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Liability for Negligence James Goudie QC

- On 6 June 2019 the Supreme Court gave Judgment in Poole Borough Council v G N (2019) UKSC 25
- Case was concerned with whether the Council was liable for what was alleged to have been a negligent failure
- The question was whether it should have exercised its social services functions so as to protect children from harm caused by third parties
- Answer: No

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- The principal question of law raised was whether
 - a local authority, or
 - its employees

may owe a COMMON LAW DUTY OF CARE to children affected by the manner in which the authority

 - exercises, or
 - fails to exercise,

its social functions; and
 - If so, in what circumstances

- The Claimants sought damages for personal injuries
- These injuries were suffered while they were living in the Council's area
- The Claimants argued that the injuries were suffered as a RESULT of the Council's NEGLIGENT FAILURE to exercise its powers under the Children Act 1989 ("CA 1989") so as to protect them from harm, at the hands of third parties

- The Claimants alleged that they and their mother were placed by the Council in a house on an estate in Poole next to a family who, to the Council's knowledge, persistently engaged in anti-social behaviour. The Claimants and their mother became the target of harassment and abuse at the hands of this family, which persisted over a period of several years until they were re-housed
- This included vandalism of the mother's car, attacks on the family home, threats of violence, verbal abuse, and physical assaults on the mother and one of the Claimants
- As a result, the Claimants suffered physical and psychological harm.
- During the period in question, both Claimants were identified by the Council as "children in need", as defined in the 1989 Act, and had social workers allocated to them

The Claimants' Case (2)

- The Claimants initially brought their claim on the basis that the Council had been negligent in the exercise of both its housing functions and its functions under the 1989 Act
- The claim was struck out on the basis that no relevant duty of care towards the Claimants arose out of the statutory powers and duties relied on
- The Claimants appealed in relation to the Council's functions under the 1989 Act only
- The appeal was allowed in the High Court
- The Court of Appeal then allowed the Council's further appeal
- The Supreme Court unanimously dismissed the appeal, on the basis that the Claimants' Particulars of Claim did not disclose any recognisable basis for a cause of action

- The Claimants focussed on Sections 17 and 47 of the 1989 Act
- However, it was accepted that the 1989 Act does not create a statutory cause of action
- Therefore, the question was whether local authorities may be liable for breach of a common law duty of care in relation to the performance of their functions under the 1989 Act

- Lord Reed, Deputy President, with whom the rest of the Supreme Court agreed, said that public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm
- However, they can come under a common law duty to protect someone from harm in circumstances where the principles applicable to private individuals or bodies would also impose such a duty
- An example is where the authority has (i) created the source of danger or (ii) assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation

The Supreme Court's Answer (2)

- The present case was not one where the Council was alleged to have harmed the claimants
- It was one in which the Council was alleged to have failed to provide a benefit to the Claimants by protecting them from harm
- The Claimants' case was that the Council had assumed a responsibility towards them to take reasonable care in investigating and monitoring their position, and that, if such care had been taken, the Council would have exercised its powers under the 1989 Act to remove the Claimants from their home into at least temporary care
- The Council's conduct in investigating and monitoring the Claimants' position did not, however, involve the provision of a service to them on which they or their mother could be expected to rely
- It could not be said that the Claimants and their mother had entrusted their safety to the Council, or that the Council had accepted responsibility
- Nor had the Council taken the Claimants into its care, and thereby assumed responsibility for their welfare
- The Council therefore did not assume a responsibility towards them

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- The Claimants also advanced an alternative claim on the basis that the Council was vicariously liable for negligence by the social workers in its employment
 - There was no doubt that, in carrying out the Council's statutory functions, the social workers were under a contractual duty to the Council to exercise proper professional skill and care
 - The question was whether, in addition, they also owed a similar duty to the Claimants under the law of tort
 - That depended on whether the social workers assumed a responsibility towards the Claimants to perform their functions with reasonable care
 - A defendant may assume responsibility to a claimant where he undertakes the performance of some task or the provision of some service for the claimant with an undertaking that reasonable care will be taken
 - Such an undertaking may be express but is more commonly implied, usually by reason of the foreseeability of reliance by the claimant on the exercise of such care
 - In the circumstances of this case, however, the Particulars of Claim did not
 - Set out any basis on which such an assumption of responsibility might be established at trial

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- Any uncertainty as to whether this case was one which could properly be struck out was eliminated by the further difficulties that arose in relation the Claimants' case that the Council breached its duty of care by failing to move the Claimants from their home into, at least, temporary care
 - In order to obtain a care order under the relevant provisions, it would have been necessary to establish that the Claimants were suffering, or were likely to suffer, significant harm which was attributable to a lack, or likely lack, of reasonable parental care
 - The harm suffered by the Claimants was attributable to the conduct of the neighbouring family, rather than a lack of reasonable parental care. There was simply no grounds for removing the children from their mother