

Local Authority Liability

Sixth Edition

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PREFACE TO THE SIXTH EDITION

In previous editions of our book we have dealt with cases in which the appellate courts have considered the circumstances in which local authorities owe a duty of care, particularly when they are performing a statutory function. When the first edition of this book was published, the high watermark represented by *Anns v Merton* had been lowered by *Caparo*. Since then the courts have grappled with the concept of the assumption of responsibility, and also attempts have been made to develop the common law duty of care in harmony with Convention claims brought under the Human Rights Act 1998. The Supreme Court has rejected the latter approach in *Michael v The Chief Constable of South Wales Police*. In his analysis of the law in *Furnell v Flaherty and Others*, Turner J pointed out that the starting point for analysis of when a duty of care arises out of the exercise of a statutory function was the House of Lords decision in *East Suffolk Rivers Catchment Board v Kent and Another*, decided as long ago as 1941.

A decision which may give rise to attempts to extend the occasions when a duty of care is owed is *Woodland v Essex County Council* in which the Supreme Court held that a school can owe a non-delegable duty of care to its pupils. An attempt was made to apply this decision to foster parents in *NA v Nottinghamshire County Council*. The attempt failed, but an appeal has recently been heard by the Court of Appeal and it is possible that the case may not rest there.

Although slightly peripheral to local authorities, we note the extension of vicarious liability reflected in the decisions in abuse cases involving the Roman Catholic Church. We also note the Court of Appeal's approach to Section 58 of the Highways Act 1980 in *TR v Devon County Council*.

We also refer to the significant change in cases of employers' liability where Section 69 of the Enterprise and Regulatory Reform Act 2013 has removed civil liability for breach of regulations. As this change applies only to breaches of duty from 1 October 2013, it is too early for the courts to have had the opportunity of dealing with such claims. In chapter 6, therefore, we have dealt with the existing law under the various workplace regulations, because this remains relevant, but we have also speculated on the way in which the change may affect cases in the future. We will no doubt deal with claims following the coming into force of Section 69 in the next edition of our book.

As before, we present this book as an attempt to give guidance to those dealing with claims against local authorities, bringing together the various liability claims that they face.

We would like to thank those who have contributed to this book, namely Andrew Warnock QC, Angus Piper and Mark Whittaker. We must also thank all of those who have given assistance with research and typing, particularly Lynne Mockett. Finally, our families who, as always, have had to allow us time to review the developing case-law to include in this sixth edition.

A line has to be drawn and accordingly this book reflects cases decided before 30 September 2015.

John Morrell
Richard Foster
September 2015