**DRAFT**

1. **Action 2 paragraph 13 – 8 September 2000 Church Street, Llantwit Major.** It is common ground that on the evening of 8 September 2000 Mr Kirk was arrested in Church Street, Llantwit Major, was taken to Barry Police Station, and was charged with an offence under section 5 Public Order Act 1986; that there were appearances at Barry Magistrates Court in respect of this; and that the prosecution was discontinued, the CPS stating that it was not in the public interest for the prosecution to proceed.
2. The claims are that arrest by PC Kihlberg was unlawful, that Mr Kirk was detained at Barry Police Station for longer than was reasonably necessary, and that he was thereafter maliciously prosecuted (Particulars of Claim at A2/8.1).
3. The pleaded Defence is that he was arrested on proper grounds and made an abusive gesture towards PC Kihlberg, and, warned under the Public Order Act, he then called PC Kihlberg a “skunk” so that the police officer had reasonable grounds for suspecting or believing that he had committed such an offence; that his detention was properly authorised by the Custody Officer PS McCarthy at Barry Police Station; and that the CPS were apparently satisfied that there was good and cogent evidence against him but in view of his general conduct, conviction and the likely sentence proceedings could not be justified; with general denial of unlawful arrest or malicious prosecution (A2/8.2-3).
4. On the Claimant’s side, I heard evidence from Mr Kirk, Mrs Kirstie Kirk (his then, and now former, wife) and a Mrs Hutchinson. The evidence of Mrs Hutchinson is devoted solely to what occurred at the scene in Church Street, Llantwit Major as, almost exclusively, was that of Mrs Kirk.
5. On the Defendant’s side, I heard evidence from PS 3444 Kihlberg (then PC 3444) and PC 3546 Gareth Holmes who were present and involved in the arrest in Church Street; and thereafter, in sequence of their involvement, PC 332 David Barrett (who conveyed Mr Kirk in a police van to the police station); PS (now retired) Paul McCarthy the custody officer who received Mr Kirk into custody and authorised his detention; PC 1590 Robert Morgan the assistant on custody duty; retired PS 585 Nigel Streeter who took over as custody officer of the shift starting at 10.00pm and his assistant in the custody duties on the 10.00pm shift PC 2 Gary Hayes; lastly retired Inspector 2837 Timothy Hubbard, who attended at 01:07 hours, and whose intervention led to Mr Kirk co-operating to provide fingerprints and photographs, following which he was released.
6. The incident at Church Street, Llantwit Major took place on the evening of 8 September 2000. This immediately followed an attendance by Mr Kirk at the Magistrates Court in respect of the incident involved in Action 2 paragraph 9. (This was the incident when Mr Kirk had been driving his BMW car on 1st December 1999, was stopped by the police near Gilestone Cross and, not having got out of his car, had the rear quarter light broken after - according to the evidence of PC Kihlberg - he failed to respond to PC Kihlberg. (It is noteworthy that, (see above), he was then arrested on allegation that he failed to give a breath specimen, and yet at the police station he was tested with a zero reading).
7. The fullest account in the witness statements of Mr Kirk is that of 19 May 2002 (A2/8.4D at 4E). There, he stated that PC Kihlberg in a police car stopped on the pretext that Mr Kirk had given a “V” sign; that he was bullying and Mr Kirk initially ignored him; that he Mr Kirk “whispered” to PC Kihlberg, for the 2 police officers to hear, something like you’re such a bad example to the police force or you are a skunk He told me at trial that “no-one could have heard that except my wife standing beside me, and Holmes, standing as close as we all are”. PC Kihlberg then told Mr Kirk that he was arresting him for a public order offence, he was handcuffed and manhandled to the car with his wife remonstrating, and taken to the police station where PC Kihlberg ‘gave a false account’ of what happened.
8. This assertion of a false account is a reference, as set out in the witness statement of 19 June 2009, to the allegation that PC Kihlberg told the custody sergeant not that Mr Kirk had called him a “skunk” (which Mr Kirk agrees he called him), but a “fucking skunk”, and this in order to excuse the arrest (paragraph 719 of the 2009 statement at A2/8.4B). In a typed statement signed on 12 January 2009 as being written “about 9 years ago”, Mr Kirk refers to himself being arrested and handcuffed in full view of his wife and the general public, and being detained only to be released 5 hours 39 minutes later (A2/8.4H).
9. In Mr Kirk’s oral evidence, both in chief and in cross examination, it became evident that there was a large measure of agreement as to what was said between himself and PC Kihlberg before his arrest - as opposed to how Mr Kirk had said it. It is common ground that Mr Kirk had made a gesture with his hand at PC Kihlberg as he drove past in the police vehicle; that PC Kihlberg, having reversed, gave Mr Kirk a warning not to continue with abusive behaviour towards him; that Mr Kirk replied “I think you can read my mind”; that PC Kihlberg said “I take it that you understand”; and that Mr Kirk replied “you are a skunk”. The evidence of Mr Kirk is that this was said so that only the policeman, and his wife heard, or would hear.
10. Mr Kirk was then arrested and handcuffs were put upon him. It is common ground that Mr Kirk tensed himself so as to passively resist being removed, was awkward to move, and was firmly gripped, so as to be placed over the bonnet of the police car. The evidence of PC Holmes was that, it being evident that the handcuffs on Mr Kirk were too tight, he tried to apply the small handcuff key to loosen them, but dropped it, whereupon Mr Kirk kicked the key under the police car. Mrs Kirk in her oral evidence remembered the dropping of the key and that “Maurice stamped on it”. In cross examination, Mr Kirk, prompted, remembered the dropping of the keys and said “I put my foot on it….. I think I stood on them” and, further prompted, agreed that he was trying to kick the key under the car, “I was obstructing if you like, it was a passive thing, obstruction, I was annoyed I’d been arrested for no reason…. Ah! I was hoping for witnesses to come out of the surgery”.
11. It is the evidence of the police officers, and Mr Kirk, and Mrs Kirk, that after being handcuffed, he was shouting out offering a reward to witnesses of his arrest.

“Q. Your purpose was to make it as difficult as possible, without using violence? A. Exactly. Q. You positively resisted the attempt to handcuff you behind your back? A. There was no need. I had several joint injuries [i.e. to his wrist] they could have handcuffed one hand…. They banged my head. They threw me against the bonnet, I was folded over, and I banged my head to the side. This went on for some time…. Q. What you are saying is during the course of the struggle, your head came into contact with the bonnet? A. Yes. It was quite unnecessary”.

1. Mr Kirk complains that on arrival at the police station PC Kihlberg gave a false account to the custody sergeant by stating that Mr Kirk had used the words “a fucking skunk” at the scene before his arrest. The custody record is at A2/8.9, and circumstances of arrest and grounds for detention are recorded as “DP arrives at custody unit handcuffed. Cuffs checked both sides double locked and sufficient gap for me to insert my finger. DP was seen by arresting officer to make an abusive, insulting gesture to police officers, the officers stopped and spoke to the DP. The DP was warned to his conduct, he replied by saying, “you are a fucking skunk”. The custody record is also that “The DP was arrested, cautioned, he replied “You’re a fucking bastard”…. PCs Kihlberg and Holmes handcuffed the DP to the front and whilst PC Holmes attempted to adjust the cuffs to correct setting, the DP kicked out at the officer and needed to be restrained by holding against the police vehicle. The DP was subsequently conveyed to custody in a police van”. It is clear that the account was given by PC Kihlberg, not by PC Holmes; and clear that the reply “You’re a fucking bastard was made only after arrest.
2. In a number of letters after this incident, Mr Kirk demanded disclosure of the custody suite video tapes, on the basis that they would show that PC Kihlberg had given a false account to the custody sergeant. He made complaint to the CPS, that PC Kihlberg was guilty of perjury and attempting to pervert the course of justice, to which the CPS replied in rather neutral terms that they were ‘not satisfied there was sufficient evidence to provide a realistic prospect of a conviction’ (letter 5th January 2001 A2/8.133).
3. Mr Kirk’s repeated enquiries and demands for a copy of the video recording of the custody suite eventually led to it being located in June 2001. (“Dear Mr Atherton [CPS], Maurice Kirk Cardiff Crown Court 9th July 2001….Further to the Maurice Kirk saga I hope the following assists you with regard to Mr Kirk’s arrest and detention on 8th September 2000 at Barry police station, I have now found the video recording of the custody suite and a copy is attached and the original will be held.” (A2/8.127) ). This appears not to have been released to Mr Kirk at that point, but must have been released at some stage, because a typed statement of Mr Kirk (?from the year 2002) states “Eventually it was released, showing PC Holmes not by custody sergeant when Kihlberg said I swore in public, and therefore did not hear fucking skunk quoted by Kihlberg that caused the detention and charge” (paragraph 74 Mr Kirk witness statement 19 May 2002 A2/8.4F, emphasis supplied).

1. The entry as to circumstances of arrest and grounds for detention are timed in the police custody record of Barry police station at 20:11 hours, with detention then authorised by PS McCarthy. The various timed entries in the custody log appear at A2/8.11-12).
2. These show release at 01:50 hours in the early morning of 9 September 2000, after Mr Kirk was charged (with a Public Order Act offence). At 20.14, the entry is “State on arrival: slight reddening to wrists only, no injuries claimed, asked for doctor”. At 21.25, PC Morgan is recorded as attending to secure Mr Kirk’s attendance at the charge room, “he refused stating that he wanted to make a statement”. At 23.13 “Mr Kirk has prev stated that he wishes to make a statement prior to coming out of the cell to be charged… no officer has been available to interview Mr Kirk at this time due to being very busy”. At 00.31 “If Mr Kirk still wishes to make a statement prior to charge it will be recorded on tape and he will be charged whilst the tape is still recording”. At 00.50 “spoke to DP… he has been informed that we are now in a position to take his statement if he still wishes to make one… he has decided that he does not want to make one now”. At 00.52 ‘charged on offence of disorderly conduct – harassment etc. under section 5 Public Order Act, no reply to charge and declines to sign’. At 00.58 “DP asked to accompany PC to process room.. sitting on bench will not say anything”; 01.02 “Mr Kirk advised regarding the further grounds for his detention…did not reply….still sat on bench with his eyes closed”; at 01.07 the custody record, attendance by Inspector Hubbard, “Tried to speak to the DP who was still sitting on the bench and saying nothing”; and 01.34 “Inspector Hubbard persuaded DP to co-operate and provide fingerprints and photographs”. At 01.41 it states, ‘Mr Kirk refused to sign the PNC1 form or the fingerprint forms’; likewise at 01.45 the bail forms or for return of property; and grant of release at 01.50.
3. Whilst the pleaded case is that he was detained longer than reasonably necessary, Mr Kirk did not pursue this in his own evidence, or in cross examination of the officers involved in his custody. Save that on his own account, he asked for a doctor more than once, he did not much explore and he did not significantly challenge the account in the custody log. His complaint was that if PC Kihlberg had not embroidered his account, he would not have been detained and/or charged in the first place. This was also the thrust of his complaint of malicious prosecution, (save that also, in earlier correspondence or statements, expressly or by implication he alleges that the prosecution was dropped for want of any merit, not on account of the balanced and responsible grounds then professed for discontinuance of the prosecution).

**The excessive time in detention was recorded on the custody records clearly showing malice**

1. The witness statements of PCs Holmes and Kihlberg were closely aligned, as were their section 9 witness statements, handwritten and date/time stamped on the evening of 8 September 2000, (it seems at 20.28 for PC Kihlberg see A2/8.81 and ?20.50 for PC Holmes see A2/8.46A).
2. Each states that after the handcuffing, Mrs Kirk approached and said words to the effect “Is all this necessary?”. It is common ground, and PC Kihlberg was anxious to emphasise, that this took place at a location in the centre of Llantwit Major which is effectively a triangle overlooked by 3 pubs. It was “a very well populated area… especially in good weather, there would be hundreds of people. It was a nice evening, clear, dry. There were plenty of people about.” He worked regularly in that area, he lived in that area, and as for the words “you’re a skunk” it was loud enough for other people to hear, it was said to be abusive, and “I took it to mean, I’ll continue my behaviour towards you”…. I felt if other people thought that was acceptable, it would mean the green light for other people…”. Asked what he would do when somebody ‘carried on abuse’ “*I’d always arrest*” (emphasis supplied). Asked by leading counsel, “Q. Always?” he nonetheless persisted: “In a public place, where there are other people drinking and revelling, I would effect an arrest”.
3. As to entry on the typed custody record, he told the Court that “I speak to the custody sergeant at the desk, and he types it into a computer”. As to the entry, “you’re a fucking skunk” his reply was “It would appear to be a mistake in the custody record. *I can’t recall* that I said that to him” (emphasis supplied). When it was put to him by Mr Kirk that skunk was said no louder than would be heard by the police officers and Mrs Kirk, he said “it was louder. Loud enough for others to hear, *otherwise I would not have got out of the car*”. Later, he said he would have asked Mr Kirk to calm down, and “I would have spoken to you in a calm way”.
4. As to the other officer present, PC Holmes, I have related elsewhere that PC Holmes spoke of Mr Kirk as somebody with whom in general he personally did not encounter any difficulty. He, like PC Kihlberg, was clear that the gesture in Church Street by Mr Kirk was a “V” sign. In his witness statement, dealing with events after arrest, PC Holmes stated that as he bent down to pick up the handcuff key he felt Mr Kirk pull backwards, “and then kick out, in my direction, with his right leg but he did not connect. Mr Kirk had now become aggressive and fearing for my safety I began to pull him to the ground….” (witness statement 28.10.2008 paragraph 31 A2/8.31 at 37). This appears also in the section 9 statement made the same evening to which I refer above (A2/8.46). In oral evidence, he tempered this somewhat: “Q. Did you see me attempt to assault PC Kihlberg at any time? A. There’s a difference between assault and resistance. At no time did you attempt to assault PC Kihlberg. You did attempt to kick out. Q. You mean I was not compliant? A. Yes”. This was the sense of his evidence throughout. As to how the words “you’re a skunk” were said, he disagreed that it was quiet and said “it was quite loud”.
5. PC Holmes was a straightforward witness. He was also visibly uncomfortable when giving evidence as to the arrest by PC Kihlberg. Early in cross examination on this point, he said “If PC Kihlberg had not arrested you, I may have. I don’t know”. When asked further about the arrest, by way of illustration, he answered as follows, “Q. I said “you are a skunk”? A. Yes. Q. Why is that a public order offence? A. *PC Kihlberg deemed that* offensive and insulting behaviour”. A little later “and I’ve never had an issue with Mr Kirk. *Officers feel things in different ways*”. I am satisfied that this is a police witness who was extremely uncomfortable at the turn of events after the words said by Mr Kirk, and who was attempting not to be disloyal to the fellow officer who had taken the decision to arrest.
6. Other witness evidence. As to events at the scene, Mrs Kirstie Kirk was present. She made notes of the incident, at A2/8.4L-M. She had crossed the road, but saw a police car and

The policeman “? Grey hair” [plainly PC Kihlberg] speaking to M “who seemed to be ignoring him. Policeman persisted - ???? not going to be insulted – M continued to ignore him. Then he said he was going to arrest him for public order offence. Then M said I beat you today. The judge had something to say about you. Then got out of car and said arresting for public order offence. M called him a skunk and he wouldn’t get in car. They handcuffed him within seconds. I protested that his hands were blue. M told me to leave younger PM [policeman] alone as he was behaving correctly and told him that his colleague gave his uniform a bad name. Then threatened with CS gas….. PM [older] looked abs. [absolutely] furious…. I told them ridiculous behaviour. Older PM: 3444. Younger PM: 3546. PM driving van: 332 [this accurately records the police collar numbers of PC Kihlberg, PC Holmes, and PC Barratt the van driver, respectively].”.

1. Mrs Kirstie Kirk noted the names, and telephone number or address, of four persons who appeared to offer themselves as witnesses, but twelve and a half years later before me, the witnesses so named were not called. In general terms throughout this trial, Mr Kirk made informal observation from time to time that witnesses had disappeared or he had been unable to trace them because of the passage of time.
2. As to Mrs Kirk herself, she was a modest, mild, and careful witness, obviously searching her memory for an accurate account. I have observed elsewhere that, as to the incident on the stairs with Paul Stringer, she was willing to blame her husband for provoking a confrontation. Here, it was plain she regarded the police action, or in particular that of the older officer, as disproportionate. Her contemporary notes describe police behaviour as ridiculous; she telephoned custody during the night; she was, at the time, plainly critical of the police action: Inspector Hubbard spoke to her to advise her to speak to Mr Kirk “and attend [Barry Police Station] if she wishes to complain” (his official pocket book exhibited at A2/8.59).
3. I also heard evidence from Mrs Dorothy May Hutchinson (Claimant’s witness Bundle 270), who had for nearly 30 years lived opposite the Llantwit Major surgery. She told me that two ladies, staying with her, came to her ‘very very upset’ and that when she got to her gate she saw two policemen, one of whom ‘threw Mr Kirk against the wall’. She was at pains to say that one police officer was throwing Mr Kirk against the wall, but the other one “folded his arms and moved away as if he didn’t want to know. It was a terrible thing…I was concerned for [Mr Kirk’s safety. Why a nice man like Mr Kirk? …They put the handcuffs on him. They were too tight. He asked him to loosen them…. They just carried on, the big one, he smashed him on the bonnet, at least twice. That’s why the two ladies were crying….. it was disgraceful. They were getting him in the police car… I was at the gate on the second occasion when they threw him face down on the floor. You’re supposed to push their head down [putting someone in a police car], well they didn’t.”
4. Mrs Hutchinson agreed in cross examination that she found the incident a very shocking experience. On exploration, she was describing the “*big*” police officer as the one exercising such force against Mr Kirk and the “*smaller*” one as having folded his arms. She did not see a police officer trying to help with a key trying to loosen the handcuffs (although she did say she was now dealing with the two ladies who were upset, trying to calm them down).
5. In short, this account of which police officer was forcefully engaged with Mr Kirk appears to be the wrong way round, both on Mr Kirk’s account and according to Mrs Kirk’s notes – in that they have Holmes acting correctly, who was much the taller of the officers, and reasonably lean. On the other hand, PC Kihlberg, one may accurately say, is obviously rotund.
6. It is suggested that Mrs Hutchinson is unreliable, in that she did not see what undoubtedly happened with the handcuffs key being dropped; although it may be that Mrs Hutchinson was looking away when PC Holmes was trying to apply keys and crouching to retrieve them when they fell to the ground. It is evident that Mrs Hutchinson found it shocking in itself that “her” vet should be the subject of police intervention, which may skew her observations. Her description of Mr Kirk being thrown against a wall does not feature in other accounts. I note that Mr Kirk, who has been consistently and engagingly open in his comments in the courtroom, later described her in passing as “the lady with Alzheimer’s”. As to the detail of what happened on this occasion, I must therefore approach the evidence of Mrs Hutchinson with care.
7. However, as to the likelihood that force was applied by PC Kihlberg to overcome Mr Kirk’s passive resistance, then looking forward to my conclusions on all of the evidence I heard, I am sure that very considerable force was applied, and I have no doubt that in the course of it Mr Kirk’s head made contact with the bonnet of the police car, probably on two occasions.
8. The evidence of the police van driver PC Barrett is uncontroversial. The evidence of other police officers involved with Mr Kirk’s detention at Barry Police Station that evening and in the early hours was not substantially explored nor significantly challenged.
9. What PC Kihlberg told the custody officer. A central theme of Mr Kirk is that PC Kihlberg falsely embroidered the words used at the scene, in order to justify his arrest. I accept that PC Holmes simply did not recall whether he was present or not when the arresting officer was giving the account of the circumstances of arrest to the custody sergeant. He added, “I know it will all have been video recorded”, and told me that he did not remember the precise words by PC Kihlberg to the custody sergeant. Therefore the evidence of PS McCarthy the custody sergeant is potentially important as to what was said by PC Kihlberg at the desk when reporting the circumstances and grounds of arrest. In answer to a neutral question from myself, he told me that the accuracy of recording what is said by the arresting officer is important, because “the key evidence is the officer’s evidence which he’ll record”. I fully accept his further observation, that by its nature, a paragraph of this size [a dozen lines odd] does not contain the exact detail of everything that is said; but he went on “obviously, getting the circumstances right, in terms of their liberty being taken from them, is important to the custody officer”. He said also, “Obviously sometimes there is a difference between the original account of what is recorded, and what should be the most accurate document which is the witness statement of what is recorded”; but he told Mr Kirk, in oral examination “ordinarily, and with your demeanour, this would have been typed as he told me what happened”.
10. His recollection is that the arresting officer [here PC Kihlberg] would have signed the document, himself signing his own section and PC Kihlberg signing his section. In signing his own section, PC Kihlberg would have been able to see the words “a fucking skunk” recorded.
11. This incident took place during a period of adjournment in the magistrates’ court trial of Mr Kirk for failing to provide a specimen of breath, at Gilestone Cross, an incident in which PC Kihlberg was engaged. In closing written submissions leading counsel for the Defendant invites the court to consider whether Mr Kirk deliberately created a confrontation between him and PC Kihlberg on the evening of 8th September 2000, which he could then use in the continuing magistrates’ court trial.
12. I think it highly probable that Mr Kirk did give a “V” sign towards PC Kihlberg as he drove by. Albeit coy on the point, Mr Kirk came close to agreeing that he did so (A. “It could have been taken as a “V” sign. Q. If someone interpreted it as a “V” sign, you would not be surprised? A. No.”). However on analysis of the evidence, the characters of those concerned, and their detailed evidence, I consider it unlikely in the extreme that Mr Kirk deliberately created a confrontation on the evening of 8 September 2000 for use in the then continuing magistrates’ court trial. Mr Kirk is of choleric character, and on occasion thoroughly naïve, but his actions are generally those of a man prone to react to circumstance rather than create them.
13. In particular, PC Kihlberg was, in respect of this incident (as for other incidents), a far from an impressive witness.
14. First, on the contemporaneous record of what he told the custody sergeant, and accepting what the custody sergeant PS McCarthy told me, I am satisfied that at the custody desk PC Kihlberg told the Custody Sergeant that Mr Kirk had called him “a *fucking* skunk” (emphasis supplied). This was untrue. He must, as the arresting officer, have been well aware here that the words he said were used by Mr Kirk, and which he alleged caused him to arrest Mr Kirk, were of signal importance. Yet his own written statement of some 20 minutes later did not include this word.
15. Second, no-one would reasonably suggest that police officers should expect routinely to be abused and do nothing about it. Nonetheless it is surprising, unless PC Kihlberg was reacting with animus to the particular presence of Mr Kirk, that on driving past he should rise to a v-sign and reverse the police car as he did. PC Kihlberg told me that the police car was going extremely slowly and that he reversed “*a couple of feet*” (emphasis supplied). This is not what Mr Kirk says (crashed the gears, reversed harshly) and it is not what PC Kihlberg or PC Holmes said at the time (each, “reversed about 4 to 5 yards to where Mr Kirk was standing” A2/8.24 at paragraph 42 and A2/8.36 at paragraph 25). I prefer Mr Kirk’s account of this, which betrays an intemperate action, in keeping with PC Holmes’ observable discomfort in giving evidence as to the actions of his fellow police officer.
16. Third, the full extent of the subsequent exchange is, (i) at its highest, an official warning not to continue with a particular piece of behaviour, (ii) a reply from Mr Kirk which was merely anodyne, “I think you can read my mind”, (iii) PC Kihlberg prolonging the exchange, “I take it that you understand”, followed by (iv) Mr Kirk saying “you are a skunk”. I find it likely that Mr Kirk said this in a voice loud enough to be heard by those close by (Mrs Kirk heard it, it seems across this narrow street) and equally I find it improbable that it was “shouted” (see PC Holmes’ oral evidence “quite loud” not “shouted”). I found wholly unconvincing PC Kihlberg’s explanation that he would be or might be placed in difficulty in dealing with people on another occasion because others outside the public houses had seen the v-sign or had heard this said. As a witness he radiated anger that his authority should be questioned, and an intent to stamp his authority upon any one whom he considered to be questioning him. His own evidence that he would “always” arrest (see above) is a reflection of his personality, abundantly apparent in his demeanour, and is not one of any balanced approach.
17. Fourth, this is a witness who gave me wholly inconsistent explanations of why on 1st December 1999, having arrested Mr Kirk, he had declined to give Mr Kirk a lift back to where Mr Kirk’s car had been left (see above).
18. On this occasion he told the custody sergeant that he had been called “a fucking skunk” by Mr Kirk, which was an embroidered account. His account at the custody desk is recorded as being that PC Holmes attempted to adjust the cuffs to the correct setting, and Mr Kirk “*kicked out at the officer and needed to be restrained*” (emphasis supplied), whereas, by the evidence of PC Holmes before me, this account is neither accurate nor fair. I am careful not to attach undue weight to this small item of evidence, not least because I cannot trace that the matter was put individually to PC Kihlberg, but it is part of an unpleasant picture.
19. The decision to arrest was that of PC Kihlberg alone. The reaction of Mrs Kirk, whose evidence before me was given in a balanced, restrained, and indeed model way, was to ask at the scene “Is this really necessary?” I have the same question.
20. Mr Kirk’s evidence is that PC Kihlberg was in a temper. On the one hand, Mr Kirk is a man who sees the whole world, when acting in a manner adverse to him, as acting in conspiracy against him; but here at the scene itself, he was telling his wife that PC Holmes was not behaving improperly. I am satisfied beyond doubt that PC Kihlberg was in a temper, and reacted as he did to Mr Kirk because he was in a temper.
21. In evidence in chief, leading counsel asked Mr McCarthy, the custody sergeant, “If there hadn’t been the word “fucking” before skunk, would it have made a difference to the decision to charge? A. That word is not necessary – it is the conduct of the person which is important,….. it would not have changed my decision”. First, in my judgment it was of itself bound to play a critical part in the decision whether or not to charge the detained person for a public order offence, and I am satisfied that it was a conscious embroidery on the part of PC Kihlberg. Second, this was and was bound to be reinforced by PC Kihlberg’s account that “PC Holmes attempted to adjust the cuffs to the correct setting, the *DP kicked out at the officer* and needed to be restrained by holding against the police vehicle”.
22. At 10.00pm, it was PS Streeter who took over as custody sergeant and who thus continued Mr Kirk’s detention, and who authorised the charge to be put. He was clear that this decision was his, as the custody sergeant now on duty, he relying on what is set out in the custody record – “I’m relying on the fact that I’ve got no reason to doubt what I’ve been told”. Officers were frank as to their absence of recollection other than that which was written in the custody record (e.g. PC Morgan had “no recollection at all”). I am satisfied that he also was likely to be relying in particular on the twin allegations I have recorded in the preceding paragraph.
23. In other incidents, it is clear Mr Kirk has seethed silently at the police station. He may have intended to make a statement of complaint on this occasion also, but at best it is opaque whether he made that clear to the police officers at the custody suite. Having seen their somewhat passive and unimaginative demeanour and evidence, I think it more probable that those concerned were simply wishing to arrange the taking of statement by other officers, in his cell as he wished, and those responsible for custody have no part in the investigation of the alleged offence of the detained person itself.

Relevance of the fact that the prosecution was discontinued.

1. Mr Kirk relies, in support of his claim for malicious prosecution, upon the fact that the prosecution was discontinued. He would say that the prosecution had no discernible basis and/or that its discontinuance was consciously motivated by concern at the tainted evidence of PC Kihlberg of which he complained so strongly.
2. I respectfully disagree. The charge was discontinued on 19 October 2000. The reason given was that it would ‘not be in the public interest to proceed’ (A2/8.93 and 120-121). A letter of 28 September 2000 in the additional bundle of disclosure, from CPS to Barry Police File Preparation Unit, sets out the reasons for not continuing the prosecution.
3. The letter states,

“The Defendant is well known to the police and courts as a result of his frequent offending. He has numerous convictions for various offences involving violence, public disorder, road traffic and air traffic control laws. Each of his cases is blown up out of all proportion by the Defendant who claims on each occasion to be the victim of persecution by the authorities responsible for preserving law and order. It appears obvious that the Defendant actively seeks conflict with authority, in this case the police, in order to provide himself with a forum (the criminal courts) from which to rant at length on the inequity of his treatment….. the fact that the courts have, to my knowledge, always convicted the Defendant in the past shows plainly that his allegations of police harassment are untrue and have never been accepted. I believe that the present case, if proceeded with, would result in the same outcome. However that outcome would be achieved only after a significant use of resources in terms of case preparation and man hours expended at court. The sentence which the Court could impose is limited to a fine and a conviction itself would add little to the Defendant’s list of convictions. I appreciate that the police officers involved should not have to tolerate the sort of abuse they suffered in this case, and I am certainly not advising that Mr Kirk should be allowed to abuse police officers with impunity. Each case should be looked at in light of its own particular facts and circumstances. I advise that in this particular case it would not be in the public interest to proceed”.

1. This letter appears to be written in ignorance of occasions when Mr Kirk has been convicted but has succeeded on appeal. However the essence of this letter is that the offence in question is a minor offence, and in the circumstances alleged it was about as minor an alleged public order offence as one could possibly find. I therefore do not find the discontinuance of the prosecution to be evidence of bad faith on the part of those who processed the prosecution in reliance on the evidence recorded to them.
2. In written submissions, leading counsel for the Defendant observed that clearly the words used by Mr Kirk prior to his arrest were not of the worst sort used towards the police; says maybe some officers would have decided not to exercise their discretion to arrest the Claimant; but at any particular time there would only be a very small number of officers on duty in Llantwit Major who might have to deal with a large number of persons using the three public houses in the main square; and draws attention to the burden being on the Claimant to establish that the officer’s discretion was unlawfully exercised..
3. I do not ignore that Mr McCarthy *said* that without the word “fucking” he would still have authorised detention on the basis that the report before him justified charging Mr Kirk. However, Mr McCarthy was expressing a hypothesis, and moreover a hypothesis based on the account of Mr Kihlberg that Mr Kirk had *kicked out at the officer.*
4. An arrest may be held to be unlawful if it is one made outside any rational range of exercise of the power to arrest. The standard of proof is a high one, as I have set out in this judgment in the introductory passages as to the law. PC Kihlberg was acting in anger that his authority should be questioned, and out of an intent to stamp his authority upon any one whom he considered to be questioning him. The evidence of Mrs Kirstie Kirk is compelling, that PC Kihlberg actually got out of his police car to arrest Mr Kirk (as opposed to saying that he was arresting Mr Kirk) only after Mr Kirk uttered the words, “I beat you today” (a reference to the court appearance). I regret that I found the evidence of Mr Kihlberg unconvincing and I have no doubt that at the scene he was acting in temper, unreasonably, and out of personal pique and/or animus against Mr Kirk. I do not accept that he was acting on a genuine suspicion that Mr Kirk was guilty of a criminal offence, as opposed to an intemperate reaction to being challenged by Mr Kirk. Even if I were wrong in that I would nonetheless conclude that the decision to arrest was wholly disproportionate and that the circumstances could not in my judgment rationally justify arrest.. The supposed difficulty of policing such an area if he let the v-sign go is wholly unconvincing. In my judgment the arrest has not been shown to be lawful and Mr Kirk is entitled to recover damages for unlawful arrest.
5. There is no evidence which would justify a finding of malice on the part of those who dealt with his prosecution in reliance on what PC Kihlberg had alleged. I may require assistance as to the consequence of my finding of unlawful arrest upon the claim for malicious prosecution.