



CN v Poole Borough Council

Executive Summary of the Decision of the Supreme Court Handed Down on June 6th 2019

- ❑ The Supreme Court dismissed the claimants' appeal on a unanimous basis, upholding the striking out of their claims by the Court of Appeal. Lord Reed gave the single judgment with which all the other members of the court agreed.

- ❑ The basis of the judgment is twofold:
 - The council owed the claimants no duty of care at common law in relation to the exercising of its child protection functions with a view to removing them from their mother's care.

 - There was no basis for the claimants' assertion that the council would have been able to remove them from their mother's care even if it had sought to do so.

- ❑ Lord Reed reaffirmed the distinction that was re-emphasised in *Michael v Chief Constable of South Wales Police* and in his own judgment in *Robinson v Chief Constable of West Yorkshire Police* between positive acts which cause personal injury and failures to protect individuals from harm caused by the actions of third parties.
- ❑ On its facts, this case fell into the latter category. No duty of care would therefore be owed unless the case could be found to fall into one of the exceptions to the rule that there could be no liability in negligence for failing to confer a benefit on the claimant: creation of the danger by the defendant, a sufficient level of control over the third party causing the damage, or an assumption of responsibility to the claimant.
- ❑ The council did not create the danger to the claimants by placing them near to the family whose anti-social behaviour caused the damage.
- ❑ There was no arguable assumption of responsibility on the pleaded facts. In contrast with the position of a clinician or an educational professional, a child's parent or guardian did not place reliance on the opinions and actions of a social worker so as to give rise to an assumption of responsibility. The mere operation of the statutory scheme for child protection by the council was not sufficient.
- ❑ In any event, it was not arguable that the council could have obtained a care order authorising the claimants' removal from their mother.

Prepared by Paul Stagg of 1 Chancery Lane, first junior counsel for the respondent council. This executive summary is sent along with a detailed briefing note which analyses the CN litigation and its implications in detail.