

Summary

“The Consequences of Public Authority Liability”

by Daniel Squires

Considering public authority negligence liability in the UK, Squires observes that the law in this area is strikingly unstable and oscillating. He argues that this is because judgments have rested on conflicting views about the relationship between the citizen and the state, and on conflicting (and perhaps unprovable) assumptions about the effects of stricter liability. He contends that “the view that imposing a duty of care will be inefficient and detrimental to the effective discharge of the duties of public authorities is just as plausible as the contrary view that the threat of liability encourages greater care and ultimately saves public money”. By focusing on the absence of a factual basis for imposing a duty of care, Squires reminds us that a political judgment about the relationship of citizens to states must underpin tort law. Squires also discusses “compensation” in narrower terms, asking whether one could argue that “claimants who suffered injury should receive compensation regardless of the consequences for the future conduct of public authorities”. Here, he notes that the tort system is a poor device for providing compensation if that is its principal aim. He points out further (here echoing McLean) that compensation to individuals for public authority negligence must come out of the public purse, and so out of the same pot which the state could use for other aims, or to pursue more general public benefit. Squires finally remarks that it is anomalous, and hard to justify, that duties of care are owed by some UK public employees but not by others (why do ambulance drivers owe a duty of care, but coastguards do not?). In sum, the current jurisprudence of public authority negligence in the UK reveals deep and unresolved tensions in the political view of the relationship between citizen and state and the consequent liability for compensation when things go wrong.