**Action 1 claim 8.17 10 August 1994 Triumph Spitfire arrest for driving whilst disqualified**

1. **Action 1 claim 8.17 10 August 1994 Triumph Spitfire arrest for driving whilst disqualified**. The pleaded allegations are that Mr Kirk was arrested by Sergeant Smith of Barry Police Station (an officer who previously had involvement with him) for having no driving licence, that he was detained for several hours in Barry Police Station and eventually released; and that he police maliciously charged him with driving without insurance but such charge was subsequently withdrawn.
2. The pleaded Defence is that Sergeant Smith was on motor patrol when he saw the vehicle being driven by Mr Kirk, was aware that the PNC recorded that he was disqualified from driving, and eventually stopped him outside his veterinary practice in Tynewydd Road. “The officer then arrested the Plaintiff for driving whilst disqualified. At no time did the Plaintiff inform the officer that his disqualification from driving had been suspended pending his appeal. In the premises, the officer had reasonable cause to suspect the Plaintiff was a disqualified driver. The Plaintiff was taken to the police station from where he was eventually released at 11:20 hours. It is denied they acted maliciously”.
3. In his witness statement of 19 June 2009 Mr Kirk states, “584. On 10th August, the following day, I was again arrested and jailed for driving whilst disqualified by Sergeant Smith who was present with me, in custody, the day before! 585. I was later released without charge, apology or compensation.”
4. In oral evidence, Mr Kirk said “First, I can’t remember why this happened – they were acting on information I was disqualified. What I can’t remember is what caused them to do that”. He agreed that, as Sergeant Smith stated in his own witness statement, he had gone round and round the roundabout, perhaps 3 times, before coming to a stop outside his surgery. Mr Kirk was asked why, but I did not understand his response, namely “to remind him the reason that he was following me had to do with being banned”.
5. The custody record opens with an entry at 09:35 that Mr Kirk was arrested for driving, whilst disqualified, a white Spitfire CKV 629K at Langstone/ Court Road, Barry; “arrested at Tynewydd Road, Barry, failing to stop for police. Detention is authorised in order to complete process and charges [signature of Custody Sergeant PS Goodman]”; followed immediately by “*disqualified at Barry MC 13-6-94 for interim period under totting up system. Disqualified on 11-7-94 for 6 months*” [emphasis supplied, again with the signature of PS Goodman]”.
6. On the next page, at the same time there is an entry as to rights being given, request for a telephone call, and “he also requests to speak to Acting Inspector Merrett re a complaint” and at 10:06 “wishes to make a complaint of assault against A/C Insp and PC.” [I inferred, and in oral evidence Mr Kirk confirmed, that this was a reference to his arrest the previous day by Inspector Davies]. At 10:30, Mr Kirk is informed that A/Supt Francis would be dealing with his complaint and he was seen by Mr Francis at 10:44. At 10:50 the complaints procedure is explained to Mr Kirk, who did not wish to make complaint to Mr Francis and preferred to write to the Chief Constable direct. At 11:20 Mr Kirk was bailed, being recorded as refusing to sign for property or bail.
7. In a witness statement of 1 October 1997 (the now) Inspector 1419 David Smith states that after arresting Mr Kirk for driving whilst disqualified, he cautioned Mr Kirk, but has no record of reply from Mr Kirk; and that after conveying Mr Kirk to Barry Police Station, the matter was dealt with by PC Dinlle Francis whilst he continued with supervisory duties. He later learned that due to an administrative error Mr Kirk’s disqualification was suspended pending appeal but the suspension not known. “I was not aware of these facts at the time of his detention or when I arrested him”.
8. The witness statement of Mr Smith says, “at 09:35 hours I saw a white Triumph Spitfire approaching Barry Police Station being driven by Maurice Kirk. At that time I was accompanied by PC 1694 Francis. I was driving a marked police vehicle and in full uniform”. He simply states that a check with the PNC on 9 August 1994 revealed that Mr Kirk was disqualified from driving, “and as far as I was concerned [had] not changed in the 24 hours since I had dealt with him as a custody officer. Therefore when I arrested Mr Kirk I had more than reasonable suspicion to believe that he was so disqualified. Again, Mr Kirk did not indicate to me that he was not disqualified”.
9. In his witness statement Mr Dinlle Francis, a Detective Constable in plain clothes, states that he was in the police station when he was approached by Sergeant Smith, who told him that Maurice Kirk was at the station and that Kirk’s car, namely a Triumph Spitfire car, was parked outside the police station. Sergeant Smith advised him that Mr Kirk appeared to intend to drive the vehicle and that Sergeant Smith knew him to be a disqualified driver. DC Francis was in plain clothes and says he would not therefore be able to stop a vehicle and arrest an occupant; so Sergeant Smith said that he would accompany him to prevent Mr Kirk from driving. He obtained keys to a marked patrol car, and Sergeant Smith and he ran to the patrol car in the police compound, then following the Triumph Spitfire.
10. Mr Francis too says that when stopped Mr Kirk did not intimate to him that he was not a disqualified driver. He says that at the police station, (after placing the dog which Mr Kirk had had with him in a kennel), he ran a computer check as a matter of procedure and confirmed via the computer the totting up disqualification of 11 July 1994 for 6 months, with no reason to doubt the information provided.
11. I observe above that the witness statement of Mr Smith in the present proceedings is very brief. However his police notebook is fuller, and is consistent with DC Francis’ account. It is also consistent with Mr Smith’s then witness statement, namely “Kirk is known to me as a disqualified driver. Disqualified by PNC. (He was arrested yesterday 9 August 94 by PC Kerslake Llantwit Major for the same offence. At that time I was the duty Custody Sergeant)” (A1/4.192).
12. Mr Kirk did not dissent from the evidence of PC Dinlle Francis, who was accompanying PS Smith on patrol, that he remained completely calm “and silent” at the scene of arrest. It is the silence which is relevant, in the context of the pleaded Defence that Mr Kirk did not inform the police that his disqualification had been suspended. Asked about the attendance of a senior officer at his cell when he indicated complaint he said “Ah yes, I wanted to make a complaint of assault the day before”. In short, Mr Kirk does not say in his witness statement, and he did not say orally in evidence before me, that on 10 August 1994 itself he informed those dealing with him that although he was disqualified, the disqualification was suspended pending appeal. Mr Francis states this was the only incident in his 6 years of police service where the PNC was not correct. He places the enquiry as being after 9:55 am, when he placed the animal in police kennels. I find this consistent with, and strongly supported by, the fact that on the first page of the custody record PS Goodman has put his signature at the end of the circumstances of arrest on presentation at 09:35, and has made a separate entry as to disqualification, then signing the entry separately.
13. According to Mr Francis’ witness statement, he contacted Barry Magistrates Court direct whilst Mr Kirk was in custody and obtained a certified copy of the court record which showed the conviction and subsequent appeal, and that therefore the disqualification was suspended pending appeal. He immediately notified the custody sergeant, who arranged release, and whilst Mr Kirk was being released he spoke to Mr Kirk. “Initially he refused to listen or speak to me, until I had showed him my warrant card. Kirk thereafter listened to my explanation. At no time during Kirk’s detention did Kirk indicate to me or any other officer to the best of my knowledge that he had appealed his original conviction against disqualification” (para 11 A1/4.167). In cross examination, he said that he contacted the court of his own volition but that he had done that on numerous occasions (knowing of other officers doing the same and it being easy for anyone to do so). He told me that as a part of interview, the court record would have been used.
14. His further replies were also of interest. “It would be fair to say that Mr Kirk was acting differently to many people who I’ve been involved in their arrest. He didn’t say very much coming back in the car. He didn’t say very much on arrival. It was a feeling on my part maybe that something was not right. Not as far as I can recollect, anyone suggesting that [the disqualification] was in doubt”. He also noted that in the custody record there was an entry that Mr Kirk requested to speak to the Acting Inspector in respect of complaint, that there was nothing that he had done to warrant a complaint, so “that may have indicated to me that the check with the court may have been prudent”.
15. I found Mr Francis a straightforward witness whose evidence both in general demeanour and its detail had the ring of truth. I note also in particular that Mr Kirk in his questions to Mr Francis did not at any time suggest that he had told Mr Francis that he was subject to disqualification, but one which was suspended; nor in questions to Mr Smith did he suggest that he had told Mr Smith this. Mr Kirk’s questions at trial were often a mixture of question and comment on his part, but they included to Mr Smith “I never told you anything about a valid driving licence, did I? and by then, I was so tired and fed up with police.” Lastly and for completeness, Mr Kirk did not suggest to Mr Goodman that he had given such information while in custody, and the complaint which he wished to make is recorded on the custody record as being in respect of assault by Mr Kerslake and Mr Howard Davies the day before.
16. It is striking that both at the scene and at the police station, on this occasion, Mr Kirk is described as being quiet and passive. I suspect that his inner mood was one of bitter and resigned conviction (whether justified or not) that he was the target of some police officer or officers’ campaign against him. For whatever reason, nonetheless the only fair conclusion is that Mr Kirk did not inform those who arrested and detained him on the morning of 9 August, or 10 August 1994, of the fact that his disqualification was suspended.
17. Mr Kirk’s suspicions or belief in relation to the police demand that I explore the evidence incident by incident, and then again subject them to review using an overarching approach.
18. As to the evidence as to this individual incident, I would find the evidence of Mr Smith, and in particular Mr Francis, persuasive, and I have no reason to doubt the evidence of the custody sergeant, which was moreover not challenged. Thus as a matter of fact I find that (i) on 10 August 1994 the PNC was showing Mr Kirk as disqualified; (ii) Sergeant Smith knew Mr Kirk to have been arrested the previous day for driving while disqualified, and had no information to the contrary when he took steps to arrest Mr Kirk on suspicion of driving (again) while disqualified; (iii) Mr Kirk did not inform the police officers who arrested him that his disqualification was suspended; (iv) Mr Kirk did not inform the custody sergeant that his disqualification was suspended; and (v) it was the individual initiative of DC Dinlle Francis which identified the fact that Mr Kirk’s disqualification had been suspended, and once identified it was acted upon properly so as to withdraw the charge of driving while disqualified and to release Mr Kirk from custody. Accordingly on all or any of the direct evidence in respect of this incident (including Mr Kirk’s own) the claim in respect of this incident would fail as to the actions of the individual police officers who dealt directly with Mr Kirk.
19. However that may be, it is lamentable that as a result of defective records in the Police National Computer as to disqualification, and in reliance on it, Mr Kirk was being arrested on 2 separate days in August 1994 on suspicion of driving whilst disqualified when his disqualification had in fact been suspended pending appeal, just as he had been arrested on 3 October 1993 on suspicion of driving whilst disqualified in reliance on the PNC by PS Booker when his disqualification had been suspended on appeal.
20. On 3 October 1993 he had been arrested and detained on suspicion of driving while disqualified, in respect of a disqualification which had been made on 24 May 1993. On the present occasion, 10 August 1994, it was on suspicion of driving while disqualified, in respect of a different and later disqualification, from 13 June 1994. The question arises how on two separate occasions the record of disqualification in the PNC failed to show a later suspension.
21. In relation to the incidents of 9 and 10 August 1994, as with the arrests October 1993, Inspector Andrew Rice gave evidence that he had no personal involvement but stated, “There is no evidence in existence which suggests that Barry Magistrates Court or Cardiff Crown Court advised South Wales Police that the relevant disqualification was subsequently being suspended pending appeal or had been removed following a successful appeal hearing. If the Court Service had failed to notify South Wales Police that the disqualification had been suspended or removed, then 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.” (witness statement of 1 April 2009 A1/4.177).
22. The evidence of PS Booker was that (as at October 1993, in any event) he understood the Collator’s Office in Barry kept records of disqualified drivers within the Division, the court sent forms regarding disqualification to the Collator’s Office and the Collator’s Office had predefined forms to go to the DVLC to advise them of the conviction, any cancellation or amendments of disqualifications should remain in file at Barry Collator’s Office; and that the PNC and Criminal Intelligence system are updated on information that is put in at Cardiff. The Barry Collator’s Office could not input directly into the PNC. They had an IRIS machine and transferred information to Cardiff for them to input. 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 onto their system” (witness statement A1/2.66). This is the fullest description given in any of the police witness statements. It was not challenged or explored at trial, and as I have recorded above, PS Booker was very forthcoming about the information on Mr Kirk which he had investigated for the purpose of his report. The Collator’s Office at Barry was closed many years ago.
23. For deliberate false input (or omission) into the PNC on the part of police officers to have originated at Barry police station would have required the court in question (either Barry Magistrates’ Court or the Crown Court at Cardiff) to have informed the police at Barry, and for Barry then, using an IRIS system which is a recorded system, to send either positively false information, or to choose not to send on the information received from the court even though this is, in turn, likely to have been on record. Inherently, it seems difficult and risky for a police officer to do so at Barry.
24. For a police officer to do so at Cardiff, (suspending for present purposes any inherent probability or improbability of the police doing so), it would require not only deliberate wrongdoing on the part of the police officer but for Mr Kirk to be regarded at Cardiff as of sufficient importance and/or threat to warrant doing so. Here it is simply improbable that anyone would think that a veterinary surgeon practising in Barry was of great importance on the wider stage (with due respect to the professional class and status which Mr Kirk holds dear). In May/October 1993 any threat would have had to arise from incidents or contact up to that date when Mr Kirk told me that ‘things really got going only in late 1992’. There is no positive evidence of it, whether directly or by reported remark or comment. Inference of it would have to be from the coincidence of Mr Kirk’s experience of 3 October 1993 and 8/9 August 1994 and/or other wider experience to that date.
25. Mr Kirk’s thesis and belief is that he has been the victim of a campaign arising from his experiences at the hands of West Country and in particular Guernsey police in earlier decades, as harassment, and so as a matter of scrupulous analysis I keep open a final conclusion until I have reviewed all the evidence in the case. At this stage, in my judgment the coincidence of experience of October 1993/August 1994, and/or more widely to that date in the incidents I have considered, simply does not amount to (or come near to) evidence from which I could make a finding of such wrongdoing by sinister inference. Unless such inference can be made then the claims in respect of the present incident fail.

***Inference*, it is the appellant’s humble submission, would have little difficulty in being confirmed had there been allowed a jury trial or consolidation of 23 years of incessant bullying as indicate throughout all 33 incidents.**