**DRAFT**

**Action 2 paragraph 3 – 12 May 1996 overtaking cyclists**.

**The purpose of this claim is to expose the extreme and exceptional lengths to which the South Wales Police were prepared to go by using the vulnerability, for any motorist, the Road Traffic Act.**

**First, the police had him struck-off the veterinary register, reliant on their own spurious allegations and then goaled him with the very real risk of being indefinitely in a high securety mental hospital by usingon their own fabricated NHS (Wales) medical records.**

**This police action was to provoke the separation from his wife and then 10 year old daughter, sparked by the fear her daughter would be taken into care if her mother did not co-operate and sign the police pre prepared witness statement that her husband was so dangerous, ‘trading in machine guns’, it justified a MAPPA level 3 category 3 registration.**

**The last five paragraphs of this judgment, p650 to p654, adequately indicate this continuing nefarious conduct when simple alternatives were so easily available.**

**The Appellant was therefore committed to a choice of a trader’s insurance policy, named on another owner’s car policy, insure on a monthly basis at least six vehicles or simply leave the area as he had to do in both Taunton and Guernsey.**

**Why is it so ‘frowned upon’ as to what the Appellant is doing and what 95% of the UK’s population also do?**

**Why was he so prosecuted and not for the other section in the Road Traffic Act?**

**Would the Appellant knowingly ever drive without basic 3rd party cover as a practicing veterinary surgeon and knowing he had 24/7 South Wales Police surveillance?**

1. **Action 2 paragraph 3 – 12 May 1996 overtaking cyclists**. This is an occasion when Mr Kirk overtook cyclists when driving, was stopped by the police, and was charged with driving without due care and attention and no insurance. The claim is that his prosecutions ‘continued maliciously’, and ‘without reasonable and proper cause’ in respect of both driving without due care and driving without insurance. He was also charged with crossing the white line, to which he pleaded guilty, and a later attempted appeal in respect of that charge failed.
2. I gave a full written judgment on preliminary issues on 30 November 2010 in which I ruled that the claim in respect of his driving without due care (or crossing the white line) must be dismissed. Put shortly, the Crown Court on appeal from the Magistrates Court had refused to make a costs order in favour of Mr Kirk and had made findings of fact which in my judgment precluded any reasonable prospect of Mr Kirk establishing absence of reasonable and proper cause for his prosecution for driving without due care (or crossing the white line).
3. I observed in the judgment on preliminary issues that

“73. As to his prosecution for driving without insurance, the certificate which he produced (late) in May 1996 was for a car in a different registration. He was convicted by the Magistrates Court on 02.12.1996. He made appeal which came before His Honour Judge Jacobs, on 4th and 5th November 1997. It was in November 1997 that insurance brokers wrote to the judge to clarify the terms of Mr Kirk’s insurance, (letter date 05.11.1997, trial bundle A2/1/199 and 330). It was on 20.11.1997 the appeal was allowed in respect of driving without insurance, no evidence there being offered.

74. *Mr Kirk will thus at trial face difficulty in showing that, in contrast to reasonable belief and want of malice in relation to the charge of driving without due care and attention, there was malice or want of reasonable and probable cause for his prosecution for driving without insurance. His case for malice in prosecution for want of insurance, if I might say so, appears to date factually frail in the light of the matters evident in paragraph 73* (emphasis supplied).

75. That is however a different matter from concluding that his factual case for such malice is in itself inconsistent with the prior findings of the court, or amounts to a collateral attack on the findings of that Court”.

Thus the matter could only be resolved finally on hearing the full evidence at trial.

1. The vehicle he was driving was an Austin Maestro Van D821 LNY. This is recorded on an HORT2 (Bundle A2/1.159). An insurance certificate was produced by Mr Kirk on 25 May 1996 (i.e. strictly, out of time, Bundle A2/1.160) for vehicle F118 NTP. Thus the certificate of insurance which Mr Kirk produced, (late), in May 1996 was for a car in a different registration than that which he was driving when he was stopped. He was convicted by the Magistrates’ Court on 02.12.1996. He lodged appeal which came before HHJ Jacobs, on 4 and 5 November 1997. On viewing the certificate itself (Bundle A2/1.200) it includes a provision that he “may also drive a motor car not belonging to him and not hired to him under a hire purchase agreement”. It was only in November 1997 that insurance brokers wrote to the judge to clarify the terms of Mr Kirk’s insurance (letter dated 05.11.1997, Bundle A2/1.199, and 330) 18 months after the stop. It was thus that on 20.11.1997 that the appeal was allowed in respect of driving without insurance, no evidence there being offered.
2. I turn to the witness evidence.
3. In his witness statement of 19 June 2009, Mr Kirk states “635. This incident was about the police accusing me of ‘careless driving’ in order, I believed, to examine the car for roadworthiness and discover who my latest insurance company was” (A2/1.141B). In an earlier statement dated 19 May 2002, he says he won on appeal on driving without due care and attention, and crossing the white line. [The latter is factually incorrect, see written ruling of the Crown Court at A2/1.221]. “The incident started when a police motor bike was behind me – I overtook him further back and he followed me. None of the cyclists complained about me. After the incident I caught up the cyclists again and then I saw another police motor bike coming the other way so I swerved in front of him onto the kerb to make him stop. I therefore deliberately stopped the policeman to make a complaint as I believe the police were behaving maliciously – there was no careless driving, the appeal judge said so” (A2/1.141E). (It is common ground that the police motorcyclist who stopped Mr Kirk was behind him when Mr Kirk overtook the cyclists).
4. In oral evidence in chief, Mr Kirk told me that he relied on evidence of similar fact, being asked on so many occasions to produce documents. As to producing the insurance document late, he said, “I had a deliberate purpose, to avoid them [the police] finding out the name of my insurers, so I would always give a delay to producing my insurance documents”. In cross examination, he agreed that he had produced his driving licence in person at Canton Police Station on 20 May 1996, but had not produced his insurance, stating that the insurance was in the post. He sent the original insurance certificate to the same police station, when received on 25 May 1996 (see A2/1.159, and 160 for the respective HORT 2 documents). As to whether the production late was by accident, or deliberate, he said that nothing would surprise him if he did not produce the insurance documents “in order to avoid the police going back to White Rose [the insurer] and hounding them”.
5. In fact, the insurance certificate for F118 NTP covered him to drive another vehicle providing that he was not the owner.
6. The appeal was to be heard on 4 November 1997 before HHJ Jacobs; it is plain that the judge required further information; on 5 November 1997 there was faxed to the Crown Court for the attention of HHJ Jacobs a letter of the same date from insurers/brokers confirming that they had insured Mr Kirk for various specific vehicles continuously since 23 December 1991, always with the “driving other vehicles” extension and stating that they had photocopies of his insurance documents on file if required. As I have related above, Mr Kirk was in the habit of driving a large number of different vehicles, in order - as he believed - to lessen the chances of him being stopped by the police and required to produce his documents. He told me that he also believed that if he were required to produce documents to the police, the attritional repeated enquiry of his insurers would lead them eventually to decline to insure him, which would be a disaster for a professional veterinary surgeon.
7. In respect of this particular incident, it is apparent that documents as to insurance having been received, the CPS on 20 November 1997 offered no evidence in respect of the charge that on 12 May 1996 he had used a motor vehicle without insurance and the conviction was accordingly quashed by HHJ Jacobs (A2/1.161). Mr Kirk observed that “he usually upheld my appeals with caustic comments”. It is clear HHJ Jacobs expressed views in the strongest terms critical of Mr Kirk’s insurance arrangements, and the court repeatedly being troubled by the enquiries which were generated by them.
8. For completeness, the police officer who stopped Mr Kirk on this occasion was PC 2727 Andrew Stephens. He was a patrol motorcyclist attached to Eastern Traffic Sector monitoring an annual Barnardo’s charity cycle ride, and following cyclists approaching Gileston Cross. He states that ahead of him was Mr Kirk, a white Fiesta, and then a group of about ten cyclists on the same side of the carriageway causing an obstruction to the lane. He said it was clear Mr Kirk was becoming impatient due to the obstruction, based on the position of his vehicle, and that Mr Kirk then overtook the Fiesta and the cyclists in order to do so crossing right over the solid white line and alongside the cyclists. “Whilst undertaking that manoeuvre he encountered a vehicle on the opposite side. That vehicle had to brake and pull over. Mr Kirk then attempted to enter the correct lane infringing on the group of cyclists forcing them to the kerb….. The driving of Mr Kirk contravened the road markings which are in place to indicate no overtaking”. He stated that the markings were in place due to the approach of a left hand bend with certain restrictions of vision of the road ahead. He stopped Mr Kirk, using his horn and lights, advised him that he had stopped him in relation to his driving and contravening a solid white line overtaking on the brow of a hill. He completed an HORT 1 document and told Mr Kirk he was required to produce his driving licence and other relevant documents, and that he was reporting him for driving without due care. (Witness statement for these proceedings dated 16 May 2000 A2/1.142 at 144-145, which is mirrored by the pocket book at A2/1.156–157 and the police witness statement of the time). He states that Mr Kirk was brusque, verbally aggressive, and in fact drove off as he was going through the verbal process of Notice of Intended Prosecution.
9. In oral evidence he said that his purpose was to ride behind the cycle ride, not to follow Mr Kirk, and that Mr Kirk’s vehicle came to his interest as they approached the bend. “It was nothing to do with MOT, insurance, or who owned the vehicle, it was the manner of your driving”. He said that it was a matter of routine, if he stopped a motorist for a motoring contravention, to issue an HORT 1. He said that it was the first time that he had encountered Mr Kirk. Asked by Mr Kirk what knowledge or acquaintance he had, Mr Stephens replied that prior to this date “I can reassure you I had no knowledge or dealings with you”. As to the period from 1992 to 2002 as a whole, he said what he picked up was from the press, that Mr Kirk had an attitude to authority “but that’s the press for you” and “if you’re talking about gossip in the police, the Traffic was at that time separate from the Division…. Your notoriety had no bearing on this particular incident… it was the first occasion I’d become aware of who Mr Kirk was”.
10. The findings of fact by the Crown Court included that there was a car coming from the opposite direction but the court considered that “it was arguable” there was room for the manoeuvre to be completed without risk to oncoming vehicles; they were not satisfied that Mr Kirk had inconvenienced any bicyclists; but “*we concluded that the police officer honestly believed* that cyclists had been inconvenienced but was unsighted and could not see around the vehicle which had been overtaken” (emphasis supplied); and they considered that the police officer had acted in good faith.
11. For the record, I also found Mr Stephens a straightforward witness and there is no independent evidence which would undermine the truthfulness of his account or suggest malice on his part individually. In addition there is nothing implausible in a police motorcyclist shepherding cyclists on an occasion such as this charity cycle ride. I accept that it was as a matter of routine practice that he issued an HORT1 form for him after stopping Mr Kirk, and in the honest belief that Mr Kirk had been guilty of a traffic contravention.
12. The insurance certificate sent by Mr Kirk expressed cover in respect of a different vehicle from Austin Maestro D821 LNY driven by him on this occasion. It is notable that in October 1996 the CPS, in preparation for hearing at the Magistrates’ Court at Barry, were writing to Mr Kirk asking him to ensure

“that you bring your original insurance document to Court on 2 December 1996, (reference vehicle registration number D821 LNY)” (A2/1.183).

Yet it is only in November 1997 that the relevant documents were produced by Mr Kirk. Further explanation was given by D and K Insurance Brokers, in a ‘second letter’ of 05 November 1997 for the attention of HHJ Jacobs, confirming that Austin Maestro D821 LNY was not specifically insured on 12/05/96 however Mr Kirk would have been insured to drive it ‘providing he was not the owner’ (A2/1.330).

1. Between 1990 and 2004 Dawn Kenyon was the proprietor of D and K Insurance Brokers. I received a witness statement and oral evidence. Mr Kirk was a friend of her late father who had been his insurance broker in Taunton.

“I recall on numerous occasions the police called and my father had to speak to them about matters relating to Mr Kirk’s various cars or aeroplanes. This must have been in the late 1960’s/early 1970’s. I must admit I was surprised when some 20 years later, running my own business and dealing with Mr Kirk, I too received numerous telephone calls from the police requesting information about the vehicles that he owned and/or was insured to drive. I also, on more than one occasion, recall Mr Kirk’s insurance company contacting me to suggest that we re-place his business at the next renewal. Although not explicit, there was suggestion that they were perturbed by the police contact they had obviously received”.

In oral evidence, she told me that she said to the insurers she would need to have a proper reason, since otherwise Mr Kirk would have to declare a refusal of insurance, and she would want the reason in writing, “so they left it alone and we carried on with the insurance”.

1. Mr Kirk was in the habit of registering vehicles in such names as Buzz Aldrin or Amelia Earhart. To state the obvious, these are names of well known aviation and astronautic figures but fictitious for the purposes of registration of a vehicle. In cross-examination Ms Kenyon told me this was something of which she was unaware. She had agreed that a driver would need the permission of the registered keeper in order to drive a vehicle, but was visibly amused to be told of Mr Kirk’s habit. Had Mr Kirk told them that he was registering the vehicles in a name *not* that of the correct keeper? “Of course not, no… he would know we’d probably tell him, watch out, you’re on shaky ground”. As to the variety of vehicles which Mr Kirk drove, she said “it seemed to be better for him to be able to jump into other people’s cars, until it was noticed that he was driving that car” – “jumping in to other vehicles” being simply her assumptions. She did say that Mr Kirk was the only person in all their years of trading for whom they used to have to produce details this often. I have no reason to doubt the evidence of Miss Kenyon on this point: it must be rare, if not unknown, for any motorist so resolutely to adopt the habit which Mr Kirk had, of often changing between vehicles or, as he told me, on some occasions driving to a destination in one vehicle and, in order not to be noticed by the police (in his belief), driving back in another vehicle. His witness statement even speaks of him climbing over walls in order to do so.
2. Independently of Miss Kenyon, enquiry must have been made of brokers/insurers about Mr Kirk’s insurance as early as February 1996, since his Bundle of witness evidence includes a statement from Richard Hirst dated 01.02.1996, (taken by a PC 2742 Ridley), giving details of the certificate of insurance issued to Mr Kirk on 23.12.1994 in respect of a Citroen G347 LNX and temporary cover on a Triumph CKV 629K in April 1995.
3. Mr Hirst stated, ”Mr Kirk’s certificate of insurance has an extension to allow him to also drive a motorcar not belonging to him and not hired to him under a hire purchase agreement. If Mr Kirk drove any other vehicle owned by him apart from the Citroen G347 LNX, then he was not covered by our company’s insurance” (Claimant’s Bundle 173).
4. The simple truth is that Mr Kirk employed uniquely complicated arrangements in order to drive, at any one period, a number of different vehicles not named on his certificate of insurance. I am satisfied that the police officer who required him to produce insurance documents on this occasion did so in good faith. When the insurance certificate was produced at the police station, (I have no doubt deliberately late), it was for a vehicle of different registration than that being driven by Mr Kirk at the relevant time. HHJ Jacobs was properly caustic in his comments about Mr Kirk’s insurance habits. To discern that a vehicle was in fact covered by insurance involved Mr Kirk establishing that the vehicle was not owned by him. It may be that at the appeal Mr Kirk produced the vehicle registration document in respect of the Maestro vehicle in question (which shows the keeper as “Janet Mary Kirk”) and that the CPS equated registered keeper with legal owner. At any rate, it was only in November 1997 that the information which HHJ Jacobs considered essential was produced, long after the summons for no insurance had been issued and had been pursued at the magistrates’ court. I can identify no nexus between the officer who stopped him and any police officer or police station which might be well acquainted with Mr Kirk. It is for Mr Kirk to establish an absence of reasonable and probable cause for issuing the summons, and malice, and I have no hesitation in dismissing the claim on the basis that he has in this instance shown neither.