

Duty of Care revisited – a Step Too Far!

In a “common sense” Judgment which should give refreshing encouragement to local authorities, the Court of Appeal in *Appleby Town Council (ATC) v Glaister* have given fresh guidance on the duty of care in a Judgment handed down on 9 December 2009.

Mr Glaister was seriously injured in 2004 when he attended the Appleby Horse Fair. The Fair dates back hundreds of years, probably to the middle ages. Thousands of travellers or gypsies come to Appleby and the surrounding area at the same time each year for the purpose of showing and selling horses, informal horse racing and “sulky” or carriage racing. Over 40,000 visitors attend the fair each day. A country road known as Long Martin Road was used for the racing and showing of horses. This was outside of the parish boundary of ATC. Members of the public watched this from the grass verges at the sides of the highway. As with all other activities at the fair, this was not an organised event.

Mr Glaister was standing on the grass verge with his wife and daughter, when he saw a loose horse behind him. Someone called for him to take hold of the tether. As he bent down to do this, the horse kicked him in the head and he sustained serious injuries. His wife and daughter alleged that they sustained psychiatric injuries as a result of witnessing the accident and its aftermath.

The original claim against ATC was that the Council was responsible for the organisation of the Fair and it failed in its duty to protect the public from the danger of horses getting loose amongst the spectators. It was alleged that there should have been segregation of the horses from the public and supervision of the tethering of the horses.

Liability was denied and there was a trial on liability only. It was denied that ATC managed or organised the fair. It “simply happened” when the travellers arrived each year. The only land which ATC had any control over was Fair Hill which was used by the travellers, by licence from ATC, as a campsite during the Fair. ATC argued that it owed no duty of care to the Claimants in respect of the acts of another (the unknown horse owner) and it had no power or duty to do anything on land outside of its boundaries.

On the day of the trial, the Claimants abandoned their allegations that ATC was responsible for the management and organisation of the Fair and substituted a further allegation which meant that the only issue was “was ATC under a duty of care to ensure that appropriate public liability insurance in respect of negligent acts or omissions by participants of the fair was in place?”

This was not a claim that ATC itself owed a duty to obtain or effect such insurance but they should have ensured that it was done by way of a condition on a licence for Fair Hill. This therefore became a claim for economic loss.

In the words of the Court of Appeal, the Recorder, wishing to try to secure some compensation for the Claimant, was wrong in law. The Recorder found that:

1. ATC owed visitors to the Fair a duty to take reasonable steps to ensure there was public liability insurance.
2. ATC should have granted a licence for Fair Hill conditional upon such insurance being in place and that a multi agency committee (comprising ATC, Defra, the police, RSPCA, Cumbria County Council as highway authority and Eden District Council) would have effected this.
3. If was fair, just and reasonable to impose a duty of care on ATC to see that such insurance was put in

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place because the risks to public safety were well known and therefore foreseeable and although it was a claim for economic loss, public policy lent towards providing a remedy for losses arising from personal injury.

4. The Court of Appeal unanimously rejected the Recorder’s findings and gave guidance for local authorities, and other bodies, in similar circumstances. The Court ruled that:
 - i) ATC was not the occupier of the land where the accident happened and it did not cause or direct the various activities of the Fair which took place beyond its own boundaries. There was therefore no basis for holding that

ATC owed a duty of care to assume responsibility for those activities.

- ii) ATC owed no duty of care to organise the safe segregation or supervision of horses. It did not owe a duty of care to procure a third party to do so.
- iii) ATC had no duty to see that the activities of others on land which was not its own were safely conducted.
- iv) "The model tenet that you should love your neighbour as you love yourself, and thus protecting from harm which you can foresee he may suffer from a third person's fault, has not been converted into a legal principle." In the absence of a special relationship (e.g. vicarious or occupier's liability) a Defendant cannot be liable to a Claimant for injury caused by the negligence of a Third Party, even if the Defendant could foresee the harm that the Claimant may suffer. In making this statement, Lord Justice Toulson

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- v) This was a novel claim. Although it was stated that the categories of negligence are never closed, the law should develop novel categories of negligence incrementally.
- vi) When deciding whether there is a duty of care the test is usually whether it is "fair just and reasonable" to impose a duty. Lord Justice Toulson considered that "the expression means little more than the Court only imposes a duty of care if it considers it right to do so".
- vii) For a duty of care to arise in a claim for economic loss, there needs to be something particular about the relationship between the Defendant and the Claimant, in relation to some particular transaction or activity likely to have economic consequences for the Claimant such that the Claimant can properly expect to be entitled to rely on the Defendant to safe guard him from

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also said the following which should give reassurance and encouragement to many local authorities – "Many parish, Town or City Councils, County Councils or Regional Authorities try in different ways to encourage and support tourism in their area (by which I do not mean land of which the body concerned is the occupier and therefore under a statutory duty of care to visitors.) In many villages, towns and cities there are annual festivals of one kind or another. They vary in size from a small church fete or village show to big carnivals. I would reject the idea that those bodies, public or private, which try to encourage attendance at such events or undertake some responsibility in relation to them thereby expose themselves to legal liability for the negligence of other bodies participating in the event.

economic harm likely to result from want of care on the part of the Defendant. This is the test as to whether there is a special duty or special relationship. There was no such relationship between ATC and the many tens of thousands of visitors, including the Claimants, who visited the fair.

There was therefore no duty of care on ATC to ensure the placement of public liability insurance or to ensure there was safe segregation and supervision of tethered horses. The Court took care to clarify the duty of care on Local Authorities in such circumstances and Authorities should now be encouraged that a firm stance has been taken to limit such claims.

Hopefully the stable door has been bolted!

If you have any queries regarding this article or other Local Authority matters please contact Stephen Crute, who acted for **Appleby Town Council**.

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