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APPEAL REF: QA-2022-BHM-000026
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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

ON APPEAL FROM
THE COUNTY COURT SITTING IN LEICESTER
CLAIM NO E77YM442

Date: 9th May 2023

Before:

MR JUSTICE RITCHIE

- -

BETWEEN

ESENGUL WOODCOCK

Appellant/Claimant

- and -

THE CHIEF CONSTABLE OF NORTHAMPTONSHIRE POLICE

Respondent/Defendant

Mr Charles Davey (instructed by Capital Lawyers) for the **Appellant/Claimant**
Mr Matthew Holdcroft (instructed by DWF) for the **Respondent/Defendant**

Hearing date: 25 April 2023

- -

APPROVED JUDGMENT

Mr Justice Ritchie:

The appeal

1. This is an appeal from a judgment delivered by HHJ Murdoch on 19.4.2021 after a 5 day trial in January 2021 (by video), in which the Judge dismissed the claim with costs.

2. By notice of appeal dated 9.9.2021 the Appellant seeks to overturn the judgment. Henceforth I shall call the Appellant "the Claimant" and the Respondent "the Defendant" or "the police" and the Claimant's husband or ex-husband "H".

3. Permission to appeal was granted on the papers by me on 23.6.2022 with a direction to perfect the grounds of appeal and skeleton. Directions for the appeal were given by HHJ Kelly on 24.8.2022 and 6.12.2022.

Bundles and evidence

4. I had the following digital bundles: an appeal bundle and a joint authorities bundle. I also read the permission to appeal bundle. The bundle contained the draft judgment not the approved judgment. My comments on form below are therefore likely to be irrelevant because I suspect they were all tidied up in the approved judgment.

Overview

5. On 19.3.2015 the Claimant was leaving her home with her son, daughter and H and getting into her car, when she was viciously attacked by Riza Guzelyurt (RG) and stabbed at least 7 times in her chest and body. She was very seriously injured. Her children saw the attack. RG was convicted of attempted murder and imprisoned for life.

6. The Claimant sued the police for failing to warn her that RG was outside her house that morning and many other asserted failings (failing to protect her; failing to arrest RG; failing to cocoon her; failing to put officers outside her house all night; etc.). The Defendant denied liability asserting that the police owed the Claimant no duty of care, did not breach any duty which they might be found to have owed and did not cause the injury in any event.

7. The Judge made findings of fact which I shall summarise below and ruled that: (1) no duty of care was owed to the Claimant; (2) there was no breach of duty in any event; (3) the burden of proof on causation was not fulfilled by the Claimant on the evidence.

Issues

8. The main issue in the appeal is whether the Defendant had a duty to warn the Claimant after a neighbour made a 999 call and informed the Defendant of RG loitering outside the Claimant's house 12-13 minutes before the attack.

The grounds of appeal

9. The Claimant filed amended grounds of appeal dated 2.8.2022. There were 3 grounds with multiple sub-grounds.

10. **Ground 1, Duty of Care:** the Claimant asserted that Judge was wrong to reject a duty of care. The Claimant relied on: the long history of harassment and attacks by RG on her which were known by the police; the multiple arrests of RG and the bail conditions imposed on RG by the police; the termination of her affair with RG; the asserted fact that the Defendant had initiated a "cocoon" watch; the fact that the Police had flagged the Claimant's address; the fact that the Defendant had contacted the Claimant through her mobile phone previously, many times; the extensive manhunt effected by the Defendant on the 18th- 19th of March 2015; the fact that the Defendant would have used a helicopter if the weather had been better; the fact that the Defendant had agreed to provide comfort to the Claimant at her request by placing a police officer in a car outside her home after midnight on the 18th of March 2015 running into the early hours of the 19th of March. The Claimant asserted that those facts were sufficient to evidence that the Defendant had "assumed a duty of care" to protect the Claimant.

11. Separately, the Claimant asserted that the Judge was wrong to hold that the Defendant had no duty of care to warn the Claimant that RG was outside her house both before and after a 999 call which was received by the Defendant at 07.32 am on 19th March 2015 from a neighbour, reporting that RG was loitering outside and had threatened to kill her. That call occurred 13-14 minutes before she walked out of her house and was stabbed.

12. **Ground 2, breach:** The Claimant asserted that the Judge was wrong to fail to find a breach of duty by the Defendant. Nine allegations are made to justify this ground: failing to discuss with the Claimant her movements before she left home that morning; failing to advise the Claimant to contact the police before she left home; failing to warn the Claimant on her mobile phone that RG was outside; failing to advise the Claimant to remain at home until they arrested RG; failing to inform the Claimant that they had not yet arrested RG; failing to arrange a cocoon watch so the Claimant's neighbours had contact details and kept a look out for RG (this contradicted the assertions in Ground 1); failing to brief PS Randall fully as to the history and failing to station police officers outside the Claimant's home until she physically left home to go to work and deliver the kids to school. In addition the Claimant asserted the Judge was wrong to find that calling the Claimant to warn her after the neighbour's 999 report was not required and was not within the remit of the Defendant's staff. The Claimant relied on the IPCC conclusions after their investigation of the police conduct and the lack of defence evidence on the point. Paragraphs 6 and 7 of the grounds of appeal were already subsumed within the rest of ground two in my judgment.

13. **Ground 3, causation.** The Claimant challenged the Judge's findings on causation. The Claimant relied on three matters: firstly the assertion that causation was not on the list

of agreed issues provided for a pre-trial review; secondly because the Judge failed to address five of the allegations of breach set out at paragraphs 4.1 to 4.5 of the grounds; thirdly because the Claimant asserted that it was "clear" that she would not have left home if she had been informed by the police that RG was outside and/or that he had not been arrested yet.

14. In response the Defendant submits that the Judge was correct; the arguments in the grounds of appeal have changed somewhat since the permission was granted; the actions and words of the police did not constitute a contract to provide protection, so no duty arose; the duty to warn was pleaded as part of a duty to keep the Claimant safe not on its own and that no *Human Rights Act* claim was raised. In the Defendant/Respondent's skeleton parts of the transcript of evidence were recited but no transcript was put into the appeal bundle. In one of two such excerpts the Claimant admitted that she had only been assaulted twice by RG and never with weapons. There was a transcript of the Claimant's evidence at trial in the bundle for the permission to appeal stage but that was omitted from the appeal bundle. I should make clear that I have read that transcript.

The judgment

15. The layout of the judgment is odd. There is no heading and there are no paragraph numbers. The Judge launched straight into a chronology using shorthand language which appears to be a summary of the police log.

Rulings on the law

16. The Judge's rulings on the law followed the summary of the police log. The Judge considered *Hill v Chief Constable of West Yorkshire* [1989] A.C. 53, but provided the wrong citation. He then quoted text from Lord Keith's judgment with no report page reference and no quote marks. By reading the report one can glean that part of the reference is from page 59. Some words are then omitted and the second part is again from the judgment of Lord Keith on pages 59-60. The Judge wrote this:

> "**Hill v Chief Constable of West Yorkshire** [1987] UKHL Lord Keith said;
> There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution, and also for negligence. Instances where liability for negligence has been established are Knightly v. Johns [1982] 1 W.L.R. 349 and Rigby v. Chief Constable of Northamptonshire [1985] 1 W.L.R. 1242. Further, a police officer may be guilty of a criminal offence if he wilfully fails to perform a duty which he is bound to perform by common law or by statute: Reg. v. Dytham [1979] Q.B. 722, where a constable was

> convicted of wilful neglect of duty because, being present at the scene of a violent assault resulting in the death of the victim, he had taken no steps to intervene. (words omitted) …
> But as that case shows, a chief officer of police has a wide discretion as to the manner in which the duty is discharged. It is for him to decide how available resources should be deployed, whether particular lines of inquiry should or should not be followed and even whether or not certain crimes should be prosecuted. It is only if his decision upon such matters is such as no reasonable chief officer of police would arrive at that someone with an interest to do so may be in a position to have recourse to judicial review. So the common law, while laying upon chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged. That is not a situation where there can readily be inferred an intention of the common law to create a duty towards individual members of the public."

17. This was not the ratio of *Hill.* The ratio of the judgment in *Hill* is set out in later paragraphs of the House of Lords' judgment. The facts related to the mass murderer, Peter Sutcliffe. The family of his last victim sued the police for failing to arrest him before their daughter's death. The issue was whether the police owed her any duty of care and whether they breached it by failing to apprehend Sutcliffe before her murder. The judge at first instance struck the claim out before trial on the basis that there was no duty of care. The Court of Appeal dismissed the Claimant's appeal. The House of Lords also dismissed the Claimant's appeal. In summary the House ruled that no general civil law duty of care was owed by the police to the Claimant in relation to failing to find and arrest Sutcliffe. The rationale for the decision is set out below.

18. Lord Keith considered foreseeability of harm to the claimant and proximity between the criminal, the police and the victim and ruled that no duty of care arose on normal tortious principles. At page 60 he ruled as follows:

> "But if there is no general duty of care owed to individual members of the public by the responsible authorities to prevent the escape of a known criminal or to recapture him, there cannot reasonably be imposed upon any police force a duty of care similarly owed to identify and apprehend an unknown one. Miss Hill cannot for this purpose be regarded as **a person at special risk** simply because she was young and female. Where the class of potential victims of a particular habitual criminal is a large one the precise size of it cannot in principle affect the issue. All householders are potential victims of an habitual burglar, and all females those of an habitual rapist. The conclusion must be that although there existed reasonable foreseeability of likely harm to such

> as Miss Hill if Sutcliffe were not identified and apprehended, there is absent from the case any such ingredient or characteristic as led to the liability of the Home Office in the *Dorset Yacht case*. Nor is there present any additional characteristic such as might make up the deficiency. The circumstances of the case of the case are therefore not capable of establishing a duty of care owed towards Miss Hill by the West Yorkshire Police."

19. Arguably this ruling left open a category of members of the public who could prove that they were at special risk from a mass murderer as attracting a duty of care from the police.

20. Public policy was then considered by Lord Keith as follows:

> "But in my opinion there is another reason why an action for damages in negligence should not lie against the police in circumstances such as those of the present case, and that is public policy. In *Yuen Kun Yeu v. Attorney-General of Hong Kong* [1988] A.C. 175, 193, I expressed the view that the category of cases where the second stage of Lord Wilberforce's two stage test in *Anns v. Merton London Borough Council* [1978] A.C. 728, 751-752 might fall to be applied was a limited one, one example of that category being *Rondel v. Worsley* [1969] 1 A.C. 191. Application of that second stage is, however, capable of constituting a separate and independent ground for holding that the existence of liability in negligence should not be entertained. Potential existence of such liability may in many instances be in the general public interest, as tending towards the observance of a higher standard of care in the carrying on of various different types of activity. I do not, however, consider that this can be said of police activities. The general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by the imposition of such liability so far as concerns their function in the investigation and suppression of crime. From time to time they make mistakes in the exercise of that function, but it is not to be doubted that they apply their best endeavours to the performance of it. In some instances the imposition of liability may lead to the exercise of a function being carried on in a detrimentally defensive frame of mind. The possibility of this happening in relation to the investigative operations of the police cannot be excluded. Further it would be reasonable to expect that if potential liability were to be imposed it would be not uncommon for actions to be raised against police forces on the ground that they had failed to catch some criminal as soon as they might have done, with the result that he went on to commit further crimes. While some such actions might involve

> allegations of a simple and straightforward type of failure - for example that a police officer negligently tripped and fell while pursuing a burglar - others would be likely to enter deeply into the general nature of a police investigation, as indeed the present action would seek to do. The manner of conduct of such an investigation must necessarily involve a variety of decisions to be made on matters of policy and discretion, for example as to which particular line of inquiry is most advantageously to be pursued and what is the most advantageous way to deploy the available resources. Many such decisions would not be regarded by the courts as appropriate to be called in question, yet elaborate investigation of the facts might be necessary to ascertain whether or not this was so. A great deal of police time, trouble and expense might be expected to have to be put into the preparation of the defence to the action and the attendance of witnesses at the trial. The result would be a significant diversion of police manpower and attention from their most important function, that of the suppression of crime. Closed investigations would require to be reopened and retraversed, not with the object of bringing any criminal to justice but to ascertain whether or not they had been competently conducted. I therefore consider that Glidewell L.J., in in his judgment in the Court of Appeal [1988] Q.B. 60, 76 in the present case, was right to take the view that [1989] A.C. 53 Page 64 the police were immune from an action of this kind on grounds similar to those which in *Rondel v. Worsley* [1969] 1 A.C. 191 were held to render a barrister immune from actions for negligence in his conduct of proceedings in court. My Lords, for these reasons I would dismiss the appeal."

21. The use of the word immunity would cause problems later in the European Court in Strasbourg and has been abandoned but the principle in *Hill* remains sound today. So the third part of the test in tort for the imposition of a duty of care in civil law was public policy and that favoured no duty being imposed on the police.

22. In the judgment in this appeal the Judge then considered *Robinson v The Chief Constable of West Yorkshire* [2018] UKSC 4, and cited two passages, once again without identifying which they were by paragraph number. The facts of that case were that two police officers knocked over an elderly lady when arresting a drugs dealer in the street. The trial judge dismissed the claim despite ruling that the police officers were negligent on the basis that the police were immune from suit for negligence. The Court of Appeal dismissed the appeal but the Supreme Court upheld the appeal and judgment was entered for the Claimant. Lord Reed gave the lead judgment. He ruled firstly (at para. 29) that:

> "In the present case, however, the court is not required to consider an extension of the law of negligence. All that is required is the application to particular circumstances of established principles governing liability for personal injuries."

23. Lord Reed then analysed the constituent elements necessary for the imposition of a duty on the police. In relation to the general imposition of a duty of care at para. 45 he ruled thus:

> "45 For the purposes of the present case, the most important aspect of Lord Keith's speech in *Hill's case* is that, in the words of Lord Toulson JSC (*Michael's case* [2015] AC 1732, para 37), "he recognised that the general law of tort applies as much to the police as to anyone else". What Lord Keith said [1989] AC53, 59 was this:
>
> > "There is no question that a police officer, *like anyone else*, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution, *and also for negligence."* (Emphasis added.)
>
> The words "like anyone else" are important. They indicate that the police are subject to liability for causing personal injury in accordance with the general law of tort. That is as one would expect, given the general position of public authorities as explained in paras 32–33 above."

24. In relation to police omissions to act Lord Reed ruled as follows (at para. 50):

> "On the other hand, as Lord Toulson JSC noted in *Michael's case* [2015] AC1732, para 37, Lord Keith held that the general duty of the police to enforce the law did not carry with it a private law duty towards individual members of the public. In particular, police officers investigating a series of murders did not owe a duty to the murderer's potential future victims to take reasonable care to apprehend him. That was again in accordance with the general law of negligence. As explained earlier, the common law does not normally impose liability for omissions, or more particularly for a failure to prevent harm caused by the conduct of third parties. Public authorities are not, therefore, generally under a duty of care to provide a benefit to individuals through the performance of their public duties, **in the absence of special circumstances such as an assumption of responsibility**. This was recognised by Lord Toulson JSC in *Michael's case*. As he explained, at paras 115–116:

> "115. The refusal of the courts to impose a private law duty on the police to exercise reasonable care to safeguard victims or potential victims of crime, **except in cases where there has been a representation and reliance,** does not involve giving special treatment to the police …
> "116. The question is therefore not whether the police should have special immunity, but whether an exception should be made to the ordinary application of common law principles …" (My emboldening)

25. Lord Reed then went on to deal with the public policy aspects raised in *Hill* and in later cases and summarised the exceptions based on special circumstances or assumption of a duty or responsibility, as follows at para. 64:

> "64 In *Smith v Chief Constable of Sussex Police* [2009] AC 225, the majority of the House were in agreement that, **absent special circumstances such as an assumption of responsibility,** the police owed no duty of care to individuals affected by the discharge of their public duty to investigate offences and prevent their commission. Lord Hope of Craighead, with whose reasoning the other members of the majority agreed, followed the approach adopted in *Brooks v Comr of Police of the Metropolis* [2005] 1 WLR 1495 in the passage cited in para 61 above, and emphasised the risk that the imposition of a duty of care of the kind contended for would inhibit a robust approach in assessing a person as a possible suspect or victim. He acknowledged that "There are, of course, cases in which actions of the police give rise to civil claims in negligence in accordance with ordinary delictual principles", and cited *Rigby v Chief Constable of Northamptonshire* [1985] 1 WLR 1242 as an example: [2009] AC225, para 79. Lord Phillips of Worth Matravers CJ summarised the core principle to be derived from the *Hill* and *Brooks* cases as being that **in the absence of special circumstances, the police owe no common law duty of care to protect individuals against harm caused by criminals.** Lord Brown approached the matter in a similar way, concluding that, in the absence of an assumption of responsibility towards the eventual victim, the police generally owe no duty of care to prevent injuries deliberately inflicted by third parties, when they are engaged in discharging their general duty of combating and investigating crime. None of the speeches is inconsistent with the existence of a duty of care to avoid causing physical harm in accordance with ordinary principles of the law of negligence." (My emboldening).

26. Summarising, Lord Reed ruled as follows, at paras. 68 and 70:

> "68. On examination, therefore, there is nothing in the ratio of any of the authorities relied on by the respondent which is inconsistent with the police being under a liability for negligence resulting in personal injuries where such liability would arise under ordinary principles of the law of tort. That is so notwithstanding the existence of some dicta which might be read as suggesting the contrary.
> 70. Returning, then, to the second of the issues identified in para 20 above, it follows that there is no general rule that the police are not under any duty of care when discharging their function of preventing and investigating crime. They generally owe a duty of care when such a duty arises under ordinary principles of the law of negligence, unless statute or the common law provides otherwise. **Applying those principles, they may be under a duty of care to protect an individual from a danger of injury which they have themselves created, including a danger of injury resulting from human agency,** as in the *Dorset Yacht case* [1970] AC 1004 and *Attorney General of the British Virgin Islands v Hartwell* [2004] 1 WLR 1273. **Applying the same principles, however, the police are not normally under a duty of care to protect individuals from a danger of injury which they have not themselves created, including injury caused by the conduct of third parties, in the absence of special circumstances such as an assumption of responsibility."**

27. The Judge then considered the earlier case: *Michael v Chief Constable of South Wales* [2015] UKSC 2. It would have made more sense to consider *Michael* before *Robinson* because the judgment in *Robinson* relies on the judgment in *Michael.* In any event the Judge cited paragraphs 97-100 and 138. These contained Lord Toulson's consideration of the duty to warn considered by Lord Bingham in his dissenting judgment in *Smith v CC of Sussex & Van Colle v CC of Hertfordshire Police* [2008] UKHL 50. Lord Toulson set out the two exceptions to the general rule that the police owe no duty of care to victims for the actions of criminals or to prevent the actions of criminals who are "third parties" to the relationship between the police and the victim. The first exception is where the police had control over the actions of the third party (for instance the borstal boys who escaped custody in *Dorset Yacht),* and the second is where the police have assumed a positive duty to safeguard the victim or the Court has imposed such due to their actions in taking responsibility. Having done so the Judge relied on para. 138 of Lord Toulson's judgment and recited it in full.

28. The facts of *Michael* were that the police in Gwent received a call from the victim informing them that her ex-boyfriend had arrived in the night to find her with another man, driven the man away and threatened to return and hit her and he would be back any minute. The transcript actually showed the victim said that the boyfriend threatened

to "kill her" on his return. The call handler advised her to lock her doors and that the call would be transferred to her local police station and that station would call her back. 14 minutes later the victim called back, was heard to scream and the line went dead. She was stabbed to death. The issues included whether the police were under a duty of care to safeguard the potential victim once informed (by the victim) of an imminent threat to her life. Lord Toulson considered evidence on domestic abuse and violence against women and the conventions signed to prevent such. Lord Toulson described Lord Keith's use of the term "immunity" in *Hill* as unfortunate. The intervention of the European Court in *Osman v Ferguson* [1993] 4 All ER 344 and *Osman v United Kingdom* [1998] 29 EHRR 245 was considered. Then he ruled on the general rule and the exceptions to the general rule, at paras. 115-116, as follows:

> "115 The refusal of the courts to impose a private law duty on the police to exercise reasonable care to safe guard victims or potential victims of crime, **except in cases where there has been a representation and reliance,** does not involve giving special treatment to the police. It is consistent with the way in which the common law has been applied to other authorities vested with powers or duties as a matter of public law for the protection of the public. Examples at the highest level include *Yuen Kun Yeu v Attorney General of Hong Kong* [1988] AC 175 and *Davis v Radcliffe* [1990] 1 WLR 821 (no duty of care owed by financial regulators towards investors), *Murphy v Brentwood District Council* [1991] 1 AC 398 (no duty of care owed to the owner of a house with defective foundations by the local authority which passed the plans), *Stovin v Wise* [1996] AC 923 and *Gorringe v Calderdale Metropolitan Borough Council* [2004] 1 WLR 1057 (no duty of care owed by a highway authority to take action to prevent accidents from known hazards).
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> 116 The question is therefore not whether the police should have a special immunity, but whether an exception should be made to the ordinary application of common law principles which would cover the facts of the present case."

29. Lord Toulson then considered the *European Convention on Human Rights* and the *Human Rights Act 1998* and whether the rights set out therein affected the common law duty of care. On this he ruled at para. 130 as follows:

> "130 More generally, I would reject the narrower liability principle advocated by the Claimants for the same reasons as the broader liability principle advocated by the interveners. If it is thought that there should be public compensation for victims of certain types of crime, above that which is provided under the criminal injuries compensation scheme, in cases of pure omission by the police to perform their duty for the

> prevention of violence, it should be for Parliament to determine whether there should be such a scheme and, if so, what should be its scope as to the types of crime, types of loss and any financial limits. By introducing the *Human Rights Act 1998* a cause of action has been created in the limited circumstances where the police have acted in breach of articles 2 and 3 (or article 8). There are good reasons why the positive obligations of the state under those articles are limited. The creation of such a statutory cause of action does not itself provide a sufficient reason for the common law to duplicate or extend it."

30. So the Claimant's action in *Michael* failed. All the call handler had done was to take the potential victim's call and pass it on to her local police station. That was not sufficient to make out the special circumstances or the assumed responsibility exceptions and in any event, it appears to me that the alleged breach by omission (if any) was a failure to get to the house in 14 minutes which was a matter for consideration of whether that was possible in the light of the other policing duties carried by the Cardiff police that night. The facts are quite different from those in the appeal before me which I shall set out below from the Judge's findings.

31. Having touched on those three cases the Judge made rulings on the law in an odd way. He raised the *Bolam* test with counsel, but this is the test for negligence of medical practitioners and counsel submitted it was not relevant. I agree with counsel. He then summarised the law thus:

> "Duty of care
> I draw from *Hill* that the Police have a wide discretion as to how they address their statutory functions. And that Police officers may be liable in tort for their acts or commissions. *Robinson* confirms that the Police would not normally be under a duty to protect from a danger they have not created. *Michael* makes it clear that the Police may owe such a duty if they assume a positive responsibility to safeguard the Claimant under the *Hedley Byrne* principle. In my judgment the facts of this case although different in detail to that in *Michael* mirror the same issues raised"

32. With due respect to the learned Judge that summary is barely a sufficient analysis in relation to the three cases he referred to. He also overlooked any analysis of the exceptional cases or special circumstances duty. He referred only to the *Hedley Byrne* exception. That case is the classic authority for a duty of care relating to negligent misrepresentation. It has been referred to in various civil action against the police cases as a foundation for the assumption of responsibility exception. The reasoning being that if the police have represented to the victim that they will keep her safe and if the victim has relied on that promise and acted to her detriment (for instance by sending away her

own private security guards) then the police have assumed a duty of care. In my judgment, whilst this set of facts (unlikely though they may be) may well fulfil the exception called assumption of responsibility, it is probably not the only trigger for a duty of care to fulfil that exception as I will seek to explore below. I consider that other cases are instructive on the law relating to the issues in this appeal.

33. *Brooks v The Commissioner of Police* [2005] UKHL 24, concerned a friend of Stephen Lawrence who was present when he was murdered. Brooks was traumatised by the racially motivated murder and then brought a claim against the police for insensitive or abusive treatment during their investigation. Lord Nicholls briefly mentioned the exceptional cases at para. 5:

> "**There may be exceptional cases where the circumstances compel the conclusion that the absence of a remedy sounding in damages would be an affront to the principles which underlie the common law.** Then the decision in *Hill's* case should not stand in the way of granting an appropriate remedy." (My emboldening).

34. Lord Steyn commented on the rule in *Hill* and public policy as follows at para. 30:

> "A retreat from the principle in *Hill* would have detrimental effects for law enforcement. Whilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim. By placing general duties of care on the police to victims and witnesses the police's ability to perform their public functions in the interests of the community, fearlessly and with despatch, would be impeded. It would, as was recognised in Hill, be bound to lead to an unduly defensive approach in combating crime."

35. In relation to the exceptions to *Hill* Lord Steyn said this at para. 34.

> "It is unnecessary in this case to try to imagine cases of outrageous negligence by the police, unprotected by specific torts, which could fall beyond the reach of the *Hill* principle. **It would be unwise to try to predict accurately what unusual cases could conceivably arise. I certainly do not say that they could not arise.** But such **exceptional cases** on the margins of the *Hill* principle will have to be considered and determined if and when they occur." (My emboldening).

36. In *Smith & Van Colle v Hertfordshire Police* [2008] UKHL 50, the accused in case (1) approached the Claimant's son attempting to persuade him not to give evidence at the accused's forthcoming trial. Two such approaches were aggressive but no death threats were made. Arson events occurred, affecting the son, but were not directly evidentially attributed to the accused. The police were informed of all this. No police protection was provided to the son but he was then murdered by the accused. The claim was for breach of an asserted duty to protect and under the *Human Rights Act 1998.* The Judge held the police were in breach of Art. 2 of the HRA. The Court of Appeal upheld the Judge. The House of Lords overturned the decision and dismissed the claim. In case (2) the victim received and reported death threats to him from his male ex-partner. There was a history of previous violence by him to the victim. The police did not take a statement, made no crime report, provided no protection and did not arrest the accused. He was attacked in his home and suffered serious injuries. He sued the police. The judge struck out the claim. The Court of Appeal reinstated it and the House of Lords dismissed the claim. So both Claimants lost.

37. Lord Phillips considered that the imposition of a duty was a matter for Parliament. Lord Carswell considered that there was no liability for omissions but stated in relation to the exceptions that:

> "109 It remains to be considered whether there are any exceptions to the generality of the rule. Lord Hope has referred in para 79 to the existence of a duty of care in respect of operational matters. **As he says, imposing liability in such cases does not compromise the public interest in the investigation and suppression of crime**. I also agree with his view (para 78) that the test propounded by Lord Bingham, dependent on the production of apparently credible evidence of a specific and imminent threat to the life or physical safety of the complainant, would be difficult to operate and would tend to lead to a defensive approach to the carrying out of police work. I would not dissent from the view expressed by Lord Nicholls of Birkenhead in *Brooks* at para 6 that **there might be exceptional cases where liability must be imposed**. I would have reservations about agreeing with Lord Steyn's adumbration in para 34 of Brooks of a category of cases of "outrageous negligence", for I entertain some doubt whether opprobrious epithets provide a satisfactory and workable definition of a legal concept. I should accordingly prefer to leave **the ambit of such exceptions undefined at present."** (My emboldening).

38. Lord Brown gave the lead judgment. He considered Lord Bingham's dissenting judgment in which Lord Bingham had ruled as follows:

> "44 Differing with regret from my noble and learned friends, I consider that the Court of Appeal were right, although I would go further: if the pleaded facts are established, the chief constable did owe Mr Smith a duty of care. The question whether there was a breach of that duty cannot be addressed until the defence is heard. I would hold that if a member of the public (A) furnishes a police officer (B) with apparently credible evidence that a third party whose identity and whereabouts are known presents a specific and imminent threat to his life or physical safety, B owes A a duty to take reasonable steps to assess such threat and, if appropriate, take reasonable steps to prevent it being executed. I shall for convenience of reference call this "the liability principle".

39. Lord Brown did not agree with Lord Bingham's "liability principle". He analysed and rejected it in paras. 128 - 133 in particular due to the policy considerations. In summary he did not consider the police should be the civil liability insurers (my words) for all criminals' activities and that civil proceedings about why the police failed to catch criminals would cost a lot and tie up police resources endlessly. Lord Brown then considered the exceptions to the general rule that there is no liability on the police for the acts of criminals which they fail to prevent as follows:

> "135 True it is that in *Brooks* both Lord Nicholls of Birkenhead and Lord Steyn contemplated the possibility of **exceptional cases** on the margin of the *Hill* principle which might compel a different result. If, say, the police were clearly to have **assumed specific responsibility for a threatened person's safety**—if, for example, they had assured him that he should leave the matter entirely to them and so could cease employing bodyguards or taking other protective measures himself—then one might readily find a duty of care to arise. That, however, is plainly not this case. There is nothing exceptional here unless it be said that this case appears exceptionally meritorious on its own particular facts—plainly not in itself a sufficient basis upon which to exclude a whole class of cases from the *Hill* principle. That said, the apparent strength of this case might well have brought it within the *Osman* principle so as to make a Human Rights Act claim here irresistible."

40. Lord Hope ruled as follows:

> "76. The risk that the application of ordinary delictual principles would tend to inhibit a robust approach in assessing a person as a possible suspect or victim, which Lord Steyn mentioned in the last sentence of the passage that I have quoted from his opinion in *Brooks,* is directly relevant to cases of the kind of which *Smith's case* is an example. It is an unfortunate feature of the human experience that the

> breakdown of a close relationship leads to bitterness, and that this in its turn may lead to threats and acts of violence. So-called domestic cases that are brought to the attention of the police all too frequently are a product of that phenomenon. One party tells the police that he or she is being threatened. The other party may say, when challenged, that his or her actions have been wrongly reported or misinterpreted. The police have a public function to perform on receiving such information. A robust approach is needed, bearing in mind the interests of both parties and of the whole community. Not every complaint of this kind is genuine, and those that are genuine must be sorted out from those that are not. Police work elsewhere may be impeded if the police were required to treat every report from a member of the public that he or she is being threatened with violence as giving rise to a duty of care to take reasonable steps to prevent the alleged threat from being executed. Some cases will require more immediate action than others. The judgment as to whether any given case is of that character must be left to the police."

41. Thus in *Smith & Van Colle* the House of Lords restated the general rule and acknowledged the existence of exceptions to the general rule that the police are not liable in civil law for failing to catch criminals or to prevent crime. The exceptions were categorised as: (1) special circumstances and/or (2) exceptional cases and/or (3) the assumption of responsibility to protect, but the constituent elements of or triggers for the exceptions were not defined. Category (3) was not confined the *Hedley Byrne* triggers.

42. The Claimant/Appellant in the appeal before me relied in submissions on *Griffiths v The Chief Constable of Suffolk & Norfolk NHS Trust* [2018] EWHC 2538, a decision of Ouseley J. to support the pleaded assertion of a duty to warn on the police.. The facts of that case were that the victim called the police because a man obsessed with her had tried to commit suicide, been detained under the Mental Health Act and then released by a mental health panel and had then harassed her and she was really frightened. The call taker assessed the risk as requiring a response in 4 hours. Later the police called her back and asked for a delay in their attendance due to other demands on their service and she agreed. She was then brutally murdered in front of her children. Her estate sued the police under the *Human Rights Act 1998* alleging the call grading system for the risk to the victim was inadequate. The judge held that the mental health panel had insufficient evidence to engage a duty to warn the victim. He went on to rule that the *Human Rights Act* claim against the police failed because the police did not know or have reason to believe that there was an imminent risk to life. Ouseley J was considering the duty on the mental health panel when he ruled at para 459 as follows:

> "So, turning to the second way in which the exception can arise, the legally imposed or "assumed" responsibility to safeguard another, the principal issue is whether, during the assessment, the panel should have foreseen that there was a risk to Ms Griffiths of McFarlane murdering her, or assaulting her in such a way as would breach Article 3, that is a serious assault. The pleadings against the NHS Trust allege an assumption of responsibility in part because it knew or ought to have known that Mr McFarlane posed a significant risk to Ms Griffiths' life or personal safety; (158(iv)). Certainly, if the panel foresaw or should reasonably have foreseen the risk of Mr McFarlane murdering her or assaulting her in a way which breached Article 3, a serious physical assault, the law would in my judgment impose an obligation to safeguard her by taking steps such as warning her or alerting the police. I consider that that duty would have arisen whether or not he had been sectioned or admitted voluntarily. The gravity of the risk would be sufficient to impose such a duty; a good measure of that point is that it would be at the point at which the duty of confidentiality to the patient was overridden by the public interest in the avoidance of risk to others. I do not need to deal with how that would be affected by prior knowledge on the part of the victim of the risk for a sufficiently special relationship, the proximity issue for a duty towards her to arise; there is no evidence that she was aware of any such risk. The public interest in her protection would outweigh the confidentiality inherent in the assessment process and in the relationship to the patient, absent perhaps some very strong circumstances. What steps, if any, that meant should be taken would depend on the facts; they could vary from compulsory admission if the statutory criteria were satisfied, perhaps to pressing voluntary admission, then to warnings to the police, and to her, and especially if the assessment uncovered anything she might not appreciate."

43. In my judgment, this part of the judgment does not assist the Claimant in the current appeal. This paragraph was concerned with the other Defendant, the NHS Trust. In relation to the claim against the police Ouseley J. ruled as follows at paras. 585 and 620:

> "585. I accept Mr Johnson's submission that there was nothing in the call to suggest objectively a real and immediate threat to life or of serious assault. Mr McFarlane was not present; he had made no threats to harm her. Ms Griffiths agreed that the police could come the next day, and there was nothing in her language or tone in the second call to suggest that she was covering up such a fear. She did not suggest that she would much rather they visited that evening because she was frightened that Mr McFarlane might do her serious harm.

> …
> 620. I also conclude that there was clearly a risk of harassment and stalking, and of unwanted presence at Ms Griffiths' home of which the Suffolk Police knew on 5 May. But there was nothing to suggest that it was an imminent risk, against which measures were required that night. So if there were a protective duty in relation to such a risk, which could arise under Article 8, the Suffolk Police did not breach it in their response, by grading the call as 3, and ringing back at 21.43 and acting in reliance upon what Ms Griffiths said. I do not accept that a breach of Article 8 can be raised where Articles 2 and 3 were not breached, nor that Strasbourg jurisprudence permits a breach of Articles 2 or 3 to be based on a failure to take steps which an Article 8 duty would have required, where no breach of Articles 2 or 3 was or should have been foreseen."

44. That case is different from the case in this appeal because it was pleaded under the *Human Rights Act.* Also it was an allegation of failure to protect. However Ouseley J's close consideration of the foreseeability of harm and the imminence thereof is quite normal when considering the existence of a duty of care in tort cases. A *Human Rights Act* claim has specific requirements which needed to be evidenced before an award could be made.

45. The Claimant also relied on *ABC v St Georges Hospital* [2020] EWHC 455, a decision of Yip J on whether a hospital should have warned a relative of the patient about her genetic danger because she would have inherited it from the patient (her father). Between paras. 175 and 188 Yip J considered foreseeability and proximity and public policy and ruled that was a duty to warn. I do consider that this case assists me to some extent in deciding whether the police owned a duty to warn. But it is different because, although the common law factors are the same, the public policy factors are quite different with the police.

46. The Claimant also relied on various elderly American cases concerning psychologists and a spouse to support the assertion of a duty to warn. In *Tarasof v University of California* [1976] Pacific Reported 2d series 334 and *JS v RTH* [1998] Atlantic Reporter 714 at 924, the Defendants were held liable for failing to warn the victims based on the Defendants' knowledge of the risk of injury. But because neither case concerned the police I do not find the cases of any assistance.

47. The Defendant relied on *Tindall v The Chief Constable of Thames Valley* [2022] EWCA Civ 25, in which the facts were that the police attended an accident noting black ice and put out a warning sign. Later they left and took the sign and the Claimant's husband skidded and died. On whether there was a duty of care Stuart -Smith LJ ruled as follows at para. 54:

"54. In my judgment this statement of principle applies to the police as to other authorities. However, when considering whether the police are to be taken as having assumed responsibility to an individual member of the public so as to give rise to a duty to exercise reasonable care to protect them from harm, I must apply the principles derived from the decisions of high authority to which I have referred . In particular:

i) Where a statutory authority (including the police) is entrusted with a mere power it cannot generally be made liable for any damage sustained by a member of the public by reason of a failure to exercise that power. In general the duty of a public authority is to avoid causing damage, not to prevent future damage due to causes for which they were not responsible: see *East Suffolk, Stovin*;

ii) If follows that a public authority will not generally be held liable where it has intervened but has done so ineffectually so that it has failed to confer a benefit that would have resulted if it had acted competently: see *Capital & Counties, Gorringe, Robinson;*

iii) Principle (ii) applies even where it may be said that the public authority's intervention involves it taking control of operations: see *East Suffolk, Capital & Counties*;

iv) Knowledge of a danger which the public authority has power to address is not sufficient to give rise to a duty of care to address it effectually or to prevent harm arising from that danger: see *Stovin*;

v) Mere arrival of a public authority upon, or presence at, a scene of potential danger is not sufficient to found a duty of care even if members of the public have an expectation that the public authority will intervene to tackle the potential danger: see *Capital & Counties, Sandhar*;

vi) The fact that a public authority has intervened in the past in a manner that would confer a benefit on members of the public is not of itself sufficient to give rise to a duty to act again in the same way (or at all): see *Gorringe*;

vii) In cases involving the police the courts have consistently drawn the distinction between merely acting ineffectually (e.g. *Ancell, Alexandrou*) and making matters worse (e.g. *Rigby, Knightly, Robinson*);

viii) **The circumstances in which the police will be held to have assumed responsibility to an individual member of the public to protect them from harm are limited. It is not sufficient that the police are specifically alerted and respond to the risk of damage to identified property (*Alexandrou)* or injury to members of the public at large (*Ancell)* or to an individual (*Michael*);**

ix) In determining whether a public authority owes a private law duty to an individual, it is material to ask whether the relationship between

> the authority and the individual is any different from the relationship between the authority and other members of the same class as the individual: see *Gorringe,* per Lord Scott."

48. *Tindall* related to the actions of the police which did not make matters worse but likewise did not make matters safer. Those facts are different from the facts in the appeal before me.

49. Boiling down these high level rulings so that they are relevant to the case before me on duty to protect or duty to warn:
    (1) The general common law principles which apply to the imposition of a duty of care on any member of the public apply as normal to the police.
    (2) The police are under a general duty of care to their neighbours during the course of their operations (in the *Donoghue v Stevenson* sense) and so will be held liable for their actions which cause damage to persons who are, or property which is, proximate to them and may reasonably foreseeably be damaged or injured by their careless actions, subject to the clear public policy considerations which may affect the existence or extent of such a duty (see *Robinson*).
    (3) Whilst the police carry statutory and general duties to protect the public, those duties are matters for internal regulation and discipline and if necessary for judicial review. The police owe no general civil liability duty of care to protect the public at large and so, if the police fail to find or catch criminals who then injure members of the public or damage property, the police are not liable (whether qua insurers or otherwise) for the injury or damage caused by those third party criminals. Public policy and the public purse does not support the police being held to account as the civil liability insurers of the public from criminality. The police are not responsible in civil law for the crimes of criminals, the latter alone are liable for their own crimes (see *Hill*). The criminal injuries compensation scheme covers such cases.
    (4) The exceptions to the general rule that the police are not liable and owe no duty of care for failing to act or failing to prevent harm caused by criminals are limited to cases where: (1) the police have assumed a specific responsibility to protect a specific member of the public from attack by a specific persons or persons; (2) exceptional or special circumstances exist which create a duty to act to protect the victim and/or it would be an affront to justice if they were not held to account to the victim. To engage a duty of care on the police to act to protect a member of the public the Courts will carry out a close analysis of the evidence relating to:
        (a) the foreseeability of harm and the seriousness of the foreseeable harm to the specific member of the public (the suggested victim); and
        (b) the reported or known actions and words of the specific alleged protagonist in relation to the feared or threatened harm; and

(c) the course of dealing between the potential victim, the police and the alleged protagonist focussing on proximity; and
(d) the express or implied words or actions of the police in relation to protecting the victim from attack by the protagonist and the reliance of the victim (if any) on the police for protection as a result; and
(e) whether the public policy reasons for refusing to impose a duty of care outweigh the public policy in providing compensation for tortiously caused damage or injury.

50. In my judgment, only if factors (a) to (c) and (e) [and in some cases also (d)] are proven, on the balance of probabilities by the Claimant, with sufficient weight and severity and immediacy, will the common law combined with public policy exceptionally permit the Courts to rule that a civil law duty of care was owed by the police to the specific potential victim to protect him or her from the actions of the specific third party criminal in the circumstances or to warn him or her of danger. All cases in which the exceptions to *Hill* are asserted are utterly fact specific so I am unable to construct any clearer guidance for myself from the authorities.

51. Even if a duty of care is so engaged, the Claimant still has to prove breach of the duty by the police and causation of the harm by that breach.

52. The case law set out above shows that reports to the police that a current or an ex-partner has threatened the victim with violence and that the threat is imminent are not sufficient to engage any civil liability duty on the police for failing to prevent an attack which then occurs unless they satisfy the *Human Rights Act* criteria. Nor does the duty arise after repeated reports, or reports of future fears or threats made after previous violent attacks and threats. The common law legal threshold and public policy reasons for there being no civil liability duty on the police for the crimes of third parties, in these all too common and abhorrent domestic circumstances, remains in place (see *Smith and Van Colle; ABC v St Georges; Griffiths v CC Suffolk; Michael v CC South Wales*).

53. In which cases then have the Courts imposed a duty to act to protect or to warn the victim? In *R v Dytham* [1979] Q.B. 722 the Court or Appeal upheld the conviction of a police officer who stood by and did nothing as the assailant murdered the victim outside a club. The officer was convicted of misconduct in public office by wilfully omitting to take steps to preserve the Queen's peace. He watched and then drove away. This case was commented on in other cases as an example in which civil liability might have been imposed for failing to act because a duty of care might have arisen to act by warning the offender of the officer's presence at the least. However no such decision was actually made in *Dytham*.

54. In *Rush v Police Service of NI* [2011] NIQB 28, Gillen J determined a strike out application in a claim against the police by the family of a victim murdered by the Real

IRA in a bomb attack in Omagh. The claimant asserted that the police had actual knowledge of the bombers' plans, including the date of the attack and the place where it would take place, and failed to warn the victim or arrest the attackers. The Master struck it out. Gillen J. overturned the decision and considered examples of the exceptions to the *Hill* rule as follows:

> "[19] To those examples I respectfully add some others. In *Swinney v Chief Constable of Northumbria* [1997] QB 464 the Court of Appeal was prepared to recognise that a duty could be owed by the police to protect an informant whose identity they had negligently disclosed. The public interest and the protection of informants were to be regarded as outweighing the public interest in protecting the police from liability as regards their performance of their duties. In *Costello v Chief Constable of the Northumbria Police* [1999] 1 All ER 550 a woman police constable was attacked and injured by a woman prisoner in a cell at a police station. At the time a police inspector was standing nearby but he did not come to plaintiff's help when she was attacked. The Court of Appeal concluded that a police officer who assumed a responsibility to another police officer owed a duty of care to comply with his police duty where failure to do so would expose that other police officer to unnecessary risk of injury. The police inspector had acknowledged his police duty to help the plaintiff.
> [20] I pause at this stage to observe that it was Mr Ringland's contention that the exceptions to the core principle in *Hill* were confined to those cases where there was a necessary pre-tort relationship in the form of an assumption of responsibility on the part of the police towards the victim."

55. In relation to those two examples, both concerned attacks by third parties on victims for which the police were held liable. However in *Sweeney* the duty arose out of the control the police had over information for the protection of an informer, and their positive (negligent) act in disclosing that information. In the *Costello* case one officer was held to owe a duty of care to another in relation to an attack by a prisoner in police control. The Claimant and the errant officer of the Defendant were both employees of the police so an employee and vicarious liability situation was at the heart of the duty. So neither case is directly relevant to the appeal before me which concerns a failure to warn, so an omission.

56. Having reviewed the authorities Gillen J ruled that the Claimant's case could not be said to have no reasonable prospect of success and so let it continue for the following reasons:

> "[32] However I am satisfied that the category of cases which constitute exceptions to the core principle is far from closed. I am conscious of the cautionary note struck in *Lonrhos's case* (see para 9 of this judgment). Courts at first instance must be wary lest arguable cases are stifled at too early a stage whatever the ultimate fate of that argument may be at the trial itself once there has been a close and protracted examination of the documents and facts of the case. **It has proved very difficult for judges even at the highest level to construct with any precision a formula for exceptions which will cover the range of particular circumstances which could arise**. Suffice to say that my task at this stage is not to determine the outcome of the plaintiff's assertions but merely to determine if the case on the pleadings is arguable.
> [33] Confining my focus to the pleadings, the case made in this instance is that the Defendant 'had actual knowledge' of the route of the bombers, their target, namely Omagh and the date and timing of the bombing. I consider that this arguably is distinguishable from the facts in *Smith* where the police had to process and interpret information reported to the police by one party to a so-called domestic case. Contrast the instant case, where the case is made that the police actually knew that the event was to take place ie there was no question of treating, processing or judging a report from a member of the public and making a value judgment." (My emboldening).

57. I do not know what happened in *Rush* because no report of any trial is recorded. The case may have been settled. I have also considered the *Compensation Act 2006*. This provides at S.1:

> **"Deterrent effect of potential liability**
> A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—
> (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
> (b) discourage persons from undertaking functions in connection with a desirable activity."

This Act has not been mentioned in any of the leading cases on civil actions against the police considered since it was passed. Looking at the provisions, I must ask whether a duty requiring the police to warn the Claimant that RG was loitering outside her house, after the neighbour's 999 call, would be preventing a desirable activity from being

undertaken. I do not consider that it would. Likewise I do not consider the sub-paragraph (b) barrier applies in the circumstances of this appeal. As Lord Hobhouse ruled in *Tomlinson v Congleton* [2003] UKHL 47, at para. 81:

> "…it is not, and should never be, the policy of the law to require the protection of the foolhardy or reckless few to deprive, or interfere with, the enjoyment by the remainder of society of the liberties and amenities to which they are entitled."

58. However the Claimant was not being foolhardy. Quite the opposite. She was taking all the care that she could to protect herself and her children in her home then going to work.

59. In *Sherratt v Chief Constable of Greater Manchester* [2018] EWHC 1746 (QB*),* King J. upheld a recorder's decision that the police were liable for failing to protect a woman who was reported as suicidal by her mother, based on assumed responsibility through the words used by the police 999 operator to the mother on which she relied. The *Hedley Byrne* factors were analysed and King J. ruled that the representations or assurances did not have to be given to the victim. The judgment was upheld despite the assurances being given to the mother, not her daughter. The duty arose despite the strict *Hedley Byrne* features being relaxed. That was not a failure to warn case, it was a failure to act case, but it is not dissimilar.

60. I intend here to make no ruling on any other circumstances in which the exceptions to the general rule may arise and will focus only on the facts of this case.

Chronology of facts

61. The Judge found that with the benefit of input from a therapy and support centre the Claimant had realised after the horrific attack that before the attack she was in an abusive and coercive relationship with RG. She had to endure a long history of appalling behaviour culminating in what the Judge described as a diabolical knife attack. The Judge found that in the distant history the Claimant would report abuse and then continue her relationship with the perpetrator and on other occasions the perpetrator would report to the Police complaints about the Claimant. It was agreed by both counsel at the appeal hearing that the Claimant's relationship with RG continued on an off until they finally separated on 4 February 2015. The evidence seemed to indicate that they separated in October 2014 for a substantial period.

62. The Judge assessed the Claimant's evidence as honest and straight forward and remarkably restrained.

63. I have had to reorganise the chronology of the findings of fact by the Judge because the facts were not set out chronologically in the judgment. I have also taken into account

and set out below some transcripts and direct records of evidence extracted from the appeal bundle which do not appear in the judgment. Below, the words "reported" mean reported to the police. A helpful Scott Schedule was provided to the Judge by parties setting out their respective positions on the chronological history. The Judge did not make findings of fact on all of the issues therein but the schedule is helpful to set out the background.

History of distant events between 2013 and December 2014.

64. I attach to this judgment a PDF of the Scott Schedule of events agreed by the parties which sets out the parties' summary of their evidence on each date.

65. In overview the Claimant, who was married to H (or may have been divorced from H), was in a relationship with RG on an off and it was stormy. She and H made three complaints to the police about RG.

66. The Defendant imposed some harassment warnings on RG but none on the Claimant or H.

67. The Defendant arrested RG for assaulting H by head butt and punches and he was convicted of assault. The assault occurred after H went to the Claimant's house where she and RG were together.

68. The police arrested RG on more than one occasion and imposed bail conditions on him which required him to stay away from the Claimant and her home but RG persistently broke those conditions.

69. On one occasion the police recorded that the Claimant asserted that she was not frightened of RG. On other occasions the Claimant reported that RG assaulted her and she was afraid of him. RG was not convicted of assaulting the Claimant on any occasion because the Claimant dropped her support for the charges each time.

70. The Claimant received threats to kill from persons she believed were put up to them by RG in October 2014.

History of close events – January to March 2015

71. The Scott Schedule also sets out the parties' evidence in summary on each of these events. I shall summarise them and the Judge's findings below.

72. On 04 February 2015 the Claimant went to RG's home and there was an argument. The Claimant left and RG followed her out. The Claimant locked her car doors. The Claimant's daughter telephoned the Defendant to report an incident in which RG had threatened to "fuck" her and pulled a wing mirror from the side of the Claimant's car. The Claimant asserted more: namely that her daughter asserted that RG had previously

physically hurt her daughter, her son and the Claimant. The Claimant reported that RG had shouted threats at her daughter. Officers visited RG and warned him not to contact the Claimant. This was the date upon which the Claimant and RG finally split up, as the parties agreed at the appeal hearing.

Death Threats and Criminal Damage

73. On 05 February 2015 the Claimant reported that RG had attended her place of work and had been ejected by management. The Claimant reported that her car mirrors had been damaged. She also reported that following the visit by officers to RG on 04 February he had sent her 25 abusive messages in the space of 24 hours, to which the Claimant had not replied. The messages included threats to commit anal rape on the Claimant's son and daughter and on any police officer attending.

Arrest with bail conditions

74. On 06 February 2015 at 04.00 hours RG was arrested for criminal damage and harassment and interviewed. His phone was seized. RG was charged with harassment and perhaps criminal damage. He was bailed with conditions not to contact the Claimant or her children and not to go to the Claimant's home address or work address. At 6.20 am PC Goodwin sent a message to the Claimant by FastSMS informing her that RG had been arrested. Officers later visited the Claimant and a DASH form was completed with a score of 14. The assessment was of "medium" risk. This was an error, the Defendant's policy was that 14 was "high" risk.

75. On 11 February 2015 RG's mobile phone was submitted by the Defendant for examination.

Breach of bail

76. On 27 February 2015 the Claimant, who is described in the Defendant's Report as “crying and very shaken”, reported that RG had entered her car and asked her to drop the charges against him, (disputed: the police note was that he also apologised and offered to pay for the car damage as well). This was a breach of his bail conditions. The call was initially graded as an emergency but downgraded to a prompt response when the Claimant advised that she was leaving the area to get away from RG. Later an officer attended the Claimant at her home and whilst there, a male who initially identified himself as "Riza" called on the phone. After the officer identified himself as a police officer the caller started to call himself “David”.

Breach of bail

77. On 17 March 2015 the Claimant reported that RG had approached her in town and tried to hug, kiss and talk to her, then followed her to her car, all in breach of the bail conditions. An officer attended the Claimant at her home and took a statement. A DASH form was completed with a score of 3. (Disputed): one officer said the police would arrest RG during the night shift.

Breach of bail and death threats; then later criminal damage

78. The Claimant signed a witness statement dated 18.3.2015 (in the late evening). In that the Claimant accepted that on each previous occasion she had "dropped the charges" which had been laid against RG as a result of her complaints. She had installed a CCTV system at her home to guard against him. She was "petrified" that he would hurt her or her family. She wrote that at midday on 18.3.2015 RG had followed her into a shop, followed her out, held her car door so she could not drive away and threatened that if he went to prison he would "*kill every person in her household*". She also asserted that he said: "*please record this and show the police they will not do anything about it".* Later that afternoon H found a broken window at her home. The CCTV showed RG had climbed over the rear fence. In her afternoon report to the police the Claimant disclosed that she had recorded RG's threats on her phone. She reported that in October 2014 RG had been arrested for threatening to shoot her in the head. In her evening police report (21.50 hours) the Claimant complained that no officer had attended her home despite her earlier afternoon report. At 22.25 hours PCs White and Watts attended and took the written witness statement summarised above. A DASH form was completed. In it the Claimant asserted that she had tried to separate from RG 6 times in the past year and that RG had threatened to kill everyone in her family that day and had breached his bail conditions. The police classified the risk as "medium". In evidence the Defendant accepted that classification was wrong and it should have been "high". The phone recording of the threats was played (in Turkish) to the police. Safety advice was given. The police witness consent form timed at 22.35 pm noted "threats to kill".

Breach of bail, more criminal damage

79. At 00.17 hours on 19th March 2015 (so the same night), shortly after the officers left, the Claimant reported that RG had arrived and kicked her front door and thrown himself at it to get in. This was captured on CCTV. The Claimant was extremely distressed. She reported that RG had threatened to kill her. Her daughter had called H to come to the house to protect them. The police arrived whilst the Claimant was still on the phone. PC White described the Claimant as "hysterical" on arrival. The Judge found that the Claimant asked the officers to stay (to protect her and her family). There were factual disputes about what was said. The Judge found as follows:

> "1. **19/3/15 was the Claimant informed that a police car with two officers would remain outside for the rest of the night.**
> The background to this issue is that the Claimant on arriving home from work reviews the CCTV at the property [that had been installed by Michael for her protection] and sees that the perpetrator has jumped over the back fence. She discovers that the corner of one of the rear living room windows has been damaged. She suspects and I find that he had tried to break in. The police are called and attend. Shortly after they leave, she calls

them again because he is back trying to break in through the front door -as referenced above. The Claimant says that fearing for her safety she asks the attending officer if he or someone else could stay with her. She says that he said two officers would be outside the house all night. She says she recalls looking out of the window and seeing an unmarked police car but that it left at 3am. She says she recalls seeing two officers inside the car. Michael supports her evidence. PS Goosey gave evidence that he was on duty that night, as a sergeant he was not obliged to attend "call outs" but he chose to support his colleagues. He said he attended the Claimant's home, he was called away on other jobs but returned in his unmarked car to sit outside the address. It was he said his idea and he gave no one any time scale for his deployment. PC White recalls matters differently in that he says he spoke to PS Goosey who said he would park outside for a few hours and that he believes that he was still present when PS Goosey parked outside.

PC Watts gives a third account namely that he and PC White had a conversation with PS Goosey at the car, which cannot of course fit if the car was not deployed until after they left. I take nothing from all these inconsistencies; the Claimant was clearly distressed the perpetrator had attempted to break into her home she is heard screaming and is asked to keep calm [something no doubt easier said than done]. Shortly after she is interacting with the Police. They are dealing with a distressed victim; a large search is being conducted involving coordination of several officers, the dog unit and possibly the force's helicopter. There are other calls outs too. It is no surprise to me that who said what to whom is not crystal clear in that situation. **However, I do accept that the Claimant asked for someone to sit outside and the Police said someone would as that is what happened.** It may be true that PS Goosey was not ordered to do so after all he was the senior officer there and as such it was his own decision but**, in my judgment, there was an agreement to provide comfort to the Claimant to have a car there.** However, it would not have been in the gift of any of the officers that attended that night to guarantee the provision of scarce Police resource - as evidenced by the fact that PS Goosey was called to and reacted to other calls that night. I find therefore that the Claimant is mistaken when she says she was told two officers were to be sat in a car outside all night.

2. Was the Claimant not told about the provision of alternative accommodation and simply told to remain at the property?

> The Claimant says that after the Police attend the incident on 19/3/15 she was not advised about any form of alternative accommodation whether that be a move to friends or relatives the address of whom the perpetrator is unaware, or refuge. Michael supports her version and tells me that he was at the property having been called by their daughter after the first incident that night. PC Watts accepted that on the first visit that night there was no mention of the option of seeking alternative accommodation. He says on the second occasion he thought that the perpetrator knows where she lives and has come back shortly after we, the Police have left, it would be safer for her to stay elsewhere. He says he and PC White urged her to leave but she refused. She would however get family and friends to stay to give protection. PC White says that he was aware that she had family with her [he mistakenly thinks they are from Bedford whereas they were from Leicester, but nothing hangs on that] so he does not suggest alternative accommodation. He says he and PC Watts give safety advice and leave. As I have already found it was a fast-moving busy scene and it is of no surprise that recollections differ. However, PC White and the Claimant are as one on two issues: the presence of relatives and the lack of mention of alternative accommodation. PC Watts is mistaken when he suggests family would arrive. **I find that alternative accommodation was not mentioned**." (My emboldening).

80. The safety plan constructed with the Claimant on 19th March was as follows. For the Claimant to keep her mobile phone fully charged at all times; if RG attended her home to get into a locked room and call the police; to lock all windows and doors; to have family and friends stay over for the night; to call the police on 999 if she saw RG; to make neighbours aware of the issue.

81. In the transcript of the Claimant's evidence she was asked by Defence counsel about the advice to inform neighbours to keep a look out for RG and answered that she had informed one neighbour "Debbie", and also her boss lived on the estate nearby and knew of the need to keep a look out for RG.

82. The Defendant deployed a substantial group of officers to locate and arrest RG that night. They did not achieve their aim.

83. At shift changeover around 07.00 hours on 19th March 2015 PC White handed over to PS Randall and informed him that there were only 6 ticks on the DASH risk assessment form but PC White said: "*we need to get him before something happens*" (accepted evidence).

The 999 call

84. At 07.32 on 19th March 2015 a neighbour of the Claimant called 999 and the following transcript (some of which I omit) was in evidence:

> "Neighbour: Hello I live at ***** Rd and last night the police were up here looking for this Turkish guy. Operator: oh right. Neighbour: and I can see him lurking outside the lady's house, I think he's gonna attack her when she comes out to go to work. Operator: OK and so what address is he loitering near to? Do you know which one it is? Neighbour: erm he's *** I think. Operator: OK so it's ******. Neighbour: no I don't if it's *** what number does Essen live at? ***, is it? Yeah yes ***. Operator: okay and do you know what the blokes name is? Neighbour: no, I know he's Turkish. There was a lot outside last night till about two o'clock. Operator: right OK. Neighbour: err her ex-husband's staying there the night. Operator: right. Neighbour: but I think he's going to attack her; she's going to go to work about 7:45. Operator: okay, so not long at all. Neighbour: I've tried contacting her but she's changed her mobile number so there's no way of me, unless I go over, I don't really want to get involved. Operator: OK what's your name? Neighbour: my name is blank, I live at blank. Operator: OK what's the chap look like. Neighbour: he's 6 foot. Long black mack, blue jeans. Dark hair. Dark black hair, black shoes. He's pacing up and down with his arms behind his back. Operator: OK and so how far is he away from her address at the moment is he? Neighbour: one door. Operator: oh OK. Neighbour: one house away. He's lurking on the corner. Operator: so just far away that he can't be seen? Neighbour: yeah. When she comes out for work he's gonna. Operator: ok and we reckon it's about 7:45 that she'll be out. Neighbour: should be out yeah 7:45 or just before if she's going to work yeah. Operator: ok, alright. Neighbour: and she'll have her children with her as well because they're going to school. Operator: how old are the children? Neighbour: blank operator and you said the female was called Essen. Operator: What do you know what her surname is? Neighbour: no she's Turkish. And her ex-husband is in the house because he's been there all night. Operator: okay I'm going to get the officers to go straight round we need to obviously stop anything taking place and I'll have a.. Neighbour: yeah. Operator: .. look and see what we know about them as well ok? Neighbour: yeah." (The asterisks: *** are mine anonymising the address provided)

85. The Claimant gave evidence in answer to defence counsel's questions that it was Debbie who called the police. Debbie did not have the Claimant's changed phone number because they were not close friends, just neighbours.

86. At 07.36 PC Saynor was dispatched to the Claimant's house to arrest RG. He/she did not make any phone call to the Claimant to warn her that RG was outside and he/she was on the way to arrest RG.

87. At 07.43 PS Randall self-dispatched to go to the Claimant's house. He did not make any phone call to the Claimant to warn her that RG was outside.

88. None of the Defendant's phone operatives or officers made any call to the Claimant to warn her that RG was outside.

Attempted murder

89. At 07.45 the Claimant's daughter called the police informing them of RG attacking the Claimant in the street outside the house. What happened was that the Claimant and her children and H left the house. H went to his car and the Claimant went to her car and RG approached her and stabbed her with a large knife 7 times in front of her children.

Pleadings

90. In her re amended particulars of claim the Claimant asserted she had an affair with RG between May 2013 and February 2014 (she resiled from this assertion during the appeal as set out above). A chronology of the facts was then pleaded. The Claimant asserted that the Defendant owed her a duty to "keep her safe" and that this duty was breached in the ways set out, including: failing to carrying out adequate DASH risk assessments; failing to cocoon watch the Claimant; failing to give the neighbours the Claimant's phone number same; failing to arrest the Defendant; failing to keep PS Goosey in a police car outside her house all night on the 18th-19th March 2015: failing properly to complete a safety plan; failing to advise the Claimant to stay indoors until RG was arrested and failing to warn the Claimant that RG was outside on the 19th of March 2015.

91. In the defence the Defendant asserted the relationship lasted longer than the Claimant had pleaded and asserted that the Claimant herself had been aggressive in various reports. The Defendant relied on an assertion that RG had no history of violent offences or convictions against the Claimant. The Defendant asserted that on the 18th of March 2015 the Defendant advised the Claimant to leave her property and stay elsewhere with family and friends but she refused. This was because her husband and family members were to stay with her at her property that night. The Defendant denied that the Defendant had told the Claimant that its officers would stay outside her house protecting her all night. As to the law, the Defendant denied any duty of care generally to the Claimant and denied assuming a responsibility to protect the Claimant.

Other evidence

92. Other evidence was called before the Judge at the trial which is not mentioned in the judgment. So the IPCC carried out an investigation into the events and recommended the various lessons be addressed by the Defendant. The 5th lesson was "*the threat to life policy should be revised so far as possible to allow for situations such as this where a warning to the victim is considered within a short time frame using a shorter process."*

93. Appendix 6 to the IPCC report was the "Threat to life Guidance" which was current at the time. At paragraph 1 the guidance required the police to carry out a threat and risk assessment where there was a threat to life situation and to engage in a proactive response which may include moving or protecting the intended victim or the use of covert resources. In the light of the Judge's finding that he accepted the evidence of the witness Mr Tompkins that the DASH risk assessment on the 18th of March should have resulted in a conclusion that there was a "high risk" the Defendant's Domestic Abuse Policy was relevant. That policy stated that where there was a high risk, because there were identifiable indicators of risk of serious harm, and the potential event could occur at any time and the impact would be serious (with a DASH score generally of 14 or more). The policy regretfully noted that Northamptonshire Police domestic abuse unit no longer had the capacity to deal with all the high risk cases it was required to consider. The relevant National Policing Improvement Agency Guidance put before the Judge including a checklist for developing safety plans with victims. That checklist required police forces dealing with domestic abuse, when advising victims and creating safety provisions and safety plans, to establish how the victim could be contacted safely and to ensure that all police officers in contact with the victim were aware of this information; to obtain the victims' views about the level of risk; to ensure that the victim had the means to summon up help in an emergency; and to ascertain where the victim might go if they had to leave quickly and what they would have to take with them. The National Policing Improvement Agency Practise Advice on Investigation at paragraph 2.7.1gave guidance on keeping the victim informed. This stated:

> "*Office for Criminal Justice Reform (2005)* the code of practice for victims of crime, includes duties to keep the victim informed. Victims of harassment and any other people at risk should be fully informed of any risk identification, assessments undertaken and actions taken to manage these risks.... this may include informing the victim of facts that come to the attention of the police which may later affect the risk assessment and the action taken. This contact with the victim may prompt further information from the victim and assist them to take steps to improve their safety. in particular the victim should be promptly informed of the following:
>
> - any arrest;
> - release or otherwise of a suspect;
> - bail and conditions applied whether by the police or a court;

- conditions attached to a restraining order;
- any variations to a restraining order;
- release from prison and any conditions attached."

94. It is correct to observe that this list does not include advice for the police to inform a domestic abuse victim of a 999 report by a neighbour that the abusive ex-partner who had made threats to kill and whom the police had decided to arrest was loitering outside her house at just about the time when she was due to leave for work with her children in the morning. On the other hand looking at the matters which the police are required to inform domestic abuse victims about, such urgent information would fall logically within that list.

Appeals - CPR 52

95. I take into account that under CPR rule 52.21 every appeal is a review of the decision of the lower court, unless the court rules otherwise or a practice direction makes different provision, it will not hear oral evidence or new evidence which was not before the lower court and will allow the appeal if the decision was wrong or unjust due to procedural or other irregularity.

96. Under CPR rule 52.20 this court has the power to affirm, set aside or vary the order; refer the claim or an issue for determination by the lower court; order a new trial or hearing etc.

Findings of fact

97. I take into account the decision in *Grizzly Business v Stena Drilling [2017] EWCA civ 94 at 39-40.* Any challenges to findings of fact in the court below have to pass a high threshold test.

Analysis and conclusions

Duty of care – ground 1

98. I have set out above the relevant law in relation to the imposition of duties of care on the police in the circumstances of this case. By the time that submissions were complete it was clear that the Appellant's main ground of appeal was that the Defendant failed to pass on to her the warning which they had received from a neighbour just after 7:30 in the morning on the 19th of March 2015. The Judge found that there was no general duty of care in civil law owed to the Claimant to protect her. In addition the Judge found that there was no duty to warn both before that 999 call and after it. I do not consider that this ground of appeal is made out in law or in fact in relation to the asserted duty to protect in 2014 or 2015 on the facts of this case, or in relation to any duty to warn at any time up until the 07.32 on the 19th of March 2015.

The real issue

99. The duty of care issue really turns, in my judgment, on the events of the morning of the 19th March 2015 in the light of the events on 17th. to 19th March 2015. The question at the root of the appeal in relation to duty of care is whether, either through special or exceptional circumstances or through an assumption of responsibility, having received the 999 call, the Defendant had a duty of care to the Claimant to warn her by phone that RG was loitering outside her house and that the police were on their way to arrest him (and perhaps also to stay indoors until the police arrive).

Analysis

100. The key facts relevant to this issue are that the police knew that the Claimant had suffered a long history involving domestic abuse mainly by RG on the Claimant. That history included two alleged assaults on the Claimant. It also included a conviction for assault on the H by bodily force. That history included at least three arrests and many breaches of bail conditions preventing RG from contacting the Claimant or going to her home. The Defendant was also well aware that RG had very recently threatened to kill the Claimant and her family and had threatened to rape the Claimant's children. The Defendant was also aware that during the afternoon and evening of the 18th of March 2015 the Defendant had twice trespassed on the Claimant's property and caused criminal damage, first to a window pane and second by trying to breakdown the Claimant's front door. There was no dispute as to any of these facts.

101. The further context is that the Defendant had decided by the late evening of the 18th of March to arrest RG for threats to kill, criminal damage and breach of bail conditions. It was further relevant that the Defendant knew that the Claimant was "petrified" and in fear for her life as a result of the above facts. It is further relevant that the Defendant accepted that it should have risk assessed on the DASH basis that the risk was "high" but in error wrote "medium". The safety plan was constructed by the Defendant's officers with the Claimant which rested on keeping RG out of the house; the Claimant telling neighbours of the risk and asking them to assist in spotting RG; in keeping her mobile phone charged to make and receive phone calls and having her family stay over. It is further relevant that the police guidance makes it clear that in domestic abuse situations the police should inform the female victim of all important matters such as the arrest of the alleged abuser or his bail conditions for his release. It was an agreed fact that the Claimant's address was "flagged" as requiring an immediate response. In my judgment the operational duty to inform covered a duty to pass on information that the alleged abuser was loitering outside the likely victim's house having made death threats most recently.

102. On the other hand I must take into account that RG had never been accused of possessing a gun or carrying a weapon, for instance a knife, in any of his interactions with the Claimant or her husband. I also take into account the excerpt of the transcript in the Respondent's skeleton argument in which PS Randall stated that there was less

likelihood of an attack when members of the public were around than when they were absent and Superintendent Tomkins gave similar evidence.

103. As to comparable cases, I consider that this case is not the same as *Michael.* That was not a duty to warn case, it was a failure to protect by arresting the protagonist case. Secondly, this case is different from *Smith and Van Colle* which were, likewise, failure to protect cases, not failure to warn cases.

104. Taking each of the relevant factors in turn for considering whether a duty of care on the police to warn the Claimant may arise.

105. **(a) The foreseeability of harm and the seriousness of the foreseeable harm to the specific member of the public (the suggested victim).** In my judgment it was reasonably foreseeable to the Defendant, after the 999 call from the neighbour and in the light of the facts set out above, that the Claimant was at high risk of serious injury from RG whether by head butting or punching or bodily attack within a very short space of time. The Judge did not find otherwise however, the Judge made no analysis of the foreseeability of harm or the seriousness of harm in his judgment. In addition, the harm was foreseeable to a specific person not a class of persons and this factor, it seems to me, sets this case apart from *Hill.*

106. **(b) The reported or known actions and words of the specific alleged protagonist in relation to the feared or threatened harm.** In my judgment the facts and circumstances set out immediately preceding this analysis identify a specific protagonist and set out quite clearly, undisputed threats to kill, threats to rape children, repeated breaches of bail conditions, repeated criminal damage in the course of attempting to get into close contact with the Claimant by the protagonist and intimate police involvement in constructing safety plans for the Claimant against the obvious risk. RG had already been convicted of assaulting H. He had tried twice already that night to storm the Claimant's house. In the last two days he had threatened to kill her and anally rape her children, caused criminal damage to her car, breached bail at her work and in the town and was now focussing on attacking her home.

107. **(c) The course of dealing between the potential victim, the police and the alleged protagonist focussing on proximity.** When considering the proximity criteria in this case the key factors in my judgment are the repeated failure of RG to comply with protective bail conditions and the substantially increased frequency of his attempts to get close to the Claimant on the 17th and 18th of March 2015, aligned with his threats to kill and rape. These matters are objectively to be seen in the context of the police making no challenge to the honesty or validity of the complaints. This is understandable in the light of the confirmatory objective CCTV evidence and telephone recording of the threats to the Claimant by RG. This is not a case where operational judgment would call into question the Claimant's reports because of the past history of claim and

counterclaim in the domestic setting. The distant past was no longer relevant. The facts were clear and undisputed and, as a result, the Defendant's officers were clear in their desire to arrest RG urgently. The large force sent to arrest RG testifies to all of this. Also, the officers provided the Claimant with safety plans before the arrest. Those plans specifically focussed on keeping the Claimant safe and secure in her home and alerting the police and the Claimant to RG's presence outside her home by the conscription of neighbours as look-outs. More crucially, the 999 call from the neighbour alerted the Defendant to RG being outside her house again, just as she was due to leave for work and school. The danger to the Claimant at 07.32 hours was immediate and obvious. The neighbour told the Defendant she could not herself call the Claimant and (rightly) did not want to go outside to tell her.

108. **(d) The express or implied words or actions of the police in relation to protecting the victim from attack by the protagonist and the reliance of the victim (if any) on the police for protection as a result.** The Defendant's officers visited the Claimant twice on the 18th/19th, in addition to the 17th March. I also take into account the Judge's finding that the Claimant had asked for protection on the evening of the 18th of March and that she was given comfort protection in a conversation with PC White and by the parking of PS Goosey in a car outside her house, albeit for an unknown period of time depending on the operational demands which might arise overnight. I take into account the Judge's finding of fact that the Defendant did not advise the Claimant to leave her home and stay elsewhere that night, despite the Defendant's assertion that that advice was given. It was known that she would stay at home. I take into account the detailed safety plan drawn up by the Defendant with the Claimant being advised that night to conscript neighbours to keep a look out for RG. In relation to the confused pleading about whether "a cocoon" was set up by the Defendant through gathering together neighbours and providing them with the Claimant's contact telephone number and asking them to keep a look out on her behalf for RG, the Judge made no finding despite the evidence of the safety plan and the Claimant being asked, as part of that plan, to inform neighbours and the Claimant stating that she did so with her boss and Debbie. It is clear that Debbie was looking out for RG on the Claimant's behalf. The Defendant's officers also informed the Claimant that they would be arresting RG both on the 17th and the 18th of March 2015. Officers advised the Claimant to keep her phone charged so she could make and receive calls. There was a very close tripartite nexus in which the Claimant was relying on the Defendant's officers' advice and the safety plan. In my judgment there would be little point in advising the Claimant to ask neighbours to keep watch for RG and to tell the Claimant or the police, if the police were then going to keep any such report secret from the Claimant at the precise time when the Claimant was due to leave the house to go to work.

109. **(e) Whether the public policy reasons for refusing to impose a duty of care for omissions and failures to prevent, outweigh the common law rules on providing compensation for tortiously caused damage or injury.** Abused women need

protection. I do not consider that the public policy reasons behind *Hill* and the refusal of the common law to impose a general duty of care in civil law on the police to protect the public from the crimes of third parties should stand as a bar to a limited and precise duty to warn on the facts of this case. The police were given knowledge by a neighbour who did not have the Claimant's new phone number and wanted to warn her about RG loitering outside her house at her go to work time. They did not tell the neighbour that they would keep the information to themselves and keep it from the Claimant. The cost of passing on this vital information was infinitesimal. There was no good reason given in evidence to keep it secret. There were very good reasons to inform the Claimant. The only person, other than police officers, who needed to know, was the Claimant. I reject Defence counsel's submission that informing the Claimant might have led to a risk of the Claimant or H attacking RG. That submission is unjustified in the circumstances. As to public policy and whether civil liability would undermine the operations of the police for such a duty, where a neighbour provides key information to the police which she cannot pass on herself, I consider that if the civil law supported or sanctioned the police refusing or failing to pass on such vital information to the victim, that could undermine public confidence in reporting to the police.

110. Such a duty of care will not undermine the police's operational decision making or fetter the police in taking a robust approach to their modus operandi. I do not consider that such a duty in the circumstance will lead to a plethora of litigation which will restrict the availability of the police for their operational duties. It will encourage good practice and sit in parallel with the Guidelines already in place for the protection of domestic abuse victims. Any Criminal Injuries Compensation Scheme award will be deducted from civil damages so no public policy issue arises from that Scheme.

111. The IPCC has recommended that the Defendant should improve it's warning methods and procedures.

Special or exceptional circumstances

112. Taking the above factors into account, in my judgment, special or exceptional circumstances did exist in this case in a limited way. This case has similarities to *Rush.* In this appeal the police were given knowledge of an imminent and risk laden event with pretty precise timing, a specific victim, a specific address, a perpetrator who was already the subject of a large man-hunt and a vulnerable victim who was going to walk into a dangerous trap. They had advised the Claimant to set up an early warning system specifically to provide the police and the Claimant with advance warning of RG approaching her house. That was specifically for the Claimant's protection from attack (and for her children). There was going to be a time lag between the dispatching of police officers and their arrival at the scene. The Claimant needed to know that she would be walking out into a confrontation with RG. The appeal also has similarities to *Dytham.* The obvious need for the police officer, who was watching the murder take place from 30 yards away, to intervene, at least by words, is comparable to the obvious

need for the Defendant to inform the Claimant of RG being outside her house. The circumstances of this case gave rise, in my judgment, to a common law duty on the Defendant to call the Claimant once they had been informed by a neighbour that RG was loitering outside her property. That duty arose immediately after the neighbour's phone call as a result of the factors set out above and the content of the phone call. However, for the reasons set out in the House of Lords' and Supreme Court's decisions set out above (*Hill* and *Smith & Van Colle* and *Michael*) I do not consider that there was a civil law duty to protect the Claimant physically, beyond providing the warning, despite the clear operational objective to arrest RG.

Assumed responsibility

113. In addition, I consider that the Defendant's words and actions, in the full circumstances set out above, gave rise to the Claimant having a reasonable expectation that the Defendant would inform her that RG was loitering outside her house in circumstances where she was likely soon to leave her house and there would be a 5 to 10 minute gap before the arrival of the police to arrest RG. The Claimant was relying on the police to pass on neighbour's message. There are similarities to *Sherratt* in relation to the duties on the police when given information about imminent danger and in relation to reliance. In my judgment the Defendant assumed a responsibility to warn the Claimant if a neighbour provided the Defendant with information that RG was lurking outside her house that morning just as she was due to leave to go to work. It would undermine the purpose of official or unofficial cocoons and of flagging victims' contact details, of safety plans and of the advice to lock doors and stay inside, in a domestic abuse setting, if the public were to know that the police had no duty to pass on urgent warnings to the victims of criminals subject to man hunts who lurk outside their victim's property. It would encourage stalkers. It would discourage good practice.

114. Therefore, I consider the Judge was wrong to reject the pleaded case that the Defendant owed to the Claimant a civil law duty to warn her on the facts of this case.

Breach of duty

115. Whilst the Judge found no breach of duty I consider, on the facts of this case, that the decision on breach was also wrong. In my judgment the Defendant did breach its duty to warn by failing to call the Claimant after the neighbour's 999 call. It is apparent from the judgment that the Judge focused on the training and allocated responsibilities of the Defendant's telephone operatives, Mr Marriott and Mr. Thompson. However, I consider that was the wrong approach. The correct approach was to consider whether the Defendant, as an organisation, breached its responsibility by failing to pass on the neighbour's warning. I have already found above that a duty of care to warn by phone existed. It is not a defence to that duty to call evidence to show that the Defendant did not have appropriate training or procedures in place. Quite the opposite. The failings make or contribute to the breach. It was undisputed evidence that the Defendant's telephone operatives had called the Claimant on more than three occasions before the

relevant evening to inform the Claimant of bail conditions or arrests or other matters in line with the police good practice guidance. I consider that the Defendant's failure to call the Claimant to protect her in the gap before the allocated police officer arrived at her premises was a breach of the duty of care.

Ground 3- Causation

116. The Judge's ruling on causation was short:

> "In essence her case is that if the Police had acted differently, he would have been arrested earlier or she would have acted differently, by residing elsewhere that night or not leaving the house. The Claimant advanced no evidence that if she had been aware that he was outside she would not have left house. I would find that the claim fails to establish a causative link between the pleaded breaches and the vicious unprovoked attack."

117. I note that paragraph 28 of the re amended particulars of Claimant does not specifically assert that the Claimant would have complied with any advice given by phone by the Defendant not to go out that morning or plead what the Claimant would have done had she known RG was there. In paragraph 47 of her witness statement the Claimant stated that:

> "my ex-husband had stayed at the house and I asked him to leave the house at the same time as I was anxious. I opened the front door at approximately 7:30, took the children to the car and they got in, my ex-husband went to his car. As I was walking around to the driver side of the car Michael shouted that (RG) was coming. (RG) pinned me against the wall by my throat lifting the off the ground. He had a knife concealed up his sleeve and stabbed me three times in my chest. Jade got out of the car and tried to pull him off me, he swung around at jade but then turned back to stab me again. Michael came over and I managed to free myself, I ran across the road but fell and (RG) got past Michael, sat on me and started stabbing me in my legs. Michael managed to knock the knife out of (RG) hand and he then ran off."

118. This does not cover causation and none of the earlier witness statements dealt with the point. Having re-read the transcript of the Claimant's evidence, causation was not mentioned. In cross examination it was put to the Claimant that she put herself in harms way by going into town and shopping at Tescos because RG worked at a café nearby. In the judgment the Judge found that the Claimant was not prepared to be intimidated by RG which was illustrated by her going to town and stated she was "rightly not prepared to be restricted by him as to her movements". I agree. The bail conditions were imposed on RG, not the Claimant. But that finding should not be prayed in support

of any defence submission that the Claimant would have left her house on the morning of 19th March 2015, after the events of the previous day and night and the death threats and threats to rape her children, had she been informed by the police that RG was loitering outside at the time she usually went to work and that they were on their way to arrest him.

119. I was informed in submissions that the evidential gap on causation was raised by the Judge at the end of evidence and that an opportunity was given to the Claimant to call such evidence but that the Claimant's legal team did not to take the opportunity. I have not seen the transcript of that assertion and make no finding in relation to it. In my judgment, in justice, that error should not be laid at the Claimant's door, save perhaps as to costs.

120. In submissions I was asked to infer from her evidence that the Claimant would have waited at home, if warned. Whilst I was minded to make such an inference, it seems to me that in these circumstances there is no scope for this Court to declare that the Judge's decision that there was no evidence upon which to make a finding that any breach by the Defendant caused the loss was wrong. However, I do consider that it was unjust under CPR r.52.21(2)(b). Therefore, I rule that this case shall be remitted to the trial Judge (if available) to hear evidence on causation under CPR r.52.20(2)(b).

121. For the reasons set out above I allow the appeal.

122. I shall deal with consequentials and the order after receiving written submissions or if necessary at a short hearing.

END