

# Legal Update

## Robinson v West Yorkshire Police Court of Appeal (Hallett LJ, Sullivan LJ and Arnold J) 5 February 2014

### Executive Summary

The Court of Appeal held that an innocent bystander was not entitled to compensation from the police for injuries sustained when she became caught up in the arrest of a suspected drug dealer. The **Hill** 'immunity' principle applied and there was no duty of care or negligence.

### Background

The claimant was walking down a busy street in Huddersfield when she was knocked to the ground during the course of the arrest of a drug dealer. The dealer had been spotted, dealing in class A drugs, by an officer on unrelated business. The officer contacted a senior officer and it was agreed to arrest the dealer as quickly as possible while still in possession. Back-up was called and arrived. Possible locations for the arrest were considered and it was decided to arrest on the street. The intention was for two officers to approach from the front and two from the rear in a pincer movement to prevent escape. The drug dealer's response was to react violently, the momentum of the struggle taking him and officers towards the claimant. She was knocked to the ground before the second pair of officers arrived to assist three seconds later. Other persons also tried to intervene and to dispose of the drugs.

### Decision

At first instance, the judge concluded that more careful planning was required and that the significant foreseeable risk of an attempted escape put the claimant, by virtue of her physical presence, in a position of proximity and risk of foreseeable injury.

The judge also criticised the second pair of officers for not being closer to the scene at the time of the strike. He concluded that this was a case of negligence but not outrageous negligence. However, the so-called 'immunity' from suit enjoyed by the police under the **Hill** principle was engaged, so despite his finding of negligence, the claim was dismissed.

The claimant appealed against the finding in relation to immunity under **Hill**. The chief constable appealed against the decision in relation to duty and negligence, whilst supporting the overall outcome.



## Court of Appeal

The claimant argued that the requirement for the court to consider whether it was fair, just and reasonable to impose a duty of care (the third element of the well-known **Caparo Industries'** test) did not apply in the present case. That was because, the claimant argued, the police had caused direct physical harm to the claimant and **Caparo** was a case about economic loss, not direct physical harm.

The claimant repeated the same argument in relation to other so-called legal 'problem areas', categorised as indirect harm and psychiatric injury. As a result, the claimant sought to distinguish the leading case of **Hill** and its subsequent adoption of the principle, notably in the cases of **Brooks v Metropolitan Police** and the conjoined appeals of **Van Colle v Hertfordshire Police and Smith v Sussex Police**.

Lady Justice Hallett, in a thorough analysis of the law in this area, dismissed the claimant's contentions. It was well established that the **Caparo** test applies to all claims in the modern law of negligence, with the 'qualitative difference' between direct physical damage and indirect economic loss colouring only the court's attitude to deciding when it is fair, just and reasonable to impose a duty. As Lady Justice Hallett noted, the line between direct and indirect harm can be a fine one, this case being a classic example. The appeal judge observed that it made no sense to hold the chief constable liable if an officer knocked into the claimant directly, but not if the culprit was the drug dealer. In any event, contrary to the claimant's submissions, this was not a direct physical harm case, but an indirect one, the CCTV footage showing it was the drug dealer who had collided with the claimant.

As to the enduring application of the **Hill** principle, Lady Justice Hallett repeated Lord Steyn's rationale that: "The prime function of the police is the preservation of the Queen's peace. The police must concentrate on preventing the commission of crime; protecting life and property; and apprehending criminals and preserving evidence."

That underlying reasoning justified the following response to the claimant's rhetorical question of what the public would think if the police could injure innocent members of the public, during the course of arrest, with impunity:

"...provided the police act within reason, the public would prefer to see them doing their job and taking drug dealers off the street. It will be of little comfort to [the claimant], but the risk to passers by like her is trumped by the risk to society as a whole." – paragraph 47

The Court of Appeal highlighted that the **Hill** principle does not operate to provide blanket immunity. Lady Justice Hallett declined to attempt to define possible exceptions or cases of 'outrageous negligence', although she did concede that she saw the sense "in exempting cases of outrageous negligence on the basis that nobody wishes to encourage grossly reckless police operations."

Those findings determined the outcome of the appeal but Lady Justice Hallett went on to observe that she would have overturned most of the judge's findings had she needed to. The claim should have failed on the question of duty and "it [was] not enough to say that an operation carries with it acknowledged risks and therefore there is a notional duty to any individual passing by". The appeal judge agreed with the chief constable's submission that "a general professional obligation to seek to minimise risks does not equate to some form of legal duty". As to whether, even if a duty arose, there had been negligence, she expressed even greater doubts. This was "a classic case of the benefit of hindsight [highlighting] the dangers of judges sitting in judgment on police operational decisions", when "the evidence did not come close to justifying the criticism."

Mr Justice Arnold also agreed that even if a duty of care was owed, the actions in this case did not fall below the standard of reasonable competent police officers. The only real point related to the late arrival of the second pair of officers and that was beyond criticism. He also agreed that officers “should not be second-guessed with the benefit of 20/20 hindsight.”

### Comment

This is useful case examining the authorities in relation to police operational immunity and the appropriate test in negligence. The Court of Appeal decision accords with the established position and provides a useful up to date analysis of the underlying policy considerations at play. Ultimately, despite undoubted sympathy for the claimant, the actions of the officers could not really be faulted.

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