The Liability of Schools for Accidents Suffered by their Pupils

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Introduction

1. The Court of Appeal and the High Court have had to consider the difficult question of the liability of schools in respect of the safety of their pupils frequently over recent years.

2. It is probably not surprising that such litigation is generated by the tension between, on the one hand, the expectation that children will be safe at school, and on the other hand, if education is to be as good as it can be, school cannot ever be an entirely risk-free environment, and “children will be children” and will make errors in judgment and cause injury to one another.

3. This article seeks to draw together some of the recent case law and reach some conclusions about the circumstances in which liability will attach to schools arising out of accidents suffered by their pupils, and the nature of the duty of care which is owed.

Supervision

Palmer -v- Cornwall County Council [2009] EWCA Civ 456

4. The Court of Appeal (Waller, Longmore and Richards L.J.) considered the case of a boy who was in the play area of a school at lunch time who was hit in the eye by a rock thrown at a seagull by another boy.

5. The issue in the case was whether or not the boys were properly supervised. Evidence was led as to the ratio of supervisors to pupils and the Court of Appeal said that “it is not possible to say that a certain ratio must be adhered in each and every case; all must depend upon the circumstances and the assessment of risks. But what one can say is that……. younger children need closer supervision than older children, but all need supervision”. In that case one supervisor was left to supervise well over 150 year 7 and year 8 pupils: this was “quite inappropriate”. It also led to one supervisor “only being able to glance occasionally at years 9 and 10 and that left those age groups effectively unsupervised”. The court also considered that to be inadequate supervision of years 9 and 10. The Court considered this to be “clearly negligent”.
6. The Court gave important guidance also as to the approach to be taken as to causation in cases of a failure to supervise. “Since the purpose of appropriate supervision is to deter children from taking part in dangerous activities, as well as to stop dangerous activities if they do occur, a Court should not be too ready to accept that the dangerous activity would have happened anyway”.

7. Accordingly, an important part of the general duty to supervise school pupils is the nearby presence of appropriate adults. That, of course, does not mean that children have to be accompanied and be under the eye of a watchful member of staff at all times, but reasonable arrangements as to supervision must be made. If the staff are stretched too thin and reasonable arrangements are not made and enforced then the argument that “it would have happened anyway” may fail even if an incident was short-lived (with the Defendant’s argument in those cases being that the teacher would not have been able to intervene to stop the incident anyway): the question would be whether the incident, short-lived as it was, would have ever happened at all in the first place had there been proper supervision. A school should be able to justify its supervision levels by reference to evidence, and preferably risk assessments before the event.

*Webster -v- The Ridgeway Foundation School [2010] EWHC 157 (QB)*

8. The Queen’s Bench Division (Nichol J.) had to consider a case in which a year 11 student, the Claimant, had agreed earlier in the day to have an altercation with a younger boy in year 10 at the school’s tennis courts after the school day finished, with the fight to be a “one on one” fight. Unknown to the Claimant, however, the other boy had telephoned his older brother, who had in turn, contacted other friends and relations and boys and adults turned up, three of which adults entered the tennis courts and attacked the claimant, who was beaten around the head with a claw hammer and suffered serious injury. The incident was a very serious nature resulting in prosecution of the persons who set upon the year 11 student.

9. The Court considered that to some extent, at least, the school had a duty to take reasonable care to safeguard and protect the claimant from attack by outsiders. It had a duty to take reasonable care to see that the claimant was reasonably safe during school hours and for a reasonable period after the end of the school day whilst he was still on the school’s premises.

10. It was found that the school was not in breach of duty by failing to construct a perimeter fence which would have kept out the outsiders because there were “formidable obstacles to the construction of a fence”
on the ground in that case, and “the risks and dangers as they were reasonably perceived to be prior to [the incident] were not so grave that the school was nevertheless obliged to overcome them”.

11. Further, it was not negligent to fail to have a staff presence by the tennis courts. The Court accepted the evidence of the teachers who had “given rational reasons for the choice”. “It was within the reasonable range of responses which were open to them”. However, even it were negligent the Court found that it would in fact not have prevented this incident because the tennis courts had been selected for the fight precisely because they were not likely to be seen by staff. The site was enormous and they probably would have chosen somewhere else for the fight if the tennis Courts had been supervised.

12. Further, the Court found that the school was not negligent because of its general disciplinary approach which the Claimant alleged had culminated in this incident. The school was not negligent in its approach to discipline generally.

13. The case accordingly gives some guidance as to the temporal and geographical nature of the duty of care owed by a school: it is at least owed on the school premises, within school hours and for a reasonable period outside of those school hours. Ever-present supervision is not required everywhere. The case also respects the fact that judgments have to be made by informed individuals about how to allocate supervision resources. In that case the Court accepted that the choice was “rational”. It is rather akin in reasoning to the cases of professional negligence of medical professionals. A doctor will not be found to be negligent if he acts in accordance with the views of a respected body of opinion, which are rational, even if some other doctors might have acted in a different way. Provided the decision was reasonably justified, and reasonable resources were deployed, the decision can be defended.

14. Further, the case does reflect the possibility for causation arguments still to succeed. The point made about causation arguments in the context of supervision in the Palmer case is a good point which the lay person can immediately see the merit of. However, it all depends on the facts of the case. In the case such as the Webster which concerned a fight which parties deliberately engineered to occur outside of the gaze of responsible adults causation arguments have much weight on the part of the Defendant because efforts can be made by individuals to escape supervision.

15. The Court of Appeal (Pill, Rimer and Black LJJ) considered an accident at a school gold lesson. On the way to the gold course which the school had made on its grounds one of the boys unexpectedly and out of the blue swung his golf club and struck another boy in the face by accident. The boys had been told not to swing their golf clubs until they were told to do so by the one teacher who was supervising. At first instance the Court had found that the teacher had failed properly to supervise the children because he did not see the golf club swung, and on that basis had not exercised reasonable care and skill. There was no issue about staffing ratio: one teacher was sufficient. On appeal the Court overturned the decision at first instance and dismissed the claim. It was found that “however observant a teacher is, however careful the lookout he is keeping, he could not and could not be expected to see every action of each of 22 boys walking in crocodile fashion as these boys were … the boys were 11 to 12 years old, had had previous golf instruction, were well-behaved generally and on this occasion. The action of [the boy swinging the golf club] was wholly unexpected. I do not consider that [the teacher’s] failure to see the quick and unexpected swing gives rise to a finding of negligence against him. He could not be expected to see every action of every member of the group, wherever he positioned himself”.

16. This case emphasizes again that supervision is a question of judgment and that only reasonable care is required. The mere fact that momentary recklessness was not spotted does not prove negligence. A teacher is not expected to have eyes in the back of his head.

Conclusions on supervision

17. Accordingly, in terms of supervision, the following appears to be the case:

    a. A school does have a general duty of supervision.

    b. The amount of supervision required depends upon the age of the pupils, and no doubt the activities which they are engaging in, but all pupils need some supervision.
c. A rational and defensible decision has to be reached about how to allocate supervision resources. This does not call for supervision of all places at all times, but thought has properly to be given, in advance, about what to supervise, how and why, because that decision may have to be justified after the event.

d. The duty extends throughout school hours, and for a reasonable period after school (and no doubt before school), while the pupils are on the school premises.

e. A teacher can only be expected to exercise reasonable care and skill. He cannot see everything and everyone all at once and cannot be expected to have eyes in the back of his head.

f. Any causation defence will require careful analysis. There are some cases where it can properly be said that an incident “would have happened anyway, even if there had been better supervision”. The Webster case provides a classic example: a deliberately engineered and planned fight on vast premises which could not in their entirety be supervised all the time in circumstances in which the protagonists would have managed to find a place to fight free from the gaze of responsible adults whatever the school had done. On the other hand, however, injuries of a less stark and planned kind can often be prevented by better supervision. A short-lived piece of high spirits or carelessness by children might well be deterred and prevented by a responsible adult simply being nearby. If that is the case, an argument by the school that once the incident got underway it could not have been stopped in time might fall foul of the argument that that misses the point because the whole incident could have been “nipped in the bud” before even its inception.

g. What is clear is that even if the principles can hopefully be stated clearly and concisely, their application in any given case will depend upon the careful analysis of the facts.
Safety of Premises

Simonds -v- Isle of Wight Council [2003] EWHC 2303 (QB)

18. The Queen's Bench Division (Gross J, as he then was) considered the case of 5 year old boy who was at a primary school sports day. The children were well-supervised generally at this event. The claimant's mother came along and sat some distance away from the teachers with her boy. When she was going off she did not actually take the child over to the teacher to hand him over to him but pointed the teachers out some distance away and sent the boy off to rejoin them. She watched him commence his journey and left. Unknown to her the boy then went to play on some nearby swings and managed to injure his arm. An argument of inadequate supervision was rejected by the Court at first instance: the number of teachers was adequate. The Judge at first instance, however, decided liability in the claimant's favour on the basis of an un-pleaded case that the swings should have been immobilised on the grounds that the school knew that the swings could be a hazard and there was simple things that could have been done to immobilise the swings.

19. On appeal it was considered that there was no breach of duty. The Court would not have expected a prudent parent organising a sporting event to have immobilised the swings, anymore than if there had been a tree on the field, the school would have been expected to rope that off too, lest someone climb it.

20. The premises need accordingly to be reasonably safe, but not every conceivable step need to be taken to prevent children from injuring themselves.

Young -v- Kent County Council [2005] EWHC 1342 (QB)

21. The Queen's Bench Division (Morrison J) considered a case of a claimant who was playing football at a youth club held at a school. The football was kicked or thrown up on to the roof of a school building which had a flat roof and a number of skylights and whilst the boy was on the roof to retrieve the ball he fell through the skylight and suffered injury. The school was aware that children did get on to the roof of the building and the cost of preventing access, had they thought about it, would have been very low indeed.
22. The Court treated the matter as a case for the Occupiers’ Liability Act 1984 because the boy was a trespasser. Even though he was lawfully on the school premises, he was in a part of the school premises and doing something which he ought not to have done. The Court considered that the premises did pose a danger and that there were reasonable grounds for believing that children would come into the vicinity of the danger. Further, the school would have known that if children got onto the roof there was a danger that they would hurt or kill themselves. The cost of preventing such an accident was cheap. In those circumstances there was a causative breach of duty.

23. This case reflects the fact that schools and adults generally have to expect children to be less careful than adults and to do things which adults would not be expected to do. Active thought has to be given to the safety of premises and a risk which ought to have been known should not be ignored. In such appropriate circumstances a duty could be owed in respect even of parts of school premises which children should not be in in the first place. Accordingly, whilst the duty is not “wrap up in cotton wool” the children, it is a high burden of safety, probably as the public would expect of those whose care children is entrusted.

**Hewitt v. Hertfordshire County Council 20th July 2011 (QB)**

24. In Hewitt, the Claimant was 13 and during his lunch break was playing at the school’s playing field with his friends. The Claimant’s ball became lodged in some vegetation close to fencing. The Claimant tried to reach up with his hands to recover the ball, having help from his friend who “gave him a boost”. Somehow, the Claimant slipped, or lost his support, and the Claimant’s right hand came into contact with the top of the fencing, which was sharp, causing the Claimant to suffer a significant injury to his hand. The Claimant was aware of the sharp points on the top of the fencing and generally appropriate supervision found to be in place. The Court found that no legitimate criticism could be made on the decision to erect the fence which was intended to deter as well as protect. Accordingly, in the circumstances, a reasonable decision was taken and no breach of duty was found.
Hufton -v- Somerset County Council [2011] EWCA Civ 789

25. In *Hufton -v- Somerset County Council* [2011] EWCA Civ 789 the Court of Appeal (the Chancellor of the High Court, Jackson and Elias LJJ) considered the case of a pupil who slipped and injured herself at school in the assembly hall. There were two means of access to the assembly hall, one of which was through some fire doors which were used as a "convenient shortcut". Access that way was barred when it rained: prefects were stationed to prevent this happening and signs were put out. There was, however, the risk of some water being walked in when it started to rain during a break before the signs were put out and access was barred through the fire doors. The Claimant slipped on water in the hall which had been so walked in.

26. The issue on appeal was whether there was a proper system in place for preventing the hall floor from getting wet and cleaning up water if the floor did become wet. As to the system, which offered a narrow window of opportunity for water to be "walked into" the hall after it started to rain, the Court considered this to be a difficult point. However, "it is *not* possible, and the law does not require, the occupier of premises to take measures which would absolutely prevent any accident from ever occurring. What is required both by the common law and Section 2 of the Occupiers' Liability Act 1957, is the exercise of reasonable care". The Court found that reasonable care was exercised. Further, the Court did "regard it as realistic to say that the school should have had a system in place whereby the small area of water should have been spotted and mopped up during the brief period of time between its arrival and the moment when the Claimant slipped". Jackson L.J. concluded his judgment by saying that "no Judge likes to send away empty-handed a Claimant who has suffered injury in an accident through no fault of her own. But so long as we have fault-based system of compensation, rather than strict liability or universal compensation for accidents on the New Zealand model, this is what Judges must sometimes do."

**Conclusions on the safety of premises**

27. The cases on safety of premises are not entirely easy to reconcile, which no doubt reflects that largely an exercise of judgment is required to decide how these cases will be decided and different people might well reasonably differ on how such cases will properly be resolved. However, drawing together the various strands of the case law, my conclusions are as follows:-
a. Often issues of safety of premises will involve related issues of supervision. Reasonably safe premises can become unsafe to children who are not supervised, and already dangerous premises can become much more dangerous to children lacking adequate supervision.

b. In terms of premises safety, however, the starting point is going to be the standard duties under the Occupiers’ Liability Act 1957 and the Occupiers’ Liability Act 1984, in the case of trespassers.

c. The standard is one of reasonable care, rather than absolute safety. This is borne out by the Simonds (no need to immobilise a swing) and Hufton (not every bit of water can be stopped from getting onto the floor or detected and dealt with prior to an accident) cases in particular.

d. Well-designed and appropriately maintained infrastructure features will not ordinarily attract criticism.

e. However, a school has to expect children to be mischievous, and sometimes reckless and irresponsible. Thought has actively and in advance be given as to what parts of the school premises pupils might try to access and as to the safety of parts of the premises which the pupils are forbidden from entering. Even if an adult might essentially enter such areas “at his own risk”, the same conclusion might not be reached in the case of a child. The Young case is a good illustration of this approach.

f. What is really required is a good rolling process of assessment, inspection and maintenance. Reasonable care, nothing more, but nothing less, is what is called for.
The scope of a school’s duty of care to its pupils – non-delegable?

Woodland -v- Essex County Council [2012] EWCA Civ 239

28. In Woodland -v- Essex County Council [2012] EWCA Civ 239 the Court of Appeal (Laws, Tomlinson and Kitchin L.J.J.) considered the case of a 10 year old child which was sent by the Defendant’s school with her class to a swimming pool run by another local authority where private organisations provided the life guards and swimming teachers. The Claimant suffered serious injury due to oxygen deprivation to the brain. The material issue was whether or not the Defendant owed a non-delegable duty such that it was responsible for the alleged negligence of the private life guard and swimming teachers.

29. The majority found that to recognise a duty as arguable would be a marked extension of the law. An education authority would not be liable to a pupil who was injured outside the school itself, where arrangements had been made with those who are recognised as specialist professional to provide the activity. The school would not be responsible for a failure to exercise due care by a reasonably carefully chosen lifeguard in the presence of reasonably careful swimming teacher.

30. Accordingly, outside of the school there is no over-arching non-delegable duty of care on the part of the school to the children such that the school is liable even where children are properly entrusted to reasonably competent and properly selected contractors. Obviously, this does not absolve the school of responsibility to exercise such supervision as is appropriate and carefully to select contractors but it does avoid the automatic assumption of any kind of “vicarious liability” in relation to such specialist activities.

Conclusions

31. Any case concerning the liability of a school for the safety of its pupils necessitates a close look at the scope of the duty of care and a careful application to the facts. The following are some broad propositions which can be drawn from the case law:-

(a) A rational and defensible decision needs to be taken by the school as to the amount of supervision. If a proper level of supervision is in place, provided that the supervising teacher is paying reasonable
attention, he will not be expected to have eyes in the back of his head. If, however, the duty to supervise is breached, the argument that “it would have happened anyway” may fall on barren ground, in circumstances in which part of the rationale for supervision is to deter irresponsible or dangerous conduct in the first place.

(b) A school has to expect children to be mischievous and sometimes reckless or careless. This also informs the duty of care in relation to the safety of premises. Premises have to be reasonably, rather than absolutely safe, and well-designed and appropriately maintained infrastructure features are unlikely to attract criticism, but active thought has to be given to the design and state of the premises and what the pupils might do on the premises, expecting them to be less careful in that regard than adults might be expected to be.

(c) The duty is the duty which one would expect of an ordinarily prudent parent. As such, a school can delegate certain specialist activities to contractors (such as swimming lessons) without incurring automatic vicarious liability for negligence by contractors. However, reasonable care will have to be shown in contracting and in ensuring that contracted services are carried out safely.

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