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IMMUNITIES from liability can appear a somewhat endangered species. The modern trend has been to constrain or abandon them (*Arthur JS Hall & Co. v Simons* [2002] 1 A.C. 615 (H.L.); *Jones v Kaney* [2011] UKSC 13, [2011] 2 A.C. 398; *Smith v Ministry of Defence* [2013] UKSC 41, [2014] A.C. 52) or reinterpret their effect as a reasoned, substantive application of legal principles (*Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] A.C. 1732). Quite rightly, we now tend to respond with slight regard (if not quite full scorn and defiance) to the blanket exclusion of legal rights that immunities represent. Like a rare animal in the wild, then, witnessing an immunity offers a thrill to some and inevitably attracts comment. In *Chief Constable of Sussex Police v XGY* [2025] EWCA Civ 1230, [2026] P.N.L.R. 8 ("*XGY*") the Court of Appeal faced two such specimens in the context of court proceedings and the preparations for them, holding that the relevant immunities were engaged and therefore barred claims against the defendants.

The anonymous claimant alleged domestic violence by her ex-partner, who was later convicted of assault. Categorised by the police as a victim of domestic violence at high risk, she changed address. A bail condition nevertheless alerted the ex-partner to her new whereabouts in Epsom, requiring a second move and causing the claimant depression. Despite requesting the police keep her new whereabouts in Hampshire confidential, during a further bail hearing an advocate for the Crown Prosecution Service ("CPS") requested a condition that essentially revealed that information. The police explained that there had been, as the officer put it, a "muck up" and the claimant was again forced to move. Medical evidence suggested this worsened her depression and brought on post-traumatic stress disorder.

The claimant sued both the police and the CPS under the Human Rights Act 1998 ("HRA") and the Data Protection Act 2018 ("DPA") as well as for breach of confidence and misuse of private information, but not negligence. The police raised a range of arguments in response, alongside claiming immunity for their role in legal proceedings. By contrast, the CPS raised only the core immunity traditionally afforded to advocates, from which the police's supposed immunity extended. The HRA claims foundered on the summary judgment that she was not a "victim" as required by HRA, section 7. Our focus here is on whether the remaining claims were, in any case, barred by those respective immunities.

The County Court held both immunities were engaged, but in the High Court (*XGY v Chief Constable of Sussex Police* [2024] EWHC 1963 (K.B.),

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[2024] P.I.Q.R. P16) Ritchie J. took a different view, parsing the core immunity into six subcategories (at [20]) and emphasising that courts have adopted a "grudging" attitude to extending immunities (at [80]). He rejected as outdated an approach he termed "absolutism", where immunity applies automatically to an appropriate defendant engaging in the protected behaviour. Instead, courts must consider an immunity's justification on the facts, particularly where, as with the police here, this went beyond a core immunity into supposedly less settled territory (at [109]). As he put it, "the Court is required to look at the function performed not just the category of person who has performed it", enabling a judge to "analyse whether the actions undermined the justifications for the claimed immunity" (at [106]). Where this was the case, immunity could be withheld. Applying this test, the police could not shield themselves behind what he described as "Legal Proceedings Immunity Before Court". That immunity's justification lay in protecting witnesses and their evidence at trial, and the police's actions clearly ran contrary to that goal (at [109]). The authority in *CLG v Chief Constable of Merseyside Police* [2015] EWCA Civ 836 ("*CLG*"), which had engaged that immunity after disclosure of an address, was distinguished on the basis that the information there had been crucial evidence for obtaining a warrant, whereas in *XGY* it was not (at [98], [133]). As to the CPS, a disclosure that had in fact endangered a witness ran contrary to the rationale for the core immunity, which lay in protecting freedom of speech for witnesses, encouraging free and fearless advocacy, and preventing satellite claims undermining the finality of litigation (at [113]). Indeed, Ritchie J. felt that, if anything, potential liability here was apt to protect witnesses from being put at risk by such disclosures (at [116]). In any case, the disclosure was a "peripheral" matter unrelated to witness evidence, which he regarded as the focus of the core immunity (at [113]).

The defendants appealed, joined now by the intervening Bar Council of England and Wales. The Court of Appeal unanimously held both immunities were engaged. They squarely rejected Ritchie J.'s case-by-case "justificationism" (at [65]). That approach would undermine an immunity's effectiveness by throwing the relevant actor into doubt about the foreseeability of its application (at [16], [65]). It was true that extensions of the core immunity must be strictly scrutinised (at [19]–[25]) and that immunity from suit in negligence had been rolled back in certain contexts, but these cases were read narrowly and did not suggest the core immunity had otherwise been undermined (at [26]–[30]). The Court emphasised that despite the less formal nature of a bail hearing, information about a complainant's address was materially important (not least, in domestic violence cases, when identifying a suitable exclusion zone) and not, as Ritchie J. viewed it, an evidential irrelevancy.

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Indeed, the Court found compelling the interveners' suggestion that any distinction between "evidential" and supposedly "administrative" information was unworkable (at [59]–[61]). Whilst the Court conceded that novel extensions of, or challenges to, existing immunities did require scrutiny of their justification, the simple application to appropriate facts of an existing immunity, core or otherwise, did not (at [64]). Considering the CPS, the disclosure had been, "indubitably 'in the ordinary course of court proceedings'", so engaging the core immunity (at [62]). Considering the police, given the address was central rather than collateral to prosecution, the situation was on all fours with *CLG* and squarely engaged a recognised extension of that core immunity (at [68]–[71]). For completeness, the Court clarified that both immunities would have applied to any of the claims raised here (at [74]). It was not tenable to bar some but not all claims in the absence of unmistakably clear statutory language to the contrary (at [77]).

These points will now go to the Supreme Court, where there is perhaps hope for the claimant still. First, both decisions recognised the tension between the core immunity and the competing principle that wrongs should be remedied. Although the Court of Appeal (at [14], [30]) suggested the latter was the correct analytical starting point, their approach evidences the opposite, suggesting where an immunity is engaged the wrong is irrelevant. If engaging an immunity only requires consideration of the defendant's factual status but not the substantive consequences for the claimant, this treats all wrongs as collectively inferior in the balance, assumes there can be no compelling counterweight and manifestly offends the bilateral, interpersonal nature of justice within private law.

Second, the trend of greater scepticism towards immunities is clear and the Court of Appeal's fear of inviting over-deterrence is easily overstated. Advocates have, after all, already learned to live with the consequences of their negligence. There is also an important distinction between asking whether facts fall within the scope of an immunity and whether, on those facts, engaging the immunity can be coherently justified. The first question already requires case-by-case analysis, given that every immunity must, in theory, have an ultimate edge and identifying that may create uncertainty. Indeed, as Ritchie J. flagged (at [39]), the police did not appear to raise immunity in relation to the Epsom-based disclosure. Equally, the Court of Appeal's suggestion that the second question is only appropriate when challenging or extending an immunity, but not when engaging it (at [64]), draws too fine a line and acknowledges that defendants may be required to justify their immunity where warranted without suggesting that this possibility creates harmful uncertainty.

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Third, Ritchie J.'s analysis of the clashing interests is palpably compelling. Legal policy zealously protects us against personal injury. We should not simply ignore relevant values enshrined elsewhere in the law and relying for examples, as the Court of Appeal did (at [11]), on cases of reputational and economic harm highlights the fallacy. Indeed, in the context of another rule of public policy, the Supreme Court has clearly acknowledged the importance of openly weighing competing rationales and considering the system's overall integrity (*Patel v Mirza* [2016] UKSC 42, [2017] A.C. 467); why is this so different? If there is to be no liability here, let it be for reasons and better ones than at present. If our prevailing concern is, as the Court of Appeal suggested (at [15]), to avoid situations that run "contrary to the interests of justice", it is probably best we avoid precisely that. Let us not be so grudging as to simply assume a risk of undue deterrence and in doing so ensure undue sufferance.

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