.

437. Thus, as noted as the last relevant entry in his pocket note book at page 195, PC Osbourne made enquiries with the Crown Court Liaison Officer, PC Caroline Hopkins, who was based at the Crown Court in Cardiff, as a result of which she supplied him with an official document confirming the disqualification. Most importantly, not only did the document confirm the disqualification, it recorded an appeal by the Claimant to the Crown Court, the dismissal of that appeal, and the imposition of a period of disqualification. There is no suggestion that at this time, or at any other period during the Claimant's detention in respect of this arrest, that the officers concerned, or the Custody Sergeants who dealing with the Claimant, were informed by him that he had been back to Court on more than one occasion in relation to an appeal. In examination in chief, PC Osbourne considered the document at Action 2, vol. 6, page 270, and although he was not 100% sure, he thought that the document which had been supplied to him by PC Hopkins was either that document, or something very similar to it. In other words, at that time the Police were not simply relying upon the PNC, but upon a document generated by the Court itself.

438. It seems that PC Osbourne passed whatever document had been supplied to him by PC Hopkins, onto PC Cocksey, who in turn passed it onto PC James (now deceased), who was deputed to become the interviewing officer since PC Cocksey was going off duty (see the entry in PC James' notebook, in the lower half of A3, vol. 4, page 202). The Claimant was interviewed by PC James, and during the course of the interview, as the Court will note from his statement at page 197, PC James was informed that there was a PNC entry in relation to the Claimant recording him as being a disqualified driver. In that

same statement (at paragraph 9, page 198), and his note of interview at page 247, PC James accepted that during the course of the interview the Claimant had denied being a disqualified driver, and that he had had the points taken off at Court. There is no suggestion that the Claimant told the officer he had attended at Court the previous day when the points were removed. In any event, as noted by PC James in the Magistrates' Clerks' notes in relation to the trial for no insurance, (at page 266), whatever the Claimant might have been alleging, the officer had been provided with a copy of the Crown Court order/judgment, which recorded the Claimant as being disqualified.

439. Following the interview, the Custody Sergeant authorised the charging of the Claimant with those charges set out in the custody record at 1654 hours on page 206, and as recorded in the Charges at page 245. The charging officer was PC James, and in preferring the charges that he did, he appears to confirm the approach taken by PC Osbourne in the Newport Road matter, namely, that if a motorist was charged with a substantive driving offence (eg. driving whilst disqualified, or failure to provide a breath sample), it was police procedure to charge any motoring document offences at the same time, see the notes of the Magistrates' Clerk in the centre of page 266.

440. We know from the evidence of PS Canterbury that she intended to grant bail to the Claimant following charge, however, he refused to acknowledge bail, in the sense that he refused to sign the bail form, stating that he was not a banned driver (see the entry at 1802 hours at page 207). Not surprisingly, PS Canterbury was concerned, that if she granted bail, the Claimant, who asserted that he was entitled to drive, would in fact drive, when at the time all of the officers concerned with the matter suspected that he was a disqualified driver. Indeed, as we know from the evidence of PC Osbourne, PC Cocksey and the statement of PC James, there was documentary evidence from the Crown Court confirming the hearing of an appeal, the dismissal of the appeal and the record of disqualification. In the circumstances as they were then known to the Custody Sergeant, we contend that the Claimant has failed to establish that the decision of PS Canterbury not to grant him bail was

unreasonable. She therefore authorised his detention so that he could be produced to the Magistrates the following day.

441. Thereafter, the Custody officer who took over the evening/early morning shift was PS Geoffrey Roberts. As the Custody record at pages 208 - 210 confirms, PS Roberts had considerable contact with the Claimant during the course of his shift, particularly when the Claimant finally decided to inform the Police, that his vehicle, which was still at the scene of the stop, contained dangerous veterinary drugs. PS Roberts arranged for the drugs to be removed to the Police Station, and for the Claimant's vehicle to be recovered. As PS Roberts told the Court, as a result of comments made by the Claimant regarding a possible appeal in relation to the original disqualification, he too carried out investigations as to the existence of the disqualification, such enquiries as he made, which included at least a review of the PNC, confirmed to him that the Claimant was disqualified from driving.

442. The actions of PS Roberts tend to be of a piece with the actions of the other officers involved, namely, they were concerned and wanted to investigate any material given to them by the Claimant. They took their investigations as far as they could on the information provided. As he conceded, PS Roberts had to make his own decision as to whether to continue custody. In the light of the material known to him, in particular the existence of documents that confirmed the disqualification and the fact that the Claimant would not acknowledge his proposed bail conditions, his decision to continue the custody was not *Wednesbury* unreasonable.

443. At 0832 hours on 22nd May 2002, the Claimant was taken to Cardiff Magistrates' Court where he was eventually granted bail. A small incident which took place at the Magistrates' Court was the production by the Claimant of his driving licence. As the Court will recollect, one of the offences with which he had been charged was his failure to produce a driving licence (see page 206). His only reply on being charged was "I don't believe I am a banned driver". He did not at that stage produce, or indicate that he was able to produce, his driving licence. On the morning of his production at the Magistrates' Court, he was able to produce his driving licence. During the

course of cross-examination, the Claimant, having been asked about this several times, stated that the licence had been in his sock all the time and that he hadn't bothered producing it to the officers.

444. Thereafter, it appears a decision was taken, presumably by the CPS, only to continue the prosecution of the Claimant in relation to driving without insurance. 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, the Claimant 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. The Claimant was found not guilty. He then sought to have his costs paid, but, it appears, the Magistrates declined to make such an order. The Claimant 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 the Claimant, 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".

445. In dealing with the Claimant's arrest at the Hayes, and thereafter his detention and subsequent charging in relation to motoring matters, the Court is of course concerned with the state of mind of the officers who arrested, detained and charged him. It is likely however, that the Court will be interested in the Claimant's appearance at the Magistrates' Court on 20th May 2002, when

various orders were made in relation to endorsements, which related to the Claimant's sentence on 11th April 2002 which concerned his arrest, detention and prosecution in relation to his failure to provide a specimen of breath at Newport Road on 5th April 2000 (the incident pleaded at A2, paragraph 11). We refer the Court to paragraphs 356 – 361 above dealing with the tangled history in respect of that matter. As the Court will be aware, the Claimant eventually appeared before HHJ Hickinbottom on 11th April 2002, when he was disqualified for a period of 6 months in relation to his failure to provide a specimen of breath on 5th April 2000. (Of course it was a document dealing with this appeal which was produced by PC Hopkins to PC Osbourne when he was making enquiries with the Crown Court on 21st May 2002.)

446. It appears that by 20th May 2002, ie. the day before he was arrested at the Hayes Monument, the Claimant had persuaded the CPS that he did in fact have insurance on 5th April 2000. The Claimant therefore went before District Judge Watkins sitting in the Cardiff Magistrates Court on 20th May 2002, and persuaded her to set aside his guilty plea entered by him in relation to the offence of no insurance on 5th April 2000 (the conviction for failing to provide a specimen of breath stands), see the letter from the Magistrates' Legal Advisor of 20th May 2002, at A3, vol. 4, page 186. There is no evidence that any representative of the Police attended the Magistrates' Court on 20th May 2002, nor is there any evidence that the Police were informed as to what had taken place on 20th May 2002 before the Claimant's arrest on 21st May 2002. Indeed, the note made by Mrs Kirk, which appears to have been broadly contemporaneous with the events of 20th – 23rd May 2002, to be found at A3, Vol 4, page 173F-173J, appear to confirm that the Police were unaware of these various events. Thus, in the last paragraph at page 173F notes that during a telephone conversation between the Claimant and Mrs Kirk, whilst he was in custody on the evening of 21st May, the Claimant was concerned that "The CPS had possibly not told the Police that points had been removed from his licence", which implies that the Police were not present. Further, having been granted bail on the morning of 22nd May 2002 (in relation to the Hayes Monument incident), the Claimant re-attended the Magistrates Court in the afternoon, when he sought to have the disqualification discharged. These are

the events recorded in the letter from Mr Dodson of 22nd May 2002, at page 188.

447. In any event, Mrs Kirk has recorded (one-third of the way down her note at page 173H) that during the hearing on the afternoon of the 22nd May, there was concern that: *"…a letter had been drafted to PNC to place a caution(?) that MJK should not be arrested – obviously had not received. Agreed that CPS should inform Police/DVLA re today's decisions*". This is clearly a reference to the hearing of 20th May 2002, and an acknowledgement that the decision made on that date was probably not transmitted to the Police/PNC.

448. During the course of cross-examination, the Claimant conceded that when arrested at the Hayes Monument on 21st May 2002, he had with him, or at least within his vehicle, a letter from the Magistrates' Court confirming that the endorsements in relation to the Newport Road incident of 5th April 2000 had been removed from his licence. This appears to have been a reference to the letter at A3, vol. 4, page 186. As the Court will have noted, at no time either during his initial arrest, during the period of his detention, or when discussing with PS Roberts the contents of his vehicle, or when being interviewed, did the Claimant inform the various officers that he had such a letter from the Magistrates' Court which could have confirmed the setting aside of his endorsements. The fact he was in possession of this letter, which was faxed to him on 20th May 2002, is further confirmed by the first paragraph of his statement/document at page 240.

449. In any event, notwithstanding the setting aside of the previous guilty verdict for driving with no insurance and the associated endorsements, it may well be that he was still disqualified, since the order of the Crown Court had not been set aside. It is also interesting to note that the Claimant apparently did not address the issue of setting aside his disqualification on initial presentation to the Magistrates Court on the morning of 22nd May 2002 when he was being dealt with for the Hayes Monument incident, but then later chose to re-attend the Court to clarify the position that afternoon (when District Judge Morgan exercised his powers to remove the disqualification imposed by the Crown Court, see page 188). It rather tends to beg the question as to why the

Claimant did not raise these matters during his first attendance at Court that day – save for producing his driving licence from his sock.

450. It is also interesting to note, that as soon as the Claimant 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 by driving down the side of the Cardiff Central Police Station in his "battle wagon", displaying his prominent placards. He then drove – according to his estimate - some 50 times around the Hayes Monument, when he must have known that the Police would intervene. When arrested, he failed to tell them in any detail of an attendance at the Magistrates' Court the previous day, or suggest that he had a letter from the Magistrates' Court dealing with those events. It is inconceivable that the Police would have continued with the arrest or his detention if that letter had been produced, as indeed, is confirmed by the events that took place on the afternoon of 23rd May 2002, at Westgate, Cowbridge, below.

451. Thereafter, during the course of his custody, the Claimant deliberately hid the fact that he had possession of his driving licence, and the fact that he had a letter from the Magistrates Court confirming the events of 20th May 2002. Whether he was still disqualified is a moot point, but it is likely that if the officers had any reasonable doubt, then, as described by Sergeant Booker in respect of events in 1993, the Claimant would have been placed on deferred bail. When considered in the light of the Claimant's actions in deliberately not producing his certificate of insurance to the Police, CPS or Magistrates' themselves, a clear picture emerges as to the Claimant's conduct in relation to the Police, and other figures of authority that the Claimant believes are involved in a conspiracy against him. He deliberately acts in such a way as invites suspicion, and thereafter, appears to make a conscious decision to obfuscate the issues and provide no clarification of his position.

452. Further, although in these proceedings the Claimant makes no allegation of malicious prosecution in relation to 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, the Claimant's conduct in respect of many of the other occasions when he has been arrested, detained and prosecuted, becomes more explicable. It is in this context that the Claimant's vaunted collection of not guilty verdicts has to be viewed. In effect, his actions are intent on building up a series of incidents when, notwithstanding the fact that he can establish that he is lawfully entitled to drive, and possesses the relevant motoring documents, he nevertheless allows himself to be charged and convicted, in some cases pleading guilty to the charges, so that these can be overturned or set aside at a later date, sometimes several years later.

ACTION 3 – PARAGRAPH 6

453. The Claimant's allegations and the Defendant's response are contained in A3, vol. 5, pages 1 to 4. The Claimant in his pleadings, claims that on 23rd May 2002 he was unlawfully arrested for driving whilst disqualified. He claimed that the allegation was withdrawn the following day at Barry Magistrates Court, but, as was clarified during the course of this case, the Claimant was arrested at the scene for driving whilst disqualified, and then de-arrested within a matter of minutes. This incident concerns that period of time; the subsequent matters relating to a public order incident are outwith the scope of this claim, see paragraph 355 of the Defendant's Extended Skeleton Argument of 21st March 2012 for the background.

454. The Court therefore, having considered the matter, heard evidence from PC 644 Roger Bickerstaff, PC 3428 Stephen Holehouse, and PS 3120 Robert Davidson, whose statements are at A3, Vol. 5, pages 6 – 93.

455. The Court will note that this incident took place two days after the Claimant's arrest on 21st May 2002, which formed the substance of the allegation contained in paragraph 5 of this action, and one day after District Judge Morgan had lifted the disqualification which had been imposed by the Crown Court at Cardiff on 11th April 2002. 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).

456. Shortly after 6pm on the 23rd May 2002, Officers Bickerstaff and Holehouse were on duty in Cowbridge, the former in the Cowbridge Police Station, and the latter on motor patrol duty. As PC Holehouse was driving up Primrose Hill, he passed a VW Camper van, which was being driven down Primrose Hill. The vehicle had displayed upon it a number of protest placards. PC Holehouse recognised the driver as the Claimant, having previously seen him on a television programme. He believed that the Claimant was a disqualified driver, having seen his name on a list of disqualified drivers on the Police divisional website. Because it would take him time to turn his vehicle around, he contacted PC Bickerstaff, who had also seen the divisional list recording the Claimant as disqualified. PC Bickerstaff got into his marked Police vehicle and drove out from the exit to the station car park which emerges onto the High Street, Cowbridge. After a short period, he saw the Claimant in his VW Camper van approaching along the High Street, proceeding in the direction of Westgate.

457. There was then a short stand-off, whilst the Claimant stopped to allow PC Bickerstaff to exit the car park onto the High Street, whereas PC Bickerstaff waved the Claimant on. PC Bickerstaff then brought the Claimant to a halt almost immediately and approached the Claimant, who got out of his own vehicle and started talking into a mobile telephone. PC Bickerstaff's recollection of the conversation that took place between himself and the Claimant is set out at paragraphs 9 – 15 on pages 8 – 9 of his statement. In the course of cross-examination, the Claimant did not dispute the accuracy of that record.

458. When challenged as to whether he was disqualified from driving, the Claimant's response was to shout "I'm legally entitled to drive". In keeping with his character, the Claimant failed to inform the officers that he had been subject to a disqualification which had been set aside the previous day at Cardiff Magistrates Court, and that he most probably had one or more letters from the Magistrates Court confirming that. Thereafter, having had the usual "amusing" discussion regarding his date of birth, instead of allowing the officer to complete a PNC check, which as we know, would have revealed the

Claimant was not disqualified, the Claimant made off. Once again, the Claimant's behaviour served to confirm the officer's suspicion and left him no choice but to take action on the basis of the suspicion he then had. By this time, PC Holehouse had also arrived upon the scene.

459. The officers then pursued the Claimant, when they caught up with him, they each took hold of the Claimant's arms; the Claimant then began to twist and attempt to break free. He was warned to stop struggling and eventually the officers took him to the ground. It appeared that there was an issue as to whether the Claimant's face came into contact with the ground; the officers accepted that the side of his face might have contacted the ground, but not in any forceful fashion. The Claimant was informed that he would be handcuffed with his hands behind his back, but when he complained of having a broken wrist and a bad shoulder, he was told he would be handcuffed to the front; these were therefore applied and the Claimant was assisted back to the Police car, where he was arrested on suspicion of driving whilst disqualified. Given the Claimant's behaviour, this was the first reasonable opportunity available to the officers of informing him of the fact and reason for the arrest.

460. After caution, the Claimant replied "My reply is J933 TTG Volvo, write it down". PC Holehouse duly noted that reply. The Court will recollect that this apparently was the registration number of a car belonging to two female witnesses who, according to the Claimant were shocked and distressed by the circumstances of his arrest. In respect of this matter, the Claimant's case on cross-examining PC Holehouse appeared to be that the Police, and in particular, these two officers, had wholly ignored that information and had failed to investigate whether there were any potential witnesses. Following re-examination of that witness, when various documents were considered, which showed that these, and various other officers, had attempted to trace the registered owner and occupants of the car, the Claimant, when cross-examining Mr Holehouse further (having been permitted to do so), altered his case to allege that the officers had deliberately sought to trace a different vehicle to the one which he had identified. Either that, or the officers couldn't

be sure that the police authorities had conducted the search correctly, as, in the Claimant's words, "we are dealing with a lot of very evil people".

461. When it was then pointed out that the registration number traced by the officers was the same number as appeared in the Claimant's own notice offering a reward for witnesses (see A3, vol. 5, page 5L), the Claimant's case changed once again to suggest that he, the Claimant, had made a mistake in the registration number when replied to caution, and that the Police officers had failed in their duty to ensure that he read out the correct number. The Court may wish to consider the documents at A3, vol. 5, pages 230, 242, 243, 250, and 251. From the outset these officers, together with a number of other officers from this and another Constabulary, made strenuous efforts to trace the witnesses, solely for the benefit of the Claimant. Their actions were exemplary and hardly consistent with the conspiracy alleged against them by the Claimant.

462. In any event, continuing the chronology of the incident, PC Bickerstaff was able to complete his check with the PNC, which confirmed that the Claimant was not disqualified at that time. The officers therefore de-arrested the Claimant immediately.

463. The above deals with the Claimant's pleaded case. We contend, on the information known to the officers, together with the Claimant's own conduct, was sufficient to establish a reasonable cause to suspect that he was driving whilst disqualified. There can be no doubt that the officers did in fact believe that he was driving whilst disqualified.

464. Although not part of the pleaded case, the Claimant, both in his own evidence, and through the evidence of Mr Angus Turnbull, sought to allege that he had been mistreated by the arresting officers in the back of the police car as they were issuing an HORT1 to him. The Claimant's own evidence changed in his regard, as to whether he was simply prevented from leaving the police car, or as to whether he was sat on in some way by one of the officers. The general impression given by Mr Turnbull - albeit that he was trying to reconcile two apparently contrasting witness statements - was to the effect that the Claimant

was leaning with his back partly against the back seat and partly against one of the rear doors of the police car, with one of the officers leaning over the Claimant. He did not describe seeing any violence being used against the Claimant.

465. It is notable that the Claimant did not plead any allegation of such mistreatment, nor did he make any allegation that mistreatment had occurred whilst in the police car in his statement in connection with this matter, see A3, vol. 5, page 5H. Interestingly, in this statement of 18.6.2009, the Claimant also alleges therein that the officers made no attempt to issue him with an HORT1 – the very process about which he now complains in his oral evidence. This tends to suggest that the Claimant was given no cause for the process of issuing the HORT1 to become a memorable event for him. In the circumstances, we invite the Court to accept the evidence of the officers over that of the Claimant. The evidence of Mr Turnbull hardly contradicts their evidence, and does not support the Claimant's developing account.

466. The Court also heard evidence from the Custody Sergeant, PS Davidson, regarding the entry he made in the Custody Record at page 54. He recorded that the reason why the officers had stopped the Claimant's VW Camper van was because the placards were obstructing his vision. Whilst there can be no doubt that the officers, in particular PC Holehouse, was struck by the amount of placards attached to the vehicle, their own clear evidence as to why they stopped the Claimant's vehicle was because they believed that the Claimant was disqualified from driving. It was not suggested to them in cross-examination or in any other way that they had stopped the Claimant's vehicle for any other reason, indeed, it is clear from the questions put to them by the Claimant, that he appeared to accept that this was the reason why they had stopped him, albeit that they were mistaken regarding the disqualification.

Lloyd Williams QC
Natalie Sandercock
30 Park Place, Cardiff
21st June 2013

IN THE CARDIFF COUNTY COURT

Case No:

BS 614159-MC65 ("Action 1")
CF101741 ("Action 2")
CF204141 ("Action 3")

BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF SOUTH WALES POLICE

Defendant

DEFENDANT'S WRITTEN CLOSING SUBMISSIONS

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