

Draft case stated by Cardiff and Vale Magistrates' Court in the matter of an application by Maurice Kirk to Magistrates' Court to state a case for an appeal to the High Court regarding the hearing of a complaint brought by Maurice Kirk under the Police Property Act, 1897.

1. The case before me was a complaint brought by Maurice Kirk against South Wales Police under the Police Property Act, 1897 for the return to him of property seized from him by South Wales Police on a number of dates.
2. The complaint was instigated by a letter from Mr. Kirk to the court, dated the 22nd 11 '11 but redated 1st 12 '11, in which Mr. Kirk stated, "I apply for an order under 1984 PACE Act Sect. 22 and Police (Property Act) 1897 for police to release:
my machine gun ammunition, antique firearms, both Aya and Laurona 12 bore shotguns, legal papers and other property seized on or about 22th June 2009
also legal papers, computer and other personality of mine seized on 24th August 2011
also legal papers, cameras, mobile phones and briefcase seized on 17th and 21st September 2011, respectively."
3. After a number of adjournments the case was finally heard, in the absence of Mr. Kirk, on the 25th September '12, the matter having been set down for trial on that day and I having acceded to a request made that day by South Wales Police to proceed (in all the circumstances of the case) in Mr. Kirk's absence and, further, to do so by hearing evidence in the matter, as opposed to dismissing the matter for want of prosecution.
4. In the light of the evidence that I heard I formed the view that it was either not possible or not appropriate to make any order for the "release" or delivery of any of the property in question to Mr Kirk or to anyone else.
5. Mr. Kirk has, in his application, raised the following questions for the High Court:
whether I was correct to proceed in his absence on 25th 9 '12 under S56 Magistrates' Courts Act when I knew he was in prison and
whether, in doing so, I denied him "natural justice" in domestic law and/or effective access to the court for the "determination of his civil rights and obligations" under article 6(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act, 1988.
6. I will, in the circumstances of this matter, treat those questions as raising the question that my decision to proceed in his absence was an exercise of my discretion as to so proceeding that was one to which no reasonable bench of magistrates could come and therefore being wrong in law, thereby depriving him natural justice in domestic law and/or effective access to the court for the "determination of his civil rights and obligations" under article 6(1) of the ECHR as incorporated under schedule 1 of the human Rights Act, 1988.
7. The facts on which I based my decision stem from the history of the matter, which I now set out.
8. Those matters referred to in paragraph 2 above.
9. The first hearing was listed on 9th 2 '12.
10. During that hearing nothing said or done by Mr. Kirk assisted me in relation to making any progress with his application. He did state, as I was trying to ascertain details of precisely what had been seized from him and when, that there was a "second list" with the police and that he had a copy of it. I directed that Mr. Kirk serve copies of that list within 28 days on the court and South Wales Police. I was told that there were a large number of civil actions brought by Mr. Kirk against South Wales Police (hereafter referred to as SWP) outstanding. I made directions that SWP were to serve on Mr. Kirk and the court details of those civil claims within 28days in order that I could consider any issues which might have arisen out of those claims which may have affected this proceeding. I further directed SWP to detail all property seized from Mr. Kirk on the dates set out in his letter of 1st 12 '11 and to serve such details within 28days upon Mr. Kirk and the court. The case was adjourned to 15th 3 '12 for a mention hearing so that I could assess what issues existed in the matter in the light of such information. Mr. Kirk was, on 9th 2 '12 produced in court from custody.

11. On the 8th 3 '12 a SWP response to Mr. Kirk's application was received at court. That response set out all property seized from Mr. Kirk on the relevant days; that Mrs. Kirk caused SWP to be handed a .410 walking stick shotgun subsequent to the 22nd 6 '09 search of Mr. Kirk's home; what property was retained by SWP; what had happened to property no longer in their possession (including detailing the return of many items seized to Mr. and Mrs. Kirk {and enclosing copies of documents acknowledging receipt of such items by signatures of Mr. and Mrs. Kirk next to descriptions of the returned items}) that no machine gun ammunition had ever been seized from Mr. Kirk; that he no longer held a firearm or shotgun certificate; that Mrs. Kirk no longer did either; that certain property was retained by SWP and that those items were able to be categorised in 3 ways, namely:

4 items (3 antique muskets and a muzzle loader) which did not require a licence to be possessed. These had been the subject of attempts to return them to Mr. Kirk (such attempts being unsuccessful due to lack of cooperation by Mr. Kirk) and that SWP would arrange for those 4 items to be released upon Mr. Kirk nominating a suitable firearms dealer or other person to collect them.

that the .410 walking stick shotgun is subject of a general prohibition on retention of such an item and anyone in possession of it would be committing an offence by such possession, meaning that SWP could not deliver it to Mr. Kirk

other items where a person's possession of them required a shotgun or firearm licence and they could not be returned to Mrs. or Mr. Kirk and that Mrs. Kirk (under whose certificates they had been held) had, at the date of the response, not nominated anyone to whom they could be given.

12. At the 15th 3 '12 hearing Mr. Kirk was in attendance, having been produced from prison. I made attempts to ascertain his response to the matters raised in the SWP response and to progress the matter. Those attempts were in vain given the attitude, approach and behaviour of Mr. Kirk, who indicated that he did not know if he had received a copy of the SWP response and that he would not at that stage nominate anyone to whom the returnable items could be returned.

13. I decided that I had no choice but to list the matter for trial in due course but not before another mention hearing. I directed (in order to be sure that Mr. Kirk would have the SWP response) that it be served on him within 7 days if it had not been already and that evidence on which SWP sought to rely also be served on Mr. Kirk and the court within 21 days. I further directed Mr. Kirk to serve on SWP and the court within 42 days his response to those documents.

14. The next (mention) hearing was set for 12th 4 '12.

15. On 12th 4 '12 Mr. Kirk was produced from prison for the hearing. At one point he refused to attend the hearing but eventually did so after my legal advisor had, at my request, been to see him in the cell area. SWP told me that he had been served, the day before the hearing, with a bundle of documents but that a further bundle was also to be served on him that day and was so while he was in the dock. Mr. Kirk had, therefore, all the documentation, including witness statements on which SWP intended to rely with the exception of evidence in relation to 3 items, in regard to which the police officer who had dealt with them could not be identified. In relation to those items SWP said they might call Mrs. Kirk. I adjourned the case for trial to 10th 5 '12 and, in view of the fact that Mr. Kirk had not complied with any court direction, I made a further direction that Mr. Kirk:

"serve on the respondent and the court in writing within 21 days of today's date his answer to all points raised by the respondent in the response responding to the applicant's claim and the respondent's 2nd court bundle served in response to the applicant's claim. If the applicant does not so respond the court will decide what course to adopt in relation to his claim including the issue of whether dismissal of the claim for want of prosecution would be appropriate."

That direction was made in Mr. Kirk's presence in court and a written copy of it was served

- upon him.
16. A letter, dated 27th 4 '12, was received from Mr. Kirk. It requested a further adjournment of this case, "in the light of current circumstances and in the absence of proof that my property is still in the condition it was in when confiscated". The adjournment was requested "until such time further and better explanation can be given concerning allegations of a criminal nature, as a damages claim in the County Court already exists."
17. SWP had already confirmed in their response that the civil actions against them by Mr. Kirk did not relate to any of the property referred to in this complaint.
18. No criminal proceedings in which Mr. Kirk may then have been involved related to any of the matters subject to this complaint.
19. I had intended to deal with that application to adjourn (see paragraph 16) at the next court hearing but prior to it information was received from the County Court that, partly because of possible difficulties that may have existed in Mr. Kirk preparing for those lengthy proceedings due to his having been in custody, they were to be adjourned. On the 8th 5 '12, in the light of that information, I directed that the next hearing of this case be a mention only.
20. At the 10th 5 '12 hearing Mr. Kirk was not present. SWP were. I was told that he had been released from custody the day before. There was no explanation from Mr. Kirk, who knew of the hearing date, for his non attendance. I adjourned the case for a mention hearing to the 12th 7 '12, doing so in order to be utterly fair to Mr. Kirk in view of the County Courts concerns as to his possible difficulties in preparing for trial in that matter. I did not want any such difficulties that may have existed to adversely affect Mr. Kirk's position in this case. Whilst the next hearing was to be a mention, I indicated that consideration may be given at that hearing to whether this complaint should be struck out.
21. Notice of that adjournment was sent to both of the possible addresses the court had for Mr. Kirk.
22. Other than the letter of 27th 4 '12, referred to in paragraph 16 above no contact had been made with the court by Mr. Kirk since his last production from prison at a hearing until he requested a 7 day adjournment of the 12th 7 '12 hearing. The case was administratively ordered to be adjourned to the 18th 7 '12 and letters were sent to Mr. Kirk at the same two addresses telling him of that and informing him that if he did not attend the case could proceed in his absence.
23. Mr. Kirk did not attend the 18th 7 '12 hearing and the case was set down for an all day trial listing on 25th 9 '12.
24. On 19th 7 '12 the court received a letter from Mr. Kirk, dated either 18th or 19th 7 '12 (the date put on the letter by Mr. Kirk is unclear) referring in its heading to the listing of this matter on 25th 9 '12 and requesting witness summonses be issued against 3 people, who did not appear to be relevant to this application.
25. On the 6th 8 '12 the court wrote to Mr. Kirk, at the same two addresses, confirming the listing of the matter for trial on 25th 9 '12, directing him to file written submissions regarding his request for witness summonses by 4pm on 3rd 8 '12 and inviting him to comply with the court's direction of 12th 4 '12, which had been served personally upon him at HMP Cardiff on 17th 4 '12.
26. At no time during this case has Mr. Kirk complied with any direction or order or request of the court.
27. In early September I became aware that Mr. Kirk was again in custody. Accordingly I arranged for a production order to be obtained for his production at the 25th 9 '12 hearing.
28. On the 25th 9 '12 the court was informed by cell staff at the magistrates' court that Mr Kirk had refused to be transported to the court (under the authority of the production order) from Bristol prison so that he could take part in the proceedings, saying, at one stage, that as it was a civil case he did not have to attend.
29. Mr. Kirk did not appear at the 25th 9 '12 hearing.
30. In paragraph 2 of his grounds of appeal Mr. Kirk raises the issue that the court would not

have been aware if he knew of the hearing date and implies that he could not attend the hearing as he was in custody and there was no arrangement for his production to court. Paragraphs 24, 27 and 28 above establish the contrary.

31. At the hearing on 25th 9 '12 SWP, represented by counsel, as it had been throughout, applied for the case to proceed in the absence of the complainant and that, if I acceded to that application, that I do so by hearing all available evidence instead of dismissing the complaint for want of prosecution.

32. S. 56, Magistrates' Courts Act, 1980 contains a power (in the exercise of the courts' discretion) to proceed in the absence of the complainant and the matter generally is governed by the Magistrates' Courts Rules, 1981. (Hereafter, "MCR") I also took into account the spirit of the provisions of the Civil Procedure Rules.

33. In dealing with the case throughout and coming to my decision on 25th 9 '12 that the case should proceed in Mr. Kirk's absence I linked the matters set out above with the following, specific provisions of the MCR:

Rule 3A(1): the court must actively manage the case. That includes

(a) the early identification of the real issues

(b) the early identification of the needs of witnesses (SWP witnesses were in attendance and ready to give evidence on 25th 9 '12)

(c) achieving certainty as to what must be done, by whom and when, in particular by the early setting of a timetable for the progress of the case

(d) monitoring the progress of the case and compliance with directions

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings

(g) encouraging the participants to co-operate in the progression of the case

Rule 3A(3): each party must-

(a) actively assist the court in managing the case without, or if necessary with, a direction

Rule3A(7): in fulfilling its duty under paragraph (2) actively to manage the case the court may give any direction and take any step unless that direction or step would be inconsistent with legislation, including these rules. In particular, the court may-

(b) give a direction on its own initiative or on an application by a party

(i) specify the consequences of failing to comply with a directions

Rule3A(14): At every hearing the court must, where relevant-

(a) if a party is absent, decide whether to proceed nonetheless

(d) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action

Rule3A(15): In fulfilling his duty under paragraph (3) actively to assist the court in managing the case, each party must-

(a) comply with directions given by the court;

(c) make appropriate arrangements to present any written or other material

Rule 3A (17): In order to manage the case-

(a) the court must establish, with the active assistance of the parties, what disputed issues they intend to explore; and

(b) the court may require a party to identify-

(i) which witnesses will give oral evidence;

(vi) what written evidence that party intends to introduce;

(vii) what other material, if any, that party intends to make available to the court in the presentation of the case

Rule 3A (18) the court must make available to the parties a record of directions given.

34. I also considered the spirit of the Civil Procedure Rules and in particular:

the overriding objective of enabling the court to deal with cases justly; saving expense;

dealing with the case in ways which are proportionate - to the amount of money involved; to the importance of the case; to the complexity of the issues and to the financial position of each party;

ensuring that the case is dealt with expeditiously and fairly; allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;

the requirement for parties to help the court to further the overriding objective; the court's duty to actively manage cases, including deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others; fixing timetables or otherwise controlling the progress of the case;

the court's case management powers including whether or not to strike out the claim; the court's ability to strike out if no reasonable grounds for the bringing of the claim are disclosed or if there has been a failure to comply with a rule or court directions;

the court's power to give summary judgment if it considers that the complainant has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a trial.

35. At the hearing on the 25th 9 '12 SWP submitted to me that it had provided a complete answer to Mr. Kirk's claim; that no response or allegation to the contrary had been provided by Mr. Kirk; that he had utterly failed to comply with any direction made by the court or to assist the court in any other way; that the case was a substantial expense to SWP and the public generally and that any further adjournment of the case would inappropriately add to such expenses; that Mr. Kirk was aware of the hearing and had chosen not to attend it and that the time had come in the case to say that enough was enough. In addition it submitted as set out in paragraph 31 above.

36. In deciding whether to proceed with the case in the absence of the complainant I considered all of the history set out above as well as the matters set out in paragraph 32 above and the issues set out in the MCR as detailed in paragraph 33 above. I came to the conclusion that the responses of SWP appeared to establish that the complainant had no real prospect of succeeding in his complaint; that the history of the case amounted to a complete failure by the complainant to assist the court, by failing to respond, in any way, to any requests, cajolings, directions, orders, reminders and opportunities, including the failure of the complainant to attend any hearing when he was at liberty to do so and able to do so (including the opportunity to attend court on the 25th 9 '12) and amounted to an equally complete failure to prosecute his complaint let alone establish or even hint at any basis on which his claim could succeed, despite the opportunity to have done so throughout the many months that had passed since he first lodged his complaint with the court. I further concluded that those failures meant that Mr. Kirk had failed, during the pre trial phase of the case, to present any answer to the immensely strong case presented by SWP as to why the application was either flawed or, where property of the complainant's remained in the possession of SWP, was one where it would be inappropriate or impossible for a court to make the order that Mr. Kirk sought. I further concluded that the additional cost in public time and expense of any further adjournment of the case was not merited; that the complainant was aware of the possible consequences of non compliance with court directions and that he was aware of the hearing and its purpose. I concluded that Mr. Kirk had chosen not to attend the trial to prosecute his complaint when facilities existed for him to do so.

37. I decided to exercise my discretion in favour of SWP's application to proceed in the complainant's absence and, in all the circumstances, to do so by hearing evidence regarding the complainant as opposed to striking out the complaint. On the evidence I heard I came to the conclusions set out in paragraph 4 above.

38. The question for decision by the High Court is whether that decision, in the light of all the foregoing, was unreasonable and therefore unlawful as set out in paragraph 6 above and whether it led to the deprivation referred to in paragraph 6 above.

Message received 8.30 am from Lee in the cells complex. Bristol Prison is reporting that Mr Kirk is refusing to get into the van to be brought to Cardiff. The DJ is contacted and via a Legal Adviser the message is given that a production order has been sort and it is a matter for the prison.

Maurice Kirk –v- The Chief Constable

Trial: 25th September 2012

Before DJ Bodfan Jenkins

Mr Richard Cole – Counsel for Police

Counsel submits additional statement from Mrs Kirk served on the court this morning but has not yet been served on Mr Kirk. It was only signed yesterday. This evidence is only for “completeness” and they want the matter to go ahead on evidence.

DJ expresses concern that the wife's evidence has not been served on Mr Kirk but says he can deal with evidence on its merit and will consider proceeding with the trial.

Counsel say they will deal with the trial as they would a Civil County Court case.

Neither the court nor the police have had evidence from Mr Kirk as directed by the DJ at previous hearings. Mr Kirk has been RIC'ed on a criminal matter to Bristol Prison.

DJ confirms that a request for a Production Order was issued by himself as a result of this and we are in the process of obtaining written confirmation of the events of this morning when Mr Kirk refused to get on the van. It was a matter for the Complainant as to what he wanted to do. On the face of it the defendant knows of the proceedings but has refused to attend.

Counsel apply to proceed in applicant's absence as he has made the decision not to attend.

DJ gives Judgement before trial proceeds:-

These are proceedings brought about by Mr Kirk. Raised firstly by letter of 1/12/11 (re-dated 22/11/11). The terms of the letter brought about the issuing of a Complaint by the court against South Wales Police. The letter references property obtained/detained by the police belonging to Mr Kirk and the balance of such items that remain with them.

A second letter was received dated 1/1/12 received at the court on 9/1/12. I have re-read this letter again today and cannot see that it relates in anyway to these proceedings. I have also re-read the letter of 6/1/12 and again cannot see that it is relevant to this application today.

On 9/2/12 the first hearing took place when all parties were present, this was adjourned to 15/3/12 for further enquiries and for details to be provided by Mr Kirk as to the actual application and what was sought. The initial letter from Mr Kirk did not set out the basis on which he sought an order under the Police Property Act 1997. The court required the details of what happened on each of the dates stated in the complaint. Directions were made that the Complainant serve on the Respondent in writing within 21 days the answer to all the points raised by the Respondent and likewise for them to serve on the Complainant their response to that. The matter was listed for mention for 15/3/12.

The court received a response from the SW Police and attempts were made to progress the case at the hearing however Mr Kirk was being very difficult/awkward in DJ's opinion. In view of what had gone back and forth between both parties the matter could not be dealt with on basis alone. A trial would be necessary.

Directions were made that police should serve on Mr Kirk and the court all evidence on which they sought to rely to establish their case within 7 days. The response to this and any evidence on which Mr Kirk sought to rely should be served by him within 21 days.

An adjournment was asked for by Mr Kirk for 12th April. All parties present at this time but no documentation had been received from Mr Kirk. Again, in DJ's view the complainant was awkward and obstructive. He was concerned only with matters that affected his own mind and not the matters before the court. He stated that he had not received the documentation the police said they had served. Mr Kirk was RIC at this time and an additional bundle was served on him in the secure dock. Matter was adjourned to 10/5/12. Directions again made that Applicant should serve Respondent and court within 21 days in writing answer to all points raised by the Respondent and also the points in the additional bundle that had now been served. Directions also said that if the Applicant does not so respond the court will decide what to do with the case including consideration of a dismissal.

Under the Magistrates' Courts Rules a written copy of the Directions were served on the Complainant and the Police save for 3 documents where the Police Officers had not been identified. Police had served a lot of relevant documents.

27/4/12 letter received from Mr Kirk asking for an adjournment – no other issues raised in this letter. In the May hearing Mr Kirk was not present. DJ was told that he had been released from custody the previous day. DJ received a letter from Judge Seyes Llewellyn (County Court Judge) stating there had been proceedings before the Civil Court where there were a number of civil claims made by Mr Kirk against the SW Police and there was to be a trial listed for 9 weeks. There had been a large amount of written material in Mr Kirk's cell. The matter had been taken out of the list.

At the May hearing there was a discussion between the DJ and Resp. Counsel about whether the matter should proceed in Mr Kirk's absence when he did not attend. It was decided that the case would be adjourned and it was listed for Mention on 12/7/12. Mr Kirk was written to and warned of the consequences of his actions if the court should receive no response from him. No further directions were made.

Mr Kirk was written to at the 2 addresses held on file re: the adjournment with reminders of the earlier directions. He was also told of today's trial date. DJ was told on his return from summer holiday that Mr Kirk has been remanded into custody for a criminal offence. He instructed that a Production Order be made for today's date.

Today, we have been told by the officers at Bristol Prison that Mr Kirk has refused to get into the van. The officers raised the issue with the cells complex as to whether they should bring him. The DJ said that a Production Order had been issued so it was a matter for the prison. Therefore, Mr Kirk had chosen not to come if he would not get on the van. Even if one of the letters informing him of today's hearing had gone astray he is the applicant and it is his duty to follow up if letters are not received. His absence is voluntary. In response to the directions of the 12th April to date no response has been received from Mr Kirk by the court or the police.

The DJ will consider Counsel's application to proceed in absence under Magistrates' Courts Rules 1981 (3c1). Document submitted – Civil Procedure Rules with matters relevant to this case and the DJ agrees with the document and under numerous subsections of the MCA ruling – 3a7, 3a7(1) specifically to the consequences of not dealing with directions. (Sub para. 3a of 14/15/17/18). It is time to call a halt to the proceedings although I am not striking it out of the list. I will consider the evidence/merits made by Counsel. Hope merits will weigh in the balance of any further consideration the court may have to give in the future.

It is appropriate/inevitable that the matter proceeds in absence and I ask that Counsel give thought to the evidence provided by the Complainant. Is it necessary for me to hear evidence but make ruling when more appears on behalf of the Complainant. Would not say the documents speak for themselves but prima facie it makes the case.

Trial

Counsel – Feel it is important for officers to give evidence – no need for hearsay only evidence as per their statements. DJ agrees to hear it.

DJ Complainant – there is no evidence except for initial letters which are not technically evidence- they are vague. Will not rely on statement of Mrs Kirk. DJ may consider an Order or not – will use discretion that I have. DJ has read all statements.

Counsel PC 3995 Bristow. (Cardiff Bay Police Station) on oath Believes that his statement at pages 1 and 2 are true to the best of his knowledge and belief.

DC Jackson and Heidi Murrick – not present

Nigel Brown (Firearms Examination Officer – Bridgend) on oath Believes that his statement on p6 and 7 re: the walking stick firearm belonging to Mr Kirk is true to the best of his knowledge and belief. The only way Mr Kirk could hold

such a firearm would be if he held a Shotgun Licence with the relevant conditions. He is aware of only one person in the SW Police Force area that holds such a licence. This firearm does fall within the said category of licence. Statement was made on 3/4/12

DC 2461 Williams (Specialist Crime Team) on oath
Statements at p8,9,10 & 11 (inc appended documents). They are signed and true to the best of my knowledge and belief. I confirm Mrs Kirk's signature also.

DC 3167 Evans (CID Bridgend) on oath
Statements p 12 & 13 DJ points out that it is not signed/dated by officer. He is given a copy to sign in the witness stand (now held on court file- not hearsay document) P12 appended signed documents plus p14 & 15. They are true to the best of my knowledge/belief. The signature at p15 is Mr Kirks, mine is at the front page with another officers (he has now retired - Neil Thornton). I was present when all documents were returned and signed. (Original Signed and dated document is then found by Counsel dated April 2012)

PC 3394 Owens (Vale of Glamorgan Police) on oath
Statement p17 Mrs Kirk. It is true to the best of my knowledge/belief.

PC 197 Hallett (Barry Police Station) on oath
Statement p17 when with Mr Kirk at Cardiff Bay Police Station. It is true to the best of my knowledge/belief. Appended p18 & 19 - list of property subject to charge enquiry. The document list was compiled by DC 2762 Dave Thomas but I gave back the items to Mr Kirk (record set out at p20 & 21) of bundle with copy of notebook.

Sara Williams (Firearms Licensing Manager - Bridgend) on oath
P22 bundle. P24 dated 10/4/12 with my signature at each page. I have checked the exhibits/statements. They are true to the best of my knowledge/belief. Mr Kirk's current position regarding his licence is that he made an application in March 2010. He was visited by an officer as there were discrepancies in his application, he had not given the correct home address, was not registered with the GP stated on his application and in references to previous convictions he had just stated "see police pnc". We asked him by letter to submit a new application. To date we have not received one. At p23 Mrs Kirks licence revoked in August 2009. Many items placed on her certificate. Item E returned to her as not required on licence. 3 antique muskets /muzzle holder can be returned to nominated Firearms Dealer as nominated by Mr Kirk. Still have concerns over the walking stick. Legislation in 1992 stated you had to apply for a shotgun licence in order to possess this sort of weapon. This legislation applied to those who already had such an item but not to anyone seeking to acquire one now. I am not aware that Mr Kirk has applied for the licence. I have spoken to Mrs Kirk, the items on her certificate; I am content for these to be passed to a Registered Gunsmith/Firearms Dealer (p23) of her choice. Mrs Kirk no longer has a licence. Any nominees would be vetted by me and we are currently liaising with her in regards to this. Mr Kirk does not have a Firearms/Shotgun certificate.

SW1 - application by Mr Kirk p25,26,27,28 and refer to p23. File copy of letter sent to Mr Kirk, this is at p29 of the statement.

Every item seized on these dates has been accounted for. Either returned, in the possession of the police and cannot be returned to Mr or Mrs Kirk as neither have the relevant licence or certificate or the court could not make an order as it would be an illegal act (walking stick).

Counsel – he could have the muzzle holder/muskets back but he is RIC so would have to be returned through a nominated dealer.

DJ – It is inappropriate for the court to make an order, there is no evidence from the Complainant. The evidence shows that he is the owner of the items. It is

inappropriate in these circumstances. Legislation say the court MAY make an order upon application. The evidence is unchallenged by the Complainant and in the balance of probabilities no-one is lawfully able to be in possession of the walking stick, no items for which Mr Kirk would need the licence/certificate, cannot have an order for nominated persons as no-one has been nominated. Therefore I cannot make

that order.

Counsel asks for costs of £4000.00. DJ asks about Mr Kirks means and Counsel say that officers in the court and those involved in the investigation say that he is a man of means and has assets and properties but he cannot say in detail.

DJ – SW Police have been put to enormous expense and trouble and there is no reason not to order costs.

Costs of £4000.00 ordered. Under S64 of MCA Act subsection 3 the costs are enforceable as a civil debt and subsequently there is no period for payment