Issue 6 - Public Sector

AWARE

Keoghs
a Davies business

Contents

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Welcome

Welcome to our latest edition of Public Sector Aware, where Keoghs' Public Sector team brings you the latest legal, legislative and sector-focused developments shaping policy and practice across local government and public services.

This issue covers a broad and timely range of topics, not least the Government's proposal to introduce a standalone offence targeting Child Criminal Exploitation as part of the new Crime and Policing Bill (Anna Churchill).

We also provide a Highways Update from Michael Davies and examine the recent case of Khambra & Others v Harrow LBC [2025], considering its practical implications for authorities thanks to Chris Wilson.

Our team takes a closer look at the growing concern around expert and solicitor misconduct in Housing Disrepair Claims (Rebecca Gargan), while our risk specialists offer seasonal guidance on occupier responsibilities as winter approaches, with a refresher on the Occupiers' Liability Act 1957 (Max Hobbs). Nicola Markie also explores Government reforms aimed at removing the presumption of parental involvement in family proceedingsan important shift intended to strengthen protections for children at risk of harm.

Finally, Paul Edwards rounds up the latest position on costs, helping practitioners keep ahead of key changes and procedural trends.

We hope you found this edition and also our Public Sector monthly webinars insightful and useful in navigating the evolving public sector landscape for both you and your teams.
We look forward to hosting you again in 2026.

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Government proposes specific Child Criminal Exploitation legislation in Crime & Policing Bill

Author:
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What is child criminal exploitation?

The Crime & Policing Bill had its second reading in the House of Lords in October 2025. Within this, the Government has proposed specific legislation targeting child criminal exploitation. Following the second reading, the Children's Commissioner has criticised the much needed legislation, pointing to loopholes that are likely to be exploited by perpetrators.

Child criminal exploitation (often referred to as 'CCE') is the exploitation of children from criminal gain; occurring when an adult uses a child to commit crimes for them. Often, the perpetrators of these crimes are members of gangs or organised crime organisations and the victims are vulnerable children. Often, perpetrators groom and exploit children into committing crimes so as to avoid detection and/or conviction for themselves or other adult members of the gang.

Child criminal exploitation is particularly complex as the victims often do not view themselves as such and may believe they are carrying out the criminal acts of their own volition. The children involved therefore often face punishment instead of support and are themselves criminalised.

As there is no statutory definition of child criminal exploitation and no specific crime at present, it is difficult to obtain data about how widespread it is. However current estimates show that between 2023-2024 14,500 children were identified as at risk of or involved in child criminal exploitation. However, due to the very nature of child criminal exploitation many victims will not be known to authorities so this figure is likely to be under estimated.

The proposals in the Crime & Policing Bill

The Government's Crime & Policing Bill was first introduced to the House of Commons on 25th February 2025. The second reading in the House of Lords took place on 16th October 2025 and the committee stage begins on 10th November.

Part 4 of this Bill provides the new legislation regarding child criminal exploitation. It will create a standalone offence of child criminal exploitation which will make it a crime for an adult (defined as anyone over 18) to use a child (who is under 18) to commit crime or to engage in conduct toward the child with the intention of causing them to commit a crime. Conviction will carry a maximum penalty of 10 years imprisonment, a fine, or both.

Furthermore, the Bill introduces child criminal exploitation civil preventative orders, to prevent exploitative conduct from occurring or reoccurring. These orders give the Court powers to restrict the actions of a person who is at risk of committing or recommitting child criminal exploitation where such an order is necessary to protect children. For example the Court could impose restrictions on an adult from contacting certain individuals or attending a specific address. Breach of this order is a criminal offence carrying a maximum penalty of 5 years imprisonment. Such orders are available at the conclusion of criminal proceedings regarding the offence of child criminal exploitation or without a criminal trial, on application by the Police.

The Secretary of State also has the power to produce statutory guidance in support of the new offences and to ensure consistency in the application of the legislation. Chief Police officers and the NCA will have a duty to have due regard to this guidance.

Criticism by the Children's Commissioner

Dame Rachel De Souza, Children's Commissioner, has welcomed specific legislation to deal with child criminal exploitation due to its growing prevalence and concerns regarding the criminalisation of victims. However in a response to the Bill on 16th October 2025, she criticises the legislation in its current form.

A particular concern is that the new offence allows a perpetrator to escape conviction if the child is over 12 and the perpetrator 'reasonably believed' they were an adult. This provides a Defence to an offender who can claim that they believed the child was older than they were.

The Children's Commissioner is concerned that this results in similar issues as those that arise in child sexual exploitation cases, where perpetrators often allege that they believed the child was over 16, and in doing so can avoid prosecution for sexual offences against the children they have groomed. Furthermore, there is a risk of victim blaming – if the perpetrator uses the child's behaviour and/or looks to suggest that they felt they were an adult and therefore avoid conviction.

She calls for national strategy and statutory guidance on child criminal exploitation, bringing together Police, social services, education and health.

Keoghs comment

It is clear that any legislation and strengthening of laws surrounding child criminal exploitation is necessary and positive for vulnerable victims. However, there is an opportunity to close the loopholes seen in relation to child sexual exploitation convictions and it would be a shame for this new legislation to simply bring child criminal exploitation into line with child sexual exploitation and miss the opportunity to further protect vulnerable children.

The Bill is listed for committee stage starting 10th November 2025. Keoghs await developments and the final stages of this Bill with interest.

Highways update

Author:
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Robertson v Cornwall Council

King's Bench Division, 06.11.24

Facts

The claimant was an experienced cyclist who was riding on the A3047 near Redruth on 20 May 2018. He intended to leave the carriageway and join an adjacent cycleway, which was to the nearside of the road. The access between the road and cycleway was not completely flush to the ground. Instead, the claimant had to ride over a slightly raised kerb in order to join. As he crossed the kerb, he lost control and fell off, sustaining injury. He was rendered unconscious and had no memory of what caused him to fall off.

The claimant's wife had been riding on ahead of him and said she 'wobbled' as she went over the kerb. She did not see the claimant's accident but heard it.

The kerb resulted from cycleway works that had been completed 6 months previously. The defendant authority, Cornwall Council, had carried out a Road Safety Audit (RSA) a few months before the accident and had identified the kerb and other similar kerbs as a hazard to cyclists, the level of risk depending on the angle of approach, speed, the type of bicycle, and the weather conditions. The RSA recommended that measures were taken to ensure suitability for cyclists approaching at an angle. On 30 April 2018, a matter of weeks before the accident, the council had resolved to make the access to the cycleway flush, but these works were not completed until August 2018.

The council's own witness admitted in cross-examination that cycleways should be designed so that access points were flush with the adjoining road.

There was no evidence of the size of the kerb upstands other than photographs, and no measurements. The upstand was not uniform – in the middle of the access point, the height was much lower than at the edges. There was no evidence of any objective standard applying to such kerbs either.

The trial judge, HHJ Carr, found that the claimant had not proven that the accident was caused by the kerb. He also found that, despite what the council's witnesses had conceded, not all of the kerb was dangerous. In order to make a finding of dangerousness (breach of duty) he said he would need to know where the claimant crossed the kerb, and he did not have the evidence to do that. The claim was therefore dismissed.

The claimant appealed to the High Court, arguing that the judge was wrong and that his reasoning was insufficient.

Judgment

The appeal was dismissed by Mr Justice Linden. While HHJ Carr was probably wrong to have found that the accident was not caused by the kerb (it not being necessary for the claimant to prove the precise mechanism of the fall), the trial judge was justified when he found that not all of the kerb was a hazard. The trial judge was therefore entitled to find the claimant had not proven the accident was caused by a hazardous part of the kerb. The fact of the accident did not necessarily mean it must have been caused by a dangerous part of the kerb.

Keoghs Comment

The case was not decided under section 41 of the Highways Act 1980 – the kerb not being out of repair and issue of 'layout' not being within the scope of section 41. Rather, the issue was misfeasance in the construction of the kerb.

However, the decision may be of use in section 41 cases as well. The need for a claimant to prove that it was a dangerous part of the highway which caused the accident is sometimes not fully explored in section 41 cases, it instead being assumed by the court on the balance of probability that this would have been the case. For defendants this may be an issue which is best left to cross-examination at trial, since raising it beforehand (for example via a Part 18 request) would forewarn the claimant.

To give an example, if you have a paving slab which is raised at one corner, to a dangerous level, the trip height may still reduce to nil, further away from the corner. Does the pedestrian who trips and falls have to prove that it was the dangerous corner of the paving which caused the trip? Or would in those circumstances the entire paving slab which needed repair be treated as a breach of section 41?

It is also noteworthy that despite the council's witnesses saying the kerb at the access should have been flush with the road, in the absence of any evidence of a published standard requiring that, the court did not find that this was a necessity. It should be remembered that the court is applying an objective standard in such cases and failure by the authority to comply with its own policies is not necessarily fatal to defence.

The claimant's application for permission to appeal in this case was refused by the Court of Appeal on paper in April 2025.

The Bill is listed for committee stage starting 10th November 2025. Keoghs await developments and the final stages of this Bill with interest.

Remiszewski v Gloucestershire County Council

County Court at Gloucester, 10.01.2025

Do all highway kerbs have to be maintained to the same standard of safety for pedestrians? That is a question which highway maintenance managers may often ponder. This case may provide some guidance for them.

Facts

Mrs Remiszewski was walking north along the footway at Evesham Road, Cheltenham on 29 June 2019. Evesham Road has a junction with a side road, Wellington Road, which the claimant had to cross to continue her journey. She stepped down from the footway on Evesham Road using the tactile dropped kerb crossing point and started to cross the carriageway of Wellington Road.

Rather than continuing straight over at the crossing point, the claimant moved quickly to her right, in order to avoid a motor car which was being driven around the corner at speed from Evesham Road. This meant she was a short distance away from the dropped kerb crossing point as she reached the other side. To the right of the dropped kerb (from the claimant's direction of travel) was a tarmac surfaced area and to the right of that, a grass verge.

The kerbstones between the verge and the carriageway in that position had several issues. One kerb was sloping down from left to right; there was a gap between that kerb and its neighbour to the right; and the kerb to the right had rotated towards the road so it could not be safely stepped on. As the claimant stepped up onto or over these kerbstones, she tripped and fell, sustaining injury.

It was the claimant's case that one or more of the kerbstones were dangerous and amounted to a breach by the defendant highway authority, Gloucestershire County Council (GCC) of its duty to maintain the highway under section 41 of the Highways Act 1980. The claimant suggested that an important part of the context was that there was an open public park immediately to the north of Wellington Road, which meant that pedestrians coming from there would choose to cross Wellington Road at any point, not just at the tactile dropped kerb. She said that the accident point should be regarded as on a pedestrian traffic route.

GCC disputed causation but also argued that in the circumstances of this case, the kerbs were not dangerous so as to amount to a breach of the section 41 obligation. When reported, GCC repaired the kerbstones on a Category 1 basis. They said that kerbs in pedestrian areas may be expected to be uniform/level but that a high standard of maintenance should not apply to kerbs which are adjacent to grass verges.

Judgment

The claim was dismissed.

Despite the claimant not being clear about precisely which feature had caused her to fall, His Honour Judge Ralton accepted that the claimant had tripped on the rotated kerbstone. However, he found that there was no real source of danger to pedestrians and therefore no breach of section 41. He rejected the claimant's case that this location of the fall should be regarded as a pedestrian area. He found that the highway authority could not be expected to maintain the area to a higher standard on the basis pedestrians may choose to cross there.

Despite the defects apparently being longstanding, HHJ Ralton went on to say that if he had found there was a breach of section 41, he nevertheless would have held that GCC succeeded with its section 58 defence. Among other things, this was because GCC could not reasonably have foreseen the kerbstones were likely to cause a danger to pedestrians.

Keoghs Comment

This is not a particularly surprising outcome on the facts, but it is still a useful reminder that not all kerbs will be regarded in the same way for the purpose of dangerousness. While GCC must be taken to have known that some pedestrians might cross at that same point, this would be very few compared to those using the dropped kerb crossing. An important feature is that there was a grass verge on the other side of the kerb rather than a paved footway. If the verge had not been present, the outcome may have been different.

The alternative finding that the section 58 defence would have succeeded is more problematic. If there had been a breach of section 41 – requiring reasonable foresight of harm – the writer does not see how it can be said that GCC could not have foreseen that the kerbstones were likely to be a danger to pedestrians (it being accepted that the defects were longstanding).

Finally, credit to HHJ Ralton for his inclusion in his judgment of a photograph of the site, which greatly assists understanding of the locus. The location is also easily identifiable on Google Street View, including historic imagery from June 2019 – the month of the accident.

Braithwaite v London Borough of Lewisham

King's Bench Division, 02.04.2025

Facts

The claimant was a motorcyclist who was riding along Dorville Road, London on 20 March 2019, during the hours of darkness. It was not an area he was familiar with – his usual route had been blocked by an accident. He made a last moment decision to turn right into Leyland Road, which was a one-way street. As he did so, he hit a 75mm kerb, causing him to fall off. The kerb formed part of what was described as a 'build-out' constructed at the mouth of Leyland Road. The claimant had not seen the kerb of the build-out until he was about to hit it.

The build-out had been present around 2000, when Leyland Road had become one-way. It extended over half of the mouth of Leyland Road, thus restricting its usable width for motorists. It had granite kerb surrounds, which contrasted with the tarmac in the road surface and made the build-out more visible; and there was adequate lighting in the area. The Give Way line markings at the junction of the usable part of Leyland Road had faded. At the time of construction there were wooden bollards situated on the build-out, but these had disappeared by the time of the accident.

There were two conventional blue/white illuminated one-way street signs at either side of the entrance to Leyland Road, but the right-hand sign was not situated on the build-out itself but on the corner of Leyland Road (as though the build-out was not present). Sometime after the accident, the right-hand one-way sign was moved so that it was positioned on the build-out.

The expert evidence in the case found that the build-out complied with all applicable regulations relating to traffic-calming measures. The signage and road markings similarly were compliant. The experts differed mainly about how visible the build-out was at night.

The claimant nevertheless argued that the build-out was a hazard and insufficient steps had been taken to highlight it.

The trial judge, HHJ Saggerson, found that the build-out was no more hazardous than any other sort of traffic calming measures to be found, including some that the claimant had already negotiated on his journey. The accident was caused by the claimant riding too fast at 30mph (in a 20mph area) and not slowing down sufficiently as he made his last-minute decision to turn right. The judge noted that there was only hearsay evidence of minor, unreported accidents taking place in the nearly 20 years since the build-out was constructed. He found no breach of duty and dismissed the claim.

The claimant appealed on the basis that the judge should have found that the build-out created a trap for those not familiar with the area. It was asserted on his behalf that he was misled by the positioning of the right-hand one-way sign. He also argued that the faded road markings and absent wooden bollards meant the judge should have found a breach of section 41 of the Highways Act.

Judgment

The claimant's appeal was dismissed by Mr Justice Cotter.

Dealing firstly with the odd positioning of the right-hand-side one-way sign, the problem for the claimant was that the judge made no finding that he was in any way misled by it. It was not mentioned in his statement.

Similarly, clearer road markings and wooden bollards would not have affected the accident on the judge's findings; and it is well established that there is no duty under section 41 to maintain road markings.

Interestingly, Cotter J did find that the judge had erred slightly, in that he had found that the defendant highway authority only had to take account of the reasonable, careful motorcyclist. Instead, the trial judge should also have considered the less careful motorcyclist. But in the view of the appeal judge, the lack of care which the highway authority might reasonably have taken into account was mere inattention. If the claimant's only failing had been inattention, he probably would have seen the kerb and avoided it. The highway authority did not have to take account of motorcyclists who were not only inattentive but who were substantially exceeding the speed limit and ignoring other traffic calming measures like the speed humps on the Dorville Road.

Cotter J said that this combination of factors rendered the claimant's riding unforeseeable. If the trial judge had applied the higher standard, he would have reached the same conclusion, that there was no breach of duty. He noted that under the relevant traffic calming regulations, there is no requirement to warn of the presence of traffic-calming features (including build-outs) in a 20mph zone.

Keoghs Comment

The locus is difficult to fully appreciate from the descriptions given and it is a case which might have benefited from a photograph being incorporated into the judgment. However, it too can readily be seen on Google Street View.

The absence of real evidence of previous accidents, despite the build-out having been present for nearly 20 years, is quite an important part of the context. The claimant seemingly did not attract much sympathy from the trial judge, having initially said he was riding at 30 mph, reducing that later, perhaps after learning that the speed limit was 20mph.

The claimant's assertion that the fading of the road markings was relevant to section 41 is highly surprising, given the clearest possible case law in this area.

Cotter J's comment that the relevant regulations do not require warnings of traffic calming measures, when situated in a 20mph zone, is interesting. Presumably, he was just making the point that traffic calming measures are not regarded as significant hazards when the speed limit is 20 mph. It is important to understand that the regulation cited applies only to 20 mph zones, which are different from other roads that happen to have a 20mph limit. The locus in this case was not a 20mph zone.

The claimant applied for permission to appeal in the case, but permission was refused on paper in September 2025.

Morriss v London Borough of Hillingdon

King's Bench Division, 21.04.2025

Facts

The claimant was riding his motorcycle along Falling Lane, Hillingdon, at around 5.30pm on 10 September 2019. This was an A-road. This was the claimant's route home from work, and he had been riding it for about the previous 8 months. He approached a right-hand bend and then lost control of his machine, crashing into a fence at the nearside edge of the carriageway. Sadly, he required amputation of an arm as a result.

His pleaded case was that the accident was caused by one of two manhole covers in the highway which were about 75cm apart. These were owned by the water authority but, in accordance with well accepted principles, were still the highway authority's responsibility under section 41 of the 1980 Act.

The gist of the claimant's claim was that the second cover, MH2, was dangerously slippery, amounting to a breach of the council's maintenance obligation in section 41. According to the claimant, this was because it was badly worn and polished, such that the patterned surface was insufficiently raised. The claimant also interestingly relied on the presence of the nearby fence on the nearside of the road, constructed using steel sections for support, which he suggested meant that there was a risk of serious injury if someone did happen to lose control on the bend.

Given the serious nature of the case, both parties had expert highway engineering evidence. The claimant's expert opined that the cover was dangerous at the time and that the site was the most dangerous he had ever assessed on a distributor road, though both he and the council's expert had the disadvantage of both covers having been replaced before they visited.

The council said that they assessed the manhole covers soon after that accident and found that they were not significantly slippery or worn and no remedial works were necessary. They did cause a section 81 notice to be issued to the statutory undertaker responsible for the allegedly offending cover, the water authority, but this referred to the cover being loose, not that it was slippery.

Falling Lane was the subject of periodic driven inspection, which included looking out for the presence of deteriorated manholes. Monthly inspections before and after the accident detected no problem with the cover, so they relied on section 58 in the alternative. The council also finally disputed causation, noting that the claimant had initially been inconsistent about which wheel of his motorcycle slipped out when on the manhole, among other discrepancies.

Judgment

The claim was dismissed by Mr Douglas-Jones KC.

Firstly, there was no breach of section 41. The judge accepted the council's evidence that the cover was not slippery or significantly worn, though he was critical of the statement of the council's witness who carried out the inspection following the report of the accident, as he had not included in his statement how he examined it (by running his hand over it).

The absence of other accidents despite high levels of public usage (18,000 vehicles per day) was important as well. The judge strongly rejected the claimant's expert's view that it was the most dangerous site he had ever assessed.

The judge found in the alternative that the council's section 58 defence had been proven.

Finally, the judge also concluded he could not accept that the loss of control was the fault of the cover, which the claimant blamed. He relied on several factors, including the claimant's inconsistency about which wheel of his machine lost traction.

Keoghs Comment

Another unsurprising outcome on the basis of the evidence which the judge described. While it is well established that worn and slippery manhole covers are capable of being within section 41, one difficulty for claimants is that there is little in the way of guidance about what constitutes an unacceptable condition for such covers.

The council's multiple inspections – all finding no serious fault with the cover, including one physical assessment by touch – were important.

To have a better chance of succeeding, it might have been necessary for the claimant to have the cover assessed by an expert. The implicated cover was not replaced until April 2021, more than 18 months after the accident, so there may have been sufficient time for expert assessment.

The section 58 defence understandably does not receive much analysis in the judgment but it is worth noting that the inspection vehicle was being driven at 25mph. In Day v Suffolk County Council , the Court of Appeal did not interfere with the trial judge's finding that 25mph was too fast for an effective inspection. However, in the Day case there was no expert evidence, and such evidence would likely have shown that 25mph was a reasonable speed, depending of course on the class of road. As the burden is on the council to prove its section 58 defence, careful attention should be paid in evidence to the speed of driven inspections.

Karpasitis v Herefordshire County Council

Court of Appeal – 21.06.2025 (UPDATE)

The High Court trial result was explained in a previous edition of Public Sector Aware. The claimant was a cyclist who left the path he was riding on in order to overtake a jogger. He rode onto the adjacent verge but unfortunately there was a large hole present, which caused him to fall off and sustain serious injury.

The defendant highway authority had succeeded with its section 58 defence in the High Court, in circumstances where the highway inspector was not present at trial (apparently because he had retired, though he had signed a witness statement).

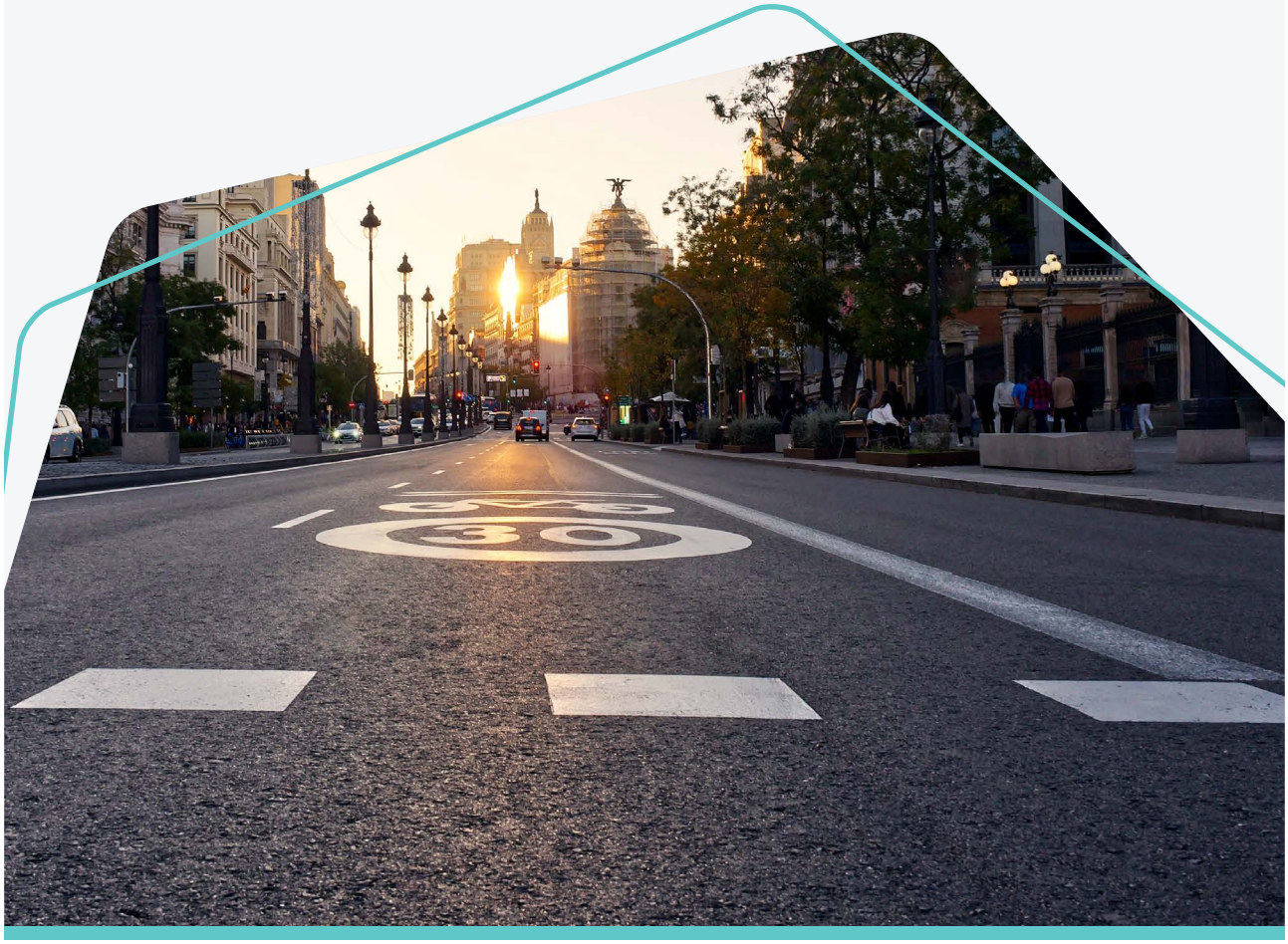
The decision however was reversed by the Court of Appeal and the judgment given in the claimant's favour.

The result largely turned on the manner in which the evidence emerged at the trial and the case is therefore not significant regarding principles of highway law.

The most interesting aspect is that the Court of Appeal relied on GPS tracking data from the highway inspector's vehicle, which seriously undermined the case expressed in his witness statement, that he had done a walked inspection of the verge where the accident took place. The trial judge had discounted the GPS information.

The GPS data suggested the inspector's vehicle had only stopped for 3 minutes on the day of the inspection. Without the inspector present to give evidence at trial to account for this discrepancy (and his absence being for no good reason), the section 58 defence 'unravelled', according to the Court of Appeal.

The position has always been that retirement of key witnesses is not a good enough reason for their attendance at trial to be excused, according to the courts. This is all the more important in section 58 defence cases, where the burden is on the highway authority. The Court of Appeal also emphasised the importance of contemporaneous documentary evidence (the GPS information) in any fact-finding exercise at trial.



Khambra & Others v Harrow London Borough Council & Others [2025] EWHC 2083 (KB)

On Wednesday 29 October 2025, Mrs Justice Foster handed down a judgment in the case of Khambra & Others v Harrow London Borough Council and Others [2025] EWHC 2083 (KB). Christopher Wilson, Partner in the Keoghs abuse and public sector team, considers the judgment and its implications.

Author:
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Partner

Background

The case concerned an incident involving a psychiatric patient, C3, who was assessed by Approved Mental Health Professionals (AMHP), but not detained, under the Mental Health Act 1983 (MHA). C3 later attempted to murder his mother, C1, resulting in serious injuries to C1 as well as C2, a close family member. The claimants alleged that the defendants (D1 – a local authority; and D2 – an NHS Trust) owed them a duty of care and breached statutory and human rights obligations by failing to detain C3

Key Legal Issues Considered

The claimants argued that D1 and D2 owed a common law duty of care to C1 and C2 due to the foreseeability of harm and the alleged assumption of responsibility by the professionals involved.

Claims were brought under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), and 8 (right to private and family life) of the Human Rights Act 1998 (HRA), on the basis that the authorities had failed to protect the claimants from foreseeable harm.

The defendants sought strike-out or summary judgment, relying on Section 139 of the Mental Health Act 1983 (MHA), which requires leave of the court to bring proceedings against professionals acting under the Act unless bad faith or lack of reasonable care is shown. The claimants had not, in this case, sought leave prior to issuing proceedings.

Court's Conclusions

1. The court agreed that the claims fell within the scope of Section 139 MHA and therefore required the court's leave to pursue proceedings. As a matter of fact, the claimants had not sought leave pursuant to section 139 and the court found no sufficient basis to grant leave in any event, as the professionals acted in good faith and with reasonable care.

2. The AMHP and clinicians were performing statutory roles and not engaging in a therapeutic relationship akin to a doctor-patient duty, and thus they had not assumed responsibility in a way that would give rise to a duty of care.

3. The threshold for Article 2 and 3 claims was not met. There was no real and immediate risk to life known to the authorities, nor was the treatment of C1 and C2 inhuman or degrading. C3's claim was also struck out on the basis that as the person committing the attack, he could not be said to have suffered ill-treatment.

4. The court struck out the claims and granted summary judgment in favour of the defendants.

Keoghs Comment

The High Court's decision in Khambra & Others marks a further potentially significant development in the legal landscape surrounding public authority liability, in both mental health contexts and beyond. Building on the restrictive approach to duty of care and assumed responsibility established in CN v Poole [2019] UKSC 25 and reaffirmed in HXA/YXA [2023] UKSC 52, the court confirmed that professionals acting under statutory powers do not automatically assume a duty of care to third parties, even where harm may be foreseeable, and thus extends the principles established in CN and HXA/YXA beyond the actions of social workers. Therefore, the judgment essentially reflects broader policy concerns about the expansion of liability in local authority contexts and underscores judicial caution in imposing legal duties on such professionals that could deter them from making difficult decisions in complex and high-pressure environments.

In terms of human rights, the claimants' arguments under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), and 8 (right to private and family life) of the Human Rights Act 1998 were rejected on the basis that the threshold for such claims is high, requiring a real and immediate risk to life or treatment that meets the standard of inhuman or degrading conduct. This provides useful guidance and clarity for defendants.

Finally, the judgment also serves to remind us of the protective role of Section 139 of the Mental Health Act 1983, which not only acts as a procedural safeguard for professionals operating under the Act, but also acts as a shield for local authorities against unfounded or opportunistic claims.

It remains to be seen whether the claimants will seek to appeal the decision.

The Question of Expert and Solicitor Misconduct in Housing Disrepair Claims

Author:
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File Handler

Housing disrepair claims are becoming more and more high-profile, both in relation to the volume of claims but also in the reporting of conduct concerns in respect of both solicitors and experts. Claims rose by double digits in 2024 and have shown no signs of slowing in 2025.

Recent regulatory scrutiny from the Royal Institution of Chartered Surveyors (RICS) and the Solicitors Regulation Authority (SRA) paints a stark picture: misconduct is fuelling a claims epidemic, with potential fraud diverting funds from genuine repairs and hitting landlords and their insurers hard.

At the epicentre are surveyors doubling as expert witnesses, whose reports often form the backbone of disrepair litigation. The RICS's April 2025 Practice Alert flagged a surge in unethical conduct, from 'copy-and-paste' reports using pre-populated templates that bypass independent inspections to falsified qualifications, inflated repair costs, and fee arrangements that are demonstrably tied up to the outcome of the case. An example is that defence solicitors have reported that it is common for surveyors to report that damages exceed £1,000 by just a few pounds to push the claim into the fast track where legal costs are more likely to be recovered. Further, it is not uncommon for an expert to be paid a different fixed fee dependent upon whether the expert is of the opinion that damages exceed £1,000.

Surveyors report a 'carousel of concerns':

unqualified practitioners dodging court appearances, biased opinions accusing landlords of legal breaches without evidence, and conflicts of interest from solicitors repeatedly instructing the same experts, creating financial dependencies that compromise impartiality. With Awaab's Law now mandating swift responses to hazards like damp (effective October 2025), the impact of such practices will potentially grow when the window for testing and challenging the veracity of claims is limited.

The RICS has now backed up their earlier practice alerts by launching a consultation on an updated expert witness standard. This will be the RICS's first major update of the standard since 2014 and it is noted that while the revised standard is not just in respect of housing disrepair claims, the launch of the review stated that: "this consultation builds on RICS April 2025 practice alert to remind members of their obligations in expert witness work especially in housing disrepair cases. The updated standard offers a longer term framework to support professional excellent in all expert witness practice and protects the integrity of the wider profession".

Compounding the issue is solicitor misconduct in high-volume claims mills. The number of firms handling these types of claims has increased as they attempt to generate fees in an area where fixed recoverable costs are not yet applicable. The SRA's August 2025 thematic review reveals 95 open investigations into 76 firms believed to be handling about 200,000 disrepair cases, spotlighting non-compliance in client acquisition, funding, and advice. In housing disrepair claims specifically, solicitors are accused of 'unhealthy connections' with surveyors, pushing marginal cases via no-win-no-fee marketing that targets vulnerable tenants, often without advising on self-resolution options. This volume-driven approach has already resulted in nine firms being under formal investigation, post-SRA visits.

All the above highlights the need for a critical and proactive response to such claims. There is an overwhelming obligation both on an individual case basis but also at a strategic level to challenge flawed expert evidence and reports and address poor conduct head on.

Winter is coming: occupiers' liability act 1957

As winter approaches, the risk of slips and falls in icy car parks becomes a topical concern.

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The Law

Under the Occupiers' Liability Act 1957, those in control of premises owe a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor is reasonably safe in using the premises for the purposes for which they are invited or permitted to be there.

Clerk and Lindsell

When assessing all the circumstances of the case, the authors of the 24th edition of Clerk and Lindsell (Chapter 11, Section 2 d 'Factors in account') said:

In determining whether what was done or not done by the occupier was in fact reasonable, and whether in the particular circumstances of the case the visitor was reasonably safe, the court is free to consider all the circumstances, such as the foreseeability of injury, how obvious the danger is, the age or infirmity of the visitor, the purpose of his visit, the conduct to be expected of him, and the state of knowledge of the occupier. The difficulty and expense of removing the danger is a relevant factor, as is the time in which a reasonable occupier may be expected to spot and deal with a hazard, the practice of occupiers generally, and any relevant official or semi-official safety rules. The presence of a reasonable system for dealing with possible dangers, such as regular patrols, is a powerful indicator that any duty of care has been satisfied. Thus, it has been held unreasonable to expect a local authority to supervise a municipal swing at all times, or otherwise disable it, in case a child falls off it. Similarly, the court is entitled to take into account the likelihood of the danger materialising: if one allows a reputable organisation to use land, one may well justifiably assume that it will act responsibly. Again, the precautions expected of a householder are likely to be less than those of a professional. With amenity or wilderness land, the desirability of keeping it in an unaltered state is relevant. Furthermore, it seems that the occupier is entitled to take at least some account of aesthetic matters, and to leave his premises in their original condition even though particular safety features may later become available. It should also be noted that the Compensation Act 2006 s.1 may be relevant here. This requires a court in any negligence action to have regard to whether requiring steps to avoid an accident might prevent, limit or discourage desirable activity. This may well incline a court to be indulgent to the occupiers of amenity land, cycle paths and the like faced with a claim that demanding precautions ought to have been taken (though in practice this seems to have been the approach anyway).

Cook v Swansea City Council [2017]

This issue was highlighted in the case of Cook v Swansea City Council [2017], where the Court of Appeal confirmed that occupiers are not expected to prevent every patch of ice, but rather take reasonable and proportionate steps to reduce foreseeable risks.

The car park in question was one of 46 operated by the defendant. It was a small, unstaffed, 24-hour pay and display facility with 40 spaces, open to the elements. It was not proactively gritted, but only reactively on reports from the public of dangerous conditions; by contrast, the defendant did proactively manage and grit their 'staffed' car parks.

The court considered the implications of finding the council should proactively grit unstaffed car parks. The council's position was it would most likely close those car parks in response to reports of adverse conditions and this would inconvenience residents and visitors. The alternative to closing the car park would be staffing them or arranging regular gritting and this would involve significant use of staff and material resources. This would be disproportionate and costly when compared to the risk posed and would divert resources from situations where attending was more urgently required.

Furthermore, there is no duty to protect against obvious dangers (Tomlinson v Congleton [2004]) and people 'out and about' in cold weather can be reasonably expected to watch out for ice and to take care. Tomlinson v Congleton [2004] considers the balancing exercise under section 2 (2) of the Occupiers' Liability Act when considering the likelihood and gravity of injury, social value of the activity, and cost of precautions. The court in Cook applied those principles to conclude that the defendant's reactive system was reasonable and proportionate considering the obvious nature of the risk and the costs and impracticability of further precautions.

Practical Considerations for Supporting a Defence

- Obtain any CCTV as soon as possible (if available).
- Winter Policy/Risk Assessments – even if this is not to proactively grit, but provide reasons why it has been considered.
- Reports/records – accident and near miss reports concerning the relevant area.
- Consider how many other similar areas are managed or maintained by the defendant.
- Detailed summary concerning the relevant location and its features. For example if the location is a car park: type (multi-storey or open air), height restrictions (relevant for gritting vehicle access), maximum stay, opening hours, disabled parking bays.
- Images – for context of the location in absence of CCTV.
- Any relevant specifications of surfaces – for example if the incident occurred on an external set of steps – manufacture's specification, Pendulum Test Value (PTV, slip test rating).
- Witness statements.

Government Reforms Remove the Presumption of Parental Involvement to Protect Children from Abuse

On 22 October 2025, the Government announced Family Law Changes that included plans to repeal the statutory presumption that a child's welfare is best served through the involvement of both parents contained in the Children Act 1989.

Amendments to the Victims and Courts Bill will introduce measures to further restrict parental responsibility. This includes parental responsibility being automatically restricted where a child is born out of rape or where their parent has been convicted of serious sexual offences against any child.

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Why the Change?

The decisions form part of the Government's wider 'Plan for Change' to improve protections for children and victims of domestic abuse and to rebuild confidence in the justice system.

Presumption and Children Act 1989

Currently the Children Act 1989 provides that the courts must presume that, unless the contrary is shown, the involvement of a parent in a child's life will further the child's welfare. This is known as the presumption of parental involvement. The Expert Panel on Assessing Risk of Harm to Children and Parents in Private Law Children Cases published a report in 2020 that recommended this presumption be reviewed urgently to address its detrimental effects as it allowed, in some cases, parents with convictions of serious sexual offences against children to take active steps in their child's life. In November 2020, the Ministry of Justice officially launched the Review of the Presumption of Parental Involvement which focused on understanding how courts apply the statutory presumption and the impact on child welfare of the courts' application of these provisions.

The review revealed that where a parent posed a risk, or had harmed a child, the evidence suggested that involvement with that parent might not further the child's welfare. Such involvement could leave the children at ongoing risk of harm with both short-term and long-term implications for their lives. Evidence suggested that in some cases with indicators of high risk the courts were ordering direct contact between children and parents who posed a risk of harm to their child. Such decisions have a lifelong negative impact on children and potentially expose them to abuse. The evidence in the review suggested that children's views were not always being considered.

The review concluded that in, practical terms, assumptions about child welfare could affect decision-making and an individualised focus on the welfare of each child could be lost, with current practice leaving children at ongoing risk of harm.

Following the completion of this review, Deputy Prime Minister David Lammy announced his intention to remove the presumption of parental involvement. He added that the reform owed much to the campaigning of Claire Throssell MBE, whose sons Jack and Paul were killed by their abusive father in 2014.

Victims and Courts Biil

The reforms follow campaigning by Labour MPs Natalie Fleet and Jess Asato and Baroness Harriet Harman to provide greater protection for vulnerable children. Restrictions will be imposed immediately after sentencing to remove the necessity of applying to the Family Court.

Lammy said the reforms were a "crucial step forward in restoring faith in our justice system". He added: "Automatically restricting parental responsibility in cases of rape where it has led to the birth of a child and serious child sexual offences sends a clear message: the rights and safety of children come first".

In cases where a defendant has been convicted and sentenced for a rape that resulted in the birth of a child, the restriction of the defendant's parental responsibility would only apply to the that child. The Crown Court will be required to make a Prohibited Steps Order.

If it has not been established during criminal proceedings that the offending led to a child being born, but the defendant is convicted of rape and the court considers the child may have resulted from that offending, the court must refer the case to the relevant local authority. The local authority must then apply to the Family Court.

Keoghs Comment

The reforms follow new evidence showing that the current presumption introduced in the Children Act 1989 can in some cases cause harm by pressuring the Courts to maintain contact with abusive parents. The removal of the presumption ensures that the well-being and safety of the children are at the forefront of decision-making and should prevent abuse if contact is restricted with the abusive parent.

While the presumption is for the benefit of the Court when considering whether to make an order for parental responsibility, the shift in decision making will also need to be considered by employees of local authorities who will be responsible in many cases for making these applications. Local authorities will need to ensure that decision-making continues to be centred around the welfare of the child to ensure children are not put at risk of abuse by parents with a history of serious abuse against children/others. Decision-making in line with the act should limit any potential claims against the local authorities and insurers. In addition, we note under the Victims and Court Bill where there are cases where a child is suspected of being a product of rape but this is not proven in the Crown Court cases will be referred to local authorities for them to apply to the Family Court. Procedures will need to be in place to ensure the required applications/investigations are made to ensure contact is not allowed with the convicted sexual offender and that there is no possible legal recourse against the local authority and their insurers. Obviously in all above circumstances it will be fact specific as to whether there is a duty of care owed by the local authority and/or any course of action to prevent the abuse under the Human Rights Act 1988.

We eagerly await further updates on the bill when it comes to the general debate in the House of Lords and further guidance is provided on the reforms.

Birds eye of view of costs paying dividends

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While more claims than ever before are now subject to Fixed Recoverable Costs, there remain some large categories of claims that impact the public sector where costs are still calculated on the basis of hourly rates. Abuse, clinical negligence and military claims are among the excluded categories, and it remains the case that having an embedded and accessible costs solution is important.

Having experienced and enthusiastic costs draftsmen has always been important on a file-by-file basis, however our recent experiences show that a fully joined up approach with strategic oversight can also bring dividends. It is always important that on a regular basis someone takes a step back and looks at cohorts of work based on a variety of criteria, such as type of work.

Another success was shown in a cohort of circa 5,000 claims brought by one firm where the TPA had been paying costs of £15,000 per claim on average. We took a sample of claims and started cost proceedings, focusing on issues such as the cost and content of medical evidence, reliance on counsel and how all documents on the case were clearly based on templates. Shortly before the assessment, on the advice of costs counsel, the claimants proposed to accept £9,000 per case, promising to change their behaviours. These results would not have been possible had we not taken a bird's eye view of the claims, comparing and analysing everything from the content of letters of claim to medical reports. Further negotiations led to a further reduction, potentially saving our client over £30 million across the whole tranche of claims.

This sort of strategic oversight is vital, because often claimants' solicitors don't expect opponents to take such an approach. Once they become aware that this approach is being employed, we find that expectations drop, unreasonable costs are no longer claimed and word spreads across the sector, driving down both costs claimed and costs paid.

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