X & Y (Protected parties represented by their litigation friend the Official Solicitor) v *London Borough of Hounslow*

An officer of the Supreme Court who acts for people with disabilities (see Senior Courts Act 1981, s 90).

High Court of Justice Queen's Bench Division [2008] EWHC 1168 (QB)

The claimants, X and Y, are claiming damages against the defendants, the London Borough of Hounslow, in the tort of negligence and under sections 6 and 7 of the Human Rights Act 1998. The claims arose out of an 'ordeal' which the claimants suffered in their council flat at the hands of local youths in November 2000 where, over the course of a weekend, the claimants (both of whom had learning difficulties) were imprisoned in their flat and repeatedly assaulted and (sexually) abused (often in front of their two children). This account of the facts is taken from Maddison J's judgment:

Note the date of the incident—compared with the date of trial—2007—and with the final resolution of the case in 2011.

These claims were not revived in the Court of Appeal (at [36]). This is surprising given the decision to appeal to the ECtHR and, ultimately, to settle (which suggests that the ECtHR was expected to have found a violation of the claimants' human rights).

[5]…X said that at one stage the youths confined him and Y to their bedroom, and made them perform sexual acts. They threw many of X's and Y's possessions over the balcony. They forced pepper and fluid into X's eyes. They locked him in the bathroom for a time, in the dark. They made him drink urine, eat dog biscuits, dog faeces and the faeces of one of the youths, threatening him that he would be stabbed if he did not. They made him put a vibrator up his bottom, and then lick it. They sprayed kitchen cleaner in his mouth, face and hair. They slashed him repeatedly all over his body with a knife or knives. Y's statement was to similar effect, adding that she too was made to put the vibrator in her mouth. The children too were abused, assaulted and locked in their bedroom from time to time. Even the family dog was abused. It is unnecessary to go into further detail, or into the physical and psychological injuries suffered by the claimants as a result.

The claimants argued that, amongst other things, the defendant should have foreseen that they were in imminent physical danger at their flat and should have arranged for them to be accommodated elsewhere. The claimants and their family were known to the defendants. Although they lived as a unit in the community, the family was seen as vulnerable and two sections of the defendant's Social Services Department had been engaged with the family prior to the relevant weekend. These were the Community Team for People with Learning Disabilities ('CTPLD') and the Children and Families section ('C & F').

The defendant strongly contested liability. They denied they owed the claimants a duty of care, pointing out that in no previous case had a local authority been held to be under a duty of care to protect vulnerable adults

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from abuse by third parties and that any failings in this regard are only justiciable, if at all, within the forum of public law, and not by way of actions for damages of the kind brought here. Still less, argued the defendant, did it breach any such duty of care: what happened during the relevant weekend was caused by third parties, and was not reasonably foreseeable.

After setting out the background to the case in detail, Mr Justice Maddison turned to the law:

The Law

[84] The liability of local authorities in negligence and under the Human Rights Act 1998 and the European Convention on Human Rights is a complex and developing area of the law. It is perhaps for this reason that I have been referred by Counsel to well over 40 authorities. I have found some helpful, but by no means all. In one of them, *Midland Bank Trust Co Ltd and Another* v *Hett Stubbs & Kemp (a firm)* [1979] 1 Ch 384 at 405B Oliver J said

> I have been led by counsel through a bewildering complex of authorities many of which are not easily reconciled with the principles established in subsequent cases in superior courts or, in some cases, with one another. The task of a judge of the first instance faced with this situation is not an easy one.

That observation, with which I sympathise, has provided some relief and comfort during my trawl of the authorities cited to me. Otherwise, I have not found the *Midland Bank* case helpful.

The Test to be Applied

[85] I first consider the test that should be applied to determine whether or not the Defendant owed the Claimants a duty of care. I have been taken to authorities in which it has been observed that the courts may be prepared to find that a duty of care exists more readily in cases involving injury or damage to person or property than in those involving only economic loss. (See e.g. ***Caparo Industries Ltd*** **v** ***Dickman*** [1990] 2 AC 605 at page 618, per Lord Bridge.) I have also been referred to authorities illustrating that important if not determinative factors in deciding whether or not a duty of care exists may be the assumption by the defendant concerned of responsibility toward the claimant concerned (see e.g. ***Hedley Byrne*** **v** ***Heller & Partners*** [1964] AC 465) or the degree of proximity between the parties (see e.g. *Perrett* v *Collins* [1998] 2 Lloyd's Rep 255 at page 261 per Hobhouse LJ). In the event, I do not need to consider such authorities in any detail because, at the conclusion of the oral argument, counsel appeared to accept that the proper test to apply in this case was the familiar tri-partite test deriving from the ***Caparo*** case referred to above. I agree with this approach. Given that I am dealing, as stated above,

This is true. The 'public bodies' chapter **(Chapter 6)** is one of the longest, and most complicated, chapters in this book.

This is the leading case on establishing a duty of care in *novel* areas of the tort of negligence, that is where existing precedent doesn't settle whether a duty is owed.

It is worth noting here that Sir Anthony Clarke MR in the Court of Appeal did not approach the case in this way. Rather, he adopted the incremental approach (as endorsed by *Robinson* v *Chief Constable of West Yorkshire* [2018]) and sought to develop existing case law that focused on whether the defendants had 'assumed responsibility' for the claimants noting that this claim falls outside cases where the courts have previously imposed negligence liability at ([60]). (see further section 3.3.3)

Essentially what the defendants are arguing is that the court is not in a position to judge or adjudicate on the case—that it falls outside its remit. See further on justiciability **section 6.6.1**.

Establishing a duty of care is the first element of any claim in the tort of negligence.

'per' here means that the principle or dictum is quoted on 'the authority of' (that is, can be found in) Lord Bridge's opinion.

In fact, as the Supreme Court in ***Robinson*** confirms, the court in ***Caparo*** **[1990]** did not seek to set out the general three-stage 'test' described here. See further **section 3.3**.

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with a difficult and developing area of the law, and given that no previous case has established that a local authority owes a duty of care to adults in circumstances such as those arising in this case, I think it right that I should find that a duty of care existed only if I am satisfied that the injury and loss suffered by the Claimants was reasonably foreseeable; that their relationship with the Defendant was sufficiently proximate to warrant the imposition of the duty of care; and that it would be just, fair and reasonable to impose such a duty.

[Maddison J then established that the defendant could be treated as a single entity.]

Was the Injury and Loss Reasonably Foreseeable?

[93] I therefore turn to consider whether the Defendant should reasonably have foreseen the injury and loss which the Claimants suffered. The authorities cited to me establish that the Claimants must show that it was reasonably foreseeable that they would suffer an assault by local youths at their home of the general kind that actually happened; but need not show that the Defendant should have envisaged 'the precise concatenation of circumstances' which led up to the incident (see *Hughes* v *Lord Advocate* [1963] AC 837 at p 853 per Lord Morris) or the precise form the assault would take (see by way of analogy ***Jolley* v *London Borough of Sutton*** [2000] 1 WLR 1082). The fact that the injury and loss resulted from the acts of third parties would not by itself prevent that injury and loss from being foreseeable but it would be reasonable to expect someone to foresee such third party intervention only if it was highly likely or probable (see e.g. *Smith* v *Littlewoods Organisation Ltd* ([1987] 1 AC 241 at p 261 E to G per Lord Mackay of Clashfern).

[94] The chronology of events . . . seems to me to paint a picture of gradually mounting concern about the welfare and safety of the Claimants and their family. It is true that in some respects the Claimants could lead normal lives. It is also true that they were anxious to preserve their independence, to the extent that they sometimes resented and resisted the efforts of the Defendant's Social Services Department to help them. However, the repeated concerns, expressed by Z and the Defendant's own Social Services Department about the Claimants' vulnerability, their ability to keep themselves and their children safe, the unsuitability of their home and the condition in which they kept it, the way in which the children were being looked after, and the suspicion that the children had been sexually abused by others, tell their own story. In addition, there was information from Z that X had been attacked from time to time both in Wandsworth and Hounslow; and although there may have been times when the Defendant regarded Z as a thorn in its side, I see no reason why the information she provided should have been seen as unreliable.

[95] In my judgment, these mounting concerns made it reasonably foreseeable from an early stage that the Claimants and/or the children might in some manner come to some sort of harm. However, despite the number and variety of different concerns and the frequency with which they were expressed, they would not in my judgment be sufficient to satisfy the first of the three ***Caparo*** conditions as explained . . . above. What needs to be asked is whether, and if so when, events gathered pace to the extent that the harm that was reasonably foreseeable changed from harm of a general ill-defined

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This is good example of the 'confusion' as to the effect of ***Caparo*** referred to by Lord Reed in ***Poole Borough Council* v *GN* [2019]**:

'Confusion also persisted concerning the effect of ***Caparo*** until clarification was provided in ***Michael* [2015]** and ***Robinson***. The long shadow cast by ***Anns* [1978]** and the misunderstanding of ***Caparo*** have to be borne in mind when considering the reasoning of decisions concerned with the liabilities of public authorities in negligence which date from the intervening period. Although the decisions themselves are generally consistent with the principles explained in *Gorringe* [2004] and later cases and can be rationalised on that basis, their reasoning has in some cases, and to varying degrees, been superseded by those later developments.' (at [34]).

This aspect of Maddison J's judgment was rejected by the Court of Appeal (at [67]).

In order for the injury to be reasonably foreseeable it must be of the same general kind. This is clarified in relation to the acts of third parties in the next sentence. We discuss issues relating to the establishment of a duty of care for the acts of third parties in more detail in **Chapter 4**.

'Z' is X's mother—now in her 80s.

This seems to suggest foreseeability.

nature to harm resulting from an attack of the kind that happened during the relevant weekend. In my judgment, this development did indeed take place, and the events that made critical difference began early in September 2000. They took the form of the infiltration and ultimately the taking-over of the Claimants' flat by local youths; the development of a state of disorder and then of chaos or near-chaos at the flat; the assault on X at McDonalds; the making of threats to the Claimants; the obtaining of keys to the flat by youths who did not live there; and the reluctance of the Claimants through fear to complain about what was happening to them. That is not to say that the events occurring before September 2000 are irrelevant. Though insufficient by themselves in my view to establish the required degree of foreseeability, they did provide the background against which the events occurring in and after September 2000 could and should have been considered and assessed. [...]

[The judge then went on to detail the incidents of violence and intimidation against the claimants (known to the defendants) between September and November 2000.]

[106]... it was in my judgment reasonably, indeed clearly foreseeable that either or both of the Claimants would suffer a serious physical attack from local youths in their flat. In my judgment the danger of this happening should have been foreseen at the very latest by 7th November when, to the Defendant's knowledge, the prior assaults, threats, infiltration of the Claimants' home, dumping of stolen goods and arrests had been followed by the variety of complaints from neighbours referred to above. However, in my judgment it could and should reasonably have been foreseen by 20th October when Tajinder Hayre's letter of 18th October was received by the Defendant's Housing Department, given what was already known to the Defendant by then.

Was there a Relationship of Sufficient Proximity?

[107] The Claimants having thus cleared the first hurdle, as it were, I consider whether they and the Defendant were in a relationship sufficiently proximate to warrant the imposition of the duty of care. In my judgment they were, for reasons that can be explained comparatively briefly. The Defendant was the Claimants' landlord. More importantly, the Defendant, aware of the Claimants' disabilities, provided social services for them and indeed for their children. [...]

Just, Fair and Reasonable

[108] I therefore turn to consider whether it would be just fair and reasonable to impose a duty of care on the Defendant. It is convenient to begin by considering the scope of the duty contended for. The more widely based this is, the more difficult it might be to argue that it would be just, fair and reasonable to impose it.

[109] Vulnerable though they were, the Claimants do not suggest that the Defendant was under a general duty to protect them from harm. They were living independent lives in the community, and life is not free from risk

However, in order for the claimant's injury to be 'reasonably foreseeable' it must be established that the defendants had (or should have had) *more* than a general awareness that the family might come to some sort of harm. That is, the defendants must have been aware of the possibility of the claimants suffering a serious physical assault.

This aspect was considered by the Court of Appeal (at [91]–[93]) which held that: 'Given our view that there was here no relevant assumption of responsibility or other considerations such as those discussed in the *Gorringe* [relating to statutory duties] and *Mitchell* [2009] cases we have reached a different conclusion on the question whether it would be fair, just and reasonable to impose a duty of care of the kind suggested on the council. We do not think that it would' (at [93]).

This is a point not often acknowledged—the narrower the scope of the duty is (if found), the less likely it is that allowing it will 'open the floodgates' to future claims.

One of the claimants' social workers.

Note the Court of Appeal disagreed with this aspect of Maddison J's judgment.

This essentially allows the court to consider matters of policy etc that might weigh against (or for) there being a duty of care.

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and danger. The Defendant did not purport to provide policing or security services. It would plainly not be fair, just and reasonable to impose such a broadly-based duty on the Defendant.

This is the potential scope of the defendant's duty—it is not a general duty to take care but rather a specific duty to move the claimants to alternative accommodation.

[110] However the Claimants do contend in essence that the Defendant became under a duty to protect them in a particular way, namely by moving them out of their flat and into some form of alternative accommodation at some stage before the relevant weekend. All parties accept that in practical terms there was nothing else the Defendant could have done to prevent the Claimants from being assaulted and abused as they were during the relevant weekend.

[The judge considers arguments as to when the defendants should have moved the claimants out of their flat.]

Compare the view of the Court of Appeal (at [91]–[93]).

[116] . . . if it was not the Defendant's duty to move the Claimants out of the flat long before the relevant weekend, it certainly became their duty to protect them by doing so in response to the developing crisis towards the end of 2000. I accept that submission. I return to my earlier findings that by about 20th October 2000 an attack of the kind that the Claimants suffered during the relevant weekend was reasonably foreseeable, and that the Defendant had the power and the procedures in place to move the Claimants on an emergency basis. Subject to the further discussion below, in those circumstances I would regard it as fair, just and reasonable to impose upon the Defendant a narrowly-defined duty to move the Claimants out of the flat in response to the unusual but dangerous situation which had developed.

Having established that the defendants might owe the claimants a narrowly framed duty to move them out of their flat once the dangerous situation had become apparent, Maddison J then goes on to consider arguments to the contrary.

[117] I now consider whether there are any other features of the case which would suggest that it would or would not be fair, just and reasonable to impose a duty of care. I have borne in mind the absence of any previous decided case establishing liability in similar circumstances. That is not of course determinative of the present case. However, regard must be had to the following dictum of Brennan J. in *Sutherland Shire Council* v *Heyman* (1985) ALR 1, at p 44:

> It is preferable, in my view, that the law should develop novel categories of negligence incrementally and by analogy with established categories, rather than by a massive extension of a prima facie duty of care restrained only by indefinable considerations which ought to negative or to reduce or to limit the scope of the duty or the class of persons to whom it is owed.

This refers to the 'incremental approach' to establishing a duty of care discussed further in **section 3.3.3**.

[118] This dictum has often been cited with approval in the courts of England and Wales, for example by Lord Bridge in the ***Caparo*** case at p 618.

This was one of the appeals in ***D v East Berkshire Community NHS Trust*** **[2005]**.

[119] It is well-established that local authorities may, in certain circumstances, owe a duty of care to children, for example in relation to the investigation of suspected child abuse and the initiation and pursuit of care proceedings (*see JD and others* v *East Berkshire NHS Trust and Others* [2003] Lloyd's Law Reports 552) and in relation to the return of children previously placed in foster care to their natural parents (see *Pierce* v *Doncaster MBC* [2007] EWHC 2968). In the present case the Claimants, though adults, both functioned in many ways like children. No adult of normal intellect and

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understanding was living in their household. The Defendant knew this, and had allocated a social worker to both their cases. In my judgment, the extension of a duty of care to the Claimants would involve a small step rather than a giant leap forward, and would not offend the 'incremental' principle enunciated by Brennan J. This is so particularly since, for the reasons explained above, the duty to be imposed, if any, would be of a very narrow and case-specific nature, and as such would not open the gates to a flood of future claims that would not otherwise have been brought.

[120] I have not overlooked the fact that in the *JD* case it was held by the Court of Appeal (and indeed by the House of Lords on a further appeal) that no separate duty of care was owed to the adult parents of the children concerned; and that a similar conclusion was reached by the Court of Appeal in *Lawrence* v *Pembrokeshire County Council* [2007] 1 WLR 2991. However, the position of the Claimants is in my judgment much closer akin to that of the children concerned in those cases than to that of their parents; and this case does not involve any conflict of interest between parent and child that prompted the refusal of the parents' claims in the cases just cited.

Here Maddison J is distinguishing the facts of *JD* v *Mather* [2012] and *Lawrence* [2007] from those in this case.

Often, as we shall see, it is hard to establish a duty of care when the harm was caused by the actions of third parties (such as the youths in this case)—see **Chapter 4**.

[121] Does the fact that the direct cause of the Claimants' injury and loss was the actions of third parties over whom the Defendant had no control mean that it would be unjust, unfair or unreasonable to impose a duty of care? In my view, it does not. It is clear from the *Littlewoods* case referred to in paragraph 93 above that the actions of such third parties are capable of founding an action in the tort of negligence. The Defendant is protected by the principle that a high degree of foresight is required in such cases.

[122] A further factor which it seems to me can properly be taken into account, though by itself it is not determinative of the issue, is the advent of the Human Rights Act 1998 and its incorporation of the European Convention on Human Rights into domestic law. The authorities appear to show a greater willingness to find the existence of duties of care subsequent to the passing of the Act.

[The judge then looks at two cases by way of example and dismisses the relevance of the defendant's apology to the claimants.]

[126] Accordingly, I find that it would be just, fair and reasonable to impose on the Defendant a duty of care of the kind contended for.

The considerations above only established a *duty*. The second hurdle in every claim in negligence is whether the defendant was 'at fault'. There are two questions that need to be addressed: (1) What is the standard of care required of the defendant? (2) Have they fallen below it?

Breach of Duty

Again the Court of Appeal came to a different conclusion in relation to this: **'If anyone assumed responsibility towards the claimants it was [the social worker] and, in our judgment, if anyone was at fault it was her. In our judgment, it follows from the fact that no such suggestion has been made that it is accepted that [the social worker's] approach was one which a reasonable social worker could reasonably take. It further follows that it is accepted that she could not be in breach of duty because of the principles in *Bolam* v *Friern Hospital Management Committee* [1957]' (at [98]).**

[127] The next question to be considered is whether or not the Defendant was in breach of its duty of care to the Claimants. In the context of this case, the question becomes whether or not the Defendant could and should have moved the Claimants out of their flat before the relevant weekend.

[First the judge considered whether the defendants could have moved the claimants and their procedures for doing so.]

[132] . . . Given my earlier conclusion (which some might see as generous to the Defendant) that an assault of the kind that occurred during the relevant weekend first became reasonably foreseeable on or about 20th October 2000, in my judgment this emergency system was the only one available to the Defendant which could have been deployed to move the Claimants out of their flat before the relevant weekend.

So, the defendants could have moved the claimants out of their flat, which leads to a second question—should they have done so?

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[133] I therefore turn to consider whether the Defendant *should* have invoked the emergency transfer system to move the Claimants from their flat. […]

[137] …I find that the Defendant should have invoked its emergency procedure to remove the Claimants from their flat on or very shortly after 20th October, 2000 but at the very latest on or very shortly after 7th November. The fact that this did not happen in my judgment pointed to and resulted from a lack of proper cooperation and communication between the Social Services and Housing Departments; a failure within those Departments sufficiently to appreciate the gravity and urgency of the situation which the Claimants faced (to which both Z and Tajinder Hayre were doing their best to draw attention); and a failure to give the Claimants' case the priority it deserved.

[138] Accordingly, I find that the Defendant was in breach of its duty of care to the Claimants.

The defendants could and should have moved the claimants out of their flat and so by failing to do so the defendants fell below the standard of care expected of them, that is they breached their duty to the claimants to move them out of their flat once it became reasonably foreseeable that they were likely to suffer a serious physical assault.

Causation

[139] Finally, in the context of the tort of negligence I have to consider whether the Defendant's breach of its duty of care caused the injury and loss in respect of which this claim is brought. I can come clearly to the conclusion that it did. Self-evidently, had the Claimants left their flat before the relevant weekend, the assault of which they complain would not have happened. However, the Defendant has advanced two arguments in this regard.

This is the final element that needs to be addressed. It can sometimes be tricky to establish that the defendant's actions *in fact* caused the claimant's loss or injury. Alternatively, it may be clear that the defendant caused the claimant's injury in fact, but not *in law*—that is, their injury or loss is considered to be too remote. However, here Maddison J deals with causation quickly, rejecting arguments made by the defendants in relation to whether the claimants would have agreed to move or have maintained contact with their eventual abusers. The defendant was unable to establish on the balance of probabilities that the claimants would have been assaulted even had they moved before the relevant weekend (at [141]).

Do the Claimants have a Right of Action at All?

[142] I have thus far assumed that the Claimants do in fact have a right of action for damages based on the tort of negligence. The Defendant submits, however that the Claimants do not. Though it may appear strange to leave this matter until this stage of the judgment, I have done so because it needs to be considered against the background of the matters already dealt with.

Put simply, the defendants are arguing that the claimants ought not be allowed to claim in the tort of negligence (private law) about something which is essentially a public law matter and which has a public law remedy (judicial review). *O'Rourke* [1997] is considered in the context of the tort of breach of statutory duty in **section 14.2**.

[143] Ultimately, it is said on behalf of the Defendant, the Claimants are complaining about the failure of the Defendant to re-house them; and decisions taken by local authorities in relation to the provision of social housing can be challenged only by way of an application for judicial review. In this connection, reliance is placed on the case of *O'Rourke* v *Camden London Borough Council* [1998] AC 188, in which the House of Lords held that the Plaintiff's claim for damages, arising out of the Council's failure to accommodate him as a homeless person pursuant to section 63(1) of the Housing Act 1985, should be struck out. Section 63(1) was part of a scheme involving the provision of social housing for the benefit of society in general, and created no private law duty sounding in damages, but was enforceable solely by way of judicial review.

[…]

[148] …The present case is distinguishable [from *O'Rourke*]. The Claimants were well-established tenants of the Defendant. The Defendant had already exercised its powers as to social housing in relation to the Claimants. Their claim is that they should have been moved *from* that accommodation, and not necessarily into further Council accommodation. Their claim is not based on narrow considerations of housing policy. There is, for example, no

And therefore already had a relationship that the law might recognise.

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complaint that, being literally homeless, the Claimants were wrongly denied housing; or, being already housed by the Defendant, were wrongly placed in a transfer list below competing candidates. Their claim involves both the Housing and Social Services Departments; the interaction between them; and the manner in which these departments together reacted (or failed to react) to information they received about the Claimants' predicament.

[149] Finally, the evidence in and the reality of this case is that, by virtue of whatever statutory provisions, the Defendant actually had in place an emergency transfer procedure which it could have used before the relevant weekend, and which it did in fact use though only after that weekend.

Essentially, the defendant was able to do more than they did.

[150] I therefore regard the Claimants as having a valid cause of action.

This was overturned by the Court of Appeal in 2009. See section 6.7.2.

The Claim under the Human Rights Act 1998

Claims under s 7 of the HRA are *not* claims in tort law. They are public law claims against the state for not ensuring that rights under the HRA are protected. Courts (as public bodies) are obliged under s 6 of the HRA to ensure that all their decisions are HRA compatible. Both claims are considered in more detail in the introduction to the book **(section 1.4)** and in the course of discussion of public body liability (see **Chapter 6**).

[151] In addition to their claim based on the tort of negligence, the Claimants claim damages under the Human Rights Act, 1998 sections 6 and 7. This is on the basis that, in the circumstances already discussed, the Defendant failed to protect them from inhuman and degrading treatment, and to maintain the integrity of their private and family life, thus breaching Articles 3 and 8 respectively of the European Convention on Human Rights.

[. . .]

The claimants (and 'Z', X's mother) took their case to the ECtHR alleging violations of Arts 3, 6, 8 and 13. Though there is no judgment from the ECtHR (the case having been settled), the fact that the case was settled suggests that the ECtHR was likely to have found the UK to have breached the claimants' rights. And if so this, in our view, makes the Court of Appeal's judgment even more unpalatable.

[153] However, I do not think that it is necessary for me to determine the claim, for several reasons. The first is that I have already found the Defendant liable in the tort of negligence. In doing so, incidentally, I have taken into account the impact of the Human Rights Act, albeit amongst many other factors when deciding that the Defendants owed a duty of care to the Claimants. The second reason is that in the course of argument the parties agreed (as do I) that in the circumstances of this case it is difficult to see how the claim under the Human Rights Act might succeed if that based on the tort of negligence failed. If the negligence claim failed, so would the Human Rights Act claim fail. Not having heard full argument on the point, however, it occurs to me that the converse may not necessarily apply. I have in mind that the 1998 Act came into force on the 2nd October, 2000 so that, on my earlier findings, the Claimants could rely on it only in relation to the period beginning on that date and ending on or about 20th October or, at the latest 7th November, 2000. Since I have found that the significant deterioration in the Claimants' situation began in September, 2000 and that developments after that month should have been assessed against the background of what had gone before, the claim in relation to the Human Rights Act is not without its complications. However, for the reasons I have given, I do not think it is necessary to extend any further what is already a lengthy judgment by detailed consideration of this claim.

The claimants win.

Conclusion

[154] I therefore give judgment for the Claimants on the question of liability. Damages have been almost entirely agreed, any remaining issues can be resolved when the court convenes for the handing down of this judgment.

Compensation in the form of money—the primary remedy available in tort law. See further **Chapter 21**.

These were agreed at £97,000 at first instance. At settlement, X and Y each received €25,000, Z received €7,000 and €12,500 were awarded to cover all parties' costs.