

## **West Sussex County Council v Master Lewis Pierce (a child by his litigation friend Mrs Annette Pierce) [2013] EWCA Civ 1230.**

The claimant was a 9 year old boy. He suffered a laceration injury to his thumb when, in trying to punch his brother, he missed and hit the underside of a school drinking fountain. The defendant was the local authority responsible for the school. The appeal considered the duty prescribed by section 2 of the Occupiers' Liability Act 1957.

### **The Trial**

At trial, the judge held that the underside of the fountain had a sharp edge, that the school had not considered what risk the fountain might pose to children, and that no properly considered risk assessment had been carried out. He therefore found the defendant liable.

### **The Appeal**

The appeal focused on the judge's failure to mention the 1957 Act or to apply the proper legal test. He was criticised for making a finding based on the *"the possibility of harm, rather than the reasonable foreseeability of harm"*.

Giving the judgment of the Court, with which the Master of the Rolls and McFarlane LJ agreed, Sharp LJ put the proper legal test in this way:

*"The question which has to be addressed...is whether as a matter of objective fact, visitors to the School were reasonably safe in using the premises, including for this purpose, the water fountain, bearing in mind of course that children do not behave like adults, and are inclined to lark around."*

Her Ladyship answered that question in the affirmative on the basis that the evidence did not establish that the fountain was not reasonably safe. She had inspected it herself, and found that it was not sharp. She considered the possibility that the school might have had the edge bevelled or padded, but concluded there was no duty to do so, reasoning as follows:

*"The School was not under a duty to safeguard children against harm under all circumstances... the School was no more obliged as an occupier to take such steps in respect of the water fountain that it would be in respect of any of the other ordinary edges and corners or surfaces against which children might accidentally injure themselves whilst on the premises."*

Therefore, whilst the Court considered the accident unfortunate, it reversed the judge's finding, and allowed the appeal, holding that the defendant was not liable.

### **Comment**

Whilst each case will always turn on its own facts, this decision may come as a relief to local authorities. Although section 2(3) of the 1957 Act requires an occupier to be prepared for children to be less careful than adults, the

judgment of the Court of Appeal in this case demonstrates that that requirement does not alter the substantive legal test in relation to foreseeability. Sharp LJ's judgment is very clear: the test remains one of reasonable foreseeability, not one of mere possibility.

Isaac Hogarth

29th October 2013