

Supreme Court considers the extent of a school's obligation towards its pupils

The Supreme Court's judgment in the case of *Woodland (the Appellant) –v- Essex County Council (the Respondent)* was given on 23 October 2013 following a hearing in July 2013. The case arose from a tragic accident in July 2000, when the Appellant was ten years old. The Appellant was a pupil at a primary school for which Essex County Council ('the County Council') was responsible. The accident occurred during a swimming lesson, which took place in school hours but at a pool which was not on school premises. The Appellant was being taught by a swimming teacher, with a lifeguard in attendance. During the lesson, the Appellant suffered a serious injury to her brain as a result of oxygen deprivation.

The Appellant argued that her injuries were due to negligence on the part of the swimming teacher and lifeguard, neither of whom were employed by the County Council as they worked for a separate organisation. This organisation had a contract with the County Council to provide swimming lessons to pupils in the area.

The Appellant argued that even though the swimming teacher and the lifeguard were not employed by them, the County Council owed her a duty of care and was responsible in law for any negligence on the part of these individuals. The County Council denied this and the case ultimately reached the Supreme Court to make a decision on this issue. The Supreme Court did not decide whether there had been any negligence on the part of the swimming teacher and lifeguard, only whether the County Council could be held responsible if there was.

'Non-delegable duties of care'

The Supreme Court accepted that there are circumstances in which an individual or organisation that delegates work to others ('the Delegator') can be obliged to ensure that this work is performed carefully and where a 'non-delegable' duty of care arises. For example, this can occur where:

- The duty the Delegator owed to the injured person existed due to a relationship which the two had prior to the negligence taking place;
- The duty is a positive obligation to protect a particular type of person against a particular type of risk; and
- The duty is 'personal' to the Delegator, i.e. it remains their duty even though they have delegated the work needed to perform the duty to someone else.

Did the County Council owe the Appellant a non-delegable duty of care?

When giving the Supreme Court's main judgment on the case, Lord Sumption acknowledged that "the courts should be sensitive about imposing unreasonable financial burdens on those providing critical public services. A non-delegable duty of care should be imputed to schools only so far as it would be fair, just and reasonable to do so".

However, the Supreme Court decided that it was fair, just and reasonable to decide that the County Council owed such a duty to the Appellant here and in doing so they emphasised the following factors:

- There was an existing relationship between the Appellant and the County Council which put the Appellant in the County Council's custody or care and it was therefore possible to say that the County Council had assumed a positive duty to protect her from harm.
- The Appellant was a child and was dependent upon the protection of the County Council against the risk of injury.
- The Appellant (and her parents) had no control over how the County Council chose to perform its obligations, e.g. through employees or independent contractors.
- The County Council delegated work that was a key part of the duty which it had assumed towards the Appellant and the independent contractor had exercised the custody and control that the County Council would usually have over her.
- The County Council had delegated its control to someone else to perform part of the school's educational function and it was reasonable that the school should be answerable for the careful use of this control by the swimming teacher and lifeguard.

Nevertheless, the Supreme Court stressed that there are important limitations on the non-delegable duties a school can be said to have. If they have no duty to perform the relevant function but they simply arrange its performance, they will not be liable for the negligence of independent contractors. For example, a school will not be liable for the negligence of independent contractors providing extra-curricular activities outside school hours, such as on school trips during the holidays.

Lucy Wilton

Solicitor

020 8394 6406

Lucy.wilton@russell-cooke.co.uk

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