Neutral Citation : [2024] NIMaster 23

Ref:

Judgment: approved by the Court for handing down (subject to editorial corrections)

Delivered: **04/11/2024**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

Frances Quinn

Plaintiff

and

Chief Constable of the Police Service of Northern Ireland

Defendant

Mr McCaughey (instructed by Aiden Quinn, solicitors) for the Plaintiff
Miss Gillen (instructed by The Crown Solicitor) for the Defendant

---

Master Bell

Introduction

[1] Policing is a human institution and, like all human institutions is fallible and imperfect. This action is about that fallibility and whether the underlying facts of the case legitimately give rise to a claim for damages which must be compensated for.

[2] On 21 June 2018 the plaintiff was at work when she was contacted by a relative to say that there were three unmarked police cars at her home and

that police officers were searching it. She was immediately distressed and was calmed down by others. She arrived home about 25 minutes later to find that the police had left. Her back door had been broken in to gain entry to the property and a search warrant had been left on her coffee table. The plaintiff alleges that she phoned police and her call was returned by a Sergeant Agnew who apologised to her and admitted that police had made a mistake and had acted on incorrect intelligence.

[3] The search warrant was signed by a lay magistrate. The signature of lay magistrate was indecipherable. It stated that an application had been made by a named constable from Cookstown PSNI and that it appeared from the application that there were reasonable grounds to believe that there were mobile phones and electronic storage devices in connection with offences of the possession and supply of controlled drugs which were on the premises of Gareth McGuigan situated at a particular address in Dungannon which the warrant then set out, including the postcode. This was the address of the plaintiff and was not an address at which Mr McGuigan had ever lived. The warrant also allowed for the search of persons at the property, associated vehicles, outbuildings and sheds.

[4] On 15 June 2021 the plaintiff issued a writ against the Chief Constable alleging negligence, misfeasance in public office, trespass, and breach of statutory duty. This was subsequently followed on 11 January 2024 by a Statement of Claim.

[5] The Chief Constable has now issued an application that those proceedings should be set aside.

Defendant's Submissions

[6] The defendant's primary argument is that section 30 of the Police (Northern Ireland) Act 1998 provides that, even if there is an irregularity or error made in the issue of a warrant, police are immune from liability if they act in accordance with its terms. (I shall refer to this hereafter as "the section 30 submission").

[7] Section 30 of the Act provides:

> "Protection of members of the police force in executing warrants.
>
> (1) No action shall be brought against a member of the police force in respect of any act done in execution of a warrant by reason of—
>
> (a) any irregularity in the issuing of the warrant; or
> (b) any lack of jurisdiction in the person who issued it.

(2) Where any such action is commenced, the judge may, on an application by the defendant supported by an affidavit of facts, order that the proceedings in such action be set aside with or without costs."

[8] Counsel referred me to the cases of *McGrath v Chief Constable* [2001] 2 A.C. 731, *Doherty v Chief Constable* [2002] NIJB 165, and *Dillon v PSNI* [2016] NICA 15 in support of her position that police are immune from liability in civil proceedings if they act in accordance with the terms of a search warrant.

[9] *McGrath v Chief Constable* concerned the issue of whether an arrest based upon a warrant which had been wrongly issued in the arrested person's name was lawful. Giving the decision of the House of Lords, Lord Clyde held:

> "16. Of more direct relevance is one of the other cases to which we were referred, *Hoye v Bush* (1840) 1 Man & G 775. It was held in that case that an arrest was wrongful where the constable had applied for a warrant to arrest Richard Hoye, the warrant had been mistakenly issued in the name of John Hoye and the constable had arrested Richard Hoye. Thus, a police officer cannot under a warrant arrest someone who is not named in it even although he knows the person intended to be covered by it. Tindal CJ (p 786) observed:
>
> > "It would be dangerous if a person whose office is wholly ministerial, were allowed to sit in judgment, and say who is the unnamed person intended by the warrant which he is required to execute."
>
> One principle which can be found in *Hoye* is that the person executing a warrant should follow and be entitled to rely on the face of the warrant. He may not act outside the terms of the warrant. That was what happened in *Hoye*. But he should be not be held to have acted unlawfully if he carries out the instruction which appears from the face of the warrant. It is not for him to question that instruction if it is clear.
>
> 17. Warrants issued by a court of law require to be treated with the same respect as must be accorded to any order of the court. The general rule was stated by Romer LJ in *Hadkinson v Hadkinson* [1952] P 285, 288:
>
> > "It is the plain and unqualified obligation of every person against, or in respect of whom, an order is

> made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. 'A person who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it…. It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null and void - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of an order which was null and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed' (*Per* Lord Cottenham LC in *Chuck v Cremer* (1846) Cooper temp Cott 205, 338)."

That passage was followed in *R v Oldham Justices, Ex p Cawley* [1997] QB 1, where it was held that a prison governor did not require to question the order contained in a warrant of committal.

18. If warrants which are apparently valid are to be taken at their face value and justify the action taken in conformity with them it is necessary that there be strict controls governing the granting and the execution of them. In so far as warrants may authorise what would otherwise be an unlawful invasion of private rights, there are various safeguards which accompany the granting and execution of them. Whether or not they are granted under statutory provision the procedures required for the granting of them must be carefully followed. They must state whatever the particular statutory provision under which they are issued requires them to state (e.g. *R v Inland Revenue Commissioners, Ex p Rossminster Ltd* [1980] AC 952. The warrants must be sufficiently clear and precise in their terms so that all those interested in their execution may know precisely what are the limits of the power which has been granted. As Coltman J stated in *Hoye* (p 788): "It is of the essence of a warrant that it should be so framed, that the officer should know whom he is to take, and that the party upon whom it is executed should know whether he is bound to submit to the arrest." To take an example from Scots law, a search warrant must clearly identify the premises which the constable

has power to search (*Bell v H M Advocate* 1988 JC 69). Compliance with the proper procedure is particularly important where the liberty of the subject is concerned (*R v Metropolitan Police Commissioner, Ex p Hammond* [1965] AC 810, 837). Where legislation requires particular information to be given to the arrested person, as in section 28(3) of the Police and Criminal Evidence Act 1984, the failure to give the information will make the arrest unlawful (e.g. *Mullady v Director of Public Prosecutions* [1997] EWHC 595)."

[10] *Doherty v Chief Constable* concerned a claim that the plaintiff's arrest and detention on foot of a warrant was unlawful. The plaintiff's main submission in that case was that the warrant contained a contradiction in that it referred to the defendant currently serving a sentence of imprisonment yet, when it was executed, the plaintiff was at his home and some time had elapsed since it was issued. It was submitted that the police officers should have queried the warrant and sought further information about it and the plaintiff before proceeding to execute it. Higgins J, having cited the decision of the House of lords in *McGrath v Chief Constable*, dismissed the claim and referred to the legislative predecessor to section 30 of the 1998 Act:

> "Nonetheless the constable is protected from liability by virtue of the Constabulary (Ir) Act 1836, s 50 of which, as amended, states—
>
> > 'Provided always, that when any action shall be brought against any constable for any act done in obedience to the warrant of any magistrate, such constable shall not be responsible for any irregularity in the issuing of such warrant, or for any want of jurisdiction in the magistrate issuing the same, and such constable may ... give such warrant in evidence; and upon producing such warrant, and proving that the signature thereto is the handwriting of the person it is reputed to be and acts as a magistrate of such county or district (as the case may be), and that the act or acts complained of were done in obedience to such warrant, the jury ... shall find a verdict for such constable ...'

[11] In *Dillon v PSNI* the underlying facts were that the police had arrested the plaintiff on 19 June 2010. A judge issued a warrant of further detention two days later. Three days after that, the judge issued a warrant for his further detention. The following day the warrant was quashed by the High Court. The plaintiff then launched civil

proceedings in the County Court for, *inter alia*, unlawful arrest and unlawful detention. The police then sought to have the plaintiff's proceedings set aside under section 30 of the Police (Northern Ireland) Act 1998. The judge upheld that application and set aside the proceedings. The plaintiff appealed to the Court of Appeal by way of case stated. However the Court of Appeal concluded that it lacked jurisdiction to deal with the case stated because the plaintiff's solicitors had not forwarded the case stated to the Court of Appeal in compliance with the Rules.

[12] In addition to the section 30 application, the defendant's summons also applied for the plaintiff's negligence claim to be struck out under Order 18 Rule 19(a), (b) and (d). These applications were accompanied by submissions concerning the line of decisions which began with *Hill v Chief Constable of West Yorkshire* [1989] A.C. 53 and has been developed by the courts over the succeeding 30 years. I was also referred to the decision of the Court of Appeal in *Magill v Chief Constable of the Police Service of Northern Ireland* [2022] NICA 49. Miss Gillen submitted that the line of decisions was consistent with the approach that there is generally no duty of care owed by police to a private citizen in the conduct of criminal investigations or crime suppression.

[13] Further, the defendant's summons also applied for the plaintiff's misfeasance in public office claim to be struck out under Order 18 Rule 19(a) and (b). These applications were accompanied by submissions which relied on the decisions in *Carter and others v Chief Constable of the Cumbria Police* [2008] EWHC 1072 (QB), *Sandhu v HMRC* [2017] EWHC 60, *Thacker v Crown Prosecution Service* The Times, 29 December 1997 and *London Borough of Southward v Dennett* [2007] EWCA Civ 1091. Miss Gillen argued that, in connection with this tort, the plaintiff must identify the person or people who acted with subjective recklessness and establish their bad faith. However, she submitted that the plaintiff had failed to identify any particulars sufficient to maintain an allegation of malice. She also submitted that the immunity against allegations for negligence against the police ought not to be circumvented by the pleading device of converting what are, in reality, no more than allegations of negligence into claims for misfeasance in public office.

[14] Finally, the defendant's summons also applied for the plaintiff's allegations of personal injury to be struck out under Order 18 Rule 19(a) and (b). These applications were accompanied by submissions which relied on the decisions in *Paul and another v Royal Wolverhampton NHS Trust* [2024] UKSC 1, *McLoughlin v O'Brien* [1983] 1 AC 410, *Alcock v Chief Constable of the South Yorkshire Police* [1992] 1 AC 310 and *Frost v Chief Constable of South Yorkshire* [1992] 2 AC 455. Miss Gillen argued

that the necessary ingredients to establish a duty of care are entirely absent from the facts of the plaintiff's action.

Plaintiff's Submissions

[15] The plaintiff conceded that immunity from liability was granted to the Chief Constable as a result of section 30 of the 1998 Act. Nevertheless, Mr McCaughey, for the plaintiff, referred the court to para 7-144 of the textbook "Civil Actions Against the Police" (Clayton and Tomlinson, 3rd Edition) which states:

> "Assuming that all the procedural requirements of ss 15 and 16 have been complied with, a constable must still act "in obedience" to the warrant. The warrant will, of course, be "strictly construed". Thus a constable will be liable if he executes it on the wrong person or the wrong premises. If the warrant gives the wrong address for the premises, it will not authorise a search of the correct flat."

[16] The plaintiff also submitted that the defendant failed in his duty to prepare the warrant with all due diligence and care, arguing that there was no evidence that the plaintiff was linked to Gareth McGuigan whose name was referred to on the warrant which resulted therefore in the warrant being defective and the search being illegal. Given the authorities which present difficulties in alleging that a duty of care is imposed on the defendant in the conduct of their activities in preventing and investigating crime, the plaintiff alleges that the police were negligent in their duty to diligently prepare a warrant and insert the correct address.

[17] The plaintiff also submitted that, whilst the authorities supported the principle that police would generally not be liable in the course of their activities in the prevention and investigation of crime, the Supreme Court in *Robinson* established that there can be exceptional circumstances in which a duty of care and liability will arise. Counsel argued that the circumstances of this case, whereby an incorrect address was used on the warrant, amounted to a careless act coupled with omissions causing or making a material contribution to personal injury to the plaintiff.

[18] Moving beyond the matter of the section 30 submission, and dealing with the general approach of negligence actions against the police, the plaintiff also submitted that the correct legal test in this field was set out in *McAteer and McAteer v The Chief Constable of the PSNI and Craig* [2018] NIMaster 10, stating that the power to strike out may not be invoked to deprive plaintiffs of their right to bring an arguable matter before the courts and should only be used in plain and obvious cases, confining it to cases where the cause of action was obviously and incontestably bad.

Conclusion

Statutory Interpretation

[19] The first step in reaching a decision on this application requires me to interpret section 30 of the 1998 Act. It is on the statutory interpretation and application of that provision that both counsel focussed their submissions at the hearing. In *R (Quintavalle) v Secretary of State for Health*. [2003] UKHL 13 Lord Bingham described the role of the court in terms of statutory interpretation in the following way:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

In the same case, Lord Steyn very clearly emphasised that a purposive, rather than a literal approach, was now to be taken:

> "The pendulum has swung towards purposive methods of construction. This change … has been accelerated by European ideas… [N]owadays the shift towards purposive interpretation is not in doubt."

More recently, Lord Reed and Hodge, giving the leading judgment in *Test Claimants in the FII Group Litigation v HMRC [2020] UKSC 47* said:

> 'It is the duty of the court, in accordance with ordinary principles of statutory interpretation, to favour an interpretation of legislation which gives effect to its purpose rather than defeating it.'

[20] Section 29(1) of the Police (Northern Ireland) Act 1998 establishes the general principle that the Chief Constable will be vicariously liable for the tortious acts of members of the police force:

> "Liability for wrongful acts of constables
>
> "The Chief Constable shall be liable in respect of torts committed by members of the police force under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of torts committed by his servants in the course of their employment, and accordingly

> shall in respect of any such tort be treated for all purposes as a joint tortfeasor."

However that liability is not absolute and section 30 then provides an exception to this general principle.

[21] The word "irregularity" is not defined in the 1998 Act. The Cambridge Dictionary defines it as meaning "something that is not correct or acceptable". The Longmans Concise English Dictionary defines the word as meaning: "Something irregular (for example, contrary to accepted professional or ethical standards)."

[22] Section 30 of the 1998 Act was not a novel section. Indeed the 1998 Act repealed in its entirety the Constabulary (Ireland) Act 1836 which contained a similar and earlier protection for police. Nor were such provisions applicable only in Ireland. In England and Wales the governing provision was section 6 of the Constables' Protection Act 1750. As the Law Commission for England and Wales noted in its 2018 Consultation Paper on Search Warrants:

> "Despite its age and arcane drafting, the provision is routinely cited as affording protection to police constables and Chief Constables who would otherwise be vicariously liable under section 88 of the Police Act 1996 for the actions of constables. The provision extends to any persons acting by the order and in aid of such constables."

Section 6 of the 1750 Act was considered in the decision of Eder J in *Tchenguiz & Ors v The Serious Fraud Office (SFO)* [2013] EWHC 1578 (QB). That decision concerned search warrants which were executed on the homes and offices of the plaintiffs by the Serious Fraud Office into suspected offences committed within the UK in relation to an Icelandic bank. The warrants had subsequently been quashed in judicial review proceedings. Eder J commented that:

> "The effect of this provision is that "… if the constable acts in obedience to the warrant, then, though the warrant be an unlawful warrant, he is protected by the Statute of 1750": *Horsfield v Brown* [1932] 1 KB 355 per Macnaghten J; cited with approval in *McGrath* (cited above) at [12] per Lord Clyde. The leading textbook in this area states that "Even if a warrant is, in fact, invalid the police will have a statutory defence under the Constables Protection Act 1750 provided they act "in obedience" to it": *Civil Actions Against the Police, Clayton & Tomlinson*, 3rd Ed, 2004 at §1-029.

> Section 6 of the 1750 Act has remained on the statute book for over 262 years without any amendment, despite the remainder of the Act having been long ago repealed. It is not a dusty relic but a constitutionally important provision routinely cited as affording protection to police constables and to Chief Constables who are vicariously liable for such constables' actions: see e.g. *Bell v Chief Constable of Greater Manchester* [2005] EWCA Civ 902 at [27]-[29] per Sir Mark Potter P; *Fitzpatrick v Commissioner of Police of the Metropolis* [2012] EWHC 12 (Admin) at [134]-[152] per Globe J."

Eder J observed that, "The clear purpose of the 1750 Act is to protect public officers from civil actions for acts undertaken in obedience to a judicial warrant."

[23] In reaching a conclusion as to the meaning of section 30 of the 1988 Act I agree with what the Law Commission for England and Wales stated in its 2018 Consultation Paper on Search Warrants when it stated:

> "Search warrants serve an important purpose and are vital to criminal investigations. They also raise important constitutional issues concerning the rule of law and the proper balance between the powers of the state and the rights and freedoms of the citizen, in particular the right to privacy and safeguards against state intrusion."

[24] The view I have taken in terms of the meaning of section 30 of the 1998 Act is reinforced by the identification by Lord Keith of the public policy factor which lies behind the decision in *Hill v Chief Constable of West Yorkshire*. Lord Keith said:

> "The general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by the imposition of such liability so far as concerns their function in the investigation and suppression of crime. From time to time they make mistakes in the exercise of that function, but it is not to be doubted that they apply their best endeavours to the performance of it. In some instances the imposition of liability may lead to the exercise of a function being carried on in a detrimentally defensive frame of mind. The possibility of this happening in relation to the investigative operations of the police cannot be excluded."

[25] In *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4 Lord Reed, with whom Lady Hale and Lord Hodge agreed, explained that the general law of tort, including the tort of negligence, applies as much to the police as to anyone else. Nevertheless, it is clear from decisions such as *McGrath v Chief*

Constable that what section 30 of the 1998 Act does is to provide a clear carve-out so that police officers are not susceptible to actions for negligence in respect of any irregularity regarding the issuing of a search warrant.

[26] Code B, one of the Codes of Practice made under the Police and Criminal Evidence (Northern Ireland) Order 1989 provides at para 3.1:

> "When information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought."

Mr McCaughey's submission that there had been a breach of the Code of Practice in that police had failed in their duty to prepare the warrant with all due diligence and had failed to carry out proper checks and investigations, with the result that the warrant was defective and the search was unlawful and hence the plaintiff's claim should be allowed to proceed, is not a submission that I am able to accept. Article 66(9) of the Police and Criminal Evidence (Northern Ireland) Order 1989 provides that a failure on the part of a police officer to comply with any provision of one of the Codes of Practice made under the 1989 Order shall not of itself render the officer liable to any criminal or civil proceedings. Article 66(9) appears to be, like section of the Police (Northern Ireland) Act 1998 an attempt by Parliament and the Secretary of State to reach a balance whereby the important tool of search warrants can be utilised by police in circumstances where a successful application to a court which meets the statutory criteria has been made and yet, in the event of an error having been made, no civil or criminal liability will attach to an officer who is acting in good faith. Breach of para 3.1 of Code B could, however, lead in appropriate circumstances to disciplinary proceedings against an officer as that type of proceedings have not been excluded under Article 66(9).

[27] My conclusion on the section 30 submission is that, once a warrant had been issued to search the specific address where Ms Quinn lived, the police were obliged to act on that judicial warrant and carry out a search at that address. Under the provisions of section 30 of the 1998 Act, Parliament has prohibited any civil action for damages in connection with the execution of that warrant (assuming that police do not step outside the strict bounds of what the warrant contains). The allegations of negligence are therefore struck out. The allegations of trespass, breach of statutory duty, and reputational damage must similarly fall.

Misfeasance in Public Office

[28] The Plaintiff's Statement of Claim also includes an allegation of misfeasance in public office. The leading authority on the subject of misfeasance in public office is *Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1. The ingredients of the tort were subsequently and usefully summarised by Tugendhat J in *Carter and others v Chief Constable of the Cumbria Police* [2008] EWHC 1072 (QB) as follows:

> "(a) The defendant must be a public officer;
>
> (b) The conduct complained of, that is an act and/or an omission (in the sense of a decision not to act) must be in the exercise of public functions;
>
> (c) Malice: The defendant's state of mind must be one of two types, namely either:
>
> i) "Targeted malice" i.e. the conduct is "specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of a public power for an improper or ulterior motive…".
> ii) "Untargeted malice": i.e. the public officer acts knowing that he has no power to do the act complained of or with reckless indifference as to the lack of such power and that the act will probably injure the claimant. "… it involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful…" Thus the unifying element is "…. conduct amounting to an abuse of power accompanied by subjective bad faith…"
>
> (d) The claimant must have a "sufficient interest to found a legal standing to sue" but there is no requirement of sufficient proximity between the claimant and the defendant ;
>
> (e) Causation of damages/loss;
>
> (f) Remoteness of damage: Where the malice is of the second type, see (c)(ii) above – The defendant must know that his/her conduct "would probably injure the plaintiff or person of a class of which the plaintiff was a member." "

[29] If therefore one was attempting to define the essence of misfeasance in public office, one might usefully explain it as a dishonest abuse of public power exercised in a deliberate or reckless manner. As Lord Steyn observed in *Three Rivers*, the test to be applied by the courts represents a satisfactory balance between the two competing policy considerations, namely enlisting tort law to combat executive and administrative abuse of power and not allowing public officers, who must always act for the public good, to be assailed by unmeritorious actions.

[30] In 2019 the Law Commission for England and Wales conducted a project on the subject of "Reforming Misconduct in Public Office". Although the Law Commission's focus was on criminal law offences, one of its background papers considered the related tort of misfeasance in public office. Appendix B to the Commission's background paper stated:

> "Pleading bad faith is difficult, because the pleading rules require details, and professional conduct rules forbid practitioners supporting obviously baseless allegations. Proving bad faith is even more difficult. Where they have a choice, the courts are strongly disposed to believing that bureaucratic error was caused by genuine mistake, even incompetence, rather than by bad faith. The result is that of the hundreds of misfeasance claims that are actually filed, very few make it to trial. Most are filtered out for inadequate pleading of bad faith, or because an allegation of bad faith has no real prospect of success. … Misfeasance in public office is an oddity in several respects. Not allowed to trespass on better established torts, it occupies a tiny niche reserved, in essence, for redressing harms caused by public officers who knew or suspected that they were abusing their public power or position to the detriment of the individual."

[31] When it comes to proving malice, this can be done by inference. Nevertheless, as Collins Rice J said in *Sivananthan v Vasikaran* [2023] EMLR 7:

> "There is a difference between inference and speculation. The components of an inferential case must themselves be sufficiently evidenced and/or inherently probable to be capable of adding up to something which discharges a claimant's burden".

[32] In *Young v The Chief Constable of the Warwickshire Police and The Director of Public Prosecutions* [2020] EWHC 308 (QB) Master Davison discussed inadequate pleading and the particularising of malice when alleging misfeasance in public office:

> "[26] In line with the heavy burden thus imposed, the claimant must specifically plead and properly particularise the bad faith or reckless indifference relied upon. It may be possible to infer malice. But if what is pleaded as giving rise to an inference is equally consistent with mistake or negligence, then such a pleading will be insufficient and will be liable to be struck out. The claimant must also specifically plead and properly particularise both the damage and why the public officer must have foreseen it. A pleading that fails to do so is similarly liable to be struck out. These propositions have been established in a series of cases, including *Three Rivers*, *Thacker v Crown Prosecution Service* CA, 16 December 1997 (unreported) and *Carter v Chief Constable of Cumbria* [2008] EWHC 1072 (QB)."

[33] In *Young* both defendants submitted that the claimant had not pleaded a claim for misfeasance with sufficient particularity. In essence, it was submitted that what the claimant complained about was as (or more) consistent with mistake or negligence than with malice. Further, the claimant had not pleaded a case of knowledge on the part of the defendants as to the consequences for the claimant of their acts and omissions. Master Davison stated:

> "I should scrutinise the claim carefully to ensure that the allegations of misfeasance in public office amount or are capable of amounting, in reality, to something more than "mere" negligence. They do not. And I should make it clear that a pleading that does not or cannot give proper particulars of bad faith is not saved by the "bootstraps" operation of alleging that this is the "only explanation" when, on the facts pleaded, that is quite clearly not the case."

On appeal, Master Davison's exposition of the legal position on misfeasance in public office, and the application of those principles in his decision to strike out the allegations, was upheld by Martin Spencer J in the latter's decision at [2021] EWHC 3453 (QB).

[34] The issue of pleading malice is also considered in actions for malicious prosecution where it is similarly a crucial element of the tort. In *Daly v Independent Office For Police Conduct* [2023] EWHC 2236 (KB) the claimant was a serving police officer who was the subject of both criminal and disciplinary proceedings. He was acquitted in the criminal proceedings and the disciplinary proceedings were dismissed without the claimant having to give evidence. He then brought a case against the defendant alleging malicious prosecution and misfeasance in public office in relation to those proceedings. The particulars of malicious prosecution set out in the pleadings included failures in the conduct of the investigation, a failure to hold a formal

identification procedure, a failure to act in a fair and impartial manner, and a failure to appoint a sufficiently experienced investigative officer. Upon considering the pleadings, Master Yoxall struck out the claim, stating:

> "In my judgment these alleged failures and the matters pleaded under the various sub-headings, even if proved, do not establish malice. These failures, if made out, may equally show incompetence or want of care. That is no basis for a claim in malicious prosecution."

In particularising the alleged misfeasance in public office, the claimant had merely repeated the particulars of claim in his malicious prosecution claim. When dealing with the claim for misfeasance in public office, Master Yoxall gave summary judgment to the defendant, holding that the claimant had no real prospect of establishing bad faith and stating:

> "Error of judgment, even serious error of judgment, is not sufficient to establish liability."

[35] In the application before me, once the defendant's challenge to the Statement of Claim had been filed, the plaintiff's advisers conceded that the pleading did not comply with authorities such as I have referred to and was fatally compromised because malice had not been alleged. The plaintiff's skeleton argument acknowledged that misfeasance in public office had been merely pleaded as an alternative to negligence and accordingly consented that I should strike out that pleading. Even without that consent, however, such an outcome was inevitable.

[36] I therefore also grant this aspect of the defendant's application and strike out the allegation of misfeasance.

[37] During the hearing I posed a question to Miss Gillen as to whether or not there had been an *ex gracia* payment made to the plaintiff by the Chief Constable to cover the cost of damage to Ms Quinn's door when police forcibly entered her property. Miss Gillen informed me that she had no instructions on that point. While it is, in my view, clear that Parliament has passed in section 30 of the 1998 Act a legislative provision which does not allow for civil actions to be taken against police in the circumstances of this case, any reasonable person would consider that an *ex gracia* payment to cover the cost of the damage caused by police entry to Ms Quinn's home is what the justice of the situation requires.