

IN THE SUPREME COURT OF THE UNITED KINGDOM

Case No. UKSC/2025/0194

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

SECOND RESPONDENT’S WRITTEN CASE

References in this Written Case in the form §1 WC are to paragraphs in the Appellant’s Written Case; references in the form §1 SFI are to paragraphs in the agreed Statement of Facts & Issues; references in the form §1 CA are to paragraphs in the judgment of the Court of Appeal. References in the form [1] are to page in the Main Hearing Bundle.

INTRODUCTION

1. “By the end of the 19th century it was settled that persons taking part in a trial - the judge, the advocates, the witnesses – could not be sued for anything written or spoken in the course of the proceedings” (per Lord Hoffman in *Taylor v Director of the Serious Fraud Office* [1999] 2 AC 177 (“**Taylor**”) [3198]). It is submitted that, as regards claims by third parties (which is the present case), that principle is both longstanding and sound.
2. By Ground 1, the Appellant accepts the immunity but, in her primary case, now seeks to limit its application to certain causes of action; contending as a result that it does not

apply to the causes of action she wishes to advance. The CPS submits that words spoken in the course of proceedings in court, such as those relied on as founding the present claims against the CPS, are immune from suit whatever the cause of action relied upon. The CPS also submits that the Court of Appeal correctly stated the principles affording absolute immunity to the CPS.

3. Ground 2 challenges the extension of the immunity to acts preparatory for proceedings in court on the facts in this case. This relates to the actions of the Chief Constable of Sussex Police. As such, the CPS makes only limited submissions in respect of it.

THE FACTS AND PROCEDURAL HISTORY

4. The key facts are set out at §§2-14 SFI [6-9]. In summary, DYP was brought before the magistrates' court for a breach of court bail conditions. The CPS advocate was provided, by Sussex Police, with information about the ongoing matters relating to the Appellant, including her address in Hampshire ("**the Hampshire Address**"). In the course of making an application to the magistrates to impose bail conditions, he disclosed the street and town where the Appellant now lived, which had not hitherto been known to DYP. That was then incorporated into DYP's bail conditions by the magistrates' court. The CPS accepts that this disclosure ought not to have occurred. The Appellant was not at the time living at the Hampshire Address, but with family (noting that these events took place during the first COVID lockdown). She did not return to the Hampshire Address as a result of its disclosure. There is no suggestion that DYP was able to cause any physical harm to the Appellant as a result of the disclosure of the Hampshire Address, and no evidence that he sought to do so.
5. The amended claim form and Particulars of Claim set out claims for breach of Part 3 of the Data Protection Act 2018 ("**the DPA**"), breach of the Human Rights Act 1998 ("**the HRA**") in respect of Articles 2, 3 and 8 ECHR, misuse of private information and breach of confidence [533-558]. The claims against the CPS were in respect of the Hampshire Disclosure only. The claims against the Chief Constable were in respect of both the Hampshire Disclosure and an earlier disclosure of an address in Epsom.
6. HHJ Brownhill held [243-283]:
 - a. The claims against the CPS were barred by the established immunity applying to things said and done by advocates in the course of proceedings in court;

- b. The claims against the Chief Constable in respect of the Hampshire Disclosure were barred by the established extension to the immunity;
 - c. In any event, reverse summary judgment should be entered on the HRA claims against both defendants in respect of the Hampshire Disclosure, since the Appellant did not have victim status on the facts;
 - d. The claims against the Chief Constable in respect of the Epsom Disclosure should go to trial. That element of the judgment was not appealed.
7. The Appellant appealed. At a rolled-up hearing in the High Court, Ritchie J allowed the appeal on all grounds [169-240]. In doing so, he described and applied an approach he described as ‘*justificationism*’, whereby the application of an immunity, in situations where it was ‘unsettled’ on particular facts, had to be justified on a case-by-case basis.
8. The Chief Constable and CPS appealed Ritchie J’s ruling. The Bar Council intervened in the appeal. The Court of Appeal rejected Ritchie J’s ‘*justificationism*’ as unprincipled and unworkable. The core of their judgment on the law is at §30 CA [152-3]:

“30. *To summarise:*

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

ii) The core immunity can be extended if the extension is necessary for the proper administration of justice, which is a strict test. There are two established extensions: witnesses and potential witnesses are immune from suit for statements made outside of court with a view to giving evidence. This extends to the preparation of evidence they are likely to give in court proceedings, including their preliminary examination to ascertain what they could prove. And investigators are immune from suit for statements made as part of the process of investigation.

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

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

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

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

9. The Court of Appeal considered the claims against the CPS at §§62-67 CA [159-161] and held that they were ‘doomed to fail’ by virtue of the core immunity that applies to words spoken, by advocates as well as others, in the ordinary course of court proceedings. Ritchie J’s ‘justificationism’ approach was rejected as a wrongful elision of the requirement to justify categories of immunity with a requirement to justify the actions of a person on the facts of every case. That reflected the fact that, *‘To be effective, foreseeability is essential if those involved in the administration of justice are to speak freely. The approach of “justificationism” fundamentally undermines the public policy underlying the existence of the immunity’* (§65(i) CA). They also held that the core immunity is not limited to evidential matters, and that it applies to bail proceedings which are an integral part of proceedings in a criminal court (§65(ii)-(iii) CA). They found that the immunity applies to all the Appellant’s claims, inclusive of those under the HRA and DPA: §§73-80 CA [162-3].
10. The Court of Appeal further overturned Ritchie J’s findings as regards the claims against the Chief Constable, on the grounds that to allow a claim in relation to the preparation of the file for the CPS would outflank the core immunity. The conduct of Sussex Police fell within the extension of the immunity that was established in *Taylor*.
11. The Appellant then sought permission to appeal from this Court, on four grounds [284-293]. She received permission on the first two grounds only, which were:

- a. Ground 1: The Court of Appeal erred in concluding that advocates have the benefit of an absolute immunity from suit in respect of anything said or done “*in the ordinary course of court proceedings*”.
 - b. Ground 2: The Court of Appeal erred in concluding that the police have an immunity in respect of the preparation of the file for the CPS as part of the process of criminal investigation and the administration of justice so as not to outflank the core immunity of the CPS advocate.
12. The grounds on which she was refused permission were:
- a. Ground 3: whether common law immunity bars claims under the HRA and DPA absent express statutory abrogation. This ground also challenged the Court of Appeal’s decision at §75 that ‘since *Watson [v McEwan]* was a claim for breach of confidence, the modern-day equivalent of such a cause of action ... must also be caught by the core immunity’.
 - b. Ground 4: whether the Court of Appeal erred in reinstating the summary disposal of the HRA claims.
13. As the Appellant accepts (§1 WC [17]), the effect of that decision is that even if the immunity does not operate as a defence to the Appellant’s HRA claims relating to the Hampshire Disclosure, then the Court of Appeal’s reinstatement of the County Court’s reverse summary judgment finally determined those claims.
14. The Appellant now seeks to run an additional point that was not run below. It is that ‘*the scope of the immunity is determined by the cause of action and the immunity’s underlying rationale and not usually by the category of participant*’ (§7 WC [20]). It is unclear how it can be squared (at least in relation to the DPA claim) with the refusal of permission to advance Ground 3.

GROUND 1

The nature of the relevant immunity

15. The immunity applies to things written or said in the course of proceedings and to the range of persons involved in criminal proceedings including advocates¹.

¹ This does not appear to be in dispute; the Appellant accepts (correctly) the existence of what she calls ‘*Judicial Proceedings Immunity*’ as protecting ‘*witnesses, advocates and jurors*’ (§10 WC).

- a. In *Taylor*, Lord Hoffman stated at 207F: “... *the core of the principle of immunity from suit is not in doubt. By the end of the 19th century it was settled that persons taking part in a trial - the judge, the advocates, the witnesses - could not be sued for anything written or spoken in the course of the proceedings. The immunity was absolute and could not be defeated even by proof of malice.*” [3198]
- b. In *Darker v Chief Constable of West Midlands Police* [2001] 1 AC 435 (“**Darker**”), Lord Hope said at 445H that, while the immunity “*is shared by all witnesses in regard to the evidence which they give when they are in the witness box*”, in fact “*it extends to anything said or done by them in the ordinary course of any proceedings in a court of justice. The same immunity is given to the parties, their advocates, jurors and the judge*”. [1548-9]

16. See also eg:

- a. *R v Skinner* (1772) 98 ER 529² per Lord Mansfield: “*neither party, witness, counsel, jury, or Judge, can be put to answer, civilly or criminally, for words spoken in office.*”
- b. *Dawkins v Lord Rokeby* (1872-73) LR 8 QB 255 (“**Dawkins**”): “*The authorities are clear, uniform and conclusive, that no action of libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceedings before any court or tribunal recognised by law.*” [2664]
- c. *Munster v Lamb* (1883) 11 QBD 588 (“**Munster**”), in which the Court of Appeal upheld the summary dismissal of an action in defamation against an advocate. Sir Baliol Brett MR held at 601 that: ‘*Certain persons can claim the benefit of the privilege which arises as to everything said or written in the course of an inquiry as to the administration of the law, and without making an exhaustive enumeration, I may say that those persons are judges, advocates, parties and witnesses*’. [2402]
- d. *Royal Aquarium and Summer and Winter Garden Society Ltd v Parkinson* [1892] 1 QB 431 (“**Royal Aquarium**”), in which Lord Esher MR (with whom Fry and Lopes LJJs agreed) at 442 held that: “... *in respect of statements made in the course of proceedings before a Court of justice, whether by judge, or counsel, or witnesses,*

² The case related to quashing an indictment against a justice of the peace for speaking contemptuously of a grand jury.

there is an absolute immunity from liability to an action. The ground of that rule is public policy.” [2871] Lopes LJ observed at 451:

“The authorities establish beyond all question this: that neither party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the person defamed. This “absolute privilege” has been conceded on the grounds of public policy to insure freedom of speech where it is essential that freedom of speech should exist, and with the knowledge that Courts of justice are presided over by those who from their high character are not likely to abuse the privilege, and who have the power and ought to have the will to check any abuse of it by those who appear before them.” [2880]

17. The nature and reach of this core immunity has not been affected or undermined by *Arthur JS Hall v Simons* [2002] 1 AC 615 (“*Half*”) [1059] or *Jones v Kaney* [2011] UKSC 13; [2011] 2 AC 398 (“*Jones*”) [2025].
18. In *Hall*, the House of Lords reversed *Rondel v Worsley* [1969] 1 AC 191 [2745] on the grounds that an immunity for barristers from claims by their clients in negligence was not justified by public policy. Four of their Lordships (on a panel of seven) made clear that they were drawing a distinction between the older and broader immunity to claims arising from things said and done in legal proceedings, including against advocates, and the liability of advocates specifically to their own clients based on the existence of a duty of care. (The speeches of the remainder of the House did not directly address the issue.)
 - a. Lord Steyn at 677H referred to ‘*the analogy of the general immunity from civil liability which attaches to all persons in respect of the participation in proceedings before a court of justice, namely judges, court officials, witnesses, parties, counsel and solicitors alike*’ [1121] and at 679A referred again to ‘*the analogy of the immunities enjoyed by those who participate in court proceedings*’ which ‘*prevent legal actions based on what is said in court*’ [1123]. That analogous immunity, he said, ‘*has little, if anything to do with the alleged legal policy which requires immunity from actions for negligent acts.*’
 - b. Lord Hoffman referred at 687B to ‘*an absolute immunity which protects witnesses, lawyers and the judge*’ because ‘*the administration of justice requires that participants in court proceedings should be able to speak freely without being*

inhibited by the fear of being sued, even unsuccessfully, for what they say'. He then contrasted it with '*a similar immunity against proceedings for negligence*', i.e. the *Rondel v Worsley* immunity [1131]. At 697B-698F [1148-9], Lord Hoffman made clear that he drew a distinction between the absolute immunity, which survived and the absence of liability for negligence, which could no longer be justified because, '*The fact that the advocate is the only person involved in the trial process who is liable to be sued to negligence is because he is the only person who has undertaken a duty of care to his client*'. It was thus only the existence of a duty of care that took claims in negligence by an advocate's client out of the scope of the immunity.

c. Lord Browne-Wilkinson at 684B agreed with both Lord Steyn and Lord Hoffman [1128].

d. Lord Hope at 724H made an explicit distinction between the kind of claims considered in *Hall* and the surviving general immunity:

"But here again I would stress the point which I have already mentioned several times, that the immunity to which I refer is the advocate's immunity against claims by his client for negligence. I would retain the immunity of the advocate against claims for negligence by third parties." [1168]

19. In *Jones*, the Supreme Court, on a similar basis to *Hall*, removed the immunity of expert witnesses to claims from their own clients in negligence. Lord Phillips traced the history of the various immunities at §§11-13 [2034-5], and made clear at §13 that: '*The barrister is, however, still protected by absolute privilege from a claim in defamation in relation to statements made in the course of the conduct of legal proceedings*'. Lord Brown similarly identified at §65 that advocates retained immunity from suit for '*defamation claims and the like pursuant to the absolute privilege attaching to court proceedings*.' [2049]

20. *Hall* and *Jones* have been consistently analysed as relating solely to liability to the advocate's or expert's own client, stemming from the existence of a duty of care. In *Darker*, a case on the extension of witness immunity which was handed down shortly after *Hall*, there was no suggestion that *Hall* had affected the core immunity: see the speeches of Lord Hope at 445H-446D [1548-9] and Lord Clyde at 457D-E [1560]. Similar analyses appear in *Medcalf v Mardell* [2002] UKHL 27; [2003] 1 AC 10 ('*Medcalf*') at §53 [2378], *A & B v Chief Constable of Hampshire* [2012] EWHC 1517 (QB) at §§24-27 ('*A&B*') [928-9], *Jones* at §65 [2049], *King v Stiefel* [2021] EWHC

1045 (QB) (“**King**”) at §333 [2149], *El Haddad v Al Rostamani* [2024] EWHC 448 (Ch) (“**El Haddad**”) at §90 [1619], the judgment of the Court of Appeal in this case (§27-30 CA [152-3]), and *Erhard-Jensen Ontological/Phenomenonological Initiative Ltd v Rogerson* [2025] EWCA Civ 1547; [2026] 1 WLR 2969 (“**Rogerson**”) at §45 [2742].

21. It is to be noted in the light of these authorities, and this principled distinction based on the existence of a duty of care, that it is well established that the CPS does not owe a duty of care to suspects, witnesses or victims of crime: *Elgouzouli-Daf v Commissioner of Police of the Metropolis & Crown Prosecution Service* [1995] QB 335 (CA) [1641]. As Lord Toulson (with whom Lords Mance, Reed and Hughes agreed) observed in *SXH v Crown Prosecution Service* [2017] UKSC 30 at §38 [3164]: ‘*the duty of the CPS is to the public, not to the victim or to the suspect, who have separate interests. To recognise a duty of care towards victims or suspects or both, would put the CPS in positions of potential conflict, and would also open the door to collateral interlocutory civil proceedings and trials, which would not be conducive to the best operation of the criminal justice system.*’³
22. There are clear limits to the immunity recognised in the authorities. These reflect the balance between the benefit to the administration of justice of the immunity and the general principle that wrongs should be remedied.
23. First, the immunity applies only where the statement itself is used as the basis of the cause of action: *Taylor* at 215C *per* Lord Hoffman [3206]; *Singh v Reading Borough Council* [2013] EWCA Civ 909; [2013] 1 WLR 3052 (“**Singh**”) at §66(v) [3005]. Drawing on the Court of Appeal’s decision in this case, but also on the earlier authorities, in *Rogerson* Andrews LJ described this principle as follows:

“46. It follows that where the immunity attaches to something that is “done” in the course of legal proceedings (whether prior to or at the hearing) the act in question must relate in some way to the statement that is the foundation of the cause of action, whatever that cause of action may be. It would encompass, for example, the promulgation of a defamatory statement in pleadings or witness statements; or making reference to confidential information in written or oral submissions, or the act of providing information for use in proceedings in court.” [2742]

³ In *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4; [2018] AC 736, it was mentioned with approval at §§59 and 91: see also *Suresh v General Medical Council* [2026] EWCA Civ 955 at §55; *James-Bowen v Commissioner of Police of the Metropolis* [2018] UKSC 40; [2018] 1 WLR 4021 at §§28 and 33.

24. That principle also means that the immunity does not protect against regulatory or contempt of court or wasted costs proceedings, only civil liability. Nor does it protect those who maliciously institute proceedings against another, because the act of instituting proceedings is not a statement in court (*Roy v Prior* [1971] AC 470 [2849]; *Taylor* at 215D [3206]; *Rogerson* at §47 [2742]). The inapplicability of the absolute immunity to these categories of proceedings also reflects the immunity’s policy rationale: each of these acts undermines, rather than supports, the administration of justice.
25. Its second limit is that it does not cover matters which are ‘*wholly extraneous*’ or outside the ‘*ordinary course of proceedings in court*’ or which have ‘*no reference at all to the subject matter of the proceedings*’: *Taylor* at 215B [3206]; *Smeaton v Butcher* [2000] EMLR 985 (CA) [3116-7]; *Iqbal v Mansoor (No 2)* [2013] EWHC Civ 149 at §32 [1969] and *Iqbal v Manson* [2014] EWHC 2818 (QB) at §70 [2003-4]; *Titan Wealth Holdings Ltd & ors v Okunola* [2026] EWCA Civ 138 (“*Titan Wealth*”) at §§57-62 [3228-9].
26. But it has always been held to protect everything done *coram judice*, in the face of the court, without exception. In *Lincoln v Daniels* [1962] 1 QB 237 at 257-8, it was held that:

*“The absolute privilege which covers proceedings in or before a court of justice can be divided into three categories. The first category covers all matters that are done coram judice. This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which initiates the proceedings. The third category is the most difficult of the three to define. It is based on the authority of *Watson v M’Ewan* [1905] AC 480, in which the House of Lords held that the privilege attaching to evidence which a witness gave coram judice extended to the precognition or proof of that evidence taken by a solicitor. It is immaterial whether the proof is or is not taken in the course of proceedings. In *Beresford v White* (1914) 30 TLR 591, the privilege was held to attach to what was said in the course of an interview by a solicitor with a person who might or might not be in a position to be a witness on behalf of his client in contemplated proceedings.” [2337-8]*

This passage from *Lincoln v Daniels* has recently been cited with approval in the Court of Appeal in New Zealand (*Jindal v Daruwalla* [2024] NZCA 685 [3983], permission to appeal to the New Zealand Supreme Court refused at [2025] NZSC 98) and by the England & Wales Court of Appeal in *Rogerson* [2737].

27. There is no basis in the authorities for the first (or second) category of immunity referred to in this quotation applying only to evidence or matters relating to evidence. The cases relied on by the Appellant to that effect all relate to attempts (whether successful or not) to rely on the third category, which reflects the ‘no outflanking’ principle (see below).
28. When dealing with matters *coram judice*, all statements, questions, submissions, comments or observations are covered, so long as they have some reference to the subject matter of the proceedings. That is demonstrated by *Munster*, where the claim was based on submissions by a defence advocate about the victim of a burglary. Sir Baliol Brett MR said (at 599 [2400]) that ‘*I shall assume that the words were irrelevant to every issue of fact which was contested in the court where they were uttered; nevertheless, inasmuch as the words were uttered with reference to, and in the course of, the judicial inquiry which was going on, no action will lie against the defendant, however improper his behaviour may have been.*’

The rationales for the immunity

29. As Lord Esher MR observed in *Royal Aquarium*, the justification for the immunity is public policy, specifically the public interest in the effective administration of justice. Lord Hoffman in *Taylor* at 209C described the extent of the immunity as follows:

“The immunity from suit, on the other hand is designed to encourage freedom of speech and communication in judicial proceedings by relieving persons who take part in the judicial process from the fear of being sued for something they say. It is generated by the circumstances in which the statement was made and it is not concerned with its use for any purpose other than as a cause of action. In this respect, however, the immunity is absolute and cannot be removed by the court or affected by subsequent publication of the statement.” [3200]

See also *Darker* at 445H *per* Lord Hope. [1548]

30. That public interest has various facets. The key facet is the promotion of fearless expression in a process aimed at delivering justice.
31. As Fry LJ identified in *Munster* at 607 [2408]:

“The rule of law exists, not because the conduct of those persons ought not of itself to be actionable, but because if their conduct was actionable, actions would be brought against judges and witnesses in cases in which they had not spoken with malice, in which they had not spoken with falsehood. It is not a desire to prevent actions from being brought in cases where they ought to be maintained that has led to the adoption of the present rule of law; but it is the fear that if the rule were

otherwise, numerous actions would be brought against persons who were merely discharging their duty. It must always be borne in mind that it is not intended to protect malicious and untruthful persons, but that it is intended to protect persons acting bona fide, who under a different rule would be liable, not perhaps to verdicts and judgments against them, but to the vexation of defending actions.”

32. In the same case, Sir Baliol Brett MR held at 603 [2404]:

“If upon the grounds of public policy and free administration of the law the privilege be extended to judges and witnesses, although they speak maliciously and without reasonable or probable cause, is it not for the benefit of the administration of the law that counsel also should have an entirely free mind? Of the three classes—judge, witness, and counsel—it seems to me that a counsel has a special need to have his mind clear from all anxiety. ... The rule of law is that what is said in the course of the administration of the law, is privileged; and the reason of that rule covers a counsel even more than a judge or a witness. To my mind it is illogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is, that a counsel, who is not malicious and who is acting bona fide, may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included who have been guilty of malice and misconduct.”

33. The important role of the advocate in the administration of justice is clear: see eg *Medcalf* (a decision on wasted costs orders) per Lord Hobhouse §§51-53 [2377-8]. The concerns about narrowing or undermining the absolute immunity relating to advocates prompted the Bar Council to intervene in the Court of Appeal. The Bar Council’s evidence provides a valuable and informed perspective on the real-world implications of the immunity being narrowed or abolished: see especially §§19-33 of the first witness statement of Dr Anton van Dellen, and §§20-83 of his second witness statement.
34. The immunity requires foreseeability of application to fulfil its rationale. A participant in court proceedings must be able to foresee at the time when they speak whether or not the immunity will attach. If an advocate or witness or party does not know whether the immunity will apply, then the protective effect of the immunity is lost: the fear of a possible action defeats the immunity’s public policy ends. As Lord Hoffman (with whom Lord Goff, Lord Hope and Lord Hutton agreed) held in *Taylor* at 214E [3205]: *“The policy of the immunity is to enable people to speak freely without fear of being sued, whether successfully or not. If this object is to be achieved, the person in question must*

know at the time he speaks whether or not the immunity will attach.” Lord Hope made a similar point at 219E-H of *Taylor* [3210]. Lord Clyde’s speech in *Darker* at 457C [1560] was to similar effect: ‘*There has to be some degree of a certainty about the existence of an immunity for it to be effective. The matter cannot be entirely left as one to be determined on each and every occasion. For the immunity of a witness to be effective it is necessary that the person concerned should know in advance with some certainty that what he or she says will be protected.*’ Lord Mackay also endorsed the above passage from Lord Hoffman’s speech in *Taylor* at 451F-G as ‘vitally important.’ [1554] See also Lord Dyson in *Jones* at §105: ‘*there should be a degree of certainty as to the existence of an immunity if it is to be fair and effective*’. [2058]

35. The Court of Appeal correctly recognised that principle in this case at §30(iv) and §65(i) CA. [153, 160]
36. It is to be noted in this respect that the Appellant now accepts that immunity ‘*is applied with reference to identified categories of case rather than the factual circumstances of a particular case*’ (§16 WC [24]). She expressly accepts that the Court of Appeal was correct to reject ‘*justificationism*’.
37. Related to these rationales, the immunity also protects the principle of the finality of litigation, preventing collateral challenges to the outcome of proceedings (see *Hall* at 715D *per* Lord Hope [1159]; 741E *per* Lord Hobhouse [1185]; *Darker* at 446G-H *per* Lord Hope [1549] and 458A-C *per* Lord Clyde [1561]). To that can be added that it prevents collateral challenges within proceedings, as recognised at §80 CA [163].

The Appellant’s attempt to limit the immunity by reference to causes of action and the ‘no outflanking’ principle

38. The basic principle is that the immunity is as broad as it needs to be to fulfil the public policy reasons for its existence. As a consequence, the immunity extends so far as necessary to avoid being outflanked: *Watson v McEwan* at 487 (“*Watson*”) [3253]; *Darker* at 465F [1568]; *Singh* at §66(iii) [3005]. An immunity that can be outflanked through creative drafting or reframing does not fulfil its public policy ends. That applies both to attempts to outflank it through the use of different causes of action and to attempts to reframe what occurred through a different factual lens.

39. The Appellant contends that the immunity should be carved up by reference to different causes of action. That approach is unsupported by the authorities, and is wrong in principle.

The authorities.

40. As the Court of Appeal recognised, early attempts to bring claims for things said or done in court were largely (though not solely: *Skinner*) in defamation. Nonetheless, none of the cases turn, or were stated to turn, on the nature of that cause of action. Moreover, even in those early cases, the principle was expressed more widely. In *Munster*, Sir Baliol Brett MR specifically considered whether the immunity applied only to defamation claims, holding that the proposition that there might be some other cause of action which might escape the immunity was ‘wholly untenable.’ He held:

“No action of any kind, no criminal prosecution, can be maintained against a defendant, when it is established that the words complained of were uttered by him as counsel in the course of a judicial inquiry, that is, an inquiry before any court of justice into any matter concerning the administration of the law.” [2406]

41. In *Royal Aquarium*, it was described as ‘absolute immunity from liability to an action’. [2871]
42. *Watson*, properly analysed, is an example of and House of Lords authority for the immunity being applied to claims for breach of confidence. That is apparent both from the report of the case [3246-3256], and from the analysis of it in *Jones*.
- a. By reference to the report, the Lord Ordinary allowed two issues to be raised by Jessie McEwan against Sir Patrick Watson. The first related to an alleged breach of confidence by Sir Patrick, who had been employed as Mrs McEwan’s ‘private and confidential medical advisor’ but was said to have disclosed ‘matters relative to the pursuer and her state of health ascertained in the course of said confidential employment.’ That issue was then disallowed by the Second Division (see 483-4 [3249-50]), and there was an appeal (in fact, a cross-appeal) against that disallowance by Mrs McEwan. The main appeal was by Sir Patrick, against the finding that his statements to Mr McEwan’s solicitor were capable of forming a ground of action against him.
- b. The Earl of Halsbury LC introduced his speech at 485 [3251] by saying: “*My Lords, when one examines these two appeals, I think it is impossible to say that any*

different question arises in the one from that which arises in the other. The same judgment is applicable to both.” When he said shortly thereafter, at 485-6 [3251-2], that he did not propose to express an opinion upon what would be the legal determination of any question as to the confidential nature of the employment between patient and medical man, that was because ‘*other grounds have no difficulty at all in their solution*’. It was ‘*too plain for argument*’ that a witness was protected from suit for words spoken in evidence. Rather than considering that this represented an extension of the immunity, it reflected the fact that the immunity was well-established as applying whatever the cause of action, including breach of confidence.

43. That analysis of the decision is consistent with that set out by Lord Hope in *Jones*, which concluded at §142 by stating that: ‘*The immunity extended as much to a claim of damages for breach of a duty of confidence as it did to a claim for slander; or indeed any other claim.*” [2068-9] Lord Phillips (with whom Lord Kerr agreed, and whose judgment Lord Dyson endorsed) expressed his gratitude to Lord Hope ‘*for his clarification of the nature of this rather confusing litigation*’ and appears to have accepted Lord Hope’s analysis. [2036-7]. Baroness Hale held:

“176 Lord Hope DPSC has demonstrated, to my mind convincingly, that there is House of Lords authority, in the shape of *Watson v M’Ewan* [1905] AC 480, for the general proposition that no cause of action of any kind lies against any witness in respect of the evidence he gives to a court. The rule was first developed as a protection against suits in defamation, but there is no reason in principle to limit it to these. If the purpose is to ensure that witnesses can prepare and give their evidence freely to the court, irrespective of whether it might otherwise constitute a tort or a breach of contract against someone else, then it should not matter what the source of that liability might be: whether saying or writing something which is defamatory of someone else; or saying or writing something in breach of a duty of confidence owed to someone else; or saying or writing something in breach of a contractual duty owed to someone else; or saying or writing something in breach of what would otherwise be a tortious duty owed to someone else. The rule has been taken for granted by courts at all levels for a very long time.” [2079]

44. The immunity was never regarded as having applied solely to claims for defamation. And attempts to circumvent the immunity by relying on causes of action other than defamation have always been robustly rebuffed.
45. In *Hargreaves v Bretherton* [1959] 1 QB 45, a man convicted of fraud brought a civil suit for perjury. Lord Goddard CJ cited *Skinner* and held that:

“That is a perfectly clear statement by one of the greatest common lawyers that ever lived, that for words spoken by a witness in office, which means, of course, for this purpose in giving evidence, he cannot be put to answer either civilly or criminally.” [1849]

At 54 [1852], Lord Goddard CJ referred to an attempt to circumvent the immunity as ‘an obvious “try-on”’, which was then cited as ‘apt to this case’ by Diplock LJ in *Marrinan* at 539 [2316] when considering an attempt to rely on a different cause of action.

46. In *Marrinan v Vibart* [1963] 1 QB 528, the Court of Appeal applied the principle to a claim against a witness at a judicial inquiry based on conspiracy to injure. In the context of witness evidence, Sellars LJ stated at 535:

“Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the court and in the preparation of evidence which is to be so given.” [2312]

47. In *Evans v London Hospital Medical College (University of London)* [1981] 1 WLR 184 [1660], the immunity was applied to a claim brought in negligence: that decision was approved by the House of Lords in *Taylor* (at 215 [3206]) and *Darker* (at 451G [1554]).
48. As already noted above, Lord Hoffman in *Taylor* at 209C [3200] described the extent of the immunity as follows:

“The immunity from suit is generated by the circumstances in which the statement was made and it is not concerned with its use for any purpose other than as a cause of action. In this respect, however, the immunity is absolute and cannot be removed by the court or affected by subsequent publication of the statement.”

There was no suggestion that prohibition on use as cause of action in question arising from the immunity would be limited to defamation.

49. Consistently with that, the claim in *Darker* related to conspiracy to injure and misfeasance in public office. Though the House of Lords held that the alleged acts complained of fell outside the scope of the immunity, that was not by reference to the cause of action that had been deployed: see Lord Hope at 446D (*‘The plaintiffs claim damages against the police for conspiracy to injure and misfeasance in public office. If their claims related only to things said or done by police officers while they were in the witness box they would be excluded by the core immunity’* [1549]). A claim in misfeasance in public office was earlier found to be barred by the immunity in *Gizzonio v Chief Constable of Derbyshire* (The Times, April 29, 1998, CA), in relation to the police

having engaged in ‘*false and malicious conduct on the part of police to deny [the claimants] bail*’ by putting misleading information before the court [1721].

50. In *Hall* itself, Lord Hobhouse expressly distinguished immunity from a limitation on the scope of a duty of care at 736F-G [1180]. At 740G, he also distinguished it from a privilege for the purposes of the law of defamation: ‘*A feature of the trial is that in the public interest all those directly taking part are given civil immunity for their participation [...] This is not just privilege for the purpose of the law of defamation, but is a true immunity.*’ [1184]
51. In *Jones*, Lord Phillips noted at §13 that immunity from suit extended beyond defamation ‘*to other forms of action in tort*’ [2035], while Lord Brown at §65 referred to witnesses enjoying ‘*complete immunity – immunity, that is, from any form of civil action in respect of evidence given (or foreshadowed in a statement made) in the course of proceedings*’ as well as advocates having immunity ‘*from defamation claims and the like pursuant to the absolute privilege attaching to court proceedings*’ [2049]. Lord Collins at §72 referred to the immunity having ‘*extended to other causes of action*’ beyond defamation [2050].
52. Still more recently, in *Singh* the cause of action was unfair dismissal, a claim under the Employment Rights Act 1996. The Court of Appeal found that the alleged acts complained of – undue pressure applied to a witness to produce false evidence – fell outside the scope of the immunity, but appears to have accepted at §§29-37 that in principle the immunity could have barred the claim. [2996-9]
53. In *Crawford v Jenkins* [2014] EWCA Civ 1035; [2016] QB 231 (“*Crawford*”) at §§52-58 and 69-70 [1529-30, 1532], the immunity was applied to a claim under the Protection from Harassment Act 1997, with Sir Timothy Lloyd holding that, ‘*It seems to me that the policy of the immunity rule applies just as much to a claim in harassment based on such a statement as it does to a claim in defamation.*’ It is only where a claim has ‘*the feature of abuse of process of the court*’ that it falls outside the immunity rule (at §57).
54. In *CLG v Chief Constable of Merseyside* [2015] EWCA Civ 836 (“*CLG*” [1427, 1438]) it was again applied to a claim brought in negligence, against the police, for the failure to redact a confidential address from a witness statement.
55. Contrary to the Appellant’s case, the absolute immunity has been held to apply to claims for misuse of private information. In *BHX v GRX* [2021] EWHC 770 (QB) (“*BHX*”), a

claim for various torts including misuse of private information arising, materially, from allegations of inappropriate sexual behaviour and sexual assault against BHX that were made by GRX's solicitors in the course of family proceedings, Nicklin J held that:

"57. I can deal with the second publication shortly. Because it was made during the Court proceedings (it appears at the hearing on 20 June 2018), it is protected by immunity from suit. No claim, whether for defamation, malicious falsehood, misuse of private information or harassment can be brought by the Claimant on this publication. The claim in respect of that publication will be struck out pursuant to CPR 3.4(2)(a)." [1333]

56. Finally, in this case, the Court of Appeal held that the immunity applied to claims under the DPA and HRA [162-3]. This Court refused the Appellant permission to appeal on the grounds that the Court of Appeal was wrong to do so [291-2; 302].

The international authorities.

57. In Australia, in *Cabassi v Vila* [1940] HCA 41; (1940) 64 CLR 130 at 144, McTiernan J held that,

"It is a rule of law that no civil action lies at the suit of any person for any statement made by a witness in the course of giving evidence in a judicial proceeding. The rule, which is founded on public policy, is not confined to actions for defamation, but applies to any form of action." [3486]

58. This was then applied as regards advocates in *Giannarelli v Wraith* [1988] HCA 52 at §§15-17 [3876-7]. Post-*Hall*, the absolute immunity of advocates was upheld in *D'Orta-Ekenaike v Victoria Legal Aid* [2005] HCA 12, where the High Court of Australia held (at §85) that 'an advocate is immune from suit whether for negligence or otherwise in the conduct of a case in court.' [3602]

59. New Zealand followed a similar path to England and Wales, in that *Rees v Sinclair* [1974] 1 NZLR 180 followed *Rondel v Worsley*, but then, post-*Hall*, advocates' immunity from suit for negligence claims by their own client was abolished: *Chamberlains v Lai* [2006] NZSC 70 [3495]. It does not appear that the issue of whether the immunity applies beyond claims in defamation has yet been tested.

60. In Canada, there has been no immunity from suit for claims in negligence by an advocate's own client since *Demarco v Ungaro* (1979) 95 DLR (3d) 385. In *Amato v Welsh* [2013] ONCA 258 [3353], the Ontario Court of Appeal endorsed [3366-7] its earlier decision of *Samuel Manu-Tech Inc v Redipac Recyling Corp* [1999] 124 OAC

125, which held ‘*the immunity extends to any action, however framed, and is not limited to actions for defamation*’ [4127].

61. That was then in turn applied in *Duncan v Lessing* 2018 BCCA 9, albeit *obiter* (because the statutory tort did not apply to acts taken in judicial proceedings). At §68, Hunter J (with whom Bauman CJ and Fisher J agreed) held that ‘I agree that the immunity developed in the law of defamation can in principle apply to other causes of action when the public interest considerations that underlie the privilege apply to those actions.’ [3698] But he noted that this is not always the case, giving the familiar examples of negligence claims against an advocate by their own client and malicious prosecution. The law in Canada therefore appears to be settled that the immunity does apply to other causes of action beyond defamation, albeit that the precise outlines of how that will apply factually are still being determined.
62. In the United States, though there was never an equivalent to the *Rondel v Worsley* type immunity (*Ferri v Ackerman* 444 US 193 (1979)), prosecutors acting in the course of their prosecutorial duties associated with the judicial phase of the criminal process are absolutely immune from civil suit (*Imbler v Pachtman* 424 US 409 (1976) [3938]).
63. But in addition to that specific immunity for prosecutors, there is also a broader doctrine of judicial proceedings privilege, which protects a party and its lawyers from civil claims based on communications in the course of judicial proceedings: *Landry’s Inc v Animal Legal Defense Fund* 631 S.W.3d 40 at 51 (Tex 2021). Though originating as a defence to defamation claims, it has been expanded to other causes of action: ‘*Although commonly applied in defamation cases, the privilege prohibits “any tort litigation based on the content of the communication” at issue.*’ [3997] The rationale for this is that the privilege ‘*would be nullified if individuals barred from bringing defamation claims could seek damages under other theories of liability*’ (*Hugel v Milberg, Weiss, Bershad, Hynes & Lerach LLP* 175 F.3d 14, 18 (1st Cir. 1999) [3936-7]). While there is likely to be state-to-state variance, therefore, the US authorities provide clear support for the equivalent immunity applying well beyond defamation claims.

In principle

64. Baroness Hale in *Jones* set out the principled point in the passage quoted below (which related to witnesses but the logic of which is equally applicable to the other protected actors):

“The rule was first developed as a protection against suits in defamation, but there is no reason in principle to limit it to these. If the purpose is to ensure that witnesses can prepare and give their evidence freely to the court, irrespective of whether it might otherwise constitute a tort or a breach of contract against someone else, then it should not matter what the source of that liability might be: whether saying or writing something which is defamatory of someone else; or saying or writing something in breach of a duty of confidence owed to someone else; or saying or writing something in breach of a contractual duty owed to someone else; or saying or writing something in breach of what would otherwise be a tortious duty owed to someone else.” [2079]

65. The Appellant’s attempt to limit the immunity by reference to causes of action proceeds on the premise that the immunity is justified and necessary in the context of defamation claims. But it is incoherent to restrict it to such claims. The justification is not linked to the nature of the cause of action; but to the protection of the administration of justice in the proceedings in which the statement relied on is made. Moreover, if the protective purpose of the immunity is to be effective, it must apply to any cause of action, not just defamation. There is no special feature of defamation as a cause of action that could or would serve relevantly to distinguish it as a cause of action compared to any other.
66. Further, if the immunity did not apply to the causes of action relied on by the Appellant, then anyone speaking in court – at least any advocate, witness, party or juror – would have to consider before they spoke whether or not they were potentially liable to be sued in those causes of action for what they said. That would undermine the protective effect and the benefits flowing from that effect.
67. By reference to the specific causes of action relied upon by the Appellant, both breach of confidence and misuse of private information involve two-stage tests: whether there is a reasonable expectation of confidence or privacy, and, if so, whether there is in any event a justification for the disclosure or use of the information in question. Misuse of private information can be established even where the information in question is untrue: *McKennitt v Ash* [2006] EWCA Civ 1714; [2007] 3 WLR 194 at §80 [2354]. Expecting those participating in proceedings in court to make those assessments prior to speaking would have the exact chilling effect which the absolute immunity exists to prevent. The same effect would apply when considering the preparation of witness evidence or written submissions.

68. The same analysis applies in relation to Part 3 of the DPA.⁴ There, the stages are somewhat different: there has to be consideration of whether the information constitutes personal data, and whether its processing complies with the relevant data protection principles. For the first data protection principle, that includes consideration of whether, in the absence of consent by the data subject, the processing of the personal data in question is ‘*necessary for the performance of a task carried out for [a law enforcement purpose]*’: s.35(2) DPA [784]. If the information is ‘*sensitive personal data*’ as defined in s.35(8) DPA, then, unless there has been consent, the processing must be ‘*strictly necessary for the law enforcement purpose*’ and comply with an additional condition in Schedule 8 DPA: s.35(3) and (5) DPA. ‘*Necessity*’ in this context is not a low bar: it is something more than ‘desirable’ or ‘useful’ or ‘convenient’, but less than indispensable or absolutely necessary. It involves consideration of proportionality: processing for a particular purpose will not be necessary if the purpose can be achieved by lesser means: *R (Elgizouli) v Secretary of State for the Home Department & others* [2021] UKSC at §§9 and 210 [2536, 2584]. ‘*Strict necessity*’ is self-evidently a higher bar, and connotes indispensability or absolute necessity. It is an objective standard, with ‘*only one correct answer*’: *YZ v Chief Constable of South Wales* [2022] EWCA Civ 683 at §28 [3340]. Moreover, the data protection principles also include a requirement that personal data must not be processed in a manner that is incompatible with the law enforcement purpose for which the controller collected it (s.36(1) DPA, the second data protection principle [786]) and that ‘*personal data processed for any of the law enforcement purposes must be accurate*’ (s.38(1) DPA, the fourth data protection principle [788]). That requires a determination of meaning, and then a decision as to whether that meaning is ‘*incorrect or misleading as to any matter of fact*’ (*NTI v Google LLC* [2018] EWHC 799 (QB); [2019] QB 344 at §80 [2448]). While in the law enforcement context, the information in question does not have to be true, its accuracy does ‘*depend on whether [it] accurately reflect[s] what the police were told and what the police did. It does not depend on what happened in the underlying incidents*’ (*AB v Chief Constable of British Transport Police* [2022] EWHC 2749 (KB) at §76 [965]).
69. It would create a strikingly chilling effect on freedom of speech in court were individuals to be at risk of suit in any of these causes of action as a result of what they said. Each of

⁴ It would also apply to the UK GDPR for processing in court proceedings of personal data that was not under Part 3 DPA, as the UK GDPR contains a similar though not identical set of data protection principles in Article 5.

the causes of action depends on relatively sophisticated balancing exercises being conducted, potentially at considerable speed and with incomplete information available.

70. It makes no difference that in the final reckoning, the decision to make use of a particular piece of information may be justified. The chilling effect would occur in any event, for two reasons. First, every participant in court proceedings would be at risk (and know that they were at risk) of what they said being found, later and in a different court, to be unjustified and unlawful as a result. Second, even if they were found to have been justified, they would be at risk of being put to what Fry LJ described in *Munster* as ‘*the vexation of defending actions*’ [2408]. That has always been the justification for the immunity being absolute, which may mean that even the malicious or untruthful are protected by it. Otherwise, a qualified immunity would suffice: *Darker* at 464C-E per Lord Hutton [1567].
71. The accuracy element under the DPA, and the possibility of a misuse of private information claim being founded on untruthful information, add further complicating factors for those involved in court proceedings to weigh up before speaking.
72. Moreover, each of these causes of action has a relatively low bar as regards injury for a viable claim to be brought. For a claim in misuse of private information (and probably also breach of confidence), mere ‘loss of control’ over private information will suffice: *Gulati v MGN Ltd* [2015] EWCA Civ 1291; [2017] QB 149 at §§45-46 [1758]. For claims under Part 3 of the DPA, claims can be brought for ‘*damage not involving financial loss, such as distress*’ (s.169(5) DPA [797]). There is no comparable threshold to claims in defamation, which now require ‘serious harm’ to reputation (s.1 Defamation Act 2013 [802]), or claims in negligence which require an actionable injury within the scope of duty. Those low thresholds for damage increase the risk of a multitude of claims being brought, and makes it harder for claims of this kind to be summarily dismissed.
73. Without seeking to set out an exhaustive list of possibilities, it is easy to see an expert giving evidence in respect of psychiatric injuries – whether in a civil or criminal case – being the subject of claims by the opposing party arising out of the use of elements of medical records which was said to be unjustified and which had as a result caused a loss of control of that information. Likewise, the door would be open for claims against witnesses based on what they said having been inaccurate if that was said to have caused distress. It would also be open to claims against advocates based on an allegation that

information they deployed in the course of questioning or submissions was not ‘necessary’ (or ‘strictly necessary’ if it was sensitive personal data), either at all or for the purpose for which the information had been collected. Such claims would have a strikingly adverse impact on the administration of justice.

74. The fact that the interests sought to be protected by these torts are not identical to the interests which the law of defamation seeks to protect does not affect the position. The private interests of privacy and of confidentiality give way to the public policy in the effective administration of justice, just as the private interest in protection of one’s reputation does.
75. Similarly, the disparate origins of the torts – in equity, in the common law as influenced by the ECHR, or under statute – do not alter that principle.
76. The limitation of the immunity simply to defamation claims would also undermine the effective administration of justice by introducing collateral challenges, both to final decisions and to the efficient conduct of proceedings. For final decisions, it is easy to see how allegations that reference to particular elements of third party information was ‘unlawful’ would produce collateral challenges to outcomes. But interim challenges would also arise. The inability of advocates to know with certainty what strands of personal data they could or could not refer to at any given time without risk of rendering themselves open to civil liability would complicate, frustrate and undermine the administration of justice. That is part of why the immunity exists. It provides a continued justification for the absence of a remedy for the Appellant in this case. As the Court of Appeal identified at §80 [163], the prospect of third-party claims based on the alleged misuse of personal data or information arising out of criminal (and, the CPS would add, other) proceedings is an unhappy one: *‘It is easy to see how criminal proceedings for example, could become mired in technical debates about which strand of personal data could or could not be referred to at any given stage of proceedings.’*
77. This goes far more broadly than criminal proceedings, although the issue may well be most acute there. *BHX* provides an example of an attempt by a disgruntled litigant to bring a misuse of private information claim in respect of events in family proceedings. *El Haddad* and *King* are both examples of disgruntled litigants bringing conspiracy claims based on the conduct of their opponent’s lawyers in commercial claims.

78. *Kul v DWF LLP* [2025] EWHC 1824 (KB) [2177] (upheld on appeal [2026] EWCA CIV 1130) is an example from the sphere of personal injury litigation. It involved separate proceedings by way of a challenge under the UK GDPR in which ‘the claimants complain of the actions of the defendant in proceedings to which the claimants themselves were not parties, which they say violated their rights as data subjects.’ [2179] One of the remedies sought was a compliance order under s.167 DPA that would have controlled how the defendant could use a witness statement in other proceedings. While it failed on its facts (and the immunity was not relied upon by the defendant), it is an example of the sort of satellite litigation that is contrary to the effective administration of justice and which the immunity exists to prevent.

79. The central premise of the Appellant’s argument is therefore wrong: there is no basis for carving out the causes of action on which she relies from the absolute immunity.

No outflanking by way of reframing.

80. The same ‘no outflanking’ principle applies to attempts to bring a claim in respect of a different point in the chain of events. In *Watson*, the House of Lords extended the immunity to communications made for the preparation of witness statements, as well as the contents of witness statements themselves. In *Taylor*, the House of Lords extended it to the exchange of information between investigators, since this was preliminary to the production of evidence.

81. In *CLG*, the Court of Appeal applied this principle to the communication of information from the police to the CPS, finding that:

“32. One of the features of the present case, which it shares with *Swinney v Chief Constable of Northumbria*, is that the claim is based not on anything that D.C. Gaffney said in his statement, but on what the police and CPS subsequently did with it. It is accepted that the CPS should have been alerted to the fact that the statement contained sensitive information and that on this occasion the system for ensuring that it was examined by the Disclosure Officer broke down. The question for decision, however, is whether the transmission of the statement by the police to the CPS was part and parcel of preparing for D.C. Gaffney to give evidence in support of the application by the prosecution for a warrant of arrest. In my view it was, because it falls squarely within Lord Hoffmann’s statement in *Taylor v Director of the Serious Fraud Office*, to which I referred earlier. It is true that the action in the present case is not based on the nature of the statement itself, as it would be if the claim were for defamation, but it is based on the transmission by the police to the CPS of a statement required for the purposes of enabling D.C.

Gaffney to give evidence in court, as he subsequently did. In substance, the position is essentially the same as if D.C. Gaffney had made his statement orally to a representative of the CPS. To hold the police liable for communicating its contents to the CPS would outflank the immunity to which they were entitled in relation to the evidence once given in court. In my view, therefore, the police are immune from action in respect of the transmission of his statement to the CPS, despite the fact that it was carried out negligently.” [1438]

82. In each of these cases, the fundamental principle was that allowing a claim based on an earlier point in the process would undermine the public policy underpinning the existence of the immunity, and thereby outflank it. Each was about the extension of the immunity from statements that were clearly protected to matters taking place outside proceedings which were preparatory to those statements. They provide clear and consistent authority for the principle that when the immunity attaches to statements made in court, it should not be outflanked by attacking conduct preparatory to that statement being made.

“Errant administrator”

83. The Appellant’s suggests that the CPS is not entitled to an immunity as an ‘*errant administrator*’ and that the ‘*impugned conduct*’ fell outside the immunity. This is simply an attempt to outflank the immunity for things actually done in court.
84. The act that the Appellant complains of was the disclosure of the Hampshire Address: see her amended claim form (‘*The Claim against the [CPS] arises from the disclosure of the Claimant’s address by a Crown Prosecution Advocate on 16 April 2020*’ [533]) and §§30(b), 31(g) of her Particulars of Claim [552, 554]. That disclosure took place in the course of proceedings in court. As the Court of Appeal found, it had relevance to those proceedings, in that it was in the course of a bail application and relevant to DYP’s conditions of bail (indeed, it was ultimately made part of a bail condition). It was not ‘wholly extraneous’ to the proceedings. The Appellant is compelled to recast this as an act of ‘errant administration’ because her actual complaint – that the CPS advocate said something that he should not have – is barred by the immunity.
85. None of the methods by which she has sought to recast the claim – by saying that the disclosure did not relate to evidence, or that the disclosure was not necessary, or that the transmission of information from the police to the CPS was purely administrative – take her case further. The immunity applies not only to the participant in court proceedings who acts reasonably and justifiably, but also to the one who acts foolishly or erroneously – even to the extent of protecting one who acts maliciously.

Strike out

86. The Appellant has raised (at §§122-124 WC [64-5]) whether strike out was appropriate. Claims involving the immunity have frequently been the subject of successful strike out applications, or of determination as a preliminary issue on assumed facts, a similar process: *King*, *El Haddad*, *A&B*, *BHX*, *Taylor*, *Marrinan*, *Crawford*. That reflects the need for the application of the immunity to be foreseeable and that part of the public policy rationale is the avoidance of having to defend actions at all. As Fancourt J held in *El Haddad* at §113 [1624], ‘the immunity that [participants in legal proceedings] enjoy operates as a threshold bar to a claim against them and it is therefore right that this issue should be determined on that basis, without considering first the merits of the particular allegations against them or the criticisms that have been levelled against the style in which they are pleaded.’
87. While there is inevitably a line beyond which the immunity does not bar a claim, as in *Darker* where it did not apply to alleged fabrication of evidence, a claim based on words said in court falls well inside the immunity. No detailed exploration of the factual circumstances behind how the words came to be spoken is required. That is reflected in the fact that the Appellant has not been able to point to a single case where a claim based on words actually spoken in court has even been allowed to go to trial, let alone succeeded. Taking the Appellant’s pleaded case at its highest, there were no reasonable grounds for bringing it because it could not succeed as a matter of law: as such, striking out under CPR 3.4(2)(a) was appropriate.

GROUND 2: THE EXTENSION OF THE IMMUNITY TO THE PREPARATION OF THE FILE

88. Ground 2 relates to the claim against the Chief Constable. It does not affect the claims against the CPS.
89. Nonetheless, the CPS, as the public prosecutor, has a legitimate interest in the effective operation of case preparation by police forces. There is a line between the role of the police as investigators, and their role in preparing evidence and material for presentation in court: *Darker* at 448C-F *per* Lord Hope [1551]. The former is not protected by the immunity save to the extent described in *Taylor*; the latter is more closely connected to it. It is submitted that matters that fall on the investigative side of the line would include the conduct of searches, the seizure of exhibits, the recording of material for the purposes

of disclosure, and the identification, location, arrest and interview of suspects. Matters that fall within the immunity would include the taking of witness statements (and, the CPS would add, that must now include the conduct of ABE interviews), the preparation of material to be placed before the court (which might include applications for various warrants, authorisations and orders, prepared by the police but to be presented by the CPS), and the transmission of information to the CPS.

90. That approach strikes a fair balance between the importance of a remedy where there has been a wrong – particularly when this relates to the exercise of police powers – and the public interest in the effective administration of justice. It would be harmful to that public interest if the police, when acting in support of the CPS’ presentation of cases in court, were not entitled to rely on the same immunity as applies to the actual conduct of cases in court. It would enable that immunity to be outflanked, which has long been seen as impermissible.
91. It would also create an unprincipled disparity between the CPS and police which is likely to have negative practical consequences. If the police have to operate on the basis that they are susceptible to claims, even unfounded ones, being brought by third parties based on the sharing of personal data or information, that is likely to reduce the quality of material shared with the CPS, slow down the process of information sharing between police and CPS, and undermine effective joint working in the interests of justice.
92. When striking that balance, the unique relationship between the CPS and the police should be taken into account: the police are not the client of and do not give instructions to the CPS. As in *Goodridge v Chief Constable of Hampshire* [1999] 1 All ER 896 [1728], that relationship can result in a different approach arising as regards legal professional privilege. It can also mean that public interest immunity considerations arise.
93. None of this is to encourage the inappropriate sharing or disclosure of personal information or data: there are protocols and guidance in place as to what should or should not be shared in different circumstances, and whose responsibility it is to address those matters. But that does not mean that a failure to abide by those stipulations should result in the threat of civil liability.
94. For those reasons, the CPS supports the Chief Constable’s position that Ground 2 should also be dismissed.

CONCLUSION

95. It is submitted that the appeal should be dismissed for the following summary

REASONS

- a. Words spoken in the course of proceedings in court are absolutely immune from suit, whatever the cause of action relied upon. The immunity protects judges, jurors, advocates and witnesses.
 - b. The immunity is limited in that: it applies only where the statement itself is used as the basis of the cause of action; it does not cover matters which are wholly extraneous or outside the ordinary course of proceedings in court or which have no reference at all to the subject matter of the proceedings; it does not apply to claims in negligence against an advocate or expert by their own client where a duty of care is owed.
 - c. The justification for the immunity is public policy, specifically the public interest in the effective administration of justice. People must be able to speak freely in proceedings in court without fear of being sued, whether successfully or not. If this object is to be achieved, the person in question must know at the time he speaks whether or not the immunity will attach.
 - d. The immunity is as broad as it needs to be to fulfil the public policy reasons for its existence. The immunity therefore extends as far as necessary to avoid being outflanked. That includes applying to all causes of action where the statement made is the essence of the claim.
96. The CPS further supports the Chief Constable's position that the claims against her should be dismissed because in this case the act complained of was not an act as an investigator but was the preparation of material for use in court, such that it falls within the extension to the immunity established in *Taylor*.

9 September 2026

SIR JAMES EADIE KC

FIONA BARTON KC

JOHN GOSS