**Action 1 8.26 6 June 1995: the “Gafael” incident**

**If ever there was a need then and NOW, for an outside police force to investigate, to obtain the full police records of first being charged with an alleged illegal eviction and then, much later, being charged with a fabricated charge of ‘criminal damage’ charge, it was this one.**

**The Appellant was refused an outside police force to investigate or cause disclosure of contemporaneous records of each of the many incidents, surrounding the serious damage to the veterinary premises, alleged eviction and witnessed police break-in, causing even more quite unnecessary damage, with the use of a sledge hammer and not, simply, with the key of the lock.**

**Relevant Section of Judgement**

1. **Action 1 8.26 6 June 1995: the “Gafael” incident**. In June 1995 Mr Kirk ownedpremises at 175 Cowbridge Road West in Ely. His surgery was on the ground floor; above it were residential premises, which he agreed to let as a flat to a Mr Anthony Gafael and Mr Gafael’s girlfriend Alison Genner. On 6 June 1995, builders were carrying out works for Mr Kirk at the building. The evidence of Mr Gafael, in a witness statement of complaint to the police, was that on that day he returned to find that their possessions had been removed from the flat and entry to the flat had been barred.
2. Mr Kirk’s pleaded case is that “in June 1995 the Defendant purported to arrest [him] for illegal eviction of a tenant at the house. The Defendant well knew and/or had insufficient evidence to justify the arrest and in any event should have conferred with the Local Authority who have direct responsibility for administering the Protection Against Eviction Act 1977. The arrest and detention was unlawful”. There is no claim for malicious prosecution, and no claim for loss or damage by forcible entry into the property.
3. Originally the Defence made no admissions, and a request for further and better particulars of this claim was made in June 1998. During case management hearings, Mr Kirk produced a witness statement of Anthony Glen Gafael dated 11th June 1995. Thereafter a detailed Defence was served.

**Defence delayed to allow loss of further relevant evidence**

1. The essence of the Defence is that on 6th June 1995 Mr Gafael made complaint at Ely Police Station that he was a tenant at the flat and had returned to find that his possessions had been removed, and when he had time to look through his possessions he found that a number had been damaged or broken. He described a course of conduct by Mr Kirk towards him which had become increasingly hostile; he believed it was Mr Kirk who had removed the possessions and that damage to his possessions was at the very least caused recklessly. On 3rd July 1995 Mr Kirk attended Barry Police Station where he was arrested by PC Manders for an offence of criminal damage to property belonging to Mr Gafael; PC Manders had reasonable cause to suspect that Mr Kirk had committed the offence of criminal damage based on information given to him by the police officers at Ely Police Station.

“Following his arrest, the Claimant was detained in custody from 3.40pm until about 5.28pm at which time he was charged with the offence of criminal damage and then bailed. During his period of detention he was interviewed by PC Roche. In the premises, the period of detention was reasonable in the circumstances”.

There was a general denial of the claim under 8.26, but no detailed pleading to Mr Kirk’s claim that the police purported to arrest him for illegal eviction of a tenant at the house.

**That very incident is recorded on Barry police station records and in thepersonal pocket note books of those officers that laid the allegation**

1. This is a case where there is profound difficulty for the court in trying to assess the facts. Mr Kirk alleges that a number of police officers attended to force entry, but he was not himself present. As the evidence evolved, it became clear that the evidence of each of the two men who emerged as the principal witnesses of fact is profoundly unsatisfactory.

**All recorded in both the memories of those police, arriving in police vehicles, both Superintendant Jenner and Sergeant Roe refused to identify during the trial.**

1. Mr Kirk was not himself, on his own case, a direct witness to events at the building on that afternoon and evening. In his witness statement of 19 June 2009 Mr Kirk states that a neighbour Mr Peach informed him by phone, as did another neighbour, that police were breaking through his roller shutters at the front door of his surgery and, “I was later arrested and charged in Barry Police Station on or around 6 June 1995. It was clear one of the officers was not a ‘happy bunny’ on arresting me on a civil matter especially when I warned I would sue and that the allegation given to me was for the County Council”. He also asserts that his detailed complaint of criminal damage, including flooding out the flat and the ceiling falling in to his surgery received no response whatsoever. Mr Kirk himself put in evidence the witness statement of Mr Gafael dated 11th June 1995, to which I will turn in detail shortly, but in particular Mr Gafael there stated that he reported matters to the police, returned to the surgery with Sergeant Roe and later that afternoon following a conversation with Sergeant Roe “*he and myself* gained entry to the flat and I replaced some of my furniture” (emphasis supplied).
2. Neither Mr Peach nor the other neighbour referred to by Mr Kirk was called by Mr Kirk. I have searched the “Claimant’s Witness Bundle” (namely the bundle compiled of witness evidence statements or letters on which Mr Kirk relied) but I have not identified witness statement or letter from any person other than Mr Kirk in relation to this incident.

**BECAUSE, over passage of such time, the deliberate delays had acquired the required effect, both witnesses were diseased since the writing of the Appellant’s statement.**

1. The Defendant served witness statements from retired PS Robert Nelson Roe; retired Chief Inspector Genner (the father of Alison Genner); PC Philip Roche the officer in the case (and who attended Barry Police Station once informed of Mr Kirk’s arrest there); and PC Manders, then a community constable to Barry Island, who was present at the police station when Mr Kirk attended by appointment, and who is recorded as the arresting officer.
2. In addition the Defendant served a witness statement from retired Inspector 913 Sidney Griffiths dated 19 May 2000. At paragraph 15 he states “The Claimant alleges that in June 1995 officers purported to arrest him for illegal eviction of a tenant at a house. I am advised that enquiries undertaken did not reveal an arrest of Mr Kirk during this period for the alleged incident”. A further statement of 21 July 2008 states that he then could not recall who it was who undertook those enquiries, but his recollection is that they would have included checking with the custody officer at Barry Police Station to ascertain whether Mr Kirk had been booked in at the police station during June 1995 and that Captor incidents would also have been checked to ascertain whether Mr Kirk had had any involvement with the police recorded on Captor during June 1995. As I have recorded above, Mr Griffiths was a witness who impressed Mr Kirk during the hearing. I have no reason to doubt that he recorded accurately that which he was told. Nonetheless it is perfectly clear that, contrary to what Inspector Griffiths was told, Mr Kirk was in fact arrested on 3 July 1995 and charged – inter alia – with an offence of criminal damage to property belonging to Mr Gafael.

**Inspector Griffiths is still another who, on the balance of probabilities, made sure he became aware of information still not disclosed without Home Office intervention but had caused the ‘gulag card’ being played on their victim, for Ashworth High Security Psychiatric Hospital still further clandestine applications, this time before His Honour Judge Bidder QC on the 2nd December 2009.**

**At that hearing, re the police conduct of Dr Tegyn Williams having to be justified, when not even qualified to write such 19th October 2009, was deliberately carried out in absolute secrecy with no tape recording even while preventing this humble Appellant from attending by locking him up in the cells below the Cardiff Crown Court.**

**On that 2nd arrest, in Barry, no proceedings, of course, progressed for fear the truth may be uncovered and so His Honour Judge Nicholas Chambers QC had ordered that very information for.this civil trial.**

**Barbara Wilding’s direct intervention, in January 2009, when trying to avoid signing the court ordered affidavit instigated FTAC and Home Office psychiatric assessment of the Appellant to avoid this same disclosure.**

**When that failed she used her own ‘home grown’ but clandestine 8th June 2009 MAPPA 3/3 registrations of her victims by maliciously allowing fanciful Dolmans, solicitors, just in it for the money, to make a groundless criminal complaint, anything to delay ‘exchange of witness statements’ with a dead line, next day, due on the 19th June 2009 at 4pm with the Appellant still ‘at large’. MAPPA procedures, to safeguard the general public were abused throughout the Appellants then and now registration.**

**There is still refused relevant police disclosure from that 8th June 2009 MAPPA meeting, over this civil action, being further grounds for appeal as it was this trial judge that had refused that disclosure.**

**The real threat on the Appellant’s life incident, in Barbara Wilding’s office, ten days later, inside Bridgend police HQ, when surrounded by police brandishing machine guns and sporting tin hats and anti flack jackets, was becaue all had been given the order ‘to shoot to kill’ if need be. Gunmen were to, at least, intimidate this Appellant to withdraw these prosecutions.**

**All this related to, of course, Chief Superintendant’s Jenner’s pregnant daughter and the appellant’s property and quite inappropriate use, again, of police recourses to preserve their pensions.**

**Incidentally, the same police, in November 2013, caused the eviction of Bristol’s court bailiff, when lawfully directed, by both the new owner and Bristol Court, to have drug dealer, GBH convicted Mark Davenport, whilst handling stolen goods, from not being evicted from the very same residence.**

**Davenport was in the employ of the South Wales Police (see bailiff’s detailed affidavit and October 2013 Appellant’s MG5 remand papers to obtain unlawful custody from October 2013 until March 2014 only for all charges to be dropped.**

**Back to the ‘trading in machine guns’ charges etc, following his arrest and detention on the 22nd June 2009 for eight months in gaol to acquittal on this conspiracy of indictments is now history..**

**Barbara Wilding had thereby missed her opportunity, well recorded in 8th June 2009 MAPPA records, some leaked, from Barry police station, of having the Appellant shot.**

1. I heard oral evidence from each of these witnesses. In addition I heard evidence from a retired Detective Constable David Lewis whose name appears, in a document produced during the course of the hearing, as an “Investigating Officer” in respect of this incident. The form itself is at Bundle A1/5.164C. In short, his evidence was that at the relevant period he had an administrative role only, being retired in about April 1996 on account of ill health and stress, being office bound for some year before his retirement, and unacquainted with Mr Kirk before this incident.
2. He said that he was not able to understand the reference to himself as an investigating officer since at this time he merely dealt with routine administrative process. PC Roche’s evidence was that he was himself the investigating officer in the case. In short I found Mr Lewis, who was a strong and alert witness, also an impressive one. I accept fully his evidence.

DC Lewis would or should obtained the audit trail records of this incident and failed to disclose them.

1. This is a remarkable incident. The evidence in his witness statement of retired PS 1815 Roe was that (i) he advised Miss Genner and Mr Gafael to contact the local authority to make a complaint of unlawful eviction and harassment (ii) he advised them *not* to attempt to re-enter the premises (emphasis supplied) (iii) he “categorically denied” that he was involved in or had any knowledge of any police officer gaining access to the flat. These were points which he underlined both in his witness statement and in the oral evidence he gave before me on Thursday 7 March 2013.
2. In his witness statement, he says, “The only reason why a police officer would have broken into the flat was to preserve life or property. I can see no reason why a police officer would have required access to the flat in the circumstances of this particular incident” (at paragraph 10). He states that it is unlikely that Mr Kirk was arrested in relation to this incident: “Whilst Mr Gafael had made a complaint of theft and damage to his belongings, this could well have occurred whilst his belongings were outside the flat. In these circumstances the theft and damage were not clearly attributable to Mr Kirk. It is for these reasons that I believe that it is unlikely that Mr Kirk was arrested in relation to this incident” (at paragraph 13). “It is my recollection that Mr Kirk voluntarily attended Ely Police Station to discuss the incident with me. I would have advised him of the complaints made by Mr Gafael and Miss Genner. I would have also advised him that I had recommended to Mr Gafael and Miss Genner that they made a complaint to the Local Authority. I would have also told him that it was my intention to submit a report to the Local Authority about the incident”.

**This document is yet another applied for by the Appellant, having been charged and was also denied its disclosure.**

1. In oral evidence, on 7 March 2013, he told me “I don’t recollect entering the property. I went with Mr Gafael and his girlfriend, there was a roller shutter door, we couldn’t get in as I recall. …. *I can say for certain I would not have gained entry. I recollect going to the flat, the roller shutter door was down.* I can only recollect going on the one occasion”. Asked by Mr Kirk whether he was surprised that Mr Kirk was arrested, his answer was “*You wouldn’t have been. As soon as it hit the Custody Officer he would have said that it is not an arrestable offence and it is a matter for the Local Authority*” (emphasis supplied).
2. PC Roche, the officer in the case, concluded his witness statement of 1 June 2010 by stating, “I can confirm that Mr Kirk was not arrested for the illegal eviction of a tenant in June 1995 as he has alleged in his civil claim against South Wales Police” (paragraph 21). He also denied knowledge of any police officers gaining access to the flat.
3. The custody record itself, at A1/5.155 makes reference only to criminal damage: “15.42 As a result of information received from Cardiff officers I made arrangements for Mr Kirk to attend here and … subsequently arrested him on suspicion of causing criminal damage to property belonging to a Mr Christopher[sic] Gafel[sic] which allegedly occurred on 6/6/95. It records interview of Mr Kirk at 16.09 to 16.34; at 17.24, “DP charged with offences by PC 3100 [i.e. PC Roche] CR [caution] N/R [no response]”; and at 17.28 Mr Kirk as going to process with PC Roche.
4. The evidence of Mr Genner was that he knew Mr Kirk as a vet and had high regard for him as a vet; his then 18 year old daughter and boyfriend Mr Gafael had rented a flat from Mr Kirk in May 1995, and he and his wife had assisted in purchasing household items for them; but a short time after they had moved in his wife and he received a distraught telephone call from their daughter saying that her boyfriend had discovered their belongings outside in the street and that they had been locked out of their flat.

“My wife and I travelled to Cowbridge Road West and we waited with Alison until her friend arrived to collect her. Mr Gafael was present at the scene and shortly before my wife and I left Mr Gafael’s mother and her partner arrived at the scene. It is my recollection that Mr Gafael was talking to PS Roe who was also present.”

He subsequently received a telephone call from Mr Kirk who was conciliatory and polite. He strongly advised his daughter not to get involved with any legal proceedings. “It is my recollection that Mr Kirk was apologetic about any damage that had been caused to Alison’s property although he did not accept any responsibility in respect of the same”. In oral evidence he said that he had seen clothing and belongings, a “pile of property” in the street, but he attended as a father only and deliberately took no part in anything and kept his distance from the police advising his daughter to do the same.

1. His personal background, as described by him, was supportive of his account that he had no direct involvement in any police entry at the scene. Thus his duties at the time were emergency planning for South Wales; he was due for retirement; during the last weeks of employment he had an illness, was not serving as a police officer, and did not serve as a police officer again until he retired. Contrary to this, in oral evidence Mr Roe told me that Inspector Genner was the Inspector in charge of Fairwater Police Station. Whatever this detail, it is clear that the police officers who were dealing with the incident knew that one of the tenants was the daughter of a senior police officer, since PS Roe was present at the scene when Mr Genner was also present, and in his oral evidence Mr Roe expressly acknowledged that “[he was] aware from the beginning that Alison was the daughter of Inspector Genner”.
2. I consider it likely that Mr Genner did distance himself from actual involvement and that consciously or unconsciously Mr Roe himself wished to distance Ms Genner from matters. I note that no witness statement appears to have been taken from Ms Genner, and that the charges preferred against Mr Kirk referred to Mr Gafael only not also Ms Genner.
3. I am satisfied by the evidence of PC Manders, the contents of the custody record, and the circumstances generally of Mr Kirk attending at his local police station Barry in respect of this Cardiff complaint, that the involvement of PC Manders was limited to arrest of Mr Kirk on attendance.
4. At my instance Mr Roe was recalled to give evidence on 29 April 2013. This was because on a date after Mr Roe had given evidence on 7 March 2013, Mr Kirk produced a copy of a witness statement from the then PS Roe dated 22 June 1995 which included, “At 9.00pm the same day I returned again with Mr Gafel [sic] where *he in my presence forced open the roller shutter doors. I went upstairs with him*. *I noticed that the electricity and water were turned off, floor boards had been pulled up, there were no carpets on the floors, the premises at that time were not fit for reasonable habitation without some professional work being carried out. Mr Gafael removed a quantity of the furniture and personal property from the side of the house and took it into the flat. We all then left*”.
5. This statement should have been put to him. Mr Kirk’s explanation was that he did not wish to alert a witness whom he considered to be dishonest before all evidence from police officers in respect of this incident was complete. In addition, by the time of Mr Roe’s recall Mr Kirk had produced to the court a copy of the charge sheet for criminal damage dated 3.7.95 and two charge sheets of the same date under the Protection from Eviction Act 1977.

**So who are the flagrant liars?**

1. The charge sheet for criminal damage is at A1/5.164F. As I have noted above, the custody record states that at 17.24/17.25 the detained person was charged with offences by PC Roche, with “CF, N/R”. This charge sheet records that Mr Kirk was charged by PC Roche with an offence of criminal damage on Tuesday 6th June 1995 to property belonging to Anthony Gafael, being a porcelain miniature figure; quantity of clothing; picture frame; and hi-fi speakers “value not yet known”; ie not unlawful eviction.
2. The charges in relation to unlawful eviction, under the 1977 Act, were as follows. The first charge sheet is that

“At Cardiff…. between 1st June 1995 and 8th June 1995 did unlawfully deprive Anthony Gafael the residential occupier of the flat at 175 Cowbridge Road West, Ely, Cardiff of his occupation of the said premises Sec 1(2) Protection from Eviction Act 1977” and “At Cardiff…. between 1st June 1995 and 8th June 1995 did with intent to cause the residential occupier Anthony Gafael to give up his occupation of the flat …. Acts likely to cause interference with his peace or comfort and persistently withheld services to the said address Sec 1(3) Protection from Eviction Act 1977” (A1/5.164A).

The second charge sheet plainly refers to the interview with PS Roe (and PC Roche) at Barry Police Station:

“At Barry… on Monday 3rd July did refuse to comply with Notice under Protection from Eviction Act 1977 *by not supplying PS Roe 1815* with details of the landlord of the flat at 175 Cowbridge Road West, Ely, Cardiff Sec 7 Protection from Eviction Act 1977” (emphasis supplied, A1/5.164B).

1. The handwriting of PS Roe and PC Roche are similar, as Mr Roe himself observed. Each of them stated that it was he who had taken the statement of Mr Gafael. Mr Roche told me that he recognised the handwriting on the charge sheet of criminal damage (at Cardiff on Tuesday 6th June 1995 without lawful excuse damaged the property listed below…. etc;”) as being his own. I accept that it is. PC Roche gave oral evidence on 24 April 2013, by which time the two charge sheets had been disclosed which showed charges against Mr Kirk of offences under the Protection Against Eviction Act 1977 (A1/5.164A and 164B, see also 164F). PC Roche told me that the charges themselves were not in his writing. The handwriting on those charge sheets is indeed subtly different. Each has at its foot, “charged by: PC Roche PC 3100 Ely/SWP”. I accept the evidence of PC Roche on this point, on his own evidence and given the view I take below of the evidence of Mr Roe.
2. I find on the balance of probabilities that it was PC Roche who put the charges to Mr Kirk, but that the charge sheets had been written by another person not him. In cross examination, he said that he had no recollection of events on the day (6th June) because he was not present, and that he did not know Inspector Genner. “To the best of my recollect it was Sergeant Roe who apprised me of the information relating to this matter”. “Q. I was charged with illegal eviction of tenants – it would be natural that you would require proof of tenancy? A. I don’t know and you weren’t arrested by me for that. You were arrested for criminal damage and theft as I recall”. (I remind myself that it is this which appears on the custody record at its outset, under “circumstances of arrest and grounds for detention”, and that there is on the custody record nothing to do with eviction).
3. Mr Roche said that charges under the Protection from Eviction Act 1977 were not, to the best of his recollection, something he would normally deal with, and that the only person concerned with the interviewing process of Mr Kirk other than the custody sergeant “was Sergeant Roe. I do not remember any other officer being present or involved”. As to the eviction events, he told me in answer to my question that he would have had to take advice, or researched it himself, but he could not recall exactly. The recollection of PC Roche was that during the interview, whilst he could not be 100% certain “after all this time” he believed that Mr Kirk answered no comment to the majority of questions that were put to him (witness statement 1 June 2010 A1/5.152).
4. It is thus clear that Mr Kirk was charged with offences in respect of alleged illegal eviction of a tenant.
5. Mr Kirk’s own recollection of interview was hazy. He ‘seemed to remember’ two occasions of interview, and being interviewed on one occasion by plain clothes officers. His memory was of attending by appointment and both officers being in plain clothes. He was “not going to rule it out” that he was arrested by ‘the big police officer’ [PC Manders] for something else than alleged eviction. Prior to giving oral evidence, he was required to elucidate his case and gave a handwritten statement on 29 April 2013 speaking to two occasions of being questioned, although I note that there, he said “the information as to the second arrest I am hazy on other than I must have been recalled to the police station arrested and cautioned. Today I do not remember Manders but accept it may well have happened”, and in it, he accepted that the original signatures were his on the custody record, as he “must have been making some stance that the process was unlawful”. He did not remember the “interrogation” but accepted it may well have happened. He therefore “could not confirm if Roe and Roche were the same officers, on the second arrest”.
6. It had not been put to PC Roche or PS Roe that there were two occasions of arrest and interview. By the time of his own evidence Mr Kirk was asserting a belief that the custody record was not a true copy, and was a forgery, but once shown what purported to be his signature, he accepted that it was “a pretty good likeness” and he appeared to me to revise his stance, so that in the circumstances he was suspicious of the record, and thought it appropriate for an outside police force to look at it. I have only the evidence presented before me. Throughout this hearing, Mr Kirk has been able ready and willing to put to some of the police officers that they were not being truthful, or to question documents, but here he did not suggest forgery of the custody record to PS Roe or PC Roche and he did not do so to PC Manders, whom I find to be a straightforward witness. The internal evidence of the custody record is consistent with what Mr Kirk himself says happened, that he warned police officers that he would sue if charged with matters to do with illegal eviction.
7. The custody record notes “Mr Kirk has been given copy tape form” following his return from interview. Mr Kirk pursued questions in respect of the entry at 16.09 “DP with PS/PC Roche to interview”, in that it omits the name “Roe”. I do not feel able to draw significant inference from this in itself, but insofar as it invites query or suspicion, it is not what one would expect from a concoction or forgery. The custody record, and its timing, are consistent with the copy charges which Mr Kirk himself has produced to the court. Quite apart from these matters of detail, there is no material to support doubt as to the authenticity of the record. I accept that it is a genuine copy of the custody record contemporaneously recorded at the time of Mr Kirk’s voluntary attendance, and arrest, at the police station. Given the copy charge sheets which Mr Kirk himself has produced, it seems to me – insofar as it is necessary for me to decide the point – more likely that it was on a single occasion that Mr Kirk was arrested interviewed and charged.
8. There remains in issue the central allegation which Mr Kirk makes, that in respect of illegal eviction there was insufficient to justify his arrest. I shall have to deal with the evidence given before me of Mr Gafael himself, in circumstances which are unsatisfactory.
9. First however I turn to the evidence of Mr Roe. On the first occasion of him giving evidence, he appeared to be seeking positively to give answers sympathetic to Mr Kirk. His demeanour was that of a man to whom the allegations of police misconduct came as a surprise. When it was put to him that a number of police officers had attended using a crow bar to effect entry, he answered “I’ve no knowledge at all of it, when was this?”. Asked if he accepted that property being left on the road side would be likely to be stolen in this area, he positively hastened to agree with Mr Kirk, saying “In Ely, I’d have to agree with you! It’s sad times”. Asked about interview at Barry Police Station, and the entry at 16.09 “DP with PS/PC Roche to interview, 16.34 returned” he answered “It definitely isn’t me. Whether it’s an either/or rank, or two officers…..”. When recalled to give evidence on 29 April 2013 he accepted that the witness statement dated 22 June 1995 (A1/5.179A to B) was his statement, and bore his signature. “It will be an accurate document of my evidence at the time, rather than now, with the aid of my pocket book and things which were not available now”. Initially, he said that he thought the handwriting on the charge sheets as to eviction were probably in the writing of PC Roche; shortly afterwards, in cross examination, he said that the handwriting could have been Mr Roche’s but “it looks like it could be mine. It looks like it. The wording of the charges could have been written by myself”.
10. Of the charge (at 164B) of not supplying him with details of the landlord of the flat, he said,

“This is, to say the least, unusual, we must have been advised by the CPS. I must have served you with these. I said previously, we’d have submitted a report to the local authority who deal with this sort of incident, of harassment”.

1. When it was put to him that he had been seen standing outside the premises and that other officers attended he answered

“There could have been another officer with me, I wouldn’t like to say [how many police officers there were]. I don’t recollect Chief Inspector Genner being there, I’d be surprised, it’d be a thing he’d want to keep at arms’ length”.

There had been no suggestion whatever in his earlier evidence that another police officer may have been present.

1. As to the interview of Mr Kirk, his own witness statement of 22 June 1995 expressly refers to attending at Barry Police Station together with PC Roche when they interviewed Mr Kirk “in relation to damaged property *and tenancy* offences” (emphasis supplied, A1/5.179A at 179B).
2. The evidence of Mr Roe is wholly unsatisfactory, and I cannot accept it. Notwithstanding the length of this judgment, in an Annexe to this judgment I set out his oral evidence in answer to questions of my own on the occasion of his recall. Presence at or assistance with a forced entry is something which he told me forcefully would be quite unacceptable, yet he now accepts that he was present at a forced entry; I find as a fact, based on his own evidence, that he himself entered the flat. It is clear from the charge sheets that the matter of unlawful eviction must have been explored by Mr Roe himself in interview, and charges in respect of it were placed on the same date as interview. I accept that PC Roche did not write out the charges on the charge sheets; they must therefore have been written by Mr Roe, who was the only other officer engaged on the enquiry, as I accept on PC Roche’s evidence. This is contrary to his considered and repeated protestations that such would never be done by the police and was a matter for referral to the local authority. It is profoundly unlikely that he would forget this incident, involving the daughter of a senior police officer. He was the senior officer to PC Roche in this enquiry. It is notable that no statement appears to have been taken from the daughter of the senior police officer, and the charges of criminal damage are framed solely in relation to property of Mr Gafael. His evidence to me on 3 March 2013 that he did not enter the flat was, I am satisfied, consciously untruthful.
3. Mr Kirk himself called as a witness Mr Gafael, having served witness statements in respect of him. Even prior to my seeing and hearing him, the circumstances were extremely unprepossessing for acceptance of his evidence.
4. Mr Gafael did not attend in response to a witness summons properly served by Mr Kirk. At my direction he was served with a witness summons by the court bailiff to appear on short notice, with notice that he appeared to be in breach of the witness summons and liable to a fine, but might purge his contempt by attending on the further date specified to give evidence.
5. A typed witness statement, without signature, was served by Mr Kirk which at its foot included “*Not yet signed until Mr Kirk gives him £1000 cash* (emphasis supplied)”.
6. (On 6th May 2013 it appears that Mr Kirk attended Mr Gafael, and made notes of what Mr Gafael was saying on 4 handwritten pages with a typed page (starting “I Anthony Glen Gaphael[sic] on which there was handwritten “Attached to this is four pages of my statement written by Mr Kirk based on questions to answers Mr Kirk hopes to type this up if there is time” signed by Mr Gafael on 6 May 2013 (A1/5.130N – 130R, earlier Statement 130M). A type written statement dated “12th May 2013” was lodged with the Court and a signed copy of that statement (A1/5.130S-T) .
7. In his own oral evidence Mr Kirk stated that it was £2000 which Mr Gafael had said he wanted, and that he was not prepared to sign it unless he got £1000: “It went from £2000 to £1000. Q. When did it go down to £1000? A. When he signed.” Mr Kirk said that he had not paid Mr Gafael any money other than conduct money but, asked whether he had promised to pay Mr Gafael any money in respect of his attendance to give evidence, stated, “*He may well get some more….. he has an indication he may well get more money than his conduct money. I didn’t give him any indication I would give as much as he wanted…. He may well have gained the impression that he would get more money*” [emphasis supplied]. Mr Kirk insisted that he was not going to bribe the witness and said that there was a difference between being prepared to give money to a witness to give false evidence, or to give his evidence whatever that might be.
8. Mr Gafael accepted in cross examination that he had asked for £1000, saying “I’ve never been compensated” (for his loss in the incident).

This is a profoundly dubious start to a witness giving evidence.

1. In the witness statement of 2013 which is first in time, Mr Gafael stated that both Alison and he were locked out because their front door was barricaded by a locked roller shutter and then “my girlfriend’s father, then Chief Inspector Brian Genner of St Athan, arrived in his car with his wife. He assessed the situation with Sergeant Roe of Ely Police Station and called for more police to attend. My parents both came, but on foot, at the same time and possibly supplied the sledge hammer used to break in, if it was not in the van with the police who came later. I then ‘gained entry’ to the flat with the police and retrieved my property. I lost at least £2000 worth of property due to my eviction” (statement at A1/5.130M). This statement was not signed.
2. Caution is needed in any event as to the second statement, referring to four handwritten pages of Mr Kirk, because they are jottings which have not been individually phrased, nor on their face have they been individually checked by Mr Gafael. Nonetheless, it includes this “Genner phoned his mates described situation – using his own mobile …. Police wagon arrived 5 or 6 police officers got out of police van may have been plus police car. Dozen people? Plus. Mr Genner and one policeman went aside and talked for about 5 minutes. Roe turned and he said P/S later…. On an aside to A.G. Roe said “I will be a witness to your entry – you can use reasonable force – wink wink, do what you like”. These notes further include, “it was obvious me that there was some other agenda re police against Mr Kirk”, “it was not going away. The police were indicating that a lot more was going on than I was being told about”. I do not know what, or whether, attention was given to them by Mr Gafael individually.
3. In the witness statement which is typed and which is signed by him at Bundle A1/5.130S–T, Mr Gafael says that on finding the flat barricaded by a roller shutter locked down across the entrance, he telephoned both his parents and Alison’s, that all arrived in 20 to 30 minutes making 5 of them standing outside the front door,

“Mr Genner telephoned his officers and described the situation to several of them. Everyone heard the conversation.

9. After about 10 minutes a van load of police arrived with 5 or 6 police officers and got out of a van. I believe there was also a police car that turned up as well.

10. There were about a dozen of us now outside the premises.

11. Mr Genner and one of the police officers then went off to the side, out of hearing and discussed something for about 5 minutes.

12. Sergeant Roe then turned up and said I was to go up to the Ely Police Station later….

14. As an ‘aside’ Sergeant Roe said to me “I will be a witness to your entry you can use reasonable force [wink, wink], do what you want”. ….

20. When Mr Kirk asked about sledge hammer and crow bar my reply was “it was a feasible possibility”.

21. Then went back to Ely Police Station and Sergeant Roe in the dark at about 8.00pm and signed a document re proposed breaking in. Para 22. Then walked back to the flat with Roe.

23. I used sledge hammer and crow bar to break in.

24. It was obvious to me that there was some obvious agenda re police against Mr Kirk.

25. It was not going away. The police were indicating that a lot was going on than I was being told about. …. A few days later by appointment by phone I go back to Ely Police Station and make a long statement. I only made one statement.

29. I was told Mr Kirk had been arrested on the day or a couple of days later by police.

30. When asked for what Mr Kirk was arrested (by Mr Kirk) I said: Eviction and sub-letting property not even Mr Kirk’s. (Not arrested for criminal damage or theft).

31. While we and Mr Genner were putting in furniture in the flat, before 6 June, a neighbour told us Mr Kirk should not be renting as part of the sale was not allowing to sub-let”…..

1. In evidence before me, he acknowledged the handwritten section 9 statement made to the police and dated 11th June 1995 as his, and the signature on it as his. In it he says that on Friday 2nd June Mr Kirk complained to his mother at the flat that his music was too loud and he didn’t think the tenancy would work out; the same morning he came banging on the door to say that they had flooded his surgery and his electrics had blown, coming in and taking photographs of the wet patch next to the bath; the same day he returned at 4.30pm and turned off the electricity and they found themselves without water and electricity. On Saturday 3rd June “we asked the builders to turn the electric back on” and were told that they had been informed by Mr Kirk not to do so. They turned the water back themselves. On Sunday builders returned and the electricity was put back on. On the Monday he returned to find the electricity had been turned off. In this witness statement, given 5 days after the event, there is reference to damage to personal possessions. He relates finding the possessions placed in the street in bags. They stayed with friends for the next 3 nights “going through our belongings that we had moved from the flat. I discovered damage to valuable porcelain miniature figures. Damage to various items of clothing which had been left with building material when removed. A table leg had been destroyed….. there was a picture frame smashed. One of the speakers to my hi-fi system had been split. As we got to use our belongings we found further damage”.
2. In oral evidence Mr Gafael told me that, when he went back with Sergeant Roe to the flat, Mr Roe actually gained entry for him but made it clear that he wasn’t supposed to be there in that capacity – he was there to witness entry. In particular, when leaving the police station ‘in the main area where you walk in’, he asked the officer who wrote down the original statement what was likely to happen and him saying, “We’re well aware of Mr Kirk, he’s a nasty piece of work, it’s not the first time he’s evicted someone”.
3. In examination in chief, by Mr Kirk, Mr Gafael said he remembered, after getting past the roller shutter door, that his door was boarded up and there were planks of wood that the officer gained entry to the door and opened it. “Q. Was it locked? A. Yes, locked and barricaded with the wood across. Q. So how did you get entry to the second door? A. *I believe a crow bar was used* (emphasis supplied)”. He believed the officer who wrote down his statement was different to the one going to the property with him on the day. It is this officer who made the comment to him of being well aware of Mr Kirk, a nasty piece of work. He said that he had no further dealings with either officer. As to paragraph 23 of his own witness statement, where he states, “*I used the sledge hammer and crow bar* to break in”, Mr Gafael smiled, and said “Unfortunately it is not correct. I thought it was correct at the time I made the statement (sic)”. As to several officers attending, in oral evidence he could not remember the exact number but said, “There was a presence….. I can remember it was quite impressive, it was being dealt with”. He further said that the officer with whom Mr Genner had a conversation had a higher rank than the others attending, something of which there was no hint of mention in his written statement. He did not indicate, and was not asked, whether this might have been a Sergeant compared to other police constables attending.
4. As to his comment about an “agenda” he explained it as “some of the comments being made about you and what was going to happen. It wasn’t just about me being illegally convicted. You were a naughty boy and they wanted to talk to you about other things”. He said that he recalled the document that he signed in respect of entering the property, as being an official document with a South Wales Constabulary logo on it. “I remember the officer saying you would be pursued for what you had done to me. At that time I believed they were acting in my interests. Obviously not”. (He did not elaborate on the last comment). Asked about being homeless, he said he was led to believe that the police were going to deal with it “as a criminal offence”.
5. If the circumstances of his giving evidence were already un-prepossessing, Mr Gafael’s evidence itself was self-inconsistent at a number of points. In his contemporaneous statement to the police (taken by PC Roche not PS Roe) he mentions only himself and Sergeant Roe returning. In 2013 he describes a considerable police presence. In his contemporaneous statement to the police there is no mention of any part or role played by Mr Genner, the father of his girlfriend. In 2013 he is describing confidential discussion at the scene, in somewhat conspiratorial terms, between Sergeant Roe and Mr Genner. Variously, his evidence has been that it was he who gained entry, and that it was Sergeant Roe who did so. In his statement to Mr Kirk, he said he had used sledge hammer and crow bar, in oral evidence he said it was Mr Roe who used the crow bar to effect entry. This change of account was made within days of giving his statement. He was a witness who oozed insincerity and lack of credibility when he spoke.
6. I am therefore faced with the evidence of two central witnesses, from each of whom I have unsatisfactory evidence.
7. If I return to the sequence of events in 1995, Mr Kirk was granted bail at 17.41 hours, and any possible prosecution simply petered out: there is no record of court attendance, and indeed there is no claim in malicious prosecution. In written submissions leading counsel argues that in any event the purported charge for unlawful eviction was or might be a nullity (which I consider possible); and that thereby there could be no claim for malicious prosecution because “it would never have exposed the Claimant to any effective prosecution and conviction” (a proposition which I consider surprising, since it would be inconsistent with the rationale for there being a tort of malicious prosecution to protect the individual against malicious exposure to the process of prosecution). Since there is no such claim before me, I need not consider that argument in further detail.

**The Appellant humbly submits a submission of what utter nonsense to put before any UK court of Law by a QC who should of advised settlement ‘out of court’ more than a decade ago.**

1. On the balance of probabilities I consider that there was a single arrest in respect of this incident, not two as floated by Mr Kirk at trial itself. Mr Kirk was uncertain on the point in oral evidence, the charge sheet for unlawful eviction was written by Mr Roe not some other officer or officers, and an undated “landscape” formatted statement from Mrs Kirk under cover of a letter stated 15 June 2000 refers only to a single arrest and detention.
2. The requirements for lawful arrest are that the police officer did in fact honestly suspect that an offence had been committed by Mr Kirk and there were reasonable grounds for that suspicion. The burden of establishing a reasonable suspicion involves a very low threshold (eg only *Hussein v Chong Fook Kam* 1970 AC 792 and, for brevity, the authorities cited in *Civil Actions against the Police* 3rd ed. at 5-071-074).
3. I find the following facts on the balance of probabilities: (i) the personal possessions which Mr Gafael and Ms Jenner had in the flat were put out in the street; (ii) some of those possessions were damaged, and Mr Gafael made complaint to the police that there was damage; (iii) Mr Gafael and Ms Jenner were renting the property from Mr Kirk; (iv) the property which they were renting had been boarded up and entry barred to them; (v) Mr Gafael gave a witness statement to the police complaining that in the previous days Mr Kirk had taken steps against them which made clear he wanted them out; (vi) it is plausible that Inspector Genner wanted to avoid any involvement of his daughter, and that he conveyed that to PS Roe at the scene, but it is improbable that he had any other involvement with securing or encouraging the arrest of or the charge or charges against Mr Kirk.
4. Given this and what Mr Gafael had set out in detail in a signed written statement to the police, in my judgment (a) there was ample material justify to the relevant standard a suspicion by the police officer that Mr Kirk had committed an offence of criminal damage and (b) I accept that the officer did honestly suspect that an offence of criminal damage had been committed. The eviction of persons and property arose not because of some action on the part of the police but because some other person or persons had evicted the occupiers and this was reported to the police. I am therefore satisfied that Mr Kirk was arrested on account of and by reason of that suspicion.
5. What of any potential offence of unlawful eviction? The initial evidence of Mr Roe was unequivocally expressed that “ as soon as it hit the custody officer he would have said that it is not an arrestable offence”, and it is not suggested in closing submissions that Mr Kirk could lawfully have been arrested on suspicion of unlawful eviction. But was Mr Kirk in fact purportedly arrested on account of that? His statement of June 2009 asserts that one of the officers was not happy arresting him ‘on a civil matter’ and that he warned the officer he would sue (see above).
6. However, (i) Mr Kirk’s recollection in relation to these matters was hazy (see above) and in oral evidence he was “not going to rule it out” that he was arrested by ‘the big police officer’ for something else than alleged eviction; (ii) the arresting officer himself (PC Roche) was firm that “You weren’t arrested by me for that. You were arrested for criminal damage and theft as I recall” (see above); (iii) the custody record of circumstances of arrest make no mention of unlawful eviction. On the balance of probabilities I find that at the time of arrest, Mr Kirk was not arrested on suspicion, or arrested on suspicion also, of an offence of unlawful eviction.
7. It is inevitable that Mr Kirk should have deep suspicion of the motives and involvement of the police in this incident. In addition the fact of formulation by Mr Roe of the charges in relation to unlawful eviction is of profound concern, but I am unable to find in favour of the claim brought, which is for wrongful arrest.
8. It requires overarching evaluation upon all the evidence in the case whether this is evidence of a police vendetta or conspiracy against Mr Kirk, or rather the product of Mr Roe’s individual actions alone; but on the direct evidence the latter is far more likely since the police intervention was reactive to an incident where the tenant complained to them of eviction and damage to goods.