**Action 1 claim 8.11 3 October 1993 at St Athan stop and arrest for driving whilst disqualified**.

**The whole purpose for the Appellant’s 64 page June 2009 interrupted by armed police unfinished witness statement was to set the scene for proving extreme and exceptional conduct by senior Barry police officers from the moment PNC records , on or before the December 1992 fire at his home with the loss of his garaged WW2 Piper Cub when acused of doing it on purpose. (see TV exhibit video)**

**The Appellant was already known to both the Barry magistrates and area police from numerous police forced detentions some twelve or fourteen years earlier, all on spurious grounds including an arrest At Cardiff airport while passing through South Wales, carrying a fare paying passenger, for Eire, to go hunting or the Isle of Man for the vintage and TT races.**

**An ignominious Barry magistrates acquittal for their airport based Special Branch Barry based police coincided with a string of acquittals, dangerous driving, speeding, low flying and theft of the Taunton area’s police commander’s person al pocket note book when no defence was needed to win any of the trumped up lies.**

**Another incident, leaving the South Wales Police with ‘egg on their faces’ was when the Appellant’s WW2 aircraft was unlawfully detained by them, no doubt at the behest of Taunton police just across the water, at about this same time, provoking a serious collapse in the roof of a police patrol car, a chase across the Irish Sea on a November night at six feet by a Hawker Hunter, out of then, RAF Brawdy.**

**Apart from giving the RUC much entertainment, at St Angelo aerodrome, Enniskillen, in the moon light, reciting the unbelievable telexes from south Wales no enquiry into the pilot’s conduct accounted for caution, warning or prosecution by either the police or Civil Aviation Authority.**

**Whereas the Appellant was aware of the well documented phenomenon, ‘police vengeance’, currently then being metered out on an almost weekly basis, with only an accurately calculated success rate of only 25%, in Taunton’s courts, meant the future was grim**

**The Appellant, therefore some twelve or so years later, on returning to Wales to do just a two week locum for a local veterinary surgeon and ‘get out of there’, had no intention of staying in such a nationally known notorious evil environment based on inherent deceit and a hatred of the English instilled from the day each is born.**

**But the farmers and small animal clients appeared to be no different to those he had had in the Vale of Taunton, in Somerset and so, with ‘affairs of the heart’ to cloud his vision, the Appellant reminded himself he was, himself, the grandson of a famous Jenkins with his special wife, a Morgan.**

**The naive appellant was completely amazed, therefore, so long after, in 1992, that the ‘war of attrition’ was re-kindled from, first Taunton and then, where extreme and exceptional police practices are the norm, the tax haven of the Channel Islands.**

The pleaded allegation is that on this date police officers stopped Mr Kirk whilst he was driving his motorcycle and no valid reason was given for his arrest; he was taken and unlawfully detained at Barry Police Station and held in custody on suspicion of driving whilst disqualified. He was released without charge.

More precisely, the allegation is that the Defendant was unlawfully detained in custody on 3rd October 1993 between 17:40 and 19:50 or thereabouts. These are the times respectively shown for arrival and presentation to the custody sergeant at Barry Police Station in the custody record and the time when he was bailed to Barry Magistrates Court (custody record A1/2.103 at 104, 105). The arrest was by PS Booker.

A copy of the court register of Barry Magistrates Court for 25 May 1993 records that Mr Kirk was convicted in his absence on 19 April 1993 of driving without insurance, but - in manuscript - it records “disqualified from driving 6 months…. suspended pending appeal” (A1/2.71). Thus it is correct that Mr Kirk’s disqualification on that day was not effective on the day of his arrest by PS Booker and he was in fact entitled to drive.

The pleaded Defence is that on that afternoon, Police Sergeant Booker was travelling in Llantwit Major when he saw Mr Kirk riding his BMW motorcycle, and that he had previously seen Mr Kirk’s criminal record held on the PNC indicating that on 24 May 1993 Mr Kirk had been disqualified from driving for a period of 6 months. He stopped Mr Kirk, informed him he believed him to be a disqualified driver, having been disqualified by the Barry Magistrates Court but Mr Kirk said he had never been to Barry Magistrates Court and indicated, whilst PS Booker was making further enquiries on the PNC that he intended to leave. “The officer therefore arrested the Plaintiff on suspicion of driving while disqualified. In the premises, the officer had reasonable grounds to suspect that the Plaintiff had been driving whilst disqualified. The Plaintiff did not inform the officer that his disqualification had been suspended pending his appeal. The Plaintiff was eventually taken to Barry Police Station where he was eventually released”. A central part of that Defence is that Mr Kirk did not inform the police officer that his disqualification had been suspended. A critical issue is whether PS Booker did, as he says, make enquiry to check whether Mr Kirk was disqualified.

I heard evidence from Mr Kirk himself; and on the part of the Defendant from retired PS 2602 Booker, retired PS 2148 Huw Phillips, retired PS 1301 Roy Goodman, and Inspector Andrew Rice.

Mr Kirk’s extensive witness statement of 19 June 2009 is terse in respect of this incident. In its totality it says, “541. On 3rd October 1993 I was riding my BMW motorcycle, registered in Guernsey, near St Athan, when I was stopped by police and accused of driving whilst disqualified. I flatly denied it. He mentioned a court case in Barry and I remember asking what on earth he was talking about it was court history. I repeated my complaints of harassment when in custody”.

In oral evidence Mr Kirk initially remembered little more. I therefore drew his attention to his letter dated 15 December 1993 to the Management Information Unit at Police Headquarters, Bridgend where he stated “I wish to have the full record concerning my arrest and unlawful detention on 3rd October 1993 at Barry Police Station for alleged driving while disqualified” (A1/2.112)”. [The same letter required like details for an alleged offence on 4th October 1993, which is an incident when Mr Kirk was stopped after release from custody at the police station by PC Kerslake when he was driving around a roundabout; however in my written judgment of 30 November 2010, I struck out this claim for the reasons there set out in paragraphs 53 – 66) ].

**A highly significant ‘struck out’ incident when the veterinary nurse’s sworn affidavit had recorded’, ‘we will get him- driving around in his white sports car’, said by police at the back of the magistrates court room ..and introduction of the mystery extra police officer for the Crown Court appeal to say’ the approaching vehicle to the roundabout had to break violently’ due to the Appellant circulating at {agreed) no more than 4 mph for a two and a half times before stopping of his own volition.**

**Mystery introduced new police officer as no evidence could be given of the seven others of a’ moving traffic offrnce’ to substantiate a motoring allegation for ‘driving without due care and attention’.**

The witness statement of 08 August 2000, produced to me by Mr Kirk after his oral evidence was complete, is not much longer than that of 19 June 2009. “I was detained in Barry Police Station. I later found out because they believed I had no driving licence. I reminded them that I drive daily within a few 100 yards of the police station and that my licence was valid and always had been whilst working in Barry and that this was not the first time they had accused me of it. I was released without charge”.

In evidence in chief Mr Kirk said he was quite satisfied that he made it clear to PS Booker at the scene, and to the Custody Sergeant who was on duty that there had been court cases, and it was clearly recorded on the Court records that he was not disqualified. “All they had to do was contact the Court – Barry Magistrates Court”. He did not say that he informed them that he was disqualified but the disqualification suspended.

**This matter disputed as police records were denied throughout 23 years of harassment**

On the Defendant’s side, the witness statement of 16 May 2000 of PS Booker, who retired from the police in 2004, does relate some prior knowledge of Mr Kirk, and I examine that further below. According to that statement, at 17:10 hours he was returning to the police station on Sunday 3 October 1993 to conclude his shift, when he saw Mr Kirk riding his BMW K100 RT motorcycle registration number 1876. “He was driving towards me when I recognised the unusual Guernsey number plate. I also recognised the driver and was surprised to see him bearing in mind he was a disqualified driver”. He describes what he took to be Mr Kirk attempting to avoid him until he caught up with him at St Athan, where there was slow moving traffic, and stopped him. He informed Mr Kirk that he had reason to believe he was a disqualified driver having been disqualified by Barry Magistrates Court. “His attitude was immediately hostile and he alleged my reasons for stopping him was part of a police conspiracy. He said that he’d never been to Barry Magistrates Court and told me that he was not disqualified from driving.” He provided his full name on request, for the officer to carry out a PNC check, and when asked his date of birth stated slowly and deliberately “12345”, which Mr Booker took to be a wind up, but subsequently became aware was his correct date of birth (12 March 1945). Mr Kirk stated did not have time for his enquiries and was going to leave, stood up and walked back towards his motorcycle, upon which he Mr Booker told him he was being arrested on suspicion of driving whilst disqualified “at which point he began ranting and raving using obscene language and behaving in a generally threatening manner”.

**Fanciful-The motor cycle being driven towards him with only one number plate at the rear (stolen by police later) with the rider in helmet and visa?**

**The concocted story, below, was backed by little police controlled contemporaneous record, a theme, incidentally, over the full 23 year period of harassment.**

While he was waiting for assistance, Mr Kirk repeatedly asked him why he had been disqualified by Barry Magistrates Court and “would not accept the fact that I could not supply him with an answer to his query”. Shortly after PC McDonagh from Cowbridge and PC Phillips from Eastern Traffic Area and a third officer from Barry arrived to give assistance, since Mr Kirk had declined to get into the police vehicle on arrest.

(PC Huw Phillips did give evidence before me but his role was peripheral. He attended on a patrol police motorcycle when he received a radio message that Sergeant Booker was ‘following a disqualified driver’. He responded to the call. By the time he arrived Sergeant Booker had already stopped the driver. He asked if he could be of assistance and “Sergeant Booker stood to the side of his vehicle using his personal radio checking details via the control room as to Mr Kirk’s disqualification”. He drove Mr Kirk’s motorcycle into Jeff White’s Motors he believes at Mr Kirk’s own request since he did not want the vehicle left at the side of the road, or in the police compound. He had no further dealings with Mr Kirk).

The evidence of PS Booker is that in view of Mr Kirk’s denial at the scene that he was disqualified, he made checks at the Collator’s Office in Barry which keeps records of disqualified drivers within the Division. Having completed his enquiries he was satisfied that all information obtained on that date and his previous knowledge from other checks on other occasions confirmed Mr Kirk to be a disqualified driver. At 19:20 hours on the same day he charged Mr Kirk with driving his motorcycle whilst disqualified with no insurance, and also charged him in relation to an incident on 1.10.1993 when PC McDonagh had dealt with Mr Kirk driving a Triumph Spitfire motor car.

When charged, and cautioned, Mr Kirk replied “blatant harassment”. The following day Mr Booker was at Barry Magistrates Court on another matter “when it came to my attention that Maurice Kirk had been arrested in Barry again for driving whilst disqualified. Mr Kirk was being held in custody for Court that day. It subsequently became apparent later that day that Mr Kirk had appealed against his disqualification imposed by Barry Magistrates Court and that his appeal had been allowed at Cardiff Crown Court on 3 June 1993”.

Central to the pleaded defence are the assertions by PS Booker that (i) he checked the PNC and Collator’s office as to the disqualification, and the record was of simple disqualification; and (ii) ‘at no time during his dealings with Mr Kirk on 3 October 1993 or indeed at Court during his remand application’ did Mr Kirk inform anyone that he had appealed against disqualification. The evidence of PS 1301 Roy Goodman is therefore significant. He was the custody sergeant at Barry Police Station that afternoon; his witness statement emphasises that Mr Kirk was shouting and being verbally aggressive on presentation at 17:40 hours, refused to answer him or to sign the custody record when informed of his rights at 17:55 hours, and refused to provide his full name and details; and as to the timing of events, his statement follows the custody record (itself at A1/2.102). However, in particular he says, “I recall Sergeant Booker obtained details on the Police National Computer for me” (witness statement A1/2.77 at 78).

He says in the witness statement that he has been informed sometime after the incident that Mr Kirk was not in fact disqualified but says “at no time during his detention at the police station did Kirk express his innocence in my presence or advise anyone that he had successfully appealed against his disqualification to the best of my knowledge and belief”.

In cross examination Mr Goodman insisted that Mr Kirk “blanked” him and did not wish to communicate with him in any way. He said that if Mr Kirk had made a complaint to him he would have called the Acting Inspector to take any complaint. As to the arresting officer presenting Mr Kirk “I don’t think he had a chance to get a word in sideways, you were shouting so much”. At the time of presentation, as Mr Kirk acknowledged in cross examination, he “would have been very angry”. Mr Goodman appeared to me, putting it politely, to be an unimaginative witness and one principally concerned to demonstrate that he had done what he was required to do by the book as a custody sergeant, and no more. I suspect he had little sympathy with Mr Kirk, a man who would not even sign for bail (custody record at 19:50 hours A1/2.105), and who only agreed into entering bail after consultation with the duty solicitor who had been called.

Certain documents are of importance. The first is the Court document which shows that Mr Kirk had in fact been disqualified, but had the sentence suspended pending appeal (see above). This is a Court registered document. Mr Booker said that he had no access to Barry Magistrates Court on this, a Sunday, and was not aware of this document, and further insisted that he was not told by Mr Kirk that there had been a disqualification, but one which was suspended.

The next important document is a disqualified driver report dated 17-09-93 in respect of Mr Kirk (giving his full name date of birth, and home address) and reciting “Court name BARRY MAGISTRATES length of disq. 6 MONTHS date of sentence 24051993 date of expiry 23.11.1993” for an offence of no insurance.

At the foot of the page the document reads “end of message print CIC00340 FOR CIC FROM VDU 067 17-09-93 1439”. In manuscript on this document is written “PNC ID 93/283950F”. In turn, in the short statement of circumstances of arrest and grounds for detention on the second page of the custody record, the handwritten entry is “Kirk disqualified Barry M.C. 24-5-93 expiring 23-11-93. Force ref 62CA/0489 PNC ID no. 93/283950F”. Thus this print-out does not record any suspension of the disqualification. The message of 17-09-93 was sent from ASU [Administrative Support Unit] Cardiff Central and the destination is given as “CIC, EA, TA, OA”; which Mr Booker told me referred respectively to Crime Information Centre (CIC), Barry Division (EA), Traffic Administration (TA) and OA although he was unaware of what OA was. Thus this document had been sent to Barry police station, and is a document of the sort which was kept in the Collator’s office at Barry police station (see below).

PS Booker told me that this was different from the screen displayed by the PNC, although the PNC would contain similar information. The reference “PNC ID 93/283950F” he said was an ID marker for an individual, and because it is written on this document he assumes that it relates to Mr Kirk, although it could just be jotted on.

At the hearing before me, Mr Kirk was fiercely sceptical of who had caused this information to be registered or sent, which was misleading in that it did not record the suspension of disqualification pending appeal, but he did not suggest that the document itself was a forgery. I note also that hand written on a South Wales Constabulary form there is a memo from one S Davies of the PNC Bureau to a PC 124 Parker in respect of Mr Kirk stating “Please find enclosed copies of MS [message switch] 489 17/9/93 circulating Kirk as disqualified …. “.

There is then a message switch “MS 236 5/10/93” informing the PNC Bureau of the appeal against the disqualification. Thus this notification of the appeal against disqualification was sent after the date when PS Booker arrested Mr Kirk on 3 October 1993.

(A copy of the disqualification record on PNC. ASU Cardiff originally circulated KIRT and not KIRK. Kirk was then added to the record as an alias. (A1/2.116). The disqualified driver report printout 17-09-93 (I presume at 14:39 hours) had indeed mis-spelled Mr Kirk’s name as “Kirt”)

A PNC printout dated 05.10.1993 records that disqualification was suspended pending appeal (A1/3.113). Again, therefore, this is a document which postdates the arrest on 3 October 1993 and would not be available on any enquiry or search of the PNC by PS Booker on that day.

Mr Booker states in his witness statement that in view of Mr Kirk’s denial at the scene that he was disqualified, (which chimes with Mr Kirk’s evidence that he told the police officer he had a valid driving licence), he made checks at the Collator’s Office in Barry (see above). It was his understanding that the court sends forms containing information regarding disqualifications to the collator’s office; the collator’s office then had pre-defined forms to go to the DVLC to advise them of the convictions; and any cancellation or amendments of disqualifications should remain on file at Barry collator’s office. “The PNC and Criminal Intelligence System are updated on information that is put in at Cardiff. The Barry collator’s office cannot input directly into the PNC. They have an IRIS machine and transfer information to Cardiff for them to input. The PNC contains information regarding Court matters. Any Notice of Appeal on conviction would go straight to Cardiff Central Police Station from the Court, who, I assume, would go through the same procedure in relation to inputting that information on to their system”.

In his letter of report to Superintendent Francis of 8 November 1993, he states that despite checks he made in the collator’s office at Barry he was unable to discover any further information in relation to the disqualification, and the Barry IRIS link to the PNC was down.

Orally, he told me that so far as he remembered the computer at Barry was on link to the computer at Cardiff, but might go down, however if you contacted CIC [Crime Information Centre, see above] at Cardiff they could give you information. He told me that on Monday to Friday he could have contacted Barry Magistrates Court for their records, but this was a Sunday. He said that Mr Goodman was of the opinion that interviewing Mr Kirk would be pointless, given his demeanour, and that he was showing as a disqualified driver, which to Mr Goodman was the end of it. He was fairly sure that in 1993 they were not interviewing people stopped for driving whilst disqualified, in that they had an entry on the PNC, the identity of the driver, and that was thought sufficient. (Mr Kirk showed some warmth in questioning him as to why the system only changed later for interviews, but Mr Booker said that it coincided with the laws and procedures changing, to have interviews in the hope of getting admissions to save the time of the Courts, and that is credible to me).

Inspector Andrew Rice gave a witness statement in respect of system. It reads, “No documentation remains in existence which records the system which was in force in the 1990’s regarding the passing of information between Barry Magistrates Court and South Wales Police or Cardiff Crown Court and South Wales Police concerning sentences made. I can also confirm that I have been unable to locate a serving police officer who would be able to provide oral evidence as to the system which was in force at that time” (A1/2.82 at 83). (I was not told, nor was it explored in evidence before me, what the extent was of any search to identify such an officer).

**Liar**

He told me that he was tasked in 2009 to carry out enquiries into the incidents mentioned in his statement. Mr Rice also says in his statement that he can “confirm that no records held by the Barry Police Station Collator’s office in respect of their communications with the Barry Magistrates Court in 1993 or 1994 remain in existence. The Collator’s office also no longer remains in existence. The responsibilities of the Collator’s office have been taken over by different departments, which have also evolved over the years. I can also confirm that no records are held by Cardiff Central Police Station in respect of any communication with Cardiff Crown Court in 1993 or 1994”.

Mr Rice also states that he has had the opportunity of considering the file of papers held by South Wales Police in respect of Mr Kirk’s arrest on 3 October 1993, 4 October 1993, 9 August 1994 and 10 August 1994 (in respect of each of which the same point as to suspension of disqualification arises) and says “there is no evidence in existence” which suggests that Barry Magistrates Court or Cardiff Crown Court advised South Wales Police that the relevant disqualification had subsequently been suspended pending an appeal or had been removed following a successful appeal hearing. “If the Court Service had failed to notify South Wales Police that disqualification had been suspended or removed, the South Wales Police would have been unable to update the Police National Computer which was relied upon by the arresting officers as to the driving status of Mr Kirk”.

**Liar**

The witness statement was given on 1 April 2009. The claim was made by Mr Kirk in action BS614159 - MC65, which was issued long ago. I respectfully share Mr Kirk’s frustration that there is no contemporaneous evidence or authoritative witness statement of system and have considered whether adverse inference should be drawn. .

Mr Rice told me that in the early 1990’s the only way that information could be put into the PNC was by a trained operator, at the computer in Hendon, and “we” simply sent information and they would update it in Hendon. He said that as far as he knew in 1993, and during all of his service, the prosecution of all matters had been by the CPS, not by police officers, and thus he did not think there was a Police Liaison Officer at that time in Barry Magistrates Court. He did not know how information got from Barry Magistrates Court to the Administration Support Unit at Cardiff Central Police Station, and he had no information as to how information such as that at A1/3.113 (5 October 1993 printout as to suspension of disqualification on appeal) was conveyed to Hendon. He did tell me that although he was at one time a Sergeant in Barry Police Station, this was only from 1997 or 1998, namely some 4 years after the date of this arrest.

**Liar**

Mr Kirk was incandescent and hostile in his questions to Mr Rice. This did not assist in probing his evidence.

However it is also central whether Mr Kirk informed the police officers who dealt with him on 3 October 1993 that there was disqualification, but subject to appeal. Mr Booker in witness statement and oral evidence insisted that he had not been told this: “You had ample opportunity to tell me your disqualification had been suspended, you didn’t do it. I’m certain of that. If I had been told that, I’d have deferred bail”. He further said “If you had told anyone, it’d be on the custody record, as relevant to the charge, he’d have recorded it verbatim, it’s what they do, *or* [he conceded], should do. I did not hear you tell anyone that you had your disqualification suspended.

This is a police officer whose dealing with Mr Kirk at the scene Mr Kirk regarded as proper: “Remember, I gave Booker the benefit of the doubt. I didn’t know he had instructions to stop me. At the scene he conducted himself in a proper way, unlike me” (Mr Kirk in cross examination). Further, in that cross examination, Mr Kirk accepted much of the detail of Mr Booker’s account of matters at the scene. Asked why he did not tell Mr Booker that his sentence had been suspended, Mr Kirk first said “I see no reason for not telling him”, thereafter at first said that he would have made it very clear that there had been court cases and that there was an appeal, but pressed as to the detail of what he told police officers Mr Kirk reflected and said, “The word “appeal” or “Crown Court” I may not have said… I told him at the road side I was not disqualified. As to what I said, I can’t remember, but I would have said there were Court cases and that I was not disqualified”. Thus Mr Kirk in his own evidence, on reflection, was not asserting that he had told the police at the scene he had a disqualification but one which was suspended; nor did he say in oral evidence (or in his prior witness statements) that he had told the police this at the police station.

Asked by Mr Kirk why the PNC did not show that his disqualification was suspended Mr Booker answered “that’s the six million dollar question”. “Q. Was it my fault? A. No. Except it would have helped if you had said. For it to be suspended, I assume you would have been in contact with Barry Court. I was unaware of these facts. If I was aware of these facts, it would not have happened”. As a matter of demeanour alone, these answers rang true.

Up to this point in considering the present incident I have not referred at any length to any background evidence of relations between Mr Kirk and the police, and/or of asserted animus or hostility to him on their part. Up to this point, the evidence is persuasive as to the lack of knowledge of any suspension of the disqualification on the part of any individual police officer dealing with Mr Kirk, in that (i) the evidence of each is internally consistent; (ii) there is no note on the custody record of him raising the point; (iii) his own written and oral evidence does not allege that he told them of this; and (iv) their account of their state of knowledge is consistent with and supported by the contemporary documents. In addition, knowingly to arrest for driving whilst disqualified a man whose disqualification was suspended might be thought to be inviting trouble, and the more the awareness of Mr Kirk, of his past relations with the police, and of his character, the more the trouble which was being invited. This is a powerful accumulation of evidence and inherent likelihood and I am satisfied would be fatal to the claim brought if restricted to the direct evidence of Mr Kirk and the police officers involved. Such scarcely needs further analysis.

It is necessary however to consider whether this is displaced or weakened by evidence of background. As to background knowledge or gossip, Mr Booker asserted limited knowledge, but this did include that Mr Kirk was the subject of a local intelligence bulletin from Fairwater Police Station that Mr Kirk had been in Cardiff Prison; and that the arrest and detention at Cardiff Prison also received media attention in the South Wales Echo. He thought that this was “for possession of a humane killer, but basically because you refused to give your name and address”. I myself note that Mr Booker was, he said, interested in motorcycles, this was a BMW RT 1000 [similar to a police motorcycle], and that in his police notebook, not particularly the subject of question or comment from either side in this case, he recorded first seeing the BMW K100 RT motorcycle “which I know belonged to Maurice Kirk (local vet). The rider appeared to be Maurice Kirk” (A1/2.87).

As to other engagement with Mr Kirk, the available evidence is as follows. On Sunday 12 September 1993 he had been working an evening shift when shortly after midnight he was called to the premises next to Mr Kirk’s veterinary surgery at Burial Lane, Llantwit Major where Mr Kirk was quite reasonable towards himself and another officer PC 1961 Andy Price, identifying that he had received information that David Wakefield (a known local criminal and drug abuser) and friends were going to break into the premises to sleep there. The next day he did attend those premises, with a number of officers already present, and Mr Kirk present with 5 youths “4 of whom were well known to me”; the youths had obtained entry to Mr Kirk’s property; and Mr Kirk was asserting that he had been assaulted by one of the youths, the youths in turn alleging that Mr Kirk had threatened them and that it was Mr Kirk who had caused damage to the front door. The police officers present persuaded the youths to leave which defused the situation.

“Several days after the squatting incident, I was on duty at Barry Police Station. I was able to get access to the PNC record” (there being no access from Llantwit Major, his own usual police station) and he decided to view Mr Kirk’s up to date criminal record “due to my previous involvement and the fact that he was now residing in my area”. He discovered that Mr Kirk was shown as being disqualified from driving at Barry Magistrates Court on 24.5.1993, the disqualification appearing to end on 23 November 1993. ‘This was a fact that no-one appeared to be aware of’, and he circulated the information both at Barry Police Station on the notice board and at Llantwit Major Police Station.

There did exist a disqualified driver record of 17-09-93 showing Mr Kirk as disqualified, which is consistent with Mr Booker’s assertion that several days after dealing with the squatters incident, he had viewed Mr Kirk’s up to date criminal record on the PNC and there discovered that he was shown as being disqualified from driving at Barry Magistrates Court on 24.5.1993.

He also states (witness statement paragraph 5 A1/2.59) that “sometime before the incident on 3.10.1993 I also had the opportunity of reviewing Mr Kirk’s voluminous schedule of previous convictions received from Guernsey Police” (emphasis supplied). In closing submissions Mr Kirk says this is evidence of conspiracy in the “ripples from the stone in the pond” (paragraph 9 above).

PS Booker wrote a letter to Superintendent Francis, Barry Police Station dated 8 November 1993 (only some 5 weeks after the incident).

“I refer to the arrest .. at St Athan on Sunday 3rd October 1993 for an offence of driving whilst disqualified, the circumstances of which are as follows:

In the months preceding his arrest there were certain factors which brought Mr Kirk’s notoriety to my attention. Briefly these consisted of a burglary at his veterinary surgery at Burial Lane, Llantwit Major at which he refused to give any details whatsoever to PC 1961 Price, who made comment of Mr Kirk’s eccentricity. Mr Kirk later alleged to PC Price that the burglary had been committed by the police and was part of a police conspiracy.

His arrest at Cardiff which he went to Cardiff Prison for 4 days having refused to disclose his identity. He was subject of a local intelligence bulletin from Fairwater in relation to this and the arrest subsequently received media attention in the South Wales Echo.

Receipt at Llantwit Major of a copy of his previous convictions from Guernsey (attached) [not available now, but PS Booker told me in answer to my enquiry that it was some 4 or 5 pages].

On Monday 13 September 1993 I was involved in an incident at a dwelling next door to his surgery at Burial Lane at which Mr Kirk complained of squatters at the dwelling. In fact the Force Solicitor spoke by telephone with a traffic officer who was also at the scene in relation to this matter. The matter was eventually resolved, but it was then that I became aware that Mr Kirk intended to reside within the Llantwit Major area.

Photostat copies of newspaper cuttings were circulating involving Mr Kirk’s association with the actor Oliver Reed and the fact that on several occasions Mr Kirk had turned up at Court in fancy dress”.

Several days after the squatting incident whilst working at Barry, I decided to view Kirk’s up to date criminal record held on PNC due to the fact he now resided within my area. It was then that I discovered that he was shown as being disqualified at Barry Magistrates Court on 24th May 1993, the disqualification ending on 23rd November 1993, a fact that no-one appeared aware of”.

In that letter he goes on to detail the events of Sunday 3 October 1993 and refers to checks he made in the Collator’s Office the Barry IRIS link to the PNC being down”.

I therefore consider whether the existence of a list of convictions in Guernsey or covert information prompted, or made more likely the arrest and thereafter detention of 3 October 1993. In its most wide ranging form, Mr Kirk has alleged conspiracy at various times on the part of “H M Establishment” between police officers from different police forces, judges including High Court and circuit judges, magistrates and their clerks, the CPS, and variously the office of the Attorney General. The Royal College of Veterinary Surgeons and elements of the Civil Aviation services. One dominant theme in his submissions is, and has always been, that there is a very large number of incidents where he has been charged with offences but the charges have later been withdrawn, or he has succeeded on appeal. A large number of the incidents with which I am concerned have been road traffic offences. Closer analysis of these, as has been seen to date and will be seen later in this judgment, yields mundane explanation, and (particularly in insurance matters) Mr Kirk repeatedly being the architect of his own difficulties; quite apart from him telling me from time to time either that he wished the lower court to convict, in order to throw a flood of light on police action on successful appeal (presumably in fact there trusting those judges), or that he did not attend the hearing on the occasion of his conviction in the lower court to the same end. Nonetheless this court must continue to be alert to possible inference in Mr Kirk’s favour that he was being “chased”.

Another prominent theme, in statements over the years preparatory for trial, is that Mr Kirk would call direct evidence from witnesses of surveillance of him, in particular of listening to and overhearing police radio messages; but this witness evidence has not materialised. (Mr Kirk has gone to elaborate lengths, on his own evidence, to defeat being identified or followed; including using different vehicles, and different vehicles to leave and return on veterinary calls, using an inflatable doll, and the like; but he does not identify any particular occasions when he had seen a police officer or police vehicle in wait. I appreciate that he relies on the number of times he has stopped as speaking for itself, but hand in hand with being alert to the allegation of general impropriety the court has to analyse individually each incident).

**Gerald Thomas**

Mr Kirk also set store by the asserted activities, and potential evidence, of a Mr Alexander-Ebbs. This is one witness who asserts a direct instruction or invitation by the police to act corruptly in order to injure Mr Kirk, and is advanced by Mr Kirk as precious illustration of what was going on against him more generally, where (he would say) it is and would be inherently difficult to find direct evidence. I deal later in this judgment with the extent to which, if at all, credibility of Mr Alexander-Ebbs is to be accepted.

It is impermissible for a judge to dismiss at the outset an allegation of conspiracy because it seems at the outset inherently fantastical, either by the width of the conspiracy alleged, or the modesty of the incident alleged to be at the root of it all (dispute between Mr Kirk and a particular police officer in the Avon and Somerset police force in the 1970s). However the more inherently unlikely the particular emanation of the conspiracy alleged, (such as conspiracy by judges, to take an obvious example), the more a court will look to see hard evidence or a convincing body of material which supports inference of that impropriety.

Mr Kirk’s belief is that there was a police conspiracy against him on the part of at least some high ranking members of South Wales Police. I have considered the possibility with care, in relation to this incident as with every other, but this incident is on analysis unpromising for Mr Kirk’s thesis. There is no evidence before me directly or indirectly to suggest there was a system then in place for, or which succeeded in, conveying directly from court to police the suspension of the disqualification. The evidence establishes that as at the date when he was stopped on 3 October 1993 there had been a disqualification from driving, to a date in November 1993; there was contemporaneous report of a disqualification; there was apparent confirmation of that disqualification from the PNC; and the driver himself (who was very angry, and resolutely uncommunicative to the police) was not telling them the critical fact that there may have been a disqualification on the record, but it had been suspended. As a lesser matter but tending in the same vein, it would be inviting trouble to arrest or to continue to detain him for any time at a police station knowing the disqualification was suspended.

Mr Kirk did not allege that the PNC itself had been “fixed” but if he were to have done so, there is no direct or circumstantial evidence in support.

Mr Kirk invites me to reflect that after Mr Booker’s evidence as to considering a list of Mr Kirk’s convictions received from Guernsey police in the period prior to this incident, ‘there may be more to the Guernsey angle than the court might once have thought’. I have continued to reflect on the possible significance. (In fact I had done so since much earlier in the course of trial than the calling of Mr Booker, since I have been mindful that input from myself as trial judge was necessary to identify points of evidence relevant to his own case, where Mr Kirk’s own lack of recall or command of detail might be an impediment to him).

When Mr Booker came to give evidence, Mr Kirk’s stance was to suggest to him that he was an unwitting pawn in the conspiracy. If he had been himself wittingly active in some campaign or conspiracy it seems improbable that he would have compiled, and put on record, that which he did in his letter to Superintendent Francis of 8 November 1993 with its statement of information gathered upon Mr Kirk. He was stationed at Llantwit Major and his actions are consistent with acting, in somewhat old fashioned police terms, out of interest in a new resident who was one of those circulated in the area as having been disqualified. The vice of the system, in its operation upon Mr Kirk, was that the PNC (a national England and Wales system then inputted elsewhere than Wales) did not on 3 October 1993 have the suspension of Mr Kirk’s disqualification entered, whereas the successful appeal of 3 June 1993 was entered on the PNC after this on 5 October 1993 (A1/1.116). Mr Kirk’s own recollection supports this in that, when he was cross-examining Mr Booker, Mr Kirk expressed a recollection that the PNC operator to whom Mr Booker was speaking at the scene was unhelpful in that she was able to confirm the fact and date of conviction; but he did not suggest or recollect that she was saying that the disqualification was suspended.

Since Mr Rice gave evidence as to system as at the date of this incident, I asked him whether there was any view or views taken by other police officers of Mr Kirk, and whether one of the views might have been “utter exasperation” to which he said “Most definitely. By myself. And by many of my colleagues. Because Mr Kirk was prone to make complaints, and nothing is straightforward – it is very confusing dealing with Mr Kirk”; to Mr Kirk, “I had no dealings direct with you other that the one incident. I’m going by what my colleagues told me”; and to me “ There are people you prefer in the police service not to have dealings with, because there’s so much confusion in dealing with any matter, and from my perspective Mr Kirk is one of those people”

An essential element of the tort of malicious prosecution is malice. After this elaborate dissection of the evidence relevant to the particular incident, and consideration of the sinister wider possibilities which Mr Kirk invites me to consider, the evidence falls very significantly short of anything which would justify a finding on the balance of probability that there was malice in initiating or pursuing prosecution.

Accordingly the arrest is shown to have been lawful in that I consider that the Defendant has shown on the balance of probabilities that PC Booker did in fact honestly suspect that an offence had been committed by the Claimant and there were reasonable grounds to support that suspicion, enquiry of the PNC having revealed the fact of disqualification for a period then current but not the fact of it having been suspended.

The Defendant has shown on the balance of probabilities that the period of detention between 17.40 and 19.50 or thereabouts was consequent upon that lawful arrest and that the fact of suspension of the disqualification did not come to light at any point before the end of that period.

I am not satisfied on the balance of probabilities that there was malice on the part of Mr Booker (or any other police officer who dealt directly with Mr Kirk) in charging Mr Kirk. I have no evidence from which I can properly infer that the charging or prosecution of Mr Kirk was engineered (in some way more remotely) by malice on the part of any other police officer or officers.

It follows that the claims in respect of the incident of 3 October 1993 do not succeed.