Neutral Citation Number: [2025] EWCA Civ 1230

Case Nos: CA-2024-002167
CA-2024-002118

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON SECOND APPEAL FROM THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
Ritchie J
[2024] EWHC 1963 (KB)

ON APPEAL FROM WINCHESTER COUNTY COURT
HHJ Brownhill
J08YJ076

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 October 2025

Before:

THE LADY CARR OF WALTON-ON-THE-HILL
LADY CHIEF JUSTICE OF ENGLAND AND WALES
THE PRESIDENT OF THE KING'S BENCH DIVSION
DAME VICTORIA SHARP DBE
and
LORD JUSTICE COULSON

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Between:

(1) The Chief Constable of Sussex Police	**Appellants**
(2) The Crown Prosecution Service	
- and –	
XGY	**Respondent**
- and –	
The Bar Council of England and Wales	**Intervener**

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Jason Beer KC, Georgina Wolfe and Robert Talalay (instructed by **Weightmans LLP**) for the **1st Appellant**
Fiona Barton KC and John Goss (instructed by **Government Legal Department**) for the **2nd Appellant**

Fiona Murphy KC and Frederick Powell (instructed by **Irwin Mitchell LLP**) for the **Respondent**
Adrian Waterman KC and Beatrice Collier (instructed by **Kingsley Napley LLP**) for the **Intervener**

Hearing Dates: 24-25 June 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 8 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill CJ, Dame Victoria Sharp P. and Lord Justice Coulson:

A. Introduction

1. This is an appeal by the Chief Constable of Sussex Police (the Chief Constable) and the Crown Prosecution Service (the CPS) from the order of Ritchie J dated 29 July 2024 allowing appeals against the order of HHJ Brownhill dated 25 September 2023.

2. The claimant, who is the respondent to these appeals, issued claims for damages against the Chief Constable and the CPS under the Human Rights Act 1998 (HRA) and the Data Protection Act 2018 (DPA), and for breach of confidence and misuse of private information. We shall refer to the claimant as XGY, as she is entitled to anonymity under section 1 of the Sexual Offences (Amendment) Act 1992. As part of the protection to which XGY is entitled, it is necessary to anonymise her former partner, to whom we shall refer as DYP.

3. We deal with the facts in more detail below but in brief summary, the claims arise from words spoken by an advocate for the CPS (the advocate) during the course of a bail hearing in Brighton and Hove Magistrates' Court after DYP's arrest following allegations made against him by XGY.[1] The advocate sought a condition of bail designed to protect XGY from DYP. In doing so, he revealed XGY's then address. This address had been provided to the Sussex police (the police) by XGY in confidence. It had then been passed by the police to the CPS as part of the police's file preparation for the bail hearing, without any indication or warning marker that it was confidential.

4. HHJ Brownhill struck out XGY's claims against the CPS on the ground that there was a core immunity for things said and done by advocates in court. She struck out XGY's claims against the police in respect of the provision of XGY's address to the CPS on the ground that the police were entitled to rely on the same immunity by extension. She also held that XGY had no real prospect of establishing that she was a victim within the meaning of section 7 of the HRA and article 34 of the European Convention on Human Rights (the Convention) and accordingly entered (reverse) summary judgment for the appellants on XGY's claims under section 7.

5. Ritchie J allowed XGY's appeal against the order of HHJ Brownhill on all grounds. On the central issue of immunity, he considered that there was an immunity, but that recent case law meant that, at least arguably, it was limited, and had to be justified on a case-by-case basis (and could not be justified here).

6. In this appeal, the appellants challenge Ritchie J's approach to the ambit or scope of immunity for things said or done in court by advocates, and for the actions of the police in supplying information to the CPS in circumstances such as these. They submit that the judge's approach is contrary to settled authority at the highest level, both as to the core immunity and to its necessary extension to things said and done outside court to prevent the circumvention or "outflanking" of that immunity; and that his "fact specific" approach cuts directly across the policy rationale for the immunity. They

[1] There was a separate strand to XGY's claim against the Chief Constable that was not struck out by HHJ Brownhill concerning different conduct by the police. There was no appeal against this aspect of her ruling to Ritchie J, and the issue forms no part of this appeal.

further submit that HHJ Brownhill's conclusion that XGY was not a victim for the purposes of section 7 was one that she was entitled to reach and Ritchie J erroneously substituted his own view for that of HHJ Brownhill.

7. Permission to appeal on all grounds was granted by William Davis LJ. The Bar Council of England and Wales (the Bar Council) was subsequently given permission by this court to intervene and to make written and oral submissions.

B. The Law

The core immunity and its extension

8. Since at least the sixteenth century it has been recognised by the common law that it is necessary for the administration of justice for certain participants in the administration of justice - advocates, parties, witnesses, judges, and jurors - to be immune from suit i.e. that legal claims against them arising from almost anything done or omitted to be done in the course of conducting a case in court are barred (see *Darker v Chief Constable of the West Midlands* [2001] 1 AC 435 per Lord Hutton at 463). This has been described as the core immunity.[2]

9. The core immunity "is limited to actions in which the alleged statement constitutes the cause of action": see *Taylor v Director of the Serious Fraud Office* [1999] 2 AC 177 per Lord Hoffmann at p 215C.

10. The early cases concerned actions for defamation against advocates and witnesses, as such claims were the obvious way in which to attack what an advocate (or witness) did or said in court: see for example, *Cutler v Dixon* 76 ER 886; (1585) 4 Co Rep 14, and *Munster v Lamb* (1883) 11 QBD 588; (1882) 5 LJ QB 46. In order to prevent the immunity being circumvented or outflanked, however, for many years the immunity has been held to apply to whatever claim was being made against the advocate or witness for things done or spoken in court and however ingeniously such a claim was framed. It has for example, barred a claim for conspiracy to give false evidence (*Marrinan v Vibart* [1963] 1 QB 528); a claim for breach of confidence (*Watson v. M'Ewan* [1905] AC 480; (1905) 7 F (HL) 109) and a claim under the Protection from Harassment Act 1997 (*Crawford v Jenkins* [2014] EWCA Civ 1035; [2016] QB 231).

11. Two more recent first instance examples are *King v Stiefel* [2021] EWHC 1045 (Comm), where an allegation that the conduct in court of a Queen's Counsel was part of a conspiracy to present false information was struck out in reliance on the core immunity (see [156] and [335]); and *El Haddad v Al Rostamani* [2024] EWHC 448 (Ch), where it was held that the core immunity was a threshold bar to a claim that lawyers had dishonestly conspired to mislead the court, even if they had misled the court (see [109]-[113]).

[2] Nothing turns in this appeal on the various exceptions to this for claims of perjury, malicious prosecution and analogous claims involving malicious initiation of criminal proceedings and proceedings for contempt of court: see for example: *The Chief Constable of South Wales Police v Daniels* [2015] EWCA Civ 680, per Lloyd Jones LJ at [32].

12. An explanation of the rationale for the core immunity was given by Brett CJ in *Munster* where he stated (at 604) that advocates must be able to speak freely in order to properly perform their duty to the court and their client:

> "What [the advocate] has to do, is to argue as best he can, without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of his argument to consider whether what he says is true or false, whether what he says is relevant or irrelevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform."

13. The immunity therefore attached to statements, spoken or written in court, regardless of whether the statement was made maliciously or was irrelevant to the court proceedings.[3] As Fry LJ also explained in *Munster* (at 607):

> "The rule of law exists, not because the conduct of those persons ought not of itself to be actionable, but because if their conduct was actionable, actions would be brought against judges and witnesses in cases in which they had not spoken with malice, in which they had not spoken with falsehood. It is not a desire to prevent actions being brought in cases where they ought to be maintained that has led to the adoption of the present rule of law; but it is the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging their duty. It must always be borne in mind that it is not intended to protect malicious and untruthful persons, but that it is intended to protect persons acting bona fide, who under a different rule would be liable, not perhaps to verdicts and judgments against them, but to the vexation of defending actions."

14. More recently, the House of Lords and the Supreme Court have emphasised that the scope of the immunity involves a balance between different public interests. The first is that every wrong should have a remedy. The second is the encouragement of freedom of speech and communication in court proceedings, which is necessary to protect the proper administration of justice and the interests of justice: see *Taylor* at 208; *Arthur JS Hall & Co v Simons* [2002] 1 AC 615 at 679 and *Jones v Kaney* [2011] UKSC 13; [2011] 2 AC 398 at [55]-[57], [67], [85]-[86], [87] and [108]-[114].

15. It would be contrary to the interests of justice, for example, if a witness's willingness to give frank evidence was affected or inhibited by the fear of being sued for what they said in court: see *Darker* per Lord Hoffmann at 469E. By the same token, the protection afforded to a witness would lack coherence if, for example, the witness could speak freely but their advocate was constrained from putting their client's case, including what the witness had said, either to opposing witnesses, or in submissions to the court.

16. The effectiveness of the immunity would be undermined if the scope of the protection afforded had to be tested after the event in each case. As Lord Hoffmann explained in *Taylor* at 214E-G, if the core immunity is to be effective in enabling those involved in

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[3] Irrelevance in this context means statements which "have no reference at all to the subject matter of the proceedings" and are wholly extraneous to them: see *Smeaton v Butcher* [2000] EMLR 985 at [26]).

the administration of justice to "speak freely without fear of being sued, the person in question must know at the time he speaks whether or not the immunity will attach" (see also Lord Dyson in *Jones* at [105] where he said there should be a degree of certainty as to the existence of an immunity if it is to be fair and effective).

17. As has also been recognised, immunity must extend beyond the narrow limits of what is said or done in court if the core immunity is to be effective, but only "where the particular work is so intimately connected with the conduct of the cause in court that it can fairly be said to be a preliminary decision affecting the way that cause is to be conducted when it comes to a hearing. The protection should not be given any wider application than is absolutely necessary in the interests of the administration of justice." This formulation by McCarthy P in the New Zealand Court of Appeal in *Rees v Sinclair* [1974] 1 NZLR 180, 187 was adopted and relied on by the majority of the House of Lords in *Saif Ali and Anor v Sydney Mitchell & Co* [1980] AC 198 at 215B-D.

18. Lord Wilberforce in that case also pointed out (at 215F) that the formulation takes proper account of the fact that many trials, civil and criminal, take place only after interlocutory or pre-trial hearings. At these proceedings, decisions may often fall to be made of the same nature as decisions at the trial itself; and, he stated, it would be illogical and unfair if they were protected in one case but not in the other.

19. The test for extensions to the core immunity, however, is a strict one. Extensions can be made if necessary for the administration of justice, but the decision on whether immunity is necessary for the administration of justice must have regard to the cases in which immunity has been held to apply in the past, so as to form part of a "coherent principle" (see Lord Hoffmann in *Taylor* at 214D).

20. In *Watson* the House of Lords extended immunity to statements made by witnesses outside of court where those statements were made with a view to giving evidence. People must not be reluctant to give evidence for fear of being sued. The immunity existed to ensure that this important public policy was not undermined and to ensure that witnesses would be able freely to give evidence (see Lord Halsbury at 487). The extension was necessary for the administration of justice, and in order to prevent the core immunity from being outflanked. In *Taylor,* the House of Lords ruled that the extension also covers statements made out of court by *potential* witnesses. Potential witnesses would not be able to speak freely if their immunity depended upon whether they were actually to be called as a witness (see Lord Hoffmann at 214E-G).

21. The same principles were applied in *CLG v Chief Constable of Merseyside Police* [2015] EWCA Civ 836. The appellants had received threats after giving witness statements in relation to a shooting incident and had moved house accordingly. They then failed to comply with a witness summons. The police officer who had served the summons made a statement in support of an application for arrest warrants, and in so doing revealed the appellants' new address. The police passed the statement to the CPS, who served it on the defendants. When the appellants and the police realised that the new address had been disclosed, the police arranged temporary accommodation for the appellants, until they could find a new home. The appellants brought proceedings against the police for negligence, breach of the Convention and breach of the DPA.

22. The negligence claim failed because it was held that the police did not owe the appellants a duty of care. However, the Convention and DPA claims failed because the

provision of the appellants' new address by the police to the CPS fell squarely within the witness extension established in *Watson* and reaffirmed in *Taylor*: "[the claims were] based on the transmission by the police to the CPS of a statement required for the purposes of enabling D.C. Gaffney to give evidence in court, as he subsequently did… To hold the police liable for communicating its contents to the CPS would outflank the immunity to which they were entitled in relation to the evidence once given in court" (see Moore-Bick LJ at [32]).

23. *Taylor* established a further extension to the core immunity, applicable to investigators. The appellant, a solicitor, brought a defamation claim alleging that a letter and file note created by the Serious Fraud Office in the course of an investigation suggested libellously that the appellant was suspected of fraud. These documents were disclosed to the appellant in subsequent criminal proceedings to which he was neither a party (never having been charged) nor called as a witness. The House of Lords dismissed the appeal against a strike out order, ruling that investigators have immunity for statements which can fairly be said to be part of the process of investigating a crime or a possible crime. Lord Hoffmann explained that "it is necessary for the administration of justice that investigators should be able to exchange information, theories and hypotheses among themselves and to put them to other persons assisting in the inquiry without fear of being sued if such statements are disclosed in the course of the proceedings" (see 214H-215A). Investigators are not, however, immune for statements which are "wholly extraneous" to the investigation (see 215B).

24. In *Darker,* the House of Lords considered the limits of these two extensions to the core immunity. It was held that neither extension barred claims against the police for conspiracy to fabricate false evidence. The act of fabricating evidence was not the same as preparing to give evidence. Lord Hope explained that there was a distinction "between the act itself and the evidence that may be given about the act or its consequences. This distinction rests upon the fact that acts which are calculated to create or procure false evidence or to destroy evidence have an independent existence from, and are extraneous to, the evidence that may be given as to the consequences of those acts" (see 449B). Similarly, procuring false evidence is not "exchang[ing] information, theories and hypotheses" (see Lord Cooke at 454F).

25. In *Singh v Reading Borough Council* [2013] EWCA Civ 909; [2013] 1 WLR 3052 a similar line was drawn. The respondent council was held not to be immune from claims that it had pressurised a witness to include inaccurate information in her witness statement because "the complaint is not about the content of the statement, but the means by which it was procured" (see Lewison LJ at [71]). Likewise in *Daniels,* it was held that a claim for misfeasance of public office was not within the scope of the extensions of core immunity because the substance of the claim was not founded on a statement made, but on the way in which the disclosure exercise was performed (see Lloyd Jones LJ at [46]).

Immunity from negligence claims by clients

26. In *Rondel v Worsley* [1969] 1 AC 191 the House of Lords held that the existing rule protecting advocates from immunity from suit in respect of their conduct in court, remained apt (as it had been considered to be up until then) to bar claims for negligence against barristers by their clients. The rule was based on public policy; public policy was not immutable, but the policy justification for such protection withstood scrutiny.

27. In *Hall*, some thirty years later, the House of Lords re-examined the issue, and concluded that the public policy arguments advanced in favour of maintaining advocates' immunity from actions for negligence by their clients, including the cab rank rule and problems of re-litigation, did not justify displacing the fundamental principle that there should be a remedy for a wrong. In particular, the contention that an analogy with the core immunity warranted advocate immunity from negligence was rejected. Lord Steyn describing it as having "virtually no weight" since the public policy justification for the core immunity, namely encouraging freedom of speech in court so that the court will have full information about the issues in the case, had "little, if anything, to do with the alleged legal policy which requires immunity from actions for negligent acts" (see 679B-C). To similar effect, Lord Hope said at 714G:

> "I think that there is a little more, but not much, to be said for the analogy with the immunity of others who participate in the proceedings which take place in court. At best it is only an analogy. It is a make-weight argument. Its significance lies in the fact that the other immunities exist because they also can be justified on grounds of public policy."
>
> (See also Lord Hoffmann at 697B-G)

28. Additionally, the argument that immunity from negligence was necessary to ensure that barristers complied with their duty to the court was rejected. Reliance was placed on the high threshold that must be crossed to establish negligence. An advocate cannot be guilty of negligence unless they made an error that no competent member of the profession could have made. This was "an important element of protection against unjustified liabilities" (see Lord Hobhouse at 737H). As Lord Steyn explained, "the mere doing of his duty to the court by the advocate to the detriment of his client could never be called negligent" (see 681G).

29. *Jones* adopted a similar analysis to negligence claims by clients against expert witnesses. Lord Phillips, echoing the approach of Lord Reid in *Rondel* (at 228), asked "whether the abolition of the rule would probably be attended by such disadvantage to the public interest as to make its retention clearly justifiable" (see [51]). A majority of the Supreme Court were not satisfied that any of the putative disadvantages to the public interest in abolishing expert witnesses' immunity from negligence claims — reluctance to testify or to perform their duty to the court, harassment by vexatious claims, or a multiplicity of suits — justified its retention.

30. To summarise:

    i) It is a general principle that every wrong should have a remedy. Nonetheless, it is necessary for the proper administration of justice that advocates, parties, witnesses, judges, and jurors are immune from suit for statements made in court whatever the cause of action, regardless of whether the statement was made maliciously or was irrelevant to the court proceedings. This is known as the core immunity. It is founded on public policy and is intended to encourage freedom of expression and communication in court proceedings in order to protect the proper administration of justice and the interests of justice.

    ii) The core immunity can be extended if the extension is necessary for the proper administration of justice, which is a strict test. There are two established

extensions: witnesses and potential witnesses are immune from suit for statements made outside of court with a view to giving evidence. This extends to the preparation of evidence they are likely to give in court proceedings, including their preliminary examination to ascertain what they could prove. And investigators are immune from suit for statements made as part of the process of investigation.

iii) The police may claim an extended immunity either as potential witnesses or for statements or conduct which can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution in respect of the matter being investigated. Investigators are not immune with regard to statements which are wholly extraneous to the investigation.

iv) In order for the core immunity and extensions to be practicable and effective, it must be foreseeable at the time of its making whether a statement will be immune.

v) Public policy can change over time and be re-evaluated. When an established immunity is re-evaluated or an extension to an established immunity is contemplated, careful justification is required for a departure from the principle that every wrong should have a remedy. There is an important distinction, however, between that position, and determining whether on its facts, a case falls within an established immunity. To impose a requirement of justification in the latter case, would fundamentally undermine the utility and purpose of the core immunity, and cut across the policy reasons for its existence (on this latter point, see further [65i] below). We would add that it was not suggested that there had been any material change in public policy considerations since *Hall* and *Jones* such as to justify a reconsideration of the scope of the core immunity.

vi) As a consequence of the re-evaluation in *Hall* and *Jones*, advocates can now be liable to their clients for the negligent conduct of court proceedings and expert witnesses can be liable for breach of duty to those who retain them. Beyond that, advocates can still claim the core immunity.

C. The Factual Background

31. XGY had been in a relationship with DYP. The relationship ended on 5 November 2019. XGY moved out of her home in Chichester and, unbeknown to DYP, went to live in Epsom with her aunt. The following day she reported DYP to the police and alleged that he had physically, sexually and mentally assaulted her, threatened to kill her and to throw acid on her and/or her relatives' faces. She asserted that DYP had previous convictions for armed robbery, was a drug dealer and had a fierce temper. She was categorised as a victim of domestic violence.

32. The police arrested DYP and released him on police bail. One of the conditions was that DYP was not to enter the town of Chichester. Another was that he was not to enter the town of Epsom. DYP knew that XGY's aunt lived in Epsom and was aware of her address there, so that this police bail condition meant that he might surmise where she had gone. It is XGY's case that, as a result of the disclosure by the police of the Epsom location, she suffered depression through fear of assault or worse. Although the Epsom

disclosure is part of XGY's claim against the police, it is not part of the claim against the CPS and in any event is not the subject of this appeal.

33. XGY left Epsom and went to live in a women's refuge. In March 2020, with the help of a detective constable, D.C. Wells, XGY relocated to an address in Hampshire ("the Hampshire address"). She told the police about her new address and required them to keep it confidential from DYP. She also told the police that during their relationship, DYP had raped her. On 15 April 2020, the police arrested DYP in connection with both the rape allegation and a breach of his bail. They prepared a file for the CPS in advance of the Magistrates' Court hearing on 16 April. That file included the Hampshire address which had not been marked as confidential.

34. On 16 April DYP was produced in the Magistrates' Court on the breach of bail matter. For the hearing, the bail conditions that the police had indicated were the continuation of the 'non-contact' condition and the prohibition on entering Chichester. However, it appears that the CPS advocate was concerned these might be insufficient: XGY did not live in Chichester so that condition served no purpose. Instead, the advocate asked for a bail condition that DYP be prevented from going to the Hampshire address, thereby informing DYP of XGY's new address. As the contemporaneous police log puts it: "CPS have probably put this condition on thinking that they were doing the right thing but clearly this is not right". Later that day, when D.C. Wells informed XGY of these events, D.C. Wells apparently described it as a "muck up".[4]

35. In consequence, XGY felt obliged to leave the Hampshire address. There is medical evidence that this exacerbated her depression and caused her post-traumatic stress disorder. DYP was subsequently convicted of six counts of common assault against XGY.

D. XGY's Claims and the Applications To Strike Out/Reverse Summary Judgment

36. On 4 February 2022, XGY commenced proceedings against the appellants. The claims are pleaded pursuant to the HRA by reference to Articles 2 and 3 of the Convention. There are also claims pursuant to the DPA and for misuse of private information and breach of confidence. There is no claim in negligence. The claims seek conventional damages, aggravated damages and exemplary damages.

37. The claims against the appellants under Articles 2 and 3 are concerned, respectively, with the right to life and the prohibition of torture or inhuman or degrading treatment or punishment. Such claims can only be advanced if XGY is or would be a victim of the unlawful act pursuant to section 7 of the HRA. The Particulars of Claim assume that XGY meets the criterion set out in section 7, without spelling this out.

38. The claims under Articles 2 and 3 are put in two ways. First, it is said that the appellants were in breach of the operational duty under Articles 2 and 3 in respect of the Hampshire disclosure, because they knew or ought to have known of the existence of a real and immediate risk to XGY's life and/or her physical integrity from the criminal acts of DYP; and that, amongst other things, they failed to take measures within the

[4] During the course of her submissions on behalf of XGY, Ms Murphy KC said that the CPS advocate "had gone beyond the scope of his professional instructions". That is an incorrect characterisation: the police are not in a position to give the CPS "instructions". The police provide information to the CPS, but the CPS is an independent prosecuting authority.

scope of their powers which, judged reasonably, might have been expected to avoid that risk. It is said that the police failed to protect and/or actively undermined the confidentiality of the Hampshire address by sharing this information with the CPS, contrary to the interests and express wishes of XGY. As against the CPS, it is said that they failed to protect and/or actively undermined the confidentiality of the Hampshire address by sharing this information with the court (and therefore DYP).

39. Secondly, the claim under Articles 2 and 3 is made by reference to the systemic duty which it is said that both the police and the CPS owed to XGY, to put in place an appropriate system for protecting and sharing sensitive and confidential information in respect of victims of domestic violence. Reliance is placed on the incompatibility of the police's domestic abuse checklist with the CPS's case file system. This relates to the alleged failure on the part of the police to pass on to the CPS, in an effective way, XGY's instruction that her address was confidential.

40. There is a separate claim under Article 8 in respect of XGY's right to respect for her private, family and home life. Again, that claim assumes that XGY met the necessary criterion under section 7. There are then two further claims: one for breach of the DPA, which asserts that the address was "personal data" and /or "special category data" within the meaning of sections 3(2) and 10 of the DPA; and a claim that the disclosure of the address was a misuse of and/or unjustified disclosure of private information and a breach of confidence.

41. Both appellants applied to strike out the claims against them based on the disclosure of the Hampshire address. The CPS did not serve a defence: it was their stated position that they had an immunity from suit because the claim related to something said by an advocate in court. The police served a defence in which, amongst other things, they denied (in some detail) XGY's status as a victim under section 7. Their primary defence was that the core immunity extended to their provision of the Hampshire address to the CPS.

E. The Judgment of HHJ Brownhill: A Summary

42. HHJ Brownhill concluded that the claims in respect of the Hampshire address should be struck out. She concluded that the CPS had an immunity from suit in respect of things said in court which meant that, because the only claim against the CPS arose from the Hampshire disclosure, the action against them must fail. She concluded that the police were entitled to rely on that immunity (by extension) in respect of the provision of the Hampshire address, so that the claim against the police in respect of the Hampshire disclosure would be struck out.

43. In reaching these conclusions, HHJ Brownhill held that whilst any new extension of an established immunity required detailed examination, the law did not require a trial or investigation into the relevant public policy considerations where the case fell within an already established immunity. Further, *Hall* did not have the effect of removing an advocate's immunity, other than for professional negligence claims by the advocate's own client. The disclosure of the Hampshire address by the CPS advocate fell squarely within the "advocate immunity". As for the police, she stated that the inclusion of the Hampshire address in the CPS file was similar to the file note in *Taylor.* The police conduct fell within an established extended immunity.

44. HHJ Brownhill also concluded that XGY did not fulfil the section 7 criterion for bringing a HRA claim in any event, and granted the CPS and the police reverse summary judgment on that issue. We deal with that aspect of the appeal in greater detail in Section L below.

45. Accordingly, HHJ Brownhill struck out the claims based on the Hampshire address against both appellants.

F. The Judgment of Ritchie J: A Summary

46. It is not necessary for us to set out the full detail of Ritchie J's reasoning in allowing XGY's appeal, rather, only the headlines. An important element of his analysis was that he considered, as a matter of law, that both the advocate's immunity and any immunity claimed by the police in consequence, had to be justified on the individual facts of each case. He called this "justificationism".

47. He divided immunity into six separate categories: "1) Judges' Immunity at court [AC]; 2) Witness Immunity at court [AC]; 3) Witness Immunity before court [BC]; 4) Advocates Immunity at court [AC]; 5) Advocates Immunity before court [BC]; and 6) Legal Proceedings Immunity before court [BC]".

48. In summarising the law, he concluded that the courts had arguably stated that the correct approach to claimed immunities beyond the core immunities (which he identified as Witness Immunity AC, Judges' Immunity AC and parts of Advocates' Immunity AC) was to grant them "grudgingly". It was clear to him, he stated, that on a strike-out application, if there were "relevant issues in relation to the facts which might make the claimed immunity "unsettled" concerning the scope of or the justification for the claimed immunity, the justification should be analysed on the necessary evidence to see if it makes immunity necessary in the public interest". He reached that view because of what he described as "the movement in the last 25 years…away from absolutism towards careful consideration of whether the facts of each case actually do fit within the claimed "immunity" by reference to whether the long-established justifications for the immunity apply…partly due to the implementation of Art. 6 of the ECHR but also modernity in society".

49. At [107] he set out "the better questions" now to be asked: "does the behaviour of the Defendant and the function being performed by the Defendant put the behaviour by the Defendant: (a) prima facie inside or outside the scope of the immunity? If inside, does it (b) support or undermine the justifications for the claimed immunity?". He stated that the court would look at the facts and determine further specific questions. Then, if "the Defendant has passed through these gateways there is a balancing exercise to be carried out to determine whether the way the function was performed so undermined the justifications for the claimed immunity that the swings and roundabouts argument should be rejected and the immunity should not be granted".

50. Against this background, he concluded that:

    i) The police were being sued as "errant administrators". The only relevant immunity would be Legal Proceedings Immunity BC, which was not a core immunity. HHJ Brownhill had wrongly ignored "the justification requirement" and failed to carry out the necessary balancing exercise. It was also arguable

that Legal Proceedings Immunity BC did not apply at all. There was an arguable case against the police.

ii) HHJ Brownhill was right to determine that Advocates' Immunity AC was long established. However, the core part of that immunity related to "the witness evidence in the case, not to extraneous or peripheral or administrative matters". HHJ Brownhill should have asked whether the function performed by the CPS advocate fulfilled the policy justifications for the claimed immunity. The clear answer was that it did not. Permitting liability would not undermine the advocate's freedom of speech. HHJ Brownhill had been wrong to conclude that Advocates Immunity AC was so well established in relation to the facts of this case that there was no arguable claim.

51. Ritchie J went on to conclude that the issues on immunity could not be considered safely on a strike-out application and that HHJ Brownhill had been wrong to conclude, at the summary judgment stage, that there was no real prospect of XGY establishing that she met the section 7 test.

G. The Issues on Appeal

52. It is important for both appeals to be considered in their proper context, namely the hearing of a bail application. Thereafter, it is convenient to take the principal point raised by the CPS on its appeal first, namely whether or not the CPS has the benefit of the core immunity. The answer to that question allows for a proper consideration of the issues raised by the police in their appeal.

53. The central issue raised by the CPS is whether Ritchie J failed to apply settled law as to the extent of the immunity applying to words spoken by an advocate in court. The CPS contends that he was wrong to find that it was in some way "evidential", and that it needed to be justified on the facts in every case. It is submitted that the immunity would become unworkable if the application of the immunity in any given case could only be determined after the event.

54. The police raise first the issue of an unqualified advocate's immunity. It is then said that, by an established extension of the advocate's immunity, there can be no claim against the police. There is an alternative argument that the provision of the information by the police to the CPS was protected by witness immunity.

55. There are two further grounds of appeal, common to both appeals, as to: i) whether any immunity that we do find extends to all XGY's claims in these proceedings; and ii) whether XGY had the necessary standing pursuant to section 7 to make the HRA claims in any event.

H. The Relevant Context: A Bail Hearing

56. In advance of a bail hearing, the police are obliged to prepare a file for the CPS. The file has to comply with the statutory guidance on charging. Paragraph 9.3 of the guidance requires compliance with a National File Standard (NFS). The guidance sets out the material and information required for charging and for subsequent management of the case at initial hearings. At Annex 5 there is a reference to a list of witnesses. The police are required to keep in contact with such witnesses and therefore require a record

of their addresses. Annex 5 also expressly refers to "Victims and Witnesses Information" which again, will invariably include the addresses of victims and witnesses.

57. In both the Magistrates' Court and the Crown Court, the provision of information from the advocate to the court during a bail hearing is relatively informal. Usually, there are no witness statements and there is no oral evidence. Important information is still provided, however, in various ways (primarily by way of documents and oral submissions) which will comprise the evidence on which the court makes its decision as to whether or not to grant bail and, if it does grant bail, what bail conditions should be attached to that grant.

58. This point was emphasised in *R (DPP) v Havering Magistrates' Court* [2001] 1 WLR 805, a case about breach of bail conditions. There was an attack on the informal way in which those conditions had been imposed. At [39]-[41], Latham LJ explained how bail conditions were decided by a magistrate on the basis of the material supplied, "which was not restricted to admissible evidence in the strict sense". The material, he said, was likely to range across the spectrum, from mere assertion to documentary proof. Whilst mere assertion was unlikely to have any probative effect, all the material was potentially relevant.

59. It is in this way that information is provided to the court about, for example, the defendant's previous convictions, or whether or not he or she is a flight risk and, if so, why. Another element of the information routinely provided by the CPS to the court is the address of a complainant. That is often necessary in a domestic violence case such as this, in order for the court to identify an appropriate and proportionate exclusion zone designed to prevent the possibility of the defendant endeavouring to see or speak to the complainant. Usual exclusion conditions will identify a geographical location into which the defendant may not enter (e.g. that the defendant is prohibited from entering, say, Nottingham, save for the purposes of attending pre-booked appointments with his legal advisors). In order to ensure that such a condition is proportionate in all the circumstances, the Magistrates or the Crown Court judge will need to know the address that forms the basis of the identification of the relevant exclusion zone.

60. In his judgment, Ritchie J stated that XGY's address was irrelevant to DYP's bail hearing. For the reasons just given, we consider this was wrong: when testing the proportionality of any bail condition, it is necessary for both an advocate and the court to know a complainant's current address. Of course, in a domestic violence case like this, the address should not be referred to expressly in open court: that was the error that occurred. This cannot detract however from the materiality and importance of the address for the purposes of the bail hearing.

61. These matters link with one aspect of the written evidence of Dr Anton van Dellen of the Bar Council, as to the practical difficulties associated with Ritchie J's distinction between the immunity applying to 'evidential' matters, but not to purely 'administrative' matters (which, on the judge's analysis, included what was said and done at a bail hearing). Dr van Dellen is a practising barrister, an elected member of the Bar Council and has been a member of its Legal Services Committee since 2016. His evidence is directed in particular to the practical implications of Ritchie J's decision. In his evidence, Dr van Dellen said:

> "24. Advocates working in the areas of crime, family, housing, immigration and welfare will be particularly affected by the uncertainty associated with Ritchie J's decision on the basis that these practice areas are more likely to concern significant amounts of personal data, including the special categories of personal data (for example, relating to health, sexual orientation, religious belief, ethnicity) and criminal offence data. These are areas in which the individual's Article 8 rights are more likely to be engaged.
> …
> 26. The distinction between "evidential" and "administrative or procedural" is not clear in the context of ancillary matters commonly dealt within in the course of litigation alongside the trial on the evidence in the proceedings. In such hearings, for example, to deal with case management matters or ancillary orders, sensitive personal information is commonly shared by counsel outside of the formal evidence in the trial.
> 27. With respect to criminal proceedings, alongside reaching a verdict on the evidence, there are other important matters involving addressing factual matters which we do not believe can be categorised as either "evidential" nor "administrative or procedural." This includes abuse of process applications; sentencing; confiscation proceedings and restraining orders. Whilst evidence may be adduced in the context of these ancillary processes, they arguably do not relate to the "evidence in the case." Sentencing and other orders (including confiscation and restraining orders) will occur after the verdict "on the evidence" has been returned.
> 28. In addition, the disclosure, review and use of unused material by the defence, by definition, will never be "evidential". Although it is already contempt to use unused material for purposes other than the proceedings in which it is disclosed (section 18 of the Criminal Procedure and Investigation Act 1996), there is a risk that an advocate who refers to personal data within unused material in court in a bail application, sentence, or other non-trial setting will be liable in suit.
> 29. It is unclear how a defence advocate could resolve the evident tension between her duties to put forward, fearlessly, the best possible case for her client in all parts of the criminal process and any concerns she may have as to possible claims from victims and witnesses given the lack of clarity concerning the scope of immunity."

I. The CPS Appeal: Is the CPS advocate Protected By The Core Immunity?

62. The principles of law summarised in Section B above lead inevitably to the conclusion that HHJ Brownhill was right to conclude that the claims in this case against the CPS must fail. Whilst the disclosure of XGY's then address should not have occurred, the words of the CPS advocate were spoken indubitably "in the ordinary course of court proceedings" and so covered by the core immunity.

63. It follows from this that we disagree with Ritchie J's central conclusion that the core immunity was somehow inapplicable here. This means that we would allow the CPS appeal on its central ground.

64. With respect to Ritchie J, we consider that his approach was based on an incorrect interpretation of the various authorities. Given the importance of the issues raised, we should highlight the following:

i) At [73], it was said that *Taylor* confirmed that extending immunity from witness immunity BC to legal proceedings immunity BC "requires an analysis of necessity". This appears to be the foundation for the judge's view that the immunity had to be justified in every case. However, if the facts fall within an existing immunity, there is no need for such individual justification. *Taylor* was concerned with the justification for an *extension* to the core immunity, which is a different thing.

ii) At [77] *Darker* was said to be authority for the proposition that, if the police were preparing evidence for a witness in a trial, they would be covered by the immunity, but if they were investigating or enforcing the law, they would not be. That is a misreading of *Darker* and is contrary to *Taylor*. It was wrong to state that *Darker* somehow modified *Taylor*; in fact, it expressly approved *Taylor* (see *Darker* at 328C, 331F, 335B, 347A and 353B).

iii) At [79], it was said that, since *Darker* was authority for the proposition that no immunity attaches to actions which do not form part of the evidence to be given at trial, "the bail hearing file prepared by the Police was arguably extraneous." That is a misreading of *Darker* and contrary to *Watson*.

iv) At [80], again in the context of *Darker*, it was said to be arguable that XGY's address "was not evidence in the rape case, proved nothing of the crime, was irrelevant to the bail hearing and it was extraneous". However, as set out above, the address was not extraneous to the bail hearing. The address did not have to be relevant to the rape case or prove the crime in order to fall within the definition of matters to which the immunity applies.

v) At [84], Ritchie J said that *Hall* showed "a movement away from absolutism towards analysing the justification". Again that fails to differentiate between the situation in *Hall,* which involved a specific challenge to an existing immunity based on policy (namely that counsel should be immune from suit by their own clients in negligence) and the situation here, which simply raised the question of whether the facts fell within an existing immunity. In the latter situation, there is no requirement to examine underlying justification.

vi) Similarly, at [87], it was stated that *Jones* was "an exposition of the move away from absolutism, towards justificationism". However, *Jones* was concerned solely with whether an expert witness's immunity from suit should continue to include an immunity from claims in negligence by his or her own client.

vii) At [98], *CLG* was distinguished on the basis that the address was crucial evidence for the arrest warrant in that case, whereas the address here was confidential and not to be used in evidence whether at the bail hearing or a later criminal trial. This fails to recognise the importance of a complainant's address at a bail hearing, as set out above.

65. It follows that in our judgment:

i) Applications of the core immunity and its established extensions do not need to be justified on a case-by-case basis. As the appellants have argued, it is wrong therefore to elide the requirement to justify categories of immunity with the

requirement to justify the actions of a person on the facts of every case. If a claim falls within the scope of the core immunity or its established extensions, the claim must be struck out. To be effective, foreseeability is essential if those involved in the administration of justice are to speak freely. The approach of "justificationism" fundamentally undermines the public policy underlying the existence of the immunity.

ii) The core immunity is not limited to evidential matters. It is far wider in scope. The core immunity attaches to statements (said or written) made in court. Whether or not a statement is related to evidence, is a limiting factor only in the extension of the core immunity to statements made by potential witnesses outside of court – such statements are only within the scope of the extension if they are made with a view to giving evidence.

iii) The core immunity and its extensions apply to bail hearings. Bail proceedings are an integral part of proceedings in the criminal court. As the Court of Appeal held in *Gizzonio v Chief Constable of Derbyshire Police* [1998] Lexis Citation 4431 "matters relating to bail were part of the investigatory or preparatory process in criminal proceedings. Absolute immunity therefore applies."

66. Finally, and briefly, it was wrong to consider, as Ritchie J did, that it was incumbent on the CPS to file a defence. The CPS considered that it had a complete answer to the claim by reason of the core immunity, and was entitled to seek to strike out the claim without more on that basis. Similarly, it was wrong to conclude that the question of immunity could only be determined at trial, a conclusion perhaps explicable by reference to the reasoning on "justificationism" which we have rejected. The facts were straightforward and, for the purposes of the striking out application, to be assumed in XGY's favour as set out in the Particulars of Claim.

67. For those reasons, we would allow the principal grounds of the CPS' appeal. The core immunity means that XGY's claims against the CPS are doomed to fail.

J. The Police Appeal: Are They Protected By An Immunity?

68. Having regard to the principles set out above, the police's preparation of the case for the bail hearing was covered by the extended immunity identified in *Watson*, *Taylor* and *CLG*. There can be no doubt that the preparation of the file for the CPS was part of the process of criminal investigation and the administration of justice. With the removal of the erroneous "evidential" requirement identified by Ritchie J, this case is no different to *CLG* and the same result must eventuate. A finding that no immunity applied to the police activity would outflank the core immunity of the CPS advocate.

69. As set out above, DYP was accused of serious criminal offences. There was an application for bail. It was critical that XGY's address was provided by the police to the CPS. As in *Gizzonio* (at [166]), its provision was "part of the investigatory or preparatory process in criminal proceedings. Absolute immunity therefore applies."

70. A comparison with *Taylor* in particular supports this conclusion. First, as in *Taylor*, the police were providing written information as part of their criminal investigation (albeit via the CPS rather than directly). Secondly, immunity was held to apply in *Taylor* in relation to two documents produced some time before there were any criminal

proceedings. In the present case, the Hampshire address was information for a bail hearing which took place as part of ongoing criminal proceedings. Thirdly, neither of the documents covered by the immunity in *Taylor* (a file note and a letter to the Attorney General of the Isle of Man) was "evidence". The file note was not to be evidence (as confirmed by Lord Hoffman at 213H). Nor was there any suggestion that the letter would be "evidence".

71. Though this analysis is not necessary for the determination of these appeals, and we note the absence of any ground of appeal on this point, for the sake of completeness, we should record our disagreement with Ritchie J's conclusion that the announcement by the CPS advocate of the address in open court broke the chain of causation flowing from the open inclusion of XGY's address in the police file. It was entirely foreseeable that the content of the police file as conveyed to the CPS advocate would be deployed by the CPS advocate in open court at the bail hearing, as, in the event, it was.

72. For these reasons, we would allow the principal grounds of the police's appeal. The established extension of the core immunity that applies to the police conduct means that XGY's claims against them are doomed to fail.

K. Both Appeals: Does The Immunity Apply To All of XGY's Claims?

73. We turn next to the question whether any of the claims for data misuse and breaches of the HRA and DPA somehow survive the findings on immunity. It was suggested for XGY that the HRA claims at least took precedence over, and therefore escaped, the application of the core immunity in any event. This was similar to the submission that was made on XGY's behalf to HHJ Brownhill, that claims under the HRA were "fundamentally different". No authorities were cited in support of either submission.

74. The core immunity applies to all possible claims against the CPS advocate (although of course he would be open to a claim by his own client in negligence). The extended immunity available to the police also extends to all possible claims against them. As explained at [10] above, the immunity cannot be outflanked by other claims, no matter how they are formulated. In both cases, the immunity from suit means just that.

The DPA and the HRA

75. As for the claim under the DPA, *Crawford* confirms that immunity applies to claims for breach of statutory duty. In addition, since *Watson* was a claim for breach of confidence, the modern day equivalent of such a cause of action, namely misuse of private information or a claim under the DPA, must also be caught by the core immunity.

76. The remaining question is whether the HRA is in some way in a different position to any other statute, such that claims pursuant to its provisions are not affected by the immunity. We do not consider that it is.

77. If Parliament had intended the HRA (or the DPA for that matter) to cut across the common law immunity from suit, such an intention would need to be clearly expressed in the Act, or arise by necessary implication: see *R v Secretary of State for the Home Department ex parte Pierson* [1998] AC 539 at 573G. There is nothing in the wording

of the HRA, however, which demonstrates any intention on the part of Parliament to dilute or modify the core common law immunity.

78. In *Smart v Forensic Science Service* [2013] EWCA Civ 783, it was held to be arguable that, on the facts of that case, the immunity did not apply; but it is implicit in the judgments of the court that, if the immunity had applied, it would have applied to the claim under the HRA. Further, we note that in *Mazhar v Lord Chancellor* [2019] EWCA Civ 1558, it was held that the HRA did not "abrogate or encroach upon the principal of judicial immunity". As submitted for the CPS, it would be surprising if it nevertheless abrogated or encroached upon the core immunity available to the advocate.

79. For all these reasons, we conclude that the immunity, which we have found to exist and to be available to the CPS and the police in this case, applies to all the claims made by XGY.

80. However, we would add this. If, in some way, personal data and claims arising from it were exempt from immunity, the Bar Council's evidence as to the unworkability of this approach in practice is compelling. It is easy to see how criminal proceedings for example, could become mired in technical debates about which strand of personal data could or could not be referred to at any given stage of those proceedings.

L. Both Appeals: Did XGY Meet The Section 7 Criterion?

81. Section 7 of the HRA provides:

> "(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
>
> (b) rely on the Convention right or rights concerned in any legal proceedings,
>
> but only if he is (or would be) a victim of the unlawful act…
>
> (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act."

82. It is common ground that, for the purposes of Articles 2 and 3, XGY needed to demonstrate that she was, at the material time of 16 April 2020, at "real and immediate risk" of death (Article 2) or mistreatment amounting to at least the seriousness of an assault occasioning actual bodily harm (Article 3). Real means "objectively well-founded" or "objectively verified": see *Re Officer L* [2007] UK HL 36 at [20]; "immediate" means "present and continuing": see *Rabone v Pennine Care NHS Trust* [2012] UKSC 2. Thus a real risk which is no longer continuing is insufficient. As explained in *Osman v United Kingdom* (1998) 29 EHRR 245 ("*Osman*") at [116], it must be established to the court's satisfaction that the authorities knew or ought to have known at the time of the existence of the real and immediate risk in question.

83. The test was described as "stringent" in *Re Officer L*. In *Van Colle v Chief Constable of Hertfordshire Constabulary* [2009] 1 AC 225 ("*Van Colle*") the test, derived from *Osman*, was described as a "very high threshold" [69].

84. If XGY fails to meet the criterion in section 7 in respect of the claims under Articles 2 and 3, then the Article 8 claim can add nothing: see *CLG* at [39].

HHJ Brownhill's Conclusions

85. At the hearing before HHJ Brownhill, there was a good deal of argument about disclosure. XGY complained that disclosure had not been adequate although, as HHJ Brownhill noted, there had been no application for specific disclosure. She concluded that, given the issues that she had to decide, further disclosure would not impact materially on the pleaded relevant facts, nor would the further information highlighted on behalf of XGY meet the arguments relied on by the police and the CPS.

86. On the application for reverse summary judgment, XGY served no evidence. HHJ Brownhill was entitled to draw inferences from the material before the court, applying the well-known principles identified in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC (Ch) 339 as approved by this court in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098.

87. HHJ Brownhill rejected the submission that there was a real prospect of XGY meeting the criterion under section 7. She reasoned that, even taking the pleaded points at their highest, XGY had no real prospect of satisfying the "victim" test at the time of the Hampshire disclosure. By April 2020 XGY had not alleged any contact, whether direct or indirect, from DYP after the end of their relationship in early November 2019, over five months before. While the rape allegation undoubtedly would have brought XGY to the fore of DYP's mind again in April 2020, the pleaded facts did not come close to suggesting that this would have, objectively, created a real and immediate risk of death or mistreatment to the necessary standard. By the time of the Hampshire disclosure, there had been no recent action or threat or contact from DYP. Given the passage of time and lack of contact in the intervening period, any risk flowing from the events of November 2019 would have dissipated. The Hampshire disclosure did not, of itself, resurrect or create an objective risk near the necessary severity.

88. To the extent that HHJ Brownhill was making an evaluative decision, the threshold for challenge on appeal is again high: there must be some identifiable flaw in her treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion: see *Re Sprintroom Limited* [2019] EWCA Civ 932; [2019] BCC 1031 at [76]. That approach has been restated recently in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 at [46]-[50] and *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc* [2025] UKSC 25 at [94]-[95]. To the extent that she made findings of fact, on appeal it must be shown that there was "no sufficient evidence upon which the decision could have been reached or that no reasonable judge could have reached that decision" (see for example *Volpi v Volpi* [2022] EWCA Civ 464 [2]-[4] and [52]).

The Approach of Ritchie J

89. Ritchie J undertook his own analysis of the section 7 issue, reached the opposite conclusion to that of HHJ Brownhill and substituted his own view for it. He relied on potential information that was not before the court, such as what the police knew about DYP, DYP's reaction to the allegation of rape, his mental state, his actions over the five months after November 2019 and his full police records.

90. He thus considered that HHJ Brownhill had been wrong to proceed on the basis that determination of the section 7 issue should be disposed of without awaiting further disclosure.

91. On the available material, and in the absence of an application for specific disclosure or any evidence in response to the application for summary judgment, we consider that HHJ Brownhill's decision to proceed without more was well within the ambit of reasonable decision-making. She was entitled, in accordance with *EasyAir*, not to allow the claims to proceed to trial merely because something may turn up on disclosure. The burden was always on XGY to show that there would be specific material which had not been disclosed but which would (contrary to HHJ Brownhill's view) make a difference to the assessment under section 7. XGY did not discharge that burden.

92. We have concerns that Ritchie J at times confused the entering of reverse summary judgment on the HRA claims (which is what happened) with their striking out (which is not what happened) (see for example [9], [121] and [125] of his judgment). We have concerns that he may have adopted too low a threshold on a summary judgment application (see [124] of his judgment). We also have concerns about the emphasis placed by him on XGY's mental suffering (see [122] of his judgment). He did not (at least expressly) address whether the mental suffering met the high threshold for establishing a breach of Article 3. As confirmed in *R (on the application of ASK) v Secretary of State for the Home Department* [2019] EWCA Civ 1239 at [70], ill-treatment that attains the appropriate minimum level of severity usually involves the relevant individual suffering intense physical or mental suffering. Further, the focus needed to be on the objective nature of the assessment of real and immediate risk.

93. However, fundamentally, we consider there was no proper basis on which to interfere with HHJ Brownhill's assessment that there was no real prospect of the section 7 criterion being met. HHJ Brownhill had expressly taken into account the police's ongoing assessment of risk to XGY as "high" and the suggestion of a heightened risk of harm given DYP's recent knowledge of the rape allegation. She was aware of DYP's history including convictions for violence, the threats he made in early November 2019, including threats to kill and to assault XGY and her family members and that DYP was not always compliant with bail conditions. She was also aware that following the disclosure at court, a police officer advised XGY not to return to the Hampshire address.

94. Ritchie J stated (at [120] of his judgment) that HHJ Brownhill did not have sufficient or full evidence to know whether DYP had the ability to find or communicate with XGY in the five month period between November 2019 and April 2020. But HHJ Brownhill knew that DYP had not threatened XGY immediately before she left the Chichester address, or when she was at the Epsom address (despite its disclosure) and which she did not leave immediately following the granting of police bail. The disclosed police log provided no evidence that DYP, who had XGY's (new) telephone number, had made any attempt to contact her on that number.

95. Ritchie J identified four matters which in his view HHJ Brownhill had overlooked. On analysis it can be seen that, to the extent that they were relevant, she did not overlook any of them. The first concerned the rape allegation and its effect on DYP in terms of threat towards XGY. She had regard to this even though, on strict analysis, it was of no particular relevance to the objective test. The second concerned the effect on XGY of the disclosure of the Hampshire address. HHJ Brownhill was fully aware that mental suffering was at the heart of XGY's claim (see for example [121] of her judgment). It was set out in XGY's statement of case. It also does not go to the knowledge of the authorities, and the objective test. The third matter was the police's own assessment of the risk as "high". That was, however, referred to repeatedly by HHJ Brownhill (see [8], [38], and [116] of her judgment). Similarly, in respect of the fourth matter, namely the advice from D.C. Wells to leave the Hampshire address,[5] that too was a matter recognised by HHJ Brownhill. This (no doubt sensible) advice did not mean that XGY would be able to establish that she fell within the section 7 criteria.

96. In short, there were no identifiable flaws in HHJ Brownhill's treatment of the question that she was deciding. There was no lack of logic or reasoning, nor did she overlook any material factors. In essence, the absence of any contact over a five-month period, despite DYP's knowledge of two of the relevant addresses, entitled her to conclude that there was no real prospect of establishing a real and immediate risk to XGY of treatment in breach of the Convention.

97. We conclude therefore that Ritchie J should not have interfered with HHJ Brownhill's decision that there was no real prospect of XGY meeting the section 7 test (or any other compelling reason why there should be a trial). We reinstate HHJ Brownhill's decision on summary judgment in respect of the HRA claims.

M. Conclusions

98. Accordingly, we set aside the order made by Ritchie J on 29 July 2024. XGY's claims against the police and the CPS based on the Hampshire disclosure are struck out on the principal ground that they are caught by the core immunity (the CPS) and its established extension (the police). In addition, we would reinstate HHJ Brownhill's conclusion that, on summary judgment, XGY has failed to make out the necessary criterion under section 7 at the time of the Hampshire disclosure, so that the HRA claims based on the Hampshire disclosure are doomed to fail in any event.

99. We wish to emphasise that nothing that we have said is intended to detract from the consequences for XGY of the disclosure of her Hampshire address. We would wish to express our sympathy for her and the situation in which she was placed. However, public policy and long-established principle mean that she does not have a legal remedy in these proceedings for what happened.

[5] More accurately, her advice was not to return home.