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(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

SEAN FEGAN

Plaintiff-Appellant

and

ASSISTANT CHIEF CONSTABLE E W ANDERSON AND THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendants-Respondents

Girvan LJ, Coghlin LJ and Sir John Sheil

GIRVAN LJ (delivering the judgment of the Court)

Introduction

[1] The question raised in this appeal is whether the Police Service of Northern Ireland owed a duty of care to the appellant, a social worker employed in a children's home run by a religious order, when informing the appellant's employers that following an investigation into allegations of sexual abuse, he was not, in the police view, a fit person to continue to be employed as a social worker in the home. More particularly the question is whether the trial judge Gillen J was correct in law to accede to the respondents' application for a direction at the close of the appellant's case on the basis that the respondents owed the appellant no duty of care when making the impugned statement.

The Appellant's Claim

[2] The appellant was employed as a social worker at Nazareth House Children's Home ("the Home") in Londonderry by the Sisters of Nazareth

("the employers"), commencing employment on 1 June 1987. There were two units in the home for up to 20 children aged between 5 and 17. By 1993 he was acting team leader with responsibility for the day to day running of the units. In his capacity as a social worker in the home he had close contact with children in the home.

[3] On 31 July 1996 he was informed that a former resident had made an allegation of a sexual nature against him. This led his employers to place him on precautionary suspension while the matter was investigated by the police and the Foyle Health and Social Services Trust and his employers. On 6 January 1997 the appellant was informed by the Director of Public Prosecutions that no further action was being taken. On 14 July 1997 he was reinstated.

[4] Some weeks later new allegations were raised against him and he was again placed on precautionary suspension on 29 August 1997. Two children had identified the appellant as a participant in a ring of adults involved in the sexual abuse of children in the northwest. One of the children lived in the Republic of Ireland. The appellant was interviewed on 10 September 1997 by the Garda Siochana. On 9 April 1998 he was informed that the Irish Director of Public Prosecutions had determined that no further action was to be taken in relation to that child. The police in Northern Ireland did not interview the appellant. A file was sent to the Director of Public Prosecutions in Northern Ireland relating to the Northern Ireland investigation. No further action was taken against the appellant under the criminal law.

[5] On 7 April 1998 Sister Theresa King on behalf of the employers wrote to the Sub-Divisional Commander of the RUC Strand Road following a telephone call that she had with DI Paul in Strand Road CID Department. In her letter she reminded the police that the appellant was suspended on full pay. She indicated that the employers were anxious to clarify where things were with the police so that the employers could decide on appropriate action without compromising the police investigation. She asked for an early response and any information which the police were in a position to share with them.

[6] Ultimately on 20 October 1998 Acting Assistant Chief Constable Anderson ("A/ACC Anderson") from C1 Branch in the Crime Department at RUC Headquarters wrote to the employers in the following terms:

> "I can confirm to you that an exhaustive investigation has been conducted by the Royal Ulster Constabulary and the Garda Siochana arising out of the complaints against Sean Fegan and others. Although the Director of Public Prosecutions both here in Northern Ireland and in

> the Republic of Ireland have (on the basis of evidence available) directed no prosecution, I have to inform you that as a result of the above investigations the view of the RUC is that Mr Fegan is not a fit person to continue in employment as a social worker because of our paramount concern for the safety and welfare of children."

[7] This letter followed a number of internal police memoranda including memoranda of 5 May 1998 and 30 June 1998 from Chief Inspector Paul; a memorandum of 10 August 1998 from Detective Chief Inspector Maxwell to DS McArthur; a memorandum of 28 August 1998 from DS McArthur; a memorandum of 2 September 1998 from Detective Superintendent Stewart; a memorandum of 4 September 1998 from DS Harvey of Branch C2 to the Acting Assistant Chief Constable; a memo of 21 September 1998 to Detective Chief Inspector Gillespie to Assistant Chief Constable; and a memorandum dated 23 September 1998 from ACC R White. Relevant extracts from these memoranda are set out in the judgment of the trial judge at paragraphs [10] to [20]. The documents before the trial judge included an additional relevant memorandum to which he did not refer, namely a memorandum of 2 September 1998 from Detective Superintendent Stewart to the Head of Branch C2 in which the Detective Superintendent said:

> "The content of this file strongly suggests that Sean Fegan is not fit to continue in his present employment as social worker at Nazareth House albeit the standard of proofs available fall somewhat short of what would be required in a court of law. Like Detective Superintendent McArthur I do believe that in the interests of the public we should share our concerns with Fegan's employers."

[8] Two disciplinary procedures were invoked by the employers against the appellant. After a hearing before a panel the employers decided to dismiss the appellant on 30 March 1999. The appellant instituted proceedings in the Industrial Tribunal for unfair dismissal.

[9] The Industrial Tribunal proceedings were settled on the basis of the payment to the appellant of £5,000 as an ex gratia payment. The terms of settlement stated that the appellant acknowledged that the payment was not an admission of any fault on the part of the employers. Paragraph 2 of the terms of settlement stated:

> "The parties agreed in the light of the information and evidence received by the Sisters of Nazareth, in particular from Detective Clare and SEW Anderson of the RUC that the Sisters had no alternative but to terminate the employment of the applicant."

The Appellant's Pleaded Case

[10] The appellant alleged that the respondent was under a duty to exercise reasonable care when tendering advice and providing information concerning the appellant to another party who the respondent knew or ought to have known would rely on such advice for information. The particulars of negligence pleaded were set out in paragraph 17 of the amended statement of claim thus:

> "(a) Failing to carry out any or proper investigation of the alleged allegations made against the plaintiff.
>
> (b) Failing to inform the plaintiff's employer that there was no investigations concerning the plaintiff.
>
> (c) Failing to take any reasonable steps to ascertain the truth of any allegations made against the plaintiff.
>
> (d) Failing to inform the plaintiff's employer that the allegations against him were unfounded and untrue.
>
> (e) Failing to inform the plaintiff's employer that the allegations against him had not been investigated by the RUC.
>
> (f) Permitting E W Anderson to provide the plaintiff's employer with a misleading and detrimental statement concerning the plaintiff's suitability for social work."

Gillen J's Decision

[11] The trial judge acceded to the respondents' application for a direction. That application was founded upon the argument that the respondents owed no tortious duty of care in giving the advice which they did through the letter

from A/ACC Anderson. He concluded that although there were exceptional cases where the core principles in Hill v Chief Constable of West Yorkshire Police [1989] AC 53 did not apply, in the absence of special circumstances police owed no common law duty of care to protect individuals against harm caused by criminals. In the present case the interest of the police in preventing the commission of crime and protecting vulnerable children is part of the core principle identified in Hill. It is crucial to ensure that the interests of children are paramount in the area of child protection. To dilute the principle would bring about a situation in which police officers would be diverted from ensuring that robust and fearless approach which is crucial in the public interest. Imposing a duty of care would lead to a defensive frame of mind in carrying out the function of protecting children and would be against the public interest. Whilst A/ACC Anderson may have used terms which were more forthright than those canvassed in earlier documentation the overall effect of the letter of 20 October 1998 captured the mood of the police concerns whilst leaving the ultimate decision for the employers. The trial judge rejected the appellant's argument that A/ACC Anderson negligently misstated the position when he stated that there had been an exhaustive investigation. The fact that the appellant was not interviewed did not mean that there had not been an exhaustive investigation. In the result the trial judge concluded that there was no basis in law for the appellant's claim as no duty of care arose. He accordingly dismissed the plaintiff's claim.

The Parties' Arguments

[12] Mr O'Donoghue QC on behalf of the appellant argued that the trial judge incorrectly applied the decision in Brooks v Commissioner of Metropolitan Police [2005] 1 WLR 1495. Counsel argued that while the House of Lords in Brooks upheld the approach taken in Hill v Chief Constable of West Yorkshire [1989] AC 53, nevertheless, as Lord Steyn made clear at paragraph [29] of his speech, "cases of assumption of responsibility under the extended Hedley Byrne doctrine fall outside the Hill principle. In such cases there is no need to embark on an inquiry where it is fair just and reasonable to impose liability for economic loss". Counsel criticised the trial judge for failing to properly address the question whether the facts showed an assumption of responsibility by the police outside the investigation process. He contended that the present case can only properly be viewed as a case in which the police assumed responsibility. The police knew that offering an opinion was a serious matter and one to be undertaken with due care having regard to the potential consequences to the appellant. The appellant's counsel referred to a memorandum of 30 June 1998 as evidence that the police recognised the potential liability for their expression of opinion. Mr O'Donoghue argued that the simple point in the present case was that A/ACC Anderson, in corresponding with the employers, elected to assume a responsibility for the content of the letter, knowing the consequences for the appellant's employment. Having done so, the

respondents owed a duty of care under the extended Hedley Byrne v Heller principle. The decision in D v East Berkshire Community Health NHS Trust [2005] 1 WLR 993 was not authority for the proposition that when police take on an assumption of responsibility and speak to an employer in relation to an employee's suitability to work in childcare they do not owe the employer a duty of care.

[13] The appellant argued that by the close of the appellant's case in the trial he had adduced sufficient prima facie evidence to establish that the letter of 20 September 1998 erroneously and negligently misstated the police position to the employers. Firstly the letter claimed that an exhaustive investigation had been carried out implying that the police had sufficient evidence from which it could be concluded that the appellant was unfit to be employed as a social worker working with children. It was argued that the investigation was not exhaustive, the appellant not having been questioned about the two sets of allegations. Secondly the letter wrongly claimed that the police had formed the view that the appellant was not a fit person to be employed as a social worker. The internal documentation discovered by the respondent and put in evidence by the appellant did not show that the police had taken such a view. At most various officers expressed concerns about the continued employment of the appellant as a social worker, something different from reaching a concluded view that he was unfit to be a social worker.

[14] Mr Ringland QC countered the appellant's argument by submitting that the trial judge was correct to conclude that there was no basis in law for the appellant's claim. The appellant had no evidential basis for the proposition that the respondents had assumed responsibility to the appellant so as to lay the basis for a duty of care. Nowhere in the pleadings was there any suggestion on the part of the appellant that the respondents had assumed responsibility towards him. The judge correctly recognised that Hill made provision for exceptional cases and special circumstances when a duty of care might arise but he was right to conclude that this was not such a case. The prevention of crime and the protection of vulnerable children is part of the core principle in Hill and the underlying rationale as stated in Hill for rejecting the duty of care applied equally in the present case.

Determination of the Appeal

[15] Lord Bridge in Caparo Industries plc v Dickman [1998] 2 AC 605 in a frequently cited passage succinctly stated the key questions which must be addressed in determining whether a duty of care arises as between a plaintiff and a defendant:

> "What emerges is that, in addition to the foreseeability of damages, necessary ingredients in

> any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of proximity or neighbourhood and that the situation should be one in which the court considered it fair just and reasonable that the law should impose a duty of a given scope upon one party for the benefit of the other."

[16] While it has been consistently recognised that a duty of care is owed in respect of false statements carelessly made which result in personal injury or other non economic loss, until 1964 there prevailed the view that there was no cause of action in negligence in respect of pecuniary loss arising from a negligent misstatement nor was there any remedy for an expression of opinion given without due care or skill even if it was known that it was likely to be acted on by a third party whether to the detriment of that third party or to some other party.

[17] However in the House of Lords decision in Hedley Byrne v Heller [1964] AC 465 the House of Lords overruled earlier case law such as Le Lievre v Gould [1964] AC 465 and decided that whenever there existed a "special relationship" between the parties a duty arose to take care in the making of statements, a breach of which would found liability for either physical or pecuniary loss. In the context of negligent misstatement leading to economic loss the plaintiff seeking to establish the requisite proximity of a relationship must satisfy a more stringent test of proximity than will apply in other cases. In considering the proximity of relationship required between the parties to give rise to their duty of care Lord Devlin stated at 530:

> "I shall therefore content myself with the proposition that wherever there is a relationship equivalent to contract, there is a duty of care. Such a relationship may be either general or particular. Examples of a general relationship are those of a solicitor and client and of banker and customer … There may well be others yet to be established. Where there is a general relationship of this sort, it is unnecessary to do more than prove its existence and the duty follows whereas in the present case what is relied on is a particular relationship created ad hoc. *It will be necessary to examine the particular facts to see whether there is an expressed or implied undertaking of responsibility.* I regard this proposition as an application of the general conception of proximity. Cases may arise in future

> in which a new and wider proposition quite independent of any notion of contract will be needed." (italics added)

Lord Morris stated:

> "It should now be regarded as settled that if someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise. The fact that the service is to be given by means of or by the instrumentality of words can make no difference. Furthermore, if in a sphere in which a person so placed that others could reasonably rely upon his judgment or his skill or upon his ability to make careful inquiry a person takes it upon himself to give information or advice to, or allows his information or advice to be passed onto, another person who, as he knows or should know, will place reliance upon it then a duty of care will arise."

[18] As the passage from Lord Devlin's speech shows, an essential question arises as to whether it can be said in the circumstances of the individual case that the defendant has undertaken responsibility for the statement, whether it took the form of an opinion or the provision of information. As Lord Steyn pointed out in Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830 the concept of assumption of responsibility is not without its difficulties. At first sight it suggests a voluntary acceptance by the maker of the statement that he will bear responsibility if it is wrong and given carelessly. In Hedley Byrne v Heller the incorporation of a disclaimer of responsibility negatived any such assumption of responsibility and it was not necessary for their Lordships in that case to spell out further the extent of the concept which was not itself a statutory definition of the appropriate test of proximity intended to apply in the context of negligent misstatements. Lord Slynn in Phelps v London Borough of Hillingdon [2001] 2AC 619 at 623 stated:

> "It is sometimes said that there has to be an assumption of responsibility by the person concerned. That phrase can be misleading in that it can suggest that the professional person must knowingly and deliberately accept responsibility. It is however clear that the test is an objective one. The phrase means simply that the law recognises a duty of care. It is not so much that responsibility is

assumed as that it is recognised or imposed by the law."

The relevant question can be compendiously formulated thus: Does the evidence point to the conclusion that the maker of the statement has accepted or ought in the circumstances to have accepted personal responsibility for the financial consequences flowing from reliance on his statement if negligently made?

[19] The early cases applying the principle in Hedley Byrne v Heller related to the reliance by direct recipients on the information contained in the allegedly negligent misstatements. However, the principle is not restricted to cases of reliance by the direct recipients of the alleged misstatements. A negligent misstatement may lead to adverse consequences to a party adversely affected by an impugned statement upon which another party has relied to the detriment of the injured party. Thus, in Spring v Guardian Assurance plc [1995] 2 AC 296 a former employer's negligent reference relating to an ex-employee had serious adverse consequences for the ex-employee since the recipient of the negligent reference acted on the statement to the detriment of the ex-employee. In that case Lord Goff pointed out that the relationship between the former employer and the ex-employee, which had been founded on a contractual relationship, was very close. An employer provides a reference, for what it is worth in the interests of the former employee and the employee is entitled to rely on the employer to exercise due skill and care in the preparation of the reference before making it available to third parties. Spring was accordingly a case in which the maker of the statement was held to have been bound to accept responsibility for the consequences flowing from reliance by a third party on the misstatement which adversely affected the plaintiff.

[20] On the other side of the line the case of Harris v Evans [1998] 3 All ER 522 is an example of a case in which the plaintiff was indeed adversely affected by a negligent statement made by the defendant to a third party but in which the plaintiff failed to establish a duty of care. It is an authority which usefully points up some of the issues relevant to the present case and it prefigured the approach in Hill. In that case the plaintiff wished to operate a bungee jumping facility for public use. He was advised that if he followed a particular code of practice the relevant requirements would be satisfied and he duly did so. Subsequently, an inspector within the Health and Safety Executive carried out an inspection and wrongly concluded that the equipment required adjustment. The local authority in reliance on that advice served prohibition notices on the plaintiff which led to financial losses. Subsequently the Dept of the Environment concluded that the inspector's advice was erroneous. The plaintiff claimed damages for his economic loss flowing from the local authority's reliance on the negligent advice of the inspector. The Court of Appeal upheld the decision of the Master to strike out

the plaintiff's claim as disclosing no cause of action on the basis that the inspector did not owe a duty of care to the plaintiff. Having considered the statutory duties of the inspector under the Health and Safety at Work etc Act 1974 Sir Richard Scott VC pointed out that the purpose of the 1974 Act was to protect the safety of the public. He drew in particular on what Lord Brown-Wilkinson said in X v Bedfordshire County Council [1995] 2 AC 633 at 739. That case was one in which children who alleged that they had suffered parental abuse and neglect sued the council for its negligence in failing to protect them by instituting care proceedings. Lord Brown-Wilkinson said:

> "In my judgment a common law duty of care cannot be imposed on a statutory duty if the observance of such a common law duty of care would be inconsistent with or have a tendency to discourage the due performance by the local authority of its statutory duties."

In Harris v Evans the Court of Appeal concluded that the statutory scheme had as its paramount consideration the protection of the safety of the public. Sir Richard Scott VC giving the court's judgment stated:

> "The duty of enforcing authorities whether inspectors or local authorities is to have regard to the health and safety of members of the public. If steps which they think should be taken to improve safety would have an adverse economic effect on the business enterprise in question so be it. A tortious duty which rendered them potentially liable for economic damage in the business enterprise caused by the steps they were recommending to be taken would, in my judgment, be very likely to engender untoward cautiousness and the temptation (to postpone making such a decision until further inquiries had been made in the hope of getting more concrete facts) to which Lord Brown-Wilkinson referred."

[21] While X v. Bedfordshire County Council and Harris v. Evans were cases relating to the carrying out of statutory duties, the same principle can apply where the defendant is subject to the exercise of common law powers exercisable in the public interest. Lord Keith pointed out in Hill v Chief Constable of West Yorkshire [1989] AC 53 that by common law police officers owe to the general public a duty to enforce the criminal law. Common law, while laying on chief officers of the police an obligation to enforce the law, makes no specific requirement as to the manner in which that obligation is to be discharged. That is not, as Lord Keith said, a situation where there can be

readily inferred an intention of the common law to create a duty towards individual members of the public. In Hill the House of Lords concluded that there is no general duty of care owed by the police officers to identify or apprehend an unknown criminal nor did they owe a duty of care to individual members of the public who might suffer injury through the criminals activities save where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime. However, the House of Lords also rejected the plaintiff's claim on a wider basis. As a matter of public policy the police were immune from action for negligence in respect of their activities in the investigation and suppression of crime. Lord Keith at 63 [1989] AC 53 at 63 stated:

> "The manner of conduct of an investigation must necessarily involve a variety of decisions to be made on matters of policy and discretion, for example as to which particular line of inquiry is most advantageously to be pursued and what is the most advantageous way to deploy the available resources. Many such decisions would not be regarded by the courts as appropriate to be called in question, yet elaborate investigation of the facts might be necessary to ascertain whether or not this was so. A great deal of police time, trouble and expense might be expected to have to be put into the preparation of the defence to the action and the attendance of witnesses at the trial. The result would be a significant diversion of police manpower and attention from their most important function, that is the suppression of crime. Closed investigations would require to be reopened and re-traversed not with the object of bringing any criminal to justice but to ascertain whether or not they had been competently conducted."

[22] In Calveley v Chief Constable of Merseyside Police [1989] AC 1228 Lord Bridge dealing with the questions whether the police owe a duty of care to a suspect in carrying out a criminal investigation observed at 1238:

> "It is, I accept, foreseeable that in these situations the suspect may be put to expense or may conceivably suffer some other economic loss which might have been avoided had a more careful investigation established his innocence at

> some earlier stage. However any suggestion that there should be liability in negligence in such circumstances runs up against the formidable obstacles in the way of liability and negligence for purely economic loss. Where no action for malicious prosecution would lie it would be strange indeed if an acquitted defendant could recover damages for negligent investigation. Finally, all other considerations apart, it would be plainly contrary to public policy in my opinion to prejudice the fearless and efficient discharge by police of their vitally important public duty of investigating crime by requiring them to act under the shadow of a potential action for damages for negligence by the suspect."

[23] In Brooks v Commissioner of Police of the Metropolis [2005] 1 WLR 1495 the House of Lords restated the position in Hill and reiterated that as a matter of public policy the police generally owed no duty of care to victims or witnesses in respect of their activities when investigating crimes. In that case the duty of care alleged by the claimant had been inextricably bound up with the investigation of a crime and, accordingly, the claim was struck out. Lord Steyn stated:

> "[29] Counsel for the Commissioner concedes that cases of assumption of responsibility under the extended Hedley Byrne doctrine (Hedley Byrne v Heller & Partners [1964] AC 465 fall outside the principle in Hill's case. In such cases there is no need to embark on an inquiry whether it is fair, just and reasonable to impose liability for economic loss: Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830.
>
> [30] But the core principle in Hill's case has remained unchallenged in our domestic jurisprudence and in European jurisprudence for many years. If a case such as the Yorkshire Ripper case, which was before the House in Hill's case arose for decision today I have no doubt that it would be decided in the same way. It is, of course, desirable that police officers should treat victims and witnesses properly and with respect … but to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far. The prime

> function of the police is the preservation of the Queen's peace. The police must concentrate on preventing the commission of crime; protecting life and property; and apprehending criminals and preserving evidence: … A retreat from the principle in Hill's case would have detrimental effects for law enforcement. Whilst focusing on investigating crime and the arrest of suspects police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim. By placing general duties of care on the police to victims and witnesses the police's ability to perform their public functions in the interests of the community fearlessly and with dispatch would be impeded. It would, as was recognised in Hill's case, be bound to lead to an unduly defensive approach in combating crime."

[24] While Mr O'Donoghue emphasised Lord Steyn's statement in paragraph [29] of his judgment it must be noted that what Lord Steyn stated in that paragraph was the recording of a concession made by counsel. He did not analyse further the question of what constitute circumstances which show that the police have assumed a responsibility to a plaintiff. What is clear is that in Brooks the evidence did not show any such assumption of responsibility. What is also clear is that, absent evidence from which an inference of assumption of responsibility can be made, the court does need to address the question whether it would be fair, just and reasonable to impose liability for economic loss. Since the test of whether an assumption of responsibility has occurred is an objective one in the circumstances of the individual case the question must inevitably arise whether in the circumstances it is fair, just and reasonable to infer an assumption of responsibility.

[25] For the court to infer an assumption of responsibility by a relevant defendant so as to give rise to a duty of care there must be evidence that the defendant by his conduct assumed responsibility (per Steyn LJ in Elguzouli-Daf v Commissioner of Police [1995] QB 335. Lloyd LJ in Kirkham v Chief Constable of Greater Manchester Police [1990] 2 QB 283 at 289 said:

> "The question depends in each case on whether, having regard to the particular relationship

> between the parties, the defendant has assumed a responsibility towards the plaintiff and whether the plaintiff has relied on that assumption of responsibility."

This dictum must be qualified in cases where a third party relies on a statement which has adverse consequences on the plaintiff who is not relying on the statement as such.

[26] Welsh v Chief Constable of Merseyside [1993] 1 All ER 692 was an example of a case where it was held to be arguable that the Prosecution Service had assumed responsibility to the plaintiff. Representatives from the Prosecution Service and the plaintiff's legal advisors had been in close communication about the plaintiff's case with the Prosecution Service leading the plaintiff's advisors to believe that the Magistrates' Court would be informed by the prosecution of offences for which he had been bailed, something which the Crown Prosecution Service forgot to do leading to the plaintiff's arrest in respect of which he claimed. In Swinney v Chief Constable of Northumbria [1997] QB 464 the plaintiff was a police informer. The police negligently allowed information relating to the plaintiff being an informer to be released. The court held that it was arguable that a special relationship arose between the plaintiff and the police through the assumption by the police of responsibility to preserve the confidentiality of the information. It was thus arguable that the police did in fact assume a responsibility of confidentiality. Peter Gibson LJ at 485d said:

> "It seems to me properly arguable that an informant, giving in confidence sensitive information to the police, is in a special relationship to the police, that relationship being based on an assumption of responsibility towards the informant by the police such that, when through the negligence of the police that information is disclosed to criminals, it can result in a valid claim by the informant in respect of consequent damage to the informant."

These two cases are examples of situations in which the police or Prosecution Service had by their conduct led the plaintiff to believe that they were undertaking to do certain things or take certain steps. It was fair, thus, to infer an assumption or undertaking of responsibility.

[27] In the present case, however, there was no evidence that simply by reason of the fact that they sent the letter of 20 September 1998 to the employers the police were putting themselves in any special relationship with the appellant who had been investigated as a suspect in relation to allegations

of criminal acts. The normal principle is that the police do not have a tortious duty of care to a suspect. There was no evidence to lead to an inference that they had undertaken special responsibility to the appellant. True it is that the police were aware of the significance of their view to the employability of the appellant as a social worker in a children's home and, accordingly, they would clearly have been aware of the foreseeability of damage if the advice was negligent. That, however, does not in itself give rise to that kind of special relationship required to give rise to a duty of care by virtue of an assumption of responsibility to the appellant.

[28] The giving of advice to employers running a children's home such as that proffered by the police in the present instance following an investigation into allegations of sexual abuse is clearly closely related to the investigation itself. It thus falls within the principle in Brooks. It is also proffered in furtherance of the police function of preventing crime and protecting the third parties against the consequences of crime. The logic of the approach as adopted in Hill, in Brooks and in Harris v Evans, applies with equal force in the present case. We thus consider that Gillen J correctly stated the position in paragraph [46] of his judgment where he stated:

> "In the present case, however, the interests of the police in preventing commission of crime and protecting vulnerable children is part of the core principle of Hill. It is crucial to ensure that the interests of children are paramount in the vexed area of child protection. In my view this is a fundamental function of the duty of police officers. A retreat from that principle will in my opinion have detrimental effects on the overarching need to protect children. To dilute this principle would bring about a situation in which police officers, whilst focussing on protecting children from criminal abuse would in practice be required to ensure that every warning given would lack that robust and fearless approach which is crucial in the interests of the community. It would irreparably inhibit their freedom to exercise their judgment and lead to an unduly defensive policing approach in combating abuse to children. The cancer of child abuse in our community is such that the creation of a duty of care which would lead to a defensive frame of mind in protecting would be utterly against the public interest."

[29] As noted in paragraph [13] above Mr O'Donoghue focused on two aspects of the letter from Mr Anderson of 20 September 1998 which he argued showed evidence of negligence on the part of the respondents. Firstly, he challenged the statement in the letter that there had been an exhaustive inquiry. Gillen J was not persuaded that the absence of the plaintiff being spoken to in one of the two cases showed that there had been an investigation that was less than exhaustive. Cases are often stopped because parties withdraw allegations or the evidence is not sufficiently strong before the alleged defendant has been interviewed. This does not preclude an exhaustive investigation having taken place. The trial judge found nothing in the phraseology that persuaded him that the case should be taken outside the Hill core principles for the reason suggested by Mr O'Donoghue. We agree with that conclusion.

[30] Mr O'Donoghue's second point was that there was prima facie evidence that Mr Anderson had acted outside his authority in overstating the police view in saying that it was the police view that he was not an appropriate person to be employed as a social worker in the home. In support of that proposition he claimed that the other documents merely expressed concerns but did not go so far as to say that he should not be employed. As noted there was an earlier memorandum of 2 September 1998 in which that very view had been expressed. It must be remembered that A/ACC Anderson was the Acting Assistant Chief Constable in the relevant crime department at police headquarters. There was no evidence to rebut the inference that he was acting within his authority in stating the police view. There was no evidence to suggest that he had no authority to formulate that advice on behalf of the police as set out in the letter. If a senior police officer with apparent authority to express the police view knowingly and contrary to the police view misstated the police view he would not be acting in good faith. Bad faith has not been pleaded or relied on in this case nor was there any evidence or suggestion of the same. There thus was no evidence to support Mr O'Donoghue's proposition of a prima facie case of an excess of authority.

[31] Since neither of the matters referred to by Mr O'Donoghue gave rise to prima facie evidence of negligent misstatement by A/ACC Anderson and there being no other evidence relied on to show negligence that was at the close of the plaintiff's case no evidence on which a finding of negligence could have been made even if there had been a duty of care.

[32] In the result we conclude that Gillen J was right to grant a direction and to dismiss the plaintiff's claim. We dismiss the appeal accordingly.