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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: MAG10996

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2016 No. 11178

BETWEEN:

**MAUREEN MAGEE AS ADMINISTRATRIX OF THE ESTATE OF
JONATHAN MAGEE (DECEASED)**

Plaintiff/Appellant;

-and-

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant/Respondent.

MAGUIRE J

[1] This is an appeal against the decision of Master McCorry given on 10 November 2017 whereby the Master ordered the plaintiff's action in common law negligence against the Defendant be dismissed pursuant to Order 18 Rule 19(1)(a) of the Rules of the Court of Judicature (Northern Ireland) 1980.

[2] Mr Thomas Fitzpatrick BL appeared on behalf of the plaintiff/appellant and Mr Aldworth QC and Mr Henry BL appeared on behalf of the Chief Constable. Mr Sharpe BL appeared on behalf of the Northern Health and Social Care Trust and the Belfast Health and Social Care Trust, both of which have an interest in the proceedings, as will be discussed later.

Background

[3] The relevant pleading in this case is a Statement of Claim dated 12 January 2017. The Writ of Summons was issued on 5 February 2016. The Plaintiff's claim arises from the death of Jonathan Magee, who was a son of the Plaintiff, who asserts her claim under the Law Reform (Miscellaneous Provisions) (Northern Ireland) Act 1937 and the Fatal Accidents (Northern Ireland) Order 1977. The causes of action

against the Chief Constable, as set out in the Statement of Claim, are a cause based on common law negligence and a cause based on breach of Article 2 of the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998. For present purposes, the issue before the court relates to the viability of the cause which is said to arise in respect of alleged common law negligence on the part of the police.

[4] Jonathan Magee (“the deceased”) committed suicide on 29 January 2011. He did so by walking in front of a moving train, near Knockmore Bridge, Lisburn, County Antrim. At the time of his death, it appears that he had a significant history of mental illness and had suffered from schizophrenia and had abused drugs from an early age. At the date of his death he was aged 29 years.

[4] The background to the claim of negligence appears to be as set out at paragraph [3] of the Statement of Claim. It reads:

“The deceased had a significant history of schizophrenia and drug abuse from an early age and had required care and assistance for a significant period of time. There were various attempts made to assist the plaintiff but his problems continued. On 20 December 2010 he was reviewed by Dr Boyle, consultant psychiatrist, at the Mater Hospital and consideration was given to detaining him under the Mental Health Order, but it was felt that a further appointment should be provided on 24 January 2011. The deceased was on significant medication at the time and it was hoped that he would continue to take the medication during the period between 20 December 2010 and 24 January 2011. Further contact was made with the deceased’s general practitioner on 23 December 2010 and the deceased agreed to commence taking his medication. Further contact was made between the deceased and his general practitioner on 7 January 2011 when he indicated that he was taking his medication, although he was not taking it on a regular basis. On 11 January 2011 the deceased attended the Mater Hospital complaining that he had been drugged and expressing persecutory beliefs and he was strongly encouraged to attend his appointment with Mr Boyle, consultant psychiatrist, on 24 January 2011. Before that appointment the deceased attended at the Emergency Department of the Mater Hospital on 23 January 2011 where it was noted that he was agitated. He was then encouraged to attend his

appointment with Dr Boyle the next day and he did attend the appointment although he was clearly dishevelled and was noted to be “grandiose and manic” as well as being deluded. The deceased was referred but not admitted to the Home Treatment Team and he was assessed to be expressing delusional beliefs and it was agreed that he had a psychotic illness. He was not however offered admission to the Home Treatment Team at the time. Attempted contact was made on 25 January 2011 to arrange a domiciliary visit but no answer was received. The Home Treatment Team did attend the deceased’s property but found him to be agitated and irritable upon their presentation. On 26 January 2011 the deceased attended Whiteabbey Hospital and the Home Treatment Team were asked to assess him. He was noted to have presented with suicidal thoughts. He was assessed as showing no evidence of psychosis or mood disorder and he was refused admission to Holywell Hospital. Contact with the PSNI was arranged, but the deceased then left Whiteabbey Hospital and was not contactable. The deceased was briefly assessed at the Lagan Valley Hospital on 26 January 2011 and it was noted that he had a history of acute anxiety and paranoia. It was also noted that there would be a bed available in Ward K of the Mater Hospital and an ambulance transfer was arranged and the deceased was admitted on a voluntary basis to Ward K at the Mater Hospital on 26 January 2011. The deceased absconded and the PSNI were contacted in order to investigate the deceased’s absconding and to return him to the hospital. Mr Magee attempted suicide on 28 January 2011 by cutting his wrists and overdosing. He was picked up by the police on the Cavehill Park as there were concerns from his family about tablets that he had taken from the house. An ambulance took him to Belfast City Hospital and he arrived around 17.30 hours, but he was not detained under the Mental Health Order and he was not held by the police but left in the care of the hospital. Arrangements were made to have an out of hours GP and a social worker attend to assess whether the deceased should be detained under the Mental Health Order and a social worker concluded at 22.30 hours that the deceased was paranoid but did not have ideas of self-harm or

suicide. It was indicated that a GP would not be available until 0030 hours on 29 January 2011 (in fact the GP arrived at 01.40 hours). Mr Magee had left the Department by that stage. The PSNI were notified of Mr Magee's absconding from the hospital but investigation into his disappearance was not fruitful and Mr Magee died from suicide having walked in front of a train."

[5] There are then set out in the Statement of Claim particulars of negligence and later particulars of breach of the European Convention of Human Rights. The particulars of negligence are numerous and often detailed. While the court does not intend to conduct a detailed consideration of the *minutiae* of these, it will set out below the particulars of negligence so that the reader can appreciate their scope:

"(a) Following arrest of the plaintiff on 28 January 2011 de-arresting the deceased within minutes to allow him to be examined by hospital staff and failing to ensure that he was detained for his own safety.

(b) Failing to arrest or consider arresting the deceased under the Mental Health Order on 28 January 2011, following discovery of the deceased at Cavehill Country Park, Belfast having attempted suicide.

(c) Failing to have any or adequate regard for the history provided by the deceased's family which indicated that he was at a significant suicide risk.

(d) Failing to ensure, on 28 January 2011, that the deceased was actually detained under the Mental Health Order prior to releasing him from their custody.

(e) Causing or allowing the deceased to abscond from the Belfast City Hospital and to commit suicide.

(f) Failing to take immediate action to locate the deceased following the report from Belfast City Hospital at 01.13 am hours on 29 January 2011 that he had left the hospital whilst in the process of being detained under the Mental Health (Northern Ireland) Order 1986.

- (g) Failing to obtain full and accurate details surrounding the deceased's departure from the hospital in failing to correctly record the information received on incident log following the report from the Belfast City Hospital after the deceased had absconded.
- (h) Failing to link the call from the Belfast City Hospital in relation to the deceased to all previous incidents involving the deceased and failing to ensure that a police vehicle was sent to the Donegall Road to locate the deceased and return him to the hospital forthwith.
- (i) Failing to categorise the deceased as a high risk concern following the report from the Belfast City Hospital.
- (j) Failing to conduct proactive enquiries in relation to the deceased's whereabouts until 03.36 hours on 29 January 2011.
- (k) Failing to commence a missing person's investigation until 03.36 hours on 29 January 2011.
- (l) Failing to deem the deceased high risk and suicidal until 03.36 hours on 29 January 2011.
- (m) Failing to assess the level of risk and determine the appropriate course of action upon the call from Belfast City Hospital following the plaintiff absconding from hospital at 01.13 am.
- (n) Failure of the first duty inspector, at 03.36 hours on 29 January 2011, following assessment of the deceased as high risk to contact a detective inspector and report him as a high risk missing person.
- (o) Failing to appoint a CID detective inspector to have responsibility for the management of the investigation upon assessment of the deceased as high risk.
- (p) Failing to ensure that Form 57 was completed for missing persons and failing to ensure that an initial risk assessment was conducted.

(q) Failing to fill out a Form 57 until 10.40 hours on 29 January 2011, failing to complete the same until 11.10 hours therefore causing a delay of 7½ hours from the time that hospital staff reported the deceased to be high risk and suicidal.

(r) Failing to conduct all proper and reasonable checks upon attendance at the deceased's home at 04.35 hours and 06.19 hours on 29 January 2011.

(s) Failing to gain access to the property on either of the two searches.

(t) Failing to establish that there was a good level of access to the rear of the property.

(u) Causing or allowing a delayed response to a failure to properly investigate the property. Failing to, within a reasonable period of time, obtain phone information from the PSNI telecommunications liaising officer or conduct proactive enquiries at Lisburn City Centre in order to obtain the deceased's last known phone number.

(w) Failing to contact family and friends upon being alerted that the deceased was high risk suicidal to obtain his phone number.

(x) Failing to contact the deceased within a reasonable time after notification of his disappearance.

(y) Erroneously deeming the deceased not to be 'high risk' following a telephone conversation with him on 29 January 2011.

(z) Erroneously reducing the risk assessment following phone contact with the deceased.

(aa) Failing to make a phone application to the telecommunications liaising office in order to assist in the detention of the deceased.

(bb) Failing to properly carry out handovers or to properly communicate between the supervising officers involved in the investigation.

(cc) Failure of the first duty officer to brief the second duty officer at 07.00 am on 29 January 2011 in relation to the enquiries made re the deceased's whereabouts.

(dd) Causing or allowing the second duty inspector and the second duty sergeant not to be aware of the incident until 1½ hours after they started duty.

(ee) Failing to inform the second duty officer that a Form 57 had been completed and failing to notify him of the telephone contact made with the deceased.

(ff) Failure on the part of the second duty sergeant to notify the second duty inspector of events surrounding the police response in relation to the deceased's disappearance and the on-going investigation and failure of the duty inspector to seek a further update in relation to the same."

[6] It was the Defendant's contention before the Master that the Statement of Claim should be struck out on the basis that it disclosed no reasonable cause of action. This contention was partly upheld by the Master who provided a carefully reasoned judgment. He held that the Plaintiff's common law claim in negligence against the Chief Constable was unsustainable in that the Chief Constable did not owe a duty of care to the Plaintiff or his personal representative. However, he refused to strike out the Plaintiff's claim based on alleged breach of Article 2 of the ECHR. The Plaintiff now has appealed that part of the Master's decision related to common law negligence. There has been no cross appeal by the Chief Constable in relation to his conclusion in respect of alleged breach by him of Article 2 ECHR. That issue, as things stand, will, go to trial.

[7] The involvement of the two Trusts referred to above, relates to the assertion by the same Plaintiff of similar causes of action against each of them arising from the deceased's death. They, as a result, have an interest in the outcome of the strike out proceedings initiated by the Chief Constable. This court was told that it has already been accepted by the parties that the proceedings by the Plaintiff against the Chief Constable and those against the two Trusts should be consolidated but, as yet, no consolidated Statement of Claim is available. In respect of the position of the Trusts, it appears that each has accepted it is liable in respect of common law negligence but each denies any breach of Article 2. Neither Trust has itself made any strike out application of the sort made by the Chief Constable.

[8] This Court in these proceedings is concerned only with the correctness or otherwise of the Master's decision to strike out the Plaintiff's common law cause of action in negligence against the Chief Constable.

Order 18 Rule 19(1) of the Rules of the Court of Judicature

[9] Order 18 Rule 19(1) of the Rules of the Court of Judicature provides:

“The court may at any stage of the proceedings order to be struck out or amended any pleading...on the ground that –

- (a) It discloses no reasonable cause of action...and may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.”

[10] For the purpose of this application, the averments in the Statement of Claim must be assumed to be true.¹

[11] It is a well settled principle that the summary procedure for striking out pleadings is to be used in clear and obvious cases only. The matter must be unarguable or almost incontestably bad.

[12] In approaching such applications the court should be appropriately cautious in any developing field of law particularly where the court is being asked to determine such points on assumed or scanty facts included in the Statement of Claim.

[13] In considering whether or not to decide difficult questions of law, the Judge can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in the light of the actual facts of the case.

[14] A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered. The mere fact that the case is weak and unlikely to succeed is no ground for striking it out.

[15] The court's summary jurisdiction was not intended to be exercised by a minute and protracted examination of the documents and facts of the case in order to see whether the plaintiff really has a cause of action. To do that is to usurp the position of the trial judge and to produce a trial in chambers.

¹ This and succeeding paragraphs are based on the well-known judgment of Gillen J (as he then was) in *Rush v Police Service of Northern Ireland and Another* [2011] NIQB 28.

The thrust of the plaintiff's case against the police in common law negligence

[16] The Plaintiff's case against the Chief Constable in common law negligence when viewed against the broad sweep of the facts set forth in the Statement of Claim and the particulars of negligence can be distilled to essentially three main strands:

- (a) That the Chief Constable failed to detain the deceased after he was taken to the hospital and thereby enabled him to leave the hospital to which he had been taken.
- (b) That the Chief Constable failed to investigate adequately after the deceased allegedly 'absconded' from the hospital.
- (c) That the Chief Constable failed to conduct a reasonable search for the deceased after he had allegedly 'absconded' from the hospital.

[17] These three strands are said to arise because on the facts it is argued on behalf of the Plaintiff that the Chief Constable owed a duty of care at common law to take reasonable steps to safeguard the deceased against the risk of him coming to harm and the Chief Constable breached this obligation.

[18] By mounting his strike out application, the Chief Constable contended that the Plaintiff's case was unarguable on the simple basis that he owed no duty of care at common law to the Plaintiff (or his personal representative) of the nature of that described above and so there could be no liability in negligence at common law on the part of himself or his officers, including those officers who dealt with the deceased at the time.

The Master's Decision

[19] The outcome of the proceedings before the Master has already been noted. Focussing only on his decision to strike out the Plaintiff's common law claim in negligence, it is right to acknowledge that the Master carried out a comprehensive analysis of the many authorities in the field of alleged police liability in negligence. As the Master commented:

"... the extent and limitations on such a duty of care [owed by police] has been the subject of numerous judgments of the superior courts in the United Kingdom, included most notably *Hill v Chief Constable of West Yorkshire* ... *Van Colle v Chief Constable of Hertfordshire* ... *Smith v Chief Constable of Sussex* ... *Rush v Chief Constable of the Police Service for Northern Ireland* and *C v Chief Constable for Northern Ireland*".

[20] The Master then commented specifically on *Hill*²:

“The general principle as set out in *Hill* ... is that the police owed no duty of care in negligence ... unless the relationship between the claimant and the police demonstrated the special ingredients and characteristics which would create such a duty of care and it was contrary to public policy that police should owe a duty of care in negligence for the manner in which it conducted a criminal investigation”.

[21] On the facts of the present case, the Master did not consider that it could be maintained that the police had assumed any special responsibility for the plaintiff so that the matter fell to be considered on the basis that there was no private law duty of care owed by the police to the deceased in line with the views expressed by the majority of the Supreme Court in the case of *Michael*.

[22] In these circumstances, the Master held that the common law claim against the Chief Constable in negligence should be struck out.

The case before this Court

[23] In considering the present appeal the court has been concerned about the way in which the appeal bundle had been constructed. It was immediately struck by the presence of a significant quantity of evidential material which had been filed by the parties, which appears to cut across the description of the court’s normal approach to strike out applications which it has already referred to at paragraphs [9]-[15] above.

[24] In particular, the court noted that:

- (a) An affidavit had been filed on behalf of the Chief Constable which provided a commentary on the case and, in addition, exhibited quite a volume of evidential material in the form of documents. This was filed before the case was heard by the Master and he appears to have introduced certain parts of this material into his description of the factual basis for the Chief Constable’s application.
- (b) An affidavit had been filed, this time after the decision of the Master, by Maureen Smyth (nee Magee). This was filed on behalf of the Plaintiff.
- (c) An affidavit had also been filed, after the decision of the Master, by Julie Magee on behalf of the Plaintiff.

² [1989] 1 AC 53

- (d) A selection of evidential material (for example, medical notes relating to the deceased) had been exhibited on behalf of the Plaintiff, again after the handing down of the Master's decision.

[25] At the outset of the appeal hearing the court indicated its unhappiness at the presence of such materials, given that the court's role is not to hear the case but rather is to decide whether or not the causes of action, on the pleadings, disclosed an arguable case. At this stage it is generally not the court's job to set upon a trial of the action and conventionally this is avoided by the adoption of the position that usually the court will proceed on the basis of taking the plaintiff's pleadings factually as true. The parties appeared to accept that the court should proceed to hear the appeal on this basis and this is what it will do, at least as far as it is possible to do this. It will be prepared, where appropriate, to make reference to matters which appear in the Master's careful judgment.

The Supreme Court decisions in *Michael*³ and *Robinson*⁴

[26] The above are two recent decisions of the Supreme Court which, at least in broad terms, deal with the subject matter of police liability in negligence for the acts of others. The Master was aware of and referred to and sought to apply the *Michael* case, which was decided in 2015. However, the decision in *Robinson* post-dated the Master's decision, being decided in 2018. It can now be regarded as setting the base line in litigation of this sort.

[27] Together these decisions sweep away the notion that the police enjoy immunity from negligence actions when carrying out their functions of preventing and investigating crime but this alone should not be viewed as saying that the police will always be liable in this context. Rather the position adopted – especially in *Robinson* – is that while the police will generally owe a duty of care *in accordance with ordinary tort principles of the law of negligence* unless statute or the common law provides otherwise, this will be subject not only to those principles but also to the fact that there will be exceptions.

[28] The exceptions, in short form, may be found in situations where the police have themselves intervened in a significant way in the case, such as where they have themselves brought about the injury or death which has produced the claim, or where the police have assumed responsibility for the injured party.

[29] *Ordinary tort principles of the law of negligence* will generally not make the police liable in negligence for omissions on their part. Lord Reed in *Robinson* cited from an academic article what he described as the 'omissions principle', which was formulated in the article as follows:

³ [2015] AC 1732

⁴ [2018] UKSC 4

“In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B unless:

- (i) A has assumed responsibility to protect B from that danger,
- (ii) A has done something which prevents another from protecting A from that danger,
- (iii) A has a special level of control over the source of that danger, or
- (iv) A’s status creates an obligation to protect B from danger”⁵.

[30] In the light of the above, Lord Reed indicated that generally the police will not be under a duty of care to prevent the occurrence of harm⁶.

[31] *Michael* had concerned an alleged failure by the police to respond promptly to a 999 call made by a Mrs Michael who was under threat from her violent ex-partner. Unfortunately, by the time the police responded Mrs Michael had been murdered by her partner and the argument was that in these circumstances the police owed a duty in negligence, which had been breached on the facts.

[32] The majority in the Supreme Court considered that on these facts the police owed no duty of care which sounded in common law negligence. The leading judgment was delivered by Lord Toulson who at an early stage noted that:

“English law does not as a general rule impose liability on a defendant (D) for injury or damage to the person or property of a claimant (C) caused by the conduct of a third party (T)”⁷.

[33] Likewise, the common law, he noted, does not generally impose liability for pure omissions⁸. Lord Toulson put the matter this way:

“It is one thing to require a person who embarks on action which may harm others to exercise care. It is another matter to hold a person liable in damages for failing to prevent harm caused by someone else”⁹.

⁵ Para [34]

⁶ Para [37]

⁷ Para [97]

⁸ Ibid

⁹ Ibid

[34] At paragraph 114 of his judgment, Lord Toulson provided a further interesting formulation of principle when he said:

“It does not follow from the setting up of a protective system from public resources that if it fails to achieve its purpose, through organisational defects or fault on the part of an individual, the public at large should bear the additional burden of compensating a victim for harm caused by the actions of a third party for whose behaviour the state is not responsible. To impose such a burden would be contrary to the ordinary principles of the common law”.

The court’s assessment

[35] The involvement of the police with the deceased which falls centrally to be considered in this case relates to a period of time beginning on the afternoon of 28 January 2011 and which ends with the deceased’s death on the following day. This is not to say that the police did not have dealings with the deceased prior to this window of time but it is to say the key to any consideration of the Plaintiff’s case against the police will be crucially concerned with this period.

[36] In essence, what appears to have occurred during this period (having regard to the Master’s consideration of the case as well as the contents of the Statement of Claim) is that on the afternoon of 28 January 2011 the police stopped the deceased in a public place (Cavehill Countryside Park) and arrested him. The reason for the arrest appears to be disputed as between the parties but there seems to be no dispute that it occurred. Unusually, the deceased was not *post* arrest taken to a police station, as might have been expected. Rather he was taken (the Master found by ambulance with the police following) to Belfast City Hospital. At the hospital arrangements appear to have been made for the deceased to be assessed by a social worker and later by a doctor.

[37] At some point, the police officers who were with the deceased at Belfast City Hospital, de-arrested the deceased and left the premises, leaving the deceased there. The reasoning behind this development is unclear and would, if the matter goes to trial, have to be the subject of explanation. At all events, once the police officers left, the deceased, it appears, was under no legal compulsion to remain at the hospital. While he was seen and assessed by a social worker at around 22.30 hrs, the deceased left the City Hospital before he could be seen by a doctor. The police were notified of this in the early hours of the morning of 29th January 2011 and took various steps to try and locate him, without success. It appears that at some point during the afternoon police officers did speak to the deceased by telephone but they did not, it seems, have an address or location for him. At or around 5pm on that day the deceased ran in front of a train, as already mentioned in this judgment.

[38] The question for the court is whether in the circumstances broadly described above it is arguable or not that the police owed a duty of care in the law of negligence to take reasonable steps to protect the deceased? Would such an argument bear some chance of success?

[39] The court's conclusion does not lie in a minute or protracted examination of the documents and facts in the case but it does depend, at least to a considerable extent, on how the law has developed and the evolution of jurisprudence in this broad area.

[40] In this context, it is right to acknowledge that the facts of cases which give rise to issues in relation to alleged police common law negligence will vary widely. Usually the risk which is at the core of the case will be one related to damage or death which may befall an identified individual, in the absence of police intervention, at the hands of third party criminals. That is, of course, not this case. This case is concerned with a risk to the deceased primarily from the deceased himself. But the court is of the view that the principles of law which have been developed, particularly in the context of the recent Supreme Court judgments, are widely enough stated to be capable of application in the present case¹⁰.

[41] In the court's opinion, the present case falls squarely within the category of case where generally there will be no duty of care which arises at common law. The police do not owe a duty of care in the broad sweep of cases to prevent an adult person from harming themselves just in the same way that the police will generally not owe a duty to protect an individual from harm which may befall him or her from the criminal acts of third parties.

[42] However, this conclusion, it seems to the court, does not conclude the issue in this case. This is because in this case the police did intervene on the afternoon of 28th January 2011 and they did so, at least arguably, for reasons which related to their concern that the deceased might harm himself. The police, in fact, arrested the deceased but instead of taking him under arrest to the police station they took him (or followed an ambulance containing him) to the hospital for (again at least arguably) an assessment of his suitability for admission as a compulsory patient.

[43] The court is of the view that such actions can be accommodated (again at least arguably) under the banner that this is a case where there has been an assumption of responsibility by the officers concerned in relation to the deceased.

[44] The problem in respect of the police case made to this court is that if it is arguable that the police did assume responsibility for the deceased, the court is left with a largely unexplained *volte face* on their part involving de-arresting him and

¹⁰ A good example is the last sentence of para [70] of Lord Reed's judgment where he says: "...the police are not normally under a duty of care to protect individuals from a danger of injury which they have not themselves created...including injury caused by the conduct of third parties, in the absence of special circumstances such as an assumption of responsibility".

placing him, *de facto*, in a position where he could leave the hospital of his own volition.

[45] It seems to the court that once responsibility is assumed – as it would be generally where the police take a person into custody – then the circumstances in which that responsibility is terminated can give rise to possible issues of negligence for breach of a duty of care, depending of the facts. Of course, at a trial, a satisfactory explanation may be available for a step such as de-arresting an individual and this may lead to a conclusion that any duty of care has been performed and that is a possible outcome in this case.

[46] In the course of the hearing before this court, there was extensive reference made to the powers of the police under the Mental Health (Northern Ireland) Order 1986. In particular, there was reference to Article 129 (definition of ‘place of safety’ which includes a hospital) and Article 130 (which gives a general power to a constable to detain a person who appears to be suffering from a mental disorder so he can be removed to a place of safety and detained there for assessment).

[47] It is not clear to the court whether the powers provided under the 1986 Order were used in this case but what is clear is that the police did possess powers of this sort and very likely could have used them in this case. In other words, the statutory model for intervention by the police existed in this case, though it may be that arrest powers in respect of another aspect of their investigation were exercised.

[48] It seems to the court that in either event it was open to the police to assume responsibility and so create the circumstances where it is arguable that a duty of care arises. This is what appears to have occurred in this case.

[49] Assumption of responsibility by the police, according to *Michael, Robinson* and similar cases, is an exception to the general approach discussed at paragraph [42] above. It seems to the court, it alters the landscape and leads to the conclusion that the court should allow the Plaintiff’s appeal in this case and this is what the court will do. As the events of the later police investigation into the whereabouts of the deceased and the search for him may have to be viewed in the context of an assumption of responsibility by them, the court is not inclined to the view that it should strike out parts of the Statement of Claim dealing with these matters.

Conclusion

[50] For the reasons given the court will allow the Plaintiff’s appeal and restore the Statement of Claim.

[51] It will also list an early case management review of this case as the litigation should be advanced speedily.