**Action 2 paragraph 14 campervan outside Cardiff County Court 13 December 2000**

**Appellant makes application (see para 942) what the other side has access to, listen to hearing discs, in the light of being allowed to tape record some evidence in the Ely veterinary surgery break–in conspiracy by police using a sledge hammer.**

**Further harassment from senior management to obtain an arrest, by using clearly reluctant police officers simply trying to be reasonable, in order to generate a range of the usual ‘bread and butter’ charging possibilities such as ‘resisting arrest’ and/or ‘assault’ to obtain the ‘legal right’ to go through the Appellant’s legal papers in his vehicle and copy off from his laptop again content relating to these legal proceedings.**

**Despite the appellant’s name and address of residence being supplied and used by the custody officer for his immediate release he was still arrested under orders by the same faceless wonders accountable, it appears, to no one.**

**This typical repeated incident, for the same purpose, again supports an over arching view that there should of been consolidation with the stayed and yet to be served claims.**

1. **Action 2 paragraph 14 campervan outside Cardiff County Court 13 December 2000**. The allegation is of unlawful arrest. Mr Kirk had his VW campervan (or in his words “battlebus”) parked partly on the pavement and partly on the carriageway immediately outside the entrance to Cardiff Civil Justice Centre. In a nutshell, two police officers on foot attended and asked him to move the vehicle; he was told that he would be issued with a fixed penalty notice and an HORT 1; and when, the police officer says, he was dissatisfied with Mr Kirk’s answers he arrested him. Once Mr Kirk reached Fairwater Police Station, he was recognised by the custody sergeant who verified his address and he was released from detention after being at Fairwater Police Station for about 18 minutes in all.
2. The pleaded case is that the arrest and detention were unlawful because “there were no reasonable grounds to believe that the Claimant was probably guilty of an arrestable offence which he was arrested”, that the arresting officer did not state the grounds on which he was arrested, and that the decision to arrest and detain him was such that no reasonable police officer would have reached.
3. The pleaded Defence is that on the attendance of the police Mr Kirk provided an address and then went on to identify 6 to 8 other addresses used by him, that the police officer who intended to proceed against him for obstruction of the highway was not satisfied that the details given were correct, and he therefore arrested Mr Kirk under the powers given by section 25 PACE.

**No address was proved to have been incorrect following PACE regulated investigation**

1. Nobody comes particularly well out of this incident, except for PS Fahey, who was the custody sergeant on duty at Fairwater Police Station when Mr Kirk entered the custody unit, who recognised him, and who caused his release so soon as an address was verified for Mr Kirk.
2. Mr Kirk deals with this only very briefly in his witness statement of 19 June 2009 or elsewhere. His campervan had large signs on all four sides (“corruption and conspiracy in Cardiff Courts”). Its position can be seen in the photograph of that day at A2/8.179A. The campervan is mostly on the pavement, with one set of wheels just into the carriageway. Two police officers attended on foot. [They were in fact PC 3487 Robert Gunstone, an older officer based in Cardiff and a very young officer PC Michael Stone].
3. In a letter of 14 December 2000 to South Wales Police (in other words the day after this) Mr Kirk wrote, “A police officer said he was to issue a parking ticket but went on to ask for driving documents without success. He asked me to move my aircraft banner tied 70 feet between two lamp posts in front of the court, but I wished to move the vehicle first. He then arrested me and my dogs(sic) for obstruction, I think, and took me to Central Police Station where I sat in the back of a locked van for about half an hour…. I was then taken to Fairwater Police Station and released with no parking ticket or paperwork of any sort”. [He then relates that his vehicle was removed by the police and that ultimately] my campervan had been towed away from the Crown Court with a penalty of £105 and the taxi fare. My suggestion of a whip round was declined. What would you be doing with the driver? Seasons Greetings Maurice J Kirk” (A2/8.177). In a more formal statement, undated, he stated “My Volkswagen campervan had large signs on all four sides. I had also draped along the railings and between 2 lampposts, my 80 feet banner, regularly towed behind my aircraft around South Wales, with the wording ‘www.kirkflyingvet.co.uk’ in 7 foot high lettering. I was then arrested either for obstruction or refusing to provide driving documents etc. and detained in custody for about an hour” (A2/8.176).
4. In oral evidence Mr Kirk agreed that it was the older police officer PC Gunstone who did most of the talking to him. He said that at a certain point PC Gunstone stopped writing and said “it’s an obstruction, move it”. Mr Kirk’s belief that someone on the radio to him was telling him to change it from a parking ticket to obstruction. “When I said it was not an obstruction, he started writing a parking ticket”. Mr Kirk agreed that the policeman must have asked him for his address. He did not remember the detail but he was pretty sure that the policeman wrote out an HORT 1 and agreed that he might have nominated John O’ Groats as the police station to produce his documents and the sense of his answers was that he had given a number of addresses adding “I was living in at least 3 local addresses”. “Q. Why not give him a single address? A. I had had constant trouble with the police, using an excuse to lock me up all night, it matured they would not release me from custody because they did not have my home address. Sometimes they did, sometimes they didn’t”.
5. Importantly, when Mr Kirk was asked whether he remembered the policeman saying that he was arresting him under Section 25 PACE he replied “not at the moment I don’t but it must be all on my custody record”.
6. The custody record at Fairwater Police Station records the circumstances of arrest and grounds for detention as 13/12/2000 11:48 “arrested by Central officer for section 25 PACE. Original offence being vehicle obstructing the road o/s the County Court building. The POD attended and identified himself as being the owner/driver. He furnished an address but then stated he had 6 – 8 addresses and frequented areas as far as John O Groats. The officer doubted the details given to him were not(sic) correct and arrested him” (A2/8.163). The arrival at the police station is recorded as being at 11:40 hours and his release from detention as being at 11:58 hours by PS Fahey.
7. The evidence of PC Gunstone is that when he arrived at the scene he spoke to Mr Kirk “advised him with regards the parking of the vehicle” and asked Mr Kirk to move it. “It was parked in such a manner so as to cause unnecessary obstruction to vehicles travelling from Park Street into Havelock Street and also those vehicles travelling from Havelock Street to Westgate Street”. “He did not comply so I informed him that he could be issued with a fixed penalty notice. He still took no notice so I began the process of issuing him with a fixed penalty. I then asked Mr Kirk for an address and he said “Which one do you want, I’ve got 6 or 8. I’ll give you my business address”. I said to Mr Kirk, “what is your home address”, he replied “I’ve got 6 or 8 addresses”. I said to Mr Kirk, “Give me your business address then”. Mr Kirk informed me that his business address was 51 Trenewydd (sic) Road, Barry” he asked Mr Kirk for his driving documents, which he could not produce “so I began to fill in an HORT/1 for the production of his documents. (He then complains that Mr Kirk refused to nominate a suitable police station for production of documents, deals with Mr Kirk letting 2 dogs out of the van, and continues,] Because of Mr Kirk’s awkward and evasive behaviour I felt that the address he had provided in Barry was insufficient for me to serve a summons on him and as a result I said to him, I am arresting you under section 25 of the Police and Criminal Evidence Act in order to confirm your name and address”. He then made arrangements for Mr Kirk to be conveyed to the police station at Fairwater, being aware that Cardiff Central custody unit was full.
8. Mr Stone in his witness statement dated 14 June 2004 confirmed that at the time he was a probationer constable and his tutor PC was PC Gunstone. Like PC Gunstone, he states that, “the vehicle was causing an obstruction to other motor vehicles”.. Mr Stone had a recollection “of Mr Kirk being very awkward and obstructive towards PC Gunstone, who was very calm and patient with him”. The statement of Mr Stone is very short.
9. I am fully satisfied that on the police attendance, PC Gunstone asked Mr Kirk to move his vehicle, and Mr Kirk did not do so. Equally, I am satisfied that PC Gunstone warned Mr Kirk that he would be issued with a parking ticket and that when Mr Kirk did not move the vehicle, PC Gunstone told Mr Kirk that the vehicle was obstructing the highway and started to write out an HORT/1 form with a view to prosecution for obstructing the highway. I am equally satisfied that when he arrested Mr Kirk, he did not do so on account of any arrestable offence, nor did he purport to do so, but told Mr Kirk that he was being arrested pursuant to section 25 Police and Criminal Evidence Act on the basis that he was not satisfied with the details which Mr Kirk had given.
10. I have said that no-one comes out of this incident particularly well. On Mr Kirk’s part, whatever the history of his experiences with the police and/or his motivation, I am satisfied that he was deliberately being as awkward as he could, both in relation to not moving the vehicle, and in giving opaque details which he hoped would irritate the police officer.
11. On the part of the police officer, I find his approach equally unappealing. This was a Saturday morning. The road in question is at a junction, (of which, unsurprisingly, I have intimate acquaintance), but of very wide roads indeed. The camper vehicle intruded into the carriageway by at most about a foot, as can be seen in the photograph. Of course it is not and was not for Mr Kirk in some lordly way to ignore the restrictions which apply to any other driver. Yet instead of leaving or calling for a parking ticket, or telling Mr Kirk to move it or he would be back in 10 minutes, he followed a course of events which led to arrest. In oral evidence, PC Gunstone said that he was looking to resolve the situation at the lowest level he possibly could. If so, he failed by as comprehensive a margin as one could possibly achieve.
12. In cross examination, he agreed that Mr Kirk had not been belligerent violent or threatening to the public. He agreed that Mr Kirk appeared respectably dressed. He appears to have been influenced by Mr Kirk’s nomination of John O’ Groats police station for production of documents, albeit if documents are produced at one police station they can be sent on to the HORT/1 issuing officer or station.

**John O Groats police station has been nominated for service of driving documents on numerous successful occasions and known by senior management, who are always so meticulous in trying to confine evidence of their routine bullying, over 23 years, not just to stay west of Offa’s Dyke but kept well buried within the confines of South Wales.**

1. PC Gunstone said that it was “on the incident as a whole” that he considered Mr Kirk was awkward and evasive. “You’d gone back to the vehicle, released the dogs, given me 6 or 8 addresses, alright you had given me one address but I thought there was now reasonable doubt as to that address….. I wanted to be sure we had the correct address. I didn’t know Mr Kirk. It was very difficult to examine what the info was. I had a reasonable doubt in my mind. *I think there comes a point where, if you are making a reasonable request and you’re advising for example that if the vehicle is not moved we will be issuing a fixed penalty notice and being greeted by a degree of non-compliance even down to nominating a police station where this gentleman could produce his documents and I’m aware that we’ve covered that at some length but there has to come a point where you think to yourself well how much longer can we continue this and we’re still not resolving the issue which is quite simply we have a vehicle causing obstruction. We have to draw the line somewhere Your Honour and I felt there was reasonable opportunity for this matter to have been resolved, and we got to the point where perhaps it couldn’t be resolved reasonably and we then had to utilise legislation. So we perhaps ventured to sum it up in so much as it wasn’t a lack of patience but certainly I felt we’d reached the point where as it stood this matter couldn’t be resolved any other way.* (Quotation taken verbatim from the disc of hearing).
2. Mr Kirk stressed that the policeman was in radio contact with the police station. He says that this was other police telling PC Gunstone what to do, and he is suspicious that the police officers attended at all. This was yet again part of the targeting of him. I am unimpressed by Mr Kirk’s suspicions. He is free to campaign, in a free country, but he was trying to draw attention to himself with a 70 or 80 foot banner, and I have no doubt he was pleased to draw the attention of the police officers on patrol.

**The aircraft banner-tow simply published the truth in** [**www.kirkflyingve.co.uk**](http://www.kirkflyingve.co.uk) **website**

1. That said, it is wearisome to find that the police officer took the course he did. Taken in the round it was a mechanical, indiscriminate, and insensitive progress from beginning to doubt that the details of address he had been given were correct, to disbelieving them, to his decision to arrest. In strict terms, the police officer had power to do what he did and on its face the claim is defensible in law, subject to any issue of whether his exercise of the power of arrest was ‘*Wednesbury* unreasonable’, namely (for brevity) a decision to arrest “so unreasonable that no reasonable [police officer] could come to it” (*Wednesbury Corporation* 19481 KB223at 229-230).
2. There are numerous authorities regarding a police officer’s discretion as to whether to exercise a power of arrest, but not one directly in point. Thus an arrest may be unlawful, where notwithstanding the existence of reasonable grounds to suspect the commission of an offence, the officer wrongfully exercises the discretion, but the burden is upon the Claimant to show that the police officer exercised that power in such a manner that no reasonable police officer could properly have done so and the burden is a high one.
3. In this case the obstruction of the highway was at best technical. If I were free in law (or in fact) to roll up the whole incident into one, and conclude that the police officer arrested Mr Kirk because his vehicle was obstructing the highway, I would conclude without hesitation that he was not entitled at law to do so and that any decision to arrest was *Wednesbury* unreasonable. I am not free in law to do so. However bovine I might personally think the decision to arrest was in general terms, I conclude that on the balance of probabilities as a matter of fact it was made because this highly unimaginative officer was not satisfied that the address which he was given was correct, and this was the address he had required to be given in order for summons if necessary to be served. In law it is this decision which has to be assessed for *Wednesbury* unreasonableness, and it is the exercise of a power individually tailored to the case where the address given is not established to the satisfaction of the police officer. Would that Mr Kirk had simply given a straightforward home address in the first place; and thank goodness it was PS Fahey who saw him walk in to the custody suite. However that may be, I cannot conclude that the arrest was unlawful for *Wednesbury* unreasonableness.