1. **Action 1 claim 8.15 09.08.1994 stop by PC Kerslake while driving Triumph Spitfire**. The pleaded allegation is that on 9 August 1994 Mr Kirk was stopped and arrested by PC Kerslake for driving whilst disqualified at 8:00am “The police at Barry unlawfully held the Plaintiff in custody until 12:45pm before being released. The Defendants maliciously charged the Plaintiff with driving without insurance, such charge being subsequently withdrawn”. It is alleged that PC Kerslake, “after assaulting him”, arrested Mr Kirk detained him and falsely charged him with driving without insurance. Thus the charge of malice is against the police generally and/or against Mr Kerslake individually and expressly that Mr Kirk was unlawfully detained in custody “between 08:00 and 12:45 or thereabouts” (the custody record, at A1/4.64, shows arrival at Barry Police Station at 08:15 hours and release from custody at 12:56 hours).

**Another Abuse of Process by withholding police records and those of the court, the theme in all the won and lost criminal proceedings from 1993 to date.**

**Also police failed to investigate the fact that the Claimant was assaulted at the scene by the arresting officer**

1. The Defence avers that PC Kerslake was on motor patrol, saw Mr Kirk pass in a vehicle and on checking the PNC discovered that on 11th July 1994, Mr Kirk had been disqualified from driving for a period of 6 months. He followed and stopped Mr Kirk in Pontypridd Road, Barry where Mr Kirk walked off. PC Kerslake informed him that he suspected Mr Kirk to be a disqualified driver and was arresting him on suspicion of that offence. Mr Kirk was cautioned and taken to Barry Police Station. “At no time had the Plaintiff informed the Defendants police officers that his disqualification had been suspended pending his appeal against conviction. In the premises, at all material times the officer was acting lawfully on the reasonable suspicion that the Plaintiff was driving whilst disqualified. It is denied that the Defendant’s officers were acting maliciously”.
2. The background is that at Barry Magistrates Court on 13 June 1994, when Mr Kirk was not present, the court proceeded in his absence and heard evidence relating to an incident of 4 October 1993 when Mr Kirk’s vehicle was followed by PC Kerslake and PC Hill and he was arrested when going round (and round) a roundabout. He was charged in particular with the offence of driving without insurance, and without due care and attention. The court found the charges proved and adjourned sentence to 11 July 1994. On 11 July 1994 Barry Magistrates Court disqualified Mr Kirk for 6 months although they in fact suspended the disqualification pending appeal.
3. The incident of 4 October 1993 was formerly the subject of claim in these proceedings in Action 1 Claim 8.12, but following extensive submissions I gave written ruling on 30 November 2010 which struck out that claim by reason of the express findings of fact made by the Courts who dealt with the incident of that day. It may be remembered that on 4th October 1993, Mr Kirk was not in fact disqualified, his disqualification having been suspended on 24 May 1993 pending appeal, an appeal which was in fact successful. However on the appeal, in a judgment delivered on 24 May 1995 in respect of the facts of 4 October 1993 itself, Judge M Evans QC sitting with Justices ruled that they accepted the prosecution witnesses as witnesses of truth. Since the claim in respect of the incident on 4 October 1993 was struck out, I did not permit cross examination in respect of it.
4. By way of further background, I record that in October 1993, it became clear after initial arrest that Mr Kirk was not in fact disqualified; yet Mr Kerslake writes in a hand written letter/report to Superintendent Francis at Barry Police Station dated 24.10.1993,

“It was then ascertained by the CPS that Mr Kirk was not a disqualified driver. I believe that all of the charges were withdrawn. However *it is my belief that the offences of fail to stop for police and due care and attention be reinstated by way of summons due to the blatant neglect for other road users*” (A1/3.110 at 112 emphasis supplied).

**A prosecution ‘plant’ if ever there was.**

**The police at the Appeal had produced the possible ‘elements’ of a ‘careless driving’ incident from a mysterious new police officer who could only state, uncorroborated, a private motorist had to break ‘hard’ so as not to enter the four lane roundabout was the Claimant, at 4mph hugging the inner reservation’ only two and a half times, had infringed the road Traffic Act.**

**Quite unlike the press court obtained information from the above proven evidence confirming the roundabout was empty and yes, PC Kerslake had admitted it was only two and a half times at 4mph , not the press coverage of nine times.**

But, of course, there had been no ‘careless driving’ but these Guernsey registered vehicles in fictitious registrations had to be removed from ‘their patch’ by ‘any means (later incidents indicate the modus operandi instructions from senior management—remove driver’s licence and have the four vehicles stolen and or burnt out.)

1. In his witness statement of 19 June 2009 Mr Kirk deals with the present incident tersely. “577. On the 8th August 1994 I was stopped again by police, known to me, on alleged driving whilst disqualified…. 578. I was assaulted, arrested, bundled into a police car only to be charged again. These charges were later withdrawn and as with many previous experiences with police harassment, deliberately arrested to then provoke me, often behind bars to promote further confrontation”.
2. Mr Kirk is not the most organised man in preparation of his evidence. His oral evidence before me initially took matters little further. I therefore directed him individually to certain documents closer to the time, which gave an account which he told me did reflect his experience.
   1. By letter to the Chief Constable dated 10 August 1994 he wished “to make a complaint of assault upon my person by Inspector Davies [claim number 8.16] and PC J Kerslake in Barry on 9 August 1994. I have spoken to the Station Commander today whilst I was in custody” (A1/4.139)
   2. He wrote a letter of 6 September 1994 to Mr Gary Evans (the solicitor who attended him at the police station). He told me this was a request for notes relating to him being charged in the police station in respect of this incident (A1/4.141).
   3. On 15 November 1994 he wrote a hand written section 9 “Statement of Complaint”. It makes oblique reference to a Mrs Walker “as a witness to the intent of the police”, but asks that the police not contact her at that time. This is a reference not to the present incident but the court appearance of 13 June 1994 which preceded it – see below. In this statement Mr Kirk goes on to complain of assault by Julian Kerslake after being stopped in Pontypridd Road, Barry. He, Mr Kirk, started to walk away:

**[ Mrs Walker reference is to the roundabout incident ‘struck out’ as found ‘guilty’ of careless driving despite hearing having heard that the Claimant had not been able to attend court as he had been admitted into hospital (see medical records exhibits and clerk of the court notes recording court had been informed by another witness, Claimant’s first secretary, Linda, he had suffered a motor cycle accident). Photos of significance were exhibited showing knee injury that needed to be x-rayed.**

**“We will get the basterd driving around in his little white sports car quoting European Human Rights” Mrs Walker heard, from the back of the court, by one of the police officers when the court publically stated the Claimant was unable to attend.” (in affidavit OF SIMILAR DATE AS AN EXHIBIT IN THE CASE.**

“It was my intention in walking away from the car to find a witness to the meeting with Constable Kerslake. The reason for this behaviour relates to the previous meetings I have had with the officer. When I heard Constable Kerslake shout, I turned and returned to the car. I had forgotten my dog. I called to the dog but Molly did not respond. I then turned and walked away along the pavement in the direction I had been walking. I was not aware of Constable Kerslake’s presence as I didn’t look at him. I got about 10 yards away from my car, still only walking, when Constable Kerslake came up behind me and grabbed hold of my right arm. He grabbed hold of my arm with both hands and pushed me sideways into the low wall. He then pulled me towards the curb, diagonally along the pavement a distance of about 10 feet. *It was at the kerb that I stumbled into the road and twisted my right ankle*….. at no time up to that point did I or the officer speak. The incident was over in a few seconds….. my complaint of assault is solely based upon Constable Kerslake *pushing me into the wall and then pulling me to the kerb where I twisted my ankle*” [emphasis supplied]” (A1/4.36B).

1. As to alleged assault, the witness statement of PC 1324 Kerslake asserted that on being stopped, Mr Kirk got out of the car and started to walk away. “He was limping and not walking fast. I quickly walked after him and told him I believed him to be a disqualified driver and that I was arresting him on suspicion of this offence. I then cautioned him to which he made no response. He simply wanted to keep on walking and so I touched his arm to signal he had been arrested. I did not have to restrain him as at this point. I asked him why he had a limp and he said he had hurt his foot hang gliding….. I had radioed in to say I was following a suspected disqualified driver. At about the time I arrested Mr Kirk another police vehicle turned up into which I put the dog… I conveyed Mr Kirk to Barry Police Station”. There he presented him to the custody sergeant (A1/4.37 at 42). Following the incident, he had a second complaint that he had violently pushed Mr Kirk “against the wall” and that this is what had hurt his ankle. “This allegation was totally untrue and again the complaint was found to be unsubstantiated following investigation, as there had been a witness who confirmed my actions at the scene of Mr Kirk’s arrest”. (At 43). That witness statement was given on 18 May 2000.
2. Mr Kirk and Mr Kerslake were at one in speaking of another person being present at Pontypridd Road, Barry at the time of this incident, but neither Mr Kirk nor the Defence called any independent witness to the events there**.**

**Because this witness could not be traced by the time the incessant abuse of harassment became obvious to have the Claimant ‘struck off’ or make him leave their patch.**

1. Mr Kerslake gave a second witness statement dated 21 July 2008 in which he said “I wish to confirm that my knowledge that Mr Kirk was a disqualified driver on this occasion came from information from another officer. I had been advised by another officer shortly before 9 August 1994 that he had been involved in an earlier incident with Mr Kirk when it was discovered that Mr Kirk was a disqualified driver. When I had observed Mr Kirk driving on 9 August 1994 I conducted a search with the PNC which confirmed that Mr Kirk remained a disqualified driver” (A1/4.45).
2. Of some importance is an IRIS log printout for 09-08-94. It gives the incident time as starting at 07:59, the source as radio, the location as Rhoose bypass and the code for the Barry Divisional area, the message being “following vehicle white Triumph Spitfire with the roof off”; thereafter 07:57 (with the collar number of PC Kerslake, 1324); 07:58 driver Maurice Kurt believed disqualified driver; entries as to [PC Kerslake] following the vehicle; then 08:01 from EQ13 [presumed to be PC Kerslake] vehicle has been stopped Pontypridd Road; *08:02 from EQ14 “require check PNC prior to arrest drive disqualified*” (emphasis suppled). Mr Kerslake said in evidence in chief that this indicated that another officer EQ14 has come on the radio and made a PNC check prior to arrest: an entry at 08:05 states from LQ13 *Kirk Maurice 12.03.1945 PNC DISQ UNTIL 12.12.94* (emphasis supplied); and at 08:16 there is an entry reporting that officer 1324 arrests a person for disqualified driving.
3. As recorded on the custody record, the custody sergeant PS (now Inspector) 1419 David Smith recorded the arrival of Mr Kirk at 08:15 hours at 08:16. He recorded that Mr Kirk wished to speak to a doctor. “He refuses to state what injuries he has – appears uninjured” (A1/4.64). At 08:22, he recorded “Kirk now appears to be walking with a limp”. A Dr Baig attended 08:46 hours and wrote in the custody record “patient refuses to give me his name and address. Has twisted his ankle (right) this ankle needs x-ray and necessary treatment. Patient to be seen at casualty Barry Accident Unit for necessary investigation and treatment”.
4. It is perhaps convenient to note that the custody record states, “08:10 hours “Maurice Kirk” arrested for driving whilst disqualified (driving Triumph Spitfire CKV 629K)”; that Mr Kirk refused to give his address or date of birth; that at 08:30 he refused to sign for acknowledgment of rights property etc.; that he had on arrival stated he required the service of a solicitor (then not named); at 08:34, the services of a duty solicitor; and at 08:48 “It was explained to Mr Kirk that if he gives details sufficient for charge – he would be charged processed and bailed. – he only stated “copy of your Codes of Practice please”. (A1/4.64 at 66).
5. The solicitor is recorded as arriving at the station at 10:36 hours, consulting with Mr Kirk at 10.41, and at 10:52 “Mr Kirk now states through his solicitor that he refuses to give personal details. His address is unknown to me…. From previous dealing I can identify him as Maurice John Kirk however I am aware that his previous home address in Tynewydd Road is no longer his permanent address – I am not aware personally of his new address”. There is a note at 11:37 hours, that Mr Kirk states that nowhere in the copies of the Codes of Practice does it state he has to give his name and address “….I’m awaiting arrival of officer in the case to try and verify address or other details of Kirk before any further decision is made. There are no details in his personal property to verify his DOB or name or address… file address shown for Kirk is 6(a) Burial Lane, Llantwit Major. At 12:16 there is an entry “asked if he lived at 6(a) Burial Lane, Llantwit Major, as this is the address on the police file, he replied “I saw the duty doctor earlier he stated I should have my leg x-rayed and I now want that done without [?*delay* , illegible].
6. At 12:26 an entry by PS Smith reads “in view of the fact that Mr Kirk requires medical examination – I am now prepared to bail him to an address namely his veterinary practice surgery Tynewydd Road. I am still not aware of his home address however under these circumstances I will bail him to that above address”. Shortly thereafter Kirk was recorded as refusing to leave his cell stating that he wanted his leg examined before release. At 12:47, “Kirk is to be released on advice of A/CI [Acting Chief Inspector] Davies in concurrence with my decision – therefore forcibly removed from cell complex to custody office. 12:50 charged by PC Kerslake”.

**Another example of released on bail to Claimant’s Barry practice without the need of it being solely his only residence cf Action 2 paragraph 14 campervan outside Cardiff County Court 13 December 2000 when the custody sergeant released Claimant on bail for very same assumption address for service was realistic contrary to judgment.**

1. Before going to the content of evidence given by each witness, I observe that Mr Kirk had a particular distrust or antipathy towards Mr Kerslake. During most of his oral evidence, Mr Kerslake himself appeared to be nervous and uncomfortable. I remind myself that it is unwise for a judge to place undue weight on the demeanour of a witness alone, as opposed to the internal consistency of his or her evidence and its consistency with that which appears to be established externally to the evidence; and I bear in mind that he was facing a hostile Mr Kirk as his questioner, but in asking questions of this witness, Mr Kirk had been proper in his manner.
2. As to whether there was an assault, Mr Kirk said “There was no violence in the arrest. What I remember, I was pushed over a low wall of a garden. When I say over the wall, part of my leg was damaged by the top of the wall, I did not physically have my leg over the other side of it”. In evidence in chief Mr Kirk said, “I don’t think it was the kerb, I was always on the pavement” Cross examined as to detail, he said “if I stumbled over a kerb, that is not the injury. It might have aggravated my old injury to the ankle – the injury of which I complained in custody”; and, “I remember the injury of him pushing me was against the garden wall”. Reminded by leading counsel of the content of his ‘Statement of Complaint’ of 15.11.1994 dictated by him to a police officer, he said “This is a superb document”. Reminded of the content of that, he then said it was at the kerb that he stumbled into the road and twisted the ankle, and that he stood by that in that it was what he wrote then.
3. There was modest further support for inference that any injury was at the kerb, in that Mr Kirk came to accept that PC Kerslake took his arm when he was walking away again, therefore with the wall on his left, therefore any contact with or across the wall would have been with the left leg, whereas the entry of Dr Baig in the custody record relates to twisting the right ankle. Mr Kirk adhered to complaint that twisting the ankle was caused by the police officer pulling him, but said that this was not as important as “the violent pushing me against the garden wall”.
4. As to the period in custody, there is an attendance note of the solicitor stating at its foot “This note has been dictated at 11:45am on the 9th August 1994” (A1/4.91). This attendance note includes his arrival in the custody area at 10:30am and “the custody sergeant informed me that Mr Kirk was known to him as he had been involved in a previous case with him, but he was unsure as to Mr Kirk’s current address. His former address was Tynewydd Road. He indicated that the charge sheets had been prepared and that *if Mr Kirk voluntarily supplied his address, date of birth and fingerprints he could be released on bail immediately*” (emphasis supplied). In an interview room, Mr Kirk indicated that the full details [in context, of address and date of birth] “anyway have been supplied to an officer who arrived later at the scene, that he had a number of legal actions against the police relating to appeals to previous detention and a number of other matters”. Mr Kirk in oral evidence agreed that all of this was most likely. The note goes on “Inspector Davies then knocked the interview room and entered *and indicated to Mr Kirk that if his address was supplied to the custody officer and he supplied his fingerprints he would be immediately released* (emphasis supplied). He further indicated that the Vale of Glamorgan Magistrates Court was sitting only as a fines Court and that no other Court in the Vale of Glamorgan area was available. He further indicated that it was not feasible to transport Mr Kirk to Cardiff nor was it possible to recall PC Kerslake from Llantwit Major. This was in response to my indicating to Inspector Davies that Mr Kirk wished to be brought before the court, although he did not expect the case itself to be dealt with”. Mr Kirk in oral evidence agreed that this note by the solicitor, “assuming he’s straight”, was a record of the true events. Surprisingly as I found it, Mr Kirk agreed that he did not divulge his address to his solicitor, saying of the solicitor “I did not know him, was I going to give him personal details?”.
5. Mr Smith was the custody sergeant on Mr Kirk’s arrival. He retired from the police some 5 years ago. In essence he simply spoke to the custody record and his notebook of the next day, following arrest yet again of Mr Kirk on the basis that he was driving whilst disqualified. This records “I was later informed by PC Francis that Kirk was in fact not disqualified from driving and arrangements were made for his immediate release from custody”.
6. In answer to questions by Mr Kirk, Mr Smith agreed that Mr Kirk was known to him, as the police vet, and known to him at the police station: “I had arrested you for burglary”. He agreed that the police station had had plenty of visits from Mr Kirk as a victim of crime, his buildings having caught fire, “A. Yes. I believe you had a shed [Q. And an aeroplane in it?] A. Yes.” He said that he then knew Mr Kirk’s practice was at Tynewydd Road. He declined to agree that the police had a duty of care to Mr Kirk, the local veterinary surgeon known to be driving round, saying that “we rely on the PNC for that information. In this case, it was somebody else’s fault [that the PNC incorrectly recorded an effective disqualification]. He gave as his explanation for in the end settling for a business address for bail purposes that Mr Kirk had an injury.
7. There may be a little variance in the evidence of Mr Kerslake. In his notebook at A1/4.85 Mr Kerslake records “Believed to be disqualified from driving” and in oral evidence explained this as “I have a hot list of intelligence on persons disqualified from driving, it’s something I specialised in, arresting persons for driving whilst disqualified. He described that as a list of about 100 persons disqualified from driving in the area and Mr Kirk as being one of them. “It used to be distributed at that time by the intelligence cell in Barry”. In his witness statement of 21 July 2008 he had said that his knowledge that Mr Kirk was a disqualified driver on this occasion came from information “from another officer. I had been advised by another officer shortly before 9 August 1994 that he had been involved in an earlier incident with Mr Kirk when it was discovered that Mr Kirk was a disqualified driver”.
8. Nonetheless the IRIS log, the authenticity of which was not challenged, does show enquiry by PC Kerslake while following Mr Kirk to check whether Mr Kirk was disqualified (viz, above, “require check PNC prior to arrest” at 8.02 am) and does show him being informed that the PNC showed Mr Kirk to be a disqualified driver. He told me that this was the sole instance in his career when he had found that the PNC gave incorrect information.
9. Mr Kerslake certainly knew of Mr Kirk as a vet telling Mr Kirk that members of his family used him, there were only 2 vets in Barry, and “I’m a Barry boy”. As to the initial arrest, Mr Kerslake said that he and Mr Kirk were not near any wall, and “if you go back there, there is no low garden wall”. (Neither party put photographs of the scene before me). As to the alleged witness to proceedings Mr Kerslake said that he believed a PC Parker had taken a statement from the witness. There was no statement from an independent witness or in the Trial Bundle, nor was any such statement placed before me by either party.
10. That day Inspector Howard Davies was on the 8.00 to 4.00pm shift at Barry Police Station at about 11.00 am he was contacted by internal telephone by the custody sergeant because Mr Kirk was refusing to give his personal details to the custody sergeant who required them before releasing him. “I knew Kirk from a previous incident. Although I cannot now remember the date, I recall that I attended at an address in Tynewydd Road in relation to a complaint of criminal damage. I was well aware of Kirk’s reputation for being an awkward individual although my previous dealings with him had been very good” (witness statement A1/4.55 at 56).
11. He states that he went to see Mr Kirk and asked him to give the necessary details to the custody officer. “Regrettably no amount of persuasion would persuade Mr Kirk to cooperate and he continued to refuse to provide his details…. His attitude was belligerent. After my best endeavours to obtain the relevant information I left the situation in the hands of the custody officer. The situation was a total farce and in the interests of common sense I advised the Sergeant to bail Kirk to his business address. I believe…. during a private conversation just prior to Kirk’s release”. This account of his approach to Mr Kirk and Mr Kirk’s response is supported by the solicitor’s contemporaneous attendance note
12. Mr Smith the custody sergeant had had dealings with Mr Kirk in approximately July 1993 when arresting Mr Kirk on suspicion of burglary of premises let by him to sitting tenants; and on several occasions prior to 9th August 1994 including those connected with his employment as a veterinary surgeon (witness statement paragraphs 3 and 8).
13. This is corroborated, in the attendance note of the solicitor at 11.45am which refers to the custody sergeant informing him at 10:20am that Mr Kirk was known to him but he was unsure as to Mr Kirk’s current address, his former address being Tynewydd Road (A1/4.91). That note, and the custody record, also corroborate Mr Smith’s evidence that he knew a professional address but not a home address for Mr Kirk. Later that day Mr Smith contacted the veterinary practice by telephone and decided he was prepared to bail him to Tynewydd Road the address of his veterinary practice. I asked Mr Howard Davies what had changed from about 8:00 am or so to 12:56 when Mr Kirk was in fact released. I was unclear from his answer whether anything had changed. I asked him if it was common sense at 12:56 to authorise the release of Mr Kirk was it not common sense to do so before? His answer was “You might say that, yes. We were duty bound to get his home address. It was an impasse. The custody sergeant is bound to get the home address”.
14. I note above that in his statement of complaint Mr Kirk had made oblique reference to the evidence of a Mrs Walker. I heard evidence from Mrs Jane Davies (formerly Jane Walker) who worked as a receptionist for Mr Kirk at the Llantwit Major branch of his practice. She attended a magistrates’ court in Mr Kirk’s absence on one occasion and made a handwritten note of proceedings (Claimant bundle p147). It is headed “13.6.1994” and she told me that this occasion would have been on 13 June 1994. She had been given a message for the court from Mr Kirk but told me that she was given short shrift by the court clerk. I am satisfied by her evidence that the note was made by her immediately after the court hearing and probably at the court premises.
15. She swore an affidavit as to the court hearing for use in an application in the Divisional Court, (at Claimant bundle p 144). At the end of it she has added in manuscript, “During the proceedings *I heard one of the policemen say to the prosecutor words to the effect they knew of MJK and his white sports car and that We will eventually get the bastard*” emphasis supplied see page 146). She told me that she heard one of the policemen present say this to the prosecutor, in the waiting room. She told me that she would have informed Mr Kirk of this at her earliest convenience. She was not able to identify the police officer in question.
16. Leading counsel for the Defendant explored the reliability of this note or her present recollection of the incident, but I found her evidence persuasive both in manner and content. She ceased to be employed by Mr Kirk in 1994. She had been employed only over 2 to 3 years. I discerned no ongoing acquaintance or relationship with Mr Kirk. She spoke in surprised terms of what she heard, given her own family where she had been brought up to have regard for the police. She said, “If I’ve heard it, I’ve heard it. And if I haven’t written it in my notes, I’ve heard it when I was leaving”; and that she was “very confident that I would not tell my employer what might cause me to lose my job [if wrong]”.
17. In addition, she told me that it was “a strange time. You were rather treated as a pariah for working for Mr Kirk”. When she first said this, it was in the context of “loitering” at the court on 13 June 1994 but it did appear to be a more general comment, since later she told me, asked why Mr Kirk had employed her services, “Maybe I was fresh eyes. I was surprised by the lack of attendance. I often wondered why the police did not attend. It was a strange employment”. A comment by an individual police officer that “we will eventually get the bastard” is self-evidently abusive and improper. The court will have to investigate the evidence as to each individual incident, and the evidence overall, in evaluating whether other police officers were similarly motivated and in turn whether thereby on the part of some there was agreement or understanding to “chase” him, discriminate against him or as Mr Kirk alleges to hound him and detain and charge him improperly.
18. In passing, I observe that the closing submissions for the Defendant state that the pleadings do not include a separate claim for assault. The allegation is not well defined, but I consider that an assault is pleaded, viz “after assaulting him” (see above).
19. I make the following findings of fact, on the balance of probabilities:
20. PC Kerslake had a jaundiced view of Mr Kirk, illustrated by the fact that the year before, in October 1993, he had taken the unusual step of writing to argue that charges should be reinstated against Mr Kirk.
21. At the magistrates’ court on 13 June 1994 Mrs Walker secretary to Mr Kirk had overheard a police officer saying that the police knew of Mr Kirk and his white sports car and “we will eventually get the bastard”.
22. I cannot conclude on the balance of probabilities that this police officer was PC Kerslake, since although PC Kerslake was present at the court that day and Mrs Walker identified him by name in her notes of evidence given by police witnesses at the hearing, she was unable to identify which police officer had said this.
23. Irrespective of the foregoing, PC Kerslake did understand Mr Kirk to be a disqualified driver when he saw him driving on 9 August 1994.
24. Prior to the initial arrest PC Kerslake did make radio enquiry whether Mr Kirk was disqualified from driving and was told that the PNC recorded that Mr Kirk was disqualified;
25. PC Kerslake was not told by Mr Kirk that any disqualification was suspended, either then or during the period when Mr Kirk was in custody; nor did Mr Kirk tell any other police officer this during his period in custody.
26. In the initial arrest Mr Kirk did suffer an injury by twisting of the right ankle; this happened when he stumbled at the kerb not on contact with any wall.
27. In the light of Mr Kirk’s complete mis-recollection at trial as to where and how he suffered injury to his ankle, and in the absence of independent evidence by any witness or photograph of the scene, I am not satisfied on the balance of probabilities that there was any unreasonable (or substantial) use of force by PC Kerslake prior to Mr Kirk twisting his ankle at the kerb.
28. Mr Kirk was taken to Barry police station arriving at about 8.15 am.
29. During his time at the police station Mr Kirk refused to give any information about his name and address. He declined to give his name and address to Dr Baig, the doctor who attended, recorded at 8.46 am; or during the time when a duty solicitor was present on his behalf (from 10.36 am to 11.20 am); or after Inspector Davies told Mr Kirk that if he gave his address to the custody officer and supplied his fingerprints he would be released (probably at 11.03 am); or after a PC Crabtree asked Mr Kirk whether he lived at 6(a) Burial Lane Llantwit Major (at probably 12.16 pm), this being an address which the custody sergeant had found an address on breaking the police seal on Mr Kirk’s personal possessions in an effort to identify a home address for Mr Kirk independently.

1. The impasse was broken when Inspector Davies advised the custody officer that he might bail Mr Kirk using his business address; and the custody sergeant did so, having telephoned the veterinary practice at 12.10 to verify that mail could be sent to that address. The custody sergeant did so in order to release Mr Kirk to pursue any medical examination or treatment for his swollen ankle.
2. Mr Kirk was physically removed from the cell complex, having declined to leave it before his leg was examined.
3. As to the initial arrest, PC Kerslake did in fact have a suspicion that Mr Kirk had committed the offence of driving while disqualified, and it was a reasonable belief based on what he was told of the PNC record on express enquiry. The error on the PNC was not then known to PC Kerslake. Nothing was said or done by Mr Kirk which would dispel the then reasonable suspicion on the police officer’s part. For the reason set out above I do not consider that it has been shown that unreasonable force was used the arrest. I conclude that the arrest itself was lawful.

1. By section 38(1)(a)(i) PACE 1984, “Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall, subject to section 25 of the Criminal Justice and Public Order Act 1994, order his release unless: (a) if the person arrested is not an arrested juvenile (i) his name and address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name and address”.
2. No argument has been addressed to me at trial or in closing submissions that a business address suffices in law for these purposes. It might be surprising if the legislation contemplates a business address as sufficient, since a residential address usually has more permanence, there may be more than one business address, (illustrated in the case of Mr Kirk by having more than one veterinary surgery), and in the ordinary course the individual bailed is more likely to be readily found by the police at a residential address if he fails to answer bail than at a business address. The decision taken to bail in this case was one of common sense, which I applaud, but Mr Kirk’s “address” (in its meaning as a matter of law) could not at any time be ascertained, and the respective police officers therefore had power in their discretion to detain him.
3. I have reflected on whether the period of detention could be argued to have been prolonged by failure to ensure that Mr Kirk was taken to hospital following Dr Baig’s attendance, albeit this is not argued in closing submissions or at trial. (Mr Smith and Inspector Davies received advice in respect of this failure following the incident). Mr Kirk asked on the morning of his detention to see Codes of Practice, but a failure to comply with a PACE Code of Practice is expressly stated not to give rise to a claim in damages by section 67(10) of PACE 1984. It seems to me inescapable that the period of detention was not prolonged by the omission to take Mr Kirk to hospital; in fact removal to hospital for examination while still under police detention would if anything have prolonged the period of detention.
4. The failure to ascertain Mr Kirk’s address was consequent on Mr Kirk’s refusal to give his address. Since legislation expressly empowers the police to detain an individual in order to establish his address for the purposes of service of any summons, I applaud the decision to break the impasse by releasing him but I do not consider that in these circumstances the decision to detain up to that point has been shown to be “*Wednesbury*” unreasonable, or that the period of detention has been shown to be unreasonable.
5. It is regrettable in the extreme that the suspension of disqualification was not entered on the PNC record. Mr Kirk was charged with driving without insurance (a finding which would follow inevitably if he were, as believed to be, driving while disqualified). However in the light of my findings of fact Mr Kirk has not established, in the light of what was known to the police officers concerned, absence of reasonable and probable cause for prosecution. That is fatal to the claim in malicious prosecution in respect of this incident.

1. It was not submitted to any witness, (and is not contended in closing submissions upon this incident) that the PNC had been doctored by South Wales police officers. I deal below with the fact that this was not an isolated occasion of Mr Kirk being arrested on suspicion of driving while disqualified whereas in fact the disqualification had been suspended, but the direct evidence in respect of the present incident including contemporaneous records supports a belief by the arresting officer that Mr Kirk was driving while disqualified.