In The Supreme Court of Bermuda

CIVIL JURISDICTION
2023: 29

BETWEEN:-

(1) DANTAE WILLIAMS
(2) TESHAE TROTT

Plaintiffs

- and -

(1) CHIEF INSPECTOR PETER STABLEFORD (of the Bermuda Police Service)
(2) THE ATTORNEY GENERAL OF BERMUDA

Defendants

RULING

Date of Hearing: **19-21, 26-28, 30 May 2025**

Ruling Delivered: **15 August 2025**

Appearances: ***Mr. Delroy Duncan KC and Mr. Ryan Hawthorne,*** **Trott & Duncan Limited, for the Plaintiffs**
The first Defendant representing himself
Mr. Brian Myrie, **Crown Counsel, for the second Defendant**

HEADNOTE

The Defendants are liable for a malicious prosecution of the Plaintiffs. There was a deliberate decision by the First Defendant to withhold information relevant to a defence available to the Plaintiffs. The Second Defendant is vicariously liable for the actions of the First Defendant.

RULING of AJ Southey KC

Introduction

1. The Plaintiffs have brought proceedings alleging malicious prosecution by the First Defendant. They allege that the Second Defendant is vicariously liable for that as the First Defendant was acting as a police officer. Further details of these arguments are set out below. This judgment sets out my findings regarding the merits of the proceedings following a trial that took place between 19 and 30 May 2025.

2. I would like to thank all of the parties for the helpful manner in which they conducted the litigation. I have found their submissions to be of great assistance.

McKenzie Friend

3. At the start of the trial, the First Defendant applied to have a McKenzie Friend, David Geraghty, assist him as McKenzie Friend. I authorised the First Defendant to be assisted by Mr Geraghty as that appeared to me to be in the interests of justice. I was conscious that the trial was likely to be challenging for the First Defendant as a litigant in person.

4. The Plaintiffs raised a concern that, because the First Defendant was appearing remotely, it would be difficult to know whether the First Defendant was being prompted when cross-examined. I sought to address this issue by requiring the McKenzie Friend to be absent during evidence. It was agreed that would be verified by the camera being rotated so that the room where the First Defendant was located could be seen in full. This procedure was adopted before the First Defendant gave oral evidence.

Preliminary point

5. At the start of the trial, the First Defendant sought to argue that the recording and transcript of a conversation between him and the First Plaintiff had been served late. Having questioned the First Defendant about the issue, I was satisfied that there was no need to investigate the issue of late service in order to determine whether I should take any action in relation to it. That was because I was satisfied that any late service would not have any impact on the fairness of the trial for the following reasons:
    a. The First Defendant has been well aware of the potential relevance of the recording and transcript from at least when the criminal prosecution was

dismissed. He could have requested the recording and transcript earlier. In fact one reason for not requesting the transcript may be that it appears to have been available to the First Defendant as it was within his discovery.

b. The First Defendant does not challenge the accuracy of the recording. It was not suggested that additional time was required to investigate the recording.

c. There is a dispute about the accuracy of transcript. However, this could be and was addressed by evidence and submissions. In particular the recording was played and I was able to compare it with the transcript. The First Defendant drew attention to passages of the transcript that he said were inaccurate.

Background to the claim

6. The amended writ summarises the proceedings that have resulted in the trial in the following terms:

> *The Plaintiffs contend that they were maliciously prosecuted by Cl Stableford without reasonable and probable cause.*

7. It is clear from the amended writ that the allegation of malicious prosecution arises from a prosecution that was brought for an alleged breach of the Public Health (COVID-19 Emergency Powers) (Stay at Home) Regulations 2021 (BR 50/2021) ('the COVID Regulations'). The prosecution had alleged that the Second Plaintiff unlawfully mixed households with the First Plaintiff. The Plaintiffs essentially allege that the First Defendant was aware that in fact the Plaintiffs lived together. It is argued that the First Defendant denied in evidence in chief during the trial that the Second Plaintiff lived with the First Plaintiff. However, when confronted with a tape of a conversation that was said to show that the First Defendant knew that the Second Plaintiff lived with the First Plaintiff, the First Defendant's evidence changed. He accepted that the Second Plaintiff lived at 2 addresses including one that she shared with the First Plaintiff. It is pleaded that the prosecution was then abandoned in light of this change of evidence. That occurred on or about 31 May 2022.

8. There are a number of matters that are clearly in dispute or where one party has put the other to proof. These include:

a. The Plaintiffs' claim to have been in a relationship since the Autumn of 2018.

b. The Plaintiffs allegation that they were prosecuted by the First Defendant.

c. The Plaintiffs allegation that the prosecution was malicious.
d. The Plaintiffs claim that at all material times the First Defendant was acting in purported performance of his police functions within the meaning of the Police Act 1974.

9. Having read the pleadings and herd the oral evidence, it appears to me that there are a number of matters that are not in dispute. These include:
   a. The First Plaintiff was at all material times a Justice of the Peace and a Director of a law firm in the Islands of Bermuda. At all material times Mr Williams lived at Southview Gardens, Unit 1, #5 Tribe Road No 5, Warwick WK 07, Bermuda ('Apartment 1').
   b. The Second Plaintiff was at all material times a Detective Constable in the Bermuda Police Service ('BPS') who has been employed by the BPS for 18 years. At all material times, the Second Plaintiff was assigned to the Serious Crime Unit ('SCU') which was headed by, the First Defendant.
   c. The First Defendant was at all material times a Chief Inspector of the BPS having previously spent time working in Northumbria Police in the United Kingdom. He lived in apartment 4 ('Apartment 4') of Southview Gardens #5 Tribe Road No 5, Warwick WK 07, Bermuda (the 'Property'). He was at all material times joint landlord of the Property with his wife.
   d. Loryn Bell was at all material times an Intelligence Analyst at the BPS having commenced employment with the BPS in July 2011. At all material times Ms Bell lived in Apartment 3 at the Property. Additionally, Ms Bell was assigned to the SCU and so was under the direction of the First Defendant.
   e. Dean Martin is an Inspector in the BPS who was assigned to work in the SCU under the direction of the First Defendant. At the material time Inspector Martin was a sergeant and the immediate supervisor of the Second Plaintiff.
   f. Alexander Kenneth Rollin is a Chief Inspector of the BPS who at all material times was the commander for Central Policing Division and the officer in charge of investigating allegations that have led to these proceedings. He is currently head of the Professional Standards Department at the BPS. That is relevant when considering his evidence about the conduct of the First Defendant. It suggests that he has particular expertise in the standards expected of police officers.

10. Both documentary and oral evidence was called in relation to disputed matters. In particular, the Plaintiffs, the First Defendant, Chief Inspector Rollin and Police Sergeant Warren Bundy all gave oral evidence. Reference was also made to a number of documents as well as 2 recordings. I will consider this evidence in detail when I make findings of fact. Witness statements from Loryn Bell and Inspector Martin were served by the Second Defendant. However, they were not called to give evidence and they were not relied upon. As a consequence my findings below take no account of the written evidence of Ms Bell and Inspector Martin.

Approach to fact finding

11. It is for the Plaintiff's to prove their case on the balance of probabilities (*Stuart v Attorney General of Trinidad and Tobago* [2023] 4 WLR 21 at [1]). In *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] AC 11 Lord Hoffman held that:

> *There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.* [15]

12. The Court must bear in mind that a witness may tell lies during a hearing. The Court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas* [1982] QB 720).

13. In *Gestmin SGPS SA v Credit Suise (UK) Ltd* [2013] EWHC 3560 (Comm) Leggatt J (as he then was) highlighted the importance of documentary and other contemporaneous evidence when assessing credibility in light of the unreliability of memory [22]. The judgment of Leggatt J was considered by the English Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645, which held that the judgment in *Gestmin*:

> *... is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and*

> *evidence upon which undoubted or probable reliance can be placed. ... But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.* [88]

14. In determining whether the findings are proved to the requisite standard, the court is required to consider 'the wide canvas' of the evidence before the court (*Re U (Serious Injury: Standard of Proof)* [2005] Fam 134 at [26]). Although *Re U* was a family case, it has been applied in other contexts (e.g. *Deakin-Stephenson v Behar and another* [2024] EWHC 2338 (KB) at [53(3)]).

Submissions of the parties

15. All of the parties filed helpful written submissions. I have had the opportunity to consider them with care. I also heard oral submissions addressing queries that I raised having read the closing submissions. Rather than summarise the submissions, I will address the submissions when I make findings. However, any failure to expressly reference a matter relied on in evidence or argument does not mean that I have not considered it.

Factual findings

Background

16. Although inevitably I will consider and make findings regarding discrete aspects of the history below, I have reminded myself of the need to consider all the evidence in the round. As a consequence, although I will highlight particular aspects of the evidence that I regard as significant when making findings of fact, that does not mean that I have not considered all of the evidence in the round. Although this judgment is structured in chronological order, that does not mean that I did not consider later incidents when making findings regarding earlier incidents. However, I have reminded myself of the approach in *Lucas* when taking account of negative credibility findings.

17. Although the Plaintiffs have been put to proof of the fact of a relationship between them, in fact there does not appear to be any real dispute that there was a relationship. The First Defendant states in his written evidence that:

> *[The Second Plaintiff] was at the time of the events [in issue] in a relationship with [the First Plaintiff]. I became aware of that relationship when [the First Plaintiff] became my tenant.* [9]

The First Defendant's oral evidence was essentially consistent with this.

18. However, despite the absence of any real dispute about the existence of a relationship, there is an evidential dispute about whether the Plaintiffs moved in together and/or whether the First Defendant was aware of this.

19. There appears to be no doubt that on 1 March 2020 the First Plaintiff moved into Apartment 1 having executed a lease with the First Defendant and his co-landlord on 25 February 2020. It appears to be agreed that none of the documentation regarding the lease mentioned the Second Plaintiff.

20. The First Defendant states in his written evidence that although the lease permitted 2 occupants, his understanding was that the First Plaintiff intended to and did live there alone throughout his tenancy. In his oral evidence in chief the First Defendant stated that he did not understand Apartment 1 to be the Second Plaintiff's home and that he believed she had another address in Hamilton Parish (which was an address at My Lord's Bay Drive). Those statements do not easily fit with what was said during the criminal prosecution in issue (see below). In particular, they do not fit easily with the First Defendant's evidence that a person can live at more than 1 residence. I have concluded that it is likely (applying the balance of probabilities) that the First Defendant was aware that the Second Plaintiff was living with the First Plaintiff at Apartment 1 (as well as living in Hamilton Parish) at the time when he reported an alleged breach of the COVID Regulations. In particular:

    a. As I have already noted, there is no real dispute that the Plaintiffs were in a relationship. Given that the First Defendant lived at the Property, was the landlord of the Property (which only had a small number of apartments) and worked with the Second Plaintiff, it is inherently unlikely that the First

Defendant was not aware that the Second Plaintiff was spending significant amounts of time at Apartment 1.

b. During the criminal trial, the First Defendant stated, when confronted with evidence of a conversation on 13 May 2021, that the Second Plaintiff was living between the 2 properties. He did not suggest that anything that happened after the alleged breach of the COVID Regulations changed his understanding of the Second Plaintiff's living arrangements.

c. Similarly, although the First Defendant's oral evidence was that the Second Plaintiff was living in Hamilton Parish, he did also state that the Second Plaintiff was moving between Apartment 1 and Hamilton Parish, that she was living between the 2 properties and that she was staying between the 2 properties. As a consequence, the First Defendant essentially repeated the evidence that he had given in the criminal trial. Despite the Plaintiffs arguing that this should have been revealed earlier during the criminal prosecution, the First Defendant did not suggest that there was some event after the alleged breach of the COVID Regulations that meant that he learnt the Second Plaintiff was living in the 2 properties.

d. The First Defendant's wife wrote an e-mail apparently accepting that Apartment 1 was the Second Plaintiff's residence when childcare permitted (see below). It is difficult to see why the First Defendant would have significantly less knowledge of the living arrangements. The First Defendant gave evidence that his wife was at home more. However, it appears to me that it is inherently unlikely that the couple would not have talked in light of their common interest in the Property.

e. I accept that the fact that both Plaintiffs were not mentioned on the lease is a matter that may suggest that it was unclear whether they were living together. However, it appears to me that carries little weight in light of the fact that the lease permitted 2 residents at Apartment 1.

f. The First Defendant points out that the Second Plaintiffs address on the police system was not Apartment 1 but the address at My Lord's Bay Drive. The significance of this limited. The evidence appears clear that there was no policy requiring changes of address to be notified until 2024. There is also no doubt that the First Plaintiff continued to have an address at My Lord's Bay Drive.

g. The First Defendant also points out that Apartment 1 was not the address used on her driving licence. Instead the address was the address at My Lord's Bay Drive. It appears to me that this carries little weight. Firstly, it is unclear whether the First Defendant would have been aware of this at the material time. That is important as it appears to me what is key is the First Defendant's knowledge (see below). Secondly, there appears to be no doubt that the Second Plaintiff did have a property at My Lord's Bay Drive. The driving licence details are consistent with the Second Plaintiff having multiple addresses.

h. It is true that at times during an in-person conversation on 13 May 2021 the First Defendant appeared to treat the claim that the Second Plaintiff was residing at 2 addresses as a hypothetical (see below). That is something that might suggest a lack of knowledge of the living arrangements. However, as noted below, there is also at least one passage that suggests actual knowledge of the Second Plaintiff's living arrangements. I consider this issue in greater detail later.

21. The First Plaintiff's statement implies that the Second Plaintiff lived with him save when she was forced to quarantine with her son [33]. That appears to have been for a couple of weeks shortly before 23 April 2021. When giving oral evidence the Second Plaintiff stated that she would have said she lived at the Property. However, when her son needed to isolate she stayed at 3 My Lord's Bay Gardens so that her son could be separate from everyone. There several relevant points about this evidence:

a. There appears to be no dispute that the Second Plaintiff had a property at My Lord's Bay Drive. It also appears to be accepted that she spent time at My Lord's Bay Drive. It appears to me that the evidence is essentially that the Second Plaintiff was spending significant periods of time at both Apartment 1 and the property at My Lord's Bay Drive. It was said that she was living at both properties. This appears to me to be correct.

b. There is a legal dispute when the relevant regulations commenced. I will consider this dispute later. The debate is about whether the relevant date for the regulations was 13 or 20 April 2021. In light of that I will make findings as to where the Second Plaintiff was living on 13 or 20 April 2021.

c. There was no challenge to the statement in the First Plaintiff's witness statement dated 15 September 2025 that between 19 and 21 April 2021 the Second Plaintiff went to work from Apartment 1 and return to the same property. I am

conscious that the Second Plaintiff said in oral evidence that she could not remember if she returned to Apartment 1 on 23 April 2021. That is not surprising in light of the passage of time and might suggest that the First Plaintiff cannot be certain where the Second Plaintiff was resident between 19 and 21 April 2021. I don't accept that. This period is likely to be memorable because of the isolation and the prosecution. It appears to me that there is no basis for rejecting the evidence of the First Plaintiff that the Second Plaintiff was staying at Apartment 1 between 19 and 21 April 2021.

d. However, there appears to be no dispute that the Second Plaintiff was isolating away from Apartment 1 on 13 April 2021.

22. The First Plaintiff states that there was no conflict between him and the First Defendant until the prosecution that has led to these proceedings (in other words until after an allegation was made that there was a breach of the COVID Regulations). The Second Plaintiff gave evidence that her relationship with the First Defendant was positive before the prosecution. She said that was both her professional relationship and her relationship with the First Defendant as a landlord. None of this evidence was contested. That is significant as it might be suggested that there was no motive for a malicious prosecution. This is something that I will return to.

23. One incident that occurred before the events that led to the prosecution was highlighted by the Second Plaintiff in her evidence. She says that following a Christmas party in 2020 held by the SCU, Loryn Bell was required to isolate after she tested positive for COVID. Inspector (then Sergeant) Martin was then required to isolate after it was alleged that he had spent the weekend with Ms Bell. The Second Plaintiff believes that Ms Bell and Inspector Martin believe that she caused the treatment of Inspector Martin and were angry about it. She says that they must have assumed this as she knew that Ms Bell and Inspector Martin spent weekends together at the Property. Ms Bell and Inspector Martin were not called to rebut this evidence. This evidence that Ms Bell and Inspector Martin may have had a grudge against the Second Plaintiff is potentially significant as in cross-examination the First Defendant accepted that he was closer to Ms Bell and Inspector Martin than he was to the Plaintiffs. The relationships of the Second Plaintiff and the

First Defendant with Ms Bell are potentially significant as it was Ms Bell who seems to have alleged a breach of the COVID Regulations.

The matters that resulted in the prosecution

24. The First Defendant states that Loryn Bell had contacted him on 23 April 2021 to say that she believed that the Second Plaintiff had visited the Property the night before in breach of the COVID Regulations. He had then viewed CCTV footage and believed that this was correct.

25. The First Defendant accepted that he had not viewed any earlier CCTV to see whether the Second Plaintiff had been at the Property earlier in April 2021.

26. The First Defendant's witness statement says:

> *Given my understanding that Teshae [i.e. the Second Plaintiff] lived elsewhere, it seemed to me that if she was visiting Dantae at Unit 1 this would constitute a mixing of households which was, as I understood it, a breach of the Stay at Home Regulations.*[14]

27. In oral evidence the First Defendant stated that he believed that the COVID Regulations were breached if the Second Plaintiff was not at the property where she was when the curfew in question took effect. He believed that date to be 13 April 2021. Essentially the First Defendant's view was that you could not move. He believed that the Second Plaintiff was at Hamilton Parish under quarantine when the curfew took effect. As a consequence, in his mind, presence at the Property showed a breach of the COVID Regulations. That is why he decided to report the matter. That evidence appears to me to be inconsistent with what was said by the First Defendant to the First Plaintiff during a conversation on the night of 13 May 2021 that was taped (see below). That is because he appeared to accept that a person could have more than one home for the purposes of the COVID Regulations.

28. I have seen a series of WhatsApp messages between the First Defendant and Loryn Bell that appear to start on 22 April 2021. I have assumed that for some reason the dates on these WhatsApp messages are wrong. For example, the witness statement of Chief Inspector Rollin in the criminal proceedings states that the first criminal complaint was

at 12.52 on 23 April. That evidence appears consistent with other evidence. However, the WhatsApp messages suggest a complaint by 13.18 on 22 April. Assuming the WhatsApp messages are accurate (and there appears to be no basis for suggesting that they are not), there must have been an error with the date recording. I have assumed that the date recorded in the WhatsApp was 1 day earlier than the actual date. However, when describing the WhatsApp messages, I have used the date that appears to be recorded in the messages.

29. The WhatsApp messages show that at 10.45 on 22 April (which I have assumed was 10.45 on 23 April) the First Defendant appears to state in response to a question from Ms Bell about whether she was wrong that:

> *I doubt it - puts me in worse position as landlord possibly losing tenant for dealing with breach and manager of staff beaching - with Gee so upset right now I will deal with this one later - a little too much for me a the moment but I will sort no worries…*

At 10.56 the First Defendant appears to state:

> *Not your fault Teshae decided to breach regs - I will follow up though*

These messages appear to suggest that the First Defendant had reached a clear conclusion about the COVID Regulations. That was despite the fact that he had not viewed earlier CCTV or spoken to the Second Plaintiff and sought an explanation for the alleged breach. However, in a later WhatsApp at 13.18 the First Defendant states that:

> *… just to update you have reported matter as possible breach of house holds to Alex as we should deal with it the same way as anyone else - I would hope there is a justified reason maybe Dante isn't there or she has had to move households to quarantine ? Hopefully it is ok*

Later at 13.50 the First Defendant sent a WhatsApp saying:

> *It doesn't help us feel any better but they know they shouldn't have been mixing…*

These WhatsApp messages appear to me to demonstrate 2 matters:

a. The First Defendant and Ms Bell were close. They appear to have been seeking to support each other. They were in very regular contact about the allegations.
b. There is an inconsistency in the approach of the First Defendant. At several points he appears to be certain of guilt. At other times he appears to recognise the possibility of a defence.

30. The First Defendant relied in oral evidence on his understanding of the COVID Regulations to explain why he had not viewed earlier CCTV recorded in April to see when the Second Plaintiff had been present at the Property. His view was that was not relevant to whether an offence had been committed. It appears to me that there is a tension between this and the recognition in the WhatsApp messages that the Second Plaintiff might have a defence. It also appears to me that there is a tension between this evidence and the evidence of the First Defendant that charging was a matter for the Director of Public Prosecutions ('the DPP'). If charging was for the DPP, that implies a need to provide the DPP with all material that he required to make a decision. This is something that I will return to.

31. It appears that the First Defendant was off duty and at home when the report was made. However, Chief Inspector Rollin gave evidence that by reason of section 5 of the Police Act 1974, police officers are always on duty. This is a matter that I will need to address later.

Investigation

32. Having taken advice from another senior officer Arthur Glasford, who was then head of Professional Standards, the First Defendant says he made a report of the alleged criminality. In his witness statement the First Defendant states that:

> *I was conscious of the standards of conduct expected of me as a police officer, even when off duty, and the associated obligation to report potential criminal conduct.* [15]

Orally in evidence the First Defendant stated that he was compelled by his obligations as a police officer to make a report.

33. The actual report appears to have been made when First Defendant called Chief Inspector Rollin later on 23 April 2021. The papers include a note that Chief Inspector Rollin says he prepared contemporaneously. This states that:

> *- u/k if Trott lives there?*
>
> *- is occupying it?*
>
> *- Breach if not?*

This appears to me to be an important document. It suggests that Chief Inspector Rollin concluded that it was necessary to understand whether the Second Plaintiff was living at Apartment 1. He appears to have been left in doubt about this. When questioned on behalf of the Plaintiffs, Chief Inspector Rollin accepted this indicated that it was critical to determine whether the Second Plaintiff was living at the property.

34. The papers also include an e-mail sent by the First Defendant to Chief Inspector Rollin at 1.14pm on 23 April 2021 that states:

> *Further to our phone call I confirm I was informed of a possible breach of households* [sic] *at Unit 1, 5 Tribe Road 5, Warwick.*
> *This is my tenants property of the lawyer Dantae Williams and the other house is suspected to be DC Teshae Trott.*
> *In* [sic] *being informed of this it is incumbent to ensure the matter is progressed as per any other report.* [Emphasis added]

35. It seems to me that, read as a whole, this e-mail suggests that there was uncertainty as to whether an offence had been committed. That is demonstrated by the use of the word 'suspected' (which is a word that the First Defendant used on at least one occasion when cross-examined). That uncertainty meant that there was a need to progress the matter by investigating. That does not fit easily with the certainty of the First Defendant's answer when asked about whether he had viewed earlier CCTV. As noted above, in that context the First Defendant stated that he had not viewed earlier CCTV because he didn't think it was relevant suggesting certainty about guilt. It also does not fit with the passages of the WhatsApp messages on 22 April 2021 suggesting certainty about guilt.

36. The First Plaintiff placed weight on the word 'progressed' as demonstrating that the First Defendant was pressing for the matter to be investigated. It appears to me that e-mail sent at 1.14pm on 23 April 2021 and the use of words such as 'incumbent' demonstrate that the First Defendant was pushing for an investigation (and a possible subsequent prosecution).

37. There is no dispute that during his initial contact with Chief Inspector Rollin the First Defendant did not state that the Second Plaintiff was staying at Apartment 1. The First Defendant stated during cross-examination that he did not believe that it was necessary

to state that the Second Plaintiff was staying with the First Plaintiff. That was because he was simply seeking to trigger an investigation. The problem with this claim is that the record of the call made by Chief Inspector Rollin suggests an awareness of the significance of whether Second Plaintiff lived with the First Plaintiff. This again appears to me to be evidence of the inconsistent approach that is apparent in the evidence. If the First Defendant was of the opinion that others needed to investigate the allegation and then for the DPP to decide whether there is to be a prosecution, why not provide full information?

38. The First Plaintiff states that he received a visit from Sergeant Bundy of the BPS on 23 April 2021. Sergeant Bundy warned him that he was in breach of the COVID Regulations. The claim that a warning was given is supported by a contemporaneous report that references a 'verbal warning'. However, Sergeant Bundy's witness statement in the criminal prosecution makes no reference to a 'verbal warning'. The First Plaintiff said during a conversation with the First Defendant on 13 May (see below) that he was told:

> *It's not going to be proceeded any further.*

It appears to me that all of the evidence indicates that the First Plaintiff was given a warning that gave the impression that no further action would be taken. I have no basis for doubting the evidence of the First Plaintiff. It corresponds with the contemporaneous records.

39. Although the First Defendant says that he did not conduct the investigation, he was plainly aware of the visit by Sergeant Bundy soon after it had taken place. At 13.39 the First Defendant appears to have sent a WhatsApp to Loryn Bell telling her about the visit.

40. The First Plaintiff stated during oral evidence that he had spoken by telephone with the First Defendant shortly after the visit from Sergeant Bundy. He said that during that conversation the First Defendant had said that he knew that the Second Plaintiff was living with the First Plaintiff. That was why he was confused about some of what was said during the conversation on 13 May 2021. I will address this conversation later.

41. At about the same time as the visit of Sergeant Bundy, Chief Inspector Rollin called the Second Plaintiff. There is a dispute about what was said during that call:

a. The Second Plaintiff states in evidence that:

> *I recall that Cl Rollin informed me that a complaint had been made against me for mixing households. Cl Rollin asked me if I attended at Southview Gardens on 22 April 2021? To which I replied that I did. Cl Rollin next asked me do I live there? To which I replied yes I live there. Cl Rollin next asked me did I stay there at the commencement of the latest Stay at Home order to which I responded no (I had no time to explain that I was required to quarantine and under the law I was required to quarantine at my alternate residence). Cl Rollin next asked me am I aware that mixing households is a breach of the Covid-19 regulations to which I replied yes and I told him that I live at Southview Gardens and have another residence.*

The First Defendant relied in his closing submissions on this as evidence that 'CI Rollin reasonable grounds to believe that an offence had been committed'. However, even if this is correct, I cannot see what its relevance because it appears to me what matters is the First Defendant's knowledge (see below). There is no reason to believe that the First Defendant was aware of the conversation between the Second Plaintiff and Chief Inspector Rollin.

b. Contemporaneous handwritten notes of Chief Inspector Rollin appear to state:

> *Informed of allegation – "cool" after told I would be writing down her evidence – [unclear] – "Yes" when asked stay there and at hers. Back and forth.*

c. The witness statement of Chief Inspector Rollin dated 5 May 2021 provided during the criminal trial stated that he:

> *… told her that I would be writing our conversation down and would have to enter the contents of my notes as evidence. She replied ,"Cool". I asked her if she had visited the residence of Mr. Williams the night before and she said, "Yes". I asked her if she was aware of mixing households. I asked she lived there and she replied that she lives between her place and there. I again reminded her that the mixing of households was against the law under the current*

regulations. I told her that I would have to gather more evidence and report the matter.

42. The difference between the accounts is not massive but potentially significant. A statement that the Second Plaintiff had visited the Property would not necessarily fit with the claim that she lived at the Property. It is notable that the contemporaneous note does not use the language of visit. The witness statement was prepared over 2 weeks later. Chief Inspector Rollin accepted that the failure to use the language of visit in the handwritten note was a material omission. As I make clear later, it appears to me that Chief Inspector Rollin gave evidence that demonstrated his integrity. However, it appears to me that his statement that the Second Plaintiff said that she 'visited' Apartment 1 is unlikely to be reliable evidence of an admission that the Second Plaintiff was not living at Apartment 1. As already indicated, there is a weight of evidence that the Second Plaintiff resided at Apartment 1 so it is unlikely that she would say something inconsistent with that. If Chief Inspector Rollin had thought that the Second Plaintiff had said something of significance, he would have been likely to record it in his contemporaneous note.

43. The First Defendant argues that this conversation meant that Chief Inspector Rollin was aware from an early stage that the Second Plaintiff was saying that she was living between Hamiliton Parish and Apartment 1. That would appear to be correct. However, that does not mean that it was not important that the First Defendant raise the issue of the Second Plaintiff essentially living at 2 properties. The First Defendant stated in oral evidence that he did not know of this call. Therefore, the First Defendant had no basis for concluding that Chief Inspector Rollin knew that the Second Plaintiff lived between Hamiliton Parish and Apartment 1. It will be remembered that the First Defendant had not said this when he first made the report to Chief Inspector Rollin.

44. The Second Plaintiff says that she should have been cautioned if she was being criminally investigated. Chief Inspector Rollin accepted that the Second Plaintiff was not given her rights that she should have been given if a criminal investigation was being conducted. This appears to me to be of limited significance. At most it is evidence that there was no

active investigation being conducted by Chief Inspector Rollin. However, the focus of this claim has to be on the actions of the First Defendant.

45. After this call Chief Inspector Rollin says that he decided to remain as officer in charge of the investigation. Consistent with this, the First Defendant essentially stated in oral evidence that he did not investigate matters further as he was not the investigating officer.

46. The First Defendant submitted a witness statement on 6 May 2021. This statement says nothing about the Second Plaintiff being a regular visitor to the Property or staying overnight with the First Plaintiff. When cross-examined about this, the First Defendant sought to explain the statement on the basis that at this stage he believed that there was a mixing of households and hence a breach of the COVID Regulations. However, as noted above, the First Defendant had already exchanged WhatsApp messages with Loryn Bell where there was a recognition that the Second Plaintiff might have a defence. Also the call with Chief Inspector Rollin on 22 April 2021 would appear likely to have meant that the First Defendant understood the importance of the Second Plaintiff's living arrangements to guilt. These matters, together with the First Defendant's knowledge that charging decisions were a matter for the DPP, mean it was likely that the First Defendant was aware of the need to give full details of the Second Plaintiff's living arrangements.

47. The following day the First Defendant e-mailed the Plaintiffs to tell them about his actions. The First Defendant argues that this e-mail demonstrates that he was open with the Plaintiffs. He stated that:

> *Gina and I have always respected our tenants right to privacy and have been placed in a situation that we did not ask for but I have been required to respond to.*

The First Defendant states that the reference to 'tenants' plural was not a reference to the Second Plaintiff being a tenant. It appears to me that this e-mail is not evidence that the First Defendant treated the Second Plaintiff as a tenant. It appears to me that the e-mail simply indicates that he believed that the privacy rights of all tenants should be protected. There clearly were more than 1 tenant whether or not the Second Plaintiff was a tenant. Loryn Bell was a tenant.

48. The First Plaintiff says that he agreed to meet with the First Defendant at the First Defendant's house on the night of 13 May 2021. The First Plaintiff had been told by a BPS whistleblower that he should not trust his landlord. As a consequence, the First Plaintiff wanted to tape a conversation in order to see whether the First Defendant had made comments that might assist if further action was taken regarding the alleged breach of the COVID Regulations. There appears to be no doubt that the conversation was in fact taped. The First Plaintiff alleges that, among other things, this conversation shows that:

    a. When information is communicated to the First Defendant that shows a crime, he believes that he is required to take action because he is a police officer.
    b. The conversation shows that the First Defendant believed that no action would be taken against the First Plaintiff. That suggests that he knew that no crime had been committed.
    c. The First Defendant downplayed the role that he and Loryn Bell played in the progressing of the allegation made in relation to the COVID Regulations.
    d. The First Defendant had breached the COVID Regulations by attending a party. I will return to this party later. However, it is important to note that it appears that this party was separate from the SCU Christmas party mentioned above.

49. It appears to me that:

    a. In the recording the First Defendant appears to be stating that when information is communicated to him, he is required to take action because he is a police officer. Early on in the conversation on 13 May 2021 the First Defendant appears to imply that his role as a Chief Inspector means that he cannot ignore what he is told.
    b. It appears to me that there is material in the recording that supports the allegation that at one stage the First Defendant believed that no action would be taken. Early in the conversation the First Defendant states that:

        > *... when you had the conversation with me I thought that was going to be the end of it. But I don't know what conversation went on between Alex and Teshae and to how that came about.*

        This suggests that that at some point before 13 May 2021 the First Defendant had believed that no action would be taken. However, the conversation between Chief Inspector Rollin and the Second Plaintiff had changed the position. I don't

see this evidence as suggesting that the First Defendant believed that no crime had been committed. A belief that a matter will not result in a prosecution does not necessarily mean that there was no criminal behaviour.

c. The First Defendant is clear that he was approached by Loryn Bell who alleged that the Second Plaintiff had been dropped off at Apartment 1. As a consequence, I don't accept that the First Defendant downplayed his role or that of Loryn Bell to any significant degree.

50. More importantly the transcript of the conversations shows that the First Defendant said that:

> *If it comes around that anything comes out of this if your position is that Teshae is living at your premises that sounds perfectly reasonable to me. And I cannot refute or say that in fact if anything I will say that Teshae is at that premises on a regular basis. The domestic arrangements only you can speak to, because I can't say whether she lived. Only you can say that I can't say that. All I can say is that absolutely Teshae and Dantae are regularly at the house together. How often they are there together I do not know.*

Teshae is obviously the Second Plaintiff.

51. The First Plaintiff said in his witness statement that the quotation set out in the paragraph above demonstrates that the First Defendant knew that the Plaintiffs were living together. However, when questioned about this, his position modified and he focused on another unrecorded conversation as demonstrating a knowledge that the Plaintiffs were living together. The First Defendant states that he was merely considering a possible explanation for the allegations that had been made against the Plaintiffs. It appears to me that it is not surprising that the First Plaintiff appeared to change his position. It appears to me that on an objective reading the First Defendant is saying that he knew that the Second Plaintiff was 'at that premises on a regular basis' and he was saying that it sounded reasonable for the Second Plaintiff to claim that she lived at the premises. He is not saying that the couple do in fact live together.

52. Another passage of the transcript that appears to me to be of importance is one where it is recorded that the First Defendant said that:

Listen, Teshae is sharing the care of her son and she stays half the time at your house and lives with you. That would be perfectly reasonable to me that that would be an explanation that that would not constitute a breach of households.

The First Defendant states that 'would be' is a mistranscription. The correct word should be 'sounds'. It appears to me that there is a mistranscription. However, I don't understand how it makes a difference.

53. The passage in question is preceded by a passage where the following exchange occurs:

[First Plaintiff]: And that wasn't the first time she had been there through the stay at home order. It wasn't the first night.

[First Defendant] So Dantae. You may be absolutely right

It appears to me that this passage demonstrates that the First Defendant had been alerted to the living arrangements. The First Defendant was being told that Second Plaintiff was living at Apartment 1 and he appeared to accept this.

54. The First Plaintiff says that the passage quoted at paragraph 51 is significant as he had not told the First Defendant that the Second Plaintiff was caring for her son. As a result, the remarks showed an awareness of the Second Plaintiff's living arrangements. The First Defendant says that he was simply considering a hypothetical example of matters that might offer an explanation. It appears to me that:

a. The context of the words in paragraph 51 are those that I have set out in paragraph 52. In that passage it appears to me that the First Defendant is told about the living arrangements. As already noted, his reaction was essentially to state that he had no reason challenge what he was told by the First Plaintiff. From at least this point in time, the First Defendant was on notice that it was being said that the Plaintiffs were living together and that was apparently being relied on as an answer to an allegation that there was a breach of COVID Regulations. However, this is unlikely to have been new information. I have already explained it appears to me that it is likely that the First Defendant was aware that the Second Plaintiff was living with the First Plaintiff at Apartment 1.

b. As far as I can see, it is correct that there had been no prior reference to childcare before the passage set out at paragraph 51. That appears to me to be significant

as the First Defendant's reference to childcare suggests an awareness of the Second Plaintiff's living arrangements. The evidence that the First Defendant was aware of the living arrangements adds credibility to First Plaintiff's evidence that the First Defendant had indicated that he was aware of the Second Plaintiff's living arrangements when they spoke shortly after Sergeant Bundy's visit.

c. If there was an awareness of the Second Plaintiff's living arrangements as the reference to childcare suggests, the language used during the conversation seems striking. The First Defendant appears to use language suggesting that the living arrangements were hypothetical. That raises the question of why he was seeking to suggest the arrangements were a hypothetical when he appears to have known about the living arrangements. This is a matter I will return to.

d. In any event, what is clear from this passage is that the First Defendant was aware that it was possible for a person to live at more than 1 home. He expressly stated that 'would not constitute a breach of households' (i.e. the COVID Regulations). That does not fit with the evidence given in this matter that all that mattered was where the Second Plaintiff was located on 13 April 2021 (see above and below).

55. A further passage that was relied on heavily by the Plaintffs is one where it is said that:

> *…and here is an interesting thing about friendships right. So I'm going to be very frank and share some stuff with you about right Dean and Loryn thing right. We tend to open ourselves up all time being generous and stuff like that. And last year a couple of times we were on the boat and his boat broke down a few times. And I went out and helped tow his boat in on like three occasions right. That's a lot of gas that's a lot of … Thanks? No. And that's it you know. So the trouble being is that it's my fault in that I open myself up to be taken advantage of. And to be fair they are two single people you know. So blinkered by their … And a couple of times (and I tell you this in confidence so please don't repeat this) And I do this because we are in this horrible situation of … I just want to put some perspective and context around things because this is me personally talking about feeling taken advantage of and I tell you and be honest I felt taken advantage of by Loryn. And it won't have even entered her head as to what she's done. And I'm going to be really honest and tell you*

that once we can try and get this stuff sorted out from our thing she doesn't know I want to renovate that one.

56. The First Plaintiff says that the passage set out in the paragraph demonstrates that Inspector Martin and Loryn Bell took advantage of the First Defendant and he was not willing to stand up for himself. In oral evidence the First Defendant stated that he was seeking to explain how Inspector Martin and Ms Bell had failed to consider the impact of their actions on him and his wife. It appears to me that this passage of the conversation is slightly odd. The criticisms of Inspector Martin and Ms Bell appear to be within a passage of the conversation where the First Defendant appears to be seeking to demonstrate that there was no conspiracy to prosecute the Plaintiffs. It is not clear why it might be thought that there was a conspiracy. I am not aware of any prior allegation of a conspiracy. This is a matter that I will consider later.

57. Finally the transcript states that:

... we are making decisions with the only information we have, and we get it wrong, but in the context of the information we had at the time you can understand why the decision was made. And then when a new information you re-evaluate your decision and say look I got this wrong.

This appears to me to be significant because it is recognition of the importance of police officers having full information to ensure accurate decision making. Obviously it is not surprising that the First Defendant was aware of this in light of his experience as a police officer.

58. On 9 June 2021 Chief Inspector Rollin sent an e-mail to the First Defendant asking 4 questions related to whether the Second Plaintiff was a resident at Apartment 1. One of those questions was:

Have you known here [sic] to use any apartment at #5 Tribe Rd #5 as a permanent residence at any time?

Even if prior to this e-mail, the First Defendant was in doubt about the importance of the Second Plaintiff's living arrangements (which seems unlikely in light of the call with Chief Inspector Rollin on 22 April 2021), this e-mail can have left him in no doubt.

59. The e-mail dated 9 June 2021 was forwarded by the First Defendant to his wife who responded apparently answering the questions. In response to the question set out in the paragraph above, the First Defendant's wife stated.

> *- Yes, on multiple occasions I have greeted Ms. Trott in the early mornings when we were on our way to work, during the evenings when returning from work and week-ends. She was not seen carrying an overnight bag which would be required if she didn't have personal belongings at the property. In my opinion she was living at the property when childcare matters allowed.*

This demonstrates that the First Defendant's wife was aware that the Second Plaintiff was living at Apartment 1. As noted above, this is evidence of the First Defendant's knowledge of the living arrangements.

60. The First Defendant's wife's answers were subsequently incorporated into a witness statement from her dated 28 June 2021.

61. When cross-examined about his wife's statement, the First Defendant appeared to accept that her statement was 'diametrically opposed to his'. He said that was not surprising as she was at home and saw more of what was going on. He said that the contrast between the 2 statements was why he had sought a statement from his wife.

62. On 28 June 2021 the First Defendant also signed a witness statement. The First Defendant states that this statement was not provided earlier as he was not asked for it. This stated that:

> *Teshae has over the last 2 years frequented the property on an almost weekly basis staying 2-3 nights as an average, although this has been less in recent in [sic] months. I am assuming this only from seeing her car in the driveway. Teshae does not have Tribe Road 5 listed as her home address that I know of, I have never signed any TCD documentation as landlord to register her vehicle to the property and I believe her home address is in Hamilton Parish.* [Emphasis added]

The First Defendant's statement does not suggest that the Second Defendant lived at Apartment 1. To the contrary, it suggests that she lived at Hamiliton Parish and that the time spent at Apartment 1 had reduced in recent months. When cross-examined about why he had not said that the Second Defendant had resided at the property, the First

Defendant complained about the focus on the use of the word 'reside' and said it was seizing on a single word. However, it appears to me that, read objectively, the witness statement seeks to give a clear impression that the Second Plaintiff did not live at Apartment 1. There is an emphasis on matters such as the absence of Transport Control Department documentation. That was in a context where it was clear that the investigating officer was seeking details of the living arrangements.

63. However, as already noted, the First Defendant's wife's statement did suggest that the Second Plaintiff lived at 2 addresses. That is significant as the First Defendant was involved in obtaining that statement, which might be said to be inconsistent with a deliberate attempt to withhold details of the Second Plaintiff's residence. Further, the First Defendant did state that the Second Plaintiff stayed regularly at Apartment 1 (at least up until the months immediately before the alleged breach of COVID Regulations). However, there was an inconsistency between the evidence of the First Defendant and his wife. The First Defendant accepted that when he said that the statements were diametrically opposed. It would have been obvious that a prosecutor would potentially place weight on the First Defendant's statement. For example, a prosecutor might conclude that the First Defendant was focused on the residence arrangements at the relevant period of time while his wife was describing earlier periods. That is why the First Defendant's witness statement was important.

64. One matter that appears to me to be significant about the First Defendant's witness statement is that it suggests an awareness that what was relevant was not simply the Second Plaintiff's place of residence on 13 April 2021 (the date when he believed that the relevant COVID Regulations took effect). That is because it is describing the Second Plaintiff's living arrangements over a period of time. That would suggest an awareness of the need for openness about the full picture regarding the Second Plaintiff's residence. That awareness is not surprising in light of the matters highlighted above such as the terms of the e-mail from Chief Inspector Rollin sent on 9 June 2021.

65. In August 2021 the First Plaintiff says that he learnt that he and the Second Plaintiff would be charged. On 17 August he was served with a summons. It appears that charges had been approved by the DPP on 14 May 2021. The First Plaintiff accepts that it was the DPP who would have been required to authorise charges. The First Defendant's oral

evidence was that he played no role in the charging decision. I have seen no evidence that contradicts evidence of the First Defendant regarding his role in the prosecution decision.

66. The terms of the charges are relevant. The charge against the First Plaintiff was that:

> *On the 22nd April, 2021, in Warwick parish, Dantae Williams failed to comply with regulation 13(a) of the Public Health (COVID-19 Emergency Powers) (Stay at Home) Regulations 2021, in that you unlawfully allowed another person, namely Teshae Trott, to visit your home at Unit 1, No. 5 Tribe Road No. 5, Warwick parish.*
>
> ***Contrary to regulation 18(1) of the Public Health (COVID-19 Emergency Powers) (Stay at Home) Regulations 2021*** [Emphasis in the original]

In relation to the Second Plaintiff it was alleged that:

> *On the 22nd day of April 2021, in Warwick Parish, failed to comply with regulation 13(a) of the Public Health (Covid-19 Emergency Powers Stay at Home) Regulations 2021, in that you unlawfully visited the home of Dante Williams at Unit 1, #5 Tribe Road #5.*
>
> ***Contrary to regulation 18(1) of the Public Health (Covid-19 Emergency Powers Stay at Home) Regulations 2021.*** [Emphasis in the original]

67. Shortly before the charge, on 12 August 2021, the Plaintiffs' lawyers wrote pointing to 4 witnesses (including 3 police officers) who could confirm that the Second Plaintiff lived at Apartment 1. It appears that no steps were taken to take statements from these witnesses. The First Defendant relies on this letter as he says that it shows that all material relating to the Plaintiffs' living arrangements were before the DPP. However, it appears to me that this letter demonstrates the importance of the First Defendant's statements. That is because they were presumably the evidence relied upon to demonstrate that the Plaintiffs had no defence. That is also clear from the costs ruling, which makes it clear that the First Defendant's evidence was key to the prosecution (see below). It is also significant that it appears that charges were approved on 14 May 2021 (see above). That means that the letter from the Plaintiffs' lawyers was not available when the charging decision was made and cannot have influenced it.

68. On 13 August 2021 the First Defendant signed his third and final witness statement. This said nothing about the Second Plaintiff living at Apartment 1. It should be noted that the context of this and earlier statements is the evidence of the First Defendant that the decision as whether there had been a breach of the COVID Regulations was a matter for the DPP. This implies that it was important that the DPP was fully informed.

The criminal trial

69. The trial of the allegation of a breach of the COVID Regulations took place on 31 May 2022. I have read a transcript of the evidence of the First Defendant. During evidence in chief, the First Defendant described the CCTV footage and stated that:

> *I recognized the female as Teshae Trott. She was a friend of Dantae's and had stayed at the premises. A friend of Dantae's and stayed at the house. ... To the best of my knowledge, Dantae Williams was living at that premises. I believe Ms Trott had her own residence in the Hamilton Parish. I believe she lived at her own address in Hamilton Parish. ...*

70. Chief Inspector Rollin was asked about this last statement during cross-examination. He said that this answer was consistent with what the First Defendant had said during his investigation of the allegation that the Second Plaintiff had breached COVID Regulations. That appears to me to be correct. It appears to me that this is significant in light of the evidence subsequently given by the First Defendant during the trial. That is because that later evidence appears to be inconsistent with what was said at this stage. This is a matter that I will return to.

71. Later, the evidence of the First Defendant during evidence in chief included the following statements:

> *I recognized her vehicle parked in the driveway on a frequent basis 2-3 times a week.*
>
> *On the weeks prior to 22nd I don't remember seeing her car. Prior to that I remember seeing her car.*
>
> *I didn't ever believe that Teshae was a tenant in my property. Teshae lived at her own place.*

Again Chief Inspector Rollin said that this matched what he had been told during the investigation. It also matched the First Defendant's witness statement dated 28 June 2021

in that it suggested that the Second Plaintiff had spent less time at Apartment 1 in the weeks preceding the alleged breach of the COVID Regulations.

72. At the start of his cross-examination, the First Defendant stated that:

> *I would say that Ms Trott stayed there <u>but did not reside</u>.* [Emphasis added]

It appears to me that the emphasised words are important. The First Defendant was clear that the Second Plaintiff did not reside at Apartment 1. Again Chief Inspector Rollin said that this evidence matched what he had been told when investigating.

73. Following the evidence set out above and other evidence, the transcript of the tape recording on 13 May 2021 was made available. Having been cross-examined about the tape recording of the conversation with the First Plaintiff, the First Defendant stated that:

> *I acknowledged that Teshae was living between her house and Dantae. The lease has 2 occupants.*
>
> *I accept a person can live at more than one residence. …*

A series of propositions were then put to the First Defendant. In response to one of those propositions, he stated that:

> *She was living between the two addresses when childcare matters allowed.*

Although the First Defendant did not expressly say that the Second Plaintiff was residing at Apartment 1, it appears clear that he accepted that the Second Plaintiff was resident at both Apartment 1 and Hamilton Parish depending upon childcare obligations.

74. When questioned on behalf of the Plaintiffs, Chief Inspector Rollin said that the failure of the First Defendant to tell him that the Second Plaintiff lived at 2 addresses including Apartment 1 compromised his investigation. When later questioned by the First Defendant he appeared to modify his position to some extent. In particular he accepted that if the Second Plaintiff lived away from Apartment 1 at the commencement of the relevant COVID Regulations, that might suggest an offence had been committed. He also stated that the failure to mention what was said at trial would not have influenced his investigation. However, he stated that he would still have liked to have been told what was said at Court. When questioned further on behalf of the Plaintiffs, Chief Inspector Rollin said that the failure to tell him what was said by the First Defendant during cross-examination was dishonest. He also accepted that his note of the call on 22 April 2021 demonstrated the significance of what was said by the First Defendant during questioning

(see above). It appears to me that the evidence of Chief Inspector Rollin is significant for 2 reasons:

a. Chief Inspector Rollin has particular expertise in the standards expected of police officers.
b. The fact that Chief Inspector Rollin was willing to be critical of a fellow officer in circumstances in which there was no apparent motive for him to do this suggested that he was acting with integrity when giving evidence. Obviously I have considered the evidence of the First Defendant challenging the evidence of Chief Inspector Rollin. I do accept that evidence. As I note elsewhere, it appears to me that the First Defendant has failed to explain in any credible way why did not give a full account of Second Plaintiff's living arrangements. This is a matter that I will return to.

75. I have considered the evidence of Chief Inspector Rollin that the evidence given by the First Defendant during cross-examination would not have changed the investigation. It appears to me that Chief Inspector Rollin was making it clear that he would have taken the same investigative steps. That does not mean that the evidence given during cross-examination was not material. It is clear that the evidence given during cross-examination was material as the prosecution subsequently offered no evidence. The prosecution stated that:

> *In light of the evidence the Crown offers no evidence. He answered the question that she was living between the two addresses yes. And the regulations did actually state that.*

That implies that the prosecution is unlikely to have been brought if the First Defendant had revealed earlier what he said during cross-examination. The prosecution was of the opinion that residence at 2 addresses was a defence.

76. On 1 June 2022 the Deputy DPP wrote by e-mail to Detective Chief Inspector Glasford of BPS saying that:

> *During the cross-examination of the first witness evidence emerged that Ms. Trott lived between both addresses.*
> *Accordingly, to continue the trial was futile and no further evidence was offered.*

77. Consistent with the Deputy DPP's e-mail, Chief Inspector Rollin said when cross-examined that he had not heard the evidence that emerged during cross-examination at any earlier stage during the investigation and prosecution.

78. On 5 December 2022 a costs ruling was issued by Magistrate Tokunbo. This stated that:

> *... the charges against [the Plaintiffs] were dismissed by myself as the presiding Magistrate.* [Emphasis added]

This also stated that:

> *In my judgment the prosecutor offered no evidence and the defendants were discharged because it became evident that the Chief Inspector, the main witness, had been playing both sides. He was not a credible witness, unbeknown to the prosecution, until he was confronted with the defendant's secretly recorded conversation.*
>
> *The prosecution had every right to rely on the Chief Inspector's 3 witness statements to found a prosecution. The defendants have not persuaded me that the charges were unfounded. In the circumstances their application is not proven and is therefore refused.* [Emphasis added]

79. The First Defendant has stated in his written evidence that:

> *I also gave a witness statement in a 2019 drink driving matter against Magistrate Tokunbo in respect of which he launched a police complaint and a civil claim against the BPS and the police officer who arrested him. I am therefore concerned that he may have been biased in reaching the conclusions he did about my evidence.*

The First Plaintiff gave oral evidence that he was part of the team who prosecuted Magistrate Tokunbo. That was because the DPP could not prosecute as there was a conflict of interest. He said that he did not fear bias as the magistrate was a person of integrity. He also said that having reviewed the papers gathered as part of the prosecution of Magistrate Tokunbo, he thought it was significant that there was no statement from the First Defendant. That evidence was not challenged.

80. It appears to me that the First Defendant's allegation that Magistrate Tokunbo was biased against him was a claim that had no proper basis. On the evidence before me First Defendant played a very limited role in the prosecution of Magistrate Tokunbo. It appears

to me that on the evidence the First Plaintiff had greater reason to be concerned about bias. It appears to me that the approach of the First Defendant to Magistrate Tokunbo suggested a lack of balance when giving evidence. However, applying the approach in *Lucas*, it appears to me that I must be cautious before giving significant weight to this matter. The First Defendant might seek to present unmeritorious arguments in his own defence for reasons that do not support the claim for malicious prosecution. He may simply be concerned about the possibility of a finding of malicious prosecution.

81. The First Defendant states in his written evidence that:

> *My earlier evidence had been that, in my view, Teshae did not reside at the Property in the normal sense of it being her home because: (a) she was not my tenant (not being a party to the lease); (b) she had, as far as I was aware, a home address where she lived with her child; and (c) she had not registered her car at the Property because I had not signed a TCD form in relation to it. That evidence was not contradicted by my later evidence that Teshae lived between the two addresses in the sense that she was regularly at the Property.*

82. The First Defendant's defence states:

> *As to paragraph 40, it is denied that the First Defendant changed his evidence. The First Defendant's evidence at trial was consistent with the evidence available to the DPP and the BPS prior to the trial. The First Defendant will rely on the recording of the trial on 31 May 2022 which speaks for itself and will request that the recording be played for the Court at the trial of this matter or during the judicial reading in period.* [44]

83. When giving oral evidence the First Defendant stated that he did not believe that his oral evidence changed during the trial. When cross-examined the First Defendant initially sought to explain his evidence during cross-examination on the basis that he was simply dealing with a hypothetical. He then appeared to change his evidence and suggest that the problems arose because of 'semantics'. He stated that:

> *... look, if you want to say yes, that she lived there, I'll agree with it. I get that. But it just, my understanding was simply that she was living at a home address.*

84. It appears to me that:

a. The starting point is what was said by Magistrate Tokunbo and the DPP about the First Defendant's evidence. Although I have heard a recording of the trial, that is not the same as being physically present. Magistrate Tokunbo and the DPP were unbiased observers of the trial. They make clear that at the very least the First Defendant had withheld key evidence.

b. It appears to me that the witness statements and oral evidence in chief of the First Defendant gave a clear impression that the Second Plaintiff's sole residence was in Hamilton Parish. It was only when confronted with the tape recording of the conversation on 13 May 2021 that his evidence developed and he accepted that the Second Plaintiff was resident at 2 addresses.

c. It appears to me that the First Defendant was an experienced police officer. That implies that he should have known the importance of supplying all relevant evidence in statements. He appears to have acknowledged that during the conversation on 13 May 2021. If, as the First Defendant said during the conversation on 13 May 2021, residence at 2 addresses might provide a defence, that implied that the investigating officer and the DPP needed to be made aware of the Second Plaintiff's living arrangements.

d. The finding that the First Defendant needed to be candid is supported by the evidence of Chief Inspector Rollin. That evidence was not surprising. Both the call with Chief Inspector Rollin on 22 April 2021 and the e-mail from Chief Inspector Rollin on 9 June 2021 made it clear that full details of the Second Plaintiff's living arrangements were sought.

e. Overall, it appears to me that the First Defendant was seeking to present evidence in a manner that supported the prosecution rather than in a manner that was unbiased. That was contrary to his duty as a police officer. The First Defendant appeared to accept that his role should have to simply gather/provide evidence for the DPP to assess.

f. The First Defendant's evidence during this trial sought to explain the change of evidence in a manner that lacked credibility. Consistent with the remarks of Magistrate Tokunbo and the DPP, it appears to me that there was a significant change of evidence prompted by the tape. It appears to me that the failure to appreciate that there had been a significant change of evidence during the criminal trial in the course of evidence at this trial undermined the First

Defendant's credibility and suggested that the First Defendant had no good explanation for his change of evidence. I have reminded myself about the need to take care when giving weight to the lies of a witness (*Lucas*). However, in this case I can see no reason why the First Defendant would not have presented his explanation for not mentioning that the Second Plaintiff lived at 2 properties if there was a good explanation for this.

Subsequent disciplinary proceedings

85. The First Defendant was served with a notice issued under section 14 of the Police (Conduct) Orders 2016 (BR 113/2016) dated 22 November 2023 ('the section 14 notice'). It was essentially alleged that:

> *[the First Defendant] provided several statements in support of the criminal prosecution however you later changed your evidence in court when you were confront with a secret recording between yourself and Mr. Williams …*

Section 14 notice also highlighted the findings of Magistrate Tokunbo. The notice stated that:

> *These allegation(s) are subject to investigation under criminal and conduct legislation and, if substantiated, would be contrary to Standards of Professional Behaviour. Based on the information available at this time, the conduct described above, if proven or admitted, has been assessed as amounting to Gross Misconduct. This matter may result in your attendance at a Misconduct Hearing.*

86. There was an e-mail in response dated 18 December 2023:

> *I have said that I could review the allegations fully after 18 December 2023. I intend to fully participate in the process, I simply need more time to provide a fulsome response.*
>
> *I do not wish to delay or in any way impair the investigation requested by the PCA. As above I am in the process of taking legal advice on the Notice and I expect my counsel to respond by 22 December 2023.* [Emphasis in the original]

87. A response was sent by attorneys acting for the First Defendant on 20 December 2023. There was no suggestion that the First Defendant was about to retire. However, on 10 January 2024 the First Defendant retired.

88. On 5 April 2024 the Police Complaints Authority wrote saying that it could not pursue disciplinary matters against the First Defendant as he was outside of the jurisdiction. That meant that the disciplinary charges were never faced.

Inspector Martin's party

89. I have mentioned above the SCU Christmas Party. There is another party whose date is unclear but that was addressed in the evidence. It is the party discussed during the recorded meeting between the First Plaintiff and the First Defendant on 13 May 2021. The transcript of that conversation records the First Defendant saying:

> *And it's funny we were we went to Dean's birthday party or we went to something that Dean and Loryn planned. And I think it was at Taste or something. Gina and I were both like we can't because this was during the Covid Regulations. And people were up they were standing at the Bar they were like and I was like Kia we can't do this. Like And that's me like now I'm off duty. Now I'm the Chief Inspector in charge of Central sending people out to do checks and what and I'm supposed to be in a bar now standing up it's like No and I'm like Gina , I'm leaving ... I told Kia not ok we got to go. That's the horrible thing. Cause I don't want to be in that position. But that's the reality of it because the next thing you know there is a photograph of me posted on facetube standing at the bar, no mask on and like I'm done you know. I'm done. You don't come back from that stuff.*

The First Defendant appeared to be describing the party in order to demonstrate his integrity.

90. I have mentioned earlier that the First Plaintiff alleges that this is an admission that the First Defendant failed to act appropriately in relation to officers who attended a party that breached COVID Regulations that applied at that time. The First Plaintiff points to language used during the conversation that suggests that the First Defendant did not want to be photographed at the party. He says that is an indication that the First Defendant knew that he was breaching regulations.

91. The First Defendant said in oral evidence that there were people standing at a bar. He told people that it was not compliant with the COVID Regulations and they then complied. He took no further action as the policy at the time was ensure compliance. However, he felt awkward because he had raised the issue and so left. It appears to me that does not fit with what was said on 13 May 2021. When he was cross-examined as to why he had said that he felt concerned, he said that he was worried that photographs can be viewed out of context. However, the language of the conversation on 13 May 2021 implied that there was continuing illegality that the First Defendant felt uncomfortable with. However, rather than reporting it, he decided to leave the party. As a consequence, I do not accept the First Defendant's explanation for what he said on 13 May 2021 about the party.

92. Chief Inspector Rollin gave evidence that, if the COVID Regulations applied, the party should have been investigated. He accepted that this looked like one rule for some and another rule for others. He also gave evidence that the First Defendant was responsible for how the COVID Regulations were administered. It appears to me that the evidence of Chief Inspector Rollin is consistent with the BPS Code of Ethics which require police officers when other officers appear to be in breach of their professional obligations.

93. It appears to me that the evidence of the First Defendant's response to breaches of the COVID Regulations at Inspector Martin's party suggests that he is willing to breach his professional obligations when compliance with those obligations might be seen as being disloyal to colleagues.

94. The First Defendant pointed to a statement dated 12 March 2022 and supplied by the First Plaintiff. It was supplied in support of a criminal complaint against the First Defendant. He correctly argues that this statement overstates what was said during the taped conversation about the party. It appears to me that the statement contains a number of details that are said to be in the taped conversation but are not in fact found in it. However, it appears to me that those inaccuracies are insufficient to justify a finding that the First Plaintiff deliberately lied. The details may have been misremembered. The First Plaintiff had no motive to lie as it would have been obvious that was he likely to be asked for a copy of the tape. As a consequence, the overstatements were likely to be discovered.

Evidence of loss

95. The First Plaintiff has claimed damages. He says that he faced months of anxiety. He said it was distressing to have to disclose details of the charge to work colleagues and to the other directors of a charity that he was a director of. The fact that the prosecution was conducted by Zoom meant that there was wider knowledge of the prosecution as people could view the Zoom. That evidence was largely unchallenged.

96. The Second Plaintiff has claimed damages. She says that she was turned down for promotion. She points to the fact that Chief Inspector Rollin and Inspector Martin were involved in the process. Support for the argument that the Second Plaintiff should have been promoted can be found in the tape of the conversation between the First Plaintiff and the First Defendant. In that conversation the First Defendant praises the Second Plaintiff profusely. However, the argument that Chief Inspector Rollin and Inspector Martin blocked the Second Plaintiff's promotion is inconsistent with the unchallenged evidence of Chief Inspector Rollin that promotion panels consist of at least 15 people. It is also unclear why Chief Inspector Rollin would be willing to block the Second Plaintiff's promotion when he was willing to give evidence that was critical of the First Defendant. In light of these matters, I do not accept that the prosecution caused the Second Plaintiff to be turned down for promotion.

97. The Second Plaintiff also says that she incurred legal costs and her reputation has been damaged at work. This evidence was essentially unchallenged.

Law governing malicious prosecution

98. *Kevin Stuart v Attorney General of Trinidad and Tobago* [2022] 4 WLR 21 makes clear that there are 5 discrete elements to the tort of malicious prosecution [1]:

    a. The Plaintiff was prosecuted by the Defendant, i.e. that proceedings on a criminal charge were instituted or continued by the defendant against the Plaintiff. In other words, it must be established that the Defendant was a prosecutor.
    b. The proceedings were terminated in the Plaintiff's favour.
    c. The proceedings were instituted without reasonable and probable cause.

d. The Defendant instituted the proceedings maliciously. This an additional requirement to the requirement that proceedings were instituted without reasonable and probable cause (*Willers v Joyce* [2018] AC 779 at [55]).
e. The Plaintiff suffered loss and damage as a result.

The prosecutor

99. In *Martin v Watson* [1996] AC 74 the House of Lords held that:

> *Where an individual falsely and maliciously gives a police officer information indicating that some person is guilty of a criminal offence and states that he is willing to give evidence in court of the matters in question, it is properly to be inferred that he desires and intends that the person he names should be prosecuted. Where the circumstances are such that the facts relating to the alleged offence can be within the knowledge only of the complainant, as was the position here, then it becomes virtually impossible for the police officer to exercise any independent discretion or judgment, and if a prosecution is instituted by the police officer the proper view of the matter is that the prosecution has been procured by the complainant.* (at p86)

100. In *Rees v Commissioner of Police for the Metropolis* [2018] EWCA Civ 1587 the English Court of Appeal accepted that the mere provision of false information to a prosecuting authority leading to a prosecution does not make the provider of that information a prosecutor [59]. Instead the court endorsed the test identified in AH(unt) v AB [2009] EWCA Civ 1092 that:

> *It would have been necessary to establish that [the defendant] had deliberately manipulated [the prosecution service] into taking a course which they would not otherwise had taken if … she was to be regarded in law as the prosecutor.* (*AH* at [47]). [Emphasis in the original]

101. In *Rees* the key aspect of the factual background that led to a finding that the senior investigating officer ('the SIO') was a prosecutor was the fact that he had compromised the de-briefing of a key witness [8]. There was no suggestion that the prosecution service was aware of this. In light of this, the approach of the Court of Appeal was to consider whether the prosecution would have happened had the prosecution service been aware of the truth. The Court of Appeal directed itself that:

> *In assessing whether the [prosecuting authorities] were able to exercise a truly independent judgment, it is necessary to stand back from the printed word and, postulating the reverse of the facts as they were, to ask what effect it would have had on their judgment if they had been told that the SIO had deliberately presented to them a case in which the evidence of the only supposed eyewitness had been improperly procured by that officer by acts intended by him to pervert the course of justice.* [57]

Termination in favour of the plaintiff

102. Discontinuance with the leave of the court has been held to be termination in favour of the plaintiff (*Watkins v Lee* (1839) 5 M & W 270). Consistent with that, in *Stuart* the Privy Council appears to have recently accepted that discharge of a plaintiff following the service of a notice of discontinuance was a termination in favour of that plaintiff [9]. There is obviously good reason why that should be the case. Were it not the case, prosecutors could avoid liability for malicious prosecution by seeking last minute discontinuation of proceedings when it became clear that a prosecution was likely to fail. That is despite the fact that loss might have been caused by the wrongful acts of the prosecution.

103. The Second Defendant relied on the judgment of the Supreme Court in *R (Hallam) v Secretary of State for Justice* [2020] AC 279 to argue that innocence must be established. The issue in that case was statutory compensation for a miscarriage of justice. As far as I can see, the only reference to malicious prosecution is in the judgment of Lord Hughes. He held that:

> *A simple example is the accused who, following acquittal which may well be in dubio pro reo brings an action for malicious prosecution against the police or other accuser. Of course it may be theoretically possible for a prosecution to be malicious even if the accused is guilty, but in most such cases it is an integral part of the claimant's case that he was prosecuted when not guilty and that the defendant knew it.* [122] [Emphasis added]

It appears to me that the emphasised words make clear that there is no need for innocence to be established. That appears to me to be no surprise. It would be surprising if the Supreme Court had intended to overrule the long-established approach to discontinuance described in the paragraph above when that was not an issue expressly raised in *Hallam.*

Reasonable and probable cause

104. In *Hicks v Faulkner* [1878] 8 QBD 167 the Divisional Court held that for there to be a reasonable and probable cause, there must be:

> *An honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of the state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.*

This was upheld by the House of Lords in *Herniman v Smith* [1938] AC 305.

105. In *Willers* a majority of the Supreme Court held that:

> *In order to have reasonable and probable cause, the defendant does not have to believe that the proceedings will succeed. It is enough that, on the material on which he acted, there was a proper case to lay before the court …* [54]

106. In *Hicks* the Divisional Court held that:

> *The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bonâ fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of - no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another.* (at p170)

This appears to me to demonstrate that it is important to focus on what was known to the Defendant.

107. *Clerk & Lindsell on Torts*, Tettenborn and Jones, 24th Ed states that:

> *… it would be obviously absurd to make a defendant liable because matters of which he was not aware put a different complexion upon facts which in themselves appeared a good cause of prosecution. However, neglect to make reasonable use of the sources of information available before instituting proceedings may be evidence of want of reasonable and probable cause and also of malice.* [15.43] …

A prosecutor has no right to pick and choose among the evidence before him, and act only upon such portions of it as show that he has good cause for proceeding …

… the Code for Crown Prosecutors, issued *under the Prosecution of Offences Act 1985 s.10, requires prosecutors to take into account likely lines of defence when considering sufficiency of evidence for the purpose of bringing a prosecution. Police officers considering whether to charge must also take into account the provisions of the Code.* [15.47]

108. In *Abrath v The North Eastern Railway Company* (1883) 11 QBD 440 the Master of the Rolls held that:

The question, whether *reasonable care has or has not been taken by a prosecutor to inform himself of the real state of the case, is not merely a piece of evidence to prove some fact, but it is a question which is itself to be decided by evidence, and upon which evidence to prove and disprove it may be given. It is a necessary part of the question whether there was reasonable and probable cause, because if there has been a want of reasonable care on the part of the prosecutor to inform himself of the true state of the case, then there must be a want of reasonable and probable cause.* (450-451)

109. In *Glinski v McIver* [1962] 1 All ER 696 Viscount Simonds held that:

it is the duty of a prosecutor *not to find out whether there is a possible defence but whether there is a reasonable and probable cause for prosecution.* (701)

110. In *Rees* the Court of Appeal concluded that there was not a reasonable and probable cause. That was because the case presented to the prosecuting authority:

… included (and relied strongly upon) evidence … procured by [the prosecutor's] own acts which were intended by him to pervert the course of justice. There is no evidence that he gave any thought to the question whether there was a fit or proper case to be laid before the court absent that tainted evidence. In such circumstances, I cannot see that [the prosecutor] could be found to have honestly believed that there was a "proper" case to lay before a court. [75] [Emphasis added]

111. *Archbold Criminal Pleading Evidence and Practice*, HHJ Lucraft KC, 2025 Ed, states that in relation to perverting the courts of justice that:

> *Any act or course of conduct tending and intended to interfere with the course of public justice will amount to the offence …* [28.2]

It then gives examples of conduct that can amount to perverting the course of justice. These include that concealment of evidence (albeit the example given concerns concealment of evidence of guilt).

112. *Clerk & Lindsell on Torts*, Tettenborn and Jones, 24th Ed suggests that a clear error of law may mean that someone lacks reasonable and probable cause. However:

> *[i]t is not evidence, however, of absence of reasonable and probable cause that a mistake has been made on a difficult and doubtful question of law.* [15.49]

Malice

113. In *Gibbs v Rea* [1998] AC 786 the Privy Council held that:

> *The true foundation of [malicious prosecution] is intentional abuse of the processes of the court. Malice in this context has the special meaning common to other torts and covers not only spite and ill-will but also improper motive.* (at p797) [Emphasis added]

114. In *Willers* a majority of the Supreme Court held:

> *As applied to malicious prosecution, [malice] requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the clamant can prove that the defendant brought the proceedings in the knowledge that they were without foundation (as in Hobart CJ's formulation). But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process.* [55] [Emphasis added]

115. In *Stuart v AG of Trinidad* [2023] 4 WLR 21 the Privy Council held that:

> *… Charles J assessed PC Phillips as being an untruthful witness and as having made up some aspects of his evidence. And in the light of this, she found that he did not have the required honest belief for the purposes of the "lack of reasonable and probable cause" element of the tort of malicious prosecution. She also concluded from the lies and inconsistencies in PC Phillips' evidence that the prosecution was malicious (ie that the "malice" element of the tort had been proved) in the sense that there was an improper motive for prosecuting the claimant. An improper motive is a motive other than bringing the claimant to justice. Charles J was in effect inferring malice from her finding that PC Phillips lacked the relevant honest belief. That malice can be inferred from a lack of reasonable and probable cause in a proper case was recognised in, eg, Williamson v Attorney General of Trinidad and Tobago [2014] UKPC 29 at para 13: see also, eg, Clerk and Lindsell on Torts at para 15-57. Moreover, it was not disputed – and counsel for the defendant accepted this point in answer to a question from the Board – that, on the facts of this case, it was justifiable for Charles J to have drawn the inference of malice once she had found that PC Phillips lacked the required honest belief. It was not incumbent on the claimant to specify and prove the precise motive for the prosecution because, on the facts of this case, given the lack of honest belief, the motive could not have been a proper one.* [16] [Emphasis added]

116. In *Rees* McCombe LJ stated that:

> *Can it be the law, as assumed by the judge, that because a prosecutor believes a person is guilty of an offence, he prosecutes that person without malice (in the sense of dishonesty), even if the case which he presents to prove guilt is heavily reliant on the evidence of a witness which he has procured by subornation amounting to a criminal intention to pervert justice? In my judgment, that is not the law. Before probing the matter more, I would hold that bringing a prosecution in that manner is not "bringing a criminal to justice" at all.* [81]

McCombe LJ then concluded that:

> *For these reasons, I consider that [the SIO's] belief (as found by the judge) that the appellants were guilty … cannot prevent the prosecution having been malicious. He knowingly put before the decision-maker a case which he knew was significantly tainted by his own wrongdoing and which he knew could not be properly presented in that form to a court. To find that the element of malice was not satisfied in this case, to my mind, would be, quite simply, a negation of the rule of law. [91]* [Emphasis added]

117. In *Hughes v Revenue and Customs Commissioners* [2025] EWCA Civ 113 the English Court of Appeal recently held that:

> *A malicious prosecution involves bad faith or, at the very least, reckless indifference to the consequences of an unlawful act. The paradigm of a malicious prosecution is where the proceedings are brought not for the purpose of determining whether the accused has committed the offence but to secure some extraneous benefit. Negligence or incompetence will not establish malice.* [22]

It appears to me that this dicta must be read with a degree of caution. The Court of Appeal did not suggest that it was overruling earlier case law that I have cited such as *Rees* suggesting that it is sufficient that an improper case is knowingly presented to a prosecutor. However, I accept that it is consistent with the earlier judgments that negligence or incompetence will not necessarily establish malice.

Loss and damage

118. In *Manley v Commissioner of Police for the Metropolis* [2006] EWCA Civ 879 the English Court of Appeal endorsed the following statement of Roch LJ in *Clark v Chief Constable of Cleveland Police* [1999] EWCA Civ 1357 setting out the 3 heads of compensation for malicious prosecution:

> *Compensation for malicious prosecution has three aspects. First, there is the damage to a person's reputation. The extent of that damage will depend upon the claimant's actual reputation and upon the gravity of the offence for which he has been maliciously prosecuted. The second aspect is the damage suffered by being put in danger of losing one's liberty or of losing property. Compensation is recoverable in respect of the risk of conviction. [McGregor*

on Damages] considers that an award under this head is basically for injury to feelings, unless there has been a conviction followed by imprisonment. The third aspect is pecuniary loss caused by the cost of defending the charge.

In *Manley* advised caution in balancing the 3 heads [26].

The legal framework that applies to police officers

119. The BPS Code of Ethics was apparently made under section 32 of the Police Act 1974. It states, among other matters, that:

Members are required to follow the Standards of Professional Behaviour as set out in the Code of Ethics and the Police (Conduct} Orders 2016 as set out below … [5.1]

Police officers are honest, act with integrity and do not compromise or abuse their position. … [6.1]

Police officers act with fairness and impartiality. … [6.3]

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour. [6.10]

120. The BPS Code of Ethics references the Code of Ethics issued by the United Kingdom's College of Policing. The UK's Code of Ethics states that an aspect of the need to act with integrity is that police officers:

… do not knowingly make false, misleading or inaccurate oral or written statements in any professional context …

The COVID Regulations

121. Regulation 13 of the COVID Regulations (as amended) provide that:

The following restrictions apply at all time …

(a) no person shall visit any other person's home or allow any person to visit his home …

There was a list of exceptions, none of which applied in the circumstances that led to the prosecution in this case. Prior to amendment by the Public Health (COVID-19 Emergency Powers) (Stay at Home) Amendment Regulations 2021 (BR 55/2021) ('the Amendment Regulations')

122. Regulation 2 of the COVID Regulations provided that:

> *"home", in relation to a person, means the place in Bermuda where he is living - (a) on commencement …*

123. The commencement of the COVID Regulations was 5am on 13 April 2021 (regulation 22). The Amendment Regulations amended the COVID Regulations so that regulation 13 was in the terms that led to the prosecution. The Amendment Regulations came into effect at 5am on 20 April 2021.

124. It appears to me that:

a. Contrary to the submissions of the Plaintiffs, the key commencement date was 5am on 13 April 2021. The definition of home in regulation 2 of the COVID Regulations was not amended by the COVID Regulations. The Amended Regulations did not change the definition of 'home' in regulation 2 of the COVID Regulations. There was good reason why the definition would not change. The Amended Regulations essentially extended a prohibition on mixing of households. It would be surprising if the concept of home changed. It was unclear how a person's home could lawfully change between 13 and 20 April 2021.

b. Commonsense suggests that 'home' cannot simply mean the person where someone was located at 5am on 13 April 2021. They might be arrested in a police cell or in a hospital emergency department. If the mere fact that someone was present in a police cell meant that was their home, the effect would be that they would need to stay in the cell during the period of the COVID Regulations. In fact regulation 3(2)(b) of the COVID Regulations makes it clear that a person could be away from home to attend a hospital emergency department. That demonstrates that the place where a person was located at 5am on 13 April 2021 was not necessarily their home.

c. The difficult question is whether a person may have more than 1 property as their home. That needs to be considered as it is clear that the Second Plaintiff had stronger ties with the My Lord's Bay Drive Property than she would have had with a hospital emergency department. The reference 'to the place' where a person 'is living' in regulation 2 of the COVID Regulations suggests that a person has only 1 home. Consistent with this interpretation, it might be argued

that there is no provision that expressly permits a person with more than 1 home to move between the 2 homes. It appears to me that this argument carries less weight as there are clearly ways that at least some persons could legally move between properties. For example, persons permitted to work away from home could leave 1 home to travel to work but then return to another home. Finally, it might be argued that interpreting the COVID Regulations as permitting a person to have 2 homes would increase the risk of COVID spreading by allowing increased contact between people. That is because a person would be able to have contact with other residents of either of the 2 homes. Against these arguments, it appears to me that it is relevant that people have complex living arrangements. The evidence in this case demonstrates that the Second Plaintiff had a child in one location and a partner in another location. The complex living arrangements found in modern society may explain why it appears to have been accepted during the criminal proceedings that a person may have more than 1 home. Interpreting the COVID Regulations as providing that a person had only 1 home would potentially have a significant impact on family life. It also might make it difficult for ordinary people to assess which of 2 homes was their home for the purposes of the COVID Regulations. For example, on the facts of this case it is not straightforward how to determine whether the Second Plaintiff's home was Apartment 1 or Hamilton Parish. She appears to have strong ties with both properties. Further the language of regulation is that of visit. It is difficult to see how a person can be said to be visitor in a property that is their home. Overall it appears to me that a purposive interpretation of the COVID Regulations means that a person could have more than 1 home. However, what matters more for the purposes of this judgment is the fact that the interpretation of the COVID Regulations is unclear and open to argument.

Findings regarding malicious prosecution

Whether the First Defendant was a prosecutor

125. It appears to me that there is little doubt that the First Defendant is a prosecutor if his actions were malicious. If his actions were malicious (and for reasons set out below I find they were), that implies that the DPP was deliberately manipulated into bringing a prosecution in circumstances in which it was likely that there would have been no prosecution had the full picture been presented by the First Defendant. The clearest

evidence of that is the fact that the DPP discontinued the prosecution after the cross-examination revealed the full picture. Applying the approach in *Rees* and considering 'the reverse of the facts', it appears clear that no prosecution would have been brought had the DPP been presented with the full facts by the First Defendant. The argument that there was other material available to the DPP that demonstrated the true picture (such as the letter from the Plaintiff's lawyers that was sent 12 August 2021), appears to me to support the argument that the First Defendant was a prosecutor. That is because it demonstrates that the DPP appeared to regard the First Defendant's evidence as a solid basis for a prosecution despite contrary evidence. The DPP appeared to feel able to discount other evidence and rely on the evidence of the First Defendant.

126. I have considered the evidence of Chief Inspector Rollin that the failure to mention what was said at trial about the Second Plaintiffs living at 2 addresses did not influence his investigation. It appears to me that this evidence is irrelevant. Had the true picture been presented, the actions of the DPP in discontinuing proceedings when the true picture was revealed demonstrates that the evidence of the First Defendant set out in his statements was key to the DPP's decision to prosecute.

127. The e-mail sent at 1.14pm on 23 April 2021 also seems to me to be significant. It demonstrates that the First Defendant was pushing for an investigation. That is evidence that the First Defendant desired and intended a prosecution (applying the approach in *Martin*). Against that I have taken account of the fact that the WhatsApp messages dated 22 April 2021. It may be said that they suggested that a hope that the Second Plaintiff had a defence. However, what appears to me to be more important is the contact with Chief Inspector Rollin as he was the officer conducting the investigation. That is because it was the responsibility of Chief Inspector Rollin (and not Loryn Bell) to progress matters.

128. The Second Defendant argues that:

> *It is our submission that the First Defendant simply made a report to the Police as he suspected that there was a potential breach of the law. Rollin was the Officer in Charge investigating this matter had full and independent control over the investigation once the report was made. The First Defendant*

had nothing to do with directing, influencing or controlling the investigation or the resulting charge in any way. (closing submissions [38]).

129. It appears to me that this submission fails to recognise that the role of the First Defendant was greater than simply making a report to the police. The First Defendant made the report in circumstances in which he was the landlord of the property where it was said that the offence had been committed. That implies that his evidence was potentially central. The First Defendant then pushed for the matter to be investigated. That is why he was asked to provide witness statements. It was clear that the First Defendant was a key influence on the decision to prosecute as the prosecution was dropped when his evidence changed. The First Defendant must have known his evidence was likely to be central as an experienced police officer.

130. I should emphasise that my finding that First Defendant was a prosecutor is dependent on him being malicious. It appears to me that is necessary applying judgments such as *Martin*. That is because malicious evidence can be clear evidence of a desire for there to be a prosecution. Although the e-mail sent at 1.14pm on 23 April 2021 is further evidence of a desire for a prosecution, I am not satisfied that would be enough without evidence of malice. I will consider later whether the actions of the First Defendant were malicious.

Termination in favour of the plaintiff

131. I have no doubt that there was a termination in favour of the Plaintiffs. Earlier in this judgment I have explained why I have concluded that innocence need not be established. It appears clear to me that discontinuance is a termination in favour of the Plaintiffs. I should add that the finding that there was a termination in favour of the Plaintiffs is supported by the costs ruling, in which Magistrate Tokunbo stated that the charges were 'dismissed'. That demonstrates that there was a court order that benefitted the Plaintiffs.

Reasonable and probable cause

132. Based on my analysis of the evidence above, I have made the following findings of fact (applying the balance of probabilities) that are relevant to whether the First Defendant had reasonable cause:

    a. As I have set out and explained above, it appears to me that it is likely that the First Defendant was aware that the Second Plaintiff was living with the First

Plaintiff at Apartment 1 (as well as living in Hamilton Parish) on 23 April 2021 when the report was made that COVID Regulations had been breached. However, she was isolated away from Apartment 1 on 13 April 2021.

b. Further, it appears that the First Defendant was aware that the Plaintiffs were arguing that they had a defence to the allegation that they had breached the COVID Regulations because the Second Plaintiff lived at Apartment 1 (as well as living in Hamilton Parish) from at least the call on 13 May 2021.

c. The First Defendant's evidence before me was that he believed that all that mattered for the purposes of the COVID Regulations was where the Second Plaintiff was at commencement on 13 April 2021. It appears to me that it is likely that this is untrue and the First Defendant believed that it was possible that the Second Plaintiff could live at 2 homes for the purposes of COVID Regulations. At the very least the First Defendant believed that this was an arguable defence. In reaching this conclusion I have taken account of contemporaneous records such as WhatsApp messages dated 22 April 2021 that suggested that the First Defendant had little or no doubt of the Second Plaintiff's guilt. That would be consistent with him believing that where the Second Plaintiff was on 13 April 2021 was critical. It maybe at that stage that the First Defendant had not given thought to the relevance of the Second Plaintiff's living arrangements. Alternatively, it maybe that the First Defendant was being encouraging to the Loryn Bell and not disclosing that there was uncertainty as to guilt. Chief Inspectors Rollin's note of his call with the First Defendant on 13 April 2021 suggests that the First Defendant was aware of uncertainty about liability. However, by the time of the call on 13 May 2021 it was clear that the First Defendant was saying that he believed that residence at both Apartment 1 and Hamilton Parish might provide a defence. The need for full details of the Second Plaintiff's living arrangements was made clear in Chief Inspector Rollin's e-mail dated 9 June 2021. That was consistent with the fact that the First Defendant's witness statement dated 28 June 2021 was not merely focused on the location of the Second Plaintiff on 13 April 2021. That statement implied that it was relevant if the Second Plaintiff was spending considerable periods at Apartment 1. All of these matters mean that it appears to me that it is likely that the First Defendant was aware well before the criminal trial of the importance of revealing full details of the Second Plaintiff's living arrangements.

d. Further, the First Defendant accepted in evidence that charging decisions are taken by the DPP. That is hardly surprising as the First Defendant's police career is likely to have meant that he had considerable experience of the prosecution process. That is significant as it implies that the First Defendant was likely to be aware that it was important that the DPP had the full picture. The DPP needed to be aware of matters that might provide a defence.

e. The First Defendant failed to state that the Second Plaintiff lived at Apartment 1 (as well as living in Hamilton Parish) at any stage until cross-examination during the criminal trial. In fact his statement supplied in support of the prosecution dated 28 June 2021 appears to have been intended to create the impression the Second Plaintiff was not living at Apartment 1. The First Defendant accepted that this statement was 'diametrically opposed' to his wife's statement, which made it clear that there was residence at Apartment 1. His evidence in chief during the criminal trial was that the Second Plaintiff lived in Hamilton Parish. He later stated during cross-examination that the Second Plaintiff did not reside at Apartment 1.

f. The evidence of the First Defendant during cross-examination after the transcript of the tape recording on 13 May 2021 was made available was inconsistent with what had been said earlier. It appears to me that he was accepting that the Second Plaintiff lived 'between' Apartment 1 and Hamilton Parish. In other words, the First Defendant accepted that the Second Plaintiff was resident at 2 addresses. It appears to me that that evidence was inconsistent with what had been said by the First Defendant earlier in the trial. He had been clear that the Second Plaintiff lived at her own property in Hamilton Parish. Both Magistrate Tokunbo and the Deputy DPP (who were present during the trial) appear to have regarded the evidence given after the transcript of the tape recording on 13 May 2021 was made available as being unforeseen and inconsistent with earlier statements.

g. The First Defendant's explanations for this failure to reveal the true position regarding Apartment 1 were inconsistent and confusing. For example, he stated that he had not told Chief Inspector Rollin about this during the call on 23 April 2021 as he was seeking to trigger an investigation. However, if there was a need for a full investigation, it is unclear why relevant information was not provided to Chief Inspector Rollin. Further, the First Defendant had further opportunities

to give a full account of the Second Plaintiff's living arrangements later such as when the statement dated 28 June 2021 was signed. However, that statement was inconsistent with the First Defendant's subsequent evidence that the Second Plaintiff lived at 2 addresses. The overall effect of that statement was to suggest that the Second Plaintiff did not live at Apartment 1.

h. Perhaps the key point that was difficult to understand and inconsistent with other evidence was the evidence that all that mattered was the Second Plaintiff's location on 13 April 2021. That is inconsistent with what was said during the call on 13 May 2021 that residence at 2 properties might provide a defence. It was also inconsistent with Chief Inspector Rollin's e-mail dated 9 June 2021 seeking greater detail about the Second Plaintiff's living arrangements.

i. The First Defendant's evidence during this trial about his evidence when cross-examined during the criminal trial was particularly unconvincing. It appeared to me that the First Defendant sought to suggest that there had been no significant change of evidence. That does not fit with the recording of the trial or the understanding of Magistrate Tokunbo and the Deputy DPP.

j. When considering the matters above, I have reminded myself about the need to take care when giving weight to the lies of a witness (*Lucas*). However, as noted above, in this case I can see no reason why the First Defendant would not have presented his explanation for not mentioning that the Second Plaintiff lived at 2 properties if there was a good explanation for this.

k. I have already noted that it appears to me that the First Defendant knew about the Second Plaintiff's living arrangements. Despite that he was unwilling to confirm his knowledge of the living arrangements during the call on 13 May 2021. It appears to me that may suggest that the First Defendant was already unwilling to admit by this date to his knowledge of the Second Plaintiff's living arrangements.

l. When considering the First Defendant's explanations for his failure to give a full account of the Second Plaintiff's living arrangements, it appears to me that it is relevant that the First Defendant was an experienced police officer. Consistent with the evidence of Chief Inspector Rollin, it appears to me to be likely that the First Defendant was well aware of the importance of him giving a full account of the Second Plaintiff's living arrangements. That means that

suggests that it was inherently unlikely that the failure to reveal the full account of the Second Plaintiff's living arrangements was an accident.

m. Although it appears to me to carry limited weight, it is of some significance that the First Defendant's sudden retirement is consistent with a desire to avoid disciplinary proceedings.

n. As noted above, the uncontested evidence of the Plaintiffs was that they had had a good relationship with the First Defendant until the point in time when he alleged a breach of the COVID Regulations. There was uncontested evidence that Loryn Bell might have animus towards the Second Plaintiff. There was also uncontested evidence that Loryn Bell was closer to the First Defendant than the Plaintiffs were to the First Defendant. That appeared to be to be consistent with the WhatsApp messages. That was potentially significant as Ms Bell appears to have made a complaint to the First Defendant and that caused him to act. The passage of the transcript of call on made on 13 May 2021 appears to suggest that the First Defendant was sensitive that it might be suggested that he had conspired with Inspector Martin and Loryn Bell to make an allegation against the Plaintiffs. That might be said to suggest that he felt guilty about his relationship with Inspector Martin and Loryn Bell. However, the burden was on the Plaintiffs to prove their case. It appears to me that it is inherently unlikely that a dispute about a work party would be sufficient to cause a third party who was not involved with the dispute (which appears to be the position of the First Defendant) to conspire to pervert the course of justice. To be fair, this did not appear to be a major part of the Plaintiffs arguments. What I do accept is likely is that the First Defendant may have felt that it was important that he supported Ms Bell. That may explain why the First Defendant made a formal allegation against the Plaintiffs when he made no allegations against those attending Inspector Martin's party. In both cases the First Defendant was essentially supportive of officers who he was close to and took actions that appear to have been contrary to his duties. The BPS Code of Ethics (as well as the Code of Ethics issued by the United Kingdom's College of Policing) imply that the First Defendant should have provided a statement in the proceedings against the Plaintiffs that made clear what the Second Plaintiff's living arrangements were. Equally, he should have reported illegality at Inspector Martin's party. Chief Inspector Rollin's evidence supports both of these conclusions.

o. My finding that the First Defendant had a motive to present an incomplete picture supports my finding that there was a deliberate decision to withhold full details of the Second Plaintiff's living arrangements. However, even if this is wrong, there would appear to be no legitimate reason why full details of the Second Plaintiff's living arrangements were not made clear. Chief Inspector Rollin's e-mail dated 9 June 2021 made it clear that full details of the living arrangements were sought.

133. It appears to me that:

a. It is likely (applying the balance of probabilities) that the First Defendant made a deliberate decision to not tell Chief Inspector Rollin that the Second Plaintiff was resident at both Apartment 1 and Hamilton Parish. As I have made clear in the paragraph immediately above, it appears to me that from at least 13 May 2021 the First Defendant was seeking to withhold the full extent of his knowledge of Second Plaintiff's living arrangements. It was only when during the criminal trial that he was confronted with the tape of the conversation on 13 May 2021 that he revealed the true extent of his knowledge. His explanations for that lack credibility. Further, the First Defendant was likely to have been aware of his obligations as a police officer to provide a full account of what was said.

b. I have carefully considered the statements of the First Defendant that he believed that all that mattered was where the Second Plaintiff was physically present on 13 April 2021 when the COVID Regulations took effect. Although I have concluded above that this is a misinterpretation, it appears to me that the lack of clarity regarding the terms of the relevant COVID Regulations means that in principle this is not a case where a misunderstanding of the correct legal position would mean there was no reasonable and probable cause. However, it appears to me that does not assist the First Defendant. As I have made clear, by the time of the call on 13 May 2021 it was clear that the First Defendant was saying that he believed that residence at both Apartment 1 and Hamilton Parish might provide a defence. That implied that there was a need to give a full account of the living arrangements. As a consequence, I do not accept that First Defendant's evidence regarding the significance of 13 April 2021 is true.

c. It appears to me that the First Defendant was likely to have been motivated to give an incomplete account of the Second Plaintiff's living arrangements by a desire to support Loryn Bell. The First Defendant's account given during the call on 13 May 2021 of Inspector Martin's party suggests that he was willing to bend the rules to favour colleagues. There appears to me to be little doubt that the First Defendant was closer to Ms Bell than he was to the Plaintiffs. However, even if this wrong, it appears to me no credible legitimate explanation has been provided for the failure to reveal full details in light of my findings in paragraph 133(b).

d. The judgments in cases like *Hicks* and *Willers* have tended to focus on the merits of a prosecution. They suggest that it is difficult for a plaintiff to demonstrate that the merits of a prosecution are such that there is no reasonable and probable cause. Had the First Defendant revealed the Second Plaintiff's living arrangements, it appears to me that the Plaintiffs may have been unable to establish the absence of a reasonable and probable cause. Although it was ultimately concluded that the living arrangements provided a defence, it may have been possible to bring proceedings arguing that the COVID Regulations meant that criminal liability simply depended on where the Second Plaintiff was located on 13 April 2021.

e. However, as I have already made clear, I have concluded that First Defendant deliberately withheld details of the Second Plaintiff's living arrangements. It appears to me that *Abrath* and *Rees* demonstrate that prosecutors owe duties to defendants in criminal proceedings. That is because the presentation of selective material in support of a prosecution means that the case presented is not a reasonable one. That is hardly surprising when a prosecutor is a police officer. As already noted, police officers are subject to positive duties to ensure that evidence is accurate and does not mislead. It appears to me that all of these matters mean that *Clerk & Lindsell on Torts* is correct to state that:

> *A prosecutor has no right to pick and choose among the evidence before him, and act only upon such portions of it as show that he has good cause for proceeding …*

It appears to me that my findings demonstrate that the First Defendant picked evidence that he believed supported the prosecution rather than looking at the evidence in the round.

f. The conclusions in the sub-paragraph above are supported by the judgment in *Rees*. That demonstrates that it is relevant to consider whether there was an intent to pervert the course of justice or whether a 'proper' case was being laid before the criminal court. It appears to me that the conduct of the First Defendant can be analysed as a form of perverting the course of justice. Relevant evidence that potentially supported a defence was withheld from Chief Inspector Rollin (and indirectly the DPP).

g. To be clear, this is not a case where I am suggesting that the First Defendant was required to search for a possible defence (which does not establish the absence of a reasonable and probable cause applying *Glinski*). I have found that there was a deliberate failure to reveal relevant facts known to the First Defendant and so there was no reasonable cause.

134. The First Defendant argues that Chief Inspector Rollin had reasonable grounds to believe an offence had been committed. It appears to me that this is no answer for 2 reasons. Firstly, what matters is what was known by the First Defendant, given that this claim has been brought against him. *Hicks* makes it clear that there is a need to focus on the First Defendant's state of mind. Secondly, my findings set out above include a finding that Chief Inspector Rollin was not given the full picture. That means that no analogy can be drawn between his position and that of the First Defendant. I have found that the First Defendant did have the full picture.

Malice

135. The starting point when considering the issue of malice is the findings set out in paragraphs 132 and 133 above. Based on those findings it appears to me that (applying the balance of probabilities) malice on the part of the First Defendant has been proven:

a. It appears to me that the key issue for me to consider is whether the First Defendant had an improper motive for his actions (*Gibbs*). In such a case it can be said that the First Defendants were not a bona fide use of the court's process (*Willers*).

b. I have already made clear that it appears to me that the First Defendant deliberately withheld details of the Second Plaintiff's living arrangements. In light of the duties imposed on police officers, it appears to me that there cannot be a proper motive for that course of action. The BPS Code of Ethics (and the

Code of Ethics issued by the United Kingdom's College of Policing) demonstrate the importance of police officers providing evidence that does not mislead. In fact the motive I have found (which was a desire to support Loryn Bell) is obviously an improper motive as police officers are expected to impartially (see [6.3] of the BPS Code of Ethics).

c. My analysis above is supported by the judgment in *Stuart*. That judgment makes it clear that malice can be inferred from a lack of a reasonable cause. Such an inference appears to me to be proper in this case where I have found the lack of a reasonable cause on the basis of deliberate unlawful actions of the First Defendant.

d. My analysis is also supported by the approach in *Rees.* This is a case where the First Defendant knew that his own wrongdoing in presenting an incomplete case tainted the prosecution case.

e. Finally, it appears to me that at the very least the First Defendant's actions amount to reckless indifference to the consequences of an unlawful act (*Hughes*). It appears to me that the First Defendant can have given no proper consideration to the consequences of his failure to give a full account of the Second Plaintiff's living arrangements. That goes beyond mere negligence as I have found that the First Defendant knowingly failed to comply with legal obligations to provide a full account of the Second Plaintiff's living arrangements.

Loss and damage

136. On the unchallenged evidence before me, it appears to me that there is little doubt that the Plaintiffs suffered loss. Both Plaintiffs essentially gave evidence that was unchallenged that they had suffered damage to reputation. That is sufficient loss (applying the approach in *Manley*). It is neither necessary or appropriate for me to say more at this stage when it appeared to be agreed that I should hear further argument about damages. In any event, it appears to me that I will be assisted by arguments about damages as I have only really heard arguments about the evidence and little about quantum.

Concluding remarks

137. In light of the matters above, it appears to me to be proven by the Plaintiffs that on balance of probabilities the First Defendant is liable for malicious prosecution.

Legal framework governing the liability of the Second Defendant

138. Section 1 of the Crown Proceedings Act 1966 provides that:

> *"the Crown" includes a Minister, Government Department and a Government Board; …*
>
> *"servant of the Crown" means any person whose remuneration is derived either directly or indirectly from the Consolidated Fund of Bermuda in relation to any functions, duties or responsibilities the performance or discharge of which may form the subject of proceedings under this Act;*

It does not appear to be in dispute that the first Defendant was at the material time a servant of the Crown as a police officer. His salary in that role is derived from the Consolidated Fund of Bermuda. It was confirmed in *Tokunbo v Commissioner of Police* [2024] CA (Bda) 25 Civ that police officers are Crown servants [12].

139. Section 3(1) of the Crown Proceedings Act 1966 provides that:

> *(1) Subject to this Act, the Crown shall be subject to all those liabilities in tort to which it would be subject if it were a private person of full age and capacity—*
>
> *(a) in respect of torts committed by its servants or agents; …*
>
> *Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act of a servant or agent of the Crown unless that act would, apart from this Act, have given rise to a cause of action in tort against that servant or agent or his estate.*

140. Section 3(3) of the Crown Proceedings Act 1966 provides that:

> *Where any functions or duties are conferred or imposed upon a servant of the Crown as such either by a rule of the common [sic] or by statute, and that servant commits a tort while performing or purporting to perform those functions or duties, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions or duties had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.*

141. In *Tokunbo* the Court of Appeal appears to have proceeded on the basis that liability under the 1966 Act is established if vicarious liability is established. In terms of the approach to be adopted to vicarious liability, the Court of Appeal cited *Bernard v The Attorney General of Jamaica* [2005] IRLR 398 and *Attorney General of the British Virgin Islands v Hartwell* [2004] 1 WLR 1273. It also appears to me that it is relevant to consider *WM Morrison Supermarkets plc v Various Claimants* [2020] AC 989 in which the UK Supreme Court conducted a recent review of the case law regarding vicarious liability (including both *Bernard* and *Hartwell*). It appears to me that these judgments demonstrate that:

    a. An employer can be liable for intentional wrongdoing by an employee (*Bernard* at [23]).
    b. The applicable test is whether the acts in question were so closely connected with acts that a police officer was authorised to do that, for the purposes of liability of the Government as his employer, his actions may fairly and properly be regarded as made by him while acting in the ordinary course of his employment as a police officer (*Hartwell* at [16]).
    c. A key issue is whether the employee was engaged, however misguidedly, in furthering his employer's business. Such cases can be distinguished from cases where the employee is engaged solely in pursuing his own interests: on a 'frolic of his own' (*WM Morrison Supermarkets plc* at [47]).
    d. The mere fact that employment gave an individual the opportunity to commit the wrongful act would not be sufficient to warrant the imposition of vicarious liability (*WM Morrison Supermarkets plc* at [35]).
    e. In a police context, it is relevant to vicarious liability whether a police officer asserted police authority (*Bernard* at [25]).

142. Section 14(1) of the Crown Proceedings Act 1966 provides that:

> *Proceedings against the Crown under this Act shall be instituted against the appropriate Minister in his style as such or, as the case may be, against the appropriate Government Board, in the corporate name of the Government Board, or if none of the Ministers or Government Boards is appropriate or the person instituting the proceedings has any reasonable doubt whether and if so which Minister or Government Board is appropriate, then against the Attorney-General in his title as such.* [Emphasis added]

There appears to be no dispute that the Attorney General is the correct defendant if liability can be established under the 1966 Act. That appears to me to be consistent with the judgment of the Court of Appeal in *Tokunbo.*

143. Section 4 of the Police Act 1974 provides, among other things, that:

> *(1) The functions of the Service shall be to take lawful measures for— ...*
>
> *(c) preventing and detecting crimes;*

144. Section 5 of the Police Act 1974 provides that:

> *(1) A member of the Service, unless duly excused or interdicted from duty—*
>
> *(a) shall at all times have all the powers and immunities conferred upon police officers by any statutory provision; and*
>
> *(b) shall at all times be bound to discharge any of the duties imposed upon police officers by or under any statutory provision.*
>
> *(2) Every member of the Service shall for the purposes of this Act or any other statutory provision be deemed always to be on duty when required to act as such.*

Section 1(1) of the 1974 Act provides that:

> *"Service" means—*
>
> *the Bermuda Police Service; ...*

145. It appears to me that the terms of section 5 of the Police Act 1974 are clear:

a. Unless excused from duty, police officers are required to carry out statutory duties. This would appear to include compliance with the BPS Code of Ethics as that has a statutory basis (see above).
b. Police officers enjoy their statutory powers at all times. That, however, does not imply that police officers are on duty at all times. That is inconsistent with section 5(2) which makes it clear that police must be required to be on duty before they are in fact on duty.

Findings regarding liability of the Second Defendant

146. Based on my analysis of the evidence above, I have made the following findings of fact (applying the balance of probabilities) that are relevant to whether the Second Defendant is vicariously liable for the actions of the First Defendant:

    a. It appears clear that the First Defendant was purporting to act as a police officer or at least act in a manner that was consistent with his duties when he reported the Plaintiffs. For example, he took advice from another senior officer, Arthur Glasford, before making his first report. He stated in evidence before me that he was compelled to make a report because he was a police officer. That evidence was consistent with what the First Defendant said to the First Plaintiff during the tape-recorded conversation on 13 May 2021. As noted above, he appeared to believe that he was subject to a duty to report illegality. This appears to me to be consistent with the BPS Code of Ethics, which requires police officers to report misconduct.
    b. The First Defendant appeared to have privileged access to Chief Inspector Rollin because he was a police officer. It appears to me to be unlikely that a member of the public would have had access to such a senior officer.
    c. The evidence given by the First Defendant about Inspector Martin's party implied that the First Defendant believed that he had a duty to enforce police officers' compliance with the COVID Regulations in social settings.

147. Based on my findings above, I am satisfied (applying the balance of probabilities) that Second Defendant is vicariously liable for the actions of the First Defendant:

    a. Obviously my findings make it clear that I have found that the First Defendant deliberately withheld key evidence about the Second Plaintiff's living arrangements. However, that is no answer to the claim against the Second Defendant as there can be vicarious liability for deliberate decisions (*Bernard*).
    b. As I have noted above, Chief Inspector Rollin gave evidence that by reason of section 5 of the Police Act 1974, police officers are always on duty. I don't accept that this is sufficient for vicarious liability to be established. It would imply vicarious liability for a burglary committed by a police officer while on holiday in a foreign jurisdiction. For reasons set out above, it appears to me that the scope of section 5 is narrower. However, it does appear to me that this was a case where the First Defendant was essentially on duty. The BPS Code of

Ethics required the First Defendant to take action when he believed that other police officers were acting unlawfully. The First Defendant clearly relied on that obligation as a justification for him reporting the alleged breach of COVID Regulations.

c. Section 4 of the Police Act 1974 makes it clear that a key function of BPS is to detect crime. The obvious purpose of that is to enable prosecutions to be brought. That suggests a close connection between the acts in question and those that a police officer is authorised to take. Consistent with this, I have already noted how it appears to me that the First Defendant was essentially on duty. In light of these matters, it appears to me that the First Defendant was engaged, in furthering his employer's business albeit in an unlawful manner. That indicates vicarious liability (*WM Morrison Supermarkets plc* at [47]). This was not merely a case where employment as police officer gave rise to an opportunity to act unlawfully.

d. My conclusions are supported by the fact that at times the First Defendant has relied on his role as a police officer to justify him reporting criminality. That includes during the taped conversation on 13 May 2021.

Concluding remarks

148. It should be clear from my judgment above that I have found both Defendants liable for malicious prosecution.

149. I will list this matter for oral argument about damages on 12 September 2025. Written submissions and authorities should be filed (in electronic form as well as hard copy) 7 days before the hearing. There is liberty to apply for further directions.

Dated this 15 August 2025

MR.HUGH SOUTHEY KC

ASSISTANT JUSTICE