

# **THE LIABILITY OF PUBLIC AUTHORITIES**

**(SUPPORTING MATERIALS)**

**CHRISTOPHER KENNEDY Q.C.**  
**6 November 2010**

## HIGHWAYS ACT 1980

### **41. - Duty to maintain highways maintainable at public expense.**

(1) The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty, subject to subsection (2) and (4) below, to maintain the highway.

(1A) In particular, a highway authority are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.

### **58. - Special defence in action against a highway authority for damages for non-repair of highway.**

(1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.

(2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters: -

(a) the character of the highway, and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the highway;

(d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;

(e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

**79. - Prevention of obstruction to view at corners.**

(1) Where, in the case of a highway maintainable at the public expense, the highway authority for the highway deem it necessary for the prevention of danger arising from obstruction to the view of persons using the highway to impose restrictions with respect to any land at or near any corner or bend in the highway or any junction of the highway with a road to which the public has access, the authority may, subject to the provisions of this section, serve a notice, together with a plan showing the land to which the notice relates, -

(a) on the owner or occupier of the land, directing him to alter any wall (other than a wall forming part of the structure of a permanent edifice), fence, hoarding, paling, tree, shrub or other vegetation on the land so as to cause it to conform with any requirements specified in the notice; or

(b) on every owner, lessee and occupier of the land, restraining them either absolutely or subject to such conditions as may be specified in the notice from causing or permitting any building, wall, fence, hoarding, paling, tree, shrub or other vegetation to be erected or planted on the land.

**ROAD TRAFFIC ACT 1988**

**39. - Powers of Secretary of State and local authorities as to giving road safety information and training.**

(1) The Secretary of State may, with the approval of the Treasury, provide for promoting road safety by disseminating information or advice relating to the use of roads.

(2) Each relevant authority-

(a) if it is a local authority, must prepare and carry out a programme of measures designed to promote road safety, or

(3) Each relevant authority

(a) must carry out studies into accidents arising out of the use of vehicles

(b) must, in the light of those studies, take such measures as appear to the authority to be appropriate to prevent such accidents, including the dissemination of information and advice relating to the use of roads, the giving of practical training to road users or any class or description of road users, the construction, improvement, maintenance or repair of roads for the maintenance of which they are responsible

(c) in constructing new roads, must take such measures as appear to the authority to be appropriate to reduce the possibilities of such accidents when the roads come into use.

	<b>Case name</b>	<b>Service/Authority</b>	<b>Facts (or assumed facts)</b>	<b>Duty</b>	<b>Basis [often as explained in later cases]</b>
1	Home Office v Dorset Yacht Co. [1970] AC 1004	Prison	Young offenders detained under statutory powers left unsupervised by borstal officers, escaped and stole a yacht which they navigated into another yacht damaging it.	Yes	The service (through its employees) assumed a common law duty of care to persons in the vicinity. Nothing in the statute qualifies that duty.
2	Anns v Merton LBC [1978] AC 728	Building inspection	Inadequate foundations of a block of flats negligently inspected by a building inspector. Subsidence ensued. <i>Case later over-ruled on pure economic loss point. Later relevant discussion assumes personal injury.</i>	Maybe	<i>As explained by Lord Hoffmann in Stovin</i> , open question as to whether it was wrong or not but remarks suggest he considered it so because LA had a discretion as to whether to inspect or not and should not be liable merely for inspecting negligently (i.e. not altering the structure) when would not be liable if didn't inspect at all. <i>But cf support for principle by Lord Nicholls</i>
3	Hill v Chief Constable W Yorks [1989] AC 53	Police	Failure to catch the Yorkshire Ripper leading to injury to members of the public	No	Necessary for police to have discretion unfettered by private law liability. Even if action susceptible to judicial review (i.e. 'irrational') no public law right
4	Alexandrou v Oxford [1993] 4 All ER 328	Police	Police failed to inspect a building properly when they responded to an alarm. The property was burgled after they left.	No	No duty of care owed to individuals for acts done by the police with a view to preventing crime.
5	X v Bedfordshire CC [1995] 2 A.C. 633	Social Services	Inaction following evidence of abuse by parents coming to the attention of the LA	No	Remote possibility of a direct duty but would not be fair just and reasonable to impose a common law duty on the LA in relation to its statutory duties to protect children. <i>This is no longer the case in relation to children see JD v East Berkshire H.A. below.</i>

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6	M v Newham LBC [1995] 2 A.C. 633	Social Services	Inadequate investigation led to an accusation of abuse being levelled at C's mother's boyfriend. C taken away from her mother for a year as a result. Mother and child sued.	No	No direct duty alleged. Case put as vicariously liability of LA for failures of a social worker and a psychiatrist who owed personal duties to the mother and child. On Caparo principles no duty assumed to mother and child because psychiatrist and social worker were advising LA. Would not be fair just and reasonable to impose a duty. Analogy of doctor doing report for life insurance company accepted.
7	E v Dorset County Council [1995] 2 A.C. 633	Education	Dyslexic child, alleged (i) failure to identify his needs and address them properly. (ii) negligent advice from LA's psychology service to the parents. <i>In fact this was a misunderstanding of the factual situation and the service advised the local authority - see Barrett.</i>	(i) No (ii) Yes	(i) No duty imposed because not fair just and reasonable.. (ii) Duty: authority offering a service to the public so a duty of care can exist Scope of that duty may be affected by the need not to impede the due performance of its statutory duties. Potentially the liability is both direct and vicarious.
8	Christmas v Hants CC [1995] 2 A.C. 633	Education	Dyslexic child. Parents told by headmaster than no learning disability. Same advice given by an agency run by Defendant L.A. to whom head referred the case	Yes	Case put on the basis of vicarious liability for negligence of head and advisory service. Accepted with the proviso that the 'Bolam' test will apply.
9	Keating v Bromley LBC [1995] 2 A.C. 633	Education	Allegations that Defendant LA (i) failed to place a child at school at all for a time (ii) negligently placed him in special schools rather than mainstream ones	Yes (narrowly)	No private law action for breach of the Education Act. Remote possibility for a claim for vicarious liability
10	Swinney v Chief Constable [1996] 3 All ER 449	Police	Details revealing an informant's identity were carelessly allowed to become known	Yes	The nature of the informant/officer relationship gave rise to a duty of care

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11	Stovin v Wise [1996] A.C. 923	Highway	RTA. Bank materially obscured vision. HA had power to get bank removed and had taken steps to do so but not followed them up.	No (3-2)	1. Even though HA decided to remove bank, fact that it was discretionary relevant. No evidence that a decision not to go ahead would have been irrational 2. Pure omission. No statutory provision for private law compensation. In such circumstances common law duty of care would be unusual.
12	Capital & Counties v Hants CC [1997] 2 All ER 865	Fire	(i) A fire officer ordered that a sprinkler system be turned off before the seat of the fire was located. No reasonable fire officer would have done this. (ii) Fire officers failed to inspect premises near an explosion. After they had left the premises did catch fire. (iii) Inadequate maintenance of water hydrants and a failure to locate others led to extensive fire damage	(i) Yes (ii) No (iii) No	Public duty to make provision for efficient fire-fighting services does not produce a private cause of action but where a fire officer increases the risk of damage by his unreasonable actions a private law cause of action does lie.
13	OLL v Transport Secretary [1997] 3 All ER 897	Coastguard	Lyme Bay disaster. Allegation that coastguard owed a duty of care to canoeists	No	Reasoning in <i>Capital and Counties</i> adopted
14	Clunis v Camden & Islington HA [1998] Q.B. 978	Mental Health Services	Supervised patient killed someone. He claimed that HA owed him a duty under section 117 to arrange an assessment of his mental health prior to the attack and that, had they undertaken this assessment, they would have taken appropriate steps to reduce the risk he posed to others	No	No private law cause of action arose.
15	Kent v Griffiths [2000] 2 All ER 474	Ambulance	Ambulance delayed without explanation. C suffered personal injury as a result	Yes	Ambulance response is to a call from a particular individual. It can give rise to a private law cause of action. No policy issues on the facts of this case.
16	Reeves v Commissioner of Police [2000] 1 AC 360	Police	Prisoner committed suicide	Yes Conceded	Described as an exceptional case based on the potential for prisoners to despair by Lord Hoffmann in <i>Gorringe</i> (& Tomlinson)

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17	Goodes v East Sussex CC [2000] 3 All ER 603	Highway	RTA caused by black ice.	No	Clearing of ice not within section 41 <i>Overtaken by statute, new section 41(A)</i>
18	Barrett v Enfield LBC [2001] 2 AC 550	Social Services	C alleged negligent treatment whilst in care of LA	Yes	What was relevant was not that the LA was acting under a statutory power but that it had assumed parental responsibility. The powers might provide the LA with defences to specific allegations but that was a question of fact to be explored at trial
19	Phelps v Hillingdon LBC [2001] 2 AC 619	Education	Educational psychologist employed by LA in pursuance of its public law duties failed to diagnose dyslexia	Yes	As in <i>Barrett</i> what was relevant was not that the LA had provided the psychologist but what the psychologist had done once he entered into a relationship with C. Individual statutes might provide defences but this one did not. Vicarious liability established
20	Re G [2001] 2 AC 619	Education	Failure by teachers to provide a computer which was needed because of G's special needs	Yes	Teachers have a duty to exercise reasonable care and those responsible for them may be vicariously liable.
21	A v Essex CC [2003] EWCA Civ 1848	Social Services	Failure by adoption agency to pass on information to adopters about a child's behaviour. Decision had been made to pass the information but this had not happened.	Yes & no	Decisions as to what information to pass on not justiciable. A duty of care was owed to implement the decision made to pass the information on which the agency had decided should be disclosed.
22	Gorringe v Calderdale CC [2004] 2 All ER 326	Highway	RTA caused/contributed to by the failure to paint a 'SLOW' sign on the road. Allegation that duty under section 39 RTA 1988 to carry out measures to improve public safety gave rise to a private law cause of action.	No	Pure omission. No private law cause of action under section 39 itself and nothing in it which justifies a common law cause of action. Contrasted with the situation if HA 'created a reasonable expectation about the state of the highway' or 'brings a new danger to the road'
23	Carty v Croydon LBC [2005] EWCA Civ 19	Education	Educational welfare officer alleged to have made negligent decisions about C.	Yes but discharged	In this field the duty is to restricted to avoiding decisions that are 'plainly and obviously wrong'.

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24	JD v East Berkshire H.A. [2005] UKHL 23	Social Services	Parents sued on basis of alleged negligence in diagnosing abuse in children	No	Duties owed by health professionals to children but not to suspects including parents because not fair just and reasonable to impose such a duty. <i>Otherwise if parents not suspects Merthyr Tydfil v C [2010] EWHC 62</i>
25	Clarke v Havering BC [2007] EWHC 3427	Highway	C became injured when stepped on a stopcock whilst cutting the verge. HA not liable for failing to cut grass even though done it in the past	No	Not a section 41 case. Mere omission.
26	Jain v Trent H.A. [2007] EWCA Civ 1186	Care Homes	The HA successfully but wrongly applied to get C's licence revoked.	No	Too many questions of policy and not sufficiently analogous to other cases to permit a finding that the imposition of a duty of care would be fair just and reasonable.
27	K v Central & NW NHS Trust [2008] EWHC 1217	Mental Health	C was a patient in the community under a statutory regime when he jumped out of a window sustaining catastrophic injuries. C alleged failure to treat him properly.	Yes	Was sufficient proximity and the imposition of a duty might be fair just and reasonable.
28	X v Hounslow [2009] EWCA 286	Social services	Cs were vulnerable adults injured by others following LA's failure to rehouse them.	No	LA was simply undertaking its statutory duties. No assumption of responsibility to Cs.
29	Desmond v Chief Constable	Police	C's CRB certificate contained damaging allegations which should not have been included on it.	Yes	Distinguished from crime investigation cases and element of proximity could give rise to a duty of care on ordinary principles.
30	Connor v Surrey CC [2010] EWCA Civ 286	Education	C was a headteacher who alleged that the LA had breached its duties to her by failing timeously to invoke statutory powers available to it to disband the board of governors. D argued that the invocation of the statutory power was not justiciable.	Yes	<i>Barnet/Phelps</i> principles apply. In an appropriate case the law will require a LA to use public law powers to discharge a private law duty providing that is consistent with the LA's public law obligations.
31	Yetkin v Newham [2010] EWCA Civ 776	Highway	C injured partly as a result of poor visibility at a central reservation consequent upon shrubs planted by HA growing too large. Alleged duty to cut	Yes	HA had created the situation where visibility was reduced and had a duty at common law to manage it.