

Swinney and Another v Chief Constable of Northumbria Police (No 2) (1999)

The Times (May) 25 QBD

Mr & Mrs Swinney passed on information in confidence to the police about the identity of a person implicated in the killing of a police officer, expressing her concern that she did not want the source of the information to be traced back to her. The information was recorded by the police, naming the Swinney's, in a document which was left in an unattended police vehicle. The vehicle was broken into and the document was stolen. It then came into the possession of the person implicated in the information. Mrs Swinney was threatened with violence and arson and suffered psychiatric damage. Her claim in negligence against the police was originally struck out, **but re-instated**.

Held: Police may exceptionally be liable in negligence in criminal investigations. In this case there is a special 'close' relationship between the Swinney's and the police. This is shown by the police assuming responsibility, and the Swinney's relying upon that assumption of responsibility, for preserving the confidentiality of the information. If the information fell into the wrong hands, it was likely to expose them and members of their family to a special risk of damage from the criminal acts of others, much greater than the general risk which ordinary members of the public must endure.

Peter Gibson LJ: *'The Court must evaluate all the public policy considerations that may apply'*. The position of a police informer required special consideration from the viewpoint of public policy.

Hirst LJ: *'As Laws J. pointed out in his judgment, there are here other considerations of public policy which also have weight, namely, the need to preserve the springs of information, to protect informers, and to encourage them to come forward without an undue fear of the risk that their identity will subsequently become known to the suspect or to his associates. In my judgment, public policy in this field must be assessed in the round, which in this case means assessing the applicable considerations advanced in the Hill case [1989] A.C 53, which are, of course, of great importance, together with the considerations just mentioned in relation to informers, in order to reach a fair and just decision on public policy'*.

Ward LJ: *'The public interest will not accept that good citizens should be expected to entrust information to the police, without also expecting that they are entrusting their safety to the police. The public interest would be affronted were it to be the law that members of the public should be expected, in the execution of public service, to undertake the risk of harm to themselves without the police, in return, being expected to take no more than reasonable care to ensure that the confidential information imparted to them is protected. The welfare of the community at large demands the encouragement of the free flow of information without inhibition. Accordingly, it is arguable that there is a duty of care, and that no consideration of public policy precludes the prosecution of the plaintiffs' claim, which will be judged on its merits later'.*

The interpretation and comments made within this document are not to be considered as legal advice.

Reference should always be made to the original case.