



[2026] JMSC Civ 114

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2023CV01184

BETWEEN	ERROL KERR	CLAIMANT
	(Administrator and near relation of the estate of JEROME JOEL KERR otherwise called JEROME KERR)	
AND	THE JAMAICA CONSTABULARY FORCE	FIRST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	SECOND DEFENDANT
IN OPEN COURT		

Ms Tamiko Smith instructed by Smith Afflick Robinson & Partners for the Claimant
Mr Jenoure Simpson instructed by the Director of State Proceedings for the Defendants

Heard: January 19 & September 21, 2026

**Negligence – Force Recruit collapses during physical later dies - Duty of Care–
Standard of Care – Foreseeability – Causation – Burden and standard of proof
Fatal Accidents Act, Law Reform (Miscellaneous Provisions) Act**

WINT- BLAIR J

INTRODUCTION AND DECISION

[1] The claimant, Mr Errol Kerr, brings this claim as administrator of the estate of his late son, Jerome Joel Kerr, otherwise called Jerome Kerr, and as a near relation within the meaning of the Fatal Accidents Act. The first defendant is the Jamaica Constabulary Force ("the JCF"), a statutory body established by the Constabulary Force Act. The second defendant is the Attorney General of Jamaica. The claimant

seeks damages against the defendants jointly and severally in negligence, under the Fatal Accidents Act and under the Law Reform (Miscellaneous Provisions) Act.

- [2] On 11 May 2021, Jerome applied to join the JCF. As part of the recruitment process, the JCF required him to undergo a physical assessment at the Police Training Academy at Twickenham Park in Saint Catherine. The first exercise was an 800-metre endurance run. Jerome completed approximately 350 to 400 metres, then struggled and collapsed. He was taken to the Spanish Town Hospital, where he remained until his death. This claim arises from that sudden and tragic death.
- [3] The police do not enjoy general immunity from the ordinary law of negligence. The JCF organised and controlled the physical assessment and owed Jerome a duty to take reasonable care in organising and conducting it. The real issues concern the scope of that duty, whether it was breached, and, if so, whether that breach caused the loss for which the claimant seeks damages.
- [4] For the reasons which follow, I find that the claimant has proved that the run precipitated Jerome's medical crisis. However, he has not proved, on a balance of probabilities, that reasonable care required the JCF to alter its recruitment protocol so that a blood donation, a complete blood count, or a formal medical assessment was required before the physical assessment.
- [5] He has also not proved that any of these would probably have detected Jerome's condition, so the result would have been available to the recruitment staff and/or would probably have led the JCF to withhold Jerome from the run. The essential elements of breach and factual causation have therefore not been established. The claims in negligence, under the Fatal Accidents Act and under the Law Reform (Miscellaneous Provisions) Act consequently fail.
- [6] The Attorney General is the proper representative of the Crown in these civil proceedings. The claim was defended on its merits. Nothing in the result depends on treating the JCF as a separate legal person against whom substantive relief may be ordered. No separate substantive order is therefore made against the Force independently of the Attorney General. This treatment of the parties is consistent with section 13(2) of the Crown Proceedings Act, which provides that

civil proceedings against the Crown are to be instituted against the Attorney General.

BACKGROUND

- [7]** Mr Kerr is Jerome Kerr's father and a porter by occupation. The Court issued a Grant of Letters of Administration in Jerome's estate to him on 7 July 2022. He brings this claim for the benefit of the estate and of the persons for whose benefit a claim may be brought under the Fatal Accidents Act.
- [8]** Mr Kerr said that he and Jerome enjoyed a good relationship. They spoke at least twice each week about their lives, their general well-being and the family's finances, to which Jerome usually contributed.
- [9]** Jerome applied to join the JCF and was accepted as a force applicant. To the best of Mr Kerr's knowledge, Jerome was scheduled to participate in the physical assessment on 11 May 2021. Mr Kerr was listed as Jerome's next of kin.
- [10]** The JCF informed Mr Kerr that Jerome had collapsed during the physical assessment and had been taken to Spanish Town Hospital. Jerome was diagnosed with rhabdomyolysis associated with sickle cell disease, with onset following the rigours of the run.
- [11]** Mr Kerr went straight to the hospital. He found it deeply distressing to see Jerome in a hospital bed and spoke with Dr Miller-Thomas, who had attended to Jerome in the Accident and Emergency Department. Jerome was later admitted to a ward under the care of Dr Trevor Bygraves. Mr Kerr agreed to a sickle cell test, and the results revealed that Jerome had sickle cell disease, not just the sickle cell trait he had thought was Jerome's condition.
- [12]** Mr Kerr and his wife, Mrs Alecia Kerr, remained at Jerome's bedside each day. Mrs Kerr tidied him, changed him, and fed him. Jerome's muscles had deteriorated to the point that he could not use his limbs or care for himself. Mr Kerr described the experience as heartbreaking and said he still cries about it daily.
- [13]** While Jerome was on the ward, Mr Kerr said that both parents received daily medical updates. He spoke with Dr Bygraves on about four occasions, three of

which were before Jerome's death. Dr Bygraves explained Jerome's worsening condition and the associated complications. After Jerome died, Dr Bygraves explained his medical condition and the circumstances that led to his death. Mr Kerr relied on the agreed medical report of Dr Bygraves and the agreed pathology report, both of which were admitted into evidence.

[14] At the time of his death, Jerome was employed as a casual worker at Serge Island Dairies and earned \$36,000.00 every fortnight. Mr Kerr said that Jerome contributed approximately \$20,000.00 each month to the family. Of that sum, Jerome's younger brother, Johnelle Kerr, who attended college, received \$3,000.00 each week for transport and lunch. Mr Kerr used the balance for his own expenses. He believed that, had Jerome lived, he would have continued to contribute financially to himself and the family, particularly Johnelle.

[15] The pleaded claim is that Jerome's death resulted from the JCF's negligence and that it caused the claimant and the estate to incur expenses and suffer loss and damage. The special damages claimed are:

1. Police report: \$3,000.00.
2. Birth certificate: \$4,500.00.
3. Death certificate: \$4,500.00.
4. Autopsy report: \$1,000.00.
5. Funeral expenses: \$819,697.00.
6. The claimant's transportation: \$25,200.00.
7. Medical report: \$4,000.00.
8. Cost of obtaining the Grant of Administration: \$125,980.00.
9. Pampers, egg-shell mattress and catheter kit for haemodialysis: \$25,661.00.
10. Laboratory test: \$6,500.00.

The total claimed as special damages is \$1,020,038.00.

THE EVIDENCE

Mr Errol Kerr

[16] In cross-examination, Mr Kerr confirmed that he had given permission for a blood test to be performed on Jerome. He understood that this was not Jerome's first

sickle cell test, as Jerome had been identified at birth as having the sickle cell trait. Mr Kerr said he learnt only from the later hospital test that Jerome had sickle cell disease.

[17] Mr Kerr agreed that the JCF recruitment process included physical and medical components, but disagreed with the defendants' case that the physical assessment had to be completed before the medical assessment and that Jerome was never rostered for a blood test because he had not completed the physical assessment. Further, Mr Kerr said he knew that force applicants were required to disclose any medical conditions. He disagreed that the JCF did not know of Jerome's sickle cell status before the physical assessment as Jerome had disclosed his condition. Mr Kerr disagreed that the JCF had not required Jerome to undergo a blood test.

[18] In re-examination, Mr Kerr was shown an agreed document, marked as Exhibit 29, which he described as a printed page from the JCF's website. He said that, according to that document, the medical assessment was listed before the physical assessment. He also believed that Jerome had undergone a JCF-sanctioned blood test before the physical assessment.

Deputy Superintendent Dian Bartley

[19] Deputy Superintendent Dian Bartley gave evidence for the defendants. She is attached to the Department of Force Recruitment, responsible for JCF recruitment and has been the Chief Recruiting Officer since 19 January 2020. Before 2020, she served in the Office of the Commissioner of Police as an assistant staff officer.

[20] Ms Bartley said the JCF's recruiting protocols govern the recruitment of force applicants. The process includes physical assessments and a medical examination. In the process she described, the physical assessment precedes the medical examination. On 11 May 2021, the physical assessment included an 800-metre endurance run.

[21] Ms Bartley described the process in detail. A prospective applicant first completes an online application, then sits an entry examination in Mathematics, English, Civics, and essay writing. A successful applicant undergoes an antecedent

investigation. If recommended as suitable, the force applicant is invited to a physical assessment. That assessment includes an 800-metre run within a fixed time, pull-ups, push-ups, abdominal exercises and explosive jumps.

- [22]** Ms Bartley said that, after completing the online application, examination, and invitation stages, a person is described as a force applicant. The JCF's recruitment protocol requires a physical assessment first to test the applicant's ability to perform physical tasks. At that stage, however, the JCF does not undertake medical vetting to decide whether an applicant is physically capable of attempting the assessment.
- [23]** A force applicant who passes the physical assessment is given a date to donate blood at the National Blood Bank. Ms Bartley described this as part of the recruitment process and the applicant's national responsibility to give back. Donated blood is screened for sexually transmitted diseases or infections and for Hepatitis B, C and E. If the Blood Bank approves the blood, the applicant is invited to a medical assessment.
- [24]** Before the medical assessment, the applicant receives a request for a complete blood count ("CBC"), a dental report and an updated immunisation card. Ms Bartley's witness statement said that a CBC assesses overall health, including haemoglobin, platelet, white blood cell and red blood cell counts, and may detect anaemia, autoimmune disorders, bone marrow disorders, dehydration, infection, inflammation, haemoglobin abnormalities, leukaemia and other conditions. The CBC is intended to rule out diseases or illnesses which may prevent enlistment in the JCF.
- [25]** A medical officer conducts further testing. An applicant who passes the medical assessment is deemed fit for enlistment and is invited to a polygraph examination. The recruiting office then sends the application to specified departments for deeper vetting, including the National Intelligence Bureau, the Firearm Narcotics Investigation Department and the Criminal Records Office. Where those investigations reveal no concern, and where the polygraph result presents no

difficulty, the application is sent to the selection panel, which identifies applicants for training.

- [26]** She disagreed that blood testing was required before the physical assessment to determine an applicant's fitness or health for the recruitment process and that a blood test would necessarily identify a disease or illness which would prevent an applicant from attempting the physical assessment.
- [27]** Ms Bartley could not say whether the JCF permits an applicant with sickle cell disease to complete the physical assessment, or which medical conditions might prevent enlistment, as those decisions are made by the Medical Services Branch. She knew that asthma, impaired visual acuity and bone or physical deformities had prevented applicants from being enlisted, but said that those conditions were identified during the medical stage, which followed the physical assessment.
- [28]** She disagreed that persons with diseases or ailments would take part in the physical assessment. She maintained that an applicant could not attend a medical assessment unless the applicant had passed the physical assessment and the Blood Bank had approved the donation. In her view, the JCF would not be responsible if a force applicant with asthma attempted the physical assessment and experienced difficulty.
- [29]** Physical assessments take place at several locations across Jamaica, not all of which are operated and controlled by the JCF. Jerome's assessment was conducted at the JCF National Compound at Twickenham Park, which is controlled by the JCF. On the day of the physical, a recruiting officer, members of the Department of Force Recruitment, members of the physical assessment team, and members of the Medical Services Branch were present at the compound.
- [30]** Ms Bartley said the medical personnel were present under the applicable protocol to provide first aid, attend to injuries, and respond to any physical challenges a force applicant might experience. Their role was not limited to treating injury.
- [31]** She was aware of no other steps, apart from those in the recruiting protocols, that needed to be completed before the physical assessment and that could prevent a

force applicant from participating. She also did not believe a force applicant was likely to have difficulty completing the assessment because of a medical condition.

- [32] The first stage of the process is an online application. Ms Bartley said that information for prospective applicants is available at www.recruitingatjcf.gov.jm and that the listed contact number is 1 876 598 42773. When shown Exhibit 29, she did not agree that it had been published on the JCF website. She admitted that it contained information on JCF requirements, including educational requirements, but pointed out that the JCF did not accept SSC grades in May 2021 and instead accepted two City and Guilds Stage 3 and Level 3 qualifications.
- [33] Exhibit 29, titled "Physical, Medical and Psychological Requirements," was noted by Ms Bartley as not presenting the correct order for force applicants' requirements. She pointed out the document incorrectly listed the medical assessment prior to the physical assessment. However, she was unable to confirm if the JCF website had been updated since May 2021 and did not accept that Exhibit 29 accurately reflected the website as it appeared at that time.
- [34] Ms Bartley dismissed the suggestions that Jerome needed a JCF-sanctioned blood test before the physical assessment, that he had already taken such a test, that the test was meant to determine his eligibility, or that the JCF had scheduled him for the assessment without a test result in violation of their own protocol.
- [35] She said the first blood-related stage was blood donation following a successful physical assessment. She could not speak to the Blood Bank's testing beyond confirming it was a blood donation, which preceded the CBC and medical assessment. If Jerome had completed the physical assessment, the next step would have been blood donation. Ms Bartley could not say whether blood donation or a CBC would have detected the sickle cell disease or trait.
- [36] Ms Bartley agreed that blood testing was used to rule out diseases or illnesses that could hinder an applicant from performing the duties of a JCF member. She also agreed that the recruitment process seeks fit and healthy candidates and that the physical assessment tests an applicant's ability to perform physical tasks. However, before the physical assessment, there was no medical vetting to

determine whether the applicant could safely undertake it. The JCF therefore had no medical information at that stage to indicate whether an applicant might experience a physical challenge.

- [37] Ms Bartley stated that a doctor would need to clarify whether a CBC could identify a disease preventing enlistment. Her statement regarding potential CBC results was based on hearsay from a doctor. She was unable to explain the term "haemoglobin abnormalities" used in her statement. She only agreed that the listed conditions were medical issues that could hinder enlistment.
- [38] She maintained that the JCF was not responsible for ensuring each applicant was physically capable of undertaking the physical assessment, and she did not accept that the Medical Services Branch had assumed that responsibility. She described as speculative the suggestions that failing to await a blood result left Jerome's sickle cell status undisclosed or that such a result would have prevented his participation.
- [39] Ms Bartley confirmed that the 800-metre run was the first exercise. She estimated that Jerome ran about 350 to 400 metres before struggling near the end of the first 400-metre lap. He was taken to the Spanish Town Hospital immediately after collapsing and remained there from 11 May 2021 until his death.
- [40] In re-examination, Ms Bartley said that force applicants were required to disclose their medical conditions. If an applicant became ill during a physical assessment, the JCF was required to ensure the applicant received medical attention.

SUBMISSIONS

The Claimant

- [41] Ms Smith relied on **Devon Harris v E & R Hardware Ltd**,¹ **Donoghue v Stevenson**,² **Caparo Industries plc v Dickman**,³ **Joan Thompson v Jamaica**

¹ [2016] JMSC Civ 228

² [1932] AC 562

³ [1990] 2 AC 605

Health Security Network Limited and Clinton Sewell,⁴ and **Rohani Watson v Calvin Irving**⁵ to submit that a claimant in negligence must prove a duty of care, a breach of that duty, causation and the foreseeability of the relevant damage. A defendant is liable only for damage which was reasonably foreseeable, and causation must be proved on a balance of probabilities.

[42] Counsel relied on **Robinson v Chief Constable of West Yorkshire Police**⁶ and **Michael v Chief Constable of South Wales Police**⁷ to submit that the police are not immune from liability in negligence and are governed by ordinary principles of tort. Although the police are generally not liable for a mere omission to protect a person from harm caused by another source, a duty may arise where they create a danger or assume responsibility.

[43] The claimant's case was that the JCF did not just fail to protect Jerome from an external danger; it designed the recruitment process, controlled the environment and required Jerome to perform strenuous exercise without first obtaining medical clearance. In doing so, the JCF exposed him to a foreseeable risk of serious injury. The Commonwealth authorities recognise a duty of reasonable care when the State controls a training environment requiring participation. The higher the activity's risk, the greater the need for precautions and supervision. Recruitment and training for a disciplined service are controlled processes, not voluntary sport, needing a safe system like medical screening. Participation in assessments was necessary for Jerome's progression and did not waive the JCF's duty. (See **Betty James v Attorney General of Trinidad and Tobago**⁸ and **Joseph Reynolds v Attorney General of Bermuda**).⁹

⁴ [2022] JMSC Civ 18

⁵ [2024] JMSC Civ 170

⁶ [2018] UKSC 4

⁷ [2015] UKSC 2

⁸ CV2010-05009, judgment dated 22 April 2015

⁹ [2022] SC (Bda) 35 Civ

- [44] The claimant cited **Jamaica Pre-Mix Concrete Ltd v Shawn Hennie**,¹⁰ arguing the blood-testing showed the JCF recognised a foreseeable medical risk and that proceeding without a result was a failure to take reasonable precautions.
- [45] The JCF owed Jerome a duty of care. It had direct control of him at its facility. Serious physical harm from strenuous exertion by a medically uncleared applicant was reasonably foreseeable, particularly because the recruitment process itself required blood testing and because, on the claimant's case, Jerome had disclosed that he had the sickle cell trait. It was therefore fair, just and reasonable to require medical clearance as part of a safe recruitment system before exposing him to that risk.
- [46] The breach was failing to operate a safe system to prevent medically unfit candidates from high-risk exercise. The blood test requirement recognised that medical conditions could make someone unfit for strenuous activity and aimed to identify risks before physical stress. The JCF, having accepted responsibility for safety by supervising the exercise, should have completed essential safety measures, including medical clearance, before the run. On this basis, the risk was neither remote nor unforeseeable. The breach was failing to await the result of its own safeguard the JCF had established.
- [47] An underlying condition did not break the chain of causation if the JCF's breach triggered the harm, as the JCF had to take Jerome as it found him. Even if Jerome did not disclose his sickle cell status, which the claimant did not admit, obtaining and acting on a medical result remained within the JCF's control.
- [48] The claimant relied on the conventional "but for" test. It was submitted that, but for the failure to obtain and act on the blood result, Jerome would not have undertaken the physical assessment; the exertion would not have triggered rhabdomyolysis and acute kidney injury; and he would not have died when and as he did. The omission increased the risk of harm. Even if test results were uncertain, the Court could infer causation because the JCF exposed a medically uncleared applicant

¹⁰ [2021] JMCA Civ 7

with a haematological risk to strenuous exercise. Serious injury was foreseeable, so remoteness could not defend the claim.

The Defendants

- [49] Mr Simpson conceded, relying on **Donoghue v Stevenson** and **Glenford Anderson v George Welsh**,¹¹ that the JCF owed Jerome a duty of care. He submitted that the scope of the duty was to ensure that competent medical staff were present to respond to an emergency. Ms Bartley's evidence, supported by the medical report, established that the Medical Services Branch was present, administered saline, referred Jerome to hospital and transported him there without delay.
- [50] The defendants emphasised that the Particulars of Claim stated that Jerome believed he had the sickle cell trait and had disclosed that belief to the JCF. Mr Kerr said he believed Jerome had undergone a blood test, but there was no direct or documentary evidence that the test had taken place or that Jerome had disclosed either the trait or the disease to the JCF.
- [51] The defendants argued that the claimant failed to prove the JCF's procedure required a blood test or medical assessment before the physical assessment. Exhibit 29 was insufficient, as listing the medical assessment before the physical did not establish a sequence, only requirements. Ms Bartley's evidence was that an applicant had to pass the physical assessment before any blood donation, CBC or medical assessment. Her evidence remained unshaken in cross-examination and that the JCF followed the recruitment protocol then in force.
- [52] It was also submitted that Jerome's collapse and death were not reasonably foreseeable. Neither Jerome nor the defendants knew of his sickle cell disease before the run. He could not disclose an illness of which, on the claimant's case, there was no proof that even he was aware. The fact that an unknown condition produced a tragic result did not establish that the injury ought reasonably to have been foreseen.

¹¹ [2012] JMCA Civ 43

[53] The defendants distinguished **Michael, Betty James** and **Joseph Reynolds**. In **Betty James**, the police failed to have a medic available when the claimant fell after descending the last stair of a staircase. In this case, medical personnel were present and treated Jerome. In **Joseph Reynolds**, injury was foreseeable if the training was conducted unsafely. Here, the defendants argued, death from complications of an unknown sickle cell condition was not reasonably foreseeable, and the JCF protocol did not require blood testing before the physical assessment.

ISSUES

[54] The issues which arise for decision are:

1. Whether the JCF owed Jerome a duty of care and, if so, the scope of that duty.
2. Whether the sequence and conduct of the recruitment assessment met the standard of reasonable care.
3. Whether a proved breach of duty caused Jerome's medical emergency and death.
4. Whether the claims under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act can succeed.

[55] One central requirement governs these issues; the claimant must prove each element of the cause of action on a balance of probabilities, as the regrettable occurrence of Jerome's death does not prove negligence in this case.

DISCUSSION

Burden and Standard of Proof

[56] In **Glenford Anderson**,¹² the Court of Appeal restated that a claimant alleging negligence must prove duty, breach and causation on a balance of probabilities. A court may draw a proper inference from facts which have been proved, but it must

¹² at paragraphs 26 to 29

examine the whole of the evidence and may not substitute the fact that an accident occurred for proof of negligence.

- [57] At paragraph 29, the Court of Appeal explained that liability attaches where the defendant's negligent act is the sole effective cause of the injury, or is so connected with it that it materially contributes to the injury. A negligent act may form one part of a chain of events, but the claimant must prove that causal connection. Proof that the injury was caused by the defendant's negligence may raise a presumption of liability however, the claimant must first satisfy the Court that the negligence caused, or for want of care substantially accounted for, the injury.
- [58] The standard of care is objective and prospective. It is not determined by looking backwards from the injury with the knowledge later acquired. In **Roe v Minister of Health**,¹³ Denning LJ warned, "*We must not look at the 1947 accident with 1954 spectacles.*" The Court must therefore ask what a reasonable recruiting body, with the information then available or reasonably obtainable, should have foreseen and done before Jerome began the run.

The Documentary Medical Evidence

- [59] The agreed pathology report of Dr Charles Anderson and the agreed death certificate certified by Dr Trevor Bygraves recorded the immediate causes of death as sepsis secondary to bronchopneumonia, bilateral pulmonary haemorrhage, congestive cardiac failure and acute kidney injury. Rhabdomyolysis and sickle cell cardiomyopathy were recorded as contributory factors.
- [60] No doctor gave viva voce evidence to explain the pathology or to identify sickle cell disease as the cause of death. The Court can therefore go no further than to accept what these agreed documents record.
- [61] The agreed medical report from the South East Regional Health Authority dated 15 September 2025 recorded that Jerome attended the hospital after participating in an 800-metre run; that he arrived with a referral letter from the JCF Medical Services Branch; and that his initial treatment included an intravenous infusion of

¹³ [1954] 2 QB 66

1.5 litres of normal saline before he was transported to hospital. It is not in dispute that members of the Medical Services Branch were on site on the day of the run, that they attended to Jerome, began treatment and transported him to hospital on the day he fell ill.

- [62] The medical evidence and that of Ms Bartley establish that the run precipitated a serious medical emergency, after which Jerome was hospitalised and later died. However, this evidence does not establish whether a medical examination or a blood test ought to have been conducted before the run.

The Recruitment Protocol

- [63] Exhibit 29 is a document headed "Physical, Medical and Psychological Requirements." It sets out the requirements for entry into the JCF, including medical and physical assessments, and bears the words "Copyright ©JCF 2015 All Rights Reserved". It contains no web address, publication date or download date. Nothing in Exhibit 29 indicates that it was an official document setting out the internal recruitment protocol in force in May 2021.
- [64] Even if Exhibit 29 came from the JCF website, no witness provided evidence that the internal recruitment protocol was publicly available or that it was published on that website. At its highest, Exhibit 29 is an information page for prospective applicants and is not an internal document for use by the recruiting office. It does not state that the listed requirements appear in chronological order. The unchallenged evidence that the document refers to educational qualifications which the JCF did not accept in May 2021 further reduces the weight to be placed on Exhibit 29 as evidence of the process then in force. I therefore do not accept Exhibit 29 as the official JCF recruitment protocol applicable to May 2021.
- [65] The defendants did not produce the written recruitment protocol. Ms Bartley did not say it was unavailable, she said she had not brought it to Court. That position was most unsatisfactory in a case such as this. It deprived the Court of the best evidence of the actual recruitment process and reduced the weight to be given to her assertion that the protocol had been followed.

[66] The absence of the written recruitment protocol does not shift the burden of proof, nor does it establish that Exhibit 29 was the governing protocol in May 2021, or that the requirements listed there were intended to be followed in that order. Exhibit 29 may explain Mr Kerr's belief about the order in which the process should have occurred, but his belief is not proof of the governing procedure. There is no evidential basis for drawing an adverse inference about the contents of the missing protocol from its absence. Additionally, this was a matter of disclosure at the pre-trial stage.

The Police

[67] In **Robinson v Chief Constable of West Yorkshire Police**,¹⁴ the Supreme Court made clear that public authorities are generally governed by ordinary principles of negligence as they have no general immunity. Paragraph 34 speaks of the general rule that a public authority, like a private person, does not ordinarily owe a duty to prevent harm caused by a source which that authority did not create. Paragraphs 34 and 37 identify the exceptions, including cases in which the authority creates the danger or assumes responsibility for a person's safety.

[68] **Michael v Chief Constable of South Wales Police**¹⁵ and **Tindall v Chief Constable of Thames Valley Police**¹⁶ explain the difference between causing or increasing a danger and merely failing to protect a person from a danger which already exists. **Tindall** describes the distinction as the difference between making matters worse and failing to confer a benefit, which includes a failure to protect a person from harm.

Foreseeability

[69] **Attorney General of the British Virgin Islands v Hartwell**¹⁷ is instructive on reasonable foreseeability. At paragraph 21, Lord Nicholls explained that foreseeability does not occupy one fixed point on a scale of probability. The risk must be real rather than one which a reasonable person would dismiss as far-

¹⁴ [2018] UKSC 4 at paragraphs 32 and 33

¹⁵ [2015] UKSC 2

¹⁶ [2024] UKSC 33

¹⁷ [2004] UKPC 12

fetches. The gravity of the possible harm also matters. The more serious the possible consequence, the lower the probability which may be sufficient to require a reasonable precaution. (See also Lord Reid in **Overseas Tankship (UK) Ltd v Miller Steamship Co Pty (The Wagon Mound No 2)**.)¹⁸

- [70] **Hartwell** cautions against treating foreseeability as an abstract calculation. At paragraph 25, the Board considered the nature and gravity of the possible harm, the likelihood of its occurrence, and the ease or difficulty of eliminating the risk. In that case, the police gave a probationary officer ready access to a loaded firearm despite earlier incidents that ought to have alerted them to the risk of misuse. A loaded firearm is inherently dangerous, and restricting access is a practical precaution. At paragraph 46, the Board held that the police had failed to exercise the degree of care the circumstances demanded. In **Hartwell**, the Board said that the possibility of grave harm may justify a precaution even where the probability is comparatively low.
- [71] The principles from **Hartwell** apply to this case, although a loaded firearm and an 800 metre run do not present the same kind of danger. The Court must examine the information available to the JCF before the event, the likelihood and gravity of the relevant risk, and the practicality and likely effectiveness of the proposed precaution. The seriousness of Jerome's eventual injury does not, without more, prove that the risk was obvious or reasonably foreseeable at the time.
- [72] In **Bolton v Stone**,¹⁹ the House of Lords held that a remote possibility of injury was insufficient; the probability had to be such that a reasonable person would anticipate the danger. **Roe** highlights that conduct should be evaluated based on what could reasonably have been predicted at the time, rather than information acquired afterward.
- [73] Distilling the principles set out in the authorities, shows that foreseeability plays different roles at various stages. During the duty of care phase, the Court assesses whether the specific harm was reasonably foreseeable. When examining breach

¹⁸ [1967] 1 AC 617 at 643

¹⁹ [1951] AC 850

of duty, it considers the severity and scope of the risk, as well as the feasibility and likely success of preventive measures. In the remoteness phase, it determines whether the damage was of a type that could reasonably have been foreseen.

[74] **Hughes v Lord Advocate**²⁰ confirms that the precise mechanism by which the injury occurs need not have been foreseen. **Smith v Leech Brain and Company Ltd**²¹ establishes that a defendant who negligently causes personal injury must take the injured person as he found him (the eggshell skull principle.)

[75] **Paris v Stepney Borough Council**²² and **Barber v Somerset County Council**²³ also identify the precautions which reasonable care may require. In **Paris**, the employer knew that the employee had only one working eye and that injury to the remaining eye would have especially grave consequences. That knowledge increased the importance of taking a reasonable precaution. In **Barber**, the House of Lords approved the proposition that, unless an employer knows of a particular problem or vulnerability, the employer is ordinarily entitled to assume that an employee can withstand the normal pressures of the work.

[76] Those cases do not mean that an unknown health risk may always be ignored. They mean that the precautions required by reasonable care are influenced by what the defendant knows or ought reasonably to know about the person who will be exposed to the danger.

[77] The claimant's case is twofold. First, he argues that the JCF departed from its own recruitment protocol by placing the physical assessment before the medical assessment. Second, even if the JCF had followed its own protocol, it was objectively unsafe because it exposed force applicants to strenuous exercise before any medical condition was known.

[78] The defendants accept that a duty of care existed but deny a breach. They rely on the sequence as set out in the recruitment protocol, which, though not in evidence in writing, was as described by Ms Bartley. They argue that the absence of proof

²⁰ [1963] AC 837

²¹ [1962] 2 QB 405

²² [1951] AC 367

²³ [2004] UKHL 13

that Jerome disclosed any illness, the absence of any diagnosis, symptom or warning before the run, and the presence and prompt response of medical personnel to his collapse were the precautions taken based on what was known on the day of the run. They also contend that the claimant did not prove that earlier testing would have detected Jerome's condition or prevented him from taking part.

Duty of Care

[79] The JCF accepted Jerome into the recruitment process and required him to attend a facility which it controlled at Twickenham Park. It designed and administered an assessment comprising an 800-metre endurance run and other physical exercises. Members of the recruiting team, the physical assessment team and the Medical Services Branch were present. The JCF was responsible for the force applicants within that controlled exercise. It has been conceded that the JCF owed Jerome a duty of care.

[80] The existence of a duty is only the beginning, as the applicable standard remains that of reasonable care. The Court needs to consider four questions separately: first, what the JCF knew or should reasonably have known before the run; second, what precautions reasonable care would require; third, whether the JCF failed to take those precautions; and finally, whether taking those precautions would likely have prevented Jerome's injury and death.

Assessment of the Evidence

[81] I accept that, before his son's hospitalisation, Mr Kerr genuinely believed that Jerome had the sickle cell trait rather than sickle cell disease. I also accept that he responded as a concerned father would. He went directly to hospital, remained closely involved, consented to testing, received updates from the doctors, and, with his wife, stayed at Jerome's bedside. Nothing in the analysis that follows finds that Mr Kerr was not honest with the Court about what he believed to be true.

[82] However, on several key issues of liability, Mr Kerr discussed events in which he had no personal involvement and gave evidence of medical and recruitment procedures he was not qualified to explain. His sincere belief, although designed to support his claim, cannot prove these matters.

- [83]** There was no evidence from Jerome's family doctor or another treating physician who had examined him before 11 May 2021, the date of the physical assessment, to show that Jerome had been tested and received the results concerning his sickle cell status. Mr Kerr's belief that Jerome only had the trait does not prove that Jerome had previously been diagnosed only with the trait, that Jerome's knowledge was limited to what his father believed, or that Jerome had disclosed either sickle cell trait or disease to the JCF.
- [84]** Jerome's application form, declaration and any medical questionnaire were not in evidence to show that he had disclosed a medical condition. There is no written record showing what medical information Jerome gave to the JCF. No doctor who had treated Jerome warned the JCF that he should not run, and there is no evidence that he showed any symptom, complaint, or other warning sign before the run.
- [85]** Mr Kerr also believed that Jerome had undergone a JCF-sanctioned blood test. However, the hearsay evidence beyond that statement was excluded. There was no evidence of the date of any such test, a laboratory report, a blood donation receipt, a CBC result, a request form, or a witness with direct knowledge to establish that a blood test had occurred before the physical assessment. There was also no evidence of a request for disclosure of any of these records.
- [86]** Ms Bartley gave direct evidence of the recruitment practice as Chief Recruiting Officer. She said that the physical assessment came first, followed by blood donation, the CBC and the formal medical assessment. Jerome was scheduled for the physical assessment, and no reliable evidence established that he had first donated blood or undergone any other JCF-sanctioned blood test. Her evidence about the sequence was consistent with what occurred in Jerome's case.
- [87]** The Court regarded parts of Ms Bartley's evidence with caution. She did not produce the written protocol. But she could not say whether a blood donation or CBC would detect sickle cell disease, or explain what a haemoglobin abnormality means. Those were medical matters beyond her expertise, although they were in her witness statement. Her assertion that the JCF was not responsible for deciding

whether an applicant was fit to attempt the physical assessment was a legal conclusion and carries no weight.

[88] Those weaknesses do not require the Court to reject all of her evidence. Because of her role, she had direct knowledge of the protocol used by the recruiting office. I accept that, in May 2021, the practice she described placed the physical assessment before blood donation, a CBC and the medical assessment.

[89] On the totality of the evidence, I find that the JCF did not send Jerome Kerr to give blood, nor was it awaiting a blood result before Jerome could participate in the physical assessment. I further find that the JCF did not know before the run that Jerome had any illness, including sickle cell trait or sickle cell disease. The evidence also does not permit a finding on whether Jerome knew or did not know his own sickle cell status. The main finding is that no disclosure to the JCF was proved.

Foreseeability

[90] The fact that the JCF followed its own protocol does not mean it has successfully defended the negligence claim. An internal protocol may itself fall below the standard of reasonable care. The Court must therefore decide whether requiring a force applicant to run 800 metres before medical assessment exposed the applicant to a real risk of serious harm that a reasonable recruitment office ought to have foreseen, and whether a reasonable and proportionate precaution was available.

[91] The JCF knew that the assessment required strenuous physical exertion. It arranged for members of the Medical Services Branch to be present because applicants might suffer injury or encounter other challenges. The recruitment process also required a later CBC and medical assessment to decide whether an applicant was fit for enlistment.

[92] Ms Bartley admitted that the JCF performed no medical vetting before the physical assessment to determine whether an applicant had an undisclosed condition which could make the exercise difficult or unsafe. That evidence shows, first, that the JCF recognised that the physical assessment could produce immediate physical

distress and, second, that an applicant's health would ultimately affect whether the applicant could be enlisted.

- [93] The presence of medical personnel therefore supports the foreseeability of some immediate physical distress during the run. It does not, without additional evidence, establish that reasonable care required a CBC, sickle cell screening or a formal medical assessment before the physical assessment. Prevention and emergency responses address different aspects of risk.
- [94] Jerome's underlying medical condition existed before the physical and was not caused by the JCF. The claimant's case, however, is not confined to a failure to discover that condition. Rather, he contends that the JCF exposed Jerome to strenuous exercise that triggered or worsened the condition. But this could not be so, as there is no proof Jerome knew he had sickle cell disease on the day of the run; there was no proof of disclosure of any illness and no proof that the JCF knew he had an illness or vulnerability before the run.
- [95] The claimant must demonstrate that, given what was known or reasonably should have been known before the run, given that nothing was known about Jerome's sickle cell disease, the physical assessment presented an unreasonable risk, and that exercising reasonable care would have necessitated medical screening as a precaution.
- [96] That question must be answered from the information known before the run. After Jerome's death, both sides knew that he had an underlying condition and that strenuous exertion had precipitated a serious medical emergency. They could then see that earlier medical information might have been useful or even preventive. But negligence cannot be established by beginning with that later knowledge and working backwards (see **Roe**).
- [97] **Paris** and **Barber** identify the same need in a different setting. Knowledge of a medical condition or disability may require precautions tailored to that person. There is a distinction between saying that the JCF ought to have known that an applicant could have an undiscovered condition and saying that the JCF knew, or by taking reasonable care ought to have known, that Jerome himself would face a

life-threatening risk if required to undertake strenuous exercise, so that a particular precaution should have been taken.

[98] What did the JCF know about this particular force recruit? There was nothing in the evidence to demonstrate that the JCF knew, before the run, that Jerome in particular had the underlying condition. There was no proved symptom, warning, diagnosis, disclosure or medical advice which placed the JCF on notice that this particular force applicant faced an unusual risk by strenuous exertion. Nor was there evidence of any similar incidents which ought to have alerted the JCF to a systemic need for prior screening for all force recruits.

[99] The claimant also failed to prove that best practice required medical screening before every force applicant undertook a strenuous assessment, whether or not the individual displayed a symptom, and no expert gave evidence in Court or by expert report to establish that the precaution was a necessary step in the recruitment protocol. The claimant could not prove these assertions relying on the later medical evidence as that information was not known at the time.

Precaution

[100] To establish that reasonable care required medical clearance before the run, the claimant needed evidence directed to matters such as:

1. What the May 2021 recruitment protocol required.
2. Whether medical clearance was required before the physical assessment.
3. Whether the proposed medical assessment or blood test was designed to detect sickle cell disease.
4. Whether it would probably have detected Jerome's condition.
5. Whether a reasonable recruiting authority would have awaited and reviewed the result before permitting participation.
6. Whether Jerome displayed a symptom, made a complaint or disclosure, or presented any other warning sign.
7. Whether a test result identifying the condition would probably have excluded him from the run.
8. The applicable written recruitment policy.
9. Any relevant medical protocol.
10. Any recognised best practice.

11. Expert evidence about safe recruitment procedures or showing that the proposed medical assessment was a prerequisite to strenuous exercise.
12. Any information supplied by Jerome, or evidence of any other circumstance, which put the JCF on notice.

[101] There was no evidence directed to any of those matters and no proof that a reasonable recruiting authority was required to take the precaution being claimed before this kind of physical assessment.

The Medical Assessment

[102] The claimant's most compelling argument is that medical screening exists to discover conditions which neither the applicant nor the JCF already knows about. It follows that a recruiter cannot defend the argument by saying that it lacked actual knowledge of the condition. The claimant must still prove that reasonable care required the relevant screening before the run and that the screening would probably have served the proposed precaution.

[103] The blood-donation argument does not assist the claimant as there was no proof Jerome donated blood or did a blood test. Ms Bartley's evidence was that he was never given a date because he had not completed that assessment. She described blood donation as a later stage, for community service purposes. That evidence was not shaken or challenged.

[104] There was evidence that donated blood is screened for sexually transmitted diseases or infections and for Hepatitis B, C and E. If the Blood Bank approves the blood, the applicant is invited to a medical assessment. There was no evidence that the Blood Bank would screen for and report sickle cell disease or trait, or that the donation was intended to clear an applicant for strenuous exercise. The Court cannot draw those inferences merely from the fact that blood was donated as one stage of the recruitment process.

[105] The later CBC and medical assessment show that an applicant's health mattered to eventual enlistment. However, without medical evidence, it cannot be inferred that these tests were designed to determine whether an applicant could safely participate in the physical assessment. There was no evidence that fitness for

eventual enlistment and fitness to attempt a physical assessment serve the same function.

- [106]** It is therefore not enough to argue, without proof, on the assumption that a medical result could have affected the outcome. That proposed precaution must be proven to be a reasonable response to the actual risk, which was prevention of death or injury.
- [107]** Furthermore, the Court was not provided with any evidence about the actual foreseeable risk beyond what the JCF could reasonably anticipate by having medical personnel on hand to respond to injuries. There was also no evidence explaining why all force applicants should, as a standard safety precaution, undergo medical screening as I have explained earlier.
- [108]** The presence of medical personnel does not prove the recruitment sequence was safe; what matters is the actual precautions taken that day. The Medical Services Branch attended Jerome, gave intravenous saline, referred him for hospital care, and transported him there. No evidence was led to challenge their competence or handling. Negligence in emergency treatment or transportation was not established.
- [109]** The accepted evidence shows that Jerome's physical exertion triggered his medical crisis. This establishes a medical or factual link between the run and the crisis. However, it does not imply any negligence on the part of the JCF.
- [110]** The claimant's causation argument required four links: the JCF had to consider the proposed medical result before the run; the test needed to likely reveal Jerome's condition; this result had to probably cause Jerome's exclusion; and avoiding the medical episode depended on Jerome not running.
- [111]** The evidence that the run caused the crisis supports the fourth link but cannot compensate for the absence of proof of the first three. Again, no evidence showed that medical assessment would likely have identified Jerome's condition, nor did any witness explain the decision that would have followed such results. The idea that a result would have prevented participation remains possible, not probable.

- [112] The claimant argued that the JCF materially increased the risk of harm. However, the claimant must prove that the JCF breached an applicable standard of care or that the precaution would likely have prevented injury. Otherwise, the Court would conclude using hindsight that precautions not proven to be necessary should have been in place before Jerome's death.
- [113] Jerome's underlying condition was an existing danger and was not created by the JCF. The JCF could nevertheless have been liable if, with actual or constructive knowledge of that danger, it unreasonably exposed him to exertion, or if reasonable care required universal prior screening which would probably have discovered the condition and excluded him. Neither contention was proved on the evidence.
- [114] The thin-skull rule in **Smith v Leech Brain and Company Ltd**²⁴ provides that a defendant who negligently causes foreseeable personal injury must take the injured person as found and is liable for the full consequences, even where an unusual condition makes the injury more serious. The rule applies after breach and factual causation have been established. It does not establish either element. Because the claimant did not prove breach or the necessary causal links, that rule does not alter the Court's conclusions.

The Fatal Accidents Act

- [115] The claim under the Fatal Accidents Act depends on proof that Jerome's death was caused by a wrongful act, neglect or default which would have entitled him to sue had he survived. Negligence was not proved; therefore, the statutory threshold in section 3 has not been met.
- [116] Mr Kerr is the proper person to bring the statutory claim, and his evidence regarding Jerome's financial assistance would have been relevant to dependency if liability had been established. However, on the evidence before the Court, Jerome could not have brought a successful negligence claim had he survived. No award is made under the Fatal Accidents Act.

²⁴ [1962] 2 QB 405

The Survival Claim

[117] The claim under the Law Reform (Miscellaneous Provisions) Act also requires proof that Jerome had an actionable cause of action that survived for the benefit of his estate. Since breach and the necessary causal connection were not proved, no cause of action in negligence vested in Jerome can now be maintained by the estate. The claim under that Act, including the claim for funeral expenses under section 2(2)(c), also fails.

The Proper Defendant

[118] The Attorney General is the proper representative of the Crown in these civil proceedings. The claim was defended on its merits. Nothing in the outcome depends on treating the JCF as a separate legal person against which substantive relief may be ordered. No separate substantive order is made against the Force independently of the Attorney General. This treatment of the defendants is consistent with section 13(2) of the Crown Proceedings Act, under which civil proceedings against the Crown are to be instituted against the Attorney General. The JCF is therefore removed as a party.

Conclusion

[119] Jerome's illness was not created by the police. That fact alone would not protect the JCF from liability if its own activity exposed him to a foreseeable risk of physical injury. The run formed part of a recruitment assessment designed, controlled and conducted by the JCF, and ordinary negligence principles apply.

[120] It would be equally wrong to reason that, because the JCF organised the run and the run triggered the crisis, liability must follow. The evidence must establish that reasonable care required the JCF to obtain and consider a medical result before subjecting Jerome to the physical demands of the run. The evidence did not support these assertions.

[121] The evidence also did not establish that a blood donation, CBC or formal medical assessment would probably have detected Jerome's condition, that the result would have reached the recruiters in time, or that the result would probably have

caused them to prevent his participation. Those missing links are central to both breach and causation.

[122] Without that proof, the reasoning would be that Jerome ran, died after the run and was later found to have an underlying condition; therefore, the JCF should have obtained a medical result before he ran. That moves directly from a tragic outcome to a finding of negligence. The law does not permit that line of reasoning.

[123] The Court is not saying that no physical harm of any kind was foreseeable. Some immediate physical distress was foreseeable, and the JCF provided medical personnel to respond. What the Court is saying is that the claimant did not prove that the foreseeable risk to an apparently fit, asymptomatic applicant required the JCF to conduct a medical assessment or blood test as a precaution before Jerome could run, as that was not reasonably foreseeable given that the JCF did not know he had sickle cell disease. He displayed no symptoms, made no medical complaints, and there is no proof that he disclosed an underlying condition to the JCF before the run. There was therefore no reason to test Jerome or to send him for medical examination to prevent a medical emergency.

[124] This conclusion does not suggest that Jerome's death was insignificant or unjust to his family, however, Mr Kerr has not demonstrated, on a balance of probabilities, that reasonable care would have involved prior blood donation, a CBC, a medical assessment, or another specific precaution, or that neglecting such precautions caused Jerome's death and as such the claim is dismissed.

Orders

[125] The Court makes the following orders:

1. The Jamaica Constabulary Force is removed as a party to the claim.
2. The claim is dismissed.
3. Judgment for the Attorney General
4. Costs to the Attorney General to be taxed if not agreed.

Wint-Blair J