



NINESTJOHNSTREET

In Ibrahim v MOJ
David Calvert
represented the
Claimant prisoner

www.9sjs.com

9 St John Street, Manchester, M3 4DN

DX Address: 14326 MANCHESTER 3

Tel: 0161 955 9000

In *Ibrahimi v MOJ* David Calvert represented the Claimant prisoner at first instance and at appeal, in respect of a claim arising out of an assault the Claimant sustained while at HMP Leeds. The Claimant (who was serving a sentence in respect of a sex offence) was deemed to be a vulnerable prisoner and was required to be segregated from the general population for his own safety. While he was at Friday prayers in a room where vulnerable and non-vulnerable prisoners were allowed to mix, he was assaulted by a non-vulnerable prisoner.

The claim alleged that the Claimant should have been segregated and had been so he would not have been assaulted. The judge at first instance dismissed the claim. The judge said that the reason for the assault (which the judge found to be linked to a tobacco debt (which the Claimant denied)) had to be related to his status as a vulnerable prisoner *per se*. As the assault was linked to a tobacco debt and not his vulnerable status then as a matter of law the claim failed.

The Claimant appealed and the appeal was heard before HHJ Gosnell sitting at Leeds CC. The appeal argued that when considering the scope of the duty of care along with the principles of causation and foreseeability contained in *Caparo v Dickman* and *The Wagon Mound No1* et al, then it was clear that the MOJ's duty was as follows; (a) to keep the Claimant reasonably safe, (b) to keep the Claimant reasonably safe as a vulnerable prisoner away from the general population, (c) in keeping the Claimant reasonably safe that included safe from assault (d) the Claimant suffered an assault and (e) that assault occurred while not being segregated from the general population.

The MOJ sought to argue that *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191 applied, namely the judgment of Lord Hoffman that even if negligent the MOJ were not responsible for all the consequences of their actions and that the MOJ were not obliged to guard against attacks of "all types". Reliance was also placed on *Hill v MOJ* [2020] EWJC 370.

HHJ Gosnell accepted the appellant's arguments and agreed with the formulation laid down in the appellant's skeleton argument as to the application of the but for test. The judge referred to *Hughes v Lord Advocate* [1963] AC 837 supporting the contention that the precise way in which injury was inflicted was not relevant.

The matter was remitted for a re-trial and the appellants were awarded their costs.