1. **Action 1 paragraphs 8.18, 8.19, 8.20, and 8.21**. It is convenient to take these matters together, because each concerns the actions, as alleged by Mr Kirk, of a Mr Paul Stringer in late July and early August 1995. The essence of Mr Kirk’s complaint is that on 21 July 1995 Mr Stringer attacked him and damaged his property at Tynewydd Road, Barry but the police failed to respond (Action 1, 8.18); on 23 July 1995 the police witnessed an assault by Mr Stringer on Mr Kirk and failed properly to deal with it, or protect him, or pursue prosecution of Mr Stringer (Action 1, 8.19); on 24 July 1995 Mr Stringer attempted to enter Mr Kirk’s veterinary hospital using a lump of wood, but there was no response from the police (Action 1, 8.20); and on 6 August 1995 Mr Stringer attacked one person and on the following day broke windows, again without proper police action or response (Action 1, 8.21).
2. In respect of each claim the Defendant denies that the matters, even as alleged, give rise to any cause of action. As I noted in my written judgment on preliminary issues of 30 November 2010, as the law stands there is a formidable argument for the Defendant that there is no privately actionable duty of care in respect of these matters. I made no ruling because those complaints had been the subject of application to strike out long ago whilst this action was still in the Bristol County Court, and I considered it unjust for the court to embark for a second time upon consideration whether the claims should be struck out prior to evidence being given. Accordingly I first deal with evidence and factual findings, before returning to the point of law.
3. **Action 1 8.18: 21 July 1995** . The pleaded case is that Paul Stringer was observed breaking a window at 52 - 53 Tynewydd Road, he then head butted punched and tried to throttle Mr Kirk; the incident was reported to the Defendants [“who were made aware not only of the effects of the incident but also the threat of further incidents”]; but PC 972 Johnson negligently refused to take a statement of complaint from Mr Kirk or to record it in his notebook. On return from registering the complaint, Mr Kirk ‘discovered’ that ‘the doors had been damaged as had an internal door’ and he thus contacted PC Johnson who “again…negligently refused to take any further action”.
4. The Defence is in essence that on 21 July 1995 PC 972 Jonathan Johnson did attend the property and recorded the complaint of damage to the property (without mention being made of any assault); he later re-attended leaving a message for Mr Kirk to contact him but no further contact was received.
5. **Action 1 8.19: 23 July 1995**. The pleaded case is that the police were in attendance at 51/53 Tynewydd Road and observed Paul Stringer without provocation attack Mr Kirk, throttle him and push him down the stairs, as a consequence of which he was taken to hospital by ambulance; yet the Defendants again negligently refused to investigate the incident or take any action to protect Mr Kirk.
6. The Defence is in essence that on 23 July 1995 PC 1623 Martyn James attended Tynewydd Road and saw Stringer push Mr Kirk on the landing of the stairs so that he fell backwards; but he did arrest Stringer, also arranging ambulance attendance for Mr Kirk who had hurt his back and ankle; and (like PC Johnson) he attended on Mr Kirk to get a statement, achieving contact on his mobile on one occasion when Mr Kirk said that he was too busy, but that Mr Kirk was never available and that the matter did not proceed as it appeared that Mr Kirk did not wish to make a complaint.
7. **Action 1 8.20 : 24 July 1995**. The pleaded case is that Stringer tried to gain access to the Plaintiff’s veterinary hospital armed with a length of wood, and the Defendant again negligently refused to take any action to provide protection for Mr Kirk’s property or third parties.
8. The response is that the Defendants have not been able to locate any documentation, either recording this incident, or receiving any message to attend on that date.

**Untrue, yet again.**

**Police were telephoned by veterinary staff in the presence of the Appellant.**

**Sensitive police and CPS records are so called ‘missing’ throughout this civil action as ‘nothing is new under the sun’ when dealing with a few bad apples in the barrel.**

**Despite CPR rules and His Honour Judge Nicholas Chambers QC having ordered their disclosure and therefore preservation, deception is the name of the game.**

**Back in the mid 90s, in Bristol County Court where the Claimant had been solemnly promised it would be finally heard ‘Sringer and other incidents were struck out’ until the Claimant ‘smelt a rat’ and eventually had some, already ‘struck out ‘ incidents’, re instated.**

**This civil action would never have ‘got off the ground’ had not the Claimant preserved and demanded his 30 odd stuffed arch lever files, of most of these thirty three incidents out of a hundred or so, being served on the police when this general excuse, re ‘police no longer have records’, was dealt.**

**The Appellant has, over the years, emphasised his need for all those files to be listed as exhibits with cctv and still yet undisclosed custody records like those of 1st December 2009.**

**1st December 2009 Cardiff magistrates’ file was eventually handed over, to the day, four years later with all reference to what actually went on each day in those shambolic hearings.**

**Who was there, witnesses etc and what was recorded on contemporaneous records in the hearing, police station and court custody suite on that day?**

**Much seen created and asked for by the Appellant for the subsequent 1st March 2012 Cardiff Crown Court Appeal before His Honour Judge Phillip Hughes.**

**Who altered, after conviction, both court log and clerk’s notes asked for and refused for 4th May 20 12 Cardiff jury before His Honour Judge Paul Thomas.**

**, record of where and how the ‘restraining order’ was ‘served’ on this Appellant as the truth further gives grounds of why this civil trial should be re-heard, this time in the High Court outside Wales.**

**An easy ploy when the police know both South Wales magistrates and Crown Courts had clear instruction to release record of 23 years of litigation in person when the then potential Claimant could obtain no legal representation.**

1. **Action 1 8.21: 6 and 7 August 1995**. The pleaded case is that there was again an attack by Stringer; the police were again called; and they negligently refused to take any action, as they failed on 7 August 1995 when Stringer broke windows and caused damage to Mr Kirk’s property at 52 Tynewydd Road despite call to the police. Likewise the Defendants state that they have not been able to locate any documentation either recording the incident or receiving a message to attend the property on that date.
2. All of these matters are dealt with only very shortly in the witness statement of Mr Kirk dated 19 June 2009. As to action 1 paragraph 8.18, (21 July 1995) that witness statement reads, “In the *summer of ’94* (emphasis supplied) I called or had called via veterinary staff the Barry Police to my home, opposite the surgery, at 52 Tynewydd Road, at least 9 times (para. 586). Paul [Stringer] a resident there was seen smashing the front windows and others in the property. A PC Johnson refused to let me see his notebook, sign it, or arrange proper investigation. Paul [Stringer] had attacked me by punching and throttling me with both hands. He also head butted me, (para.587)…. Later on the same day doors were smashed in but again, police refused to do anything about it” (para.589)
3. The incident alleged did not take place in 1994, but on 21 July 1995. This accords with contemporaneous letters written by Mr Kirk; and is contemporaneously recorded in the police notebook of PC 972 Johnson. (See Mr Kirk’s handwritten statement “16:38 local time” of 21/7/95 [Bundle Action 1/5.3G-H]; a letter of 26 July 1995 (Bundle A1/5.52), [coloured photograph produced by Mr Kirk]; and the entry of a broken window endorsed in his handwriting, “windows broken 21 July 95,” and police notebook at 1/5.728.
4. As to the claim in respect of 23 July 1995 Mr Kirk’s witness statement reads “Police were in attendance, the same week, to see Paul [Stringer] attack me and push me down the stairs. I was conveyed to hospital by ambulance (para 590). Police again refused to take my complaint telling a Barry Court that Paul [Stringer] was being released from their custody without charge due to insufficient evidence. …. He had been charged for actual bodily harm. I had specifically asked to be notified of any Court proceedings relating to the police and my property. I was never asked to make a statement of complaint re the assaults or the immense damage done by any of the occupants of 52 Tynewydd Road. [He exempts one WPC Bowden who did attend on 28/7/95 and who appeared genuinely concerned] (para 591).
5. In respect of the claim in respect of 24 July 1995, his witness statement reads “Around 24 July *1994* (emphasis supplied), Paul [Stringer] tried to gain entry to my surgery armed with a large piece of wood (para 594). My clients were clearly frightened we managing to lock the waiting room door just in time (para 595). Police refused to attend or protect my staff and clients. Further windows were then smashed” (para 596). Here too, the allegation clearly in fact relates to 1995.
6. In respect of 6/7 August 1995, Mr Kirk’s witness statement reads “On the 6th August the same man attacked me threatening to burn the house down and if evicted they would break back in. … I informed the police of what I was told and identified neighbours who had heard threats. Statements were taken and I passed on the information to the police (para 597). Paul [Stringer] then was seen smashing more windows, photographs of his damage given to police with a builder’s estimate for the cost incurred. Photos and eye witness accounts in writing, were again gathered by staff and myself offered to the police (para 598). Police, at least twice a day, were called but refused to intervene (para 599).” He then describes the house catching fire and gaining entry with 3 fire extinguishers 2 of which were faulty, as he also related to the police, since the extinguishers had internal parts missing, yet the police still refused to prosecute. Fire engines and an ambulance attended the fire leaving an estimated insurance claim of £6,000.
7. All of these claims concern the actions of Paul Stringer (and to some extent it seems other tenants, a Mr Burns and a young woman). The evidence of the police officers called before me established clearly that, at that time, Mr Stringer and Mr Burns were well known to the police as frequently causing trouble or damage in particular whilst drunk.
8. 21 July 1995. It is plain that there was an incident involving Paul Stringer which led Mr Kirk to call the police. In a witness statement PC Johnson states that prior to this incident he had knowledge of Paul Stringer and had arrested him previously for offences such as drunk and disorderly, and on this day attended on receiving a call over his radio. He believed Mr Kirk was the person who contacted the police to request attendance and to report damage (witness statement 28.2.2000, paragraphs 3 and 4, A1/5.4 at A1/5.5). PC Johnson states that Mr Kirk did not make any mention of an assault on him, “Mr Kirk just wanted Paul Stringer out of the property and did not wish to make a complaint about him. He did not want there to be any proceedings in relation to the criminal damage he just wanted the police to advise Paul Stringer to move on. I advised Mr Kirk I would come back to the property later to see if Paul Stringer was present. If there were any problems in the meantime he could contact me” (paragraph 7). He relates the demeanour of Mr Kirk as being reasonable until a point where he requested to examine and sign the police notebook which the police officer declined. He says that later that day he attended at the surgery, “Mr Kirk was not at the surgery and I therefore left a message for him to contact me. I received no further contact from Mr Kirk concerning this matter” (paragraph 9 A1/5.4 at 6).
9. The entry in the police notebook, which was not challenged, is consistent with the emphasis being on removal of Paul Stringer: “17:50 52 Tynewydd Road re problems at premises from Paul Stringer. Owner of premises a bedsit Maurice Kirk spoken with and requested for Stringer to be removed from premises as had smashed a window at the address” (Bundle A1/5.7). The notebook also records a further attendance at 19:25, that Mr Kirk was not then at the premises, and that a message was left with the occupier that they had attended. In oral evidence PC Johnson told me that this message was left with a lady, but he did not remember her name as it was too long ago.
10. In a witness statement of 19 February 2010 (i.e. 15 years later) PC Johnson stated that he had “no recollection” of attending upon Mr Kirk in respect of any of the other incidents alleged [namely 24 July 6 August or 7 August 1995] (A1/5.70 at 71).
11. In his oral evidence before me PC Johnson was not an impressive witness. He became heated during cross examination, stating “Who are you raising your voice to?”. He had a tendency to fence with questions, e.g. when asked whether if he had arrested Mr Stringer he would “interrogate him” he answered “No. The police wouldn’t interrogate him. …. I have interviewed detained persons, yes”. As he left the courtroom, he had an altercation with a person sitting at the back of the court. PC Johnson maintained his evidence that he had not known of Mr Kirk prior to attendance on 21 July 1995 and that Mr Kirk had not informed him that he had been assaulted. He had not found Paul Stringer present at the premises; if he had been there, he would “possibly look to remove him from the premises”. He said that Mr Kirk had requested that he remove Stringer from the premises. He said he knew nothing of other incidents involving Mr Kirk, or Stringer, at 52 Tynewydd Road. He was insistent that, if Mr Kirk had made clear to the police that he wanted something to be done about Stringer, he knew nothing of that.
12. The evidence before me goes much further than the brief references in Mr Kirk’s witness statement of June 2009.
13. Mr Kirk wrote a letter dated 21st July 1995, addressed to the Duty Inspector at Barry Police Station. In it he stated that “at about 4:23pm today” he saw Paul Stringer break a window of his house on 52 Tynewydd Road, seen by a man calling himself John Edwards, and “I crossed the road and went to 52 Tynewydd, where I was head butted, punched and throttled by his hands around my neck in front of Mr J Gill, Marion James and someone else. Paul Stringer continued to be violent throwing me against the wall. I had some bruises on my back from the injury. His speech was incoherent. I manages (sic) to get down the stairs whilst he shouted further threats of assault on me, and further damage to the property. I reported the matter to police officer 972 John Johnson at 5:00pm today. I fear for the occupants of the house and the fact that he has threatened to do more damage to 52 Tynewydd Road. I believe he should be apprehended without delay. It is a matter of record that the police have refused to act properly in the past when receiving my complaints. The policeman refused to take a statement of complaint for me to sign or be recorded in his notebook. At 5:40pm I returned to inspect the damage and found a damaged door, a smashed internal door which was not like it when I left after the assault. I telephoned and spoke to PC Johnson at about 17:45pm and reported that they were all back in the house including the witness, possibly Mr Edwards. This is a complaint of serious assault and criminal damage to the South Wales Police Force” (A1/5.9).
14. One of Mr Kirk’s then staff was Jill Jones. A handwritten letter is in the trial bundle dated 21-7-95, signed by “J. Jones” and in the following terms “I was asked by MJK to run after a gentleman who had been speaking to Mr P Stringer. When I caught up with him he accompanied me back to the hospital [i.e. veterinary hospital] where Mr Kirk asked him some questions. He gave his name as John Edwards and telephone number as 747748; he also said he was talking to Mr P Stringer then afterwards Mr P Stringer smashed a window of 52 Tynewydd Road. Time 16:36pm” (A1/5.3F).
15. There was not a witness statement as such from Miss Jones, and she was not called as a witness before me. Nonetheless the handwritten note of Mr Kirk himself, headed “4.23# [broken] glass” mirrors the handwritten letter of Miss Jones, viz “16:29 saw window broken, saw Stringer [indecipherable] a Mr Edwards in road. Jill was asked to run after him – Mr Edwards confirmed to me he saw Stringer break the window”. That handwritten note says that Mr Kirk went straight to 52 Tynewydd Road where he saw Stringer in the front room and “he head butted me and punched. I did not hit back… Stringer then tried to throttle me – he was quite incoherent in what he was talking about. I managed to get away to call 999” (A1/5.3G to H). There is thus a contemporaneous note of the incident of the window being smashed, and a contemporaneous letter of the very same day which alleges, in addition to the smashing of the window, an assault on Mr Kirk by Paul Stringer. It would be surprising, when Mr Kirk was on the same day writing to the Duty Inspector in the terms that he did in the letter of 21 July 1995 above, if he did not equally report to PC Johnson the assault as well as the criminal damage.
16. I consider below Mr Kirk’s own answers in cross examination as to the focus of his concern and interest at that time. The trial bundles contain a handwritten letter from a Jennifer Hanson to Mr Kirk, apparently of this time, complaining of disturbance to herself and her young child, by the foul language and persistent noise from his tenants, and seeking discussion with him in contemplation of taking further action of a more official nature from his property (A1/5.3D, Claimant’s bundle at 168). There was no witness statement from her, and she was not called as a witness before me. However it is readily understandable that one of Mr Kirk’s then concerns was to achieve removal of the tenants, Mr Stringer in particular.
17. Mrs Holland, a then member of Mr Kirk’s staff, was called as a witness before me. She was careful, and precise, and said that there was more than one fire at 52 Tynewydd Road, and that during the period of Mr Stringer and Mr Burns being there “They were not very pleasant people”. She thought that it was between 2 and 3 and a dozen times that the police were called. She was unable to tell me whether the lack of contact with the police was because they did not call at the surgery when they went to 52 Tynewydd Road, or whether they did not call.
18. I have related above the evidence of Mrs Jane Davies (formerly Walker) as wondering why police did not attend. She was employed not at Barry but at Llantwit Major. Nonetheless her evidence chimes with that of Mrs Holland.
19. 23 July 1995. In respect of this incident, PC 1623 Martyn James attended having “received message via my radio, of a domestic situation at 52 Tynewydd Road” (witness statement 28.2.2000 paragraph 4 A1/5.37 at 38). “I entered the hallway of the premises and saw that wooden stairs had been smashed and pieces of wood were strewn across the hallway.” He spoke first to Paul Stringer, in the living room, then checked upstairs and saw a female “who was known to me” and was the girlfriend of Paul Stringer, in a state, whom he attempted to calm. Mr Kirk must have entered the building as “he came up the stairs shouting at Paul Stringer blaming him for the damage”. In the passage way, “Mr Kirk continued to approach and was shouting into the face of Paul Stringer. Paul Stringer then started to respond and put out his hand to push him away. As soon as I heard Paul Stringer raise his voice I got up from the bed and moved out of the room with a view to sorting out the situation. However I did not get to the situation before Paul Stringer put his hand out to push away Mr Kirk. At this time Mr Kirk was about 4 to 6 feet from one of the flights of stairs. He stumbled/tripped backwards, hit the side wall and fell down about 3 stairs and landed on his bottom. Paul Stringer did not approach Mr Kirk and had no further contact with him.” PC James states that he arrested Paul Stringer for assault. Mr Kirk was on the floor requesting an ambulance, indicating he had aggravated an old back injury, and PC James radioed for an ambulance to attend and he was taken to hospital. He took Stringer to Barry Police Station and presented him to the custody sergeant for detention but Stringer was intoxicated and unsteady and on attendance the Police Surgeon did not think Stringer fit to be detained.
20. PC James’ police notebook is to the like effect (A1/5.42 to 45); as is the custody record which includes “23/7 time 18:28. Arrested for assault ABH on Mr Maurice Kirk at 52 Tynewydd Road, Barry earlier this afternoon. There had been [indecipherable] between the two parties which resulted in Mr Kirk being pushed by the DP down the flight of stairs” (A1/5.47). At 20.35 hours the custody record includes, “informed Mr Paul Stringer in the interests of justice that he does not get involved with the injured party, he said I will be leaving his house tomorrow”.
21. Mr Kirk said that PC James did not take a witness statement from the woman whom he saw on the landing after he saw Stringer push Mr Kirk, this being in fact Kirstie Webb, later to be Mrs Kirstie Kirk; in cross examination, PC James agreed. I turn to her direct evidence of this incident below, and it will be seen that it does not assist Mr Kirk. :
22. In his witness statement and in his oral evidence PC James states that he could recall attending on Mr Kirk to try to get a statement, by attendance at the property and by trying to make arrangements to meet him but that he was never available; he also tried to contact him on his mobile and at the surgery although “Mr Kirk responded that he could not speak to me as he was too busy. I also invited Mr Kirk to attend at Barry Police Station to make a statement but he never attended. Therefore the matter did not proceed, as it appeared that Mr Kirk did not wish to make a complaint.” (paragraph 13 A1/5.41). In oral evidence, PC James told me that he needed a ‘Statement of Complaint’ from Mr Kirk to proceed with a charge. He related telephoning the surgery and speaking to the receptionist, but never getting to speak to Mr Kirk, other than the one occasion on his mobile phone. “I wanted to take a short statement, it would have taken 20 minutes, he stated he was too busy”.
23. PC James agreed that Mr Stringer then had a number of convictions on the PNC, but said that in December 1995 the decision whether to charge would have been that of the custody sergeant. The custody sergeant was PS 2411. Other police officers, in relation to other incidents the subject of claim, likewise told me that (at this period) the decision whether to charge would have been the responsibility of a custody sergeant.
24. The location, and extent, of Mr Kirk’s fall down the stairs, are essentially the same between Mr Kirk, and PC James, in their respective accounts. The hospital records confirm that Mr Kirk was taken to hospital where he was tender to the left side of the lumbosacral spine, over his ribs, and to his “right” ankle; the history includes “assaulted at home – pushed backwards down flight of stairs, injury to right ankle and chest”. (A1/5.53 at 54). In cross examination Mr Kirk declined to accept that he was shouting at Stringer, saying “when does a loud voice change to a shout?”, but in particular said that he was quite violently pushed, and deliberately, down the stairs.
25. The difference between the accounts of Mr Kirk and PC James is that according to PC James “in my eyes the push by Paul Stringer to Mr Kirk was an attempt to get him away from his face and not cause him serious harm” (paragraph 14 witness statement 28.2.2000 A1/5.41).
26. There was another witness to this incident, Kirstie Webb, as she then was, later to be married to Mr Kirk. Mr and Mrs Kirk have, sadly, separated and divorced following events of 22nd June 2009 when Mr Kirk was arrested on charges of possession of a machine gun, and was detained for a number of months until acquitted by the jury at trial in February 2010. Nonetheless this is not a case where the evidence of a witness should be approached with care because the witness has fallen out with the person against whom he/she is called. First, Mrs Kirk was called as a witness by Mr Kirk himself. Second, I found her an impressively careful witness who was at pains to relate to me only what she could recall.
27. In respect of this incident, her evidence is not helpful to Mr Kirk’s cause. She told me that she was in the stair well area, that she did see Maurice being pushed and fall down the stair, but said “I actually thought he had provoked Paul Stringer to push him and that’s why I wasn’t prepared to agree with him that the police officer hadn’t acted properly”. In cross examination, she said “I don’t remember whether there was shouting. I know it was provocative, Maurice was the provocateur. “Q. May the push have been to put distance between himself and Mr Kirk? A. It could have been. I can’t absolutely remember in detail”. In short, Mrs Kirk supports PC James’ account of the incident.
28. PC James was a somewhat passive witness in oral evidence, who struck me, without any intended discourtesy to him, as a somewhat stoical and unimaginative witness; but he did arrest Stringer at the scene. On the content and demeanour of his own evidence, even if it stood alone, I would have accepted his account that he had tried to make contact with Mr Kirk to take a witness statement, but without success. However his evidence is also supported independently by two observations, one which is general, and one which is particular to the incidents of July 1995.
29. The general observation is that during the many days of evidence in this trial, which included not simply questions to witnesses but comment by Mr Kirk, I formed the firm impression that in the years in question Mr Kirk was an extraordinarily busy veterinary surgeon, who worked very long hours indeed, and made himself available to clients at all hours. In respect of other incidents, police officers have recorded him as saying that he was extremely busy and did not have time to waste on the police; and in cross examination he did not dissent from the suggestion that this was so. That is supported by direct evidence to which I refer below.
30. The particular observation is as to 21 July 1995 itself. When it was suggested to him in cross examination that he was not asking for charges to be brought, as opposed to wanting Paul Stringer out of his premises, he answered, “Any unnecessary involvement with the police was leading to trouble for me. I would have been reluctant to ask for police involvement.”…. Q. You called the police, but you were not necessarily wanting a prosecution to be instituted? A. Well, it’s time consuming. And I was aware that even a minor conviction could cause problems”. To the suggestion that PC Johnson came back later that day his answer was “I don’t think he came back” (i.e. not, eg, ‘I was at the veterinary surgery, and he did not come back’).
31. As to this very incident of 23 July 1995, having agreed in cross examination that the police officer did arrest Stringer, and did arrange an ambulance, in cross-examination as to the police officer’s attendance subsequently to get a statement, Mr Kirk answered “Once, I was busy. Then they used that as an excuse…. Q. He tried to get hold of you at the surgery? A. Well, I was very busy….. Q. He invited you to attend the police station to give a statement? A. Once. Q. Why did you not go to the police station? A. I’ve been to Cardiff Police Station five times, they don’t produce a police officer to take a statement. A day or two later, I said, I’m too busy”. In short, Mr Kirk appears to accept what PC James said in relation to 23 July 1995.
32. This is not to say that Mr Kirk failed to pursue the matter in writing. On 26 July 1995 he wrote again to the Duty Inspector at Barry Police Station, “Paul Stringer. Further to my letter of 21 July 1995 I noted, with little surprise, that the police did little towards investigating my complaint of a serious assault by Paul Stringer. On 23 July I visited 52 Tynewydd Road to inspect further damage caused by Paul Stringer. A police officer saw Stringer, quite unprovoked, fly at my throat with both hands and push me down the stairs….. I was informed that Stringer was not detained by the police because he was ‘unfit’ and returned to the premises further frightening the residents and neighbours”.
33. 24 July 1995 and/or 6/7 August 1995. The Defendant states that there is no record of call to the police or attendance by them.
34. As to 24 July 1995, in Mr Kirk’s letter of only two days later 26 July 1995 (cited above), Mr Kirk continued, “On 24 July 1995 Stringer tried to gain access to the veterinary hospital armed with a length of wood. I again reported this matter to the police and again being refused access on the phone to either the Duty Sergeant or Duty Inspector. Still further damage has been done by Stringer since that incident and neighbours again have approached me expressing their fears of further violence. I warn you yet again that if something is not done today the next one to be injured may not recover” (letter at A1/5.52).
35. As to the 6/7 August 1995, only a day or two later on 8th August 1995 Mr Kirk wrote again to the Duty Inspector at Barry Police Station stating “Paul Stringer. On 6 August 1995 Paul Stringer was seen to hold a knife to someone’s throat, causing the police to be called. On 7 August at the same premises, 52 Tynewydd Road, again the police were called. I once again warn you that somebody is going to be seriously injured, if not fatally. Serious criminal damage was occasioned when he broke further windows. On 7 August 1995 the front door of 52 Tynewydd Road was completely broken. [Mr Kirk added a handwritten postscript: ] P.S. I have now telephoned 11 times complaining as to what is being done since my last letter”.
36. Inspector Stephen Griffiths gave evidence, both by witness statement and orally, that he was asked to investigate in November/December 1996 a number of incidents of which Mr Kirk complained, including these. “My searches were unable to find any information in respect of these matters. As part of my enquiries I spoke to relief officers at Barry Police Station who would have been on duty on the relevant dates and times. I attended at the station at their briefing session and asked the whole relief to check their pocket books to ascertain if there had been any involvement on their part. There was no positive response. I also made enquiries on the CIS which was a computer network set up in 1994 which deals with all crimes in the South Wales Police area. I also made a check of IRIS messages which is a separate computer dealing with all operational force matters dealing with complaints reports etc. These enquiries were negative”.
37. Mr Kirk was extremely complimentary to Mr Griffiths during is evidence and expressed his appreciation of Mr Griffiths’ efforts. For my part, I am satisfied that Inspector Griffiths (then PS 913 Griffiths) did make diligent enquiry in November/December 1996. Disclosure in the course of trial revealed a letter to him from Mr R Leighton Hill, Force Solicitor for South Wales Police, dated 19th November 1996, in respect of incidents of 21, 23, 24 July and “7” August 1995. By letter dated December 6 1996 Mr Griffiths reported that “the reliefs working on the relevant dates have been spoken to and have been unable to provide any information. Enquiries with the CIS and IRIS were also negative” (blue disclosure bundle 103).
38. It is of some note that Mr Griffiths added, “whilst making enquiries the following crimes were recorded on the CIS which all refer to Mr Kirk’s premises at Tynewydd Road, Barry and all were offences of criminal damage: EA/95/6841; EA/95/12952 [which may in fact be 10952]; EA/95/11088; and EA/95/11089.
39. He included copies.

EA/95/6841 recorded criminal damage to a value of £60, “nominal” [i.e. Stringer] seen to throw object at van windscreen smashing windscreen, nominal then arrested by police officers at scene.

EA/95/10952 in respect of a Mr Burns [also a tenant] showed complaint of damage to property damaged “£2000” and “there has been an ongoing dispute between land Mr Kirk and tenant Mr Burns which culminated in the nominal [i.e. Burns] setting fire to bed and chair in room destroying his property causing smoke damage to this room. Fire contained by Fire Service damage being accessed cigarette lighter used to start fire” (page 115); complaint of damage to a value of £170, “persons or person unknown smashed internal door damaging frame, and smashed side landing window”.

EA/95/11089 was a complaint of damage to a value of £485 “persons or person unknown with legitimate access, caused severe damage to five external windows and two internal doors” (page 111); respectively on 7/6/95, 16/09/95 between 16/09/95 and 19/09/95, and 19/09/95.

1. Each report gives the name of “Officers Involved”. Respectively, in the same order, the serving police officers involved were PC 3120 Davidson, DS 927 Runnalls, and PC 3210 Martin; DC 2600 Jones DS 927 Runnalls and DS 1264 Cottle; PC 56 Edwards; and PC 56 Edwards and PC 146 Ross. No witness statement was submitted by the Defendant in respect of any of these police officers. I have no information or evidence as to whether those officers were unavailable retired or dead.
2. Those forms strongly corroborate the evidence of Mr Kirk, in his witness statement and orally, that there were repeated calls to the police from him or his staff in respect of the premises at Tynewydd Road and that the matters being reported were either not trivial, or were serious. Mr Kirk’s evidence is corroborated by that of Mrs Holland (and Mrs Jane Davies).
3. The custody record shows that on 13 December 1995 Stringer surrendered to bail at Barry Police Station, with his solicitor in attendance, and was interviewed by PC James 1623. No charge was in fact preferred against him.

1. Factual conclusions. In respect of 21 July 1995, Mr Kirk appears to have submitted details of potential witnesses [himself, Jill Jones, John Edwards] but there is nothing to indicate that statements were taken from them. On the balance of probabilities I consider that Mr Kirk did complain to PC Johnson that Stringer had assaulted him. Equally I consider that on the balance of probabilities PC Johnson did attempt to make further contact with Mr Kirk to take a statement, but Mr Kirk considered himself too busy to do so and at that stage of the Stringer incidents Mr Kirk was more concerned with getting Stringer out of his property than with him being prosecuted. Without a witness statement or response to assist from Mr Kirk the direct victim of Mr Stringer in this incident, a prosecution was unpromising, the more so if the incident of 23 July 1995 was as described by PC James.
2. In respect of 23 July 1995, I conclude on the balance of probabilities that despite Mr Kirk being taken to hospital, PC James was not satisfied that Stringer had had any intention deliberately to harm Mr Kirk and took the same view as Mrs Kirstie Webb of Mr Kirk’s role upon the stair. This is supported by the fact that he arrested Mr Stringer for “ABH” as opposed to an offence involving intent to injure. As an individual police officer, I am satisfied that he was faced with a complainant in Mr Kirk who considered himself too busy to make a witness statement in support of a charge being brought.
3. A police witness statement was taken from Mr Kirk dated 30 September 1995, of complaint of a threat by Mr Burns on 14 September 1995 to burn his premises, and of an incident of 16 September 1995 when there was fire with attendance of the Fire Service to put it out, but not in respect of any of the other incidents, despite the letters to the Duty Inspector. It appears that Burns was arrested in respect of the fire but the prosecution did not succeed. (“Another occupant was arrested for the fire but dismissed at committal”, Mr Kirk letter to Bobbetts Mackan 20.02.1996 A1/5.61).
4. I received, in particular, evidence from PC Manders, in connection with the incident of 6 June 1995 (an incident involving police officers from Ely, Cardiff, but where PC Manders was responsible for arrest when Mr Kirk presented himself at Barry police station). PC Manders was a community constable at Barry, home territory to Mr Kirk with his surgery there. He struck me as a straightforward and impressive witness. I find particular interest in his answers when asked in cross examination for his background knowledge of Mr Kirk.

“Q. What generally was my reputation? A. The honest one was if it was anything to do with Mr Kirk, officers would ask me to speak with him, the younger police officers in particular did not like dealing with him, he was difficult. I was at ease. I like Mr Kirk. A lot of officers did not like to deal with Mr Kirk because it could be difficult to deal with him at times. And I’m a community officer. I was happy to go.”

Asked directly on this point, he said that in his time, working at Barry police station, he could not imagine no police officer attending to a call from Mr Kirk, “it would be a neglect of duty”, and “if you made an official complaint to South Wales Police I would be aghast if you did not get a response”. Re-examined, as to what he meant by “difficulty” with Mr Kirk, his answer was

“On occasion he could be quite irate, quite angry, sometimes belligerent, and not always give the full facts. It made it difficult particularly for a younger constable. Q. Towards you? A. Yes, but because I got used to his quirks of character, I could fathom out what it was about…. Were officers falling over themselves to arrest Mr Kirk? A. I would suggest not, it was difficult, it was never an easy outcome”.

I noted his answer to Mr Kirk

“You can be quite aggressive, you can be too forthright, you would not always give the full facts – you would get angry quite quickly. I like you, you’re quirky and interesting”.

Having heard all the evidence, and seen and observed Mr Kirk myself, I regard this evidence as insightful and persuasive.

1. More generally, with PC Johnson and PC James, I had the impression that Stringer and Burns were regarded as noxious troublesome and to be managed rather than prosecuted, save with the serious incident of arson complained of not against Paul Stringer but against Mr Burns. (The incident in respect of Mr Burns is not the subject of claim in these proceedings and in any event, if the letter to solicitors Bobbetts Mackan is accurate, the police were willing to bring and pursue charges in the first instance at least).
2. As to Mr Kirk himself, I have noted my firm impression that during this period he was extraordinarily busy and diligent. This is supported by direct witness evidence. Mrs Jane Davies, who worked for him from 1992 into 1994, told me that at Barry, “The veterinary office was at best frenetic. It was difficult catching Mr Kirk, the hours he worked”. In addition he has, to put it neutrally, a very large sense of self importance, both as to his then professional status as a veterinary surgeon; and, as I conclude, in expecting others and the police in particular to get on with the business of securing evidence and taking action against those of whom he complained. His own oral evidence concedes, in effect, what PC Johnson and PC James respectively said about the difficulties of making contact with him and the absence of any witness statement from him as to the incidents of 21 and 23 July 1995. If the principal complainant was unwilling to make himself available to make a statement in respect of these two incidents, it is not unduly surprising to me that PC Johnson and PC James respectively should have not succeeded in taking the matter of prosecution further.
3. As to the incident of 24 July 1995 I consider it unlikely that Mr Kirk was himself present. First he does not say so in his witness statement. Second given his personality (and that of Stringer) I consider that if Mr Kirk had been present the incident would have escalated and there is no report that it did. Equally given Mr Kirk’s letter of the next day I consider that Mr Kirk did report the matter to the police, as something which was reported to have occurred not something which was then occurring and there is no evidence of report to the police as this particular incident was occurring. I consider it probable that Mr Kirk was fended off from speaking to a more senior police officer, as he says he was, and that there was no police follow up at all, given the absence of record of this incident by the police.
4. As to the incidents of 6 and 7 August 1995, (knife, windows broken), there is some degree of ambiguity in Mr Kirk’s own letter of 8 August as to whether the police did or did not attend: “the police were called” – without express complaint, as elsewhere, that they did not attend.
5. On 7 August 1995 his account appeared to be one of having found damage to the front door, which Mr Kirk concluded that Stringer must have done, rather than direct observation by him of the damage being carried out.
6. I conclude as a finding of fact on the balance of probabilities that the incidents of 24 July and 6/7 August 1995 were reported to the police but, given the absence of contemporary police record of attendance and to some extent the more general evidence of members of Mr Kirk’s staff Mrs Holland and Mrs Jane Davies (then Jane Walker), the police did not attend on the dates in question. I am unable to make firm conclusions on whether the police attended on any later date or dates.
7. Mr Kirk believes that if police did not attend, it was as a result of conspiracy to make life difficult for him to practise as a veterinary surgeon. This is contended to be linked to the antipathy of the Guernsey Police towards him. Given the repetition of incidents involving Stringer within a short period, and the evidence of Mrs Holland and Mrs Davies, I regard it as probably regrettable in at least some instances that there was no urgent attendance or follow up. However the conspiracy theory is (i) inconsistent with the instances when police officers did arrest Mr Stringer and Mr Burns, (against whom prosecution for arson failed at committal), and with Stringer attending the police station for interview with his solicitor, and (ii) is unsupported in respect of the “Stringer” incidents by any direct (or indirect) evidence. I consider that as a matter of fact it is infinitely more likely that the explanation for any non-attendance lies in the evidence of PC Manders (see paragraph 508 above).
8. I now turn to whether such incidents support a claim in law. In my written judgment of 30 November 2010 I set out in detail the law and authorities in this area. I do not propose to set this out again in full in the text of this judgment. In general for reasons of public policy the highest Courts have ruled that there is - in general - no privately actionable duty of care to members of the public. This is so even where the damage alleged was the most terrible that could be imagined: the murder of the daughter of the Claimant, at the hands of Sutcliffe “the Yorkshire Ripper” (*Hill v Chief Constable West Yorkshire Police* (HL 1989 1 AC 53). Language less deferential to the police is (happily) now employed than that used in *Hill*; but the “core principle” in *Hill* has been consistently upheld in subsequent decisions, (*Brooks v Commissioner of Police for the Metropolis* [2005] UKHL 24; *van Colle* [2008]UKHL 50). Illustratively, in *van Colle* the core principle was upheld even though, in the words of Lord Hope,

“There was in Mr Smith's case a highly regrettable failure to react to a prolonged campaign by Jeffrey threatening the use of extreme criminal violence”.

If liability is excluded in the circumstances such as *van Colle*, I do not see how it can fail to be excluded in the case of the incidents involving Paul Stringer.

1. As a matter of conceptual analysis, a possible exception to the core principle has been canvassed in “special” or “exceptional” circumstances: in *Brooks* (Lord Steyn) and *van Colle* (Lord Carswell). In none of the authorities to which I have been referred is there an attempt to define what is “special” or “exceptional”. However what is clear is that negligence which gives rise to serious specific and imminent threat to life of an individual member of the public is not in itself sufficient to found a duty of care actionable at the suit of that individual. If that is so, then absent a positive conspiracy to allow Mr Kirk to be injured or damaged by Mr Stringer, I conclude that no claim lies in respect of any of the incidents at Action 1 8.18, 8.19, 8.20 or 8.21. On the direct evidence there is no such conspiracy shown and in my judgment none to be inferred from any direct evidence of the incidents. Yet again, I am willing to keep open a final conclusion until I have reviewed all the evidence in the case but the material in relation to this group of incidents is unpromising.