Action 2 14.3 Breath Test required at Cowbridge Road West Surgery 20 December 2000.

**A classic example of another police ‘fishing exercise’ just to establish the Appellant’s latest insurance company‘s name and address. No evidence was heard to identify the police’s excuse for a cause of action.**

**No fact was ever substantiated of a road traffic accident or how when and where or by whom that there was a moving traffic offence for the police to have a reasonable cause of demanding a road side breath test on private land.**

**Had the Appellant not been in the middle of morning surgery he would of, without doubt, refused the breath test as an abuse yet another abuse of process.**

**Is it a coincidence, just seven days earlier, in:**

**Action 2 paragraph 14 campervan outside Cardiff County Court 13 December 2000 that the police failed to establish the Appellant’s insurance company and also failed another prosecution process designed for that purpose? Proved unlawful locking up of the Appellant up only achieved tow away and parking charges exceeding £200 to identify further police malice?**

**Is it a coincidence in:**

**Action 3, paragraph 6.1 arrest at West Gate, Cowbridge 23 May 2002 , PC Bickerstaff features in this incident , still frantic, two years later, to identify the owner of the VW and another one of this judge’s stayed Actions consisting of some thirty concocted incidents that should have been heard along these?**

**Is it a coincidence in:**

**Action 3, 5.1-3 the VW Campervan around the Hayes Roundabout 21 May 2002**. The ubiquitous Cocksey and PC Osborne also fabricated alleged traffic offences all of which failed, mainly before court when again the Appellant refused to produce proof of insurance for fear he would lose his livelihood.

**Action 2 14.3 Breath Test required at Cowbridge Road West Surgery 20 December 2000.** The pleaded case is, “On or about 20th December 2000 police officers attended the Claimant’s surgery in Cowbridge Road and required him to provide a breath sample. There was no good reason for this action and the breath sample was negative”. This is the totality of the pleaded case. There is no allegation, nor is it suggested in the evidence, that Mr Kirk was arrested or detained. Thus the pleaded case shows no cause of action. However summonses were issued but later withdrawn; and in the light of Mr Kirk’s allegation of overarching conspiracy on the part of the police it is incumbent on the court to explore the circumstances, in order to determine whether the actions of the police on that date, or arising from that date, are shown to have been without reasonable or probable cause, or ill motivated.

**The Appellant WAS DETAINED to carry out his legal responsibilities while, meantime, holding up his surgery of clients , the ultimate purpose from spite.**

1. It is common ground that at about lunchtime that day PC 301 Zachary Mader went with another police officer, acting Police Sergeant Stewart Chick (PC2673 since retired), to Mr Kirk’s veterinary surgery at Cowbridge Road West, Ely, not far from the Ely Police Station; that PC Mader asked to speak to and did speak to Mr Kirk at the surgery; and that he asked him about a VW Caravanette parked immediately outside the surgery. It is also common ground that Mr Kirk was required to provide a sample of breath and that this proved negative. It is also common ground that Mr Kirk was required to produce his motoring documents and refused to do so, and that equally he made it plain when served with an HORT1 form to produce those documents at a police station that he would refuse to do so.
2. I received evidence, by witness statement and orally, from Mr Kirk and PC Mader only.

**The recurrent theme of police failed disclosure**

1. The witness statement evidence of Mr Kirk is succinct. In his witness statement of 19th June 2009, he says

“731. I was doing surgery consultations in Cardiff only to be made to do a breath test whilst in my consulting room and accused of a traffic offence. 732. The police refused to divulge the details of the other driver, details of the car, or his driving documents. They refused to make him take a breath test[sic]. 733. I was refused any information in writing other than the issuance of an HORT1. 734. I was later charged with ‘failing to produce documents only for all charges to be withdrawn by CPS’ (Bundle 2/8.182B).

In an undated page at Bundle 2/8.191, which probably originates from 2002 at the time of giving instructions to his solicitors for the second action which I am trying, he stated,

“On 20 December 2000 I was interrupted at my Cardiff surgery by two police officers who were investigating, they said, a complaint by a man well known to them then, who had an un-roadworthy car parked on my private land, which I suspected was not covered by third party insurance. I was made to give a breath test, which was negative. I was ordered to take my insurance and MOT to the police station, which I refused to do, demanding they record what I had said. I was accused of causing a road traffic accident, thereby giving them the excuse to harass me. My request for them to investigate the man on my forecourt was refused so I decided to refuse to produce any of my documents or give details of the vehicle I was supposed to have been driving, to force the issue. My letters and telephone calls during the next few months were ignored, giving no explanation or outcome to my complaints about the other driver who then went on and did considerable damage to my property.” (Bundle 2/8.191).

This does not reveal whether Mr Kirk disbelieved, or accepted, that a complaint had been made, or by whom such complaint might have been made to the police. However a letter from Mr Kirk of 6 June 2001 to the CPS states “On 20 December I was made to do a breath test in my surgery following a complaint from a vandal squatting in my flat” (Bundle 2/8.192).

1. In oral evidence in chief, Mr Kirk simply adopted what he had set out in the documents to which I have referred. In cross examination, he agreed that the police officers who visited were discussing a collision between another vehicle and the vehicle which was possibly his own, outside the surgery. He said that he “did not know” who had made a complaint about what, but when reminded of his letter of 6 June 2001 (above), he told me that one of the possibilities was that the person in the top flat, who wasn’t paying rent, had made the complaint, since he Mr Kirk had made a complaint to the police of that person stealing, albeit the police did nothing about it. He agreed that he was required to produce a document including a certificate of insurance and test certificate, and refused. In answer to PC Mader’s recollection that Mr Kirk at the scene then told the police officers, “Well your involvement with this finishes now and it will go to your department that deals with documents”, he did not dissent that this is indeed what he then intended. He agreed that he was required to provide a specimen of breath, although at this remove of time he did not remember giving one; he accepted that he had, given his own handwritten note “20/12/0 Ely surgery PC2673/301; 13.24.49 [the time] – ve breath test. Owner – no reply (2nd request) repeated. 1st I would need notice for a Q like that [apparently as to who was the owner of the caravanette] I will not bring. 301 will be prosecuted”. Likewise PC Mader wrote on the HORT1 form the words “will not attend a police station” (both copied at Bundle 2/8.188).

**The police officer admitted, at the scene of the breath test voluntarily given, he had no idea who the complainant was or supposed vehicle the Appellant was allegedly to have been driving to have possibly committed any moving traffic offence.**

**Therefore, it is the Appellant’s submission, the request for a sample of breath, under the Road Traffic Act, was unlawful and an abuse under the Human Rights Act 1998**

1. The witness statement of PC Mader is dated 2 February 2009, namely some eight years after the incident. He no longer had a copy of his pocket book entry, and he had very limited recollection of the incident.

**NB This incident indicates that it was more than seven times that this Appellant has now refused to produce driving documents without prosecution for the overarching conspiracy, by the ring leaders, would be identified.**

**Still more seriously irresponsible conduct by the Chief Constable of South Wales Constabulary, by not to applying the law for the safety of the general public, was defying His Honour Judge Nicholas Chambers QC’s succinct order to disclose police records of this and numerous other similar events.**

1. He could not then say whether he was accompanied by another officer, but he was able to confirm that PC2673 (as recorded by Mr Kirk on the HORT1 form, see above) was retired PC2673 Stewart Chick. He produced documents which were respectively the HORT1 served on Mr Kirk, a pro forma statement by him as reporting officer recording attendance at 13.05 on 20/12/00 at Cowbridge Road West, Ely Cardiff, in which under “details of offence” there was circled ‘no insurance’, ‘failed to produce insurance’, ‘no test certificate’ and ‘failed to produce test certificate’.
2. I interpose that it is clear from the documents in the bundle that in due course, following Mr Kirk’s refusal at the scene to produce documents, and his non-production of those documents at a police station thereafter, summonses were issued on 20 March 2001. Later, on or about it would seem 5.6.2001, they were withdrawn by the CPS (Bundle 2/8.194, 196-197, 193).
3. The witness statement of PC Mader of February 2009 states that he spoke to Mr Kirk at 13.05 and ascertained that he was the owner/driver of the VW Caravanette, and was the person responsible for parking the vehicle. This was not challenged in cross examination, nor was the contrary suggested by Mr Kirk during evidence. In oral evidence, PC Mader told me that he believed he was attending about a road traffic collision which had taken place, in answer to a radio message and confirmed his witness statement that he would only have requested a breath sample had he reason to believe that Mr Kirk had been involved in a road traffic accident.

**OF course it was not challenged as to who’s car it was and/or who parked it as it could open the door for further fishing’ and harassment of the owner and or driver who parked it, whoever that was. Assumption of no challenge is a theme in this extreme case.**

**Appellant knew full well he was neither the owner nor driver of a VW camper van and the very fact he may have parked it, on some day, no evidence indicated as to which two or more cars were involved in an alleged traffic offence when and where?**

1. Asked by Mr Kirk whether he knew of Mr Kirk or his reputation with the police, PC Mader told me that Mr Kirk was known to him as a person who “needed to be dealt with in a professional manner”; that he was aware that Mr Kirk was “not happy with issues with the local police, you had ongoing issues, I don’t know what they were. People were aware of that in the station, on my team or shift, I can only speak to them. It was generally known on my team or shift”. Mr Kirk explored with PC Mader whether he had been told to deal with Mr Kirk as he did. His answer was “I was not told to do anything. If you’re insinuating, someone told me to take an action, that’s categorically not true. I take responsibility….. I don’t remember who asked me to attend. All I know is there would have to be a generated incident to attend and to call over the radio”. He told me that once he had submitted the documents, he had no further part in the matter. In particular, the letter of complaint by Mr Kirk dated 6 June 2001 was not ever drawn to his attention, and he could not remember anyone asking him for further information in respect of 20 December 2000 apart from the documentation which he had already submitted.

**An indictment in itself, from this police officer, of the South Wales Police’s general attitude when ignoring the Appellant’s numerous complaints relating to his veterinary staff, property and his own physical well being.**

1. I was able to observe PC Mader giving evidence over a certain time. He gave his evidence in a straightforward way. He impressed as an honest witness. Asked which other police officers were stationed at that station at the time, he was able to give some names, and was plainly searching his memory to assist. There is in fact no conflict between the evidence of himself and Mr Kirk as to what happened on his attendance at the surgery on that day.

**Does that suggest on this incident account, at least, the Appellant was not considered a blatant liar as in several other incidents along with his own few witnesses?**

1. Elsewhere in the trial, Mr Kirk showed particular interest in who was the owner or registered keeper of the vehicle used by him at a particular time, (his belief being that those vehicles were registered in his name and or known by the police to be associated with him were targeted). First, no such suggestion or exploration was made in respect of this incident. Second, from Mr Kirk’s own letter of 6 June 2001, and from his agreement in oral evidence that he considered one of the possibilities was that there had been ill-founded complaint to the police by the person occupying the top flat, it appears plain to me that he did not believe at the time that the police had made up the story of complaint about involvement in a road traffic accident so as to target him. In addition, I am unable to discern any link between the police who attended, or processed matters arising from the attendance, on 20 December 2000 and the police involved with Mr Kirk in other incidents before me.

**Likewise, there was no evidence it was the squatter in his flat, as the unnamed complainant, there had been an alleged offence to legally justify a breath test or demand to disclose the Appellant’s current insurance agent and company to be further harassed.**

**The issuing of the HORT 1 on Appellant was therefore unlawful.**

**Quote RTA appropriate passages**

1. Refusal on his part to produce documents on this occasion is entirely consistent with Mr Kirk’s profound disaffection with the police, but it makes it unsurprising that summonses should have been issued. An HORT1 had been issued, and he had elected not to conform with it. He attended Court on 5 June 2001 and says that all charges were dropped in court without proper explanation (letter 6 June 2001 above). However (i) this was a matter by then the responsibility of the CPS, not the police; (ii) I have no detailed account (whether from Mr Kirk or from any other source) of what transpired at court; (iii) PC Mader himself was, it seems, not ever required to attend court nor involved in the decision to withdraw the charges. In addition, (iv) it does seem to be the case that about this time Mr Kirk did have troublesome tenants, eg Mr Kirk making a complaint by statement dated 10/11/2000 of forced entry into a flat currently tenanted from him at 49 Tynewydd Road Barry, and pointing the finger of suspicion at the lone tenant in the flat above that to which there was forced entry (A2/8.206). In the present incident, it is not challenged that the police had received a complaint against Mr Kirk. He accepts that it is possible that such was made by the person in the top flat, against whom Mr Kirk had made a complaint to the police of theft.
2. I conclude in respect of this incident that irrespective of lack of any cause of action in the case pleaded, the actions of the police on that date, or arising from that date, are not shown on any of the evidence relating to this individual offence to have been without reasonable or probable cause, or ill motivated.