

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL CIVIL DIVISION
[2025] EWCA CIV 1230

Carr LCJ, Sharp P and Coulson LJ

B E T W E E N:-

XGY

Appellant

-and-

THE CHIEF CONSTABLE OF SUSSEX POLICE

First Respondent

THE CROWN PROSECUTION SERVICE

Second Respondent

THE GENERAL COUNCIL OF THE BAR OF ENGLAND AND WALES

Intervener

INTERVENER'S WRITTEN CASE

A. INTRODUCTION

1. This appeal concerning advocates' immunity raises questions of fundamental importance, not only to advocates, but to the administration of justice more generally.
2. The written case for the General Council of the Bar of England and Wales ("the Bar Council") argues first, that advocates' immunity rests on a public interest rationale which it shares with other functional immunities recognised by

English law: it exists not to protect the individual advocate, but to protect the function that advocates perform in the effective operation of the courts and the administration of justice. Secondly, that the public interest rationale remains as cogent in 2026 as it was in 1585.¹ The modern data protection and Generative AI landscape makes the need for the immunity more pressing, not less. Third, that the reasoning by which XGY's appeal would have to succeed cannot be confined to advocates alone, and would weaken the protection which parallel immunities offer to constitutionally critical institutions such as the judiciary and witnesses.

B. THE PUBLIC INTEREST JUSTIFICATIONS FOR THE EXISTENCE OF THE IMMUNITY

3. The question of whether defendants should be permitted immunity from suit involves an examination of whether the benefits to the public interest of the existence of the immunity outweigh the clear and axiomatic principle that a claimant who has suffered a wrong should be able to seek redress by way of vindication and damages in a court of law.²
4. The justifications advanced for immunity from suit in the authorities from Cutler v Dixon (1585) 4 Co. Rep. 14b, 76 ER 886 ("Cutler") to El Haddad v Al Rostamani [2024] EWHC 448 ("El Haddad"), have been various, and have, inevitably, been influenced to an extent in any one case by the nature of the claim, including the identity of the defendant (whether they be a witness of fact, an expert witness, a barrister, a solicitor), the cause of action (whether that be defamation, breach of confidence, negligence etc.), and the specific words or

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¹ Cutler v Dixon (1585) 4 Co. Rep. 14b

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² As acknowledged by Lord Browne-Wilkinson in Arthur J S Hall & Co v Simons [2002] 1 A.C. 615 at 684C. See also Hope of Craighead at 723G.

HB/1092

actions or omissions which are said to ground the cause of action (for example testimony in court whether oral or written, statements made by one investigator to another, actions taken during the preparation of a trial, advice as to other potential parties and settlement).

5. Thus the reasons which have been proposed, and in a number of cases accepted, as supporting the existence of an immunity from suit on the part of the defendant are:

- a. *Re judges, jurors, witnesses and advocates*: It is in the public interest that people can have their claims tried before the civil courts and that those accused of crimes stand trial, and that in order to protect and support that public interest those who take part in a trial should be free from the risk of litigation in discharging those functions. These participants must be able to perform their functions freely rather than their speech and/or actions being influenced by the fear of subsequent civil liability (see: *Cutler; R v Skinner* (1772) Lofft 54, 98 ER 529 (“*Skinner*”); *Munster v Lamb* (1883) 11 QBD 588 (“*Munster*”) at 594, *Darker v Chief Constable of West Midlands Police* [2001] 1 A.C. 435 (“*Darker*”) at 445H, *Taylor v Director of the Serious Fraud Office* [1999] 2 A.C. 177 (“*Taylor*”) at 214E; *A&B v Chief Constable of Hampshire Constabulary* [2012] EWHC (QB) 1517 (“*A&B*”) at [33]).

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- b. *Re witnesses*: Witnesses should be protected from actions arising out of statements made in the course of court proceedings because the administration of justice depends upon witnesses being willing to come forward and provide their truthful evidence in court (see: *Taylor* at 214E-F).

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- c. *Re barristers*: Advocates owe an overriding duty to the court and the administration of justice, which may conflict with their clients' wishes and if advocates could be sued they might prefer their clients' interests over their duties to the court; moreover the threat of claims might encourage defensive advocacy, such as calling unnecessary witnesses or raising every conceivable point, thereby prolonging trials (see Munster 594-595, Rondel v Worsley [1969] 1 A.C. 191 ("Rondel") at 228G-229A (Lord Reid), 251C-F (Lord Morris), 282A-283E (Lord Upjohn); Saif Ali v Sydney Mitchell & Co. [1978] UKHL 6, [1980] A.C. 198 ("Saif Ali") at 235D (Lord Keith, dissenting), at 233D (Lord Russell, dissenting); Arthur J S Hall & Co v Simons [2002] 1 A.C. 615 ("Hall") at 692D-693E (Lord Hoffmann). HB/2395; 2782; HB/2805; 2836 HB/2922; HB/2920 HB/1136-1137
- d. *Re barristers*: It is in the public interest that claims are not re-litigated and the court's final order not subsequently undermined or subject to collateral challenge. A negligence action against an advocate could require the original proceedings to be examined or re-tried to determine whether the advocate's negligence caused the outcome (the loss). This could undermine the finality of judgments and operate as a collateral challenge, a concern which was particularly acute in criminal cases where this might undermine a conviction, especially given that a different standard of proof would apply to the negligence action (Rondel at 230B-D (Lord Reid), 249B-250B (Lord Morris), Saif Ali at 222F-223D (Lord Diplock), Hall at 741E-F (Lord Hobhouse). HB/2784; 2803-2804; HB/2909-2910 HB/1185

C. THE PLACE OF HALL AND JONES v KANEY [2011] 2 AC 398

6. Whether or not the above reasons have been accepted by the court as sufficient to justify the immunity from suit has been influenced by the features of the

wider legal and social context which judges have considered relevant to a consideration of the public interest (see Saif Ali at 218C-219E (Lord Diplock), 229E (Lord Salmon); Hall at 682F (Lord Steyn); Jones at [112] (Lord Dyson)). Thus, the wasted costs jurisdiction, strike out/summary judgment, the position of other professionals, changes in the insurance market, developments in the law of negligence, perceived expectations of consumers have all been considered at various points as being factors which may support or undermine the public policy justification(s) for the immunity.

HB/2905; 2916

HB/1126; 2059

7. In Rondel the plaintiff, who had been convicted of causing Grievous Bodily Harm, sued his barrister alleging that the conduct of his defence had been negligent. When the case came to the House of Lords, the House held that barristers were immune from being sued in negligence by a client in respect of the conduct and management of a case in court. The public policy justifications which the House gave were that the administration of justice required that barristers be able to carry out their duties to the court fearlessly and independently; that claims in negligence against barristers would necessitate elements of the original action being relitigated which threatened the finality of judgments and opened up the prospect of collateral challenges; and, that as barristers operated under a 'cab rank' rule, they would be vulnerable to vexatious claims brought by clients whom they had been obliged to accept, which sat in tension with a duty of care.

HB/2745

8. Between 1967 and 2000 a number of cases tested the precise scope of the immunity which had been accepted in Rondel, with negligence claims being brought for various actions/omissions in the conduct of litigation often pre-trial, but also in relation to settlements where a distinction came to be drawn

between settlements that were negotiated before the hearing started, and those which occurred mid-trial.³

9. In Hall, in which the beneficiaries of the immunity were assumed to be barristers,⁴ the House of Lords unanimously held that the public policy reasons advanced by the appellants to justify their immunity from own client negligence claims in respect of their conduct of litigation, some of which had been accepted in Rondel, were not persuasive and concluded that advocates do not enjoy immunity from suit in claims of negligence brought by their own clients in civil cases; and, by a majority of four to three, that advocates do not have immunity from suit in negligence claims arising from criminal cases. The House of Lords did not explicitly overrule Rondel by citing the 1966 Practice Statement⁵ but held that it no longer reflected public policy — an acknowledgement of the centrality to the existence of the immunity of public policy justifications.

HB/1059

10. Jones was a case in which the beneficiary of the immunity was a witness, but an expert witness and thus a professional who had been retained by the claimant. By a majority the House concluded that there was no justification for continuing to hold expert witnesses immune from own client suit for breach of duty in relation to the evidence which they gave in court or for their opinions given in contemplation of court proceedings.

HB/2025

11. In both Hall and Jones, the existence of a duty of care as between advocate/expert witness and client was a significant factor in the court's conclusion that neither professional should be exempt from liability to their

³ See for e.g. Atwell v Perry [1998] 4 All E.R. 65, Kelley v Corston [1998] Q.B. 686 outlined respectively by Lord Bingham LCJ in Hall (CA) at 637B-638D.

⁴ In fact the four appellants, who each were defendants to the original claims, were solicitors but the House of Lords decided that it would analyse the immunity as it applied to barristers.

⁵ [1966] 1 WLR 1234; see also Lord Burrows' Lord Toulson Memorial Lecture 2024 at footnote 5.

HB/1081

clients for negligent performance of their duties.⁶ Focusing on breach rather than duty, Lord Hobhouse in Hall at 737G-H and Lord Phillips in Jones at 421A each expressed the view that provided the advocate/expert observed their duty to the court, this was unlikely to amount to a breach of duty and they noted that the standard by which this would be judged would be one which took into account the pressures of conducting litigation.

HB/1181;
2048

12. These two cases are therefore to be understood as allowing for an exception to the immunity from suit based on the particular features of a claim for professional negligence brought by a client.⁷ They do not undermine the key justification for the immunity outside the context of professional negligence, namely the necessity of promoting and protecting freedom of speech within court proceedings. Nor do these judgments touch or diminish the ancillary justification for extending the immunity to actions and statements out of court in order that the immunity is not “outflanked”.

13. This was the conclusion reached by Cockerill J (as she then was) in King v Stiefel [2021] EWHC 1045 (QB) (“King”). She addressed the argument made on behalf of the claimants that “*the advocate’s immunity from suit has been substantially done away with following [Hall], remaining only arguably in place as regards defamation or conspiracy to defame*”⁸ stating “*the best way to deal with this point is to trace through the authorities in chronological order, placing [Hall] in its context.*”⁹ Having undertaken that analysis¹⁰ she concluded that “*while the cases do deal specifically with different situations (witness immunity, judicial immunity and so on) the fundamental point being made is that aside from the specific carve outs made by [Hall]*

HB/2084

⁶ At 698F (Lord Hoffmann).

⁷ As submitted in the First Respondent’s written case at [52]-[56];

⁸ King at [320]

⁹ King at [321].

¹⁰ King at [322]-[333] starting with Marrinan.

HB/1142

HB/85-86

HB/2146

HB/2146

HB/2146

and [Jones] the immunity remains".¹¹ The Bar Council submits that Cockerill J's analysis and conclusion are correct.¹²

D. COMPARISON WITH OTHER IMMUNITIES

14. The immunities recognised as being necessary to protect other categories of person from liability for acts they perform in their official capacity are underpinned by similar public interest rationales. At root, all share a common theme, namely that immunity from suit is necessary to enable them to carry out their duties, the immunity being not for their personal benefit but for the benefit of the public at large whom they serve.

Judges

15. The central justification for judicial immunity was articulated in Sirros v Moore [1975] Q.B. 118, a false imprisonment claim, as being so that judges can perform their judicial function with complete independence "*so they may be free in thought and independent in judgment*"¹³ which, Buckley LJ noted, quoting De Grey CJ in Miller v Seare (1772) 2 Wm.Bl. 1141 is "*...not so much for the sake of the judges, as of the suitors themselves*".¹⁴ X v Transcription Agency LLP [2023] EWHC 1092 (KB) ("X v Transcription Agency") was a Data Protection Act 2018 ("DPA 2018") claim concerning the exemptions under sub-paragraphs 14(2) and 14(3) of Schedule 2 to the DPA 2018 for data which was processed by a person or body acting "in a judicial capacity" or where application of the UK GDPR would be "likely to prejudice judicial independence." Mrs Justice Farbey quoted with approval similar statements from 19th century authorities which

HB/3007

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HB/4492

¹¹ King at [333]

¹² See also the cases listed at [20] of the CPS Second Respondent's written case.

¹³ Sirros, per Lord Denning MR at 136C.

¹⁴ Sirros, at 139A.

HB/2149

HB/121

HB/3025

HB/3028

noted that judicial immunity, as a bulwark of independence, is necessary for the administration of justice and exists for the benefit of the public.¹⁵

16. The rationale is thus the same as that which underpins the immunity of jurors, witnesses and advocates in court proceedings: the protection exists not for the personal benefit of the judge, but so that the judicial function — like the advocate’s function — can be discharged without the influence of potential civil liability.

Parliamentary Privilege

17. Parliamentary privilege arising from Article 9 of the Bill of Rights provides that the freedom of speech and proceedings in Parliament ought not to be impeached or questioned in any court.¹⁶ This form of immunity from suit has as its rationale the public interest in its members enjoying freedom of speech and debate in the Houses of Parliament and in parliamentary committees without fear of litigation in order to protect and promote the legislature’s democratic process.¹⁷

18. R v Chaytor [2010] UKSC 52 was a case which considered whether defendant MPs prosecuted for allegedly making dishonest expenses claims could benefit from immunity on grounds of Parliamentary Privilege. Lord Phillips observed that when considering whether actions outside the Houses and Committees benefit from the immunity because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy immunity, this is likely to impact adversely on the core or essential

¹⁵ X v Transcription Agency at [69] and [76].

¹⁶ Note that in addition to the privilege conferred by Article 9 of the Bill of Rights, Parliament also enjoys a wider, but overlapping, privilege of exclusive cognisance: see R v Chaytor [2010] UKSC 52 at [13] per Lord Phillips; R (on the application of Rupert Lowe MP) v Independent Complaints and Grievance Scheme [2026] EWHC 1163 (Admin) at [32]-[33] per Chamberlain J.

¹⁷ See Chaytor at [28], [31] per Lord Phillips.

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business of Parliament. He concluded that that scrutiny of Members' expenses claims by the court *"will have no adverse impact on the core or essential business of Parliament, it will not inhibit debate or freedom of speech. Indeed it will not inhibit any of the varied activities in which Members of Parliament indulge that bear in one way or another on their parliamentary duties. The only thing that it will inhibit is the making of dishonest claims."*¹⁸

19. Lord Phillips' reasoning in Chaytor thus establishes a functional test: an immunity attaching to a class of person will extend to an act only where the connection between that act and the core protected activity is sufficiently close that withholding immunity would be liable to inhibit the proper discharge of that activity. In Chaytor the core business of Parliament — parliamentary debate and scrutiny — could proceed, unaffected by whether prosecution for expenses claims attracted immunity. By contrast, the communication of information within court proceedings is not incidental to, but constitutive of, the core function of the administration of justice. As with judicial immunity the key concept is function rather than status: the immunity attaches to particular actions because of what it is necessary to protect, not because of who performs it.

20. The comparator immunities confirm that where immunity from suit is recognised in domestic law, its rationale is that it protects a constitutionally significant public function and its scope is defined by reference to what is necessary to protect that function, rather than by reference to the individual who benefits from it. Judicial immunity protects the independence of the decision-making function; parliamentary privilege protects the freedom of debate that underpins the democratic process, and the advocate's immunity

¹⁸ Chaytor at [48].

from suit likewise protects the advocate's contribution to the administration of justice.

E. THE PUBLIC INTEREST JUSTIFICATIONS REMAIN NECESSARY

21. XGY brings claims for breach of Articles 2, 3 and 8 of Schedule 1 to the Human Rights Act 1998 ("HRA 1998"), breach of Part 3 of the DPA 2018¹⁹, misuse of private information and breach of confidence. It is the communication of XGY's address in open court in the context of a hearing which has resulted in the claims. In respect of the claim against the Second Respondent, the claim is based upon the advocate telling the court XGY's address in order to ensure that DYP's bail conditions included a condition excluding him from the area in which she lived. As regards the First Respondent, the claim is based upon the preparation of the court file for the bail hearing in which her address was not clearly marked as not to be disclosed.

HB/804

22. The Bar Council acknowledges the devastating impact of the disclosure on the Appellant but observes that, as described in Dr Anton van Dellen's witness statement at [30(a)], any judicial process setting bail conditions that are proportionate and effective requires difficult decisions to be made at short notice by the participants on the information that may require to be disclosed.

HB/4291

23. The most important, longstanding and fundamental of the justifications for the existence of an immunity for witnesses, advocates and other participants in the judicial process is that it encourages full disclosure and freedom of speech, without which, as the Court of Appeal accepted,²⁰ the administration of justice, and by extension, the rule of law, will be significantly undermined.

¹⁹ Processing of data inconsistent with the first, second, third and sixth data protection principles.

²⁰ *The Chief Constable of Sussex Police and anor v XGY* [2025] EWCA 1230 ("CA Judgement") at [30(i)].

HB/152

24. For advocates it remains important that their duties to their client, the court and their professional obligations are protected from external intervention or pressure liable to jeopardise their independent judgement and to influence their decisions and conduct.
25. Their immunity from civil liability is conferred by the common law, not as a perquisite for their private advantage, but for the protection of the administration of criminal justice and in service of the overriding objective served by civil justice.
26. It is submitted that the public policy reasons underpinning this justification for the immunity from suit from actions based on information communicated (orally or in writing) in the course of court proceedings (whether by way of disclosure of information, evidence, questions to witness, answers to questions from the bench or submissions) remain cogent and are plainly relevant to the claims brought by XGY.
27. XGY submits at [111] of her written case that there are comparable challenges in data handling faced by many professions which are not afforded immunity. But, without diminishing those challenges, the Bar Council submits that the comparison is misplaced. The difficulties faced by other professions did not arise in comparable circumstances or with the same consequences. Nor is the handling of data by other professionals integral to the administration of justice to the same degree. Self-employed barristers, unlike social workers, doctors and police officers, are independent data controllers. At the same time, they are almost wholly dependent on data provided by others in order to discharge their forensic function: they must receive, assess and deploy information from many sources, often at short notice, and whilst operating in a public forum,

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under a duty of candour and with overriding duties to the court in the administration of justice. The advocate is not simply handling data as an ancillary part of a professional service: the handling of the data is intrinsic to the advocate's role in assisting the court to determine the issues before it and therefore the particular data-handling challenges faced by advocates must be understood in the context of their distinctive function within the administration of civil and criminal justice.

28. Moreover, as set out in Dr Van Dellen's witness statement,²¹ there are a number of features of the 21st century's legal landscape which underline the necessity of the immunity where the justification for the immunity lies principally in the importance of promoting free communication in the course of court proceedings, and any extension outside court necessary to protect that free communication:

- a. The digitisation of data and the ease of transmission have resulted in a proliferation of sensitive information relating not just to the parties to litigation, but also third parties, quantities of which are routinely provided to advocates during the course of litigation. As noted in Dr Van Dellen's witness statement, this is particularly acute so far as advocates in certain sensitive data-rich practice areas are concerned.²²
- b. The observable increase in complaints and claims against barristers and other participants in the administration of justice²³ suggest that (unless the standard of barristers' work is dropping) the willingness and ability of the public to complain has expanded. It is reasonable to assume that

²¹ See [20]-[29] of Dr Van Dellen's witness statement.

²² See [30]-[32] re criminal practitioners; [42] re family practitioners; [56]-[58] re personal injury practitioners; [59]-[61] re housing law practitioners; [62] re immigration practitioners.

²³ See [23] of Dr Van Dellen's witness statement.

this trend will only be accelerated by the availability of Generative AI tools (“public Gen AI tools”) and agentic AI.

- c. Concomitant with the rise, since Hall, of digital data, is an expansion of statutory data rights alongside the growth of the common law privacy torts, and an extension of the areas covered by a reasonable expectation of privacy. Unlike a claim for professional negligence, disclosure without consent and/or inadvertently can, without more, give rise to a cause of action for a range of statutory, human rights and common law claims; furthermore, unlike a claim for professional negligence, the class of potential claimants is wide and the questions involved in establishing liability are not normally susceptible to summary disposal.

HB/1059

29. Thus the conditions in which practitioners in the civil and criminal courts work are more complex than those which obtained in 2000.²⁴ Furthermore, the threshold for a viable cause of action for data breach-based claims is low as compared with negligence; the class of potential claimants is wide as claims may also be made by persons who are not participants in the court’s processes and who have no relationship with the participants against whom the claim may be made; the general awareness amongst members of the public of their data rights post-GDPR is high; and public Gen AI tools have made it the possible to for members of the public to draft a legal claim in minutes.

30. All these factors combine to make the risk of litigation against advocates (and others involved in the administration of justice) real rather than alarmist. As set out at [76(a)-(c)] of Dr Van Dellen’s witness statement, there would be a real risk to the administration of justice if advocates (and other participants) were

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²⁴ When Hall was decided.

to feel constrained as to the information which they shared in court proceedings because of a concern that their sharing of information may result in civil liability.

31. XGY has attempted to draw a distinction between ‘evidence’ and other forms of information exchanged in court and in preparation for court accepting that the rationale for the immunity as it applies to evidence, but denying that the same rationale obtains so far as other forms of information are concerned.²⁵ This is misconceived: whilst it is plainly critical that witnesses should speak freely because they provide evidence upon which the judge or jury will make findings, that does not diminish the importance of protecting other forms of communication within court. And, as recognised by the Court of Appeal, when quoting the first witness statement of Dr Van Dellen, that distinction is not one that is easy to draw in practice.²⁶ Moreover, control over the provision of information and data to the courts should rest with the courts and not in rights of third parties to bring claims over the conduct of the court hearing.

32. In Hall the House considered that the then recent reforms to civil procedure introduced by the Civil Procedure Rules 1998 (“CPR”) such as summary judgment pursuant to CPR. r.24.2 and the difficulty in obtaining legal representation for professional negligence cases would provide sufficient protection for advocates from vexatious or disruptive litigation.²⁷ The argument based on the availability of strike-out or summary judgment was necessarily largely speculative because the CPR had only been in force for just over a year; in any event, data breach claims, which typically require a fact-specific and context-dependant enquiry before they can be determined, are ill-

²⁵ See [23] of XGY’s written case.

²⁶ See CA Judgement at [80] and at [60]-[61] and the extracts from Dr Van Dellen’s first witness statement quoted at [61].

²⁷ Hall at 691-692 (Lord Hoffmann); at 682 (Lord Steyn).

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suited to summary disposal, and withdrawal of the advocate and/or detriment to the parties will normally have already occurred before any judicial determination of the claim has occurred. These claims are also more likely to emerge during the currency of litigation given the increased accessibility of material under the open justice principle.

33. The withdrawal of an advocate occasioned by the threat of litigation is an inevitable and acceptable consequence of the absence of immunity in relation to own client claims. It would be highly damaging, however, if withdrawal were liable to be prompted by opposing party or third party claims. There is obvious scope for tactical claims designed to prompt withdrawal in the face of third party or opposing party complaints if immunity is not an answer to the threatened claim.

34. In addition to the risks to the administration of justice in individual cases, a lack of immunity for data breach claims for advocates will, self-evidently, it is submitted, serve to increase pressure on the publicly funded bar both because of the personal and financial costs associated with such litigation, even despite indemnity insurance.²⁸ This may well result in practitioners moving out of these areas already under significant pressure resulting in damage to legal services in practice areas, which, as set out in Dr Van Dellen's witness statement, are critical for access to justice.

F. POTENTIAL IMPACT ON JUDICIAL PROCEEDINGS IF THIS APPEAL SUCCEEDS

35. If this claim succeeds, it is likely to lead to advocates asking the court to determine difficult issues of disclosure so as to engage the protection of data

²⁸ See Dr Van Dellen's witness statement at [68]-[69].

being dealt with by the courts “acting in their judicial capacity,” see Art 9.1(f) UK GDPR and the DPA 2018.

HB/4355

36. The removal of the immunity sought by the Appellant may also have consequences beyond those contemplated for advocates. If the Supreme Court holds that the determination of statutory and common law claims for the mishandling of data outweighs the public interest in the freedom of communication within court proceedings — this determination is, unlike own-client negligence claims, not one that can logically be restricted to advocates alone.²⁹ Judges routinely request, receive, discuss and rule upon sensitive personal data in the course of case management, in oral exchanges or documents shared in court, and in judgments; witnesses give evidence that likewise will inevitably involve sensitive data. To draw a distinction between advocates and others would require the Supreme Court to ignore the fact of their complementary and interconnected roles in the administration of justice: allowing this appeal would place judicial immunity on significantly less secure ground than it currently occupies, and has occupied, since the earliest authority in the bundle.

37. At best, even if the judicial immunities are maintained, success in this appeal may lead to surrogate attacks on advocates where the intended target is in reality the court or the witness, as, for example, described at [47(b)] of Dr Van Dellen’s witness statement. Low value data protection claims are particularly well-suited to this sort of tactical litigation. Insofar as the attack is based on data placed before the court that should not have been made available, it may also involve an intrusion on the principle of finality. There remains a public interest in avoiding unnecessary satellite litigation, whether in criminal or civil matters,

HB/4299

²⁹ Nor to some causes of action and not others, as submitted at [65] of the Second Respondent’s written case.

HB/133

that may permit a collateral attack on the outcome of the main proceedings, See Willers v Joyce [2018] AC 779 at [46] and the First Respondent's written case at [71].

HB/3270

HB/4308

G. AVAILABILITY OF OTHER REMEDIES

38. It is inevitable that the question of whether, in any particular case, the statements, actions or omissions out of court said to ground the cause of action are covered by an extension necessary in order to prevent the immunity from suit being 'outflanked' is, unless clearly covered by existing authority, fact-sensitive. As expressed by Lord Hope in Darker at 446C-D:

HB/1549

The question that has been raised relates to the further extent of the immunity. Where are the boundaries to be drawn? It arises because there is another factor that must always be balanced against the public interest in matters relating to the administration of justice. It is the principle that a wrong ought not to be without a remedy. The immunity is a derogation from a person's right of access to the court which requires to be justified.

In agreement with the final sentence of [105] of the First Respondent's written case, the Bar Council accepts that the extension should only cover the conduct that is sufficiently functionally connected to the conduct of court proceedings so that it would be incoherent to protect one and not the other.³⁰

HB/101

39. It is submitted that any deficit in the available remedies is a matter for legislation rather than judicial law making. The observations of Lord Lowry in

³⁰ For example, Dr Van Dellen's witness statement describes at [48]-[49] some situations which the Bar Council would submit would have a sufficient such connection to be covered by the immunity.

HB/4299

C (A Minor) v Director of Public Prosecutions [1996] AC 1 at 28 provides useful guidance:

HB/4382

“It is hard, when discussing the propriety of judicial law-making, to reason conclusively from one situation to another ... I believe ... that one can find in the authorities some aids to navigation across an uncertainly charted sea. (1) If the solution is doubtful, the judges should beware of imposing their own remedy. (2) Caution should prevail if Parliament has rejected opportunities of clearing up a known difficulty or has legislated, while leaving the difficulty untouched. (3) Disputed matters of social policy are less suitable areas for judicial intervention than purely legal problems. (4) Fundamental legal doctrines should not be lightly set aside. (5) Judges should not make a change unless they can achieve finality and certainty.”

40. If the appeal is dismissed, the Appellant may raise the claimed violations in Strasbourg. As was the case with SW v United Kingdom (App no 87/18) (ECtHR, 22nd June 2021), any established violation of her rights may then be subject to precise remedial statutory amendment, rather than the broad brush answer she seeks as to how the competing interests are to be valued.

H. CONCLUSION

41. The Bar Council respectfully invites the Supreme Court to dismiss the appeal for the reasons given at [95]-[96] of the Second Respondent’s written case.

HB/141

25 September 2026

CLARE MONTGOMERY KC

BEATRICE COLLIER