

## Police not immune from damages claims if they negligently injure passers-by, Supreme Court rules

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The Supreme Court, in *Robinson v Chief Constable of West Yorkshire Police*, has allowed an appeal by an elderly woman who was injured when she was accidentally knocked down by police officers as they arrested a suspected drug dealer. The appellant, Elizabeth Robinson, claimed damages for negligence against the Chief Constable of West Yorkshire Police. However, her claim was dismissed because the recorder at trial found the ‘Hill immunity’ applied—ie an immunity for police officers engaged in the apprehension of criminals. Solicitors from Leigh Day say the ruling is of critical importance in balancing the potential harm caused by the police to people present when arrests are made, against the harm caused to society by constraining the police in the performance of their vital duties.

### Details of the case

Mrs Robinson was injured when two police officers fell on top of her while arresting a suspect on the street. The officers had foreseen that the suspect would attempt to escape, and had not noticed that the appellant was in the close vicinity.

At trial, the recorder found that the officer who planned the arrest was under a duty to consider the risk to passing members of the public, and had acted negligently. However, the claim failed because the police were held to be immune under the Hill principle (*Hill v Chief Constable of West Yorkshire Police* [1989] 1 AC 53, [1988] 2 All ER 238), which says that, unless there are special circumstances, the police and the Crown Prosecution Service do not owe members of the public a common law duty of care in carrying out their operational duties of investigating, detecting, suppressing and prosecuting crime.

Mrs Robinson appealed, but the Court of Appeal on 5 February 2014, in *Robinson v Chief Constable of West Yorkshire* [2014] EWCA Civ 15, [2014] All ER (D) 111 (Mar), dismissed the appeal and allowed the police cross-appeal against the findings that the arresting officers were negligent. On 3 August 2016 the Supreme Court granted Mrs Robinson permission to appeal.

### Issues for the Supreme Court

The main issue was whether the *Hill* immunity applied in a case where the relevant police act was a ‘positive act’—in this case, where the suspect was resisting arrest, and whether [the Court of Appeal was correct to overturn the findings of negligence](#). The court re-examined the scope of the immunity which protects the police from claims when, in the course of their duties, they negligently injure passers-by.

The appeal involved a reconsideration of the judgment in *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] All ER (D) 215 (Jan), where the court, by a majority, refused to abolish the immunity, preferring instead the ‘omissions principle’.

The case also helps resolve a controversy over the meaning of the general rule that the police cannot be sued in negligence. Many feel that important issues around the *Hill* immunity and the nature of ‘pure omissions’ were not settled by the *Michael* case, and that the law is still unsatisfactory in this area.

### Supreme Court ruling

The police, like other public authorities, are subject to liability for causing personal injury; however, the general law enforcement duty of the police does not carry with it a private law duty towards individual members of the public.

The court found that *Hill* is not authority for the proposition that the police have a general immunity for actions in the course of crime prevention. The authorities relied on by the respondent were not inconsistent with a general police duty of care to avoid causing injury where this would arise according to ordinary principles of the law of negligence. Applying these principles, the police may be under a duty of care to protect an individual from danger of injury under circumstances which they have created.

The present case, the court ruled, concerned a positive act, not an omission. The reasonably foreseeable risk of injury to the appellant was enough to impose a duty of care on the officers. The appellant’s injuries were caused by the officers’ breach of their duty of care, and as a result of being exposed to a danger from which they had a duty of care to protect her.

### ‘The police should be held accountable’

David Preston, solicitor in the personal injury team at Leigh Day, comments: ‘This judgment is of critical importance to balance the potential harm caused by the police to people present when arrests are made, against the harm caused to society as a whole by constraining the police in the performance of their vital duties.’

‘The Court of Appeal decision held that the police were immune from negligence claims when carrying out their duties as it would not be fair, just and reasonable to impose a duty of care.’

‘The Supreme Court decision has clarified that in the *absence of special circumstances*, the police do not owe a duty of care to protect the public from harm while investigating crime. They also found that if established principles of negligence place a duty on the police, it is not necessary to consider whether it would be fair just and reasonable to find the police negligent.’

‘While the Supreme Court found in favour of Mrs Robinson, it is important to note that requirements for establishing that the police are under a duty of care remain stringent. The “special circumstances” in this case were that the police had, by their own actions, created a situation which was dangerous to members of the public, they were aware of this danger, they failed to spot Mrs Robinson who then suffered an injury caused by their actions. In my view these circumstances will not often arise.’

‘I welcome the Supreme Court decision as it enables innocent people going about their daily lives to claim compensation for injuries caused by the negligent actions of the police. The judgment also brings the rights of people injured by the negligent actions of a police officer travelling on foot more closely in line with the rights of

those injured by a police officer driving negligently (where it has long been established that the police owe a duty of care). Above all, I am pleased with the recognition that the police should be held accountable for their negligent actions.'

LexisPSL Personal Injury comment: The Supreme Court has clarified that the police owe a duty of care when such a duty arises under ordinary principles of the law of negligence. The court decided that the complaint was not that the police officers failed to protect the appellant against the risk of being injured, but that their actions resulted in her being injured. The case was therefore concerned with a positive act, not an omission.

Source: [Case: Robinson v Chief Constable of West Yorkshire Police](#)



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