eventuated. Second, all the judgments upheld the rule established in *Dingle*, namely, that damages cannot be mitigated on the basis of that similar statements had been published about the same claimant by other persons. It was also found that defamation's "repetition rule", a construction which treats a statement that somebody else made an allegation as equivalent to making that allegation oneself, had also remained unaffected. Finally, all agreed that the serious harm test could be proved not only by direct evidence but also by inference. Especially the last of these should go a considerable way to allaying the genuine concerns of claimants. Nevertheless, it remains the case that untrue and unfair attacks on reputation are increasing (principally online) and defamation law may often not provide an effective avenue for vindicating the rights that are thereby impaired. At least in relation to natural as opposed to legal persons, many of these rights are recognised at a fundamental level not only within the concept of private life (as enunciated in the European Convention and EU Charter) but also in the protection of personal data (as expounded only in the later). Moreover, statutory data protection contains explicit safeguards against inaccurate and unfair processing of information relating to natural persons, this law has already been recognised by the courts as relevant in reputation cases (see e.g. *Moulay v Elaph Publishing* [2017] EWCA Civ 29) and new General Data Protection Regulation 2016/679 significantly strengthens these safeguards including in order to protect individuals from damage to "reputation" (recital 75). With defamation actions becoming more difficult, individuals wishing to vindicate their reputation may increasingly look to these alternative remedies. Even should Brexit eventuate, we may therefore still find European legal imports playing a greater role in shaping reputation rights in this jurisdiction.

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LIABILITY IN NEGLIGENCE IN PROVIDING A PUBLIC GOOD: REALLY NOT SO DIFFERENT?

IN *Poole Borough Council v GN* [2019] UKSC 25, the Supreme Court ruled that a local authority did not owe a duty of care to children whose family it had placed in public housing near another family it knew to have a reputation for anti-social behaviour, and who went on to subject the claimants and their mother to extreme forms of harassment, resulting in harms which included both physical and psychological injury. The Supreme Court upheld the ruling of the Court of Appeal in the same case ([2017] EWCA Civ 2185) but on different grounds. The Court of Appeal in *GN* had considered that its own earlier decision in *D v East*

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Berkshire AHA [2004] Q.B. 558, [2003] EWCA Civ 1151, establishing that a local authority could owe a common law duty of care to a child to whom it had assumed statutory responsibilities, had been implicitly overruled by later decisions giving a restrictive reading to the common law duties of public bodies, including the police case of *Michael v Chief Constable of South Wales* [2015] A.C. 1732, [2015] UKSC 2. The Supreme Court in *GN* has now decided that the Court of Appeal's reading of its own former judgment in *D* was wrong. This is no surprise, not least because the framing of the statutory powers of local authorities in child cases is completely different from that applying to the police. The wider significance of *GN* lies in Lord Reed's restatement of the principles underlying the tortious liability of governmental and statutory bodies.

The claimants in *GN* were two brothers aged nine and seven when the harassment began. The elder child was severely disabled, both physically and mentally, and required constant care. The harassment they and their mother were subjected to included attacks on the family car and home, threats of violence, verbal abuse and physical assaults against the mother and the younger child. The council and the police took action, including, at various stages, obtaining injunctions and anti-social behaviour orders, eviction, proceedings for contempt of court, and criminal prosecutions. However, the harassment did not stop, and the council could not immediately rehouse the claimants. The younger child, when aged nine, began to express suicidal thoughts and at one point ran away from home. The council made an assessment of his mental health needs and he was provided with support in the form of psychotherapy. Eventually another house was found for the claimants and their mother. An independent report commissioned by the Home Office found that the police and local authority had not made full use of powers to curb anti-social behaviour, and an internal review by the council concluded that the mental health assessment of the younger child's needs had been flawed.

The claimants in this case were both highly vulnerable. One was mentally and physically disabled prior to the events which gave rise to the claim, and the other became mentally unwell as a result of those events. Both were given care which reflected their needs. In respect of the elder child, the house the council provided was adapted in the light of his condition and he was provided with a care package. The younger child was given the mental health support referred to above. This is not therefore a pure omission case of the kind which occurs when a hospital or fire service fails to respond to an emergency (*Capital and Counties plc. v Hampshire C.C.* [1997] Q.B. 1004). The harms the claimants suffered included physical injury, so the subtle distinctions applying to cases of psychological harm and pure economic loss are not relevant. Under these circumstances the finding of no duty is clearly in need of explanation.

Part of the answer lies in the need to distinguish between the different functions performed by the defendant local authority. In its capacity as landlord, the defendant could not be liable for harms caused by one tenant to another (*Mitchell v Glasgow CC* [20009] 1 A.C. 874). It was not within the council's social care powers to remove the children from their mother because of the threat posed by third parties (on this point see in particular the judgment of King L.J. in the Court of Appeal, [2017] EWCA Civ 2185). Nor could any claim be made against the police, by virtue of the case law restricting their duty of care (confirmed in *Michael*).

The wider significance of *GN* lies in Lord Reed's clarification of the position of public and statutory bodies with respect to the existence of a duty of care. The overall message is clear: public bodies are not treated in any fundamentally different way to private parties or entities. Thus they are not generally liable for failing to confer a benefit, or for harms caused by third parties. Conversely, the statutory basis of their powers does not, without more, confer on them any particular immunity. *Robinson v Chief Constable of West Yorkshire* ([2018] A.C. 736, [2018] UKSC 4), confirmed in *GN*, demonstrates that the tort of negligence is committed where a public or statutory defendant foreseeably causes physical harm to another through a positive act amounting to negligence. The *Caparo* test (*Caparo Industries plc. v Dickman* [1990] 2 A.C. 605), which allows for the adjustment of the scope of a duty of care on (among other things) grounds of policy, has no application to such a case. This was a welcome clarification.

Although the law of tort rarely imposes liability for omissions, there are still some significant instances when it does. "Employers" and "occupiers" are among the special categories of defendants owing affirmative duties of action to those ("employees" and "visitors") most directly affected by their ownership of the means of production, in the one case, and land, in the other. Responsibility can be "assumed" beyond the cases of the existing special categories. Thus a parent company can assume, through its actions and conduct, responsibility for managing the health and safety of the employees of one of its subsidiaries (*Chandler v Cape plc.* [2012] 1 W. L.R. 3111 and more recently *Vedanta Resources plc. v Lungowe* [2019] UKSC 20, [2019] 2 W.L.R 1051, noted above p. 490). A hospital owes a duty not just to a patient in its care but to family members who may have shared a hereditary illness (*ABC v St. George's Hospital NHS Trust* [2017] EWCA Civ 336). In these cases, the element of volition in the creation of the duty is minimal, if it is present at all: in the *St. George's* case (at [64]) the court found that a duty was owed without the need to show a specific assumption of care. The duty arises because of the exposure of the claimant to a risk which the defendant is in a position, by virtue of its resources and knowledge, to address and which the claimant, conversely, cannot.

Was the council in *Poole* really not in a position to address the risks to which the claimants were exposed? According to Lord Reed, the council

would have owed a duty had it taken the claimants into care; but as it was, it did not assume responsibility for the claimants' safety merely by virtue of "investigating and monitoring the claimants' position", while the mother's "anxiety" to be rehoused did not "amount to reliance" (at [81]). The fact-intensive quality of this part of Lord Reed's judgment suggests that the case could have been better dealt with on breach and causation grounds. The errors committed by the council did not clearly lead to actionable damage. A jurisprudence focused on "duty" inevitably means that a more nuanced account of what amounts to fault in complex settings such as this will be slow to emerge.

In the light of Lord Reed's judgments in *Robinson* and *GN*, it may be difficult to maintain the idea that there are special "policy" factors limiting the tortious liabilities of public bodies, although some of these may reappear in future under the heading of the "statutory framing" of the common law duty of care, which continues to be relevant (Lord Reed at [75]). But should the liabilities of public and private sector defendants be so closely aligned? Private law, in conjunction with liability insurance, prices risks and entities are generally able to diffuse and absorb the costs of managing them. Local authorities, on the other hand, are providing public goods for which no effective price mechanism exists. They cannot use insolvency law or the corporate form to shield themselves from excessive liabilities in the same way that their private sector counterparts can. Rules on joint liability effectively make them defendants of last resort for risks run by others. It is difficult to see why there shouldn't be a special regime for public torts.

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OVERREACHING AND TRUSTS OF LAND

"THE doctrine of overreaching is a means by which some interests in land, particularly beneficial interests under a trust, are removed from the land on a disposition and attach to the proceeds of sale" (Law Com No 380 (2018), xvi). The doctrine matters in "priority disputes": cases where several parties claim an interest in a single asset, and each argues that he is entitled to enjoy his interest free of the claims of the others.

Baker v Craggs [2018] Ch. 617 involved a priority dispute. *A* (Mr. and Mrs. Charlton) had sold and conveyed land to *B* (Mr. Craggs). Before *B* registered the conveyance, and so acquired legal title to the land, *A* granted a legal easement over that same land to *C* (Mr. and Mrs. Baker). Did B's equitable title pending registration have priority over the easement granted to *C*? *C* argued that it did not: at the time the easement was granted,