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Judgment: approved by the Court for handing down | *Delivered:* **22/03/11**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

LAURENCE RUSH (ON HIS OWN ACCOUNT AND AS PERSONAL REPRESENTATIVE OF ELIZABETH IMELDA RUSH) DECEASED

Plaintiff;

-and-

POLICE SERVICE OF NORTHERN IRELAND
-and-
THE SECRETARY OF STATE FOR NORTHERN IRELAND

Defendants.

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GILLEN J

[1] This is an appeal against the decision of Master Bell given on 18 May 2010 whereby the Master ordered the plaintiff's action be dismissed pursuant to Order 18, Rule 19(1)(a) and (b) of the Rules of the Court of Judicature (Northern Ireland) 1980.

[2] Mr Mansfield QC appeared on behalf of the plaintiff / appellant with Mr Coyle. Mr Ringland QC appeared on behalf of the defendants/respondents with Mr McEvoy.

Background

[3] The pleadings in the amended Statement of Claim allege that on 15 August 1998 Libby Rush was murdered by a bomb placed by the Real IRA in a car at Main Street, Omagh, Country Tyrone and her business premises were severely damaged.

[4] Paragraphs 4-8 of the Statement of Claim are pleaded in the following terms:

"4. The bomb which killed Elizabeth Imelda Rush was planted by the so-called Real IRA, a criminal terrorist conspiracy and a proscribed organisation.

5. That proscribed organisation had been infiltrated by an informer, one Kevin Fulton, who fed to the security forces information about the Real IRA in general and the threat of a bomb attack on a town in Northern Ireland and Omagh in particular. The defendants in particular, through their agents or servants namely the GCHQ Communications Centre at Cheltenham, Gloucester, had contemporaneous intercepts of the bombers' mobile phone communications on the afternoon of 15 August 1998. The said Communication Centre had actual knowledge of the route of the bombers and their target being Omagh. This information was not acted upon to either apprehend the bombers or put into operation a comprehensive evacuation strategy of Omagh mindful of the intent of the Real IRA which had been demonstrated some weeks previously when a bomb was planted and exploded at Banbridge, County Down. The threat and capacity of the Real IRA were known to the defendants as a consequence of that previous bombing. The circumstances of the transportation of the bomb to Omagh could not have been more serious and the defendants, their agents and/or servants failed to react either in time or at all to prevent the loss of life to Libby Rush.

6. The defendants, or one of them, had a sufficient quality of information to apprehend the perpetrators, or prevent the planting of the bomb, at Market Street, Omagh, County Tyrone on 15 August 1998 which directly caused the death of Libby Rush. The quality of this information was given precision by the contemporaneous intercepts of mobile telephone communications between the bombers of the Real IRA.

7. Further and in the alternative, the first named defendant failed to take such steps as would have prevented the loss of life by timely and effective warnings to the public, including Libby Rush whose shop at Market Street, Omagh, County Tyrone, was

> directly across from the bomb site. Moreover it failed to implement upon receipt of the warning an effective and sufficient evacuation strategy of the locus of the bomb thereby preventing a loss of life, including the murder of Libby Rush. The first named defendant with information or the means of knowledge of what was to take place in terms of a bomb in the town of Omagh, depleted the number of constables on duty on 15 August 1998 by deploying a significant number to Kilkeel, County Down. Therefore, the first-named defendant had inadequate officers on duty in Omagh on the afternoon of 15 August 1998 as many had been deployed to police a parade at Kilkeel, County Down. The dissemination and broadcast of evacuation messages and information to the public in Omagh and Libby Rush was therefore slow and inadequate to produce an effective removal of civilians from the epicentre of the blast or its adjacent area. There were established guidelines available to the first-named defendant and these were not implemented to achieve a sound evacuation strategy which would have worked and saved the life of Libby Rush and the other persons who died. In addition the first-named defendant failed to request the army to deploy troops in aid of the civil power. There were sufficient military personnel at Lisanelly Army Barracks to assist the civil power to close the town of Omagh or to prevent backup to an evacuation strategy directed and controlled by the first-named defendant.
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> 8. To the extent that any warning was given to UTV in Belfast and to the Samaritans was imprecise, the evacuation and warning strategy deployed by the first-named defendant should have been more comprehensive in terms of clearance of civilians from the potentially affected area by the bomb."

[5] It is the defendants' contention that the amended Statement of Claim should be struck out on the basis that it discloses no reasonable cause of action and/or alternatively that it is frivolous or vexatious.

Order 18, Rule 19(1) of the Rules of the Court of Judicature

[6] Where relevant Order 18, Rule 19(1) of the Rules of the Court of Judicature provides:

> "(1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything and any pleading or the endorsement, on the ground that –
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> (a) It discloses no reasonable cause of action or defence, as the case may be; or
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> (b) It is scandalous, frivolous or vexatious; or
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> (c) It may prejudice, embarrass or delay the fair trial of the action; or
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> (d) It is otherwise an abuse of the process of the court,
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
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> (2) No evidence shall be admissible on an application under paragraph (1)(a)."

[7] For the purposes of the application, all the averments in the Statement of Claim must be assumed to be true. (See O'Dwyer v Chief Constable of the RUC (1997) NI 403 at p. 406C).

[8] O'Dwyer's case is authority also for the proposition that it is a "well settled principle that the summary procedure for striking out pleadings is to be used in plain and obvious cases." The matter must be unarguable or almost incontestably bad (see Lonrho plc v Fayed (1990) 2 QBD 479).

[9] In approaching such applications, the court should be appropriately cautious in any developing field of law particularly where the court is being asked to determine such points on assumed or scanty facts pleaded in the Statement of Claim. Thus in Lonrho plc v Tebbit (1991) 4 All ER 973 at 979H, in an action where an application was made to strike out a claim in negligence on the grounds that raised matters of State policy and where the defendants allegedly owed no duty of care to the plaintiff regarding exercise of their powers, Sir Nicholas Brown-Wilkinson V-C said:

> "In considering whether or not to decide the difficult question of law, the judge can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts

> pleaded or whether it would not be better determined at the trial in the light of the actual facts of the case. The methodology of English law is to decide cases not by a process of a priori reasoning from general principle but by deciding each case on a case-by-case basis from which, in due course, principles may emerge. Therefore, in a new and developing field of law it is often inappropriate to determine points of law on the assumed and scanty, facts pleaded in the Statement of Claim."

(See also E (A Minor) v Dorset CC (1995) 2 AC 633 at 693-694).

[10] Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted. A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. So long as the Statement of Claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.

[11] Evidence by affidavit is admissible so that the courts can explore the facts under Order 18 r. 19(1)(b)-(d). Thus I am entitled to rely on the affidavit of Mr Murray on behalf of the defendants. However a court at this stage must be careful not to engage in a minute and protracted examination of the documents or the facts of the case. I draw attention to the comments of Danckwerts LJ in Wenlock v Moloney (1965) 2 All ER 871 at 874G where he said of the comparable English rule under Order 18 r 19 (as it then was) :

> "There is no doubt that the inherent power of the court remains; but this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case in order to see whether the plaintiff really has a cause of action. To do that, is to usurp the position of the trial judge, and to produce a trial of the case in chambers, and affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to an abuse of the inherent power of the court and not a proper exercise of that power."

[12] The alternative ground relied on by the respondent in this case under O18 r19(1)(b) is that the amended Statement of Claim is frivolous and vexatious. By these words are meant cases which are obviously frivolous and vexatious or obviously unsustainable. The pleading must be "so clearly

frivolous that to put it forward would be an abuse of the process of the court" (per Jeune P. in Young v Holloway (1895) P. 87 at 90.

The decision of Master Bell

[13] In a well researched judgment, Master Bell concluded that he could find no factor capable of classifying this action for negligence as exceptional or outside the scope of the core principle in Hill v Chief Constable of West Yorkshire (1989) AC 53 ("Hill's case"). It therefore disclosed no reasonable cause of action. Secondly, he concluded that the plaintiff's case was obviously unsustainable and therefore within the definition of frivolous and vexatious. That I have departed from the conclusion of Master Bell is no adverse reflection on the obvious care and industry that he has invested in this judgment.

The core principle in Hill

[14] It is a well established principle that in the discharge of the general duty of the police of combating and investigating crime the police owe no legal duty of care to the individuals affected (hereinafter called "the core principle" in Hill's case). That case involved an action against the police brought by the mother of the last victim of a notorious serial killer. The claim failed firstly on the basis that there was insufficient proximity between the police and the victim who had never made any contact with the police. Secondly the claim was defeated by public policy arguments of defensive practice and diversion of police resources.

[15] The rationale behind this core principle is that the existence of a duty of care would alter detrimentally the manner in which the police performed their duties inasmuch as they would act defensively out of apprehension of the risk of legal proceedings. Time and resources would have to be devoted to meeting claims brought against the police which would be better directed to their primary duties. (See also Brooks v Metropolitan Police Com. (2005) 2 All ER 489 and Van Colle and Another v Chief Constable of Hertfordshire of Police and Smith v Chief Constable of Sussex Police (2008) 3 All ER 977 (2008) UKHL 510). [37]. In Smith's case at paragraph 97 Lord Phillips summarised the position as follows :

> "That principle (*the Hill core principle*) is, so it seems to me, that in the absence of special circumstances the police owe no common duty of care to protect individuals against harm caused by criminals. The two relevant justifications advanced for the principle are:

(i) that a private law duty of care in relation to individuals would be calculated to distort, by encouraging defensive action, the manner in which the police would otherwise deploy their limited resources;

(ii) resources would be diverted from the performance of the public duties of the police in order to deal with claims advanced for alleged breaches of private law duties owed to individuals."

[16] This is not to say there is immunity from liability in negligence for police officers in all circumstances. Whilst the shortcomings of the police in individual cases cannot undermine the core principle nonetheless that principle has some ragged edges. It is well established that there are exceptional cases on the margins which will have to be considered if and when circumstances appropriately arise.

[17] I consider it is necessary for the purposes of this judgment that I should recite the various approaches adopted to that possible cadre of exceptions.

[18] First, in Hill's case Lord Keith said at page 59C:

> "There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution and also for negligence. Instances where liability for negligence has been established are Knightley v Johns (1982) 1 WLR 349 (*where a police officer instructed the victim to ride his motorcycle behind a blind bend into a tunnel against the flow of traffic*) and Rigby v Chief Constable of Northamptonshire (1985) 1 WLR 1242 (*where police had fired a canister of CS gas into a shop without ensuring that adequate precautions were in place to put out any fire that might result*). Further, a police officer may be guilty of a criminal offence if he wilfully fails to perform a duty which he is bound to perform by common law or by statute: see Reg v Dytham (1979) 2. B. 722, where a constable was convicted of wilful neglect of duty because, being present at the scene of a violent assault resulting in the death of the victim, he had taken no steps to intervene."

[19] To those examples I respectfully add some others. In Swinney v Chief Constable of Northumbria (1997) QB 464 the Court of Appeal was prepared to recognise that a duty could be owed by the police to protect an informant whose identity they had negligently disclosed. The public interest and the protection of informants were to be regarded as outweighing the public interest in protecting the police from liability as regards their performance of their duties. In Costello v Chief Constable of the Northumbria Police (1999) 1 All ER 550 a woman police constable was attacked and injured by a woman prisoner in a cell at a police station. At the time a police inspector was standing nearby but he did not come to plaintiff's help when she was attacked. The Court of Appeal concluded that a police officer who assumed a responsibility to another police officer owed a duty of care to comply with his police duty where failure to do so would expose that other police officer to unnecessary risk of injury. The police inspector had acknowledged his police duty to help the plaintiff.

[20] I pause at this stage to observe that it was Mr Ringland's contention that the exceptions to the core principle in Hill were confined to those cases where there was a necessary pre-tort relationship in the form of an assumption of responsibility on the part of the police towards the victim.

[21] Clerk and Lindsell on Torts 20th Edition at paragraph 14-28, having traced the path of the authorities post Hill states:

> "Leaving aside cases where there is an assumption of responsibility, such 'exceptional cases' have not so far been recognised, and their existence might appear somewhat less likely given not only the outcome but also certain remarks by the majority in Smith v Chief Constable of Sussex Police (see above)."

[22] In Brooks' case – involving a duty to give appropriate protection to witnesses and alleged victims of crime – Lord Steyn dealt with the exceptions to the Hill principle in the following terms:

> "It is unnecessary in this case to try to imagine cases of outrageous negligence by the police, unprotected by specific torts, which could fall beyond the reach of the Hill principle. It would be unwise to try to predict accurately what unusual cases could conceivably arise. I certainly do not say that they could not arise. But such exceptional cases on the margin of the Hill principle will have to be considered and determined (see paragraph 34)."

[23] Lord Nicholls at page 494 paragraph 6 of Brooks' case said:

> "Like Lord Bingham and Lord Steyn, in reaching this conclusion I am not to be taken as endorsing the full width of the observations in 'Hill's case. 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. The decision in Hill's case should not stand in the way of granting an appropriate remedy."

[24] I find in the most recent leading authority on this matter, namely Smith's case, a similar bold assertion of the principle in Hill accompanied by broad unspecified references to potential exceptions. In that case the plaintiff had been threatened with extreme violence over a period of months by his ex-partner after having ended their relationship. He had repeatedly told the police about the threats, the majority of which had been sent as text messages, and had given the police both the name and address of the ex-partner, as well as the mobile number from which the relevant text messages had been sent. Despite having ample evidence and information to arrest the ex-partner, the police failed to do so. The ex-partner subsequently attacked the plaintiff causing serious injuries. The House of Lords (Lord Bingham dissenting) held that the claim was defeated by the defensive practice argument enshrined in Hill's case. In short, the core principle of Hill remained intact.

[25] At paragraph 77g of that judgment, Lord Hope commented on the dissenting judgment of Lord Bingham which had espoused the view that liability applied in cases where a member of the public has furnished apparently credible evidence to police that a third party represents a specific and imminent threat to his life or physical safety as follows:

> "But, if adopted, it would lead to the uncertainty in its application and to the detrimental effects that Lord Steyn warned against. Who is to judge whether the evidence is apparently credible? Who is to judge whether the threat is imminent? These are questions that the police must deal with on the spot. A robust approach would leave the matter to the judgment of the police officer. The decision in Brooks' case adopts this approach, leaving the police free to form their own judgment …. How then is the police officer to deal with evidence which, for one reason or another, he or she does not find convincing but about which there is a risk that, after the event, a judge might take a different view? Subjecting the officer's judgment to an objective test would tend to lead to what my noble

> and learned friend Lord Carswell describes as defensive policing, focused on preventing, or at least minimising, the risk of civil claims in negligence."

[26] However Lord Hope went on at paragraph 79 to recognise that there are cases in which actions of the police do give rise to civil claims in negligence adverting inter alia to Rigby v Chief Constable of Northamptonshire and Knightley v Johns (see paragraph 18 of this judgment) as examples where operational decisions taken by the police can give rise to civil liability without compromising the public interest in the investigation and suppression of crime.

[27] Lord Phillips of Worth Matravers at paragraph 101 directly addressed the complex issue of exceptions to the Hill principle in the following terms:

> "For these reasons I find myself reluctantly unable to accept the 'liability principle' formulated by Lord Bingham. I say reluctantly, because lack of action in the face of the individual facts that he postulates, and indeed the lack of action on the assumed facts of this case, come close to constituting the 'outrageous negligence' that Lord Steyn contemplated as being potentially outside the reach of the principle in Hill's case. I have not, however, found any principled basis for placing this case outside the range of that principle."

Lord Carswell at paragraph 109 said:

> "I would not dissent from the view expressed by Lord Nicholls of Birkenhead in Brooks' case at (6) that there might be exceptional cases where liability must be imposed. I would have reservations about agreeing with Lord Steyn's adumbration in para. (34) of Brooks's case of a category of cases of 'outrageous negligence', for I entertain some doubt whether opprobrious epithets provide a satisfactory and workable definition of a legal concept. **I should accordingly prefer to leave the ambit of such exceptions undefined at present.** (my emphasis)"

[28] Lord Brown of Eaton-under-Heywood said at paragraph 135:

> "True it is that in Brooks's case both Lord Nicholls of Birkenhead and Lord Steyn contemplated the possibility of exceptional cases on the margin of the Hill principle which might compel a different result. If, say, the police were clearly to have assumed

> specific responsibility for a threatened person's safety – if, for example, they had assured him that he should leave the matter entirely to them and so could cease employing bodyguards or taking other protective measures himself – then one might readily find a duty of care to arise. That, however, is plainly not this case. There is nothing exceptional here unless it be said that this case appears exceptionally meritorious on its own particular facts – plainly not in itself a sufficient basis upon which to exclude a whole class of cases from the Hill principle. That said, the apparent strength of this case might well have brought it within the Osman principle so as to make a Human Rights Act claim here irresistible."

Conclusions

Reasonable cause of action

[29] I have come to the conclusion that it is neither plain nor obvious that the cause of action in this matter has no chance of success. In short I do not consider that on the pleadings the case made by the plaintiff is unarguable.

[30] I preface my reasoning for this conclusion by acknowledging that I am bound by the core principle in Hill notwithstanding the academic criticism that has been recently visited upon it e.g. "Getting defensive about police negligence: the Hill principle, the Human Rights Act 1998 and the House of Lords" by Claire McIvor, Volume 69 (2010) CLJ 133.

[31] Moreover I am not persuaded by Mr Mansfield's skeleton argument that it is time for the Hill core principles to be revisited by this court particularly in light of the recent consideration of that principle in Smith's case in the House of Lords. For the removal of doubt I further indicate that I find no authoritative support for his contention that the distinct nature of this crime or its size and extent or the damage to the peace process engendered by the attack are sufficient to bring this case outside the Hill core principle.

[32] However I am satisfied that the category of cases which constitute exceptions to the core principle is far from closed. I am conscious of the cautionary note struck in Lonrhos's case (see paragraph 9 of this judgment). Courts at first instance must be wary lest arguable cases are stifled at too early a stage whatever the ultimate fate of that argument may be at the trial itself once there has been a close and protracted examination of the documents and facts of the case. It has proved very difficult for judges even at the highest level to construct with any precision a formula for exceptions which will cover the range of particular circumstances which could arise. Suffice to say that my task at this stage is not to determine the outcome of the

plaintiff's assertions but merely to determine if the case on the pleadings is arguable.

[33] Confining my focus to the pleadings, the case made in this instance is that the defendant "had actual knowledge" of the route of the bombers, their target, namely Omagh and the date and timing of the bombing. I consider that this arguably is distinguishable from the facts in Smith where the police had to process and interpret information reported to the police by one party to a so-called domestic case. Contrast the instant case, where the case is made that the police actually knew that the event was to take place i.e. there was no question of treating, processing or judging a report from a member of the public and making a value judgment.

[34] Accordingly is it not at least arguable that the instant case on the pleadings has more in common with the circumstances in Costello where a police officer knew that the plaintiff was being attacked and stood by and did nothing? The analogy in the instant case is that the police, *knowing* an attack was imminent, similarly stood by and did nothing. Did those circumstances involve the police assuming a responsibility to protect the public? If this is the proven state of affairs does not the need to protect persons imminently about to be killed outweigh the public interest in protecting from liability police in the performance of their duties?

[35] It seems to me arguable that the precision of the foreknowledge and the exactitude of the information alleged arguably put this plaintiff within the bracket of the outrageous negligence adumbrated by Lord Steyn, the special circumstances described by Lord Phillips, the exceptional circumstances contemplated by Lord Carswell and that category of cases addressed by Lord Keith "where the absence of a remedy would be an affront to the principles underlying the common law".

[36] I make no comment on whether such assertions as are contained in the pleadings will be sustained by the factual evidence or whether even then the argument that they constitute an exception to the Hill core principle is weak or likely to succeed. I observe only that I do not at this stage consider that the case is unarguable. To that extent therefore I must depart from the conclusion of Master Bell and reverse his decision in respect of Order 18 r19(1)(a).

Vexatious and Frivolous

[37] The defendant/respondent had essentially relied on an affidavit by Mr Murray, solicitor in the Crown Solicitor's Office of 30 October 2009 to found the case on Order 18 r19 (1)(b) that the claim was frivolous and vexatious. On the basis of the evidence put forward at this stage I am not so satisfied and my reasoning is as follows:

[38] Master Bell summarised the thrust of this affidavit in paragraphs 66 - 68 of his judgment as follows:

> "He deposes that the amendments to the statement of claim and the allegations that the defendants had fore knowledge of what were to take place by means of contemporaneous interception of the bombers' communications as they made their way to Omagh are based solely on a Panorama programme broadcast on BBC television on 15 September 2008. He further deposes that, following the Panorama programme, Sir Peter Gibson, being the Intelligence Services Commissioner, was invited to review any intercepted intelligence material available to the security and intelligence agencies in relation to the Omagh bombing and how this intelligence was shared. On 16 January 2009 Sir Peter Gibson published a summary of his review and this was exhibited to Mr Murray's affidavit.
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> (67) Mr Murray also deposes that, after reviewing all the documentation provided by the various agencies and the PSNI Sir Peter Gibson concluded:
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> (i) there was nothing to suggest either that a bomb attack was going to take place on 15 August 1998 or that the town of Omagh was to be the target of any bomb attack;
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> (ii) any intelligence derived from interception as might have existed could not have prevented the bombing;
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> (iii) that there was no information on or before 15 August 1998 that could reasonably indicate by reference to the bombing of Banbridge on 1 August 1998 that a further bombing attack was about to take place; and
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> (iv) the portrayal in the Panorama programme of the tracking on a screen of the movement of two cars, a scout car and a car carrying a bomb, had no correspondence whatever with what intercepting agencies were able to do, or did do, on 15 August 1998. Sir Peter Gibson was satisfied that in 1998 it was neither possible to

> track mobile phones in real time nor to visualise the location and movement of mobile phones in the way that was shown in the Panorama programme. It is clear therefore that no intelligence or security agency or law enforcement agency did see, or could have seen, what was suggested in the Panorama programme.
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> (68) Mr Murray therefore deposes that, in the circumstances, the allegations in the amended Statement of Claim are without merit as they had been discredited by the comprehensive review carried out by Sir Peter Gibson."

[39] The respondent further relied on sections 17 and 18 of the Regulation of Investigatory Powers Act 2000 (RIPA). The provisions of that legislation are fully set out in Master Bell's judgment at paragraph [70]. In short these provisions prohibit evidence being adduced, questions asked, assertions made and disclosure being provided in connection with any legal proceedings which in any manner has the effect of disclosing contents of or the fact of interception itself.

[40] In his skeleton argument Mr Mansfield contended that the evidence to be adduced in this case rested not merely on intercept activity but also , for example, telephone billing for two mobiles, the movement of two cars, the ability to track mobiles, and general intelligence all of which would fall outside the intercept material.

[41] I have concluded that there may well be substance in this argument. It would be inappropriate that I engage in a minute analysis of the evidence and documentation at this stage to determine that issue before discovery applications have been completed and oral evidence has been given.

[42] Similarly Mr Mansfield has contended that the court may be invited to invoke the provisions of s18 (7) (b) and s18 (8) of RIPA in considering all the evidence available within the Gibson review. Section 18 of RIPA provides for a limited number of exceptions and for disclosure to a judge, inter alia, at Section 18(7) (b) "in a case in which that judge has ordered the disclosure to be made to him". Section 18(8) further provides "A relevant judge shall not order a disclosure under (7) (b) except where he is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice."

[43] The trial judge might not necessarily come to the same conclusions on the basis of the evidence as that arrived at in the Gibson review. That

conclusion does not bind the trial judge and the issue will be assessed by the trial judge after having had the benefit of pre-trial disclosure, examination and cross-examination of witnesses and detailed submissions by counsel. I am not in a position to determine at this early stage whether this might be one of the exceptional circumstances addressed in s 18(8) of RIPA. The full extent of the documentation that will fall to be admitted in evidence in this case is thus uncertain in the absence of legal argument and Mr Ringland, in my view wisely, did not venture down that path in his oral submissions before me. In these circumstances I have not been persuaded that the pleadings in this matter are so clearly frivolous that to put them forward would be an abuse of the process of the court.

[44] I have thus come to the conclusion that the decision of Master Bell must be reversed, the summons dismissed and the cost of this application reserved to the trial judge save that the appellant's costs shall be taxed under the appropriate legal aid legislation.