

Action 3, paragraph 6.1 arrest at West Gate, Cowbridge 23 May 2002.

Another example of police failed disclosure to which the arrested Appellant was entitled. An independent Volvo driver and her passenger stood right in front and witnessed the protracted assault on the Appellant who, while lying on the ground with both police on top of him managed to scream for witnesses, an acquired necessity over the years of police harassment. This caused the recording of that vehicle's front number plate and ample opportunity to interview both at the scene by either police officer.

Despite the Chief Constable's February 2009 sworn affidavit, to disclose, she , with malice aforethought, deliberately withheld the identities of both ladies in the hope of a conviction to have him 'struck off' six days later.

More to the point both ladies told or could of told police, as to whether to prosecute for what this time, that the Appellant left the scene after sufficient dialogue to walk towards the nearby police station (for witnesses with authority to have him no longer detained in order to do his evening surgery).

1092. **Action 3, paragraph 6.1 arrest at West Gate, Cowbridge 23 May 2002.** The pleaded case is that on 23 May 2002 the Defendant in Cowbridge maliciously and without reason or probable cause arrested the Claimant for driving whilst disqualified. It is common ground that Mr Kirk was driving his Volkswagen Campervan TYA 633 in Primrose Hill into Cowbridge and that he was there arrested, and "de-arrested", before again being arrested.

1093. The pleaded Defence is that PC Bickerstaff observed Mr Kirk driving his van which "had attached to it various display boards which appeared to obstruct the driver's view" stopped that vehicle in order to speak to Mr Kirk who refused to co-operate with the officers PC Holehouse by now having arrived, and "attempted to run away". The officers suspected that he was driving whilst disqualified whereupon they followed him and arrested him. "In the premises, the officers' suspicions were reasonable in the circumstances which then existed". He was de-arrested when enquiries disclosed that he was not disqualified from driving but he became belligerent when they attempted to give him an HORT1 Notice and was therefore arrested for breach of Section 5 Public Order Act. He was taken to Barry Police Station, eventually charged with an offence under section 5 of the Act. An attempt was made to bail him to the Magistrates Court but he refused to sign his bail sheet and in the circumstances "the Custody Officer reasonably suspected that if, notwithstanding his refusal to sign the bail form, he was nonetheless granted bail, the Claimant would fail to attend to answer his bail. The Claimant was therefore detained in custody until he could be produced on the morning of the 24th May 2002 at Barry Magistrates Court". The Defence as so pleaded, it will be seen, is revealing.

1094. I received witness statement and oral evidence from Mr Kirk himself and from Mr Angus Turnbull who saw Mr Kirk in the process of being arrested; and, called by the Defendant, PC Bickerstaff, PC Holehouse, and Robert Davidson then custody sergeant at Barry Police Station.

1095. I also received in writing the witness statement of Mr Kirk's former wife Mrs Kirstie Kirk dated 18th June 2009 producing her handwritten record of the events of 22-23 May 2002 setting out how she was informed that Mr Kirk was in custody on the evening of 22 May 2002 at Barry Police Station, made a repeated enquiry as to when he might be released, ultimately attending his car in the early hours of the morning to retrieve cats which he had with him for treatment. Mrs Kirk was called as a witness, but was not asked about the events of that evening by Mr Kirk or in cross examination, no evidence having been given by police officers inconsistent with her account.
1096. In his witness statement dated 19 June 2009 Mr Kirk principally adopts the statement signed by him on 18 June 2009, but as being "written a long time ago". In that statement (Bundle 3/5.5H) he says that in Cowbridge town he stopped to wave on a policeman in a police car waiting to pull out of the High Street, who refused to pull out but waited until he had gone past.
1097. Further down the road he was stopped by that police car with a blue flashing light. The officer said he was being stopped because he was a disqualified driver, "which I denied, giving him my date of birth and at the same time getting as much information to my wife and staff by my mobile phone". The two police officers arrested him for driving whilst disqualified "despite having all the relevant information". He says he was thrown to the ground and handcuffed behind his back, noting the registration details and description of a Volvo saloon car whose occupants appeared to be amazed at what they had seen.
1098. Later he was "de-arrested only to be arrested again whilst the police were continuing to try and delay my departure.... There was no attempt to issue me with an HORT1 nor was there any indication of the need knowing there had been no traffic offence and that someone at the station would have warned them to leave me alone. I was arrested for a Public Order offence, which I denied". He heard PC Bickerstaff tell the custody sergeant at Barry Police Station that he was stopped because of the boards on the front of his campaign wagon, obstructing his view; but "This was the first time I had heard of this accusation and know that it was not the case due to the care I had taken with all the boards not to be in breach of the law. I was never asked to produce my driving documents. He told the custody sergeant that I attempted to run away which was absolute nonsense. I was neither abusive or started shouting and swearing as he told the custody sergeant. As usual I was detained in custody overnight to cause maximum injury to myself and my family..... their holding me that night was vindictive, giving me no good reason why I needed to be detained for court" (A3/5.5H-5I).
1099. Later at the substantive hearing at the Magistrates Court of the charge of a Public Order offence "Bickerstaff and Holehouse lied on a number of occasions relating to the incident and refusing to assist the Court by introducing independent eye witnesses knowing that I had no witnesses to support my evidence". His appeal against the Magistrates Court decision was upheld at the Crown Court by Her Honour Judge Parry and magistrates.

The Newport Crown Court hearing was stopped by the judge, without Appellant evidence, as so often has happened before in Taunton, Guernsey and Cardiff Crown Courts as an 'abuse of process'.

1100. In his witness statement dated 19 June 2009, Mr Kirk states that when he was stopped “the large policeman, forget which was which, said he had recognised my face from a TV series in which I featured, apparently to do with veterinary work”. In evidence in chief before me, Mr Kirk simply confirmed his written witness statement. I note that on 24 May 2002 he was writing letters to the South Wales Police requiring full custody records relating to the incident “to include the taped interview in the police car and details of the conversation between the police operator and the police at the scene, in particular whilst I was in the police car” and asking for identification in particular of the two ladies who were standing beside the blue Volvo (24 May 2002 A3/5.94); see also 27 May 2002 A3/5.95 11 July 2002 A3/5.99; 24 December 2002 at A3/5.101 18 February 2003 at A3/5.110; 18 July 2002 at A3/5.129; 18 December 2002 at A3/5.146.

1101. An internal letter from Inspector Mark Taylor to A/C/Inspector Runnalls states, with reference to the request by Mr Kirk for custody tapes, that numerous enquiries had been made to find the tapes of custody of 22/23 May without success; (A3/5.105). Sergeant Davidson had in fact endorsed both the custody record and tape register book with the fact that tapes needed to be retained. The custody officer who changed these tapes was Sergeant Hall “who I have also spoken to and states he did not retain the tapes and has no idea where they may be”. It is self-evidently unsatisfactory that the tapes were not retained despite contemporaneous instruction that they should be, and despite prompt request by Mr Kirk to have copies of or access to them. In the event however, the custody record itself confirms Mr Kirk’s own account of what the arresting officers told the custody sergeant.

Omnipresent Inspector Runnalls, again, the one who told a jury trial the Llantwit Major police had never received complaints of burglaries or break-ins to the Appellant’s veterinary surgery when no less than four had been supported in writing and oral evidence by Veterinary receptionist Mrs Walker.

1102. The statement of PC Bickerstaff was that when Mr Kirk said “My reply is J933 TTG Volvo, write it down” PC Holehouse wrote this down on his police notebook, as PC Bickerstaff was on the radio at the time (Bickerstaff notebook A3/5.20). In turn, the copy of PC Holehouse’s notebook is at A3/5.39; it starts “18.35 TYA 633M cautioned. Reply J933 TTG. Volvo; arrest of Maurice Kirk. Notes timed at [left blank]: At approx 18.30 hours I was driving up Primrose Hill [etc].” That recorded in the manuscript notes up to the word Volvo [where it states interruption for arrival at BP, I assume Barry police station] is in a handwriting discernibly *different* from what follows. Whether or not this is satisfactory, it is not a matter pursued by Mr Kirk at the hearing.

1103. In cross examination, it was put to Mr Kirk that the officers had asked whether he was disqualified from driving, asking his date of birth, and that he shouted in reply I’m legally entitled to drive; Mr Kirk’s recollection of detail was limited, but he agreed that he was de-arrested. He adhered to his complaint that he had merely walked away not run off and that he was mistreated in the back of the police car when detained. I return to this later.

1104. Mrs Kirk’s notes record that she telephoned the police station on a number of occasions including at 19.53 hours when she spoke to PC Holehouse and was told that her husband would be released within 1 hour; again at 20.10 hours speaking to Custody Sergeant Davidson and at 22.14 hours to Sergeant Hall “who informed me that MJK would be charged and released within an hour” as officers were coming over to see him;

at 23.40 hours when Sergeant Hall apologised for the delay and told her that the other officers had not turned up; again at about midnight; and at 01.30 hours when she was told that he was being held as he would not sign the charge sheet. Sergeant Hall telephoned to explain the situation and relate Mr Kirk's concern about the cats left in his car (A3/5.5P-5R). I defer the written and oral account of Mr Turnbull, in order to relate first the evidence of police officers Bickerstaff and Holehouse.

1105. The evidence of PC 644 Roger Bickerstaff. In his witness statement dated 22 December 2008, he said he was in Cowbridge police station when PC Holehouse telephoned him to say that he had seen Mr Maurice Kirk driving a green Volkswagen Campervan down Primrose Hill Cowbridge; "PC Holehouse and myself believed Kirk to be disqualified from driving. ...I believed Mr Kirk to be disqualified from driving because I had seen his name on a list of disqualified drivers on our divisional website. Cowbridge is a rural area and I frequently checked the list. I had never dealt with Mr Kirk previously but I was aware that other officers had dealt with Mr Kirk" (paragraphs 5-6 A3/5.7).

1106. He went to a police vehicle, drove to the entrance to the police station car park, and waited there. Shortly he saw Mr Kirk's car and Mr Kirk indicated for him to pull out but he signalled Mr Kirk to move on, pulled out and immediately activated his blue light to stop Mr Kirk. As he got close, Mr Kirk was giving over the phone his police collar number and the index number of the police vehicle. Likewise when PC Holehouse arrived, Mr Kirk gave his police collar number into the phone. Mr Kirk was ignoring him. He then asked Mr Kirk "are you disqualified from driving" to which Mr Kirk replied by shouting at him "I'm legally entitled to drive". He asked Mr Kirk's date of birth, which was not given Mr Kirk shouting out "I haven't got time for this, I've a veterinary surgery to go to". Mr Kirk was prevented from putting his key into the ignition by PC Holehouse, then did give his date of birth "12345" and PC Bickerstaff then used his personal radio to ask for a PNC check.

1107. While the check was being carried out, Mr Kirk "got back out of his vehicle and started to *run away* down West Gate, in the middle of the road. Such behaviour reconfirmed my belief that Mr Kirk was a disqualified driver. PC Holehouse and myself immediately *gave chase and caught up with him* a short distance away. He had probably gone no more than 10 yards when we caught up with him". PC Holehouse took hold of Mr Kirk and took him to the ground, he was handcuffed, and taken back to the police vehicle. PC Bickerstaff then said, "I'm arresting you on suspicion of driving whilst disqualified". Mr Kirk insisted he write down J933 TTG Volvo which he wrote in his pocket book. His enquiry with the control room showed Mr Kirk was not disqualified from driving and so he de-arrested Mr Kirk removing the handcuffs. "*Had Mr Kirk allowed me to complete the checks before running away from us I would have had not arrested him [sic]*" (paragraphs 15, 21 and 26 at A3/5.9 emphasis supplied in each case). PC Bickerstaff states that he then said to Mr Kirk stay where you are please, I will issue you with an HORT1 for you to produce your driving documents, when Mr Kirk started to get out of the car and said in a loud voice, "You bastards make me sick, I'm going, I have a veterinary surgery to run". "By this time Mr Kirk had got out of the car and I said to him, "Stop shouting and swearing or you'll be arrested for public order. I'm going to give you a form to produce your documents". As I was saying this to Kirk he was physically trying to push past me to get to his vehicle. He was still shouting and said, "I haven't bloody time for this you bastards I've been arrested 13 times (I believe he said 13) since

I've been living in bloody Wales". By this time Mr Kirk's behaviour *was causing me alarm and distress*. I was also of the view that *it was causing alarm and distress to passers by*. [emphasis supplied]", therefore he arrested Mr Kirk who was taken to Barry police station.

1108. He asserts, in that statement, that he was professional and calm in his dealings with Mr Kirk whose behaviour was irrational; he had not had any previous dealings with Mr Kirk prior to this incident, "although it is true to say I had heard of his reputation" (A3/5.14). He says that on the second arrest, Mr Kirk started to struggle flayed his arms about and tried to pull away from him.

1109. He states at paragraph 21 that immediately after the first arrest and caution Mr Kirk said "my reply is J933 TTG Volvo write it down", and that because he was still using his personal radio, PC Holehouse wrote Mr Kirk's comment down in his pocket book (paragraph 21). I observe that in his own police notebook, he states that while he was using his personal radio to ask for a PNC check, "Kirk started to run away down West Gate into the middle of the road. We both ran after him"; and that on the second arrest for the section 5 Public Order offence, he handcuffed Mr Kirk to the front again "*as he was still offering violence and struggling against the handcuffs*" (A3/5.20-21). The witness statement of 22 December 2008 substantially reproduces a section 9 statement dated 23 May 2002 in which Mr Bickerstaff concluded "*Kirk's actions and abusive conduct caused me a great deal of harassment*. There were also a number of people passing by in the street on foot and in vehicles, which had been caused to stop by this whole incident" (A3/5.126-127 emphasis supplied in each case).

1110. The evidence of PC3438 Stephen Holehouse His witness statement dated 9 January 2008 is essentially the same as that of PC Bickerstaff, save that it was PC Holehouse driving his police vehicle in the Primrose Hill area to the west side of Cowbridge who says he saw a green Volkswagen Campervan approaching and travelling in the direction of Cowbridge.

"The first thing that I noticed about the vehicle was that it was covered in placards..... when I first saw the vehicle I did not know to whom it might belong but as it got closer I could see that it was being driven by Mr Maurice Kirk. I did not know Mr Kirk but I recognised him from having seen him on the television".

1111. PC Holehouse says he believed Mr Kirk to be a disqualified driver having seen his name on the list of disqualified drivers on their divisional computer listing disqualified drivers in the Barry Vale of Glamorgan and Penarth areas. "I regularly checked the list and had done so just a day or two before. As soon as I realised that it was Mr Kirk driving the vehicle I suspected that he was a disqualified driver and immediately contacted my colleague PC644 Bickerstaff.... I could not request a PNC check via my radio this time because I wanted to stop the vehicle before it had got away" (witness statement A3/5.29 at paragraphs 5-9). He says that both vehicles were travelling slowly, himself in the opposite direction to Mr Kirk.

1112. At the point of PC Bickerstaff asking Mr Kirk for his date of birth and Mr Kirk replying "12345", his statement reads, "This was said in a loud contemptuous manner. I couldn't believe that Mr Kirk was so scornful towards us.... He was totally unreasonable.

There were members of the public and motorists passing by and at this time and I can only describe Mr Kirk's behaviour as insulting towards myself and PC Bickerstaff" (paragraph 16).

1113. Like PC Bickerstaff, he says that when the PNC check was being made Mr Kirk "suddenly *ran from his vehicle along the middle of the road* towards the direction of the police station. *Such behaviour cemented my belief that Mr Kirk was a disqualified driver.* Myself and PC Bickerstaff gave chase....". At paragraph 21: "By Mr Kirk *running away into the middle of a busy road, I felt alarmed and distressed fearing for his safety and the safety of others* (sic)" (emphasis supplied in each case). Of the second arrest, for an offence under the Public Order Act, he says that Mr Kirk was resisting not in a violent manner, he was just trying to pull away from PC Bickerstaff.
1114. PC Holehouse made a s9 statement on 23 May 2002 in substantially identical terms, including that when PC Bickerstaff used his personal radio, Kirk "*suddenly ran from his vehicle along the middle of the road towards High Street*". He says that when on the second arrest PC644 was applying the handcuffs to Mr Kirk, "*I was feeling very harassed by the continual contemptuous manner of Kirk*". In a postscript, he said that further to the above whilst sat in the police vehicle when PC644 was checking via PR to find if he was disqualified or not, Kirk stated "I'm going to bloody well sue you by the second" (A3/5.121-125). PC Bickerstaff and PC Holehouse were called as witnesses at the magistrates' court. The Magistrates Court's notes of the hearing before them of 15/7/2002 include PC Bickerstaff saying that in his opinion, Mr Kirk "ran away" and PC Holehouse stating that he ran away "*very fast*" (Bundle A3/5.135 and following).
1115. Before turning to their oral evidence, I record the circumstances of arrest and grounds for detention given by them as recorded at 19.25 at Barry police station by the custody officer PS312 Davidson.

"DP arrested for sec 5 POA. The facts are the DP was seen by police driving a VW Campervan index TYA 633M along West Gate Cowbridge. The vehicle was displaying boarding on all sides of the vehilve (sic). The police officer had cause to stop this vehicel(sic)as he belived(sic) that the drivers view was obstructed due to one of these boards being at the front of the vehicle. When the vehicle stopped the DP exited and made a call on his mobile phone before the officer had chance to speak with him. The officer could hear the DP say "644 write this down" the DP then quoted the index number of the police vehicle. Another police officer attended in a police vehicle the DP took his number and also the vehicle's index. The DP was told to put the phone down on numerous occasions however he ignored the officers requests. He was then asked if he had driving documents. He replied "I'm entitled to drive". He refused to co-operate with the officer's requests and attempted to run away. He was apprehended and arrested on suspicion of disqual driving. PNC checks then proved he wasn't disqualified. He was then de-arrested. Police then attempted to give the DP a HORT1 to produce his documents. He became very abusive and started shouting and swearing he was warned however continued and then attempted to make off however he was arrested for sec 5 POA" (A3/5.53).

1116. The custody log states, ‘At 19.32 detained person has requested legal advice; 19.33 the DP refuses to speak; [various entries including request for a doctor and a solicitor being called and arriving, as did the doctor at 20.56]; at 22.30 PS James Hall determining “that there is now sufficient evidence to charge this prisoner with the offences for which the detained person has been arrested”; at 23.56 the officer dealing having been delayed at an RTA incident; and at 00.32 Mr Kirk charged with a section 5 offence to appear at the Magistrates Court on 31st May. Mr Kirk’s reply was “It’s quite ridiculous”.
1117. At 00.58 hours, the custody record is “The DP has refused to sign his bail sheet, as such I am unable to release him” (PS3737 James Hall). At 01.39 the entry is “the detained person has been charged with an offence. I authorise the detained person’s being kept in police detention as necessary for the following reasons. I have reasonable grounds for believing that the person arrested will fail to appear in court to answer bail (s.38(1)(a) PACE Act 1984). The DP has at this stage refused to sign his bail sheet, as such there are reasonable grounds to believe he will fail to appear at Court (PS3737 James Hall) (A3/5.58).
1118. In preparation for the next shift, when PS3544 Michael George appears to have taken over as custody officer, “I have spoken to the previous Custody Officer who stated that the DP showed total disregard for the bail process, refusing to acknowledge the bail date and gave the impression that he would refuse to answer bail. This was explained to the DP who made no comment. After consultation with PS Hall I am in agreement that the DP is to remain in custody for court” (A3/5.59).
1119. PS Davidson gave a witness statement dated 12 March 2003, in essence reproducing the content of the custody record. In evidence in chief before me, he said that he had some recollection of the demeanour and behaviour of Mr Kirk towards staff, but otherwise not an independent recollection of events over and above the record. In cross examination he had no reason to doubt the accuracy of what he had recorded PC Bickerstaff as saying as to the circumstances of arrest and grounds for detention, including I note in particular, “The police officer had cause to stop this vehicle as he believed that the driver’s view was obstructed due to one of these boards being at the front of the vehicle”. At 21.43 the custody log records PS James Hall taking over as Custody Officer in preparation for the 10.00 o’clock shift.
1120. Witness statements as to the period time in detention. There were witness statements from PS (now D/I) Hall; Thomas Warren a jailer PC; PC Giboney a jailer; PC Claire Baxter-Jones Deputy custody officer for the night of 23 May 2002; and Dr Coleman, the GP who attended as doctor. For the most part, the content of these statements was devoted to indicating that during his time in custody proper attention had been given to Mr Kirk’s welfare. Since Mr Kirk does not in these proceedings allege ill treatment or failure to attend to him while in custody, as opposed to the fact that he was kept in custody, I need not recite this evidence.
1121. Other oral evidence. I deal first with the evidence of Mr Angus Christopher Turnbull. He gave a statement dated 16 December 2002 (A3/5.285). He was a builder who knew Mr Kirk personally. In his statement he says that his attention was drawn to Mr Kirk’s vehicle, he saw a police Peugeot 306 car with police officers present and “one of the police officers leant over the back door of the Peugeot with another officer in the back of the car. Mr Kirk had his back against the back door in what could be classed as a

defensive, submissive posture”. He made a call to and left an answerphone message ‘to Kirsty’ to tell her what he had seen”.

1122. In examination in chief, he told me that “what I couldn’t understand was that Maurice Kirk was in the back of the police 306 [ie model of car], a large officer, I don’t understand how, if this was a driving offence, he could end up forcing him [Mr Kirk] into the back of the car with the other officer by the door when it was not 50 yards from the police station in the High Street [in Cowbridge]”.

1123. In cross examination, Mr Turnbull described Mr Kirk as being laid against the back with his head against the side of the car, and with the police officer on top of him. The door nearest to him as he drove past was closed with Mr Kirk’s head and back against it; it was the door nearest the pavement which was open. He was pressed that he could not have seen Mr Kirk, if it was the door nearest the pavement which was open, and he was driving past on the other side. He told me that “through the back door window, I could see the back of him and the side of his face. I visually saw him. The back of his head was against the window. He was splayed across the back of the car with the back of his head the other side of the car [to his legs]..... the door was ajar, because the legs were into the door opening.... The officer, his back was against the ceiling of the car.... It would appear that the officer was restraining the person by being on top of him in the back of the car”. He told me that he had recognised Mr Kirk’s van straight away, had seen the vehicle from something like 100 yards away, and was driving at 20mph at that point.

1124. The cross examination of Mr Turnbull by leading counsel was entirely proper to the effect that he could not have been properly sighted so as to see that which he said he had seen; but I was wholly unpersuaded that Mr Turnbull would not have been able to see into the car as he did. I found Mr Turnbull to be a straightforward witness, and his account internally credible. Whilst he knew Mr Kirk as a person, there is nothing to suggest close acquaintance with Mr Kirk, animosity towards the police, or reason for inclination to give untruthful evidence.

1125. Discussion.

1126. (i) The evidence of PC Bickerstaff was that he stopped Mr Kirk because he believed him to be disqualified from driving. Asked by Mr Kirk, “You gave information to the Sergeant at Barry that you believed I had an obstruction to my vision because of a sign on my vehicle?” PC Bickerstaff replied “That’s not correct”; “Q. Did you hear it discussed at all, as soon as I was detained, or when I was released, any suggestion that I was stopped because my windscreen was obscured by a sign at the front of the vehicle?” I’m sorry, I can’t recall that from my recollection the vehicle was covered with banners as in the photo you’ve shown me. “Q. Is the banner in that photograph obstructing the view of the driver? A. I would not say so”.

1127. These answers fly in the face of the contemporaneous record of what he told the custody sergeant. Mr Holehouse, now retired, told me that in presenting Mr Kirk to the custody officer, it was PC Bickerstaff who dealt with matters; and such is consistent with the custody record.

1128. As to the true ground for Mr Kirk’s arrest, in the course of cross examination Mr Holehouse said, “I can’t remember if you were arrested for driving disqualified”. This is an extraordinary answer for three reasons, first because in his witness statement he relates

PC Bickerstaff as saying “I’m arresting you on suspicion of disqualified driving” (statement paragraph 2); second because his evidence was that he had radioed for Mr Kirk to be stopped precisely because he believed him to be driving whilst disqualified; and third because unusually Mr Kirk was first arrested, then de-arrested, and then re-arrested, which one would expect to stay in the memory even now.

1129. (ii) The evidence of both officers, in their contemporaneous witness statements, was that after Mr Kirk had given his date of birth, and this was being checked, he “ran away” (see above). In the case of PC Holehouse, the assertion was that Mr Kirk “suddenly ran from his vehicle along the middle of the road”, and he told the magistrates’ court that Mr Kirk ran very fast (see above). In the case of PC Bickerstaff, he asserted a reconfirmed belief that Mr Kirk was a disqualified driver because Mr Kirk got back out of his vehicle and “started to run away down West Gate, in the middle of the road”. The assertion that Mr Kirk ran away did not survive cross examination. The police officers caught up with Mr Kirk, on their own account after about 10 metres. To a question from myself, Mr Holehouse told me that it was “just over a jog for us to catch up”.

1130. On my enquiry as to his giving evidence at court that Mr Kirk ran “very fast” he said

“I grant you he may not have been very fast, it may have been very fast for a yard or two then you realise oh he’s not going very fast and you catch him up. It’s not a very good answer I grant you”.

Yet PC Bickerstaff said in cross examination, in contrast to this evidence of Mr Holehouse, that Mr Kirk was running away, and “Yes, [*he had to run to stop Mr Kirk running from them*] (emphasis supplied)”.

1131. Each police officer accepted that Mr Kirk was making in the direction of the police station.

1132. (iii) The evidence of Mr Turnbull, and Mr Kirk, was that Mr Kirk was held down in the back of the police car. Mr Turnbull described the officer above him as being a very large framed officer. I observe that Mr Holehouse is very tall. He accepted in evidence that if there was reference to “a very large policeman”, it must be him. Mr Holehouse denied that anything happened of the sort alleged by Mr Turnbull and Mr Kirk. In cross examination,

“Q. You had me sprawled across the back of the car? A. There was no need for that, it didn’t happen. [Mr Kirk clarifying that his assertion was that he had not been allowed to leave the car and had been held down with great force] A. I did not touch Mr Kirk when he was in the back of the vehicle, the allegation by Mr Turnbull is an absolute fabrication”.

In evidence PC Bickerstaff said, “I have no recall of that. I have known people struggle but in this particular incident I have no recall of a police officer being across Mr Kirk. The recollection I’ve got is that that did not happen”.

1133. (iv) Neither police officer, on their own evidence, made enquiry by radio of the PNC before Mr Kirk was stopped. PC Holehouse, driving in the opposite direction, saw Mr Kirk’s campervan in Primrose Hill to the west of Cowbridge. According to Mr Bickerstaff [who initially paused and made no reply] it was possibly a mile and

depending on the time of day it could take a couple of minutes to drive from there from where Mr Kirk was stopped, it could be longer”. The witness statement of PC Holehouse asserted that he could not request a PNC check via his radio “because I wanted to stop the vehicle before it had got away. Also I did not know his date of birth and a more accurate check can be achieved if you have full name and date of birth”.

1134. It is a little surprising that no enquiry at all had been made. On its own, this would be the most minor of matters; but it sits oddly with Mr Holehouse’s later reply in oral evidence that he could not remember if Mr Kirk was arrested for driving while disqualified. He told me that before events of this day, save for once when he had seen Mr Kirk on the TV in his role as a vet, he had not seen him before. Mr Kirk asked whether before the event he was aware that Mr Kirk was running a veterinary practice. His reply, “Yes” was hesitant. He claimed he was “not really” aware of Mr Kirk’s dealings with the police.

1135. The evidence of the police officers’ is in a number of central matters simply improbable and lacking in credibility.

- (i) They say that they stopped Mr Kirk on suspicion of driving while disqualified. The account given to the custody sergeant was that he was stopped on account of his vehicle’s vision being obscured, not for suspected driving while disqualified. In addition there would have been ample opportunity to radio in and check whether that was so and yet neither officer did so.
- (ii) The account to the custody sergeant was that ‘because he ran away’ it was thought that he was driving while disqualified. On the strong balance of probabilities I do not accept that Mr Kirk ran away and I do not accept that the police officers thought he was running away.
- (iii) The account of the police officers is that they thought Mr Kirk’s actions were thought to be causing distress and alarm to passers by. One explanation given was that this was because he was running into the road. That would have been profoundly unconvincing even if I accepted that he was running, which I do not. The other explanation was his loudness or rudeness to the police officers. I do not for one moment accept that they observed anything which would cause a member of the public to be in fear or distress; or that they were put in fear or distress themselves. They were simply offended by his scornful and dismissive attitude towards them.
- (iv) As to forceful detention in the back of the police car, they denied anything of the sort happened. In my judgment the account of Mr Turnbull is internally consistent and externally, it is consistent with the account given by Mr Kirk, namely:

Mr Kirk, in cross examination “A. They were stopping me from getting out.... whoever was in the gap between the door and the back seat, pushed me in – the big one – and the momentum.... Up until then it was the other one being more violent. The big one, Holehouse .. [Q. In your Statement, at A3/5.5B, there is nothing as to being mistreated in the back of the car?] A. It happened! Every time I was arrested I was pushed about”.

I am satisfied that the evidence of Mr Turnbull was honest and correct.

1136. After being brought back to the police car, arrested, and de-arrested, and it being confirmed that he was not disqualified from driving, he was re-arrested under section 5 Public Order Act 1986.

1137. Lawfulness of arrest. A person is guilty of an offence under section 5 “if, with intent to cause a person harassment, alarm or distress, he (a) uses threatening abusive or insulting words or behaviour, or disorderly behaviour..... thereby causing that or another person harassment alarm or distress”.

1138. Asked by Mr Kirk why a second arrest was required, Mr Holehouse replied “I was distressed. Alarmed ... and I agree I used the word harassed. Not “terrified”. At paragraph 27 of his witness statement and following, PC Bickerstaff said

“Kirk started to get out of the car and said, in a loud voice, “You bastards make me sick, I’m going, I have a veterinary surgery to run”. By this time Mr Kirk had got out of the car and I said to him. “Stop shouting or swearing or you will be arrested for public order. I’m going to give you a form to produce your documents. As I was saying this to Kirk, he was physically trying to push passed(sic) me to get to his vehicle. He was still shouting and said. “I haven’t bloody time for this you bastards. I’ve been arrested 13 times since I’ve been living in bloody Wales”. By this time Mr Kirk’s behaviour was causing me alarm and distress. I was also of the view that it was causing alarm and distress to passers by. Therefore I said to Mr Kirk, “I’m arresting you for section 5 public order”.

1139. Mr Kirk had protested very loudly, indeed may have shouted, that he was legally entitled to drive. Mr Kirk may well have used the word “bloody”. That was quite insufficient to amount to words or behaviour within the offence of section 5 and I do not accept that the police officers thought that it did. It is difficult even on the face of the witness statements of the police officers to see what could in any reasonable way have been understood to be the use of threatening abusive or insulting words or behaviour by Mr Kirk with intent to cause harassment alarm or distress to the police officers. Nothing said by the police officers in oral evidence has dispelled my bafflement and I repeat my factual findings above. On the contrary, I have been driven to disbelieve the account of each police officer as to Mr Kirk running away or not being physically detained by force in the back of the police car as described by himself and Mr Turnbull, and the account of him being arrested on account of suspicion that he was driving whilst disqualified is irreconcilable with the account given in the custody record. I regret to say that their evidence reeked of embellishment at best.

1140. Accordingly the Defendant has not shown the arrest to be lawful and Mr Kirk is entitled to recover damages in respect of it.

1141. Later continuing detention. It may be that the unlawfulness of arrest makes academic further discussion of the detention which ensued but for completeness I ought to consider it independently. The custody sergeant to whom Mr Kirk was presented at Barry Police Station was Sergeant Davidson. He confirmed that the account of the circumstances of

arrest which he had recorded accurately reproduced what he had been told by the arresting officer (PC Bickerstaff). His evidence written and oral was that Mr Kirk refused to co-operate at all; I have no reason to doubt that.

1142. He confirmed receiving a telephone call from Mr Kirk's wife, and that she was asking that the custody record video record be kept; he said it was not his responsibility; he was succeeded by another custody sergeant PS Hall for the 10.00 to 6.00 shift. His evidence was the subject of relatively little questioning by Mr Kirk.

1143. The custody record relates that Mr Kirk refused to sign the bail form. It is clear that he would have been released, if he had signed the bail form. The custody record further indicates that he was therefore detained in custody on the basis that it was believed that he would not or may not answer to his bail:

"I authorise the detained person's being kept in police detention ... for the following reason. I have reasonable grounds for believing that the person arrested will fail to appear at court...If the DP agrees to sign the bail form, then this situation can be reviewed" (entry at 01.39 Bundle A3/5.58).

1144. This is briefly reproduced in the witness statement of Mr Hall, not called before me, in a witness statement dated 21 November 2006: see paragraphs 8-10, of decision to charge Mr Kirk at 22.30 hours and detention for that purpose until charge at 00.32, and 10-12 "refused to sign his bail sheet and *as such I was unable to release him* (sic) (emphasis supplied).

1145. It is inconceivable that at this stage, at Barry Police Station, Mr Kirk was not known to be a local veterinary surgeon with a veterinary practice and surgery in Barry. His details were available from the PNC check if required. The custody record stated "Maurice John Kirk address 49-53 Ty Newydd Road Barry, Occupation Veterinary Surgeon".

1146. PS Hall was not called to give evidence before me. I have no doubt (both on the evidence generally and on observation of Mr Kirk) that he is often haughty, confrontational, and deeply irritating. This offers one plausible and persuasive reinforcing motive for the custody sergeant to have declined to release him when he refused to cooperate or sign the bail form. Objectively viewed, I find it improbable that merely because he was uncooperative, and/or refused to sign the bail form, it could be inferred that he would not appear at court. The question is of course, not what I would have thought if acting as a custody sergeant, but what the custody sergeant believed. Nonetheless, I consider this conclusion was outside the range of any reasonable conclusions which a custody sergeant could rationally reach for continued detention.

1147. This is a troubling incident from start to finish.