

## Headline

In *Chief Constable of Sussex Police v. XGY* [2024] EWHC 1963 the Court of Appeal has re-affirmed advocates' general immunity from suit for what the advocate has said in Court, and corresponding immunity for police in respect of preparatory work for such hearings. Immunity does not require a fact-finding exercise.

## Facts and underlying decisions

XGY is a victim of grave domestic abuse by her former partner. In bail proceedings relating to the former partner someone "mucked up", with the result that XGY's current address was disclosed orally in Court by the CPS advocate, and so become known to the former partner; XGY had to flee from that address, and suffered recognisable mental health damage. She claimed damages from the police and the CPS, relying on the Human Rights Act 1998 and the Data Protection Act 2018. Both defendants asserted that they were immune from suit, and applied to strike out - in the case of the CPS, without serving a Defence.

The Circuit Judge struck the claims out on the basis of immunity from suit (holding also that the Human Rights Act case must fail).

On appeal, Ritchie J. ([2024] EWHC 1963 [2024] P.I.Q.R. P16) disagreed and reinstated the claim. In a detailed judgment, his most important conclusion was that advocate's immunity was not a blanket one based simply on the fact of the words having been spoken in a court hearing, and had to be justified by the defendant on a case-specific basis [paragraphs 106 and 107]. He referred to a move away from "absolutism" to "justificationism" [paragraph 89].

## The Court of Appeal

The Court allowed the appeal from Ritchie J. on multiple grounds. Most importantly, it rejected Ritchie J.'s approach to the advocate's immunity [paragraphs 63 and 64(i)]. The Court of Appeal's approach applied equally to the issue whether the Police were protected by an immunity. In the section addressing the question whether the immunity of each applied to the claims under the Human Rights Act and Data Protection Act [paragraph 73 and following], the Court held that it did.

## Comment

Although one grieves to read the facts of the case, the decision restores clarity and practical good sense to the law. It is worth remembering the importance of the word "suit". As the Court of Appeal said [paragraph 74], immunity from suit means just that. Particularly in an age when advocates or Police will have the protection of insurance, or employer-indemnity, it is probably much more important that someone should be accorded immunity from suit than from liability to pay damages if the suit succeeds. The aim of such immunity as there is has always been to stop claims at the outset - as, for example, Fry L.J. pointed out in *Munster v. Lamb* (1883) 11 Q.B.D. 588 at p.607: "... it is intended to protect persons ... not perhaps to verdicts and judgments against them, but to the vexation of defending actions." A problem with the Ritchie decision was that it would have tended in the direction of the less important goal of stopping some defendants to such cases from having to pay money, rather than the more important goal of preventing all defendants to such cases from having to defend them.

