

BETWEEN:

**Maurice John Kirk**

**Claimant**

and

**The Chief Constable of South Wales Police**

**Defendant**

**Further Submission to Argument on Preliminary Issues:**

**Reasons for Not Striking Out Any Incidents**

*Only too often the litigant in person is regarded as a problem for judges and for the court system, rather than the person for whom the system of civil justice exists. The true problem is the court system and its procedures which are still too often inaccessible and incomprehensible to ordinary people.*

*Woolf (1995), Chapter 17, para. 2.*

In the spirit of Lord Woolf's quotation, this is what I could produce in the short time available, since I read the email about the invitation for further submission on the evening of Friday, 1<sup>st</sup> October, 2010.

**1) Broad Overview to Give Context to Legal Issues and Specific Incidents**

**A. Unusual, extreme and "indefinite"**

1. As stated previously this case is unusual and extreme. Not only did the Chief of Police know, and failed to take action, but also allowed the unusual and extreme situation to escalate and to occur 'indefinitely' such as below.

**B. Broad Overview: 'Leaked' Official Record - Independent Evidence that Police Manufacture Evidence at a MAPPA meeting – as how Police manufacture evidence in incidents in this case**

2. The first page of the leaked record of multi agency MAPPA meetings says the "main reason" for the Claimant being on MAPPA was media attention. Yet Police then also assert (without giving any evidence) that the Claimant is also a risk to himself and others. That would seem to suggest the Police believe the level of risk presented by the Claimant, as less a risk than the Claimant being in the media.
3. But then the leaked record goes on to say, that because of this risk (which by Police version is not more than media attention) they intend to shoot the unarmed Claimant, (presumably expecting to kill the Claimant) when the CPS clearly confirm to Police, that the Claimant would be acting lawfully, and within his rights.

**C. Broad Overview: Convictions that stand, can be proved otherwise. (CPR 9B 232)**

4. With a number of examples available to suggest as above, regards the bad faith (malice and dishonestly) by the Defendant in this case, the Claimant believes it is possible for the Court to believe the Claimant's view and evidence, and so to prove for the purposes of this trial, that the Claimant is not guilty, where he has previously been convicted based on the Defendant's evidence or chicanery.
5. Events such as the Cowbridge show are where a retired Police officer slapped the Claimant across the face, and then a security guard violently attacked the Claimant from behind and slammed the Claimant to the ground. Yet on the evidence of these the Claimant was convicted, as if attacking them.

**D. Broad Overview: New Evidence to Prove Claimant Innocent, when previously convicted**

6. Possibly, the Court may take the view that taking a broader or retrospective review, and seeing all this as an unusual case, brings new evidence to the Cowbridge show and other like incidents.
7. In all of the relevant incidents, no clearly independent members of the public complain about the Claimant, all prosecution complainants and witnesses against the Claimant are either the Defendant or the Defendant's associates including some in the Crown Prosecution Service

**E. Broad Overview: Honest belief, reasonable & probable cause, not believable given an unusual case and such as the above points**

8. Given the point above, it is possible for the Court to take the view that actions and inactions were not done by an honest belief or by reasonable and probable cause by the Defendant, but rather actions and inactions by the Defendant were done in bad faith.

**F. Broad Overview: Claimants wording of Claim – Obvious Intended Meaning**

9. The Claimant is a litigant in person. Should the Defendant wish to challenge or quibble over wording in the Claim, then the Claimant asks the Court to take the view to use the obvious intended meaning and have regard for the overriding interest of justice.

**2) Human Rights**

**A. Broad Overview: Burden of Proof on Defendant to justify “indefinite” interference in, and loss of Claimant's Fundamental and Conditional Human Rights as “Absolutely Necessary”**

10. The Claimant believes the burden of proof is on the Defendant to adequately prove why if the level of belief of risk is less than media attention, (as above) why it was necessary to breach any, let alone so many of his human rights.
11. The level of burden of proof required from the Defendant is that interference in the Claimant's rights as below was “absolutely necessary”.

12. The Claimant believes he has essentially lost his Fundamental Rights, ECHR Article 2: Right to life, ECHR Article 5: Right to liberty, (imprisoned repeatedly without charge or referral to a court). ECHR Article 6: Fair Trial at criminal and civil Courts because of the dishonesty and malice by the Defendant in proceedings and at hearings.

#### **B. Broad Overview: ECHR Article 8 - including Defamation and MAPPA**

13. ECHR Article 8: the right to respect for private and family life. There is emphasis on “respect” in ECHR Article 8. Was the interference proportionate to the level of risk? Where Police have said their belief of level of risk as less than being in the media? The Claimant believes the Defendant must prove interference was “absolutely necessary”.
14. ECHR Article 8 means that the Claimant has a right to be free from defamation by public bodies including at MAPPA meetings.

#### **C. Broad Overview: ECHR Article 3 Torture by Cruel and degrading treatment**

15. The European Courts are quite clear that ECHR Article 3 is to have a high threshold and should only be used for the more or most unusual and extreme cases. However, case law for ECHR Article 3 allows for a situation like this, where cruel and degrading treatment can mean authorities degraded a man in his social status compared to his peers. It would be extremely difficult to find a professional man, of the Claimant’s status as a Vet, Pilot and property owner who has experienced such a long term and now indefinite level of cruel and degrading treatment that contrasts so very greatly with that of his peers. Although not wanting the burden of the Claimant needing to prove this point, possibly the Court would be willing to allow opportunity and potential to reserve the option for the Court to find the Defendant has been breaching ECHR Article 3, the Right to freedom from torture, (cruel and degrading treatment).

### **3) Preliminary Introduction to Current Issues**

16. One of the most blatant incidents of the Defendant’s combination of malicious intent and behaviour, lack of duty of care, bad faith and convictions out of proportion is referred to under “Cowbridge Show” in paragraph 2.1 of the 3rd Action, which is expanded later in this document.
17. The barrister for the Police at the Claimant’s appeal wrote to the Royal College of Veterinary Surgeons (RCVS), in January 2002, (see Claimant’s 52 Lever Arch files lodged with the Defendant), that had he known about the detail of the arrest and what actually occurred in Barry Magistrates, in relation to a simple complaint of **breach of the peace**, bungled by the Defendant, he would never have opposed the Claimant’s appeal at Crown Court.
18. The barrister reminded the RCVS that the first blow was by that of a retired police officer striking the Claimant across the face, followed by the Complainant, the security guard, knocking the Claimant to the ground from behind (recorded in the Magistrates Clerk’s notes), only for the Claimant to then be arrested for **breach of the peace** when he had returned to the scene from his practice ambulance to complain that he had been assaulted.

19. The Defendant rests his case on the relevant law in respect of the more common heads of claim of the Claimant and, in general terms, the response to the particular allegations made by the Claimant.
20. In contrast, the Claimant wants to re-state the general approach of the Defendant's harassment, malicious intent and unlawful behaviour:
  - a. The **modus operandi** of the Force displayed in general is a knee jerk reaction to losing control over a car driver, the Claimant in 1971, who started to use aeroplanes instead.
  - b. The **malicious intent** is demonstrated by the revelation of the first four pages of a report of MAPPA meetings which, so far, have been repeatedly denied by the Defendant. These pages were sent to the Judge before his invitation to make a further submission. These consist of some of the medical records needed by the Claimant's anaesthetist and surgeon before they can carry out the much overdue total hip replacement procedure. Defendant records also include the following points:
    - i. **"The Defendant is taking careful advice regarding the procedure of the criminal case in light of the fact that they are also the subject of civil complaint."**
    - ii. **"The Defendant intends to take certain action which they anticipate will result in a remand into custody."**
    - iii. Regarding the charges of possessing and selling prohibited weapons, the first four report pages admit to:
      - **"there was no criminal history of previous use of firearms"**
      - **as confirmed by HM Crown Prosecution Service (CPS), "recent actions do not constitute an offence."**
  - c. The unlawful behaviour of the Defendant has reached a level of such utter unreasonableness that it is time to recognise the malicious intent underlying the Chief Constable's 25<sup>th</sup> February 2009 false affidavit, false imprisonments and enforced custody in Caswell Clinic. During this stay in a medium security psychiatric environment, the Director of the establishment even stated in his report that he recommended the Claimant be transferred to a maximum security prison.
  - d. The foreseeable harm, intentional wrongdoing and improper motive of the Defendant seem to be obvious to every onlooker, observer or reader of 18 years of harassment, but not to either the Defendant or their lawyers.

#### **A. Knee-Jerk Reactions as the Modus Operandi of the Force**

21. In the 1970s, the Somerset and Avon Police repeatedly took the Claimant to criminal court, mainly for motoring but also other offences, eventually losing, two thirds, fifty-six out of seventy-two allegations, before the Claimant felt forced to leave the area. Loss of driving

licence, early on in this harassment, meant the Claimant had to use a variety of strange old aircraft as alternative transport, in order to carry out his veterinary work around the farms of Taunton.

22. This led to the Taunton Police laying numerous complaints with the Civil Aviation Authority, only to be severely rebuked each time, by letters that later came into the possession of the Claimant. For the Police did not know about the privileges bestowed on UK registered pilots flying UK registered aircraft in UK airspace. Instead, somebody must have said: "**Let the harassment commence.**"
23. Dr Elizabeth Miller, specialising in neuropsychology and brain surgery, explained recently the possible origin of this behaviour. She suggested that any organisation that thinks it's losing control or power over a person, will tend to cause that organisation or person to act irrationally, if not unlawfully. The Claimant has been subject to such knee jerk behaviour over and over again.
24. Sabine McNeill, McKenzie Friend and web publisher, calls the pattern an example of 'templated' rather than appropriate behaviour by the South Wales Police: having lost control of a motor bike rider, on a foreign registered vehicle and not in the same name of the believed current rider. Further examples in the three Actions indicate other vehicles registered abroad and whose registered names changed almost monthly.
25. This exacerbated the behaviour of the local police, while the Claimant had to take extreme and drastic steps in order to practise veterinary surgery in peace.

#### **B. Malicious Intent behind MAPPa Surveillance Level 3**

26. In June 09 the Claimant was officially categorised MAPPa level 3 (terrorist), following the falsification of the Chief Constable's affidavit sworn on February 25th 2009. In anticipation of his early demise, the Claimant was adding a post script to his sixty-four page witness statement of explanations on 19th June 2009, while the helicopter was already hovering above his head.
27. Irregular procedures surrounding police covert surveillance date back to 1992, since the Claimant first arrived in South Wales to practise veterinary surgery.
28. Surveillance culminated in official MAPPa activity, but purely on the pretext to allow the Defendant to lawfully kill the Claimant or imprison him for life, in her so called execution of duty. Evidence of this premeditation and malicious intent of the Defendant is included in the first four pages of the leaked MAPPa report, faxed to the current trial judge, because the Cardiff County Court continues to block the Claimant's e-mails.
29. Subsequent examination of the 2009 monthly MAPPa minutes, currently still withheld by the Defendant, by an appropriate alternative police force or successful Claimant Appeal in the Court of Appeal, will further disclose the cooperation between NHS doctors and HM Prison Cardiff at MAPPa meetings.

30. The malicious intent of incarcerating the Claimant for life under the Mental Health Act depended on the evidence, alone, of Dr Tegwyn Williams, Director of the South Wales Police Forensic Unit, Caswell Clinic, Bridgend on 2nd December 2009 in Cardiff Crown Court, was unlawful.
31. At those proceedings, Dr Williams told HHJ Bidder QC that the Claimant had “significant brain damage” with the possibility of a brain tumour, making him too dangerous to be released from custody. Even though in prison, the Claimant obtained an independent report by consultant neurologist specialising in nuclear physics, Dr Robert Kemp, who stated that the enforced brain scan, of 28th August 2009, was wholly inappropriate and potentially dangerous.
32. HHJ Bidder QC designated to be the trial judge and clearly saw there was no mileage in it, pointed out that the 1983 Mental Health Act required a signature from two level 12 forensic psychiatrists to recommend the Claimant be transferred to the maximum security prison.
33. Due to Section 35 of the same Act, the duration of 12 weeks had expired at Caswell Clinic and the Claimant was either to be released on bail or returned to Cardiff Prison.
34. The Claimant remains intrigued as to how Dr Tegwyn Williams gained right of audience, when the Claimant was no longer his patient, and who exactly arranged this spurious evidence to be put before the Court on 2nd December, 2009.
35. Since then, further malicious intent has been displayed by the Defendant withholding the medical evidence, to prejudice these civil proceedings, that was put before the Court on 2nd December, 2009 which is desperately required for the hip to be operated upon.

### C. The Unusual and Extreme Nature of this Case

36. The Defendant was well aware of this as an “unusual” and extreme case. In 1993 the Claimant's solicitors wrote to the Force solicitors over six months to **preserve evidence** and consider financial settlement. Six months later, Dolmans took charge of the case and refused to negotiate.
37. The Defendant was aware there was a problem and failed to act. The Defendant is well aware of liability for wrongful acts by those it employs. Yet the Defendant made no attempt to stop what has become very many incidents that were foreseeable to have a ruinous and injurious effect on the Claimant.
38. As previously stated, the Claimant believes the Court can take the view that a duty of care exists.
39. The Claimant believes the various case laws used by the Defendant are not relevant to this type of claim.
40. Upon His Honour the Judge's question **“But are there no indications as to what might constitute a truly exceptional case?” the answer was: “No, Your Honour.”**
41. The Claimant's son who was present at the Court in his father's absence at the time writes:

**“Why does the QC of the Police impose this lengthy, irrelevant onslaught of verbal diarrhoea upon us, if none of it addresses the central tenet of contention as highlighted by a single utterance from the Judge?”**

42. Similarly, neither “keeping the peace” nor the “measurement by outcomes” seem to have been directives or guidelines that the Force have been following in this unusual case.

#### **4) The Utter Unreasonableness of the Defendant’s Behaviour**

43. The Claimant believes that, for all these incidents with a foreseeable cumulative effect, it was and still is utterly unreasonable for the Chief Officer(s) not to act, to intervene or to protect the Claimant and prevent foreseeable harm, ruin and injury.

#### **5) Responsibility comes with Control**

44. There are varying levels of control. In this “unusual” case, the control and proximity can be with the chief of police. Obviously, individual Police Officers have high levels of control, but when a trend occurs, their Police Chiefs even more. The Claimant believes case law says “Responsibility comes with Control” as a guide to imposing a duty of care.

*Police Act 1996 “The chief officer.... liable...as a master is liable for his servants...”*

45. The Claimant believes that in an unusual and extreme case such as this, the Police Act 1996 is explicit that “The Intention of Parliament” for police be held to account in this type of unusual case.

*Police Act of 1996 c. 16 88 Liability for wrongful acts of constables*

(1) The chief officer of police for a police area shall be liable in respect of (any unlawful conduct of) constables under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of (any unlawful conduct of) his servants in the course of their employment, and accordingly shall (in a case of tort,) be treated as a joint tort feaser.”

*Smaller events are part of a trend and no less important “.. as a master is liable for his servants..”*

46. The Claimant believes that potentially less serious events, that are at first seemingly insignificant, are important as a part of a trend that reassert the ability to abuse power, so to cause similar mental distress and suffering as a major event of interference.

#### **6) Close Proximity**

47. The Claimant believes there was and is a close proximity of relationship:

- by each Officer or Officers of each incident of action or omission
- from a close cluster of many incidents in one fairly small geographic area.
- the Claimant believes the chief of police had an obvious responsibility for these incidents, and so a close proximity relationship to the Claimant.

## 7) State of Mind

48. The Claimant believes the state of mind of the Constable(s) and Defendant was to either teach him a lesson, or as PC B said “get the B\*\*t\*\*d”, to the extent to ruin both the status and business of the Claimant.
- 49. It is in writing in the first four pages of the MAPP report that the Defendant intends to shoot the unarmed Claimant, when the Claimant would be acting lawfully according to the CPS.**
50. The Claimant believes that the conduct of the Defendant’s lawyers, by not seeking a solution or to address problems, reiterates the deepest kind of bad faith, that the Claimant experienced over and over in the various incidents with the lawyers only driven by avarice.

## 8) Bad Faith & Evidence of Malice

51. An absence of good faith is evidence of bad faith. The facts speak for themselves of a long history of absence of good faith.
52. A deliberate failure to deal is evidence of bad faith. Case law says failure to deal with a complaint is evidence of malice. One example brought to the attention of the lay Claimant is a Police case from an Employment Appeals Tribunal where the contractual relationship in Employment Law is irrelevant to the case, but relevant are the principles of a deliberate failure to deal, being proof of malice, and more senior officers than a Detective Chief Inspector Miller may be giving the orders to act unlawfully, if not maliciously:-

*“46 Miss Shepherd recognised that she needed to establish a deliberate failure to deal. In those circumstances this Tribunal expressed the conclusion, by which we stand, that, if there is to be a case which is required to be proved at trial that DCI Miller in doing what he did, deliberately failed to deal with the Applicant’s complaints, then that needs to be pleaded. It is a serious allegation that a senior officer deliberately fails to deal with complaints. Effectively it can only be an allegation of bad faith, unless of course it is done under the express orders from a higher authority who themselves would be acting unlawfully.”*

## 9) Material Damage

53. The attempt to “get the b\*\*t\*\*d” means economic ruin of earning status as veterinary surgeon, private pilot, businessman and property owner.
54. The material damage cannot be estimated high enough, given the utter ruin of business and personal reputation during seven and half months of prison, including three months in Caswell Clinic.

55. However, this is just the epitome of physical injuries, mental distress, suffering and deterioration during the prime years of veterinary practice.
56. Having to relocate his practice from Somerset to Guernsey and Wales, whilst having to endure harassment and suffer from the non-investigation of crimes, seems minor compared to being prevented from working for one's professional income since 2004.
57. The resulting damages are incalculable in terms of loss of income, wealth, reputation, health and generally quality of life.

#### **10) Misfeasance in Public Office**

58. The Defendant may struggle to provide defences to such an unusual and extreme case but the Defendant's suggestion that "Mr Kirk should have pursued that route" may have been said because, in certain circumstances *Armstrong?*, prison officers case, it allowed Defendant immunity to punitive damages.. ..yet to be researched.

#### **11) Defence of Honest Belief not suitable for this Unusual Case of many Actions and Inactions**

59. The Claimant believes that the number of incidents vented on the Claimant should also be compared with the experience of others of his class: the Claimant being a white, highly qualified, professional man, public school educated, Veterinary Surgeon (Local veterinary Inspector to Government) and once a Commercial Airline Pilot, moderately wealthy, well spoken in more than one language and at the time of incidents a respectable married middle aged man, with a well educated professional wife (a Government Advisor) and well educated children.
60. The volume of incidents vented on the Claimant by Police, make "honest belief" of any officer not believable across so many. (see 4th Action not yet joined, lodged 24th October 2007.)
61. The Claimant believes the Court can, if it so wishes, take the view that the close cluster of incidents that are confined to a small geographical area, does not suggest officers were making judgment and using discretion based on honest beliefs.
62. For the Claimant to face the Defendant's demand of disclosing his driving insurance documents, thirty-five times, is a mute point. On the thirty-fifth occasion (3rd Action) the Claimant simply refused and the Cardiff Magistrates, upon sound legal advice from the clerk of the court, found the Claimant Not Guilty based on 'The balance of probabilities' that as he had been found to be not illegal, on all previous occasions, then the burden of proof rested squarely with the Defendant.
63. It does not follow that if officers "honestly believed" the Claimant was a bad or even odd driver that they can find grounds to not deal with or investigate the Claimant's complaints of criminal conduct by some lay persons towards the Claimant.

#### **12) If Defendant says 'did not know,' Case Law says can be Deceit or Bad Faith**

64. Taking a parallel from the Tort of Deceit, the Claimant notes, Obligations: The Law of Tort by Lord Templeton and E D Pitchfork (1999) says “in Notts Patent Brick and Tile Co v Butler (1886) 16 QBD 778, the defendant’s solicitor in response to a question from the plaintiff purchaser, said that he did not know of any restrictive covenant which affected the land. Although it was true that he did not know of any restrictive covenant, this was because he had not bothered to look. It was held that this was a misrepresentation which entitled the Plaintiff to rescind the contract.
65. The Claimant believes that the Court can, if it so wishes, take the view that at best, the intent of the Defendant was sufficiently reckless that if Police Chief “could not be bothered to look”. From this could follow for the Court to take a view that a duty of care be imposed and also to find that this duty was breached.

*The Police Act of 1996 c. 16. - 88 Liability for wrongful acts of constables.*

It is difficult for the Police Chief to be excused who did not have means or systems in place to comply with explicit primary legislation, so that Police Chiefs are left as if they “could not be bothered to look”, given the law that the Defendant knows well.

### **13) Defendant’s Defence of saying Claimant Mentally Ill & a Risk to Self and Others**

66. The Defendant has thrice tried (and thrice failed) to prosecute the Claimant for going and being at the Caswell Clinic, a Specialist Unit for people whose mental state means that they may be a risk to self or others. If Police believed the Claimant was mentally ill or present a risk, especially given the Multi Agency Involvement like MAPP, the Defendant would be seen to try to steer the Claimant to get care, support and treatment such as at Caswell. Instead the Claimant believes the main trend of evidence suggests that the Defendant wishes to bring ruin, harm and injury to the Claimant.

### **14) Claimant Unwell and why he lacks Capacity for all Proceedings**

67. The conduct of continuing failed disclosure by the Defendant, to include crime reference numbers of all police incidents with the Claimant, medical records under their control and the identity of police officers at each incident has seriously prejudiced the Claimant’s basic human right to a fair trial. Ample medical evidence has been served on the court to support this contention.

### **15) Claimant Unwell and Explanation for Incapacity to counter Legal Arguments**

68. The Claimant sometimes wonders whether staying in bed all day, with his latest edition of Pilot Magazine, is more conducive to the preparation for the rigors of a lengthy trial than trying to comprehend clearly irrelevant legal arguments from the Defendant whilst on 10mg bid Morphine Sulphate, Dichlofenac 50mg et al.

## **16) Defence List of Incidents to be 'Struck Out'**

### **1<sup>st</sup> Action, Paragraph 8.12: Roundabout without due care**

69. The Defence barrister's admission, informing court that the MOT document for Channel Island registered vehicle was accepted by Barry police, highlights the day by day communications that were going on between the Defendant and Guernsey Insular Authorities hell bent on their 'fishing trip' to find anything to prosecute the Claimant further displays bad faith.
70. The Defendant was either too bone idle, liable to tort, to check with the Barry court that the Claimant had lodged and Appeal and its outcome, on the driving ban or far more likely, the Defendant knew it, Crown Prosecution office now in the same police station and played the so often 'ignorance' card, again liable for tort .
71. Their partial success in the convictions, careless driving and failure to stop, are now in serious doubt with this new evidence, seventeen years of it and counting, of their long standing attitude problem towards the Claimant that was not before the original court.

### **1<sup>st</sup> Action, Paragraph 8.13: BMW bike stolen**

#### **An example of Bad Faith and Duty of Care as Bailee**

72. A Guernsey registered BMW 1000cc motor cycle, number 1876, bought from a Guernsey police officer, was used to visit Barry police station to serve the Claimant's 11th May 1993 letter on Inspector Trigg (court exhibit) backed by Claimant's solicitors, later that year, also complaining of continuing police harassment and notice of the commencement of legal proceedings for damages.
73. Within the hour of the Claimant leaving Barry police station he is arrested outside his Cardiff veterinary surgery, in front of his clients, for theft of the motorcycle and jailed for four days, in Cardiff prison on the pretext the Claimant could not be 'identified'.
74. A few weeks later, the Claimant, again riding the same BMW motor cycle, is seen by police at Tumble, on the edge of Cardiff and is followed, at speed, for about six miles, past Cowbridge, through the Vale of Glamorgan.
75. On 13th October 1983, the Claimant, riding the same BMW motorcycle, is followed by police from Llantwit Major towards Barry and then arrested and jailed for "driving whilst disqualified" only for this and other allegations all to be withdrawn later.
76. The BMW was registered, at the time, in the name of "Joseph F Bloggins".
77. On 16th October 1993, Crime ref E/12996/93, the Claimant reported the theft of the same BMW motorcycle from his Barry veterinary surgery, on regular police covert surveillance, only to be immediately chased by police and recovered within half a mile of the Claimant's premises.

78. A witness (exhibit and statements), very nearby, hears the “chase” on his police scanner and arrives at the scene to identify a “foreign” number plate on the said, now crashed, BMW with the thief seen running away as police vehicles arrived.
79. A client of Claimant, employed to recover the motorcycle records (exhibit) no number plate on bike in his official log, police having not left the scene until he loaded the bike.
80. Many weeks later a police motorcyclist, another client of the Claimant, identifies the bike in the recovery garage as belonging to the Claimant but police refuse to disclose any but limited information on this bike incident or as to the identify of which police officer, first arriving at the scene, removed the identity of the motorcycle, its number plate.
81. Recovery Garage log book, only traced in April 2010, identifies that police officer and whose name also features, incidentally, is also in one of the Barry magistrates court cases denied any knowledge of by the then current Chief Constable, Barbara Wilding, within her 25th February 2009 sworn Affidavit.
82. The said police officer also featured in the theft complaint, twice in one day, of the Claimant's other Guernsey registered vehicle, his veterinary ambulance, never to be seen again. Recent statement (tendered on court) of a Barry scrap dealer with a similar scenario for the Claimants' vehicles tending to disappear a sample in the forty odd incidents listed in the 4th Action the Claimant is being blocked from joining with these.
83. Enclosed is the police print-out of the Claimant's complaint of the BMW motorcycle being stolen, police recording it as a ‘Jersey saloon car’ which is little wonder, of course, why the Defendant enjoyed her excuse of why the bike was never later recorded as being recovered!
84. The Defendant was well aware of this as an “unusual” and extreme case. In 1993 Claimant's solicitors wrote to the Force solicitors over six months to preserve evidence and consider financial settlement. Six months later, Dolmans took charge of the case and refused to negotiate.
85. The Defendant was aware there was a problem and failed to act. The Defendant is well aware of liability for wrongful acts by those it employs. Yet the Defendant made no attempt to stop what has become very many incidents that, foreseeably, would have a ruinous and injurious effect on the Claimant.
86. As previously stated, the Claimant believes the Court can take the view that a duty of care exists.
87. The Claimant believes the various case laws used by the Defendant are not relevant to this type of claim.

**1<sup>st</sup> Action, Paragraph 18 – 21: Stringer tenants**

88. These four incidents were re-instated following the Claimant’s appeal to HHJ Jack QC in 1998. It was noted that the counsel for the Defence was ‘not aware of this on the 1st day it was referred to by the Claimant, in current proceedings but later conceded he had been party to those proceedings in the Bristol.

89. If it is the contention that paras 18-21 are liable to be struck out for the 2nd time then HHJ Jack QC's refusal to allow the Claimant a TRIAL BY JURY must also be in doubt.

90. That being said, the Claimant makes application to re-instate incidents **1.8.4** and **1.8.8**

**The 2<sup>nd</sup> Action was filed with the Court on 6<sup>th</sup> June 2002, putting the Defendant further at risk with the enactment of the 1997 Harassment Act but more to the point notice that their handling of the Claimant was to or should have been under the control of more senior police officers.**

**2<sup>nd</sup> Action, Paragraph 2.3: Crossing the White Lane to Avoid Running over Cyclists**

91. A judge said police had 'honest belief'. I had driven 'without due care' and Defence now say, therefore, not actionable.

92. Nonsense. He had been a BMW motorcyclist in the Claimant's Barry station, riding one on the day of the incident, privy to all the gossip over Claimant's latest bike that featured so much in the then current incidents involving his arrest and loss over the motor bike (see paras 72-87 incl). In short, another incident that is FACT SENSITIVE that must be allowed to be aired on evidence on oath that will reveal the other names of the police at the scene.

**2<sup>nd</sup> Action, Paragraph 2.4 PC Roche /Alleged Traffic Offences**

93. Similar argument to obvious 'proximity', PC Roche, again, featuring in 4th Action and the Police break-in to the Claimant's veterinary surgery denied by the Defendant (see Barbra Wilding False Affidavit) .Further, paras. 69, 70, 71 and 92 also apply.

**2<sup>nd</sup> Action, Paragraph 8.1 Red Light and Positive Breath Test**

94. As per paras 69, 70, 71 and 92 and much more, not available due to time allocated but, let us not forget His Honour's parting comment, allowing the Claimant the appeal, when Judge Jacobs raised the issue of this case being yet another example of Mr Kirk appearing to obtain a red light positive breath test, on the road side, only to have a 'zero reading', shortly afterwards, on the definitive test in Barry police station.

**2<sup>nd</sup> Action, Paragraph 9.1 PC Kihlberg/ BMW CAR (bailee)**

95. Kihlberg, again, as per 'proximity', often featured in incidents always displaying outrageous unreasonableness alongside others, appearing to be carrying out their lawful duties. Paras 69, 70, 71 and 92 apply as does the 'bailee' argument in paras 72-87.

**2<sup>nd</sup> Action, Paragraph 11.1 PC Osborne Breath Test in Cardiff / Overhead Video**

96. Videos of custody and road side, which must be seen, displaying the Claimant being seriously assaulted, again makes this incident fact sensitive and puts into doubt the only conviction to stand, 'refuse breath test', occurring immediately after a day in court before HHJ Gaskell. The conviction was obtained by torture.

**The 3<sup>rd</sup> Action was filed with the Court on 14<sup>th</sup> June 2002, putting the Defendant yet again on further notice of the “special relationship” between Claimant and Defendant, compounded by their “special treatment” of the Claimant, the responsibility of senior officers**

**3<sup>rd</sup> Action, Paragraph 2.1: Cowbridge Show**

97. Upon Claimant’s Breach of the Peace arrest and presented before Barry Magistrates, Jackie Seal, Crown Prosecutor, remained silent, on behalf of the Defendant, throughout proceedings having handed to the Clerk of the court, to read out the reason why the court had convened. He did not and the case was adjourned. The reason was that of a ‘bind over’, but in three different versions.

**98. Jackie Seal refused to confirm this, before His Honour Judge Gaskell in the much later ‘Abuse of Process’ application (see transcript) her excuse being, “for fear of incriminating myself”.**

99. At the next hearing the Claimant failed to attend, witnessed by his secretary, unrecognised as HM Partnership had moved away the case Bridgend under an entirely different reference number.

100. At the next hearing his secretary heard police outside the court, discussing whether or not to serve the Claimant what turned out to be, later, new allegations.

101. Part way through the hearing these three separate summonses were served on the Claimant with the Crown Prosecutor stating that for about a month the police had had ‘difficulty’ in serving them as the Claimant who had appeared ‘elusive’ despite no evidence to the contrary that he had resided at a fixed abode throughout and worked at his usual nearby veterinary surgery.

102. At lunch time the clerk to the Justices advised the prosecutor that the first charge, BOP, needed putting to the Claimant but would, most likely, refuse to be bound over, meaning jail or it could be withdrawn.

103. Had the Crown Prosecutor and HHJ Gaskell, at the time, been made aware of the truth as to what actually happened in the original Barry Magistrates hearing, then the Claimant’s Abuse of Process Application would have overturned the three convictions or with the CPS barrister, originally defending the Crown Court appeal, following convictions, to have ‘not opposed the Appeal’.

104. The CPS’ barrister’s letter to the Royal College of Veterinary Surgeons confirms that had the Defendant informed him of the Barry Magistrates involvement, withheld by Jackie Seal [and 4th version of BOP now supplied by the Defendant] submitted to Recorder Roderick Evans, then the Claimant would have had the convictions quashed.

105. It is the Claimant’s submission arguments in this rebuttal all apply to this incident and the manner authority dealt with it afterwards

106. THE TRIAL JUDGE MUST HAVE ACCESS TO THE 52 FILES LODGED WITH DEFENDANT, AS CLAIMANT EXHIBITS, FOR TRIAL, TO READ JACKIE SEAL TRANSCRIPT, BARRISTER I.REES LETTER TO RCVS, BRIDGEND MAGISTRATES CLERK’S NOTES(ASSAULTS ON CLAIMANT) AND UNLAWFUL CONDUCT OF CROWN PROSECUTOR ALSO LOGGED IN COURT RECORDS.

107. Documents to support all incidents threatened with strike out are carefully preserved in those files but time allowed for this document to be prepared has caused the Claimant not to be able to finish these submissions.

**3<sup>RD</sup> Action, Paragraph 3.1: Stolen and Falsified Cheques**

108. As of today's date with recent sightings of the two thieves in Barry, reported to the police by the Claimant no approach has been made, by the Defendant, either to the Claimant or to the Barry post office, to preserve either evidence or apprehend criminals. The post office has the information for an early arrest having the current whereabouts of both Adam Baker and Christian Harrison.

**References:**

1. 52 Lever Arch files served on the Defendant about six years ago, in anticipation of the current situation. They provide the evidence to every paragraph referred to in the Particulars of Claim and this rebuttal to the Application by the Defendant that any incidents should be struck out.
2. Should His Honour be required to access specific documents, it is hoped that more time will be provided beyond this current submission of a preliminary nature.

This document is far from finished.

Maurice J Kirk BVSc

4<sup>th</sup> October 2010

(Paragraph numbering corrected 5<sup>th</sup> Oct 2010)