1. **Action 2, Paragraph 9, 1 December 1999 detention of Mr Kirk’s vehicle**. The essence of the pleaded case was that Mr Kirk was driving his BMW car in Llantwit Major, he was stopped by PCs Kihlberg and Humphries, and there was no good reason for his arrest, or translated into legal terms that there was an unlawful arrest in respect of his alleged failure to provide a specimen of breath. He was convicted of failing to provide a specimen of breath on 4 December 2000 by Vale of Glamorgan Magistrates who set out reasons for his conviction.
2. In addition he claims that he was wrongfully deprived of his car for a period of about six weeks by the actions of the police. The background is that his car had been left by the side of the road upon his arrest; on returning by taxi he found that his car had been removed; he reported to the police that the car was missing, but it was only some six weeks later that he located the car. It is better that I deal first with the evidence and my findings of fact.
3. In respect of his claim for unlawful arrest, the claim stands struck out on the basis that it amounted to a collateral attack on the findings of a prior court, which had not been the subject of successful appeal, and no new independent or unavailable evidence had been identified. It suffices, but it is relevant, to say that Mr Kirk faced a twofold difficulty.
4. The first was that there was still a conviction extant against him for failure to give a specimen of breath. The second was that there were findings of fact made by the magistrates which had at no time been set aside on any judicial review or on any appeal which included the following

“You were stopped by the police as they considered you were exceeding the speed limit… the police requested you to open your car door. Following your refusal and lack of response to police requests, and your unusual behaviour in eating a sandwich, making a phone call and closing your eyes and reclining your seat the police concluded that you were under the influence of alcohol… after giving warning a forced entry into the car was made. The rear near side quarter light was broken and entry obtained. In gaining access to the car there was a strong smell of alcohol. PC Kilberg (sic) formally requested you to give a specimen of breath and you failed to respond. This was witnessed by Sergeant Bowen and PC Humphries. He again repeated the request and your response was to shine your torch in the police officer’s face. On the third request PC Kihlberg said “shall I get the apparatus out?” but you did not respond. You were then arrested and cautioned and taken to Fairwater Police Station. Once at the Police Station you cooperated in supplying a specimen of breath and the reading was zero…. We therefore find you guilty of failing to give the road side breath test without reasonable excuse on 1 December 1999”.

1. There was also application to strike out the claim in respect of detention of the car, but I considered that this ought to await findings of fact, not least in that it is the Defendant’s case that PC Kihlberg made arrangements for the vehicle to be safely recovered and stored by a reputable recovery firm, and Mr Kirk makes particular complaint against PC Kihlberg as having been maliciously disposed and maliciously motivated in his actions towards him. I noted that PC Kihlberg features also in the complaints made by Mr Kirk in Action 2 Paragraph 13 (arrest at Llantwit Major on 8 September 2000 by PC Kihlberg then accompanied by a PC Holmes).
2. Mr Kirk’s pleaded case in relation to the car is that following two breath samples which were negative he was served with an HORT 1 form requiring him to produce insurance and MOT certificates in respect of his car, following his release he had to take a taxi to his car, “some 20 miles away, at a cost of £20. Upon his arrival at the scene of his arrest he discovered that his car had been removed. The Claimant reported to the police that his car was missing, but the police officers failed to inform him that it had been moved to a garage near Cowbridge on the instructions of the police. Upon discovering the whereabouts of his car some weeks later, the Claimant informed the police that he had recovered the car. No steps were taken to correct information on the Police National Computer and as a direct result thereof the Claimant was arrested by officers of the Avon and Somerset Constabulary on or about 23 January 2000 on suspicion of car theft. Further for a period of some six weeks the Claimant was deprived of the use of the car and became liable to pay removal and storage charges of £386.57”.
3. In his long witness statement of 19 June 2009 Mr Kirk deals with this matter only briefly, “Para 673. I was arrested and manhandled into a police car with Kihlberg swearing before during and after my arrest. He appeared to be showing off to the considerable number that had attended. Para 674. Cardiff 20 miles away he reported me for various things my breath test proving negative on the definitive machine. He refused to return me to my car, refused to tell me where it was and it took six weeks to trace it to an open public car park, unlocked full of dangerous drugs. I had reported it stolen which caused my arrest near Bristol just after I had been tipped off by a police client as to its whereabouts.”
4. In an earlier statement, which appears to be a draft taken by solicitors, he says of his departure from the Police Station,

“I was then released, the other police officer said “would you like a lift back 20 miles to where your car is?” or words to that effect and Kihlberg said, “No, he can find his own way back”, which was of no surprise to me….. Kihlberg, not to put too fine a point on it is a bully boy.

[and Mr Kirk goes on to complain of the incident outside his surgery at Llantwit Major when he was arrested by PC Kihlberg who alleged to the Custody Sergeant that Mr Kirk had called him a “*fucking”* skunk”. I deal with this incident, below (Bundle A2/3.5G and 5H)].

1. The bundle contains also a statement of complaint (undated, but in a manuscript entry of 18 June 2009 Mr Kirk says that it was written in 2000), which is a complaint “of perjury and perverting the course of justice by PC Kihlberg and others” where he says, having found that there was no car at Llantwit Major where he had been arrested, “I reported it stolen at two Police Stations, both refusing to record the details. I therefore wrote to the police by a recorded system. Six weeks later I found the car in an open car park at Ystradowen, it being unlocked containing lethal drugs, the police deliberately withholding this information to either the garage owner or myself”.
2. Given that the claim for unlawful arrest stands struck out, I do not propose to recite in any detail the evidence of Mr Kirk, or of various police officers, as to events at the scene in Llantwit Major which led to the quarter light of the BMW car being broken, Mr Kirk being required to give a specimen of breath, or him being arrested and taken to Cardiff Police Station.
3. I do note that PC Kihlberg was the driver of the police car; and that at the scene, when Mr Kirk was not responding to and was wholly ignoring PC Kihlberg, PC Kihlberg told his accompanying officer PC Humphreys that he knew who the driver was (witness statement paragraph 15 A2/3.9). I also note the finding of fact by the magistrates that following the breaking of the quarter light and a repeated request by PC Kihlberg to give a specimen of breath, the response of Mr Kirk was to shine a torch in the face of PC Kihlberg.
4. PC Humphreys says in his witness statement that before they left the scene Sergeant Bohun, who had attended, asked Mr Kirk for the keys of his motor car, and “I remember Sergeant Bowen (sic) asked Mr Kirk what he wished to be done with the vehicle but Mr Kirk refused to answer. Sergeant Bowen then told Mr Kirk that due to the position and condition of the vehicle it would be removed by a recovery company at Mr Kirk’s expense. Again Mr Kirk made no comment”. This was not challenged at trial. As to release from custody, he observed PC Kihlberg issue Mr Kirk with a HORT/1 form and caution him to which Mr Kirk replied “I won’t be doing that”. “I do remember that before we left the Police Station we were in the foyer and Mr Kirk then asked if he could have a lift home. PC Kihlberg politely told Mr Kirk that we had no obligation to give him a lift as he was no longer in our custody.”
5. In his witness statement, PC 3444 Kihlberg similarly states that PS Bohun asked Mr Kirk at the scene what he wished to be done with the vehicle, that Mr Kirk refused to answer, and that PS Bohun told him it would be removed by a recovery company at his expense. As to release of Mr Kirk, and the car, he states “I had, while Mr Kirk was at Fairwater Police Station, contacted PS Bohun with regard to the location of Mr Kirk’s BMW. He informed me that it had been removed by Tudor Motors. I in turn informed Mr Kirk of this. He did not show any signs of acknowledgment when I gave him this information. I was at this stage standing in the foyer of Fairwater Police Station and I went back into the custody area to speak to the custody officer. When I returned to the foyer a few moments later, Mr Kirk had left the Police Station (witness statement 30 August 2001 Paragraphs 25 and 26 A2/3.24).
6. In this statement, there is no mention of any request by Mr Kirk to be taken home. In his witness statement for the purposes of the present action, PC Kihlberg likewise states that he told Mr Kirk that Tudor Motors of Ystradowen had recovered the car, but also states “By this time we were in the foyer of the Police Station. Mr Kirk then asked if I could give him a lift home. *I normally would have given a reasonable and compliant person a lift* but because of his behaviour and his unpredictability, also the allegations he may make, I did not want him in my car, so I refused. He then left the Police Station” (paragraph 32 A2/3.43) (emphasis supplied).
7. Police Sergeant Bohun (as he then was) stated in a witness statement for the purposes of the present proceedings that at the scene he asked Mr Kirk if he had a preference as to what he wanted to be done with his vehicle, but Mr Kirk did not answer and that “when Mr Kirk had left the scene I arranged for a local garage to be called out to remove Mr Kirk’s vehicle…. I subsequently contacted PC Kihlberg and gave him details of where Mr Kirk’s vehicle had been taken (paragraph 14 A2/3.71). He asserts that to his knowledge sometime after his release from custody Mr Kirk reported the vehicle as having been stolen and “shortly after this he was arrested in the Bristol area for being in possession of it. He had by this time obviously collected his vehicle from the garage and had failed to inform the police that he had recovered it”.
8. A police radio log records that at 23:38 on 1 December 1999 there was a garage call out, at 23:44 that the person in custody “may well be in possession of car keys”, at 00:29 that Tudor Garage were at the scene recovering the vehicle and “have assured me it will be under secure cover” the concluding words of the log being “vehicle conveyed to garage….Action complete… Officer dealing: 3444 [i.e. PC Kihlberg] (A2/3.78). In oral evidence, PS Bohun stated that a garage call out was authorised by himself and that the standard service level agreement was that the garage would make the car secure. As far as he was concerned, the car was in a secure place. He insisted in answer to Mr Kirk that Mr Kirk was aware of where it was, “because I instructed PC Kihlberg to tell you. The garage would have been informed that you were the driver of the vehicle.” He also stated that PC Kihlberg “confirmed that he told you”. As a matter of detail, Mr Kirk did not challenge the evidence of Mr Bohun that at the scene he had told Mr Kirk that the car would be recovered by a garage.
9. It is apparent from the evidence that the car was in fact recovered to Tudor Garage (Ystradowen). A letter from Vivienne Davies dated 21 January 2000 to Mr Kirk confirms that an incident number was given to them by the police. They were not informed of the ownership of the vehicle, since “it is the responsibility of the police to inform the owner of the vehicle that it has been found whereupon we wait for the owner to contact us”.
10. As to what Mr Kirk was told at the Police Station or thereafter as to the car, the protagonists in oral evidence before me were Mr Kirk himself and PC (as he then was) Kihlberg.
11. My inference is that Mr Kirk made complaint at an early stage: a letter from PC Kihlberg, the officer in the case, dated January 6 2000 states “BMW 7351 index FRU 206Y owner Mr M J Kirk…. Sir, the above mentioned vehicle is currently at Tudor Motors, Ystradowen, having been recovered there on 2 December 1999”. He stated that at the scene PS Bohun told Kirk that due to the position and condition of the BMW it would be removed by a recovery company at Kirk’s expense; Kirk still made no comment; at Fairwater Police Station he contacted PS Bohun in regard to the location of Kirk’s BMW; he was told it had been recovered by Tudor Motors and I pointed that out to Kirk. Not surprisingly he did not acknowledge my existence” (A2/3.213). It will be seen that there is a small discrepancy between PS Bohun and PC Kihlberg, in that each states that he contacted the other to give the information about where the vehicle had been taken. I do not attach particular significance to the discrepancy, in that it was only later that complaint by Mr Kirk appears to have been relayed in respect of the location of the car.
12. In oral evidence, PC Kihlberg agreed that he had refused a lift to Mr Kirk. He regarded it as “possible” that another officer had offered Mr Kirk a lift and that he personally had refused a lift. “That’s possible. He was quite welcome to give you a lift if he had a vehicle. I refused a lift because of the possibility of complaint by you against me”. As a matter of demeanour, PC Kihlberg appeared to be reticent to agree that he recognised Mr Kirk as the local vet. He was enthusiastic to say that he did not know how busy Mr Kirk was or what visits he may or may not have made to animals at night time.
13. Of somewhat more interest, in oral evidence, he said “I rarely take persons I’ve detained back to the car, unless it’s a juvenile who is vulnerable or an older person who is vulnerable unless there were some circumstances. More often than not, I would refuse to take them. *Generally I wouldn’t give a detained person a lift back*” (emphasis supplied). This is different from his witness statement, above (above, “I normally would have given a reasonable and compliant person a lift….”). One may perhaps expect differences in recollection on a matter of detail as to what happened on a particular night, a number of years before, but this is a statement of what his ordinary practice was, which is unlikely to have changed. At best, it is defensive; at worst, it suggests trimming in his evidence.
14. In oral evidence, Mr Kirk did not add significantly to his witness statement. In cross examination, he was insistent that PC Kihlberg at no stage told him that the car was at Tudor Garage at Ystradowen, and that he did not know where it was. It is common ground that a few days later PC Kihlberg called at the surgery of Mr Kirk, to tell him that he would be reported for the roadside failure to give a breath test. Mr Kirk was asked why he did not ask PC Kihlberg on that occasion where his car was. Mr Kirk was dismissive of the notion that PC Kihlberg was an officer of “proper quality”, and said “if I asked him he wouldn’t say.”.
15. The deep mutual dislike of Mr Kirk and PC Kihlberg was palpable. At the roadside Mr Kirk been contemptuous of the efforts of PC Kihlberg to engage him, and at the police station was again, I am satisfied, dismissive of him. It is of some note that he was willing at the police station to give a specimen of breath (indeed two) that he was unwilling to give to PC Kihlberg. By this date, Mr Kirk was suspicious of the motives of all local police officers, and PC Kihlberg was stationed at Llantwit Major Police Station. PC Kihlberg’s witness statement, given on 13 September 2002, is inherently more likely to convey his true state of mind, namely that normally he would have given a reasonable and compliant person a lift, as opposed to his defensive explanation in oral evidence, which I do not accept. I have little doubt that he declined to give Mr Kirk a lift because he was irritated with Mr Kirk.
16. Mr Kirk said that he found out where the car was, because somebody rang him, he thought it was a male voice, who said “by the way your car is at …..”. A section 9 statement dated 5 July 2001 of Vivienne Davies (deceased) from Tudor Garage states however that she contacted Mr Kirk. For a time at trial Mr Kirk was willing to accept this but later reverted to his original belief.
17. It will be seen later in this judgment that I am critical of the actions of PC Kihlberg in Llantwit Major on 8 September 2000 and am profoundly unimpressed by his evidence in relation to that incident generally and in relation to what he told the Custody Sergeant when presenting Mr Kirk. Mr Kirk is certainly capable of being obtuse, as he has demonstrated many times in the incidents before me, but I consider it likely that he did have veterinary equipment and drugs in his car and it would be inherently surprising if knowing where the car was, he deliberately chose not to go and retrieve it for a number of weeks. (It is apparent from the letter dated January 6 2000 of PC Kihlberg that on that date, five weeks on from the incident, the car was still at Ystradowen). There is a theoretical possibility that Mr Kirk was devious enough to see the opportunity to not recover the car, to report it as stolen and thus make trouble for the police but I discount it. Therefore it is likely Mr Kirk left the police station without a location for the car in his mind.
18. Did PC Kihlberg, irritated by Mr Kirk, decide to let him stew in relation to recovery of the car and so did not inform Mr Kirk of its location? Since the arrival of PC Kihlberg at his car window, Mr Kirk had spent the whole of the episode studiously ignoring him (save for the trivial insult of shining a torch in his face). It is a possibility but it would have added little to the satisfaction of letting Mr Kirk stew by having to make his own way home.
19. On the balance of probabilities I find that PC Kihlberg did inform him of the location of the car, at the police station, but Mr Kirk was so intent on blanking Mr Kihlberg out that he did not listen and thus did not hear what had been said to him.
20. As a matter of law I would have concluded that the police can have a duty as bailee of property, but (i) the duty is no higher than to take reasonable care of the chattel (Sutcliffe –v- the Chief Constable of Yorkshire 1996 RT I86 CA, where a vehicle was seized and retained by the police pursuant to the powers conferred on them by sections 19 and 22 of the Police and Criminal Evidence Act 1984) and (ii) the standard of care to be exacted will be conditioned by the fact that they are akin an involuntary bailee and thereby much less onerous than that for a voluntary bailee.
21. Accordingly the circumstances here would have fallen well short of anything which would establish breach of that duty. For completeness, Mr Kirk alleges that he wished to report the car stolen at two police stations which refused to accept the report, but he must have succeeded at some stage (he was arrested by Bristol police on suspicion of driving a stolen car) and such refusal, if any, would be remote from the scope of any duty which I contemplate above.