HOUSE OF LORDS SESSION 2004–05
[2005] UKHL 24

on appeal from: [2002] EWCA Civ 407

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Brooks (FC) (Respondent)
v.
Commissioner of Police for the Metropolis (Appellant) and others

ON
THURSDAY 21 APRIL 2005

The Appellate Committee comprised:

Lord Bingham of Cornhill
Lord Nicholls of Birkenhead
Lord Steyn
Lord Rodger of Earlsferry
Lord Brown of Eaton-under-Heywood

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LORD BINGHAM OF CORNHILL

My Lords,

1. Duwayne Brooks, the respondent, was present when his friend Stephen Lawrence was abused and murdered in the most notorious racist killing which our country has ever known. He also was abused and attacked. However well this crime had been investigated by the police and however sensitively he had himself been treated by the police, the respondent would inevitably have been deeply traumatised by his experience on the night of the murder and in the days and weeks which followed. But unfortunately, as established by the public inquiry into the killing (*The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (1999) Cm 4262-I), the investigation was very badly conducted and the respondent himself was not treated as he should have been. He issued proceedings against the Commissioner of Metropolitan Police and a number of other parties, all but one of whom were police officers.

2. I am indebted to my noble and learned friend Lord Steyn for his detailed summary of the history of these proceedings, the pleadings and the issues, which I gratefully adopt and need not repeat. As he makes clear in paras 12 and 14 of his opinion, the only issue before the House is whether, assuming the facts pleaded by the respondent to be true, the Commissioner and the officers for whom he is responsible arguably owed the respondent a common law duty sounding in damages to

(1) take reasonable steps to assess whether [the respondent] was a victim of crime and then to accord him reasonably appropriate protection, support, assistance and treatment if he was so assessed;

(2) take reasonable steps to afford [the respondent] the protection, assistance and support commonly afforded to a key eye-witness to a serious crime of violence;

(3) afford reasonable weight to the account that [the respondent] gave and to act upon it accordingly.

3. For reasons elaborated at some length in my dissenting opinion in *JD v East Berkshire Community NHS Trust and others* [2005] UKHL 23, I would be very reluctant to dismiss without any exploration of the facts a claim raised in a contentious and developing area of the law where fuller factual enquiry might enable a claimant to establish that a duty of care had been owed to him and had been broken. I would also be reluctant to endorse the full breadth of what *Hill v Chief Constable of West Yorkshire* [1989] AC 53 has been thought to lay down, while readily accepting the correctness of that decision on its own facts. Two considerations, however, persuade me that this appeal should be allowed and the respondent's claims in common law negligence struck out.

4. The first is that the facts of this case have been exhaustively investigated. While theoretically the facts are only to be assumed, and have not been proved, it seems most unlikely that there are factual discoveries to be made or that there will be any substantial challenge to the facts as pleaded. If the case went to trial, the judge would base his decision on essentially the same facts as are now before the House. The second consideration is that the three duties pleaded are not, in my opinion, duties which could even arguably be imposed on police officers charged in the public interest with the investigation of a very serious crime and the apprehension of those responsible. Even if it were to be thought, for reasons such as those touched on by Lord Steyn in paras 27–29 of his opinion, that the ratio of *Hill* called for some modification, I cannot conceive that any modification would be such as would accommodate the three pleaded duties. This conclusion imports no criticism at all of the respondent's expert advisers, who have plainly pleaded the strongest duties available on the facts. But these are not duties which could be imposed on police officers without potentially undermining the officers' performance of their functions, effective performance of which serves an important public interest. That is, in my opinion, a conclusive argument in the Commissioner's favour. Fortunately, the respondent has other causes of action which he is free to pursue.

LORD NICHOLLS OF BIRKENHEAD

My Lords,

5. I have had the advantage of reading in draft the speeches of my noble and learned friends Lord Bingham of Cornhill and Lord Steyn. I too would allow this appeal. I can see no basis for sensibly imposing on the police any of the three legal duties asserted by Mr Brooks on this appeal. These duties would cut across the freedom of action the police ought to have when investigating serious crime.

6. Like Lord Bingham and Lord Steyn, in reaching this conclusion I am not to be taken as endorsing the full width of all the observations in *Hill v Chief Constable of West Yorkshire* [1989] AC 53. 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.

LORD STEYN

My Lords,

I. The Racial Attack

7. The background to this appeal is the tragic event of the evening of 22 April 1993 when a gang of young white thugs attacked Stephen Lawrence and Duwayne Brooks, two eighteen year old youths, for no other reason than that they were black. Stephen Lawrence died from stab wounds less than an hour later. Duwayne Brooks was a key witness to the attack on Stephen Lawrence and was the surviving victim of the attack.

II. The Macpherson Report

8. On 31 July 1997 the Home Secretary appointed Sir William Macpherson of Cluny, aided by three experienced advisers, to inquire into the matters arising from the death of Stephen Lawrence in order particularly to identify the lessons to be learned from the investigation and prosecution of racially motivated crimes. It was an exhaustive inquiry: the oral hearings took 59 days. The unanimous Macpherson report was delivered on 15 February 1998. It exposed a litany of derelictions of duty and failures in the police investigation. Although there were large numbers of police officers early on the scene, the Inquiry was astonished at the total lack of direction and organisation during the vital first hours after the murder: [46.6]. For present purposes only brief references to the conduct of police towards Mr Brooks are necessary. The report described Mr Brooks as someone who: "… saw his friend murdered, dying on the pavement, and dead as he was carried into the hospital. And he has had to endure that night, and the whole course of the failed investigation. He was a primary victim of the racist attack. He is also the victim of all that has followed, including the conduct of the case and the treatment of himself as a witness and not as a victim": [5.7]. The criticisms of the police conduct towards Mr Brooks included the following passages:

> "5.10 We have to conclude that no officer dealt properly at the scene with Mr Brooks. His first contact was probably with Police Constable Linda Bethel. She described Mr Brooks as being "very agitated". Police Constable Joanne Smith said that he was "jumping up and down and being very aggressive". Police Constable Anthony Gleason said that Mr Brooks was "Highly excitable. Virtually uncontrollable". Considering what Mr Brooks had seen and been involved in none of that should have been surprising. Furthermore Mr Brooks was justifiably frustrated and angry, because he saw the arrival of the police as no substitute for the non-arrival of the ambulance, and to his mind the police seemed more interested in questioning him than in tending Stephen.
>
> 5.11 Yet there is no evidence that any officer tried properly to understand that this was so, and that Mr Brooks needed close, careful and sensitive treatment. Furthermore even if it was difficult at

first to gain a coherent story from him the officers failed to concentrate upon Mr Brooks and to follow up energetically the information which he gave them. Nobody suggested that he should be used in searches of the area, although he knew where the assailants had last been seen. Nobody appears properly to have tried to calm him, or to accept that what he said was true. To that must be added the failure of Inspector Steven Groves, the only senior officer present before the ambulance came, to try to find out from Mr Brooks what had happened. He, and others, appear to have assumed that there had been a fight. Only later did they take some steps to follow up the sparse information which they had gleaned. Who can tell whether proper concern and respect for Mr Brooks' condition and status as a victim might not have helped to lead to evidence should he have been used in a properly co-ordinated search of the estate?

5.12 We are driven to the conclusion that Mr Brooks was stereotyped as a young black man exhibiting unpleasant hostility and agitation, who could not be expected to help, and whose condition and status simply did not need further examination or understanding. We believe that Mr Brooks' colour and such stereotyping played their part in the collective failure of those involved to treat him properly and according to his needs."

III. The Criminal Proceedings

9. A public prosecution of two youths for the murder of Stephen Lawrence was commenced. On 9 July 1993 it was discontinued. The family of Stephen Lawrence started a private prosecution against five youths for murder. Three of them stood trial at the Central Criminal Court. Mr Brooks gave evidence during a "voire dire" on 18th, 19th and 22nd April 1996. The trial judge directed that Mr Brooks' evidence should be excluded. In the light of this decision the prosecution offered no evidence and the defendants were acquitted on the judge's direction. No successful prosecution has ever been brought against the assailants.

IV. The Civil Proceedings

10. In April 1999 Mr Brooks issued civil proceedings in the Central London County Court against the Commissioner of Police of the Metropolis, 15 named police officers and the Crown Prosecution Service. He sought to recover damages —

(1) From the first defendant, the Metropolitan Police Commissioner, on the grounds of negligence, false imprisonment, and misfeasance in public office.
(2) From the second to sixteenth defendants, who were all at the material time serving police officers, for breach of statutory duty, namely breaches of section 20 of the Race Relations Act 1976.

The thrust of the claim was that as a result of the attack on 22 April 1993 Mr Brooks suffered from a very severe post-traumatic stress disorder until the Spring of 1998 and thereafter continued to suffer from some of the symptoms of that disorder. It was alleged that the disorder was substantially exacerbated or aggravated by the failure of the Police to treat Mr Brooks lawfully.

11. In his pleading Mr Brooks set out several causes of action. The first was based on section 20 of the Race Relations Act 1976. The heart of the case was that Mr Brooks had been stereotyped as a black person and treated unfairly as such. Secondly, claims in negligence against the police were put forward to which I will turn in more detail later. Thirdly, there was a specific claim of the false imprisonment of Mr Brooks by the police in a police car at the hospital. Fourthly, Mr Brooks relied on the tort of misfeasance in public office, against the police. In respect of all these causes of action the claims were directed both against the named police officers and against the Commissioner.

V. The Procedural History

12. The pleadings are lengthy and the subsequent procedural history is complex and confusing. Part of the problem is that particulars drafted in support of the cause of action based on the Race Relations Act have been used by cross-referencing for the different purpose of claims in negligence. The House must, however, deal with the matter as it stands. The Agreed Statement of Facts and Issues before the House provides a

summary. It records that Mr Brooks discontinued his claims against the Crown Prosecution Service (the 17th Defendant) and two named officers (the 9th and the 10th Defendants). The remaining part of the story is as follows:

> "5. In relation to the [Commissioner] [Mr Brooks] seeks damages for false imprisonment, negligence and misfeasance in public office. The claim in negligence alleged that the [Commissioner] and/or those for whom he is vicariously responsible owed [Mr Brooks] five duties of care, namely to:
>
> (1) take reasonable steps to assess whether [Mr Brooks] was a victim of crime and then to accord him reasonably appropriate protection, support, assistance and treatment if he was so assessed ("the first duty");
>
> (2) take reasonable steps to afford [Mr Brooks] the protection, assistance and support commonly afforded to a key eye-witness to a serious crime of violence ("the second duty");
>
> (3) afford reasonable weight to the account that [Mr Brooks] gave and to act upon it accordingly ("the third duty");
>
> (4) take reasonable steps to investigate the crime with all reasonable diligence ("the fourth duty"); and
>
> (5) take reasonable steps to ensure that officers do not behave in a racist manner towards members of the public, including [Mr Brooks] ("the fifth duty").
>
> 6. In relation to the named police officers Mr Brooks sought damages for breach of the Race Relations Act 1976.
>
> . . .
>
> 8. The named officers applied for summary judgment or to have the proceedings against them struck out on the grounds that:
>
> (1) The proceedings were brought outside the limitation period provided for by Section 68 of the Race Relations Act 1976; and
>
> (2) [Mr Brooks] did not seek to obtain services from the named officers within the meaning of Section 20 of the Race Relations Act 1976.
>
> 9. HHJ Butter QC determined the applications on 29th March 2000. He found against the named

officers in relation to the limitation argument. He found for some of the officers in relation to the Section 20 argument. The effect of his decision was that the claims against the 6th, 7th, 8th, 10th and 16th Defendants were struck out.

10. Meanwhile, on 13th September 1999 the Commissioner applied to strike the claim out on the grounds that it disclosed no reasonable grounds for bringing a claim.

11. HHJ Butter QC heard the [Commissioner's] application on 18th and 19th December 2000. On 12th February 2001 HHJ Butter QC gave judgment. He acceded to the [Commissioner's] application and struck the entire claim out.

12. [Mr Brooks] appealed against HHJ Butter QC's decisions of 29th March 2000 and 12th February 2001.

13. The named officers cross-appealed in relation to HHJ Butter QC's decision as to limitation.

14. The Court of Appeal heard the [Commissioner's] appeals, and the named officers' cross-appeal, on 22nd, 23rd, 24th and 25th March 2000. The Court of Appeal handed its reserved judgment down on 26th March 2002.

15. As to the appeal and cross-appeal concerning the named officers, the Court of Appeal:

(1) allowed [Mr Brooks'] appeal; and

(2) dismissed the named officers' cross-appeal in relation to the limitation issue.

The named officers have not sought to appeal these decisions.

16. As to the appeal concerning the claim against the [Commissioner], the Court of Appeal:

(1) allowed [Mr Brooks'] appeal in relation to the claim in false imprisonment. There is no appeal by the [Commissioner] against that decision.

(2) dismissed [Mr Brooks'] appeal in relation to the claim in misfeasance in public office. There is no appeal by [Mr Brooks] against that decision.

(3) dismissed [Mr Brooks'] appeal in relation to the negligence claim in respect of the fourth and fifth duties of care.

(4) in respect of the fourth duty of care the Court of Appeal held that it was not, even arguably, fair, just and reasonable for this duty of care to be imposed.

(5) in respect of the fifth duty of care the Court of Appeal held that there did not exist between the [Commissioner] and [Mr Brooks] a relationship of sufficient proximity to justify the imposition of a duty of care. These duties of care remain struck out. There is no appeal by [Mr Brooks] against the decisions regarding the fourth or fifth duties of care.

(6) the Court of Appeal allowed [Mr Brooks'] appeal in relation to the negligence claim in respect of the first, second and third duties of care. It is against this decision that the [Commissioner] appeals."

The focus of the appeal to the House is, therefore, on the sustainability of the first, second and third duties of care as set out in paragraph 5 quoted in this paragraph.

VI. The Appendix

13. The pleading before the House is the Re-Amended Particulars of Claim. This document was redrafted after the Court of Appeal judgment. It would be difficult to summarise the allegations in it. But the full pleaded case must be placed on record. In these circumstances I attach to my opinion a self-explanatory appendix containing all the relevant allegations. The appendix is an agreed document.

VII. The Agreed Issues

14. The agreed issues before the House are as follows:

(1) Whether, on the pleaded facts, there are no reasonable grounds for the claim that there was sufficient proximity between the Commissioner and/or those for whom he is vicariously responsible, on the one hand, and Mr Brooks, on the other, to give rise to the following duties of care:

(a) to take reasonable steps to assess whether Mr Brooks was a victim of crime and then to accord him reasonably appropriate protection, support, assistance and treatment if he was so assessed (the first surviving duty);

(b) to take reasonable steps to afford Mr Brooks the protection, assistance and support commonly afforded to a key eye-witness to a serious crime of violence (the second surviving duty);

(c) to afford reasonable weight to the account given by Mr Brooks and to act upon that account accordingly (the third surviving duty).

(2) whether there are no reasonable grounds for the claim that it is fair, just and reasonable to hold that the Commissioner and/or those for whom he is vicariously responsible owed to Mr Brooks the duties of care set out above.

VIII. The Court of Appeal Judgment

15. The Court of Appeal reviewed the authorities in some detail. It took into account the principle that wrongs should be remedied. It proceeded on the basis that claims should only be struck out in absolutely clear cases. The Court of Appeal was satisfied that the fourth and fifth alleged duties (including a duty to take reasonable steps to investigate the crime with reasonable diligence) were bound to fail and had to be struck out. However, on the issues of law engaged on this appeal – that is, the sustainability of the alleged first, second and third duties of care – the Court of Appeal gave no reasons for ruling that these particular causes of action are sustainable in law. How these rulings are to be reconciled with the decision to strike out the fourth and fifth duties of care is not explained. It may well be that the multiplicity of causes of action and particulars, presented in a rather unstructured way, did not make the task of the Court of Appeal easy.

IX. The Starting Point

16. First, I accept that in these proceedings it must be assumed without equivocation that each and every one of the allegations of fact in the pleading under consideration could conceivably be established at trial. In particular the matter must be considered on the basis that Mr Brooks has suffered personal injury (in the form of an exacerbation of or aggravation of the PTSD that was induced by the racist attack itself) in consequence of the negligence of the officers and that injury of

this type was reasonably foreseeable. Secondly, counsel for Mr Brooks cautioned the House about the danger of trying to resolve complex questions of law on an application to strike out a pleading. He emphasised particularly the undesirability of embarking on a strike out application in the face of a developing state of a particular branch of law. He referred to what Lord Slynn of Hadley said in *Waters v Metropolitan Police Commissioner* [2000] 1 WLR 1607, 1613-1614:

> "It is very important to bear in mind what was said in *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633; in *Barrett v Enfield London Borough Council* [1999] 3 WLR 79 and in *W v Essex County Council* [2000] 2 WLR 601 as to the need for caution in striking out on the basis of assumed fact in an area where the law is developing as it is in negligence in relation to public authorities if not specifically in relation to the police."

These observations are important and will have to be carefully considered.

X. The Rival Submissions

17. Both counsel accepted that the issues must be resolved in the framework of the principles stated in *Caparo Industries plc v Dickman* [1990] 2 AC 605. In that case Lord Bridge of Harwich stated (at 617H-618A:

> "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."

Here the agreement between counsel came to an end. Their competing submissions can now be stated in outline. Counsel for the Commissioner submitted that the primary function of the Police is to

preserve the Queen's peace. He contended that in the course of performing their function of investigating crime, the police owe no legal duties to take care that either a victim or a witness as such does not suffer psychiatric harm as a result of police actions or omissions. For this submission he relied strongly on the decision of the House of Lords in *Hill v Chief Constable of West Yorkshire* [1989] AC 53 and other authorities at House of Lords and Court of Appeal level.

18. Counsel for Mr Brooks did not in any way challenge the decision in *Hill* but submitted that it does not stand in the way of his arguments. His central submission was that the Police owe a duty of care not to cause by positive acts or omissions harm to victims of serious crime, or witnesses to serious crime, with whom they have contact. He said that the first, second and third pleaded duties of care were concrete manifestations of this general duty.

XI. The Case Law

19. *Hill v Chief Constable* is an important decision. The claim in that case was that the Police had been negligent by failing properly to investigate the crimes committed by the Yorkshire Ripper before the murder of his last victim. The mother of the victim brought the claim. With the express agreement of three Law Lords, and the support of a concurring speech by another, Lord Keith of Kinkel observed [at 59B-59I]:

> "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 *Knightley v Johns* [1982] 1 WLR 349 and *Rigby v Chief Constable of Northamptonshire* [1985] 1 WLR 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: see *R v Dytham* [1979] QB 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.

> By common law police officers owe to the general public a duty to enforce the criminal law: see *R v Commissioner of Police of the Metropolis, Ex p Blackburn* [1968] 2 QB 118. That duty may be enforced by mandamus, at the instance of one having title to sue. 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."

Lord Keith made reference to the well known decision of the House of Lords in *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004. He continued [at 62G-64A]:

> "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 are therefore not capable of establishing a duty of care owed towards Miss Hill by the West Yorkshire police.
>
> That is sufficient for the disposal of the appeal. 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] AC 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] AC 728, 751-752 might fall to

be applied was a limited one, one example of that category being *Rondel v Worsley* [1969] 1 AC 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 pursing 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 LJ, in his judgment in the Court of Appeal [1988] QB 60, 76 in the present case, was right to take the view that the police were immune from an action of this kind on grounds similar to those which in *Rondel v Worsley* [1969] 1 AC 191 were held to render a barrister immune from actions for negligence in his conduct of proceedings in court."

The second paragraph of the last quotation constitutes the alternative ground of the decision in *Hill*. It is part of the *ratio decidendi* of the case. It will be necessary to take stock of the present status of *Hill* later in this opinion.

20. In *Calveley and Others v Chief Constable of Merseyside Police* [1989] AC 1228 police officers brought an action in negligence against a Chief Constable on the ground that disciplinary proceedings had been negligently conducted. The decision in *Hill* was cited to the House. Giving the opinion of a unanimous House, Lord Bridge of Harwich observed [at 1238D-H]:

> "It is, I accept, foreseeable that in these situations the suspect may be put to expense, or may conceivably suffer some other economic loss, which might have been avoided had a more careful investigation established his innocence at some earlier stage. However, any suggestion that there should be liability in negligence in such circumstances runs up against the formidable obstacles in the way of liability in negligence for purely economic loss. Where no action for malicious prosecution would lie, it would be strange indeed if an acquitted defendant could recover damages for negligent investigation. Finally, all other considerations apart, it would plainly be contrary to public policy, in my opinion, to prejudice the fearless and efficient discharge by police officers of their vitally important public duty of investigating crime by requiring them to act under the shadow of a potential action for damages for negligence by the suspect.

> If no duty of care is owed by a police officer investigating a suspected crime to a civilian suspect, it is difficult to see any conceivable reason why a police officer who is subject to investigation under the Regulations of 1977 should be in any better position."

This was clearly an application of the second ground of the decision in *Hill*.

21. In addition, the principle enunciated in *Hill* has been applied in a number of Court of Appeal decisions: *Alexandrou v Oxford* [1993] 4 All ER 328, 340J; *Ancell v McDermott* [1993] 4 All ER 355, at 365G-H. *Osman v Ferguson* [1993] 4 All ER 344; *Cowan v Chief Constable for Avon and Somerset Constabulary* (2002) HLR 830, para 44.

22. Acknowledging that *Elguzouli-Daf v Commissioner of Police* [1995] QB 335 is a different case altogether, counsel for the Commissioner relied on it by analogy. The two appeals before the Court of Appeal in that case raised the question of law whether the Crown Prosecution Service owed a duty of care to those whom it was prosecuting. Relying in large measure on the reasoning in *Hill* the Court of Appeal held that there was no such duty. The court held that different considerations arise in cases where the police had by conduct assumed a responsibility. Although not expressly mentioned in the judgments this was clearly a reference to the principle in *Hedley Byrne & Co. Ltd v Heller and Partners Limited* [1964] AC 465. In my judgment I said [349C-350C]:

> "That brings me to the policy factors which, in my view, argue against the recognition of a duty of care owed by the CPS to those it prosecutes. While it is always tempting to yield to an argument based on the protection of civil liberties, I have come to the conclusion that the interests of the whole community are better served by not imposing a duty of care on the CPS. In my view, such a duty of care would tend to have an inhibiting effect on the discharge by the CPS of its central function of prosecuting crime. It would in some cases lead to a defensive approach by prosecutors to their multifarious duties. It would introduce a risk that prosecutors would act as to protect themselves from claims of negligence. The CPS would have to spend valuable time and use scarce resources in order to prevent

> law suits in negligence against the CPS. It would generate a great deal of paper to guard against the risks of law suits. The time and energy of CPS lawyers would be diverted from concentrating on their prime functions of prosecuting offenders. That would be likely to happen not only during the prosecution process but also when the CPS is sued in negligence by aggrieved defendants. The CPS would be constantly enmeshed in an avalanche of interlocutory civil proceedings and civil trials. That is a spectre that would bode ill for the efficiency of the CPS and the quality of our criminal justice system.
>
> *Conclusion*
>
> While Mr Richards, who appeared for the CPS, disputed that even the element of foreseeability of harm is established, I would be prepared to accept that the plaintiffs can satisfy this requirement. For my part the matter turns on a combination of the element of proximity and the question of whether it is fair, just and reasonable that the law should impose a duty of care. It does not seem to me that these considerations can sensibly be considered separately in this case: inevitably they shade into each other.
>
> Recognising that individualised justice to private individuals, or trading companies, who are aggrieved by careless decisions of CPS lawyers, militates in favour of the recognition of a duty of care, I conclude that there are compelling considerations, rooted in the welfare of the whole community, which outweigh the dictates of individualised justice. I would rule that there is no duty of care owed by the CPS to those it prosecutes."
>
> . . .
>
> I have rested my judgment on the absence of a duty of care on the part of the CPS. If my conclusion is wrong, I would for the reasons I have given in dealing with the question whether a duty of care exists rule that the CPS is immune from liability in negligence."

Rose LJ agreed and Morritt LJ agreed in a short concurring judgment.

23. Shortly after the decision in *Elguzouli-Daf* the same issue came before a differently constituted Court of Appeal (Butler-Sloss and Millett LJJ and Sir Ralph Gibson): *Kumar v Commissioner of Police of the Metropolis* (unreported) 31 January 1995. Again, the case involved

a strike out application. The thrust of the case was that in instituting and continuing a patently hopeless prosecution for rape, based only on the evidence of a woman who had made repeated false allegations of rape, the police acted in breach of a duty of care. Following *Hill* and *Elguzouli-Daf*, a unanimous Court of Appeal upheld the order of the deputy High Court judge to strike out the pleading. Giving the principal judgment Sir Ralph Gibson observed in a detailed review:

> "In my judgment, for similar reasons [to those given in *Elguzouli-Daf]*, the interests of the whole community are better served by not imposing a duty of care upon the police officers in their decisions whether or not to place sufficient reliance upon the account of a complainant to justify the making of a charge against an accused."

XII. Comparative Law

24. Counsel for Mr Brooks candidly accepted that he was arguing for a new development. In that context he pointed out that *Hill* has not been followed in Canada: *Doe v Board of Commissioners of Police for Metropolitan Toronto* (1989) 58 DLR (4th) 396; *Jane Doe v Board of Commissioners of Police for Municipality of Metropolitan Toronto* (1990) 72 DLR (4th) 580, 585; *Jane Doe v Board of Commissioners of Police for Municipality of Metropolitan Toronto* (1998) 160 DLR (4th) 697; *Odhavji Estate v Woodhouse and others* [2003] 3 SCR 263.

25. Similarly, in South Africa the Constitutional Court did not follow *Hill*: *Carmichele v Minister of Safety and Security* (2001) 12 BHRC 60; see also *Hamilton v Minister of Safety and Security* 2003 (7) BCLR 723 (C). On the other hand, the decision of the Australian High Court in *Sullivan v Moody* [2002] LRC 251 is generally speaking consistent with *Hill*: paras 57 and 60. That is so despite the fact that the three-stage approach in *Caparo* is not part of the law of Australia.

26. This *tour d'horizon* was interesting. But one must not lose sight of the fact that *Hill* has not been challenged in this appeal. In any event, ultimately the principle in *Hill* must be judged in the light of our legal policy and our bill of rights.

XIII. The Status of Hill

27. Since the decision in *Hill* there have been developments which affect the reasoning of that decision in part. In *Hill* the House relied on the barrister's immunity enunciated in *Rondel v Worsley* [1969] 1 AC 191. That immunity no longer exists: *Arthur J S Hall & Co (A Firm) v Simons* [2002] 1 AC 615. More fundamentally since the decision of the European Court of Human Rights in *Z and others v United Kingdom* 34 EHRR 97, para 100, it would be best for the principle in *Hill* to be reformulated in terms of the absence of a duty of care rather than a blanket immunity.

28. With hindsight not every observation in *Hill* can now be supported. Lord Keith of Kinkel observed that "From time to time [the police] 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": 63D. Nowadays, a more sceptical approach to the carrying out of all public functions is necessary.

29. Counsel for the Commissioner concedes that cases of assumption of responsibility under the extended *Hedley Byrne* doctrine fall outside the *Hill* principle. In such cases there is no need to embark on an enquiry whether it is "fair, just and reasonable" to impose liability for economic loss: *Williams v Natural Life Health Foods Limited* [1998] 1 WLR 830.

30. But the core principle of *Hill* has remained unchallenged in our domestic jurisprudence and in European jurisprudence for many years. If a case such as the Yorkshire Ripper case, which was before the House in *Hill,* arose for decision today I have no doubt that it would be decided in the same way. It is, of course, desirable that police officers should treat victims and witnesses properly and with respect: compare the Police Conduct Regulations 2004 (No. 645). But to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far. 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: see section 29 of the Police Act 1996, read with Schedule 4 as substituted by section 83 of the Police Reform Act 2002; section 17 of the Police (Scotland) Act 1967; *Halsbury's Laws of England,* Vol 36 (1), para 524; *The Laws of Scotland, Stair Memorial Encyclopaedia,* 1995, para 1784; *Moylan,*

Scotland Yard and the Metropolitan Police, 1929, 34. 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.

31. It is true, of course, that the application of the *Hill* principle will sometimes leave citizens, who are entitled to feel aggrieved by negligent conduct of the police, without a private law remedy for psychiatric harm. But domestic legal policy, and the Human Rights Act 1998, sometimes compel this result. In *Brown v Stott* [2003] 1 AC 681, Lord Bingham of Cornhill observed [at 703D]:

> "The Convention is concerned with rights and freedoms which are of real importance in a modern democracy governed by the rule of law. It does not, as is sometimes mistakenly thought, offer relief from 'The heart-ache and the thousand natural shocks That flesh is heir to.'"

I added [at 707E-708A]:

> "In the first real test of the Human Rights Act 1998 it is opportune to stand back and consider what the basic aims of the Convention are . . . The inspirers of the European Convention, among whom Winston Churchill played an important role, and the framers of the European Convention, ably assisted by English draftsmen, realised that from time to time the fundamental right of one individual may conflict with the human right of another … . They also realised only too well that a single-minded concentration on the pursuit of fundamental rights of individuals to the exclusion of the interests of the wider public might be subversive of the ideal of tolerant European liberal democracies. The fundamental rights of individuals are of supreme importance but those rights are

> not unlimited: we live in communities of individuals who also have rights. The direct lineage of this ancient idea is clear: the European Convention (1950) is the descendant of the Universal Declaration of Human Rights (1948) which in article 29 expressly recognised the duties of everyone to the community and the limitation on rights in order to secure and protect respect for the rights of others."

Unfortunately, when other specific torts and the Race Relations Act 1976 (as amended) are inapplicable, an aggrieved citizen may in cases such as those under consideration have to be content with pursuing a complaint under the constantly improved police complaints procedure: see Police Reform Act 2002, the Police (Conduct) Regulations 2004 and Police (Complaints and Misconduct) Regulations 2004. For all these reasons, I am satisfied that the decision in *Hill* must stand.

32. While not challenging the decision of the House of Lords in *Hill* counsel submitted that it can be distinguished. The only suggested distinction ultimately pursued was that in *Hill* the police negligence was the indirect cause of the murder of the daughter whereas in the present case the police directly caused the harm to Mr Brooks. That hardly does justice to the essential reasoning in *Hill*. In any event, *Calveley*, *Elguzouli-Daf,* and *Kumar* were cases of alleged positive and direct negligence by the police. The distinction is unmeritorious.

XIV. The Three Critical Questions

33. That brings me to the three critical alleged duties of care before the House. It is realistic and fair to pose the question whether the three surviving duties of care can arguably be said to be untouched by the core principle in *Hill*. In my view the three alleged duties are undoubtedly inextricably bound up with the police function of investigating crime which is covered by the principle in *Hill*. For example, the second duty of care is to "take reasonable steps to afford [Mr Brooks] the protection, assistance and support commonly afforded to a key eye-witness to a serious crime of violence." It is quite impossible to separate this alleged duty from the police function of investigating crime. The same is, however, true of the other two pleaded duties. If the core principle in *Hill* stands, as it must, these pleaded duties of care cannot survive.

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.

35. Making full allowance for the fact that this is a strike out application, and that the law regarding the liability of the police in tort is not set in stone, I am satisfied that the three duties of care put forward in this case are conclusively ruled out by the principle in *Hill*, as restated, and must be struck out.

XV. Disposal

36. I would allow the appeal of the Commissioner.

APPENDIX

A. FIRST DUTY – PARA 5(1) OF THE STATEMENT OF FACTS AND ISSUES

(1) **Paragraph 5(1)** of the Statement of Facts and Issues states the 'First Duty' as being to:

> "Take reasonable steps to assess whether the Respondent was a victim of crime and then to accord him reasonably appropriate protection, support, assistance and treatment if he was so assessed."

(2) References to the particulars of claim relating to the First Duty in the "Annexe to Order of Court of Appeal of 26th March 2002 – Re-Amended Particulars of Claim" are found in **Para 54(i) – page 123**:

> "Failing to assess whether the Plaintiff was a victim and to treat him as a victim thereafter. The Plaintiff repeats and relies upon the matters set out in **paragraph 51(i)** above. This failure comprised all police officers involved in witness liaison with the Plaintiff and is not limited to the sued officers;…"

(3) **Paragraph 51(i) – page 118** relates back to **paragraphs 21**, **22**, **27**, **28**, **29**, and **31**. The details of these paragraphs are set out in tabular form below:

Para. No.	Page No.	Details – First Duty
21	106-107	"The Second Defendant spoke to the Plaintiff at the scene of the attack. He told her that it had been carried out by 5-6 white male youths and indicated that they had run off in the direction of Dickinson Road. He also told her that one of the youths had called out "what what nigger" immediately before the assault on Stephen Lawrence. She did not note down this information provided by the Plaintiff or act on it or cause it to be acted on at the time. She questioned the Plaintiff as to whether the assailants were known to him and as to whether he was carrying a weapon. She asked these questions more than once and seemed reluctant to accept his answers. She did not ask him for descriptions of the assailants. She did not, or at least did not appear, to take his account seriously. She did not try to establish if the Plaintiff had been attacked himself. She did not offer him any support or check to see whether he was all right. She did not appear to appreciate that he was in a distraught and frightened condition as a result of the attack and the condition of his friend lying on the pavement, nor that he was frustrated by the apparent delay in the arrival of the ambulance that had been called."
22	107-108	"The other sued officers at the scene of the attack during this period did not act to remedy any of the deficiencies in the Second Defendant's handling of the Plaintiff described in the previous paragraph."
27	109-110	"At Plumstead Police Station the Plaintiff made a full statement to the investigating officers, which took between approximately 1.30 – 5.30am. Apart from one inquiry made by DC Cooper (the officer taking the statement) none of the officers present made inquiries about the Plaintiff's welfare or as to whether he would prefer to give a statement at home. The officers that spoke to him expressed scepticism about various aspects of his account, in particular that the attack was wholly unprovoked and that the phrase "what what nigger" had been used. None of the officers asked if the white youths had attacked or touched him."

Para. No.	Page No.	Details – First Duty
28	110	"During the course of this period at the Police Station the Plaintiff was spoken to by the Fourteenth Defendant on more than one occasion. He was one of the officers who behaved in the manner referred to in the previous paragraph."
29	110	"In the meantime the Sixth Defendant had initiated various lines of inquiry at the scene such as asking persons in a local public house (located in the opposite direction from which the attackers had fled the scene) whether they had seen anything of significance. He did not first ascertain from the Plaintiff directly or indirectly an account/details of the attack. He assumed that Stephen Lawrence had been injured as a result of a fight and that the Plaintiff was a potential suspect. Further, he failed to treat the attack as a racial assault."
31	111	"At no stage was the Plaintiff treated by the three officers referred to in the previous paragraph [Eleventh, Twelfth and Thirteenth Defendants], or by any other police officer as a victim of the attack. He was not offered counselling or other forms of support, he was not given any information about the Victim Support Scheme, nor was any effective arrangement made for representatives of that Scheme to make contact with him. He was not given any leaflets or other information about victim's rights and was not advised of the possibility of a Criminal Injuries Compensation Authority claim."

B. SECOND DUTY – PARA 5(2) OF THE STATEMENT OF FACTS AND ISSUES

(1) **Paragraph 5(2)** of the Statement of Facts and Issues states the 'Second Duty' as being to:

> "take reasonable steps to afford the Respondent the protection, assistance and support commonly afforded to a key eye-witness to a serious crime of violence."

(2) References to the particulars of claim relating to the Second Duty in the "Annexe to Order of Court of Appeal of 26th March 2002 – Re-Amended Particulars of Claim" are found in **Para 54(ii) – pages 123 - 124**:

> "failing to take reasonable steps to afford him the protection, support and assistance appropriate to a person in the Plaintiff's position as the key eye-witness to a very serious crime of violence. The Plaintiff repeats and relies upon the matters set out in **paragraph 51(iii)** above. This failure comprised all police officers involved in witness liaison with the Plaintiff and is not limited to the sued officers. In addition it specifically comprises the incident involving DS Coles referred to in **paragraph 46** above;…"

(3) **Paragraph 51(iii) – pages 119 - 120** relates back to **paragraphs 21**, **22**, **25**, **26**, **27**, **28**, **31**, **33**, **44**, **45**, and **46**. The details of these paragraphs are set out in tabular form below:

Para. No.	Page No.	Details – Second Duty
21	106-107	"The Second Defendant spoke to the Plaintiff at the scene of the attack. He told her that it had been carried out by 5-6 white male youths and indicated that they had run off in the direction of Dickinson Road. He also told her that one of the youths had called out "what what nigger" immediately before the assault on Stephen Lawrence. She did not note down this information provided by the Plaintiff or act on it or cause it to be acted on at the time. She questioned the Plaintiff as to whether the assailants were known to him and as to whether he was carrying a weapon. She asked these questions more than once and seemed reluctant to accept his answers. She did not ask him for descriptions of the assailants. She did not, or at least did not appear, to take his account seriously. She did not try to establish if the Plaintiff had been attacked himself. She did not offer him any support or check to see whether he was all right. She did not appear to appreciate that he was in a distraught and frightened condition as a result of the attack and the condition of his friend lying on the pavement, nor that he was frustrated by the apparent delay in the arrival of the ambulance that had been called."
22	107-108	"The other sued officers at the scene of the attack during this period did not act to remedy any of the deficiencies in the Second Defendant's handling of the Plaintiff described in the previous paragraph."
25	108	"Whilst he was at the hospital none of the police officers present – which included the Third, Fourth and Fifth Defendants – took steps to check on the Plaintiff's welfare, to offer him comfort and support or to arrange for the same to be given."
26	108-109	"The Plaintiff was told by the Fifth Defendant that he had to go to the police station to make a statement. He was not given the option of going home and a statement being taken at his house or at another venue or at some later time at the police station. The Fifth Defendant told the Plaintiff that he could either wait in the hospital or in his car until he was ready to drive to the police station. The Plaintiff chose the latter as he found being in the hospital very distressing. He felt that he had no option to simply leave the scene and go home and felt that he would have been arrested, had he done so. He waited in the car for what felt like up to 30 minutes before the Fifth Defendant came and drove the vehicle to the police station (although he accepts that it may actually have been somewhat less)."
27	109-110	"At Plumstead Police Station the Plaintiff made a full statement to the investigating officers, which took between approximately 1.30 – 5.30am. Apart from one inquiry made by DC Cooper (the officer taking the statement) none of the officers present made inquiries about the Plaintiff's welfare or as to whether he would prefer to give a statement at home. The officers that spoke to him expressed scepticism about various aspects of his account, in particular that the attack was wholly unprovoked and that the phrase "what what nigger" had been used. None of the officers asked if the white youths had attacked or touched him."

Para. No.	Page No.	Details – Second Duty
28	110	"During the course of this period at the Police Station the Plaintiff was spoken to by the Fourteenth Defendant on more than one occasion. He was one of the officers who behaved in the manner referred to in the previous paragraph."
31	111	"At no stage was the Plaintiff treated by the three officers referred to in the previous paragraph [Eleventh, Twelfth and Thirteenth Defendants], or by any other police officer as a victim of the attack. He was not offered counselling or other forms of support, he was not given any information about the Victim Support Scheme, nor was any effective arrangement made for representatives of that Scheme to make contact with him. He was not given any leaflets or other information about victim's rights and was not advised of the possibility of a Criminal Injuries Compensation Authority claim."
33	111 - 112	"As regards the three officers referred to in paragraph 31 above, the attitude shown towards the Plaintiff by the Thirteenth Defendant was particularly unsupportive. Further he breached the Plaintiff's trust in revealing to other officers for the purposes of an arrest of the Plaintiff (referred to in greater detail below) an address of the Plaintiff's then girlfriend that he had given him in confidence."
44	115	"The Plaintiff learnt of the discontinuance of the prosecution brought by the Crown Prosecution Service through reading about it in the media. This was the starkest example of a general difficulty that he faced that the police did not keep him informed of the state of their investigations/the prosecution."
45	115	"Whilst the attackers remained at large the Plaintiff was frightened for his own safety, not least because he lived in the same locality. He did express fears to the Twelfth Defendant on occasions. However, the Plaintiff was never provided with police protection or other means of practical or physical support to allay those fears, save that he was provided with a police escort during the trial at the Central Criminal Court."
46	115	"To his horror the Plaintiff later learnt that the officer who escorted him on the night of 22 April 1996 was one DS Coles, a known associate of Clifford Norris who is a notorious criminal and father of one of the suspects, David Norris."

C. THIRD DUTY – PARA 5(3) OF THE STATEMENT OF FACTS AND ISSUES

(1) **Paragraph 5(3)** of the Statement of Facts and Issues states the 'Third Duty' as being to:

> "afford reasonable weight to the account that the Respondent gave and to act upon it accordingly."

(2) References to the particulars of claim relating to the Third Duty in the "Annexe to Order of Court of Appeal of 26th March 2002 – Re-Amended Particulars of Claim" are found in **Para 54(iii) – page 124**:

"failing to accord reasonable weight to the account given by the Plaintiff and to act on it accordingly. The Plaintiff repeats and relies upon the matters set out in **paragraph 51(ii)** above;…"

(3) **Paragraph 51(ii) – page 119** relates back to **paragraphs 21**, **22**, **24**, **27**, **28**, **29**, **31** and **33**. The details of these paragraphs are set out in tabular form below:

Para. No.	Page No.	Details – Third Duty
21	106-107	"The Second Defendant spoke to the Plaintiff at the scene of the attack. He told her that it had been carried out by 5-6 white male youths and indicated that they had run off in the direction of Dickinson Road. He also told her that one of the youths had called out "what what nigger" immediately before the assault on Stephen Lawrence. She did not note down this information provided by the Plaintiff or act on it or cause it to be acted on at the time. She questioned the Plaintiff as to whether the assailants were known to him and as to whether he was carrying a weapon. She asked these questions more than once and seemed reluctant to accept his answers. She did not ask him for descriptions of the assailants. She did not, or at least did not appear, to take his account seriously. She did not try to establish if the Plaintiff had been attacked himself. She did not offer him any support or check to see whether he was all right. She did not appear to appreciate that he was in a distraught and frightened condition as a result of the attack and the condition of his friend lying on the pavement, nor that he was frustrated by the apparent delay in the arrival of the ambulance that had been called."
22	107-108	"The other sued officers at the scene of the attack during this period did not act to remedy any of the deficiencies in the Second Defendant's handling of the Plaintiff described in the previous paragraph."
24	108	"Whilst at the hospital, from around 23.30 hours to about midnight the Plaintiff was spoken to by the Fourth Defendant who took a statement from him about the attack which included a description of the principal attacker, including his hair colour. The Fourth Defendant subsequently failed to transmit this information to officers responsible for investigating the murder."
27	109-110	"At Plumstead Police Station the Plaintiff made a full statement to the investigating officers, which took between approximately 1.30 – 5.30am. Apart from one inquiry made by DC Cooper (the officer taking the statement) none of the officers present made inquiries about the Plaintiff's welfare or as to whether he would prefer to give a statement at home. The officers that spoke to him expressed scepticism about various aspects of his account, in particular that the attack was wholly unprovoked and that the phrase "what what nigger" had been used. None of the officers asked if the white youths had attacked or touched him."
28	110	"During the course of this period at the Police Station the Plaintiff was spoken to by the Fourteenth Defendant on more than one occasion. He was one of the officers who behaved in the manner referred to in the previous paragraph."

Para. No.	Page No.	Details – Third Duty
29	110	"In the meantime [whilst at Plumstead Police Station] the Sixth Defendant had initiated various lines of inquiry at the scene such as asking persons in a local public house (located in the opposite direction from which the attackers had fled the scene) whether they had seen anything of significance. He did not first ascertain from the Plaintiff directly or indirectly an account/details of the attack. He assumed that Stephen Lawrence had been injured as a result of a fight and that the Plaintiff was a potential suspect. Further, he failed to treat the attack as a racial assault."
31	111	"At no stage was the Plaintiff treated by the three officers referred to in the previous paragraph [Eleventh, Twelfth and Thirteenth Defendants], or by any other police officer as a victim of the attack. He was not offered counselling or other forms of support, he was not given any information about the Victim Support Scheme, nor was any effective arrangement made for representatives of that Scheme to make contact with him. He was not given any leaflets or other information about victim's rights and was not advised of the possibility of a Criminal Injuries Compensation Authority claim."
33	111 - 112	"As regards the three officers referred to in paragraph 31 above, the attitude shown towards the Plaintiff by the Thirteenth Defendant was particularly unsupportive. Further he breached the Plaintiff's trust in revealing to other officers for the purposes of an arrest of the Plaintiff (referred to in greater detail below) an address of the Plaintiff's then girlfriend that he had given him in confidence."

N.B.
References to the particulars of claim relating potentially to both the First and Second Duties in the "Annexe to Order of Court of Appeal of 26th March 2002 – Re-Amended Particulars of Claim" are also found in **Para 54(iv) – page 124**:

> "failing to treat the Plaintiff with reasonable courtesy and respect in his capacities as either a witness or a victim. The Plaintiff repeats and relies upon the matters set out in **paragraph 51 (iv) and (v)** above; …"

Paragraph 51(iv) on page 120 does not refer back to any other paragraphs but states:

> "inaccurately and unfairly portraying the Plaintiff as an aggressive and uncooperative young black man and/or one who was out of control at the scene of the attack and/or at the hospital afterwards. The Plaintiff alleges this breach against the Second, Third, Fourth, Seventh and Eight Defendants. A white person in his position would not have been so treated;"

Paragraph 51(v) on pages 120-121 refers back to **paragraph 29**, which states:

Para. No.	Page No.	Details
29	110	"In the meantime the Sixth Defendant had initiated various lines of inquiry at the scene such as asking persons in a local public house (located in the opposite direction from which the attackers had fled the scene) whether they had seen anything of significance. He did not first ascertain from the Plaintiff directly or indirectly an account/details of the attack. He assumed that Stephen Lawrence had been injured as a result of a fight and that the Plaintiff was a potential suspect. Further, he failed to treat the attack as a racial assault."

LORD RODGER OF EARLSFERRY

My Lords,

37. I have had the advantage of reading the speech of my noble and learned friend, Lord Steyn, in draft. I agree with it and, accordingly, I too would allow the appeal. I add only one short observation.

38. The decisions in *Elguzouli-Daf v Commissioner of Police* [1995] QB 335 and *Kumar v Commissioner for the Police of the Metropolis* 31 January 1995, unreported, show, correctly in my view, that the Crown Prosecution Service and the police owe no duty of care to a defendant against whom they institute and maintain proceedings. The reasons are general, but none the less persuasive. The fact that no such legal duty of care exists does not mean, however, that a prosecutor or police officer should be anything other than scrupulous in considering the strengths and weaknesses of the case against the defendant. On the contrary, at every stage they will be conscious that, if their decision is wrong, the defendant will be exposed to the risk of suffering substantial harm. In that very real sense, the defendant's interests are always before them. Prosecutors and police officers are therefore under an ethical and professional duty to act with due care. Nevertheless, this duty does not translate into a legal duty of care to the defendant. A fortiori, for the reasons given by Lord Steyn, police officers investigating crime do not owe witnesses the supposed legal duties of care alleged by the respondent. But, as a matter of professional ethics, officers can be expected to treat witnesses with appropriate courtesy and consideration, and may be open to disciplinary proceedings if they do not.

LORD BROWN OF EATON-UNDER-HEYWOOD

My Lords,

39. I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Steyn. I agree with it and for the reasons he gives I too would allow the Commissioner's appeal.