Neutral Citation Number: [2025] EWCA Civ 13

Case No: CA-2023-000989
CA-2022-001943and CA-2022-001940

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
Ritchie J
[2023] EWHC 1062 (KB)
and ON APPEAL FROM THE HIGH COURT
Martin Spencer J
[2022] EWHC 1661 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/01/2025

Before:

LORD JUSTICE HOLROYDE
LORD JUSTICE STUART-SMITH
and
LORD JUSTICE JEREMY BAKER

- -

Between:

CHIEF CONSTABLE OF NORTHAMPTONSHIRE POLICE	**Appellant**
- and -	
ESENGUL WOODCOCK	**Respondent**

and between

HD, PD, CJ, PJ and OB (by their respective litigation friends)	**Appellants**
- and –	
CHIEF CONSTABLE OF WILTSHIRE POLICE	**Respondent**

- -
- -

Andrew Warnock KC, Matthew Holdcroft and Cecily White (instructed by **DWF Law LLP**) for the **Chief Constable of Northamptonshire** and (instructed by **Wiltshire Police Legal Services**) for the **Chief Constable of Wiltshire**
Nicholas Bowen KC, Charles Davey and William Chapman (instructed by **Irwin Mitchell LLP**) for **CJ, PJ, HD and PD**; (instructed by **Farleys LLP**) for **OB**; and (instructed by **Capital Lawyers**) for **Ms Woodcock**

Hearing dates: 28, 29 and 30 October 2024

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Approved Judgment

This judgment was handed down remotely at 10:30 a.m. on 15 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Holroyde, Lord Justice Stuart-Smith and Lord Justice Jeremy Baker:

1. In March 2015, Ms Esengul Woodcock was attacked and seriously injured by her former partner Riza Guzelyurt. She brought proceedings against the Chief Constable of Northamptonshire Police, alleging that the police owed her a duty of care to protect her from an attack, and were in breach of that duty. Her claim was dismissed by HH Judge Murdoch. Ms Woodcock brought a successful appeal before Ritchie J. By permission of William Davis LJ, the Chief Constable now appeals against the decision of Ritchie J.

2. In March 2016, a man to whom we shall refer as MP was sentenced to a total of 10 years' imprisonment for two offences of rape of children, 13 offences of sexual assault on a child under 13, and 25 offences of making or possessing indecent images of children. The five victims of his sexual offences are entitled to anonymity. We shall refer to them individually by the letters CJ, PJ, HD, PD and OB, and collectively as "CJ and others" or "the appellants". They brought proceedings against the Chief Constable of Wiltshire Constabulary, alleging that the police owed each of them a duty of care to protect them against MP, and were in breach of that duty. They claimed damages for negligence or compensation for breach of their rights under articles 3 and 8 of the European Convention on Human Rights. Each of their claims was dismissed by Martin Spencer J. By permission of William Davis LJ, they now appeal against that decision.

3. Thus both actions raise issues as to whether the police may be liable in damages for failing to protect a person from harm caused by the criminal actions of a third party. For that reason the appeals, though otherwise unconnected, were heard together.

4. This is the judgment of the court in relation to both appeals.

Case law prior to the hearings below

5. Shortly before the appeals were heard, the Supreme Court handed down judgment in *Tindall v Chief Constable of Thames Valley Police* [2024] UKSC 33 ("*Tindall SC*"). That judgment had not, of course, been available to the judges below. It is convenient, before coming to the facts and arguments in the individual cases, to summarise the case law which was considered below. We shall return to *Tindall SC* later in this judgment.

6. In *Van Colle v Chief Constable of Hertfordshire Police, Smith v Chief Constable of Sussex Police* [2008] UKHL 50, [2009] 1AC 225 ("*Van Colle and Smith*") the House of Lords allowed appeals by the defendant Chief Constables in two cases. The first involved a claim that the police had failed to act compatibly with article 2 of the European Convention on Human Rights ("the Convention"). In the second case, the claimant had reported to the police that he had been repeatedly threatened by his former partner. The threats had included threats to kill him. The claimant was later attacked and severely injured by this former partner. He brought proceedings alleging that the police had negligently failed to protect him from that attack.

7. In relation to that second case, their Lordships stated the "core principle" that the police owed no common law duty to protect individuals from harm caused by criminals. There was no exception to that principle which would impose a duty of

care in circumstances such as had occurred in the instant case, where the police were discharging their general public law duty of law enforcement.

8. In *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] AC 1732 ("*Michael*") the police had failed to give sufficient priority to an emergency telephone call made by a woman who reported that her former partner had threatened to kill her. They responded immediately to a later call by the victim, but were too late to prevent her being stabbed to death. The estate and dependants of the deceased claimed damages for negligence. Summary judgment was given in favour of the Chief Constable. That decision was upheld by the Supreme Court. Lord Toulson, giving the leading judgment of the majority of their Lordships, stated at [97] the general rule that liability in negligence is not imposed for pure omissions:

> "It is one thing to require a person who embarks on an action which may harm others to exercise care. It is another matter to hold a person liable in damages for failing to prevent harm caused by someone else."

Lord Toulson then identified two well-established exceptions to that general rule, the second of which was a case in which a public authority had assumed a positive responsibility to safeguard an individual.

9. Lord Toulson later explained, at [114] and [115]:

> "114. It does not follow from the setting up of a protective system from public resources that if it fails to achieve its purpose, through organisational defects or fault on the part of an individual, the public at large should bear the additional burden of compensating a victim for harm caused by the actions of a third party for whose behaviour the state is not responsible. To impose such a burden would be contrary to the ordinary principles of the common law.
>
> 115. The refusal of the courts to impose a private law duty on the police to exercise reasonable care to safeguard victims or potential victims of crime except in cases where there has been a representation and reliance, does not involve giving special treatment to the police. It is consistent with the way in which the common law has been applied to other authorities vested with powers or duties as a matter of public law for the protection of the public. …"

10. At [138], Lord Toulson rejected as untenable a submission on behalf of the claimant that what had been said to her by the call handler who took her 999 call was sufficient to give rise to an assumption of responsibility:

> "The only assurance which the call handler gave to Ms Michael was that she would pass on the call to the South Wales Police. She gave no promise how quickly they would respond. She told Ms Michael that they would want to call her back and asked her to keep her phone free, but this did not amount to

> advising or instructing her to remain in her house, as was suggested. Ms Michael's call was made on her mobile phone. Nor did the call handler's inquiry whether Ms Michael could lock the house amount to advising or instructing her to remain there."

11. In *Robinson v West Yorkshire Police* [2018] UKSC 4, [2018] AC 736 ("*Robinson*") a pedestrian had been knocked to the ground and injured as police officers attempted to arrest a man in the street. The Supreme Court, reversing the decisions of the trial judge and of this court, held that it was reasonably foreseeable that pedestrians who were close by would be injured in the course of the arrest, that the police were under a duty of care towards those pedestrians, and that the officers who were attempting to make the arrest were in breach of that duty.

12. At [21], Lord Reed (with whom Baroness Hale and Lord Hodge agreed) rejected a submission that the decision in *Caparo Industries Ltd v Dickman* [1990] 2 AC 605 ("*Caparo*") established a test applicable to all claims in negligence, so that the courts would only impose a duty of care where it was considered fair, just and reasonable to do so. Rather, the correct approach was based on precedent and on developing the law incrementally and by analogy with established authorities. Lord Reed noted, at [26], that there are many situations in which it has been clearly established that a duty of care is or is not owed. He continued:

> "Where the existence or non-existence of a duty of care has been established, a consideration of justice and reasonableness forms part of the basis on which the law has arrived at the relevant principles. It is therefore unnecessary and inappropriate to reconsider whether the existence of the duty is fair, just and reasonable (subject to the possibility that this court may be invited to depart from an established line of authority). Nor, a fortiori, can justice and reasonableness constitute a basis for discarding established principles and deciding each case according to what the court may regard as its broader merits. Such an approach would be a recipe for inconsistency and uncertainty …"

Lord Reed added, at [27], that it would normally only be in a novel type of case, where established principles did not provide an answer, that the court would need to go beyond those principles to decide whether a duty of care should be recognised.

13. At [34], Lord Reed stated the rule that public authorities, like private individuals, are generally under no duty of care to prevent the occurrence of harm. He referred with approval to the summary of the "omissions principle" given in an academic article by Tofaris and Steel, "Negligence liability for omissions and the police" (2016) 75 CLJ 128 ("Tofaris and Steel"):

> "In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that

> danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."

14. Lord Reed went on, at [37], to state the further general rule that public authorities, like private individuals, owe no duty of care towards individuals to prevent them from being harmed by the conduct of a third party. He noted that exceptions to that general rule included –

> "… circumstances where the public authority has created a danger of harm which would not otherwise have existed, or has assumed a responsibility for an individual's safety on which the individual has relied."

15. The proceedings in *Tindall v Chief Constable of Thames Valley Police* [2022] EWCA Civ 25, [2022] 4 WLR 104 ("*Tindall CA*") arose out of a fatal road traffic accident which occurred when a driver lost control of his car on a patch of black ice. There had been an earlier, less serious, accident when a Mr Kendall had lost control of his car on the same patch of ice. Mr Kendall had reported the ice to the police and had tried to signal to other drivers to slow down or stop. Police officers attended, spoke to Mr Kendall and put up a warning sign. However, they subsequently left the scene, taking the sign with them. The fatal accident occurred a few minutes later.

16. The claimant Mrs Tindall brought proceedings, as widow and executrix of the estate of the deceased, alleging that the Chief Constable was liable in negligence for her husband's death. The Chief Constable applied to strike out the claim as disclosing no reasonable cause of action, or alternatively for summary judgment. The application was refused by a Master, but this court allowed an appeal by the Chief Constable.

17. Stuart-Smith LJ, with whom Nicola Davies LJ and Thirlwall LJ agreed, summarised at [54] the principles to be applied when deciding whether the police have assumed responsibility towards individual members of the public so as to come under a duty to exercise reasonable care to protect them from harm. Omitting references to earlier cases, he stated:

> "(i) Where a statutory authority (including the police) is entrusted with a mere power it cannot generally be made liable for any damage sustained to a member of the public by reason of a failure to exercise that power. In general the duty of a statutory authority is to avoid causing damage, not to prevent future damage due to causes for which they were not responsible …
>
> (ii) It follows that a public authority will not generally be held liable where it has intervened but has done so ineffectually so that it has failed to confer a benefit that would have resulted if it had acted competently …
>
> (iii) Principle (ii) applies even where it may be said that the public authority's intervention involves it taking control of operations …

> (iv) Knowledge of a danger which the public authority has power to address is not sufficient to give rise to a duty of care to address it effectually or to prevent harm arising from that danger …
>
> (v) Mere arrival of a public authority upon, or presence at, a scene of potential danger is not sufficient to found a duty of care even if members of the public have an expectation that the public authority will intervene to tackle the potential danger …
>
> (vi) The fact that a public authority has intervened in the past in a manner that would confer a benefit on members of the public is not of itself sufficient to give rise to a duty to act again in the same way (or at all) …
>
> (vii) In cases involving the police the courts have consistently drawn the distinction between merely acting ineffectually … and making matters worse …
>
> (viii) The circumstances in which the police will be held to have assumed responsibility to an individual member of the public to protect them from harm are limited. It is not sufficient that the police are specifically alerted and respond to the risk of damage to identified property … or injury to members of the public at large … or to an individual …
>
> (ix) In determining whether a public authority owes a private law duty to an individual, it is material to ask whether the relationship between the authority and the individual is any different from the relationship between the authority and other members of the same class as the individual …"

18. Stuart-Smith LJ concluded, at [73], that there was no basis on which the police could be found to have assumed responsibility towards Mr Tindall or other road users. He continued, at [74] –

> "What occurred was a transient and ineffectual response by officers in the exercise of a power. It did not involve any assumption of responsibility to other road users in general or to Mr Tindall in particular for the prevention of harm caused by a danger for the existence of which the police were not responsible."

19. The claimant appealed to the Supreme Court: see paragraph 84 below.

20. We turn to a summary of the essential facts of each of the cases, the proceedings below, and the grounds of appeal.

Ms Woodcock's case: the facts

21. For about two years from 2013, Ms Woodcock was in an "on/off" relationship with Guzelyurt. During that period, each had made complaints to the police about the

other, but had subsequently resumed the relationship. Ms Woodcock's complaints had included reports that Guzelyurt had threatened to kill her. Guzelyurt had been given a number of harassment warnings by the police. He had also been convicted of an offence of assault on Ms Woodcock's former husband.

22. Ms Woodcock ended the relationship on 4 February 2015. She reported to the police that Guzelyurt had threatened her and her children.

23. On 5 February 2015 Guzelyurt went to Ms Woodcock's place of work. He was ejected. Ms Woodcock later found that the wing mirrors of her car had been damaged.

24. On 6 February Guzelyurt was arrested for criminal damage and harassment, and was bailed subject to conditions which included prohibitions against contacting Ms Woodcock or going to her home or work addresses.

25. On 27 February Ms Woodcock reported that Guzelyurt had entered her car and asked her to drop the charges. It was noted that she was "crying and very shaken" when making this report.

26. On 17 March 2015 she reported that he had approached her, tried to hug and kiss her and followed her to her car.

27. On 18 March she reported that he had followed her, held her car door, and threatened to kill everyone in her household if he was sent to prison. Later that afternoon she returned to her home to find evidence of an attempted entry. A CCTV camera had recorded Guzelyurt jumping over Ms Woodcock's fence.

28. Police officers attended Ms Woodcock's home that night and took a witness statement from her. A short time after the officers had left, Ms Woodcock reported that Guzelyurt had kicked her front door, thrown himself at it and threatened to kill her. The police again went to her house. Guzelyurt had departed, but Ms Woodcock's former husband was present, having been asked by Ms Woodcock's daughter to come to the house for protection.

29. Ms Woodcock was advised to lock all doors and windows; to keep her mobile phone fully charged; to go into a locked room and call the police on 999 if Guzelyurt came to the house; to have family or friends stay with her overnight; and to make her neighbours aware of the situation. She asked for a police officer to remain outside her house, and an officer was present for much of the time until about 3am.

30. Police officers made considerable efforts overnight to trace and arrest Guzelyurt, but could not find him. At 7am on 19 March 2015 Sergeant Randall came on duty and put in place a plan to arrest Guzelyurt when he went to work at 8am.

31. At 7.32am a female neighbour rang 999 and said that Guzelyurt was loitering outside Ms Woodcock's house and "I think he's going to attack her when she comes out to go to work. … She's going to go to work about 7.45". The neighbour described Guzelyurt as "lurking on the corner" and "pacing up and down with his arms behind his back", and added:

> "I've tried contacting her but she's changed her mobile number so there's no way of me, unless I go over, I don't really want to get involved."

At the conclusion of that call, the call handler said to the neighbour:

> "Okay, I'm going to get the officers to go straight round, we need to obviously stop anything taking place and I'll have a look and see what we know about them as well, okay?"

32. The call was treated as an emergency, and an officer was at once sent to arrest Guzelyurt. Sgt Randall also went immediately to Ms Woodcock's house. No call was made by the police to Ms Woodcock to tell her of the neighbour's information or to tell her that an officer was attending.

33. Ms Woodcock left the house with her children and her former husband. Guzelyurt attacked her as she was about to get into her car. He stabbed Ms Woodcock repeatedly, causing severe injuries.

34. Sgt Randall arrived on the scene at 7.46am, one minute after Ms Woodcock's daughter had made a 999 call to report that Guzelyurt was attacking her mother with a knife.

35. Guzelyurt was subsequently convicted of attempted murder and sentenced to life imprisonment.

Ms Woodcock's case: the proceedings below

36. Ms Woodcock claimed damages for negligence. In essence, her claim was based on the failure of the police to protect her from attack, to arrest Guzelyurt earlier than they did, or to warn her that Guzelyurt was outside her house.

37. Judge Murdoch dismissed the claim. He found that the Chief Constable did not hold or assume a duty of care to Ms Woodcock. If he was wrong about that, he held that none of the alleged breaches of duty had been proved. In particular, in relation to the criticism that Sgt Randall had failed to ring Ms Woodcock to inform her of the neighbour's warning, Judge Murdoch found:

> "PS Randall acted in a timely manner; he deployed to this job as soon as it came in, he raced to the claimant's address arriving within minutes. He could do no more. He used his judgement, the perpetrator was outside her home, no one knew he was armed with a knife. I heard most of the police witnesses say that the most effective method to reduce risk is to remove its source and to arrest the perpetrator would achieve that aim. PS Randall knew the perpetrator was outside her home, he knew where he was and could now be arrested. He wanted to get there as soon as he could to effect that plan. I find PS Randall acted as many officers would have done and bears no responsibility for the events that sadly unfolded."

38. Judge Murdoch also found that it was not within the training or guidance of those who handled the 999 call to ring and warn a potential victim.

39. Judge Murdoch further found that the claimant had established no causative link between the pleaded breaches of duty and Guzelyurt's attack:

> "In essence her case is that if the police had acted differently he would have been arrested earlier or she would have acted differently, by residing elsewhere that night or not leaving the house. The claimant advanced no evidence that if she had been aware that he was outside she would not have left the house."

40. Judge Murdoch, though sympathetic to the personal plight of Ms Woodcock, therefore dismissed her claim.

41. On appeal to the High Court, Ritchie J identified the main issue as being whether the Chief Constable had a duty to warn Ms Woodcock about her neighbour's information that Guzelyurt was loitering nearby.

42. Ritchie J analysed relevant case law, referring to the general rule that the police are not liable in civil law for failing to catch criminals or to prevent crime. He identified the exceptions to that general rule as being cases in which the police had assumed a specific responsibility to protect a specific member of the public from attack by a specific person or persons, and cases in which exceptional or special circumstances existed which created a duty to act to protect the victim and/or it would be an affront to justice if they were not held to account to the victim. He referred to the recent decision of this court in *Tindall CA*, but at [103] he distinguished it, on the basis that in the present case the police were under a duty to warn Ms Woodcock, whereas *Michael* –

> "… was not a duty to warn case, it was a failure to protect by arresting the protagonist case."

He added that both the cases considered by the court in *Van Colle and Smith* were "failure to protect cases, not failure to warn cases".

43. On the facts of the present case, Ritchie J held that it was reasonably foreseeable to the Chief Constable, after the neighbour's 999 call and against the background of previous incidents, that Ms Woodcock was at high risk of serious injury from Guzelyurt. There was undisputed evidence that Guzelyurt had recently threatened to kill Ms Woodcock or to commit serious crimes against her and her children. The police were aware that Guzelyurt had repeatedly failed to comply with bail conditions which were intended to protect Ms Woodcock. Taking into account events on the night of 18 April, the judge held that Ms Woodcock was relying on the advice and the safety plan given to her by the police. He said there was little point in advising Ms Woodcock to ask neighbours to keep a lookout for Guzelyurt if the police were not going to inform her of the neighbour's 999 call.

44. Ritchie J concluded that there were exceptional circumstances which gave rise to a common law duty on the Chief Constable to call Ms Woodcock once they received the neighbour's information:

> "That duty arose immediately after the neighbour's phone call as a result of the factors set out above and the content of the phone call. However, for the reasons set out in the House of Lords' and Supreme Court's decisions set out above (*Hill* and *Smith and Van Colle* and *Michael*) I do not consider that there was a civil law duty to protect the claimant physically, beyond providing the warning, despite the clear operational objective to arrest [Guzelyurt]."

45. Ritchie J further found that the Chief Constable had assumed a responsibility to warn Ms Woodcock if a neighbour provided the police with information that Guzelyurt was lurking outside Ms Woodcock's house just as she was due to leave to go to work; and that the Chief Constable had breached the duty by failing to warn Ms Woodcock by telephone.

46. As to causation, the judge said that an error by Ms Woodcock's legal representatives, in failing to call evidence on that issue, should not be laid at her door. He said that he was minded to draw an inference that Ms Woodcock would have waited in the house if she had been warned of Guzelyurt's presence outside, but –

> "… it seems to me that in these circumstances there is no scope for this court to declare that the judge's decision that there was no evidence upon which to make a finding that any breach by the defendant caused the loss was wrong. However, I do consider that it was unjust under CPR r52.21(2)(b). Therefore, I rule that this case shall be remitted to the trial judge (if available) to hear evidence on causation … "

47. The judge accordingly allowed the appeal.

Ms Woodcock's case: the grounds of appeal

48. The Chief Constable puts forward three grounds of appeal. In ground 1, it is submitted that Ritchie J was wrong to find that the Chief Constable owed Ms Woodcock a duty of care, in particular because he wrongly distinguished *Michael* and other cases on the basis that they were not "duty to warn" cases; wrongly found that a duty of care arose because of special or exceptional circumstances; and wrongly found an assumption of responsibility on the facts found by Judge Murdoch.

49. In ground 2, it is submitted that Ritchie J was wrong to overturn Judge Murdoch's finding that there was no breach of duty, and that in doing so he mischaracterised Judge Murdoch's findings and reversed the burden of proof.

50. In ground 3, it is submitted that Ritchie J wrongly remitted causation, despite having found that Judge Murdoch's decision on that issue was not wrong.

51. Ms Woodcock submits that Ritchie J's decision should be upheld for the reasons he gave. In a Respondent's Notice, she puts forward alternative grounds on which she submits this court could uphold the decision.

The cases of CJ and others: the facts

52. As we have noted in paragraph 2 above, these proceedings arose out of sexual crimes committed by MP. In 1998 MP's father, BP, had been imprisoned for sexual offences against his daughter DJ (MP's sister). After he had been released from that sentence, BP gave an old laptop computer to another daughter, CP: precisely when he did so is not clear, but it appears to have been a significant time before December 2012. The laptop was used by various members of the family. When using it in December 2012, CP discovered a folder containing indecent images of children. She told her mother, who questioned each of the male members of the household, including MP, who was then aged 16. No one admitted responsibility for the images. Unsurprisingly, suspicion fell on BP. CP and her mother went to a police station and reported what had been found.

53. Detective Sergeant Ellerby, accompanied by another police officer, went to the house that evening and seized the laptop. He looked at the images contained in the relevant file. He checked the properties of that file and found that it had been created earlier in December 2012. He did not question anyone in the household, or BP. He entered the case on a Wiltshire Police information management system known as Niche. He also made an entry in an Occurrence Log in which he referred to BP's status as a convicted sex offender, and noted that he would submit the laptop for examination -

> "… because should the creation of that folder/document pre-date the time when [CP] was handed the laptop (about a year ago) then I will have cause to speak with [BP]."

54. DS Ellerby submitted a request to the Hi-Tech Crime Unit ("HTCU") to examine the laptop. Under a triage procedure used by the HTCU, this task was given middle to low priority, in part because BP was a known sex offender who was already being managed by the Public Protection Unit. The examination was completed in April 2014. Eight indecent images of children were found, all of which had been created on the laptop in December 2012. None was in the most serious category of imagery, category A. One image was in category B ("non-penetrative sexual activity") and seven were in category C ("other indecent images not falling into categories A or B").

55. Whilst the laptop was awaiting examination, DS Ellerby decided in August 2013 to close the case on Niche. He later explained that he had done so because a Niche record which remained open for some time, without being updated, would be poorly received, and he "wanted an inbox that made him and his team look good".

56. In May 2014 DS Ellerby received the report of the HTCU's examination of the laptop, which pointed to MP as the person who downloaded the indecent images. DS Ellerby was also given a police laptop, onto which the contents of the seized laptop had been loaded so that they could be used in interviews, and was told that it would be valid for six weeks. DS Ellerby did not take any further action, did not update the Niche record with details of what had been found on the seized laptop, and did not seek any advice as to what he should do. He returned the police laptop to the HTCU in September 2014.

57. In late February 2015, OB told his mother that MP had forced him to watch rude pictures. That complaint was reported to the police on 26 February 2015. MP's contact with OB was immediately ended, and a police investigation was begun by a member of the Child Abuse Investigation Team.

58. On 9 April 2015, HD's mother reported MP to the police for sexual abuse of HD. MP was arrested the following day. The investigation of that complaint was linked to the investigation of OB's complaint, and Detective Sergeant Sweeney was appointed as the officer in the case.

59. In June 2015 DS Ellerby discovered that MP was the subject of a separate investigation into allegations of sexual assaults. He contacted DS Sweeney and provided him with a copy of the HTCU report. In August 2015 DS Sweeney formally took over DS Ellerby's investigation.

60. The images had in fact been created by MP. He had gone on to commit sexual offences against each of the claimants. The charges to which he pleaded guilty alleged offences between November 2013 and April 2015. On three occasions (1 August 2012, 10 February 2014, and 20 January 2015) he was the subject of enhanced checks by the Disclosure and Barring Service, to each of which the police responded by saying that no relevant information was recorded. He was able to obtain work as a child minder, and the parents of OB, HD and PD engaged him in that capacity.

61. For convenience, MP's offending has been divided into two periods:

    i) Between 21 December 2012 (when the laptop was seized) and 19 May 2014 (when the HTCU examination was completed), MP sexually abused his nephew CJ (then aged 10-12) and his niece PJ (aged 5-7).

    ii) Between 20 May 2014 and 1 July 2015 (when MP was arrested), he sexually abused HD (then aged 9), PD (aged 7) and OB (aged 6). The latest date of offending covered by the charges to which he pleaded guilty in relation to those victims was 8 April 2015.

62. In November 2015, MP pleaded guilty to the 40 offences which we have summarised at the start of this judgment. He was sentenced in March 2016 to a total of 10 years' imprisonment.

63. In July 2017 a disciplinary panel found that during the second period, DS Ellerby had shown a lack of integrity because he had neither actively advanced the investigation nor handed it over to someone more experienced. The panel found that his serious failings justified dismissal, but did not dismiss him because of the generous stance taken by the parents of the abused children.

The cases of CJ and others: the proceedings below

64. The five claimants brought proceedings against the Chief Constable, initially as three separate claims which were later consolidated. All five pursued claims for breach of their rights under article 3 of the Convention, which provides:

> "**Prohibition of torture**
>
> No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

CJ and PJ also claimed damages for negligence: the remaining claimants accepted that they could not succeed in negligence as the law stood, but reserved their positions in

case the law changed. The basis of all the claims, in a nutshell, was that DS Ellerby's failings had resulted in MP being able to avoid detection as the person responsible for the indecent images, and so being able to go on to commit the offences against the claimants.

65. Martin Spencer J dismissed all the claims. He found that Wiltshire Police, through DS Ellerby, had been negligent in investigating the indecent images found on the laptop. He held that DS Ellerby should have enquired at an early stage how long the HTCU would be likely to take to examine the laptop. He would probably have been told it would take 12 months. He should then have started interviewing those who had access to the laptop, starting with BP. The judge held that DS Ellerby would probably have found that BP was unlikely to be responsible for downloading the images. In the judge's view, interviewing of MP would then have been likely to elicit admissions. Although a prosecution would probably have had to await the outcome of the HTCU's examination of the laptop, the investigation would have been kept open and MP would have been noted on Niche. The enquiries made about MP would not then have resulted in "no relevant information" responses: on the contrary, the police would have regarded MP as a person who was not suitable to work with children.

66. On that basis, the judge held that, if DS Ellerby had acted appropriately, MP would not have been given any opportunity to abuse CJ and PJ, and would not have been employed as a child minder to look after any of HD, PD or OB.

67. The judge then reflected on case law (including the recent decision of this court in *Tindall CA*) which established that public authorities are generally under no common law duty of care to prevent the occurrence of harm. He noted the concession that HD, PD and OB could not succeed in their claims for negligence, because DS Ellerby's failures had constituted a failure to confer a benefit. He considered the submissions on behalf of CJ and PJ to the effect that DS Ellerby had committed positive acts which had either made the danger to them from MP worse than it was, or had created a new danger. He also considered the submissions on behalf of those claimants that they could bring their cases within the Tofaris and Steel exceptions.

68. At paragraphs 75-76 of his judgment, the judge concluded:

> "75. The fundamental question, in my judgement, is whether DS Ellerby owed a duty of care towards these claimants. Thus, failing to confer a benefit will not generally bring a person, or a public authority, within the sphere of tortious liability in negligence, even where the public authority has a duty to act but fails to do so. But making matters worse by one's actions does give rise to a duty of care: in a sense, the law thus echoes the first duty of a doctor, namely 'do no harm'.
>
> 76. In my judgement, Mr Holdcroft is correct when he submits that, properly analysed, the positive acts relied on by the claimants on the part of DS Ellerby are no more than omissions or failings on his part to act, in disguise. …"

69. The judge went on to find, at paragraph 82, that DS Ellerby had acted ineffectually rather then made matters worse. Moreover, DS Ellerby had never specifically been alerted to the risk of contact offences by MP.

70. As to the claims for breach of the appellants' rights under article 3 of the Convention, the judge noted that it was common ground between the parties that the sexual abuse suffered by the claimants amounted to inhuman treatment for the purposes of article 3. He referred to the decision of the Supreme Court in *D v Commissioner of Police for the Metropolis* [2018] UKSC 11, [2019] AC 196 ("*D*"), which he summarised as follows:

> "(i) The Human Rights Act 1998 imposes on the state a general duty rigorously to enforce laws which prohibited conduct constituting a breach of article 3 of the Convention so as effectively to deter such conduct, which requires that complaints of ill-treatment amounting to a violation of article 3 be properly investigated (the 'investigative duty').
>
> (ii) The positive obligation on the part of state authorities to investigate complaints arises both where state involvement in the acts said to breach article 3 was alleged and also in circumstances where non-state agents were responsible for the infliction of the harm.
>
> (iii) Even serious failures which are purely operational will suffice to establish a claim that an investigation carried out pursuant to an article 3 duty infringed the duty to investigate, provided that they were egregious and significant and not merely simple errors or isolated omissions."

71. Martin Spencer J rejected the appellants' submission that he should be concerned with the whole investigation into MP, beginning with DS Ellerby on 21 December 2012 and ending when DS Sweeney took over on 19 August 2015. He accepted the submission of the Chief Constable that the investigation which began in December 2012 was concerned with the provenance of the indecent images, and did not engage article 3; whereas the investigation which began in April 2015 concerned the abuse of HD and PD (and later OB, CJ and PJ) following the first report of a contact offence. This second investigation, he held, did engage article 3.

72. Martin Spencer J found no failure in the process of triage and examination of the seized laptop (a finding which is not now challenged), but held that DS Ellerby was guilty of a number of culpable failures, which resulted in the appellants suffering abuse which they would otherwise not have suffered. He found, at [95], that the failures after DS Ellerby had received the HTCU report in May 2014 were egregious, but that his failures before that time were not.

73. Martin Spencer J held, however, that DS Ellerby's investigation was never an article 3 investigation, and could not be transformed into one by MP's subsequent sexual abuse of his victims. The article 3 duty was only "animated" in April 2015, when DS Sweeney began his investigation into the reports of sexual abuse by MP. He reached

those conclusions on the basis of *D*, which made clear that the duty under the Human Rights Act was to investigate ill-treatment amounting to a violation of article 3.

74. The essence of the judge's ruling on the article 3 claims was expressed as follows at paragraph 119 of his judgment:

> "This [the decision in *D*] shows that there is a wide range of failures, both operational and systemic, which will fall within article 3; but it must surely be the premise for such liability that the investigation in question is into conduct which is, and is known by the police to be, conduct engaging article 3. Thus, my decision does not represent a retreat from the requirement 'to take such preventative operational measures that, judged reasonably, might be expected to avoid the risk' …: that requirement remains in all its potency, but the risk must be identified at the time."

The cases of CJ and others: the grounds of appeal

75. The grounds of appeal of CJ and others challenge the judge's conclusions in relation to their article 3 claims (grounds 1-3) and claims in negligence (grounds 4-7).

76. In ground 1, it is submitted that the judge erred in law in (a) concluding that the Chief Constable's investigative obligation under article 3 was only animated on 9 April 2015, when the police became aware (through HD's mother's report: see paragraph 58 above) that HD and PD had been sexually abused, and/or (b) in rejecting other suggested pathways by which the judge should have found that the police had failed to do all that could reasonably be expected of them to prevent a breach of the claimants' article 3 rights.

77. In ground 2, it is submitted that the judge erred in law in failing to find that the duty of the police to carry out an article 3 compliant investigation arose throughout both the first and the second periods.

78. In ground 3, it is submitted that the judge was wrong to find that the failures of the police during the first period were not egregious.

79. In ground 4, it is submitted that the judge failed to make relevant findings as to the action which DS Ellerby should have taken, given that he had no training or experience in investigating child sexual offences.

80. In ground 5, it is submitted that the judge was wrong to view some of DS Ellerby's conduct as pure omissions rather than actions.

81. Alternatively, it is submitted in ground 6 that on the findings which the judge made as to DS Ellerby's acts and omissions, he should have found that one or more of the Tofaris and Steel exceptions applied.

82. In the further alternative, it is submitted in ground 7 that the judge should have analysed the claim by reference to the principles in *Caparo* and should have found that it was fair, just and reasonable to impose liability in negligence on the police.

83. All those grounds of appeal are resisted by the Chief Constable.

84. Before coming to the submissions to this court, we must refer to the most recent decision of the Supreme Court.

Tindall SC

85. The single judgment was given by Lord Leggatt and Lord Burrows, with whom Lord Hodge, Lord Briggs and Lady Simler agreed. The opening paragraph of the judgment stated the basic principles:

> "It has long been recognised that the tort of negligence draws a fundamental distinction between acts and omissions or, in the more illuminating language adopted in recent years, between making matters worse (or harming) and failing to confer a benefit (or to protect from harm). As a general rule, a person has no common law duty to protect another person from harm or to take care to do so: liability can generally arise only if a person acts in a way which makes another worse off as a result. In recent years this distinction has taken on added significance because it is now firmly established (or re-established) that the liability of public authorities in the tort of negligence to pay compensation is governed by the same principles that apply to private individuals. Many public authorities – notably, protective and rescue services such as the police force and fire brigade – have statutory powers and duties to protect the public from harm. But failure to do so, however blameworthy, does not make the authority liable in the tort of negligence to pay compensation to an injured person unless, applying the same principles, a private individual would have been so liable. That means that to recover such compensation a claimant generally needs to show that the public authority did not just fail to protect the claimant from harm but actually caused harm to the claimant."

86. Their Lordships stated that, on the facts of the case, the failure of the police officers to protect road users from the danger caused by the ice was undoubtedly a serious dereliction of their public duty owed to society at large. It did not, however, follow that they were in breach of a duty of care in the tort of negligence owed to particular individuals. At [43], their Lordships referred to the passage which we have quoted from the Tofaris and Steel article (see paragraph 15 above) as "a useful starting-point for analysis" of exceptions to the general rule.

87. At [44], their Lordships summarised the principles to be derived from the main cases, including the following:

> "(i) There is a fundamental distinction … between making matters worse, where the finding of a duty of care is commonplace and straightforward, and failing to confer a benefit (including failing to protect a person from harm), where there is generally no duty of care owed.

> …
>
> (iii) A difficulty in drawing the distinction (between making matters worse and failing to protect from harm) is how to identify the baseline relative to which one judges whether the defendant has made matters worse … The cases show that the relevant comparison is with what would have happened if the defendant had done nothing at all and had never embarked on the activity which has given rise to the claim. The starting point is that the defendant generally owes no common law duty of care to undertake an activity which may result in benefit to another person. So it is only if carrying out the activity makes another person worse off than if the activity had not been undertaken that liability can arise.
>
> (iv) Another way of stating the general rule is to say that a person owes a duty to take care not to expose others to unreasonable and reasonably foreseeable risks of physical harm created by that person's own conduct. By contrast, no duty of care is in general owed to protect others from risks of physical harm which arise independently of the defendant's conduct, whether from natural causes … or third parties … ."

88. Their Lordships then referred to exceptions to the general rule where, for example, a defendant has assumed a responsibility to protect a person from harm, or has control of a third party.

89. At [56] their Lordships approved, as a correct statement of law, the "interference principle" expressed as follows in McBride and Bagshaw, "Tort Law", 6th ed at p213:

> "If A knows or ought to have known that B is in need of help to avoid some harm, and A knows or ought to have known that he has done something to put off or prevent someone else helping B, then A will owe B a duty to take reasonable steps to give B the help she needs."

That principle, they said, was simply an illustration of the duty of care not to make matters worse by acting in a way that creates an unreasonable and reasonably foreseeable risk of physical injury to the claimant.

90. On the facts of Mr Tindall's case, it was held that the claimant failed because there was no evidence that the police were aware that Mr Kendall had been trying to warn other motorists. The information which Mr Kendall had given to the call handler was entirely consistent with his seeking assistance for himself, and gave no reason to think that he had attempted, or would attempt, to warn other motorists of the ice on the road. The claimant's evidence had focused on what Mr Kendall said he would have done if the police had not arrived. But the crucial question was whether the police could reasonably have foreseen that their attendance would displace attempts which Mr Kendall would otherwise have made to prevent other road users from suffering harm. It was therefore critical to establish what the police knew or ought to have known about the role of Mr Kendall, and what he would have done if the police had

not attended. So far as the police were concerned, Mr Kendall was a victim of a road traffic accident, not a rescuer.

91. As to the claimant's arguments based on an assumption of responsibility by the police, it was held at [76]:

> "The basic stumbling-block for any argument based on assumption of responsibility in this case is the complete absence of any communication or interaction between the police officers who attended the scene of Mr Kendall's accident and Mr Tindall. The police officers did not say or do anything of which Mr Tindall (or other motorists who drove along the relevant section of road after the police had left) were aware, or on which they could have relied. We find it impossible to see in these circumstances how an assumption of responsibility could be said to arise."

92. At [84], their Lordships confirmed the principle that –

> "… taking steps which are ineffectual, whether because they are inadequate to begin with or because the defendant does not persist in them, cannot give rise to a duty of care."

93. Their Lordships concluded that none of the grounds alleged for there being a duty of care owed by the police to Mr Tindall stood up to scrutiny. Applying the interference principle, the police could not be held liable for making matters worse, and none of the possible exceptions to the general rule, that there is no duty of care to protect a person from harm, could be made out. The claimant's appeal against the decision in *Tindall CA* was therefore dismissed.

94. We turn now to the submissions made to this court in each of the present cases. We are grateful to all counsel for their assistance. The submissions were lengthy and detailed. We will summarise them quite briefly, but we have considered all of the points which were made on each side.

The submissions to this court: Ms Woodcock's case

95. Mr Warnock KC relies on *Michael*, *Robinson* and other decisions of the highest court as establishing that a public authority does not owe a duty of care where a private citizen would not do so, even if the public authority has public law powers or duties which enable or require it to prevent the harm concerned. He points to the decisions in those cases as illustrating the distinction between an omission, such as a failure to protect from harm or a failure to make a situation better (*Michael*; and *Poole Borough Council v GN* [2019] UKSC 25, [2019] 2 WLR 1478 ("*Poole*")), and conduct which creates the relevant danger and causes harm (*Robinson*). The failure to warn Ms Woodcock, he submits, was an omission, a failure to confer a benefit or make things better, and Judge Murdoch had therefore been correct to identify this case as being covered by the principles stated in *Michael*. Ritchie J, it is submitted, was wrong to hold that there was a duty to warn, because the giving of a warning would simply be a method of protecting Ms Woodcock from harm caused by another.

96. It is further submitted that in finding that a duty of care arose because of special or exceptional circumstances, Ritchie J had in effect applied a tripartite *Caparo* test and had thereby departed from the correct approach stated in *Robinson*. Ritchie J had, moreover, wrongly conflated issues of duty with issues relevant to breach of duty: relying on *Hill v Chief Constable of West Yorkshire* [1989] AC 53 at [60] and *Mitchell v Glasgow City Council* [2009] UKHL 11, [2009] 1 AC 874 at [15], Mr Warnock KC submits that neither knowledge of a danger, nor foreseeability of harm, is in itself sufficient to impose a duty of care on the police.

97. Next, it is submitted that Ritchie J was wrong, on the facts, to find that the police had assumed a responsibility to Ms Woodcock. The police had not promised to warn Ms Woodcock of any sighting of Guzelyurt near her home, or to pass on any warning given by a neighbour or to respond within a particular timescale to any information they received from a neighbour. Applying the principles summarised in *Tindall CA* at [54], which we have quoted at paragraph 19 above, it is submitted that the present case is, at most, one in which the assistance provided by the police was ineffectual.

98. As to ground 2, it is submitted that Judge Murdoch was entitled, on the evidence he heard, to find that the police had not acted unreasonably and that they were not negligent in failing to pass on to Ms Woodcock the information received from the neighbour. It is submitted that there was no basis on which Ritchie J could properly go behind those findings. Mr Holdcroft argues that Ritchie J wrongly conflated the role of the call handler and the role of police officers on the ground. Here, he submits, the call handler rightly assessed the risk level as "immediate" and rightly passed the information to the police. The police then made an operational decision to respond by immediately attending the scene rather than by making a telephone call to Ms Woodcock. There was no evidence that they acted unreasonably in so doing, and therefore (it is submitted) Ms Woodcock could only establish a breach of duty if the police were under a specific duty to warn her.

99. As to ground 3, it is submitted that Judge Murdoch was correct to hold that Ms Woodcock had failed to adduce any evidence that, but for the conduct of the police, she would have acted differently and would not have left her house. She had thus failed to discharge the burden of proof on the issue of causation. It is suggested that Ritchie J, though referring (as we have noted at paragraph 47 above) to CPR 52.21(2)(b), was in fact purporting to rely on CPR 52.21(3). But, it is submitted, that rule can only apply where there has been a serious procedural or other irregularity in the proceedings below: Ritchie J identified no such irregularity, and (it is submitted) there was none.

100. In response, Mr Bowen KC submits that Ritchie J was correct to find that the police were under a duty to warn Ms Woodcock of the imminent risk of attack by Guzelyurt. That duty was owed, it is submitted, for three reasons: first, because the police added to the existing danger and made things worse, by failing to pass on the neighbour's warning; secondly, because the police interfered with the neighbour, who (but for the involvement of the police) would have warned Ms Woodcock; and thirdly, because the police exercised sufficient control and assumed responsibility to give a warning. The concluding words of the call handler, which we have quoted at paragraph 33 above, are relied on as an assurance to the neighbour that the police would warn Ms Woodcock of Guzelyurt's presence outside her home. It is submitted that the case

law makes clear that there are exceptions to the omissions principle, and that in the present case those exceptions applied so as to permit the finding of a duty to warn.

101. It is further submitted that, correctly analysed, the conduct of the police in this case made matters worse and increased the danger. Ms Woodcock and the neighbour had both acted in accordance with the police advice which we have summarised at paragraph 30 above, but the police had neutralised that advice (by failing to pass on the neighbour's warning); and because of the assurance which it is submitted was given by the call handler, the court should infer that the neighbour would have alerted Ms Woodcock if the police had not given that assurance. It is submitted that Ms Woodcock was therefore not in the same position as she would have been if the police had done nothing.

102. Mr Bowen KC also relies on the Tofaris and Steel exceptions. It is submitted that the police assumed a responsibility to warn Ms Woodcock, in particular because they had provided a watch on her house earlier that night (the first exception). As to the second exception, reliance is placed on the suggested assurance to the neighbour. As to the third exception, it is submitted that the police had a significant degree of control over Guzelyurt because they had decided to arrest him, had searched for him, had been provided by the neighbour with specific information as to where he was, and could prevent the danger to Ms Woodcock by passing on the neighbour's warning. As to the fourth exception, it was initially submitted that the status of the police as a trained, professional rescue service is a relevant consideration in deciding whether, in particular circumstances, a duty of care should be imposed on them even though it would not be imposed on a private citizen. That submission was however abandoned in oral argument before us, Mr Bowen KC conceding that status itself was not enough.

103. Ms Woodcock accordingly submits that the appeal should be dismissed. Ground 1 should fail because Ritchie J was correct to distinguish *Michael* on its facts and to find that a duty of care did exist. Ground 2 should fail because the police had adduced no evidence to explain the failure to pass on the neighbour's warning: either Sgt Randall, or the call handler, or the system operated in the call room had made a plain error. As to ground 3, either Ritchie J was correct to remit the issue of causation; or alternatively, as pleaded in the Respondent's Notice, remittal was unnecessary because it was obvious that Ms Woodcock, if warned, would have stayed in her house until the police arrived.

The submissions to this court: the cases of CJ and others

104. Addressing first the grounds of appeal relating to the article 3 claim, Mr Chapman submits that the investigative obligation under article 3 was engaged in December 2012, when DS Ellerby seized the laptop; or in May 2014, when the laptop was returned to DS Ellerby after being analysed; or at latest in February 2015, when allegations of abuse of OB were first reported to the police. Martin Spencer J was therefore wrong to find that the obligation was only engaged in April 2015, when the police learned that HD and PD had been abused. It is submitted that the possession of the indecent images, whilst it did not in itself amount to ill-treatment for the purposes of article 3, showed a sexual interest in children and a risk of escalation to contact offending. The protective principle which lies at the root of the obligation under article 3 was thus engaged; the police were therefore required to do something, though

not necessarily very much, to investigate; the discharge of the article 3 duty required at least sufficient work to identify MP as the principal suspect; and the police, it is argued, were guilty of egregious failures to identity MP as the man responsible for downloading the imagery. The failure, it is submitted, was not simply that of DS Ellerby, though his failings were egregious throughout: the police should have operated systems which would have identified his inactivity. Relying on *DSD v Commissioner of Police for the Metropolis* [2015] EWCA Civ 646, [2015] 3 WLR 966, Mr Chapman submits that compliance with the article 3 duty would have required only minimal effort on the part of DS Ellerby, but the failure to discharge that duty had the serious consequence that MP was not debarred from working with children.

105. In relation to ground 2, it is submitted on behalf of the appellants that Martin Spencer J was wrong to limit consideration of the article 3 claim to the period after DS Sweeney's investigation of MP had begun. Whether article 3 ill-treatment was foreseeable by DS Ellerby when he seized the laptop would be relevant to the claim in negligence, but not, it is submitted, to the state's investigative and preventative obligations under article 3 – which arose because it was foreseeable that article 3 ill-treatment would occur as a result of the earlier, egregious operational failures.

106. As to ground 3, it is submitted that DS Ellerby was not justified in assuming that BP was the person most likely to have downloaded the imagery, and that Martin Spencer J failed to give sufficient weight to the adverse findings of the disciplinary panel. Martin Spencer J also failed, it is submitted, to take into account DS Ellerby's conduct in retaining the investigation when he had no relevant experience in order to improve his own skill set, and in failing to seek advice or to undertake any investigation.

107. Turning to the grounds of appeal relating to the claims in negligence by CJ and PJ, Mr Bowen KC submits that Martin Spencer J was wrong to characterise DS Ellerby's conduct as pure omissions: he should have found that DS Ellerby's decision to retain the case was a negligent positive act which increased the danger facing CJ and PJ and made matters worse. So, too, were his decisions to close the case on Niche, and not to pursue the investigation after he had received the report from the HTCU. This is not, it is submitted, a case of DS Ellerby doing nothing. Nor is it a case of ineffectual assistance: DS Ellerby made matters worse by retaining the case for self-serving reasons and thus preventing an appropriate investigation by better-qualified officers.

108. It was submitted in writing that the case could also be regarded as falling within each of the Tofaris and Steel exceptions, and that Martin Spencer J was wrong to hold otherwise. It was argued that DS Ellerby assumed responsibility to CJ and PJ (exception 1), holding himself out as being able to investigate indecent imagery when he knew or ought to have known that CJ and PJ were at risk of harm. DS Ellerby prevented others from protecting CJ and PJ (exception 2) by excluding the involvement of other officers who would have carried out an appropriate and effective investigation. The ability of the police to arrest, interview and further investigate MP, when he had been identified as responsible for downloading the imagery, was a sufficient degree of control to satisfy exception 3. Finally, Martin Spencer J failed to consider the status of the police as a well-resourced public authority charged with the investigation and prevention of crime (exception 4). In oral submissions, however, Mr Bowen KC told us that he did not pursue the first and third exceptions, and made "no particular point" on the fourth. His oral submissions were therefore focused on

the second exception and on the argument that DS Ellerby's conduct made matters worse.

109. In response, Mr Warnock KC submits that Martin Spencer J's rulings were correct, for the reasons which he gave.

110. Submissions were made by both Mr Warnock KC and Ms White in response to the article 3 claims. It is accepted that in certain circumstances the state has a positive obligation to take preventative operational measures to protect an individual who is at risk. Ms White referred the court to the summary of the relevant circumstances given by Lewis LJ in *AB v Worcestershire County Council* [2023] EWCA Civ 529 ("*AB*") at [57]:

> "The obligation can be seen as comprising four components. There needs to be (1) a real and immediate risk (2) of the individual being subjected to ill-treatment of such severity as to fall within the scope of Article 3 of the Convention (3) that the public authority knew or ought to have known of that risk and (4) the public authority failed to take measures within their powers which, judged reasonably, might have been expected to avoid the risk."

111. It is further accepted that there is an obligation to carry out an effective investigation into arguable claims of the infliction of ill-treatment falling within the scope of article 3, and that "egregious and significant" operational failures may be sufficient to establish a breach of that duty. But, Mr Warnock KC submits, relying on the decision of the Supreme Court in *D*, that investigatory duty is only engaged when there is an allegation of ill-treatment within article 3. Martin Spencer J was therefore correct to find that the investigatory duty in this case only arose in April 2015, when the police were informed of an allegation that MP had sexually abused HD. Until that stage, there had been no allegation of ill-treatment within article 3; and, it is submitted, a generalised risk of future ill-treatment within article 3 is not in itself sufficient to trigger the investigatory duty.

112. In relation to ground 2, it is submitted that the appellants are here seeking retrospectively to transform an investigation into conduct which did not engage article 3, into an article 3 investigation, because of something which happened later. That approach, it is submitted, would impose an impossible or disproportionate burden on the authorities, and would produce the remarkable result that a duty was breached before it was even owed.

113. As to ground 3, it is submitted that the judge was entitled to make the findings he did.

114. As to the claims in negligence, Mr Warnock KC emphasises the general rules that the police do not owe a duty to an individual to protect him against harm caused by a third party, and that a public authority does not owe a duty of care in the tort of negligence in circumstances where a private citizen would not. Mr Warnock KC points to the concession by OB, HD and PD that they could not succeed in a claim based on the tort of negligence, and submits that Martin Spencer J was correct to conclude that CJ and PJ were in no better position. He further submits that Martin Spencer J was correct to find that this is a case of a failure to protect the appellants

from harm caused by a third party, and therefore an omission or failure to confer a benefit, even though DS Ellerby performed some acts.

115. As to ground 6, it is submitted that none of the Tofaris and Steel exceptions applies in this case.

116. As to ground 7, it is submitted that in *Michael, Robinson* and other cases, the highest court has clearly established that there is no duty of care owed to an individual in relation to the investigation of crime.

Discussion: Ms Woodcock's case

117. It was, of course, Guzelyurt who was responsible for the attack upon Ms Woodcock and for inflicting serious injuries upon her. The issue raised by her case is whether the police are liable to her in negligence for failing to prevent that attack, or to warn Ms Woodcock of the imminent risk that it would happen. Judge Murdoch held that they were not; but Ritchie J held that the police were under a duty to warn her of an imminent attack. We accept Mr Warnock KC's submission that Ritchie J fell into error.

118. Mr Bowen KC disavowed any attempt to overturn the decision in *Michael*. He did however advance arguments of public policy, suggesting that by requiring the courts to consider in each case whether a duty would be owed by a private individual as well as by the police, the balance has swung too far in favour of the state. He submitted that "flexibility" is therefore required, and that detailed analysis of the earlier case law would enable this court to see "a route through". In particular, he relied on the statement by Lord Nicholls of Birkenhead in *Brooks v Metropolitan Police Commissioner* at [6]:

> "There may be exceptional cases where the circumstances compel the conclusion that the absence of a remedy sounding in damages would be an affront to the principles which underlie the common law."

Mr Bowen KC also relied on the reference by Lord Phillips of Worth Matravers in *Van Colle and Smith* at [97] to the general rule applying "in the absence of special circumstances"; and on the statement by Lord Reed in *Robinson* at [64] that –

> "… absent special circumstances such as assumption of responsibility, the police owed no duty of care to individuals affected by the discharge of their public duty to investigate offences and prevent their commission."

119. Insofar as those submissions were an attempt to widen the exceptions to the general rule, or to widen the category of exceptional cases which justify a finding of liability even though none of the established exceptions applies, we are unable to accept them. They derive no support from the statements of principle so recently made in *Tindall SC*. To treat this case as falling into the exceptional category on which Ms Woodcock relies would render the general rule inapplicable in a substantial number of cases, and would be likely to lead to uncertainty and inconsistency.

120. It is common ground between the parties that there are three relevant general rules. First, that the common law does not impose liability in the tort of negligence for omissions or failures to act. Secondly, that the police do not owe a duty to individuals to protect them against harm caused by the criminal actions of a third party. Thirdly, that foreseeability of harm is not in itself sufficient to give rise either to such a duty or to the narrower duty to warn for which Ms Woodcock contends. We have no doubt that Ms Woodcock's case falls within the scope of those general rules, and is not a novel case calling for an assessment of whether it would be fair, just and reasonable to impose liability upon the Chief Constable. We therefore focus on the submissions of Mr Bowen KC seeking to bring Ms Woodcock's case within one or more of the exceptions to those general rules.

121. We agree with Mr Warnock KC that where a claimant in circumstances such as these asserts an assumption of responsibility by the police, it will usually be necessary for the claimant to show something in the way of a specific representation or promise by the police to take particular action. It will generally also be necessary to show that the representation or promise was relied on, though that will not be required if, for example, the case concerns an assumption of responsibility towards a vulnerable child: see *HXA v Surrey County Council* [2023] UKSC 52, [2024] 1 WLR 335 ("*HXA*") at [108]. As *Poole* (especially at [81]) and *Sherratt v Chief Constable of Greater Manchester* [2019] PIQR P1 illustrate, the question of whether there has been an assumption of responsibility is highly fact-specific. It is not, however, an "elastic" test in the sense in which Mr Bowen KC appeared to use that term: the court is not free to ignore the general rules, and to stretch the concept of an assumption of responsibility beyond its proper limits.

122. Here, in our view, the police did nothing which can be regarded as an assumption of responsibility to warn Ms Woodcock or to prevent any attack upon her by Guzelyurt. They had not promised Ms Woodcock that they would warn her of any sighting of Guzelyurt near her home, and had not promised to pass on to her any information they received alerting them to a danger. They had not promised to respond within any particular time to any information alerting them to a risk of attack. The call handler said nothing which could be construed as an assurance that the police would pass on the neighbour's information to Ms Woodcock or would otherwise prevent any attack upon her. As we have noted, the facts in *Michael* were held to be insufficient to justify a finding of an assumption of responsibility. Whilst of course the precise facts of the two cases differ, we are not persuaded by Mr Bowen KC's submission that there is such a material difference as should lead this court to distinguish *Michael*. Nor are we persuaded by Mr Bowen KC's reliance on *HXA* in support of his argument that the police should be found to have assumed responsibility despite the absence of either an express representation on the part of the police or evidence that Ms Woodcock relied on the conduct of the police in deciding to leave her house.

123. Ms Woodcock next invokes the interference principle confirmed by the Supreme Court in *Tindall SC* at [56] (see paragraph 89 above) and argues that the call handler caused the neighbour to refrain from protective action which she would otherwise have taken. We accept, of course, that preventing another person from protecting a victim is a form of making matters worse for the victim, and so may give rise to liability. There must, however, be evidence both that the police knew or ought to

have known that the other person intended to act protectively, and that the other person was deflected from doing so by the conduct of the police.

124. Here, there was no direct evidence as to what the neighbour understood the police would do, or as to what, if anything, she would have done if the call handler had said something different to her. Mr Bowen KC accepts that he therefore has to rely on a suggested inference as to what the neighbour would have done. But Judge Murdoch, having heard all the evidence, did not feel able to draw such an inference, and made no finding that the neighbour would have taken action to warn Ms Woodcock herself. We see no basis on which that assessment of the evidence could be impugned. Moreover, it seems to us that in the words which we have quoted at paragraph 31 above, including in particular "I don't really want to get involved", the neighbour indicated that she did not wish or intend to take any action herself.

125. Furthermore, there was no evidential basis on which it could be said that the police could reasonably have foreseen that the call handler's words would cause the neighbour to refrain from taking action which she otherwise would have taken. Thus there was no evidence to support either of the two features which are essential to the application of the interference principle.

126. We are unable to accept the submission that the third of the Tofaris and Steel exceptions applies to this case: the police had no more control over Guzelyurt than the police generally have over persons who are suspected of crime but whom it has not yet been possible to arrest. If this submission were correct, it would render the general rule inapplicable to a substantial proportion of cases in which the police are accused of a culpable omission to act.

127. We are therefore unable to accept the submissions that this case comes within any of the established exceptions to the general rules which we have mentioned. Nor do we accept that, despite the principles clearly stated in *Michael* and other cases, there is scope here for finding exceptional circumstances such as to justify imposing a duty. It is in our view clear that Ms Woodcock's case is a case of an omission by the police to act, which did not make matters worse. Applying the principle stated in *Tindall SC* at [44(iii)] (see paragraph 87 above), nothing which the police did made Ms Woodcock's position worse than it would have been if the police had taken no action at all. With all respect to Ritchie J's judgment, and to counsel's detailed arguments on behalf of Ms Woodcock, the principles set out in *Michael*, *Robinson* and *Tindall CA* (by all of which Ritchie J was bound), and reiterated now in *Tindall SC*, make it impossible to find that the police were under a narrow and specific duty to warn Ms Woodcock.

128. That being our conclusion, the issues of breach of duty and causation of harm do not arise. We will however briefly express our views about them.

129. Had we been persuaded that the police were under the suggested narrow duty to warn Ms Woodcock, we would have accepted the submissions of Mr Davey that the evidence established breach of that duty. Although the police had only limited time in which to alert Ms Woodcock to the neighbour's warning, they could reasonably have called her on her mobile phone (the number of which was known to the police but not to the neighbour).

130. As to causation, we must first address Ritchie J's decision to remit that issue for further hearing (see paragraph 47 above). We agree with counsel that the judge's reference in his judgment to CPR r52.21(2)(b) must have been a slip, and that the rule he had in mind was r52.21(3)(b). The rule provides –

> "The appeal court will allow an appeal where the decision of the lower court was –
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

131. Ritchie J did not identify any relevant irregularity. He referred to an error by Ms Woodcock's legal representatives in failing to adduce evidence on the issue, but in our view the rule cannot be used as an escape route for an error of that kind: a decision by a party to proceedings about what evidence to adduce or not to adduce is not a serious procedural irregularity within the meaning of the rule, and it does not render unjust a decision properly reached on the basis of the evidence which was adduced. With respect to Ritchie J, therefore, he fell into error in deciding to remit that issue for further hearing.

132. We do however see considerable force in the submission that Ritchie J was entitled, and we would be entitled, to decide that the evidence before Judge Murdoch sufficed to prove that Ms Woodcock, if warned that Guzelyurt was outside her home, would have remained indoors until the police arrived, and would thus have escaped injury. We recognise, of course, that Judge Murdoch, who had heard all the evidence, did not think it proper to draw that inference. We are nonetheless persuaded that, in the context of Ms Woodcock's justifiable fear of Guzelyurt, the inference is irresistible.

133. For the reasons we have given, however, we are satisfied that there was no basis on which the police could be held to have come under the duty of care which is alleged. The appeal must accordingly be allowed, the decision of Ritchie J set aside and the decision of Judge Murdoch restored.

Discussion: the cases of CJ and others

134. Turning to the case of CJ and others, we address first the claims based in the tort of negligence. We can do so quite briefly, and without repeating what we have said in Ms Woodcock's case about the relevant principles. It was rightly conceded by three of the appellants that a claim in negligence could not succeed as the law stands. We are unable to accept the submissions which sought to place CJ and PJ into a separate category. DS Ellerby's serious failings were omissions and failures to act, and we reject the attempt to categorise them as positive acts which made matters worse. Moreover, when considering the test stated in *Tindall SC* at [44(iii)] (see paragraph 87 above) we accept the submission of the Chief Constable that if DS Ellerby had not taken any action at all, none of the appellants would have been in any better position: MP's sexual interest in children would have remained undetected, and the abuse of his victims would have occurred.

135. The general rule, that there is no liability for negligent omissions to act, therefore applies. As we have noted, only the second of the Tofaris and Steel exceptions was actively pursued; and although the fourth exception was not formally abandoned (as it was in Ms Woodcock's case), we reject it as without merit. The principal submission on behalf of CJ and PJ, therefore, is that DS Ellerby made matters worse by preventing other, better-qualified officers from taking over the investigation, or advising him how to go about it, and by causing members of MP's family to refrain from taking steps to identify the downloader, as they otherwise would have done. We cannot accept that argument: the first part seeks to characterise as positive acts what were in reality omissions; and the second part lacks any evidential foundation, and is reliant upon speculation as to what MP's family would have done.

136. We turn finally to the claims based on breach of article 3.

137. In *X v Bulgaria* (2021) EHRC 244 the European Court of Human Rights referred at [184] to the duty under article 3 to conduct an effective investigation arising when an individual "claims on arguable grounds to have suffered acts contrary to article 3". At [190] the court added that the nature and degree of scrutiny which satisfied the minimum threshold of the investigation's effectiveness –

> "… depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work."

138. In December 2012, the images which DS Ellerby saw on the laptop were neither numerous nor of the most serious kind. We agree with Martin Spencer J that they were not of a level to engage article 3. But even if they had been, the article 3 rights initially engaged were those of the children depicted in the images, and there is no suggestion that they could be identified. The appellants argue that the rights of the appellants would become engaged because the protective duty under article 3 required an effective investigation of the downloader having regard to the risk that he had a sexual interest in children which might escalate to contact offences. We do not accept that argument: a generalised future risk would not suffice to engage the article 3 investigative duty, because it would not satisfy the requirement of a real and immediate risk of ill-treatment in breach of that article: see the principles summarised in *AB*, cited at paragraph 110 above.

139. We would add that, in any event, the premise of the appellants' submission is that DS Ellerby could and should in December 2012 have identified MP as the downloader or the probable downloader. We find it difficult to reconcile that argument with the appellants' (entirely realistic) acceptance that Martin Spencer J was entitled to find no culpable failure in the process of triage and examination by the HTCU. That process was necessary because specialist examination is required before reaching firm conclusions about when and by whom imagery has been downloaded: it would not be appropriate for an officer on the ground, seizing computer equipment, to risk compromising evidence by attempting his own research of the computer. DS Ellerby's check of the file properties therefore only provided a basis for suspecting that someone with access to the laptop had downloaded the images very recently. We are not persuaded that that was enough to identify MP – then a 16 year old boy, with no previous convictions – as the principal suspect.

140. Martin Spencer J was in our view correct to consider the investigation which began in December 2012 separately from that which began in April 2015, and correct to reject the submission that article 3 was engaged either in December 2012 or at any time prior to April 2015, when contact sexual offending by MP was first alleged. He was also correct to hold that information about contact offending given to the police in April 2015 could not retrospectively transform the earlier investigation of indecent imagery into an article 3 investigation. As Mr Warnock KC pointed out, the appellants' argument to that effect would lead to the conclusion that the police had been in breach of their investigative duty before that duty had arisen.

141. Thus in our judgement, Martin Spencer J was correct to conclude that the investigative duty only arose when contact offending was reported. MP was promptly arrested, and it follows that his offending then ended. The two investigations (DS Ellerby's and DS Sweeney's) were linked within a reasonable time thereafter, and there was no failure of the article 3 duty.

142. For those reasons, we reject the appellants' submissions in relation both to the common law and article 3.

Conclusion

143. We therefore allow the appeal of the Chief Constable in Ms Woodcock's case, and dismiss the appeal of the claimants in the cases of CJ and others.

A final observation: time estimates

144. Without wanting to criticise individual counsel, we wish to draw attention to a problem which this court sometimes encounters. Although this appeal hearing was given a very generous time estimate, towards the end of the allotted three days the court was being presented with submissions which were delivered at speed and included what were, in effect, reading lists of case law and other material which counsel would not have time to cover, but which the court was asked to read. Submissions of that kind are unhelpful. We therefore emphasise that time estimates are important. If they are thought to be insufficient, that difficulty must be addressed at as early a stage as possible. But once the time estimate has been fixed, and any timetable for submissions has been set or confirmed by the court, all advocates must regulate their submissions so that they are completed in time.